

Clone makers' arguments

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Softklone, Mosaic Software, and Paperback Software, the companies sued for copyright infringement by DCA/Crosstalk and Lotus, respectively, claim that using the menu structure and general screen display of their competitors' programs violates no copyright. All three firms said that they were simply using de facto industry standards.

(DCA/Crosstalk and Lotus representatives declined to comment while the cases were under litigation.)

"At issue in our dispute with DCA/Crosstalk is whether the similarities between the status screen of our data communications program Mirror and that of their program Crosstalk XVI result in copyright violation," said Softklone's Keith Ackerman in an interview held on the Computer Press Association's electronic-mail network. "Our goal from the beginning was to improve on DCA/Crosstalk's self-proclaimed industry standard.

"In our case, none of the screen outputs of Crosstalk XVI qualify as audiovisual works. No audiovisual copyrights are claimed. At issue is a claimed textual copyright to a single screen display that is nothing more than a form for inputting data to a computer program. It has always been our contention that this input form is not subject to copyright protection," Ackerman said.

In a separate telephone interview, Richard Bezjian, Mosaic's president, agreed with this interpretation of the copyright laws. "We have always believed we haven't infringed copyright," he said, although he admitted that "our menus duplicate their menus."

While Ackerman would not speculate on why DCA/Crosstalk sued Softklone, Bezjian asserted that "it is my personal belief that Lotus' intent is to basically make Mosaic spend a lot of money and maybe even burn [Mosaic] out. Their motive is more competitive. They're basically establishing a monopoly."

Bezjian characterized the suit as a \$250,000 attack (his estimate of the cost to defend the case) brought about because "the market has accepted our product. Lotus is now realizing this."

Mosaic's Twin was on the market for 18 months before Lotus filed its suit claiming Twin violated Lotus 1-2-3's copyright. Both Mirror and Twin have sold well in their respective markets.

Twin's \$99 price is a fifth of 1-2-3's cost, and Mosaic sold about 120,000 copies of Twin in 1986, said Michael Pineo, Mosaic's vice president of marketing. Mirror sold 33,000 copies in 1986, a Softklone spokesman said. (Lotus, Paperback, and DCA/Crosstalk would not disclose their sales figures).

Should Lotus and DCA/Crosstalk win their separate suits, "the chilling effect will take place for a lot of people," Bezjian said. Indeed, he added, "if this thing continues, we could be in trouble."

"If Lotus were to win the case, the software industry would go into the Stone Age," said Adam Osborne, Paperback Software's president.

Mosaic and Softklone unabashedly sell their programs as clones of their competitors. The Twin and Mirror program names and the constant comparisons to 1-2-3 and Crosstalk make this clear. Paperback calls its program a work-alike. All three companies say their versions are better than the originals.

For Lotus, at least, this has introduced another issue in its suit against Mosaic. In its press release about its suit, Lotus claimed that Twin is less capable than 1-2-3 and thus presenting Twin as equivalent to 1-2-3 could damage 1-2-3's reputation.

While the three firms stand to lose a lot of money if the cases go against them, Softklone is in the most precarious position. It intended to develop other clone programs, including a database manager, until DCA/Crosstalk sued it, Ackerman said.

Mosaic produces several other, original programs that it could continue to produce no matter the final decision, Bezjian said.

Paperback's other main product, VP Info, produces data files compatible with the dBase database management program but is not a work-alike program, Osborne said. Paperback used the Lotus interface as its own standard because of its widespread acceptance, he added. When asked if Paperback was considering other work-alike products, Osborne responded, "There are no other industry standards worth following."