Graphical User interface GUI Granted Copyright Protection by the ECJ

On 22 December 2010, the European Court of Justice ("ECJ") handed down its preliminary ruling in Bezpečnostní softwarová asociace - Svaz softwarové ochrany v. Ministerstvo kultury. The dispute centred around a graphic interface ("GUI") and whether this was capable of being copyright protected.

The Court ruled that under Directive 91/250/EEC (the "Software Directive"), the GUI was not capable of gaining copyright protection, but that Directive 2001/29/EC (the "Information Society Directive") did grant such protection.

THE BACKGROUND
The Bezpečnostní softwarová asociace ("BSA") applied to the Ministry of Culture in the Czech Republic for authorisation to carry out collective administration of copyrights in computer programs. The BSA’s application was refused on the grounds that a GUI was not capable of being copyright protected.

THE LEGAL ISSUES
The Czech Supreme Administrative Court referred two questions to the ECJ:

1. Whether a GUI can be considered to be copyright protected as a computer program under the Software Directive; and
2. If the answer to (1) is in the positive, whether television broadcasting of a GUI is considered to be a communication under the Information Society Directive, and thus afforded protections under that directive.

Can a GUI be copyright protected under the Software Directive?
In order to be capable of being copyright protected under the Software Directive, it would be necessary that the software in question is a form of expression of a computer program. This phrase is not defined in the directive and the ECJ looked to TRIPS[2] to determine that an “expression” in such a case referred to object or source code. The ECJ further determined that "the object of protection under [the Software Directive] includes the forms of expression of a computer program and the preparatory design work capable of leading, respectively, to the reproduction or the subsequent creation of such a program". The ECJ decided that a GUI does not enable the reproduction of the computer program it is used in conjunction with, but “merely constitutes one element of that program by means of which users make use of the features of that program” and therefore could not benefit from copyright protection under the Software Directive.

However, the court went on to determine that, provided a GUI is the author’s own intellectual creation, it is capable of copyright protection under the Information Society Directive. In order to decide if a GUI is the author’s own intellectual creation, the Court held that one must look at the specific arrangement of all components of a GUI and this “intellectual creation” test cannot be met where the expression of the components of a GUI is dictated by their technical function.

Is television broadcasting of a GUI a “communication” under the Information Society Directive?
The ECJ held that when a GUI is broadcast on television, the television viewer receives the communication of a GUI in a “passive manner” and therefore the viewer “cannot use the feature of that interface which consists in enabling interaction between the computer program and the user” – the essential element of a GUI.

IMPLICATIONS
This case indicates that a GUI can benefit from copyright protection, provided it is the author’s own intellectual creation.

[1]. A GUI, on a simple level, provides ways for a computer user to interact with the operating system, typically by way of icons, toolbars and other visual representations.

[2]. Trade-Related Aspects of Intellectual Property Rights

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