Legislation to enforce "shrink-wrapped" license agreements introduced in California, Louisiana

A multimillion dollar drain on California's economy may have come a step closer to being plugged as Assemblyman Gray Davis (Democrat-Los Angeles) announced action to halt the "piracy and pilferage of computer software." 

At an April 5th news conference in Los Angeles, Davis announced plans to introduce legislation to halt the illegal copying of software, projected to cost software publishers $700 million nationally in 1984. California's share of the loss was estimated at $140 million. Total US software revenues are projected at $3.5 billion for 1984.

The news conference, held at the Los Angeles Century Center during Comdex—a nationwide computer manufacturer's exposition—was sponsored by Vault Corporation of Westlake, California. Vault, which develops and markets copy protection systems, previously worked with legislators and Secretary of State James H. Brown of Louisiana to have a similar bill, called the "Software License Enforcement Act," introduced in that state's current legislative session. Assemblyman Davis, who represents Los Angeles' west side and parts of the San Fernando Valley, said the legislation is linked to a license agreement printed on the wrapper or inserted in a software program package. In opening the package, the software purchaser becomes a licensee of the company that produced the software. Such license agreements typically prohibit any copying, modification, transfer, sale, or rental of the software.

Davis noted, however, that serious questions exist as to whether such license agreements are fully binding and enforceable. At least one alleged software pirate in California claims "they're not worth the paper they are written on," he said.

"This bill is intended to strengthen significantly the ability of software publishers and distributors to enforce their rights," Davis said. "It does make it clear that these so-called 'shrink-wrapped' license agreements would be enforceable under California law."

W. Krag Brobey, Vault chairman, noted that although computer software is protectable under US copyright law, the existence of an enforceable license agreement, backed by state law, "is critical in preserving some of the copyright owner's rights under copyright law."

Attorney Allan Grogan of Blanc, Giburne, Peters, Williams & Johnston, who prepared the California draft legislation, said, "The bill strikes a balance between the legitimate interests of the software industry in preventing piracy and the legitimate interests of the customers who acquire copies of software pursuant to license agreements. Only those provisions which may significantly enhance the ability of software publishers and distributors to enforce their rights under trade secret law and copyright law are affected."

Essentially, both the California and Louisiana bills state that if a party acquiring the software uses it, or opens the package, he will be deemed to have accepted certain specific terms, if those terms are contained in the accompanying license agreement, making the person a licensee of the software publisher.

April 1984