

S.I. No. 26/1993:

EUROPEAN COMMUNITIES (LEGAL PROTECTION OF COMPUTER PROGRAMS) REGULATIONS, 1993.

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I, RUAIRÍ QUINN, Minister for Enterprise and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 91/50/EEC on the legal protection of computer programs¹ hereby make the following Regulations.

¹O.J. No. L122 of 17.5.91.

1. (1) These Regulations may be cited as the European Communities (Legal Protection of Computer Programs) Regulations, 1993.

(2) These Regulations shall be deemed to have come into operation on the 31st day of December, 1992: Provided that nothing in these Regulations shall have the effect of making or declaring any acts to be unlawful which were not unlawful at the date of their commission.

2. (1) In these Regulations:

"the Directive" means Council Directive 91/50/EEC on the legal protection of computer programs;

"computer program" shall include any design materials used for the preparation of such program.

(2) A word or expression that is used in these Regulations and is also used in the Directive, has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

3. (1) Subject to paragraph (2) of this Regulation, copyright shall subsist in a computer program and the Copyright Acts, 1963 and 1987, shall apply to every original computer program as if it were a literary work and the legal protection so afforded shall apply to the expression in any form of a computer program.

(2) Without prejudice to the generality of paragraph (1) of this Regulation, a computer program shall be protected if it is original in the sense of being the author's own intellectual creation.

(3) Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under these Regulations.

4. Section 10 (2) of the Copyright Act, 1963, shall not apply to computer programs made by an author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship.

5. Subject to the provisions of Regulations 6 and 7 of these Regulations, the exclusive rights of the rightholder, within the meaning of Article 2 of the Council Directive, shall include the right to do or authorize:

(a) the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole. Insofar as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction, such acts shall be subject to authorization by the rightholder;

(b) the translation, adaptation, arrangement and 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, and including the rental, of the original computer program or of copies thereof. The first sale in the Community of a copy of a program by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program or a copy thereof.

6. (1) Where there are no specific contractual provisions to the contrary the acts referred to in paragraph (a) and (b) of Regulation 5 of these Regulations shall not require authorization by the rightholder where they are necessary for the use of the computer program by the lawful acquirer in accordance with the intended purpose, including for error correction.

(2) The making of a back-up copy by a person having the right to use the computer program may not be prevented by contract in so far as it is necessary for that use.

(3) The person having a right to use a copy of a computer program shall be entitled, without the authorization of the rightholder, to observe, study or test the functioning of the program in order to determine the ideas and principles which 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 which he is entitled to do.

7. (1) The authorization of the rightholder shall not be required where reproduction of the code and translation of its form within the meaning of Regulation 5 (a) and (b) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

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

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

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

(2) The provisions of paragraph (1) of this Regulation shall not permit the information obtained through its application:

(a) to be used for goals other than to achieve the interoperability of the independently created computer program;

(b) to be given to others, except when necessary for the interoperability of the independently created computer program; or

(c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

(3) In accordance with the provisions of the Berne Convention for the protection of Literary and Artistic Works, the provisions of this Regulation may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the computer program.

8. (1) Without prejudice to the provisions of Regulations 5, 6 and 7 of these Regulations and Parts II and IV of the Copyright Act, 1963 , the following acts, being infringements of the copyright in a computer program, shall be actionable at the suit of the owner of the copyright, namely:

(a) any act of putting into circulation a copy of a computer program knowing, or having reason to believe, that it is an infringing copy; or

(b) the possession, for commercial purposes, of a copy of a computer program knowing, or having reason to believe, that it is an infringing copy; or

(c) any act of putting into circulation, or the possession for commercial purposes of, any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of any technical device which may have been applied to protect a computer program.

9. (1) The provisions of this Regulation and the Council Directive shall be without prejudice to any other legal provisions such as those concerning patent rights, trade marks, unfair competition, trade secrets, protection of semi-conductor products or the law of contract. Any contractual provisions contrary to Regulation 7 of these Regulations or

to the exceptions provided for in Regulation 6 (2) or (3) of the Regulations shall be null and void.

(2) These Regulations shall apply to programs created before the 1st January, 1993, without prejudice to any acts concluded or rights acquired before that date.

GIVEN under my Official Seal, this 2nd day of February, 1993.

RUAIRÍ QUINN,

Minister for Enterprise and

Employment.

EXPLANATORY NOTE.

The purpose of these Regulations is to give legal effect to the European Communities Council Directive (No. 91/50/EEC) on the legal protection of computer programs (O.J. No. L122 of 17.5.91). The effect of the Regulations is to provide explicit copyright protection for computer programs as literary works. This is without prejudice to any protection which may have existed prior to the signing of these regulations.

The Regulations, when read in conjunction with the Copyright Acts, 1963 and 1987, give legal effect to all the requirements imposed under the Directive, for the protection of computer programs.
