

**UNAUTHORISED ADAPTATION OF COMPUTER PROGRAMMES - IS  
CRIMINALISATION A SOLUTION? *HAUPT T/A SOFTCOPY V BREWERS  
MARKETING INTELLIGENCE (PTY) LTD 2006 4 SA 458 (SCA)***

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## SUMMARY

In *Haupt t/a Softcopy v Brewers Marketing Intelligence (Pty) Ltd 2006 4 SA 458 (SCA)* Haupt sought to enforce a copyright claim in the Data Explorer computer programme against Brewers Marketing Intelligence (Pty) Ltd. His claim was dismissed in the High Court and he appealed to the Supreme Court of Appeal. The Court held that copyright in the Data Explorer programme vested in Haupt. Haupt acquired copyright in the Data Explorer programme regardless of the fact that the programme was as a result of an unauthorised adaptation of the Project AMPS programme which belonged to Brewers Marketing Intelligence (Pty) Ltd.

This case note *inter alia* analyses the possibility of an author being sued for infringement even though he has acquired copyright in a work that he created by making unauthorised adaptations to another's copyright material. Furthermore, it examines whether or not the law adequately protects copyright owners in situations where infringement takes the form of unauthorised adaptations of computer programmes. It is argued that the protection afforded by the *Copyright Act 98 of 1978 (Copyright Act)* in terms of section 27(1) to copyright owners of computer programmes is narrowly defined. It excludes from its ambit of criminal liability the act of making unauthorised adaptation of computer programmes. The issue that is considered is therefore whether or not the unauthorised adaptation of computer programmes should attract a criminal sanction. In addressing this issue and with the aim of making recommendations, the legal position in the United Kingdom (UK) is analysed. From the

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analysis it is recommended that the *Copyright Act* be amended by the insertion of a new section, section 27(1)(A), which will make the act of making an unauthorised adaptation of a computer programme an offence. This recommended section will close the gap that currently exists in our law with regard to unauthorised adaptations of computer programmes.

**KEYWORDS:** Copyright; *Copyright Act*; copyright infringement; computer programmes; unauthorised adaptation