Never-Ending Story: Collective Administration of Rights to Software

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“The Collective Administrator to SW” case: The FINALE and a short P. S.

Is it possible the CJEU got it wrong?  

aka

The door that should have never been opened?

Interface as an emerging phenomenon
Court of Justice of the European Union

C-393/09

Czech Supreme Administrative Court
“… a graphic user interface is not a form of expression of that program within the meaning of Article 1(2) of Directive 91/250 and thus is not protected by copyright as a computer program under that directive.”

AND

“Nevertheless, such an interface can be protected by copyright as a work by Directive 2001/29 if that interface is its author’s own intellectual creation.”
Hello,
to our knowledge you use KUBUNTU OS on your business machines. As you may have heard SW GUI is to be considered as unique outcome of the creative activity. By this letter we would like to kindly ask you to pay a levy for its use ...
My (hopefully more objective) interpretation of the Judgement:
CJEU has also stated that: “television broadcasting of GUI does not constitute comm. to the public of a work”

This statement was (naturally) upheld by Czech Supreme Administrative Court. Besides, it added that: “In case of any other types of use of SW there is no objective need for collective administration of rights.”

=> In case of SW (as a whole) the collective administration shall not be carried out.
Last but not least ...

I believe that Graphic User Interface that meets the conditions to be considered a work of art ...

**CANNOT** be considered as ...

a traditional graphic or audio-visual work.

It is a **WORK SUI GENERIS** … (interactive work)
Why???

... will be explained in ...

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What exactly do we mean (OR more importantly CJEU means) when referring to GUI?
CJEU: “television viewers receive a communication of that graphic user interface solely in a **passive manner**, without the possibility of intervening. (...) 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.”
GUI = specifically designed and expressed set of functions!

\[ \text{GUI}\{e_1, e_2, e_3, \ldots e_n\} \]

\[ e_1\{\{gm_1, gm_2, \ldots gm_n\}, \{hA_1, hA_2, \ldots\}, \{cA_1, cA_2, \ldots\}\} \]
public class Swing1 {
    public static void main(String[] args) {
        JFrame window = new JFrame("Swing Test");
        JLabel label = new JLabel("Hello!");
        window.getContentPane().add(label);
        window.setDefaultCloseOperation(JFrame.EXIT_ON_CLOSE);
        window.pack();
        window.setVisible(true);
    }
}
CJEU has (although not expressly stated) strongly suggested that ...

... as regards software there is a more abstract (functional) level laying above the object and source code that ...

... should not be excluded from copyright protection ...

... even if it does not qualify to be an expression of the respective computer program.
CJEU case C-406/10 (SAS Institute v. World Programming Ltd):

Is it an infringement of the copyright in the First Program for a competitor of the rightholder without access to the source code of the First Program, either directly or via a process such as decompilation of the object code, to create another program ("the Second Program") which replicates the functions of the First Program?
Furthermore, ...

... interfaces can be expected to play an increasingly significant role in our everyday lives.

How is that so is going to be explained in ...

3 Interface as an emerging phenomenon
“Man is immersed in a world which he perceives through his sense organs. (...) Communication and control belong to the essence of man's inner life, even as they belong to his life in society.”

(Wiener, 1950, pp.17-18)
Nowadays we have reached such a state in which we are capable of using different interfaces as a means to alter the reality.

In the “BSA case” CJEU has taken the approach of extending copyright protection above the level of object and source code.

The “SAS Institute case” has a high potential of becoming a landmark case of how far in the domain of functionality can copyright protection actually reach.

The approach CJEU takes today is going to heavily influence the very nature of copyright protection.
Thank you for your attention!

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