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Federal Court

Communication from the Press Office

No. 21/2011

Federal Court of Justice shall submit questions on the admissibility

distribution of "used" software licenses before

The others responsible for copyright First Civil Division of the Federal Court to the Court of the European Union today referred questions to the admissibility of the copyright sales of "used" software licenses for a preliminary ruling.

The applicant developed computer software that it markets predominantly in the way that customers will not receive a disk, but download the software from the website of the applicant on their computer. In the license agreements of the applicant determined that the copyright, which gives the plaintiff offers to the computer programs is not transferable.

The defendant acts with "used" software licenses. In October 2005, it offered "already used" licenses for programs of the applicant. She referred to a notary attestation, where it refers to a confirmation of the original licensee, after which he was the rightful holder of the licenses, they no longer use and have paid the purchase price in full. Customers of the defendant download after purchasing a "used" License download the appropriate software from the website of the applicant to a disk.

The applicant considers that the defendant infringed by the purchaser that they "used" licenses to arrange for the appropriate computer programs to reproduce the copyright in those programs. It has therefore taken the defendant to cease to deliver.

District Court and Court of Appeal have upheld the application. On appeal by the defendants in the Federal Court stayed the proceedings and the Court of the European Union put forward some questions about the interpretation of Directive 2009/24/EC on the legal protection of computer programs for a preliminary ruling.

The customers of the defendant's access from the downloading of computer programs - as the Supreme Court - in the No. 1 according to § 69c UrhG exclusively to the right holder is entitled right to copy the computer programs. Since the defendant caused its customers by offering "used" licenses for this procedure, it can be taken to cease upon if their customers are not entitled to duplicate the programs. The customers of the defendants may rely, in the opinion of the Supreme Court, however, may have on the provision of § 69d para 1 Copyright Act, will implement Article 5 paragraph 1 of Directive 2009/24/EC into German law and therefore is interpreted in conformity. Under Article 5 paragraph 1 of Directive 2009/24/EC requires the reproduction of a computer program - unless otherwise agreed - not the consent of the owner, if necessary for an intended use of the computer program by the lawful acquirer. This raises the question must be considered whether, and under what circumstances a person who has a "used" software license purchased as a "lawful acquirer" of the computer program. In this context, can also provide the further question whether exhausts the distribution right of the owner, if a computer program with his consent in the way of on-line transmission has been placed on the market.

Order of 3 February 2011 - I ZR 129/08 - usedSoft

LG München I - Case of 15 March 2007 - 7 O 7061/06

FOR 2007, 409 = CR 2007, 356

OLG München - Case of 3 July 2008 - 6 U 2759/07

FOR 2009, 70 = CR 2008, 551

Karlsruhe, 3 February 2011

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