

Summary

The problems concerning the principle of exhaustion within the online industry have been subject to a lively debate for at least 10 years. However, until the ECJ decision in re *UsedSoft* (C-128/11) no amicable solution to the problems raised could be expected. The discussion was mainly subject to the distribution of computer programs because nowadays most computer programs are obtained via internet download rather than handing out a physical copy. Detractors argued that article 4(2) Directive 2009/24/EC as well section 69c no. 3 sentence 2 UrhG referred to a physical copy of the computer program and thus the principle of exhaustion would not be applicable.

Due to the ECJ ruling in re *UsedSoft* some of the problems could be solved. Hence, it is now the general understanding that the principle of exhaustion is applicable to the online distribution of computer programs. Nonetheless, the *UsedSoft* decision was not able to address and solve all problems at issue; it even raised a couple of new questions, some of which are to be dealt with within this study.

As far the course of this manuscript is concerned the German legal situation in terms of the principle of exhaustion with regard to tangible goods will be illustrated first. Afterwards, the discussion regarding the principle of exhaustion of the distribution of computer software before the *UsedSoft* decision shall be depicted in order to be able to raise conclusions at a later stage. Thereafter, the *UsedSoft* decision itself will be analyzed. It will be shown that this decision needs to be complemented because it actually dealt with the gist of the principle of exhaustion rather than oversimplifying the issue by solely arguing in accordance to the plain wording of the law.

Due to its practical importance it will also be dealt with the topic of client-server-licences relatively volume licences. It can be foreclosed that *UsedSoft* only provided a solution regarding the client-server-licences.

Moreover, both the term of “technical measures” as yielded in *UsedSoft* as well as the possibility of bypassing the principle of exhaustion via the general terms and conditions of a contract will be assessed. In this regard, some of the latest rulings of German courts will be referred to in order to provide for an in-depth analysis.

Furthermore, it will be discussed whether the principle of exhaustion should apply to the distribution of other digital goods than computer programs. In this regard, by depicting the economical comparability and significance it will be pointed out that in spite of the lack of according legal framework it is demanded to adopt the general principle of exhaustion to these other digital goods.

In his closing words the author will underline the importance of the principle of exhaustion by vastly blinding out the dogmatic issues involved. He will then try to evaluate how to practically tackle possible future problems regarding the principle of exhaustion.