

REVIEW OF LEGISLATION ON COPYRIGHT AND RELATED RIGHTS

HUNGARY

The present document reproduces the introductory statement made by the delegation of Hungary, the questions put to it and the responses given in the review of legislation at the Council's meetings of 12 May 1998 and 16 July 1998.¹

I. INTRODUCTORY STATEMENT

The domestic law applicable to the protection of authors' rights and neighbouring rights consists today primarily of the Act No. III of 1969 on Copyright and of the Implementing Decree No. 9/1969 (XII.29.) MM.

The Act and the Decree were amended several times, in order to meet Hungary's international obligations in this field.

The Act provides protection for literary, scientific and artistic creations. The Decree itself contains, however, an illustrative, non-exhaustive enumeration of what has to be considered as "work" under the Act. In accordance with Article 10 of the TRIPS Agreement, computer programs enjoy protection as well. The most important condition of an intellectual creation being considered as a work is originality. The Act sets out that authors' rights shall be vested in the person who create the work. By doing so, only natural persons may qualify as authors.

The Hungarian Copyright Act distinguishes between personal and economic rights of the author.

Regarding their substance, the authors' rights are conceived in the Hungarian law as a bundle of inter-related exclusive rights to prevent others from unauthorized use of the author's work. Consequently, they are considered absolute rights to permit or to prohibit the use of the work, within the limits set by the law.

According to the Copyright Act, the economic rights enjoy protection during the lifetime of the author and for 70 years after his death.

The Hungarian Copyright Act provides protection for neighbouring rights in compliance with the TRIPS Agreement.

¹ The minutes of these meetings have been circulated in documents IP/C/M/18 and IP/C/M/19 respectively.

The Act No. XI of 1997 (the new Trademark Act, which entered into force on 1 July 1997) introduced amendments to the Copyright Act in accordance with the enforcement provisions of the TRIPS obligations.

Hungary is a member of the Berne Convention from 1922 and of the Rome Convention from 1994. Hungary also signed the WIPO treaties in 1996.

Currently, the Hungarian Copyright legislation is under comprehensive revision. Government Decision No. 1100/1997 (IX.30.) Korm. on the Overall Revision of Copyright Legislation prescribed the principles and requirements to be adopted in the new legal provisions. These rules are expected to fully comply with the TRIPS Agreement and EC law as well and to take account of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. The new Act is scheduled to be adopted by the new Parliament in the second half of 1998.

II. REPLIES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

1. Please explain whether and how Hungary provides full retroactive protection to works, phonograms and performances from other WTO Members as required by Articles 9.1, 14.6 and 70.2 of the TRIPS Agreement, each of which incorporate by reference or rely upon Article 18 of the Berne Convention. Please give the date to which such protection extends back with respect to each category of subject matter.

Please see the reply to US question 4.

2. Article 6 of the Copyright Law provides that rights in works disclosed anonymously or pseudonymously shall be exercised by the person who first discloses the work. Please explain how this implements Article 9.1 of the TRIPS Agreement in conjunction with Article 15 of the Berne Convention which refers in such cases to the publisher/author whose name appears on the work.

Both Article 6 of the Hungarian Copyright Act (No. III of 1969, in the following HCA) and Article 15 of the Berne Convention cover several cases.

Paragraph 1, Article 6 of the HCA corresponds to paragraph 3, Article 15 of the Berne Convention. The scope of the HCA rule is, however, wider than the Berne rule, as it covers not only the publishing of books, scores or sound recordings but all other forms of the disclosure of anonymous and pseudonymous works. No doubt, if a work is disclosed in Hungary as a publication, the name of the publisher will appear on it "as the person who first discloses the work" and it will be deemed to represent the author. The result of the rule is in full compliance with the Berne Convention. Should the anonymous work be disclosed, e.g., in the form of a broadcast, the editor or the broadcasting organization identified in the programme shall be deemed to represent the author (until the author reveals his identity).

The HCA complies, therefore, with Article 9.1 of the TRIPS Agreement by granting an even higher level of protection than required by Article 15(3) of the Berne Convention.

3. Article 18 of the Copyright Law provides that "any person may make a copy of a disclosed work provided he does not do so for the purpose of putting it into circulation or with gainful intent and does not prejudice the legitimate interests of the author in any other manner". Please explain how this provision is applied (by courts) and please also give some concrete examples.

The specialized literature understands Article 18, paragraph 1 of the HCA as the case of free reproduction for personal or private purposes (i.e. for third parties as well).

Copying for a third party means reproduction for an identified person and not for laying in stock of copies (for offering the copies to the public). Copies can be made by hand, typewriter, xerox, electronic devices. The number of free copies is limited by one of the preconditions ("does not prejudice the legitimate interests of the author ..."). No published relevant court cases are known.

4. *Article 14.2 of the TRIPS Agreement provides that performers shall have the possibility to prevent a third person from reproducing the fixation of their performances. Article 49.1(b) of the Copyright law seems to introduce additional conditions for such cases. Please explain whether and how this complies with the said Article of the TRIPS Agreement.*

The question does not include a reference to Article 14.6 of the TRIPS Agreement – conditions permitted by the Rome Convention. The "additional conditions" questioned are identical with Article 7.1(c), (ii) and (iii). Further on, the HCA grants a higher protection to foreign performers than the protection required by the TRIPS Agreement as:

- it grants an exclusive right of authorization instead of "the right to prevent";
- the national treatment is unconditional.

Consequently, Article 49.1(b) HCA complies with Article 14.1 of the TRIPS Agreement.

5. *In the light of the protection required by Article 14.2 of the TRIPS Agreement, does the Copyright Act or any other provision of the Hungarian law protect digital reproduction or digital transmission of phonograms.*

Article H50/B(1) provides exclusive "right of reproduction" to the producers of phonograms. It covers "direct and indirect reproduction" like the TRIPS Agreement. The text does not specify – again the same way as the TRIPS Agreement – whether "reproduction" includes "digital reproduction" as well. Neither the TRIPS Agreement nor the HCA grants a "digital transmission right" to the producers of phonograms.

6. *Please explain how the Hungarian Copyright Law implements Article 14.3 of the TRIPS Agreement.*

Article 14.3 of the TRIPS Agreement is to be understood together with Article 14.6 of the same Agreement and Article 13 of the Rome Convention especially. The HCA implements these rules as follows:

Article 50/F-(1) Unless otherwise provided by this Act, the radio or television organization's authorization shall be required for its programme to be:

- (a) broadcast or communicated to the public by other radio or television organizations or by cable operators;
- (b) recorded;
- (c) reproduced after recording, if the recording was made without authorization or the recording was made pursuant to Article 50I(2) and the reproduction is made for a purpose other than that to which Article 50I(2) relates.

(2) Unless otherwise provided by this Act, the television organization's authorization shall be required for its programme to be communicated to the public in a room where the programme is accessible to the public on payment of an entrance fee.

(3) The uses referred to in paragraphs (1) and (2) shall be subject to payment of remuneration, unless otherwise provided by law.

(4) Where an original programme is communicated to the public by cable, paragraphs (1) to (3) shall apply, *mutatis mutandis*.

As to the superficiality of the Hungarian level of protection compared to "the TRIPS Agreement and Rome requirements", see the two elements mentioned at the end of answer four.

7. *Articles 12 and 9.1 of the TRIPS Agreement in conjunction with Article 7.4 of the Berne Convention provide for a term of protection of 50 and 25 years. Article 51.1 and 2 of the Copyright Law, however, seem to limit the term of protection to 15 years e.g., for certain photographs and films. Please explain how this complies with the said Articles of the Berne Convention and the TRIPS Agreement.*

Article 12 of the TRIPS Agreement and Article 7(4) of the Berne Convention – referred to in Article 9.1 of the TRIPS Agreement – speak about the term of protection of works. On the contrary, the subject matter of Article 51 of the HCA are – among others – certain photographs and films which are not eligible for the copyright protection at all. This is stated explicitly in the text of the statute (see also paragraph 1 of Article 36 of the Implementation Decree No. 9/1969 (XII.29.) MM). Such productions do not have enough originality to qualify as works. The legislation, however, offers a shorter *sui generis* protection for them, subject to certain conditions.

It is to be mentioned that the Hungarian Copyright Act includes such other Articles as well which cover subject matters other than copyright and related rights (e.g. Article 54A, Domain Public Payant).

The Hungarian Government declared its intention to cancel Article 51 at the time of the next revision of the HCA.

III. REPLIES TO QUESTIONS POSED BY JAPAN

1. *Please explain whether and how the Copyright Law of Hungary provides protection for works, phonograms and performances of other WTO Members, and please describe the provision in the Copyright Law of Hungary which provides for the national treatment (NT) and most-favoured-nation treatment (MFN) as required by TRIPS Article 3, Article 4, and Article 9.1 incorporating Berne Article 5.1.*

The Hungarian Copyright Act (No. III of 1969) limits its applicability with regard to subject matters of foreign origin only concerning **works**. Any work first made available to the public abroad (in the broadest sense of public availability, not restricted to publication and including, *inter alia*, also public performance) shall be covered by the Act only if the author is a Hungarian citizen (it is not enough to have a domicile in the country) or is entitled to protection under any international treaty or on the basis of reciprocity (Act Article 2). It follows from this rule that any work of a foreign author first made available to the public in Hungary comes under the coverage of the Act.

It should be noted that the restriction explicitly provided for in the Act as regards its applicability does not extend to subject-matters other than works. According to Article 8 of the Civil Code, which applies to questions not dealt with in the Act, in the Republic of Hungary every natural

person enjoys legal capacity and may have rights and obligations. Consequently, the enjoyment of rights recognized by the Hungarian law may only be restricted with regard to foreigners by special legislation. Concerning neighbouring rights, such limitations are not contained in the Act. Thus, in this respect, the Act also applies to foreign owners of rights whether or not the subject matter of their rights originated in Hungary.

Under the relevant international conventions, the Act applies to subject-matters of foreign origin by virtue of the respective rules providing national treatment of foreign owners of rights. In addition to this, foreigners may enjoy in Hungary, as regards their works originating outside the country, the rights provided for in the substantive provisions of the applicable conventions. An international treaty ratified by the Parliament becomes a part of the body of Hungarian law and is, so far as its provisions are susceptible to direct application, self-executing. The Berne Convention (Paris text of 1971) was enacted by Law-Decree 4 of 1974, the TRIPS was ratified by the Decision No. 72/1994 (XII.27.) OGY of the Parliament and promulgated by Act No. IX of 1998. This answers the question concerning MFN as well.

Therefore, the Copyright Law of Hungary complies with Articles 3, 4 and 9.1 of TRIPS.

2. *Please explain exceptions or exemptions for NT and MFN, if any, in the Copyright Law of Hungary as permitted by Articles 3 and 4 of the TRIPS Agreement.*

The only exception for national treatment in the Copyright Law of Hungary is the comparison of the term of protection in the country of protection and the country of origin respectively. The legal source is Decree of Law No. 4 of 1974 enacting the Berne Convention Article 7(8).

Therefore, the Copyright Law of Hungary complies with Articles 3 and 4 of TRIPS.

3. *Please explain whether "computer programs" in Article 1(1) of Decree No. 9/1969. (XII.29.) MM Implementing Act No. III of 1969 on Copyright, which provides for the protection of computer programs, include computer programs in both source code and object code and please explain how the Copyright Law of Hungary complies with Article 10.1 of the TRIPS Agreement in this respect.*

The copyright Act refers to literary, scientific and artistic creations in general rather than providing for a definition of the notion of "work" (Article 1/1). The Implementing Decree No. 9/1969 (XII.29.) MM contains, however, an illustrative, non-exhaustive enumeration of what has to be considered as "work" under the Act. It provides explicitly that works have to be protected whether or not specified in the Act and offers thereafter a long list of categories of creations which have to be recognized as the subject matter of author's rights. Over and above the traditional kinds of works such as literary works, speeches, musical compositions, dramatic works, radio and television plays, and cinematographic works, it also mentions buildings and technical constructions (e.g. bridges, water energy plants), plans of architecture (including compounds of buildings) as well as town planning projects, plans for technical constructions and "software", the latter "being understood as comprising computer programs with related documentation" (Decree Article 1/1). "Related documentation" clearly covers source code and object code as well.

The Hungarian court practice went even further: it strengthened the special work category character of software by acknowledging authors' rights protection of the first software development phase (such as problem analysis schemes) as software, even when this preliminary stage of development does not result in a finished program.

In Hungary, it would be illogical to term "computer software" as "literary works" in the present, non-exhaustive enumeration of work categories of the Implementing Decree. The Decree enumerates literary (scientific, artistic) works, speeches, radio plays, theatre plays etc. They are all literary works in

a wide sense. It was very logical to add computer programs to these examples. Literary works (in a restricted sense) are works communicated to the public in writing. This is not characteristic of computer programs.

Therefore, the Copyright Law of Hungary is in compliance with Article 10.1 of TRIPS.

4. *Please explain whether "collected works" in Article 5(3) of the Copyright Law of Hungary, which provides for the protection of collected works, include compilations of data in machine readable form and please explain how the Copyright Law of Hungary complies with Article 10.2 of the TRIPS Agreement in this respect.*

An original collection (compilation) of works of one and the same author or of several ones may, as an entity, also constitute a work (Copyright Act, Article 5/3). These provisions similarly apply to databases operated by means of computer technology, as it is explicitly stated in Article 3B of the Implementing Decree. It should be noted in this context that an original selection and compilation of materials other than works may likewise be protected under the law on authors' rights. "Eye-readability" is not a precondition of the eligibility for protection for any work category (see also answer 3).

Therefore, the Copyright Act of Hungary complies with Article 10.2 of TRIPS.

5. *Please explain which Article of the Copyright Law of Hungary provides for rental rights of computer programs and cinematographic works and please explain how the Copyright Law of Hungary complies with Article 11 of the TRIPS Agreement in this respect.*

Article 13 of the Act No. III of 1969 ensures to the author "exploitation" as an economic right by means of a general clause stating without any particulars: Any exploitation of the work is subject to the licence of the author, unless otherwise provided for by law. The underlying reasons is that it would have been rather difficult to define exactly the modes of exploitation in full detail and that in this way any new mode of exploitation that may emerge with the development of technology automatically falls within the scope of the law.

The general concept of the exploitation of copyright is further defined by Article 10, paragraph (1), of Implementing Decree No. 9/1969 (XII.29.) MM as follows: "Pursuant to the Act, exploitation shall be taken to mean the process whereby the work or part of it is communicated to the public". Public distribution and rental clearly fit in with the notion of "exploitation". The authors' rights, under the Copyright Act, do not exhaust with the sale of copies in respect of either computer programs, the video versions of films or other work categories.

The Copyright Law of Hungary, therefore, is in compliance with Article 11 of the TRIPS Agreement.

IV. REPLIES TO QUESTIONS POSED BY THE UNITED STATES

1. *Please explain whether and how Hungarian law provides protection for works, phonograms and performances from other WTO Members, and whether and how it does so on the basis of national treatment, as required by TRIPS Article 3 (generally, with respect to all copyrights and neighbouring rights) and Article 9.1 (incorporating Berne Article 5(1)). In particular, please explain how national treatment is afforded with respect to the distribution of blank tape levies under Article 50J of the Hungarian Law on Copyright and Neighbouring Rights.*

The Hungarian Copyright Act (No. III of 1969) limits its applicability with regard to subject matters of foreign origin only concerning works. Any work first made available to the public abroad (in

the broader sense of public availability, not restricted to publication and including, *inter alia*, also public performance) are covered by the Act only if the author is a Hungarian citizen (it is not enough to have a domicile in the country) or is entitled to protection under any international treaty or on the basis of reciprocity (Act Article 2). It follows from this rule that any work of a foreign author first made available to the public in Hungary comes under the coverage of the Act.

It should be noted that the restriction explicitly provided for in the Act as regards its applicability does not extend to subject matters other than work. According to Article 8 of the Civil Code, which applies to questions not dealt with by the Act, in the Republic of Hungary every natural person enjoys legal capacity and may have rights and obligations. Consequently, the enjoyment of rights recognized by the Hungarian law may only be restricted with regard to foreigners by special legislation. Concerning neighbouring rights, such limitations are not contained in the Act. Thus, in this respect, the Act also applies to foreign owners of rights whether or not the subject matter of their rights originated in Hungary.

Under the relevant international conventions, the Act applies to subject matters of foreign origin by virtue of the respective rules providing national treatment of foreign owners of rights. In addition to this, foreigners may enjoy in Hungary, as regards their works originating outside the country, the rights provided for in the substantive provisions of the applicable conventions. An international treaty promulgated by law becomes a part of the body of Hungarian domestic law and is, so far as its provisions are susceptible to direct application, self-executing. The Berne Convention (Paris text of 1971) was enacted by Law-decree 4 of 1974, the TRIPS was ratified by the Decision No. 72/1994 (XII.27.) OGY of the Parliament and promulgated by Act Nr. IX of 1998. This answers the question concerning national treatment as well.

Therefore, the Copyright Law of Hungary complies with Articles 3, 4 and 9.1 of the TRIPS Agreement.

The same applies to the blank tape levies as well.

2. *Does Hungary apply the "rule of the shorter term" to phonograms and performances from other WTO members? If so, please explain how you justify such action under TRIPS Article 4.*

Hungary does not apply the "rule of shorter term" to phonograms and performances from other WTO members.

3. *Please explain whether and how Hungary protects against both the direct and indirect reproduction of phonograms as required by TRIPS Article 14.2, including by digital transmission in the context of subscription or interactive services.*

According to Article 50B of the Hungarian Copyright Act the authorization of the phonogram producer is necessary for making a copy of a phonogram either directly or indirectly. As to the reproduction of phonograms including by digital transmission in the context of subscription or interactive services, it will be clarified by an amendment to the Copyright Act foreseen for the second half of the year, that exclusive right of producers of phonograms do include the right to authorize such use of the phonograms in line with the new WIPO Treaty, which Hungary intends to ratify.

4. *Please explain whether and how Hungary provides full retroactive protection to works, phonograms and performances from other WTO Members, as required by TRIPS Articles 9.1, 14.6 and 70.2, each of which incorporate by reference or rely upon Berne Article 18. Please give the date back to which such protection extends with respect to each category of subject matter.*

The term of protection for copyright has been harmonized at 70 years after the death of the author or 70 years after the work is lawfully made available to the public, and for related rights at 50 years after the event which sets the term running. The TRIPS Agreement has also provided that the term of protection available under that Agreement to performers and producers of phonograms must last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place.

It was in line with the provisions of the Agreement that Hungary extended the term of protection from 50 years to 70 years *post mortem auctoris* for authors, and from 20 years to 50 years for neighbouring rights owners. These amendments to the copyright Act were introduced by Act No. V11 of 1994, and entered into force on 1 July 1994.

However, one of the transitional provisions of the Act (namely Article 29) makes it clear that, although such works, performances, phonograms (sound recordings) and broadcasts that were protected on the date of entry into force of the Act may benefit from the longer term of protection introduced by the Act, those works, performances, phonograms and broadcasts that have fallen into the public domain in Hungary because of the expiry of the term of protection may not be protected anew. We have considered this provision to be in conformity with the provisions of Article 18 of the Berne Convention applicable to the rights of performers and producers of phonograms. However, on the basis of extensive consultation we have held with associations, we have arrived to the conclusion that our position on this matter should be reconsidered in view of the prevailing interpretation of the above-mentioned provisions.

This is reflected by Section 3(f) of Government Decision No. 1100/1997. (IX. 30) Korm. on the comprehensive reform of Hungarian Copyright Law, which provides that, the transitional provision of Act No. VII of 1994 on the extension of the term of protection of copyright and neighbouring rights will have to be revised. This means that Hungary is ready to accept the prevailing interpretation of the TRIPS Agreement and the Berne Convention and to provide that even those works, performances, phonograms that have fallen into the public that even in Hungary because of the expiry of the term of protection may be protected anew for the remaining period. However, when taking such a legislative step and deciding on its transitional arrangements, due account will have to be taken of the respect of acquired rights and legitimate expectations which can be derived from the Constitution of Hungary and the judgements of the Hungarian Constitutional Court.

5. *Please explain whether and how compilations of data, including those that are computer-generated, are protected by Hungarian law as required by TRIPS Article 10.2.*

An original collection (compilation) of works of one and the same author or of several ones, may, as an entity, also constitute a work (Copyright Act, Article 5/3). These provisions similarly apply to databases operated by means of computer technology, as it is explicitly stated in Article 3B of the Implementing Decree. It should be noted in this context that an original selection and compilation of materials other than works may likewise be protected under the law on author's rights. "Eye-readability" is not a precondition of the eligibility for protection for any work category (see also Answer 3).

Therefore, the Copyright Act of Hungary complies with Article 10.2 of TRIPS.

6. *Please explain how Article 17(2), which permits the reproduction of any part of a work or the whole of a work of small size for educational or scientific purposes, complies with Berne Article 9(2) and TRIPS Article 13.*

According to Article 17(2) of the Hungarian Copyright Act any part of a disclosed work, or the whole of a work of a small size, may be reproduced for the purposes of school education – including

radio or television courses – and for the propagation of scientific knowledge, provided the source and the author shown as such are named.

This provision does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the right holder; therefore it is in compliance with Article 13 of the TRIPS Agreement.

7. *Please confirm whether and how Hungarian law provides rental rights for computer programs as required by TRIPS Article 11.*

Article 13 of the Hungarian Copyright Act ensures to the author "exploitation" as an economic right by means of a general clause stating without any particulars: any exploitation of the work is subject to the licence of the author, unless otherwise provided for by law. The underlying reason is that it would have been rather difficult to define exactly the modes of exploitation in full details and that in this way any new mode of exploitation that may emerge with the development of technology automatically falls within the scope of the law.

The general concept of the exploitation of copyright is further defined by Article 10, paragraph (1) of Implementing Decree No. 9/1969. (XII.29) MM as follows: "Pursuant to the Act, exploitation shall be taken to mean the process whereby the work or part of it is communicated to the public". Public distribution and rental clearly fit in with the notion of "exploitation". The authors' rights, under the Copyright Act, do not exhaust with the sale of copies in respect of either computer programs, the video versions of films or other works.

The Copyright Law of Hungary therefore is in compliance with Article 11 of the TRIPS Agreement.

8. *Please explain how Article 21, which permits the performance of a work for educational purposes, complies with Berne Articles 11 and 11ter and TRIPS Article 13.*

According to Article 21(1) of the Hungarian Copyright Act, a work, which is already disclosed, may be performed at school celebrations and for other school purposes. In our view, it is in compliance with Article 13 of the TRIPS Agreement, but changes, further restrictions are planned to make this compliance more obvious and to take account of the latest technological developments.
