Case 1586: CISG 1(1); 7; 8; 41; 42
The Netherlands: Rechtbank Midden-Nederland
No. C/16/364668 / HA ZA 14-217
Corporate Web Solutions v. Dutch company and Vendorlink B.V.
25 March 2015
Original in Dutch
Available at: deeplink.rechtspraak.nl Abstract prepared by Megan Hau.

The question in this case concerned an online software license agreement between a Canadian software company (seller) and a Dutch buyer (buyer). The buyer downloaded a software program provided by the seller and later transferred the software to another company (Vendorlink). The seller alleged that the buyer breached the terms of the licence agreement by providing the software to Vendorlink.

As both the Netherlands and Canada are parties to the CISG, the Court considered whether the CISG applied to the licence agreement. The Court noted that "sale of goods" is not defined in Article 1(1) CISG. It further noted that, under Article 7 CISG, the Convention should be interpreted taking into account its international character, the need to promote uniformity in its application and the observance of good faith in international trade, and the general principles on which it is based. With this in mind, the Court reasoned that, in light of the purpose of the CISG to remove legal barriers to trade through uniformity, a broad definition of goods must be assumed, one that includes intangible property. Thus, the Court found that the CISG applies to computer software even if it is not recorded on a physical medium such as a DVD, CD or USB stick.

The Court then turned to whether the software licence agreement could be considered a sales contract for the purposes of the CISG. The Court noted that, under Article 8 CISG, the description of the agreement is not determinative, but rather the intent of the parties or understanding that a reasonable person would have had with regard to the contract. The Court noted that the buyer's use of the software was not limited in time and that it was transferred as the result of a single payment as opposed to monthly instalments. The Court reasoned, therefore, that the agreement was consistent with the character of a sales contract as found under Articles 41 and 42 CISG, which provide that the seller must deliver goods to the buyer without any rights or claims of third parties, including rights to intellectual property. The Court determined that, despite the agreement's name, the parties' intention was to create a sales contract. Under such a contract, and in line with the European Court of Justice's *UsedSoft* decision, clauses completely prohibiting transfer are not binding. Thus, the Court decided that the buyer's transfer of the software did not violate the parties' agreement.