

Copyright In Hungary

New Copyright Act

- a response to changing times

A long process has finally resulted in the passing of a new Copyright Act (No LXXVI of 1999) ('the Act') in Hungary, which entered into force on 1 September 1999.

Legislative background

Copyright was regulated by legislation in Hungary as early as 1884. The 1884 Act, which was influenced by German and Austrian legislation, was followed by the Copyright Act of the socialist era in 1969 which, however, maintained basically all essential elements of the copyright system. Political and economic changes in the region, rapid technical development and ever-increasing international regulation of this field of law have meant that changes in domestic Hungarian law are inevitable. Furthermore, Hungary has had to face the challenges imposed by joining the European Union.

Hungary has also joined all major international treaties on copyright, such as the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), the WIPO Copyright Treaty and the Performances and Phonograms Treaty. A number of further obligations have been imposed on Hungary in concluding the bilateral Agreement with the USA on Intellectual Property in 1993 and by joining the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations in 1994, as well as by the 1991 Agreement between Hungary and the European Communities on Associated Membership.

Main features of the new Copyright Act

The new Act was eagerly awaited as it was expected to:

- harmonise local copyright law with Hungary's international obligations;

- address the challenges of technological development as well as the changed economic environment; and
- enhance the effectiveness of legal measures against infringement. The present Act expressly refers to full harmonisation with all the EU Directives that relate to copyright issues.

Following the general provisions, there are separate chapters concerning the individual genres of works and of related rights, collective administration of rights, legal consequences of infringement and, at the end, miscellaneous and closing provisions that provide for transitional regulation as well as for dates of entering into force.

In connection with the protection of software, Hungarian courts were among the first courts to deal with this issue, passing a judgment on copyright protection of computer programs in 1972. Following judicial decisions, Hungary was the third country, after Austria and Germany, to provide for direct legal provisions on copyright protection of software. The Act now includes a whole chapter dealing with rights in software, rendering Hungarian legislation fully compliant with the respective European Directive 91/250. Accordingly, the Act includes provisions on the transferability of financial rights in software, secures the right for any authorised user to study and try out the software and to make a security back-up copy. Provisions also allow a user to rearrange, make use of, copy, translate and modify such software, unless otherwise agreed, provided in each case that such acts are done in compliance with the ordinary purpose of the given software.

Legal requirements introduced by European Directive 96/9 meant that the Act had to cover the

protection of databases. Databases have secured copyright protection whether or not their parts and contents are afforded protection. The Directive and the Act also aim to increase the available protection for multimedia works which, until now, have been less well regulated.

One of the most hotly disputed issues related to the above is the legal evaluation and regulation of the internet and the various ways of using it. The main difficulty with the internet is that it contains non-traditional 'material'. Also, the use of copyright protected works and transmission of works to the public takes place in non-material ways. This kind of unlimited flow of information is contrary to the basic principle of copyright law which secures exclusive rights to permit multiplication and transmission to the public of copyrighted intellectual property. The new Act has addressed the problems arising from the application of formerly established definitions of 'use', 'multiplication' and 'making public' to the internet, although not mentioning them expressly in the wording of the Act. This may seem curious, but not particularly significant, since the standpoint of the Hungarian Act is - in accordance with that of the European Union - that the internet is not a new copyright law category to be regulated individually, but rather a new medium for making use of works.

Accordingly, the legal definition of use has been amended and is defined broadly including but not limited to the following:

- multiplication;
- distribution;
- public performance;
- transmission to the public by broadcasting or otherwise;
- transmission of a broadcast work to the public through a separate organisation;
- revision;
- exhibition.

In particular, storing a work in a digital form on any electronic equipment and production in a material form of works transmitted by a computer network both qualify as multiplication. Similarly, due to the distribution of protected works via computer networks becoming more common, an internationally recognised provision has been incorporated in the new Act, whereby a work can be made available to the public even where the user may select the place and time for downloading of the work. In addition, the presentation of protected works on a screen or making such works visible on a computer qualify as public performance and transmission to the public, respectively.

During the last two decades, the need to extend the basis of royalty claims has arisen with respect to large-scale copying for personal use. Accordingly, the Act has introduced reprography royalties to be paid for reprography equipment by their producer or importer, as well as for commercial reprography activities. A number of detailed provisions on the distribution of such reprography royalties have been incorporated into the Act, also applying to book and music publishing companies. Due to the period of time required for the many people affected by these provisions to comply, the provisions concerning reprography and royalties will not come into force until 1 September 2000.

In accordance with the European Directive, the exclusive distribution rights of the author now include the lease as well as the hire of the work to the public, with a royalty to be paid to the author. However, certain organisations may be exempted from the payment of such royalty, eg public libraries may freely hire individual copies of a work (with the exception of software and electronic databases).

In relation to related rights, the Act secures the exclusive right for performers and producers of phonograms and films to multiply and distribute their respective works. This includes the right to make them available to the public for hire or by any other means whereby individuals may select the time and place for downloading of the work. This also reflects provisions of the WIPO Copyright Treaty and Performances and Phonograms Treaty, which were ratified by the Hungarian Parliament in 1998.

Prior to the Act, collective administration of rights was regulated by a Government Decree, the content of which has been greatly modernised, differentiated and incorporated into the Act. The effective operation of such organisations, each operating practically as a monopoly, has also been acknowledged by competition law practice and legislation within the European Union. Accordingly, the Act provides for the mandatory and exclusive registration of such an organisation for the administration of rights in each of the following fields:

- literary and musical works;
- other works by artists;
- films;
- performing arts;
- phonograms.

Detailed provisions of the Act assure that each of these organisations shall have appropriate representation and shall possess reasonable computer and database infrastructure and the required expertise.

Hungarian legislation implemented changes in copyright law in 1994 to comply with European Directive 93/98. This lengthened the protection period to 70 years post-mortem auctoris for copyright and up to 50 years from the year of transmission to the public, or first distribution of the work, for related rights. The only aspect in which harmonisation with the Directive proved to be missing was the lack of copyright and neighbouring right protection with respect to works and performances for which protection had already lapsed at the time of the modifications. This defect, which was particularly unacceptable in terms of the TRIPs Agreement, has been rectified by the present Act, which secures protection for all works and performances for the full period of the respective protection. There are provisional rules to regulate any use of these works in the meantime, which allow the distribution of already produced copies of protected works for an additional year.

Among the international conventions, the TRIPs Agreement provides the most severe legal consequences for infringement of copyright. In general, the Hungarian regulations now conform to the international requirements. The new Act gives a full coverage of civil law sanctions including material and immaterial damages as well as the grant of preliminary injunctions by a court prior to the full hearing of a case. New provisions of the Act provide protection against evasion of respective technical measures used for the protection of copyright and related rights and for appropriate data protection during the collective administration of rights by the respective organisations.

As well as the Act, a separate Government Decree in 1997 set up a framework for legal steps and procedures for effective immediate measures by Customs Authorities including the seizure of counterfeit or pirated goods and other steps against infringers of copyright or related rights.

As to criminal sanctions for copyright infringement, one may note that the Hungarian Criminal Act has been imposing grave sanctions against the infringement of copyright and related rights for several years. The effective enforcement of these provisions has been aided in the field of computer technology, among others, for several years by the Business Software Alliance (BSA). As a consequence of carrying out a number of successful raids and initiating legal proceedings and as a result of the higher level of awareness of the increased number of applicable legal provisions, the use of counterfeit or pirated software products has dramatically decreased in Hungary. Corresponding to the enactment of the new Act, a Bill on the overall revision of the Criminal Act has been passed by Parliament and the respective provisions will come into force on 1 March 2000. These include even wider protection against the infringement of intellectual property rights and, within that, copyright and related rights.

Summary

The new Copyright Act provides for clear and effective regulation of copyright to replace the former,

partially obsolete, legal framework which dealt with copyright unreasonably on several levels of law. There are several disputed aspects of new technologies which will still have to be addressed by the legal profession, such as MP3 compressed files, the storage of works in digital form and the digital protection opportunities provided by a watermark. The Act is noteworthy for its flexible approach. It avoids any onerous lists and references, allowing new forms of works and new forms of use to be included without the need for further structural changes to the Act. By concise modernisation of the fields covered in the Act, Hungary has met its harmonisation obligations in this field, which can only contribute to a smoother joining of the European Union in the near future.

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