Court of Justice of the European Union
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Press and Information

Judgment in Case C-406/10
SAS Institute Inc. v World Programming Ltd

The functionality of a computer program and the programming language cannot be protected by copyright

The purchaser of a licence for a program is entitled, as a rule, to observe, study or test its functioning so as to determine the ideas and principles which underlie that program

SAS Institute Inc. has developed the SAS System, an integrated set of programs which enables users to carry out data processing and analysis tasks, in particular statistical analysis. The core component of the SAS System is called Base SAS. It enables users to write and execute application programs (also known as 'scripts') written in the SAS programming language for data processing.

World Programming Ltd (WPL) perceived that there was a market demand for alternative software capable of executing application programs written in the SAS Language. WPL therefore produced the World Programming System (WPS). The latter emulates functionalities of the SAS components to a large extent in that, with a few minor exceptions, WPL attempted to ensure that the same inputs would produce the same outputs. This would enable users of the SAS System to run the scripts which they have developed for use with the SAS System on WPS.

In order to produce the WPS program, WPL lawfully acquired copies of the Learning Edition of the SAS System, which were supplied under licences limiting the rights of the licensee to non-production purposes. WPL used and studied those programs in order to understand their functioning but there is nothing to suggest that WPL had access to or copied the source code of the SAS components.

SAS Institute brought an action before the High Court in the UK, accusing WPL of having copied the SAS System manuals and components, thus infringing its copyright and the terms of the Learning Edition licence. In that context, the High Court has put questions to the Court of Justice regarding the scope of the legal protection conferred by EU law on computer programs and, in particular, whether that protection extends to programming functionality and language.

The Court recalls, first, that the Directive on the legal protection of computer programs[1] extends copyright protection to the expression in any form of an intellectual creation of the author of a computer program[2]. However, ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under that directive.

Thus, only the expression of those ideas and principles is protected by copyright. The object of the protection conferred by Directive 91/250 is the expression in any form of a computer program, such as the source code and the object code, which permits reproduction in different computer languages.

On the basis of those considerations, the Court holds that **neither the functionality of a computer program nor the programming language** and the format of data files used in a

[1] Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42).
[2] Case C-393/09 *Bezpečnostní softwarová asociace*.

computer program in order to exploit certain of its functions **constitute a form of expression**. Accordingly, **they do not enjoy copyright protection**.

To accept that the functionality of a computer program can be protected by copyright would amount to making it possible to monopolise ideas, to the detriment of technological progress and industrial development.

In that context, the Court states that if a third party were to procure the part of the source code or object code relating to the programming language or to the format of data files used in a computer program, and if that party were to create, with the aid of that code, similar elements in its own computer program, that conduct would be liable to be prohibited by the author of the program. In the present case, it is apparent from the explanations of the national court that WPL did not have access to the source code of SAS Institute's program and did not carry out any decompilation of the object code of that program. It was only by means of observing, studying and testing the behaviour of SAS Institute's program that WPL reproduced the functionality of that program by using the same programming language and the same format of data files.

Second, the Court observes that, according to the Directive, the purchaser of a software licence has the right to observe, study or test the functioning of that software in order to determine the ideas and principles which underlie any element of the program. Any contractual provisions contrary to that right are null and void. Furthermore, the determination of those ideas and principles may be carried out within the framework of the acts permitted by the licence.

Consequently, the owner of the copyright in a computer program may not prevent, by relying on the licensing agreement, the purchaser of that licence from observing, studying or testing the functioning of that program so as to determine the ideas and principles which underlie all the elements of the program in the case where the purchaser carries out acts covered by that licence and the acts of loading and running necessary for the use of the program on condition that that purchaser does not infringe the exclusive rights of the owner of the copyright in that program.

In addition, according to the Court, there is no copyright infringement where, as in the present case, the lawful acquirer of the licence did not have access to the source code of the computer program but merely studied, observed and tested that program in order to reproduce its functionality in a second program.

Lastly, the Court holds that the reproduction, in a computer program or a user manual for that program, of certain elements described in the user manual for another computer program protected by copyright is capable of constituting an infringement of the copyright in the latter manual if that reproduction constitutes the expression of the intellectual creation of the author of the manual.

In this respect, the Court takes the view that, in the present case, the keywords, syntax, commands and combinations of commands, options, defaults and iterations consist of words, figures or mathematical concepts, considered in isolation, are not, as such, an intellectual creation of the author of that program. It is only through the choice, sequence and combination of those words, figures or mathematical concepts that the author expresses his creativity in an original manner.

It is for the national court to ascertain whether the reproduction alleged in the main proceedings constitutes the expression of the intellectual creation of the author of the user manual for the computer program protected by copyright.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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