

News that Microsoft is suing Comet for copyright infringement apparently caused Kesa's shares to fall 8% on the day. Comet says that it had the right to manufacture recovery disks because Microsoft had ceased to make the software available. Comet's position has been said to be weakened because Comet charged for those discs and (assuming for the sake of argument that it did copy Microsoft software), Comet will have to prove that it can rely exactly on one of the exceptions to copyright. These will probably have to be the right to make a backup copy; and the right to decompile for interoperability - presumably Microsoft's licence to users precluded anything else. It may even be necessary to prove that the exceptions allow backups or de-compilation before the user acquires the original software. The case though may also help to establish whether consumers still have an implied licence to repair products -- which the high profile case of British Leyland vs Armstrong decided before the 1988 Copyright legislation came into force. So we may have to remind ourselves how, if a Morris Marina's silencer failed, you could retrofit one made by somebody else.

Nigel Urwin
Lee Bolton Monier-Williams

5 January 2011

Lee Bolton Monier-Williams
1 The Sanctuary, London SW1P 3JT

Tel: +44 (0)20 7222 5381 Fax : +44 (0)20 7799 2781
www.lbmw.com

This article is intended as a general commentary. It does not represent advice, and is not intended to replace the need to consult solicitors on a specific issue or transaction. No liability is accepted for any inaccuracies or omissions.