Law Incorporating in Spanish Law Council Directive 91/250/EEC of May 14, 1991, on the Legal Protection of Computer Programs

(No. 16, of December 23, 1993)*

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Subject Matter of Protection

Art. 1.—

(1)   Computer programs shall be protected by copyright as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works.

(2)   For the purposes of this Law, the term "computer programs" shall include the preparatory design material thereof.

(3)   The computer program shall be protected only if it is original in the sense that it is the author's own intellectual creation.

(4)   The protection provided for in this Law shall apply to the expression in any form of a computer program, with the exception of those that are created for the purpose of doing harm to the computer system. Ideas and principles that underlie any element of a computer program, including those that underlie its interfaces, shall not be protected by copyright in accordance with this Law.

Ownership of Rights

Art. 2.—

(1)   The author of a computer program shall be the natural person or group of natural persons who have created the program, or the legal entity that is recognized as the owner of the copyright in the cases expressly provided for in the Law on Intellectual Property.[1]

(2)   In the case of collective works the person, whether natural person or legal entity, who publishes it and discloses it under his name shall be considered the author thereof, unless otherwise agreed.

(3)   The copyright in a computer program that is the unitary result of collaboration on the part of two or more authors shall be common property and shall accrue to all of them in such proportions as they may determine.

(4)   Where a salaried worker creates a computer program in the execution of his duties or on instructions given him by his employer, ownership of the economic rights in the computer program so created—including both the source program and the object program—shall accrue exclusively to the employer, unless otherwise agreed.

Beneficiaries of Protection

Art. 3. Protection shall be granted to all persons, whether natural persons or legal entities, who meet the requirements laid down in the Law on Intellectual Property for the protection of copyright.

Restricted Acts

Art. 4. Without prejudice to the provisions of Articles 5 and 6, the exclusive right of exploitation of the computer program accruing to whatever person is the owner thereof in terms of Article 2 shall include the right to carry out or authorize the following:

(a)   total or partial reproduction of a computer program by any means and in any form, whether permanent or temporary; where the loading, displaying, running, transmission or storage of a program call for such reproduction, those acts shall require authorization, which shall be given by the owner of the rights;

(b)   the translation, adaptation, arrangement or any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;

(c)   any form of distribution to the public, including rental, of the original or copies of the computer program. The first sale in the Community of a copy of a program by the owner of the rights or with his consent shall exhaust the distribution right of that copy, with the exception of the right to control further rental of the program or a copy thereof.

Exceptions to Restricted Acts

Art. 5.—

(1)   Unless otherwise specified by contract, reproduction or alteration of a computer program, including the correction of errors, shall not require authorization by the owner of rights where those acts are necessary for the use of the computer program by the lawful user in accordance with its intended purpose.

(2)   The making of a backup copy by a person having a right to use the computer program may not be prevented by contract insofar as it is necessary for that use.

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[1] See *Copyright and Neighboring Rights Laws and Treaties*, SPAIN-Text 1—01 *(Editor's note)*.

(3)   The lawful user of a copy of a computer program shall be entitled, without the authorization of the owner of rights, to observe, study or test the functioning of the program in order to determine the ideas and principles that underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program that he is entitled to perform.

Decompilation

Art. 6.—

(1)   The authorization of the owner of rights shall not be required where reproduction of the code and translation of its form within the meaning of Article 4*(a)* and *(b)* of this Law are indispensable to obtain the information necessary to achieve the interoperability of an independently created program with other programs, provided that the following conditions are met:

(a)   the acts are performed by the licensee or by any other person having a right to use a copy of the program, or on their behalf by a person authorized to do so;

(b)   the information necessary to achieve interoperability has not previously been readily and rapidly available to the persons referred to in the foregoing subparagraph;

(c)   the said acts are confined to the parts of the original program that are necessary to achieve interoperability.

(2)   The exception provided for in paragraph (1) of this Article shall be applicable insofar as the information so obtained:

(a)   is used only to achieve the interoperability of the independently created program;

(b)   is given to others only when necessary for the interoperability of the independently created program;

(c)   is not used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act that infringes copyright.

(3)   The provisions of this Article may not be interpreted in such a way as to allow its application to prejudice unreasonably the legitimate interests of the owner of the rights, or conflict with normal exploitation of the computer program.

Term of Protection

Art. 7. The rights recognized in this Law shall be protected in the manner laid down in Article 97 of the Law on Intellectual Property where the author is a legal entity, and for the life of the author and for 50 years after his actual or declared death or that of the last surviving co-author in the case of natural persons.

Where the computer program is an anonymous or pseudonymous work, the term of protection shall be 50 years from the time at which it is first lawfully made available to the public, the term of protection being deemed to begin on January 1 of the year following that of the said event.

Infringement of Rights

Art. 8. For the purposes of this Law, and without prejudice to the provisions of Articles 5 and 6 thereof, those persons shall he considered infringers of copyright who, without authorization by the owner thereof, perform any of the acts provided for in Article 4, and in particular:

(a)   those who bring one or more copies of a computer program into circulation when they know or can presume that they are unlawful in character;

(b)   those who stock one or more copies of a computer program for commercial purposes when they know or can presume that they are unlawful in character;

(c)   those who bring into circulation or stock for commercial purposes any material the sole purpose of which is to facilitate the unauthorized removal or neutralization of any technical device used to protect a computer program.

Special Measures of Protection

Art. 9.—

(1) Without prejudice to such other actions as may be available to him, the owner of the rights recognized by this Law may seek the cessation of the unlawful activity of the infringer, demand indemnification consistent with the material and moral damage done and apply to the court for the institution of precautionary measures for immediate protection within the meaning of Title I of Part III of the Law on Intellectual Property.

(2) For the purposes of this Law, and prior to the notification to the parties of the written claim seeking the precautionary measures, as provided in Article 127 of the Law on intellectual Property, the court may seek such reports or order such investigations as it may consider appropriate.

(3) The precautionary measures for the urgent protection of copyright may include the seizure of the material referred to in Article 8*(c)* in the manner laid down in Article 126 of the Law on Intellectual Property.

(4) The cessation of the unlawful activity may include the disablement, and where necessary the destruction, of the material referred to in the foregoing paragraph.

Continued Application of Other Legal Provisions

Sole Additional Provision. The provisions of this Law shall be without prejudice to any other legal provisions such as those concerning patent rights, trademarks, unfair competition, trade secrets, protection of semiconductor products or tile law of contract.

Applicability of the Law

Sole Transitional Provision. The provisions of this Law shall be applicable to programs created prior to the entry into force thereof, without prejudice to acts already performed and to rights already acquired prior to that date.

Repeal of Provisions

Sole Repeal Provision. All provisions of equal or lower rank that conflict with those laid down in this Law are hereby repealed.

Entry Into Force of the Law

First Final Provision. This Law shall enter into force on the day following that of its publication in the Official Bulletin of the State.

Legislative Empowerment of the Government

Second Final Provision. The Government is hereby empowered to approve, by June 30, 1995, a text that revises the legal provisions on intellectual property that are in force on the entry into force of this Law by regularizing, clarifying and harmonizing such legal texts as require revision.