

editorial

Bringing Copyright Up-to-date

The publication of the Green Paper "Reform of the Law relating to Copyright, Designs and Performers' Protection" (Cmnd 8302) is to be welcomed as it indicates serious intent on the part of the Government to implement many of the recommendations of the Whitford Committee though the opportunity has also been taken to assess the recommendations critically and to consider alternative courses of action. The tone of the document also suggests that the Government wishes to take the necessary decisions only after full consultations with industry and with users. While one has to be somewhat sceptical as to Government responsiveness to comments on its proposals in the light of, for instance, the proceedings on the Companies Bill, this does seem to be an area where the Government realises the need for the law to meet the requirements of the market place.

The need for an updating of this area of law has of course been much prompted by developments in technology. The principal legislation here dates from 1949 and 1956. Since that time there has been widespread growth of the public availability of tape recording, and now video taping, facilities. The photocopier is also now part of everyday life for most people. Computers and other data processing and retrieval apparatus are now in almost universal use.

The practical relevance of the areas of law covered by the document is reflected in this journal by the ceaseless flow of new case law on Anton Piller orders and other moves against counterfeiting and piracy.

Those engaged in manufacturing will need to be aware of the major changes which may be made to the system of registered industrial designs. Here the Government is concerned that protection should be limited to truly inventive and original features and should not be

available for features which are dictated by functional requirements (though here patent protection could be possible). In its view, if an industrial society is to be active and competitive, there must be a substantial common pool of experience from which all can freely take and it is concerned that the spectacle of all functional elements being protected carries with it a threat of stagnation of industrial development or at best of a substantial waste of time and money in changing perfectly satisfactory designs for no other reason than to avoid legal consequences. The proposed reforms may go as far as abolishing the registered designs system and leaving the matter to be dealt with under the copyright system. The Government recognises, however, that here is an area in which the views of industry as to questions of the detailed working of the system will be of great importance. We would therefore urge all those of our readers who are involved with this aspect to familiarise themselves with the proposals and to make what contribution they can to the consultative process – it is no use complaining about the changes when the eventual amending Act receives royal assent.

Sadly, the document devotes only 2½ pages to the important and complex problem of the protection of computer programs. The Government does however indicate that it is minded to amend the law so that copyright protection would extend to works fixed in any form from which they can be reproduced – which would cover programs recorded only in machine readable form. The loading of a program or other copyright material into a computer will be treated as a restricted act under copyright law and the definition of "reproduction" will be amended accordingly. This is, however, clearly an area where much thought is needed – a practical problem is that most lawyers do not have sufficient understanding of the underlying technology to advise very constructively in this field.