Under present Section 117 of the Copyright Act, when a computer owner sells his computer to a third person, he may sell unmodified software that he owns and uses with the computer, but he may not sell any enhanced versions that he has made, unless the software seller has expressly authorized him to do so. (IBM, for example, does expressly authorize purchasers of PC DOS to “modify the program and/or merge it into another program” and then transfer all copies to a third party who agrees to accept the terms of the original license to the purchaser. But IBM’s practice is not the general rule.) In contrast, under proposed Section 1051 customers are permitted to resell code in original or modified form. But they are not permitted to sell more disks or other products than they bought from the computer software copyright owner in the first place.

Since the copyright owner got his price when he sold the original copy of the code, it seems fair to let the customer sell the modified copy of the code, as long as he does not increase the number of copies over the number on which royalty was paid. But a counter-argument can be made—that enhancing an 8-bit program so that it can run on a 16-bit machine increases the value of the computer program so much that the original seller could have charged a higher royalty if he had made and marketed the enhancement. A further argument is that the originator should be allowed to be the only seller of a 16-bit version so that he can preserve the monopoly to which he is “entitled.” Probably the risk of “injustice” to the computer program seller in the latter situation is less than that to the customer if he is kept from reselling whatever he has, but reasonable persons could take a contrary view. Finally, proposed Section 1051, like present Section 117, provides that customers may make archival copies but may not sell them or use them for nonarchival purposes.

**Inapplicability.** Section 1052 makes some parts of the present copyright law inapplicable to computer software copyright. For example, present Section 117 is superseded by proposed Section 1051, which provides other rights for owners of disks, ROMs, or other codes. The remedy provisions of present Sections 503 to 506 and of Section 509 are superseded in the proposed law by Sections 1041 to 1045.

Some of the remedy sections of the ordinary copyright law seem highly inapplicable to the computer software field. Section 506 of the ordinary copyright law makes it a felony to commit some acts of copyright infringement. Sections 503 and 509 permit allegedly infringing material, and equipment used for infringing purposes, to be seized upon a secret application to the court by the copyright owner. Thus, infringing ROMs, PROM burners, and computers used with them apparently may all be seized, impounded, and later destroyed. Such relief seems excessive and unneeded.

The matter of inapplicability needs a more thorough study than that made here. To debug the proposed computer software copyright law,

- each interface (entry or exit point) between the amendment and the preexisting copyright law should be identified;
- an effort to determine the interaction should be made, and the results evaluated for sensibleness;
- defects should be eliminated, either by making the prior law inapplicable to such situations or by providing a special modification; and
- reiteration of the process should follow until reasonable confidence in the system is realized.

**Relation to other laws.** Generally speaking, it is preferable not to alter existing rights. To the extent that present copyright law is interpreted to protect computer programs as “literary works” and physical embodiments as “copies of literary works,” computer programs enjoy a 75-year copyright. Should the new computer software copyright law supersede these rights for preexisting computer programs, or should it apply only to those computer programs hereafter created? My inclination, if all other things are equal, would be to replace all existing rights in computer programs with ten years of rights under the new system. Otherwise, things would be uncertain to some degree for up to 65 years. This uncertainty may have little practical significance, however, if rights in most old computer programs simply fade away into oblivion because the computer programs fall into disuse. In that case, there is little point in trying to divest the owners of “literary work” copyrights in old computer programs of their 75 years of rights, because the effort would possibly create unnecessary and counterproductive controversy.

Another type of supersession of law deserves attention. The software business is inconvenienced or burdened by the variations in law from state to state, which make it difficult to develop a program for licensing or marketing on a nationwide basis. If this is a significant business problem, it would be preferable to have a uniform body of federal law governing the rights of software proprietors and users, as is now the case for labor-management contracts. Section 1053(b) is a proposal to this effect (see left).