

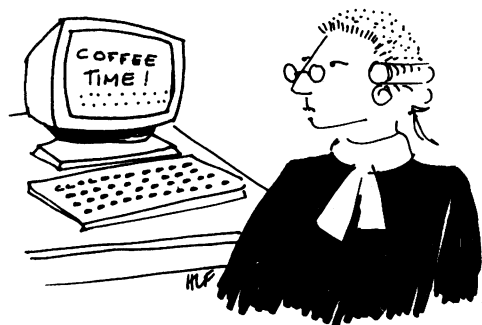
The delegation of Australia referred to the fact that in Australia an important sector of industry was engaged in producing computer software and in exporting some of it. Taking into account the fundamental purpose of existing laws and treaties, it had to be admitted that computer software was different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



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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.