

Petkó Mihály¹: Changes to the copyright collective management, orphan works

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The copyright law in many forward-looking nature has changed in recent years. Of these, one issue of the protection of orphan works legislation, which played an important gap. The introduction of the new regulations, especially as so many changes, developments in technology, specifically due to the rise of digital technology, it has become necessary. With the passage of time, the authors of the person Location, so the work of art constraints is necessarily looser or more difficult it becomes, in many cases not possible. The national film assets utilization, delivering the film audience in a legitimate way for new ways of more analysis, expert opinions and study describes the use of a number of works because it is not possible because the eligible unknown or whereabouts are unknown, and thus may not be available for use permits. Therefore, it was necessary - among other things - that the national culture - which is still under copyright protection - in order to become accessible to older parts of the still-operating contracts or work records, databases along by a legal specialist copyright rule-making to allow licenses from them. The society, however, there is a need to access such copyright works is that the use permit be granted only to introduce sui generis legislation for the author is impossible to find. In this spirit, the digitization and online accessibility of, and digital preservation of cultural material on the 2006th Commission Recommendation 2006/585/EC of 6 August 24 (A) and (c) recommended the Member States to establish mechanisms to facilitate the use of orphan works and to support the well-known works are orphan works and public domains lists available.

Decided on the basis described in the Hungarian legislation that creates whereabouts are unknown to the works of authors used a special type of representation, and instead of the original entitled to appoint a representative operating principle individuals are entitled to the side of the contractual relationship. The specifics of the regulatory rules involved in a situation that is in the fact that the person wishing to use the work of an author entity receives the license to any person acting under statutory authority, which is not affiliated with the licensors of the copyright holder.

This also means that it does not prevail in relation to the granting of permits related to guarantees of freedom of contract principle, the parking regulations as a result of impersonal

relationships in nature, can only be an objective piece of art takes into account the properties of the authors. From the above it follows that the copyright law legislation on orphan works by introducing an additional constraint created in terms of the exercise of copyright, when it took the legislature to whereabouts are unknown author of the works of social use, interest in the recovery is more important than copyright Exercise in person. Amendment to the Copyright Act², drafted by the cultural heritage are to preserve, maintain and make available part of copyrighted - the author or work records, as well as such works lists the maintenance too - introducing the necessary legal means whereby these works can legitimately be used, at the same time hurting right either. The law set up this new presumption, as the remainder after the publication of the work of art and social exploitation of the work priority.

In particular, the representation of a depositary authority, the exercise of public authority competent body to decide which public authorities will act. The new regulations result, you will no contractual relationship between the parties, but by the public authority acts exercise resulted in the authorization is a legal practice, which means that both parties, the author and the user rights curtailed because of the content of the permit determined by legal regulations, such as those can not be changed by agreement on the basis of consensus. The new rules of law as a result of the public appeared in the Copyright Act, which the traditional civil law principles overshadow. The process of mechanic in use, become bureaucratic precisely. Law final depositary of the copyright act of the Hungarian Patent Office as an administrative body under the Act on the general rules of civil procedure, administrative authority, which in the case of orphan works changes mechanic in the proceedings, the legal relationship between the hierarchy.

The authors of the change are evaluated first, so that their rights are suffering from restrictions, but this right must be added that, because inevitably, social interests, on the other hand, if the author is sufficiently general principles of civil law, that is reasonable in the circumstances diligence, which announces availability of the collecting entity, or similar - possibly led by social organizations - are stated in the register information, you can not take place, the new rules apply.

The legislature, in consideration of the copyright holder, and social interest in the use of artificial decided in favor of the latter. The copyright holder of unknown nature precludes that the relationship between him and the copyrighted work be evaluated. Created by the

legislation, in the case of orphan works, by necessity, therefore, is a minimum guarantee of protection for authors, creates the potential applicability of the copyrighted work. Since the regulation of the use of orphan works primarily in cases where the work has been the creation of several decades, perhaps a century has gone by, it is primarily the author of works of art preservation, maintenance, documenting the introduction of statutory representation.

It is important to point out that you can not orphans considered the work involved, if the existing law with regard to collecting societies involved exercise. Because of the general principle of collective management kiterjesztettségének validated as such rights can not becomes an orphan in the works. (Consequently, in the case of works for which individual rights are collective rights management, in fact, you can talk up to orphans' rights, since the rights of the collective management effects can not " becomes an orphan") This does not mean that existing in the same Work or related rights Do not be an orphan on the collective management of rights in the work or related rights in question - in this respect only the collecting society can not give permission. (Not considered an orphan work is not that anonymous or pseudonymous already been made public, and the copyright of the author onset of exercise, that the work was first published under § 8 of the Copyright Act., As in this case, person entitled to exercise the rights known.)

A farther-reaching legislation seeks to take into account the interests of the copyright, they avoid erosion, so the issue of licenses for the prospective defendant must do everything possible to seek the identity of the author. The tracing steps may be in particular:

- a) search for constructing the WIPO Voluntary registration database, the method applied for use also in view of collecting the relevant Hungary registered organizations database, accessible via the internet databases used to determine the author's whereabouts in databases, and relevant to the work type, publicly accessible collections data bases;
- b) demand information about the type of work that organizations implement a standard disclosure, the use of other persons performing the work, the work is known and can be found from other authors, as well as on the type of work performing administrative tasks in organizations;
- c) national newspaper ad.³

Hungary for more inventory and database of authors and other right can find: WIPO-led voluntary register of copyright works and any related legal performance can be reported. The collecting societies in the field of registration of works, rights related to power and maintain a database of authorized persons. To run both the WIPO records and the database by collecting societies Indication called. presumption of authorship associated with order defined by the Copyright Act. In addition to collecting societies keep records successor. These records and databases are especially present or unknown authors tracing is not an unknown location served, moreover, only in this case will help the beneficiary find where the former is actually logged in a register or database, contributed to the data communication to and accessible by the former entry contains the current data when you search.

I miss the statutory enumeration creation of information in the public records request, the possibility of notification of personal data such as databases required, so it would be obvious, while creating the privacy context, the creation of these inquiries. At the same time - in agreement with the Hungarian Association of Content Providers⁴ - in the national newspaper ad is not maintained at a suitable tool for the effectiveness of the doubt, and the disproportionate time, energy, due to the cost of risk, if maintained introduced in turn to the world wide web ads or simple search.

Taking into account the specific character under the control of the author to visit their actions proceedings for the issue of the license following that could make a significant duration combined time taken by the author to visit for measures to a maximum of 15 or 30 day time frame you use, how was the license application benyújtató be no further action.

If measures are taken to visit the author does not make a difference, the Hungarian Patent Office may be asked to grant licenses. The legal initiative to grant licenses party must provide in order to visit the author's actions evidence.

In this respect, it can be said that the judicial practice will clearly establish the adequacy of the evidence and the admissibility criteria, which should always be the particular circumstances of the case to match. Too strict requirements judicial part of this circle is not worthwhile, because of the work, such as intellectual property impede trade flows. For my part, I suggest, in accordance with the principles of common law requirement of this circle of

care justify the practitioner, or proof that the applicant is required and it - has taken reasonable steps to any given situation - as a bona fide parties.

The decision of the public authority acts as a result issued under the copyright law but I would say that the licenses for a maximum of five years in the territories of the Republic of Hungary, non-exclusive, non-transferable, additional uses to grant the license and they recast not a right. The legislature thus helping to prevent the copyrights only the most limited range allows the use, so that under no circumstances may act in breach of author's rights. Non-exclusive means that any number, at the same time requesting to be allowed to use more than one, that is, users need to ask permission from the Hungarian Patent Office and one by one individually. The reverse case where there is more than one person in the position of eligibility by the law, in which case the attachment can be found at the author's permission, the author can not be found in all respect should be submitted in the license application. The law does not have a fixed period after the period of the license, which, however, it can be concluded that even if the defense had no time to be free again applied for.

The application for the license is only available for a plant, just plant a request for more of the same author's work of the same type they use cover. The extent of processing fees, subject to the regulations are not happy about it. In my view, the same author should be given to an application submitted to the opportunity to work for other types of works. Of course, in the case of works of art belonging to the other types, the separate sheets of paper containing the required data would consider fortunate to specify the characteristics of a work of art.

The licensing fee for an application for procedural hold high, with a view to the payment of the processing fee beyond the licensee to take place later use of the work subject to the payment method and extent of the use of adjusted price.

The Hungarian Patent Office Looking now any activity I can find that would not form, so that the amount of the administrative fee is excessive, of the work marketability adversely influencing factor consider, despite the fact that the legislation lower rates is recognized in the absence of profit-making.

The intent of introducing a high premium rates to finance their creation of institutions, but I think that fixing the amount of the fee is not required to take into account this aspect, but also

the characteristics of a copyrighted work, the remuneration to be aligned. The proposed solution is that differentiated pay should be introduced, one which takes account of the copyrighted work művájára, scope and incidental expenses incurred in the recovery, and the expected revenues.

The new regulations keep its positive points, however, that the license application may be submitted electronically, and a low remuneration in the form of applications for this preference is that the legislature the way the proceedings were instituted. The electronic method features that are not always identify the sender of submissions. In this case, contrary to the law would consider sufficient response sent the e-mail address to post the request omitted because as I indicated in the e-mail address of the sender relations are not necessarily known, especially if the document is not sent uninterpretable.

I miss the regulatory rules of the Hungarian Patent Office's responsibility, which does not appear in the Copyright Act is a reference level. I believe that the Hungarian Patent Office, as the author is the responsibility of the legal representative quasi maintain the license issued by the compliance, accuracy rate of royalty set in such a case may be argued that the Office of the proceedings to apply what liability regime is responsible. Currently, the administrative body for damage caused by the trains of the administrative power held accountable, but because the license is issued several variables, especially concerning the determination of the price I think it definitely would have been necessary to determine the extent of the responsibility of a separate copyright law.

The Office issued its responsibility to regulate all the more interesting since the Agency issued its enclosed holders and users of copyright between the two-way responsibility. The law governs the case is known where in acquiring a separate circuit. In this case, the Office of the user's request, the application shall be revoked except from the date of identity or residence of the author becoming aware of the effect that the use of existing day person or a resident of the author became known extent, the remaining period under the license up to the author person resides or the day became known continued for one year.

However, the identity of the author becomes known to the user, because the author of any negative attitude is a major problem cause any damage. According to the copyright laws in cases where the use of the author's day person or place of residence became known serious

preparations were made, except that in this case the use of the preparation existing extent of identity or residence of the author became known in time to be taken up and pursued. The legislation is therefore subject is a delicate balance between the interests of authors and users to maintain.

Towards the author of the Hungarian Patent Office shall be responsible for royalty issuing. The author may demand five years from the date of the decision on the licenses of the scope of the termination of or withdrawal becomes final the user to his or her prize and - for a fee deposit - the Hungarian Patent Office to pay for it for the benefit of deposited charge. If the author does not claim the prize within these five years, you do not have to pay for the uses purpose of earning income or income increase indirectly, for, among other purposes, uses, and the deposit fee shall be transferred to the Hungarian Patent of the collecting society Agency, which authorizes the use of other or unknown whereabouts are unknown author's work. If such collecting body you have, they will receive equal shares of the fee, and if at all there is no such entity, the fee shall be transferred by the National Cultural Fund, the transferred charge should pay to make the cultural goods available to the National Cultural Fund.

The time limits on user fees discourage approve. Give rise to debate the definition of the five-year period, but as this is in accordance with the generally recognized in civil law, I believe the appropriate limitation period.

Food for thought, however, that the holder of the copyright to become aware of the user fee acceptance of the possibility, therefore impose a statutory level for issuing the permit authority that the decision of the primary site, any other printed source, publish or made available during the five-year period, that is, he is to take a minimum of effort in finding the whereabouts of the author.

Refer to the legislative debate over the extent to royalty within the limitation period, "wittily" judicial forum in which the procedure is conducted under the rules for copyright litigation. For *díjvitákkal* sure just the passage of time, that is, the development of appropriate legal practice will help again, but a kind of bureaucratic will develop will certainly result in these cases. Negative memories cause to know the story of the copyright audience copyright fee regulations recall, but certainly pay touchstone, the mechanism according to data from the

collecting societies as an aid in serving can only construct that can lead necessarily to an overall routine belonging in connection with determining the amount of the fee.

A use that is not free, but the specific situation with regard to payment rules different from the general rules: the Hungarian Patent Office only states - Method of and extent of the use of line with - a charge that he must pay it himself to the author, if the person or place of residence is known, provided that the purpose of earning income or consumption income increase not serve directly. Use for different purposes (ie, either directly or indirectly earning an income or revenue enhancers for), however, the fees set out in the Hungarian Patent Office shall be deposited, and you can begin to use after it has occurred.

In the area of copyright law changes that took place recently ended in the collective management grown difficult to follow and led to much discussion in status. Discussion at the end continuous flaring and power struggles making the control points established in the new collective management rights organizations author's system. Previously, the system of national collective management organization was difficult to read, functional and economic interdependence, and in many cases the holders and authors' interests were contrary to the operation. Said to have developed the practice of collecting societies evolved over a period of fifteen years, and validated self-government, and in addition to raising the level of legislation.

Changing the Copyright Act made the operation and management of their respective accounting and management requirements under the new regulation of collecting societies more transparent. And creating a race condition seeks to ensure the regulations in force in the same genre of creative performing the collective administration organizations. It is also a more restrictive registration rules introduced by purchase. The current regulation is limited by the inherent eligible for the deduction of royalties and creating the official control of the use of socio-cultural purposes. Renewed its approval of the amendment to the tariff schedule is so predictable timetable for introducing and providing better orientation provides a wider involvement of the users of the tariff lines giving an opinion. Documents set out in the draft law provides for the collective management organization's own website, the rights-management activities to ensure transparency. In addition, the official monitoring role Intellectual Property Office also publishes on its website a register of collective management organizations led.

The new regulations that promote the use of legal performance in the qualifying work-related orphans, changing the concept of broadcasting, the following laws and regulations relating to the payment of public property.⁵ Experts also simplified the procedure of Legal Sources and expanding the powers of conciliation body, so the outcome of the procedure body to be considered in the tariff approval process as well.

The new legislation is also the Intellectual Property Office is also considered a success. The Office has already dealt a blow to the Harry Fox Agency established in the collective management monopoly when the official control of the copyright was transferred to the Agency, as well as the Harry Fox Agency introduced a concurrent stack, it is much more important addition to help voluntary register. The Office, as well as changes at the Harry Fox Agency in Hungary the Copyright Office also breaks the monopoly of collective management Association and the Harry Fox Agency is also expected to continue to be first among equals.

The new regulations also pulled out of the ground from the National Innovation Agency argues, the National Innovation Office as the Intellectual Property Office has designed crumple under him. The National Innovation Office of the innovation chain elements, so the official patent research tasks is intended to monitor.

The technical and patent research regarding this would have been even viable, but also the supervision of the patent law is not only for research, testing tasks. Intellectual property protection has traditionally been treated uniformly and internationally, as it is not only related to innovation patents, but also trademarks, and now I really emphatically belong to that category of copyright works well. Check intellectual property protection so fortunate when legal professionals hands, not innovators or authors hit monitored. The Intellectual Property Office as a new service appears. The proposal said that "performing R & D oriented assessment of the activities of organizations involved in research organization" will be the Intellectual Property Office, or the National Tax and Customs Administration will be required to accept the Intellectual Property Office assessment of a company's R & D activities related to.

¹ egyetemi adjunktus, Debreceni Egyetem, Állam- és Jogtudományi Kar

² The 2008th CXII. Law 8 § to left justification

³ 100/2009. (V.8.) On r. 3 § (1)

⁴ Content Providers Association of Hungarian government's view of the detailed rules for the regulation of certain uses of orphan works licensing, [www.mte.hu / szakertoianyagok.html](http://www.mte.hu/szakertoianyagok.html)

⁵ <http://www.szerzoijog.com/szerzoijog2012>