



Reports of Cases

Case C-406/10

SAS Institute Inc.

v

World Programming Ltd

(Reference for a preliminary ruling from the la High Court of Justice of England and Wales (Chancery Division))

(Intellectual property — Directive 91/250/EEC — Legal protection of computer programs — Articles 1(2) and 5(3) — Scope of protection — Creation directly or via another process — Computer program protected by copyright — Reproduction of the functions by a second program without access to the source code of the first program — Decompilation of the object code of the first computer program — Directive 2001/29/EC — Copyright and related rights in the information society — Article 2(a) — User manual for a computer program — Reproduction in another computer program — Infringement of copyright — Condition — Expression of the intellectual creation of the author of the user manual)

Summary of the Judgment

1. *Approximation of laws — Copyright and related rights — Directive 91/250 — Legal protection of computer programs — Scope — Form of expression of a computer program — Concept*

(Council Directive 91/250, Art. 1(2))

2. *Approximation of laws — Copyright and related rights — Directive 91/250 — Legal protection of computer programs — Exceptions to the restricted acts — Person having a right to use a copy of a computer program*

(Council Directive 91/250, Art. 5(3))

3. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Reproduction right — User manual for a computer program*

(European Parliament and Council Directive 2001/29, Art. 2(a))

1. Article 1(2) of Directive 91/250 on the legal protection of computer programs must be interpreted as meaning that neither the functionality of a computer program nor the programming language and the format of data files used in a computer program in order to exploit certain of its functions constitute a form of expression of that program and, as such, are not protected by copyright in computer programs for the purposes of that directive.

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.

With respect to the programming language and the format of data files used in a computer program to interpret and execute application programs written by users and to read and write data in a specific format of data files, these are elements of that program by means of which users exploit certain functions of that program.

However, if a third party were to procure the part of the source code or the 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 constitute partial reproduction within the meaning of Article 4(a) of Directive 91/250.

Lastly, the programming language and the format of data files may be protected, as works, by copyright under Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society if they are their author's own intellectual creation.

(see paras 40, 42, 43, 45, 46, operative part 1)

2. Article 5(3) of Directive 91/250 on the legal protection of computer programs must be interpreted as meaning that a person who has obtained a copy of a computer program under a licence is entitled, without the authorisation of the owner of the copyright, to observe, study or test the functioning of that program so as to determine the ideas and principles which underlie any element of the program, in the case where that person carries out acts covered by that licence and acts of loading and running necessary for the use of the computer program, and on condition that that person does not infringe the exclusive rights of the owner of the copyright in that program.

The copyright in a computer program cannot be infringed where the lawful acquirer of the licence did not have access to the source code of the computer program to which that licence relates, but merely studied, observed and tested that program in order to reproduce its functionality in a second program.

(see paras 61, 62, operative part 2)

3. Article 2(a) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning 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 — this being a matter for the national court to ascertain — that reproduction constitutes the expression of the intellectual creation of the author of the user manual for the computer program protected by copyright.

(see para. 70, operative part 3)