
Book Reviews

Computer Contracts—Principles and Precedents

Gordon Hughes & Anna Sharpe

The Law Book Company Ltd, 1992, approximately 1000 pages

Hardback looseleaf service, regular updates (approx 3 - 4 per year), AU\$275.00

This is much more than just a book of computer contract precedents, though it certainly provides an ample number of those. No, it is also probably the best overview of Australian computer law.

The book is divided into two sections, principles and then precedents. The principles provide a wonderful overview of two of the main four topics in computer law, namely intellectual property and computer contracts. The other two important considerations, privacy and crime are covered in Hughes' other work, *Data Protection in Australia*, (Law Book Company, 1991), so it appears that Dr Hughes has a monopoly on the field.

The principles part covers the two topics mentioned with clarity and precision. It is interesting that in a

short section it manages to come to grips with the issues far more effectively than most works devoted to nothing but principles. For example, in the section on intellectual property Hughes and Sharpe cover not only the basics but also computer-generated works, look and feel, reverse engineering and copyright in databases. It also looks at patent, trade marks and confidential information. There are sections on taxation implications, remedies (including damages and extraordinary preliminary relief) and of course, contract. Naturally, the sections on contract are exemplary and expand on the work done in the prior edition. On contract, the authors cannot be faulted.

Hundreds of pages of precedents follow, and readers will be pleased to see the two innovations of the first edition—a checklist precedes all contracts to give an idea of important considerations, and each contract comes in two forms, one drafted for the supplier and the other for the customer. The contracts are divided into sections on hardware, software, systems integration, outsourcing, and distributorship. Separate chap-

ters exist for government contracts (particularly the GITC) and EDI contracts.

This work provides the practitioner with virtually everything necessary to conduct a practice which includes computer contracts. Without it, one would be hard pressed to advise clients with any degree of accuracy or economy. The publishers have also seen fit to produce it in a looseleaf format. For a work such as this, it makes perfect sense, given that regular updates are likely in both the principles and precedents of computer contracts. The one concern is that this does inflate the price, and places the work out of the range of students and others not in practice. However, the nature of the work means that most of the intended audience are practitioners who are more concerned with being on top of the law, than with reducing the initial purchase price. For computer lawyers this book is a mandatory reference. In conclusion, Hughes and Sharpe have produced a work which surpasses virtually every other international work in this field. Few computer law books can compete with the clarity and detail which one finds in this work. ♣

Computer Contracts

Richard Morgan and Graham Stedman

Longman, Fourth Edition, 1991, x + 554 pages

Hardback UK£65.00

In a book of principles and precedents, all that one need ask is whether it provides a useful and practical discussion of the relevant area, and if the precedents are valuable. Morgan and Stedman's *Computer Contracts* provides this. Unfortunately for the authors, at least so far

as Australian computer contracts are concerned, Hughes and Sharpe's work is more suitable. That is not to say that Morgan and Stedman's book does not have a place on desk of the Australian computer lawyer or computer company manager. It is just that the book lacks a number of the excellent features of the Hughes and Sharpe book—looseleaf format, precedents drafted in the alternative for both parties, and an excellent introduction to most aspects of computer law and not just computer contracts.

That said, the discussion provided by Morgan and Stedman is very good. It is restricted specifically to the contractual considerations of computers, and does not seek to venture beyond that. So, for example, a discussion of computer copyright is restricted to a couple of pages spread over various parts of the book. This does, however, give plenty of space to the main concerns of computer contracts, from hardware, software, maintenance, distribution and marketing, alpha and beta testing, leases, and service contracts. A feature of the book is an excellent series of

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cross-references between the commentary and the precedents, and vice versa. Therefore, the novice seeking to understand the principles while drafting his/her first computer contract can easily swap between the sections. The precedent takes shape informed by the discussion in the commentary.

The commentary is good, although I would have preferred it to rely less

on extracts from the precedents. One finds that after explaining a concept, Morgan and Stedman will insert a long clause which is in addition to and seeks to modify the precedents in the back of the book. Thus, much of the commentary is, in fact, precedent itself. However, it does cover all of the vital aspects, and even some non-vital ones (for example, section 3.7.1 includes a

commentary on specifying a dress code for the notoriously shabby computer personnel: 'Whilst the Software House's personnel are attending the Client's premises such personnel will conform to the Client's normal codes of staff practice.')

In all, a useful book, and one which can be used to complement the material in Hughes and Sharpe's book. ♪

Copyright and Designs Law

Peter Groves

Graham & Trotman, 1991, xxvii + 417 pages

ISBN: 1-8533-3646

Hardback Dfl305.00 (approx AU\$250.00)

Distributed by DA Information Services, ph: (03) 873-4411, fx: (03) 873-5679

From the opening words of this book, 'The law of copyright is one big balancing trick', I found this a fascinating, scholarly and, as importantly, a well-written book. Small touches made this a lovely book to dip into. Touches such as the catchy opening just mentioned, or the quotations at the beginning of each chapter, from sources as varied as Bob Dylan, Richard Posner, Marshall McLuhan and J.S. Mill.

Nonetheless, this is an important and vital reference to the passing of

the UK *Copyright, Designs and Patent Act* 1988. It basically comprises what they call in America a legislative history. That is, it traces the development of the Act, from the first strings, through its draft forms, the hearings, the commentary, and the provisions itself. In this way it is very different from works such as *Copinger and Skone James* which seek to provide all of the cases interpreting the Act. Rather, it explains in excellent detail and with great clarity the rationales behind the Act. Though of course Australia and New Zealand do not have exactly the same provisions in their legislative regimes, we do share the basic reasons for copyright and designs protection. To find a clear explication and a scholarly treatment of these reasons is therefore of great value to computer lawyers who practise in intellectual property domains.

All of the usual chapters on subsistence, ownership, rights, permitted acts, dealings and so on are here, though as I said the focus is more on the way in which and why the

law came about, rather than an explication of cases. Other more interesting (for this audience) chapters include chapters on international rights, counterfeiting, and semiconductor chip topographies. In each of these chapters, Groves manages to provide a scholarly and accurate analysis of the provisions legislative history, as well as provide the sort of structure which the practitioner adores. Each section is focused discretely on a useful topic, which include such practically useful discussions as (more or less at random) 'Typefaces', 'Works in an electronic form', 'Notes and recordings of Spoken Words', etc. One can quickly discover relevant sections, and once found the book neatly explains why this is important, and how the issue arose and is dealt with.

Though international works are expensive and often of limited use, I believe that this one is worth the price. It provides a unique view of the development of the legislation, and casts a fascinating light on our regimes. ♪

Intellectual Property and the Internal Market of the European Community

Peter Groves, Tony Martin, Claire Miskin, John Richards

Graham & Trotman, 1993, vii + 266 pages

ISBN 1-8533-5754

Hardback Dfl202.00 (approx \$157.50)

Distributed by DA Information Services, ph: (03) 873-4411, fx: (03) 873-5679

This is a slim work, much of whose bulk is made up by the text of various EC Conventions, Protocols and Directives. That said, it is a fascinating introduction to the area of EC intellectual property law and has a number of sections of particular use to the computer lawyer. The authors are a group of barristers and solicitors currently in practice, who have provided a remarkably current (up to September 1992) overview of the increasingly inscrutable movements in Europe. It is important to understand that this book does not purport to provide any guide to the various domestic laws enacted pursuant to the EC documents, and instead explains the documents and the reasons behind them.


The book is divided into six main chapters. The first on the introductory subject of 'Intellectual Property and 1992' sketches how the notion of one common market was thought to be possible, and how the various questions of national protection was to be brought about. This is, in a sense, an historical overview and explains the problems which faced the early cases in applying the new concepts.

Chapter two examines patent rights, and in particular the European Patent Convention. Computer related inventions are discussed (a useful addition for this reader in light of the recent moves in Australia and New Zealand in computer software patentability [See last issue—*Eds*]) as are pharmaceutical inventions, and the tests for novelty, inventiveness and so on are briefly sketched. There is further discussion of the Community Patent Convention, which will, in time, provide for a unitary patent for all EC countries. The chapter concludes with a discussion of the patentability of biotechnology under the new draft Directive (COM (88) 496 final - SYN 159).

Chapter three looks at trade mark law under the Madrid Agreement, the EC Directive and the EC Trade Marks Regulation. Again, only a broad brush is used to outline the various interpretations applicable to the documents. For example, acts

constituting infringement under the Directive only covers a page, while limitations on the scope of marks is covered in a short paragraph.

Chapters four, five and six deal in turn with Copyright, Designs and Semiconductor Chips. It is probably here that those interested in computers and law will find the most use. The chapter on copyright, for example looks at *inter alia* interoperability, reverse engineering and decompilation, maintenance of software, protection of databases, and broadcasting technology. The chapter on designs is useful when used in concert with the short chapter on chips. The latter, although only 4 and a half pages in length, clearly outlines the effect of the Directive on semiconductor chips.

This book is, according to its promotional information, aimed at IP practitioners and generalist practitioners, and those in industry. It also notes that it will be useful to those who come from the EC member states' trading partners. This is, I believe, as true for practitioners in the Antipodes, as for their clients who trade with European countries. The recent move to various Directives and Conventions has, to a large degree, confused Australian and New Zealand practitioners and traders who have little experience with this sort of codified system. This book then is a clear exposition of the basic concepts and is recommended for those who need such a work. 

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The Law of Information Technology in Europe 1992—A Comparison with the USA

A.P. Meijboom & C. Prins (eds)

Kluwer Law & Taxation Publishers, 1991, xxi + 261 pages

ISBN 9065-44-5544

Paperback Dfl110.00 (approx AU\$88.75)

Distributed by DA Information Services, ph: (03) 873-4411, fx: (03) 873-5679

Do not let the title of this book fool you into believing that it is of no value to the Australian practitioner. On the contrary, it is to my mind the best international review of the multifarious considerations and concerns which comprise information technology law. The many contributors to the book are internationally respected and often the leading figure in the specific topic of which they talk. Such luminaries as Richard Stern (author of *Semiconductor Chip Protection*), Corien Prins (author of a text on computer law in Russia), Michael Scott (author of *Computer Law* and publisher of *Computer/Law Journal* and *International Computer Law Adviser*), and Henri Hanneman (author of *The Patentability of Computer Related Inventions*) amongst a host of others contribute chapters in their own speciality.

Further, the way in which the book is structured makes it far more than a narrow exegesis of the EC law. Each

chapter on the EC provisions is followed by a chapter on the US equivalent, and the similarities and differences, and the reasons for this, are drawn out in these chapters. Since the two main areas where computer law has developed have been Europe and the US it is not surprising that this overseas experience has a great deal to tell us on the other side of the world. It is a wonderful book for the practitioner to gain an appreciation of the basics of the computer law in the EC and the USA. It is not the standard reference book—such a work would be too large to publish. It does however provide an excellent overview of virtually every major topic in the law relating to information technology.

The book opens with what must be one of the clearest and simplest explanations of how the EC arose, the difficulties which it has faced over the past few decades, and the way in which EC law seeks to face these dilemmas. I think that one of the problems which we have faced in New Zealand and Australia is a lack of understanding how all the differing Directives operate, and whether each has force of law in the different circumstances. Thus, an introduction such as this is exceedingly useful to non-EC practitioners.

The next two chapters are on competition law. This is a particularly well developed area of law in the USA and increasingly in the EC. It provides a guide to the way in which this reviewer, at least, believes the Australasian law must go. We are seeing judgments within our jurisdictions which are increasingly following the overseas lead.

Then there follows the section on intellectual property. There are chapters on EC and US law of patents, copyright, chip protection and trade marks. This is the most extensive section of the book, and to a degree the most useful. We in the Antipodes have taken much from Europe and the Americas: the Australian *Circuit Layouts Act* and the questions on patentability of software [Discussed in last issue—*Eds*], look and feel copyright, structural copyright and so on, are all discussed here. It is at times a shame that some topics cannot be examined in greater detail. While the authors have given some indication to some useful cases or commentary, often many other cases are left out for space considerations. Still, if one is to have such a wide-ranging discussion then one must compromise on detail.

The final four chapters are on the EC and US approaches to two topics: product liability for computers and computer related material and telecommunications. I would have preferred to have chapters on data protection rather than telecommunications. It is sometimes hard to see anything but a narrow connection between telecommunications and computers, though it is admittedly there. Still, these chapters are, like the rest of the book, handled well and give a clear analysis of the major issues within each topic.

For those people who need an introduction to virtually every major topic of information technology law, particularly in the major overseas markets, this book is highly recommended. ✍