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Book Review [Software Protection: Practical and Legal Steps to Protect and Market Computer Programs]

Ronald S. Laurie

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BOOK REVIEW

**SOFTWARE PROTECTION: PRACTICAL AND LEGAL STEPS
TO PROTECT AND MARKET COMPUTER PROGRAMS**

Author: G. Gervaise Davis, III
Schroeder, Davis & Orlliss, Inc.
Monterey, California.

Publisher: Van Nostrand Reinhold.
ISBN: 0-442-21903-2.

Reviewer: Ronald S. Laurie*
Townsend & Townsend
San Francisco, California

Gerry Davis' book on Software Protection should be within arms' length of the desk (or video screen) of three kinds of people: (a) software professionals including both programmers and managers; (b) business lawyers who find they are representing an increasing number of software-based companies and individuals; and (c) that somewhat undefined collection of legal specialists that refer to themselves as "computer lawyers."

The not so subliminal premise on which Davis' presentation of the subject of software protection rests is that these groups must learn to communicate effectively with one another. This means that they must share at least a common nucleus of legal, technical and business knowledge. While few discussions of legal principles can be all things to all people, Davis' book comes closer to establishing the necessary predicate for interdisciplinary communication than any other which has yet appeared on this subject.

The book is useful not only to the software professional and the business lawyer who are beginning to learn each other's language but also to the computer law specialist who (presumably) has already bridged the communication gap. This is because no individ-

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* Mr. Laurie is a senior computer law partner in the San Francisco law firm of Townsend & Townsend. He is a legal specialist in litigation and counseling regarding proprietary rights in computer hardware and software and in semiconductor chip design. The reviewer received a B.A. from the University of California at Berkeley in 1964, and in 1968 he received a J.D. from the University of San Francisco Law School.

ual lawyer can realistically hope to be an expert in all phases of the law as it applies to software.

The introductory chapter of the book establishes the context for interdisciplinary communication. The second chapter provides a technical primer for lawyers with no software background while the third introduces the basic forms of proprietary rights protection to the non-lawyer computer professional. The following chapters develop, in less than exhaustive detail, the application of copyright, patent, trade secret, and trademark principles to software. This material is followed by chapters on commercial law topics including contracts, warranties and limitations of liability, government contracts, export controls, international aspects of software protection and taxation of software. The book concludes with a helpful chapter for the computer professional titled "Selecting a Lawyer for your Software Business."

The value of Davis' book results from the fact that it presents the subject from an eminently practical perspective. (Earlier in his career as a lawyer Davis owned and operated his own software company.) The book does not purport to be exhaustive on any of the topics discussed. Because the author seeks to establish a conceptual framework this book should not be the *only* source consulted on any of the subjects covered by either businessperson or attorney. It should, however, be the *first*.

Davis effectively combines a description of the legal principles applicable as of the publication date, with the author's practical advice on how to maximize protection within the current legal framework. In addition, he occasionally volunteers his opinion on the broader policy issues underlying the legal rules. For example, Davis declares that "the fundamental problem is the inability of an established legal system, based on protection of tangible property, to cope with a form of property that can appear and disappear with the speed of light." One might conclude instead that the unsettled state of the law is due to the convergence of a number of other factors such as the application of copyright law to "functional expression" and the application of patent law to abstract algorithmic inventions. However, the legal analysis and the practical advice in the book do not depend for their validity on Davis' editorial commentary. By respecting his audience and refusing to oversimplify, Davis provides his readers with a sound conceptual basis for analysis of the new issues which will inevitably be raised by technological developments.

Davis presents the subject in a conversational style without

sacrificing accuracy. An extensive index, an informative table of contents and the generous use of headings and subheadings in the text make it easy to find information on a particular topic. A bibliography of books, articles, statutes and cases is included at the end of the book and organized by chapter. However, because the law relating to software protection is so dynamic two additional features would have made the book even better — the use of footnotes in the text coupled with a loose-leaf format and periodic updates.

The strengths of this book are its straightforward presentation of applicable legal principles and the wealth of specific practical advice for protecting software under the existing law. Attorneys who advise software clients either occasionally or routinely will find much of this advice to be quite valuable. Software professionals who read this book will be able to take appropriate protective action before serious damage is done. Their attorneys will benefit from this and from a higher level of communication with their clients.

