Supreme Decree No. 24582

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TABLE OF CONTENTS

Gonzalo Sánchez de Lozada
Constitutional President of the Republic

Whereas:

Our country has a legal system which regulates copyright protection and defence, for which purpose Law No. 1322 of April 13, 1992 was enacted as well as Supreme Decree No. 23907 and other administrative provisions governing the subject matter throughout the national territory.

The National Copyright Department, which comes under the Office of the National Secretary for Culture, as a body directly linked to the copyright field, has confirmed the urgent need to define the regime for the protection of software and databases as well as to regulate dealings for their exploitation on the national territory.

Article 6(1) of Copyright Law No. 1322 of April 13, 1992 provides that computer programs shall be protected and require specific regulations.

In the Council of Ministers

It is hereby decreed:

Article One. The *Regulations for Software, consisting of their IX Chapters and 27 Articles,* are hereby adopted, and it is clearly stated that the provisions of the Copyright Law and its Regulatory Decree shall apply in full to all legal dealings related to computer programs.

The Ministers of State for Human Development, Economic Development, Housing and Labor, remain responsible for exexcuting and enforcing this Supreme Decree.

Done in the Palace of Government in the city of La Paz on the twenty-fifth day of April, of the year one thousand nine hundred and ninety-seven.

Signed: Gonzalo Sánchez de Lozada, Antonio Aranibar Quiroga, Victor Hugo Canelas Zannier, Alfonso Erwin Kreidler Guillaux, José Guillermo Justiniano Sandoval, René Oswaldo Blattmann Bauer, Fernando Candia Castillo, Franklin Anaya Vásquez, Moisés Jarmúsz Levy, Alberto Vargas Covarrubias, Mauricio Antezana Villegas, Alfonso Revollo Thenier, Jaime Villalobos Sanjinés.

Software Regulations

Chapter I
Purpose and definitions

Purpose

1. In accordance with Article 6(1) of the Copyright Law of April 13, 1992, these Regulations shall regulate copyright and copyright holders, and define the regime for protection of software and relationships for the exploitation of the same. Copyright comes into being with the creation of the work, in accordance with the provisions of Article 2 of Law No. 1322.

In accordance with Article 7*(b)* of the above-mentioned Law, these Regulations shall also protect databases, which shall be considered as analogous to derived works.

Computer programs and databases shall be protected as literary works. They shall constitute intellectual works and forms of creative expression of the human intellect that constitute the subject matter of protection, in accordance with the provisions of Decision 351 of the Cartagena Agreement, the TRIPS of the World Trade Organization, and the Berne Convention.

Definitions

2. For the purposes of these Regulations and to facilitate understanding of the technical terms included therein, the following definitions, which may be updated by means of technical norms, are hereby established:

Algorithm. Any predetermined set of instructions to solve a specific problem in a finite number of steps (to be compared with Heuristics).

Back-up. Any copy of the software or database for safeguarding purposes.

Computor. Any electronic device that can store and process information.

Computer program. Any body of instructions to be used, directly or indirectly, in a computer with a view to obtaining a specific result.

Database. Any organized body of information that can be accessed by computer.

Flow chart. Any set of interconnected symbols and lines to show an information processing system or a sequence of program operations.

Hardware. Any device or physical means (memory, disks, hard drives, tapes, etc.) or magnetic, optical, chemical, paper or other means, used for purposes of communication between humans and machines and for storage purposes.

Heuristics. Any trial-and-error method that uses empirical rules to find the solution to a problem, evaluating step by step the progress made throughout (to be compared with Algorithm).

Memory. Any device capable to receiving and retaining information and supplying it at the user's request.

Physical support. Any hardware encompassing all mechanical, magnetic, electric or electronic devices in a data processing installation.

Program language. Any body of instructions with semantics and syntax, which can be used to develop a source program.

Software. Any body of one or more programs for computers; it may include support information, documentation and auxiliary materials, regardless of their form of expression and fixation.

Source program. Any body of instructions to be used, directly or indirectly, in a computer with a view to obtaining a specific result, in a language that is understandable to human beings.

User licence. Any document granting authorization for the non-exclusive and non-transferable use of hardware or software, in accordance with the terms and conditions set out in these Regulations. Such licencing agreement allows a single user to install the software in a single computor in a single place and once only, barring a tacit agreement contained therein which broadens said conditions.

Protected works

3. In accordance with Article 4 of Law No. 1322, these Regulations shall protect copyright to software and databases, which come into being with individual and original characteristics and are externalized in a form of expression capable of being reproduced and incorporated into software, without extending to the ideas, procedure and programming language used or included in said work.

The copyright recognized shall be independent of the ownership of the physical object containing the work.

Moral rights

4. Authors' moral rights to software shall be protected by Article 14 of the Copyright Law. By way of exception and without infringing moral rights, these Regulations protected by Article 6*(i)* of the Copyright Law shall allow modifications and improvements to the software and the database.

Economic rights

5. In accordance with the provisions of Articles 15 to 17 of Law 1322, only holders of economic rights to software may authorize or prohibit any form of exploitation of the same, in particular their commercialization, rental, distribution, reproduction, adaptation, modification, improvement, translation, transformation or importation.

Transfer of hardware

6. The transfer of the hardware which contains the software and the database shall give the acquirer a right of use and exploitation solely within the framework of the user licence.

Community of property

7. In the community of property, the spouse, the author of the works of software and/or databases, shall retain his or her moral and economic rights, in accordance with the provisions of Article 107 of the Family Code.

Derived works

8. These Regulations shall also protect the derived software and databases arising from the adaptation or transformation of software, provided that they constitute a separate creation and possesses originality, without prejudice to the copyright to said work.

Author's secrecy

9. The specification of the software, the algorithms, the source programs, the product design, the flow charts, heuristics and other means of creation of the software, shall constitute author's secrecy, and the author and/or rightsholder shall not be obliged to reveal such elements.

Chapter III
Agreements and contracts

User licences

10. Contracts of adhesion whereby the copyright holder grants a licence to use.

Agreements or contracts

11. The transfer of economic rights shall take place by means of agreements or contracts within the framework of the provisions set out in Article 29 of the Copyright Law, and must be registered in accordance with the provisions of Article 26 of Supreme Regulatory Decree No. 23907 of December 7, 1994.

Commissioned works

12. Software and databases created under a contract for employment or the delivery of services and/or a contract developed for employees or public officials in the performance of the duties inherent to their positions, shall be owned by the natural person or legal entity on whose behalf and at whose risk they were carried out, barring an agreement or contract indicating the contrary, in accordance with Article 29 of Law No. 1322.

Chapter IV
Copyright protection

Applicability of criminal law

13. In cases involving copyright violations, the norms established in Title XIV, Chapter I of Law No. 1322, and Chapters X and XI, Articles 362 and 363, of the Law on Amendments to the Penal Code.

Illegal copies

14. Illegal copies shall be governed by the provisions of Law No. 1322 and Supreme Decree No. 23907.

Back-up copies

15. Users who have legally acquired the right to utilize software or a database may, exceptionally and by their own means, produce a back-up copy thereof. This copy shall not be destined for use or commercialization, but rather for guaranteeing the continuation of use in the event of damage to the software initially contained with the hardware.

Downloads

16. Downloads as a necessary step for the execution of a program, by a person who is legitimately authorized by means of a licence to use the software and/or database, shall not constitute an unlawful act.

Chapter V
Precautionary and jurisdictional measures and evidence

Precautionary measures

17. Any precautionary measures of a provisional and accessory nature allowed by the law may be requested.

Jurisdictional measures

18. In accordance with the provisions of Articles 190 to 193 of the Code of Penal Procedure, the competent authority, at the request of the interested party, may provide for the following: a restraining order, requisition, search warrant, seizure, sealing, injunction or any other measure allowed by the law.

Evidence

19. All of the evidence recognized by the existing legal system shall be valid.

Chapter VI
Author's societies

Recognition

20. In accordance with Article 64 of the Copyright Law and Article 27.2 *(f)* of Supreme Decree No. 23907, creators of computer programs (hardware or software) may set up a copyright society, subject to recognition by the National Copyright Department.

Powers

21. In addition to those established by Article 27 of Supreme Decree No. 23907, the author's societies shall have the following powers;

a. To advise the owners of a work on the conditions to which they should adjust contracts with users, provided that these do not contravene the provisions laid down in Law No. 1322, Supreme Decree No. 23907, and these Regulations.

b. To take any other steps necessary with the corresponding bodies in order to ensure the proper application and enforcement of the Law and its Regulations.

Chapter VII
Registration of software and databases

Registration

22. Registration of software shall take place at the National Copyright Department of the Office of the National Secretary for Culture, within the framework of existing regulations and requirements. The National Copyright Department shall be responsible for the safekeeping and retention of the information entrusted to it, as a result of which it may not under any circumstances disclose the right or interest to third parties without a prior and duly justified court order.

The administrative decision of registration shall not give rise to rights and shall be granted on the presumption of the applicant's good faith, reserving the rights of third parties.

Purposes

23. The purposes of the registration of software are as follows:

a. To ensure greater security for the registered right.

b. To publicize the right of the rightsholders and the acts and contracts transferring or changing this title protected by law, making known for the author's benefit the existence of creations protected by copyright as a means of demonstrating title to the same.

c. To allow users with an interest in their exploitation, to inform themselves as to the legal conditions for possible subcontracting and also to find out about the existence of rightsholders and other successors in title who, by virtue of a contract *inter vivos* or on account of death, have legally acquired the economic rights and may consequently dispose thereof.

Material to be registered

24. At the National Copyright Department, in addition to the information laid down in Article 26 of Supreme Decree No. 23907 and these Regulations, the following must be entered:

a. The board representing the software author's societies, including the act of election in a general assembly.

b. Legal status.

c. Any other information laid down in the regulations of the National Copyright Department.

Chapter VIII
Administrative procedure for concilation and arbitration

Existing regulations

25. Within the legal norms as an alternative means of solving disputes while strictly applying Law No. 1770 of March 10, 1997, the Arbitration and Conciliation Law, these Regulations must be subject to the same.

Conciliation and arbitration

26. The procedure for arbitration shall be subject to the provisions laid down in Articles 38 to 84, and with regard to conciliation, to Articles 91 and 92 of the above-mentioned Arbitration and Conciliation Law.

Chapter IX
Transitory provisions

27. In agreement with the application of the new technologies that may emerge in the future, as well as any needs determined by them, these Regulations may be amended in accordance with the content of an express provision.

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