

Q282



National Group: Hungary
Title: **Moral rights**
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Questions

I. Current law and practice

Please answer the below questions with regard to your Group's current law and practice.

References to “moral rights” below are used to encompass all legal rights and concepts used to provide protection to the non-economic rights of authors, regardless of whether they are referred to as “moral rights”.

References to “moral rights” cover only moral rights in copyright law and not moral rights in related rights/neighbouring rights laws (e.g., rights on the performance), unless expressly stated otherwise.

This also applies to Parts II and III.

Definition of moral rights

1) a) Does your legislation and/or case law regarding copyright recognize moral rights?

Yes, in our Hungarian Copyright Act (Act LXXVI of 1999 as amended, hereinafter the ‘HCA’).

b) Are moral rights recognized outside copyright law?

YES

Our industrial property codes save for the Hungarian Trademark Act (Act XI of 1997) recognize moral rights of the inventor or designer, respectively. In addition, the personality rights provisions of the Hungarian Civil Code (Act V of 2013)- as a background to all IP codes- apply if moral/personality rights of authors/ inventors other than those listed in the IP codes are

infringed. In addition, the provision of the Civil Code on solatio doloris (§ 2.52) applies in all cases, where the moral rights of authors/inventors listed in the IP codes are infringed and the preconditions of the adjudication of solatio doloris under the Civil Code are met.

Patent Act (Act XXXIII of 1995)

Art. 7

- (1) The person who has created an invention shall be deemed to be the inventor.
- (2) Unless a final court decision rules to the contrary, the person originally mentioned as such in the patent application or the person entered as such after the modification under Article 55(2a) of the relevant entry in the Patent Register shall be deemed to be the inventor.
- (3) If two or more persons have made an invention jointly, their shares of authorship shall be regarded as equal in the absence of an indication originally mentioned in the patent application stating the contrary.
- (4) Unless a final court decision rules to the contrary, the shares of authorship originally stated in the patent application, those determined under paragraph (3) or those entered after the modification under Article 55(2a) of the relevant entry in the Patent Register shall be deemed applicable.
- (5) The inventor shall have the right to be mentioned as such in the patent documents. Published patent documents shall not mention the inventor if he so requests in writing.
- (7) Prior to the publication of the patent application, an invention may only be disclosed with the consent of the inventor or his successor in title.

Design Act (Act XLVIII of 2001)

Art. 12

- (1) The person who has created the design shall be deemed to be the designer.
- (2) Unless a final court decision rules to the contrary, the person originally mentioned as such in the design application or the person entered as such after the modification of the relevant entry in the Design Register shall be deemed to be the designer.
- (3) If two or more persons have created a design jointly, their shares of authorship shall be regarded as equal in the absence of an indication originally mentioned in the design application stating the contrary.
- (4) Unless a final court decision rules to the contrary, the shares of authorship originally stated in the design application, those determined under paragraph (3) or those entered after the modification of the relevant entry in the Design Register shall be deemed applicable.
- (5) The designer shall have the right to be mentioned as such in the design protection documents. Design protection documents made available to the public shall not mention the designer's name if he so requests in writing.
- (7) Prior to the grant of the design protection, the design may only be disclosed with the consent of the designer or his successor in title.

Utility model Act (Act XXXVIII of 1991)

Art. 6 The inventor of the utility model is the person who has created the utility model.

Art. 9 In any other matters concerning the moral rights of the inventor of the utility model (...) the provisions of the Patent Act on the moral rights of the inventor(...) shall apply mutatis mutandis.

Civil Code, Act V of 2013, PART FOUR

Section 2:55 [Subsidiary application]

This Act shall apply to matters falling within its scope which are not governed by laws on copyright and industrial property rights and on the protection of trade secrets.

Section 2:52 [Solatio doloris/grievance award]

(1) Any person whose personality rights have been infringed may claim a grievance award for non-material harm done to him.

- c) What is the purpose of moral rights (the philosophy behind moral rights), e.g., to protect the work itself, the author, the public, etc.?

To acknowledge the inseparable connection between the intellectual creation and its creator, as well as to protect the creative freedom of speech, while the economic rights shall express the property type character of the legal protection under the auspices of intellectual property law.

- 2) Are all types of works protected by moral rights or are moral rights restricted and/or excluded for certain categories of works (software, databases, architecture, etc.)?

All categories of work are protected in the same way by law, however the well-established case law of the Hungarian Courts set different requirements with regard to some aspects of practicing the moral rights. E.g. indicating the name of the author is part of the moral rights, but the name shall be indicated in a manner customary in the trade and appropriate to the nature of the use. For further details see the explanation of the Hungarian Group below.

Categories of moral rights

- 3) What are the different categories of moral rights, e.g., right of attribution, rights of integrity (distortion or modification), rights of disclosure, rights of withdrawal, right to prevent use in association with a product, service, cause or institution, etc.? Please give a short definition of each category.

Authors:

Rights of disclosure

Section 10 of HCA

(1) The author shall decide whether his work may be made public.

(2) Providing information on the substantial content of the work to the public before the making public of the work shall require the consent of the author.

(3) Under a licence contract, unless otherwise provided therein, the consent of the author to make information on the content of the work public in a manner complying with the purpose of the use shall be deemed given.

(4) For works found after the death of the author, the intention of the author to make the work public shall be presumed in the absence of statements to the contrary by the author or their legal successors or unless it is proven to the contrary in any other manner.

Rights of withdrawal

Section 11 of HCA

If there is due cause, the author shall be entitled to withdraw in writing his consent to making their work public and to prohibit the further use of his work made public; however, the author shall be liable for the reimbursement of damage having arisen until such a statement is made. The withdrawal shall not affect the employer's right to use the work and shall not prevent the party who acquired the economic rights through transfer from using the work based upon those rights.

Right of attribution

Indicating the name of the author - Section 12 of the HCA

(1) The author shall be entitled to be indicated as the author on his work and, depending on the length and nature of the communication, in the communication relating to his work. Reference to the author shall also be made in all cases where any part of the author's work is included, quoted or reviewed in another work (right of attribution). The author shall be entitled to exercise his right of attribution depending on the nature of the use, in a manner conforming thereto.

(2) The name of the author of a work shall also be indicated on the adaptation, transformation or translation of the work.

(3) The author shall be entitled to make his work public without having his name indicated or under a pseudonym. The author of a work made public under his name shall be entitled to stipulate that his work be published without the indication of his name in instances of new and lawful use.

(4) The author shall be entitled to claim that his authorship not be questioned.

Protection of the integrity of the work

Section 13 of HCA

If a distortion, mutilation or other alteration of the author's work or any other misuse relating to the author's work prejudices the honour or good reputation of the author, it shall be considered an infringement of the author's moral rights.

Exception and limitations to moral rights

- 4) Does your legislation and case law provide exceptions and/or limitations to moral rights, e.g., for specific categories of works, for the exercise of moral rights by author's heirs, in case of minor modifications of a work or in the absence of the name of the author for specific exploitations, in case of abuse of rights, etc.?

Yes.

- The right of withdrawal may not be exercised in those (exceptional) cases, where the economic rights can be and are in fact transferred.
- The right of withdrawal is coupled with a notice to be given to licensees: under Section 53 (1) of HCA the author may terminate the license contract if, for reasonable grounds, he withdraws his consent to make his work public or forbids the further use of his work already made public. In this case, the exercise of the right of termination shall be subject to the author's providing security to compensate for the damage that occurred prior to the time at which the statement was made (Section 53(2) of HCA). If, following the termination of the license contract as provided in Section 53 (1), the author intends to give his consent for his work to be published again to be further used, the previous user shall have a right of pre-emption to use the work. Furthermore, the rules on the right of first refusal shall apply to the right of pre-emption in respect of the license (Section 53(4) of HCA).
- The right of the indication of the name can only be exercised in a manner that is in conformity with the way of usage.
- The infringement upon the integrity of the work may not be claimed if the infringement does not violate the good reputation and honour of the author.
- If a work is an employee's work, the delivery of the work to the employer shall be deemed as consent for making the work public.
- If the author makes a statement withdrawing his consent to the making the work public, the employer shall omit the author's name from the work. The author's name shall also be omitted at the request of the author if, the author wishes to exercise his integrity right in cases, where the employer makes modifications to the work and the author does not approve them.
- All abuses of rights shall be prohibited under § 1:5. of the Hungarian Civil Code.

Duration of moral rights

- 5) What is the duration of moral rights?

Pma 70 years. Where the date of death of the author may not be established the commencement date is different, but the 70 years' rule applies. The right of attribution is protected without a time limitation.

Section 14 (1) of HCA: After the death of the author, the person entrusted by the author with the management of his literary, scientific or artistic legacy, or in the absence of such or if the entrusted party fails to take action, the party who acquired the author's economic rights under the legal title of succession shall be entitled to take action against an infringement of the moral rights regulated in this Act, within the term of protection (Section 31).

Section 31 (1) of HCA: Copyright shall subsist during the lifetime of the author and for seventy years following the author's 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, for works of joint authorship, from the first day of the year following the death of the joint author who died last.

(3) If the author cannot be identified, the term of protection shall be seventy years counted from the first day of the year following the year in which the work was first published. If the author presents himself during this period, the term of protection shall be calculated pursuant to paragraph (2).

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

(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 whoever of the following persons died last, regardless of their being indicated as co-authors or not: the director of the film, the author of the screenplay, the author of the dialogues and the author of the music specifically created for use in that cinematographic creation.

(7) If the term of protection is to be calculated from a date other than the first day of the year following the death of the author or joint author who died last, and the work is not made public within the seventy year period following its creation, the work shall not enjoy copyright protection.

Section 14 (2) After the expiry of the term of protection, the affected collective management organisations or representative organisation of authors shall also be entitled to take action, on the ground that the memory of the author has been violated, against any conduct that qualified under the term of protection as a breach of the right of the author to have his name indicated on his work or in a communication related to his work.

Ownership of moral rights

6) a) Who is the initial owner of moral rights, e.g., the author, co-authors, investor, publisher, movie producer, etc.?

The author (co-authors), please see the answer to Q 2.

b) Can legal entities, such as an association, a foundation, collective rights organizations, a corporate company, etc., be the initial owners of moral rights?

No. Absolutely not, but the author may authorize the licensee in a copyright licensing agreement to act in the event of infringement of moral rights, and the film producer is authorized under the statute to do so.

Section 15 of HCA: Upon the express consent of the author in the license contract, the user shall also be entitled to take action for the protection of specific moral rights of the author.

Section 65 (4) of HCA: Except for the rights provided for in paragraphs (1) and (2) (these relate to the rights of integrity), the producer shall also be entitled to take action to protect the moral rights of the authors.

- c) Do the circumstances of the creation of the work influence who the initial owner is of moral rights (e.g., work made for hire, collective work, work created by employees, etc.)?

No. Absolutely not.

- d) If the duration of the moral rights exceeds the duration of the author's life, who is the owner of the moral rights after the death of the author/owner?

Section 14 (1) of HCA: After the death of the author,

- the person entrusted by the author with the management of his literary, scientific or artistic legacy, or in the absence of such or if the entrusted party fails to take action,
- the party who acquired the author's economic rights under the legal title of succession shall be entitled to take action against an infringement of the moral rights provided by HCA.

Section 14 (2) of HCA: After the expiry of the term of protection, the affected collective management organisations or representative organisation of authors shall also be entitled to take action, on the ground that the memory of the author has been violated, against any conduct that qualified under the term of protection as a breach of the right of the author to have his name indicated on his work or in a communication related to his work.

- e) Who is the owner of moral rights of orphan works?

The HCA is silent on this issue. There is one provision that might help in some cases:

According to Section 41/A. (8) of HCA, the right holder of the work or subject-matter considered to be an orphan work shall be entitled to end, regarding his own rights, the orphan status of the work or subject-matter at any time and to assert his rights in relation to the use of the work. (The assertion of rights comprises moral rights too.)

The Hungarian Group has not identified any case law in this respect.

Moral rights and the owner of the tangible asset integrating the work

- 7) Are the property rights of the owner of a tangible asset integrating a work (painting, sculpture, architecture, etc.) limited by moral rights? For example, do moral rights prevent the owner of a building from updating or destroying it?

There is no express legal rules on the issue of moral rights versus updating and/or destroying of a building or any other piece of visual art. Under the relevant court practice ownership rights and copyright, including moral rights in particular the right of integrity shall be assessed on a case-by-case basis. The use of designs of a building shall qualify as an exception to economic rights. One can conclude and it is corroborated by the court practice (there is a number of decisions), that if an owner of a building or a sculpture acts in conformity with the leading principle (requirement) of good faith and fair dealing and exercise his/her property rights in conformity therewith, the author may not prevent such a fair exercise of rights. Under the practice of the Copyright Expert Board (that provides copyright expert opinions to the courts if ordered to do so and to clients if commissioned) the owner of a piece of visual art (sculpture) is generally expected depending on the circumstances to offer the piece of art to the author before destroying it.

Moral rights and contracts

8) a) Can moral rights be subject of contracts?

No. Save for the stipulation of a licensing agreement that authorizes the licensee to act in case of the infringement of moral rights (see in Q 5/b.)

Section 9 (1) of HCA: From the time of creation of a work the author shall be entitled to the totality of copyright, i.e. to all moral and economic rights.

(2) The author shall not be entitled to transfer his moral rights, such rights shall not be conveyed to another person in any other manner, and may not be waived

b) Can the initial owner of moral rights transfer (e.g., through a contract for valuable consideration or free of charge) these to third parties?

NO

Please see the answer to a).

c) Can the owner of moral rights renounce or waive them?

NO

Please see the answer to a).

d) Can the law relating to moral rights be overridden by contractual provisions?

NO

Please see the answer to a). All contractual provisions violating the statutory provision cited under a) above shall be null and void.

Infringement of moral rights

9) Is infringement of moral rights qualified as is copyright infringement?

Yes. All sanctions of copyrights infringements shall apply accordingly. (Please see the answer to § 2 on the application of solatio doloris).

10) What are the conditions for an infringement of moral rights to be recognized, e.g., proof that the infringement violates the honour, reputation, dignity, legitimate interests of the author, etc.?

There are no special statutory rules, but there is a rich court practice.

A few leading cases:

BDT2010. 2329.

The owner of a building has the right to reconstruct the building he owns, modifying its appearance, architectural design, function or demolishing it. The reconstruction related to the exercise of the owner's right to use the building for its intended purpose shall not result in an infringement of the designer's copyright. From the point of view of the designer's copyright, the user's rights of use shall be weighed against the interests of the user.

BH2022. 15.

Infringement of moral rights and copyright infringement are both based on objective liability, irrespective of fault. The Civil Code regulates the claims which may be brought in the event of copyright infringement as a separate legal instrument from the Civil Code, with different provisions and in a different manner, which is also justified by the difference in the subject-matter of the right to be protected (protection of intellectual works - protection of personality). (The differentiation of the assertion of personality rights under the Civil Code and moral rights under the HCA)

Kúria Pfv. 21.277/2015/4.

The defendant's version of the performance (the performance of a work created for stage with music) is clearly based on the plaintiff's staging; no relevant changes or adaptations in the sense of neighbouring rights of the performer were made, the sets, costumes, song inserts were not changed, and no additional elements were added to the performance during the adaptation of the scenes or the text. In view of this, the defendant's director's conduct, which is the subject of the action, does not give rise to any infringement of the applicant's right to protection of his moral rights as a theatre director on the basis of the protection of neighbouring rights.

Moral rights on related rights

11) a) Does your related rights legislation recognize moral rights, for example for performers?

Yes.

b) If YES, please indicate if moral rights in related rights legislation are identical to moral rights in copyright law?

Section 75 (1) of HCA

The performer shall have the moral right

- to have his name indicated, according to the nature of the use and in a manner consistent with it. In the case of an ensemble of performers, this right shall cover the indication of the names of the ensemble, the leader of the ensemble, and the major performers.
- of the right of integrity (identical with that of the authors)

There are no differences, save for the making the "performance public" that occurs with the live or recorded performance.

- c) If they are not identical, please indicate the main differences from moral rights in copyright law.

They are identical.

II. Policy considerations and proposals for improvements of your Group's current law

- 12) Could your Group's current law or practice relating to moral rights be improved? If YES, please explain.

Basically no, this a solid and accepted system the purpose of which is the protection of the weaker party and the statutory expression of the intellectual connection between creator and work.

On the other hand, the exercise of moral rights of orphan works is not regulated under Hungarian law, and the Hungarian Group would welcome some guidance on that topic.

- 13) Could any of the following aspects of your Group's current law relating to moral rights be improved? If YES, please explain.

- a) the definition of moral rights
- b) categories of moral rights
- c) exceptions and limitations to moral rights
- d) the duration of moral rights
- e) ownership of moral rights
- f) moral rights and the owner of the tangible asset integrating the work
- g) moral rights and contracts
- h) the regime of moral rights
- i) infringement of moral rights
- j) moral rights and related rights

YES.

As for "a) the definition of moral rights": The limited protection of moral rights of software and database authors on the level of statutory definition and specific rights could be considered.

- 14) 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?

No.

III. Proposals for harmonisation

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

- 15) Do you believe that there should be harmonisation in relation to moral rights? Please answer YES or NO.

If YES, please respond to the following questions without regard to your Group's current law or practice.

Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

No. The differences are deeply rooted in the philosophical approach to copyright. These differences may not be neglected. Those countries with a strong protection system would object to the loss of rights and sanctions, those countries without an effective protection would feel, that their commercial users suffer a loss if moral rights are strengthened or broadened.

- 16) a) Should moral rights be recognized? Please answer YES or NO.

Yes.

- b) If YES, should this be in copyright law?

Yes.

- 17) a) If YES to question 16), should all types of works be protected by moral rights? Please answer YES or NO.

Yes, but the limited protection of moral rights of software and database authors could be considered.

- b) If NO, for which categories of works should moral rights be restricted and/or excluded?

N/A

Categories of moral rights

- 18) What should be the different categories of moral rights? Please tick the boxes as appropriate and give a short definition of them:

X right of attribution

X right of integrity

X right of disclosure

X right of withdrawal

- right to prevent use in association with a product, service, cause or institution
- other, namely

Exception and limitations to moral rights

19) a) Should moral rights be subject to exceptions and/or limitations? Please answer YES or NO.

No. The exceptions and limitations shall apply to economic rights only, and it is always subject to the evaluation of the court, whether the moral rights are or are not infringed via the use of the benefit of exception. The connection to the general rules of the Hungarian Civil Code is sufficient to decide whether the author abuses his right or not.

b) If YES, which? Please tick the boxes as appropriate

- for specific categories of works, namely
- in case of minor modifications of the work
- in case of abuse of rights
- depending on the owner of moral rights (author, investor, employer, author's heirs, etc.)
- other, namely

Duration of moral rights

20) What should be the duration of moral rights?

The duration of the moral rights shall stay as it is regulated now.

Ownership of moral rights

21) a) Who should be the initial owner of moral rights?

The author and his /her legal successor.

b) Should legal entities (i.e. others than natural persons) be able to be the initial owner of moral rights?

No.

c) Should the circumstances of the creation of the work influence who the initial owner is of moral rights?

No.

- d) If the duration of the moral rights exceeds the duration of the author's life, who should be the owner of the moral rights after the death of the author/owner?

The legal successor or a person that was appointed for this purpose in the testament of the author.

- e) Who should be the owner of moral rights of orphan works?

The appropriate collective management organizations, and or the relevant stakeholders' associations.

Moral rights and the owner of the tangible asset integrating the work

- 22) Should the property rights of the owner of a tangible asset integrating a work (painting, sculpture, architecture, etc.) be limited by moral rights? Please answer YES or NO. If YES, please explain how.

No. The court practice can manage the conflicts via a case-by-case evaluation.

Moral rights and contracts

- 23) a) Should it be possible to contract on moral rights? Please answer YES or NO and explain.

No. The moral rights pertain to the personality of the author, that may not be subject to a contract save for the contractual authorization of the user to bring in claims for the infringement of moral rights for the benefit of the author.

- b) Should the initial owner of moral rights be able to transfer these to third parties? Please answer YES or NO and explain.

NO

Please see the previous answer.

- c) Should the owner of moral rights be able to renounce or waive them? Please answer YES or NO and explain.

No. The author is the weaker party that could be pressed to waive moral rights as it being the precondition of the conclusion of a licensing agreement /assignment.

- d) Should it be possible to override the law relating to moral rights by contractual provisions? Please answer YES or NO and explain.

No. Please see the previous answer.

Infringement of moral rights

24) Should infringement of moral rights be qualified as copyright infringement? Please answer YES or NO.

Yes.

25) What should be the conditions for an infringement of moral rights to be recognised?

The Hungarian Group is of the opinion that the current practice is in line with the needs with regard to the conditions for an infringement of moral rights, however there are no special statutory rules. The moral rights should protect the author effectively including protecting the creative freedom of speech.

Moral rights on related rights

26) a) Should related rights law recognize moral rights, for example for performers? Please answer YES or NO.

Yes.

b) If YES, should moral rights in related rights laws be identical to moral rights in copyright law?

The conditions are included in the definition of the given category of the moral rights. Open terms (e.g. derogatory to reputation etc.) shall be filled in upon the discretion of the court.

Other

27) Please comment on any additional issues concerning any aspect of moral rights you consider relevant to this Study Question.

N/A

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

Chemical industry

Performing artists

Software industry