

Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version) (Text with EEA relevance)

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of 23 April 2009

on the legal protection of computer programs

(Codified version)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) The content of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs⁽³⁾ has been amended⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) The development of computer programs requires the investment of considerable human, technical and financial resources while computer programs can be copied at a fraction of the cost needed to develop them independently.
- (3) Computer programs are playing an increasingly important role in a broad range of industries and computer program technology can accordingly be considered as being of fundamental importance for the Community's industrial development.
- (4) Certain differences in the legal protection of computer programs offered by the laws of the Member States have direct and negative effects on the functioning of the internal market as regards computer programs.
- (5) Existing differences having such effects need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the internal market to a substantial degree need not be removed or prevented from arising.
- (6) The Community's legal framework on the protection of computer programs can accordingly in the first instance be limited to establishing that Member States should accord protection to computer programs under copyright law as literary works and, further, to establishing who and what should be protected, the exclusive rights on which

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protected persons should be able to rely in order to authorise or prohibit certain acts and for how long the protection should apply.

- (7) For the purpose of this Directive, the term ‘computer program’ shall include programs in any form, including those which are incorporated into hardware. This term also includes preparatory design work leading to the development of a computer program provided that the nature of the preparatory work is such that a computer program can result from it at a later stage.
- (8) In respect of the criteria to be applied in determining whether or not a computer program is an original work, no tests as to the qualitative or aesthetic merits of the program should be applied.
- (9) The Community is fully committed to the promotion of international standardisation.
- (10) The function of a computer program is to communicate and work together with other components of a computer system and with users and, for this purpose, a logical and, where appropriate, physical interconnection and interaction is required to permit all elements of software and hardware to work with other software and hardware and with users in all the ways in which they are intended to function. The parts of the program which provide for such interconnection and interaction between elements of software and hardware are generally known as ‘interfaces’. This functional interconnection and interaction is generally known as ‘interoperability’; such interoperability can be defined as the ability to exchange information and mutually to use the information which has been exchanged.
- (11) For the avoidance of doubt, it has to be made clear that only the expression of a computer program is protected and that ideas and principles which underlie any element of a program, including those which underlie its interfaces, are not protected by copyright under this Directive. In accordance with this principle of copyright, to the extent that logic, algorithms and programming languages comprise ideas and principles, those ideas and principles are not protected under this Directive. In accordance with the legislation and case-law of the Member States and the international copyright conventions, the expression of those ideas and principles is to be protected by copyright.
- (12) For the purposes of this Directive, the term ‘rental’ means the making available for use, for a limited period of time and for profit-making purposes, of a computer program or a copy thereof. This term does not include public lending, which, accordingly, remains outside the scope of this Directive.
- (13) The exclusive rights of the author to prevent the unauthorised reproduction of his work should be subject to a limited exception in the case of a computer program to allow the reproduction technically necessary for the use of that program by the lawful acquirer. This means that the acts of loading and running necessary for the use of a copy of a program which has been lawfully acquired, and the act of correction of its errors, may not be prohibited by contract. In the absence of specific contractual provisions, including when a copy of the program has been sold, any other act necessary for the use of the copy of a program may be performed in accordance with its intended purpose by a lawful acquirer of that copy.

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- (14) A person having a right to use a computer program should not be prevented from performing acts necessary to observe, study or test the functioning of the program, provided that those acts do not infringe the copyright in the program.
- (15) The unauthorised reproduction, translation, adaptation or transformation of the form of the code in which a copy of a computer program has been made available constitutes an infringement of the exclusive rights of the author. Nevertheless, circumstances may exist when such a reproduction of the code and translation of its form are indispensable to obtain the necessary information to achieve the interoperability of an independently created program with other programs. It has therefore to be considered that, in these limited circumstances only, performance of the acts of reproduction and translation by or on behalf of a person having a right to use a copy of the program is legitimate and compatible with fair practice and must therefore be deemed not to require the authorisation of the rightholder. An objective of this exception is to make it possible to connect all components of a computer system, including those of different manufacturers, so that they can work together. Such an exception to the author's exclusive rights may not be used in a way which prejudices the legitimate interests of the rightholder or which conflicts with a normal exploitation of the program.
- (16) Protection of computer programs under copyright laws should be without prejudice to the application, in appropriate cases, of other forms of protection. However, any contractual provisions contrary to the provisions of this Directive laid down in respect of decompilation or to the exceptions provided for by this Directive with regard to the making of a back-up copy or to observation, study or testing of the functioning of a program should be null and void.
- (17) The provisions of this Directive are without prejudice to the application of the competition rules under Articles 81 and 82 of the Treaty if a dominant supplier refuses to make information available which is necessary for interoperability as defined in this Directive.
- (18) The provisions of this Directive should be without prejudice to specific requirements of Community law already enacted in respect of the publication of interfaces in the telecommunications sector or Council Decisions relating to standardisation in the field of information technology and telecommunication.
- (19) This Directive does not affect derogations provided for under national legislation in accordance with the Berne Convention on points not covered by this Directive.
- (20) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 204, 9.8.2008, p. 24.](#)
- (2) Opinion of the European Parliament of 17 June 2008 (not yet published in the Official Journal) and Council Decision of 23 March 2009.
- (3) [OJ L 122, 17.5.1991, p. 42.](#)
- (4) See Annex I, Part A.