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Call for Papers

TITLE: Copyright in Computer Programming Languages

Abstract

Intellectual property lawyers across Europe are eagerly awaiting the outcome of the recent reference by the UK High Court to the Court of Justice of the European Union ('the CJEU') in the case of *SAS Institute Inc v World Programming Ltd* (Case C-406/10), which is expected to clarify the legal position on a number of important issues relating to copyright protection of computer programs. One of the questions referred to the CJEU by the High Court throws into sharp relief a fundamental but oft-overlooked aspect of copyright law: whether the programming languages used for writing computer programs are, in themselves, capable of being protected by copyright. Although the Software Directive does mention programming languages, it does so in wording which leaves the copyright status of programming languages unclear, and is capable of at least two opposing interpretations.

This paper seeks to explore the arguments for and against the conferment of copyright protection on programming languages. Part I describes briefly the factual situation pertaining to programming languages, and sets out the relevant legal provisions under both the EU Directives and the domestic legislation of various Member States. Part II considers whether programming languages are capable of fulfilling the statutory prerequisites for copyright protection, including the requirements of originality and fixation, as well as the extent to which programming languages may amount to 'expression' rather than 'idea'. Part III examines the potential consequences of conferring copyright protection on programming languages, including its possible effects upon software users, competing software firms, and the progress of technological development as a whole. The paper will conclude that there are sound policy as well as legal grounds upon which to reject the possibility of copyright protection for programming languages.