



Study Questions for Sydney 2017

Protection of graphical user interfaces

Graphical user interfaces ("GUIs") are of increasing importance in relation to computing devices, particularly mobile devices such as smartphones and tablet computers. GUIs can comprise many elements including graphical icons, screens, pages, layouts and interactive components. GUIs can also include methods of converting physical user interaction (such as touch, speech or eye movement) into a control signal for the device. The arrangement of these elements within the GUI, and the interaction between individual GUI elements, can be very important to the accessibility of the underlying services and data of the device. Accordingly, a significant amount of innovation is increasingly taking place in relation to GUIs.

Various IP rights may protect different aspects of GUIs. For example, the most suitable mode of protection for the technical contributions of GUIs such as improvement of usability and accessibility may be patent protection. For the aesthetic elements of the appearance of GUIs, design protection is likely to be most relevant. GUIs may also attract copyright protection as an original expression. Further, GUIs may have the function of identifying the source of products, in which case, trademark protection is also relevant. There could potentially be other forms of protection, such as trade dress and *sui generis* rights.

On the other hand, there may be limitations depending on the type of IP rights. patent protection of GUIs inevitably involves the issue of whether a computer program constitutes patentable subject matter in the first place. Regarding design protection, there are issues such as whether a GUI that temporarily appears on a screen of an electronic device can be protected as a design. With respect to copyright, there is an issue of whether GUIs can be characterised as protectable expressions rather than simply as unprotectable ideas. Finally, it might be the case that only GUIs that have acquired secondary meaning through use could be protectable by trademarks.

Jurisdictions take differing approaches as to whether IP protection is available for GUIs. For example, European countries, South Korea and the US generally permit design registrations or design patents for screen layouts and icons. China used to explicitly exclude GUIs from design protection, but recently amended its rules to allow for design protection of GUIs.

This Study Question is topical by reason of the economic significance of the markets for devices incorporating GUIs, the global / cross border nature of the relevant industries, the pace of technological development in relation to GUIs, and the variation in approaches between jurisdictions. It studies the various protections afforded to GUIs, and aims to propose a degree of harmonization as to how GUIs should be protected by, and by which, IP rights.