

Analysis of Legislative Provisions in Seven Jurisdictions for Protecting Copyright in Computer Programs

Introduction

This note outlines the law in seven jurisdictions for protecting copyright in computer programs. These are Korea, Taiwan, Singapore, India, Germany, Japan and USA. The observations below represent our understanding of the position in these jurisdictions based on our examination of their relevant legislation. Being not qualified to give advice on the law of these jurisdictions, we emphasise that the observations made may not be an authoritative interpretation of their law.

Copyright Protection for Computer Programs

Korea

2. Under the Computer Program Protection Act, a person commits an offence if he, inter alia –
 - (a) infringes the copyright in a computer program by reproduction (subparagraph 1 of Article 34(1)); or
 - (b) knowingly uses an infringing copy of a computer program in a computer for his business (subparagraph 2 of Article 34(1)).

The wrongdoer is punishable by imprisonment of up to 3 years and a fine of up to 50 million won (Article 34(1)).

Taiwan

3. Under the Copyright Law, “computer program” is a kind of copyright work (Article 5). A person commits an offence if he, inter alia –
 - (a) infringes the economic rights in a work of another person by

means of reproducing that work (which includes a computer program). The penalty is imprisonment between 6 months and 3 years and a fine of up to NT\$200,000 (Article 91); or

- (b) uses a copy of a computer program for direct profit-making purpose with the knowledge that it infringes the economic rights in that computer program. The penalty is imprisonment of up to 2 years and a fine of up to NT\$100,000 (Articles 87(5) and 93).

Furthermore, if a person commits an offence in (a) in his regular business, then the penalty will be imprisonment of between 1 and 7 years and a fine of up to NT\$450,000 (Article 94).

Singapore

4. Under the Copyright Act, “work” includes a literary work (section 7(1)) and “literary work” in turn includes a computer program (section 7(1)). A person commits an offence if he, inter alia –

- (a) makes for sale or hire an infringing copy of a copyright work (which includes a computer program) which he knows or ought reasonably know that it is an infringing copy (section 136(1)(a)); or
- (b) possesses¹ an article which he knows or ought reasonably know that it is an infringing copy (which includes a copy of a computer program) for the purpose of selling or distributing (section 136(2)).

The maximum penalty is imprisonment of 5 years and a fine of S\$100,000 (section 136(2)).

5. In addition, any person who publishes an advertisement for the supply of a copy of a computer program which is an infringing copy

¹ Under s.136(7) of Singapore’s Copyright Act, a person who has in his possession 5 or more infringing copies of any work or other subject-matter shall, unless the contrary is proved, be presumed -
(a) to be in possession of such copies otherwise than for private and domestic use; or
(b) to be in possession of such copies for the purpose of sale.

commits an offence. The maximum penalty is a fine of S\$20,000 and imprisonment of 2 years (section 139).

India

6. Under the Copyright Act, “work” includes a literary work (section 2(y)) and “literary work” in turn includes “computer program” (section 2(0)). A person commits an offence if he, inter alia –

- (a) knowingly infringes the copyright in a work (which includes a computer program) by reproduction (sections 51(a)(i) and 63). The penalty is imprisonment for a term between 6 months and 3 years and a fine between 50,000 rupees and 2 lakh rupees. However, the court is given the discretion to impose a term of imprisonment of less than 6 months and a fine of less than 50,000 rupees if the infringement has not been made for gain or in the course of trade or business (section 63); or
- (b) knowingly uses an infringing copy of a computer program on a computer. The penalty is imprisonment between 7 days and 3 years with a fine of between 50,000 rupees and two lakh rupees . However, the court is given the discretion not to impose any custodial sentence but only to impose a fine of up to 50,000 rupees if the computer program has not been used for gain or in the course of trade or business (section 63B).

Germany

7. Under the Copyright Law, protected literary, scientific and artistic copyright works include computer programs (Article 2(1)). A person who reproduces a work (which includes a computer program) without the copyright owner’s consent commits an offence and is liable to imprisonment for up to 3 years or a fine (Article 106(1)). If such infringing act is committed on a commercial basis, the penalty is imprisonment of up to 5 years or a fine (Article 108a(1)). There is the requirement that a person who commits the infringing act has to be intentional (Section 15 of the Penal Code of Germany).

Japan

8. Under the Copyright Law, “works” include computer programs (Article 2(1)(*xbis*) and 10(1)(ix)). A person commits an offence if he, *inter alia* –

- (a) infringes the copyright of a work (including a computer program) by reproduction (Article 119(i)) otherwise than reproducing one copy himself for his private use (Article 30); or
- (b) distributes or possesses for distribution infringing copies (which include infringing copies of a computer program) (Articles 119(i) and 113(1)(ii)); or
- (c) uses on a computer, in the conduct of business, an infringing copy of computer program (Articles 119(i) and 113(2)).

The penalty is imprisonment of up to 3 years or a fine of up to 3 million yen (Article 119(i)). Like Germany, there appears to be a requirement that a person who commits the infringing act must be intentional under Japan’s criminal code.

USA

9. Under the Copyright Law, copyright subsists in literary works, which include computer programs. A person commits an offence if he, *inter alia*, willfully infringes a copyright –

- (a) for the purposes of commercial advantage² or private financial gain (17 U.S.C. section 506(a)(1)). The term of imprisonment imposed can be up to 10 years if there is repeated conviction and the fine imposed can be up to US\$250,000 per individual or US\$500,000 per organization (18 U.S.C. section 2319(b)); or
- (b) by reproduction or distribution, including by electronic means,

² Where reproduction of computer program is concerned, it appears this can cover corporate end-user piracy where the commercial advantage is the avoidance of the cost of purchasing legitimate products for installation in computers for commercial use.

during any 180-day period, of 1 or more copies of 1 or more copyrighted works, which have a total retail value of more than \$1,000³ (17 U.S.C. section 506(a)(2)). The term of imprisonment imposed can be up to 6 years if there is repeated conviction and the fine imposed can be up to US\$250,000 per individual or US\$500,000 per organization (18 U.S.C. section 2319(c)).

³ It appears this can cover the situation where a financial motive for copyright infringement is not apparent, as is sometimes the case with end user piracy outside the corporate context.