

Question Q235

National Group: Hungarian Group

Title: **Term of copyright protection**

Contributors: Dr. Gusztáv BACHER, Dr. Áron LÁSZLÓ, Dr. Zsófia LENDVAI

Reporter within Working Committee: Dr. Gábor FALUDI

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Questions

The purpose of Q235 is to explore the issues raised in relation to Term of protection. The Groups are invited to answer the following questions under their national laws:

I. Analysis of current law

- 1) Have the Berne Convention amended in 1979 (BC), TRIPS 1994 and the WIPO Copyright Treaty (WCT) been ratified by your countries? Please provide your answer in relation to each individual international instrument, and provide dates and details of ratification.

BC: accession, since February 14, 1922, deposit of ratification document took place on 11, September, 1972., promulgation of the Paris Act of BC by Law-Decree Nr. 4 of 1975.

WCT: Signature: January 29, 1997 Ratification: November 27, 1998, Promulgation: Act 49 of 2004.

TRIPS: Signature: ratification document deposited on 29, December, 1994., entry into force for Hungary 1 January 1995, Promulgation: Act 9 of 1998.

- 2) Have the minimal obligations in respect of Term of protection of copyright imposed by these international instruments been implemented in your countries' laws? By means of which legislation? Please respond in relation to each of RBC, TRIPS and WCT.

Yes, the former Copyright Act (Act 3 of 1969, hereafter: OCA) provided for the minimal term of protection in conformity with BC. OCA was amended in 1994 to harmonize with the Term of Protection Directive of the EU in 1994. As a result the OCA provided for a TRIPS + term of protection at the time of the adoption of the TRIPS and the same applies for the WCT.

Thus the Copyright Act (Act 76 of 1999, hereafter: CA) and also the OCA provided for a TRIPS+ (70 years) term of protection as of July, 1 1994.

- a) If the answer is no please specify (i) which obligations have not been implemented (ii) give any reasons why this has not proved possible and (iii) whether there are any current proposals for their implementation.

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- 3) Do your laws provide for TRIPS + obligations with respect to the Term of protection? Please provide details of any legislation that imposes this, and specify whether it is Domestic or Regional legislation?

The term of protection

*Article 31 CA (*as amended by Act 16 of 2013, taking effect on November, 1, 2013)*

(1) Copyright shall enjoy protection during the lifetime of the author and for seventy years following his death.

*(2) The seventy years' term of protection shall be calculated from the first day of the year following the death of the author and, in the case of *jointly created works*, from the first day of the year following the death of the joint author dying last.*

(3) If the identity of the author cannot be determined, the term of protection shall be seventy years calculated from the first day of the year following the year in which the work was first made public. However, should the author come forward during this period of time, the term of protection shall be calculated pursuant to Paragraph (2).

(4) In the case of a work made public in several parts, the year of the first publication shall be calculated for each part individually.

(5) The term of protection of a collectively created work shall be seventy years calculated from the first day of the year following the first publication of the work.

*(6) The term of protection of a cinematographic creation shall be calculated from the first day of the year following the death of the *following persons dying last, disregarding the fact whether the person is indicated as a joint author or not: the director of the film, the scriptwriter, the author of the dialogs and the composer of the music that has been created definitely for the purpose of the cinematographic creation*.*

(7) If the term of protection shall be calculated from a date other than the first day of the year following the death of the author, the author dying last or the joint author,

and the work is not made public within the seventy years' period following its creation, no further copyright protection shall be due to the work.

*The most recent amendment, indicated among (**) is the result of the transposition of Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights. The amendment does not touch upon the term of protection of authors' rights. It makes some minor changes in the term of joint works/co-authors, and gives a more detailed description of the authors of audiovisual creations.*

As we mentioned in the response to Q 2, the basic EU Directive on the term of protection (then with the original number: 98/93/EC) was transposed in 1994.

- 4) Have the Terms moved in an upward direction with ensuing revisions of your domestic laws, or as a result of any obligations derived from regional laws? Please provide details. Are there any current proposals for continued increases in Term of protection generally, or in relation to any specified categories of work? Please specify.

The Terms moved in an upward direction as a result of Hungary's obligations arising out of the EU harmonization. The term of protection of performances and sound recordings that fix the performances will increase as of November 1, 2013 to 70 years from 50 years, if the sound recordings have been put into circulation during the term of protection. If the sound recording has not been put into circulation during the term of protection the term of protection remains 50 years. The 70 years term of protection is to be calculated from the first day of the year following the one in which the phonogram was first put into circulation or from the first day of the year following the one in which the first communication to the public of the sound recording occurred.

- 5) What is the existing rationale/justification under your laws for the existing Terms of copyright protection? In particular, is the rationale/justification a merely economical one or are other reasons given? Have there been/is there currently, any academic/judicial or general criticism of this rationale? Are you aware of any economical, sociological or other studies justifying or criticizing the current Term?

The rationale is clear and is not criticized among IP specialists. It is obviously criticized by the internet community and scholars who share the views of the internet community (some members of one party represented in the Parliament share pirate parties' views).

The rationale is the economic rationale, in other words the incentive provided by the copyright protection and within this framework the term of protection. Some critics misunderstand the incentive, stating that the pma term of protection may not provide an incentive for the legal successors and that therefore the term of protection may not exceed the life of authors. Moreover, the term of protection should be much shorter in the digital era. The Group is of the view that the incentive cannot be construed only as an individual incentive for the author and his/her legal successors. The incentive is of a general nature conveying the message that should the creator create a work that has permanent or recurring success and therefore it is worth exploiting the work for a long period of time, the owner of the copyright will be rewarded. Thus the long term of protection touches upon the commercial users of the durable and timeless achievements only. If the work is only used for a short period,

the long term of protection does not have a disturbing effect, since nobody will be affected by the existing copyright.

II. Proposals for harmonisation

Groups are invited to put forward proposals for the adoption of harmonised rules in relation to Term of copyright protection. More specifically, the Groups are invited to answer the following questions:

- 6) In your opinion do the current Terms of copyright protection provide "adequate" standards of protection? Is this protection adequate for all interested parties i.e. authors/commercial providers/consumers? Please give reasons for your answer.

Yes, the Hungarian group thinks that the term of protection provides adequate standards of protection. The protection shall namely be regarded in conjunction with the long list of internal and outside restrictions of copyright, e.g.:

- free uses for the benefit of various stakeholders and the public (e.g. the LAMS exceptions),*
- the exceptions from the notion of copyright (news, facts, ideas, algorithms, principles, folklore, official documents etc),*
- the shorter term of protection for the objects of protection of related rights,*
- the right of decompilation with regards to software,*
- the impact of the freedom of expression /information on the assertion of copyright,*
- the impact of competition law (prohibition of abuse of monopoly, and of licensing practices that exclude, restrict or distort competition).*

- 7) Do you think that there is a need for an upper limit on Term in international treaties? Please provide your reasons.

No. The comparison of the terms of protection in the BC suffices. In some regions, for example in the European Union, there is a uniform term of protection, so the comparison of the terms does not apply in the EU, but it applies in EU – non EU relations.

- 8) Would you like to see the Terms of copyright protection changed? If yes should the changes take place within the confines of the existing international treaties? Please give your reasons.

No. the Hungarian Group does not think that the term of protection would create a real problem. If the right holder cannot be found or identified, the orphan work regimes may help to license the various uses. The orphan work regimes should however be developed where there is no such a regime, improved and harmonized.

- 9) If your answer to 8 is yes and you would like to see the current Term of protection changed, please indicate whether changes should take place in relation to all categories of work, or only in relation to specific categories of work. If only in relation to specific categories of work, please specify which categories of work, and give your reasons for this choice.

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- 10) Please list the factors or criteria that should in your view be used to arrive upon the optimum Term of copyright protection for any specific work, or in general. What in your opinions would this optimum Term(s) be?
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Summary

Hungary has ratified, the Berne Convention, as amended in 1979 (BC), TRIPS and the WIPO Copyright Treaty (WCT).

As of July 1, 1994, Hungarian law provides for a TRIPS+ (70 years) term of protection.

The rationale behind the term of protection is the incentive provided by the copyright protection. The incentive cannot be construed only as an individual incentive for the author and his/her legal successors. The incentive is of a general nature conveying the message that should the creator create a work that has permanent or recurring success and therefore it is worth exploiting the work for a long period of time, the owner of the copyright will be rewarded. Thus, the long term of protection touches upon the commercial users of the durable and timeless achievements only. If the work is only used for a short period, the long term of protection does not have a disturbing effect for anybody, since nobody will be affected by the existing copyright.

The Hungarian group is of the opinion that the term of protection provides adequate standards of protection. The protection shall be regarded in conjunction with the long list of internal and outside restrictions/limitations of the exclusive rights.

The Hungarian Group does not think that the term of protection should be changed. The current term does not create a real problem in the society in connection with the use of works.

Nevertheless, the orphan work regimes should however be developed / harmonized.

Résumé

Hongrie a ratifié la Convention de Berne, modifiée en 1979 (BC), ADPIC et le traité de l'OMPI (WCT).

A compter du 1 juillet 1994, la loi hongroise prévoit une ADPIC+ (70 ans) pour la durée de protection.

La durée de protection est justifiée par l'incitation assurée par la protection du droit d'auteur. L'incitation ne peut être interprétée en tant qu'une incitation individuelle pour l'auteur et son / ses successeurs légaux. L'incitation est de nature générale qui transmet le message que si l'auteur crée un œuvre d'un succès permanent ou récurrent et ainsi il est rentable d'exploiter l'œuvre pendant une longue période, le propriétaire du droit d'auteur sera récompensé. Ainsi, la durée de protection concerne seulement les utilisateurs commerciaux des œuvres durables et intemporels. Si l'œuvre est utilisée seulement pour une courte période, la durée de protection n'a pas d'effet perturbateur pour personne, puisque personne ne sera affecté par le droit d'auteur existant.

Le groupe hongrois est d'avis que la durée de protection fournit des normes adéquates de protection. La protection doit être considérée en conjonction avec la longue liste de restrictions internes et externes / limitations des droits exclusifs.

Selon le Groupe Hongrois, la durée de protection ne doit pas être changée. La durée actuelle ne constitue pas de problème réel pour la société concernant l'utilisation des œuvres.

Néanmoins, les régimes des œuvres orphelins doivent cependant être développés / harmonisés.

Zusammenfassung

Ungarn hat die Berner Übereinkunft gemäß Ergänzung aus dem Jahre 1979 (BC), das TRIPS-Abkommen und den WIPO-Urheberrechtsvertrag (WCT) ratifiziert.

Seit dem 1. Juli 1994 garantiert ungarisches Recht die Dauer des Urheberrechtsschutzes nach TRIPS+ (70 Jahre).

Sinn der Schutzdauer ist der Anreiz, den der Urheberrechtsschutz darstellt. Der Anreiz sollte nicht nur als individueller Anreiz für den/die Autor(in) und seine(n)/ihre(n) Rechtsnachfolger angesehen werden. Der Anreiz muss eine allgemeine Nachricht verbreiten, wonach der Inhaber des Urheberrechts belohnt wird, falls seine Arbeit langzeitigen oder wiederholten Erfolg hat, und die Ausschöpfung seiner Arbeit daher lohend ist. Daher beeinflusst der langzeitige Schutz nur gewerbliche Nutzer von langlebigen und zeitlosen Werken. Sollte das Werk nur für eine kurze Zeit genutzt werden, so stört die lange Schutzdauer nicht, da diese auf niemanden eine Wirkung hat.

Die ungarische Gruppe ist der Meinung, dass die Schutzdauer ein angemessenes Schutzniveau darstellt. Der Schutz sollte in Verbindung mit den zahlreichen internen und externen Beschränkungen/Vorbehalten der Ausschließlichkeitsrechte betrachtet werden.

Die ungarische Gruppe ist nicht der Ansicht, dass die Schutzdauer geändert werden sollte. Die aktuelle Schutzdauer bewirkt in der Gesellschaft während der Nutzung der Werke keine wirklichen Probleme.

Dennoch sollten Bestimmungen zu verwaisten Werken ausgearbeitet, bzw. harmonisiert werden.