Extended review: The BCS Practical Guide to Intellectual Property Rights in Software (2000)

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The British Computer Society's (BCS) [BCS-WWW] practical guide to 'Intellectual Property Rights in Software' [BCSPPGIPRSW-2000] continues the society's concern with IPR as it relates to computing systems.

In 1984, the BCS Copyright Committee established the Federation Against Software Theft (FAST), which lead to the UK Copyright (Computer Software) Amendment Act of 1985, and in 1987, it provided a detailed response to the UK Government White Paper on 'Intellectual Property and Innovation' [BCSIPRUKWPIP-1987]. BCS specialist groups continue to address IPR especially in emerging areas such as electronic publishing [BCSSGEPECIPR-1994], and the BCS Law Specialist Group [BCSSGLAW-WWW] maintains a focus on IPR. The 2002 BCS Review provides an overview of recent IPR developments [BCSREVIEWIPR-2002].

BCS Publishing is responsible for a series of BCS Practical Guides are intended to address 'the most pertinent issues facing the IT industry' and 'explain in simple language the implications facing all professionals' [BCSPPG-WWW]. In 1999, BCS produced a practical guide to E-Commerce that included IPR considerations and it has also advised on Year 2000, Data Protection and Preparing for the Euro.

In 2000, the BCS published 'Intellectual Property Rights in Software' as 'A Practical Guide for Professionals & Business Managers' [BCSPPGIPRSW-2000]. This guide 'provides a wider understanding of IPR issues as they affect the daily working lives of software developers, suppliers and users, providing practical guidance on good day to day practice' because 'there are uncertainties about the application of the law, but there are also practical measures that honest practitioners can take to protect their intellectual property and to guard against misplaced allegations of infringement,' according BCS publications manager Ian Jones [COMPWEEKBCSIPR-2000].

The guide is the work of an IPR Task Force of the BCS Legal Affairs Committee and has been endorsed by the Engineering Council. It is organised in a no-nonsense straightforward question-and-answer style, and addresses 7 topic areas with a total of 45 questions-and-answers over 51 pages.

The topic areas covered are:

- the legal protection for software - intellectual property rights – which defines software and intellectual property rights, then illustrates how IPR coverage is provided through a portfolio of approaches including contractual terms, copyright, patent, trade secret / confidential information, trade marks and design rights.

- how, practically, is protection of IPR's obtained? – addresses the recognised vehicles of patents and copyright. Attention is given to application processes, handling of patent objections, the UK Patents Act 1977, and access to relevant specialists such as UK Patent Attorneys through organisations such as CIPA.

- the international dimension and future developments – considers the similarity of national laws and trends in UK Intellectual Property Law. It picks up on the conflicts arising from EU harmonisation of common and civil law systems, including the 1991 EC directive on legal protection of computer programs, the extension of copyright life to 70 years, and the disparities between the EPO and national bodies in their acceptance of computer programs.

- the individual and software IPRs – covers the individual as creator of software and the individual as user of software, by considering who owns rights, what rights are actually owned, and how those rights may be exercised. Further detail is given to rights in the use and transfer of software, moral rights of authors, issues in co-ownership and rights for re-use in various employment arrangements.

- the organisation and protection of software – looks at the organisation as creator of software and the organisation as user of software. This includes allowable commercial activities, dealing with acts of infringement, the EU database directive, use of third party software, rights for maintenance

of works, use of shareware and inherited rights, rights to reverse engineer, license safeguards and issues with employees and software infringement.

- intellectual property rights disputes – uses a number of fictional disputes to expose important issues and extract useful instructive lessons.
- dispute resolution – walks through the primary mechanisms of negotiation, mediation, arbitration and litigation as paths to restitution and remedy.

In addition, there are a number of appendixes that provide case studies with extended analysis and commentary, references for further reading, an annotated set of relevant web resources, details of related BCS services in IPR and profiles of contributors to the guide.

Publication of the guide was reported in various computing publications [COMPBCSIPR-2000], [COMPWEEKBCSIPR-2000], and subsequently reviewed in a BCS Computer Bulletin [BCSBULL09-2000].

The material is relevant and up-to-date, and includes coverage of the European Patent Convention, and relevant EC Directives (including the 1998 EC Directive on Designs). Since publication, new statutory instruments have come into force, including the UK Trade Mark Rules 2000 and the EC Directive 2001/29 on harmonisation of certain aspects of copyright and related rights in the information society. Neither of these of these have any impact upon the substance of the guide. Despite the ongoing refinement in the interpretation of the Copyright and Rights in Databases Regulations, the guide is not affected by case law.

As indicated in the 2002 BCS Review's consideration for IPR [BCSREVIEWIPR-2002], consultation exercises on computer related patents were undertaken by both the European Commission [EPOCIIREVIEW-2002] and UK Government [UKPOSWREVIEW-2001]. The outcomes of these have already caused considerable debate, and may result in revisions to the patent system and impact upon the some elements of this guide.

The guide does provide very good advice, but it is 'no substitute for specific advice in particular situations" which "needs to take into account not only the appropriate legal considerations but also the technical means of ensuring that the legal requirements are met.' [RESOLVEITIPR-2001].

The guide is available from the BCS [BCS-WWW] at a very reasonable price of 15GBP for members, or 20GBP for non-members. A full table-of-contents is available on the BCS website [BCSPPGIPRSW-2000].

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[BCS-WWW]	The British Computer Society. WWW
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[BCSREVIEWIPR-2002]	BCS Review 2002: Intellectual property protection for computer programs, Trevor Cook, The British Computer Society, November 2001. WWW
[BCSBULL09-2000]	The Computer Bulletin: Book Reviews, The British Computer Society, September 2000. WWW
[BCSIPRUKWPIP-1987]	BCS'S RESPONSE TO THE U.K. GOVERNMENT'S WHITE PAPER 'INTELLECTUAL PROPERTY AND INNOVATION', European Intellectual Property Review, 1987 9(2) 55-59.
[BCSSGLAW-WWW]	BCS Law Specialist Group. WWW
[BCSSGEPECIPR-1994]	'Legal, Decent and Honest!: Intellectual property rights in the electronic context', March 1994. WWW

[COMPBCSIPR-2000]   BCS; PROTECTION FOR YOUR INTELLECTUAL PROPERTY, Computing, April 13, 2000.

[COMPWEEKBCSIPR-2000]   NEW GUIDE EXPLAINS INTELLECTUAL PROPERTY RIGHTS IN SOFTWARE, Computer Weekly, April 6, 2000.

[RESOLVEITIPR-2001]   Intellectual Property, ResolveIT, Iain Tolmie, March 2001. WWW

[UKPOSWREVIEW-2001]   Patents for software and business methods, The UK Patent Office, March 2001. WWW

[EPOCIIREVIEW-2002]   Patentability of computer-implemented inventions, European Commission, February 2002. WWW