

Case C-393/09

Bezpečnostní softwarová asociace — Svaz softwarové ochrany

v

Ministerstvo kultury

(Reference for a preliminary
ruling from the Nejvyšší správní soud)

(Intellectual property — Directive 91/250/EEC — Legal protection of computer programs — Notion of ‘expression in any form of a computer program’ — Inclusion or non-inclusion of a program’s graphic user interface — Copyright — Directive 2001/29/EC — Copyrights and related rights in the information society — Television broadcasting of a graphic user interface — Communication of a work to the public)

Opinion of Advocate General Bot delivered on 14 October 2010 I - 13974

Judgment of the Court (Third Chamber), 22 December 2010 I - 13990

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Dispute pre-dating the accession of a State to the European Union*
(Art. 267 TFEU)

2. *Approximation of laws — Copyright and related rights — Directive 91/250 — Legal protection of computer programs — Scope*
(European Parliament and Council Directive 2001/29; Council Directive 91/250, Art. 1(2))
3. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Communication of a protected work to the public*
(European Parliament and Council Directive 2001/29, Art. 3(1))

1. Where the questions referred for preliminary ruling concern the interpretation of Union law, the Court gives its ruling without, in principle, having to look into the circumstances in which the national courts were prompted to submit the questions and envisage applying the provision of Union law that they have asked the Court to interpret.
2. A graphic user interface is not a form of expression of a computer program within the meaning of Article 1(2) of Directive 91/250 on the legal protection of computer programs and cannot be protected by copyright as a computer program under that directive.

The matter would be different only if the provision of Union law submitted for interpretation by the Court were not applicable to the facts of the main proceedings, which pre-dated the accession of a new Member State to the Union, or if such provision was manifestly incapable of applying.

(see paras 25-26)

Any form of expression of a computer program must be protected from the moment when its reproduction would engender the reproduction of the computer program itself, thus enabling the computer to perform its task. In those circumstances, the graphic user interface does not enable the reproduction of that computer program, but merely constitutes one element of that program by means of which users make use of the features of that program. 39 In accordance with the 10th and 11th recitals in the preamble to Directive 91/250, interfaces are parts of a computer program which provide for interconnection and interaction of elements of software and

hardware with other software and hardware and with users in all the ways in which they are intended to function. In particular, the graphic user interface is an interaction interface which enables communication between the computer program and the user. In those circumstances, the graphic user interface does not enable the reproduction of that computer program, but merely constitutes one element of that program by means of which users make use of the features of that program.

Nevertheless, such an interface can be protected by copyright as a work by Directive 2001/29 of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society if that interface is its author's own intellectual creation. It is for the national court to ascertain whether that is the case in the dispute before it, taking account, *inter alia*, of the specific arrangement or configuration of all the components which form part of the graphic user interface in order to determine which meet the criterion of originality. In that regard, that criterion cannot be met by components of the graphic user interface which are differentiated only by their technical function.

(see paras 38-42, 47-48, 51, operative part 1)

3. Television broadcasting of a graphic user interface does not constitute

communication to the public of a work protected by copyright within the meaning of Article 3(1) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society.

Indeed, in principle, television broadcasting of a work is a communication to the public which its author has the exclusive right to authorise or prohibit and, in addition, the graphic user interface can be its author's own intellectual creation. Nevertheless, if, in the context of television broadcasting of a programme, a graphic user interface is displayed, television viewers receive a communication of that graphic user interface solely in a passive manner, without the possibility of intervening. They cannot use the feature of that interface which consists in enabling interaction between the computer program and the user. Having regard to the fact that, by television broadcasting, the graphic user interface is not communicated to the public in such a way that individuals can have access to the essential element characterising the interface, that is to say, interaction with the user, there is no communication to the public of the graphic user interface within the meaning of Article 3(1) of Directive 2001/29.

(see paras 55-58, operative part 2)