

Decree No. 96-103 of February 2, 1996, on the Implementation of Law No. 94-361 of May 10, 1994, Concerning the Legal Protection of Computer Programs and on Amendments to the Intellectual Property Code*

Art. 1. There shall be added after Article R. 335-1 of the Intellectual Property Code (Regulative Part) an Article R. 335-2 worded as follows:

“*Art. R. 335-2.* Any publication or user’s handbook concerning means of removing or circumventing any technical device protecting software, which does not bear a notice in clear characters that the unlawful use of such means is liable to the penalties laid down for cases of infringement shall incur the penalties laid down for offenses of the third class.”

Art. 2. There shall be introduced in Chapter II of Title III of Book I of the Intellectual Property Code (Regulative Part) a Section 5 worded as follows:

“Section 5 Pledging the Software Exploitation Right

Art. R. 132-8. Pledges in respect of the software exploitation right shall be entered in the Special National Register of Software kept by the National Institute of Industrial Property.

The entry shall contain for each computer program:

- 1° the identity of the holder of the right referred to in Article L.122-6 and of the pledgee, together with any changes concerning their surnames, forenames, business names, legal form, domicile or headquarters;
- 2° a statement of the elements enabling the computer program to be identified, such as name, make, designation of the source code, operating documents and updates, together with any other characteristic of the program and, where appropriate, the reference of any deposit;
- 3° the deed establishing the pledge on all or a part of the software exploitation right;
- 4° the acts modifying ownership or enjoyment of the exploitation right;
- 5° the acts modifying the rights of the pledger;
- 6° court actions and final court decisions where they concern the rights that are the subject matter of the pledge;
- 7° corrections of material errors affecting the entries.

Art. R. 132-9. The request for entry shall be submitted by one of the parties to the pledge or by a representative having powers of attorney. Unless otherwise provided, such powers shall extend to the requests for entry referred to in Articles R. 132-10 to R. 132-13 and R. 132-15, to the receipt of the notifications referred to in Article R. 132-14 and to the request for cancellation referred to in Article R. 132-16.

Art. R. 132-10. The request for entry of a pledge shall be effected by filing a memorandum whose form shall be determined by decision of the Director General of the National Institute of Industrial Property.

* *French title:* Décret n° 96-103 du 2 février 1996 pris pour l’application de la loi n° 94-361 du 10 mai 1994 concernant la protection juridique des programmes d’ordinateur et modifiant le code de la propriété intellectuelle.

Source: Journal officiel de la République française of February 9, 1996.

The memorandum shall contain the following particulars:

- 1° the surnames, forenames, domicile or business names, legal form and headquarters of the creditor and the debtor;
- 2° the designation of the software by means of its name, make, with a precise statement of all the elements that identify and characterize it, such as the designation of the source code, the operating documents and the updates together with, where appropriate, any references to a deposit of the software;
- 3° the nature and date of the deed of pledge;
- 4° the amount of the debt covered by the deed, its exigibility, the conditions relating to interest and the accessory costs.

This memorandum shall be accompanied by:

- one original of the deed of pledge;
- one reproduction of the above-mentioned deed if the requester wishes the original or the authentic copy to be returned to him;
- proof of payment of the prescribed fee;
- where appropriate, the powers of the representative.

Art. R. 132-11. Any acts modifying or cancelling the published rights of the debtor and of the creditor, such as, in particular, transfer, assignment of an exploitation right, transfer of the pledge or renunciation thereof, together with court actions and final court decisions relating to the rights, shall be entered at the request of one of the parties to the act.

The request shall contain:

- 1° a memorandum requesting entry whose form shall be determined by decision of the Director General of the National Institute of Industrial Property;
- 2° one of the originals of the private deed or, as appropriate, an authentic copy of the deed or of the act instituting proceedings;
- 3° a copy of the above-mentioned deed where the requester wishes the original or the authentic copy to be returned to him;
- 4° proof of payment of the prescribed fee;
- 5° where appropriate, the powers of the representative.

Art. R. 132-12. Any change in the surnames, forenames or domicile of the natural persons or any change in the business names, legal form or headquarters of the legal persons shall be entered at the request of any person concerned.

The request shall contain:

- 1° a memorandum requesting entry whose form shall be determined by a decision of the Director General of the National Institute of Industrial Property;
- 2° any document required to ascertain the changes or modifications in the civil status or domicile of natural persons or the name, legal status and headquarters of legal persons;
- 3° proof of payment of the prescribed fee;
- 4° where appropriate, the powers of the representative.

Art. R. 132-13. Requests for correction of material errors in acts already published in the Register may be submitted by any party to the acts concerned in accordance with the procedure under Article R. 132-12. They shall be accompanied by all the necessary documents.

Art. R. 132-14. If a request for entry is not in conformity, a reasoned notification shall be made to the requester. He shall be given a period of two months to regularize his request or to submit observations. Failing regularization or the submission of observations enabling the objection to be lifted, the request shall be rejected by a decision of the Director General of the National Institute of Industrial Property.

The notification may be accompanied by a proposal for regularization. In such case, the proposal shall be deemed accepted if the requester does not contest it within the two-month period afforded to him.

Art. R. 132-15. An entry shall cease to have effect if it is not renewed under the procedure set out in Article R. 132-10 prior to expiry of a period of five years computed from the date of entry of the pledge.

Art. R. 132-16. Cancellation of an entry may be requested by the creditor or the debtor by furnishing proof of the extinction of the pledged debt or by producing the act giving release from the entry.

Cancellation may also be effected as a result of a final court decision.

Art. R. 132-17. All entries made in the Special National Register of Software shall be notified in the Official Bulletin of Industrial Property.

Any person concerned may obtain from the Institute:

- (a) a reproduction of the entries in the Register;
- (b) a certificate attesting to the fact that there is no entry.”

Art. 3. The Table annexed to Article R. 411-17 of the Intellectual Property Code (Regulative Part) shall be amended as follows:

“(7) National registers of patents, trademarks, industrial designs and the Special National Register of Software:

request for entry;

renewal of the entry of a pledge on software exploitation rights.”

(The remainder unchanged.)

Art. 4. There shall be added, after Article 9 of the above-mentioned Decree of August 28, 1909, an Article 10 reading as follows:

“*Art. 10.* The pledging of businesses that comprise software exploitation rights and the sale or transfer of businesses comprising pledged software exploitation rights shall be recorded with the National Institute of Industrial Property on presentation of an entry certificate issued by the clerk of the commercial court.

The formalities referred to in Articles 7, 8 and 9 above shall apply to acts entered in the Special National Register of Software kept by the National Institute of Industrial Property.”

Art. 5. Articles 1 to 3 of this Decree shall apply to the overseas territories and to the territorial entity of Mayotte.

The pledging of businesses that comprise software exploitation rights and the sale or transfer of businesses that comprise pledged software exploitation rights shall be recorded with the National Institute of Industrial Property on presentation of an entry certificate issued in the overseas territories by the clerk of the joint commercial court and in the territorial entity of Mayotte by the clerk of the first instance court sitting in commercial matters.

The formalities laid down by locally applicable regulations concerning entries and notifications with the National Institute of Industrial Property shall apply to acts entered in the Special National Register of Software.

Art. 6. The Keeper of the Seals, Minister for Justice, the Minister for Economy and Finance, the Minister for Culture, the Minister for Industry, Posts and Telecommunications, the Deputy Minister for Overseas Territories and the Deputy Minister for the Budget, Government Spokesman, shall be responsible, each where he is concerned, with the execution of this Decree, which shall be published in the Official Journal of the French Republic.