

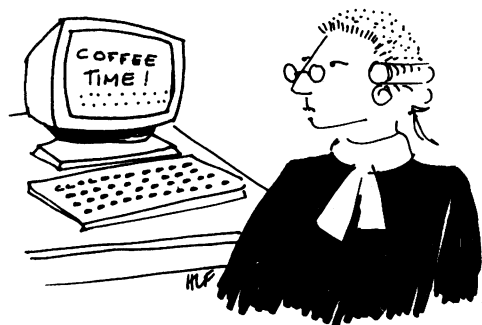
The delegation of Australia referred to the fact that in Australia an important sector of industry was engaged in producing computer software and in exporting some of it. Taking into account the fundamental purpose of existing laws and treaties, it had to be admitted that computer software was different from what is normally protected. A computer program resulted from an inventive idea and from the transformation of that idea into the actual program. About 25% of the work involved related to the idea, and 75% went into the actual writing of the program, its debugging and finalising. Copyright laws could protect only the final program, but not the underlying idea. Moreover since copyright protected only against reproduction, a problem existed with respect to the use of the program in controlling the operation of the computer. One special advantage of copyright, however, was its ability to confer protection on original compilations of non-original sub-programs. There was the question of whether any such use involved a reproduction of the program. Moreover, the duration provided under the copyright law was certainly too long; 10 to 20 years would be sufficient. In addition, copyright did not promote disclosure of works, but only provided for an encouragement and reward for the creator, while one of the primary purposes of patent protection was the promotion of disclosure of the new technology. This, and the fact that patent laws cover the use of technology and not only its reproduction and provide for a duration which takes into account the need of the public for using new technology, were arguments in favour of a patent law approach.

Conclusion

Given that software is protected by copyright in several participating countries, there emerged from the Committee's deliberations a preponderance in favour of copyright as the appropriate mechanism for protecting software, rather than a sui generis form of protection, tailor made specifically for software.

It is not known at present when the Committee will next be convened. One hopes it will be soon. Clearly, Australia is lagging behind other developed nations in its domestic copyright law. This is a matter of some concern since the software industry in Australia is large and growing, and its software is already being exported to other countries. It is clear that international opinion favours the effective protection of software, at least by way of copyright, and that several countries (including U.S.A.) already provide such protection. There is little justification for the position of uncertainty which presently prevails in Australia.

▶ J.W.K. Burnside, President of the VSCL and Melbourne barrister.



Journal of Law and Information Science

The new Journal of Law and Information Science is published by the faculties of Law and Mathematical and Computing Sciences of the N.S.W. Institute of Technology. The operations of the journal are overseen by an international editorial board under the chairmanship of the Hon. Mr. Justice M.D. Kirby, Chairman of the Australian Law Reform Commission. The editor is Dr. R.A. Brown, lecturer in computers and law at the N.S.W. Institute of Technology and practising barrister.

The journal is published annually at a cost of \$15 per issue. Volume I, number 3, currently at press, contains articles on third generation text retrieval systems, simulation modelling of court proceedings, computerisation of land titles, legal protection of software and the development of the database of Australian corporate law.

All subscriptions, inquiries and contributions should be directed to The Editor, Journal of Law and Information Science, Faculty of Law, N.S.W. Institute of Technology, P.O. Box 123, Broadway, N.S.W., Australia, 2007.



The Supplier/User Marriage

A profitable and economically viable relationship between a successful end user of a computer system and the responsible supplier of that computer system can be likened to a relationship of marriage where the parties stay together in a relationship commitment. In such a relationship, the parties conduct themselves with responsibility, their common object being the successful and profitable supply and operation of a computer system. The computer system having been conceived by both parties is a product of their procreation and therefore can be likened to an offspring of that marriage. The analogy of likening an end user/supplier relationship to a marriage must end here insofar that it is difficult to allot the role of end user to the mother and the role of supplier of the computer system to the father.

How does the envisaged successful marriage come about?

Step One: The potential computer system user is looking the field over for a partner with whom he or she can conceive a computer system. This kind of conception of computer system is often brought about by a consultant who introduces the parties to each other much like a marriage match maker.

Step Two: After being introduced, the parties may engage in a little flirtation. They may make each other rash promises, discuss the future and may even have weekend frolic together at the beach or in the snow. As the relationship becomes more serious, the parties announce their engagement. Here at this point in time of cementing the relationship, more persons become involved in the relationship. The parents of the buying party, perhaps need to give the financial support and consent to the relationship and acquisition and the parents of the supplying party likewise, must approved of the deal and commitment to supply. This is about the time that the agreements for computer equipment sale, maintenance and the licensing of the application software are mentioned to the parties on both sides. Soon after the engagement party, the date for the marriage is announced.

Whilst this process of development of the serious relationship is in progress the parties may even indulge in a little adulterous relationship. But irrespective of whether the engagement is formally sealed with a marriage ceremony, if the parties make each other a little bit pregnant, with the conception, the supply and the use of a mutually conceived computer system, they have but two choices: Choice one is to have an abortion and to part forever; Choice two is to carry on the relationship.

The more the parties respect and are in love with each other, the better the relationship. But they have little option but to stay together because they have created an offspring in which they both have a vested interest. The interest of the supplier is to deliver a satisfactory computer system for which he gets paid and which he then continues to nurse along by maintaining the hardware and giving software support. The other party is using the computer system to survive in business and show a reasonable profit. Serious stuff!

The foregoing analogy of likening a relationship between a supplier and end user of a computer system to a relationship of commitment reveals several aspects. The major ones are:

a. There must be goodwill, trust and willingness to work together and also to learn together, by both parties.

b. There must be an intention to remain good partners for the operation of the computer system for at least the economical life of a computer system.

In the current dynamic state of development and sophistication the life of a computer system may be as long as 5-6 years or as short as 3-5 years. I understand that computers depreciate by approximately 25% per year.

Unlike a marriage where the individuality and personality of partners does not change, in the situation where a computer site is owned by company ABC and is serviced and maintained by company XYZ, both companies require a written record which spells out the basis of their relationship. That record is reflected in the following contracts:

- a. agreement for equipment sale
- b. agreement for equipment maintenance
- c. program products licence and service agreement
- d. facilities planning agreement
- e. agreement for depot maintenance service (carry-in or over-the-counter maintenance)
- f. installation assistance agreement
- g. installation consultancy agreement

We have now arrived at the question "Why do we need written agreement"? The main reason is that company ABC needs written agreement with company XYZ for purposes of record, and continuity, for reasons of commitment. Above all written agreements are for the legal protection for both parties, because invariably companies such as ABC and XYZ are dynamic and subject to changes to composition of management, approaches and management responsibility.

Finally it may be appropriate to conceptualise the products of a computer supplier to be transferred to a computer user by way of negotiated legal documents. The products in some form or another are:

- a. computer equipment (hardware, designated system and site, total system)
- b. system software (comes with the designated system)
- c. application software (to operate the designated computer system for the benefit of the user)
- d. maintenance (preventive and regular maintenance of the designated system at predetermined annual rates.)
- e. specialist services applicable to the above designated system (on a times and material basis, on a retainer basis or on a monthly retainer basis plus time and material)
- f. training of customer personnel
- g. computer block time for computer centre usage
- h. supplies of expendables (such as transistors, print banks and ribbons)

▶ John Heyting, Sydney solicitor



Automate the Law Office

— Now or Later

To those of us who are closely involved with applying the latest in technology to a law practice, it is hard to credit that a significant number of firms do not yet even have a word processor. While I have not seen the results of a survey on this subject, this would appear to be the case from my own observations.

Even among those that have a word processing system, even quite a large one, I have recently met a reluctance to make any move to update or improve their existing system. The reason given is that technology is improving, new products are being produced, and any decision now will be wrong in two years' time.

This is a great pity, as these offices are denying themselves the benefits current computer technology can give them now. If these offices purchase from a large reputable supplier, they will still be able to take advantage of advances in technology as they happen.

To take the firm for whom I work as an example, they chose some three years ago a major computer supplier, and standardised on its equipment. The computer they bought was a fairly new release when they bought it, and provided considerable growth potential. Now it has been upgraded to almost its maximum capacity. If they had waited, they could have purchased newer technology and thereby ensured the availability of larger upgrades. However, because they chose a large supplier with a continuing program of produce development, this problem does not arise. A recent announcement from the manufacturer has provided a new upgrade to three times the present computing power in the same box. Similarly, they chose a word processing system based on an old processor of very limited capacity. They have now converted to a new processor, which runs the same software as the old but very substantially enhanced, including such functions as spellchecks. It is part of a product line with considerable growth potential, and which is also supported with new printers and improved