

Discussion paper: Comments requested

## "Copyright Protection for Artistic Works Industrially Applied"

The AG's Department has recently released the above discussion paper and invites submissions and enquiries to be lodged by 1st August 1987.

The interaction of copyright and designs protection in relation to artistic works which have been applied in industrial and commercial fields has been the subject of much debate in recent years and the inadequacy and confusion of the law in this area has been the subject of some concern.

The AG's paper discusses the problems with present legislation, including the definitions of "Artistic works" and "Designs", when an article is applied industrially, the limitations and policy concerns of the law regarding indirect copying and reverse engineering (of special interest in the wake of the recent House of Lords decision in *British Leyland v. Armstrong Patents* (1986) 1 All ER 850), the narrow scope of The Designs Act and the length of the duration of copyright protection.

The paper reviews some of the arguably inequitable effects of the operation of the legislation.

Persons who do not register a design capable of registration under the Designs Act, or who apply for registration but decide to market their particular article for commercial reasons prior to receiving registration, can end up with no protection for their creative effort, whilst someone who produced an industrial product based on a drawing incapable of registration as a design has copyright protection for the life of the 'author' plus 50 years.

The absence of protection for the person who fails to register (or fails to wait

for registration) arguably affects those persons deserving of some protection in that at least they have created a new or original design, even though not registered.

Although the discussion paper only considers artistic works, it recognises the difficulties faced by the application of existing definitions to new technology and in particular to the field of integrated circuits.

The discussion paper reviews the Apple decision, refers to the WIPO draft treaty of integrated circuits and other international developments of protection of integrated circuits.

The paper considers the United Kingdom and New Zealand experience.

The Attorney General's Department considers major options for reform of Australia's Copyright and Design Law will involve one or a combination of the following:-

- (i) Implementing the Designs Law Review (Franki Report of 1973);
- (ii) Introducing dual protection;
- (iii) Introducing an "unfair copying law";
- (iv) Introducing a broader designs registration system; and
- (v) Introducing an "unregistered design right" - thus implementing a modified copyright approach.

The paper considers the above options presenting the arguments in favour and against implementing each option.

## SOCIETIES NEWS

### NEW SOUTH WALES SCL

1987 Office Bearers are: Jim FitzSimons (President); Philip Argy (Vice President); Richard Davis (Secretary); and Les Lawrence (Treasurer). Louise Steer is Publicity Officer, Katrina Henty Meetings Officer and Raoul Lake Proceedings Editor.

#### Coming meetings

- 5th August: UK Data Protection Act v. Privacy Bill.  
 2nd September: Computer Generated Evidence.  
 7th October: The Franchise Agreements Bill/Act.  
 4th November: Expert Systems.  
 Meetings are held at The Law Society Building, Level 2, 170 Phillip Street and all interested persons are welcome!

David Lewis and Susie Bridge from the Australian Copyright Council addressed the May meeting of the Society on the Copyright Aspects of Databases, stimulating much discussion and debate in an area of much interest.

### VICTORIAN SCL

The President of the VSCL is Alistair Dowling; the Vice President, Julian Burnside; Secretary, Maarten Koster and the Treasurer, Rod Lambert. The VSCL AGM will be held in July. Meetings already held in 1987 have considered such topics as Litigation Support Systems, Document Tracking and Sales Tax and the Computer Industry.

#### Coming meetings

- 25th June: Negotiating Computer Contracts  
 27th August: Contracts for Contractors  
 24th September: Copyright in Software  
 29th October: Expert Witnesses  
 26th November: Australia Card

Sue Henderson is the contact for meetings and general VSCL enquiries (03) 608 7488.

VSCL publishes a number of publications, including papers on previous seminars.

All written enquiries should be addressed to: The Secretary, VSCL, PO Box 99, Kew, Victoria 3101.

Due to timing constraints, details of the inter-state societies for Computers and the Law meetings have been held over until the next issue of the Newsletter.

## COMPUTERS & LAW

Newsletter of the Australian Societies for Computers & The Law

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Subscriptions: \$20 per 4 issues  
Advertising: Inserts \$125; within the newsletter, rates by negotiation.  
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