

NIH POLICY MANUAL

1192 - COMPUTER SOFTWARE LICENSES

Issuing Office: OIRM (301-402-4463)

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1. Explanation of Material Transmitted:

This chapter is being revised to reflect changes in organizational responsibility, abolishment of the Federal Information Management Regulation (FIRMR), addition of a reference to NIH Manual Issuance 6027, entitled "Review and Approval of Software Licensing Agreements", format changes to comply with new policy, and minor wording changes to make the basic policy clearer.

2. Filing Instructions:

- Remove: 1192 - Computer Software Licenses (2/8/91)
- Insert: 1192 - Computer Software Licenses (04/25/97)

3. Distribution:

NIH Manual Mailing Keys F-401 and F-402 (transmittal sheet only) Chapter text is available on-line. See the last bullet on this page for on-line information. OIRM will also send an e-mail message to all NIH staff reminding them of the revised policy.

PLEASE NOTE: For information on:

- Contents of this chapter, contact the issuing office listed above.
- On-line information, enter this URL:
<http://www3.od.nih.gov/oma/manualchapters/>
- To sign up for e-mail notification of future changes, please go to the NIH Manual Chapters LISTSERV Web page.

A. Purpose:

This chapter establishes policies for the legal use of copyrighted or proprietary computer software.

B. Background:

Most of the software in use at the NIH including, but not limited to, packages such as DOS, WINDOWS, WordPerfect, DBASE and LOTUS, is copyrighted material and sold subject to certain license agreements. NIH does not own this software or its

related documentation and, unless authorized by the software developer, does not have the right to reproduce it. NIH is responsible for upholding all terms and conditions, copyright provisions, and licensing agreements that prohibit or restrict the use and duplication of copyrighted or proprietary software and documentation. According to the U.S. Copyright Law, illegal reproduction of software can be subject to civil damages of as much as \$50,000 and criminal penalties, including fines and imprisonment.

C. Policy:

Unless otherwise authorized in writing by the NIH Legal Advisor, NIH employees, contractors and subcontractors performing work for the NIH shall abide by the restrictions on use, reproduction, transfer, distribution and disclosure of computer software in the license or other agreement under which copyrighted or proprietary computer software was obtained. This policy applies to the use and eventual disposition of all types of licensed software or shareware for use on any type of NIH computer, e.g., PCs, mainframes, minicomputers, supercomputers, scientific workstations, etc.

NIH employees who make, acquire or use unauthorized copies of computer software shall be disciplined as appropriate under the circumstances. Such discipline may include termination. NIH does not condone the illegal duplication of software.

D. References:

1. Title 17, United States Code, Copyright Law, which establishes rights and limitations thereon in computer programs.
2. Title 18, U.S.C. 1905, Trade Secrets Act, which addresses criminal sanctions for Government employees who mishandle proprietary data.
3. Title 28, U.S.C. 1498, Patent and Copyright Cases, which provides that the remedy for Government infringement (or a contractor acting for the Government) of a patent or copyright is an action for compensation in the United States Court of Federal Claims.
4. NIH Manual Issuance 6027, which addresses procedures and responsibilities for the Review and Approval of Software Licensing Agreements acquired by the NIH.

E. Responsibilities:

1. NIH Managers shall:
 - a. Prohibit the unauthorized duplication, transfer, distribution and use of copyrighted or proprietary computer software.
 - b. Inform all employees that unauthorized reproduction or use of copyrighted or proprietary computer software, without proper authorization, is an infringement and that willful copying is unlawful

and may be subject to both civil and criminal sanctions.

- c. Direct questions relating to the legality of duplication or use of licensed or proprietary computer software to the NIH Legal Advisor, Office of General Counsel at 496-4108.
 - d. Report unauthorized reproduction or use of copyrighted or proprietary computer software to the Institute, Center, or Division (ICD) Information Systems Security Officer (ISSO). A listing of the ICD ISSOs is available in the Yellow pages of the NIH Telephone Directory and can also be accessed via the NIH OIRM web site under the title of System Security.
 - e. Create a backup copy of proprietary software, when authorized by copyright law or software licensing agreements.
2. NIH Employees shall:
- a. Be responsible for strict adherence of all licensing agreements between manufacturers and NIH, and of all relevant software copyrights.
 - b. Take immediate steps to correct any inadvertent breach of these software agreements by destroying unauthorized copies and/or purchasing necessary licenses.
 - c. Report unauthorized reproduction or use of copyrighted or proprietary computer software to their supervisor and the ICD Information Systems Security officer.
3. NIH Contracting officers shall assure that:
- a. Contracts contain provisions to protect the NIH from civil and criminal liabilities should contractors or contractor employees reproduce copyrighted or proprietary computer software and/or manuals without proper authorization in the performance of their contract.
 - b. Contractors, in the performance of their official contractual duties, recognize that they are responsible to assure that their employees or subcontractors do not make unauthorized use of copyrighted software under their contract.
 - c. COs should normally obtain commercial computer software with the rights specified in FAR 52.227-19 in accordance with FAR 27.405(b)(2).