



Legal aspects of reengineering and reverse engineering

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Legal aspects of using reengineering or reverse engineering in Sweden

- Contractual restraints, e.g. confidentiality clauses
- Trade secrets
- Patents
- Design rights
- Copyright

Contractual restraints

- Main concern
- Confidentiality clauses / proprietary data clauses / right of use clauses
 - A restriction to disclose information to third parties
- No problem with these restraints if no confidential information is disclosed to a third party
- Possibility that the obligations are no longer applicable, contracts lapse after 10 years of inactivity
- Information publicly known?
- Separate agreement with the holder of the confidential information

Trade secrets

- Protected information under the Swedish Act on the Protection of Trade Secrets
- Criminal offence to unlawfully disclose a trade secret
- Trade secret:
 - information concerning the business or industrial relations of a company
 - which that company wants to keep secret
 - and the revelation of which would be likely to cause a damage to that company from a competition point of view.
 - Manufacturing process
 - Method of treating or preserving materials
 - Pattern for a device
- May be disclosed if acquired by proper means
 - Reverse engineering, if the product was acquired by legal means

Patents

- Patents last 20 years
- Both components and processes may be protected
- A new patent cannot hinder anyone to copy an old technology, however, can protect an improvement on the old technology
- The patent holder may grant a license
- A criminal offence to infringe in a patent

Design rights and copyright

- Design rights and copyrights may exist
- Such rights should be possible to work around, using a different design
- Otherwise, agree with the rights holder

Final remarks

- The legal concerns should always be reviewed on a case-by-case basis before any steps are taken to a reengineering solution
- In practice, no company doing reengineering/reverse engineering for nuclear power plants will take on an assignment if the legal rights are unclear