

Computer Associates Crosses the Atlantic and Lake Ontario: *Richardson v. Flanders* and *Delrina v. Triolet*

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On February 12, 1993, the Ontario Court of Justice decided *Delrina Corp. v. Triolet Systems, Inc.*, 1993 Ont. C. J. LEXIS 219, a groundbreaking judgment on software copyright issues in Canada. Only a week later, on February 19, 1993, the Chancery Court of the English High Court of Justice issued an equally significant judgment in *John Richardson Computers Ltd. v. Flanders and Chemtec Ltd.* These cases represent the first software copyright decisions in the U.K. and Canada on the merits involving alleged similarities in nonliteral program elements. The nonliteral elements primarily at issue in each case were features of the programs' user interface. The courts fashioned remarkably similar approaches to software copyright infringement issues that rely heavily on U.S. case law, including the recent decision of the Second Circuit in *Computer Associates International, Inc. v. Altai, Inc.*¹ The cases thus mark a growing convergence of U.S., British and Canadian software copyright law. Additionally, the cases demonstrate the viability of *Computer Associates* as a workable standard for determining copyright infringement of computer programs.

The *Richardson* Case: Hands Across the Sea

Facts

The plaintiff company, John Richardson Computers Ltd. (JRC), was formed by a pharmacist who wrote and marketed a program called Video Genie in 1982 for use by U.K. pharmacists in the labelling of dispensed drugs and in the control of stock. This program was rewritten by the defendant, Flanders, a JRC employee, for use on another computer (a BBC microcomputer using a 6502 microprocessor) in 1983.

In 1987, after leaving JRC, Flanders began writing his own pharmacy labelling and stock control pro-

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gram, Pharm-Assist, designed to run on the IBM personal computer (PC) for use in the Irish market. This new program, written in Quick Basic, differed significantly from JRC's BBC program because of differences between the Irish and the U.K. pharmacy markets and because it made use of the significantly greater power and enhanced features of the IBM PC. Flanders began marketing the Pharm-Assist program in Ireland in 1988. When JRC declined Flanders' offer to adapt his new program for the U.K. market for sale by JRC, Flanders formed Chemtec Ltd. to market the program in the U.K. In 1990, JRC brought suit against Flanders and Chemtec, alleging that the Chemtec program infringed JRC's copyright in the BBC program.

Issues

At the beginning of its opinion, the court identified the following set of issues presented for decision:

- Does copyright subsist in a computer program?
- If so, does JRC own the copyright in the BBC program?
- What approach should the court take when no claim has been made of source code similarity?
- Are there "objective similarities" between the BBC and Chemtec programs "which enable the



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