

dBase Language Lawsuit Chronology

[Esber](#) was upset with the companies that cloned dBASE products, but was always supportive of the third-party developers who he viewed as an important part of the dBASE ecosystem. He did not believe nor support companies that cloned dBASE and leveraged the millions of dollars his shareholders had paid to market dBASE. Starting with minor actions, he eventually went to great lengths to stop cloners with cease-and-desist letters and threats of legal action. At one industry conference he even stood up and threatened to sue anyone who made a dBASE clone, shouting "Make my day!". This sparked great debates about the ownership of computer languages and chants of "innovation not litigation".

Ultimately, in order to protect the Ashton-Tate shareholders multi-hundred million dollar investment in the development, marketing and sales of dBase, the Ashton-Tate Board of directors directed the CEO to file a lawsuit against clone dBase maker FoxPro.

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 inquires 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

The dBase community reacted negatively, many amicus briefs were filed in support of FoxPro-some from people who clearly had a vested interest in the outcome. Chants of “Innovation not Litigation” were seen everywhere. Many times these chants come from those who are the pirates of technology or the violaters.

The courts were wrestling with the issues of copyrighting software and were clearly not informed enough in emerging technologies. Complicating this issue on this case, the Judge delegated the ruling to his court clerks who might have been overly influenced by the loud voices of the Fox supporters. He ultimately ruled against Ashton-Tate.

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**ASHTON-TATE RESPONDS TO RULING
IN COPYRIGHT INFRINGEMENT CASE**

TORRANCE, Calif., Dec. 13 -- In response to a Dec. 12 ruling by U.S. District Judge Terrence Hatter Jr. regarding Ashton-Tate's copyright infringement lawsuit against Fox Software, Inc., Ashton-Tate Corporation (NASDAQ:TATE) today issued the following statement:

We were extremely surprised by yesterday's ruling. We were expecting the judge to hold a hearing as scheduled next Monday, Dec. 17, regarding our motion for summary judgment.

We believe the court's ruling was in error, and we are confident that our copyrights are valid. No final judgment has been entered by the court, and we plan immediately to ask the court to reconsider its ruling. If that is denied, we will immediately appeal the decision.

This ruling does not address the substantive legal issues of look and feel, language protection, or the propriety of copying those elements of software programs.

There are a few key reasons why we believe the ruling is in error and will be reversed:

There was absolutely no intention to mislead anyone by our copyright applications. The attorney who filed the original application in the early 1980s has testified in depositions that he did not mention JPLDIS in the application simply because he had never heard of it. In addition, we've shown through filing supplemental applications that the copyright office would still have issued the registration, even if we had originally mentioned JPLDIS.

A second point is that Fox and other companies were never prejudiced by the way in which we filled out our application. That is, it did not affect in any way how Fox or other companies developed their products.

Finally, these are questions of fact about people's intentions that cannot be decided without a trial.

Considerable damage was done to Ashton-Tate with the ruling. Although the Fox supporters won, they continued to mount opposition voices against the company.

Subsequently, upon reviewing the case, the judge reversed the ruling and validated Ashton-Tate's copyright claims to its flagship dBase software. Too little too late—the damage was done. The reversal, unlike the uproar against the lawsuit, received very little publicity.

Dec 93	80	nt	80	nt
Jul 92	12½	6	12½	nt
Jul 92	15	nt	15	nt
Jul 92	20	1%	20	nt
Jul 92	25	nt	25	nt
Dec 93	15	nt	15	nt
Dec 93	25	2	25	nt
Dec 92	25	nt	25	nt
Dec 92	40	1%	40	nt
Dec 93	25	nt	25	nt
Dec 93	40	2%	40	nt
a 873 call open int 40,151				
: 135 put open int 14,833				
Dec 92	25	nt	25	%
Dec 92	27½	nt	27½	1%
Dec 92	30	nt	30	1%
Dec 92	32½	nt	32½	2%
Dec 92	35	nt	35	nt
Dec 93	25	8	25	nt
Dec 93	27½	nt	27½	1%
Dec 93	30	5	30	2 1-16
Dec 93	32½	nt	32½	nt
Dec 93	35	nt	35	nt
ne 45 call open int 52,794				
re 4,701 put open int 107,990				
ided				

PACIFIC					
	Exp.	Calls	Puts		
Date	Strike	Last	Strike	Last	
Jul 92	22½	nt	22½	nt	
Jul 92	35	nt	35	nt	
Jan 93	25	nt	25	nt	
Jan 93	30	nt	30	nt	
Jan 93	35	nt	35	nt	
Jul 92	45	23	45	nt	
Jul 92	65	10%	65	10	
Jul 92	85	nt	85	nt	
Jan 93	60	nt	60	nt	
Jan 93	75	nt	75	nt	
Jan 93	90	nt	90	nt	
Jul 92	35	nt	35	nt	
Jul 92	55	nt	55	nt	
Jul 92	65	nt	65	nt	
Jan 93	45	nt	45	nt	
Jan 93	55	nt	55	nt	
Jan 93	65	nt	65	nt	
Jul 92	25	nt	25	nt	
Jul 92	40	nt	40	nt	
Jul 92	50	nt	50	nt	
Jan 93	40	nt	40	nt	
Jan 93	45	7	45	nt	
Jan 93	55	nt	55	nt	
Jul 92	55	nt	55	nt	
Jul 92	85	nt	85	7	
Jul 92	110	nt	110	nt	
Jul 92	135	nt	135	nt	
Jan 93	80	nt	80	nt	
Jan 93	100	25	100	nt	
Jan 93	125	nt	125	nt	
Jan 92	35	nt	35	nt	
Jan 92	60	nt	60	nt	
Jan 93	35	nt	35	nt	
Jan 93	40	nt	40	nt	
Jan 93	50	nt	50	nt	
Met	Aug 92	45	nt	45	nt
Met	Aug 92	65	nt	65	nt
Met	Aug 92	80	nt	80	nt
Met	Feb 93	55	nt	55	nt
Met	Feb 93	65	nt	65	nt
Met	Feb 93	80	nt	80	nt
P	Aug 92	35	nt	35	nt
P	Aug 92	55	4%	55	nt
P	Feb 93	40	nt	40	nt
P	Feb 93	50	8%	50	nt
P	Feb 93	60	4%	60	nt

soon as the subcommittee finishes.

"The consensus seems to be for funding to ensure that the bank insurance fund remains solvent," Gonzalez said.

He said committee members want the funding to be accompanied by safeguards including requirements for least-cost resolutions of failed banks, prompt intervention at problem banks and annual examinations and audits at banks.

Gonzalez said he believed members favored increasing the amount of money the bank insurance fund can draw from the Treasury to \$25 billion from \$5 billion over authorizing it to borrow from the Federal Reserve. *IBD 4/24/91*

Judge Reconsiders Ruling On Ashton-Tate Copyright

Investor's Daily News Services

TORRANCE, Calif. — Ashton-Tate Corp. says a federal judge reversed a previous ruling and validated the company's copyright claims to its flagship dBase software.

The company said it was notified yesterday that U.S. District Judge Terry J. Hatter Jr. reversed his December 1990 decision invalidating Tate's copyrights on dBase products.

The company was stunned by the earlier ruling, which came after Ashton-Tate sued competitor Fox Software Inc. alleging copyright infringement. The Fox suit now will proceed in U.S. District Court in Los Angeles, the company said.

Bethlehem Records Loss, Predicts A Poor 2nd Qtr -

Investor's Daily News Services

BETHLEHEM, Pa. — Bethlehem Steel Corp. announced yesterday a first-quarter net loss of \$39.2 million, or 60 cents a share, and said it expects a loss in the second quarter as well.

The first-quarter loss compares with net income of \$21.3 million, or 20 cents a share, in the same period last year. Sales fell 13% to \$1.06 billion from \$1.22 billion. Bethlehem blamed the loss on the

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HOW TO SELECT STOCKS USING DAILY GRAPHS

Esber and Phillip Kahn were discussing merging Ashton-Tate and Borland. The first attempt failed as the board and Esber were feuding about the future of the company. After Esber was kicked upstairs to chairmen and ultimately left the company, the board revived the deal. They gave themselves \$250,000 each and did the deal at a price considerably lower than Esber/Kahn had originally discussed.

The US Government saw an opportunity to insert itself in the copyright case. During the government's approval process for the Borland/Ashton Tate merger, the justice department required Borland to formally give up the ownership rights to dBase. This led ultimately to Microsoft being able to buy Fox Software.