

# Unveiling The Pirate

## Part 3: The Legal Issue

"To quote me the authority of precedents leaves me quite unmoved. All human progress has been made by ignoring precedents. If mankind had continued to be the slave of precedent we should still be living in caves and subsisting on shellfish and berries." – Viscount Philip Snowden

It is always pleasant to begin an article with some brilliant quotation, just to get the mind moving a little quicker. With a slight update to these words of wisdom, it would read as such. Why do we have to rely on laws designed in days gone past before the advent of modern technology will protect us from infringement of our rights as creators of programming marvels. Virtually every law that has ever been updated can be traced back to the comparison of some antiquated precedent that is somehow misconstrued to apply today. In legal cases where the situation is always the same and always has been, why the heck not. But we are living in a new age, with technology advancing at a rate never before anticipated.

Just think back a few years and compare how quickly everything is advancing today. For this reason it would be nice to find out why the legal system is stuck in the middle ages flogging the same precedents over and over again till nobody really knows how they apply. I applaud Steve Wosniak and his group at Apple for their legal attack on the invasion of the clone people. His group took an antiquated legal system and challenged it to become better. Though the existing laws in most countries are still so relaxed that these crimes can take place, the group at Apple made the legal community stand up and take notice.

### The CLONE

With Apple, their problem was with corporations copying their computer, software, manuals, cases, literature and whatever else they could get their sleazy hands on. The companies responsible for these miscarriages of justice were located primarily in Taiwan and Hong Kong, with a little bit of activity in Switzerland and the USA. The way that it appears to have happened is that numerous corporations were set up to clone the Apple Computer complete. Those who have ever started a corporation know that shareholders of a corporation are only responsible for as much money as they have invested in the corporation. The clone corporations made very high profits with the sale of the clones, then declared

dividends quarterly to drain all of the money out as quickly as possible. If legal trouble starts brewing up over the clones, dissolving the corporation and starting another was usually the answer. Always one step ahead of the law, these clone people got very rich, and Apple lost out in numerous sales.

If the Apple subject interests you as it did me, then try to get hold of two fabulous books that cover this area extensively. They are available from the publisher direct, but may not be from book stores.

Software Protection and Marketing  
Computer Programs and Data Bases;  
Video Games and Motion Pictures  
Volumes One and Two  
by Morton David Goldberg – Chairman  
Practicing Law Institute  
New York City  
Course Handbook Series #159 and #160 – 1983

### Copyrights And How They Apply To You

Protection under the law for infringements of the rights of software manufacturers is a hopelessly messed up series of mistakes, all tied together in the law books of today. Copyright protection of computer software does apply to a limited degree in the United States, but does not apply in the least in Canada. Elsewhere in the world, many countries are on par with Canada. It seems that the United States is the worlds battle grounds for legal mistakes, with the rest of the world following suit well after all the excitement has died down.

In the United States software is and is not protected by Copyright law for the same reasons. While peering through numerous law books, I have discovered great quantities of hypocritical legal turns of events than should have never occurred. For example, lets look at the legal issue of copyright law and how it applies to software.

### "(C) COPYRIGHT" – Is It Applicable?

One argument against copyright protection of software is that copyright protection is afforded to matters that relate directly with

human beings. Books, magazines, art and music are just a few of the areas covered by copyright law. With this argument it has been stated that the design and flowcharting work that goes into software development is protected under copyright law. So is the actual source listing of the program. But the moment the program is actually entered into the computer and is activated, it no longer falls under the protective blanket of copyright. This view states that the program no longer relates to human beings, only to the computers for the sole purpose of telling the computer what to do, and recording what responses the computer came back with. The fact that the user related directly with the computer has no bearing on this argument. The computer has become the middle man and therefore excludes the software from copyright protection.

The second argument, this time finding that copyright does apply to computer software, was used with this same example. It was stated that computer software is protected by copyright law because it does relate to human beings right across the line. Computers were designed by human beings, and so are computer programs. Binary 0's and 1's mean absolutely nothing to the computer, only to the programmer. The computer relates directly with changes in voltage and current flows throughout its circuitry. It does not care about binary coding in the least. A programmer could, if persuaded to do so, decipher exactly what a computer program does, once it has been entered into the computer. Whatever language the code is written in, it can be painfully figured out by peering through this apparent machine code. Therefore, this argument states that copyright law does apply to computer software, with all prior arguments being invalid. The courts liked both explanations, therefore no real answer has been arrived at.

Many more instances of copyright law and software battles rage throughout the legal books of today. As it stands, governments worldwide have stated explicitly that they would look into the matter and come to some form of conclusion as soon as possible. The USA have changed their copyright laws a few times, but still to little avail. In Canada we have the white paper, another series of bleeps and blunders to further occupy the courts for many years to come. The legislature has promised new rules are coming, but making them so they won't go obsolete with the technology is the hard part.

Whatever the story, expecting the law to do all the work for you is foolish at this point in time. A bit of thought and careful planning will help you produce a product that may provide a good legal defense if so inclined. Let's now advance into this subject a little deeper.

### **Legal Avenues To Take**

As is obvious, written information can be protected under copyright law. A manual for your program fits into this category. The source listing, flowcharting and all else that has been written down also fits neatly into this little cubical of legal mindset, but doesn't really help the matter at all. Rely on the manual.

The sacred statement "(C) Copyright 1984 Company Name", is a mandatory requirement if copyright protection is desired. This entire statement ensures that the copyright protection that you have opted for applies in most of the countries in the world. Whether or not a complete circle is required around the letter C I do not know, but I feel that it should not matter. If the courts go to this

extreme to prove something ineligible for protection, then there is something wrong with the courts. Make sure your program displays a copyright notice on the screen at least once during the execution, and write this statement into your manual at least once, just to make sure that everyone knows your intentions.

Create your program in such a way that it requires at least some intelligence to operate it. Write a manual that will illuminate the way for all who attempt to use your creation. Design the manual well, making sure to place a specific serial number in a few key places throughout. Design a legally binding contract between your company and the end user, making sure to state the serial number somewhere prominent on the form. Make sure to write this serial number someplace on diskette where little attention will be generated because of it, and you may have started on your way to partial legal protection. If photocopies of your manual start to appear, and the serial numbers have not been removed, then copyright infringement can most likely be proven in court.

If copies of your program start to appear in a broken state, it may be difficult but not impossible to push the matter in court. The serial number combined with the signed legal contract may be a ticket to recompensation. But often this will not be the case, as I will explain below.

A high percentage of programs are broken mainly for the thrill of breaking them. Once broken, they are quickly spread around from friend to friend, often over the telephone lines, to further weaken your chances for compensation for this crime. Many of the offenses take place in private individuals homes, with the end result being given away to others who share the same sentiments. Once these pirated versions have been passed over the telephone lines, little to nothing can be done to stop its spread. And proving the crime in court is next to impossible, for the offense was probably not witnessed by anyone who will admit to it in court. Checkmate, the pirate wins.

As has been witnessed with the prosecution of video tapes pirates, other legal avenues do exist for protection that are just waiting to be tried in the courts. Though I do not profess to know how this would apply, I have been told that fraud can be proven in this matter, with a jail term and fine applied to any found guilty. This sounds pretty good to me, for it could be applied to anyone caught distributing illegal material, even if the person distributing the material is not the pirate, just someone who managed a copy and wanted to give another copy away to a friend. Talk about a quick way to put a curb in the spread of illegal software.

Legal protection is a single avenue of protection that does not appear to work in a vast majority of cases. Software piracy, unless blatantly obvious as the Apple cases were, is difficult to prove at best, and even more difficult to find laws that will stick. If this fraud situation can be tried and proven in court, then we might finally have some ammunition to work with. But until then, the legal system is not a viable method for software protection in the least.

My final recommendation in this rather volatile situation is to protect the living heck out of your program every which way that you can, and follow the courts as closely as possible. With luck and Providence prevailing, the eternal light may shine down upon the courts and appoint a few computer whiz kid judges. With a computer freak holding the gavel we may finally advance into the computer age as we should have all along.