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Vanderleeden, K. H. (2000). Legal battles that shaped the computer industry. Boston University Public Interest Law Journal, 9(Issues & 3), 519-524.

Chicago 17th ed.

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AGLC 4th ed.

Kevin H. Vanderleeden, 'Legal Battles That Shaped the Computer Industry' (2000) 9(Issues 2 & 3) Boston University Public Interest Law Journal 519

MLA 9th ed.

Vanderleeden, Kevin H. "Legal Battles That Shaped the Computer Industry." Boston University Public Interest Law Journal, vol. 9, no. Issues 2 & 3, Spring 2000, pp. 519-524. HeinOnline.

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LEGAL BATTLES THAT SHAPED THE COMPUTER INDUSTRY

LAWRENCE D. GRAHAM

QUORUM BOOKS, 1999

In *Legal Battles That Shaped the Computer Industry* Lawrence D. Graham, an intellectual property attorney in private practice, attempts to create an “easy reading” and an “accessible legal resource” on the state of the computer industry today.¹ The public should be aware of important developments in this area, given the expanding role of computers in our lives with the Internet revolution. Computers are ubiquitous in today’s society and the legal developments behind the industry are of considerable importance.

Graham intended the book to serve as a legal resource both for the general public and for people in the computer trade. To facilitate its use as a legal resource, the book has topical summaries at the end of each chapter. The summaries briefly describe the specific statutes and case law discussed in the chapter and outline the general area of intellectual property law. The book also has an appendix in which the author has reprinted sections from the federal intellectual property statutes. Graham states, however, that the book is for general informational purposes only and is not to be construed as conclusive legal authority or legal advice.

Graham begins the book with an introduction to computer law. He asserts that the law has profoundly affected the computer industry because of both the industry’s great wealth, with domestic revenues of more than 400 billion dollars, and the absence of computer specific statutory law. The author suggests that the lack of computer law has led courts to apply laws developed for other purposes thereby creating irregular results. In addition, the technical nature of computer hardware and software strains the understanding of lawyers and judges. Graham then discusses intellectual property laws, the resource of laws for the computer industry, and how they are essential in protecting the United States’s economy. An understanding of these laws provides insight into where the industry is headed and helps one avoid making costly mistakes.

¹ See LAWRENCE D. GRAHAM, *LEGAL BATTLE THAT SHAPED THE COMPUTER INDUSTRY* xii (1999).

While the introduction is informative, Graham fails to include information on computer users. An estimate of the number of computer users in the United States and how this number has grown, a list of common computer uses and other user statistics are some examples of things that would have provided a useful perspective for the reader. After all, without computer users the industry would not exist.

The author then briefly summarizes the various areas of intellectual property including patent, copyright, trademark, trade secret, and the Semiconductor Chip Protection Act, in a chapter titled "Hardware, Software, and the Law." Beginning with patent law, Graham outlines the history of each law, the requirements for protection, the duration and scope of protection, and its applicability to the computer industry. This chapter is one of the most valuable in the book. It is concise and thorough and provides the reader with an excellent overview of intellectual property. Anyone unfamiliar with the subject would benefit by reading this chapter. For example, if one wondered whether a corporate logo, such as Apple Computer's multi-colored, partially consumed apple, would be protected under copyright or trademark law, a quick read of this section would provide the answer. Copyright protects works of authorship such as literary or musical works, whereas a trademark is a symbol or word that identifies the source of the goods. Thus, Apple's logo would qualify as a trademark.

After the overview, Graham details another topic of public interest, criminal liability in computer law. In "Can I Go to Jail for This?," Graham examines the No Electronic Theft Act that levies criminal sanctions against anyone who willfully infringes a copyright by, among other means, electronic duplication. This statute protects against unauthorized software copying called pirating. Graham also discusses the Computer Fraud Abuse Act, which makes computer hacking (i.e., unauthorized computer access and the spread of computer viruses) illegal; the Economic Espionage Act of 1996, which criminalizes the theft of documents and files containing trade secrets; and the Trademark Counterfeiting Act, which criminalizes the sale of counterfeit goods including computer hardware and software. The chapter concludes by noting that the criminalization of intellectual property infringement is constantly expanding. This chapter is helpful because, computer users often believe they can give software that they have purchased to other users to install on different computers. This practice is frowned upon, however, and, if the situation is egregious, criminal sanctions may apply.

Graham provides an overview of the legal issues surrounding computer icons, such as Apple's trash can, in "The Icon Explosion." Here, the author describes *Apple v. Microsoft and Hewlett-Packard*² in which Apple attempted to prevent Microsoft from using its icon designs. The court held that copyright protection is available for icons if they are original and not purely functional. Unless the icons are exceptionally creative and original, copyright law only protects against unauthorized exact copying of the design. Copyright law, however, does not

² 35 F.3d 1435 (9th Cir. 1994).

prevent others from independently developing and using similar icon designs. The historical perspective on icons is interesting because of how frequently people come across them.

Graham examines legal issues surrounding another aspect of computers that the public often encounters in "User Interface Battles." The user interface includes the menus, color choices, icon designs, keystrokes and everything else that make up the "look and feel" of a computer program. In determining whether there has been copyright infringement of a "look and feel" element, courts will examine the strength of the rights in the original "look and feel" elements that are not functional or in the public domain. If the plaintiff's rights are strong and if the works are substantially similar, the court will find infringement. If the rights are weak, the second work must be almost identical in order for a court to find infringement. This section also discusses *Lotus v. Borland*,³ which dealt with keyboard commands and menu arrangements. The court in *Lotus* held that menu arrangements and commands are functional methods of operation and are not protected by copyright law.

In "Strategic Issues," the author discusses several topics of particular significance to both the general public and industry professionals alike. Here, he outlines the legal issues surrounding shrink-wrap licensing, trademarks, and Internet domain names. In this chapter, Graham discusses the enforceability of shrink-wrap licenses. These licenses are located inside the plastic wrapping on software boxes and state that if the consumer opens the wrap they have accepted the terms of the license. Courts, in this uncertain area of the law, will enforce these agreements if the terms are fair and consumers can return the software. This section of the book is particularly helpful to the consumer because Graham clarifies the terms found in a shrink-wrap license.

Graham then discusses the impact of trademarks on the computer industry. Trademark law has affected both computer chip manufacturers, such as Intel with its Intel Inside label and its Pentium chips, and Internet domain names such as Yahoo.com. Concerning domain names, Graham describes the registration process of names through Network Solutions, an online domain name registration site. Graham also describes a proposed plan for adopting several other new domains, such as .web, .rec, and .firm, and the possibility of an arbitration system for domain name disputes through the Internet Corporation for Assigned Names and Numbers ("ICANN"). Since Graham's book was written, both Network Solutions and Register.com have adopted ICANN's dispute resolution procedure, the Uniform Domain Name Dispute Resolution Policy.⁴ This Policy features a mandatory arbitration proceeding but allows for judicial proceeding as well. Although the

³ 49 F.3d 807 (1st Cir. 1995).

⁴ See www.register.com/dispute-policy.cgi?1474935153 <<visited March 24, 2000>> (register.com began using ICANN's dispute resolution procedure as of Dec. 1, 1999); www.domainmagistrate.com/dispute-policy.html <<visited March 24, 2000>> (Network Solutions began using the dispute resolution policy on January 1, 2000).

chapter may be missing the very latest information on ICANN, it provides a thorough discussion of the legal issues surrounding domain names.

Graham describes future legal issues in the final section of the book. Here, the author discusses the issue of free software such as the Linux operating system, which is important to the public because consumers may not have to pay as much for software and may get a better product in the future. He then mentions how software patents will offer better protection to commercial software developers. Graham concludes the book by briefly describing the ongoing Microsoft antitrust suit and its implications on the future of the computer industry.

Because of the book's dual audience, "Legal Battles That Have Shaped the Computer Industry" is effective to computer professionals and to non-industry readers in different ways. The book is somewhat successful as a practical guide for computer professionals. However, Graham's use of fanciful chapter titles like "Can I Go to Jail for This?" and section titles that suggest warfare such as "Hardware Battles" may be a bit dramatic for the computer professional. A more direct structure with simpler titles such as "Criminal Penalties" or "Computer Chips" might better serve a practitioner looking for quick background information on a specific item before consulting corporate or outside counsel. In the end, this criticism is relatively minor and the index provides adequate access to specific topics. Similarly, while the author does an excellent job summarizing the major cases and making them interesting to read, the black letter law alone might be more useful to an industry professional.

Additionally, Graham did not fully develop the legal issues surrounding the Internet. Given that the amount of electronic commerce is increasing exponentially, this area of law is ripe for future litigation. The author does not mention the ICAAN's arbitration procedure that could be extremely helpful to a potential plaintiff in a domain name infringement case. Nor does the author mention issues such as the use of banners, which are advertisements on web pages, or meta tags, which are the words embedded in a web site that allow search engines such as Yahoo.com to locate them. Similarly, Graham does not mention anything on meta searching. Meta searching involves search engines that compile the results of other search engines, or auction sites such as E-bay.com, allowing the consumer to compare results and prices. Several of the sites these meta engines search have objected to the compilation of their data, and litigation has ensued under various intellectual property arguments. Despite these omissions, Graham still manages to cover most computer industry issues thoroughly.

"Legal Battles That Have Shaped the Computer Industry" is better suited for non-industry people who are interested in computers. Graham has provided excellent, interesting descriptions of the issues. The colorful section and chapter titles work well in creating the non-industry reader's interest. Furthermore, Graham does a nice job of describing legal terminology such as *amicus curiae* and *certiorari*, for example, in his discussion of *Lotus v. Borland*.⁵ Graham, however,

⁵ 49 F.3d 807 (1st Cir. 1995).

leaves out how the computer battles have affected the public. While Graham discusses how they have changed the players in the industry and how companies conduct business with each other, he neglects to mention how they affect the individual user.

In conclusion, the book is a good compromise given the author's dual audience. The legal implications of the computer industry affect everyone from corporations to individuals buying products over the Internet. This book is an invaluable tool because it offers the public background and information about what is perhaps the most important industry in the United States.

Kevin H. Vanderleeden

