
Abstracts

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.

Case Note

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

Case note

that the applicant expressly refused permission to OzEmail to use the unrevised version of Trumpet Winsock, and in so doing revoked any licence which OzEmail may have had in its defence. The court discussed the revocation of contractual licences and of bare licences, considering the possible requirement of "reasonable notice" in such cases, but went on to find that the licence in issue could be revoked at any time by Trumpet Software, and was in fact effectively revoked. In any event no question of reasonable notice could arise in the circumstances of this case because OzEmail was seeking permission for future use.

Terms of licence (if not revoked)

The court then considered the alternative issue of whether the terms of an implied licence (if not revoked), had been breached. It began by applying the analogous doctrine of implied contractual terms propounded by the Privy Council in

B.P. Refinery (Westernport) Pty Ltd v Shire of Hastings:

Such doctrine applies by analogy rather than directly because the licence under consideration was not a contractual one. But it must have some terms and conditions. In my mind the most rational approach is to apply the BP Westernport criteria. And the contractual analogy is a close one because the shareware licence would mature into a contract if a user were to effect registration. The evidence of computer experts I find of assistance, not as direct evidence of trade custom in the legal sense but as indicating how this particular trade operates and providing an informed background against which the BP Westernport criteria can be applied.

The court used expert evidence as to the nature of shareware together with the BP Westernport criteria to arrive at two particularly apposite criteria for the implication of a condition into an implied licence to deal with a

computer program which has been made available as shareware:

whether the supposed condition is necessary to give business efficiency, in the light of the fundamental purpose of shareware, which is that of evaluation, and whether it is so obvious that it "goes without saying". (Emphasis added)

Applying these criteria the court found it a condition of licence in the case of a distributor dealing with shareware, that the software be distributed in its entirety and without modification, addition or deletion:

The whole purpose of evaluation is to enable the end user to evaluate the product as produced by the author.

The court did not find it necessary for business efficiency however, and therefore not a condition of the licence, that the software be distributed separately from other software; nor that the distributor be denied a commercial gain.

Press Release

Green multi-functional fax doesn't compromise on features

Stuart Marks

The release of Pitney Bowes' latest Multi-Function Device (MFD), the model 9820, has combined the latest technology in fax with key environmental considerations.

It has answered the growing marketplace demand for a fully-features, business class fax machine with an array of multi-functional options.

The 9820 has also complimented the feature-rich product with a "green" theme. Being one of the few MFDs to be awarded Energy-Star status by the strict Environmental Protection Agency in the USA., it provides several benefits to the environment.

"Many corporate and government customers want modular, expandable office systems with the capability of performing a combination of tasks, including faxing, printing, scanning and copying," explains Sam Portolese, General Manager of Pitney Bowes Facsimile Division. "Customers are gravitating toward fax-based multi-functionality because fax is viewed as one of the most reliable methods to send urgent documents. Additionally, in both technology and price, fax systems are better suited for multi-functional capabilities over other single function products."

According to BIS Strategic Decisions, multi-function products will leap in

sales from 311,000 in 1994 to an estimated 7.2 million by 1999.

"Multi-functionality is the latest addition to the information management jungle," says Portolese. "A consultative, direct sales force is needed to advise companies on how to increase productivity by effectively integrating multi-functional fax units with existing fax and PC networks. Our sales force can help identify key areas, such as branch and satellite offices, that will create the greatest return on investment."

Pitney Bowes is embracing multi-functional technology because the highest quality capabilities are available at a cost effective price point.