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# TECHNOLOGY

## Lawsuit filed to prohibit copyright protection of software

Tuesday, December 14, 2004 Posted: 10:46 AM EST (1546 GMT)

**WASHINGTON (Reuters) -- Computer software should not be protected by copyright laws designed for music, literature and other creative works, according to a lawsuit filed in a U.S. court in San Francisco.**

Intellectual-property consultant Greg Aharonian hopes to convince the court that software makers can protect their products adequately through patents, which provide more comprehensive protection, but are difficult to obtain and expire in a shorter period of time.

The case seeks to clarify which laws the \$100 billion U.S. software industry uses to protect its products. Currently, software makers like Microsoft Corp. use both copyright and patent laws to protect their creations, as well as "clickwrap" agreements that stipulate terms of use.

An official with a software-industry trade group said not every software product is protected by patents.

"If you eliminated the ability to sue somebody for copyright infringement, you would eviscerate our ability to go against pirates," said Emory Simon, counselor for the Business Software Alliance, which estimates that U.S. businesses lost \$6.5 billion last year to piracy.

Aharonian argues in his complaint that software copyright laws violate the right to due process enshrined in the U.S. Constitution because they do not provide



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clear boundaries for appropriate use. That means industry players and courts do not have a clear idea of the rules.

"Until you're sued and a judge makes up his mind about what is the idea and expression (at stake), no one knows," Aharonian said in an interview.

In one well-known case, Lexmark International Inc. invoked copyright laws to prevent a competitor from making computer circuits that allow cheaper inkjet cartridges to work on its printers.

One court ruled in Lexmark's favor in 2002, but an appeals court in October overturned that decision and allowed rival Static Control Components to sell its inkjet cartridge parts.

Aharonian said in his complaint he does not know if he personally has run afoul of copyright laws because he has set up a database of thousands of computer programs to help software companies figure out if their products infringe on existing material.

If the owner of any of those programs decides to sue, he could face hundreds of thousands of dollars in penalties and possible jail time.

While patents protect an idea -- say, a way to direct traffic on the Internet -- copyrights only protect the expression of that idea, usually the written code that tells the computer what to do.

Inventors applying for a patent have to prove their idea is new and original, a process that typically takes years and costs thousands of dollars. Patents expire after 20 years.

Anybody who scribbles a poem on the back of a cocktail napkin, by contrast, is protected by copyright laws for 70 years after their death, or 95 years if the work is owned by a corporation.

Both the U.S. Patent and Trademark Office and the Copyright Office began accepting applications for computer programs in the 1960s. Congress included software in copyright law in 1976.

An official with the U.S. Copyright Office declined to comment on the case, but said copyright protection was vital for U.S. software makers.

"I think it is fair to say it is the primary means of protecting U.S.-based software," said Kent Dunlap, principal legal advisor to the Copyright Office's general counsel.

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