This article was published in the *International Law Office IP Newsletter* on October 17, 2016.

Intellectual Property, Taiwan

Copyright infringement issues concerning adaptations of computer software

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Introduction

Article 3(1)(11) of the Copyright Act states that an 'adaptation' refers to the creation of another work based on a pre-existing work by translation, musical arrangement, revision, filming or other means. According to the IP Court, derivative works resulting from an adaptation should still contain elements of the original. If a different work has been created through the use of the original, the work is not considered a derivative work according to the Copyright Act, but is deemed a completely new work. Naturally, such work does not infringe the original author's adaptation rights.

IP Court Judgment 103-Min-Zhu-Shang-Zi 12 (December 3 2015) concerned whether copyrights were infringed due to adaptations of computer programs. In this case, the court determined that even where software code has been modified based on the work of others, if the modification and modified functions have resulted in a significant distinction from the original work, the modified work is considered an independent work and not a derivative work and should not infringe the copyright of the preceding work. Even if the two works share common elements, where the common elements are not subject to protection under the Copyright Act, or where ways of expressing the common elements are limited and thereby exclude the elements from copyright protection, the modified work will also not be deemed as having infringed the copyright of the preceding work.

Facts

The appellant entered into a contract with A to develop the disputed Software I. The copyright of the software was to be held exclusively by the appellant, while A and its affiliate enterprises would have the rights to reproduce, adapt and utilise it free of charge. The two parties later entered into another contract under which the appellant developed the disputed Software II, the copyright of which was vested in the appellant, while only A was entitled to use it. B was formerly an affiliate enterprise of A but subsequently split from it. The appellant claimed that B continued to use and adapt Software I and II without its consent after it had split from A, apparently infringing the copyright of the software programs.

In its defence, B argued that the disputed software code was insufficient for supporting its business operations and that the software code as used by B had therefore undergone major modifications. B had developed code on its own to suit its purposes and incorporated many new features, making the new program an independent work which did not infringe the appellant's copyright.

Decision

The IP Court determined that after B had separated from A, it had made modifications to disputed Software I, incorporating many new components. After a comparison, it was found that the user interface had been changed, while allocation and designs of the function interface and function blocks also differed from the original program. Although the same spelling mistake existed in both Software I used by B and in the appellant's software, the similarity lay only in the expression of a column name corresponding to relevant data fields as opposed to the overall design expression of the user interface. The court therefore deemed the issue unnecessary of consideration. Further, the misspelled column name or slogan should fall under Article 9(1)(3) of the Copyright Act, and should not be subject to

copyright protection. Therefore, concerning the disputed Software I, no infringement occurred on the part of B.

With regard to disputed Software II, A had rewritten and replaced Software II entirely, retaining only common elements such as its parameters, parameter profile and calling function for connecting to a database and database columns. Therefore, it was determined that A had redeveloped Software II on its own and then transferred it to B, which used and reproduced it as provided by A, but did not infringe the appellant's copyright. B also made its own developments using '.Net', which differed from the Java programming language used by the appellant. Because the source code of each respective program was written in a different manner, it naturally did not constitute an infringement of the programming language.

Even though the appellant held copyrights for disputed Software I and II, the court found that B had not willfully or negligently infringed the copyrights of the disputed software programs. The appeal was subsequently dismissed.

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