

susensoftware » background » general information pre-owned software

The trade in pre-owned software is a young, upcoming market. The customers' demands are increasing constantly, both in Germany and abroad.

As far as licensing agreements are governed by German and European Law, the first sale doctrine applies. This doctrine, embodied in § 69c German Copyright Act, allows the purchaser to transfer a particular, legally acquired copy of protected work without permission once it has been obtained. That means the distribution rights of a copyright holder end on that particular copy once the copy is sold.

The resale of software that has been bought bundled with hardware (so-called "OEM" versions) has also been found lawful by the German Supreme Court.

To learn more about the German Licensing Law, Anti Trust Law and the prevailing Case Law, please visit our German website on www.susensoftware.de.

Pre-owned software comes from companies who, predominantly due to mergers, system changes or insolvencies, want to sell their stock, mostly SAP R/3 and SAP mySAP license packages. This for example may be a German company that due to restructurings has purchased too many licenses and now wishes to sell these.

Reasons for the Sale of Software:

- Application is not needed anymore, e.g. due to the sale of the company, restructurings, reduction of jobs
- Licenses are purchased, but not used
- Change to another system

Please Note when Trading in Software

If you want to purchase or sell used software yourself, you must consider a few points. The following comments, particularly the legal statements, are for information purposes only and without responsibility.

They are no legally binding information or legal advice. In case of doubt, please contact a specialized solicitor.

Legal Situation: According to German copyright law, the manufacturer is entitled to determine when and at what price a person is allowed to purchase software (§§ 15 I, 17 III, IV, 31 I UrhG). The special arrangement in § 69c UrhG allows the purchaser to transfer a particular, legally acquired copy of protected work without permission once it has been obtained. That means the distribution rights of a copyright holder end on that particular copy once the copy is sold.

OEM-Software: In its final judgment from July 6th, 2000 (reference number 1 ZR 244197), the German Supreme Court (BGH) found that it is improper to force the customer to resell the OEM disk with bundled hardware. The free trade of OEM-Software has been allowed.

Transfer of Rights: The requirements for an effective transfer of licensing rights can vary from manufacturer to manufacturer. In case of doubt, please contact the manufacturer and ensure that you become the actual holder of the copyright. In this way you can also clarify the scope of supply.

Update Rights: The transfer of rights by contract conclusion includes also the right to update. Please ask the manufacturer whether the software contains a right to update or not.

Scope of Supply: Enquire about what is included in delivery. Ask particularly for original data carrier, written licensing agreement, product key, handbook, dongle and clearing code. Backup copies have to be delivered or to be deleted.

Further questions?

- Phone:

+49 (0)

241 963

1700

■ info@susensoftware

■ [Online](#)

[contact](#)

[form](#)