Stop Press

30 May 1996

***Data Access Corporation v Powerflex Services Pty Limited (1996)* 33 IPR 194**

This was a recent decision of Justice Jenkinson sitting as a single judge at first instance in the Federal Court in Victoria. The case involved a Victorian company which developed a software program for the design and development of computer databases (ie it was a developers' tool) which was intended to be functionally similar to a program originally written by the plaintiff, a US corporation and to supplement its operation for customers.

In the decision, the Court held that there was copyright protection for individual words in the source code of the plaintiff's program, and that the defendant had infringed copyright. The Court focussed on the similarity of function of particular words common to each language in which the programs were written, echoing the judgement of Northrop J in the Federal Court at first instance in *Autodesk v Dyason.*

Orders were handed down in the case on Tuesday 28 May. The orders represent a paradigm shift in the development of copyright law in Australia. The orders include those having the following effects:

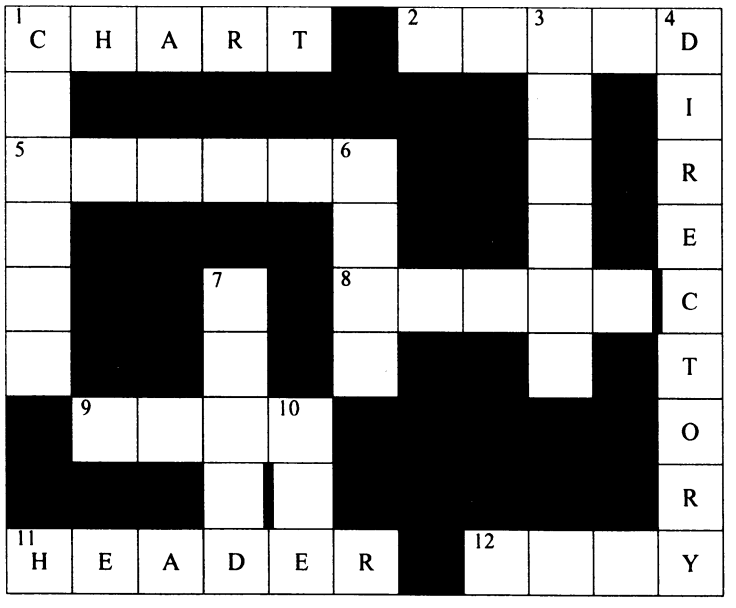
- a restriction on the right to use common words in a program language
- the right to use 3 macros potentially create a patent-like level of protection
- a restriction on using the Huffman Table
- a restriction on using the file structure which, when combined with the Hoffman Table, effectively means that you can never design a product compatible (or which interfaces) with, another program. This poses serious problems for any software program that extracts or exports data from another program, such as executive information systems and report generators.

The *Powerflex* case is at the other extreme from the Apple case, which held that there was no copyright protection for computer programs under Australian law.

Australian software developers may have to seriously consider setting up their development shops offshore in the US or in Europe to avoid the effects of this decision and to achieve protection for their products.

The parties have 21 days (ie until 17 June 1996) to lodge appeal papers. Full details of the case at first instance will be explored in the upcoming issue of the Journal in September, the theme of which is the **state of play in copyright protection of computer software and databases.**

Until the outcome of the case on appeal is settled (or the legislature sees fit to consider an amendment to the *Copyright Act* to overcome the effects of the decision on software developers), readers - especially software writers - may enjoy coping with the puzzle set out below relating to the case (no prizes from the editors for correct answers):



ACROSS

1. Measuring performance
2. Discovery
5. Remember
8. To bring equals together
9. Curve that crosses itself
11. A pass in football
12. Corpse

DOWN

1. Neverending geometry
3. Release
4. Central list
6. To call
7. Outpouring
10. The food version of the ultimate mathematical construct

There is a late change to details published at the beginning of this year in the Calendar of seminar events for the NSW Society for Computers and the Law. The date for the June conference jointly staged each year by the Society with the College of Law has been changed from **Wednesday 3 June 1996 to Wednesday 10 June 1996.**

For those with deep pockets or in need of tax deductions, the Journal editors have been asked to make readers aware of the upcoming conference in Brussels, Belgium, **Multimedia and the Internet - Global Challenges for Law.** The conference is being held on 27 and 28 June 1996. Details and registration forms with conference program are available from Virginia Gore at Blake Dawson Waldron in Sydney on 612 258 6000 or direct from Carole Bossaert on ph (Belgium) (32) (2) 543 2341 or fax (Belgium) (32) (0) 543 2415.