May 1999

Is copyright outdated?

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Recommended Citation

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A thought-provoking article by Stewart Alsop appeared in FORTUNE.com magazine in April - see “Copyright Protection is for Dinosaurs” at <http://cgi.pathfinder.com/fortune/technology/alsop/1999/04/26/index.html>.

He notes that the idea behind intellectual property is that it protects a monopoly to exploit certain rights so that people will be encouraged to engage in creative intellectual effort. In the case of copyright, this is based on the assumption that it is relatively easy to prevent copying. He points out that in the digital era this is no longer true. And contrary to expectations, he suggests that in many instances the ease of copying digital material has benefited intellectual effort. He cites the example of software companies in the early years who soon found that the more watertight their copyright protection scheme the less popular their software was in the long run. Increasingly profits tended to come from manuals, customer services, updates, etc.

Even without copyright protection, he suggests there are still obstacles to copying that protect an established investment in software compared with a newcomer to the market. The technical challenge of making the new software compatible with existing systems would discourage the newcomer. So would the speed of technological change and development. It would also take time to gain the trust of new users.

He suggests the recent success of Linux (an open source operating system), and MP3 (the standard for storage of music in digital form) might herald the dawn of a new era in which we need to re-examine assumptions about the value of intellectual property rights. Discussion on the FORTUNE.com site following the article showed a surprising level of support for this view.

The Copyright Act 1968 is to be amended to provide a number of new exceptions to infringement of copyright in computer programs. These changes are proposed in the Copyright Amendment (Computer Programs) Bill 1999 and their effect is that copyright in a computer program will not be infringed if a copy is made in the course of:

(a) running the program for normal use (subject to the conditions of the licence accompanying the program when bought);

(b) studying the operation of and ideas behind the program while running it (a form of reverse engineering);

(c) periodically backing up the data on a computer system or network for security;

(d) finding out how the program interoperates with other programs so as to make a new program to interoperate with any or all of those programs;

(e) correcting an error in the program (which includes the Y2K error);

(f) security testing and correcting a security flaw in a program or network.

The exceptions above allowing copying for interoperability, correcting errors and security testing will be subject to qualifications, including:

(a) the amount of the program copied must be limited to what is needed to find out the required information or test security or correct the error or security fault;

(b) the information disclosed by copying must not have been readily available to the owner or licensee of the defective copy;

(c) for error correction, an error free copy of the program must not have been reasonably available to the person who made the copy;

(d) the information and the copy itself must not be used or passed on to others for purposes other than those allowed by the exceptions without the copyright owner’s consent.

Computer programs

The United States Federal Trade Commission has recently issued a proposed rule designed to protect the privacy of children using the Internet. The proposed rule applies to commercial web sites directed to, or that knowingly collect information from, children under 13. With certain exceptions, these web sites will have to obtain parental consent before collecting, using or disclosing personal information from the children.

The ‘showstopper’ in this proposed rule is that the parental consent will have to be verifiable. Possible options for this verification include:

(a) a consent form to be signed by the parent and returned by postal mail or fax;

(b) the use of a credit-card by the parent;

(c) a toll-free telephone number that a parent would call;

(d) an e-mail accompanied by a digital signature.