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Gamescom and the gaming law in Germany

Interview

Interview with Dr. Andreas Leupold on new developments in gaming law.



Dr. Leupold

Entering Europe: From August 21 to 23 the city of Cologne will host Europe´s largest fair for the gaming industry, Gamescom. As an attorney advising manufacturers of computer games for PC´s and gaming consoles as well as online gaming platforms, what challenges do you see for your clients in 2013 and beyond?

Dr. Andreas Leupold: *"For a long time Games used to be sold and played offline but today we are experiencing an undeniable shift to online gaming platforms such as Steam or Gamesload that are becoming increasingly popular in Europe. In addition games are also now being played on a multitude of devices such as tablets, mobile phones and portable gaming consoles so that consumers want to be able to switch from one device to another once they downloaded a game or installed it from a DVD-Rom".*

Entering Europe: What legal implications does this development have?

Dr. Andreas Leupold: *"Industry players offering online gaming services have an interest in tying a game to a specific user account and placing limitations on customers with respect to the re-sale and transfer of the games they have purchased to third parties. The German Federal Consumer Protection Association (Verbraucherzentrale Bundesverband, in short: "VZVB") took the view that this results in an unfair restriction of consumer rights and sued Valve, who runs the Steam platform, for prohibiting any transfer of user accounts for its games".*

Entering Europe: Does this mean that online gaming providers have no means to tie a game to a user account or to use other means to prevent the re-distribution/resale of their games without their consent?

Dr. Andreas Leupold: *"This question is a controversial issue in the legal community and has not yet been decided by the German Federal Supreme Court or any other court of last resort. Personally, I take the view that there is still room for alternative distribution models that are not necessarily affected by the ECJ´s ruling such as rental models or gaming as a service models, which cannot be considered as a "sale" in legal terms. This may especially apply to games played in the cloud that are only made available to players temporarily. Whether and to what extent such alternative distribution models will be considered a circumvention of consumer rights remains to be seen and may depend on how they are actually implemented".*

Entering Europe: Obviously, free games will not be affected by this case law?

Dr. Andreas Leupold: *"At first sight no as a "resale" of a game, which can be accessed free of charge, is not possible. However, more often than not, players are granted the opportunity to make in-game purchases to reach the next gaming level, while in other cases only the most basic version of a game is made available free of charge but the full blown version must be purchased. In these cases, the line between a legitimate limitation of consumer rights and a restriction of user´s rights not foreseen and permitted by copyright law can quickly become blurry".*

Entering Europe: What about gaming apps for mobile phones?

Dr. Andreas Leupold: *"One may argue that these games have the inherent limitation that they can only be played on the mobile device on which they were downloaded. But it is still an open question whether such games must be offered in such a way that they can be transferred to other devices".*

Entering Europe: "To sum it up, it seems safe to say that the gaming industry is facing significant changes to their business models not only by the shift to online and device independent gaming but also due to the legal repercussions of the recent ruling of the ECJ on the resale of software downloaded from the Internet. Thank you for sharing your insights on this Dr. Leupold."

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