

ALAI Congress 2017 in Copenhagen

Copyright, to be or not to be

Questionnaire

The traditional justifications for copyright and related rights

In your country, which justifications for copyright have been presented in connection with your national legislation, for example in the preamble of the Statute or in its explanatory remarks or similar official documents?

The preamble of the Act LXXVI of 1999 on copyright (hereinafter referred as CA) explains the interests taken into consideration when regulating the copyright:

*“Modern copyright legislation keeping abreast of technological development plays a decisive role in **the promotion of intellectual creation** and the **preservation of the values of national and universal culture**; it can create and maintain a **balance between the interests of authors and other rightholders, users and the public at large, taking account of the requirements/demand of education, culture, scientific research and free access to information**; and that it can provide for an extensive and efficient enforcement of copyright and related rights.”*

Furthermore, the Hungarian Court of Constitution issued several decisions on the constitutional background of the CA, defining the human rights which are the fundamentals of the balancing of copyright. The following freedoms are mentioned in the decisions:

- *right to ownership,*
- *freedom of entrepreneurship,*
- *freedom of speech,*
- *freedom of access to culture,*
- *freedom of education and science.*

Are there any similar justifications for related rights? Are the arguments the same as for copyright in literary and artistic works or are there different or additional justifications?

The CA does not have any further justifications which would be applicable especially to the related rights.

Is it possible with any certainty to trace the impact of such justifications in the provisions of the law, or is their influence more on a general (philosophical) level?

The general justifications can be detected in the whole copyright system, however there are a lot of special legal institutions where we can trace the impact of such justifications. For example: principle of exclusiveness of rights (Art 16 of CC), principle of rewarding (Art 16 of CC), free uses of quotation, of education, of science (Articles 33-41 of CC), legal license for using orphan works (Art 41/A-G of CC).

Are there similar, or different or supplementary justifications for copyright and related rights expressed in the legal literature?

Scientific literature focuses on the analysis of the constitutional background,¹ however several further justifications can be found in articles with a special focus. For example, in literature on CMO's we can find the justification of cultural diversity, social sensitivity.² Furthermore, economic literature acknowledges the economic incentive effect of the exclusive rights.³

Economic aspects of copyright and related rights

Has there in your country been conducted research on the economic size of the copyright-based industries? If yes, please summarize the results.

In 2017, the Hungarian Intellectual Property Office (hereinafter: „HIPO”) published its fifth survey on the economic contribution of copyright-based industries in Hungary. In its survey, HIPO compared the 2011 data with the 2013 results to answer the question, whether the negative effects of the 2008 crisis on creative activities were just temporary, i.e. whether the pre-crisis upward trend returned in the period under review or did the contraction experienced during the last survey continue as a lasting consequence. Based on the results, between 2011 and 2013, the economic significance of the copyright-based industries in the Hungarian economy rose in terms of gross value added and employee incomes, while it decreased in output and number of employees. In 2013, the copyright-based industries showed increase in contribution to the country's economic performance (which was a record level compared to the earlier years: 2,089 billion, 8,25% to the GDP), and also in the employee income which was also a record high (698 billion; 8,23%). However, the copyright industries' share decreased in terms of output and employment between 2011 and 2013. The output of Hungarian copyright-based activities was the lowest since 2005 (8,13%). The employees of the sector – unaltered since 2006 – mean 7,28% share of the national economy.

Has the research been conducted in accordance with a generally accepted and described methodology in order to make it comparable to similar research abroad?

HIPO's survey is based on the methodology guide of WIPO (issued in 2003 and revised in 2015), which was created a standardized for international comparison of copyright-based industries. The survey was made by the guidelines of the earlier version of the Guide since the preparations for the survey begun in 2015. The applied statistic methodology – suggested in the WIPO Methodology Guide – was adjusted to the specific features of the Hungarian statistical data collection and survey system.

Has there been any empirical research in your country showing who benefits economically from copyright and related rights protection? If yes, please summarize the results and the methodology used.

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¹ GYENGE Anikó: Szerzői jogi korlátozások és a szerzői jog emberi jogi háttere. (Copyright limitations and the human right background of the copyright.) HVG-Orac, 2010., MEZEI Péter: A fájlcsere-dilemma. (The file-sharing quandary.) HVG-Orac, 2012.

² FALUDI Gábor – KABAI Eszter: A lényegtelené vált CISAC-ügy margójára. (On the margin of the unimportant CISAC-case.) Iparjogvédelmi és Szerzői Jogi Szemle, 2014/1. 71-104.

³ BODÓ Balázs: A szerzői jog kalózzai. (Pirates of copyright.) Typotex, 2011.

Individual and collective licensing as a means of improving the functioning and acceptance of copyright and related rights

Is there a wide-spread culture of collective management of copyright and related rights in your country, or is it limited to the 'core' areas of musical performing rights and reprography rights? Please describe the areas where collective management is used.

If measured by its length of tradition (the oldest CMO was established in 1907), and by its expansion, collective management has indeed a widespread culture in Hungary, extending way beyond just performing rights and reprography. We enclose a comprehensive chart of collectively managed rights, and the CMOs representing them.

Are there legislative provisions in your national law aiming at facilitating the management of copyright and related rights? If yes, please summarize.

The most significant provisions which we believe were truly designed to facilitate collective management of copyright and related rights are as follows:

- *Rights may be cleared only with the CMO registered for that purpose*

If an organisation of rightholders has been admitted into the national registry of CMOs, any usage agreement with, or payment to, any organisation other than the registered CMO shall have no effect with respect to that CMO and to the rightholders it represents, and shall not constitute relief from the statutory consequences of infringement [Article 8 of Act XCIII of 2016 on collective management of copyright and related rights (hereinafter "CRM Act")]

- *By act of law, CMOs have legal standing with respect to the rights represented*

While implementing or enforcing in court the rights they represent, CMOs themselves shall be regarded rightholders. For a CMO to litigate, no other rightholder shall be party to the lawsuit as claimant [Article 9 of the CRM Act].

- *Presumption of protection*

Until proven otherwise, the use of works and subject matter of related rights, the rights to which are managed collectively shall be presumed to fall under protection. This provision shall not apply to the right to licence mechanical reproduction [Article 10 of the CRM Act].

- *Principle of solidarity between rightholders: no cherry-picking within repertoires*

Rightholders may give or withdraw their authorisation to manage their rights only in respect of their entire repertoire. Rightholders may not, therefore, segment the management of their repertoire according, for example, to their commercial viability [Articles 13(4) and 16(2) of the CRM Act]

- *Extended rights management*

If, in respect of a certain right, a registered CMO represents a sufficiently extensive part of rightholders and repertoires concerned, it may licence the use of all works or subject matter of related rights falling

into this type and category right, regardless of whether any individual rightholder authorised the management of their rights [Article 17 of the CRM Act].

- *Obligation of users to provide information to CMOs*

Users are compelled to provide to CMOs all significant information necessary to calculate, collect and distribute licence fees to rightholders.

Which models for limitations and exceptions have been implemented in your national law? Such as free use, statutory licensing, compulsory licensing, obligatory collective management, extended collective management, other models? Please provide a general overview.

All of these models are used in some shape or form in the laws of Hungary. Generally, limitations and exception are regarded as “checks and balances” to limit the exercise of otherwise full-fledged intellectual property rights. Their most important objective is to give priority, to a reasonable extent, to certain public interests such as, for example,

- *Facilitating creative work (e.g. citation as free use)*
- *Enabling private use but compensating rightholders for the harm it causes (e.g. private copying exception combined with obligatory collective management of the compensatory private copying fees)*
- *Facilitating access to works and subject matter of related rights (e.g. extended collective management of certain rights)*
- *Implementing freedom of information (e.g. free use of public political speeches)*
- *Avoiding unreasonable restrictions to the use of digital technology (e.g. ephemeral reproduction as free use; statutory licence for the limited use of the information obtained by way of decompiling a software)*
- *Promoting equal opportunities (e.g. free non-commercial use of works and subject matter of related rights for the benefit of persons with disabilities)*