[DE] Supreme Court rules on bot software

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In Germany it is illegal to copy the so-called “bot software” that allows players of online role-playing games to automatically enhance their online characters. In a recently published decision of 6 October 2016, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that the use of such bot software for commercial purposes infringes the copyright of the developers of the online games concerned (case no. I ZR 25/15).

Blizzard Entertainment, developer of the online role-playing games “World of Warcraft” and “Diablo III”, had filed a lawsuit against Bossland GmbH, which had developed a form of automation software that, at the player’s request, took control of his or her game character and enhanced it without the player actually taking part in the game. The software enabled the online character to solve problems (“questing”) or collect virtual points (“gathering”) independently, in order to progress much faster than human players, who had to complete all tasks in the manner intended by the game’s developers.

The plaintiff claimed that the defendant had, either itself or via a third party, copied the online game software without its permission in order to develop the automation software. The BGH upheld the complaint and largely confirmed the opinion of the lower-instance courts (OLG Dresden, 20.01.2015, case no. 14 U 1127/14; LG Leipzig, 15.07.2014, case no. 5 O 1155/13), finding that the defendant had illegally used the copyrighted online game software on user devices (client software) for commercial purposes, even though it had only been granted the right to use it privately. Since the client software had been permanently downloaded onto the PCs used for the games, and the audiovisual game data had been temporarily uploaded to the PCs’ working memory and video memory while the games were being played, the client software had been copied. The copies had been made partly for commercial reasons, in particular in order to produce and adapt the automation software for the games.

According to the BGH, the defendant could not justify its actions by referring to Article 69d(3) of the Urhebergesetz (Copyright Act - UrhG), under which only the computer program could be copied, not the audiovisual game data of the client.

In 2014, the Oberlandesgerichts (Higher Regional Court, OLG) of Hamburg had decided that such manipulation software should not be used because it seriously infringed the game developer’s rights (ruling of 6 November 2014 - case no. 3 U

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86/13). It had found that the use of such bot software could significantly damage sales for the game developer. It also reduced the chances of success for players who were not using the software. The Court found that paying customers would stop playing the game because it was less enjoyable if they could not play it successfully without cheating.

Urteil des Bundesgerichtshofs vom 6. Oktober 2016 (Az.: I ZR 25/15)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&nr=77132&pos=26&anz=556

Ruling of the Bundesgerichtshof (Federal Supreme Court) of 6 October 2016 (case no. I ZR 25/15)

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