

Abstract

**Legal Interpretation and Problems on Transaction of
“Second-hand Software” in Copyright Law**

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The emerging business model of "second-hand software" transaction has brought legal discussions in Germany and Europe, in particular on the extent of application of the exhaustion principle in a digital environment. The transaction of "second-hand software" via internet raises legal issues for software vendors and customers.

Generally, the legality of software resale is decided by whether the distribution right of an copyright owner is exhausted upon the transaction. In tradition, the purchaser of software may resell the software as the copyright holder's distribution right is exhausted upon the purchase. A licensed user will infringe copyrights by reselling the software as the licensee is not empowered to sell the software. However, it is difficult to decide when a transaction should be regarded as "licensing" or "sale". Furthermore, the extent of application of the exhaustion principle in copyright law is still uncertain as its issues are mixed with the issue of whether the transaction is a sale of goods or services. This paper analyses ECJ's *UsedSoft v. Oracle* decision and the decision's impact on contents transaction model in a digital environment.

Keywords

Second-hand Software, Resale, Doctrine of Exhaustion, Distribution Rights, ECJ

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