containing the pirated compiler. Given the situation described here, such an act may be copyright infringement because only the owner of an authorized copy is given a statutory right to make archival copies.

Software licenses that require a second party (an OEM) to collect a royalty for a proprietor from a third party (the OEM's customer) are probably legal. However, if an OEM has obtained an unlicensed copy of a proprietor's compiler, the copyright law probably provides no effective relief for the proprietor except in the case of archival or other copying by the OEM. Under the present copyright law, the proprietor cannot compel the OEM to pay a royalty for each use of the pirated compiler, because loading a copyrighted program into a microcomputer is not an act of copyright infringement. Nor can the proprietor compel the OEM's customer to pay a royalty for each use of a program produced with the pirated compiler, because under present law proprietary rights in software do not exist against third parties. Whether a software law should apply to the use of pirated compilers is an interesting and difficult question I will not attempt to answer here. However, I invite IEEE Micro's readers to comment on the fairness of software licenses and on the desirability of such a law.

Courts go 2-1 for copyright protection of ROMed code

Three more decisions on the availability of copyright protection for the physical form of object code (e.g., ROMed code) indicate, 2 to 1, a swing toward allowing protection. In Apple Computer, Inc. v. Franklin Computer Corp., the federal trial court in Philadelphia denied protection to Apple against duplication of systems software in ROMs and on disk. Apple had sued Franklin for marketing the ACE 100, an emulator or alleged copy of the Apple II. The court focused on the utilitarian function of the duplicated object code, in contrast to any function as a medium of person-to-person communication of ideas, and found that the availability of copyright relief for utilitarian products was too doubtful a question to permit the court to grant Apple a preliminary injunction.

In a contemporaneous decision of the federal appellate court in Philadelphia, however, protection was decreed for a video game program loaded in EPROMs. In Williams Electronics, Inc. v. Arctic International, Inc., the court indicated that the object code form of a program should be as protectable as its source code form, which was conceded to be protectable by copyright law. After this decision was handed down—on the same day that relief was denied Apple—Apple asked the trial court in its case to reconsider its decision. But the court found no reason to apply the video game precedent to the facts of the Apple case. It is unclear what the grounds of distinction were. Perhaps they were that the display of the program involved in the Williams case was intended to be seen by persons playing the game, while in Apple the programs were systems software not intended to create a directly viewed output display.

At the other end of the country, in GCA Corporation v. Chance, a San Francisco federal trial court granted protection against duplication of ROMed code, on the ground that the ROM was a copy of the copyrighted source program. The court said:

Plaintiff's source code falls within the protection of the copyright laws as a work of authorship . . .

Because the object code is the decryption of the copyright source code, the two are to be treated as one work; therefore, copyright of the source code protects the object code as well.

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