

2025-2 Highlights

Computer Software Protection/Liability/Law/Forms discusses issues relating to computer software and the often–obscure intersections between intellectual property law and contract, tax, and consumer law.

The work explains the legal, business, and tax issues affecting software-related dealings and examines intellectual property, contract, tax, regulatory, tort, and consumer law. Software publishing, custom development, and licensing are also discussed. This work also provides more than 100 customizable sample forms and documents, accompanied by commentary and cautions.

Topics covered in this publication include:

- Avenues of appeal if the U.S. Copyright Office refuses to register copyright claim
- Dangers of software developers losing trade secrets when state and local governments license software
- The final Shareware Regulations governing the recordation of documents pertaining to computer software
- Problem of “false positive” indications from computer virus detection programs
- Income characterization and tips on how to qualify for capital gains treatment
- Restrictive agreements in employment contracts
- Database protection
- Data privacy regulation
- Source code escrow arrangements
- International licensing and the sale of software

New features and recent developments in this 2025-2 update include:

- **AI and copyright:** Confirms that purely AI generated works lack U.S. protection absent human authorship; tracks active fair use challenges to AI training and surveys new EU and other disclosure/training rules. See §§ 2:1, 17:9.
- **Software fair use:** Reaffirms API reuse for interoperability and emphasizes transformative use in software and early AI rulings. See § 2.
- **DMCA § 1201 (2024):** Summarizes the latest exemptions, including denial of remote access preservation for games, and notes continued proposals for AI model analysis research. See § 2:16.
- **Remedies and enforcement:** Adds practical guidance on using the Copyright Claims Board for small software disputes and

covers new lawsuits alleging AI output infringement. See § 2:222

- **Open source compliance:** Explains emerging standing for downstream purchasers/redistributors to enforce license terms, heightening compliance needs and the importance of clear reps and warranties; reflects the rise of automated diligence tools (e.g., LiDetector, LiResolver). See §§ 7:4, 7:19.
- **Consumer transparency and digital transfers:** Discussion of new statutes in California, Virginia, and Texas that impose data privacy requirements on database operators. See § 17:52.
- **Data use and scraping:** Updates the CFAA boundaries for scraping public websites and maps new state privacy obligations for database operators (CCPA, Virginia CDPA, TDPSA, CA Delete Act). See § 17:18.
- **Databases and AI:** Addresses misappropriation/free riding doctrines for proprietary databases and analyzes how LLMs affect data provenance and originality. See § 17:14.

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