

NOTES

- ¹ The philosophical issue of the nature of the "intangible book" is addressed in Jorge J.E. Garcia, "Textual Identity," *Sorites*, July 1995, pp. 57–75.
- ² These examples were suggested by Carol H. Sanders, who made a number of helpful suggestions for this chapter.
- ³ Randall Davis, "The Digital Dilemma," *Communications of the ACM*, 44:2, Feb. 2001, pp. 77–83.
- ⁴ Several sources were used for the history in this section. National Research Council, *Intellectual Property Issues in Software*, National Academy Press, 1991. Neil Boorstyn and Martin C. Fliesler, "Copyrights, Computers, and Confusion," *California State Bar Journal*, April 1981, pp. 148–152. Judge Richard Stearns, *United States of America v. David LaMacchia*, 1994. Robert A. Spanner, "Copyright Infringement Goes Big Time," *Microtimes*, March 8, 1993, p. 36.
- ⁵ The piano roll case is *White-Smith Publishing Co. v. Apollo*, reported in Boorstyn and Fliesler, "Copyrights, Computers, and Confusion."
- ⁶ *Data Cash Systems v. JS & A Group*, reported in Neil Boorstyn and Martin C. Fliesler, "Copyrights, Computers, and Confusion."
- ⁷ Criminal penalties for copyright infringement are in Title 18 of the U.S. Code.
- ⁸ Pub. L. No. 105-304 §100; 112 Stat. 2860 (Oct. 28, 1998).
- ⁹ U.S. Code Title 17, Section 107.
- ¹⁰ *Sony Corporation of America v. Universal City Studios, Inc.*, 464 U.S. 417(1984). Pamela Samuelson, "Computer Programs and Copyright's Fair Use Doctrine," *Communications of the ACM*, Sept. 1993, 36:9, pp. 19–25.
- ¹¹ "9th Circuit Allows Disassembly in *Sega vs. Accolade*," *Computer Law Strategist*, Nov. 1992, 9:7, pp. 1, 3–5. "Can You Infringe a Copyright While Analyzing a Competitor's Program?" *Legal Bytes*, George, Donaldson & Ford, L.L.P., publisher, Winter 1992–93, 1:1, p. 3. Pamela Samuelson, "Copyright's Fair Use Doctrine and Digital Data," *Communications of the ACM*, Jan. 1994, 37:1, pp. 21–27.
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- ¹³ "The Digital Reckoning," *Time*, May 22, 2000, p. 56.
- ¹⁴ Stuart Luman and Jason Cook, "Knocking Off Napster," *Wired*, Jan. 2001, p. 89. Karl Taro Greenfeld, "Meet the Napster," *Time*, Oct. 2, 2000, pp. 60–68. "Napster University: From File Swapping to the Future of Entertainment," June 1, 2000, www.webnoize.com/research.
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- ¹⁶ *ACM Records v. Napster*, No. 0016401, Feb. 12, 2001, DC No. CV-99-05183-MHP.
- ¹⁷ Robin D. Gross, "9th Circuit Napster Ruling Requires P2P Developers to Ensure No One Misuses Their Systems," *EFFector*, 14:4, Mar. 5, 2001.
- ¹⁸ "Let's Give It Up for Metallica," *Wall Street Journal*, May 10, 2000, p. A27.
- ¹⁹ Jared Sandberg, "Pirated Copies of the Latest Software From IBM, Others Posted on the Internet," *Wall Street Journal*, Oct. 31, 1994, p. B6. "Netwatch," *Time*, July 25, 1994, p. 18.
- ²⁰ Trevor Moores and Gurpreet Dhillon, "Software Piracy: A View from Hong Kong," *Communications of the ACM*, Dec. 2000, 43:12, pp. 88–93.
- ²¹ Russell Watson et al., "A Little Fight Music," *Newsweek*, Feb. 13, 1995, pp. 38–39. Estimates of the number of counterfeit CDs produced in China were in the range of 45–75 million per year in the mid-1990s. "Asides," *Wall Street Journal*, Aug. 25, 1995, p. A8. Craig S. Smith, "Microsoft Finds Pirated Software in Raid in China," *Wall Street Journal*, May 1, 1996, p. A13. "Microsoft Gear Is Stolen From Scottish Plant," *Wall Street Journal*, Nov. 19, 1997, p. B4. Rebecca Buckman, "Microsoft Steps Up Software-Piracy War," *Wall Street Journal*, Aug. 2, 2000, p. B6. Glenn Simpson, "Microsoft Urges Global Attack Against Piracy," *Wall Street Journal*, Apr. 2, 2001, p. A3.
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- ²⁹ Robert Fox, "News Track: Music Copyright Bot," *Communications of the ACM*, Dec. 1997, 40:12, p. 10. Robina Gibb, "Bounty to Trap Software Pirates," *The Sunday Telegraph*, Oct. 9, 1994, p. 1. Jared Sandberg, "Pirated Copies of the Latest Software From IBM, Others Posted on the Internet," *Wall Street Journal*, Oct. 31, 1994, p. B6. Brandon Michener, "Video Industry In Britain Has Pirates at Bay," *Wall Street Journal*, Aug. 16, 2000, pp. B1, B4.
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- ³³ Quoted in Karl Taro Greenfeld, "The Free Juke Box," *Time*, Mar. 27, 2000, p. 82.
- ³⁴ *Universal City Studios, Inc. v. Reimerdes*, 111 F.Supp.2d 294 (S.D.N.Y. 2000).
- ³⁵ David S. Touretzky, a computer science professor at Carnegie Mellon University, collected many forms of expressing DeCSS on his Web site, "Gallery of CSS Descramblers," www.cs.cmu.edu/~dst/DeCSS/Gallery; viewed Apr. 12, 2001.
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- ⁴² Lance Rose, "The Emperor's Clothes Still Fit Just Fine," *Wired*, Feb. 1995, pp. 103–106.
- ⁴³ Esther Dyson, "Intellectual Value," *Wired*, July 1995, pp. 136–141, 182–184. Excerpted from Release 1.0, Dec. 1994.
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- ⁴⁵ David G. Post, "New World War," *Reason*, Apr. 1996, pp. 28–33. *EFFector Online*, Oct. 7, 1995, 8:16.
- ⁴⁶ Tom Klemesrud, reported in *EFFector Online*, Feb. 23, 1995, 8:2.
- ⁴⁷ Judge Leonie Brinkema, quoted in Jason L. Riley, "The Internet vs. the First Amendment," *Wall Street Journal*, Oct. 25, 1999, p. A53.
- ⁴⁸ For example in the *Wall Street Journal*, May 11, 2000, p. A7.
- ⁴⁹ Barbara R. Bergmann and Mary W. Gray, "Viewpoint: Software As a Public Good," *Communications of the ACM*, Oct. 1993, 36:10, pp. 13–14.
- ⁵⁰ This is a brief summary of Stallman's views. See his article "Why Software Should Be Free" and many others at the GNU Web site, www.gnu.org/philosophy.
- ⁵¹ "What Is Copyleft?" www.gnu.org/philosophy.
- ⁵² *Gottshalk v. Bensen*, 409 U.S. 175 (1972) and *Diamond v. Diehr*, 450 U.S. 175 (1981). Dan L. Burk, "Copyrightable Functions and Patentable Speech," *Communications of the ACM*, 44:2, Feb. 2001, pp. 69–75.
- ⁵³ The source for information about the cases in this section is "When Is a Computer Program a Copy?" *Legal Bytes*, George, Donaldson & Ford, L.L.P., Winter 1992–93, 1:1, pp. 1,2,4.
- ⁵⁴ Anne Wells Branscomb, *Who Owns Information?*, Basic Books, 1994, p. 147.
- ⁵⁵ David L. Hayes, "A Comprehensive Current Analysis of Software 'Look and Feel' Protection," Fenwick & West LLP, 2000, at www.fenwick.com/pub/ip-pubs.
- ⁵⁶ Fifth Circuit Court of Appeals, quoted in Hayes, "A Comprehensive Current Analysis of Software 'Look and Feel' Protection."
- ⁵⁷ This exercise is based on the *Los Angeles Times v. Free Republic* case. The court's decision in favor of the newspapers seems inconsistent with the reasoning in the reverse-engineering cases described in Section 6.2.3 and was criticized by some scholars.
- ⁵⁸ This exercise was sparked by a brief note in Helen Nissenbaum, "Should I Copy My Neighbor's Software?" in Deborah G. Johnson and Helen Nissenbaum, *Computers, Ethics & Social Values*, Prentice Hall, 1995, p. 213.
- ⁵⁹ *Southeastern Express Co. v. Triad Systems Corp.*, reported in "Software Copyrights," *Wall Street Journal*, Feb. 27, 1996, p. A2. The court ruled that copying the program infringed the copyright.
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**ORGANIZATIONS AND WEBSITES**

- The Electronic Frontier Foundation's site about the Digital Millennium Copyright Act: www.eff.org/IP/DMCA
- The GNU project and free software: www.gnu.org/philosophy
- News about file sharing: www.gnutellanews.com
- UCLA's Cyberspace Law and Policy Institute: www.gseis.ucla.edu/iclp
- Many articles and legal documents: www.mp3.com/my/news/yourmusic.html
- The Recording Industry Association of America: www.riaa.com
- The Software & Information Industry Association: www.siiia.net