The Software Interface between Copyright and Competition Law

A Legal Analysis of Interoperability in Computer Programs

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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