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European Union Court Rules that Software Functions Cannot Be Copyrighted

Intellectual Property Client Alert

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In a recent decision, *SAS Institute Inc. v. World Programming Ltd.*, the Court of Justice of the European Union held that “[s]ince a program’s functionality, its programming language and the format of its data files, are merely elements of a program as opposed to expressions that would enable it to be reproduced, they are outside the scope of protection afforded by the Software Directive.”

SAS Institute alleged copyright infringement by World Programming after World Programming developed a competing set of programs that enabled users to run World Programming programs with the original SAS Institute system.

The European High Court stated that if a third party obtains parts of a source code or object code relating to the programming language or data files in a particular program, then use of that code to create similar elements in a competing computer program could be considered copyright infringement. In this case, however, World Programming had no access to the SAS Institute source code, but merely observed and studied the SAS Institute system. Furthermore, World Programming used legally obtained copies of the SAS Institute system. Thus, World Programming did not infringe SAS’ copyright.

Clients attempting to protect software in Europe or to reverse engineer a competitor’s products should be aware of these new standards. One important factor is access to source code and object code, which can be protected by copyright. Software may still be protected under other Directives, but for these purposes, the programming language and data files are not “computer programs.” Care must be taken to properly classify copyrightable elements for software in Europe in cases of reverse engineering.

The European decision is generally consistent with U.S. case law. Note that the pending *Oracle America, Inc. v Google Inc.* case in U.S. District Court for the Northern District of California raises similar issues, and the District Court judge has asked for supplemental briefings on the European decision.

A copy of the decision may be found [here](#).

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