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## Abstracts

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*The following are abstracts of the latest issues of journals of interest.*

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### **Computer Law & Practice, Volume 10 Number 4 1994**

*Editors: Clive Davies, Clifford Miller, Michael Rhodes, E Susan Singleton and Dr Ian Walden*

*Publisher: Tolley Publishing Co. Ltd, Tolley House, 2 Addiscombe Road, Croydon, Surrey CR9 5AF, England*

*Subscription: £140 per year*

#### ***Spain implements the Software Directive***

Author: Enrique J Batalla

The article provides a commentary on the Act approved by the Spanish Parliament to incorporate into the Spanish legal system the Directive of the Council of the European Communities on the legal protection of computer programs. A noteworthy point of the Act for software publishers is that it introduces a new crime of possession of copied programs which previously did not constitute an offence.

#### ***The future of telecommunications services in Europe***

Author: Michael Rhodes

The article examines the key legislative instruments which have addressed the principles contained in the Green Paper on the Development of the Common Market for Telecommunications Services and Equipment issued by the Commission of the European Communities. The Green Paper set out to introduce regulatory changes to create an open and dynamic market in the telecommunications sector and stressed that national frontiers should not be allowed to hamper the devel-

opment of a consistent communications system within the European Community.

#### ***Admissibility of computer-produced documents as evidence***

Author: Phillip Reynolds

The author examines the interpretation given to section 55B of the Evidence Act 1958 (Vic) by Justice Hayne in the case of *The Deputy Commissioner of Taxation of the Commonwealth of Australia v William Rupert Capron* (1993) ATC 4144. In discussing the admissibility of computer-produced documents the author highlights the difference in treatment that exists depending on whether what is sought to be admitted in evidence is a copy of an original document or a computer-produced document.

#### ***Some 1993 United States cases to note***

Author: Bradley J Hulbert

The author provides an overview of significant decisions made by US courts concerning the design, manufacture, transfer and use of computer-related technology. The case summaries relate to administrative

law, anti-trust law, civil procedure, contract law, copyright, criminal law, employment relations, patents, privacy law, tax law, trade marks, trade regulation and trade secrets.

#### ***United States software protection developments - a summary***

Author: Robert Bigelow

The article contains a brief overview of US software protection developments in the areas of copyright, third party maintenance, patent and trade mark law. Included as an appendix to the article is a table showing the status of legal protection for computer software in many countries.

#### ***Video games protected as cinematograph films***

Author: David Webber

A summary of the case of *Nintendo Co Ltd v Golden China TV-Game Centre and Others* in which Nintendo brought an action in South Africa for copyright infringement. The court held that Nintendo's games were original and constituted cinematograph films under the Copyright Act (Sth Africa).

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### **Computer Law & Practice, Volume 10 Number 5 1994**

#### ***Contracts for outsourcing information***

Author: John Yates

The article provides a valuable insight into the complex legal and commercial issues associated with contracts for outsourcing informa-

tion technology. Issues examined in the article include pre-contract preparation and planning, provision of computer services, transfer of assets, staff related issues, property issues, contract exit routes, contract management, and effective contract negotiation.

#### ***International trade in computer-related technology: the impact of GATT and NAFTA - Part I***

Authors: Barry Sookman and Ella Plotkin

In the first part of their article the authors discuss the new frontiers

which have been opened to Canadian and US computer and software companies as a result of the North American Free Trade Agreement ('NAFTA') and the General Agreement on Tariffs and Trade ('GATT'). Aspects of NAFTA and GATT which are considered in the article include the objectives of NAFTA and GATT, market access for goods and tariff elimination, common external tariffs on computers, rules of origin, technical standards, government procurement, anti-dumping subsidies and countervailing duties and cross-border trade in services.

### *A reversal of fortune*

Authors: William Sloan Coats and David Harrison Kramer

The authors examine the turning of the tide against copyright's plaintiff bias in the decisions of *Computer Assocs Int'l, Inc v Altai, Inc* 982 F 2d 693 (2nd Cir 1992) and *Sega Enters, Ltd v Accolade Inc* 977 F 2d 1510 (9th Cir 1992) which both favour the interests of copyright de-

fendants over those of plaintiffs. The authors also examine the effect on copyright plaintiffs of two recent US Supreme Court decisions.

### *If disaster strikes - could you be liable?*

Authors: John Mawhood and Richard Raysman

The authors consider the potential for liability at law of a company, its directors, executive officers and employees that may be created where a disaster strikes a corporate IT system. The issues canvassed in the article include where liability springs from, what constitutes a disaster, personal liability in disasters, corporate liability, and the use of technology and disasters.

### *Product liability, computer software and insurance issues - the St Albans and Salvage Association cases*

Author: E Susan Singleton

The author looks at product liability issues arising from the licensing

of computer software. The product liability issues considered in the article include express and implied warranties and conditions of software licences, software licence exclusion clauses, the Consumer Protection Act 1987 (UK), the EC Unfair Terms Directive, product liability policies and computer insurance policies.

### *Chinese word processor found patentable*

Author: David Webber

A summary of the case of *CCOM Pty Ltd v Jiejing Pty Ltd* which concerned a patent for a Chinese word processing system. The full Federal Court held that the Chinese word processing system satisfied the requirement stated in *National Research Development Corporation v Commissioner of Patents* that a patentable invention be 'a mode or manner of achieving an end result which is an artificially created state of affairs of utility in the field of economic endeavour'.

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## Computer Law & Practice, Volume 10 Number 6 1994

### *What is meant by consequential loss in relation to computer contracts?*

Author: Michael Webster

In attempting to unravel the complexities surrounding the concept of consequential loss so as to provide guidance as to a workable definition the author considers UK cases which have examined the issue, US computer contract case law and the US Uniform Commercial Code.

### *Software escrow - providing peace of mind, but does it really work?*

Authors: Richard Sheffield and Alexandra Leeven

An interesting article written from the perspective of an escrow agent. The authors look at the potential obstacles to a successful escrow arrangement and suggest steps that should be taken by all parties to ensure a reliable escrow. The article considers the preparation of a company escrow policy, the escrow agreement itself, recommended deposit materials, storage of the deposit materials, verification of the deposit, and filing for a release of the deposit.

### *International trade in computer-related technology: the impact of GATT and NAFTA - Part II*

Authors: Barry Sookman and Ella Plotkin

This is the second part of an article in which the authors discuss the new frontiers which have been opened to Canadian and US computer and software companies as a result of the North American Free Trade Agreement ('NAFTA') and the General Agreement on Tariffs and Trade ('GATT'). The article considers aspects of NAFTA and GATT relating to the provision of telecommunications services, temporary entry for business persons and intellectual property protection.

### **The Computer Law and Security Report, Sept • Oct 1994 Volume 10 Issue 5**

*Editor: Stephen Saxby*

*Publisher: Elsevier Advanced Technology, PO Box 150, Kidlington, Oxford OX5 1AS, England*

*Subscription: £210 per year*

***Reconsideration of Licence Agreements in Europe: Implications of the '1992' Programme, the Single Market, EC Enlargement and the EEA Treaty for Technology Transfer***

Author: Jeremy Brown

The author examines the implications for licensing policies of the EEA Agreement between the EC and all but Switzerland of the EFTA countries (i.e. Austria, Finland, Iceland, Liechtenstein, Norway and Sweden) and which came into force on 1 January 1994. The EEA Agreement is seen as a stepping stone to full membership of the EC.

***EC Information Security Legislation: Where Now***

Author: Wendy London

The article is based on a report submitted to the European Commission in 1993 relating to the harmonisation of information security laws in the EC. The article considers the current laws of the EC Member States relating to information security, the need for harmonisation of these laws and options for harmonisation and non-harmonisation of information security legislation and regulation.

***Marketing Public Sector Information: Some Issues***

Authors: Thomas Mandeville, Donald M Lamberton & Stuart Macdonald

The article reviews the issues raised by the sale of information obtained and held by governments. The issues discussed by the authors include the context in which marketing of government information occurs, pricing,

private sector involvement and freedom of information legislation.

***Interception of Telecommunications for Criminal Investigation - A Comparative Analysis***

Author: Dr Irini E Vassilaki

The article examines the fragmented international law governing the interception of telecommunications and suggests an appropriate international legal approach that may be adopted to address the problems associated with interception.

***Satellite Services - The Future of the Signatory Affairs Office***

Author: Harvey Freeman

The article provides a commentary on the conclusions reached by the UK Office of Telecommunications ('OfTel') in relation to the operations and future of the Signatory Affairs Office which represents telecommunications operators who require access to the satellite systems of Intelsat and Eutelsat.

***Software Piracy & Corporate Compliance***

Author: C Ian Kyer

The author outlines steps taken by the Canadian Alliance Against Software Theft to combat software piracy. The article contains a sample policy on software use and copying which companies may adopt.

***Computer Law in Central and Eastern Europe***

The second edition of the Eastern Europe Intellectual Property and Informatics Newsletter edited by Zbynek Loebel.

The newsletter provides an overview

of the legal protection of computer software databases and semiconductor chips, telecommunications laws and data protection laws in central and eastern Europe.

***EC Developments in IT Law***

Authors: Don Jerrard & Harry Small

The fourth edition of a table highlighting the legislative provisions of the EC which may impact on the IT industry. The table contains sections relating to intellectual property, personal data, competition law, product liability, standardisation, public procurement, telecommunications and media/broadcasting.

***'The US Clipper Debate Revisited'***

Author: Bernard P Zajac, Jr

A commentary on a letter written by the US Vice President Al Gore outlining the administration's position on Clipper and key escrowed encryption. Clipper will enable US security services to continue to intercept telecommunications as the telephone infrastructure switches from analogue to digital service.

***Copyright Protection for Printed Circuit Board Designs - Diagrams as Literary Works***

Authors: Peter Brownlow & John Reynolds

A casenote on the UK case of *Anacon Corporation Ltd v Environmental Research Technology Ltd* (21 April 1994) which concerned the alleged copying of electronic circuit diagrams. Justice Jacob held that the circuit diagrams constituted both literary works and artistic works under the Copyright and Designs Act 1988 (UK).

### **The Computer Law and Security Report, Nov • Dec 1994 Volume 10 Issue 6**

#### ***European Technology Transfer Block Exemption Regulation - Consultation Draft***

Author: Jeremy Brown

The author examines the draft Technology Transfer Regulation with which the Commission of the European Communities proposes to replace the EC Patent Licensing Regulation and the Know-How Licensing Regulation. The author highlights the implications of the draft Technology Transfer Regulation for parties to technology transfer agreements.

#### ***International Legal Protection for Software***

Author: US law firm of Fenwick & West

A summary of the protection available to computer software in most significant world markets. The areas of law covered are copyright, trade mark, patent and contract law. The article contains a table indicating the extent of copyright and patent protection for software in 72 countries and the convention memberships of those countries.

#### ***The Legal Protection of Computer Programs and the Value of Patents***

Author: Robert Hart

The author examines the extent of protection available to computer programs under the European Patent Convention and the UK Patents Act 1977. Consideration is given to decisions made by the European Pat-

ent Office, the UK Court of Appeal and the UK Patents Office. The article also considers the value of patents involving computer programs, infringement and contributory infringement.

#### ***Program Copyright & Moral Rights: A Culture Clash?***

Author: Gary Lea

An examination of the appropriateness of the application of moral rights to computer programs under UK law. In undertaking this exercise the author discusses the development of moral rights under civil and common law and the effect on moral rights of the Berne Convention and the EC Directive on the legal protection of computer programs.

#### ***Broadcasting Digital Multimedia Communications***

Author: Dr Stephen Castell

A briefing to the UK House of Commons Select Committee on Trade and Industry concerning the future of digital television in the UK and the possibility of making a bid based on a digital transmission system for the UK Channel 5 commercial television licence.

#### ***The Verdict on Plaintext Signatures: They're Legal***

Author: Benjamin Wright

The author contends that for the purposes of electronic commerce the law should recognise and enforce plaintext signatures contained in E-mail messages.

#### ***Insuring Computer Related Risks - A Challenge for the 90's***

Author: David Davies

The article provides a valuable insight into the subject of computer insurance. The author examines the reasons why companies insure, the risk management strategy and the wording of current computer insurance policies. The author concludes by recommending a strategy to avoid the pitfalls of the computer insurance market.

#### ***EC Developments in IT Law***

Authors: Don Jerrard and Harry Small

The fifth edition of a table highlighting the legislative provisions of the EC which may impact on the IT industry. The table contains sections relating to intellectual property, personal data, competition law, product liability, standardisation, public procurement, telecommunications and media/broadcasting.

#### ***US Digital Telephony Legislation***

Author: Bernard P Zajac, Jr

A commentary on the US Digital Telephony Bill which requires carriers and manufacturers to build into their systems the ability for calls to be surreptitiously accessed and monitored by the US government.

### **Journal of Law and Information Science, Volume 5 Number 1 1994**

*Editors: Lynden Griggs and Prof E Clark*

*Publisher: The Faculty of Law, University of Tasmania, GPO Box 252C, Hobart Tasmania 7001, Australia*

*Subscription: \$60 per year*

#### ***Personal Information Transfers Abroad***

Author: Prof Greg Tucker

The author considers the problems associated with the international transfer of personal information. The article discusses the regulatory approaches adopted in other jurisdictions to international data transfers and the protection for personal data flowing into and out of Australia. The author concludes by recommending that national legislation should be enacted to protect personal information in Australia.

#### ***Electronic Data Interchange, Data Protection and the European Community***

Authors: Indira Carr and Katherine Williams

The authors examine the need for data protection laws to protect the privacy of individuals as a result of the rapid growth in the use of computers to facilitate electronic data interchange. The article provides an overview of the revised draft directive put forward by the Council of the European Communities on the protection of individuals with regard to the processing of personal data.

#### ***The Evaluation of Criminal Justice Initiatives: Some Observations on Models***

Author: Rick Sarre

The article explores the difficulties encountered in evaluating criminal justice initiatives and considers the range of models which may be of assistance in overcoming or alleviating these difficulties.

#### ***Technology Within the Legal Profession In New Mexico, USA***

Author: Scott Taylor

The paper outlines New Mexico's experience with cd-rom technology as a legal research tool. Issues considered include the features of law related cd-roms, hardware requirements, licensing, recent product developments and competitive on-line services. The paper concludes by discussing the implications of cd-rom for legal education.

#### ***Trials and tribulations of developing computer assisted learning in a small law school***

Authors: Peter Jones and Rick Snell

The article describes a computer assisted learning project which was undertaken by the University of Tasmania with the aim of providing law students with an alternative means of learning in addition to existing educational processes. The authors provide a unique insight into the development of computer assisted learning modules for the University of Tasmania. The article provides valuable guidance for law schools developing computer assisted learning modules.

#### ***Open or close: parallel importation and policy***

Author: Marcus Breen

The author argues that copyright is a public and policy issue. The article examines the legal limitations of the policy process and the policy context in relation to the Copyright Law Review Committee's Draft Report on Computer Software Protec-

tion. The author concludes that the least we should expect from policy bodies like the Copyright Law Review Committee are recommendations that no longer advance the closure of industry and policy options.

#### ***Why the copyright 'look and feel' is not applicable to Australian law***

Author: Alicia Duigan

The paper examines the developments in copyright law relating to the protection of the 'look and feel' of user interfaces of computer programs. The author argues that the change in the approach of courts in the US and elsewhere appears to spell the end of copyrightability for the 'look and feel' of user interfaces. The author analyses the reasons behind the Copyright Law Review Committee's recommendation that Australian copyright law should not be extended to include 'look and feel'. The paper concludes with the proposition that 'look and feel' has no place in Australian copyright law as it would undermine the Australian software industry which tends to produce software which is compatible with programs brought out by its competitors.

### **Journal of Law and Information Science, Volume 5 Number 2 1994**

#### ***Legal pitfalls in cyberspace: defamation on computer networks***

Author: Timothy Arnold-Moore

The article provides an in depth examination of the application of defamation law to computer networks and cyberspace. A significant difficulty with applying defamation law to computer networks such as the internet is that computer networks disregard national and state boundaries creating many conflict of law problems. A further difficulty is that no two States in Australia have the same defamation laws. The article provides valuable advice to owners and operators of computer networks on ways to limit liability for the publication of defamatory material on their networks. In concluding the author suggests that attention should be given to making defamation law uniform across state and national boundaries as cyberspace becomes a truly global community.

#### ***The Singapore computer Misuse Act - better protection for the victims***

Authors: Indira Carr and Katherine Williams

The authors discuss the substantive elements, evidential issues, penalties and enforcement measures of the Singapore Computer Misuse Act 1993. Comparisons are made between the Singapore legislation and its British counter-part. The Singapore legislation is seen to be far more effective at preventing computer misuse than the corresponding British legislation.

#### ***Legal expert systems: a practitioner's perspective***

Author: Brendan Scott

The paper outlines the functions of legal expert systems that would be of use to a legal practitioner. The author presents case studies of a litigious action and a commercial advice to illustrate the desirable functions of a legal expert system. The author argues that for an expert system to be of use to a practitioner it is required to identify the answer to a problem and to help structure an explanation of why or how the answer was reached.

#### ***Smart cards, privacy issues***

Author: Kevin O'Connor

The Privacy Commissioner highlights the implications for personal privacy of the use of smart cards. The article considers international privacy law which will affect the development of smart card systems. The variety of applications for which smart cards can be used are discussed. The privacy implications of the introduction of smart cards are analysed in terms of the OECD guidelines on the protection of privacy and transborder flows of personal data. The Privacy Commissioner concludes by putting forward a smart card protocol that may be used to measure the privacy impact of new smart card systems.

#### ***Multimedia drives education future***

Author: Brian Gibson

The article looks at the changes that computer based learning has under-

gone as a result of research into areas of learning and the use of computers by students. Also considered are technological developments which may further change the education process.

#### ***Recent software patent developments in the United States***

Author: John Swinson

A discussion of recent decisions of the US Court of Appeals, Federal Circuit, on the patentability of computer software related inventions. The issues considered include the preemption of mathematical algorithms by inventions, claims for data structures as patentable inventions and proof in relation to prior art publications.

#### ***Patentability of software in Australia: CCOM v Jiejing***

Authors: Anne Fitzgerald and Scott Phillips

The authors discuss the first instance decision and the Full Federal Court decision in the case of *CCOM v Jiejing*. In concluding the authors comment that the decision of the Full Federal Court in *CCOM v Jiejing* confirms that most software-related inventions are now patentable in Australia.

#### ***Multimedia: authorisers of copyright infringement?***

Author: Yee Fen Lim

The article examines Australian and English cases which have interpreted the word 'authorisation' in relation to the Copyright Act 1958 (Cth).

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