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Legal Protection of Software and Databases

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Software and Intellectual Property

- ◆ Economic rights protected by intellectual property
- ◆ Software protected by copyright, patents and as confidential information (provided it is kept confidential and users are limited)

Copyright

- ◆ Software protected as a literary work – includes things like comments with source code
- ◆ Must be sufficient skill labour and judgment to attract copyright so, for example, command names are unlikely to qualify for protection or amount to infringement but program files should do
- ◆ A “mere general idea” is not protectable but a “detailed idea” is

Copyright – protection of software

Software Directive

- ◆ Protection...shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie the interfaces, are not protected by copyright under this Directive
- ◆ Unifies EU law providing protection in all territories. Questions is whether this overrides previous English law on previous slide

Copyright – protection of software

Navitaire case – elements copied reflected the business function of the program, which was a flight booking system and was not protected

What is “intellectual” property?

Protection consists of prohibited acts (i.e. things you cannot do without the permission of the copyright owner) in respect of protected material.

Copyright – prohibited acts for software

- ◆ Copying – substantial on qualitative assessment
- ◆ Issuing copies to the public
- ◆ Renting/lending
- ◆ Adapting

Copying and Adapting

Copying – any use that includes copying, so you need a licence to do most things with software, unlike mechanical objects for example.

Adapting – arrangement or altered version or a translation

Copyright - licence

Permit uses that would otherwise be prohibited acts

Licences can cover

- ◆ one or more acts; or
- ◆ specific activities within acts e.g. sales on disc as distinct from the internet

Copyright – wide licence – for licensee

All acts prohibited by [rights protecting the] software

This could cover other peoples' patents, exposing the licensor, although licensor is likely to be exposed in similar ways if he is providing software in a normal commercial environment

Copyright – narrower licence

Write down all that you could possibly do with software and leave one thing out

So beware of lists if you are taking a licence. Licensors want limited list.

Copyright – what is implied in the licence

- ◆ Licensees can always make back up copies necessary for licensed use, irrespective of licence wording
- ◆ Decompilation for making interfaces is permitted if this is the only way that you can get the information, provided that you do not use the results for anything else. Do not use the information to infringe copyright
- ◆ Copying or adapting if needed for licensed use and not prohibited by contract

Patents

Protect inventions that are new, involve an inventive step and may be used in industry

In Europe software is not patentable “as such”, but it is patentable if it has a technical effect. So typical word-processing software is not patentable but control software for a robot may well be

It is easier to patent software in the US

Patents Licensing

Patents

- ◆ may be licensed like software that is protected by copyright; or
- ◆ may be licensed like other objects if part of hardware
- ◆ most likely to be treated like normal software

Confidential Information

- ◆ Secret, identified, not trivial
- ◆ Disclosed under obligation of confidence (express/implied)

Confidential Information - licence

No conventional prohibited acts

Licensee can only agree to keep it secret and not to use it for unauthorised purposes for so long as it is confidential

Databases

Databases protected by database right and copyright.

Can be protected as confidential information if users limited and disclosure made in confidence.

Copyright in Databases

Database is a collection of independent works, data or other materials which:

- (a) are arranged in a systematic or methodical way; and
- (b) are individually accessible by electronic or other means

Selection or arrangement of contents must amount to “intellectual creation”.

Database Right

[Database right] subsists...in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database

Database Right - protection

“Must be understood to refer to the resources used to seek out existing independent materials and collect them in a database. It does not cover the resources used for the creation of materials which make up the contents of the database”

Database Right – prohibited acts

- ◆ Extracting – permanent or temporary transfer of all or a substantial part of the contents of a database to another medium
- ◆ Re-utilising – any form of making available to the public all or a substantial part of the contents of a database...

Databases - licensing

- ◆ Watch amount
- ◆ Watch purposes
- ◆ Web distribution



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