

### Computer Law and Security Report, Volume 12 Issue 1 1996

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#### **International Legal Protection for Software**

The annual summary by the US law firm of Fenwick and West of the legal protection available for computer software in the most significant world markets. The areas of law covered are copyright, trademark, patent and contract law. An attached chart indicates whether software is protected under the copyright or patent law of 72 countries and the convention memberships of those countries. Updates are also provided on copyright protection for software in the People's Republic of China, multimedia rights issues and software protection under US case law.

#### **A Comprehensive Analysis of Software 'Look and Feel' Protection: Part II - Apple v. Microsoft - The Ninth Circuit's Decision**

Author: David L Hayes

The second part of an analysis of

software 'look and feel' protection under US copyright law. This part discusses the cases of *Apple Computer Inc v. Microsoft Corp*, *Brown Bag Software v. Symantec Corp*, *Atari Games Corp v. Oman* and *Capcom USA Inc v. Data East Corp*.

#### **The EPS CD and CD-Rom Security Conference 1995**

A selection of papers presented at the Electronic Publishing Services CD and CD-Rom Security Conference in February 1995. Issues addressed in the papers include encryption, holographic solutions, digital fingerprinting, piracy and the police and the role of the British Interactive Multimedia Association.

#### **Patents for Computer Software? No Thank You**

Author: John Kleeman

The author, a practising software developer, argues that it would be wrong to extend patent protection to computer software in the UK. In his view, introducing software patents would hurt the UK software industry and the quality of software itself.

#### **Criminal Procedural Law and Information Technology, The Main Features of the Council of Europe Recommendation No. R(95) 13**

Author: Peter Csonka

A commentary on the main features of the Council of Europe Recommendation on criminal procedural law. The Recommendation aims at harmonising the criminal procedural laws of EU Member States to facilitate the investigation of computer-related crime.

#### **EC Developments in IT Law**

Authors: Don Jerrard, Harry Small and Julie Kenworthy

Baker & McKenzie's column cataloguing developments in IT law in the EU. The column contains sections on intellectual property, personal data, competition law, environment/health & safety, product liability, standardisation, public procurement, telecommunications and media/broadcasting.

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### Volume 12 Issue 2 1996

#### **A Comprehensive Analysis of Software Look and Feel Protection - Part III Recent 'Look' Cases Plus Commencement of Analysis of the 'Feel' Cases**

Author: David L Hayes

The third part of an analysis of software 'look and feel' protection under US copyright law. Cases discussed include *Interactive Network Inc v. NTN Communications Inc*, *Productivity Software Int'l v. Healthcare Technologies Inc*, *Ashton-Tate Corp v. Ross*, *Computer Associates Int'l v. Altai Inc* and *Lotus Development Corp v. Borland Int'l*.

#### **Comparison of Patent and Copyright Protection for Computer Software under US Law**

Author: Ronald S Laurie

The article examines the subject matter and scope of copyright and patent protection for software under US law. The author also comments on the renewed interest in *sui generis* protection for software and mechanisms for the enforcement of rights in software.

#### **The Case Against Software Patents**

Author: Derrick Grover

The author argues that software patents should not be granted. He discusses problems with the patent system and software patents, patent

protection of software compared with copyright protection and the loss to the software industry resulting from the grant of software patents.

#### **Information in a Digital Age - The Challenge to Copyright**

Author: Hilary E Pearson

An examination of the effects of digitisation on copyright protection for works under UK and US copyright law. Issues considered include copyright infringement on the Internet, problems resulting from analogue to digital conversion of works, relevant reports by European US and UK authorities, challenges to the application and enforcement of copyright and whether copyright provides the right form of protection.

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## Abstracts

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### ***Exploiting Commercial Information: A Legal Status Report***

Authors: John Worthy and Elizabeth Weightman

An analysis of the legal framework for protecting and exploiting databases in the UK and EU. The authors discuss intellectual property protection for databases in the UK, the proposed EU Directive on the Legal Protection of Databases, data protection in the UK and EU and product liability and defamation issues.

### ***Transatlantic: Cooperation and the Microsoft Case***

Author: Quentin Archer

A report on the cooperation and coordination between the US Justice Department and the EC Commission in the Microsoft anti-trust investigation. The Justice Department and the Commission jointly negotiated a deal with Microsoft involving Microsoft submitting to a consent decree in the US and giving undertakings to the Commission.

### ***Impact of the Information Society on Privacy in the UK***

Author: Aaron Taebi

The author highlights the major gap in UK privacy law which has left the ordinary man in the street vulnerable to increasingly routine electronic surveillance.

### ***EC Legislation Summary***

Authors: Don Jerrard, Harry Small and Julie Kenworthy

Baker & McKenzie's column on recent developments in EC law relating to IT. The column contains sections on intellectual property, personal data, competition law, environment/health & safety, product liability, standardisation, public procurement, telecommunications and media/broadcasting.

### ***Report on Information Superhighways Issued by ITU***

A summary of the World Telecommunications Development Report published in October 1995 by the International Telecommunications Union. The Report contains eight chapters on the information society, information industry convergence, information superhighway visions, corporate strategies, building information infrastructures, voice to multimedia, regulating multimedia and information infrastructure: hype or reality?

### ***Personal Computers - More Power; More Risks***

Author: David Davies

The author highlights the increased risks arising as a result of the move from mainframe to PC-based systems. He argues that these risks should be addressed by the design and implementation of security standards, back up procedures, contingency plans and insurance covers.

### ***Lotus Notes - A New Security Paradigm***

Author: Ian Beale

The article discusses the security issues surrounding Lotus Notes implementation. Lotus Notes is an advanced document handling system which allows users to store, maintain and retrieve files containing text, graphics, pictures and to update network information by merging information into the network.

### ***Electronic Payment and Settlement of Debt - IBC Legal Studies and Services Limited***

Author: Gillian Bull

A brief report on the UK Electronic Payment and Settlement of Debt Conference held on 19 and 20 October 1995.

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## ***Volume 12 Issue 3 1996***

### ***A Comprehensive Analysis of Software Look and Feel Protection - Part IV - Continued Analysis of the 'Feel' Cases***

Author: David L Hayes

The fourth part of an analysis of software 'look and feel' protection under US copyright law. This part discusses the cases of *Autoskill Inc v. National Educational Support Sys*, *Gates Rubber Co v. Bando American Inc*, *Consul Tec Inc v. Interface Sys*, *CMAX/Cleveland Inc v. UCR Inc* and *Comprehensive Technologies Int'l v. Software Artisans Inc*.

### ***The EC Legal Advisory Board's Reply to the Green Paper on Copyright and Related Rights in the Information Society***

The Legal Advisory Board ("LAB") advised the European Commission against rushing prematurely into any short-term solutions that may negatively affect the existing copyright system. The key issues to which LAB chose to limit its response were the scope of economic rights, copyright exemptions, acquisition and management of rights and technical protection.

Statement of William J Cook Before the House Judiciary Committee Courts and Intellectual Property Subcommittee Continued Hearing on

the *NII Copyright Protection Act* - 8 February 1996

The testimony of William J Cook, attorney to the US House of Representatives Judiciary Committee on online copyright infringement at the hearing to consider how copyright law may be amended in the face of the online communications revolution. The issues addressed were the threat to the value of copyrights presented by online infringement, the liability of Internet Service Providers ("ISP'S") as direct vicarious and contributory infringers and legislation that would clarify the liability of ISP's for online copyright infringement.

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## Abstracts

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### ***Protection of Computer Programs in Ireland***

Author: Karen Murray

The author discusses the extent of protection given to computer programs under the *Irish Copyright Act 1963* and the European Communities (Legal Protection of Computer Programs) Regulations specifically enacted in Ireland to protect computer programs. The article also comments on the case of *News Datacom Ltd v. David Lyons* (1994) 1 ILRM 450 being the only significant computer case to come before the Irish courts.

### ***The Data Protection Directive: A Legal Analysis***

Authors: David Bainbridge and Graham Pearce

A detailed analysis of the provisions of the EC Data Protection Directive. The authors compare the obligations

imposed on data users by the Directive and the *UK Data Protection Act 1984* and suggest how the Directive is likely to be implemented in the UK.

### ***Data Protection in Health and Telematics Projects - Compliance with Legal and Ethical Requirements***

Authors: Sophie Louveaux and Yves Poulet

A discussion of whether the EC Data Protection Directive provides adequate protection for personal data used for the provision of telematics services in the healthcare system. Examples of telematics services include telemedicine services, information services for citizens and healthcare workers and centralisation of multimedia medical records so as to enable them to be communicated and combined.

### ***Peddling Big Brother***

Author: Simon Davies

A report on the uses being made of western surveillance technology by military and totalitarian authorities throughout the world and the privacy implications of these uses.

### ***Electronic Cash Strikes a Sour Note for Privacy***

Author: Simon Davies

A description of a trial in the UK of an electronic cash scheme by Mondex. The author has filed a complaint under the *UK Trade Descriptions Act* in relation to the trial to stop Mondex likening their product to cash.

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## Case Note

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On 10 July, the Federal Court of Australia (Heerey J.) handed down a decision in favour of Trumpet Software Pty Ltd against OzEmail Pty Ltd. The dispute related to the dealing by the respondent ISP with the applicant's software which had been made available as shareware.

The Court gave a brief description of shareware as being a form of software marketing which gives the user an opportunity to evaluate the product. The owner of the software makes it available to users without charge for the purposes of evaluation. If users wish to acquire the software they must forward a registration fee to the owner.

As to access to shareware:

Distribution of shareware can either be in physical form, on diskette or CD-Rom, or through the Internet by installing it on a File Transfer Protocol (FTP) site.

As to payment for software marketed as shareware:

There are distributors who make

shareware available and charge for the diskette or CD-Rom to cover the cost involved in collating, duplicating and distributing the program, together with a profit element. This charge would not ordinarily be understood as including a licence fee for the user of the program. As mentioned, a licence fee is payable to the owner on registration if the user decides to keep the program after evaluation. If the shareware is on an FTP site, a user can simply download it. Again, a licence fee is payable to the owner upon registration.

Trumpet Software is the developer and owner of copyright in a computer program called Trumpet Winsock - a communications program enabling users to establish a connection with an ISP for gaining access to the Internet. The program, which was made available as shareware, was sought to be included on diskettes which OzEmail would then distribute on the cover of a computer magazine as a promotional exercise to attract subscribers to its service.

Permission to so distribute was expressly refused by Trumpet Software in the anticipation of a revised "timelocked" version of the program which better protected the owner's copyright. OzEmail, however, went ahead with the promotional distribution of its diskettes and had modified the applicant's program in a way which directed the user of the software to connect to OzEmail over other ISPs, and which obstructed Trumpet Software's shareware and registration messages.

It was clear that OzEmail had infringed Trumpet Software's copyright in Trumpet Winsock by having reproduced a substantial part of it in a material form (an exclusive right of the copyright owner) - unless it could make out its defence of licence implied by virtue of the program's being made available as shareware.

Revocation of licence

Determinative of the case was the fact