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## Editorial

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### A "Must-Fit" Exception for Software

So at last the Software Directive has been adopted, after breaking every record for contentiousness in its passage through the European Community's institutions (see p 157). The end result looks surprisingly workable. There are many lessons which national copyright laws can usefully learn from it.

The essence of copyright is the balance between the interests of owner and user, between protection and accessibility. Technological developments have been making this balance harder to strike ever since Gutenberg; in the software field these problems reached new heights.

A book only needs a human reader for

the copyright literary work which it contains to be used. A computer program by itself, on the other hand, is of no use whatsoever. Uniquely, computer programs need to work with other programs, and with computers, to do the job for which they are made. Just like a car's exhaust pipe, there are bits of a computer program – the interface – which have to fit into something else.

UK law struggled with exhaust pipes, and came up with an exception for "must-fit" features of a design. The EC has now struggled with program interfaces, and come up with a similar answer.

The Directive leaves unprotected those parts of a program which have to be reproduced or translated in order to achieve interoperability between that program and a new, independently produced one. In other words, if parts

of the code are mandatory for any program which is going to interoperate with the original one, it will be unprotected; just like the "X, Y, Z" co-ordinates of an exhaust pipe.

The EC's balancing act, which at first (with publication of the draft directive) appeared so ham-fisted, has in the end been executed with an elegance rarely found in Community legislation. It probably won't please both IBM and Fujitsu, but then "must-fit" didn't satisfy both BL and Armstrong, and a balance of dissatisfaction is probably the best measure of legislative success where vested interests collide so heavily.

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