Notwithstanding any contractual provisions to the contrary, the author may not invoke the prohibitory provisions of Article 4(a) and (b) to prevent any act that is essential for maintaining the program and for creating or operating interoperable programs.

This option may be exercised by the licensee or, on his behalf, by a person authorized to do so where the following conditions are fulfilled:

(a) the information necessary to achieve interoperability shall not have been published or made available previously;

(b) the retrieval of information shall be confined to the parts of the original program which are necessary for the achievement of this aim;

(c) the information retrieved may not be communicated to third parties except in so far as this is necessary for the operation of the second program;

(d) the information retrieved may not be used to create or market a substantially similar program which infringes copyright in respect of the original program;
Where a computer program is created under a contract the natural or legal person who commissioned the program shall be entitled to exercise all rights in respect of the program, unless otherwise provided by the contract.
5 JULY 1990

AMENDMENT No. 17

tabled by Mr JANSSEN VAN RAAY and Mr GARCIA AMIGO,

on behalf of the EPP Group

REPORT by Mrs SALEMA (Doc. A 3-173/90)

Proposal for a directive
COM(88) 816 final – Doc. C 3-056/90
LEGAL PROTECTION OF COMPUTER PROGRAMS

Text proposed by the Commission

Text amended by Parliament

Amendment No. 17

Article 5

1. Where a computer program has been sold or made available to the public other than by a written licence agreement signed by both parties, the acts enumerated in Article 4(a) and (b) shall not require the authorization of the right-holder, insofar as they are necessary for the use of the program. Reproduction and adaptation of the program other than for the purposes of its use shall require the authorization of the right-holder.

2. Where a computer program has been sold or made available to the public by means other than a written licence agreement signed by both parties, the exclusive right of the right-holder to authorize rental shall not be exercised to prevent use of the program by the public in non-profit making public libraries.

1. The provisions of Article 4(a) and (b) shall not prevent any modification to the form of part of the code under which a copy of the program was supplied where such a modification is essential to allow interoperable programs to be interfaced with the program at the appropriate interface point, because the information required could not be obtained otherwise, after all lawful means have been exhausted and provided that such a modification, made by the legal holder of a copy of the program who has the right to use the program, is strictly confined to the parts of the program corresponding exactly to the interface points.

2. The provisions of paragraph 1 above shall not constitute grounds for information thus obtained being used in a manner which might be detrimental to the existing or potential market for the program or to its value or prejudicial to the legitimate interests of the right-holder or which might present an obstacle to the normal use of the computer program.

3. The provisions of paragraph 1 above shall not permit the information thus acquired to be communicated to third parties.

DOC_EN\AM\91971

PE 142.529/Am.17
Or.Fr.
5a. The rights laid down in Article 4(a) and (b) shall not prevent acts carried out on a program to obtain the information required for other computer programs to interoperate with this program. This right may be exercised only by the lawful holder of a copy of the program, who is entitled to use it, or on his behalf, and only where the following conditions are fulfilled:

(a) the information allowing interoperability with the original program has not been published or made available,

(b) the acts are confined to that part of the original program required to secure interoperability,

(c) the information retrieved may not be communicated to third parties and

(d) the information obtained cannot be used in such a way as to prejudice unjustifiably to the legitimate interests of the right-holder or adversely affect the normal use of the original program.
AMENDMENT No. 19

tabled by Mr JANSSEN VAN RAAY and Mr GARCIA AMIGO
on behalf of the EPP Group

REPORT by Mrs SALEMA (Doc. A 3-173/90)

Proposal for a directive
COM(88) 816 final - Doc. C 3-056/90
LEGAL PROTECTION OF COMPUTER PROGRAMS

Text proposed by the Commission

Text amended by Parliament

Amendment No. 19

Article 5(1)

1. Where a computer program has been sold or made available to the public other than by a written licence agreement signed by both parties, the acts enumerated in Article 4(a) and (b) shall not require the authorization of the right-holder, insofar as they are necessary for the use of the program. Reproduction and adaptation of the program other than for the purposes of its use shall require the authorization of the right-holder.

1. In the absence of contractual provisions to the contrary or where a copy of a computer program has been sold, the acts referred to in Article 4(a) and (b) shall not require the authorization of the right-holder insofar as they are necessary for the use of the copy of the program by its lawful acquirer for the purposes for which it was made available by the right-holder, or for its preservation in relation to such use.
AMENDMENT No. 20

tabled by Mr JANSSEN VAN RAAY and Mr GARCIA AMIGO
on behalf of the EPP Group

Report by Mrs SALEMA (Doc. A3-173/90)

Proposal for a directive
COM(88) 816 final - Doc. C3-056/90
LEGAL PROTECTION OF COMPUTER PROGRAMMES

Commission text

Text amended by Parliament

(Amendment 20)

Article 5, paragraph 2a (new)

Notwithstanding the provisions of Article 4(a), the legitimate owner of a copy of a program may, without having to request the authorization from the right-holder, observe, study or test the working program in order to determine its underlying ideas, principles and other characteristics where these are not protected by copyright, in the course of loading, viewing, running, transmission or storage in accordance with his contractual objections.
A modification (by reverse engineering or any other method) of the farm in which a program has been supplied shall not require the authorization of the right-holder provided that:

1. the change is made to a copy of a program which has been lawfully acquired;
2. it is essential to obtain the information required to create programs which are interoperable with it; however the retrieval of information shall be strictly confined to the parts of the original program which are necessary for the achievement of this aim;
3. no information is communicated to third parties;
4. it relates exclusively to that part of the program designed for interfacing with it;
5. the information retrieved may not be used to create or market a substantially similar program.

'Interoperable program' means another computer program which may be connected with the first at a specific point (interface) and in a specified manner.
AMENDMENT No. 22
tabled by Mr JANSSEN VAN RAAY and Mr GARCIA AMIGO / 
on behalf of the EPP Group

Report by Mrs SALEMA (Doc. A3-173/90)

Proposal for a directive
COM(88) 816 final - Doc. C3-056/90
LEGAL PROTECTION OF COMPUTER PROGRAMMES

Commission text  

(Artament 22)

Article 2, paragraph 1

Authorship of program

1. Subject to the following paragraphs, the author of a computer program is the natural person or group of natural persons who has created the program.

Authorship of program

1. The author of a computer program is the natural person or group of natural persons or, where the law of the Member States permits, the legal person who has created the program. Where collective works are recognized by the law of a Member State, the natural or legal person considered by the law of the Member State to have created the work shall be considered to be its author.
Notwithstanding any contractual arrangements to the contrary, the rights enumerated in Article 4(a) and (b) shall not be exercised by the author to prevent any act essential to ensure the maintenance of the program and the creation or operation of interoperable programs. This option may only be exercised by the licensee on his own behalf and only where the following conditions are fulfilled:

(a) the information necessary to achieve interoperability shall not have been published or made available previously;

(b) the retrieval of information shall be confined to the parts of the original program which are necessary for the achievement of this aim;

(c) the information retrieved may not be communicated to third parties except in so far as this is necessary for the operation of the second program;

(d) the information retrieved may not be used to create or market a substantially similar program. ‘Interoperable program’ means another computer program which may be connected with the first at a specific point (interface) and in a specified manner.
AMENDMENT No. 24

TABLED by Mr PINX TEN, on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy

REPORT by Mrs SALEMA (Doc. A 3-173/90)
LEGAL PROTECTION OF COMPUTER PROGRAMS

Proposal for a Directive
COM(88) 816 final – Doc. C 3-56/89 – SYN 183

Text proposed by the Commission

Text amended by Parliament

Amendment No. 24

ARTICLE 1(3)

Amendment No. 1

3. Protection in accordance with this Directive shall apply to the expression in any form of a computer program but shall not extend to the ideas, principles, logic, algorithms or programming languages underlying the program. Where the specification of interfaces constitutes ideas and principles which underlie the program, those ideas and principles are not copyrightable subject matter.

3. Protection in accordance with this Directive shall apply to the expression in any form of a computer program but shall not extend to the ideas and principles. (Delete rest of paragraph).
AMENDMENT No. 25

tabled by Mr PINX TEN, on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy

REPORT by Mrs SALEMA (Doc. A 3-173/90)
LEGAL PROTECTION OF COMPUTER PROGRAMS

Proposal for a Directive
COM(88) 816 final - Doc. C 3-56/89 - SYN 183

Text proposed by the Commission Text amended by Parliament

Amendment No. 25

ARTICLE 4(a)

Amendment No. 3

(a) the reproduction of a computer program by any means and in any form, in part or in whole. In so far as they necessitate a reproduction of the program in part or in whole, loading, viewing, running, transmission or storage of the computer program shall be considered restricted acts;

(a) the reproduction of a computer program by any means and in any form, in part or in whole. (Delete rest of paragraph).
AMENDMENT No. 26

Tabled by Mr PINXTEM, on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy

REPORT by Mrs SALEMA (Doc. A 3-173/90)

LEGAL PROTECTION OF COMPUTER PROGRAMS

Proposal for a Directive
COM(88) 816 final - Doc. C 3-56/89 - SYN 183

Text proposed by the Commission

Text amended by Parliament

Amendment No. 26

ARTICLE 5(1)

1. Where a computer program has been sold or made available to the public other than by a written licence agreement signed by both parties, the acts enumerated in Article 4(a) and (b) shall not require the authorization of the right-holder, in so far as they are necessary for the use of the program. Reproduction and adaptation of the program other than for the purpose of its use shall require the authorization of the right-holder.

Amendment No. 4

1. Where a computer program has been made available to the public in a legal manner, the acts enumerated in Article 4(a) and (b) shall not require the authorization of the right-holder, in so far as they are necessary for the use or scientific analysis or testing of the program. (Delete second sentence).
AMENDMENT No. 27
tabled by Mr PINXten, on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy

REPORT by Mrs SALEMA (Doc. A 3-173/90)
LEGAL PROTECTION OF COMPUTER PROGRAMS

Proposal for a Directive
COM(88) 816 final - Doc. C 3-56/89 - SYN 183

Text proposed by the Commission

Text amended by Parliament

Amendment No. 27

ARTICLE 5(2)

2. Where a computer program has been sold or made available to the public by means other than a written licence agreement signed by both parties, the exclusive right of the right-holder to authorize rental shall not be exercised to prevent use of the program by the public in non-profit making public libraries.

Amendment No. 5

2. Where a computer program has been made available to the public in a legal manner, the right-holder may not prevent the normal use of the program by the public in public libraries.
AMENDMENT No. 28

tabled by Mr PINX TEN, on behalf of the Committee on Economic and Monetary
Affairs and Industrial Policy

REPORT by Mrs SALEMA (Doc. A 3-173/90)
LEGAL PROTECTION OF COMPUTER PROGRAMS

Proposal for a Directive
COM(88) 816 final - Doc. C 3-56/89 - SYN 183

Text proposed by the Commission
Text amended by Parliament

Amendment No. 28

Amendment No. 6

Article 5(3): add the following new paragraph:

3. A licence agreement or other written agreement must not contain any clauses which conflict with the provisions laid down in paragraphs 1 and 2.
AMENDMENT No. 29
tabled by Mr PINXTE, on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy

REPORT by Mrs Salema (Doc. A 3-173/90)
LEGAL PROTECTION OF COMPUTER PROGRAMS

Proposal for a Directive
COM(88) 816 final - Doc. C 3-56/89 - SYN 183

Text proposed by the Commission Text amended by Parliament

Amendment No. 29

ARTICLE 6(1)

1. It shall be an infringement of the author's exclusive rights in the computer program to import, possess or deal with an infringing copy of the program, knowing or having reason to believe it to be an infringing copy of the work.

Amendment No. 7

1. It shall be an infringement of the author's exclusive rights in the computer program to import, acquire or deal with an infringing copy of the program, knowing or having reason to believe it to be an infringing copy of the work.
5 JULY 1990

AMENDMENT No. 30

Tabled by Mr PINXTEN, on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy

REPORT by Mrs SALEMA (Doc. A 3-173/90)
LEGAL PROTECTION OF COMPUTER PROGRAMS

Proposal for a Directive
COM(88) 816 final - Doc. C 3-56/89 - SYN 185

Text proposed by the Commission

Text amended by Parliament

Amendment No. 30

ARTICLE 7

Protection shall be granted for fifty years from the date of creation.

Amendment No. 8

The period of protection shall be that for which provision is made in the Berne Convention, from the date of creation.
AMENDMENT No. 31
tabled by Mr COX

REPORT by Mrs SALEMA
PROTECTION OF COMPUTER PROGRAMS

Proposal for a directive
COM(88) 816 final - Doc. C3-56/89 - SYN 183

Text proposed by the Commission

(Amendment No. 31)
Article 5(2b) (new)

2b. The provisions of paragraph 2a of this article shall not permit the information obtained through its application to be used:

a) for goals other than to achieve interoperability of the independently created program.

b) for the development, production or marketing of a program substantially similar in its expression, or

c) for any other act which infringes copyright.
### Text proposed by the Commission

(Amendment No. 32)

**Article 5(2a)** (new)

2a. The authorization of the owner of the rights for the acts referred to in Article 4(a) and (b) shall not be required—withstanding contractual provisions to the contrary—where performance of these acts to modify the form of the code is indispensable to achieve the interoperability of an independently created program, provided:

- **a)** these acts are performed by or on behalf of a person having a right to use a copy of the program,

- **b)** the information necessary cannot be obtained otherwise within a reasonable time or on reasonable conditions,

- **c)** these acts are strictly limited to those parts of the program necessary to attain interoperability,

- **d)** the information thus obtained is not given to others, except when necessary for the interoperability of the independently created program.

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PE 142.529/32
Or. En.
1. Where a computer program has been sold or made available to the public other than by a written licence agreement signed by both parties, the acts enumerated in Article 4(a) and (b) shall not require the authorization of the right-holder, in so far as they are necessary for the use of the program. Reproduction and adaptation of the program other than for the purpose of its use shall require the authorization of the right-holder.

2. Where a computer program has been sold or made available to the public by means other than a written licence agreement signed by both parties, the exclusive right of the right-holder to authorize rental shall not be exercised to prevent use of the program by the public in non-profit making public libraries.

1. In the absence of specific contractual provisions, the acts referred to in Article 4(a) and (b) shall not require the authorization by the right-holder where they are necessary for the use of the program by the lawful acquiror in accordance with its intended purpose. The making of a back-up copy by a person having a right to use the program may not be prevented by contract insofar as it is necessary for that use.

2. Notwithstanding the provisions of Article 4(a) the person having a right to use a copy of a program shall be entitled, without the authorization of the right-holder, to observe, study or test the functioning of the program in order to determine the ideas, principles and other elements which underlie the program and which are not protected by copyright, if he does so while loading, displaying, running, transmitting or storing the program in execution of his contract.
(Amendment No. 34)
Article 5a(new)

Notwithstanding any contractual arrangements to the contrary, the rights enumerated in Article 4(a) and (b) shall not be exercised by the author to prevent any act indispensable to ensure the creation, maintenance or operation of an interoperable program. This option may only be exercised by the licensee on his own behalf and only where the following conditions are fulfilled:

(a) the information necessary to achieve interoperability shall not have been published or made available previously;

(b) the retrieval of information shall be confined to the parts of the original program which are necessary for the achievement of this aim;

(c) the information retrieved may not be communicated to third parties except in so far as this is necessary for the operation of the second program;

(d) the information retrieved may not be used to create or market a substantially similar program.

PE 142.529/34
Or. En.
Nothing in this Article should be taken to permit the information obtained through its application to be used in a manner which unreasonably prejudices the right-holder’s legitimate interests or conflicts with a normal exploitation of the computer program.
Notwithstanding any contractual arrangements to the contrary, the rights enumerated in Article 4(a) and (b) shall not be exercised by the author to prevent any act essential to ensure the maintenance of the program and the creation or operation of interoperable programs. This option may only be exercised by the licensee or by another person entitled to use a copy of the program on his behalf by the person authorized to do so and only where the following conditions are fulfilled:

(a) the information necessary to achieve interoperability shall not have been published or made available previously;

(b) the retrieval of information shall be confined to the parts of the original program which are necessary for the achievement of this aim;

c) the information retrieved may not be communicated to third parties except in so far as this is necessary for the operation of the second program;

d) the information retrieved may not be used to create or market a program, which violates a copyright or the program of origin.

The provisions of this article may not be interpreted in such a way as to allow information obtained in the application thereof to be used in a manner which unjustifiably damages the legitimate interests of the right-holder or which is contrary to the normal operation of the program.