



## **BASIC MANUAL ANNEX LEGAL ASPECTS**

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### **I. LAW ON PRIVACY**

#### **1.1 Belgian and European Legislation**

- *Law of 8 December 1992 safeguarding the individual / personal privacy and the processing of personal data;*
- *Some 15 Royal Decrees in implementation of the law of 8 December 1992;*
- *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data: harmonizing rules regarding the protection of personal data within the entire territory of the European Union.*

- Article 28 of Chapter VI of the directive provides the establishment of a “*Supervisory Authority*” on the protection of individuals with regard to the processing of personal data in each member state.

The Belgian law provides in the institution of an independent commission: “*Commission safeguarding the personal / individual privacy*” (Chapter VII Law 1992).<sup>1</sup>

- According to article 32 (“*Final Provisions*”), the member states turn the provisions of the directive into national law, provided that the necessary

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<sup>1</sup> Other Commissions for the protection of data:  
[http://www.privacy.fgov.be/links/andere\\_commissies.htm](http://www.privacy.fgov.be/links/andere_commissies.htm)

laws, regulations and administrative provisions are brought into conformity. The deadline for the conversion expired in October 1998.

- *Conversion into Belgian legislation by the law of 11 December 1998 (published in the Belgian Law Gazette on 3rd February 1999): adaptation of the law of 8 December 1992 to the European directive 95/46/EG of 24 October 1995;*

*Some brief highlights:*

- Extension of the field of application of the law, for example the extension of the notion “processing”: “every adaptation or all adaptations regarding personal data, whether or not accompanied by automatised processes”;
  - Reinforcement of the right on notification;
  - Right to resistance against the processing responsible for marketing purposes.
- *Royal Decree of 13 February 2001 in implementation of the law of 8 December 1992: abolition of practically all previous Royal Decrees enacted in implementation of the law of 8 December 1992.*

## 1.2 De Belgische Wet van 8 december 1992

- In order to preserve the legality in personal data processing, data warehousing has been submitted to numerous conditions (in view of correctness, application, identification / discretion, explicit personal agreement, etc...)
- The law provides a wide range of individual rights regarding personal databases (e.g. right to be informed, right to have access and make changes to data...)
- The Commission for protection of the personal privacy provides well argued advice and recommendations and investigates complaints (regardless possible law suits) regarding any matters that are dealing with the application of privacy protection (Chapter VII Law 1992).
- In case of infraction the Chairman of the Court of Law (in summary proceedings) is fully competent.
- Following conviction the one responsible for data processing is fined and – in case of recidive – may be imprisoned. The court may decide upon confiscation of any data warehousing hardware that is involved and may prohibit for a certain period any direct or indirect management activities regarding any personal data processing.

### 1.3 Relevant Remarks

- If for example, personal data are being retrieved from the web, then rules such as right on inspection, erasure, responsibility, clarity about the purpose of these data,... are applied;
- The privacy law is fully applicable to the Internet, intranet and protected educational environments; consequently, the use of a password for the protection of data cannot be invoked to evade the law.

## II. LAW ON COPYRIGHT

### 1.1 Belgian and European Legislation

- ▶ The national laws on copyright differ from country to country.
- ▶ Different international agreements concerning copyright, as well as a large number of European treaties regulate the specificities of copyright.

An Overview: cf. annex

- ▶ The most important are:
  - *European Directive 91/250/EC of the Council regarding the legal protection of computer programs ("The Computer Programs Directive")*
  - *Law of 30 June 1994 regarding copyright and related rights (published in the Belgian Law Gazette of 27<sup>th</sup> July 1994)*
  - *Law of 30 June 1994 regarding conversion into Belgian legislation of the Directive 91/250/EC of 14 May 1991 concerning the legal protection of computer programs (published in the Belgian Law Gazette on 27<sup>th</sup> July 1992)*
  - *Law of 3 April 1995 regarding the adaptation of the law of 30 June 1994 concerning copyright and related rights (published in the Belgian Law Gazette on 29<sup>th</sup> April 1995)*
  - *Directive 96/9/EC of the European Parliament and the Council of 11 March 1996 regarding the legal protection of databases*

- *Royal Decree of 28 March 1996 regarding the right on remuneration for the authors, the performing artists and the producers of phonograms and audiovisual works when reproducing for personal use (published in the Belgian Law Gazette on 6<sup>th</sup> April 1996)*
- *The WIPO (“World Intellectual Property Organisation”) Treaties: The “WIPO Copyright Treaty” and the “WIPO Performances and Phonograms Treaty” dealing respectively with the protection of authors and the protection of performers and phonogram producers.*
- *Law of 31 August 1998 regarding conversion into Belgian legislation of the European Directive of 11 March 1996 concerning the legal protection of databases*
- *Law of 25 March 1999 regarding the application on Belgian citizens of some provisions of the Berner Convention for the protection of the works of literature and art of 9 September 1886, completed in Paris on 4<sup>th</sup> May 1896, revised in Berlin on 13<sup>th</sup> November 1908, completed in Bern on 20<sup>th</sup> March 1914, revised in Rome on 2<sup>nd</sup> June 1928, in Brussels on 26<sup>th</sup> June 1948, in Stockholm on 14<sup>th</sup> July 1967 and in Paris on 24<sup>th</sup> July 1971, made in Paris on 24<sup>th</sup> July 1971 and of the international treaty regarding the protection of performing artists, producers of phonograms and broadcasting corporations, made in Rome on 26<sup>th</sup> October 1961 (published in the Belgian Law Gazette on 10<sup>th</sup> November 1999)*
- *Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (“The Copyright Directive”)*

## 1.2 De Belgische Wet van 30 juni 1994

- This law provides an author of a work of literature, science or art (e.g. books, films, recorded music, artefacts...) a temporally exclusive right to make reproductions of it, to merchandise it, or to make any derived products of it, to show it in public or to give his approval to it.
- A work is to be considered “*protected*” as soon as it is original: this means, that the work shows the author’s personal mark and is product of a certain intellectual effort. This protection is for a maximum period of 70 years after the author’s death, in favour of the person he indicated for this purpose, or by lack of the latter, in favour of his successors.
- By this law, the author has a right for remuneration as a compensation for the fact that his work may be reproduced: for this purpose the technique of the legal licence is being used.
- When an author is creating work(s), following a labour contract, status or by order, he can transfer his rights of ownership to his employer or the one

who ordered it – but only if such a transfer is explicitly stated (art 3 §3 Law 1994).

- Every subject who has right of authorship or a related right may choose either to administer these rights himself or to join an association<sup>2</sup> in purpose of administering these rights. Such an association will collect and distribute among those who are entitled, all due compensations following the use of copyright protected works and achievements. Apart from that they act to defend the interests of copyright holders, give legal advise, etc...
- Chapter Vbis deals with legislation concerning the production and/or communication of works and achievements for illustrative purposes related to education and scientific research.
- Whoever with malicious intent or in a deceptive way infracts the copyright and/or related rights, is guilty of the qualified criminal offence of forging, and may be sentenced with a fine or – in case of recidive - an imprisonment (in application of the stipulations of the penal code (Art 80 a.f.)).
- Competent Court of justice:
  - President of the Court of justice in summary proceedings (civil law)
  - Court of misdemeanour (penal code)

### 1.3 Relevant Conclusions

- Copyright jurisdiction protects a lot: as soon as there is a certain and original form of expression, the work is protected. Examples: scientific and pedagogical books, courses, books, commented anthology,...
- For instance, in case a Centre for Adult Learners appeals for one of their staff or an external organisation to develop a website, to write a course or book,... This will eventually generate certain copyrights for the author(s). To avoid this, the centre can stipulate explicitly in the employment contract that all copyrights are transferred.
- In case of copyright there is no distinction between internet, intranet, nor as for open accessible or password protected accessible information. When, f.i. a Centre for adult Education publishes on the intranet or within a virtual learning zone, photo's of artefacts (as e.g. illustrations) – such is punishable.

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<sup>2</sup> For a survey see: [http://www.just.fgov.be/justice/nl\\_html/organisation/html\\_org\\_services/da\\_n04.htm](http://www.just.fgov.be/justice/nl_html/organisation/html_org_services/da_n04.htm)

- It is permitted to quote (right to citation) free of charge from all sorts of works, on condition that the source and the name of the author are mentioned and that the quote is used for educational purposes. E.g. a short fragment of a piece of music can be used freely as an educational illustration, but should it be used to cheer up a website then it would lose the educational qualification – c.q. it would not be free from copyright submittance.
- It is not punishable to make ‘hyperlinks’ from a webbased lesson to an artefact on another website; it is on the contrary indeed punishable to add this other website to your page.
- We may conclude that the present Belgian legislation connected to copyright is taking little account of digital surroundings. Already merely surfing on the internet could be considered punishable since the computer is copying in its RAM memory pages that are copyright protected – even though it be temporary files...  
 Art 13 of the Copyright directive of May 2001 (cfr supra) stipulates that the member states should transform their national legislation by December 22<sup>nd</sup> 2002. Till today Belgium has not yet complied to this Directive. Adaptation of Belgian legislation is expected for spring 2004.

#### 1.4 Software Licenses

- Like most creative works, computer software is protected by the European copyright law. All these products are the intellectual property of the creators.
- When you purchase software, you do not become the owner of the copyright, you are only purchasing the right- the *license* - to use the software under certain restrictions imposed by the copyright owner, typically the software publisher. With other words, the software itself becomes not your property; you only have limited rights to use the software programs, to reproduce them among the conditions stipulated in the license agreement.
- There are different types of software licenses: software licenses can be restricted in time, in place, in number of users.
- Most often, the license restrictions state that you have the right to load or to use the software on a single computer and to make one backup copy. If you copy, distribute or install the software in contradiction with the license conditions (for example: using a one licensed copy to install a program on multiple computers) you are liable under the copyright law and you are guilty of the felony of “*piracy*”: or “*the illegal use and/or distribution of property protected under intellectual property laws*”. In that case the copyright owner or the software publisher can take legal actions against you or your organisation.

- There are five common types of software piracy:

- 1/ *End user Piracy*

The end user reproduces copies of software without the requested authorization. Examples: using one licensed copy to install a program on multiple computers; copying disks for installation and distribution; taking advantage of up-grade offers without having a legal copy for the version to be upgraded; swapping disks in or outside the workplace.

- o 2/ *Client/server Overuse*

This type of piracy occurs when more users have accessing to or are using the software loaded on one server than stipulated by the license conditions, in brief : if you have more users than allowed by the license.

- o 3/ *Internet Piracy*

This type of piracy occurs when software is downloaded or uploaded from the internet without the authorization of the owner of the copyright or when individuals are sending illegal copies through the internet.

- o 4/ *Hard-Disk Loading*

This type of piracy occurs when a business that is selling new computers loads illegal copies of software on the hard disk with the intention to make the purchase of the computers more attractive (and often cheaper).

- o 5/ *Software Counterfeiting*

This type of piracy occurs when copyrighted material is illegal duplicated or sold with the intention to directly imitate the copyrighted material and to sell the counterfeit copies as the official products.

- One of the most important worldwide organisations dedicated to promoting a safe and legal online world, is the professional association of software fabricants Business Software Alliance (BSA). This organisation informs computer consumers on the legislation concerning copyright on software and on cyber security and fights software piracy. On the website of BSA<sup>3</sup> you can find extended information concerning software management, software policy, new initiatives and other copyright related issues.
- Beneath copyright there are also patents that protect software against illegal duplicating, distribution and selling.

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<sup>3</sup> <http://global.bsa.org/>

- So whoever violates the legal regulations, is acting illegitimately and may be subject to civil lawsuits and criminal penalties. This is also the case for a company/organisation that does not take actions against staff who are violating the copyright law. The consequences can be restricted to negative publicity or being accused of felony but it could end up in serious indemnification claims,, fines and even imprisonment!

### III. LAW ON LIABILITY

#### 1.1 Belgian Legislation

- Universal liability rules (Article 1382 of the civil code): everyone who, because of a made mistake or negligence, causes harm to another person, has to compensate for the damage, either personally or by means of insurance. The victim is asked to proof the suffered loss, as well as the causal link between the suffered loss and the mistake of the said “offender”.

- More particularly in relation to education:

--- *The subsidized public-authority education / schools*

- Decree of 27 March 1991 regarding the legal position of some of the staff members of the subsidized public-authority education / schools and the subsidized Student Guidance Centres – Title II – Chapter I (Article 4) and Chapter III bis (Article. 17 bis) – Liability:

--- *The Flemish Community Education:*

- Decree of 27 March 1991 regarding the legal position of some of the staff members of the Flemish Community Education– Chapter II (Article 2) and Chapter III bis (Article 12 bis) – Liability:

*“Whenever the staff member causes damage to his employer or to a third party when carrying out one’s office, he is only liable for deceit and severe mistakes.*

*For minor mistakes, he is only liable if these happen more frequently than coincidentally.*

*...”*

#### 1.2 Liability concerning software licenses

What about the liability of a head of an Adult Education Centre for illegal software when found on a school computer?

Basically, the head is not personally liable or responsible, unless proven that he explicitly ordered the installation of illegal software on the school computers without possessing the necessary licenses.

*In theory:*

- The employer (represented by the head who, at the same time, is a staff member) is personally liable for individual mistakes and criminal offences;
- The employer is civil judicially liable for his staff members.

*In practice:*

- The Competent Authority (and not the head) is civil judicially liable;
- The Competent Authority in its turn can recover the damage from the staff member, but only in case of deceit or a severe mistake;
- The staff member is liable in case of a minor mistake, if this happens more frequently than coincidentally.

Consequently, staff members are only liable for individual mistakes and criminal offences.

## IV. LEGISLATION ON COMBINED EDUCATION

### 1.1 Belgian Legislation

➤ *Decree regulating some matters in adult education of 2 March 1999 (published in the Belgian Law Gazette on 21<sup>st</sup> August 1999): relevant articles: 24 and 25*

- *Section II: Contact, distance- and combined education*  
*Article 24 §1 3°: "Combined education is a combination of contact education and distance education, in which the part of contact education minimally represents 50 % of the teaching period of a module or of a course in a (school) year.*

*The Government can allow exceptions concerning this percentage on a project base for a period of five years.*

*As a deviation of the first section, the part of contact education has to represent minimally 30% in the field of general education".*

## Bibliography

- [1] Regional Expertise Network Limburg-Vlaams Brabant, educational day "*Juridische en ethische aspecten van het gebruik van ICT in het onderwijs*", Leuven, 14 mei 2003;