

### Computer Law & Practice, Volume 11 Number 1 1995

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

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Subscription: £140 per year

#### ***Contractual harmonisation in the European Union: a new approach towards information technology law?***

Author: Dr Ian Walden

The author reviews the key provisions of the European Model EDI Agreement which is a central component of a recommendation adopted by the European Commission relating to the legal aspects of EDI. The author also considers whether EDI agreements are necessary to regulate communications between commercial entities and the appropriateness of the approach taken by the European Commission to the regulation of information technology law issues. The European Model EDI Agreement is included as an appendix.

#### ***Automatic handling of personal data: treatment under Spanish law***

Author: Antonio Hierro

An overview of Spanish legislation for the protection of personal data. The Spanish legislation attempts to incorporate the approaches to the protection of personal data of five different domestic and international legal instruments.

#### ***'Analytical dissection' of copyrighted computer software — complicating the simple and confounding the complex***

Author: Jack E Brown

The article examines the key protection afforded to computer software by US copyright law. Consideration is even to the approaches adopted by US courts for distinguishing the 'idea' of a work from its 'expression'. After discussing copyright cases involving computer programs the author notes that anti-software decisions have grown in influence. The author argues that these

anti-software decisions are flawed and it would be timely to revert to first principles in computer software cases.

#### ***The Intellectual Property Registry Regulations in Spain***

Author: Enrique J Batalla

An outline of the regulation governing the Intellectual Property Registry in Spain. The Intellectual Property Registry protects intellectual property rights as it constitutes official evidence of such rights.

#### ***Sky fails to prevent sales of rival smart cards***

Authors: Anthony Burke and Sara Curran

A commentary on the Irish case of *News Datacom Limited & Others v David Lyons* (1994) which involved an unsuccessful application for an injunction to prevent the sale of smart cards capable of unlocking decoding devices attached to satellite dishes allowing viewers to watch Sky Television's channels.

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### Computer Law & Practice, Volume 11 Number 2 1995

#### ***Will the Data Protection Directive prevent a global information infrastructure?***

Author: Jan Berkvens

An analysis of the Common Position on the Data Protection Directive adopted by the Council of Ministers of the European Union on 20 February 1995. The article examines the wide scope of the definitions contained in the Common Position and the problems which arise when the principles and procedures of the Common Position are applied to electronic data interchange.

#### ***Quantifying damages in computer disputes***

Author: Graham JH Smith

The article outlines the principles governing awards of damages for

breach on contract. Consideration is given to the types of damages recoverable in computer disputes on a contractual basis and a tortious (wasted expenditure) basis.

#### ***United States software protection - recent developments***

Author: Robert Bigelow

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

#### ***The Microsoft anti-trust consent decree***

Author: E Susan Singleton

A commentary on the settlement by Microsoft of all matters raised by the anti-trust investigations undertaken by the US Justice Department. The settlement took the form of a consent decree which is included as an appendix.

#### ***Rental and lending rights and copyright - Spain implements Directive 92/100***

Author: Jose Manuel Rey

The author discusses the provisions of the Spanish legislation which incorporates the EC Directive on rental and lending rights.

### **Computer Law & Practice, Volume 11 Number 3 1995**

#### ***The Magill Judgment - its consequences for the software industry***

Author: Monica Esteve Sanz

A commentary on the case of *Radio Telefis Eireann (RTE) v Commission & Others* (6 April 1995) in which the European Court of Justice held that three television broadcasting companies in Ireland were in breach of Article 86 of the EEC Treaty by refusing to grant a licence to Magill to publish their weekly programme listings.

#### ***Lotus v Borland appeal - on-screen program menus not copyright-protected***

Author: David Bender

A commentary on the US case of *Lotus Development Corp v Borland Int'l, Inc* (1995) 49 F 2d 807 in which the US Court of Appeals for the First Circuit held that the Lotus 1-2-3 spreadsheet menu command hierarchy was a method of operation precluded from copyright protection.

#### ***Telephone technology and data protection***

Author: Valerie Collins

The author examines the threats to the privacy of individuals posed by the introduction of Calling Line Identification ('CLI') in the UK. CLI allows the person receiving a telephone call to read from a display the telephone number of the person making the call. In particular the author considers the implications of CLI for data protection in the context of the Data Protection Act 1988 (UK) and the European Draft Directive concerning data protection.

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### **Computer Law and Security Report, Volume 11 Issue 1 1995**

Editor: Stephen Saxby

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

Subscription: £227 per year

#### ***Database Detection Methods in Criminal Investigation***

Author: Valerie Collins

The article examines database detection methods used by UK police investigating national and international criminal activities. Consideration is given to the implications of the Data Protection Act 1984 (UK) and the European Directive on Data Protection for the use of these detection methods. In concluding the author comments upon the admissibility of computerized evidence in court.

#### ***Software Protection in Germany - Recent Court Decisions in Copyright Law***

Authors: Andreas Gunther and Ulrich Wuermeling

A commentary upon two recent decisions of the German Federal Supreme Court and a decision of a German Higher Regional Court of Appeal which concerned copyright protection for computer software. The three decisions were handed down after the German Copyright Act was amended to implement the EC Directive on the Legal Protection of Computer Programs.

#### ***Eastern Europe Intellectual Property and Informatics Newsletter***

Editor: Zbynek Loebel

The Newsletter contains an overview of the Polish Copyright Act and the Neighbouring Rights Act, a commentary on litigation and remedies in software infringement cases in the Czech Republic and a discussion of remedies under Bulgarian law in cases involving copyright infringement of software.

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

Authors: Don Jerrard and Harry Small

Baker & McKenzie's table highlighting information technology developments in the European Union. The table contains sections relating to intellectual property, personal data, competition law, environmental health & safety, product liability, standardization, public procurement, telecommunications and media/broadcasting.

#### ***The BT Hack and What It Means***

Author: Bernard P Zajac Jr

The author comments on an incident involving a compromise of British Telecom's computers by a group of hackers and its implications for computer security.

#### ***Impact of Online Computer Services on Copyright Law***

Author: Aaron Taebi

A discussion of the implications for copyright infringement of the increasing use of online computer services such as the Internet and Bulletin Board Systems.

#### ***St Albans City & District Council v International Computers Ltd, High Court, Scott Baker J, 3rd October 1994***

Author: David Bainbridge

A commentary on the above case in which a 'bug' in software developed by an international computer company caused a local council financial loss in excess of £1 million.

### **Computer Law and Security Report, Volume 11 Issue 2 1995**

#### ***An Interview with Iann Barron, Chairman of Division PLC***

Interviewer: Gillian Bull

An interview with one of the founders of the UK computer industry. Issues discussed include virtual reality, patent and copyright protection for information technology, network security and data privacy.

#### ***IT Security — The Legal Challenge***

Author: John Worthy

The author examines UK and EC laws concerning IT security and highlights their increasing importance for organisations. Areas of the law considered include the Data Protection Act 1984 (UK), the two proposed EC Directives on Data Protection, the Computer Misuse Act 1990 (UK) and UK laws which protect the privacy and confidentiality of communications.

#### ***Privacy Protection Principles for Electronic Mail Systems***

Author: Tom Wright

A report prepared by the Information and Privacy Commissioner for Ontario, Canada which outlines a number of general privacy protection principles to consider when developing and implementing an organisation's corporate policy on E-mail. The general privacy protection principles were developed to heighten awareness of privacy issues raised by the use of new and existing electronic information technology, such as E-mail, within government organisations

#### ***'Scope of Use' Provisions in Software Licence Agreements***

Author: Stephen J Davidson

The author discusses how US courts have dealt with disputes relating to 'scope of use' provisions contained in software licence agreements. The author provides guidance on negotiating software licence agreements and dealing with disputes relating to 'scope of use' provisions.

#### ***Computer Software Protection in the Commonwealth of Independent States***

Author: Professor W E Butler

An overview of protection in the Russian Federation for computer programs and databases provided by the enactment of the Law on the Legal Protection of Programs for Electronic Computers and Databases on 23 September 1992. The issues canvassed include author's rights, employer/employee rights, registration, assignment, use of computer programs and databases and remedies.

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

Authors: Don Jerrard and Harry Small

Baker & McKenzie's table highlighting the main IT law developments in the European Union. The table contains sections relating to intellectual property, personal data, competition law, product liability, standardization, public procurement, telecommunications and media/broadcasting.

#### ***The Wonderful World of the Web***

Author: Bernard P Zajac Jr

A brief comment on the rapid growth of the World Wide Web on the Internet.

#### ***Software Patents - Where Next?***

Author: Dr Ian Lloyd

The author examines the issues relating to the patentability of software arising out of public forums convened by the UK and US Patent Offices. Consideration is given to UK, European and US decisions which have concerned software patentability. In concluding the author states that those at the UK forum displayed overwhelming support for removal of the UK prohibition against the patentability of software.

#### ***Changes to the UK Law Relating to Contracts for the Sale and Supply of Goods***

Author: Dr David Bainbridge

An overview of the Sale and Supply of Goods Act 1994 (UK) which came into force on 3 January 1995. In particular the author considers the implications of this legislation for computer hardware and software contracts.

### Computer Law and Security Report, Volume 11 Issue 3 1996

#### ***Submission of the British Copyright Council to the Commission of the European Communities Concerning the Issues Raised by Digital Technology in the Field of Copyright and Related Rights***

The Submission suggests basic propositions which should apply to the use of protected subject matter in the digital context. The Submission also considers the legal and practical issues relating to the protection of subject matter which has been digitized.

#### ***Testing for Subsistence and Infringement of Copyright in Computer Programs: Some US and UK Cases***

Author: J A L Sterling

A comparative analysis of US and UK approaches to the protection of computer programs by copyright. The author discusses the subsistence of copyright, infringement of copyright and the limitation of the scope of copyright by the parameters of competition.

#### ***A Voluntary International Numbering System The Latest WIPO Proposals***

Author: Robert J Hart

An outline of the World Intellectual Property Organisation's proposals for the introduction of a voluntary international numbering system for the protection of digital works.

#### ***Public Registers for Software Programs***

Author: Robert Bond

The article examines software infringement proceeding difficulties, software deposit schemes and existing public registers for software programs. The author argues that there should be a Public Register for Software Programs in the UK as a means of Listing programs for public

inspection and for proof of ownership.

#### ***'Market Realities' in the Analysis of Copyright Infringement of Computer Programs***

Author: Alan Wernick

A commentary of the US case of *Engineering Dynamics v Structural Software Inc* (1994) 26 F 3d 1335 in which the US Court of Appeals for the Fifth Circuit held that market conditions need to be considered in determining the scope of copyright protection for computer programs.

#### ***Alternatives for Signing Electronic Documents***

Author: Benjamin Wright

The author compares public-key cryptography and Penop as alternative methods for signing electronic documents. Public-key cryptography relies on a private key as evidence of signature origin. Penop relies on biological behaviour as evidence of signature origin.

#### ***Information Technology Law: What Does the Future Hold?***

Author: C Ian Kyer

Ten predictions on the future development of the law relating to the delivery of information through computer hardware, software, databases, networks and telecommunications.

#### ***The Barrett Review A Blueprint for Expanding Australian Telecommunications Interception***

Author: Graham Greenleaf

An examination of the recommendations made in a Report to the Federal Cabinet on the long-term cost-effectiveness of telecommunications interception in Australia. In 1990 Federal Cabinet had decided that 'all public telecommunications services should be capable of being intercepted for law enforcement and national security purposes'.

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

Authors: Don Jerrard, Harry Small and Mark Crichard

Baker & McKenzie's column setting out the main developments in IT law in the European Union. The table contains sections relating to intellectual property, personal data, competition law, product liability, standardization, public procurement, telecommunications and media/broadcasting.

#### ***Eastern Europe Intellectual Property and Informatics Newsletter***

Editor: Zbynek Loebel

The Newsletter contains an overview of amendments made to the Hungarian Patent Act in 1994, the Czechoslovak Copyright Act in 1990 and the Croatian Copyright Act in 1993.

#### ***Impact of Bulletin Board Systems (BBS) on 'Personal Data'***

Author: Aaron Taebi

The author considers data protection issues arising from the Bulletin Board System requirement that a user is required to provide personal data to register and use the System.

#### ***1st Annual Review of IT Law - IPC Conferences Ltd***

Author: Mark O'Connor

A report on the 1st Annual Review of IT Law held on 3 November 1994 which reviewed recent highlights in IT law and foreshadowed future developments and trends.

### **Journal of Law and Information Science, Volume 6, Number 1 1995**

**Editors:** Lynden Griggs and Prof E Clark

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

**Subscription:** \$30 per issue

#### ***Copyright in Australia's 'New Communications Environment': Convergence, Transmission Rights and the Internet***

**Author:** Julian Thomas

The author considers the recommendations made by the Copyright Convergence Group ('the CCG') in its August 1994 Report 'Highways to Change: Copyright in the New Communications Environment'. In the author's opinion the CCG took an unnecessarily narrow view of 'the new communications environment' and as a result its recommendations for reform do not meet the challenge of technological change. The article discusses the communications policy context in which the CCG Report was prepared, the CCG's broadly framed terms of reference, the CCG's arguments and recommendations and limitations of the CCG's approach. The author concludes that copyright does not necessarily offer the best way to regulate the traffic of intellectual and cultural work on the internet.

#### ***Promises, promises ...***

**Author:** Dr Alistair Inglis

A paper delivered to a conference on computer managed learning ('CML') which discusses the origins of CML, the benefits of CML for educational institutions, CML systems currently being used in Australia and features which we should expect of future CML systems.

#### ***Computer and Internet Applications in a Clinical Law Program at the University of New Mexico***

**Author:** Scott A Taylor

The article provides an outline of a clinical law program which was developed at the University of New Mexico in the US and involves students using computers, expert systems software, on-line legal research, cd-rom legal research tools, email and the internet to prepare income tax returns.

#### ***Public access to law via internet: the Australasian Legal Information Institute***

**Authors:** Graham Greenleaf, Andrew Mowbray, Geoffrey King and Peter Van Dijk

A paper in which the authors explain the establishment of the Australasian Legal Information Institute ('AustLII') on the internet (<http://austlii.law.uts.edu.au>) and the policy and technical agendas which AustLII is developing. AustLII's principal purpose is to provide legal researchers with effective access to Australasian legal materials which are in the public domain or which can be obtained at minimal charge.

#### ***GATT Implementation in the United States***

**Author:** Micah D Stolowitz

The author examines the principle provisions of the GATT Uruguay Round Agreement as they affect US patent law. In particular the author considers the aspects of the GATT Agreement relating to the requirement that patents be made available without discrimination as to the place of invention, the new provisional patent application, the 20 year patent term and the transitional provisions.

#### ***UniServe-Law: Flying a Few "Idea Kites" in Search of the Roles which Should be Played by Australia's First Electronic Clearing house in Law***

**Authors:** Bob Moles and Eugene Clark

The article provides a unique insight into the creation and development of Australia's first clearing house devoted to law and legal education. The authors contend that electronic publishing, the availability of access to the INTERNET and the development of electronic clearing houses will result in substantial changes in university teaching, research and publication.