Book Reviews

Computer Software— Legal Protection in the United Kingdom

Henry Carr & Richard Arnold

Sweet & Maxwell, Second Edition, 1992, xv + 312 pages

Hardback $130.00

Distributed by The Law Book Company

It is always a danger, having spent time in both legal practice and academa, to judge books by the wrong standard. When in practice it was easy to dismiss books as 'not sufficiently commercial or 'impractical' or worse: 'too academic'. One must review books bearing their market in mind. However, with this book, it is somewhat hard to tell what the market is. The Preface says that the objective is '...to provide an introduction to the principal legal mechanisms by which computer software may be protected from unauthorised use, plagiarism and damage in the United Kingdom...' and the author's aim '...is to assist producers of computer software and their legal advisers in safeguarding the substantial investment in time, effort and money that software represents.' Even this does not help very much. The book is a curious mixture of scholarship and commercial discussion. I suspect that the best market for the book, the one for which it is well suited indeed, is as a text for those law students seeking to learn about computer law and more specifically software protection.

The book does not appear commercially oriented. Unlike the legal textbook which proliferate these days, the book has no checklists, no 'how-to's', does not break the areas down into simple components. Instead it discusses a range of topics which a practitioner would dismiss, in that

dreaded phrase, 'too academic'. For example, the text discusses 'look and feel' copyright protection, a relatively recent feature of the US law. This area, one that falls clearly within copyright law, is to be found in the chapter entitled 'Rights in Semiconductor Topographies and Copyright in Visual Displays.' A lawyer wishing to find details of 'look and feel' software will be faced with a complicated search, unless he or she happens to believe, as the authors do, that 'look and feel' can sensibly be lumped in with semiconductor layouts. A thorough examination of the index and the contents provides no clue as to whether the topic 'reverse engineering' is discussed. This issue has been of concern to computer lawyers and industry, and yet it appears not to be covered (at least, I had trouble finding anything directly on it). If it is covered, it is mentioned as part of other catch-all topics, such as 'Copyright', 'Semiconductor Topographies' and 'Patents.' It is difficult therefore to discover where specific topics might be hidden, and it is this flaw which tends to limit the effectiveness of the work for strictly commercial use.

Neither is the text a primarily scholarly work. It skims over a number of areas which would be important if the authors were keen to establish their research bona fides. For example, a number of American references are incorrectly cited and though an early important Australian case is discussed, no mention is made of the *Autodesk case*, in any of three courts. Difficult topics, such as how we should protect software, where to draw the idea/expression line in copyright, and how competition law affects software protection are given brief mention. To return to the 'look and feel' section, two to three pages are alloted to this question, one which has been the subject of hundreds of pages of comment.

Little reference is made to scholarly references which might assist in fleshing out what the book sketches. A number of times one finds sentences such as 'A full consideration of the United States (sic) authorities on copyright infringement in computer programs is beyond the scope of the book.' Unfortunately one does not find a footnote giving the reader guidance as to books which may discuss these topics. This is not a crucial flaw in a book which was primarily an introduction to the field for commercial lawyers, but as I have mentioned, the book does not seem to fit that category either.

The most usual suspect then in trying to identify the book's proper market is the UK student market. This market is well addressed, and the book covers all the important legal categories which are important to computer software protection. Apart from a thorough table of cases and statutory materials in various jurisdictions, there is a chapter explaining how computer software works and is made, a brief chapter on competing policy consideration for the 'ideal' protection, and then chapters on the main important intellectual property laws: confidential information, copyright, semiconductors (via the design right), patents, computer contracts, remedies and computer misuse.

Carr initially staked out his claim in the UK, and this second edition will solidify the first edition's position. Perhaps in the third edition the authors will reassess its market and decide whether they want it to be commercial or scholarly. At the moment it seems to perch uneasily on the fence between the two. For Australian and New Zealand practitioners it is the best introduction to the UK law, but is not the best overall analysis of the issues which are common to all jurisdictions.

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Information Law and Practice

Paul Marett

Gower, 1991, 290 pages

Hardback $92.50

Distributed by Gower Publishing Australia, phone (02) 552 2366

When I first saw this book, I was rather sceptical. I had not heard of the publisher nor of the author, and thought that it would be of limited use. I am delighted to say that this is an excellent book and provides an easy-to-use, non-technical and satisfying introduction to the issues in information technology law. The author, a lecturer in intellectual property law at Loughborough University's Department of Library and Information Studies, has brought together an impressive exposition of the important legal concerns in information technology law. The book is aimed at information professionals, librarians, and the like, but I believe that as a commentary on laws relating to information its audience could be far wider. It is a complete and useful introduction to the field for all non-lawyers (and some lawyers I'm sure).

The author states in the Preface that it is based on an intellectual property course which he has taught for some time, and the provenance shows. The handling of intellectual property is extremely good, which to this reviewer's mind is vital in these sorts of works. Understanding intellectual property is central to coming to grips with information law. The work covers this very well, and though Australia is not given much consideration, other international regimes are examined. This sort of comparative analysis is useful in applying the lessons of the book to our legal systems. Though the IP

discussion forms the backbone, other important areas are not neglected. There are discussions of defamation, the various data protection systems, censorship and so on.

This book covers more than just computer law, and traverses the growing area of information law, an area encompassing computer law, entertainment law, journalism, copyright, patent, semiconductor protection, etc. Those who need an introduction to this study would be hard-pressed to find a better work than this.

Australian Law of Trade Marks and Passing Off

D.R.Shanahan

The Law Book Company, Second Edition, 1990, lxxvii + 702 pages

Hardback $137.50

This is definitive work in the area. Shanahan's *Australian Law of Trade Marks and Passing Off* is the standard text for trade mark practitioners and one really has all that one needs to conduct a trade mark practice provided one has a copy of the Trade Mark Examiner's Manual and a copy of Shanahan.

Computer law practitioners often have cause to consult intellectual property texts, for two main reasons—first, because computer lawyers often turn their hands to intellectual property (outside copyright) and secondly because computer clients often want to protect their trade marks and want their usual lawyers to do so. Which is why computer lawyers who may ever have cause to look at trade mark questions should buy a copy of this book.

The work is the second edition of the earlier work which confined it-

self to trade marks alone. Now, with the increased and increasing importance of passing off and particularly Part V, the consumer protection part, of the *Trade Practices Act* 1974 this work deals with these areas in separate chapters. Naturally, all the major questions on trade mark law are also covered. This includes registration, infringement, limitations on registration, removal and transfer of rights. There are also specialised and vital chapters on the special court proceedings and the practice therein, groundless threats of proceedings and penal offences, customs seizure and parallel imports. Various appendices include the text of the Trade Marks Act, the Regulations, the Paris Convention (the major international convention on protection of industrial property) and a useful list of contrasted marks and names. This list compares marks where injunctions were granted or refused, and where marks were found to be too close and held to infringe or not too close and allowed. This is extremely useful in seeking to overcome objections in the Examiner's Report.

All in all, a 'must-buy'.

Blackstone's Guide to the Copyright, Designs & Patents Act 1988

Gerald Dworkin & Richard D. Taylor

Blackstone Press Ltd, 1989, x + 454 pages

Paperback $67.00

Distributed by The Federation Press

This book, though purporting to be about the entire UK *Copyright, Designs & Patent Act* 1988 is really about copyright and the related design rights. With that rider firmly in mind, the work is excellent. Dworkin, the renowned intellectual

property scholar, and Taylor, a lecturer from Lancaster Poly, have managed to gather together the threads which make up the background to the new Act. For those who operate in jurisdictions which take heavily from the old UK Act, this is extremely useful.

The book is divided up into four parts: the principal discussion in part one is confined to copyright, followed by a discussion of related rights (performance and design rights), and then special topics. The final part is the full text of the Act.

For readers of this journal, the third part covering special topics is very useful. The chapters in this part include audio and visual recordings, computer technology, and cable and satellite broadcasting. Naturally, these sections have dated somewhat, but still cover the needs of most practitioners.

A notable chapter in the first part is copyright and competition. It is gratifying to see that this important consideration is finally beginning to be addressed, by the learned authors of this text if few others. Very little is mentioned in most works about the potential difficulties which the gradual accretion of copyright power is having upon our fundamental understanding of the rationale for copyright protection. Though the question of abuse of market power, tying, and other antitrust considerations are worthy of a book in themselves (for example, the Prices Surveillance Authority's Report on Software Prices or Warwick Rothney's PhD work on economic considerations in parallel importation, soon to be published in a book) at least this book begins to look at the problems.

Those who need a clear text on UK copyright should consider this work. Not as authoritative, nor as expensive as Copinger & Skone-James, it is nonetheless a practical, effective and well-written book on copyright and related issues.

Books Received:

Information Horizons

Ian Miles, Howard Rush, Kevin Turner & John Bessant

Edward Elgar Publishing Ltd, 1988, 303 pages

Paperback $38.00

Distributed by Gower Publishing Australia, phone (02) 552 2366

This book looks at the long-term consequences of the 'Information Revolution.' It discusses the nature of technological change and the social processes which accompany with it.

Equity—Doctrines & Remedies

R.P.Meagher, W.M.C.Gummow & J.R.F.Lehane

Butterworths, Third Edition, 1992, cxxiii + 960 pages

Hardback $135.00   Paperback $99.00

This is the third edition of the standard Australian work on this topic, published in September 1992.

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