



GENERAL REGULATIONS

Article 1 – Purpose and definitions

1.1 - Object

The Agence pour la Protection des Programmes (APP), a European organisation for software authors and designers in information technology, a non-profit organisation governed by the French Law of 1 July 1901, aims to defend corporate bodies or individuals, authors or editors of computer programmes, video games, software packages, databases, digital works, and associated studies and documents as defined in article 1 of the Statutes of the association.

APP aims to facilitate out-of-court or legal action seeking compensation for the loss or damage sustained by the rights holder due to counterfeiting, fraudulent or illegal imitations, plagiarism or unfair competition. As an organisation for professional protection, APP, pursuant to Article L.331-1 paragraph 2 of the French Intellectual Property Code, is competent to initiate legal proceedings in order to defend the interests of authors.

APP registers each Creation submitted to it for referencing or deposit and gives each Creation registered in its directory (deposit or referencing) an InterDeposit Digital Number (IDDN).

1.2 - General definitions

Member: means any natural person or legal entity that has become a member of APP and which, in consequence thereof, benefits from the services of APP either for consideration or free of charge, pursuant to the terms provided in the General Regulations herein. The Member of APP is the holder of the rights in the Digital Creation registered in its account. If there are co-rights holders registered for the Creation, the Member is the rights holder in the account of which the Creation is registered and that is duly authorised by its Co-rights holders to perform any formality in respect of that deposit at the APP.

Beneficiary: means any natural person or legal entity benefiting, within the framework of a contractual agreement, from a right of access to given Deposited Elements.

Certificate/IDDN Certificate: certificate attesting to the Registration of a given Digital Creation by APP or of each of its versions subsequently deposited or referenced, and the listing thereof on the IDDN Register.

Creations/Digital Creations: refers in particular to the source codes and/or the object codes of a software application, databases, websites, video games, digital works and/or any element certifying as to the development and production of the Creation to be deposited (such as in particular preparatory meeting minutes, specifications, receipt of version report, payslip or copyright notes, purchase invoices or subcontracting invoices, etc.), or describing the content or the functions (technical documentation, user manual, etc.).

Depositor: May refer to either the APP Member depositing or referencing a Creation or one of its subsequent versions with APP for itself and/or on behalf of all of the co-holders of the rights which have expressly authorised it to do so, or a third party expressly authorised by the holder and/or co-holders of the rights to represent them in their relations with APP and provide the services on their behalf.

Deposited Elements: means the Creations having been registered with APP.

Registration: Referencing or Deposit with APP.

Supplier: means any Member granting to one or more Beneficiaries a right of access to certain Deposited Elements within the framework of a contractual agreement.

Logibox: refers to the sealed envelope containing a physical copy of the Digital Creation registered with the APP.

IDDN Number: For each Registration with APP, a registration number on the international IDDN directory, called the IDDN Number, is assigned to the Creation. This unique ID can in particular determine the body with which the creation is registered, the number of updates, the type of registration, the type of work, the year of the first registration and the category of products to which the registered work belongs.

Creation Portfolio: All of the Registrations of Digital Creations made by APP on behalf of the Member, whether or not the Deposited Elements are kept by APP at the Member's choice (for Referencing or Deposit), whether these are successive versions of the same Creation (initial version and updates), or separate Digital Creations.

Portfolio Statement: Statement of the history of the Creation Portfolio of the Member on a given date.

Seal: means the permanent closing and sealing, either physical or digital, of a Registration, either digital or physical, such that the registered Creation can no longer be modified and/or tampered with.

Online services: means specific services available to Members that allow them to remotely access and manage their Creation Portfolio, prepare their physical deposits or directly deposit their creations online (digital archiving).

Rights Holder: Rights Holder on a Digital Creation. This may be one holder or there may be co-holders. In case of several rights holders, these are jointly referred to as "co-holders".

Article 2 – Membership and membership renewal

Membership of a natural person or legal entity is compulsory in order to benefit from APP's services, and in particular in order to carry out any referencing or deposits with APP.

Upon membership, the Member undertakes to comply with the General Regulations of APP. This approval is pronounced by APP's Board. In the event that approval is refused, the decision of the Board does not have to be justified and may not lead to any compensation for the applicant.

Membership is valid for one year from date to date starting from the membership date, unless the parties expressly agree to a longer term. The membership anniversary date may not under any circumstances be changed due to the Member's late payment.

An admission fee and the annual membership dues are payable for the first year of membership. For subsequent years, only the annual membership dues are payable. In case of new membership further to the loss of capacity of Member (see Article 3 of the General Regulations herein), the admission fee shall once again be applied.

The annual membership dues are payable, net and without discount, between the time the invoice is issued and the membership due date. It may be paid by bank transfer, credit card or cheque to the bank account indicated on the invoice.

Calls for membership dues shall be paid within thirty (30) days of the date of the call, net and without discount. Should no payment be made within 3 (three) months of the call for membership dues, APP shall consider that the Member does not wish to renew Membership. This latter shall consequently, on this date, lose the capacity of Member and lose access to the APP services. APP may waive the membership in accordance with the terms and conditions provided in Article 3 of the Regulations herein.

Article 3 – Cessation of a Member's membership in APP

The capacity of Member of APP is lost:

- by the termination of the membership;
- by non-payment of the membership or renewal fees, for which APP is not required to address a reminder to the Member;
- in case of death for natural persons;
- in case of disappearance of the legal entity (in particular, striking off from the Trade & Companies Register);
- by removal for cause by APP's Board, including for violation of Article 11.

In case of loss of the capacity of Member, the Member is no longer authorised to benefit from the APP services. Any pending contractual commitment with APP shall then be automatically terminated (such as the management of access clauses, the maintenance of escrow agreements, the escrow agent, etc.). APP shall continue to make the Deposited Elements available to the Member for a period of three (3) months. At the end of such period, APP shall be authorised to destroy the Deposited Elements.

When a former Member wishes to resume payment of the membership dues, their request for new membership shall be submitted to the Board, which may refuse membership without justification. The admission fee is again applicable if APP's Board approves this new membership.

Article 4 – Referencing (registration without archiving by APP)

4.1 - Definitions

Referencing is a **registration without archiving** made by APP, which in particular means that a Digital Creation can be registered on the IDD Register, that this Creation can be assigned a given date and that the Member can describe the Creation by information elements in a declaratory form. Within the framework of referencing, **APP is not a third party escrow agent** of the registered elements. Consequently, APP cannot grant access to elements deposited and referenced, even if there is an agreement to this effect between the parties (see Article 6).

4.2 - Referencing procedure

The Depositor may file a request for referencing:

- at the head office of APP;
- by registered mail with acknowledgement of receipt or by messenger;
- through APP's online Services.

After referencing, a certificate containing the IDD number attributed to the Creation and a physical Seal (referred to as a Logibox) or digital Seal containing a copy of the Creation are sent to the Applicant. APP does not keep any copy of the referenced Creation.

4.3 - Referencing of updates

Referencing of updates corresponds to referencing of subsequent or successive versions of a Digital Creation. The IDD Number assigned at the time of the initial referencing has an encoding element which increases upon the registration of each new version of the same Digital Creation. The Member can in this way maintain a link between the registrations of the different versions of the same Digital Creation.

The Referencing of a new version of a Digital Creation does not replace the previous versions, and APP keeps a history of any registration.

Article 5 – Deposit (registration with archiving by APP)

5.1 – Definition and types of deposits

Deposit is a **registration with archiving** made by APP, which in particular means that a Digital Creation can be registered on the IDD Register, that this Creation can be assigned a given date and that the Member can describe the Creation by information elements in a declaratory form.

Within the framework of deposit, **APP is a third party escrow agent** of the registered elements.

APP offers three types of deposits:

- **simple deposit:** Simple deposit allows the Digital Creation to be listed in the international IDD register, to be given a specific date and for at least one copy of it to be deposited with APP which shall keep it in physical or digital form. APP does not carry out any verification of audits on the contents of the Digital Creation.
- **checked deposit:** More complex than a simple deposit is the checked deposit, for which APP verifies the deposited media (identity, legibility, presence of content), lists its contents (directory structure and files, calculating the electronic footprint of the files) and prepares a report on its findings.
- **controlled deposit:** A controlled deposit is a procedure in which APP, in the presence of the Member and the user, audits the consistency and usability of the Deposited Elements. This procedure ensures, among others, that the deposited elements constitute a cohesive functional whole and that the Digital Creation corresponds to that which has been installed for the user. Following this procedure, an APP agent draws up a report on the findings, recording the operations performed.

Deposit allows the Member to provide access to the Deposited Elements by one or more third-party users of the Creations in accordance with the terms and conditions described in Article 6 of the General Regulations.

5.2 - Types of archiving

APP provides two archiving options for deposits:

- **physical archiving:** the physical media (CD, DVD, USB stick, etc.) containing the Creation is archived and kept by APP.
- **digital archiving** in the context of deposits made through APP's online Services.

Whichever type of archiving is selected, the Deposited Elements are kept by APP as long as the depositor remains a Member of APP. If this membership is lost, APP reserves the right to destroy the Deposited Elements under the conditions specified in Article 3 of the General Regulations).

The procedures for archiving Creations digitally are provided in the terms and conditions of use of APP's online Services.

5.3 - Deposit procedure

The Depositor may file a deposit request:

- at the head office of APP;
- by registered mail with acknowledgement of receipt or by messenger;
- through APP's online Services.

After deposit, a certificate containing the IDDN number attributed to the Creation and a physical Seal (referred to as a Logbox) or digital Seal containing a copy of the Creation are sent to the Applicant. APP shall keep one or more Seals containing the deposited Creation.

A price quote will be issued for checked and controlled deposits prior to their implementation.

5.4 - Deposits of updates

Deposits of updates correspond to deposits of subsequent or successive versions of a Digital Creation. The IDDN number assigned at the time of the initial deposit has an encoding element, which increases at the time each new registered version of the same Digital Creation is deposited. The Member can in this way maintain a link between the registrations of the different versions of the same Digital Creation.

The Deposit of a new version of a Digital Creation does not replace the previous ones, and APP shall keep a history of any registration plus the related Deposited Elements.

Article 6 – Right of access by third parties to elements deposited

The Beneficiary of an access to Elements Deposited with APP may ask to access them subject to a written agreement with the Member, provided that the Member has declared to APP the existence of such agreement and subscribed to the related service offer.

This agreement may take the form of a bipartite agreement containing an "access clause" (6.1) or of a tripartite contract called an "escrow agreement" (6.2).

The Deposited Elements are accessed only in accordance with the procedure for accessing deposited elements available on request and after APP's Access Commission gives its opinion. Any provision to the contrary cannot be binding on APP.

Only the Member (the rights holder) and its potential Co-rights holders may contractually provide for access to the Deposited Elements. If a third party grants access to Deposited Elements deposited by the Member, the third party or the Member shall provide APP with any document (agreement or certificate issued by the rights holder) indicating that the Member has indeed authorised this third party to organise access to the Deposited Elements. If this is not the case, no access shall be possible.

In case of Co-holders, all co-holders must have authorised such access.

In the case of access to the Deposited Elements, an APP officer shall make a duplicate of them from the last update to the deposit, save the Beneficiary's express request to access a prior deposit. The costs associated with processing the request for access to the Deposited Elements and the costs of duplicating the Deposited Elements are borne by the Beneficiary.

Duplicates of the Deposited Elements may be given to the Beneficiary or to any person holding a mandate granted by the Beneficiary and expressly authorising it to obtain said duplicates.

6.1 – Bipartite agreement containing an "access clause"

The agreement providing access to the Elements Deposited with APP may take the form of a specific agreement between the Member and the Beneficiary and may be included in another contract (licence to use, IT development contract, etc.).

The agreement shall as a minimum provide the following:

- APP must be designated therein as a third party escrow agent;
- The cases of access to the Deposited Elements must be precisely listed;
- The deposit to which the agreement refers must be identified by its name and IDDN number.

The Member shall be responsible for drafting the terms of the agreement and APP cannot guarantee its applicability.

The Member shall remain a member of APP, be up-to-date with the payment of membership dues and pay the cost related to the management of the access clause during the entire validity of this clause. Otherwise, APP will not process requests for access.

When requesting access, the Beneficiary must communicate to APP:

- A copy of the contractual agreement containing the "access clause";
- Any elements indisputably showing (as appropriate based on an expert evaluation, a judicial officer's report, etc.) that one or more of the access cases provided in the clause are met.

The subscription for the management of an escrowed creation (or subject to access clause) is valid for a period of one year, date to date, starting from the date of subscription to the offer. It shall be tacitly renewed for an equivalent period of time, save waiver by the Member by registered letter with acknowledgement of receipt sent at least 30 calendar days before the expiry of the current period.

The subscription cost is available on the app.asso.fr website.

6.2 – Tripartite agreement, known as an "escrow agreement"

The agreement providing access to Elements Deposited with APP may take the form of a dedicated contract stipulating the terms of the Creation's depositing and the cases of access to the Deposited Elements, signed by the Member, the Beneficiary and APP.

The escrow arrangement is the subject of an offer of specific services, on quote.

APP's legal department makes an escrow agreement template available to Members, sent upon request addressed to legal@app.asso.fr.

Article 7 – Precautions

The rights holder of the Creation shall take all appropriate precautions to protect its intellectual property rights in particular (i) by commercially exploiting or distributing its Creation to the public and (ii) by contractual measures vis-à-vis its clients, suppliers and employees.

The Member must retain an accessible copy of the deposited Creation. Seals may only be opened by authorised persons (APP agent, judicial expert or court officer).

Article 8 – Confidentiality - Research - Requests for information

8.1 - Confidentiality

The identity of Members and all information relating to deposits made with APP are strictly confidential.

Only the Member, its agent, or any person duly authorised by the rights holder and duly identified by APP are authorised to request and obtain such information.

8.2 - Research request

Upon the request of any competent Authority, APP may carry out research concerning the deposit or referencing of Creations. The applicant shall make a written request, accompanied by documents proving its identity and/or its authorisation to obtain such information.

Following is the information that APP may make available to the applicant:

- date of the first registration and the last update,
- identity of the rights holder.

8.3 - Case of a Digital Creation placed in escrow or benefiting from an access clause

The Beneficiary of an escrow agreement signed with APP may request APP to conduct research in order to ascertain whether its Supplier has met its contractual obligations regarding its membership, the initial deposit and updates to the escrowed work and the payment of all of the costs relating to this escrow agreement.

The subscription for the management of an escrowed creation (or subject to access clause) does not give any right to information for the Beneficiary of the access clause, even if the content of the access clause provides otherwise. It is up to the Member to inform the Beneficiary on the renewal of its membership, on the history of the deposits of the work under access clause and on the payment of the subscription cost.

Article 9 – Transfer of rights

The Member undertakes to inform APP of any complete or partial transfer or change of ownership of the intellectual property rights on the Creations registered with APP.

The transferee may also declare its acquisition of intellectual property rights subject to the production of documents that incontestably prove the transfer of rights.

If the transferee wishes to benefit from APP's services, update the Creations it has acquired and/or receive IDDN Certificates in its own name, it must become a member of APP as a membership account cannot be transferred to a third party.

The prices for the transfer of rights procedure are available online on the app.asso.fr website.

Article 10 – Prices and payment terms

The prices are available online on the app.asso.fr website.

Unless otherwise stated, individual Members must pay for the services at the time they are ordered and will be issued with a receipt. For legal entity Members, the payment is made either at the time of the order or upon receipt of the invoice.

Invoices are due in cash upon receipt, net and without discount, and are payable into the bank account for which the banking information is indicated on the invoice. Any amount not settled on its due date automatically accrues late payment interest at a rate equal to the interest rate applied by the European Central Bank to its most recent refinancing operation plus 10 percentage points without APP needing to serve any official notice, plus a lump-sum indemnity to cover the recovery costs of an amount of forty (40) euros.

Article 11 – Use of the "InterDeposit" and "IDDN" trade marks

Creations that have been deposited or referenced with APP may be distributed accompanied by the "InterDeposit" and/or "IDDN" trademarks. The use of these trademarks is authorised as long as the rights holder remains a Member of APP.

Any abusive or fraudulent use of these trademarks may give rise to removal, after formal notice, resulting in the Member's loss of membership in accordance with the conditions established by Article 3 of the General Regulations, without prejudice to any other remedies, including the courts.

The use of the "InterDeposit" and "IDDN" trademarks can in no way be considered as labels. APP does not guarantee that the Creation corresponds to the specifications announced by the Member. APP does not guarantee that the Creation will perform the required functions or that it will meet the needs of the users and/or beneficiaries.

Deposits and referencing, allocation of the IDD and use of the "InterDeposit" and "IDDN" trademarks constitute a simple presumption as to the intellectual property rights owned by the Member that has declared, on oath, that it is the rights holder to APP.

Article 12 – Amendment of the General Regulations

APP reserves the right to amend the General Regulations.

Potential amendments of the General Regulations shall be applied to all Members of APP upon publication of the new version of the General Regulations on the website app.asso.fr.

Further, the Member undertakes to read the General Regulations and their potential amendments before renewing its membership. The Member's payment of its membership dues implies the full acceptance of the current version of the General Regulations.

Article 13 – General Information

13.1 - Personal Information

In the context of its services, APP shall process personal information, on behalf of the Member, related to its employees or directors, which may include, but will not be restricted to, information such as name, address or business telephone numbers. Such information shall be collected from the Member. The processing of such information is essential for the provision of APP's services.

The Member undertakes to inform its employees or directors of the terms of such processing and to obtain their prior consent.

APP undertakes not to market the personal data collected. However, it reserves the possibility to share such information with its subcontractors and partners.

Pursuant to the French Law of 6 January 1978 on Data Processing, Data Files and Individual Liberties, as amended, the Member's employees or directors have a right to consult, access, correct and challenge for legitimate reasons any and all information concerning them, which right is exercised by letter sent by post to APP, 54 rue de Paradis, 75010 Paris, together with a copy of an identity document, or by electronic mail to the Legal Department of APP, at the following address: legal@app.asso.fr.

The Depositor undertakes to notify its employees or directors of the terms for exercising their rights to consult, access, correct and challenge, pursuant hereto.

13.2 - Liability

APP's services are governed by the General Regulations herein, then in force and as published on the app.asso.fr website at the time of the operative event which may incur the liability of APP, which the Member expressly acknowledges and irrevocably accepts.

Acting solely as a custodian, APP may not be held liable for the content, corrections, authenticity, validity of the Deposited Elements or the lasting nature of the media.

As a reminder, no technology can completely guarantee the integrity of data stored on digital media over time. APP will take all reasonable precautions for the protection of the media entrusted to it, but cannot physically or legally ensure the permanence and integrity of the data stored on such media, particularly given the sealing of said media.

APP is not subject to any obligation other than those provided in its General Regulations and, as appropriate, in an *ad hoc* agreement signed by APP (such as an escrow agreement). Apart from the cases of death or bodily injuries caused by one of the Parties, of fraud or gross negligence, the full liability of APP or of one of its suppliers arising from its services may not under any circumstances exceed twenty-five thousand (25,000) euros in total. APP may not be held liable for the following damage: interruption of business, loss of profits, loss of income, loss of personal information, loss of clients or the costs related to obtaining replacement goods and services of the Deposited Elements, whether or not APP has been informed of the eventuality or of the occurrence of such damage. The parties agree that Article 13.2 herein provides for a sharing of the reasonable risks and constitutes a decisive clause without which it would not have been entered into by APP.

13.3 - Subcontracting

APP reserves the right to delegate or subcontract all or part of its obligations.

13.4 - Publication

The Member may disclose that it is a member of APP or that it uses the services of APP. APP may include the name and the logo of the Member in its list of members, internal management documents, annual reports or, as appropriate, any document required by the law or the regulations in force. For any use constituting more than a mere mention, APP shall obtain the prior written agreement of the Member on the use it intends to make of the Member's name and logo.

13.5 - Notifications

Any notification to be made to APP shall be made in writing and in French. It must be hand delivered or sent by registered letter with acknowledgement of receipt to the address and for the attention of the recipient indicated hereinafter:

Agence pour la Protection des Programmes

Legal Department
54 rue de Paradis
75010 PARIS

13.6 - Governing law and Jurisdiction

The General Regulations are governed by and interpreted in accordance with French law.

In the event that the Member considers that it has sustained damage due to a breach by APP and considers instigating legal proceedings or a claim, the parties' respective representatives undertake to meet as soon as possible in order to seek an amicable solution, and shall do so within 15 days following the invitation to said meeting by the first party to act.

In the event the Parties are unable to reach an amicable agreement concerning the dispute within thirty (30) days of the meeting, jurisdiction is expressly assigned to the District Court of Paris, notwithstanding multiple defendants or third-party claims, including for emergency proceedings, interim proceedings and claims for any dispute between them as regards the formation, validity, interpretation, performance, expiry or the termination of the General Regulations.