

## Press information

Munich, January 7<sup>th</sup> 2010

# usedSoft continues to fight for free competition

**In the matter of Adobe used software dealer lodges an appeal / competitors are supposed to be squeezed out from the market / no consequences for the trade with used Microsoft software**

usedSoft assesses the provisional injunction granted to Adobe by the Regional Court of Frankfurt as a despairing last attempt made by the US American software developers to save their monopoly. After the German Federal Court of Justice has confirmed the complaint against the denial of leave to appeal in the matter of Oracle, it is now to be foreseen that the legal situation will be clarified by highest judicial authority approximately at the end of 2010. Until then, Adobe and other developers obviously intent to have most disliked competitors squeezed out from the market through usedSoft by applying most doubtful methods.

Based on today's decision, the German usedSoft branch HHS usedSoft GmbH has been provisionally prohibited from trading with Adobe licences which had been used once before. However, this decision does not apply to used software originating from other developers, such as for example Microsoft. It is allowed to continue to trade with such software in an unlimited way.

The HHS usedSoft GmbH has already announced that it will lodge an appeal. Thus, a probably longer lasting procedure dealing with different instances will start. As next, the Higher Regional Court of Frankfurt will render its decision in the provisional injunction proceedings in a few months. Another few months later, the substantive issue of these proceedings will probably be tried before the Regional Court again, and after that, it will be transferred to the Higher Regional Court in order to get a decision. Finally, the German Federal Court of Justice must probably pass a last-instance decision.

This means that it may last a few years until this matter will be finally clarified. The HHS usedSoftware GmbH will cease to trade with used Adobe licences originating from volume contracts until the former court order will be overruled by one of the next higher instances. However, the decision has not become final and absolute yet. "We will continue our fight until a free competition in a liberalized software market will be finally made possible either by a decision of the German Federal Court of Justice or by a decision of the legislator", emphasizes Peter Schneider, Managing Director of the HHS usedSoft GmbH.

The provisional injunction which has already been passed on November 25, 2009, was only served in the afternoon of December 18, 2009 – which means shortly before the Christmas holidays. It is obvious that the attempt was made to deprive usedSoft from any possible legal protection. However, this attempt failed. "These are nothing but sleights of hand by means of which US American software monopolists have tried to save their syndicates for many years", emphasizes Peter Schneider. "However, free competition will get the upper hand in the end again."

Adobe's conduct appears rather astonishing in view of the fact that the software giant achieved an operational result of approximately 700 million US dollars in the business year 2009 – while having had sales of 2.8 billion. For comparison only: The total sales relating to used licences achieved by the usedSoft group amounted to a one-digit million sum during the same period.

In general, the legal situation regarding the trade with used software is clarified to a large extent. In this regard, in springtime 2009, the former Federal Minister of Justice, Brigitte Zypries, declared that the trade with used software is generally lawful. Only if software is brought into the market online, the legal situation would not be clarified. In the last few years, courts in Munich and Hamburg passed decisions which were in conformity with such opinion. In this context, in April 2008, the Regional Court of Munich decided "that the sale respectively resale of individual Microsoft software licences which

had been delivered within the scope of volume licence contracts before, is generally possible in an effective way even without Microsoft's consent."

And, last but not least, in summer 2007, it was even established by the Munich General Department of Public Prosecution that "no irregularities have been established" in connection with usedSoft. The usedSoft inventory control system would ensure "that there are not more licences sold than acquired, respectively that only licences are sold which were bought before."

## **About usedSoft**

usedSoft was set up in 2003, and it is a leading European supplier of used software originating from all application fields. Buyers of usedSoft licences are companies as well as software dealers. Customers of usedSoft are, among others, companies such as Edeka, KarstadtQuelle, Neckermann, Rewe, the Law Office Holme Roberts & Owen, as well as a leading soccer club belonging to the German Soccer League and a number of different Savings Banks. German authorities are more and more using used software as well: Next to the Bavarian State Capital of Munich, the German Federal Social Court in Kassel, the Municipal Administration of Bad Salzflun and the Data Central Office of Baden-Württemberg, there were more than 100 additional local authorities benefiting from usedSoft licences. The cost-saving benefit when purchasing already used licences ranges between 20 and 50 percent of the sales price.

[www.usedsoft.com](http://www.usedsoft.com)

## **For further inquiry, please contact:**

Christoph Möller  
möller pr  
phone: +49 (0) 221 80 10 87-87  
E-mail: [cm@moeller-pr.de](mailto:cm@moeller-pr.de)  
[www.moeller-pr.de](http://www.moeller-pr.de)