

Press information

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Regional Court of Munich: usedSoft is allowed to trade with Microsoft software

The resale of individual software licences originating from Microsoft volume licence contracts is generally lawful/comment of usedSoft's managing director Schneider: "a trend-setting decision"

Individual software licences originating from Microsoft volume licences may be resold "second-hand". On April 4, 2008, this decision was passed by the Regional Court of Munich I within the scope of a lawsuit because of a purchase price payment (file number 30 O 8684/07). The judgment has become final and absolute.

The Regional Court of Munich judged "that the sale respectively disposal of individual Microsoft licences which had been surrendered within the scope of any volume licence agreements is generally possible in an effective way, even without Microsoft's consent." That means in concrete terms: If Microsoft sells several rights of use and enjoyment contained in a volume package by means of one Master-CD only, the right of distribution is exhausted regarding each individual licence, however. Thus, they may be resold individually, and not only by means of the original package. With this judgment, the court rejected Microsoft's legal viewpoint that the buyer of a volume licence would not buy individual licences, but only a right to reproduce.

The Regional Court of Munich has explicitly referred to the judgment rendered by the Regional Court of Hamburg which had already decided in June 2006 that the resale of individual Microsoft licences originating from volume licence contracts would be admissible (file number 315 O 343/06). The Regional Court of Munich followed this legal viewpoint.

"This judgment pronounced in Munich, Microsoft's legal venue, is a trend-setting decision", this judgment was commented by Peter Schneider, usedSoft's managing director. "It cannot be claimed any longer that there would be a disaccord amongst the courts." In the past, this was always the argument submitted by the software developers when referring to the allegedly unclear legal position of the trade with used software. "Actually, there has never been any such disaccord", Schneider added.

Up to now, the company Microsoft has tried again and again to criminalize the trade with used software. In doing so, Microsoft has always referred to the litigation between Oracle and usedSoft which is still pending. In these proceedings, the Regional Court of Munich rendered a judgment – which has not become final and absolute yet – that Oracle software downloaded via the internet must not be resold. Since that time, Microsoft used to repeatedly claim that this judgment would also apply to Microsoft licences. Microsoft did so, although leading experts of jurisprudence always used to vehemently object to such argumentation.

The Regional Court of Munich has now explicitly pointed out that both cases cannot be compared with one another: "In the present case it is undisputed – different than in the case decided by the Regional Court of Munich I – that no software downloaded via the internet was sold. It is rather true that the plaintiff sold Microsoft software to the defendant which had been made available as volume licence containing a master copy by the company Microsoft."

Moreover, the court emphasized in the reasons for the judgment that Microsoft had in fact knowledge of the licence transfer to the trader being sued, but refrained from taking legal action for infringement of copyright. Thus, on page 9 of the judgment it reads as follows: “Based on the defendant’s pleadings (...) it is also proven that the company Microsoft did not assert any claims for infringement of copyright either against the defendant or against the end customer of the defendant, although the defendant – according to his own pleadings – had got in contact with the company Microsoft.”

“In this regard it becomes apparent again that Microsoft obviously proceeds secretly on the assumption itself that the trade with used software is absolutely legal”, emphasized Peter Schneider. “The monopolist has rather resorted to severely intimidate its customers. But that’s definitely over now.”

This judgment was rendered due to an action filed by usedSoft, a leading European supplier of used software, against an IT-company. The sued company had bought used Microsoft licences from usedSoft, but refused to pay them after delivery. The company justified its refusal by pleading that it had concerns about the legal security, as the bought software originated from split-up volume licences. The Regional Court of Munich has now judged that the sued company must pay the full amount of the agreed purchase price.

Explanatory note: The judgment referenced in the text was pronounced in November 2007. However, it was only in April 4, 2008 that the present reasons for the judgment which are hereby referred to were published. It was only 4 weeks later that the publication by this press release was made. Reason: The intention was to wait for the judgment to become final and absolute. Some parts of the text are only blackened for the opposing party’s protection.

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 Salzufflen 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 buying used licenses ranges between 20 and 50 percent.

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