

The Protection of Graphical User Interfaces in Turkish Law

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A dramatic increase in economic globalization and the rapid development of new technology products has led to greater competition, leaving companies to worry about the visual elegance in software and devices to make them more appealing and user friendly for consumers with no previous technological knowledge.

Securing rights for software graphics has become increasingly significant in the battle between tech companies as they scramble to protect and enlarge their market share, which has made the protection of graphical user interface (GUI) an important topic.

What is GUI?

A graphical user interface, or GUI, is a "computer environment" that allows a user to interact with the computer through visual elements such as icons, "pull-down menus, pointers, pointing devices, buttons, scroll bars, windows, transitional animations and dialog boxes.¹

Simply, GUIs are the icons, screen layout, and visual cues that we utilize to control the electronic devices, such as ATM's, phones, computers etc. It is important to note that GUIs are the visual aspects of these applications, and not the underlying code (i.e., "source code" and "object code").

The design of graphical user interfaces is an essential part of smart phones, tablets, PC software and applications. It can make a difference and strongly contributes to the market share of the owner by making the product more user-friendly, more intuitive and fun. Therefore, graphical user interface is a valuable asset of a company and worthy of protection.

How can GUIs be Protected in Turkey?

Since there is not any specific regulation relating to GUI, it can be protected through various different options including Trademark or Design Law or Unfair Competition, even Copyright Law.

Copyright Protection

As general information, an intellectual or artistic work is protected under the Turkish Copyright Act if it meets the dual requirements (Art. 1 of the Copyright Act; Law No. 5846 of December 5, 1951 on Intellectual and Artistic Works):

- The work must have the individuality of the author;
- The work must fall into one of the four categories of works listed in Art. 1 of the Copyright Act:

a. Scientific and literary works (Art. 2), or

b. Musical works (Art. 3), or, Works of fine art (Art. 4), or, Films (Art. 5).

Therefore, it is possible to protect GUIs under Copyright Law if the GUI carries individuality and originality. Meaning, the audiovisual element of the GUI should be stronger than its functional element. However, these criteria are hard to

meet if the GUI is highly user friendly, simple, clear and understandable.

Trademark Protection

According to the Decree Law on the Protection of Trademarks numbered 556 ("Trademark Decree Law"), a trademark is described as follows:

"A trademark, provided that it is capable of distinguishing the goods and services of one undertaking from the goods and services of other undertakings, may consist of all kinds of signs being represented graphically such as words, including personal names, designs, letters, numerals, shape of the goods or their packaging and similarly descriptive means capable of being published and reproduced by printing."

Therefore, we can say that GUIs may be subject to trademark protection if the appearance of the GUI identifies the origin of goods and services of one undertaking to differentiate them from those of its competitors. However, it is important to point out that the non-static features of GUI cannot be protected through trademark protection.

According to the records of the Turkish Patent Institute ("TPI"), trademark protection is especially chosen by technology companies for icons.

Design Protection

In Turkish Law, a design is described as the following: "design means the entirety of the various features such as lines, color, texture, shape, sound, elasticity, material or other characteristics perceived by the human senses of the appearance of the whole or part of a product or its ornamentation."

Protection shall be granted to a design, which is new and has an individual character. Therefore, it is in theory possible to protect the graphical user interface as a design.

When we checked the TPI's online records, we've noted that the design applications for GUI's are mostly classified under 14.02 or 14.04 of the Locarno Classification.

As the companies tend to protect the icons most of the time through trademark registration, interfaces are generally chosen to be protected by design applications.

Patent Protection

In Turkish Law, patents, as the other intellectual property rights, are regulated with a Decree Law. As per Article 5 of the Decree Law on the Protection of Patents, an innovation or invention is patentable only in the case that such an invention is novel, beyond the state of art and applicable to the industry. For the purpose of the Decree, state of the art means all kinds of technical information throughout the world and accessible by the public before the date of the relevant patent application.

According to Article 6 of the said Decree Law, the following along with other, not being inventions as of their nature, shall remain outside the scope of this present Decree Law:

- Literary and artistic works, scientific works, creations having an esthetic characteristic, computer programs.
- Methods involving no technical aspect, for collecting, arranging, offering/presenting and transmitting information/data.

Most of the GUIs will be interpreted as the method of presenting, collecting or transmitting data. Basically, in order to protect GUIs through a patent, there has to be something other than the simple choice of what information to display and with what layout to display it, which is most of the time not the issue for GUIs.

Unfair Competition

The Turkish Commercial Code ("TCC") provides protection for all market participants against unfair competition between competitors or providers. Articles 54-63 of the TCC regulate the legal concept of unfair competition. Article 54 generally describes unfair competition as:

"(1) The articles of the Unfair Competition aim to ensure fair and uncorrupted competition for the benefit of all participants of the market.

(2) Deceptive or other kinds of acts or practices violating the bona fide principle, affecting relationships between competitors or between suppliers and clients are unfair and unlawful."

Article 55 provides a more detailed non-restrictive list of examples of acts that constitute unfair competition. According to Article 55(a)(4), to create confusion with others' businesses, business products or activities is unfair competition.

Secondly, according to judicial precedents, we can say that during the test of similarity, the court considers the existence of confusion (or risk of confusion) between the products.

Therefore if a competitor deliberately imitates the GUI of another company without the technical necessity to do so, the rules of unfair competition may apply.

Conclusion

The importance of the design of GUIs will become increasingly as important as the technology and functionally as the design and "look" of the product becomes a valuable asset. Therefore, companies are looking for the most effective and cost-efficient way to protect the design of their GUIs. We hope to see more rulings from first instance courts and Court of Appeal to have an established precedent for GUIs.

Stigler Rachel, Northwestern University School of Law, "Ooey GUI: The Messy Protection of Graphical User Interfaces"

<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1223&context=njtip>

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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