



## PRESS RELEASE No 181/24

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Judgment of the Court in Case C-159/23 | *Sony Computer Entertainment Europe*

### **The Directive on the legal protection of computer programs does not allow the holder of that protection to prohibit the marketing by a third party of software which merely changes variables transferred temporarily to a game console's RAM**

Sony markets PlayStation video game consoles as well as games for those consoles. Until 2014, it offered for sale, among other products, the PlayStation Portable console and the game 'MotorStorm: Arctic Edge'.

Sony brought an action before the German courts against the undertaking Datel, which offers software and a device <sup>1</sup> that are compatible with that PlayStation and presents the user with game options not provided at that stage of the game by Sony.

Sony is of the view that those Datel products have the effect of altering the software which underpins its game and thereby infringe its exclusive right to authorise such alterations. It therefore requested those courts to prohibit Datel from marketing the products in question and to order it to pay compensation for the loss allegedly suffered.

The German Federal Court of Justice (BGH) has requested the Court of Justice to interpret the Directive on the legal protection of computer programs. <sup>2</sup>

The BGH observes that Datel's software is installed by the user on the PlayStation and runs at the same time as the game software. It does not change or reproduce either the object code, the source code or the internal structure and organisation of Sony's software. It merely changes the content of the variables temporarily transferred by Sony's games to the console's RAM, which are used during the running of the game. Thus, the game runs on the basis of those variables to the changed content.

The Court finds that **the content of the variable data transferred by a computer program to the RAM of a computer and used by that program in its running does not fall within the protection specifically conferred by that directive, in so far as that content does not enable such a program to be reproduced or subsequently created.**

The directive protects only the intellectual creation as it is reflected in the text of the computer program's source code and object code. On the other hand, the directive does not protect the functionalities of the program or the elements by means of which users make use of such functionalities, unless they allow that program to be reproduced or subsequent created.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> These are the software Action Replay PSP and the device Tilt FX as well as software of the same name.

<sup>2</sup> [Directive 2009/24/EC](#) of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.