



FENWICK & WEST LLP

2004 Update: International Legal Protection for Software

CHART

This chart is also available on the World Wide Web at www.softwareprotection.com and will be updated to reflect significant developments.

Our Offices

Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel: 650.988.8500
Fax: 650.938.5200

Embarcadero Center West
275 Battery Street
San Francisco, CA 94111
Tel: 415.875.2300
Fax: 415.281.1350

Boise Idaho Office
877 West Main Street, Suite 706
Boise, ID 83702
Tel: 208.331.0700
Fax: 208.331.7723

Spring 2004 : International Legal Protection for Software Chart

How to Use This Chart

This chart can be used to determine if subject matter protection is currently available in a particular country for either a U.S. or foreign party's software.

The entry under "Copyright" indicates whether subject matter protection is available for software under the national copyright law of a particular country. If so, the second step is to determine if protection is available for a U.S. work in that country. To do so, look at the entry under "Memberships" to see if there is an applicable mutual membership or a bilateral agreement between the United States and that country. If there is, subject matter protection is probably available. Use the same approach to determine if protection is available for a foreign party's software in another foreign country (except that relevant bilateral agreements are not identified). For example, a Japanese author would look at the "Memberships" entries to determine if Japan and a specific country have a common convention or organization membership.

The entry under "Patent" indicates whether subject matter protection is available for software in the specified country, under either national law or supranational law, such as the European Patent Convention. Patent treaties to which the country belongs are identified under "Memberships." While a common convention membership means that national treatment will be provided, a patent application may be filed in some countries even when no common membership exists.

Local counsel should be consulted before distributing software in a particular market to confirm and update the information in this chart and to advise on the practicality of enforcement, evidentiary considerations and other protection mechanisms.

About Fenwick & West

Fenwick & West LLP provides comprehensive legal services to high-technology and biotechnology clients of national and international prominence. We have more than 240 attorneys and a network of correspondent firms in major cities throughout the world. We have offices in Mountain View and San Francisco, California and Boise, Idaho.

Fenwick & West is committed to providing excellent, cost-effective and practical legal services and solutions that focus on global high-technology industries and issues. We believe that technology will continue to drive our national and global economies, and we look forward to partnering with our clients to create the products and services that help build great companies. We differentiate ourselves by having greater depth in our understanding of our clients' technologies, industry environment and business needs than is typically expected of lawyers.

Fenwick & West is a full-service law firm with nationally ranked practice groups covering:

- Corporate
- Employment and Labor
- Intellectual Property
- Litigation
- Tax

Updates and questions concerning this report should be directed to Ralph Pais (rpais@fenwick.com) of our Mountain View office or Michael Egger (megger@fenwick.com) of our San Francisco office. Additional copies of this report are available upon request.

Definitions of Terms Used in This Chart

- “Yes” — subject matter protection for software is available pursuant to legislation, and, in the case of patent only, is confirmed by significant case law precedent, or presidential decree expressly protecting software.
- “Probably” — significant case law precedent supports subject matter protection.
- “Maybe” — subject matter protection may exist based on, for example, a favorable lower court opinion, views of commentators or the ability to register software in the country’s copyright office.
- “No” — no substantial indication of subject matter protection for software.
- “Unknown” — no information identified.

Convention and Organization Memberships

- “B” —Berne Convention
- “U” —Universal Copyright Convention
- “P” —Paris Convention
- “E” —European Patent Convention
- “C” —Patent Cooperation Treaty
- “A” —Eurasian Patent Convention
- “W” —World Trade Organization (TRIPS)

2004 Update:

Country	Copyright	Patent	Memberships
Albania	Unknown	Yes ^{*a, x}	B, P, E, C, W
Argentina	Yes ¹	Maybe ^b	B, U, P, E, W
Armenia	Yes ²	Maybe ^c	B, P, C, A, W
Australia	Yes	Yes ^d	B, U, P, C, W
Austria	Yes	Yes	B, U, P, E, C, W
Azerbaijan	Yes ³	Maybe ^c	B, U, P, C, A
Belarus	Yes ⁴	Maybe ^c	B, U, P, C, A
Belize	Unknown	Maybe ^e	B, P, C*, W
Belgium	Yes	Yes	B, U, P, E, C, W
Bolivia	Yes ⁵	Unknown	B, U, P, W
Bosnia and Herzegovina	Yes ⁶	No	B, U, P, C
Brazil	Yes ^{*7}	Probably ^f	B, U, P, C, W
Brunei	Unknown	Probably	W*
Bulgaria	Yes	Yes ^{*a}	B, U, P, E, C, W
Canada	Yes	Yes	B, U, P, C, W
Chile	Yes ⁸	No	B, U, P, W
China (PRC)	Yes	Maybe ^g	B, U, P, C, W
Colombia	Yes	Maybe	B, U, P, C, W
Costa Rica	Yes ⁹	No	B, U, P, C, W
Croatia	Yes	No	B, U, P, C, W
Cyprus	Yes ¹⁰	Yes ^{*a}	B, U, P, E, C, W

Country	Copyright	Patent	Memberships
Czech Republic	Yes ¹¹	Yes ^a	B, U, P, E, C, W
Denmark	Yes	Yes	B, U, P, E, C, W
Dominican Republic	Yes ¹²	Yes ^h	B, U, P, W
Ecuador	Yes ¹³	Probably	B, U, P, C, W
Egypt	Yes ^{14*}	Maybe	B, P, C*, W
Estonia	Yes	Yes ^a	B, P, E, C, W
Finland	Yes	Yes ^a	B, U, P, E, C, W
France	Yes	Yes ^a	B, U, P, E, C, W
Georgia	Yes ¹⁵	Unknown	B, P, C, W
Germany	Yes	Yes	B, U, P, E, C, W
Greece	Yes	Yes	B, U, P, E, C, W
Guatemala	Yes ¹⁶	No	B, U, P, W
Hong Kong	Yes	Yes ⁱ	B, U, P, C, W (under China's memberships)
Hungary	Yes	Yes ^a	B, U, P, E, C, W
Iceland	Yes ¹⁷	Unknown	B, U, P, C, W
India	Yes	Probably ^j	B, U, P, C, W
Indonesia	Yes	No	B, P, C, W
Ireland	Yes	Yes	B, U, P, E, C, W
Israel	Yes	Yes	B, U, P, C, W
Italy	Yes	Yes	B, U, P, E, C, W
Japan	Yes ¹⁸	Yes	B, U, P, C, W
Kazakhstan	Yes ¹⁹	Maybe ^c	B, U, P, C, A
Kuwait	Yes ²⁰	No	W
Kyrgyzstan	Yes ²¹	Maybe ^c	B, P, C, A, W
Latvia	Yes	Yes ^{a, x}	B, P, E, C, W
Lebanon	Yes ²²	Maybe	B, U, P
Liechtenstein	Unknown	Probably ^a	B, U, P, E, C, W
Lithuania	Yes ²³	Yes ^{a, x}	B, P, E, C, W
Luxembourg	Yes	Yes	B, U, P, E, C, W
Macau	Yes ²⁴	Probably	B*, U*, P*, W
Malaysia	Yes	No	B, P, W
Macedonia	Unknown	Yes ^{a, x}	B, U, P, E, C, W*
Mexico	Yes	Maybe	B, U, P, C, W
Moldova	Yes ²⁵	Maybe ^c	B, U, P, C, A, W
Monaco	Unknown	Yes ^a	B, U, P, E, C
Netherlands	Yes	Yes	B, U, P, E, C, W

Country	Copyright	Patent	Memberships
New Zealand	Yes	Yes	B, U, P, C, W
Nigeria	Yes	Probably	B, U, P, W
Norway	Yes	Maybe ^k	B, U, P, C, W
Oman	Yes ²⁶	Unknown	B, P, C*, W
Pakistan	Yes	No	B, U, W
Panama	Yes ²⁷	Maybe ^l	B, U, P, W
Peru	Yes ²⁸	Maybe	B, U, P, W
Philippines	Yes	Maybe ^m	B, U, P, C, W
Poland	Yes	No	B, U, P, C, W
Portugal	Yes	Yes	B, U, P, E, C, W
Qatar	Yes ²⁹	Unknown	B, P, C, W
Romania	Yes ³⁰	Yes ^a	B, P, E, C, W
Russian Federation	Yes	Maybe ^c	B, U, P, C, A
Saudi Arabia	Yes ³¹	No	U
Serbia & Montenegro	No	Maybe ⁿ	B, U, P, C
Singapore	Yes	Yes ^o	B, P, C, W
Slovakia	Yes ³²	Yes ^a	B, U, P, E, C, W
Slovenia	Yes	Yes ^a	B, U, P, E, C, W
South Africa	Yes	Maybe ^p	B, P, C, W
South Korea (ROK)	Yes	Yes	B, U, P, C, W
Spain	Yes	Yes ^a	B, U, P, E, C, W
Sweden	Yes	Yes	P, E, C, W
Switzerland	Yes	Yes ^a	B, U, P, E, C, W
Taiwan (ROC)	Yes	Yes	W
Tajikistan	Yes ³³	Maybe ^c	B, U, P, C, A
Thailand	Yes	Maybe ^q	B, W
Turkey	Yes ³⁴	Yes ^a	B, P, C, E, W
Turkmenistan	No	Maybe ^c	P, C, A
Ukraine	Yes ³⁵	Unknown	B, U, P, C
United Arab Emirates	Yes ³⁶	No	P, C, W
United Kingdom	Yes	Yes	B, U, P, E, C, W
United States	Yes	Yes	B, U, P, C, W
Uruguay	Yes	No	B, U, P, W
Uzbekistan	Yes ³⁷	U,	Maybe P, C
Venezuela	Yes	Unknown	B, U, P, W
Vietnam	Yes ³⁸	Maybe	P, C, Bilateral Copyright

*Material added to or substantively revised from the 2003 report—available at www.softwareprotection.com.

Copyright Footnotes

- (1) **Argentina:** In November 1998, Argentina passed an amendment (Law No. 25.036 of November 11, 1998) to the Copyright Act of 1933. As amended, this law expressly protects computer software.
- (2) **Armenia:** Computer software is expressly protected under the Copyright Law of 2000.
- (3) **Azerbaijan:** Computer software is protected under Law No. 438, "On Copyrights and Related Rights," which became effective in October 1996.
- (4) **Belarus:** On August 19, 1998, a new copyright law became effective. The new law includes provisions that implement a TRIPS-compliant rental right for computer software and remedies related to anti-circumvention and to rights management information, as required by the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- (5) **Bolivia:** Computer software is protected under Bolivia's 1992 Copyright Law (Law No. 1322), as supplemented by certain software-related regulations that were implemented by presidential decree on April 25, 1997.
- (6) **Bosnia & Herzegovina:** Computer software is protected under the Law on Copyright and Related Rights, published on October 24, 2002.
- (7) ***Brazil:** Computer software is protected under the Software Law (Law No. 9,609), effective February 20, 1998, and the Copyright Law (Law No., 9,610), effective June 20, 1998.
- (8) **Chile:** Computer software is protected under the Intellectual Property Law No. 17,366, dated October 2, 1970, amended 1992.
- (9) **Costa Rica:** In May 1994, copyright protection under Costa Rica's copyright law (No. 6683 of October 1, 1982) was expressly extended to cover computer software.
- (10) **Cyprus:** An amendment to the 1976 Copyright Act that expressly extends protection to computer software became effective January 1, 1994.
- (11) **Czech Republic:** Amendments to the 1965 copyright law were adopted on March 14, 1996. The amendments reportedly include provisions that conform the 1965 copyright law to the EU Software Directive and expressly protect computer programs as literary works.
- (12) **Dominican Republic:** On October 24, 2000, a new copyright law became effective. Among other things, the new law makes the Dominican Republic TRIPS-compliant in areas such as express protection of computer software as a literary work, protection for databases and a minimum term of protection.
- (13) **Ecuador:** Computer software is expressly protected under the Law on Intellectual Property (Law No. 83), which came into force on May 19, 1998.
- (14) ***Egypt:** Egypt enacted a new law, the Intellectual Property Rights Code, effective June 3, 2002. Although the new law reportedly protects computer software, it is not completely TRIPS-compliant in a number of significant respects.
- (15) **Georgia:** Computer software is expressly protected under the Law on Copyright and Neighboring Rights, which became effective in June 1999.
- (16) **Guatemala:** On May 21, 1998, a new copyright law was signed by the President and published as Law No. 33/98. Although the new law expressly protects computer software, the law reportedly has certain deficiencies with respect to enforcement.
- (17) **Iceland:** In 1996, Iceland passed an amendment (Act No. 145) to the Copyright Act of 1972. As amended, this law expressly protects computer software.
- (18) **Japan:** No copyright protection exists in Japan for syntax, algorithms or programming languages.
- (19) **Kazakhstan:** Computer software is expressly protected under the Law on Copyright and Neighboring Rights, which became effective on June 12, 1996.
- (20) **Kuwait:** Kuwait enacted a new copyright law, effective February 9, 2000, which reportedly protects computer software. However, the new law is not completely TRIPS-compliant, and there is some uncertainty regarding the extent to which works of foreign authors will be protected under this law.
- (21) **Kyrgyzstan:** Computer software is expressly protected under the Law on Copyright and Related Rights, which became effective on January 22, 1998.
- (22) **Lebanon:** Lebanon enacted a new copyright law, effective June 14, 1999, which protects computer software. However, the law is not completely TRIPS-compliant, *e.g.*, it includes a provision that appears to grant certain

organizations effectively unlimited rights to copy and distribute a copyrighted work, without authorization of the owner of the work.

(23) **Lithuania:** Lithuania enacted a new copyright law (Act No. VIII-1185), effective June 9, 1999, which protects computer software.

(24) **Macau:** Macau enacted a new copyright law (Decree Law No. 43/99/M), effective October 1, 1999, which protects computer software. However, the new law is not completely TRIPS-compliant, and there is some uncertainty regarding the extent to which works of foreign authors will be protected under this law.

(25) **Moldova:** Computer software is expressly protected under the Law on Copyright and Related Rights, which became effective on May 3, 1995.

(26) **Oman:** Computer software is protected under the “Law for the Protection of Copyright and Neighboring Rights” (Law No. 37/2000), which came into force on May 21, 2000.

(27) **Panama:** Computer software is protected under Panama’s copyright law (Law No. 15), which came into force on January 1, 1995.

(28) **Peru:** Computer software is protected under the Copyright Law—Ley de Derechos de Autor (Legislative Decree No. 822), which came into force on May 24, 1996.

(29) **Qatar:** Computer software is protected under the Qatar Copyright Law, which came into force on October 3, 2002. However, the law is not completely TRIPS-compliant in a number of respects, e.g., it reportedly lacks a definition of “computer program” and does not expressly protect software as a “literary work.”

(30) **Romania:** On March 14, 1996, Romania’s president signed its new copyright law, which expressly protects computer software. The law became effective June 24, 1996.

(31) **Saudi Arabia:** On November 3, 2002, Saudi Arabia approved a new copyright bill that expressly protects computer software. The new legislation requires the endorsement of King Fahd before it will come into force.

(32) **Slovakia:** Computer software is expressly protected under the Copyright Act (No. 383/1997), which came into force on December 5, 1997.

(33) **Tajikistan:** Computer software is expressly protected under the Law on Copyright and Neighboring Rights, which became effective on December 17, 1998.

(34) **Turkey:** Amendments to the 1951 Copyright Law passed in June 1995 expressly extend copyright protection to software.

(35) **Ukraine:** Computer software is protected under the Law on Copyright and Neighboring Rights, which became effective on February 23, 1994.

(36) **United Arab Emirates:** In 2002, the United Arab Emirates (UAE) enacted a new Copyright Law, Federal Law No. 7 of 2002. The new law, which repealed the previous law, includes computer programs as a protected category of works. The UAE is not a member of the Berne Convention, but because the UAE is a member of the WTO, works of authors from other WTO countries are entitled to national treatment in the UAE based on the provisions of the TRIPS Agreement.

(37) **Uzbekistan:** Computer software is expressly protected under the Law on Copyright and Neighboring Rights, which became effective on September 17, 1996.

(38) **Vietnam:** The United States and Vietnam executed a Bilateral Copyright Agreement, which became effective on December 23, 1998. Under the Bilateral Agreement, each country is required to provide copyright protection under its copyright laws to works of the other country’s authors first published in either country.

Patent Footnotes

(a) **European Patent Convention:** Subject matter protection is available based on the EPO’s application of the “technical effects” doctrine if an application is filed in the EPO rather than in the individual member country. *Vicom Systems Applications*, T208/84, 2 EPOR 74, EPO Appeal Board (1987).

(b) **Argentina:** A leading Argentine case states that if a process is patentable in itself, the use of a computer means in its performance does not affect its patentability. Thus, when software is described as a means and the device is also claimed, that invention is patentable. (*IBM v. La Nacion Argentina s/Deregatoria*, September 1974).

(c) **Eurasian Patent Convention:** As in the European Patent Convention, the provisions of the Eurasian Patent Convention do not recognize algorithms and computer programs, as such, as patentable subject matter. However, because the European Patent Organization assisted in

the preparation of the Eurasian Patent Convention, these provisions of the Eurasian Patent Convention are likely to be interpreted similarly to the corresponding provisions of the European Patent Convention. However, there is no case law yet that would confirm such an interpretation.

(d) **Australia:** *CCOM v. Jiejing*, 122 ALR-417 (1994), interpreting the Australian Patent Act, as amended April 30, 1991.

(e) **Belize:** Protection may be granted to a patent granted by the U.K. patent office or the EPO designating the United Kingdom.

(f) **Brazil:** Inventions involving the use of computer software may be patentable provided they are of “technical character” (new and utilizable by industry). For example, if computer software is used to control a machine, a patent may be available for the machine. (Brazil Law #9279 (May 14, 1996), effective May 15, 1997).

(g) **China (PRC):** Inventions involving the use of computer software may be patentable in the PRC, even if the software concerned forms the major part of the invention, as a technical solution relating to a product, process or improvement.

(h) **Dominican Republic:** Provided one confirms a non-Dominican Republic software patent (*e.g.*, by registering a U.S. patent).

(i) **Hong Kong:** A June 27, 1997 patent ordinance provides protection provided that one registers a patent granted by the UK Patent Office, by the EPO designating the United Kingdom, or by the Chinese Patent Office.

(j) **India:** India’s Patents (Second Amendment) Act, which took effect July 11, 2002, excludes, among other things, a mathematical or business method, a computer program per se and algorithms from patentability. Many commentators believe that the inclusion of the per se language after “computer program” brings India’s patent law more in line with the “technical effects” doctrine promulgated by the EPO.

(k) **Norway:** Norway has reconciled its national patent law with the European Patent Convention even though it is not a member.

(l) **Panama:** The Industrial Property Law that came into effect on November 15, 1996, states that patents shall not be granted for software programs per se.

(m) **Philippines:** Section 22.2 of the Philippines office Manual of Substantive Procedure states: “A computer program claimed by itself or as a record on a carrier, is not patentable irrespective of its content. The situation is not normally changed when the computer program is loaded into a known computer. If, however, the subject-matter as claimed makes a technical contribution to the known art, patentability should not be denied merely on the ground that a computer program is involved in its implementation. . . . It follows also that, where the claimed subject-matter is concerned only with the program-controlled internal working of a known computer, the subject-matter could be patentable if it provides a technical effect.”

(n) **Serbia & Montenegro:** Implementation of computer software in technical processes is patentable.

(o) **Singapore:** Singapore patent regulations allow for a Singapore patent application to proceed to grant by conforming the specification of the Singapore application to that of the corresponding granted U.S. patent and using the granted U.S. patent as prima facie evidence of patentability.

(p) **South Africa:** South Africa patent law prohibits the patentability of computer programs as *such*. It is thus believed that the patent law does not prevent the patenting of software-related inventions so long as they are claimed as methods or as a hardware adapted to perform particular functions.

(q) **Thailand:** The Thai Patent Office is currently studying the issue of software patentability. However, a commentator for the International Association for the Protection of Intellectual Property believes that a software-related invention will be considered patentable subject matter.

(x) **EPO Extension Countries:** For EPO extension countries, subject matter protection is available by filing a special request to extend an EPO patent application to the applicable extension country.

SOURCES OTHER THAN DIRECT AUTHORITY: International Intellectual Property Alliance; U.S. Department of State, Bureau of Economic and Business Affairs; U.S. Department of State, Office of International Information Programs; World Intellectual Property Organization, Geneva, Switzerland; World Trade Organization, Geneva, Switzerland.