

Law Transposing to Belgian Law the European Directive of May 14, 1991, on the Legal Protection of Computer Programs*

(of June 30, 1994)

Art. 1.

In accordance with Council Directive 91/250/EEC of May 14, 1991, on the legal protection of computer programs, computer programs, including the preparatory design material, shall be protected by copyright and assimilated to literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works.

Art. 2.

A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection under copyright.

The protection afforded by this Law shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, shall not be protected under copyright.

Art. 3.

Unless otherwise provided by contract or statute, the employer alone shall be deemed the assignee of the economic rights in computer programs created by one or more employees or servants in the execution of their duties or following the instructions given by their employer.

Art. 4.

Moral rights shall be governed by Article 6bis(1) of the Berne Convention.

Art. 5.

Subject to Articles 6 and 7, the economic rights shall comprise:

(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 right holder;

(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, including rental or lending, of the original computer program or of copies thereof. The first sale of a copy of a program by the right holder or with his consent shall exhaust the distribution right within the European Union of that copy, with the exception of the right to control further rental or lending of the program or of a copy thereof.

*Official French title: Loi transposant en droit belge la directive européenne du 14 mai 1991 concernant la protection juridique des programmes d'ordinateur.

Entry into force: August 1, 1994.

Source: Moniteur belge, of July 27, 1994, pp. 19315 et seq.

Note: Translation by the International Bureau of WIPO.

Art. 6.

(1) In the absence of specific contractual provisions, the acts referred to in Article 5(a) and (b) shall not require authorization by the right holder where they are necessary for the use of the computer program by the entitled person in accordance with its intended purpose, including for error correction.

(2) A person having the right to use a computer program may not be prevented from reproducing it in the form of a backup copy insofar as such copy is necessary for the use of the program.

(3) A person having the right to use a computer program shall be entitled, without the authorization of the right holder, 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.

Art. 7.

(1) The authorization of the right holder shall not be required where reproduction of the code or translation of its form within the meaning of Article 5(a) and (b) is 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) the acts of reproduction and translation are performed by a person having a right to use a copy of the program or on his behalf by a person authorized to do so;

(b) the information necessary to achieve interoperability is not already readily and rapidly available;

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

(2) The provisions of the foregoing paragraph 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 program;

(b) to be given to others, except if such communication proves necessary for the interoperability of the independently created computer program;

(c) or 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) This Article may not be applied in a manner which unreasonably prejudices the right holder's legitimate interests or conflicts with a normal exploitation of the computer program.

Art. 8.

The provisions of Articles 6(2) and (3) and 7 are obligatory.

Art. 9.

The term of copyright protection for computer programs shall be determined in accordance with Article 2 of the Law of June 30, 1994, on Copyright and Neighboring Rights.

Art. 10.

Infringement of copyright in a computer program shall be punishable in accordance with the law.

Persons who put into circulation or who, for commercial purposes, possess a copy of a computer program knowing, or having reason to believe, that it is unlawful as also persons who put into circulation or possess for commercial purposes any means of which the sole intended purpose is to facilitate the unauthorized removal or circumvention of technical devices protecting the computer program shall be liable to a fine of between 100 francs and 100,000 francs.

Art. 11.

(1) In pronouncing a sentence for infringement of Article 10, the court may order confiscation of the physical mediums with which the infringement has been committed.

(2) Any repeated offense related to infringement under Article 10 shall be punishable by imprisonment of between three months and two years and a fine of between 100 francs and 100,000 francs or one only of these penalties.

Art. 12.

This Law shall also apply to computer programs created prior to its entry into force.

It shall not affect rights acquired under law or through legal instruments nor to acts of exploitation carried out prior to such entry into force.

Art. 13.

(1) Actions relating to the application of this Law shall be heard by the First Instance Courts irrespective of the value of the action.

Any action based on both infringement of the rights afforded by this Law and an act contrary to fair trading shall be heard exclusively by the First Instance Court.

(2) An action under paragraph (1) shall be heard exclusively by:

1. the Court established at the seat of the Appeal Court within whose jurisdiction the infringement has been committed or, at the choice of the plaintiff, the Court established at the seat of the Appeal Court within whose jurisdiction the defendant or one of the defendants has his domicile or place of residence;

2. the Court established at the seat of the Appeal Court within whose jurisdiction the plaintiff has his domicile or place of residence, when the defendant or one of the defendants does not have a domicile or place of residence within the Kingdom.

(3) Any agreement contrary to the provisions of paragraphs (1) and (2), whether made before or after the beginning of litigation, shall be automatically null and void.

However, the provision in the first subparagraph shall not prevent the disputes referred to in this Article from being submitted to arbitration. By way of derogation from Article 630(2) of the Judicial Code, the parties shall determine the place of arbitration.

Art. 14.

(1) Article 569(1) of the Judicial Code is supplemented as follows:

"24. actions referred to in Article 13 of the Law of June 30, 1994, Transposing to Belgian Law the European Directive of May 14, 1991, on the Legal Protection of Computer Programs."

(2) Article 627 of the aforementioned Code is supplemented as follows:

"13. the Court designated by Article 13(2) of the Law of June 30, 1994, Transposing to Belgian Law the European Directive of May 14, 1991, on the Legal Protection of Computer Programs, in the case of actions based on Article 13(1) of that Law."