

The Software Interface between Copyright and Competition Law

A Legal Analysis of Interoperability in Computer
Programs

Paris Ecole Polytechnique/IJCLP - 24 06 2009

ashwin.vanrooijen@cliffordchance.com

Interoperability: openness v. control

Flexibility v. certainty

Instruments in copyright, competition law

- Interoperability and openness v. control of interfaces (ch. 2)
- Current copyright, competition law (ch. 3, 4)
- Ex-ante interconnection in telecommunications, design protection law (ch. 5)
- Conclusion (ch. 6)

- Standardization
- Software copyright
- Copyrightable subject matter
- Software protection and DRM
- IPR / Competition law interface
- *Magill, IMS Health, Microsoft*
- Telecommunications
- IPRs v. state aid and exclusive rights

Copyright (ch. 3)

- Stimulate innovation, competition
- Traditional: incentivize software development
- But interoperability also affects innovation, competition
- Should copyright not be (more) concerned with interoperability?

Copyright (ch. 3)

- Protects use of + access to interfaces
- Originality: protection of arbitrary choices; originality v. standardization
- Reproduction, know-how and reverse engineering

Competition (ch. 4)

- Relationship copyright – competition law
 - Software Directive reverse engineering provisions
- Substantive: application of competition law to refusal to supply interface specifications
 - New product test

Design & telecommunications (ch. 5)

- Design protection: exclusion for must-fit parts
- Telecommunications: ex-ante interconnection regulation

Conclusion (ch. 6)

Openness v. control: insufficiently recognized

Flexibility v. certainty: stronger ex-ante approach

Instruments: exclude interface specs, flexible
reverse engineering approach; standardization
issues in competition law