

Press information

Munich, July 1st 2009

The judgement rendered by the Higher Regional Court of Düsseldorf does not apply to Microsoft software

The present case is not applicable to other software products / judgment rendered in accelerated proceedings will not be accepted / usedSoft wants the case to be dealt with in main proceedings

The decision passed by the Higher Regional Court of Düsseldorf (I-20 U 247/08), dated June 29, 2009, does not apply to software of Microsoft. By means of this judgment, only the trade with used licences of a special software for lawyers has been prohibited. According to applicable law, judgments are only effective for the parties involved in a litigation, and they do not have any legal impact on any other market participants. Moreover, legal remedies will be sought against the judgment rendered by the Düsseldorf court. usedSoft has already announced that it will have the case dealt with in main proceedings in order to ensure a scrutinized review of any factual and legal issues involved. Thus, this litigation will be retransferred to the Regional Court of Düsseldorf which had already rendered a decision in favour of usedSoft in the first instance.

After the written grounds of the Court's judgment are now available, it is now possible to have the judgment analysed in a more detailed way. The Higher Regional Court referred to the fact that the developer filing suit only brings his software together with hardware on the market and does not sell the programs individually. However, this does not apply to Microsoft software. For this reason only, the judgment is not applicable to any Microsoft software.

Even Microsoft itself has never contested the resale of any OEM-licences of its own brand, thereby claiming that such resale would be unlawful. On the contrary, even in well-known cases Microsoft has subsequently declared that the licence transfers effected by usedSoft were lawful. This also concerned the Municipality of Munich, whereby the Mayor of Munich let his words cited in this context as follows: "Microsoft submitted a written confirmation that everything would be okay under licence law aspects."

Moreover, the judgment rendered by the Düsseldorf Court contains some inconsistencies. The judges decided for example that the program could be resold, if it is resold together with the hard disk. According to the opinion of the Higher Regional Court of Düsseldorf, the hard disk used for the OEM-programs of the developer filing suit must be considered to be a reproduction piece. "Therefore, the question now comes up whether it would be legal to resell a program which is for example installed on an external hard disk, for example on a USB-stick", emphasizes the Munich lawyer Andreas Meisterernst who legally represented usedSoft in the present proceedings. "Such juristic struggles clearly show that in this regard the last word has not been spoken yet."

usedSoft is confident that in the main proceedings a decision will be passed in favor of usedSoft. Actually, provisionally injunction proceedings are nothing but accelerated proceedings which can only bring a summarized clarification of legal issues with it. In view of the complicated legal situation involved, it is rather likely that another judgment will be passed after the facts will have been extensively scrutinized by the courts. Thus, the Regional Courts of Munich and Hamburg have rendered judgments being final and absolute in which it has been decided that the resale of used Microsoft software is allowed.

In this context, the Regional Court of Munich decided, for example, in April of last year "that the sale respectively disposal of individual Microsoft software licences which had been sold within the scope of any volume licence contracts is generally possible in an effective way even without Microsoft's consent." This opinion is shared by a predominant number of German and international legal experts,

such as the Professors for Law Hoeren (University of Münster), Sosnitza (University of Würzburg), Rigamonti (University of Bern), and Ruffler (University of Salzburg/University of Klagenfurt).

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 Salzflen 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. usedSoft has more than 2.000 customers in about 20 European countries.

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