

# Printer case may change your future buying rights

## The Switch

BRIAN FUNG

weapon against other firms, saying that companies can be sued for patent infringement only where they actually do business.

Now, the court has ruled again along those same lines, handing a victory to consumer groups in a case about printer cartridges — or, more specifically, toner cartridges, the kind used by laser printers. The case has huge implications for how we think about technology ownership in America and your rights as a user.

Here's what you need to know:  
**What's this case about?**

Last week, the Supreme Court dealt a major blow to corporations that try to use patent law as a

The case is called *Impression Productions v. Lexmark*. Lexmark does a lot of business with corporate customers, so if you work in an office, you might know the name from seeing it on your printers there. Those machines rely on toner cartridges, which must be changed every so often when they run out, just like the ink cartridges in your home printer. And just like home printing, laser printing hinges on a razor-and-blades business model where much of the manufacturer's income depends on the reliable sale of new toner cartridges.

To protect its business model, Lexmark basically did some things that made it harder for people to get cheap, used cartridges on the secondhand market. Those tactics were

designed to make it more likely for customers to choose Lexmark's own cartridges, according to the court. While there's nothing specifically illegal about this, the court said, a company such as Lexmark can't use patent law to stop other companies, such as Impression, from reselling its old cartridges.

**What did Impression do, exactly?**

Companies like Impression make money by buying old toner cartridges, refilling them with more toner and then selling them at a lower price than what Lexmark charges.

Lexmark argued that by refurbishing and reselling the cartridges without permission and outside the terms of Lexmark's service agreement with end-users, Impression was violating the patent Lexmark held on the cartridges. Essentially, Lexmark was saying that its patent rights extended beyond the initial sale of the cartridge to cover even future resales.

## So what's the big deal?

The practical question is how much Lexmark or any other company can control what you do with what you buy. This debate isn't limited to printer cartridges. If you buy a car, how do you know you really own it? What does ownership actually entitle you to do with your property, anyway?

The issue fits into a broader fight over what some experts call the "right to tinker." The thinking goes: If you buy something, you should be free to do whatever you want with it — sell it, modify it, even destroy it. But some companies, even car manufacturers, have sought to limit that freedom. They make arguments such as Lexmark's, where handling a product in a way that potentially undermines the company's business leads to an alleged violation of patent or copyright protections. In this view, customers may think they own the physical property outright but they are still constrained by an invisible cage made of corporate intellectual

## property.

The Supreme Court disagreed with this view. To help make its case, Chief Justice John G. Roberts Jr. used an analogy:

"Take a shop that restores and sells used cars. The business works because the shop can rest assured that, so long as those bringing in the cars own them, the shop is free to repair and resell those vehicles. That smooth flow of commerce would sputter if companies that make the thousands of parts that go into a vehicle could keep their patent rights after the first sale."

In short, what you can do with the stuff you buy has real ramifications for America's way of life.

## What happens next?

This debate over ownership is only getting more complicated as the world increasingly moves to digital goods, including subscription-based streaming. With apps like Spotify, for example, consumers are choosing to rent, not buy. The sprawling digital economy raises new

questions for legal experts about access and ownership.

"The next logical step will be for courts to recognize that people who buy digital goods are owners of those goods, not mere licensees, and can resell and tinker with their digital goods to the same extent as purchasers of tangible property," the Electronic Frontier Foundation, a consumer group that supported Impression in the case, said Tuesday in a blog post.

Other analysts predict that companies will become more creative in the courts.

"In view of Lexmark, I expect that technology owners will diversify their legal strategies used to protect their products," said Seth Heller, an intellectual property lawyer at Axinn, Veltrop & Harkrider.

In fact, while the Supreme Court specifically said that Lexmark can't use patent law to go after cartridge resales, it didn't rule out other methods of getting what the company wanted.

brian.fung@washpost.com