

## Computer Law and Security Report, Volume 11 Issue 4 1995

Editor: Stephen Saxby

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### **Convergence between media and telecommunications: towards a new regulatory environment**

Authors: Yves Pouillet, Jean-Paul Traille, François van der Mensbrugge, Valerie Willems

The authors examine the regulatory issues arising from the convergence of the media and telecommunications industries. The regulatory framework in the USA and Japan is considered. In concluding the authors suggest principles for a new regulatory framework for the media and telecommunications industries.

### **GATT TRIPS and high tech**

Author: Stephen J Doyle

The article outlines the provisions of TRIPS which will benefit the high tech industry by strengthening copyright, trademark and patent protection for manufacturers of software, semiconductors and multimedia products in all countries which are signatories to the GATT.

### **Legal aspects of software protection devices**

Author: Robert Carolina

The article examines the legal implications for software developers of the use of software protection devices. The author discusses both UK and US decisions which have involved software protection technology. In concluding the author suggests strategies for software developers wishing to rely on software protection devices. (See also the article on the law relating to software protection devices in Germany, published in the *Computers and Law Journal* no. 28 (February 1996) at page 12 by Andreas Raubenheimer (Protection for technical program protection mechanisms (hardware locks) under German law).

### **Suppliers beware: implementation of the unfair contracts terms directive in Europe**

Authors: Richard Kemp and Chris Coulter

An overview of the principal provisions of the EC Directive on Unfair Terms in Consumer Contracts and its implications for IT contracts for software, hardware and support services. An accompanying table details the implementation of the EC Directive in a selection of EC/EEA countries and provides a guide to the terms which are already implied in consumer contracts relating to quality and performance of consumer goods.

### **Defamation on the Internet**

Author: Duncan Callow

A discussion of the potential liability of internet service providers for the publication of defamatory statements online. (See also a number of the articles appearing elsewhere in this issue).

### **'Self Regulation' on the Internet**

Author: Aaron Taebi

The author provides an outline of self regulatory controls currently exercised by users of the Internet. He argues that the Internet will resist government regulatory controls.

### **The Barrett Review - Part II**

Author: Graham Greenleaf

The second part of an examination of the recommendations made in a Report to the Federal Cabinet on the long-term cost-effectiveness of telecommunications interception in Australia.

### **EC Developments in IT law**

Authors: Don Jerrard, Harry Small and Mark Crichard

Baker & McKenzie's table detailing current developments in IT Law in the EU. The table contains sections relating to intellectual property, personal data, competition law, product liability,

standardisation, public procurement, telecommunications and media/broadcasting.

### **Report on the Activities of the "European Committee of Experts on Criminal Procedural Law Problems Connected with Information Technology" of the Council of Europe**

Author: Dr Irini E Vassilaki

A commentary on a Recommendation and an Explanatory Report prepared by the European Committee of Experts on Criminal Procedural Law Problems Connected with Information Technology and approved by the European Committee on Crime Problems in May 1995.

### **US v Microsoft - US District Court Judge Sporkin denies motion to approve consent decree; Department of Justice and Microsoft appeal**

A commentary on the above case in which US District Court Judge Sporkin denied the Department of Justice's motion to approve a consent decree. The Department of Justice had filed a complaint against Microsoft alleging violations of the Sherman Antitrust Act, 15 USC paras 1-7 (1980).

### **The Data Protection Registrar v Amnesty International (British section), High Court, Queen's Bench Division (Divisional Court), Rose L.J. & Scott Baker J. 8th November 1994**

A commentary on the above case concerning a charity registered under the Data Protection Act 1984 (UK) which exchanged its mailing list with another charity in order for requests for donations to be sent to each other's subscribers.

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## Abstracts

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### Computer Law and Security Report, Volume 11 Issue 5 1995

***Comments on the Green Paper entitled 'Intellectual Property and the National Information Infrastructure'***

Author: Roy N Freed

A comprehensive analysis of the Draft Green Paper of the US Information Infrastructure Task Force released in July 1994. In commenting on the Draft Green Paper the author also makes a number of suggestions for improving the effectiveness of copyright law.

***Licensing and exploiting rights in multimedia products***

Author: Hugo Sakkers

The author examines strategies for the making available and licensing of source materials for multimedia productions. In digital environments rights owners may potentially lose control of their source materials.

***Content and licensing issues in multimedia agreements***

Authors: Michael D Scott and James N Talbot

A discussion of the computer and entertainment law issues that arise in connection with multimedia projects. Issues considered include the licensing of pre-existing works, producing original works, the rights of privacy and publicity, copyright, works made for hire, works in the public domain, moral rights and insurance.

***"It's the content, stupid!"***

Author: Michael D Scott

The author argues that pre-existing content alone is virtually worthless to pre-multimedia products and the multimedia industry's existing content is the 'Emperor's New Clothes' of the multimedia industry. In the author's view those claiming 'content is king' generally don't know where the value in multimedia titles lies.

***Implications of the implementation of the eea directive on the harmonisation of copyright and related rights***

Author: Vanessa Taebi

A report on the UK implementation of Council Directive 93/98/EEC of 29 October 1993 issued by the European Commission which will harmonise the term of copyright protection and related rights among Member States.

***Should patents be granted for computer programs as such?***

Author: Ron McQuaker

The article expresses the concerns of some software developers in relation to protecting computer programs by patent. The author considers the tasks which would confront Patent Examiners and the problems for software developers themselves if patents were granted for computer programs.

***The level and extent of data protection in Europe***

Author: Dr Irini Vassilaki

A comparative analysis of the constitutional protections for personal data in EU Member States. The article examines data protection as a constitutionally protected human right and the inter-individual application of this right.

***Data protection regulation in the EU***

Author: Susan Collins

A comparative analysis of the provisions of the EU Directive on Data Protection and the existing data protection regime under the UK Data Protection Act.

***EC developments in IT law***

Authors: Don Jerrard, Harry Small and Mark Crichard

Baker & McKenzie's table highlighting the main developments in IT law in the EU. The table contains sections relating to intellectual property, personal data, competition law, product liability, standardisation, public procurement, telecommunications and media/broadcasting.

***Acquiring, licensing and exploiting rights in multimedia - euroform conference London***

Author: Darren Berman

A review of a UK conference on 'Acquiring, Licensing and Exploiting Rights in Multimedia' held on 16 and 17 March 1995.

### Computer Law and Security Report, Volume 11 Issue 6 1995

#### ***The legal protection of databases in Europe - the common position on the proposal for a directive***

Author: Simon Charlton

An analysis of the provisions of the Common Position on a Proposal for an EC Directive on the Legal Protection of Databases. The Directive now extends protection to databases in any form accessible otherwise than by electronic means.

#### ***A comprehensive current analysis of software 'look and feel' protection Part 1***

Author: David L Hayes

A comprehensive analysis of US cases which have considered 'look and feel' protection for computer programs under copyright law. Cases discussed include *Digital Communications Assocs v Sofklone Distributing Corp*, *Manufacturers Technologies Inc v CAMS*, *Data East USA Inc v Epyx Inc*, *Lotus Development Corp v Paperback Software Int'l*, and *Apple Computer Inc v Microsoft Corp*.

#### ***Digital information: its likely effect on the law***

Author: Christopher Rees

A discussion of the likely impact of digital technology on the law. Pending the arrival of the new legal regime to govern the digital revolution the author suggests that the key areas of legal focus will be on blanket licensing of rights and use of

brands or trademarks for marketing digital information.

#### ***Legal questions involving the Internet***

Authors: Dr Gordon Hughes and David Cosgrave

An overview of the legal issues raised by the increasing use of the Internet in Australia. Issues considered include copyright infringement, business liability, confidentiality, defamation and crime.

#### ***Libel online - the UK perspective***

Author: Mark Turner

The author considers the liability of service providers for defamatory statements passing across their networks in the context of a draft UK Defamation Bill.

#### ***Impact of information superhighway on non-economic rights***

Author: Aaron Taebi

The article highlights the need to address protection of non-economic rights associated with intellectual property rights on the Internet.

#### ***EC developments on IT law***

Authors: Don Jerrard, Harry Small and Julie Kenworthy

Baker & McKenzie's column cataloguing the recent developments in IT law in the EU. The column contains sections relating to

intellectual property, personal data, competition law, product liability, standardisation, public procurement, telecommunications and media/broadcasting.

#### ***Green paper on copyright and related rights in the information society***

The Statement of the European Commission that accompanied the launch of the Green Paper.

#### ***ICC statement on the global information infrastructure***

The Statement of the International Chamber of Commerce containing recommendations to policy-makers contemplating actions intended to accelerate the development of the Global Information Infrastructure.

#### ***US v Microsoft II - Department of Justice and Microsoft prevail on appeal; US District Court Judge Jackson approves consent decree***

Author: Christopher R Costa

The second part of a commentary on the above case in which a US Court of Appeals reversed District Court Judge Sporkins' decision which held that a proposed consent decree was not in 'the public interest'. The author concludes that the result is not beneficial to the public as it does not open the market to operating system or application software and does not promote competition.

### ***The role of information technology (IT) in university teaching***

Authors: Professor E Clark and Others

A 'vision statement' of a Working Party of the University of Canberra of where many universities are now and where universities should be headed in the development of a teaching and information technology policy. The authors consider minimum IT requirements for teachers and students, the role of general and technical support staff, the teaching contexts in which IT is used, teaching implications of specific IT developments, staff development and other structural strategic and tactical considerations.

### ***Multimedia teaching and the law - perspective and future applications in law schools***

Author: Stephen Colbran

The author argues that multimedia computer technology combined with the information superhighway will reshape the traditional law school. The author believes that we should expect to see the creation of larger law schools offering quality distance education through a virtual law school.

### ***Government use of the Internet: the ACT LawNet***

Author: Peter Quinton

An outline of the development of ACT LawNet by the ACT Government and the University of Canberra. LawNet is one of the largest Australian legal sites on the Internet containing a wide range of material.

### ***Modelling and simulation of the New Zealand Resource Management Act***

Authors: Martin K Purvis, Maryam A Purvis and George L Benwell

The NZ Resource Management Act 1991 establishes a legal framework which governs the management of

environmental resources in NZ. The article describes legal models for measuring the performance characteristics of the Act.

### ***Legal dilemmas in geographical information: property, ownership and patents***

Author: George Cho

The article examines the protection of property rights in geographic information. The author considers whether there may be property in and ownership of information and intellectual property protection for maps and databases.

### ***Introducing spatial information systems into local-level government: some priorities, problems and puzzles concerning organisational innovation***

Author: A M G Jarman

The author examines the socio-legal issues associated with the use of spatial information systems ('SIS') by local government in Australia. The article considers the concept of SIS, the role of government in using and selling such information and Australian experience with SIS.

### ***Some implications of the US working party group's report on intellectual property and the national information infrastructure***

Author: Mark Davison

A review of the Final Report of the US Working Group on Intellectual Property Rights released on 5 September 1995. The author examines the Reports' recommendations concerning copyright and the potential effects of those recommendations on copyright law throughout the world.

### ***Reverse engineering of computer programs: comments on the copyright law review committee's final report on computer software protection***

Authors: Cristina Cifuentes and

Anne Fitzgerald

An analysis of the recommendations on reverse engineering contained in the Final Report on Computer Software Protection by the Copyright Law Review Committee ('the CLRC'). The article examines the appropriate form of intellectual property protection for computer programs, the concept of reverse engineering, the processes of decompilation and disassembly and the CLRC's recommendations on reverse engineering.

### ***Lotus Development Corporation v Borland International, Inc: is the Lotus 1-2-3 menu command hierarchy copyrightable?***

Author: Brian F Fitzgerald

A discussion of the Lotus 1-2-3 computer spreadsheet litigation in the US. The author comments on the cases of *Lotus Development Corp v Paperback Software Int'l* and *Lotus Development Corp v Borland Int'l Inc*. At first instance US District Court Judge Keeton held the Lotus 1-2-3 user interface to be copyrightable expression in both of these cases. Judge Keeton's decision in the second case was reversed on appeal to the US Court of Appeals.

### Computer Law and Practice, Volume 11 Number 4 1995

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#### *New US patent guidelines offer hope to software developers in era of diminishing copyright protection*

Authors: William B Bierce and Michael C Harold

This article reviews recent guidelines issued by the US Patent and Trademark Office which remove some of the barriers to granting software patents, and discusses the guidelines in light of recent US Court of Appeals decisions overturning earlier PTO denials of patent protection. The authors go on to discuss the trend of cases on US protection of software by copyright, and outline considerations for software developers in seeking patent protection versus copyright protection.

#### *Contractual liability arising out of computer reservation system of air transport*

Author: RIR Abeyratne

Liability for computer airline reservation system operations and failure under the Code of Conduct for the Regulation and Operation of CRS adopted by the International Civil Aviation Organisation member states, and under international law and common law for misrepresentation and through the principles of agency. The author concludes that the regulation of CRSs by the Code and international air law properly attenuate general principles of law of liability to specific and unique problems which arise in the CRS context.

#### *Law and the Internet*

Author: Clive Davies

The author briefly reviews each of several legal issues which arise in the Internet context, including copyright protection of content, defamation (including by reference to the UK Defamation Bill and the potential liability of service providers), censorship and the protection of data especially under the proposed EU

draft Directive on database protection.

#### *Internet: the legal tangle*

Author: Peter Bartlett

This article provides an Australian perspective on the legal issues surrounding the Internet. The author covers defamation under Australian law in light of the rejection by the Full Bench of the Federal Court of the innocent dissemination defence for a Canberra television station which rebroadcast a live feed of a TCN9 Sydney program. Other issues discussed include the protection of personality and passing off, misrepresentation and jurisdictional questions.

#### *Some common and civil thoughts on computer-generated works*

Author: Tarcisio Queiroz Cerqueira

A fascinating and wide-ranging discussion from a Brazilian lawyer and Bristol University PhD candidate of the propositions involved in allocating rights in copyright works created by computer, including the question whether the computer itself should have recognised legal rights in the works and where the definition of "person" ends for the purposes of holding enforceable rights in our society.