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DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P.O. Box 889
SAVANNAH, GEORGIA 31402-0889

DISTRICT PAMPHLET
NO. 25-1-7

10 January 1996

Information Management
USE AND COPYING OF COPYRIGHT PROTECTED
SOFTWARE FOR MICROPROCESSORS

1. Purpose. The purpose of this pamphlet is to provide information as to *responsibilities for compliance with license agreements between the author of such software and the United States*.
2. Applicability. This regulation applies to all employees and contractors of the Savannah District.
3. References.
 - a. Title 17, United States Code, § 117, Copyrights, Limitations on exclusive rights: Computer programs, as amended by P. L. 96-517.
 - b. Title 17, United States Code, Copyright Infringement And Remedies, § 506, Criminal Offenses.
 - c. Title 18, United States Code, § 2319, Criminal infringement of a copyright.
 - d. OMB Circular A-130.
 - e. AR 690-700, Civilian Personnel, Personnel Relations & Services (General).
 - f. DR 25-1-3, Information Management, Software Standards.
4. Background. The growth in personal computing and communications systems has provided easy access to all types of information and data sources. The enhanced access reduces the ability of the IMO to monitor the acquisition and installation of software and ensure that copyrighted software is not improperly used. It is therefore necessary to affirm strict policy relating to the use of copyrighted software within the District.
5. Commercial-off-the-shelf Software (COTS). COTS is defined as software developed at private expense, marketed commercially to military and non-military agencies. Available for immediate use without code modification. There are several types of COTS:

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a. **Public Domain Software.** Public domain software is software that is not protected by copyright. Usually it is older software that was written by governmental or educational institutions for free use by the public.

b. **Freeware.** Freeware is similar to Public Domain Software in that it is free, but in the case of freeware there is a license agreement associated with the use of the software. Use of freeware in violation of the license agreement would be a copyright violation. An example of this is the program WORDVU distributed by Microsoft. With it someone who does not own Word for Windows can view Word documents. Microsoft has made this program available free of cost, but does require compliance with the license agreement as a condition of use.

c. **Shareware.** Shareware is freely available, but is not free. Shareware has a cost associated with it. Use of shareware without paying the license fee is a copyright violation. An example of this is the program PKZIP version 1.10. This is shareware for which an Army-wide corporate license has been purchased.

d. **Commercially Available Software.** This is the so-called "shrink wrap" software because it is usually sold in a box with manuals and media. Programs such as Word for Windows fall into this category. It is a copyright violation to use this software without a license or in violation of the terms of the license agreement. See DR 25-1-3 for examples of these programs.

6. **Licenses.** Currently most software licenses contain general terms applicable to the public and include a specific section relating to U.S. Government use specified by Federal Acquisitions Regulations (FAR). The following is an example of such a section:

U.S. Government Restricted Rights. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer- Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Netscape Communications Corporation, 501 East Middlefield Road, Mountain View, CA 94043.

FAR § 52.227-19 cited above provides:

(a) As used in this clause, "restricted computer software" means any computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted.

(b) Notwithstanding any provisions to the contrary contained in any Contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this purchase order/contract, and irrespective of whether any such agreement has been proposed prior to or after issuance of this purchase order/contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, vendor agrees that the Government shall have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any restricted computer software delivered under this purchase order/contract. The terms and provisions of this contract, including any commercial lease or license agreement, shall be subject to paragraph (c) of this clause and shall comply with Federal laws and the Federal Acquisition Regulation.

(c)(1) The restricted computer software delivered under this contract may not be used, reproduced or disclosed by the Government except as provided in subparagraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The restricted computer software may be--

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this purchase order/contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this purchase order/contract; and

(vi) Used or copied for use in or transferred to a replacement computer.

(3) If the restricted computer software delivered under this purchase order/contract is published and copyrighted, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in subparagraph (c)(2) of this clause unless expressly stated otherwise in this purchase order/contract.

(4) To the extent feasible the Contractor shall affix a Notice substantially as follows to any restricted computer software delivered under this purchase order/contract; or, if the vendor does not, the Government has the right to do so: "Notice--Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract (or Purchase Order) No. ____."

(d) If any restricted computer software is delivered under this contract with the copyright notice of 17 U.S.C. 401, it will be presumed to be published and copyrighted and licensed to the Government in accordance with subparagraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice: "Unpublished--rights reserved under the copyright laws of the United States."

(End of clause)

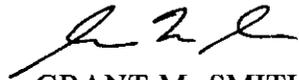
7. Non-Commercial-off-the-shelf Software. OMB Circular A-130 requires all agencies to purchase COTS software when it performs the needed function. When this is not possible, special software may have to be created. These are of two types. The first is software written by government employees. This software is not copyrighted and may be used by anyone. The second is software written by a contractor. Contractor written software is protected by copyright according to the terms of the contract. These terms may vary with programs according to the negotiated terms of the contract and the time at which it was awarded. Examples of these programs include MCASES.

8. COTS Applications. A COTS application is a program in the form of a process, macro, template, wizard or some other series of commands that performs a specific function using COTS software as the engine. Such applications are usually not copyrighted, but there are exceptions. Care should be taken to avoid using such applications until the copyright status has been verified.

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9. Penalties. Penalties for copyright law violations can be severe. Use of shareware without paying the required fee could be considered as theft under AR 690-700 and subject the violator from 14 days suspension to dismissal. Under certain circumstances violation of copyright law can be considered a criminal offense. Violators could be imprisoned not more than 5 years, or fined up to \$2,500 depending on the value of the software copied.

10. Summary. Making an illegal copy of a program or using a program in violation of the license agreement is a serious offense. Doing so denies the authors of the software fees which are legally due them. The software industry is aggressively searching out violators. While the District is committed to obtaining all software necessary to complete our mission, it is equally determined that applicable copyright laws will also be obeyed. Questions concerning license agreements should be addressed to IM.



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DISTRIBUTION: C & D
Plus: IM-P (20)
IM-PR (5)