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ATTEMPTS AT CREATING AND REFORMING LEGAL PROTECTION OF INTELLECTUAL PROPERTY IN HUNGARIAN JURISPRUDENCE

Given the peculiarities of historical development, modern codification efforts evolved with a delay in the Age of Reforms in the eighteen-thirties; with respect to copyright the Bills related to Bertalan Szemere are worth mentioning. After suppression of the War of (1849) and the Compromise (1867), basically Austrian laws were applied.

In the Central-Eastern European countries after the Second World War, intellectual property rights bore certain traces of central economic administration, foreign exchange management, income regulation and censorship. To different extent and for different reasons from country to country, this branch of law nevertheless preserved its main traditional features owing to, at last but not least, several decades long membership in international agreements. The legal field of intellectual property shows continuous progress, without infringement of material principles. Just as in the phase of its evolution, in the appearance of modern development tendencies, economic circumstances and technological conditions constitute the key driving forces. General features of historical development are reflected by the progress made in this legal field in too.

Centuries long traditions of Hungarian copyright law, experience of domestic legal development cannot be ignored in working out the new regulation. Enforcement of international legal unification and European legal harmonisation requirements do not exclude respecting domestic copyright law traditions at all—they make it definitely necessary to integrate regulation harmonised with international conventions and European Community directives into Hungarian legal system and legal development organically; therefore, we must not put aside the assets of our copyright law in order to fulfil our legal harmonisation obligations. What Hungarian copyright law needs is reforms: renewal that maintains continuity of domestic regulation by exceeding former regulation while preserving the values achieved so far.

The history of Hungarian copyright law is characterised both by successful and unsuccessful attempts at codification, although aborted bills failed due to changes in historical circumstances rather than the standard of proposals.

The Bill submitted by Bertalan Szemere to the National Assembly in 1844 was not enacted for lack of royal sanctioning. Following the age of imperial patents and decrees, after the Compromise (1867) the Society of Hungarian Writers and Artists put forth – again an unsuccessful – motion for regulation; however, the Commercial Code, Act XXXVII of 1875 devoted a separate chapter to regulation of publishing transactions.

The first Hungarian copyright law, Act XVI of 1884, was made following László Arany's initiative, upon István Apáthy's motion. The Act implemented modern codification adjusted to bourgeois conditions, setting out from theoretical bases of intellectual property not superseded ever since.

Later re-codification of Hungarian copyright law was required by the need to create internal legal conditions of the accession to the Berne Union Convention. Act LIV of 1921 harmonised our copyright law with the current text of the Convention, and adjusted our regulation to the results of technological development.

The last attempt at modernising bourgeois copyright law can be linked with the name of Elemér Balás P.; his Bill drafted in 1934 was published in 1947, however, due to political changes this Bill could not become an act.

The development of copyright law of the bourgeois epoch was dominated by the concept of intellectual property, qualifying copyright as proprietary right similar to property right, which was in line with the requirements and needs of market economy and trade. Gradual acknowledgement of authors' rights related to their personality also began; however, protection of these rights did not become the central element of copyright law approach either in theory or in practice. Paradoxically, as a special impact produced by the current ideology, this happened only during the period of plan economy and one-party system.

Our Copyright Act III of 1969 – which is the third one following Act XVI of 1884 and Act LIV of 1921 – was and has remained a noteworthy codification achievement in spite of the fact that it bore the traits of the age when it was made. Due to the economic policy trend prevailing in that period, there was no need to break away from fundamental principles and traditions of copyright; regulation did not distanced copyright eventually from its social and economic function. (Fortunately, it was only theory rather than regulation that was imbued with the dogmatic approach arising also from ideological deliberations that worked against enforcement of the authors' proprietary interests by overemphasising the elements of copyright related to personality.) Perhaps, it was owing to this that Act III of 1969, albeit with several amendments, could for a long while keep up with international legal development and new achievements of technological progress just as with fundamentally changing political and economic circumstances.

Hungarian copyright law in the late 1970's and early 1980's was in the vanguard of world-wide and European legal development: as one of the first legal systems, our copyright law acknowledged protection of copyright to computer programs, provided for royalty to be paid on empty cassettes, settled copyright issues related to so-called cable television operations. Regulation of right to follow and paying public domain was huge progress too.

After coming to a sudden standstill temporarily in the second half of the 1980's, new significant changes were brought by the period between 1993 and 1998. In terms of actions taken against violation of law, amendment to the Criminal Code in 1993 was of great significance, which qualified violation of copyright and related rights a crime (see Section 329/A of the Criminal Code (Btk.) set forth by Section 72 of Act XVII of 1993). Act VII of 1994 on the Amendments to Certain Laws of Industrial Property and Copyright, in accordance with international and legal harmonisation requirements, provided for overall re-regulation of the protection of related rights of copyright – i.e. rights that performers, producers of phonograms and radio and television organisations were entitled to. Furthermore, the Act extended the duration of the protection of author's proprietary rights from fifty years to seventy years from the author's death, and the duration of protection of related rights from twenty to fifty years. In addition to that, the Act withdrew the rental and lending of computer programs, copies of film works and phonogram works from the scope of free use; and, it required, in addition to the author's consent, the approval of the producer of phonograms and performers for rental and lending of marketed copies of phonograms. It was also an important progress that the 1994 Amendment to the Copyright Act terminated the statutory licence granted to radio and television for broadcasting works already made public in unchanged form and broadcasting public performances, and thereby modernised rules on broadcasting contracts. Act LXXII of 1994 implemented partial modification of the Act.

Following resolution 14/1994. (II. 10) AB, instead of a decree in a statute, it regulated legal institutions of "right to follow" (*droit de suite*) and "paying public domain" (*domaine public payant*) important in terms of fine arts and applied arts. Act I of 1996 on Radio and Television Broadcasting also modified the Copyright Act; furthermore, it contains provisions important in terms of copyright. Govt. Decree Number 146/1996. (IX. 19) as amended on joint handling of copyright and related rights provided for overall and modern regulation of joint handling of copyrights and related rights that cannot be exercised individually, and determined the transitory provisions related to termination and legal succession of the Copyright Protection Office as central budgetary agency, aimed at maintaining continuity of law enforcement. Decree Number 5/1997. (II. 12) MKM on rules of register of societies that perform joint handling of copyright and related rights was made to implement the Govt. Decree. Decree Number A 19/1996. (XII. 26) MKM raised the maximum duration of publisher contracts to eight years. The amendments implemented by Act XI of 1997 on Protecting Trademarks and Geographical Product Markings and entered into force on 1 July 1997 affected legal consequences that may be applied due to violation of copyright and measures that may be applied in lawsuits brought due to such violations of law. And, on the grounds of the authorisation granted in the new Trademark Act, Govt. Decree Number 128/1997. (VII. 24) on measures that may be applied in customs administration proceedings against violation of intellectual property rights was adopted. Accelerated legal development in recent years could become complete through overall re-regulation of copyright and related rights.

Act LXXXVI of 1999 satisfies these demands, while it builds on recently achieved results. The Act is based on several years' preparatory work. The Minister of Justice set up an expert team in 1994 to work out the concept of the new regulation; furthermore, the Minister of Justice invited the World Intellectual Property Organisation (WIPO) of the UN to assist in preparing the new copyright act; also, on several occasions it was possible to have consultations with the experts of the European Commission. Taking the proposals of the expert team into account, by June 1997 the concept of the overall revision of our copyright rules of law had been completed, which was approved by the Government by Govt. Resolution Number 1100/1997. (IX. 30). In accordance with Section 4 of this Government Resolution, the Minister of Justice set up a codification committee to develop the new copyright regulation from the representatives of ministries and bodies with national powers concerned, courts, joint law administration organisations as well as interest representation organisations of parties entitled, users and other copyright experts. The draft Bill has been discussed by the Committee both in details and on the whole and on several occasions; the content of the proposal reflects the consensus reached in the Committee in every respect.

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Резюме

Нотари Т. Спроби створення та реформування юридичного захисту інтелектуальної власності в системі угорського законодавства.

Статтю присвячено питанням законодавчого забезпечення сфери інтелектуальної власності в сучасній Угорщині.

Розглядаються проблеми авторського права та суміжних прав, патентного права. Аналізуються проблемні питання у цій галузі. Дається короткий аналіз основних правових шкіл інтелектуальної власності та інститутів у цій сфері. У статті приділено увагу найбільш характерним проблемам протиправних посягань на результати інтелектуальної діяльності.

Автором надаються практичні рекомендації та пропозиції щодо удосконалення чинного угорського законодавства у сфері авторського права та суміжних прав.

Ключові слова: інтелектуальна власність в Угорщині, авторське право та суміжні права, інститути інтелектуальної власності в Угорщині, навчання у сфері права інтелектуальної власності, захист прав інтелектуальної власності в Угорщині.

Резюме

Нотари Т. Попытки создания и реформирования юридической защиты интеллектуальной собственности в системе венгерского законодательства.

Статья посвящена вопросам законодательного обеспечения сферы интеллектуальной собственности в современной Венгрии.

Рассматриваются проблемы авторского права и смежных прав, патентного права. Анализируются проблемные вопросы в этой области. Дается краткий анализ основных правовых школ интеллектуальной собственности и институтов в этой сфере. В статье уделено внимание наиболее характерным проблемам противоправных посягательств на результаты интеллектуальной деятельности.

Автором даются практические рекомендации и предложения по совершенствованию действующего венгерского законодательства в сфере авторского права и смежных прав.

Ключевые слова: интеллектуальная собственность в Венгрии, авторское право и смежные права, институты интеллектуальной собственности в Венгрии, обучение в сфере права интеллектуальной собственности, защита прав интеллектуальной собственности в Венгрии.

Summary

Nótári T. Attempts at creating and reforming legal protection of intellectual property in Hungarian jurisprudence.

The article is dedicated to the issues of the intellectual property legal provision in modern Hungary.

The author considers and analyses the issues of copyright and related rights, patent law. The paper provides a brief analysis of the main intellectual property legal schools and institutions. The researcher emphasizes the typical problems of illegal encroachment on the intellectual activity results.

The paper presents practical advice and suggestions concerning improvement of the current Hungarian legislation in the sphere of copyright and related rights.

Key words: intellectual property in Hungary, copyright and related rights, Hungarian intellectual property institutions, training in the sphere intellectual property, intellectual property protection in Hungary.

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