

# Bill Safeguards Data Programs

By ANGEL CASTILLO

For the thousands of men and women in the United States who create and write computer programs — and who sometimes see their creative efforts, and potential economic rewards, pirated by unscrupulous competitors — help is on the way.

They will soon be able to obtain specific legal protection for their programs under the Federal copyright law, a development that is expected to make it easier for the multibillion-dollar computer software industry to openly market its wares and for the people who write the programs to receive the economic benefits of their efforts.

The program writers' creative work — embodied in an estimated one million programs each year — is the essential ingredient of the fast-growing business of selling or leasing software. Annual revenues are estimated to be between \$2 billion and \$4 billion in the United States.

Three years after a major revision of the nation's copyright law went into effect, Congress has finally enacted legislation to give computer programs, which had been left in legal limbo in the revised text, the specific protection of that law.

## Signing Expected This Month

The Computer Software Copyright Act of 1980, passed by Congress last month as part of a bill that amends the Federal patent laws, was received by the White House on Monday. The office of Representative Robert W. Kastenmeier, Democrat of Wisconsin, a key sponsor of the bill, said President Carter was expected to sign it into law later this month.

The legislation is aimed at protecting the rights of individuals and corporations engaged in the development, sale and leasing of computer programs.

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Bob Gale

There are believed to be between 300,000 and 500,000 computer program writers throughout the country, many of them working as independent contractors or at small companies.

A House report accompanying the bill said the new law was not meant to pre-empt or restrict additional legal protection that state law may give to software, including restrictions on un-

fair competition or protection for trade secrets.

A spokesman for the International Business Machines Corporation said the new law "should encourage investment in the creation of new programs and the open marketing of programs previously developed."

Similar favorable reactions were  
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# Bill Aims to Protect Computer Programs

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voiced by spokesmen for the Computer and Business Equipment Manufacturers Association, the Information Industry Association and the Association of Data Processing Service Organizations, major industry organizations with a stake in the protection of software rights. They said, however, that the bill was only a first step and additional legislation would be necessary.

## A Set of Instructions

A computer program, sometimes thousands of pages in length, is a set of instructions, devised by a program writer, that directs a computer in performing automated tasks with the help of one or more mathematical formulas known as algorithms. The bill passed by Congress defined a computer program as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result."

The individual program instructions, in machine or symbolic language, will be protected from unauthorized copying, but not the algorithms on which a program is based, as such formulas are considered "ideas" not covered by the copyright law.

The Congressional action adds computer programs to the list of "writings" in which exclusive rights may be granted under the Constitution for "limited times." Under present law, the rights generally last during the author's lifetime and for a further 50 years after his death,

The copyright law gives the owner of a work the exclusive right to copy it or transfer rights in it, including sale and leasing arrangements. Piracy by others of copyrighted material may be punished by fines, civil damages or criminal penalties. A work does not have to be registered with the Copyright Office to be protected, and the protection extends to all covered works as soon as they are put into "any tangible medium of expression."

Although Congress totally rewrote the copyright statutes in 1976, the status of computer programs under the new law, which took effect Jan. 1, 1978, was left unresolved while a national commission appointed by President Ford in 1975 studied the complex technological issues. Industry witnesses told the commission that clear statutory protection for computer software would induce increased investment in the development of programs and result in a more rapid advance of the technology and a more competitive software industry.

The protection of the creative effort and money invested in developing computer programs has long been a vexing legal problem.

Some program writers and owners have sought protection under the Federal patent laws, but those statutes do not specifically mention computer programs as patentable. In three cases it has considered since 1972, the United States Supreme Court has denied patent protection to computer programs, although without saying that such protection would never be available.

This term the Court has accepted for review two companion cases raising the question anew. During arguments before the Court in October. Lawrence G. Wallace, a Government attorney representing the Commissioner of Patents, stated that the Federal Government considered copyright a more appropriate legal protection for computer software than the patent laws.

The importance of copyright protection for software was illustrated recently in a case litigated in the Federal courts in Chicago. Data Cash Systems Inc., a small manufacturing concern based in Clearwater, Fla., accused JS&A Group Inc., a Chicago mail-order marketer, of selling a computer chess game that, according to expert testimony, used a program identical to one used in a similar chess game distributed by Data Cash. The Data Cash Systems game was introduced at \$169 retail in the fall of 1977, while JS&A began selling its similar game shortly thereafter for \$99.

Data Cash Systems lost its copyright infringement claim in a decision rendered last Sept. 2 by the United States Court of Appeals for the Seventh Circuit. According to specialists in copyright law, if the bill just passed by Congress had applied to the case, the result likely would have been a successful infringement claim.