

Royalty for using computer programs in Ukraine

Under the Law of Ukraine On Copyright and Related Rights, computer programs are protected as literary works. Such protection applies to computer programs, regardless of their expression manner or form (hereinafter – the work, works).

Business entities that publicly use or distribute works are bound to pay royalties to authors not less than the rates provided by the current legislation of Ukraine.

Resolution No.72 of the Cabinet of Ministers of Ukraine "On approval of minimum remuneration (royalties) rates for using objects of copyright and related rights" dated 18 January 2003 provides for remuneration (royalties) equal to 5% of income from the activity where copyright objects were used, for public broadcasting and rebroadcasting (repeated public broadcasting) of computer programs and databases published for commercial purposes, and their copies:

Type of commercial use	Remuneration (royalties) rate
Computer programs and databases publicly broadcasted via the Internet	5% of income from the activity where public broadcasting of the specified programs or works is used

* remuneration (royalties) rates are accrued as a percentage of a gross charge amount from income received from the activity where works are used, and in the absence of such income – total costs of the activity where the work is used.

The amount of remuneration (royalties) is calculated as a percentage of a business entity's income received from the activity where the work is publicly used in proper ways.

According to Article 1 of the Law of Ukraine On Copyright and Related Rights public broadcasting of the work - public notice (making available to the public) is a broadcast by radio waves (as well as laser beams, gamma rays, etc.), including the use of satellites, or remote transmission by wires or any type of ground or underground (underwater) cable (hard-wired, fiber-optic and other types) of works, performances, any sounds and (or) images, their phonogram and videogram recordings, programs of broadcasting organizations, etc., perceived by an unlimited number of people in different places, who are distant from the broadcast place and can't perceive images or sounds without the specified broadcast.

Thus, the work distribution is any activity whereby the works are directly or indirectly offered to the public, including making these works available to the public so that its representatives can get to these works anywhere and anytime.

The use of works is allowed only based on an agreement with an author (copyrighter), except as provided by the Law of Ukraine On Copyright and Related Rights, namely:

www.DLF.ua

- by Article 10 of the Law (use of unprotected works);
- by Article 24 of the Law (free copying, modification and decompilation of computer programs);
- by Article 30 of the Law (use of works that have become public domain).

In case of public broadcast or distribution of the work, a company is bound to pay remuneration (royalties) for using the work, but only if such royalty payment is provided by the relevant agreement with the author of the work.

The right to remuneration (royalties) arises if the work is received by Customer only for use, not possession, i.e. if a computer program is taken for temporary use by Customer from the computer program developer for a fee.

Payment under the contract for the transfer of exclusive property rights to the work is not deemed as a royalty. Ukrainian law defines such payment to an author (developer) of the work as a regular payment, the contract price.