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Computer Law

George S. Takach (Toronto: Irwin Law Inc., 2000, 2nd edition)

David T.S. Fraser†

George Moore observed in 1965 that the density of transistors that could be packed onto an integrated circuit was doubling every eighteen months. George Takach briefly discusses “Moore’s law”, as it came to be known, in the introduction to his second edition of *Computer Law* as an illustration of the rapid pace of technological change inherent in this area of the law. This second edition of Takach’s book may demonstrate that the law is catching up with the technology. As chips get smaller, the volume and complexity of computer law apparently grows. Takach’s seminal work has doubled in size in approximately five years, and appropriately so. This may not be the pace of Moore’s Law, but it likely is the fastest moving area in law.

As part of the Irwin Law “Essentials of Canadian Law” series, *Computer Law* ably fills the need for a work that is simultaneously broad and concise. Virtually every characteristic of the first edition lives on the second, but more so. *Computer Law* is an up-to-date text for computer law courses and serves as a serious jumping-off point for practitioners and researchers. Throughout the book, Takach develops what he posits as the four dynamics of computer law:

Most important is the rapid, almost torrid, pace of technological change, not only in terms of development and release of new high-technology products, but also in terms of the new delivery systems of traditional content, such as the Internet. A second dynamic is the elusive nature of information and the fact that it derives its economic value from its context; . . . A third dynamic is the melding of the two spheres that hitherto were distinctly private or public, as technological developments blur the line between them; . . . The final dynamic is the erosion of the borders between matters national and international. . . . [T]he Internet has since confirmed high technology’s contempt for geographic frontiers.¹

For example, the sixth chapter, entitled “E-commerce contract and evidence legal issues”, begins before the common law, leads through the *Statute of Frauds*,

and lands firmly in the present with discussions of “click-wrap”, “browse-wrap” and “shrink-wrap” contracts. Electronic evidence issues and law reform are also thoroughly canvassed. All four dynamics are apparent and intermingled as technology leads legal changes, fed in part by developments outside Canada.

Contract law is not the only area in which the law has rapidly evolved and accommodated the technological revolution. Each of the chapters of *Computer Law* has been significantly revised and updated to reflect the latest cases and matters at issue. Interestingly, the most recent expansion and development of computer law has coincided with the supposed decline of the technology sector. In many respects, technology has gone from glamorous to routine. Electronic mail (even the usually welcome, solicited kind) has surpassed paper-based mail in volume for most people. Many of today’s early adopters have already abandoned e-mail for instant messaging. The humble VCR has been supplanted, very quickly, by DVD players while many are simultaneously adopting personal digital video recorders. The tech sector may have retreated to the background for many — lawyers included — but it has certainly not gone away. Instead, technology has gone mainstream, from the classroom to the courtroom.

For many observers, new technology has had the greatest impact upon intellectual property law. This chapter alone has swelled to 125 pages in Takach’s second edition. The courts have repeatedly determined that intellectual property rights of creators do extend into cyberspace, a holding that has not apparently dissuaded the hordes who share millions of MP3 files and digital copies of Hollywood blockbusters daily. The Napster litigation grabbed the headlines in Canada and the United States, while less exciting but equally important IP decisions have come before the courts in Canada. *Computer Law* concisely sets the context for two key

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cases that are winding their way to the Supreme Court of Canada. The so-called *Tariff 22* decision², related to the proposed payment of royalties for Internet retransmission by Internet service providers, is now before the Supreme Court for final determination where, it is hoped, we will gain a better sense of certainty with respect to the liability of intermediaries for common actions such as “cacheing”. The low-tech case of *CCH Canadian Ltd. v. Law Society of Upper Canada*³, also before the Supreme Court from the Federal Court of Appeal, is similarly expected to have wide repercussions in the area of computer law. This case deals with, among other things, the measure of creativity that is required for a work to gain copyright protection and the boundaries of protection available for compilations.

Notes:

¹ George S. Takach, *Computer Law* (Toronto: Irwin Law Inc., 2003) 2nd ed. at 2.

² *Re SOCAN Statement of Royalties, Public Performance of Musical Works 1996, 1997, 1998* (1999), 1 C.P.R. (4th) 417 (Copyright Board). Leave to

In this second edition, Takach continues to reconcile the competing demands of comprehensiveness and brevity. The doubling in size to approximately 700 pages does not suggest that this edition is any less concise. On the contrary, it would have been very easy for Takach to triple or quadruple this volume. Instead, he has focused on the leading themes, the leading cases, and the overall trends, while firmly linking the present state of the law within the development of technology. In short, Takach has provided the *Essentials of Canadian Computer Law* in a form that will surely find its way into onto the shelves of practitioners and students of this area.

appeal from the Federal Court of Appeal granted by the Supreme Court of Canada (March 27, 2003).

³ (2002), 212 D.L.R. (4th) 385 (F.C.A.).