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## Editorial

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### By Coach and Horses through the Copyright Act

The famous dictum of Holt CJ in *City of London v Wood* (1701) 12 Mod Rep 669, 687 was recalled in the House of Lords on February 27 by Lord Edmund-Davis:

"Parliament can do no wrong, though it may do several things that look pretty odd".

The Judicial Committee of the Upper House of Parliament, of which his Lordship is a distinguished member, then proceeded to do some pretty odd things of their own.

The purpose of the quotation was to illustrate the state of the Copyright Act 1956. It was overdue for reform when Mr Justice Whitford's Committee reported on it in 1977. The House of Lords in *BL v Armstrong* (judgment in which was given on February 27) felt unable to remove functional designs such as exhaust pipes from its scope. Lord Templeman cited with approval the words of Lord Hailsham in *LB (Plastics) Ltd v Swish Products Ltd* [1979] RPC 551, 631, that "we must take copyright law as we find it".

But their Lordships did not leave it as they found it. Four of them proceeded to drive a coach and horses through it; the

fifth (Lord Griffiths) merely used a smaller vehicle.

Nor did the majority use the gateway marked "implied licence". Even that was insufficiently direct for them. Instead they adopted the principle — well known in landlord and tenant law — that a grantor may not derogate from his grant, and produced out of thin air a "spare parts exception" the existence of which had never previously been suspected.

The Lords appear to have made up their minds to come to the rescue of the poor oppressed BL car owner, denied the opportunity of repairing his car at reasonable cost by the manufacturer's enforcement of his copyright. But nothing in the judgment suggests that they stopped to consider whether this wrong was indeed being perpetrated.

Their Lordships made only passing reference to the licences BL had granted to five companies to make replacement exhausts in return for a 7 per cent royalty. They did not pause to analyse the market before concluding that BL was using its power to prevent owners of its products keeping them in good repair at reasonable cost.

If BL had been starving the market of exhausts, UK and EEC competition law provide remedies. If the Competition Act hasn't got enough teeth (and it probably

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hasn't) the solution is for Parliament to give it some — not for the Lords to invent a new exemption to the provisions of the Copyright Act, which after all is only doing its job as best it can.

*BL v Armstrong* does some good. It highlights in the starkest way the urgent need for reform of the 1956 Act. The long-delayed White Paper should be with us soon — perhaps before this is published. Let us hope that it will offer a properly reasoned prescription for reform.