MAIN THEME: COPYRIGHT, NEIGHBOURING AND SPECIAL RIGHTS - STATE OF AFFAIRS AND FURTHER OUTLOOK

Answers for Hungary

Contributors:

Panel I: Gergely BÉKÉS & Patrik PONTOS

Panel II: Anikó GRAD-GYENGE

Panel III: Anett POGÁCSÁS & Dávid UJHELYI

Panel IV: Patrik PONTOS

PANEL I – PERFORMER'S RIGHTS – A COMPARATIVE OVERLOOK

1- What types of performers are there according to your legal framework?

The Hungarian Copyright Act (Act LXXVI of 1999, hereinafter: „HCA") does not define the term of „performer". In legal practice, the definition of performer is understood to be equal to that of the WPPT. In addition, circus and variety artist are also considered to be performers in Hungary.

2- Do all types of performers enjoy Neighbouring Rights protection?

Yes.

3- Does the law distinguish between featured/non-featured performers? How?

In general, the Hungarian legislation does not distinguish between featured/non-featured performers regarding the scope of protection. However, there can be some differences between them in the exercise of moral rights. For example, the right to have the performer's name indicated is to be exercised "depending on the nature of the use and in a manner consistent with it" (HCA section 75 (1)). One aspect of this usage dependent exercise of moral rights is the general practice that the names of the main (featured) performers is usually displayed in a more conspicuous manner than those of the contributing (non-featured) performers.

4- Which rights are awarded to each type of performer?

I- Live performances:

a) Fixation; yes

b) Broadcasting; yes (including direct injection)

II- Fixed performances:

c) Reproduction; yes

d) Distribution; yes

e) Rental; yes

f) Making Available to the public; yes, including making available by a content-sharing service provider (pursuant to section 57/B of the HCA the content sharing service provider is responsible for the use if, as part of its service available to the public, it provides access to fixed performances uploaded by the users).

g) Communication to the Public; yes (including direct injection and limited to sound recordings released for commercial purpose)

h) Public performance; yes (limited to sound recordings released for commercial purpose)

i) Broadcasting; yes (limited to sound recordings released for commercial purpose)

j) Retransmission; yes

k) Direct Injection; yes, but limited to sound recordings released for commercial purpose

l) Any other rights (for example)

i. According to section 41/M. of the HCA (which has implemented paragraphs (1) and (4) of Article 8 of Directive (EU) 2019/790 of the Parliament and the Council), **performers have the right to authorize the non-commercial reproduction, distribution and communication to the public of a fixed performance by a cultural heritage institution** which forms a permanent part of the collection of the institution and which is not commercially available if a collective management organisation is active on that field.

ii. **private copying:** according to section 20(1) of the HCA „*fair remuneration shall be due, for the private copying of their works, performances, films and phonograms, to the authors of works, **the performers of performances**, and the producers of films and phonograms **that are broadcast in the programmes of radio and television organisations, included in the programmes of the entities communicating their own programmes to the public by cable, and put into circulation on audiovisual or audio carriers***."

iii. Performers also have a **remuneration right** in Hungary **for the re-broadcasting of a recording of a performance made for the purpose of communication to the public** (such as TV programs originally fixed by the broadcasters.

iv. **Annual Supplementary Remuneration (ASR):** Pursuant to section 74/A of the HCA

"(1) Where a contract on the fixation of performances with a phonogram producer gives the performer a right to claim a non-recurring remuneration, the performer shall have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year immediately following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public. The right to obtain such annual supplementary remuneration may not be waived by the performer. Performers shall be able to exercise their right to claim supplementary remuneration only through collective right management.

(2) Payment of the remuneration referred to in Subsection (1) to the collective rights-management body shall correspond to 20 per cent of the revenue acquired during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available of the phonogram in question [Section 76(1)c)], following the fiftieth year after it was lawfully published or, failing such publication, the fiftieth year after it was lawfully communicated to the public. (...)"

III- Are moral rights attributed to performers? Which prerogatives doesit comprehend?

HCA ensures an attribution right (section 75(1) of HCA) depending on the nature of the use. If the performance is held by an ensemble, the attribution right is limited to the name of the ensemble and those of the main artists.

HCA also ensures the right of the protection of integrity of the performance (section 75(2) of HCA).

5- What is the nature of those rights? – Statutory? Contractual?

These are statutory rights.

6- Which of them are exclusive rights/remuneration rights?

I- Live performances:

a) Fixation; exclusive right

b) Broadcasting; exclusive right

II- Fixed performances:

c) Reproduction; exclusive right

d) Distribution; exclusive right

e) Rental; exclusive right or sound recording and remuneration right for audiovisual recording

f) Making Available to the public; exclusive right

g) Communication to the Public; remuneration right limited to sound recording released for commercial purpose

h) Public performance; remuneration right limited to sound recording released for commercial purpose

i) Broadcasting; remuneration right limited to sound recording released for commercial purpose

j) Retransmission; remuneration right

k) Direct Injection; remuneration right limited to sound recording released for commercial purpose

l) re-broadcasting of a recording of a performance made for the purpose of communication to the public: remuneration right

m) non-commercial uses by a cultural heritage institution: exclusive right

n) private copying: remuneration right

o) Annual Supplementary Remuneration (ASR): remuneration right

7- Which exceptions/limitations generate remuneration rights for performers?

Remuneration for private copying.

8- Which rights are transferred to music/audiovisual producers? For how long?

Generally, the performers transfer all their exclusive rights to the producer. However, according to the rules of the HCA the performers cannot transfer their remuneration rights which are

subjects to statutory collective management: private copying, broadcasting and other communication to the public of commercially released sound recordings, cable retransmission, rental, lending, annual supplementary remuneration).

The right to remuneration for the re-broadcasting of TV programmes, the right of authorizing the making available of a fixed performance, and the right to authorize the non-commercial uses by a cultural heritage institution are subjects of extended collective management with the possibility to opt-out. The transfer of these rights is only possible after the opt-out of the rightholder from the collective management of such right.

Generally, the legal transfer covers the entire term of protection, but the parties can also agree on a shorter period of time.

9- Are there any legal presumptions of transfer or is it voluntary/contractual?

i. According to section 73(3) of the HCA, if the performer has consented to the fixation of his performance in a cinematographic work, by this consent – unless otherwise stipulated – he transfers upon the producer all of the economic rights referred in section 73(1) of the HCA[1]. This presumption not covers the remuneration rights of the performer for: private copying, cable retransmission and rental.

ii. Section 30 of the HCA sets up a presumption of transfer of rights in case the preparation of the work was the author's obligation within the scope of his/her employment.

"Section 30

(1) In the absence of any agreement to the contrary, the employer, as the legal successor to the author, obtains economic rights once a work is handed over if the preparation of the work was the author's obligation within the scope of his/her employment.

(2) In the case of legal succession in the person of the employer, the economic rights obtained on the basis of the provision stipulated in Subsection (1) are transferred to the employer's legal successor.

(3) Authors are entitled to appropriate remuneration if the employer authorizes a third person to use the work or assigns the economic rights in connection with the work to a third person.

(4) Authors are entitled to receive the remuneration that they are due after the assignment of use rights pursuant to this Act, even in the event of the employer acquisition of the right.

(5) If the preparation of a work is the author's obligation within the scope of his/her employment, the delivery of the work is considered as approval for publication. If the author issues a statement withdrawing the work (Section 11), the employer is obliged to delete the author's name from the work. At the same time, the author's name must be

[1] **Section 73 (1)** Unless otherwise provided for by this Act, the performer's consent shall be required for: *a)* the fixation of his unfixed performance; *b)* the broadcasting or the communication in another manner to the public of his unfixed performance, unless the performance broadcast or communicated in another manner to the public is itself a broadcast performance; *c)* the reproduction of his fixed performance; *d)* the distribution of his fixed performance; *e)* making his performance available to the public by cable or any other device or in any other manner in a way that the members of the public can choose the place and time of access individually.

deleted if the employer alters the work by taking advantage of its rights as employer and the author does not agree with the changes.

(6) The legal statements made by authors in connection with works made for hire that are created as a result of the author's obligations within the scope of his/her employment must be put into writing."

These rules shall also be properly applied to performers.

10- Are there any unwaivable and inalienable remuneration rights?

See our answers to Question 8.

11- What type of compensation is paid in exchange? How is it set? For how long?

In case of exclusive rights, the performers are entitled to remuneration in return for granting permission to use their performances, or transfer their rights. Remuneration – unless otherwise stipulated – must be in proportion to the income in connection with the use.

However, in case of remuneration rights, performers are entitled to receive only an equitable remuneration.

Unwaivable and inalienable rights are subjects to extended, statutory collective management. Pursuant to section 57 of Act XCIII of 2016 on the collective management of copyright and related rights (hereinafter: "**CMO Act**") – the collective management organisation shall establish, for the scope of its activities, the remunerations, and other terms for each type of use annually.

Section 57 of CMO Act: *"(1) The tariff shall be established and applied in accordance with the requirements of equal treatment, without any unjustified discrimination between the users. A collective management organisation may deviate from its licensing terms pertaining to other online services in its tariff with regard to a new type of online service that has been available to consumers in EEA States for less than three years.*

(2) When establishing the royalties included in the tariff, the nature, the scope, and other significant conditions of the use shall be taken into account. The tariffs shall be reasonable, in particular in relation to matters such as the use concerned and the economic value of the service provided by the collective management organisation. At the request of the user concerned, the collective management organisation shall provide information on the criteria applied for establishing its tariffs.

(3) The agreement reached by the parties in the procedure conducted by the conciliation board, as specified in Section 102 of the HCA., shall be taken into account both during the establishment of the tariffs and in the procedure for their approval."

12- How is "streaming" qualified in your Country for rights awarding purposes?

Streaming is a form of making available of performances.

13- Whose authorization is it required for the "streaming" of music/audiovisual content?

According to Section 73(1)e) of the HCA "*the performer's authorization is required for making his performance available to the public by cable or any other device or in any other manner so that members of the public may access these works from a place and at a time individually chosen by them."*

The performers' making available right is subject to extended collective rights management, which means, that the relevant CMO licences the usage in Hungary, unless the performer objects against the collective management of this right, in accordance with the provisions of Section 18 of the CMO Act[2].

14- What is the estimated level of copyright infringement in your Country?

Despite the fact that the CMO of performers (EJI) has made significant progress in the recent years in terms of licencing musical streaming services in Hungary, the authorization of audiovisual streaming services and UGC platforms has not been resolved to date, since operators of such platforms do not fulfil their statutory obligations. One can therefore establish that performers are losing out significant amounts of royalties due to unauthorized online uses.

15- What is the current level of disclosure on economic returns from digital platforms?

According to the relevant market researches online streaming has shown steady growth in recent years, however it can be stated, that the income data of these services are currently not transparent.

16- How is performer's compensation determined for each business model?

EJI's tariff applicable to online streaming services applies different calculations for each business model:

i) in case of a business model based on advertising revenues, the remuneration of the performers is 6% of the advertising revenue, but at least the minimum fee settled by the tariff taking into account several factors, e.g., the number of the used audio/audiovisual recordings.

ii) in case of a business model based on subscriber revenues the user shall pay 25% of the subscription fee – but at least the minimum fee settled by the tariff, which is HUF 218 in 2022 – per month per subscriber.

17- Are there minimum amounts due? Any other economic benefits?

EJI applies minimum royalties in its tariff applicable for the making available of performances. These amounts determined based on several factors:

[2] **Section 18 (1)** The rightholder specified in section 17 (2), with the exception of cases falling within the scope of mandatory collective management of rights, may withdraw his authorisation for the use of his copyright works or works or subject-matters protected by related rights for the
purpose of collective management defined in section 17 by way of a statement made in a private deed with full probative value and addressed to the representative collective management organisation performing extended collective management, served with reasonable notice set in the articles of association of the collective management but not exceeding six months. If the articles of association of the representative collective management organisation so provide, the notice of withdrawal only takes effect on the first day of the year following the end of the financial year when it was notified. The representative collective management organisation is required to comply with the notice and may not impose any other restriction on the right to withdraw.
(2) The notice of withdrawal given under subsection (1) may only pertain to the entirety of the specified type of rightholder's works or works or subject-matters protected by related rights.
(3) In the event of withdrawal, rightholders entitled to remuneration for acts of exploitation or licences granted before their notice of withdrawal concerning the collective management of rights took effect shall, regardless of the withdrawal of rights, retain their rights hereunder against that collective management organisation in respect of the royalties due.

- whether the user making available performances fixed in sound recordings, or audiovisual works
- members of the public can download the recordings made available, or they can just listen to it
- the number of the used performances (sound recordings, audiovisual works).

18- Do UGC platforms contribute to such compensation schemes? How?

According to Section 57/B of the HCA, the "*content-sharing service provider performs an act of making available to the public when it gives the public access to copyright-protected works or other protected subject matter of related rights uploaded by persons using the services*.

Currently, UGC platforms operating in Hungary do not pay making available royalties to the CMO concerned.

19- Has the Beijing Treaty been implemented in your Country, at least, in part?

The Beijing Treaty has been signed by Hungary in 2012, but has not been implemented yet.

20- Which rights are collected by Collective Management Organisations (CMOs)?

The collectively managed rights are as follows

i. remuneration for private copying (statutory collective management)
ii. rental (statutory collective management)
iii. remuneration for cable retransmission (statutory collective management)
iv. re-broadcasting of a recording of a performance made for the purpose of communication to the public (extended- opt out)
v. making a fixed performance available to the public, including making it available by a content-sharing service provider (extended- opt out)
vi. broadcasting and communication to other public of phonograms for commercial purposes, including direct (statutory collective management)
vii. lending and lending for hire to the public of copies of phonograms (statutory collective management)
viii. Annual Supplementary Remuneration (statutory collective management)
ix. non-commercial uses by a cultural heritage institution (statutory collective management)

21- Which CMOs represent performers in your Country?

EJI is the sole performers' CMO in Hungary

22- Do these CMOs comply with transparency principles?

Yes. The CMO is annually supervised by the Hungarian Intellectual Property Office. No objection was ever raised regarding the CMO's compliance with transparency rules.

23- Is it possible to find out how much income is provided by each type of rights?

Yes, EJI publishes its annual transparency report on its website each year. These reports include the current annual revenues per type of rights, going back to 2017 (https://www.eji.hu/cikk/beszamolok).

24- What is the current litigation level for performers' rights in your Country?

In Hungary, performers rarely try to assert their interests through civil litigation themselves. Enforcement typically does not reach the litigation stage. Parties seek to reach an agreement without litigation. The Copyright Expert Panel can help with this, and mediation may also be used.

25- Are there any relevant Court Decisions concerning performer's rights?

One of the most important decisions in recent years is in connection with the performers' *making available* right. In 2017 in a repeated procedure between EJI and one of the major streaming service providers operating in Hungary, the Budapest Capital Court of Hungary in its partial verdict resolved that the streaming service provider, by failing to obtain licence from EJI - to make available performances fixed in sound recordings in such a way that members of the public may access them from a place and at time individually chosen by them -, before launching its streaming service in Hungary, and by failing to report such uses to EJI and to pay the remuneration set for such uses in the tariffs of EJI infringed the rights of performers represented by EJI. The streaming service provider appealed against the decision on. In 2018 in its Interlocutory Judgement the Budapest Metropolitan Court of Appeal of Hungary upheld the judgement of the Budapest Capital Court of Hungary. The judgement of the Court of Appeal is non-appealable.

26- Does the Principle of National Treatment apply to all foreign performers?

Yes.

27- Are there "appropriate and proportionate remuneration" provisions?

See our answers to Question 11.

28- Are CMO´s mandates always exclusive and encompassing all rights?

No. Performers have the option to limit their mandate either for certain territories of use (countries) or for certain rights.

Currently, EJI is the only 'so called' **representative collective management organisation** of performers in Hungary entitled to manage performers' rights collectively and with an extended effect.

According to Section 1 of Section 17 of the CMO Act: "*when a representative collective management organisation, within the scope specified in the relevant official permit, grants a licence to, or collects royalties from the user, the user shall be entitled to use the entirety of the works or works or subject-matters protected by related rights of the same type of all rightholders whose rights are managed collectively by the representative collective management organisation – whether managed collectively by law or by the choice of the rightholder – subject to the payment of royalty under the same conditions, regardless of whether the rightholder had given the representative collective management organisation an authorisation to manage rights within that scope*."

Based on Section 4 of Section 16 of the CMO Act, in cases falling within the scope of mandatory collective management of rights, the unilateral termination of the authorisation to manage rights shall not prejudice the extended collective management of rights by the CMO.

29- Are there any partial/global revocation of transfer of rights agreements provisions?

Pursuant to Section 16 of the CMO Act the rightholders may unilaterally terminate their authorisation to manage rights granted to the collective management organisation in a statement made in a private deed with full probative value, served with reasonable notice but not exceeding six months, as specified in the authorisation. Instead of unilateral termination, the rightholders may choose to unilaterally restrict, by way of a statement made in a private deed with full probative value, the authorisation to manage rights as regards countries, types of works and works or subject-matters protected by related rights, and copyrights or related rights of his choice. The restriction of the authorisation to manage rights may only pertain to the entirety of the specified type of fixed performances.

30- Are there any provisions on contractual remuneration adjustments?

The Hungarian legislator implemented the CDSM directive in 2021, although it is worth mentioning, that a contract adjustment mechanism very similar to the one in Section 20 of the CDSM Directive has been included in the HCA since 1999.

Section 48 of the HCA:

(1) *According to the general rule of civil law, courts are entitled to amend use contracts even if such action infringes an author's lawful interest in a proportionate share of the income from use as, subsequent to the conclusion of the contract, the value differential between the parties' services becomes considerably lopsided owing to a significant increase in the demand attendant upon the use of the work.*

(2) *The provisions of Subsection (1) shall not apply to use contracts concluded by the collective management organization and the independent management entity with the user under the New Copyright Act, and to the agreement concluded by the collective management organization in exercising the right to remuneration with the party liable to pay such remuneration.*

In addition, the HCA grants the right for performers to terminate their contract in certain cases.

Section 51 of the HCA:

(1) An author may abrogate a contract containing a license of exclusive use

a) if the user fails to commence the use of the work within the period determined in the contract or a period that can reasonably be expected in the given situation; or

b) if the user exercises the rights he has acquired through the contract in a manner that is obviously inappropriate for achieving the goals of the contract or in a manner that is inconsistent with the intended purpose.

(2) If a use contract is concluded with an indefinite term or for a period of more than five years, the author is not entitled to exercise the right of abrogation referred to in Subsection (1) until two years after the date on which the contract was concluded.

(3) An author is only entitled to exercise his right of abrogation after he has set a convenient deadline for the user for performance of the terms and conditions of the contract and the deadline has expired without result.

(4) Authors are not entitled to waive the right of abrogation described in Subsection (1) in advance. This practice can only be excluded by contract for a period of no more than five years following conclusion of the contract or delivery of the work (if delivery occurs after the contract is concluded).

(5) Instead of abrogation, an author may terminate the exclusivity of a license while proportionally reducing the remuneration to be paid to him for use.

Sections 48 and 51 shall also apply to performers.

PANEL II – PHONOGRAM PRODUCERS' RIGHTS

1- Which rights are awarded to phonogram producers?

Preliminary remark: Hungarian Copyright Act has a separate chapter on neighbouring rights. The subchapter on Rights of Phonogram Producers can be found in this Chapter XI (sections 76-79). Although it is the most important part of the HCA referring to rights of phonogram producers, some special rules covering all types of the rightholders can be found in the different chapters covering authors' rights (i.e., contract law, exceptions, and limitations).

a) Right of reproduction;

According to section 76 (1) the consent of the producer of a phonogram shall be required for the phonogram to be reproduced. Unless otherwise provided in the HCA, the producer of the phonogram shall have a right to remuneration.

b) Right of broadcasting;

According to section 77 for the broadcast or communication in any other manner of phonograms or their copies released for commercial purposes to the public, beyond the remuneration to be paid for using the works under copyright protection, the user shall be obliged to pay additional remuneration, to which the producer of the phonogram and the performer shall be entitled in equal shares, unless otherwise agreed between the right holders. A phonogram shall be considered as released for commercial purposes if it is made available to the public for downloading also. The right holders may enforce their claim to remuneration only through the collecting societies performing the management of their rights and they shall be entitled to waive their right to remuneration only to the extent due to them and effective from the date of the allocation.

c) Right of communication to the public;

According to section 76 unless otherwise provided in the HCA, the consent of the producer of a phonogram shall be required for the phonogram to be made available to the public by cable or any other means or in any other manner in such a way that members of the public can choose the place and time of access individually. Unless otherwise provided in the HCA, the producer of the phonogram shall have a right to remuneration.

d) Right of distribution;

According to section 76 unless otherwise provided in the HCA, the consent of the producer of a phonogram shall be required for the phonogram to be distributed. Unless otherwise provided in the HCA, the producer of the phonogram shall have a right to remuneration.

e) Rental;

According to section 78 the public lending and rental of copies of a phonogram that was placed

on the market shall be subject to the consent, beyond that of the author of the work included in the phonogram, of the phonogram producer and, for the phonograms of performances, to that of the performer. The use shall be subject to the payment of remuneration, which shall be, unless agreed otherwise by the right holders, distributed in equal shares between the right holders. The authors and the performers may enforce their claim to remuneration through the collecting societies performing the management of their rights, and may waive such remuneration following the date of its allocation only and to the extent of the amount due to them.

f) Making available to the public;

According to section 76 unless otherwise provided in the HCA, the consent of the producer of a phonogram shall be required for the phonogram to be made available to the public by cable or any other means or in any other manner in such a way that members of the public can choose the place and time of access individually. Unless otherwise provided in the HCA, the producer of the phonogram shall have a right to remuneration.

g) Cable retransmission;

According to section 28 the author shall be exclusively entitled to retransmit his work communicated to the public by broadcasting and to authorise other persons to do so. The author shall also have the exclusive right to authorise the simultaneous, unaltered and unabridged retransmission to the public of his work that was broadcast or transmitted in the programme schedule of a radio or television organisation or of an entity communicating its own programme schedule by cable or by any other means, with the involvement of another organisation other than the original one. The right holders shall be entitled to exercise their right only through collective management of rights and shall be entitled to waive their right to remuneration only to the extent due to them and effective from the date of apportionment. The remuneration shall be determined by the collective management organisation carrying out the collective management of rights in literary and musical works, in agreement with the collecting societies of other right holders. The organisation undertaking retransmission shall pay the remuneration so determined to the collective management organisation performing the management of rights in literary and musical works. Unless otherwise agreed between the affected collecting societies by 31 March every year, from the amount of the remuneration received that remains after costs are deducted, thirteen per cent shall be due to film producers, nineteen per cent to cinematographic creators of films, three per cent to creators of works of fine arts, applied arts and authors of photographic works, fourteen per cent to film script writers, fifteen and a half per cent to composers and lyricists, twenty-six and a half per cent to performers and nine per cent to producers of phonograms. The collective management organisation carrying out the collective management of rights in literary and musical works shall transfer the part of the collected remuneration due to authors and copyright holders of types of works that are not represented by it in respect of the apportionment of the remuneration and the parts due to performers and producers of phonograms to their respective collecting societies. The remuneration for the retransmission of works broadcast in the programme schedule of or communicated by cable or in any other manner by the Hungarian public media service radio and television organisation shall be paid from the Media Services and Support Trust Fund; the Fund shall be responsible for such payments.

h) Direct injection;

According to section 26 (5a) broadcasting is also the use which takes place where the signals carrying the programme are transmitted from the original radio or television organisation which originated the programme to an organisation other than the radio or television organisation (hereinafter: making available to the public by an organisation other than the original radio or

television organisation (hereinafter referred to as the 'originating organisation'), by making the programme-carrying signals available to the public only to the originating organisation (hereinafter referred to as 'direct injection'), without transmitting the programme-carrying signals directly to the public at the same time as the direct injection. Such use shall constitute a single act of communication to the public. The communication to the public shall be subject to the acquisition of a right of use by an entity other than the original radio or television broadcasting organisation which reaches the public, provided that its activity goes beyond the provision of the technical means of use. In the case where the communicating organisation merely provides the technical means of exploitation, the radio or television organisation shall obtain the right of exploitation for such exploitation.

2- What is the nature of those rights? – Statutory? Contractual?

The rights of the phonogram producer are regulated in the Copyright Act, so they are statutory rights. In general, the phonogram producer has exclusive economic rights. He has some limited moral rights.

3- Which of them are exclusive/remuneration rights?

Rights of the phonogram producers are exclusive rights. The broadcasting right (covering satellite communication and direct injection) and the blanket carrier/private copy levy are remuneration rights.

4- Which exceptions/limitations generate remuneration rights for phonogram producers?

All of the exceptions and limitations are applicable to the phonogram producers' exclusive rights. In relation to private copy exception the phonogram producers – as well as the other rightholders – enjoy private copy levy. (See section 20 of HCA)

5- Are there any legal presumptions of transfer or is it voluntary/contractual?

Transfer of these rights is voluntary on the basis of contractual agreements.

6- What type of compensation is paid in exchange? How is it set? For how long?

Freedom of contract is applicable. Contracting partners define the royalty. In case of remunerations the tariff of the relevant CMO is applicable. The procedure of tariff's approval is set in the CMO Act.

7- How is producer's compensation determined for each business model?

It is not a public information.

8- Are there minimum amounts due? Any other economic benefits?

See answer 7.

9- Is digital piracy/streamripping still a major concern for phonogram producers?

Yes. In Hungary the ProArt Hungarian Alliance for Copyright represents the rightholders and try to help the enforcement bodies in investigation procedures and during the court trials.

10- Which rights are currently being collected via CMOs?

- Private copy levy
- Broadcasting and communication to the public of a phonogram fixed for commercial purposes
- Reproduction for non-commercial use

11- Which CMOs represent phonogram producers in your Country?

MAHASZ Hungarian Recording Industry Association is the representative collective rights management organization of the phonogram producers. MAHASZ was founded in 1997 by he Hungarian phonogram producers and international phonogram producers who acted in Hungary.

12- Do these CMOs comply with transparency principles?

The transparency criteria are regulated by the Chapter VII of the CMO Act. Compliance with these is regularly monitored by the HIPO (Hungarian Intellectual Property Office). If the CMO does not comply, the HIPO enforces compliance through an official supervisory procedure and may impose sanctions. This has not yet been done in relation to MAHASZ.

13- Is it possible to find out how much income is provided by each type of rights?

See above. Each year, the CMO is required to prepare and publish annual report in accordance with the Accounting Act. The last publication took place in 2021. It provides an itemised report of management income by type of royalty.

14- What is the current litigation level for phonogram producers in your Country?

Enforcement typically does not reach the litigation stage. Parties seek to reach an agreement without litigation. The Copyright Expert Panel can help with this, and mediation may also be used. The number of court cases is not relevant, but they typically concern right of communication to the public.

15- Are there any relevant Court Decisions concerning phonogram producer's rights?

Here we refer to the judgement mentioned in our answer to question 25 of Panel I.

16- Are there any revocation of transfer of rights' agreements provisions?

According to section 55 of the HCA if, within fifty years after placing the phonogram on the market or, in the absence of such, within fifty years after its communication to the public, counted from the first day following the year when the publication or communication took place, the producer of the phonogram or any other person authorised by the producer fails to offer copies of the phonogram for placement on the market in sufficient quantities or does not make it available to the public by wire or wireless means or in any similar manner in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract on the recording of his performance concluded with the producer of the phonogram. The right to terminate the contract may be exercised if the producer fails to carry out both acts of use within a year from the performer's notice of his intention to terminate the contract. The performer may not waive his right to termination of the contract.

17- What is considered a "phonogram published for commercial purposes"?

In Hungarian copyright law there is no general concept of commercial phonograms. Act CLXIV of 2005 on Commerce provides a definition of commercial activity.

Commercial activity covers retail or wholesale activity and commercial agency activity.

Commercial agency activity is an activity whereby a trader negotiates and concludes a contract for the sale or purchase of goods or services on behalf of another person. Retail trade activity is the distribution of goods, the sale of property rights and the provision of directly related services to the end user, including catering, in the course of a commercial economic activity. Wholesale trade activity is the resale of goods without transformation (processing) and the

provision of directly related warehousing, transport and other related services to a trader or processor in the course of a commercial economic activity, including wholesale market activity and the activity of a buyer.

For the purposes of distribution, the MAHASZ Distribution Code defines what is considered to be a sound recording in commerce. Accordingly, a recording which has been put into commercial circulation during the current distribution period is considered to be a commercial phonogram. In particular, a phonogram which is not used until the end of the current distribution period, irrespective of the context of its original, individually authorised use, shall not be considered to be in commerce. Such is the case of a phonogram made for advertising purposes which has been used exclusively in advertising during the relevant distribution period.

18- Is there any type of phonograms that is published for non-commercial purposes?

See above answer 17.

19 - Which rights are involved in audiovisual synchronization ("production music")?

Producers of phonograms do not have the right of adaptation. In relation to the cinematographic use of phonograms, the reproduction right is primarily concerned. This right is exercised individually by the publishers. Subsequent use in film (e.g. broadcasting the film on television, making it available on demand) is typically not separately licensed by the publishers or CMO.

20- Which rights are involved in mood music/sound branding licensing?

These types of uses typically involve a right of communication to the public.

PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS

1- Which rights are awarded to broadcasters in your Country?

a) Fixation – yes ("HCA") section 80(1)b)]

b) Reproduction – yes [HCA section 80(1)c)]

c) Communication to the public (with /without admission fees); yes [HCA section 80(1)a) and d)]

d) Distribution; – no

e) Simultaneous retransmission by wire or wireless means; – no

f) Deferred retransmission by wire or wireless means; – no

g) Making available to the public by wire or wireless means; - yes [HCA section 80(1)d)]

h) Pre-broadcast program carrying signal protection; – no

i) Any other rights? – yes [see below]

Section 80-81 of the Hungarian Copyright Act (HCA) regulates the neighbouring right protection of radio and television organizations (RTO's). Under section 80(1) of the HCA RTO's authorization is required for its programmes to be

a) broadcast or transmitted to the public by other radio or television organizations or by carriers that transmit to the public by cable;

b) fixed;

c) reproduced after fixation, if the fixation was made without its authorization, or if the fixation

was made pursuant to section 83(2) and the reproduction is made for a purpose other than that to which section 83(2) pertains.

d) made available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Section 80(2) of the HCA states that the authorization of the television organization is required for its programmes to be transmitted to the public in a place in which the programmes is accessible to the public for the payment of an entrance fee.

Section 81 of the HCA states that in the case of the uses described in section 80, RTO's and carriers transmitting their own programmes by cable to the public have the right to have their names indicated.

The HCA's regulatory system is in line with the international copyright and neighbouring right treaties and the EU law.

2- What is the nature of those rights?

Statutory.

3- Which of them are exclusive/remuneration rights?

All the aforementioned rights are exclusive rights.

4- Which exceptions/limitations generate remuneration rights for broadcasters?

There are no such exceptions, limitations in the HCA that would generate remuneration rights for broadcasters.

5- Are there any legal presumptions of transfer or is it voluntary/contractual?

Transfer of rights is voluntary/contractual.

6- What is the relevance of copyright infringement in relation to broadcasters' rights?

The HCA's full enforcement regime is available for every rightholder of neighbouring rights in case of infringement. The number of known infringement cases is very limited. They are mostly related to "signal-theft", i.e., accessing broadcasting signals without authorisation.

7- Is digital piracy/streamripping still a major concern for broadcasters?

The popularity of piracy/streamripping is in recession with the broadening availability of accessible legal alternatives (such as streaming services). Nevertheless, copyright infringement is still present. No data or other information are available weather this would cause major concerns for broadcasters, so, we assume this is not a primary issue for them.

8- Do UGC platforms contribute to broadcasters' rights? How?

Under section 17 of the CDSM directive, an online content-sharing service provider shall obtain an authorisation from the rightholders referred to in Article 3(1) and (2) of the InfoSoc directive. The HCA complies with the CDSM directive (section 57/B of the HCA).

The regulation of this area is very recent and we are not aware of any agreement or other mechanism by way of which UGC platforms would contribute to broadcasters' rights.

9- What is the current litigation level for broadcasters' rights in your Country?

No information is available.

10- Are there any relevant Court Decisions concerning broadcasters' rights in your Country?

In a 2017 judgement (Pf. 20.758/2017/4) the Metropolitan Court of Appeal resolved that the definitions of section 26 (1)-(5) (broadcasting of works) and section 28 (simultaneous, unaltered, and unabridged retransmission by re-broadcasting, cable or other means) shall also apply to the programme of broadcasters as protected subject matter. Consequently, in the case of retransmission of the programme by cable or other means, in addition to the fee to be paid to the authors, the permission of the radio and television organization must also be obtained, and the payment of royalties to the authors does not mean that other rights, such as the rights of the radio and television organization, are not are injured.

11- Are broadcasters acting as One-Stop Shop in relation to retransmission operators?

Broadcasters administer their rights individually. In practice, the licence a broadcaster issues to a cable operator covers the rights of the programme itself and the rights of film producers for films included in the programme. In that sense. this may be understood as a one-stop shop, but licence does not cover the rights of authors and related right holders.

12- Which rights are awarded to audiovisual producers in your Country?

a) Reproduction; - yes

b) Broadcasting; - no (but in order to be broadcast on television, it is necessary to record the film (excerpts) either permanently or temporarily, which is considered to be a licensable reproduction)

c) Communication to the public; - not in general, but: see point f) about making available to the public

d) Distribution; - yes

e) Rental; - yes (rental and lending to the public)

f) Making available to the public; - yes (made available to the public by cable or any other means or in any other mode in such a way that members of the public can individually choose the place and time of access)

g) Retransmission; - yes

h) Direct Injection; - no

i) Any other rights? - no

13- What is the nature of those rights? Statutory.

14- Which of them are exclusive rights? - a), d), e) f)

Which of them are remuneration rights? - g)

Simultaneous retransmission (section 28(4) of HCA). In case of simultaneous retransmission, the collected remuneration, minus the expenditures deducted from them, shall be distributed to rightholders, and – unless otherwise agreed between the interested collective management organizations before March 31 of every year, - thirteen percent shall be due to film producers, nineteen percent to cinematographic creators of movie pictures, three percent to creators of works of fine arts, designs and authors of artistic photographs, fourteen percent to script writers, fifteen and a half percent to composers and lyricists, twenty-six and a half percent to performers, and nine percent to producers of sound recordings.

15- Which exceptions/limitations generate remuneration rights for audiovisual producers?

Section 20(5) of HCA: in the case of video carriers the royalties collected, with the expenditures

deducted from them, shall be distributed to the rightholders, and namely – unless otherwise agreed before March 31 of every year between the affected organizations performing collective administration of rights – thirteen per cent shall be due to the producers of movie pictures, twenty-two per cent to the cinematographic creators of movie pictures, four per cent to creators of fine arts, designs and authors of artistic photographs, sixteen per cent to script writers, twenty per cent to composers and lyricists, and twenty-five per cent to performers.

16- Which rights are transferred to audiovisual producers? For how long?

Section 66(1) of HCA: *Unless otherwise stipulated*, under the contract concluded for the production of a cinematographic creation (hereinafter "contract for adaptation for screen"), the author shall transfer the right to use the cinematographic creation and licence its use to the producer. The composer of a musical work with or without lyrics is an exception under this presumption. Nor can a contract for adaptation for screen, as an individual licence, apply to uses falling within the scope of compulsory collective rights management (on "blank carrier", rental and cable licence fee claims).

The rights thus granted to the producers cover the various cinematographic uses of the film as a new, specific multi-authored work known at the time of the conclusion of the contract. Thus, even the publishing rights of a literary work made for a film are not transferred to the producer, unless otherwise specified, and merchandising rights - i.e., secondary rights, not cinematographic rights - can only be exercised by the producer in the case of an express transfer of rights to this effect.

The transfer provides an exclusive and *unlimited* right in time to the producer, but section 66(6) states that in the event that the producer fails to start the work of adaptation for screen within four years from the acceptance of the work, or if such work is started but is not completed within a reasonable time limit, the author shall be entitled to terminate the contract unilaterally and claim the payment of proportional remuneration. In such cases, the author shall be entitled to keep the advance payments he received and may freely dispose of his work. section 66(8) of HCA contains a further important rule: within ten years from the completion of the production, the author may not conclude another contract for adaptation for screen regarding the same work, unless it is consented to by the producer. This limitation shall extend to distinctive characters in a cartoon or puppet film and, if so agreed between the parties, to another work of the author with the same topic as that of the work created and used for the production of the film.

17- Are there any legal presumptions of transfer towards audiovisual producers?

Yes, as it was mentioned in point 16, according to section 66(1) of HCA: Unless otherwise stipulated, under the contract concluded for the production of a cinematographic creation, the author shall transfer the right to use the cinematographic creation and licence its use to the producer.

It is worth to mention, however, that the producer is rarely the end user of the rights acquired. In most cases, the rights to use his film are sold for a fee under a so-called distribution contract, typically limited in time and territory. Such contracts are usually concluded with several distributors or broadcasters at the same time, or the producer hires a so-called "world distribution agent" for foreign exploitations.

It should be noted that even the distributor often resells his acquired rights (unless he himself operates a cinema, video store, TV organisation), transferring certain rights to cinema operators, video stores, etc. with direct links to consumers for a limited period of time or territory.

In the digital market, these service users, who deliver the works to the consumer and are licensed by the film producer or distributor, are typically the large media service providers that

also make films available to households through various video-on-demand or interactive television services, on a subscription or other sponsor/revenue-oriented financing basis.

18- What type of compensation is paid in exchange? How is it set? For how long?

There is no fixed rate set by law. The usual types of remuneration for a film director are the so-called "creator's fee" for the creative work of the director; the remuneration for the transfer of the exploitation right and the revenue-related fees (% share of the net revenue received by the producer).[3]

According to section 66(3) of HCA, the author shall be entitled to remuneration with regard to each individual mode of use. The financial support granted to the producer for creating the film shall also be considered as income related to the use. The producer shall be liable for the payment of the remuneration to the author.

19 - How is audiovisual producer's compensation determined for each business model?

No information is available.

20- Are there minimum amounts due? Any other economic benefits?

No information is available.

21- Do UGC platforms contribute to such compensation schemes? How?

According to section 57/B of the HCA, the "*content-sharing service provider performs an act of making available to the public when it gives the public access to copyright-protected works or other protected subject matter of related rights uploaded by persons using the services*.

As far as we know in practice there is no direct payment from the UGC platforms to the producers.

22- Is digital piracy/streamripping still a major concern for audiovisual producers?

The popularity of piracy/streamripping is in recession with the broadening availability of accessible legal alternatives (such as streaming services). This is confirmed by the survey of the National Board Against Counterfeiting in Hungary.[4] Nevertheless, copyright infringement is still present. We have no data on if this causes a major concern for audiovisual producers.

23- What is the most recent estimation of rights' loss on account of digital piracy in your Country?

No information is available.

24- What is the current rule in terms of audiovisual exploitation windows in your Country?

No information is available.

[3] According to section 50/A the user is obliged to provide the author with detailed information at least once a year under the terms of the user contract about a) the use of his work, b) the manner and extent of use, (c) the revenue from the use of the work for each type of use separately, and (d) the remuneration payable to the author.
In the contract of exploitation of cinematographic and audiovisual works, the parties may stipulate that the obligation to provide information shall apply only if the author requests the information from the user in writing or by electronic means.

25- Which CMOs represent audiovisual producers in your Country?

FilmJus (Hungarian Society for the Protection of Audio-Visual Authors' and Producers' Rights) (http://www.filmjus.hu/)

26- Do these CMOs comply with transparency principles?

Yes, based on the rules of Act XCIII of 2016 on Collective management of copyright and related rights, which implemented the CMO Directive into the Hungarian law, it is mandatory for the CMOs to make an annual transparency report, and there are also other rules which guarantee the transparency of CMOs.

27- Is it possible to find out how much income is provided by each type of rights?

Yes, as any other CMO, FilmJus has exact rules on how they distribute the collected remuneration. The annual transparency report of FilmJus accurately describes the amounts collected and distributed per type of rights.

28- What is the current litigation level for audiovisual producers' rights in your Country?

The number of court cases is not significant.

29- Are there any relevant Court Decisions concerning audiovisual producer's rights?

On June 30, 2000, the plaintiff and the defendant's legal predecessor (Stock Company) entered into an agreement regarding of the production of a television show. According to the contract the plaintiff was the producer, the defendant was the procurer of the TV show.

The court of first instance found in its verdict that the defendant violated the plaintiff's rights by repeatedly broadcasting the episodes of the TV shows without the plaintiff's permission.

According to the decision Pf. 20.688/2019/7. of the Court of Appeal, the plaintiff, as a film producer, and the defendant's legal predecessor entered into a Use Contract (section 41 section (1) of the HCA) and not into a film contract (according to section 88(1) of the HCA: a contract concluded for the production of a motion picture work).

The subject of the legal dispute was the amount of broadcast (repeat) fee the defendant was obliged to pay. As an objective sanction regarding of unauthorized uses - according to section 94(1)e), the rightholder may demand restitution of the economic gains achieved through infringement of rights. The minimum fee is the user fee that has not been paid, the amount of which is determined by the courts on a case-by-case basis, taking into account all the circumstances of the given case.

30- Are audiovisual producers acting as One-Stop Shop in relation to retransmission operators?

In practice usually there is no licence agreement between the cable operator and the producers, since all licences are usually cleared by the broadcasters.

[4] https://www.sztnh.gov.hu/sites/default/files/kutatas_hent_2020_final.pdf

PANEL IV - DATABASE PRODUCERS' AND PUBLISHERS RIGHTS

1- Are Databases legally protected in your Country? How?

Yes, they are. Databases are protected as collections of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed by electronic or other means (HCA s. 60/A (1)). Databases are protected by copyright if recognized as collections of works.

2- Is there a Sui Generis Database producers' right or equivalent protection in your Country?

The rights granted to producers of databases by Directive 96/9/EK of the European Parliament and of the Council are recognised as rights related to copyright (chapter XI/A. of HCA). Pursuant to section 84/A:

"(1) Unless otherwise prescribed by law, the consent of the author of the database (Section 60/A) is required

a) for any reproduction [subsection 18(1)b)] (hereinafter referred to as 'extraction');

b) for making available to the public all or a substantial part of the contents of his database by the distribution of copies, or by transmission to the public as governed under Section 26(8) (hereinafter referred to as 're-utilization').

(2)Distribution as referred to in subsection (1)b) covers the following forms of distribution: marketing by conveyance of title by sale or other means, importation for the purpose of marketing and renting. The provisions set forth in Section 23(5) also apply to the rights of the author of the database.

(3)The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted without the author's consent.

(4)Unless otherwise prescribed by law, any use under subsections (1)-(3) is subject to remuneration."

3- Is it possible to evaluate its efficiency and level of enforcement?

Only indirectly. The reports of the Hungarian Board of Copyright Experts show that a relatively high number of database cases were referred to the Board, and the questions submitted were rather complex. This may indicate that the efficiency of the regulations pertaining to databases is moderate.

4- Is there any different form of protection for Database producers or for ownership of data?

There are other forms of protection available (e.g., rules of competition) but none adopted specifically with database producers in mind.

5- How does it work? Is it effective?

See the answers to Q3 and Q4 above

6- How do the courts of your Country balance the sui generis right with freedom of information and freedom of competition?

We have not found any cases where the court would have based its ruling specifically to setting

the proper balance between legal monopoly and freedom of information/competition. The cases referred to the Hungarian Board of Copyright Experts, however, sometimes emanate from disputes where resorting to the rules of database protection is used at least partly to stifle competition.

7- Is the sui generis right protected against circumvention of TPM designed for controlling access?

Yes. Section 95 of HCA reads as follows:

"(1) The consequences of copyright infringement shall apply to all acts that enable or facilitate unlawful circumvention of effective technical measures designed to provide copyright protection, provided the person performing the acts referred to knows or, with the due care expected in the given situation, has reasonable grounds to know that the aim of these acts is the circumvention of the technical measure.

(2) The consequences of copyright infringement shall apply to all acts, such as the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services that

a) are promoted, advertised or marketed for the purpose of circumvention of any effective technical protection;

b) have only a limited commercially significant purpose or use other than to circumvent effective technical protection; or

c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technical protection.

(3) For the purposes of Subsections (1) and (2), 'technical measures' shall mean any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts and are not authorized by the copyright holder. Technical measures shall be deemed 'effective' where the use of a protected work is controlled by the rightholders through application of an access control or protection process such as encryption, scrambling or other transformation of the work or a copy control mechanism that achieves the protection objective.

(4) The provisions of Subsections (1) and (2) shall apply without prejudice to what is contained in Section 59 and Subsections (1)-(3) of Section 60. With respect to software, Subsection (2) shall apply only in connection with the distribution of equipment, product or component, or for their possession for commercial purposes, whose only intended purpose is to enable or facilitate the unauthorized removal or circumvention of the technical means installed for the protection of the software."

8- Is there a special protection against online uses of press publications in your Country?

Yes. In result of the national transposition of the CDSM Directive, publishers of press publications are now protected as owners of rights related to copyright.

9- Does it apply to scientific journals and hyperlinks? How does it work?

No. Periodicals that are published for scientific purposes are not press publications (HCA Section 82/A (2)). The consent of the publisher of a press publication is not required for using the hyperlink to the press publication (HCA Section 82/C a)).