

Revisiting the Theoretical Framework of Exhaustion Doctrine in Copyright with a Focus on the Video Streaming Platforms

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Abstract

As video streaming platforms dominate the home entertainment market, it is concerning that the market for tangible audiovisual copyrighted works is shrinking and that the trend of licensing agreements of digital works is growing to the global scale. It raises greater concern that copyright owners follow this trend and circumvent the application of the exhaustion doctrine by using licensing agreements which have been reinforced by only a few streaming platform companies. As most of the works are now published in intangible and digital forms, the exhaustion doctrine might be increasingly obsolete. Thus, the secondary markets for copyrighted works may soon disappear.

Unlike most scholars in Taiwan focusing on the review of court cases, doctrinal reading of laws, and the analysis of technology complexities in legal terms, this Article proposes a legal framework to revisit the core theories underpinning the exhaustion doctrine. It classifies the five landmark cases from the U.S. and E.U. into two categories. Based on this categorization, it reviews the current literature and policy suggestions and further raises the legal questions that the suggestions may pose. Built on the case studies and literature review, this Article proposes a theoretical framework for the exhaustion doctrine, provides an examination of each argument, and accordingly directs its attention to the non-economic concerns of the doctrine. Furthermore, this Article uses video streaming platforms as a case study and reveals how the business models of streaming platforms either increase or decrease the economic and non-economic values

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preserved by the exhaustion doctrine. This context shows that the loss of the non-economic values will have a negative impact on the society. The impact further illustrates how the video streaming service serves as a compelling example for advocating reform of the doctrine. Potential legal barriers and possible solutions are thus presented and proposed.

This Article concludes that the non-economic values promoted by the doctrine have long been overlooked and should warrant greater attention. It is because the doctrine does not apply to the mainstream video streaming platforms, copyright law should, by means of fair use or other regulatory mechanisms, protect the public interests and values that the doctrine aims to promote, such as cultural preservation, privacy protection, democratic value, innovation, and competition.

Keywords: exhaustion doctrine, first sale doctrine, copyright, digital work, audiovisual works, licensing agreement, video streaming platform, fair use, privacy