

Colin Tapper

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Third edition

Computer law

Third edition

Colin Tapper



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Comparative Law Journal
Computer Law Service
Cornell Law Review
Dickinson Law Review
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George Washington Law Review
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Am. Pat. L. Ass. J.
Bay. L.R.
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Col. L.R.
Comp. L.J.
C.L.S.
Corn. L.R.
Dick. L.R.
F.D.C.L.J.
G.W.L.R.
Harv. Bus. R.
H.L.R.
Io. L.R.
J. Pat. Off. S.
J. Pub. L.
Jur. J.
Kansas L.R.
L.R.R.M.
L. Comp. T.
L. and Contemp. Probs.
N.Y.U.L.R.
Mar. J. Prac. Proc.
Mich. L.R.
M.U.L.L.
Rut. J. Comp. L.
Stan. J. of Intl. L.
Stan. L.R.
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 Local Government Reports
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 Probate and Divorce
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 All E.R.
 A.C.
 Atk.
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United States Code Annotated	U.S.C.A.

Introduction

Computers have been in general use in this country for about thirty years, and in business use for almost as long. Their technology and applications have undergone rapid and continuing change and expansion. Although we all have a good idea of what they are and what they do it is difficult to define them with precision, as those legislative draftsmen who have attempted the task have discovered. This book attempts no such definition, though it indicates some of the difficulties which have arisen. It is concerned only with the law as it applies to the straightforward core notion of the computer as anyone would understand it.

It may be asked why there is any more need for a book on the law of computers than there is for one on the law of typewriters or tuning forks. The most obvious answer is that computers already play a much more profound role in the life of our community. And when it is appreciated just how rapidly they are developing their potential role is seen to be quite staggering. It is difficult to measure this role by any one criterion, but whether it is measured in terms of the number of machines installed, by their power, by the number of users or of uses, or by the resources allocated to them, it becomes clear that their role is increasing, and probably increasing exponentially. It might still be argued that such merely quantitative factors cannot justify separate monographic treatment. Is there a qualitative difference? It is submitted that there is. The computer is generally used to relieve human beings of intellectual rather than physical drudgery. It enables more processes to be completed with less human intervention than before. Most legal rules were framed in a context where human presence was more pervasive. Thus many of the old rules relating to the admissibility of documents in evidence require a showing of direct human knowledge of their contents. In the days of leather bound ledgers and quill pens this was appropriate, but not today. If in the modern context the intervention of human beings at the point of application is to be dispensed with, considerable intellectual effort has to be expended at an earlier stage in arranging for this to be accomplished satisfactorily. If the computer is to be used it must be provided with programmes. This new arrangement of effort has created new problems for the law of intellectual property. The power of the computer to magnify and exploit intellectual effort enables many human institutions to operate more efficiently than ever before. Some legal areas have in the past been left largely unregulated just because the magnitude of the tasks has been too daunting. The ability

of the modern business computer to collate and digest hitherto impossibly large amounts of information has led to the dramatic emergence of concern for the personal privacy of human beings. Nor should purely quantitative factors be excluded from consideration. Modern computer systems are highly complex, very expensive and liable, if something goes wrong, to cause vast amounts of, especially financial, loss. The technology has moved so fast that the gap between lay appreciation of the functions and operations of the systems and their true potential has widened enormously. This has created special strains upon legal rules relating to the acquisition and operation of systems, and to liability for and abuse of them.

This book attempts to introduce the computer user to the framework of legal rules within which he must work. It may come as a surprise to find a book about computers, even one about the law of computers, which does not start with a chapter explaining what a computer is and does. This book is intended for those who either know already or are capable of finding out for themselves. It is in any case the author's belief that a much deeper understanding will be created by working through the examples of particular problems which have arisen in real life than by perusing an inevitably abbreviated and superficial sketch. This book is grounded throughout on decided cases and on legislation, enacted and proposed. It is felt that in this way the discussion is geared to real technology, real problems and real issues. If in some cases, for example privacy and computer abuse, there have been more fears than documented cases of abuse then the treatment mirrors this situation by concentrating more on legislation and reports than on decided cases. Wherever I could find an example of the operation of a legal rule in a computer context I have used it, sometimes in preference to better known examples drawn from other areas. This is intended to make the relevance of the discussion to the computer user clearer than it might otherwise be. I have also attempted to state the law as it is, and not as I feel it ought to be, though in some places the dearth of legal authority obscures this distinction. A beneficial consequence of the decision to stick as closely as possible to examples taken from the computer world is that the book's coverage has had to be widened to include the whole of the common law world, and in particular the law of the United States. This provides by far the richest repository of cases and legislation relating to computers anywhere in the world. This is partly because there are, and always have been, more installed machines per head of the population than anywhere else, and partly because there is also more litigation per head of the population. The decision to extend jurisdictional coverage in this way has had repercussions on the topics to be included in the book. I have concentrated on areas where some congruity of approach can be expected, either because common principles are being applied, or because international considerations necessarily predominate. Thus the law relating to contract, tort, crime, and to a lesser extent evidence, privacy and intellectual property fall into the former category, while patent, copyright and to some extent privacy and crime fall into the

latter. Other areas, such as taxation, banking and communications, which undoubtedly raise special ramifications in their application to computers are more predominantly governed by local and special rules. They have been excluded. I have tried to strike a balance in the topics which I have included between an exposition designed to open the area to a non-lawyer and an indication of the complexity of some of the issues for the lawyer. I hope that both will derive some benefit from the book.

All teachers learn from their pupils. I make some specific acknowledgment where the contribution has been particularly direct or important. I should also like to express my general appreciation for the help I derived from having the opportunity of teaching a course including most of the topics dealt with here at the Stanford Law School in the spring of 1976. I should also like to thank the Law School for the generous support of its magnificent facilities and staff. My warmest thanks are due especially to Mrs Zelda MacDonald who helped so graciously with the preparation of the typescript, and to Assistant Dean Joseph Leininger who smoothed out all administrative wrinkles and provided constant support and encouragement.

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