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Softwars: The Legal Battles for Control of the Global Software Industry

Greg S. Weber

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peruses the globe in his assessment of the legality and policies of various invasions. Because he covers so many occupations, he limits his discussion of each country to a page, tying up the loose ends in his analysis at the end of the chapter.

In his final two chapters, the author discusses the success of existing institutions in enforcing international occupation law and offers his own recommendations on enforcement policies. He suggests the main problem of supranational tribunals, such as the International Court of Justice, is the obvious lack of states' consent to have occupation issues adjudicated. In addition to international covenants and agreements, Benvenisti advises that the "most promising concerted and hence powerful reaction to unlawful occupation measures is the collective power behind international global and regional organizations." In his concluding remarks Benvenisti outlines the duties and powers of the occupying force, leaving the reader with his hope that deficiencies in current occupation law "will pave the way for the creation of international institutions [designated to monitor and enforce international occupation law]."

Lisa B. Berkowitz

CLAPES, ANTHONY LAWRENCE, SOFTWARS: THE LEGAL BATTLES FOR CONTROL OF THE GLOBAL SOFTWARE INDUSTRY; Quorum Books, Westport, CT (1993); ISBN 0-89930-597-0; 325 pp. (hardcover) Index.

The title of Mr. Clapes' latest effort, *Softwars*, refers to the debate over how much proprietary protection should be granted to the creators of computer programs. The literal elements of software, source and object code, are widely established as proper subjects for copyright protection. But the debate rages fierce—in courtrooms, legislatures, and professional symposia throughout the industrialized world—over the extent copyrights protect the nonliteral elements; i.e. "look and feel," "structure sequence and organization," and user interface.

To what extent does the copyright protect the screen displays, menus, audio input and response, assignment of function keys, command language, use of color, and iconography of a software package? When are these elements capable of such limited expression that they merge into the unprotected idea of the program? Is software predominantly utilitarian, with a limited number of efficient methods of operation for a given use? Or is software more artistic and creative, with endless possibility for expressive variation?

These legal issues cannot be separated from the public policy question. Will the broad protection of software maximize innovation by supplying the impetus to create, or will it unnecessarily stifle the free flow of information and thereby curtail innovation? "One side in the softwars vigorously avers that without strong legal protection for computer programs, the industry will stagnate. The other side swears that unless legal protection for computer programs is weakened, a few large monopolists

will inherit the entire business." Depending on the context, the large American software producers, who dominate the worldwide industry, tend to be strong protectionists. Large Japanese and European producers, as well as smaller American companies, whose success largely depends on product compatibility with standards developed by the industry giants, tend to be weak protectionists.

Mr. Clapes' "tour of the battlefield" begins with a detailed look at the landmark "look and feel" cases, including *Lotus Development Corporation v. Paperback Software International*, which helped establish that copyright protection extends to nonliteral elements of a program. In addition to the legal analysis, the author provides the industry context in which these cases are argued, including licensing strategies and the place of litigation in the overall business plan. By supplying a healthy dose of context and background throughout the book, Mr. Clapes enables his diverse audience of lawyers, business people, and programmers to appreciate one another's perspective.

Softwars is global, and the battles rage beyond American courts. *Microsoft Corporation v. Shuuwa System Trading K.K.*, heard in the Tokyo District Court, relates to the reverse engineering controversy; i.e. to what extent does a copyright prevent competitors from dissecting a software package in order to produce a competitive product? Another case receiving international attention from the software industry, argued before the Federal Court of Appeal in Melbourne, Australia, involved the piracy of an Autodesk, Inc. program.

The attempt to develop uniform copyright laws throughout the emerging European Community represents another battleground for *Softwars*. In the early 1990s, as an EC directive on reverse engineering of software was being formulated, lobbyists from around the world descended on Brussels. The weak protectionists, lead by Fujitsu and some large European companies, formed the European Committee for Interoperable Systems (ECIS). ECIS was opposed by the Software Action Group for Europe (SAGE), which predominantly consists of large American corporations and the Software Protection Agency.

The "reports from the front" that comprise this book are interesting and enlightening but one-sided. As Assistant General Counsel at IBM, Mr. Clapes does not hide his viewpoint. He states, somewhat facetiously, "that he is not likely to write anything that will get him fired." The very words he uses to describe the battle lines—"innovators" versus "copyists," "clones," and "imitators"—lead readers to wonder, at times, whether the author is a "war correspondent reporting from the front" (author's words) or a propagandist writing from central headquarters. However, Mr. Clapes offers strong arguments for his side and usually presents the counterarguments.

At this juncture in the softwars, legal protection for software is slightly stronger in America than in Europe and Japan. It is Mr. Clapes' well argued opinion that the continuing predominance of American com-

panies in the global software industry is inextricably bound to the continued strength of American intellectual property rights in software.

Greg S. Weber

CORTEN, OLIVIER AND KLEIN, PIERRE, DROIT D'INGERENCE OU OBLIGATION DE REACTION (RIGHT OF INTERFERENCE OR OBLIGATION TO REACT?); Bruylant Publishing, University of Brussels, Brussels, Belgium (1992); FB 1.868 ($55.00); ISBN 2-8027-0599-7; 283 pp. (softcover).

The thesis of this book lies in the notion that the right of interference stems from the classic international law's inability to effectively insure the respect of human rights inside nations. This treatise by Olivier Corten and Pierre Klein presents a comprehensive view of the law of the right of interference for human rights violations as it exists today and provides a look at the direction the law seems to be taking in the future.

As Professor Jean Salmon of the University of Brussels remarks in his introduction, the right of interference is an integral part of the new world order of which so much is made. Yet, in spite of countless debates over its place in international law, the right remains a rather vague notion. Not only do Corten and Klein wonderfully define the right of interference in a clear and concise manner, they also illustrate each doctrine or definition with concrete and often recent events.

One of this book's appealing features is the ingenuity of its authors, who do not hesitate to confront the fact that political reasons often lie behind publicly claimed humanitarian concerns.

They also do not hesitate to present a wide range of worldwide thinkers and their ideas, offering contradicting theories of various issues. They analyze the legality of interventions under the U.N. Charter as well as regional agreements such as the E.E.C. or the O.A.S. charters.

The book presents a wide array of reactions to the violations of human rights that are actually permissible under international law. These reactions vary from economic sanctions to armed intervention through the U.N. Security Council. The authors argue for the use of these alternatives over the unilateral right of interference that has proven bloody in the past (for example during the Vietnamese intervention in Cambodia in 1979).

In the second chapter of the book's second part, examples of the violations of human rights occurring during the civil war that raged in Somalia starting in 1991 are discussed. Because this book was written in 1992, the authors could not have included (or foreseen) the U.N.-led intervention in that conflict. Instead, they stated that Security Council Resolution 688 (in which the Council asked all member states, among other things, to help provide humanitarian assistance to the Iraqi population) was an isolated incident and not the emergence of a "new right of interference", because no one seemed interested in invoking the Resolution