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Copyright Can't Block Software Reverse Engineering: Court

By Aoife White - May 2, 2012 6:12 PM GMT+0100



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Software companies can't rely on copyright rules to prevent rivals from "reverse engineering" computer programs, the European Union's highest court ruled.

SAS Institute Inc., the world's biggest closely held software company, lost a bid at the EU Court of Justice to extend copyright protection to the functions of a computer program. World Programming Ltd. infringed SAS's copyright by developing a system that copied the company's manuals, SAS said at a September hearing.

"There is no copyright infringement" when a software company without access to a program's source code "studied, observed and tested that program in order to reproduce its functionality in a second program," the court said in a statement today.

Copyright protection doesn't extend to the functionality of a computer program or the programming language and the format of a program's data files, the EU court said.

SAS, based in Cary, North Carolina, is an independent maker of so-called business intelligence programs, which spot patterns amid vast stores of data. WPL, based in Romsey, England, makes a software product that analyzes and processes data.

The ruling is "the European software copyright case of the century," said Thomas Vinje, a spokesman for the European Committee for Interoperable Systems, a group representing International Business Machines Corp., Oracle Corp. and other software developers.

Legal Certainty

"By clearly stating that functionality, programming languages and data formats are not protected, it definitively resolves fundamental issues that have been left unaddressed for two decades in European copyright law," Vinje said in an e-mail.

While the case may aid some software developers by giving them legal certainty over "reverse engineering," or analyzing concepts from rival programs to create their own products, it will also mean that established software firms "will be at much greater risk of upstart competitors copying functionality," said Guy Wilmot, a lawyer at Russell-Cooke in London.

It's the first time the EU's top court has been asked to define the scope of copyright protection for computer software. The High Court in London in 2010 referred the case to the EU tribunal for guidance on how to interpret the region's software and copyright laws. The court will decide whether SAS can claim copyright over manuals copied by WPL.

Copyright is "a somewhat ill-fitted tool in the fight against copycats," said Tom De Cordier, a lawyer at Allen & Overy in Brussels. "For a competing piece of software to constitute a copyright infringement, it will in most cases be required" that code is copied from the original computer program.

Pamela Meek, a spokeswoman for SAS, declined to immediately comment. WPL didn't respond to an e-mail seeking comment.

The case is: C-406/10, SAS Institute Inc. v. World Programming Ltd.

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