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## Report Q182

in the name of the Hungarian Group  
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### Database protection at national and international level

#### Questions

#### 1. Analysis of Current Legal Situation

##### 1.1 Legislation

*Is there any legislation in your country dealing specifically with databases? If so, please describe it.*

The current Hungarian Act LXXVI of 1999 on Copyright (hereinafter referred to as Copyright Act) contains a whole chapter on databases. As a result of a long discussion, the database's protection was not integrated into the chapter about neighbouring rights.

On 6 November 2001, the Parliament of the Hungarian Republic adopted the modification of the Copyright Act and a significant part of the amendments regulates definition and protection of databases. The present provisions are harmonised with the EU Directive 96/9/EC on the Legal Protection of Databases.

The modification recognized that there are *compilations* which, under Article 7(1) of the Copyright Act, are author's works and protected by copyright, if the collection, arrangement or editing of their contents is individual, original, and there are *databases* which are generally not author's works, because of the lack of individual, original collection, arrangement or editing, however, which deserve a protection according to rights related to copyright (*sui generis* protection) under Articles 84/A to 84/E of the Copyright Act.

Thus, a database may qualify as author's work if the compilation of data has an individual, original character [Art. 1(2)(p) and Art. 61(1) of the Copyright Act]. Non-original databases have a *sui generis* protection; the neighbouring rights and the *sui generis* database rights constitute "the rights related to copyright".

##### 1.2 Definition of Database

*Is there any definition of the term "database" in your country's legislation or case law? If so, does it extend both to electronic and non-electronic databases?*

The Article 60/A(1) of the Copyright Act defines the term "database" as follows:

For the purposes of the Copyright Act "database" shall mean collections of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed by electronic or other means.

From the above definition it turns out that the provisions pertaining to databases extend both to electronic and non-electronic databases.

### 1.3 Copyright Protection of Databases

#### 1.3.1 Subject Matter

*Does your country's law provide for copyright protection of compilations? If so, does it only cover collections of literary and artistic works or does it also cover compilations of data or material other than literary and artistic works?*

Yes, compilations are protected by copyright if the collection, arrangement or editing of their contents is individual and original (collection of works). Compilations are protected by copyright even if their parts or components are not or can not be protected by copyright.

#### 1.3.2 Criteria of Protection

*If your country's law provides for copyright protection of compilations is the protection limited to compilations which "by reason of the selection or arrangement of their contents constitute intellectual creations"? Are there any supplementary criteria to selection and arrangement? What is the level of originality required for a compilation to be considered a work? Does hard work in gathering data, known alternatively as "sweat of the brow", qualify a compilation as original?*

Yes, the protection is limited to compilations which "by reason of the selection or the arrangement of their contents constitute intellectual creations". There are not any supplementary criteria to selection and arrangement.

The Copyright Act does not define a level of originality required for a compilation. It depends on the case in question and the judge has the right to assess the originality of the compilation in question.

A work or creation is entitled to copyright protection on the basis of its *individual and original nature* deriving from the intellectual activity of the author. Copyright protection does not depend on quantitative, qualitative or aesthetic characteristics, or any judgement of the quality of the work. It means that the "sweat of the brow" is not sufficient for copyright protection in Hungary.

#### 1.3.3 Scope of Protection

*What is the scope of copyright protection of a compilation? To which extent can a compilation be copied without infringing the copyright in the compilation?*

Any database recognised as a compilation is protected by copyright. According to Article 16(1) of the Copyright Act, the authorisation of the creator of the database recognised as the author is necessary to use the database or any identifiable part thereof in any tangible or intangible form.

There is a possibility of free use as regulated in Articles 34 to 40 of the Copyright Act for every copyrightable work. The author's authorization is not required for authorized database users to perform the acts that are necessary for accessing the database's contents and properly using the database's contents [Art. 35(6)].

### 1.4 Sui generis Protection of Databases

#### 1.4.1 System of Protection and Subject Matter

*Does your country's law provide for sui generis protection of compilations of data such as databases? If so, is registration of the database required to secure sui generis protection? Does your country's sui generis system only cover databases which do not meet the criterion of originality or is there cumulative sui generis protection also for original databases protected by copyright?*

The Copyright Act - after having been amended as from 1 January 2002 - basically follows the provisions of the EU Directive 96/9/EC on the Legal Protection of Databases. The Copy-

right Act regulates the legal protection of databases and provides the maker of the database with a *sui generis* right. The *sui generis* database protection has been introduced in the Copyright Act in the framework of the so-called related rights, where neighbouring rights are also governed. In Hungary, no registration is needed to secure the *sui generis* protection. There is a cumulative *sui generis* protection in Hungary, i.e. those databases are also protected *sui generis*, which do meet the criterion of originality of the compilation.

#### 1.4.2 Criteria of Protection

*If your country's law provides for sui generis protection of databases what are the criteria of protection? If "substantial investment" is one of the criteria of protection, what is the level of investment required for an investment to be considered substantial?*

According to Article 84/A(5) of the Copyright Act the rights provided shall apply to the maker of the database if obtaining, verifying or presenting the contents of the database have required the investment of considerable resources. According to paragraph (6) the rights provided for shall apply to - as the maker of the database - the natural or legal person or business company without legal entity at whose initiative, in whose name and at whose risk the creation of the database occurred and who/which provided the necessary resources therefore. The Copyright Act does not specify the level or the amount of the "considerable resources" required. There is no legal practice in this matter yet, either.

#### 1.4.3 Rights granted and Scope of Protection

*If your country's law provides for sui generis protection of databases what are the rights granted to the database maker? If "extraction" and "re-utilisation" are covered by any right, how are these notions defined? What is the scope of the sui generis protection? If "substantial part" is relevant in determining the scope of protection, how is this concept defined?*

According to Article 84/A of the Copyright Act - unless otherwise ruled by legislation - the authorization of the maker of a database shall be required, affecting the whole or a substantial part of the contents of the database, for its reproduction by making copies of it ("extraction") and for making it available to the public through distribution of copies of the database or through communication to the public ("re-utilization"). The notion of distribution covers the following: release for commercial circulation through sale or by the transfer of the right of ownership in a different manner, and import into the country for purposes of commercial circulation and rental.

Apart from the protection granted to the maker in case of extraction and re-utilisation of substantial part of the database, the protection against repeated and systematic extraction and/or re-utilization of even insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of the database or which unreasonably prejudice the legitimate interests of the maker of the database shall belong also to the scope of rights of the maker as well.

#### 1.4.4 Limitations and Exceptions

*If your country's law provides for sui generis protection of databases are there any limitations or exceptions? If so, what are they (e.g. private use, scientific research, education, public security, government purposes)? Are there any compulsory licensing provisions under your country's sui generis protection regime?*

According to Article 84/B of the Copyright Act no authorization of the maker of the database shall be required for the extraction or re-utilization - whether repeated or systematic - of an insubstantial part of the contents of the database by a person authorized for the use of the database made available to the public. In case the right acquired for the use of just a specific part of the database, the provision mentioned above shall apply to only the part involved of the database. However, even such lawful user of a database, which has been

made available to the public, may not perform acts that conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

According to Article 84/C(1) an extract of even a substantial part of the contents of the database may be made by anyone for private purpose if it is not designed for earning or increasing income even in an indirect way. This provision shall not apply to databases operated by computer devices.

Under Article 84/C(2) a copy of even a substantial part of the contents of the database may be made - in a manner and to the extent consistent with the use involved - for purposes of school education and scientific research subject to the requirements of reference to the source and avoidance of earning or increasing income even in an indirect way.

Under Article 84/C(3) an extraction or re-utilization of even a substantial part of the contents of the database may be made - in a manner and to the extent consistent with the use involved - for purposes of evidence in proceedings before courts of justice, public administration or other authorities.

The above exceptions and limitations are applicable only with respect to those databases, which already have been made available to the public.

There are no compulsory licensing provisions in the Hungarian *sui generis* database rights regime.

#### *1.4.5 Duration of Protection*

*How long is the duration of the sui generis protection?*

According to Article 84/D of the Copyright Act the term of protection applying to the rights provided for shall run for fifteen years from the first day of the year following the year in which the database was first made available to the public, or for fifteen years from the first day of the year in which the database was completed in case it was not made available to the public during the term referred to.

The term of protection applying to the database as calculated according to the above shall recommence in case the contents of the database have undergone a substantial alteration as a result of which the altered database, as such, shall be rated as one completed with substantial resources. A substantial alteration of the database may be the result of successive additions, deletions and modifications.

#### *1.5 Possible Alternatives for a sui generis System*

##### *1.5.1 Unfair Competition Law*

*Does your country have a law of unfair competition? If so, does it have a role in the protection of databases? If so, to what extent?*

The Act LVII of 1996 on the Prohibition of Unfair Market Practices and of Restrictions of Competition ("Unfair Competition Act") was passed by the Parliament on 25 June 1996. This Act does not play relevant role in the protection of databases as such. Although the Unfair Competition Act explicitly prohibits the unfair obtaining, use and unauthorised disclosure of so-called business secrets, this does not provide either a direct protection for databases, or even an indirect one in case of databases, which do not include any data constituting business secret under the Unfair Competition Act.

On the other hand there might be an interpretation of the Unfair Competition Act - although such precedent has not occurred yet in the Hungarian court practice - according to which in certain circumstances a maker of the database could not prohibit the use of the database by another party if this prohibition of use would lead to hinder the creation of new products and services based on his database by addition of new economic and commercial values, as

this market behaviour could be interpreted according to the Unfair Competition Act as an abuse with dominant market position.

#### 1.5.2 Other Means of Protection

*Does your country provide for any other means of protecting databases? If so, in which legal areas and by which mechanisms (e.g. contract law)?*

Before the implementation of the *sui generis* protection of databases, a certain level of protection of the maker of a database within certain circumstances against unauthorised extractions or other unauthorised use of that database could be established on the basis of the Civil Code of Hungary, more specifically on the basis of the rule concerning withdrawal of so-called "enrichment gained without legal title". However due to the entering into force of the *sui generis* database protection based on the Copyright Act one can not refer to the general rule on enrichment gained without legal title according to the relevant legal practice of the Supreme Court anymore.

## 2. Proposals for Adoption of Uniform Rules

### 2.1 Legislation

*Should legislation be enacted to deal specifically with databases? If so, should national legislation be enacted or is there a need for an international treaty on the protection of databases?*

Apart from the already existing satisfactory level of the national database protection in Hungary, the Hungarian Group would welcome an international treaty on the protection of databases which would guarantee a modern *sui generis* database rights protection on a multilateral level.

On the other hand, the Hungarian Group sees it doubtful to reach a highest level multilateral treaty concerning protection of databases with real legislative benefits taking into account that there have been several modern regimes developed concerning the protection of databases both on national and multilateral levels both in Europe and in North America. Such regimes seem to provide a satisfactory level of protection for databases already now.

### 2.2 Definition of Database

*If you think that legislation should be enacted to deal specifically with databases what should the definition of "database" be? Should it extend to both electronic and non-electronic databases?*

Definition of database should be the following: collections of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed by electronic or other means. Thus, the scope of protection should cover both electronic and non-electronic databases.

### 2.3 Copyright Protection of Databases

*Do you think that copyright protection should be granted to databases? If so, what should the criteria of protection be? Do you think that the level of originality required for a database to be copyrightable should be low, so that "sweat of the brow" databases qualify as copyrightable? What should the scope of copyright protection be?*

In addition to the *sui generis* database protection, the Hungarian Group would promote the existence of copyright protection for databases on an international level with the following criteria: the copyright protection should be granted to databases consisting of compilations which by reason of the selection or the arrangements of their contents constitute intellectual creations. The copyright protection should be granted for compilations also in that case if the parts or elements thereof are not or cannot be under copyright protection. We do not see it necessary to define the level originality required for copyright protection be low, we would

promote an international regime which would not differentiate between criteria for copyright protection of copyrightable databases and that of other copyrighted works. Scope of copyright protection would cover the following exclusive rights for the copyright owner:

- reproduction right,
- distribution right,
- right of public performance and display,
- right of communication to the public, and
- right of adaptation, arrangements and other alteration.

## 2.4 *Sui generis Protection of Databases*

### 2.4.1 *System of Protection and Subject Matter*

*Do you think that sui generis legislation should be enacted to protect databases? If so, should there be a registration system to secure sui generis protection? Should the sui generis system only cover un-original databases or should there be the possibility to obtain cumulative sui generis protection also for original databases protected by copyright?*

The Hungarian Group would promote the existence of the *sui generis* legislation to be enacted to protect databases. We promote the introduction of a registration system, which would relate only to the registration of priority date in case of a database and to the person of the rights owner, without any examination of the criteria for database protection. We would promote a cumulative *sui generis* protection.

### 2.4.2 *Criteria of Protection*

*If you think that sui generis legislation should be enacted to protect databases, what should be the criteria of protection? If you think “substantial investment” should be one of the criteria of protection what should be the level of investment required for an investment to be considered substantial?*

The criteria of protection of *sui generis* right should be a substantial investment required for obtaining, verifying or presenting the contents of the database. According to the view of the Hungarian Group the level of investment required for an investment to be considered substantial should be developed by the national level legal practice, however on a legislative level indication of certain components to be taken into account as investment apart from cash investment could be advisable, such as substantial investment in time, infrastructure, research, etc.

### 2.4.3 *Rights granted and Scope of protection*

*What rights should be granted to the database maker? If you think that “extraction” and “re-utilisation” should be covered by the rights to be granted how should these notions be defined? If you think that “substantial part” should be relevant in determining the scope of protection, how should this concept be defined?*

The database maker should be granted the right to authorise the extraction and re-utilisation of whole or a substantial part of the contents of the database. Extraction should mean the reproduction by means of making copies; re-utilisation should mean making available to the public through distribution of copies or through communication to the public. Distribution should include release for commercial circulation through sale or by transfer of the right of ownership in a different manner and import into the country for purposes of commercial circulation as well as rental. Apart from the criterion of substantial part a separate level of protection should also be implemented for insubstantial parts of the content of the database against acts which conflict with a normal exploitation of the database or which unreasonably prejudice the legitimate interest of the maker of the database.

#### 2.4.4 Limitations and Exceptions

*Should limitations or exceptions be granted? If so, which ones (e.g. private use, scientific research, education, public security, government purposes)? Should there be any compulsory licensing provisions?*

Limitations and exceptions should be granted for private use, for school education and scientific research purposes if such are not designed for earning or increasing income even in an indirect way, as well as for jurisdiction, public administration, other authority proceedings. The Hungarian Group does not promote any compulsory licensing provisions to be enacted.

#### 2.4.5 Duration of Protection

*How long should the sui generis protection be?*

The term of the *sui generis* protection should be fifteen years from the first day of the year following the year in which the database was first made available to the public, or from the first day of the year in which the database was completed in case it has not been made available to the public during the term.

#### 2.4.6 Assessment of existing sui generis systems

*If your country already provides for sui generis protection of databases, do you think the system should be revised? If so, why and in what ways?*

The Hungarian Group does not think that a revision of the existing Hungarian *sui generis* protection system is necessary.

#### 2.5 Possible Alternatives for a sui generis system

*If your country does not have unfair competition rules or if your country's unfair competition law does not have a role in the protection of databases do you think your law should be changed, so as to provide database protection on the basis of unfair competition law? Should there be any other means of protecting databases which your country does not offer or not fully take into account? If so, which ones?*

According to the Hungarian court practice of the Supreme Court if specific rule is existing on the protection of an economic achievement no general unfair competition or civil law rule is applicable. That is to say, taking into account the existence of an autonomous special *sui generis* protection of databases as rights related to copyright, which also meets the requirement of the European level of legal protection, there is no need for a general unfair competition or civil law protection to be implemented.

On the other hand, there might be a legal practice to be developed in the future on the basis of the Unfair Competition Act according to which in certain circumstances a maker of the database could not prohibit the use of the database by another party if this prohibition of use would lead to hinder the creation of new products and services based on his database by addition of new economic and commercial values, as this market behaviour could be interpreted as an abuse with dominant market position.

### 3. Miscellaneous

We have no further comments.

### Summary

There is an up to date legal protection of databases under the Hungarian copyright law, which has been fully harmonised with the legislation of the European Union (EU Directive 96/9/EC on the Legal Protection of Databases). According to the Hungarian Copyright Act (Act No. LXXVI of

1999) a database shall mean collections of independent works, data or other material, which are systematically or methodically arranged and can be individually accessed by electronic or other means. The Hungarian regulation differentiates between types of databases, whether they - in addition to the so-called *sui generis* database protection - fulfil the legal requirement of copyright protection or they do not fall under copyright protection, but under only the *sui generis* database protection.

Copyright protection is provided for databases if the collection, arrangement or editing of their contents constitute individual, original intellectual creation. The *sui generis* database protection shall be provided to makers of databases if obtaining, verifying or presenting the contents of the database has required the investment of considerable amount of resources.

Rights-owner of copyright protection on a database shall be primarily that natural person, whose individual, original creation is the compilation in question. Rights-owner of the *sui generis* protection shall be the maker of the database, who can be either a natural or legal person, or a company without legal entity, at whose initiative, in whose name and at whose risk the creation of the database has been fulfilled and who/which provided the necessary resources to the realisation of the database.

Rights of copyright owners and limitations and exceptions from the copyright protection of original compilations are the same as provided for in case of any other copyrightable work under the Hungarian Copyright Act. Rights provided under the *sui generis* protection of a database for the maker thereof is to authorise or prohibit the reproduction either in whole or in part, the extraction and the distribution or communication to the public of the database. Limitations and exceptions from the *sui generis* protection are provided by the law in case of extraction of the contents of the database for private, educational and certain judicial and administrative purposes, if it is not designed for earning or increasing income even in an indirect way. Term of copyright protection of databases in case of original compilations is 70 years p.m.a., while in case of the *sui generis* protection 15 years from the first year following the year in which the database was first made available to the public, or was completed.

## **Résumé**

Quant à la protection juridique des bases de données, il y a une réglementation moderne dans le droit d'auteur hongrois, qui est entièrement conforme à la législation de l'Union européenne (Directive 96/9/CE du Parlement européen et du Conseil du 11 mars 1996 concernant la protection juridique des bases de données). Selon la loi du droit d'auteur hongroise (Loi No. LXXVI de 1999), on entend par base de données un recueil d'œuvres, de données ou d'autres éléments indépendants, disposés de manière systématique ou méthodique, et individuellement accessibles par des moyens électroniques ou d'une autre manière. La réglementation hongroise fait la distinction entre les bases de données qui bénéficient en même temps d'une protection *sui generis* et d'une protection de droit d'auteur et entre celles qui ne bénéficient que d'une protection *sui generis*.

La protection du droit d'auteur s'applique aux bases de données si le recueil ou la disposition du contenu de la base de données constitue une création intellectuelle individuelle, originale. La protection de base de données *sui generis* s'applique aux fabricants où l'obtention, la vérification ou la présentation du contenu de base de données ont exigé un investissement substantiel. En cas d'une base de données, le titulaire du droit d'auteur sera principalement la personne physique, dont la création individuelle, originale constitue la compilation en question. Le titulaire de la protection *sui generis* est le fabricant de la base de données, qui peut être une personne physique ou morale ou une société sans personnalité juridique, à l'initiative, au nom et au risque de laquelle la création de la base de données a été accomplie et qui a fourni les ressources nécessaires à la réalisation de la base de données.

Les droits du titulaire du droit d'auteur, les limitations et les exceptions de la protection du droit d'auteur de compilations originales sont les mêmes, comme prévu dans le cas de toutes autres oeuvres selon la loi du droit d'auteur hongroise. Selon la protection *sui generis*, les droits d'une base de données incluent pour le fabricant d'autoriser ou d'interdire la reproduction entière ou partielle, l'extraction et la distribution ou la communication au public de la base de données. La loi fournit les limitations et les exceptions de la protection *sui generis* lorsqu'il s'agit d'une extraction à des fins privées du contenu, à des fins d'enseignement et pour certains buts juridiques et administratifs, s'il n'est pas conçu pour gagner ou augmenter le revenu même d'une façon indirecte. Le terme de protection de droit d'auteur en cas des compilations originales est 70 ans p.m.a., tandis qu'en cas de la protection *sui generis*, la protection a une durée de 15 ans après le 1er janvier de l'année qui suit la date de la première publication ou de l'achèvement.

### **Zusammenfassung**

Es gibt eine moderne gesetzliche Regelung des Datenbank-Schutzes im ungarischen Urheberrechtsgesetz (Gesetz Nr. LXXVI vom Jahre 1999), die völlig mit der Gesetzgebung der Europäischen Union (EG-Direktive 96/9/EC auf dem Gesetzlichen Schutz von Datenbanken) harmonisiert ist. Nach dem ungarischen Urheberrechtsgesetz verkörpert eine Datenbank eine Sammlung von unabhängigen Werken, Daten oder anderem Material, die systematisch oder methodisch geordnet ist, und durch elektronische oder andere Mittel individuell zugegriffen werden kann. Die ungarische Regelung differenziert zwischen Datenbanken, die zusätzlich zu spezifischem - so genannten *sui generis* - Datenbank-Schutz die Anforderung des urheberrechtlichen Schutzes erfüllen, und Datenbanken, die nur unter dem *sui generis* Schutz stehen.

Urheberrechtlicher Schutz wird für Datenbanken bereitgestellt, wenn die Sammlung, Anordnung oder Redigieren ihres Inhalts eine individuelle, originelle intellektuelle Schaffung bedeutet. Der *sui generis* Datenbank-Schutz soll Herstellern von Datenbanken bereitgestellt werden, wenn die Erlangung, Nachprüfung oder die Präsentation des Inhalts der Datenbank die Investierung eines bedeutenden Betrages an Mitteln verlangt hat.

Die Inhaberin des urheberrechtlichen Schutzes auf einer Datenbank ist die natürliche Person, deren individuelle Schaffung die Kompilation darstellt. Die Inhaberin des *sui generis* Schutzes soll der Hersteller der Datenbank sein, der entweder eine natürliche oder gesetzliche Person oder eine Firma ohne gesetzliche Rechtspersönlichkeit sein kann, an dessen Initiative, in dessen Namen und an dessen Gefahr die Schaffung der Datenbank erfüllt worden ist, und von dem die notwendigen Mittel zur Realisierung der Datenbank bereitgestellt worden sind.

Rechte des urheberrechtlichen Inhabers, sowie Beschränkungen und Ausnahmen vom urheberrechtlich Schutz von originellen Kompilationen sind die gleichen wie sie im ungarischen Urheberrechtsgesetz für andere urheberrechtlich geschützte Werke geregelt sind. Unter dem *sui generis* Schutz einer Datenbank ist der Hersteller berechtigt, die Wiedererzeugung entweder in vollem Umfang oder teilweise, die Extraktion und die Verteilung oder Kommunikation zur Öffentlichkeit der Datenbank zu ermächtigen oder verbieten. Beschränkungen und Ausnahmen vom *sui generis* Schutz werden durch das Gesetz im Falle der Extraktion des Inhalts der Datenbank für private, für pädagogische, für gerichtliche und Administrationszwecke bereitgestellt, falls eine derartige Benutzung nicht zum Verdienen oder zum Einkommen bringen oder Einkommen auf indirekte Weise zu vergrößern dient. Die Laufzeit des urheberrechtlichen Schutzes beträgt im Falle origineller Kompilationen 70 Jahre p.m.a. Der *sui generis* Schutz dauert über 15 Jahre vom ersten Jahr nach dem Jahr an, in dem die Datenbank erstmalig der Öffentlichkeit zugänglich gemacht oder fertiggestellt wurde.