Chapter 33

The Hellenic Framework for Computer Program Copyright Protection Following the Implementation of the Relative European Union Directives

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ABSTRACT

The huge financial rewards that may be gained from software sales have resulted in computer piracy, an increasing worldwide phenomenon. This situation has posed a challenge to the legislator, who has imposed regulations concerning the protection of software, both at national and international level. The following chapter focuses on the presentation of the current Hellenic legal framework on computer program copyright protection following the implementation of the relative E.U. Directives (Law 2121/1993, as amended). The chapter consists of an introduction focusing on software piracy rates and on the international legal framework of the protection; there is a unit on the right holder, being the subject of software copyright protection; a unit on the field of the protection; a unit on the rights of the author (the moral right, the property right and the resulting powers thereof), focusing on the power of software reproduction and specific cases where the lawful user can carry out acts without the author's consent; a unit on the consequences of copyright infringement (sanctions at civil, criminal, and administrative level); a unit on the duration of the protection; and finally concluding with final remarks and recommendations.

INTRODUCTION

The huge economic gains of computer programs are known worldwide. The enormous financial rewards of the software market have resulted in computer piracy, i.e. the illegal use, including reproduction and distribution, of software.

Software piracy is indeed a worldwide phenomenon. According to the "BSA 7th annual global software piracy study" (B.S.A., 2010), world piracy rate increased from 35% in 2005 to 38% in 2007, to 41% in 2008, to 43% in 2009. The increase of the above rate is largely due to the rapid growth of software sales in markets with the higher piracy rates, such as Brazil, India and China. The countries with the highest piracy rates (over 90%) are Georgia, Zimbabwe and Moldavia. The countries with the lowest piracy rates are the U.S.A. (20%), Japan (21%) and Luxembourg (21%). In the European Union, software piracy has remained on average at 35% since 2007, although in a number of E.U. countries, such as Austria, Germany, Greece and Italy, it has increased. In Greece the above rate fell from 64% in 2005 to 61% in 2006, to 58% in 2007 and to 57% in 2008. In 2009, however, it rose to 58% again, making it the highest piracy rate in the E.U. in 2005 and the third highest rate from 2007 to 2009. Since 2007 Bulgaria and Romania, newcomers in the E.U., have held the highest piracy rates (67% for Bulgaria and 65% for Romania).

The vast problem of software piracy has posed a challenge to the legislator, who has imposed regulations on the protection of software, both at national and international level.

It is worth noting that international treaties have been signed to protect copyright in general. Among these are the Berne Convention for the Protection of Literary and Artistic Works (1886 – as subsequently amended, ratified by Greece – law 100/1975), the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (Trip's Agreement, 1994, ratified by Greece – law 2290/1995), the WIPO Copyright Treaty (WCT, 1996, ratified by Greece – law 3184/2003).

In the E.U. the specific legal protection of computer programs has been harmonized by the Directive 91/250/EEC of 14 May 1991 "on the legal protection of computer programs", called "Software Directive", Official Journal (O.J.) L 122/42, 17/05/1991 (Lloyd, 2004; Millard, 1996; Lucas, A., Devèze, J.& Frayssinet, J., 2001). The Software Directive has been amended by the Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights, O.J. 290/9, 24/11/1993. The Directive 93/98/EEC was repealed by the Directive 2006/116/EC on the duration of the protection of copyright and related rights (codified version), O.J. L 372/12, 27/12/2006. Recently Directive 91/250, as amended, has been codified (and thus repealed) by the Directive 2009/24/EC of 23 April 2009 of the European Parliament and the Council "on the legal protection of computer programs-codified version" (O.J. 111/16, 5.5.2009).

The Software Directive is one of the most significant in the area of Intellectual Property Legislation. Other significant Directives, which reinforced the copyright protection of works in general, including that of computer programs, are the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (O.J. L 167/10, 22/6/2001), also known as the "Copyright Directive" and the Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (O.J. L 157/45, 30/4/2004, O.J. 195/16, 2/6/2004), also known as "IPR Enforcement Directive" or "IPRED"). Directive 2001/29/EC aims to adapt national legislations concerning the copyright in the digital environment. One of the most important regulations of this Directive concerns the legal protection of technological measures which aim to protect a work against infringements, as well as the legal protection of

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