[DE] New cancellation right for downloaded software

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As of 13 June 2014, German consumers are entitled to cancel purchases of software, music, videos and apps downloaded from the Internet. The change is designed to implement Consumer Rights Directive 2011/83/EU, which aims to create a common, reliable standard of consumer protection across Europe.

The amendment to the law on consumer cancellation rights itself does not contain any express regulation giving consumers the right to cancel purchases of intangible, digital content downloaded from the Internet. Rather, the introduction of such a right is demonstrated by the fact that such rights are restricted under the conditions laid down in the new Article 356(5) of the Bürgerliches Gesetzbuch (Civil Code - BGB), which transposes Article 16(m) of Directive 2011/83/EU into German law. Article 356(5) BGB defines the circumstances in which consumers' cancellation rights expire in relation to the remote purchase of digital, intangible content. It states that the decisive factor is whether the commercial seller has obtained the consumer's prior consent to the immediate performance of the contract and his acknowledgement that he thereby loses his right of withdrawal.

Cancellation rights are fraught with considerable financial risks for sellers of Internet downloads because the purchaser can always keep a digital copy. In addition, films and e-books are usually only used once. Customers could therefore buy such digital content and then - exercising their cancellation rights - send it back to the seller having made full use of it.

There were previously no cancellation rights for purchasers of software, apps, videos, music and other digital content on the Internet if the product was provided in the form of a download or stream, i.e. if it was not supplied on a tangible medium such as a CD or DVD.

Sellers of Internet downloads should find out about these new legislative amendments as soon as possible. In principle, under the amended law on cancellation rights in relation to the sale of consumer goods, the previously valid cancellation deadlines, example terms of cancellation, rules on the cost of returning goods and a number of other specific aspects of cancellation rights changed as of 13 June 2014.

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