

Digital Copyright Exhaustion

Juan Contreras and Carlos Uribe

This working paper deals with the rationales used to decide / study digital copyright exhaustion cases. Focusing on the apparent distinction between proprietary and market rationales.

Under market rationales, competition and contract law have been extensively studied; hence, resulting in a variety of conclusions about digital copyright exhaustion. Nonetheless, under a merely proprietary rationale, the possibility of copyright digital exhaustion, for the most part, is denied. Such conclusion is reached whether because digital exhaustion implies the use of further rights (other than distribution), or because the fact to enable digital copyright exhaustion would diminish the right holder's control over the subject matter.

This paper presents a response proposal to the proprietary rationales, from a civil law tradition. Moreover, this proposal includes the concept of "Social Function of Property" established in the Colombian and Spanish Constitutions (among others), and the judicial principle of "Abuse of Rights". Both, rooted deep within the civil law's property system, therefore, we believe they establish adequate responses to any copyright exhaustion problems analyzed from a merely proprietary rationale.