HUNGARY

Regulation of use of "orphan works"

1. Act CXII of 2008 amended the 1999 Copyright Law of Hungary and (in addition to a fuller implementation of the Rental, Lending and Related Rights Directive concerning the lending right) introduced a complex regulation of the use of "orphan works." The Act was adopted on December 28, 2008, and entered into force on February 1, 2009; however, in respect of the provisions on "orphan works," it will only enter into force on April 1, 2009, since as mentioned in paragraph 9, below, a governmental decree is still to regulate certain procedural details.

2. Under the new Article 57/A of the Copyright Act inserted by the above-mentioned Act, the regulation covers any work in the case of which the person who intends to use it "has made all those measures to find the author which, in view of the nature of the work and manner of its use, are justified, and still has not succeeded to locate him." This is regarded to be a synonym of "diligent search." For the conditions to be fulfilled in order to prove that "diligent search" has taken place, see paragraph 10, below.

3. As a general rule, the Hungarian Patent Office has the right to grant a non-exclusive license for the use of such works. The license is valid for five years, but it does not extend to the right of granting sub-licenses and to the making of derivative works.

4. When the Patent Office grants such a license, it also fixes the amount of remuneration due by the user of the work, taking into account the nature and extent of the use. If the use of the work does not serve, either directly or indirectly, obtaining or increasing income, the remuneration must only be paid after that the author (or other owner of copyright) is located. Where the use of the work, either directly or indirectly, serves obtaining or increasing income, the use of the work may only be commenced after that the remuneration is deposited at the Patent Office.

5. As soon as the owner of copyright is located, the Patent Office, at the request of the owner of copyright or the licensee, withdraws the license. Nevertheless, the licensee is allowed to continue using the work to the same extent as until the time of finding the owner of copyright and his location for one more year or until the expiry of the license granted by the Patent Office, whichever period is shorter. The same applies for those users who, before finding the owner of copyright and his location had made serious preparations for the use of the work under the license.

6. The owner of copyright may claim the remuneration established by the Patent Office for five years from the date of the expiry of the license or of the withdrawal thereof. After the expiry of the five-year period, the Patent Office is to transfer the remuneration deposited at it to the collective management organization which is authorized to manage the rights of the owner of copyright in respect of other uses of his works, and, in the absence of such organization, to the National Cultural Fund. The latter is to use the amounts of remuneration thus transferred for the making available of cultural goods to the general public.

7. If the owner of copyright does not find the remuneration fixed by the Patent Office appropriate, he may turn to the court to establish its amount.

8. The above-described procedure is not applicable in those cases where a collective management organization has the right to authorize the uses of "orphan works" or collect remuneration for them on the basis of obligatory or extended collective management. In such a case, the distribution rules of the organization are supposed to regulate how an owner of copyright may claim remuneration after that his identity is established and his whereabouts is located.

9. Act CXII of 2008 has authorized the Government to regulate, in a decree, procedural details concerning the licensing of use of "orphan works" by the Patent Office. The draft decree is in the final stage of consultations. It, *inter alia*, determines certain deadlines and the tariffs that the Patent Office may apply in the licensing procedure. It is rather in these aspects that, at the moment of preparing this report, there are still some unsettled questions.

10. At the same time, there seems to be agreement on those provisions of the draft decree which prescribe what documents and other proofs must be presented in order to prove that "diligent search" has taken place. Namely, certificates proving that the efforts to identify and/or locate the owner of rights on the basis of the following sources have been in vain: (i) voluntary register operated by the Patent Office, (ii) databases of relevant (relevant from the viewpoint of the genre of the work) Hungarian collective management organizations; (iii) databases of relevant publicly available collections and archives; (iv) information resources of organizations representing producers and/or publishers that usually produce or publish works of the same genre; (v) databases that may have been suitable to locate the owner of rights. It should be proved that the search has also extended to asking information from the known co-authors and from the known previous users of the same work; furthermore, that an advertisement has been published in a newspaper of national-level distribution and it has not resulted in identifying and/or locating the owner of rights. In the case of a work about which it may be presumed that its country of origin is another country, it must be proved that the "diligent search" has extended to the same sources and has been made in the same way "to the extent that it may be reasonably expected."

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