The Copyright (Computer Programs) Regulations 1992

Made

16th December 1992

Coming into force

1st January 1993

Whereas a draft of the following Regulations has been approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State, being a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the protection by copyright of computer programs, in exercise of the powers conferred by section 2(2) and (4) of the said Act of 1972, hereby makes the following Regulations:—

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Copyright (Computer Programs) Regulations 1992 and shall come into force on 1st January 1993.

(2) These Regulations extend to Northern Ireland.

2. The Copyright, Designs and Patents Act 1988(**3**) shall be amended as follows.

Amendments of Part I (copyright) of the Copyright, Designs and Patents Act 1988

"Literary work" extended to include preparatory design material for a computer program

3. In section 3(1) (meaning of literary, dramatic and musical works) in the definition of "literary work", omit the "and" immediately preceding paragraph (b) and at the end of that paragraph insert

", and

(c)preparatory design material for a computer program".

Restriction of infringement by issue of copies of computer programs within the Community

4.—(1) In section 18 (infringement by issue of copies to the public), in subsection (2)—

(a)after the words "work are" insert "except where the work is a computer program"; and

(b)for the words ", films and computer programs" substitute the words "and films".

(2) After subsection (2) of that section insert—

"(3) References in this Part to the issue to the public of copies of a work where the work is a computer program are to the act of putting into circulation copies of that program not previously put into circulation in the United Kingdom or any other member State, by or with the consent of the copyright owner, and not to—

(a)any subsequent distribution, sale, hiring or loan of those copies, or

(b)any subsequent importation of those copies into the United Kingdom,

except that the restricted act of issuing copies to the public includes any rental of copies to the public.".

Meaning of "adaptation" in relation to a computer program

5.—(1) In section 21 (infringement by making adaptation), in subsection (3) (meaning of "adaptation") in paragraph (a) after "literary" insert "work, other than a computer program,".

(2) After that paragraph of that subsection insert—

"(ab)in relation to a computer program, means an arrangement or altered version of the program or a translation of it;".

(3) In subsection (4) of that section (meaning of "translation" in relation to computer programs), omit the words ", otherwise than incidentally in the course of running the program".

Meaning of "infringing copy"

6. In section 27 (meaning of "infringing copy"), in subsection (3) (imported articles) at the beginning insert "Subject to subsection (3A)" and after that subsection insert—

"(3A) A copy of a computer program which has previously been sold in any other member State, by or with the consent of the copyright owner, is not an infringing copy for the purposes of subsection (3).".

Exclusion of decompilation of computer programs from fair dealing

7. In section 29 (research and private study), after subsection (3) insert—

"(4) It is not fair dealing—

(a)to convert a computer program expressed in a low level language into a version expressed in a higher level language, or

(b)incidentally in the course of so converting the program, to copy it,

(these acts being permitted if done in accordance with section 50B (decompilation)).".

New permitted acts in relation to computer programs

8. After section 50 insert—

"*Computer programs: lawful users*

Back up copies.

50A.—(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to make any back up copy of it which it is necessary for him to have for the purposes of his lawful use.

(2) For the purposes of this section and sections 50B and 50C a person is a lawful user of a computer program if (whether under a licence to do any acts restricted by the copyright in the program or otherwise), he has a right to use the program.

(3) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).

Decompilation.

50B.—(1) It is not an infringement of copyright for a lawful user of a copy of a computer program expressed in a low level language—

(a)to convert it into a version expressed in a higher level language, or

(b)incidentally in the course of so converting the program, to copy it,

(that is, to "decompile" it), provided that the conditions in subsection (2) are met.

(2) The conditions are that—

(a)it is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program ("the permitted objective"); and

(b)the information so obtained is not used for any purpose other than the permitted objective.

(3) In particular, the conditions in subsection (2) are not met if the lawful user—

(a)has readily available to him the information necessary to achieve the permitted objective;

(b)does not confine the decompiling to such acts as are necessary to achieve the permitted objective;

(c)supplies the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective; or

(d)uses the information to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright.

(4) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).

Other acts permitted to lawful users.

50C.—(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to copy or adapt it, provided that the copying or adapting—

(a)is necessary for his lawful use; and

(b) is not prohibited under any term or condition of an agreement regulating the circumstances in which his use is lawful.

(2) It may, in particular, be necessary for the lawful use of a computer program to copy it or adapt it for the purpose of correcting errors in it.

(3) This section does not apply to any copying or adapting permitted under section 50A or 50B.".

9. In section 179 (index of defined expressions) in the appropriate place in the alphabetical order insert—

"lawful user (in sections 50A to 50C)   section 50A(2)".

Amendments of Part VII (miscellaneous and general) of the Copyright, Designs and Patents Act 1988

Devices designed to circumvent copy-protection applied to computer programs

10. In section 296 (devices designed to circumvent copy-protection), after subsection (2) insert—

"(2A) Where the copies being issued to the public as mentioned in subsection (1) are copies of a computer program, subsection (2) applies as if for the words "or advertises for sale or hire" there were substituted "advertises for sale or hire or possesses in the course of a business".".

Avoidance of certain terms relating to computer programs

11. After section 296 insert—

"*Computer programs*

Avoidance of certain terms.

296A.—(1) Where a person has the use of a computer program under an agreement, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict—

(a) the making of any back up copy of the program which it is necessary for him to have for the purposes of the agreed use;

(b) where the conditions in section 50B(2) are met, the decompiling of the program; or

(c) the use of any device or means to observe, study or test the functioning of the program in order to understand the ideas and principles which underlie any element of the program.

(2) In this section, decompile, in relation to a computer program, has the same meaning as in section 50B".

Transitional provisions and savings

Computer programs created before 1st January 1993

12.—(1) Subject to paragraph (2), the amendments of the Copyright, Designs and Patents Act 1988 made by these Regulations apply in relation to computer programs created before 1st January 1993 as they apply to computer programs created on or after that date.

(2) Nothing in these Regulations affects any agreement or any term or condition of an agreement where the agreement, term or condition is entered into before 1st January 1993.

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E. Leigh

Parliamentary Under Secretary of State,

Department of Trade and Industry

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16th December 1992

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the provisions of Council Directive No. 91/250/EEC (O.J. No. L122, 17.5.91, page 42) ("the Directive") on the legal protection of computer programs.

The Copyright, Designs and Patents Act 1988 ("the Act") currently makes provision for the protection of copyright in computer programs. The Directive harmonises the laws of the member States relating to the protection of computer programs and includes matters for which the Act makes no specific provision or makes different provision. These Regulations amend and modify the Act in order to properly align its provisions with those of the Directive. In particular the Regulations—

(a) introduce modifications of the definition of literary work by including preparatory design material (regulation 3) and modify the meaning of adaptation and translation in relation to computer programs (regulation 5);

(b) modify the meaning of "issues to the public of copies" and "infringing copy" so as to strengthen the distribution rights of copyright owners in the United Kingdom subject to exhaustion of rights inside the European Economic Community (regulations 4 and 6);

(c) remove certain acts relating to computer programs from the general application of the fair dealing provision in section 29 (regulation 7);

(d) introduce new sections 50A, 50B and 50C (regulation 8) containing specific exceptions to the exclusive rights of the copyright owner in favour of a lawful user—

(i) permitting the making of a back up copy (new section 50A(1));

(ii) defining a lawful user (new section 50A(2));

(iii) permitting limited decompilation of a computer program (new section 50B(1)) subject to compliance with certain conditions (new section 50B(2) and (3));

(iv) permitting restricted amounts of copying and adapting for lawful use, including for error correction (except where otherwise provided for) (new section 50C);

(e) introduce an amendment to section 296 extending the category of persons against whom remedies may be sought under that section in respect of dealing in devices designed to circumvent copy-protection for the purpose of making infringing copies (regulation 10); and

(f)introduce a new section 296A which renders void any term in an agreement which seeks to prohibit or restrict the doing of any of the acts permitted under sections 50A and 50B or the use of any device or means to observe the functioning of a computer program (regulation 11).

These Regulations come into force on 1st January 1993. The provisions extending or diminishing the restricted or permitted acts (as the case may be) relating to copyright in computer programs apply to all computer programs created prior to or on or after that date. However, they are to be without prejudice to any acts concluded or rights acquired before 1st January 1993 (regulation 12).

(**1**)

S.I. 1992/707.

(**2**)

1972 c. 68.

(**3**)

1988 c. 48.