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IMPLEMENTATION OF DIRECTIVE ON COPYRIGHT IN THE INFORMATION SOCIETY

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The Hungarian Copyright Act (76/1999) was amended as of May 1, 2004 in order to bring it in line with EU directives. The provisions of the Directive on Copyright in the Information Society (2001/29/EC) were also incorporated into the act in the course of this amendment.

BACKGROUND

When drafting the Copyright Act in 1997 and 1998, the legislative expert committee took into consideration the 1996 World Intellectual Property Organization (WIPO) treaties and the then available draft Directive on Copyright in the Information Society. As a result, the act included provisions on:

- the 'make available' right of authors and neighboring right owners from September 1 1999, and of database producers from January 1, 2002;
- the protection of technological measures and rights management information in accordance with the WIPO treaties; and
- the free use of temporary reproduction in the digital environment.

BLANK TAPE LEVY

The Directive on Copyright in the Information Society provides for the "taking account of the application or non-application of effective technological measures in respect of establishment of fair compensation for private reproductions". The act has thus introduced a new clause on the blank tape levy, which raises serious concerns. It appears obvious that as long as effective anti-copying measures do not exist with regard to all works, sound recordings and broadcasts, it will still be possible to make at least analogous private copies. As a result, the application or non-application of effective technological measures may not be taken into consideration in the course of establishing the blank tape levy.

FREE USES

The act adapts the system of free uses to the mandatory and optional cases listed by the directive with regard to digital uses. As a result of the amendments, a complicated scheme has been introduced which is based around the following types of use:

- traditional free uses, where no license or remuneration is required (e.g. citation);
- legal licenses where the user's act is free, but a payee is obliged to pay remuneration (e.g. blank tape levy, reprographic remuneration);
- free uses, where the right owner may exclude, limit or broaden the scope of free use (e.g. ephemeral reproduction right of broadcasters); and
- some free uses of protected subject matter with the application of technological protection measures, where the user or an entity representing users' interests may claim that the right owner must render the free use possible.

EXAMPLES OF NEW FREE USES

Temporary reproduction

The mandatory temporary reproduction exemption was already reflected in the act; it merely required refinement to reflect the corresponding provisions of the directive. However, there are discrepancies between the term 'intermediary' used in the Copyright Act and the term 'transmitting service provider' used in the E-commerce Act.

Libraries, archives, museums and schools

The amendment grants free reproduction rights for some internal non-profit uses in certain establishments, such as:

- publicly accessible libraries;
- educational establishments operating pursuant to government accreditation;
- museums; and
- archives, including the future National Audiovisual Archive.

Such uses must not be for direct or indirect economic or commercial advantage.

The same establishments will enjoy the right to communicate freely or make available, for non-profit purposes, works held in their collections at dedicated terminals to individual members of the public for the purpose of research or private study, unless a licensing agreement provides otherwise.

During the discussions on the modification of the Copyright Act, a number of points of interpretation were raised. The only clear point is that such free use cannot in any way allow those members of the public who are granted access to the works to make permanent copies.

It was also noted that networks belonging to the same categories of establishment could be interconnected, meaning that a copy contained in the collection of a single establishment could be made available to the public through dedicated terminals on the premises of other establishments in the same category (e.g. a copy of the work owned by a library could be

made available only to terminals set up in other libraries). In addition, the networks of all such establishments could also be interconnected, meaning that a copy contained in the collection of any such establishment could be made available to the public through dedicated terminals on the premises of other establishments (e.g. the content of a musical CD or literary CD-ROM owned by a library could be made available at any university or museum).

TECHNOLOGICAL PROTECTION MEASURES

The new legislation introduces a special mediation procedure in accordance with Article 6(4) of the directive, to assist in reaching agreement between interested parties on how the beneficiaries of some listed free uses may exercise their rights in respect of works and other protected subject matter if the right owner has applied effective technological protection measures. The Hungarian legislature introduced this claim for the beneficiaries of the following exemptions:

- home copying;
- copying by libraries, archives, museums and schools;
- ephemeral recordings made by radio and television broadcasters;
- non-commercial uses for teaching purposes;
- non-commercial uses for the sole benefit of disabled people; and
- use for judicial and administrative procedures.

In the absence of an agreement between the affected right holders and beneficiaries, this claim may be enforced through judicial process or through a specific mediation body.

A mediation body established in the Hungarian Patent Office has the power to conduct such mediations. The mediation may have a certain absolute effect if the procedure is initiated by an entity representing users' interests. The mediation decision can be challenged before the courts if procedural rules are breached. If the mediation fails, the beneficiary or an entity representing users' interests may enforce the claim before the courts.

EPHEMERAL REPRODUCTIONS BY BROADCASTERS

Broadcasters will enjoy the 'make available' right and the right to make ephemeral reproductions of works they have made with their own facilities, for use in their own broadcasts. Unless a licensing agreement provides otherwise, the recording may not be stored for longer than three months. Broadcasts of works of exceptional documentary value, as specified by a separate legislative act, may be preserved in public audio and audiovisual archives for an unlimited period of time.

The contents of this article are intended to provide only a general overview of the subject matter. Specialist advice should be sought for specific matters. Queries relating to this article should be addressed to the authors at:

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