

German court says OK to unbundling

By Rick Perera

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BERLIN -- GERMANY'S highest court on civil matters, the Bundesgerichtshof, has ruled that Microsoft cannot prevent dealers from unbundling its OEM software and selling it separately.

The ruling, which was made public Friday, overturns a lower court decision in Microsoft's favor. The Redmond, Wash.-based company had sued a Berlin hardware dealer for selling a copy of the operating systems MS-DOS and MS Windows for Workgroups to an end-user without an attached PC. The lower court had handed down its decision on June 17, 1997.

Court spokesman Wolfgang Kruger said the decision rejected Microsoft's claim of intellectual property rights. "The right of authorship can only be exercised once," he said. "Once the product has entered the marketplace, with the author's agreement, he can no longer engage rights of authorship" to interfere with secondary sales. He noted that Microsoft had no binding contractual relationship with the dealer in question. In German cases, the name of the defendant is kept private.

Microsoft spokesman Tomas Jensen said it is unclear from the court's brief statement what kind of unbundling is permitted. "In court, they were always talking about OEM products," he said, which are sold to large PC manufacturers such as Siemens, Dell, or Compaq. But the item in question in this case was, in fact, DSP (Delivery Service Pack) software, provided to smaller computer makers, he said.

"As long as we don't have the long judgment with all the reasons and the legal stuff in it, it's hard to say what the consequences will be," Jensen said.

Kruger was unable to clarify whether the ruling also applies to DSP software. The court's final ruling won't be published for at least five or six weeks, he said.

Asked what consequences the decision might have outside Germany's borders, intellectual property rights lawyer Alistair Kelman referred to the concept of "persuasive authority." "Legal systems try to agree on principles between themselves," he said. "Depending on how well argued the decision is, it could have considerable impact globally."

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