

COMPUTER PROGRAMS PROTECTION ACT

CHAPTER I

GENERAL PROVISIONS

Purpose

Article 1. The Purpose of this Act is contribute to the development of the national economy by protecting the author's rights of computer program works (hereinafter referred to as "program") and striving for fair use of programs, and by promoting the programs-related industry and technology.

Definition

Article 2. For the purpose of this Act, the definitions of terms shall be as follows;

1. The term "programs" means creative works expressed as a series of instructions and commands used directly or indirectly in an apparatus having data processing capacity such as a computer, etc. (hereinafter referred to as "computer") for the purpose of obtaining a certain result;
2. The term "program author" means a person who has created a program;
3. The term "reproduction" means any act of reproducing a program by fixing it in a tangible medium without addition of any novel creativity;
4. The term "adaptation" means any act of creating a new program using the whole or significant part of a series of instructions and commands from another original program;
5. The term "derivative program" means a program adapted from the original;
6. The term "disclosure" means any act of publishing a program or presenting it to a specified person or many unspecified persons (hereinafter referred to as the "public");
7. The term "publication" means any act of reproducing or distributing a program in order to meet the demand of the public;
8. The term "distribution" means any act of transferring or lending an original program or its reproduction to the public;
9. The term "transmission" means any act of transmitting a program or providing it for use by means of wireless or wire communications in order that the public may receive or use it; and
10. The term "copyright management information" means any information on a program, an author thereof, a holder of a right there to and a method and condition of use thereof which is included in an original program or its reproductions or indicated in connection with any transmission and a numeral or mark indication such information.

Programs of Foreigner

Article 3.—(1) Programs of foreigners (including foreign juristic persons; hereinafter in this Article the same shall apply) shall be protected according to the treaty which the Republic of Korea has joined or signed.

(2) Programs which are created by a foreign juristic person having a principal office in the Republic of Korea, and those which are published firstly by a foreigner in the Republic of Korea (including programs published in the Republic of Korea within thirty days from the day on which the programs are published in a foreign country), shall be protected under this Act.

(3) Even though a foreigner's program falls under Paragraphs (1) and (2), if the foreign country to which the foreigner belongs, does not protect programs of nationals of the Republic of Korea, the protection under the treaty or this Act may be restricted correspondingly.

Exclusion from Application

Article 4.—(1) The provisions of this Act shall not be applicable to the program languages, rules and algorithms used for preparing a program.

(2) For the purpose of Paragraph (1),

1. The term “program languages” means characters, codes and system thereof as means to express a program;
2. the term “rules” means a special promise on the usage of program language in a specified program; and
3. the term “algorithms” means a method of combining instructions and commands in a program.

Derivative Program

Article 5. Derivative programs shall be protected as an independent program.

CHAPTER II

PROGRAM COPYRIGHT

Presumption of Program Author

Article 6.—(1) Any person whose name (hereinafter referred to as “real name”) or well-known pen name, abbreviation, etc. (hereinafter referred to as “nickname”) as a program author is indicated in a general manner on the original program or its reproduction, or in disclosing the program, shall be presumed to be the program author.

(2) In case of a program without indication of the program author under Paragraph (1), the person who discloses or publishes it, shall be presumed to have the copyright of the program.

Author of Program Created in Service

Article 7. With respect to a program created in the course of service by a person engaging in services of the State, corporation, organization or other employer (hereinafter in this Article referred to as “corporation, etc.”) under a planning of the corporation, etc., the author of such program shall be the corporation, etc. unless the contract, service regulation, etc. provides otherwise.

Article 8.—(1) The program author shall have the rights as provided in Articles 9 through 11 and the rights to reproduce, adapt, translate, distribute, publish and transmit a program.

(2) The program copyright shall originate from the time on which the program is created, and it shall not be required to fulfill any procedure or formality.

(3) The program copyright shall be maintained for fifty years from the year following the year in which the program is published: provided, that if it is not published within fifty years after it is created, it shall be maintained for fifty years from the year following the year in which it is created.

Right to Disclose

Article 9.—(1) The program author shall have a right to decide whether he discloses the program or not.

(2) If a program author has transferred or lent a program which is not disclosed, or he has consented to use it under Article 16, he shall be considered to have given his consent to the other party on the disclosure of the program, unless there is any special agreement.

(3) If a derivative program created with the consent of the original program author has been disclosed, only that part of the original program which is quoted for an adaptation shall be considered to have been disclosed.

Right to Indicate Name

Article 10.—(1) The program author shall have the right to indicate his real name or nickname on the program or its reproduction, or in disclosing the program.

(2) Any person who uses a program, shall indicate the real name or nickname of the program author under the conditions as indicated by the program author unless the program author expresses a special intention.

Right to Maintain Identity

Article 11. Except as prescribed in the following Subparagraphs, the program author shall have the right to maintain the identity of the title, contents and form of his program:

1. Modification of a program unusable in any computer other than a specific one so as to be usable in other computers in the limit as required therefor;
2. Modification of a program so as to be used more effectively in a specific computer in the limit as required therefor; and
3. Modification in the limit as deemed inevitable in light of the nature of a program or the purpose of use thereof.

Restriction on Program Copyright

Article 12. In the cases of any of the following subparagraphs, anyone may reproduce or use the disclosed program within the scope necessary for the purpose:

1. Where it is required for a trial;
2. Where an educator in a school as prescribed in the Elementary and Secondary Education Act or the Higher Education Act or educational institutions established under other Acts (limited to an educational institution for which the scholastic ability for admission to a higher grade school is recognized or which grants a degree) reproduces or uses the disclosed program for educational purpose in a class within the scope of not infringing unreasonably on the interests of a program copyright owner in consideration of the classification and use of the program concerned, the relative importance of the reproduced part to the whole program, and the number and nature of the reproductions;
3. Where it is inserted in books for curricula which are necessary for educational purpose in high schools and equivalent schools or lower level; and
4. Where it is reproduced or used for the individual purpose (excluding the case of profit-making purpose) in a limited place like a home; and
5. Where it is aimed at any examination for an entrance to school, or other test or inspection regarding knowledge and skill (excluding the case of profit-making purpose).

Payment of Compensation Due to Insertion in Textbooks

Article 12-2.—(1) A person who intends to insert a program in textbooks under subparagraph 3 of Article 12 shall pay or deposit compensation as determined by the Minister of Information and Communication via the deliberation of the Program Deliberation and Mediation Committee as prescribed in Article 29 to a program copyright owner within thirty days from the day when the amount of the compensation is determined.

- (2) Matters necessary for the determination of compensation as prescribed in paragraph (1) shall be prescribed by the Presidential Decree.

Reproduction, etc. by Program User

Article 13.—(1) Any person who possesses and uses reproductions of a program under a proper title, may reproduce the reproduction in the limit necessary for meeting with the destruction, damage, alteration, etc. of the reproduction.

(2) If a person who possesses and uses reproductions of a program, has lost the right to possess and use it, he shall destruct the reproduction which was made under Paragraph (1), unless the program copyright owner manifests other intentions: provided, that if the right to possess and use the reproduction of a program is lost due to the destruction of it, this provision shall not be applicable.

Transfer of Program Copyright

Article 14. Program copyright may be transferred in whole or in part.

Jointly Created Program

Article 15.—(1) The copyright of a program which is created jointly by two or more persons, and unusable with parts contributed by each person separated (hereinafter referred to as

“jointly created program”), shall be owned jointly by those who create it jointly, and their portions of co-ownership shall be considered to be equal unless there is any special agreement among them.

(2) The copyright of a jointly created program shall not be exercised without an agreement of all the copyright co-owners, and each co-owner shall not transfer his portion or make it an object of the pledge right without consent of other co-owners. In this case, each co-owner shall not prevent them from reaching an agreement or refuse his consent, contrary to good faith.

(3) If one of the jointly created program copyright co-owners has died without leaving an heir, or gives up his portion, the portion shall be distributed to other co -owners in proportion to their portions.

Permission to Use Program

Article 16.—(1) The program copyright owner may permit other persons to use his program.

(2) Any person who is permitted to use the program under Paragraph (1), may use it within the limit of permitted use methods and conditions, and may not transfer the right to use to a third person without consent of the program copyright owner.

Offer of Program to Transaction

Article 16-2.—(1) In the event that any original program or reproduction thereof is offered to a transaction by a way of sales, with the permission of the program copyright owner, it may be distributed continuously.

(2) Notwithstanding the provisions of Paragraph (1), if any program for sale is lent with a profit-making intention, it shall be permitted by the program copyright owner.

Use of Program, Copyright Owner of which is Unknown

Article 17.—(1) In cases where a person who desires to use a program is unable to receive permission for use from the program copyright owner because he does not know the program copyright owner or his residence, for all his considerable efforts, he may use it after depositing the amount notified publicly by the Minister of Information and Communication for the program copyright owner within thirty days from the day when he obtains the approval of the Minister of Information and Communication via the deliberation of the Program Deliberation and Mediation Committee as prescribed in Article 29 after obtaining the said approval under the Presidential Decree.

(2) The contents that the Minister of Information and Communication has approved and the date of approval shall be indicated on the reproduction of program used under paragraph(1).

Promotion of Program Circulation

Article 18. If a program copyright owner receives a request of a program end-user in good faith for an offer to use the program which is already published and in circulation, he shall cooperate with it unless there is any justifiable reason.

Exercise, etc. of Program Copyright which is Object of Pledge Rights

Article 19.—(1) The program copyright which is the object of the pledge rights, shall be exercised by the program copyright owner unless there is any special agreement in the act establishing such pledge rights.

(2) The pledge rights, the object of which is the program copyright, may also be exercised on money or other things to be paid to the program copyright owner by a transfer of the program copyright, transfer or lending of the program, and permission of use under Article 16: provided, that the money or things to be paid shall be seized before a payment or delivery of things.

Extinction of Program Copyright

Article 20. The program copyright shall be extinguished in the following subparagraphs:

1. Where the program copyright owner has died without leaving an heir, and his rights are reverted to the State under the provisions of the Civil Code and other laws; and
2. Where a juristic person or organization which is the program copyright owner, is dissolved, and its rights are reverted to the State under the provisions of the Civil Act and other Acts.

CHAPTER III

REGISTRATION

Registration of Program

Article 21.—(1) The program author may register the following matters, unless it has elapsed one year after creation of the program:

1. Denomination or title of the program;
2. Nationality, real name and residence of the program author;
3. Date of creation of the program; and
4. Outline of the program.

(2) If the program author has died, the person designated by his will, or his heir may make the registration as referred to in Paragraph (1), unless the author manifests any special intention.

(3) The registration as provided in paragraph (1) shall be exercised by the Minister of Information and Communication after recording it in the program register.

(4) The matters necessary for the registration of a program, the public bulletin of program for the registered program under the provisions of paragraph (1), and notify publicly the fact of such registration.

(5) The matters necessary for the registration of a program, the public bulletin of program, the perusal of the program register and the request of its copy delivery, etc. shall be prescribed by the Presidential Decree.

(6) Any person who desires to register the program, the perusal of the program register and copy delivery of a program shall pay the fee as prescribed by the Ordinance of the Ministry of Information and Communication.

Presentation of Program

Article 22.—(1) Any person who makes a registration under the provisions of Article 21 (1) and (2) shall present a reproduction of the program to the Minister of Information and Communication at the time of registration.

(2) In cases where there is a presentation under the provisions of paragraph (1), any registered program shall be presumed to be created on the registered creation date.

(3) Matters necessary for presentation of the program shall be determined by the Presidential Decree.

Duty to Maintenance Secret

Article 23. Any public official who is engaged in affairs to manage reproductions of programs presented under Article 22, or any person who was in such position, shall not divulge to other persons a secret which he acquired in the course of his duties.

Registration of Program Copyright

Article 24.—(1) If the matters falling under any of the following subparagraphs are not registered, it shall not oppose to a third party:

1. Transfer (excluding cases of inheritance and other general succession) or restriction on disposal of program copyright; and
2. Establishment, transfer, modification, extinction or disposal restriction of the pledge right the object of which is the program copyright.

(2) The provisions of Article 21 (3) through (6) shall apply *mutatis mutandis* to the registration of a program copyright as prescribed in paragraph (1) of this Article. In this case, the term “program” shall be deemed to be “program copyright”, and the term “program register” shall be deemed to be “program copyright register”.

CHAPTER IV

REDRESS FOR INFRINGEMENT OF RIGHTS

Request for Suspension, etc. of Infringement

Article 25.—(1) The program copyright owner may request a person who infringes or may infringe his right to suspend or prevent the infringement.

(2) The program copyright owner may, upon making a request under Paragraph (1), request together with it to destroy articles made by and instruments, etc. provided for the act of infringement, or to take other measures necessary for preventing the infringement.

Act to be Considered as Infringement

Article 26. Any act falling under any of the following subparagraphs, shall be considered as one infringing the program copyright concerned:

1. An act which imports any program infringing the program copyright for the purpose of distribution in Korea, if it had been made in Korea at the time of import;

2. An act of a person who uses any reproduction of a program made by an act infringing the program copyright (including any imported program as referred to in subparagraph 1) in a computer for his business, through he has know the fact; and 3. An act of intentional and unauthorized elimination or modification of electronic copyright management information, or intentional and unauthorized distribution of original programs or reproductions or importation or transmission thereof for the purpose of distribution.

Claim for Damages

Article 27.—(1) The program copyright owner may make a claim for damages against the person who has infringed his rights on purpose or by fault.

(2) Any person who has infringed a registered program copyright of another person, shall be presumed to be negligent in his act of infringement.

(3) The amount of profit which a person infringing the program copyright has realized by his act of infringement, shall be presumed to be the amount of loss which the program copyright owner has sustained.

(4) The program copyright owner may claim as damages the amount corresponding to that gainable ordinarily through the exercise of his right, in addition to damages as referred to in Paragraph (3).

(5) If the occurrence of damages is acknowledge but it is difficult to calculate the amount of damages as prescribed in paragraphs (3) and (4), a court may admit a reasonable amount of damages in consideration of the testimony and the examination of evidence.

Infringement of Jointly Created Program

Article 28. Each author or copyright owner of a jointly created program may make a claim under Article 25 without consent of other authors or copyright owners, and may claim damages under Article 27 to his portion with respect to the infringement of his program copyright.

CHAPTER V

PROGRAM DELIBERATION AND MEDIATION COMMITTEE

Program Deliberation and Mediation Committee

Article 29.—(1) In order to deliberate matters concerning the program copyright, and mediate any dispute on the right protected under this Act (hereinafter referred to as “dispute”), the Program Deliberation and Mediation Committee (hereinafter referred to as “Committee”) shall be established.

(2) The Committee shall be composed of ten to fifteen members of deliberation and mediation (hereinafter referred to as “members”), including the chairman.

(3) The members shall be selected from among those who have learning and experience in programs and copyright, by the Minister of Information and Communication and the chairman shall be nominated by the Minister of Information and Communication from among the members.

(4) The term of members shall be three years: provided, that of any members who are commissioned with their positions designated, shall be the period in which they are in such positions.

(5) In case there is a vacancy in members, a supplementary member shall be commissioned under the provisions of paragraph (3), and the term of such supplementary member shall be the remaining period of his predecessor’s term.

Function

Article 29-2. The committee shall deliberate on the policy matters concerning the protection of the program copyright such as matters concerning a compensation as prescribed in Articles 12-2(1) and 17 (1), technical matters, and other matters as prescribed by the Presidential Decree in addition to mediations of disputes.

Mediation Division

Article 29-3. In order to carry out efficiently the dispute mediation services of the Committee, the Mediation Division composed of three members shall be established in the Committee, but one of them shall be qualified for the lawyer.

Request, etc. for Mediation

Article 29-4.—(1) Any person who desires to have any dispute mediated, may request a mediation of the dispute by filing a written request specifying the purpose and cause of request, with the Committee.

(2) The mediation of a dispute as referred to in Paragraph (1) shall be rendered by the Mediation Division as prescribed in Article 29-3.

(3) The Committee shall make mediation within three months after mediation is requested: provided, that if there exists any special reason, it may extend the three month period only one time within the limit of one month with the consent of both interested parties.

(4) If the period as prescribed in paragraph (3) expires, the mediation shall be deemed not to be materialized.

Demand for Attendance

Article 29-5.—(1) If it is deemed necessary for a mediation of dispute, the Committee may demand the party concerned, his representative or interested person to attend at the Committee, or to present necessary related documents.

(2) If the party to the mediation fails to comply with the demand for attendance as referred to in Paragraph (1), without any justifiable reason, the mediation shall be considered not to be materialized.

Materialization of Mediation

Article 29-6.—(1) The mediation shall be materialized by entering the matters agreed between parties in a protocol.

(2) The protocol as referred to in Paragraph (1) shall have the same effect as the judicial conciliation, except in case of matters which the parties are unable to dispose at their option.

Expenses for Mediation

Article 29-7.—(1) The expenses for a mediation shall be borne by the applicant: provided, that when the mediation is materialized, both of parties shall bear equally such expenses, unless there is any special agreement.

(2) The amount of the mediation expenses as referred to in Paragraph (1) shall be determined by the Committee.

Organization, etc. of Committee

Article 29-8. The organization and operation of the Committee, procedure of mediation, payment method of mediation expenses, and other necessary matters, shall be determined by the Presidential Decree.

Assistance of Expenses

Article 29-9. The State may assist the expenses necessary for the operation of the Committee, in the limit of the budget.

CHAPTER VI

SUPPLEMENTARY PROVISIONS

Consultation with Ministries or Agencies Concerned

Article 30. If the Minister of Information and Communication desires to decide and execute important matters concerning the program copyright under the provisions of this Act, he shall consult with the Minister of Culture and Tourism in advance.

Relation with Other Acts

Article 31. Except as provided in this Act, if there are provisions concerning the protection of programs in the Copyright Act, such provisions shall apply.

Delegation of Authority

Article 32. The Minister of Information and Communication may delegate the authority regarding the registration and presentation of programs, and the registration of the copyright under the provisions of Articles 21, 22 and 24 to an organization as prescribed by the Presidential Decree.

Supporting Policy

Article 33. The Government shall devise a supporting policy, such as creation of demand, etc. necessary for the quality assurance, technology enhancement, development acceleration of programs on the basis of a fair trade spirit, in connection with the protection of programs.

Designation, etc. of Program Copyright Agency

Article 33-2.—(1) In order to promote the use of programs and foster the programs-related industry, the Minister of Information and Communication may designate an organization executing the trust management of the program copyright (herein after referred to as an “agency”), and have it conduct the trust affairs of the program copyright in conformity with such requirements and formalities as prescribed by the Presidential Decree.

(2) Any person who conducts an agency or the mediation of program copyright shall make a report to the Minister of Information and Communication as prescribed by the Presidential Decree.

(3) The matters concerning the operation, fee, etc. of the agency as provided in paragraph (1) shall be prescribed by the Presidential Decree.

CHAPTER VII

PENAL PROVISIONS

Penal Provisions

Article 34.—(1) Any person who falls under any of the following subparagraphs shall be sentenced to imprisonment for not more than three years, or by a fine not exceeding fifty million won, or both.

1. A person who infringes on a program copyright by means of a public announcement, reproduction, adaptation, translation, distribution, publication or transmission; and

2. A person who commits any act falling under the provisions of subparagraphs 1 and 2 of Article 26.

(2) Any person who violates the provisions of Article 23, shall be punished by imprisonment for not more than two years, or a fine not exceeding twenty million won.

(3) Any person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than one year, or by a fine not exceeding the million won.

1. Person who commits an act changing or concealing the real name or nickname of the program author, or changing the title of the program, without any justifiable title; and 2.

Person who makes a false registration of the program as prescribed in Article 21, or presents a false reproduction of the program as prescribed in Article 22.

3. A person who commits any act falling under the provisions of subparagraph 3 of Article 26; and

4. A person who conducts the affairs of the program copyright agency without obtaining the designation as provided in Article 33-2 (1).

(4) Any person who carries on an agency or mediation of the program copyright without making a report as provided in Article 33-2 (2) shall be sentenced to a fine not exceeding five million won.

Joint Penal Provisions

Article 35. If a representative of a juristic person, or an agent, employee or other serviceman of a juristic person or individual has committed an offense as prescribed in Article 34 with respect to affairs of the juristic person or individual, the fine as prescribed in the said Article shall also be imposed on such juristic person or individual, in addition to the punishment of the offender.

Accusation

Article 36. A public prosecution concerning any crime as provided in Article 34 (1) and (3) 1 and 3 shall be subject to an accusation relating thereto.

Legal Fiction as Public Official in Application of Penal Provisions

Article 37. The executive and staff of an organization who are engaged in the affairs entrusted by the Minister of Information and Communication under the provisions of Article 32 shall be considered as public officials in application of the provisions of Article 34 (2), and Articles 129 through 132 of the Criminal Act.