

Practice Exam Question #1

Lenovo is a computer company headquartered in China, with offices in the US and other countries. Netta is an Iranian citizen who has been living in China and working for Lenovo as a software engineer for the past five years. IBM is a computer company headquartered in the US, with offices in China and other countries. Iran is not a member of Berne.

Last year, Netta wrote a computer program (“Window Pane”) as part of her employment at Lenovo. The program improves the performance of Lenovo computers, and any other computer using a Windows® operating system. Lenovo posted Window Pane on its web site and notified customers that they could download and install it on their Lenovo computers. Anyone downloading the program has to agree to the End Users’ License Agreement (EULA) by clicking the “Accept” button on the website. The EULA restricts use of the program to Lenovo computers. The Lenovo website is hosted on a web server located in Beijing, China.

IBM decided that parts of Window Pane would be useful for IBM computers since they also use a Windows® operating system. An IBM employee downloaded the program after clicking the Accept button. He then proceeded to adapt Window Pane for IBM computers. IBM now distributes the modified program along with new IBM computers.

Lenovo has decided to sue IBM for Copyright infringement. Lenovo has never registered Window Pane with any national copyright office, including the Center for Copyright Protection in China and the US Copyright Office.

If *Lenovo v. IBM* is filed in a United States District Court, what is the likely outcome of the lawsuit? To guide your analysis you should answer the following specific questions:

1. Would the US District Court have subject matter jurisdiction? (You may assume it would have personal jurisdiction and that venue is otherwise proper).
2. Is there a Point of Attachment under Berne for Window Pane?
3. Does Window Pane have a US copyright?
4. If so, who is the owner of the US copyright?
5. Is lack of registration a defense either to liability or to any damages? (You may assume that Lenovo can prove infringement and special damages – loss of computer sales).

The following Chinese references may be useful to you. They are in English.

[*Zhonghua Renmin Gongheguo Zhuzuoquan Fa*](#) (China Copyright Law) (See Arts. 3, 11, 16)
[Registration Measures for Computer Software Copyright](#) (China Copyright Administration)