ALAI 2011 – Dublin Congress

Questionnaire – Boundaries and Interfaces

National Group: Hungarian Copyright Forum, Hungary
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1. The subject Matter of Protection – Works

1.1 How do your legislators or case law define a literary work? In particular, how is speech protected? Is ex tempore speech a literary work and what are the conditions for protection?

The Hungarian Copyright Act (Act LXXVI of 1999 on Copyright, hereinafter as Hungarian Copyright Act) does establish that all literary works are protected by copyright regardless of whether they are concretely designated by the law. A work or creation is entitled to copyright protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author. Copyright protection does not depend on quantitative, qualitative, or aesthetic characteristics or any judgment of the quality of the work. In Article 1 of the Hungarian Copyright Act, where the legislators defined the scope of copyright protection, the Act provides an exemplificative enumeration on literary works, such as literature, technical writings, and academic and scientific publications. The list is not exclusive; various other sub-genres of works may be considered as literary works. The Hungarian legislation is fully conform with Article 2 of the Berne Convention for the Protection of Literary and Artistic Works (1971, implemented into the Hungarian law by Act 4 of 1975; hereinafter referred to as the Berne Convention), which stipulates that "the expression «literary and artistic works» shall include every production in the literary, scientific and artistic domain, whatever may be mode form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature…". Although the Hungarian Copyright Act does not contain an exact definition of literary works, the aforementioned definition of Article 2 of the Berne Convention can be applied. Furthermore, there is a definition formulated by the Hungarian Supreme Court in 1964: "Literary work is created when somebody expresses his thoughts to others by writing or speaking" (decision No. Pf.IV.20.553/1964, BH1965/1).

The copyright protection of public speeches is specifically indicated in Article 1 (2) b) of the Hungarian Copyright Act, regardless of their ex tempore or pre-written nature. As previously mentioned the only condition of the copyright protection of public speeches is the original and individual character of the speech. If this condition is met, the copyright law protects the speech. Article 2bis (1) of the Berne Convention makes possible to exclude political speeches and speeches delivered in the course of legal proceedings from the copyright protection; in the case of lectures, addresses and other works of the same nature which are delivered in public, while Article 2bis (2) stipulates that these works may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11bis, when such use is justified by the informatory purpose.

In accordance with the aforementioned Article 2bis (2) of the Berne Convention, as well as with Article 5 (3) f) of the INFOSOC Directive (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society), the Hungarian Copyright Act stipulates that sections of public lectures and other similar works as well as political speeches may be used freely for informatory purposes to the extent justified by such purposes. In such cases, the source and the name of the author shall be indicated unless it proves to be impossible. The author's consent is required for the publication of collections of such works.

In line with the aforementioned provisions of the INFOSOC directive this exception can be applied for all types of public lectures but not all types of public speeches but only for the political speeches. Furthermore, the free use of such works means an exception only to the right of reproduction and communication to the public including making available to the public. The main condition of the free use of public lectures and political speeches is that these works shall be already published.

According to the aforementioned international, European and Hungarian provisions, the speeches other than political speeches or non-public speeches or lectures may be used only with the permission of the author. The restriction is based on the non-public and non-political nature of the speech and lecture; therefore the purpose of the speech or lecture is irrelevant. This regulation applies to educational lectures as well.

1.2 **For short works – headlines in a newspaper, phrases (including slogans), book titles, for example; are these covered by statute? Does case-law provide guidance on protection? Is this issue dealt with by de minimis rules? [In the EU discuss Infopaq and how the case is accommodated in national law].**

According to Art 1 of the Hungarian Copyright Act, a work is entitled to copyright protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author; the copyright protection does not depend on the length, or on quantitative, qualitative, or aesthetic characteristics or any judgment of the quality of the work. In accordance with Article 2 of the INFOSOC Directive, Article16 (1) of the Hungarian Copyright Act establishes that any identifiable part of a work may be protected by copyright (*de minimis* rule) and the permission of the author of the work is needed for the use of this part. Although the INFOSOC Directive ensures the copyright protection for the part of the work only related to the reproduction right, the Hungarian Copyright Act stipulates that all kind of uses of the identifiable part of the work needs the author's permission.

Although the Hungarian Copyright Act does not contain detailed rules for the definition of identifiable part of the work, the general rule of the Hungarian copyright law corresponds to the aforementioned Infopaq decision (Judgment C-5/08 issued by the ECJ) by stating that an identifiable part of the work maybe protected by copyright only if it contains, in itself, elements of original and individual nature, i.e. elements which are the expression of the intellectual activity of their author.

Titles, in general, are only protected by copyright if they are particular, i.e. have an original, individual character (Article 16 of the Hungarian Copyright Act). Due to the typically short nature of titles, authors' means to express themselves are rather limited. The Hungarian Council of Copyrights Experts (hereinafter referred to as: CCE) issued several opinions in which the CCE established a general method of assessment, measuring how general the title in question is among titles of other works in the same genre, concluding that the less general the title is, the more likely it is to be protected by copyright. That expert opinion led to some interesting conclusions: the title 'Silver Guitar' is not a particular title for a pop record (opinion No. 8/1986 of CCE), while the title 'Sad Sunday' is particular for a memorial book (decision No. 1986/14 of the Hungarian Supreme Court), or 'Matrix – Reloaded' is particular for an action movie (opinion No. 13/2003 of CCE).

As for short summaries of works, the CCE established that providing a short summary of a work for informative, reviewing purposes does not constitute publication; therefore it shall not be considered copyright infringement, provided that the reviewer properly indicates its sources (opinion No. 113/1971 of CEE).

Slogans and phrases are protected by copyright according to the aforementioned general rules. In case they are created as pre-written or ex tempore speeches the special provisions mentioned in chapter 1.1 above shall apply.

1.3 **How does your legislation define an artistic work? A closed and defined list of works? Open-ended definitions for greater flexibility?**

The Hungarian Copyright Act does establish that all artistic works are protected by copyright regardless of whether they are expressly designated in the Act. A work or creation is entitled to copyright protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author. Copyright protection does not depend on quantitative, qualitative, or aesthetic characteristics or any judgment of the quality of the work. Otherwise than that, there is no standard definition for artistic works. Article 1 of the Hungarian Copyright Act (the scope of protection) contains an exemplificative enumeration on artistic works, such as plays, musicals, ballets, and pantomimes, musical compositions with or without lyrics, radio and television plays, motion picture and other audiovisual works, works made by means of drawing, painting, sculpting, engraving, lithography, or in any other similar manner as well as the designs, photographic works, applied art works and their designs, costume and scenery designs, etc. The Hungarian legislation is in full conformity with Article 2 of the Berne Convention.

In practice, the scope of artistic works is constantly refined by various opinions of the CCE. The notion of artistic works were interpreted to include, for example, baby dolls wearing traditional costumes (opinion No. 103/1970 of CEE), clown tricks (opinion No. 7/1973 of CEE), items of interior decoration (opinion No.14/1991), as well as specifically designed copper handrails for stairs (opinion No. 10 /1992 of CEE).

On the negative side, a luggage rack the design of which is based solely on practical requirements may not be considered copyrighted artistic work for the lack of its original, individual character (opinion No. 15/1992 of CEE).

It is worth noting that earlier Hungarian case law adopted a somewhat different view on the copyright protection of artistic works, emphasizing "artistic quality" as a decisive element. “Works of applied arts may only be protected by copyright if they are of artistic quality. According to judicial practice, this can be established if the work of applied art is in fact an individual, particular work of art that makes it worthy of copyright protection reserved for artistic works (…)” (decision No. Pf.III.20.680/1967 of the Hungarian Supreme Court).

1.4 Have court decisions provided any rulings on the availability of copyright protection for contemporary forms or types of artistic expression e.g.

- surveillance art, installations, collage.
- performance art.
- Conceptual art

1.5 We are not aware of any recent court decision concerning the copyright protection of any contemporary forms or types of artistic expression in Hungary. Are there any judicial decisions/ academic opinions on other forms of expression, whether protected or not (e.g. Perfumes)?

Other forms of expression may enjoy copyright protection on the very same basis as the more established forms of expression and they equally have to have an individualistic and original nature deriving from the intellectual activity of the author; copyright protection does not depend on any quantitative, qualitative or esthetical nature of the work or any judgment of the quality of the work. The CCE stipulated in its opinion concerning a court case that the colours and colour codes (in a telephone directory) are not protected by the copyright law in Hungary and the Metropolitan Court endorsed this opinion in its judgment (opinion No. 31/1994 of CEE, judgment No. 6.P.20.322/1994). In another case the CCE found that the play of light (laser light) shall be deemed as copyrighted visual artistic work and the technical background is the part of the work as well, so the authors of a play of light are the composers, the choreographer, the creator of the play of light and the author of the software (opinion No. 31/2005 of CEE).

According to our best knowledge there is no decision concerning the copyright protection of perfumes in Hungary. However, there are decisions where the court dealt with other type of protection (i.e. trademark protection) of perfumes; these decisions do not constitute the subject of the present questionnaire, so we do not present them here.

1.6 **Is there case-law related to the protection of sporting events (soccer game, marathon race, ice skating competition, etc)? What is the basis of the protection? (dramatic or choreographic work, other?)**

According to our best knowledge there is no case-law concerning the copyright protection of sporting events, esthetical sports or forms of moves in sports in Hungary. In contrast to some international academic opinions, which suggest copyright protection for the esthetical sports and moves (for example Weber, L.J.: Something in the Way She Moves: The Case for Applying Copyright Protection to Sports Moves. Columbia – VLA Journal of Law and the Arts. 23:3/4 2000 p. 317), the Hungarian academic opinion is that sports, including extreme sports like pancration (freestyle wrestling) and skate board, and the forms of moves associated with them are not protected by copyright (Péter Gyertyánfy: How far can the copyright law extended? Published in the Gazette of the Science of the Law No. 9/2001 on October 8, 2001).

2. Creativity – the Originality Standard

2.1 How does your legislation set out the requisite originality standard?

As a general rule, "a work or creation is entitled to copyright protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author. Copyright protection does not depend on quantitative, qualitative, or aesthetic characteristics or any judgment of the quality of the work" (Article 1 (3) of the Hungarian Copyright Act). The Hungarian originality standard is in line with the article 2 (5) of the Berne Convention which stipulates that the only condition of the copyright protection is that the work constitutes intellectual creation and also with the relevant directives of the European Community on the protection of computer software and of the databases (Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs – article 1 (3) "A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection" and Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases – Article 3 (1) – "Databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection".)

The work's originality may not be affected by any kind of critical interpretation of its quality or quantity; a "bad" work may still be original work. This view is emphasized by opinion No. 43/2000. of the CCE on the assessment of techno music as copyrighted work, regardless of public or expert opinion on its quality.

It is worth mentioning that in 1934 the Hungarian Curia (rough equivalent of the current Supreme Court) adopted a more elaborate concept of originality: "Copyrighted work shall only be such a work that is the independent, individual intellectual creation of the author. Only works that show signs of certain particularities to the author's personality shall be considered copyrighted works. Elaboration of already known data, pre-existing material may also be considered copyrighted work provided that it contains independent, individual activity and shows signs of novelty" (decision No. P.I.3581/1934).

Originality of photographic works was the topic of various CCE opinions (opinion No. 18/2004 of CEE, opinion No. 24/2004 of CEE, opinion No. 19/2005 of CEE). In earlier Hungarian copyright law, only "artistic" photos could be protected by copyright, the likes of portraits could not. However, according to current regulations, the requirement of originality is the manifestation of a minimal originality. This means that the work would not be entirely predetermined by the circumstances or by

the means used, and there would be at least a minimal opportunity for the author to choose between different solutions and the work would not be a servile copy of another.

By reference to the June 1988 edition of „Photographic Works - Preparatory Document and Report of the WIPO/UNESCO Committee of Governmental Experts", the CCE also established for photographic works that all photographic works shall be deemed to contain original elements except those where the creator did not have any influence over their making or composition

The concept of originality is further elaborated in CCE opinion No. 21/2001, discussed below in greater detail.

2.2 **Does the legislation or case-law suggest a different test of originality is imposed for different kinds of work?**

While the legislation does not include specific provisions for the application of different tests of originality for different kinds of works, case law does. Opinion No. 38/2001 of the CCE establishes that there is a minimal requirement of originality that can be fulfilled by any kind of work, regardless of the circumstances (like regulatory, physical, logical restrictions).

This argument is elaborated further in opinion No. 21/2001 of the CCE. The Council concluded that software – which is largely restricted by functionality requirements – can be of original, individual character as independently working developers are likely to create different software works regardless of the fact that both software accomplish the same goal. To this end, the originality standard of software shall be different than that of musical works as the authors have fewer possibilities to express themselves when confined to a work that has to accomplish a certain objective while adapting to technical requirements at the same time.

We also refer to the various CCE opinions on photographic works, explained above in greater detail.

2.3 **For compilations / collections is the standard identical to that provided for in relation to works? [For common law jurisdictions there are significant differences on the standard e.g. IceTV (Aust) CCH (Canada). How has "sweat of the brow" been treated in recent case-law?]**

According to Art 7 of the Hungarian Copyright Act compilations are protected by copyright if the selection, arrangement, or editing of their content is individual and original (collection of works). Collections of works are protected by copyright even if their parts or components are not or cannot be protected by copyright. It means that the standard is identical to the works but there is a special rule: it is the collection, arrangement or editing of the content that shall have an individualistic and original nature and not the content itself.

Editors are entitled to copyright in the entire collection of works. This, however, does not concern the independent rights of the authors of the individual works and the owners of any subsidiary right that have been included in the compilation.

The copyright protection of collections of works does not cover the components that constitute their contents.

The Hungarian court practice does not expressly use the "sweat of the brow" doctrine, but it is clear in the case law that no matter how much work was necessary to create a compilation, a non-selective collection of facts ordered in a non-creative way is not subject to copyright protection and the courts solely examine the original and individualistic character of the selection, arrangement or editing of the compilation when deciding the existence of the copyright protection.

2.4 **Does your legislation/case law recognise copyright protection for collections such as television listings, yellow pages/white pages telephone directories? If yes, what is protected (headings, content, or both?) If not, why is protection denied (e.g. spin-off theory, competition law considerations).**

The general rules of Hungarian copyright law establish that only works with original, individual character may be protected by copyright. Yellow pages/white pages telephone directories, television or radio programs, television listings can enjoy copyright protection and shall be deemed as a compilation (collection of works) if the selection, arrangement, or editing of their content is individual and original. In that case the original and individual editing, arrangement or selection of the content is protected, not the content itself. However, it shall be mentioned that telephone directories usually are not deemed as copyrighted compilations because of the lack of the aforementioned original and individual character. The headings of these publications can be protected by copyright irrespectively from the protection of the collection if these headings contain original and individual elements, e.g. graphics. However, the colours and the colour coding of the headings and of the collection cannot be covered by copyright protection. However, protection provided by competition law (passing off) may be invoked.

If the editing, arrangement or selection of the content (data) of these directories does not have individualistic and original character, they may be protected as sui generis databases if the content is systematically or methodically arranged and the element of the content can be individually accessed by electronic or other means and if obtaining, verifying or presenting the content of the database required substantial investment of financial resources and/or time, effort and energy. However, this does not apply if the database is created as a by-product of some other activity in line with the decision of the European Court of Justice No. C-203/02, which stipulates that "the fact that the creation of a database is linked to the exercise of a principal activity in which the person creating the database is also the creator of the materials contained in the database does not, as such, preclude that person from claiming the protection of the sui generis right, provided that he establishes that the obtaining of those materials, their verification or their presentation, in the sense described in paragraphs 31 to 34 of this judgment, required substantial investment in quantitative or qualitative terms, which was independent of the resources used to create those materials". .

Several CCE opinions examined the conditions of the sui generis database protection in Hungary (CCE opinions No. 23/2008, 31/2008 and 5/2010) which take the provisions of the aforementioned Database Directive and the relevant ECJ decisions (British Horseracing Board v William Hill Organization Ltd. (C-203/02); Fixtures Marketing v Veikkaus (C-46/02), a Fixtures v Organismos (C-44/02), illetve a Fixtures v Svenska (C-338/02) and Apis-Hristovich v Lakorda (C-545/07) into consideration.

3. Achieving Access for the visually impaired

3.1 **Does your national legislation provide exceptions or limitations in favour of the visually impaired? For wider categories of disabled persons? On what condition: is there a remuneration right or right to compensation?**

The Hungarian Copyright Act does provide exceptions and limitations in favour of all disabled persons, including the visually impaired. Art 41 of the Hungarian Copyright Act establishes that the non-commercial use of works falls within the scope of free use if it is done exclusively to fulfill the needs of handicapped or disabled persons as directly related to their particular disability and only to the extent that suits such purpose. The use shall be strictly non-commercial in order to be considered free use; therefore no remuneration or other form of compensation whatsoever may be considered applicable (acceptable?).

3.2 **What kind of works are or would be subject to limitations or exceptions? Literary works only? Works and performances fixed in sound recording? Will the visually impaired or other beneficiaries of the exceptions or limitations obtain copies of covered works directly, or only via libraries or other institutions?**

The above cited regulation does not define the exact kind of work to be subject to the limitation and exception. Since May, 2004 – the Republic of Hungary's accession to the European Union – the use of all kinds of works can be considered free by the disabled or handicapped, fulfilling the conditions below. However, as the use of works shall be exercised exclusively to fulfil the needs of handicapped or disabled persons directly related to their handicap, practical restrictions apply.

Literary works fixed in sound recordings (audio-books) constitute an exception from the above rule. As their use is not related directly to the disability or handicap, it cannot be considered free.

3.3 **Are the exceptions and limitations confined to the reproduction of the work? If making available or adaptation is possible, on what conditions?**

This exception and limitation of copyright covers all ways (forms?) of use, including but not limited to reproduction, distribution, public performance, communication to the public, on-line making available to the public, broadcasting, adaptation; always subject of course to the conditions quoted in paragraph 3.1 above:

- non-commercial use;
- the purpose of the use is to fulfil the needs of disabled persons as directly related to their particular handicap;
- only to the extent that suits such purpose.

This exception and limitation is not only in favour of the visually impaired but all disabled person.

A person shall be deemed as disabled if she/he does not have ability of seeing, hearing, moving or senses at all or significantly and/or is significantly restricted in his/her communication and that means a significant and continuous disadvantage during the active participation in the social life (Act XXVI of 1998 on the right of disabled persons).

3.4 **Has your Government expressed a view on support for international initiatives (e.g. World Blind Council Treaty)?**

The Hungarian government joint the Convention on the Rights of Persons with Disabilities and its Optional Protocol of United Nations in 2007 and published it in the Act of LXXXIV of 2007.

Hungary is the EU Presidency in the first half of 2011. The program of the Hungarian government for the EU Presidency contains the access of the blind people, in the framework of which the Hungarian Government coordinates the work in WIPO concerning the WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons and the purpose is to prepare a common recommendation in this field. The position of the Hungarian Government on the WIPO Treaty is that soft law needs to be used for helping blind people and the acquis shall be taken into consideration.

3.5 **On an extra-legal basis, are there any market initiatives, or business practices, that your national group are aware of?**

There is not.

4. Access to the Internet as a Human Right

4.1 Does your legislation/constitution/case-law define access to the Internet as a specific [or human] right?

The Hungarian legislation does not define access to the internet as a specific human right per se, but it does order certain universal service providers – service providers having significant market power in a given market for internet access via fixed public telephone networks – to be subject to contracting obligation pertaining to universal service, which includes internet connection, according to Arts 118-119 of Act C of 2003 on Electronic Communications.

The minimal bandwidth (data rate) requirement of the internet connection means data rates that are sufficient to permit functional internet access, taking into account prevailing technologies used by the majority of subscribers and technical feasibility. This bandwidth is further specified by Art 1 of Government Decree 97/2010, which identifies 9600 bit/s transmission speed achievable by any technology as minimal requisite for functional internet access.

4.2 Are there any specific restrictions or limitations on this right [Europe: it is not necessary to refer to ECHR but any national decisions or rulings on ECHR should be mentioned]?

There is not.

5. Orphan Works

5.1 Are there extant legislative provisions allowing access/use in relation to orphan works? What kinds of work are involved? Performances?

Art 57/A of the Hungarian Copyright Act establishes the use of orphan works in Par (1) as follows:

„The *Hungarian Intellectual Property Office* shall grant a license of use - and shall establish reasonable remuneration consistent with the manner and degree of use - upon request to a person who has taken measures - with a view to making licensing arrangements - to the extent deemed reasonable under the given circumstances, taking into account the types of works and the forms of exploitation, to locate the author, however, he was unable to locate the author in question. The license shall be granted for a maximum term of five years, it applies throughout the territory of the Republic of Hungary, it is non-exclusive, cannot be transferred, and it carries no right to grant additional use rights nor for adaptation of the works in question"

Any kind of work may be used as orphan work. The administrative procedure required for the use of orphan works is established by the Governmental Decree No. 100/2009. Par (2) Art 1 of that Decree specifically identifies performances to be subject to the procedures the same way as works do.

5.2 On what conditions? Is there a remuneration right or right to compensation? Is there a court or administrative procedure to be satisfied prior to use?

In its request, the user shall indicate the following: data necessary for the identification of the work and – is available – of the author, all authors; method, extent, term of use and other circumstances that may be relevant for the establishment of the fee payable for the authorization of use. The user shall submit all data and evidence substantiating that he had taken reasonably expectable measures to find the author, and these measures had been fruitless.

The fee payable to the Hungarian Intellectual Property Office ranges from HUF30,000 to HUF102,500 (EUR110-EUR380) depending on the procedure (by electronic or postal means) and the purpose of use (the fee is higher if the purpose of use is to generate income).

5.3 **Are there proposals for the introduction of, or changes to, orphan works provisions?**

As pertaining provisions have been introduced to the Hungarian Copyright Act as from January 1, 2011, and the current legislation is thus both recent and pioneering — we do not expect substantial changes in the near future, nor are we aware of any such plans.

6. Graduated Response Laws or Agreements

6.1 **Within the specific context of p2p filesharing of audio-visual works and sound recordings, does your national law contain laws (or proposed laws) providing for a graduated response "solution"? On what conditions? Three strikes, etc.?**

There are no specific laws with regard to graduated response of three strikes. Therefore no internet service provider (or intermediary service provider) may be ordered to take action against a suspected infringer. However, there are various regulations regarding the disclosure of data.

Par (6) Art 94 of the Hungarian Copyright Act does not provide an exclusive list of data that may be requested from the infringer. Consequently, the law does not exclude the disclosure of further data to be requested. The ISP may be ordered to disclose data even if it was unaware of the copyright infringement, while mandatory disclosure may be ordered against third parties without regard to accountability (objective sanction).

According to the Electronic Commerce Directive (2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market) the accountability of intermediary service providers as well as the data to be disclosed may be restricted based on the proportionality of the rights infringed and the need for the protection of data. As for the data to be disclosed on private individuals engaged in file-sharing activity, the data to be disclosed may be limited by the protection of privacy.

It shall be examined individually in each case whether the data to be disclosed in connection with file sharing may be disclosed at all, based on the requirements detailed above. In addition, it shall also be examined that the data provided by private individuals during the file-sharing activity may be excluded from the category of private information and thus disclosed.

6.2 **Do such proposals include an educational aspect – enhancing awareness of intellectual property protection, as well as measures to (1) make Internet access more secure in order to prevent illegal activity; (2) – favour availability of legal services?**

No, as there is no established procedure for such disclosures, no further aspects may be considered.

6.3 **Is there a court procedure and/ or administrative agency that oversees the proceedings or authorises interruption or termination of internet access?**

No, currently there is no such court procedure or administrative agency present.

6.4 **Is it possible to assess the effectiveness of the implementation of these measures, both as a matter of stemming piracy, and with respect to the development of legal services?**

Taking the fact into consideration that such kind of measures like graduated response or three strikes are not implemented in the Hungarian law and the Hungarian legislation strictly follows the relevant

EU legislation concerning the rights and obligations of the internet service providers, in particular the E-Commerce Directive, Data Protection Directive **(**Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and the INFOSOC Directive and the relevant decisions of the European Court of Justice (for example ECJ C-275/06 case), it is not possible to assess the effectiveness of the implementation of these measures.

6.5 **Is there any case-law on the possible (own initiative) use of blocking or filtering technology by an ISP, as distinct from situations where an ISP is required by a court or administrative agency to terminate subscribers access (i.e. injunctive relief)?**

There is no case-law on such type of situation.

6.6 **Are there private agreements among copyright owners and internet service providers that function similarly to "3-strikes" laws?**

There is no such type of private agreement.

7. Private Agreements and UGC

7.1 **Are there private agreements among copyright owners and hosts of UGC content sites regarding the filtering of content posted to the sites? Are there inter-industry statements of "best practices" regarding filtering? Have government authorities in your country undertaken initiatives to encourage the adoption of such accords?**

Currently there are no private agreements, inter-industry statements or government initiatives regarding filtering of UGC content over the internet from the aspect of copyright protection.

UGC content and general World Wide Web content filtering is being developed for the purpose of protection of minors, in accordance with the Council initiative for the protection of children using the Internet and other communication technologies (COD/2008/0047). Governmental organizations as well as private companies have joined the program called "The Safe Browsing Program" which includes free content filtering software to be used on home-user PCs as well as schools. We have no information regarding any such movement in connection with copyright protection.

7.2 **How is the filtering to be accomplished?**

There is no active copyright-related UGC content filtering in Hungary.

7.3 **Have there been any cases concerning such agreements or "best practices"?**

There is no case-law on such type of situation.

7.4 **Outside the existence of such accords, have courts themselves imposed remedies requiring measures such as "take down, stay down"?**

There is no court decision in Hungary in which the court ordered UGC content sites under the take down, stay down principle.