

**HELLENIC REPUBLIC**  
**MINISTRY OF ECONOMICS**  
**ECONOMIC CRIME INDICTMENT AGENCY, CENTRAL SERVICE**  
**SPECIAL ECONOMIC INSPECTION AGENCY, DEPARTMENT C, SPECIAL ECONOMIC**  
**CASES**

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**Protocol No.: 110114/C**

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**TO: The District Departments of E.C.I.A.**

**TOPIC: PROTECTION OF COMPUTER SOFTWARE PROGRAMS**

Next to our document with protocol no. 109623/22.8.2000, providing instructions regarding the inspections for the protection of author's rights and in order to specify the inspections with respect to each category, we set forth instructions for the inspections regarding the computer software programs copyright protection.

The computer software copyright protection is a responsibility of the E.C.I.A. presenting a special tax interest, apart from the defence of the creators' interests, as defined by the legislation, because counterfeit products are usually sold without any tax vouchers and as a result the Greek State suffers an important loss of revenues.

In order for the E.C.I.A. personnel to be informed and consequently aware and able to fully deal with these cases in action, the following instructions are provided:

**A. STANDING LEGISLATION**

1. According to article 2 of L. 2121/1993 on copyright and related rights, computer software programs, as well as all preparatory material required for its development, are included among the rights protected under L. 2121/1993 on copyright and related rights. The powers of the beneficiary derive from article 3 of L. 2121/1993, which includes an indicative enumeration of the beneficiary's powers.
2. According to article 42 of L. 2121/1993, without the beneficiary's permission, it is forbidden to: reproduce, translate, adjust, adapt or in any other way modify a computer software program.
3. According to article 65 of L. 2121/1993, in case of copyright infringement, the beneficiary can claim acknowledgment of his right, cease of infringement, the safeguard that it won't be committed in the future, as well as an indemnification, which can in no way be less than the double of the amount the offender would have to pay, if he had legally purchased the user license for the program.
4. According to article 66, L. 2121/1993, providing the criminal sanctions, the offender is punished with at least one (1) year imprisonment and a fine amounting from 1 to 5 million drachmas. If the damage suffered by the beneficiary is significant, then the imprisonment provided is at least for two (2) years and the fine is set at 2 to 10 million drachmas. If the offender commits the aforementioned acts as a profession or the circumstances under which the act was committed indicates that the offender is especially dangerous for the protection of copyright or related rights, then the imprisonment may rise up to 10 years and the fine is set at 5 to 20 million drachmas, with the additional recall of the license of the business where the act was committed. The act is considered to have been committed as a profession, if the offender has been sentenced to imprisonment for copyright infringement with an irrevocable court order.

5. As defined by the second quotation of case c, article 13 of the Criminal Code, as amended by article 2 of L. 1805/1988, a document is considered to be any means (medium) used by a computer or a computer's peripheral memory, electronically, magnetically or otherwise for the recording, storage and production of elements that cannot be read instantly, as well as any other magnetic, electronic or other material where information, images, symbols or sound are recorded, either separately or in combination, provided that these means and materials are meant or adequate to prove facts of legal importance. Thus, crimes related to memos (e.g. forgery), crimes against property rights (e.g. fraud) or crimes of privacy violation may be committed with the use of a computer.
6. According to article 370C of the Criminal Code, as this was amended by article 4 of L. 1805/1988, any person copying or using computer software programs without having the relevant right, as well as any person gaining access to facts stored in a computer is guilty of a misdemeanour, provided that he has committed the aforementioned acts without having the right to do so. **These acts are prosecuted upon indictment.**
7. According to article 386<sup>A</sup> of the Criminal Code, on "computer fraud", as amended by article 5 of L. 1805/1988, any person damaging another's property with the purpose of gaining property benefits for himself or any third person, by tampering with a computer's data by means of false configuration of its program, intervention during its application, use of incorrect or incomplete elements or in any other way, is punished under the provisions of article 386 of the Criminal Code. The estimation of the damage is irrelevant to the number of the people affected.
8. The provisions of articles 370C and 386<sup>A</sup> of the Criminal Code are broader than those related to copyright because they deal with all cases of privacy violation or computer sabotage, whereas copyright theft has to do with the original intellectual work of speech, art or science regardless of the form it is expressed in (article 2, L. 2121/1993). Therefore, the above mentioned crimes are separate and independent, accumulated either in theory or in practice, taking into account the different legal property they protect (privacy, foreign property, the author's property and moral right). The crime of copyright theft can be combined with that of forgery and fraud, as accepted by case law, which has furthermore ruled that the purchase of "pirated" tapes is considered receiving of crime products.

## **B. ANALYSIS - REMARKS**

1. In practice, the illegal use (piracy) of software is expressed as illegal reproduction, either by the end user who has stored a copy of the software in his computer hard disk drive without having first purchased the required license by paying the relevant fee or by the trader who provides customers with computers loaded with pirated programmes in an effort to make his offer more appealing.
2. A computer program is considered to be reproduced every time that it is loaded to a computer or recorded on magnetic or optical storage media, such as disks, diskettes or cds, thus providing the ability to view it on screen and run it. The general meaning of reproduction covers both the recording/storage in a stable substrate and instant reproduction.
3. In order for the use of the software to be legal, the software development company, which holds the relevant copyright, must grant the buyer the license to use the specific program. This license is provided with an agreement called "End User License Agreement" (EULA). In particular, the license accompanying all legal computer programs clearly provides the way, time and the form in which the program must be used, in accordance with articles 15 and 16 of L.2121/1993. In almost all cases, the license granted by the software development companies holding the copyright equals to one software program with a specific serial number and provides that the program can be used by a single user and for a single computer. Therefore, the reproduction and use of computer programs executed without the provision of a written license or in violation of the license terms (use of the same program in

more than one computers) are illegal. In order for the user to prove the legal use of the computer programs with the specific serial number, he must produce the user licenses, the original user diskettes (featuring the serial number), as well as the purchase invoices.

### **C. INSPECTION PROCEDURES**

The E.C.I.A. is responsible for the protection of the author's rights in accordance with L.2343/95. Its annual action plan, in the context of daily tax inspections, provides for the inspection of software user licenses, where it is determined whether the used programs are accompanied by the relevant user licenses and the required tax vouchers. In every inspection in businesses using computers and consequently software programs, the E.C.I.A. crews, apart from inspecting the business' books and vouchers, will also examine whether the software products are legally used, requesting the corresponding user license for each program.

Due to the fact that the violations are considered to be too many and in order not to engage the agency in criminal prosecution procedures, which would seriously distort its operation, the person in charge of the business will be given five days to produce the purchase invoices and the corresponding user licenses for the programs. If these are not produced, a case file will be made and the persons accountable will be indicted to the competent public attorney, as provided by the standing provisions.

For the preparation of the case file, the documents already provided to you will be used.

The Director

Panayotis Douvis

