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Exhaustion Rights of Computer Programs

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ABSTRACT

Strong intellectual property (IP) protection is a fundamental issue in establishing a market for new products and services. IP can empower owners of intangible assets in the financing, manufacturing, or general commerce. However, like any other type of power, too much power can have adverse effects. This work provides a discussion of the limits of intellectual property by examining the doctrine of exhaustion of rights. This paper briefly illustrates the legal evolution of the doctrine of trademarks and digital rights. The discussion continues on the controversial concept of international exhaustion and the gist of digital exhaustion.

I. INTRODUCTION

Progress is inevitable. Over the last few decades, people have witnessed tremendous and unstoppable advances in the consumption of digital commodities, shifting both physical and printed commodities to digital media. Then you can store the classic crime books on your bookshelf on a small device called your Kindle. Moreover, our favourite music is no longer limited to tangible media such as vinyl. Movies and shows are now streamed online via Amazon or Netflix. Physical copies of books, DVDs, or records are easy to find in the second-hand market at a lower price compared to new copies. An interesting question that arises at this point is the topic of the digital second-hand market.

Prior to the Internet age, the way copyrighted works were consumed and used was based on physical distribution. In other words, people bought and borrowed books from bookstores and libraries as physical media.

An interesting situation arises when a person decides to purchase digital content such as music files or ebooks. Each file is selected. The customer decides to press the "Buy Now" button and completes the transaction by paying the specified price. But as an intangible acquirer, does he have the same privileges as a tangible acquirer? Can he use digital copies as well as physical copies? Therefore, should the acquirer of the digital copy be granted the same rights as the owner of the physical copy? It is arguable whether the principle of copyright depletion should apply to digital content.

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Technological development is responsible for subsequent changes in the use of items. How to create, create, distribute and utilize your work is emerging every day. After the development of digital technology, social needs have evolved in the same direction. As long as there is a big difference between tangible and intangible media, the digital domain will continue to evolve, bringing certain aspects such as:

B. Applicability of consumption theory in the digital domain.

II. EXHAUSTION RIGHT IN IP

Intellectual property depletion is one of the restrictions on intellectual property (IP) rights. When a particular product is sold with the permission of the intellectual property owner, its resale, rental, rental, and commercial use of other IP-protected goods Principles by third parties in the domestic and international markets.

Intellectual property rights are exhausted after a product protected by intellectual property rights such as patent rights is sold by the owner of the intellectual property rights or by another person with the consent of the owner. Is considered. The owner will not be able to exercise it. This limitation is also known as exhaustion doctrine or first sale doctrine. For example, if the inventor patents a new type of umbrella, the inventor (or anyone else he sells the patent to) legally requires another company to manufacture and sell that type of umbrella. You can ban them, but you can't ban them. I bought this umbrella from the patentee because I resell the umbrella to a third party².

Types of Exhaustion:

International Exhaustion: If the Patentee from Country 'A' sells the Product by himself or through a representative in Country 'B', his rights get exhausted in Country 'B' for that product. Therefore, any person from Country 'B' can sell the same products in Country 'A' for a higher price.

National Exhaustion: Once the Patentee has sold the products in Country 'A', any person in Country 'A' can buy from the Patentee and sell once again within the same Country where the Patentee has not sold e.g., Remote Areas.

Regional Exhaustion: If the Patentee has sold the product in France and any person can buy the product from the Patentee and sell in UK. In this case the First sale has been exhausted by the Patentee in the EU region³.

² Aishwarya Padmanabhan, "Doctrine of Exhaustion in Copyright Laws and its Compliance with TRIPs,"

³ According to 'regional' exhaustion the right of distribution would be exhausted only within a specified territory in which the copyright owner intends that the particular copy of the work be sold, and the right beyond the territory would remain intact. 'National' exhaustion means that the right of distribution would get exhausted by the first sale

III. EXHAUSTION OF RIGHTS IN US (COMPUTER PROGRAMS)

The Exhaustion Doctrine, also known as the First Sale Doctrine, is a common law patent doctrine in the United States that limits the extent to which a patent owner can control a single item of a patented product after what is known as a licensed sale. According to the doctrine, when a permitted sale of a patented item occurs, the exclusive right of the patent owner to control the use and sale of the item is said to be "exhausted" and the purchaser You can use or resell the item without further restrictions. It arises from patent rights. However, based on the principles of repair and reconstruction, the patentee shall have the purchaser of the item recreate the patented invention (ie, create another item, unless the patentee gives explicit permission.) Reserves the right to ban.⁴

Procedurally, the patent exhaustion principal acts as an active defence and protects the purchaser authorized from infringement claims regarding the sale or use (including repairs and alterations) of the patented product after the patentee approves the sale. Todo.

Only "authorized" sales trigger doctrine, so it can be difficult or at least controversial to determine if exhaustion doctrine applies in certain cases. Subject to terms binding on patents or patented products in the hands of end users after purchase (post-sales restrictions). Or, if the patentee grants another person a license to manufacture, use, or sell the patented product only in a particular region⁵.

Case: QUANTA COMPUTER, INC., ET AL. v. LG ELECTRONICS, INC.⁶

Facts: LG Electronics has patented a product group that includes microprocessor chips used in personal computers. The patent was licensed to Intel, but a separate, widely published agreement disqualified Intel customers who integrated the chip with non-Intel components. The buyer ignored the contract and used computer chips manufactured for Dell, Hewlett-Packard, and Gateway. LG Electronics has sued people who gave chips to unlicensed companies.

Judgement: The U.S. Supreme Court has stated that the authorized sale of an item that essentially embodies a patent will exhaust the rights of the patentee and that the patentee will enforce patent law to control the post-sale use of the item. Was ruled to prevent. According to the court, the patented method cannot be sold like goods or devices, but it can be "reified" into

only within the national territorial limits. The copyright owner would lose all his rights regarding the resale of the copy of his work throughout the world, once put in circulation anywhere in the world, in 'international' exhaustion.

⁴ Bently L and Sherman B, Intellectual Property Law (4th edition, Oxford University Press 2014) 11

⁵ Supra n.3

⁶ 553 U.S. 617, 128 S. Ct. 2109 (2008)

a product. The sale runs out of patent rights. Intel products embody this patent, and the sale of lens blanks has caused exhaustion. This is because their only rational and intended use is the exercise of patents, embodying the essential features of patented inventions. Therefore, the court ruled that the sale of Intel to Quanta ran out of LGE's patent rights. In addition, the court found that the license agreements entered into by the parties did not limit the right to sell Intel products to buyers intended to be combined with non-Intel parts. Finally, the court found that Intel's approved sale to Quanta made the product out of patent monopoly, and as a result, Intel could no longer claim its superior rights to Quanta.

The concept of online depletion is unique and unique because the objects are less specific and most of the work is in the form of music, movies, software, ebooks, etc. These can be downloaded or streamed online, but the main question with First Sale Doctrine is whether such use is for sale or license. "First Sale" (also known as "Exhaustion Doctrine") is the U.S. of the idea that the owner of a copy of a copyrighted work has the right to resell, rent, assign, or destroy a copy of an individual. The name under copyright law. The copyright owner's right to control the distribution of the work ends after the "first sale" of the work. The First Sale Doctrine is protected by US Copyright Law, Title 17 of the United States Code. Section 109⁷.

Case: *Kirtsaeng v. John Wiley & Sons, Inc.*⁸

Facts: Defendant John Wiley & Sons, Inc., a publisher of academic textbooks, frequently grants its wholly owned overseas subsidiary (Wiley Asia) the right to publish, print and sell overseas editions of Wiley's English textbooks abroad. increase. The Wiley Asia book states that it cannot be imported into the United States (without permission). When the petitioner Kirzen moved from Thailand to the United States to study math, he asked his friends and family to buy foreign English textbooks from a Thai bookstore at a low price and send them to the United States. Then he sold his books, compensated his family and friends, and maintained his interests. Wiley has filed a proceeding against Kirtsaeng, alleging that the unauthorized import and resale of his books by Kirtsaeng is an infringement of Wiley's exclusive distribution and import ban rights. Kirtsaeng replied that the "First Sale" doctrine allowed imports and resales without further permission from Wiley, as his books were "legally manufactured" and legally acquired. The district court ruled that Kirtsaeng could not proceed with this defense because this doctrine did not apply to foreign-made goods. The jury then admitted that Kirtsaeng had deliberately infringed Wiley's American copyright and inflicted damages. The Second Circuit

⁷[https://www.law.cornell.edu/uscode/text/17/109#:~:text=Section%20109\(a\)%20restates%20and,rental%2C%20or%20any%20other%20means.](https://www.law.cornell.edu/uscode/text/17/109#:~:text=Section%20109(a)%20restates%20and,rental%2C%20or%20any%20other%20means.)

⁸ 568 U.S. 519, 133 S. Ct. 1351 (2013)

confirmed this and concluded that the "First Sale" doctrine does not apply to foreign copies of copyrighted American works.

Judgement: The literal wording of §109 (a) means that "legally created under that title" means "created in compliance" or "created in compliance" in accordance with copyright law. Supported the non-geographical interpretation that meant. Section 109 (a) makes no mention of geography. According to 17USCS §104, works "protected by this title" include unpublished works "regardless of the author's nationality or place of residence" or "in countries that have a copyright treaty with the United States." Includes "first published" works. The norms of interpretation strongly opposed the geographical interpretation of §109 (a).

IV. EXHAUSTION OF RIGHTS IN UK (COMPUTER PROGRAMS)

The term "exhaustion" refers to whether the owners of UK intellectual property rights can exercise their rights to the actual goods (ie, the business), for example, to prevent import or sale into the UK. The relationship with the product is "exhausted" and is no longer enforceable. European Union (EU) law cites "First Sale Doctrine" as an exception to the exclusive ownership of copyrighted works. Harmonization of certain aspects of copyright and related rights in the information society is mentioned in Recital 28, the preamble to the European Parliament and the Directive 2001/29/EC of the Council of 22 May 2001. Recital (28) states that the first sale in the community of an original or copy of a work with the consent of the right holder or with the consent of the right holder exhausts the right to control the resale of the object in the community. I am saying⁹.

Article 4 of Directive 2001/29/EC provides:

"1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.

2. The distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the right holder or with his consent. "

The EU's approach to the First Sale Doctrine, the owner's exclusive right to his or her work, has been exhausted by the first sale, which applies only within the European Community. EU law basically covers the single market and freedom of movement. This led to the development of the concept of regional depletion. Within the EU itself, there are some countries that are

⁹ Directive 2009/24/EC on the legal protection of computer programs [2009] OJ 2 111

aware of the concept of international depletion, such as Denmark, Norway and Finland. Curiously, Swiss copyright law does not recognize the concept of domestic exhaustion, but it does recognize international exhaustion.

V. EXHAUSTION OF RIGHTS IN INDIA (COMPUTER PROGRAMS)

The Doctrine of Exhaustion, an internationally recognized legal system, can only be defined as the principle by which a copyright owner in his or her creation, that is, their right to control reproduction or copies of their work, expires whenever the 'original sale' is made by the owner or by taking his consent. Section 107A (b), "the importation of copyrighted goods by any person from a duly authorized person to sell or distribute a product, shall not be deemed to be a copyright infringement." According to the 2002 Declaration of Things and Reasons for Amendment, this offer was introduced to "ensure the availability of a patented product in the Indian market at a relatively small international market."¹⁰

Section 107A (b) was amended in 2005¹¹.

"The importation of patented products by any person from a person legally authorized to manufacture and sell or distribute the product, shall not be deemed to be a copyright infringement."

According to the copyright infringement policy, when the copyrighted work owner gives permission for that work to be marketed and sold, the copyright owner's right to control the distribution of that copy lapses. In India, this doctrine has been recognized under section 14 (a) (ii) of the Copyright Act, 1957 ('Act').

The digital end of the patent means the use of the theory of exhaustion in digital copies of work. It is not something that has been openly discussed under Indian law, other than to remove computer programs from its policy.

The court saw the copyright infringement on computer software in particular by considering two amendments made to the Copyright Act, 1957, 1994 and 1999, in which it ruled that the final amendment also established the doctrine of copyright infringement on software in:

Section 14 (b) (ii) as the phrase "whether such a copy has been sold or leased in the past" did not apply to it, thus providing legal recognition of the doctrine of exhaustion¹².

¹⁰ Saikia N. "The Exhaustion Rights and Indian Copyright Law"(2018)

¹¹ Indian Patent Act 1970, section 107(A).

¹² Indian Copyright Act 1957, section 14(b)(ii)

VI. CONCLUSION

When digital assets such as a file are transferred from one device to another through a system, it always involves making a copy of it. Goods go through so-called packet packets over the network and once they reach a location, which is another device, they are stored on their hard drive. This technical process is unfortunately unavoidable and will result in copyright infringement. Following the above, it is unlikely that the first sale, and the next - the expiration law will apply in respect of digital assets. In line with the principles of digital transfer, it can be very difficult to determine whether such a service would fall under a license or a sale. However, the important role of the secondary market these days should be addressed under the presented conditions. Not only is it cheaper compared to the original sale, but it also plays an important role to preserve culture. It provides an additional opportunity to buy and sell copyrighted goods and helps expand the business model. In addition, the free classification of property is a process that must be accompanied by the first principle of sale: a person will be able to resell his or her acquired property legally, as ownership is a transferable right. However, technological advances do not favor copyright holders and their rights and may be described as negative.

As the development of the internet continues and changes the world we live in and launches both; profits and limitations. The main goal and challenge of the patent law is to achieve a balance between the exclusive rights of the patent holder and the patent interests of the people who have acquired control of a copy of the protected title without regard to its similarity, in other words - the use of copyright. As a conclusion, the current copyright law and related rights should be changed and added to adequately respond to economic realities such as new forms of exploitation.

VII. REFERENCE

1. Aishwarya Padmanabhan, “Doctrine of Exhaustion in Copyright Laws and its Compliance with TRIPs,”
2. Bently L and Sherman B, Intellectual Property Law (4th edition, Oxford University Press 2014) 11
3. [https://www.law.cornell.edu/uscode/text/17/109#:~:text=Section%20109\(a\)%20restates%20and,rental%2C%20or%20any%20other%20means.](https://www.law.cornell.edu/uscode/text/17/109#:~:text=Section%20109(a)%20restates%20and,rental%2C%20or%20any%20other%20means.)
4. Directive 2009/24/EC on the legal protection of computer programs [2009] OJ 2 111
5. Saikia N. “The Exhaustion Rights and Indian Copyright Law”(2018)
6. Indian Patent Act 1970
7. Indian Copyright Act 1957
