

## Manufacturers vs. Secondary Market Dealers Defined By Joseph Marion

Very often we read articles about the battle between manufacturers and the companies who have made a market in selling pre-owned technology equipment. We call that market “the secondary market.”

Manufacturers pound on the table and scream that the secondary market is the cause of the “grey market”, a term which they conveniently misuse over and over again. They pound on the table and scream that a vibrant secondary market hurts the sale of new equipment. And they pound on the table and scream that secondary market dealers violate their intellectual property rights by selling unlicensed software. In law school you are taught that when trying a case, if you are strong on the law you pound away at the law. And when you are weak on the law, you pound on the table.

This column is dedicated to telling the real story of the secondary and reseller market and to explain what all that pounding is about.

### Grey Market

Let’s start with that misused term that manufacturers love to throw around when competing with the secondary market, “grey market.” Very often you will hear manufacturers make statements about stolen equipment, illegal software and used equipment and they will call it all “the grey market.” Nothing could be further from the truth. Grey market equipment is NOT illegal, stolen and definitely NOT used. Grey market equipment is simply NEW equipment sold by an unauthorized channel.

Manufacturers sell their equipment in two ways. They sell it directly to end users and they sell it through authorized resellers, sometimes called VARS or Business Partners. These Business Partners are pressured by manufacturers to take more and more product in order to keep their relationship with the manufacturer. These Business Partners end up buying more equipment from the manufacturer than they can use. Not being able to find a home for the equipment, and having to pay finance charges on the equipment sitting in their warehouse the reseller is forced to “dump” the hardware to a wholesaler. The wholesaler then sells it to a secondary market dealer, who then sells it to an end user. This is a “grey market” sale.

In this scenario, the end user and the wholesaler did nothing illegal or immoral. Ironically, the Business Partner was forced to violate his agreement with the manufacturer in order to keep his agreement with the manufacturer. And the manufacturer who says they are concerned about unauthorized sales forced the reseller into that position.

## The Secondary Market

Time and time again, I hear some manufacturers complain that they are losing sales of new equipment to the secondary market. And every once in a while, some not so smart policy maker at some manufacturer will come up with a plan to no longer support the secondary market. They will do this in various ways. For example, they will adopt a policy which says that the operating system does not transfer with the hardware when the hardware is sold. Then, when a second end user buys that system, they have to pay so much money for the operating system, that it becomes less expensive just to buy a new box.

Or they might come up with a plan that says that used systems needs to be inspected before they will place it under maintenance. When the equipment is inspected the manufacturer comes up with so many expenses to “upgrade” the box that it again becomes less expensive to buy a new box.

And then you have the smart manufacturers, like IBM. They understand that the best way to sell new equipment is to add value to the used equipment. IBM has a policy called Maintenance Service Qualification, or MSQ. Under MSQ an IBM machine which is under IBM Maintenance, can be moved to a new customer almost anywhere in the world and IBM will still accept it for maintenance. IBM lets most of their operating systems travel with the used systems when sold. Sun Microsystems now allows second users of their systems to download the Solaris Operating System at no charge.

A customer that is able to sell his used system at a good price, is more apt to buy a new computer from that same manufacturer.

## Intellectual Property

The manufacturers have a right to be concerned about their intellectual property. (For the purposes of this article let’s consider proprietary application and operating software to be the intellectual property we are talking about.) There are some resellers who will sell systems to end users and include copies of intellectual property on the boxes, in violation of the manufacturer’s policy. Not only is it illegal, but it would be considered a violation of the Association of Service and Computer Dealers and North American Association of Telecommunications Dealers Code of Ethics ([www.ascdi.com](http://www.ascdi.com) and [www.natd.com](http://www.natd.com)) and violators could face expulsion from these organizations.

## IT Managers need to Know

IT Managers should not allow manufacturers to scare them away from the Secondary market with the mention of the words “grey market.” Used equipment is not illegal and not even grey market. IT Managers should know that in most cases the right to use operating systems on used equipment CAN be obtained from the manufacturers legally. And they need to look for Secondary Market Dealers, like the members of the ASCDI and NATD who will not violate the manufactures intellectual property rights.