[FR] The exhaustion of distribution rights rule does not apply to video games

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Valve Corporation, an American company, offers, via the 'Steam' platform, an online distribution service for digital content such as video games, developed by Valve or third parties, software, films and television series that can be downloaded to the user's computer, as well as associated services such as functions allowing users to exchange with other Internet users or to participate in games with several players. To use this platform, subscribers must download software and accept the Steam Subscription Agreement. The online availability of video games and related services was provided in Europe by a Luxembourg subsidiary of Valve Corporation, and then by Valve itself. In 2015, the Association UFC Que choisir took the companies to court, claiming that the terms of the Steam subscription agreement were unfair or unlawful and requesting the deletion of several clauses, in particular that prohibiting the resale and transfer of Steam accounts and subscriptions acquired on the platform. When the Court of Appeal rejected UFC-Que Choisir's application and its request to refer a preliminary question to the Court of Justice of the European Union (CJEU), the association appealed to the Court of Cassation. The Court of Cassation pointed out that Article 4(2) of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programmes provides that the first sale of a copy of a computer programme in the Community by the rightsholder or with his consent exhausts the right of distribution of that copy. According to the CJEU, if the exhaustion of the distribution right provided for in that provision concerns both tangible and intangible copies of a computer programme, and therefore also copies of computer programmes which, at the time of their first sale, were downloaded onto the first purchaser's computer via the internet, the provisions of Directive 2009/24, and in particular Article 4(2) thereof, constitute a lex specialis in relation to the provisions of Directive 2001/29 (CJEU, judgment of 3 July 2012, UsedSoft, C-128/11). In this case, after recalling the provisions of the aforementioned directives and the case law of the CJEU in this regard (in particular the Tom Kabinet judgment, C-263/18 of 19 December 2019), the Court of Appeal correctly stated that a video game is not a computer programme in its own right but a complex work in that it includes software components as well as numerous other elements such as graphics, such as graphics, music, sound elements, a scenario and characters, and unlike a computer programme, which is intended to be used until it becomes obsolete, a video game is quickly put on the market once the game is finished and, unlike

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software, can still be used by new players several years after it was created. It therefore correctly concluded that only Directive 2001/29 is applicable to video games, that the exhaustion of rights rule does not apply in this case and that, in the absence of any reasonable doubt as to the interpretation of European Union law, there is no need to refer a question to the Court of Justice of the European Union for a preliminary ruling.

Civ. 1re, 23 octobre 2024, n° 23-13.738, UFC-Que Choisir c/ Valve Corporation

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