

To: All Employees

From: Edward M. Esber, Jr.



Dated: November 18, 1988

Re: Legal action taken by Ashton-Tate against Fox Software, Inc. and The Santa Cruz Operation, Inc.

Ashton-Tate today filed suit against Fox Software, Inc. and The Santa Cruz Operation, Inc. ("SCO") in United States District Court in Los Angeles. The suit alleges that the computer software product FoxBASE+ infringes Ashton-Tate's copyrights in its dBASE II, dBASE III and dBASE III PLUS software products, and seeks to prohibit Fox Software from proceeding with its threatened infringement of Ashton-Tate's copyrights in dBASE IV. The suit also seeks recovery of monetary damages, recovery of profits derived by Fox and SCO from their allegedly infringing activities, and injunctive relief to prohibit further reproduction and distribution by Fox and SCO of infringing products.

Ashton-Tate contends that FoxBASE+ has copied in substantial detail the unique form of expression embodied in the dBASE products, including the novel look and feel of the dBASE user environment. We believe that Fox Software and SCO have violated our legal rights by copying screens and menus, the dBASE language, and the entire sequence, order and arrangement of our programs as they interact with the computer user.

This suit is an effort by Ashton-Tate to protect its valuable legal rights in the dBASE products. Because of the importance of this legal proceeding, it is imperative that all employees adhere to the following rules and procedures:

1. Unless specifically authorized in writing by Ed Esber or Luther Nussbaum, no employee should make any comments regarding the lawsuit to customers or other parties outside Ashton-Tate. Instead, refer any inquiries to the Ashton-Tate legal dept., or the following executives as appropriate: Stan Witkow, Ed Esber, Luther Nussbaum, Peter Boot, Floyd Bradley or Lydia Dobyns.

2. If questioned about the suit by anyone outside Ashton-Tate, employees should simply state that a lawsuit has been brought by Ashton-Tate against Fox Software and SCO for copyright infringement, that it is

now being handled by the court system, and that, at the request of Ashton-Tate's legal department, you are not in a position to comment further.

3. Unless specifically authorized in writing by Ed Esber or Luther Nussbaum, there should be no communications of any kind between any Ashton-Tate employees and any employees or persons affiliated with Fox Software or SCO. If anyone associated with either of these companies attempts to contact you, you should immediately inform your supervisor or the Ashton-Tate legal department.

4. Ashton-Tate intends to protect its legal rights vigorously in the courts. You should not make any comments about Ashton-Tate's claims against Fox or SCO or make any disparaging remarks about Fox or SCO to anyone outside Ashton-Tate.

I have attached an open letter to the software community which provides additional explanations regarding this legal action.

Thank you for your cooperation and support in this matter.



To: ALL EMPLOYEES

From: Corporate Communications

This is a copy of the open letter that goes with the All-Employees memo that you received this morning regarding the law suit against Fox Software. We are sorry for the inconvenience.

November 18, 1988

AN OPEN LETTER TO THE SOFTWARE INDUSTRY

Ashton-Tate recognizes that its initiation of legal action against Fox Software, Inc. and The Santa Cruz Operation, Inc. for copyright infringement will stimulate discussion within the software industry. Thus, we would like to explain briefly what this suit is about.

By this action, Ashton-Tate is seeking to protect, against copying by others, the original and creative expression of its software products. Ashton-Tate developed the design of its dBASE software products through the expenditure of substantial time, effort, money and ingenuity. The imaginative program design resulting from our research and development and our developers' creativity should not be plagiarized by those who did not take the risks or exhibit the creative originality that produced these products.

This dispute boils down to whether an author who produces original work is entitled to the rewards and benefits of that authorship, or whether those rewards and benefits can be appropriated by those who did not produce the creative expression that gives the work value. It is the same issue that arises when the creative expression of a book, musical composition or film is copied without authorization. We believe the copyright law gives a clear answer to this issue -- whether we are dealing with a book or a computer program, original authorship is to be protected.

The market for database management system software products is a dynamic and competitive environment, and Ashton-Tate welcomes the challenge of competing in that marketplace against other companies which have risked their time and resources to develop software products offering original and innovative approaches to meeting the needs and desires of computer users.

When a company does not undertake to produce its own original product, but instead copies the unique and valuable expression of one of our products, however, we must draw the line.



Legal protection has been accorded to software products to protect the efforts of those designers and developers who invest their time and who are creative enough to produce original ways to express their ideas in software. The law rewards such original work in order to foster innovation by providing developers with financial incentives and rewards for the risks they undertake and the ingenuity they exhibit. Those rewards should not be misdirected to, or misappropriated by, parties who have not undertaken fresh and original design work, but have instead simply copied the results of research, development and creative authorship undertaken by others.

Ashton-Tate has devoted enormous time, research, resources and creative effort to the design and implementation of an original and creative application development and data management environment to meet the needs and desires of our customers. The results of these efforts are reflected in the unique user environment of dBASE II, dBASE III, dBASE III PLUS and dBASE IV. Through the extraordinary efforts and talents of our program developers, and the substantial resources and time we have poured into research and development, Ashton-Tate has designed and marketed a series of database management products which reflect and embody imaginative and original forms of expression.

It is these creative forms of expression which distinguish Ashton-Tate's products from those of other companies and which have helped to make Ashton-Tate a leader in the market for database management software. It is also these original and creative forms of expression which are protected by copyright law, and which we contend have been copied by Fox Software.

Ashton-Tate believes that the structure and organization of the dBASE programs are protectible under copyright law, including the screens, menus, file structures and dBASE language embodied in these products. Some developers, such as university researchers or developers working under government contract, have placed their programs and program languages in the public domain, as have some commercial enterprises. Ashton-Tate, however, has always sought to preserve its rights under copyright law in all aspects of the dBASE family of products, including the dBASE programming environment which constitutes an integral part of our products.

Our lawsuit against Fox Software and The Santa Cruz Operation does not claim protection for or ownership of the concept or idea of a program that stores and manipulates data. FoxBASE+ is not just another database management system offered by a competing vendor; rather, FoxBASE+ copies substantial and key elements of the creative mode of expression of dBASE III PLUS, including screens, menus and language, as well as the overall structure, sequence and arrangement of dBASE III PLUS as it interacts with the user. Instead of designing and implementing its own original user environment, Fox Software simply copied the creative expression of Ashton-Tate's program design, thus gaining the benefits of Ashton-Tate's research



and development, creative authorship and customer good will, without expending the time, money and creative effort which we devoted to our program development efforts.

Many competitive database management products offer computer users different approaches to the efficient management and storage of data. Under copyright law, this multiplicity of approaches is welcomed and encouraged, as authors who create original and innovative ways to express their ideas and concepts are entitled to legal protection from those who seek to profit by copying that valuable and original expression. By the legal action taken against Fox Software and SCO, Ashton-Tate is simply exercising its legal rights to protect the unique form of expression embodied in its programs from those who seek to benefit by copying the creative work of Ashton-Tate's developers instead of devoting time and resources to produce their own original works of authorship.

United States companies have always enjoyed a leadership position in the development and implementation of technology because we have been innovative leaders in the development of original technology rather than pedestrian copiers of the creative work of others. Our legal system has encouraged that innovation by rewarding those willing to be creative, to take risks, and to devote resources to the creation of new and original products that offer imaginative solutions to an ever changing marketplace.

Ashton-Tate intends to meet that challenge by continuing to offer fresh, innovative and original software. We in the software industry cannot encourage or condone those who copy the original and creative expression of others.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward M. Esber". The signature is fluid and cursive, with a large, stylized initial "E".

Edward M. Esber  
Chairman and Chief Executive Officer