Law No. 9609 of February 19, 1998 (Software Protection Law)

on the Protection of Intellectual Property of Software,
its Commercialization in the Country, and Other Provisions

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ThePresident of the Republic:

Let it be known that the Chamber of Representatives has decreed and I hereby sanction the following Law:

Chapter I
Preliminary Provisions

1. Software program is the expression of an organized set of instructions in natural or code language, contained in a physical support of any kind, necessarily employed in automatic machines for the manipulation of data, devices, tools, or peripheral equipment, based on digital or analog technique, so they will operate in the way and with the purposes determined.

Chapter II
Protection of Copyright and Registration

2. The protection system for intellectual property of software is the same granted to literary works by the copyright laws and connected provisions in Brazil, under the terms of this Law.

(1) The Provisions related to moral rights do not apply to the software program, except, at any time, the author's right to claim the authorship of the software and the author's right to oppose any unauthorized changes, when these result in the disfigurement, mutilation or any other modification to the software, which damages the author's honor or reputation.

(2) The tutelage of the rights associated to the software is assured for a period of fifty years, counting from January 1 of the year following its publication or, if this is unavailable, its creation.

(3) The protection of rights which is the object hereof shall not be subject to registration.

(4) The rights granted hereby shall be assured to foreigners domiciled abroad, provided the software's country of origin grants, to Brazilian and foreign citizens domiciled in Brazil, equivalent rights.

(5) The rights granted by this Law, and the copyright laws and connected provisions in Brazil include the exclusive right to authorize or forbid leasing, whereas this rights shall not be exhausted by the sale, licensing or any other form of transfer of software copy.

(6) The provisions in the previous paragraph shall not apply to the cases in which the software itself is not an essential object of the leasing.

3. Computer software may, at the discretion of their title-holder, be registered with a body or entity to be indicated by an act of the Executive Branch, at the initiative of the Ministry responsible for the policy for Science and Technology.

(1) The application for registration established in this article shall include, at least, the following information:

I. data referring to the author of the software program and its title-holder, provided they are different persons, whether individuals or corporate bodies;

II. identification and functional description of the software program; and

III. portions of the program and other data deemed sufficient to identify it and characterize its originality, save for third-party rights and Government liability.

(2) The information mentioned in item III of the previous paragraph shall be confidential and shall not be disclosed, save upon a court order or at the discretion of its title-holder.

4. Unless covenanted otherwise, the employer, service contracting party or public body shall have full title over the rights associated to the software program, developed and elaborated throughout the duration of an agreement or by-law obligation, expressly intended for research and development, or in which the employee's, service contractor's or server's activities are provided, or yet, which arise from the nature of the duties pertaining to said ties.

(1) Unless covenanted otherwise, the remuneration for the work or service provided shall be limited to the agreed remuneration or salary.

(2) The employee, service contractor or server shall have full title over the rights pertaining to a software program generated with no connection to the employment contract, service agreement or by-law obligation, and without the use of resources, technological information, trade and business secrets, materials, facilities or equipment of the employer, the company or entity with which the employer has entered into a service agreement or other similar agreements, or the service contracting party or public body.

(3) The treatment provided for in this article shall be applicable to the cases in which the software program is developed by scholarship students, trainees, or persons in similar circumstances.

5. The rights over the derivations authorized by the title-holder of the rights over software programs, including their economic exploitation, shall belong to the authorized person who effects them, unless otherwise provided.

6. The following shall not constitute offense to the rights of the software program title-holder:

I. the reproduction, in one single copy, of a legitimately purchased copy, provided the copy is intended as backup copy or electronic storage, in which case the copy shall be used as a backup copy;

II. partial quotes of the program, for teaching purposes, provided the program and the title-holder of the respective rights are duly identified;

III. the similarity of the program with another, preexisting, program, when this occurs by virtues of the functional characteristics of its application, compliance with normative and technical precepts, or alternative limitation on its expressions;

IV. the integration of a program, maintaining its essential characteristics, with an application or operational system, technically indispensable for user needs, provided it be for the exclusive use of the person who effected it.

Chapter III
Guarantees for Users of Software Program

7. The licensing agreement for use of a software program, the corresponding tax documents, the physical supports for the software program or the respective packages shall specify the technical duration of the commercialized version, so as to be easily read by the user.

8. Whoever commercializes a software program, whether he has the title to the software rights or to the rights of commercialization, is obligated, throughout the technical duration of the respective version, to guarantee to the respective users supplementary technical services for the proper operation of the program, considering its specifications, within the Brazilian territory.

Sole Paragraph. The obligation shall survive in the event of withdrawal from the commercial circulation of the software program throughout its duration, save in the event of a fair indemnity for any damages caused to third parties.

Chapter IV
Agreements for the Licensing of Use, Commercialization and Technology Transfer

9. The use of a software program in Brazil shall be the object of a licensing agreement.

Sole Paragraph. In case the agreement mentioned in the preamble of this article does not exist, the tax document relative to the acquisition or licensing of a copy shall be used as proof of its legal use.

10. All acts and agreements for the licensing of commercialization rights relating to software programs of foreign origin shall establish, as regards the payable taxes and charges, the liability for the respective payments, and shall stipulate the remuneration of the person who has the title to the software program rights and is residing or domiciled abroad.

(1) Null and void shall be the clauses which:

I. limit the production, distribution or commercialization, in violation of the applicable regulating provisions;

II. exempt any of the contracting parties from any third party actions arising from misuse, flaws or violation or copyrights.

(2) The remitter of the corresponding amount in foreign currency, in payment for the above-mentioned remuneration, shall hold in its possession, for a period of five years, all documents required as proof of the legal nature of the remittances and their compliance with the preamble of this article.

11. In the cases of transfer of technology of a software program, the National Institute of Industrial Property (INPI) shall register the respective agreements, to produce the legal effects before third parties.

Sole Paragraph. For the registration contemplated in this article, the provider of the technology must deliver to its recipient the full documentation, especially the commented source-code, a descriptive memorial, internal functional specifications, diagrams, flowcharts and any other technical data required for absorption of the technology.

Chapter V
Infractions and Penalties

12. Violation of rights of the author of a software program:

Penalty—Six-month to two-year imprisonment or fine.

(1) If the violation consists of full or partial reproduction, by any means, of a software program, for commercial purposes, without express authorization from the author or its representative:

Penalty—One to four-year imprisonment and fine.

(2) The penalty of the preceding paragraph is also applicable to whomever sells, puts for sale, introduces in the Country, acquires, conceals or has in deposit, for commercial purposes, any original or copy of a software program, produced in violation of copyrights.

(3) In the event of the crimes provided for in this article, the proper actions shall require a complaint, save:

I. when they are performed with damage to the public entity, government agency, public-stock company, mixed-capital company or foundation instituted by the public authorities;

II. when any tort gives rise to tax evasion, loss of tax collection or the performance of any crimes against the tax order or consumption relations.

(4) In the event of clause II of the foregoing paragraph, the collection of any tax or social contribution and any accessory payment shall be performed regardless of any complaint.

13. In case of violation of software program copyrights, the criminal action and preliminary service of search and seizure shall be preceded by an inspection, and the judge may order the seizure of the copies produced or commercialized in violation of copyrights, their versions and derivation, in possession of the infractor or of whomever places on sale, holds in deposit, reproduces or commercializes them.

14. Regardless of any criminal action, the damaged party may file an action to prevent the infractor from performing the criminal act, under penalty of a fine in the event of violation of the precept.

(1) The action to prevent the performance of the above-mentioned act may be filed jointly with the action for losses and damages resulting from said violation.

(2) Regardless of any preparative provisional remedy, the judge may grant an injunctive relief forbidding the infractor from performing the criminal act, under the terms of this article.

(3) In civil proceedings, the provisional remedies for search and seizure shall comply with the provision in the preceding article.

(4) In the event any information deemed confidential be brought to court, for the protection of the interests of either party, the judge shall order the proceedings to be conducted secretly, the utilization of said information being also forbidden to the other party for any other purposes.

(5) Whoever petitions for and furthers the measures contemplated in this article and in articles 12 and 13, acting in bad faith or out of emulation, caprice or gross error shall be held responsible for losses and damages, under the terms of articles 16, 17 and 18 of the Civil Procedure Code.

Chapter VI
Final Decisions

15. This Law is rendered effective on the date of its publication.

16. Law No. 7646 of December 18, 1987 is hereby revoked.

Brasilia, February 16, 1998; 177th anniversary of our Independence and 110th anniversary of the Republic.

Fernando Henrique Cardoso

José Israel Vargas

Notice: The English version of this law is provided only as a means of reference. It is noted that the Portuguese version solely constitutes the official one, for any use the reader may intend.