Unit 18: Computing Law

Objective

To develop understanding and raise awareness of the impact of law the professional practice of computing. To identify areas of the law which have particular relevance for software engineers.

What this Unit is NOT!

- an introduction to the legal system of the UK
- a complete survey of business law

If in any doubt whatsoever,
you should always seek professional legal advice!

Take care when selecting a legal professional as there are varying levels of expertise in legal aspects of information technology

What we will discuss!

- the consequences of negligent software design
- contractual considerations and obligations for the software developer
- the provisions of the Data Protection Act 1984
- liability under the Computer Misuse Act 1990
- intellectual property rights in software

... a very incomplete guide to staying out of Court!

Negligence

- the *tort of negligence* is an offence in *civil law*
- it arises when someone is damaged or injured due to a breach in the standard of behaviour required by law, by another person who is considered responsible for that damage or injury
- the tort of negligence is an area of *common law* in other words it is determined almost entirely by *precedent*
- this may mean, for new technologies where there are few precedents, that legal actions can prove particularly costly and time-consuming

Is There a Claim for Negligence?

- There are 3 essential elements which need to be established in order to sue for negligence:
  - Duty of Care
    - anyone involved in design and manufacture of goods is obliged to take reasonable care, this duty extends beyond the immediate user to include anyone who might *forseeably* be injured by its use

Is There a Claim for Negligence? (Continued)

  - Breach of Duty
    - not absolute, the degree of care should be taken in relation to the risk of harm, for liability there must be some element of negligence, this means that the software engineer has not acted as a *reasonably competent* engineer would
  - Harm was caused due to Breach of Duty
    - it must be proved that it was due to the negligence of the software engineer that harm was caused and that it was the type of harm that was foreseeable

Damages

- assuming that a claim in negligence has been successful then a court will award damages which represent the losses which are reasonably foreseeable consequences of the breach
- financial or physical loss
  - you can claim for both physical damage and financial loss, in general it is easier to claim for physical damage, financial loss assumes that there was a special relationship between the parties

Defences to a Claim of Negligence

- reasonable care
  - establishing that reasonable care was taken, generally by establishing that the work was of the same standard as that provided by any competent software engineer

Defences to a Claim of Negligence (Continued)

- contracting out of liability
  - it *may* be possible to avoid liability by drafting an appropriate contract between the engineer and client, such a contract should specify what can be expected of the work and what defects might arise
  - HOWEVER (under the Unfair Contract Terms Act 1977) it is NOT permissible to exclude or restrict liability for death or personal injury, the producer will be liable even if they can prove they took all reasonable care to check the product
  - in general contractual terms must be reasonable and if not clear may be construed against them

Liability under the Consumer Protection Act

- the Consumer Protection Act 1987 requires that a producer shall be liable for damage caused by a defect in their product
- where property damaged exceeds a certain value (£275) and where the product was ordinarily intended for private use
- there are a number of defences but the most important is the state-of-the-art defence which in which the producer can show that at the time the product was developed there was no scientific or technical knowledge to suggest that this defect would occur - THIS DEFENCE IS NOT EASILY ACCEPTED!

Contractual Considerations

- if a software engineer is developing a product for somebody with a specific purpose in mind, it is essential that there is a document that states the obligations of the parties to the agreement
- this should be drafted fairly and the software engineer should check that the terms are not over-onerous and that they have adequate protection (it is advisable that risks should be shared equitably among the parties)

Software Licenses

- an agreement can be drawn up in the form of a special sort of contract known as a *software licence*
- licenses are used rather than *contracts of sale* because software is subject to *intellectual property rights*, by using a license a degree of control can be exercised over the program

Who Owns the Program?

- a software license is particularly important where bespoke software is commissioned
- copyright does not belong to the commissioner of the software but to the author, if the software engineer wants to pass all legal interests in the software to a commissioning party it should be clearly stated in the form of an exclusive license (an an appropriate price paid)

Escrow

- as a safety net the client may want an independent 3rd party to have a source code copy of the software to cover situations such as the software engineer going out of business
- this will enable the client or another 3rd party to continue to maintain the software
- this service is known as an *escrow service*

Insurance & Professional Advice

- it is very important that the software engineer has adequate insurance cover
- insurance contracts are not necessarily clearly worded therefore it is advisable to check carefully what is covered
- & AGAIN FOR EMPHASIS
  - you should always seek the assistance of an independent solicitor with experience of software contracts to advise on legal matters

Criminal Offences - Data Protection Act 1984

- enforces eight data protection principles concerning personal data, personal data must be:
  - obtained and processed fairly and lawfully
  - held for specified purposes
  - not disclosed for any other incompatible purpose
  - adequate, relevant and not excessive
  - accurate and up to date

Data Protection Act 1984 (Continued)

- held for no longer than necessary
- an individual must be entitled (at reasonable intervals, without undue cost or delay) to know whether any information is held about him or her, have a right to access it and correct or delete it as appropriate
- appropriate security measures must be taken

All the above have important implications for the software engineer!

Exemptions and Exclusions

- applies to computerised records only
- records associated with national security are excluded
- records associated with payroll and accounts are excluded
- records associated with crime and taxation are excluded
- records of a purely domestic or similar nature are excluded
  - domestic financial records
  - records of small unincorporated clubs
  - mailing lists for such domestic purposes

Exemptions and Exclusions (Continued)

- records about the dead are excluded
- records which state intentions, as opposed to facts or opinions are excluded
- medical or social work records are excluded
- statistical or research data, or exam marks are excluded

Everything else is within the scope of the act!

Registration

- you must register information on the personal data held by your organisation
- your entry on the register will be publicly available
- upon payment of a £10 fee a member of the public can request the records that you hold on them in the categories in question

Enforcement

- The Data Protection Registrar is responsible for the enforcement of the Act
- The Registrar can issue enforcement notices, transfer prohibition notices, de-registration notices
- for non-registration you can be fined £2000 in a magistrates court or an unlimited amount in a higher court

Computer Misuse Act 1990

- basic hacking, to obtain access to programs or data without intention to carry out a further act
  - *maximum fine £5000 or prison sentence not exceeding six months*
- obtaining unauthorised access, with intent to commit a further act, such as fraud or blackmail
  - *prison sentence not exceeding five years*
- unauthorised modification of the contents of any computer
  - *prison sentence not exceeding five years*

Intellectual Property Rights

in general you CANNOT secure a patent or obtain patent protection for software

- copyright, easiest form of protection, set out in the Copyright, Designs and Patents Act 1988
- programs are *literary works* within the meaning of this Act
- to acquire copyright the work needs to satisfy the following requirements:
  - originality
  - tangibility
  - qualification
  - ownership

Infringement

- the owner of the copyright has the exclusive right to:
  - copy the work
  - issue copies of the work to the public
  - perform, show or play the work in public
  - broadcast the work
  - adapt the work
- remedies are:
  - damages
  - injunctions
  - account of profits

Breach of Confidence

- a tort and hence a civil matter, requiring few formalities
- the imparted information must have the necessary quality of confidence about it, it must not be public property or in the public domain
- must have been imparted in circumstances indicating an obligation of confidence
- there must be an unauthorised use of that information to the detriment of the party communicating it
- remedies are: damages, injunctions, account of profits

Key Points

- You have been given some hints on areas of the law particularly relevant to the computing professional. It should be complemented by a knowledge of basic business law which should be in the personal armoury of any well educated engineer.
- Being sued for negligence could wreck your career, keep professional standards in mind at all times.
- Software is the result of creative energy and considerable work. Take care to protect your intellectual property and do not abuse that of others.
- If in doubt ask a professional. If you fail to do so you may land up in Court, or worse