

2026-1 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 2026-1 update include:

- **Patent protection:** Discusses patent claim drafting strategies for software and computer-implemented inventions, focusing on how to navigate the “printed matter” doctrine and § 101 subject matter eligibility requirements—particularly by distinguishing stored computer data from unpatentable printed matter and structuring claims around functional relationships between data and the underlying system. § 3:12.
- **Post-Alice cases:** Discusses how bare software code and mathematical algorithms are generally considered abstract ideas under § 101, but can achieve patent eligibility when claims are directed to a specific process executed on a computer that

performs concrete operations—and provides practical drafting guidance, example claims, and an overview of relevant PTO guidance to help practitioners frame software and AI inventions as improvements to computer technology rather than unpatentable abstractions. § 3:56

- **Contract formation:** Analyzes the enforceability of electronically formed contracts increasingly depends on the design of the online interface rather than the validity of electronic signatures themselves, with recent appellate decisions focusing on whether users received reasonably conspicuous notice of terms and unambiguously manifested assent—illustrated through contrasting outcomes in cases such as *Chabolla*, *Cruz*, and *Dahdah*. § 16:4
- **Internet gambling:** Examines the continued expansion of the legal sports-betting market following *Murphy v. NCAA*, while also addressing the growing regulatory and litigation scrutiny applied to software-based monetization mechanics such as loot boxes—highlighting recent FTC and state enforcement actions as evidence that gambling-related legal analysis must now extend beyond traditional online casinos to encompass any software feature combining consideration, chance, and real-world economic value. § 16:15.
- **AI and NFTs:** Surveys the copyright implications of two emerging digital technologies—generative AI and non-fungible tokens (NFTs)—covering the Copyright Office’s ongoing AI study and multi-part report, the fair use debates surrounding AI training data and outputs, and the findings of the joint USPTO/Copyright Office NFT study, which concluded that existing intellectual property statutes are sufficient to address NFT-related infringement without requiring legislative changes. § 18:55.

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