

1992 No. 3233 COPYRIGHT

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 designated¹ for the purposes of section 2(2) of the European Communities Act 1972² 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 1988³ 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—

¹S.I. 1992/707.

²1972 c.68.

³1988 c.48.

- (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.

E. Leigh
Parliamentary Under Secretary of State,
Department of Trade and Industry

16th December 1992