

GPL's Termination under German Law

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Consequences of a GPL-violation

Copyright Violation

According to the well unanimous opinion in case law and the at least predominant opinion in the literature, the distribution of software licensed under the “GNU General Public License” in breach of the license conditions constitutes a copyright infringement.

(OLG Hamm, Judgment of June 13th, 2017 – 4 U 72/16)

Consequences of a GPL-violation

Relieve a copyright holder can ask for:

- the defendant may not distribute the work at issue
unless accompanied with the materials the GPL requires
(or else will be fined or jailed)
- the defendant may not distribute the work at issue
in any manner
(or else will be fined or jailed)

Consequences of a GPL-violation

Restoration of Permissions

..., but the violator can anytime reacquire the rights by acceptance of and obeying the conditions.

(LG Munich I, Judgment of May 19th, 2004 – 21 O 6123/04)

Forfeiture Clause

GPLv2 sect. 4

... Any attempt otherwise to copy, modify, sublicense or distribute the Program is void, and will automatically terminate your rights under this License. ...

BGB (German Civil Code) sect. 354

If a contract is concluded with the proviso that the obligor shall forfeit their rights under the contract if they fail to fulfill their obligation, the obligee shall be entitled to *rescind* the contract if this event occurs.

Rescission

BGB sect. 346 para. 1

If a contractual party has reserved the right to rescind the contract or is entitled to a statutory right of rescission, the performances received must be returned and the benefits derived must be surrendered in the event of rescission.

Abstraction Principle

Separation of

- *undertaking/obligation* (Verpflichtungsgeschäft) and
- *conveyance/disposition* (Verfügungsgeschäft)

Voiding the obligation does not transfer the goods/money/rights/... back.

Rescission due to performance not rendered (in accordance with the contract)

BGB sect. 323 para. 1

If, in the case of a mutual contract, the obliger does not provide a due performance or does not provide it in accordance with the contract, the obligee may rescind the contract *if they has unsuccessfully set the obliger a reasonable deadline for performance or cure.*

Summary

- no automatic termination of the GPL
only the permissions are granted under a condition
- to manually terminate the GPL
 - set a deadline for cure
 - send a partly-rescission notice
 - (demand the copyright permissions back)

Questions

Your Copyrights, Your Money, ...

If you have something to put forward for copyleft enforcement, Software Freedom Conservancy is happy to help you.

sfconservancy.org/assignment

sfconservancy.org/donate

No Legal Advice

I cannot give you *individualized* legal advise.