

## 歐盟法院判決在歐盟境內網路下載出售之電腦軟體適用權利耗盡原則說明

歐盟法院（Court of Justice of the European Union）於2012年7月3日對於UsedSoft GmbH v. Oracle International Corp.案作出判決，判定電腦程式法律保護指令（Directive 2009/24/EC of the European Parliament and the Council of 23 April 2009 on the legal protection of computer programs）第1條第2款規定，指令適用於任何形式的電腦程式，第4條第2款進一步說明，指令對於電腦程式的保護不區分實體載具（例如CD或DVD）或網路下載，均有權利耗用原則（exhaustion right）或稱第一次銷售原則（first sale doctrine）的適用。授權人的權利在第一次出售軟體並換以價金時即耗盡，權利轉移至被授權人。因此，在歐盟境內網路下載購買無限期專屬授權的數位軟體之被授權人，可將所有的軟體再出售，而在歐盟境內不受授權條款中「權利不可移轉」等文字的限制。不過，被授權人再出售軟體時必須不可再使用該軟體，歐盟法院允許軟體提供商利用類似產品金鑰（product keys）的保護技術管理其權利。

本文為「經濟部產業技術司科技專案成果」

### 相關連結

- [Stephen G. Charkoudian, Joe; E. Lehrer and Achal Oaz, Enropean, Goodwin Procter Newsletter, EU Court of Justice Rules First Sale Doctrine Applies to Software Downloads](#)
- [Directive 2009/24/EC of the European Parliament and the Council of 23 April 2009 on the legal protection of computer programs](#)
- [Case C-128/11, UsedSoft GmbH v. Oracle International Corp., Judgment of the Court \(Grand Chamber\)](#)

### 相關附件

- [CVRIAPress and Information \[pdf\]](#)

許慧瑩 編譯整理

上稿時間：2012年07月31日

#### 資料來源：

CVRIAPress and Information, An Author of Software cannot oppose the resale of his 'used' license allowing the use of his programs downloaded from the internet, Court of Justice of the European Union Press Release No. 94/12, , available at <http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-07/cp120094en.pdf> (last visited June 29, 2012).

Case C-128/11, UsedSoft GmbH v. Oracle International Corp., Judgment of the Court (Grand Chamber), July 3, 2012, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=124564&doclang=en&mode=req> (last visited June 29, 2012).

Directive 2009/24/EC of the European Parliament and the Council of 23 April 2009 on the legal protection of computer programs, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CJ:L:2009:111:0016:0022:EN:PDF> (last visited June 29, 2012).

Stephen G. Charkoudian, Joe; E. Lehrer and Achal Oaz, Enropean, Goodwin Procter Newsletter, EU Court of Justice Rules First Sale Doctrine Applies to Software Downloads, July 11, 2012, available at [http://www.goodwinprocter.com/Publications/Newsletter-Articles/IP-Articles/2012\\_07/11\\_01.aspx](http://www.goodwinprocter.com/Publications/Newsletter-Articles/IP-Articles/2012_07/11_01.aspx) (last visited June 29, 2012).

推薦文章