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European Court Rules on Copyright Exhaustion Rights for Software**Intellectual Property Client Alert**

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The European Court of Justice, in *UsedSoft GmbH v Oracle International Corp.*, recently ruled that it is not a copyright violation for purchasers to resell legally obtained and downloaded software. This continues a recent trend in Europe of limiting copyright protection for software.

In the European case, Oracle is selling software that purchasers can download directly from Oracle's website. UsedSoft sells used software licenses obtained from Oracle purchasers. The used licenses allow purchasers to download the Oracle software from Oracle's website.

Under EU law, the first sale of a copy of a computer program exhausts the copyright holder's right to control distribution of that copy. Oracle argued that the law should apply only to software that is sold on physical media.

The European Court, however, held that regardless of whether software is purchased on physical media or downloaded from a website, manufacturers lose the right to enforce copyrights after the first sale. The European Court held that Oracle's position would "go beyond what is necessary to safeguard" copyright. Even if the license with the initial purchaser prohibited further transfers, the copyright owner cannot oppose resale of the software, the court concluded.

The decision did, however, limit purchaser rights in that multiple licenses cannot be purchased and then split for resale. The Court also said that before a purchaser can legally resell a used license, the purchaser's own copy of the software must be made inoperable.

The European and United States copyright laws differ in this area. In the U.S., a purchaser of computer software is not an actual owner of the software, but is only a licensee. Therefore, the purchaser is not allowed to resell the copy of the software.

A copy of the decision can be found [here](#).

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