

Press information

Munich, June 30th 2008

Microsoft's drawback towards usedSoft

Microsoft must withdraw a provisional injunction in essential parts obtained against usedSoft / Microsoft must bear the costs of the proceedings

On June 24, 2008, Microsoft had to withdraw a provisional injunction in essential parts which had been granted by the Regional Court of Munich I at the end of April 2008. In such provisional injunction, usedSoft had been prohibited from saying: "The exhaustion rule constitutes binding law which cannot be excluded by agreement. That means: "Adverse licence terms of the developer become ineffective from occurrence of exhaustion in this respect." This decision passed without any oral hearing had raised a few eyebrows among experts, as such statement constitutes a fundamental, generally recognized principle of law. For example, such principle of law was also applied by the Regional Court of Hamburg, when passing its decision in the year 2006 (file number 315 O 343/06), based on which the second-hand trade with split-up Microsoft volume licences was judged to be lawful.

Therefore, usedSoft filed an objection against this passage contained in such provisional injunction to the Regional Court of Munich I. In the oral hearing, the court followed usedSoft's opinion. The judges even indicated that they were of the opinion that the explanations relating to the exhaustion rule being criticized by Microsoft are to be rather considered correct and that they did not see any evidence for any intent to mislead. As a consequence, Microsoft's lawyers fully withdrew the part of the provisional injunction contested by usedSoft even inside of the court room. Moreover, the court decided that Microsoft must bear the costs of the entire proceedings.

"This embarrassing drawback of Microsoft is another victory for a liberalized software market in Germany", emphasized usedSoft's managing director Peter Schneider. "In addition, it has been proven again that in Germany the law overrides indiscriminately phrased licence provisions."

Due to such provisional injunction, usedSoft had been also prohibited from using a second sentence in their customer cover letter which had caused the provisional injunction to be issued. In such letter, usedSoft's representatives had made mistakable statements regarding the effect of two court decisions based on which the second-hand trade with used software had been judged to be basically lawful. usedSoft had dispensed with filing an objection with regard to such rather formalistic issue.

In the meantime, a judgment was passed by the Regional Court of Munich on November 27, 2007 (file number 30 O 8684/07) which has become final and absolute. In such judgment, it is also confirmed that the trade with used software is lawful. In such trend-setting decision, the court judged" that the sale respectively disposal of individual Microsoft software licences is generally possible in an effective way even without Microsoft's consent." In this regard, the court clearly denied the legal perception of different software developers being of the opinion that the buyer of a volume licence would not buy individual licences, but only a right to reproduce. On the other hand, a judgment passed by the Regional Court of Munich I which has not become final and absolute yet, but which is often cited for supporting a converse opinion, only referred to the special case that software had been provided by a developer per download from the internet (Regional Court of Munich I, judgement of March 15, 2007, file number 7 O 7061/06).



Information about usedSoft

usedSoft was set up in 2003, and it is the leading European supplier of “used” software originating from all application fields. The buyers of “used” software consist of both companies and software dealers. Among others, customers of the usedSoft group are Edeka, KarstadtQuelle, Neckermann, Rewe and Woolworth, as well as a number of different authorities, such as the Bavarian State Capital of Munich, or the Municipal Administration of Bad Salzuffen, and the Data Central Office of Baden-Württemberg, as well as numerous Savings Banks. The cost-saving benefit when buying used licenses ranges between 20 and 50 percent.

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