SPC Guiding Case No. 48: Beijing Jingdiao Technology Co., Ltd. v. Shanghai Naikai Electronic Technology Co., Ltd. (Computer Software Copyright Infringement Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on April 15, 2015.

Keywords

Civil / infringement of computer software copyright / bundled sale / technological protection measures / abuse of rights

Holding

Where a computer software copyright owner, in order to realize the bundled sale of the software and a machine, sets the output data of the software operation in a specific file format so as to restrict machines of other competitors from reading data stored in that specific file format, thereby extending its competitive advantage on the software to the machine, this does not fall under the technological measures taken by a copyright owner, as provided in the Copyright Law, to protect its software copyright. Where another person develops software to read the specific file format it has set, this does not constitute infringement of computer software copyright.

Basic Facts

The plaintiff, Beijing Jingdiao Technology Co., Ltd. ("Jingdiao"), alleged as follows. The plaintiff independently developed the Jingdiao CNC engraving system, which consists of three major parts: the Jingdiao engraving CAD/CAM software (JDPaint software), the Jingdiao numerical control system, and the mechanical body. The system is used through two computers, one being the processing-programming computer and the other the numerical-control computer. The two computers run two different programs that need to exchange data with each other, which is done through data files. Specifically, the JDPaint software runs on the processing-programming computer to generate Eng-format data files, which are then received by the control software running on the numerical-control computer, which turns them into processing instructions. The plaintiff enjoys copyright in the aforesaid JDPaint software, which is not sold publicly to the outside but is only equipped for use on the numerical control engraving machines independently produced by the plaintiff. In early 2006, the plaintiff discovered that the defendant, Shanghai Naikai Electronic Technology Co., Ltd. ("Naikai"), was vigorously publicizing on its website that the NC-1000 engraving-milling machine numerical control system it developed fully supported Jingdiao Eng files of various versions. The Ncstudio software in the defendant's numerical control system could read the Eng-format data files output by the JDPaint software, whereas the plaintiff had taken encryption measures on the Eng format. The defendant's illegal decryption of the Eng-format encryption measures and its development and sale of a numerical control system capable of reading Eng-format data files constituted the act of deliberately circumventing or destroying the technological measures taken by the copyright owner to protect the software copyright, and constituted infringement of the plaintiff's software copyright. The defendant's acts enabled other numerical control engraving machines to illegally receive Eng files, causing a reduction in sales of the plaintiff's Jingdiao engraving machines and causing economic losses. It therefore requested the court to order the defendant to immediately cease the development, sale and other infringing acts of the numerical control system supporting the output of Eng files of various versions of Jingdiao JDPaint, to publicly apologize, and to compensate for losses of RMB 485,000.

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Naikai argued that its developed Ncstudio software could read the Eng-format data files output by the JDPaint software, but that the Eng data files and the Eng format used by those files did not fall within the scope of protection of computer software copyright, so the defendant's acts did not constitute infringement. It requested the court to dismiss the plaintiff's claims.

The court found upon trial as follows. The plaintiff Jingdiao obtained the Computer Software Copyright Registration Certificates No. Ruan Zhu Deng Zi No. 0011393 and No. 025028 issued by the National Copyright Administration in 2001 and 2004 respectively, registering it as the original acquirer of the Jingdiao engraving software JDPaintV4.0 and JDPaintV5.0 (the two software programs hereinafter referred to as "JDPaint"). Naikai obtained the Computer Software Copyright Registration Certificates No. Ruan Zhu Deng Zi No. 023060 and No. 041930 issued by the National Copyright Administration in 2004 and 2005 respectively, registering it as the original acquirer of the software Naikai numerical control system V5.0 and Weihong numerical control motion control system V3.0 (the two software programs hereinafter referred to as "Ncstudio").

Naikai declared on its company website that in December 2005, Naikai launched the NC-1000 engraving-milling machine control system, which fully supported Jingdiao Eng files of various versions, and that this function was developed in response to users' fondness for the Jingdiao JDPaintV5.19 typesetting software.

The Eng files output by Jingdiao's JDPaint software were data files adopting the Eng format. Naikai's Ncstudio software could read the Eng files output by the JDPaint software, that is, the Ncstudio software was compatible with the Eng files output by the JDPaint software.

Judgment

On September 20, 2006, the First Intermediate People's Court of Shanghai rendered Civil Judgment (2006) Hu Yi Zhong Min Wu (Zhi) Chu Zi No. 134, dismissing the claims of the plaintiff Jingdiao. After the judgment was pronounced, Jingdiao appealed. On December 13, 2006, the Higher People's Court of Shanghai rendered Civil Judgment (2006) Hu Gao Min San (Zhi) Zhong Zi No. 110, dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment held as follows. The focal points of dispute to be resolved in this case were: first, whether the Eng-format data files output by the plaintiff Jingdiao's JDPaint software and subject to encryption measures fell within the scope of protection of computer software copyright; and second, whether Naikai's act of developing software capable of reading the Eng-format files output by the JDPaint software constituted the act, under Article 48(1)(6) of the Copyright Law of the People's Republic of China (the "Copyright Law") and Article 24(1)(3) of the Regulations on the Protection of Computer Software, of "deliberately circumventing or destroying the technological measures taken by the copyright owner to protect its software copyright."

As to the first point. Article 2 of the Regulations on the Protection of Computer Software provides: "The term 'computer software' (hereinafter referred to as 'software') as used in these Regulations means computer programs and their related documentation." Article 3 provides: "The following terms used in these Regulations have the following meanings: (1) 'computer program' means a sequence of coded instructions, or a sequence of symbolic instructions or a sequence of symbolic statements that can be automatically converted into a sequence of coded instructions, that can be executed by a device with information processing capability such as a computer to produce a certain result. The source program and object program of the same computer program are the same work. (2) 'documentation' means written materials and diagrams, etc. used to describe the content, composition, design, functional specifications, development situation, test results and usage methods of a program, such as program design specifications, flow charts and user manuals. ..." Article 4 provides: "Software protected under these Regulations must have been

independently developed by the developer and fixed on a tangible object." According to the aforesaid provisions, the scope of protection of computer software copyright is software programs and documentation.

In this case, the Eng file was a data file generated by the JDPaint software running on the processing-programming computer, and the output format it used, the Eng format, was the result produced by the object program of the JDPaint software being executed by the computer. The data file in that format is itself neither a sequence of coded instructions, a sequence of symbolic instructions, nor a sequence of symbolic statements, and cannot be run or executed by a computer. The act of cracking the Eng-format file itself would not directly cause illegal reproduction of the JDPaint software. In addition, the data recorded in the file was not inherent to the plaintiff Jingdiao's JDPaint software, but was generated by the software user inputting engraving processing information, and these data did not belong to Jingdiao, the copyright owner of the JDPaint software. Therefore, the data contained in the Eng-format data file and the file format did not belong to the program components of the JDPaint software and did not fall within the scope of protection of computer software copyright.

As to the second point. According to Article 48(1)(6) of the Copyright Law and Article 24(1)(3) of the Regulations on the Protection of Computer Software, the act of deliberately circumventing or destroying the technological measures taken by the copyright owner to protect its software copyright is an act infringing software copyright. The aforesaid provisions reflect the restriction on malicious circumvention of technological measures and are protection of computer software copyright. However, the aforesaid provisions restricting "malicious circumvention of technological measures" cannot be abused. The aforesaid provisions mainly restrict malicious technological circumvention acts directed at protected software copyright. The act of a copyright owner setting a specific file format for output data, taking encryption measures on that file format, and restricting machines of other brands from reading data stored in that file format so as to ensure the market competitive advantage of machines bundled with its own computer software, does not fall under the technological measures taken by a copyright owner, as referred to in the aforesaid provisions, to protect its software copyright. The act of another person developing software capable of reading the specific file format set by the copyright owner does not constitute infringement of software copyright.

According to the facts of this case, the Eng-format files output by JDPaint were files completing data exchange between the two computer programs in Jingdiao's "Jingdiao CNC engraving system." In terms of design purpose, Jingdiao's adoption of the Eng format rather than a universal format to complete data exchange did not lie in encrypting and protecting the JDPaint software, but in hoping that only the "Jingdiao CNC engraving system" could receive this format, and only engraving machines bundled with the "Jingdiao CNC engraving system" could use the software. Jingdiao's adoption of the Eng format for JDPaint output files was aimed at restricting the JDPaint software to use only within the "Jingdiao CNC engraving system," and its fundamental purpose and true intent lay in establishing and consolidating the bundling relationship between the JDPaint software and its engraving machines. This act did not belong to technological protection measures taken to protect software copyright. If the protection of software copyright were extended to products bundled with the software, it would necessarily exceed the scope of protection of computer software copyright under China's copyright law. The technological measures taken by Jingdiao in this case were not technological measures taken to protect the JDPaint software copyright, but technological measures taken to obtain interests beyond copyright interests. Therefore, the technological measures taken by Jingdiao did not fall under the technological measures taken by a copyright owner, as provided in the Copyright Law and the Regulations on the Protection of Computer Software, to protect its software copyright, and Naikai's act of developing software capable of reading the Eng-format files output by the JDPaint software did not constitute the act of deliberately circumventing and destroying the technological measures taken by the copyright owner to protect the software copyright.

Relevant Legal Provisions

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Article 48(1)(6) of the Copyright Law of the People's Republic of China.

Articles 2, 3(1)(1) and 24(1)(3) of the Regulations on the Protection of Computer Software.

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