

ABSTRACTS

Under the doctrine of exhaustion, the first unrestricted sale of a copyrighted works exhausts the copyright holder's control over that particular copy of the work. Thus, it limits the copyright owner's exclusive right to distribute copies of his/her copyrighted work, so that the doctrine plays an important role in striking the balance between author's rights and public access to works. As the growth of digital technology has drastically changed, a high degree of uncertainty still remains with respect to its appropriate doctrinal basis.

Most of exhaustion cases have involved computer programs by which software vendors routinely distribute in tangible media, such as CD-ROMs. As software is increasingly disseminated in digital format, copyright owners attempt to impose express contractual restriction on the resale of the work often by means of a standard shrink-wrap agreement. There has been much controversy concerning the issues whether such a license provision is enforceable, and whether the transaction is license or sale. If the contract is license or the license provision is enforceable, then the buyers would not be the owner of the copy, and are not allowed to resell it even though he/she possess a copy of the work.

This article conducted a comparative analysis regarding the doctrine of exhaustion in software transaction between the United States and Korean law. It especially addresses the legal issue on digital exhaustion doctrine. In case where a copyright holder is able to control the copies of works obtained by buyers through technological protection measures, such as activation requirement for verification, they might be allowed to “forward and delete” the copies they received from the Internet.

Keywords : doctrine of exhaustion, first sale doctrine, license, software, DMCA, Autodesk, EULA, shrink-wrap license