

SCREENING MEETING ACQUIS COMMUNAUTAIRE

Brussels, 6-7 February 2006

CHAPTER 8: INTELLECTUAL PROPERTY LEGAL PROTECTION OF COMPUTER PROGRAMMES

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Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programmes

- Software is essential for the Community's industrial development.
- The development of software requires the investment of considerable human, technical and financial resources;
- Computer programs can be copied at a fraction of the cost needed to develop them independently;
- Harmonize Member States' legislation regarding the protection of computer programs in order to create a legal environment which will afford a degree of security against unauthorized reproduction of such programmes.

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- OBJECT OF PROTECTION (Art.1)

- Obligation on Member States to protect computer programmes, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works.
- The ideas and principles which underlie any element of a computer programme, including those which underlie its interfaces, are not protected by copyright. A computer programme is protected if it is original in the sense that it is the author's own intellectual creation.

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- AUTHORSHIP (Art.2)

- the natural or legal person or group of natural persons who created it.
Where collective works are recognized by the legislation of a Member State, the person considered to have created the work is deemed to be its author.
- In the case of a programme created by a group of natural persons, the exclusive rights are owned jointly.
- Where a computer programme is created by an employee in the execution of his duties or following the instructions given by his employer, the employer alone will be entitled to exercise all economic rights in the programme, unless otherwise provided for by contract.

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- BENEFICIARIES OF PROTECTION (Art.3)

- Protection is accorded on the basis of residence, nationality and first publication as laid down by the relevant Member State.



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- RESTRICTED ACTS (Art.4)

The exclusive rights of the author include the right to perform or to authorize:

- a) the reproduction of a computer program;
- b) the translation, adaptation, arrangement and other alteration of a computer program;
- c) the distribution, including the rental, of a computer programme or of copies thereof. Community exhaustion of the distribution right after first sale of copy of program

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EXCEPTIONS (Art.5)

- In the absence of specific contractual provisions, the acts necessary for the use of the computer program (“its intended purpose”) by the acquirer (Art.4,a), including for error correction.
- Moreover, the making of a back-up copy by a person having a right to use the computer program may not be prevented by contract in so far as it is necessary for that use.
Sanction: contractual provision=void

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- REVERSE ENGINEERING

A person having a right to use a copy of a computer program is entitled 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 programme which he is entitled to perform.

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DECOMPILATION EXCEPTION (Art.6)

- (as regards acts under Art.4a+b) decompilation of a program under certain limited conditions and with the aim of achieving the interoperability of an independently created computer program.
- Use of information obtained through its application
- Respect of 3 step test



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SPECIAL MEASURES AND THE PROTECTION OF TECHNOLOGICAL MEASURES (Art.7)

Member States shall provide “appropriate remedies” against a person committing any of the acts listed below:

- any act of putting into circulation a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
- the possession, for commercial purposes, of a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
- 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 unauthorized removal or circumvention of any technical device which may have been applied to protect a computer program.

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- TERM OF PROTECTION (Art.8)

- life of the author and for 70 years after his death or after the death of the last surviving author (Directive 93/98/EEC extended the duration of copyright protection to 70 years).
- anonymous or pseudonymous work, or where a legal person is designated as the author: 70 years from the time that the computer programme is first lawfully made available to the public.
- without prejudice to any other legal provisions on the protection of intellectual property.

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- CONTINUED APPLICATION OF OTHER LEGAL PROVISIONS (Art.9)

- The provisions of the Directive apply also to programmes created before 1 January 1993 without prejudice to any acts concluded and rights acquired before that date.

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Report dated 10 April 2000 from the Commission on the implementation and effects of Directive 91/250/EEC on the legal protection of computer programmes [COM(2000) 199 final].

- The Commission considers that the overall results show that the objectives of the Directive have been met and that the effects on the software sector are satisfactory.

Adoption of the Directive has improved the situation of the computer program sector in four main ways:

- a reduction in pirating,
- an increase in employment,
- the switch to open systems and
- harmonisation as regards computer programs created by employees.

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- The Directive and in particular the decompilation provisions were the result of intensive debate among all interested circles and the balance found then appears to be still valid today
- The Commission considers that no amendment of the Directive is necessary at present but does not rule out the possibility of adjustment at a later stage in the light of other developments.