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I. Current law and practice

Please answer all questions in Part I on the basis of your Group's current law.

A. Protection of mere data

1) Can mere data (in general or some specific mere data) be subject to a property right / IP right?

No.

There is no general property right / IP right for mere data. There is specific legislation which addresses the protection of certain types of information, but this does not address mere data either. Although the practical effect of such specific protection is that certain types of mere data is protected under such specific legislation, we would refrain from concluding that this creates a property right for mere data.

2) Is mere data protected by provisions other than a property right / IP right?

Yes.

If yes, please answer the following sub-questions:

a) What type of protection is available?

- i. Data protection (GDPR: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=HU#d1e1374-1-1>, Info Act: <https://net.jogtar.hu/jogszabaly?docid=a1100112.tv>)
- ii. Protection of criminal offence data (Info Act: <https://net.jogtar.hu/jogszabaly?docid=a1100112.tv>)
- iii. Protection of national data asset ("nemzeti adatvagyon" Act CLVII of 2010: <https://net.jogtar.hu/jogszabaly?docid=a1000157.tv>)
- iv. Protection of classified information ("minősített adat" Act CLV of 2009: <https://net.jogtar.hu/jogszabaly?docid=a0900155.tv>)
- v. Protection of public service media assets ("közszolgálati médiavagyon" Act CLXXXV of 2010 Art. 100: <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>)
- vi. Protection of national film assets ("nemzeti filmvagyon" Act II of 2004 Chapter 1/A: <https://net.jogtar.hu/jogszabaly?docid=a0400002.tv>)
- vii. Protection of data relating to human genetics ("humángenetikai adat" Act XXI of 2008: <https://net.jogtar.hu/jogszabaly?docid=a0800021.tv>)
- viii. Tax secrecy ("adótitok" Act CL of 2017 Art. 127: <https://net.jogtar.hu/jogszabaly?docid=a1700150.tv>)

- ix. Protection of trade secrets (Act LIV of 2018: <https://net.jogtar.hu/jogszabaly?docid=A1800054.TV>)

b) What are the requirements for such protection?

- i. Personal data must be information relating to an identified or identifiable natural person ('data subject').
- ii. Criminal offence data shall mean personal data that might be attributed to the data subject or criminal records of the data subject that is processed by law enforcement authorities entitled to preclude criminal proceedings or investigations, or by penal institutions during or prior to criminal proceedings in connection with a crime or criminal proceedings.
- iii. Public information, personal data and information on public interest processed by public authorities fall under the scope of national data assets.
- iv. Data has to be formally qualified as classified information by the authorised public authority. It can be either 'national' or 'foreign' classified information.
- v. 'Public service media assets' shall mean cinematographic and other audio visual works, radio programs, sound recordings and other documents incidental to media services representing cultural values, copyrights and certain related rights of photographs or any other licenses of the aforementioned, and the physical media containing the aforementioned works (e.g. discs, tapes, cassettes, paper based documents, music notes) ordered by Hungary's state-owned national public-service broadcasting organisation (MTVA), and its predecessors, produced on any legal grounds, obtained by purchase or obtained or created in whole or in part under use contracts or any other form of agreement.
- vi. Motion picture rights owned by the Hungarian state belong to national film assets (except those falling under the scope of public service media assets).
- vii. Data relating to human genetics is all data in connection with the biological material sample originating from a human used in accordance with the provisions of Act XXI of 2008 (<https://net.jogtar.hu/jogszabaly?docid=a0800021.tv>).
- viii. Tax secrecy is every data, document, decision, fact, circumstances or other document that concerns taxation.
- ix. Trade secret means: (i) a fact, information, other data or a compilation of these, (ii) that relates to commercial activity, (iii) which is secret in the sense that it is not, as a body or in the precise configuration and compilation of its components, generally known among or readily accessible to persons usually performing the affected commercial activity, (iv) and therefore it has pecuniary value, and (v) which has been subject to reasonable steps under the given circumstances, by the person lawfully in control of the information, to keep it secret. According to Section 1(2) of the Trade Secrets Act, protected knowledge (know-how) is also classified as trade secret and means: (i) a technical, economic or organisational knowledge, solution, experience or any compilation of the foregoing (ii) which is held in a form enabling identification.

c) Who is the person entitled?

- i. The data subject, an identified or identifiable natural person.
- ii. Only State or municipal authorities which are competent in proceedings where criminal offence data is processed.
- iii. Public authorities are entitled to process this data and only certain other bodies can engage in the data processing as data processor.
- iv. The authorised public authority or those whom are granted the right to access classified information.
- v. The Hungarian State, but MTVA exercises the propriety rights.
- vi. The Hungarian State, but the National Film Institute of Hungary exercises the property rights.
- vii. The data subject who has given a genetic sample.
- viii. Those who get to know this data because of their duties and the National Tax Authority.
- ix. The trade secret holder, i.e., an entity lawfully controlling a trade secret whose economic, financial or trade interest would be infringed by the infringement of the right in the trade secret.

d) What acts are prohibited for third parties to avoid infringement?

- i. Third parties, i.e., data controllers and processors, must not engage in data processing without a legal basis, specific legitimate purposes and a definite retention period. The data controller must also provide the data subject with information on data processing. Further restrictions can be found in the GDPR and the Hungarian Info Act.
- ii. Third parties (other than State or municipal authorities) must not engage in processing of criminal offence data.
- iii. Third parties must not process the personal data that may fall under the scope of national data assets.
- iv. Third parties must not have access to this data, it must not be disclosed, acquired, altered, used or made unavailable.
- v. Public service media assets may not be transferred or encumbered in any way, either in full or in part.
- vi. Third parties cannot acquire the ownership of these films.
- vii. The data can only be processed for the purpose of genetic research, examination and by a human genetic institute / expert or doctor or under certain circumstances the DPO of the institute.
- viii. Third persons must not get to know this data.
- ix. The person who unlawfully acquires, uses or discloses a trade secret infringes the right in the trade secret.

e) Are mere data marketable? If so, are specific rules in contract law applicable?

- i. Personal data is principally not marketable, but the Hungarian Competition Authority has established in its Facebook decision (English language press release of the Hungarian Competition Authority here: https://www.gvh.hu/en/press_room/press_releases/press_releases_2019/gvh-imposed-a-fine-of-eur-3.6-m-on-facebook) that a user can pay with his / her data to use a service.
- ii. No, it is not.
- iii. No, it is not.
- iv. No, it is not.
- v. No, it is not.
- vi. No, it is not.
- vii. No, it is not.
- viii. No, it is not.
- ix. The trade secret holder may transfer the right in the trade secret in whole or in part (contract for the transfer of rights in trade secrets) and also may provide authorisation to another person to use the trade secret (trade secret use contract).

f) Does your legislation/case law contain specific exceptions to this protection (e.g. access right for data mining, scientist research, etc.)?

- i. There are no exceptions to this protection. Nevertheless, if personal data is “depersonalised” (i.e. by pseudonymisation or anonymisation), it can be used for further purposes (e.g. archiving purposes in the public interest, scientific or historical research or statistical purposes, see also Act CLV of 2016 on official statistics: <https://net.jogtar.hu/jogszabaly?docid=a1600155.tv>).
- ii. No, there are no exceptions.
- iii. There are several exceptions. All data that is considered public information or data of public interest shall be freely accessible for all citizens.
- iv. No, there are no exceptions.
- v. The prohibition in relation to public service media assets does prevail over copyright, neighbouring rights and other use rights that may exist on specific components of public service media assets. MTVA may release to the public media service provider works classified as public service media assets—for which no special authorisation and no payment of any fee is required—for the purpose of fulfilment of its public service duty, such as in particular broadcasting, as well as authentic works and other intellectual property falling outside the scope of public service media assets, but in respect of which MTVA has the right to use. The public media service provider has the right to use any public service media assets free of charge.
- vi. Yes, any third parties can have the right to use.

- vii. Under certain circumstances pseudonymised or anonymised human genetic data can be processed by third persons as well.
- viii. Yes, for instance, public company data, or data upon which the data subject is not identifiable.
- ix. The acquisition of a trade secret shall not qualify as the infringement of the right in the trade secret if it is obtained by any of the following means: a) development, discovery or creation independent from the trade secret holder, b) observation, study or testing of a publicly available or lawfully acquired product or of a lawfully used service, provided that the acquirer of the trade secret was free from any duty to limit the acquisition or keeping of the trade secret, in particular from an obligation of confidentiality, c) exercise of the right of employees or employees representatives to information and consultation to the extent necessary, with the exception of technical knowledge and solutions within the scope of protected knowledge, or d) any other conduct which is in conformity with the requirement of good faith and fair dealing, and is generally expected under the given circumstances.

B. Protection of databases

3) Can a database be subject to a property right / IP right?

Yes.

If yes, please answer the following sub-questions:

a) What type of property right / IP right would this be?

In line with EU law, Hungarian law confers *sui generis* copyright protection on databases (Act LXXVI of 1999 on Copyright: https://www.sztnh.gov.hu/sites/default/files/English/jogforras/1999_LXXVI_Szjt_2014.03.15_EN.pdf).

b) What are the requirements for such protection?

The Copyright Act defines database as a collection of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed by computer devices or other means.

The requirements for protection are that a substantial investment has been required to obtain, verify or present the content of the database.

c) Who is the owner of this property right?

The owner of the right is the creator of the database who is the natural or legal person at whose initiative, in whose name and at whose risk the creation of the database occurred, and who or which provided the necessary investments.

d) What acts are prohibited for third parties to avoid infringement?

- It is prohibited to extract or re-utilise the whole or a substantial part of the content of the database without the right-owner's consent of the maker;
- It is prohibited to repeatedly and systematically extract or re-utilise even an insignificant part of the content of the database without the right-owner's consent;

- Not even in the case of lawful use may the user perform acts which conflict with the proper use of the database, or unreasonably prejudice the legitimate interests of the maker of the database.

e) Does your legislation/case law contain specific exceptions to this protection (e.g. access right for data mining, scientist research, etc.)?

There are several exceptions.

- The content of the database may be extracted for private purpose (if it is not intended, either directly or indirectly, for earning or increasing income);
- Making a copy of a substantial part of the content of the database for purposes of school education and scientific research, or for the benefit of disabled people;
- Extraction or re-utilisation of a substantial part of the content of the database may be made for purposes of evidence in court, administrative or other official proceedings.

4) Are databases protected by any provision other than a property right / IP right?

No, there are no other provisions for the protection of databases.

C. Public Sector Information (PSI)

5) Does your legislation contain regulation/case law regarding PSI? if YES, please explain.

Yes. As the Study Guideline does not contain a clear definition for Public Sector Information (hereinafter: **PSI**), we assume that PSI covers all sorts of data generated by public sector bodies - e.g. maps, meteorological, legal, traffic, financial and economic information - that can be re-used by anyone in innovative products, such as car navigation systems, weather forecasts, and travel information applications that can be downloaded on smart phones. Hungary has implemented the EU Directive on the re-use of public sector information (Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information) by Act LXIII of 2012 on the re-use of public sector information (hereinafter: **PSI Act**).

Under the PSI Act, PSI means collectively 'public information' and 'information of public interest' as defined by the Info Act. 'Public Information' means any known fact, data and information, other than personal data, that are processed and/or used by any person or body attending to statutory State or municipal government functions, or performing other public duties provided for by the relevant legislation (including those data pertaining to the activities of the given person or body), irrespective of the method or format in which it is recorded, and whether autonomous or part of a compilation, such as, in particular, data relating to powers and competencies, organisational structures, professional activities and the evaluation of such activities covering various aspects thereof, such as efficiency, the types of data held and the regulations governing operations, as well as data relating to financial management and to contracts concluded. 'Information of public interest' means any data, other than public information, that are prescribed by law to be published, made available or otherwise disclosed for the benefit of the general public.

The PSI Act defines its scope for the re-use of PSI and cultural PSI (information held by cultural establishments, such as museums, libraries, archives, etc.). The PSI Act regulates the method of re-using PSI in detail by way of setting up the request for re-use.

6) Is there a right to access such PSI?

Yes. A written request should be submitted to the entity/body performing public duties (hereinafter: **Body**) which processes the given data. The Body examines the request without undue delay, but within a maximum of five days from receipt of the request. The Body has 20 days to decide on the merits.

In order to ensure the quality, continuity and the security of the data transfer, the PSI Act obliges the parties, i.e., the requester and the Body) to conclude a so-called re-use agreement, i.e. in order to set the conditions and regularity of the data transfer which provides an adequate guarantee for high quality service of the data flow.

In order to maximise the fees, bodies performing public duties can only set a fee based on their actual costs, and a profit margin of up to 5%.

The PSI Act with regard to the format of data transmission, prefers a format that allows electronic, automatic processing and explicitly allows the possibility to connect directly to the State database and retrieve data instead of physically transmitting such data.

D. Health data

7) Does your legislation contain regulation/case law regarding health data? If YES, please explain.

No.

With regard to the scope of the study, in Hungary there is no specific regulation on non-personal health data.

The Hungarian legislation however contains regulations regarding health related personal data. Thus, processing (accessing) such data is limited in line with the data subject's right of informational self-determination, and the particular rules are regulated under the legal regime of general and sectoral data protection law.

8) Is there a right to access such information?

No.

As there is no specific regulation on non-personal health data falling under the scope of the study, there are no specific rules granting access to such data.

The CDSM Directive, Directive (EU) 2019/790, however indirectly provides certain rules applicable in the context of TDM (text and data mining) activities relative to (non-personal) health data as it grants a mandatory copyright (and related rights) exception and an "optional" exception when accessing data by research organisations and cultural heritage organisations for scientific research purposes and other entities for other (commercial and non-commercial) purposes. The Member States of the EU must provide measures for the transposition of the Directive by 7 June 2021. The effective Hungarian Copyright Act is yet to be modified in accordance with the said rules.

II. Policy considerations and proposals for improvements of your Group's current law Could any of the following aspects of your Group's current law or practice relating to rights in data b improved? If YES, please explain and answer each of the sub- questions.

9) Protection of mere data? a) Requirements for such protection(s)? b) Ownership of the right(s)? c) Scope of the protection? d) Exceptions to this protection?

No, it is well regulated.

10) Protection of databases? a) Requirements for such protection(s)? b) Ownership of the right(s)? c) Scope of the protection? d) Exceptions to this protection?

No, it is well regulated.

11) Rules on contract law, e.g., prohibition of contractual override, etc.?

Yes.

The CDSM Directive provides for certain mandatory copyright (and related rights) exceptions which rules may not be overridden by contractual clauses; thus, upon meeting the prescribed requirements, access cannot be denied on the basis of the right-holder's copyright or related rights. Summarising these requirements, the mandatory exception is applicable for research organisations and cultural heritage organisations for scientific research purposes, if the data is made lawfully accessible or freely available.

The Member States of the EU must provide measures for the transposition of the Directive by 7 June 2021. The effective Hungarian Copyright Act is yet to be modified in accordance with the said rules.

12) Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

The Hungarian Group is of the view that the current law properly regulates access to PSI.

III. Proposals for harmonisation

Please consult with relevant in-house / industry members of your Group in responding to Part III.

13) In your opinion, should the protection of mere data and/or database be harmonized? For what reasons?

Yes. The protection of mere data that do not qualify as any object of intellectual property, and disregarding, whether they are structured or arranged in a systematic way, should be harmonized. The reason for this opinion is the same, which constitutes the basis of the harmonization of the protection of objects of IP rights. Mere data have economic value in our digital environment, even if the data are personal, and the exploitation of mere data is per se trans-border, and occurs/may occur over the internet. Different national solutions may lead to distortion of the market that develops via the exploitation of the data.

Protection of mere data

14) Should mere data be subject to a specific protection, e.g. an IP right or other type of right?

Yes, it should be regulated via an IP type economic right, as a milestone on the way to protection of big data and other data driven commercial activities. Personal data of the consumer are already acknowledged as a consideration (economic value) for digital services in the EU Directive 2019/770 if the provision of data is not inseparable from the provision of the services, and the use of the personal data occurs with business purposes.

15) If yes, what should be the requirements for such protection?

Any data might be subject to protection, provided that such data might be used either as part of big data, or as information for another party to be used for gaining profit or economic advantage. Data that are available for the public, or data that are provided under another regime (trade secrets, objects of IP protection, e.g. works, protected by copyright), are not eligible for this protection. In other words the legal protection may not be cumulated. Government data might also be regarded as an exception to the protection or might be owned by governments. (As a comparison, please see the Crown's copyright.)

16) Who should be the owner of this right / IP right?

As far as personal data are concerned, the natural persons. As far as other data, the persons /entities that lawfully control/generate the data.

17) What acts should be prohibited to third parties to avoid infringement?

The extraction of the data and the utilisation of the data for gaining profit or other economic advantage.

18) Which exceptions, if any, should apply to this protection (e.g. access right for data mining, etc.)?

Access right for data mining made with strictly non-profit research purposes, access right for overriding public interest purposes provided for in the relevant acts (following the legal solution of access to personal data for well-defined public interest purposes).

19) What role should contract law play (e.g., prohibition of contractual override)?

The right to the data shall be transferable, and licensable, save for personal data, as enumerated (e.g. health data) and the prohibition of the circumvention of the exceptions should also be provided for.

Protection of databases

20) Should databases be subject to a specific protection, e.g. an IP right or other type of right?

No, other than the one already in place.

21) If yes, what should be the requirements for such protection?

N/A

22) Who should be the owner of this right / IP right?

N/A

23) What acts should be prohibited to third parties to avoid infringement?

N/A

24) Which exception should apply to this protection (e.g. access right for data mining, etc.)?

N/A

25) What role should contract law play (e.g. prohibition of contractual override)?

N/A

Specific regimes

26) Should Public Sector Information (PSI) be subject to a specific regime, e.g. regarding the control and access to such data/databases? If YES, please explain the desirable regime.

Yes. As seen in the current regulation, PSI is already subject to a specific regime. We are of the view that PSI is valuable data and reuse of such information would result in innovative new services and applications therefore access to such data should be regulated in a verifiable way.

27) Should health data be subject to a specific regime, e.g. regarding the control and access to such data/databases? If YES, please explain the desirable regime.

Yes.

With regard to the nature of the data, its strategic importance and – depending on the purpose of the use – its potential effect on the individual's health condition, it might be desirable to further regulate the access and control to such data.

With regard to the above reasoning, a sector-specific approach might be desirable combined with a general access regime.

General

28) Please comment on any additional issues concerning any additional aspect of Rights in Data you consider relevant to this Study Question.

No additional issues to mention.

29) Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.

Note from the Hungarian Group: We reached out to industry members, but due to the COVID-19 situation we were unable to collect any insights.