

Mr. Armstrong discussed the inadequacy of the existing definition of "broadcast material" in the light of the new technologies available now to Telecom and private networks. Dr. Freeman compared attitudes to new electronic communication systems with the reaction of the British Post Office of the arrival of the telephone, and detailed Telecom's criteria for allowing the attachment of new systems to Telecom lines. Mr. Tuckwell and Mr. Macpherson each examined aspects of the existing and proposed legislation in the area.

Electronic funds transfers

At the October meeting a four person panel dealt with various aspects of automatic banking. The principal speaker was Dr. Alan Tyree, senior lecturer at the University of NSW, who gave a detailed comparison between the teething problems experienced with the introduction of the chequing system in the nineteenth century and those now being experienced with the introduction of autobanks.

Other speakers included Mr. Ron Cameron from the Australian Bankers Association who gave much quantitative information concerning the growth of EFT's in Australia and overseas, Mr. Brian Caldersmith of QUEST, a company which markets an electronic signature recognition system, and Dr. Roger Brown, lecturer at the NSW Institute of Technology.

The November meeting featured a panel of speakers. Associate Professor Robert Hayes, Commissioner responsible for the Australian Law Reform Commission's privacy reference was unable to enlighten us on the contents of the Commission's long awaited report, as it was still in the hands of the Attorney General, but gave a very entertaining talk on the hazards of being involved in law reform, and the potential for expanding existing legal remedies to deal with privacy problems. Bill Orme and Jocelyn McGirr, respectively the past and present Executive Members of the N.S.W. Privacy Committee, presented an interesting contrast, with Mr. Orme remaining convinced of the value of self-regulation in the privacy area but Ms. McGirr more sceptical and outlining the likely avenues for the Committee's new emphasis on legislation.

Roger Clarke, information systems consultant for XAMAX Pty. Ltd. and recently-appointed Reader in Information Systems at the A.N.U., was critical of some aspects of Professor Hayes paper as failing to distinguish between those privacy problems which were computer-related and those that arise from information systems per se.



# Articles

## Protection of Software — International Developments

On the 17th of June, 1983 a report of the Committee of Experts on the Legal Protection of Computer Software was presented to the World Intellectual Property Organisation (WIPO). The Committee is convened by the Director of WIPO, who has forwarded the report to the Governments and Agencies whose delegates participated in the Committee.

Representation on the Committee is very broadly based. It includes delegates from 31 countries including Australia and 25 national or international organisations.

The Committee concluded unanimously that there should be effective international protection of computer software. It did not resolve, however, what form that protection should take. Indeed, there was a diversity of views about the extent to which software is protected under existing law. This is due principally to the fact that the details of domestic copyright law vary in different countries, notwithstanding that those countries are signatories to either the Berne Convention, the Universal Copyright Convention or both. (The thrust of those conventions is to require participating countries to provide certain minimum copyright protection for domestic and international works. This reciprocity gives a de facto international protection. Some jurisdictions, however, have enacted copyright laws which provide more than the minimum protection required, including the protection of software by copyright).

The position of software as a subject of copyright in each country was stated by most of the delegates participating in the Committee's deliberations.

### Other Nations

In summary, the position overseas is as follows:

West Germany: Copyright protection is available to computer software and has been held to be so protected by recent Court decisions.

United States of America: Recent amendments to the Copyright Act made the protection of software quite clear, and Court decisions have confirmed this, extending to protection of software in solid state media.

Netherlands: Software appears to be protected by copyright laws, but the position is not certain.

Denmark: Copyright law is in general applicable in order to secure protection of computer software but some clarification might be required.

France: It is believed that copyright protects computer software.

Hungary: Recent court decisions confirm that copyright applies to computer software, and it is regarded as "reproduction" of a protected program to use the program in controlling a computer.

Morocco, Japan, Austria, Italy, United Kingdom

and Japan: The position is uncertain.

Finland: Protection should be offered by express provisions. There was a trend in favour of a sui generis approach.

India: Protection was required and appeared not to be available on existing copyright law.

Australia →

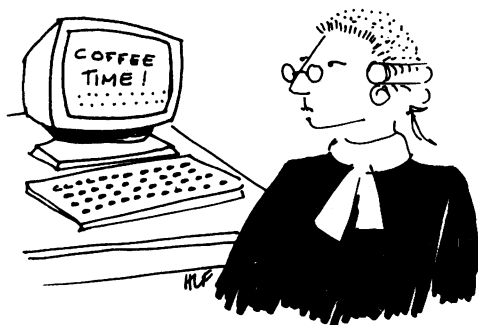
The delegation of Australia referred to the fact that in Australia an important sector of industry was engaged in producing computer software and in exporting some of it. Taking into account the fundamental purpose of existing laws and treaties, it had to be admitted that computer software was different 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.