

Abstract

**A Study on Exhaustion Doctrine for Digital Works
- considering essential meaning and legal character of exhaustion -**

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The exhaustion doctrine has long been used as a legal principle which resolves conflicts between the owner of copyright and the owner of a copyrighted products. Its underlying requirements were based on the way of trading and using copyrighted products in the early 1900s. However, as the advent of new technology has brought remarkable changes in the way of trading and using copyrighted products, the present exhaustion doctrine frequently conflicts with reality.

Under the current copyright act, since the exhaustion doctrine allows assignee to dispose the product by limiting right of distribution, and it seems not to guarantee the assignee to use and dispose of digital product anymore. That is not reasonable, in that it is still strongly needed to resolve conflicts between the owner of copyright and the owner of digital products. Therefore, if the exhaustion doctrine's requirements are not satisfied because of the features of digital technology, they should be updated considering what the requirements really stand for.

Hence, firstly, the concept of 'ownership' should be interpreted flexibly in the light of the contract, so that if a digital product fully transferred, the subsidiary provisions of the contract for use or dispose would not be legally enforceable under the copyright act. Secondly, since the exhaustion doctrine is to ensure that the assignee can use or dispose of his copyrighted products unless the assignee harms the exclusivity of copyright, the copyright act needs to be revised so that the assignee's act comes under limitations on the author's property rights.

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Keywords

exhaustion doctrine, first sale doctrine, digital works, EULA, right of distribution, right of reproduction.

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