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District Court Berlin II
Ref.   15 O 299/25 eV

Court Order

Preliminary injunction

In the proceedings

Greenbone AG, represented by the Executive Board Jan-Oliver Wagner, Neumarkt 12, 49074 Osnabrück

- Plaintiff -

<u>Legal representative</u>

██████████████████████████████

against

███, represented by ██████████████████████████████

- Respondent -

<u>Legal representative</u>

██████████████████████████████

The Berlin District Court II - Civil Chamber 15 – has decided by Presiding District Court Judge Dr. Danckwerts, District Court Judge Bauerschmidt, and District Court Judge Reith, ruled on June 20, 2025, without oral proceedings due to urgency pursuant to Section 937 (2) of the German Code of Civil Procedure:

I. The Defendant is prohibited by way of a preliminary injunction, subject to a penalty payment

to avoid a court order for each case of of up to EUR 250,000.00 to be determined by the court

for each case of infringement and,

in the event that this cannot be collected, to coercive detention,

or coercive detention of up to six months, to be enforced against its managing director,

to do the following within the territory of the Federal Republic of Germany

when acting commercially:

1. making publicly available the product " ▮▮▮Security Scanner ▮▮▮ " with the

program "OpenVAS Scanner" and vulnerability tests from the

"Greenbone Community Feed" without at the same time,

in accordance with the license terms of the GNU General Public License, Version 2 (GPL-2.0),

a) the license text of GPL-2.0 is enclosed in a manner

   that is easily accessible to the purchaser of the

   product, and

b) vulnerability tests that include the GPL-2.0-licensed

libraries "version func.inc" and "host details.inc" through the #include command

are licensed under the terms of the GPL-2.0, and

c) the complete corresponding source code

 of the program "OpenVAS Scanner" is made accessible ,

 and/or,

2. making publicly available the product "███ Security Scanner ███ "

with the programs "Greenbone Vulnerability Manager" and

"OSPD OpenVAS" without simultaneously making available, in accordance with the license

terms of the GNU Affero General Public License, Version 3 (AGPL-3.0),

    a) the AGPL-3.0 license text is enclosed in a way that makes

        it easy for the purchaser of the product to find it, and

    b) the complete corresponding source code of the

        programs "Greenbone Vulnerability Manager" and "ospd-

        openvas" is made available to purchasers for free download

        and/or

3. making publicly available the product "███ Security Scanner ███ " is

with the database "Greenbone Community Feed" without, at the

same time, according to the license conditions of

the Open Data Commons Open Database License, Version 1

(ODbL-1.0)

a) the license text of the ODbL-1.0 is enclosed in a

manner that is easily accessible to the purchaser of the

product, and

b) the Greenbone Community Feed database,

supplemented by further vulnerability tests, is licensed under

the license terms of the ODbL-1.0.

II. The Defendant shall bear the costs of the proceedings.

III. The value of the proceedings is set at € 66,600.00.

IV. The following shall be served with the order:
Application dated June 19, 2025

Reasons

A.

The respondent distributes the ▋▋▋▋ Security Scanner ▋▋▋▋ software. This program was offered for download on May 26, 2025, via the Microsoft webshop "azure" as a VHD file (Virtual Hard Disk), among other formats.

The Defendant's software contains various program components. In particular, it contains the following programs and databases, to which the applicant holds exclusive rights of use in whole or in part:

Greenbone Vulnerability Manager, version 21.4.4 (AGPL-3.0)

Greenbone Vulnerability Management Tools (GPL-3.0)

OpenVAS Scanner, version 21.4.4 (GPL-2.0-only)

Greenbone Vulnerability Management Libraries (gvm-libs), version 21.4.4, (GPL-2.0-or-later)

ospd-openvas (AGPL-3.0)

Greenbone Community Feed (GCF) database from May 15, 2025 (ODbL-1.0)

More than 100,000 vulnerability tests from the GCF database (GPL-2.0)

The Plaintiff's programs may only be used as open source products under certain license conditions. In particular, it is required that the software may only be made publicly available and/or reproduced if the recipient of the software receives a copy of the license terms upon delivery and the machine-readable source code is made available or at least offered in a specific form.

Reference is made to Annexes A2 to A8 for the license terms.

New vulnerability tests have been added to the Greenbone Community Feed in the Defendant's program,

including "microsoft_sharepoint_server_

se kb5002709 may25.nasI," which bear the copyright notices of ▮▮▮Security

(e.g., Copyright (c) 2025 ▮▮▮▮), but

no references to affiliation with the Plaintiff's GCF database and the licensing.

The vulnerability test "microsoft_sharepoint_server

se_kb5002709_may25.nasI" includes GPL 2.0-licensed libraries (version

func.inc and host details.inc) from the Plaintiff through the #include

command:

include("host details.inc");

include("version_func. inc");

This results in a "derivative work" that must also be licensed under the

GPL-2.0. However, the Defendant does not refer to open source software, but asserts its own copyrights in its header by means of a copyright notice in favor of the Defendant.

The libraries "version_func.inc" and "host_details.inc" were programmed exclusively by

the Plaintiff and are licensed under the GPL-2.0.

The Defendant's software offered on the Azure Store did not contain any license texts from GPL-2.0, AGPL-3.0, and

ODbL-1.0, which are available to purchasers of the "▮▮▮▮ Security Scanner ▮▮▮▮▮▮▮▮ "

in such a way that they are informed about the licensing of the software.

Software. No license notices were displayed or linked during the booking and download process in the Azure Marketplace. Furthermore,

during download of the VHD file and the intended use of the software, the license

texts of the GPL-2.0 and AGPL-3.0 are not brought to the user's attention.

The gvm-libs program libraries are offered for download in the software version as offered by Azure in a compiled version as

part of the "███ Security Scanner ██████" for download,

without the source code being supplied or offered in writing for shipment. A general link to the repository was hidden in a Docker overlay, but was also inaccessible without access via a serial interface.

The Plaintiff has issued a warning to the Defendant. Reference is made to Annex A18 for details of the warning. The Defendant responded with a pre-trial letter in accordance with Annex A20.

In a written submission dated June 19, 2025, the Plaintiff requests

which has been recognized.

B.

The preliminary injunction was to be issued as requested.

1.

The District Court has international jurisdiction pursuant to Art. 7 No. 2 Brussels Ia-Regulation. Local jurisdiction is based on § 32 ZPO (German Code of Civil Procedure). In any case, the infringement occurred in Germany as a result of the test download. An act within the meaning of Art. 7 Brussels Ia-Regulation and pursuant to § 32 ZPO has also been committed where the act becomes effective.

2.

German law is applicable on the basis of the principle of the country of protection, Art. 8 (1) Rome II Regulation.

According to the application, the Plaintiff seeks legal protection in the territory of the Federal Republic of Germany.

3.

According to the substantiated facts, the Plaintiff is fully entitled to the asserted injunctive relief against the Defendant pursuant to Section 97 (1) sentence 1 ZPO. The claim for injunctive relief is justified by the violation of the license terms via the Microsoft Azure distribution channel (test purchase) alone. Whether or not the Defendant complies with the license terms on its own website is therefore irrelevant to the present decision.

a)   The Plaintiff's programs enjoy copyright protection. They are complex software programs for detecting security vulnerabilities in computer programs, so that the existence of a work character is highly probable. The same applies with regard to the single datasets, which can be used to test for individual security vulnerabilities. The Plaintiff has explained the considerable effort required to develop these data sets. In addition, protection as a database applies under Section 87a of the German Copyright Act (UrhG).

b)   The Defendant made the program in question available for download via Azure on the Internet, thereby making it publicly available. The Defendant did not claim prior to the trial that this provision in an official web shop had taken place against its will, and this would also appear to be extremely unlikely.

c) The Defendant's use of the Plaintiff's programs under copyright was unlawful. In particular, it was not permitted by the Plaintiff's respective open source licenses. The Plaintiff has credibly demonstrated that the license terms were not complied with. For example, the Plaintiff's license terms were not made available to the purchaser of the program via Azure, nor was a corresponding offer made. Furthermore, the machine-readable source code of the Plaintiff's programs was not made available, nor was its availability at least offered in accordance with the license.

The Defendant did not dispute any of this. Insofar as it argues in its written statement of June 13, 2025 that downloading the program via Azure did not yet include a license to use it and that a license would have had to be obtained separately from the Defendant and that the conditions for using the open source software would have been fulfilled when the license was purchased, this does not justify a different assessment. The only relevant factor is that the Defendant's programs were made publicly available on azure without complying with the license conditions. The download was possible independently of the purchase of a license. It is irrelevant whether and to what extent the functionality of the program was restricted without a license. In addition, the requirement for a separate license is not indicated when purchasing via azure. The corresponding screenshot provided by the Defendant only proves that reference is made to license terms in general, but not that a separate license would still have to be purchased.

The general terms and conditions for using software of the Defendant also only state that uses outside the intended use are not permitted, such as sublicensing. These general terms do not indicate that a separate license must be acquired for any use of the software.

The Defendant also admits to the license infringement with regard to the integration of the Plaintiff's database into the Defendant's software. The Defendant merely asserts that the reference to the Plaintiff and, in particular, to its license terms was omitted by mistake. Since fault is irrelevant to the claim for injunctive relief, this argument cannot be used to counter it from the outset.

c)   The risk of repetition arises from the infringement and could only have been eliminated by submitting a cease-and-desist declaration with a penalty clause.

3.

The urgency arises from the infringement. In particular, there is no case of self-contradiction. Sufficient knowledge of a relevant infringement only existed since May 26, 2025. The two-month period granted by the Berlin District Court for filing the preliminary injunction was therefore observed. Even if relevant knowledge were to be assumed as early as April 2025, this would not constitute a self-contradiction of the urgency. The respondent has conceded that the initial infringement, which is not the subject of the dispute, was accidentally a test version had been made publicly available and only three downloads had taken place. The Plaintiff was not aware of any evidence to the contrary at that time. The preliminary injunction is now based on the fact that it is not a small-scale test version that has been accidentally distributed in an infringing manner, but rather that the infringing software is being regularly distributed to customers. This knowledge has only been available since the test purchase was evaluated. Compared to the initial infringement, the infringement in dispute constitutes a significantly more serious form of infringement, which justifies a new urgency.

II.

The decision on costs is based on Section 91 (1) sentence 1 of the German Code of Civil Procedure (ZPO). The value of the proceedings is two-thirds of the value of the main issue, which the Chamber assesses at 100,000.00 G in accordance with the information provided in the reminder.

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Information on legal remedies:

An objection may be lodged against the decision. The objection is not subject to a time limit.

The objection must be lodged with the

Berlin District Court II

Littenstraße 12-17

10179 Berlin

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The objection must be filed in writing by a lawyer.

An appeal may be lodged against the decision determining the value in dispute if the value of the subject matter of the appeal exceeds €200 or if the court has allowed the appeal.

The appeal must be lodged within six months at the

Berlin District Court II

Littenstraße 12-17

10179 Berlin

The period shall commence upon the decision in the main action becoming final or upon the proceedings being otherwise concluded. If the amount in dispute has been determined later than one month before the expiry of the eilige six-month period, the appeal may still be lodged within one month of service or informal notification of the determination order. In the case of informal notification, the decision shall be deemed to have been announced on the fourth day after it was posted.

The appeal must be lodged in writing or by means of a statement recorded in the minutes of the aforementioned court. It may also be recorded in the minutes of any local court; however, the deadline shall only be deemed to have been met if the minutes are received by the aforementioned court in good time. The involvement of a lawyer is not mandatory.

Appeals may also be submitted as **electronic documents**. A simple e-mail does not satisfy the legal requirements.

Appeals lodged by a lawyer, an authority, or a legal entity under public law, including associations formed by it to fulfill its public duties, must be submitted **as electronic documents**, unless this is temporarily impossible for technical reasons. In this case, transmission in accordance with the general provisions remains permissible, whereby the temporary impossibility must be substantiated at the time of the substitute submission or immediately thereafter. Upon request, the electronic document must be submitted at a later date.

Electronic documents must
- bear a qualified electronic signature from the responsible person or
- signed by the responsible person and submitted via a secure transmission channel.

An electronic document bearing a qualified electronic signature of the responsible person may be transmitted as follows:
- via a secure transmission channel or
- to the court's electronic court and administration mailbox (EGVP) set up for the receipt of electronic documents.

> With regard to secure transmission channels, reference is made to Section 130a (4) of the Code of Civil Procedure. With regard to further requirements for electronic communication with the courts, reference is made to the Ordinance on the Technical Framework for Electronic Legal Transactions and on the Special Electronic Mailbox for Authorities (Electronic Legal Transactions Ordinance – ERVV) in its currently valid version and to the website www.justiz.de

Dr. Danckwerts	Bauerschmidt	Reith
Presiding Judge at the District Court	Judge at the District Court	Judge at the District Court