

Identifying Information

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Paper Information

Title:	Preemption by Exhaustion
Abstract:	<p>The Ninth Circuit recently held that the California Resale Royalties Act, requiring resellers of artworks to pay royalties to artists when their works are resold, is preempted by the federal Copyright Act. Specifically, the court held that the doctrine of copyright exhaustion, which limits a copyright owner's control over the distribution of copyrighted materials to just the first sale thereof, prevents artists from being paid for future resales of their works. The preemption power of the copyright exhaustion doctrine is both crucially important nowadays and difficult to analyze. Recent Supreme Court decisions have interpreted both copyright exhaustion and patent exhaustion broadly, which means that right-holders are limited in using federal law to control post-sale use of their works and innovations. Consequently, right-holders are expected to turn to state law to try and extract some form of post-sale control. Their ability to do so, from a federal law perspective, is an open question. The question is especially difficult because states already play a major role in regulating secondary markets, and, at least to a degree, in doing so they vitally promote the goals of federal IP law. This work fills that gap by focusing on the goals behind the exhaustion doctrine. If exhaustion primary goal is to reduce transaction costs in secondary markets, as it supposedly is, then many state laws' causes of actions (although not all) should be unproblematic. This is also true with respect to resale royalties, which do not raise transaction costs concerns.</p>