Mátyás Kolos GYIMÓTHY: Early development and first legal regulation of copyright law in Hungary

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1. Introduction

Copyright, although in modern form and under statutory regulation can only be traced back to 18th century England, it has always been an exciting sector of civil law. In accordance with our modern private law concepts, copyright is "the exclusive right of the author or his successor over an intellectual product falling within the scope of literature or art."[1] It can thus be seen that this modern legal institution has both personality law and property law features, thus combining the characteristics of these two branches of civil law[2]. Today we consider this kind of civil rights protection of intellectual and artistic products to be completely evident, yet it may be shocking that this legal institution appeared in the form of legislative regulation only 300 years ago, in the case of our country less than 200 years ago.

Of course, even before these rules, intellectual, literary and artistic works were entitled to some protection, and the reproduction of these works was limited, but this did not seem to be a satisfactory solution, just think of the Iliad litigation, which began in 1826 and was notorious in literary circles, when prominent figures of Hungarian literature clashed over an unclear case of plagiarism. A similar problem is outlined in Act 16 of 1884, which was the first to successfully codified copyright law in Hungary. The general explanatory memorandum of the Act states that the artistic community has often felt the lack of legal regulation and has repeatedly initiated the creation of

[1] *Magyar Jogi Lexikon VI. [Hungarian Cyclopaedia of Law VI.]*. Budapest, Pallas Irodalmi és Nyomdai Rt., 1907, p. 397.
[2] BALÁS P., Elemér: Szerzői jog [Copyright]. In: SZLADITS, Károly: *Magyar Magánjog I. [Hungarian Civil Law]*. Budapest, Grill Kiadó, 1941, p. 664.

this legislation before the Parliament.[3] It can therefore be seen that the systematization and protection of copyright law at the state level became increasingly urgent, which eventually took place in the second half of the 19th century, preceded by a long trial procedure. However, the question arises, in what process had the Hungarian copyright regulation reached this moment, what direct precedents were the birth of the aforementioned law, and in what regulatory system did the Hungarian legislature implied copyright?

2. General development history

Although modern regulation is only a product of the last 300 years, copyright has its roots all the way back to ancient Rome. Even in the period of *ius civile*, quasi-contractual solutions were known that clarified the possibilities of reproduction of literary works between authors and booksellers, and applied traders' business habits to publishing spheres as well. Nevertheless, in Roman law, sources of law do not mention the right to reproduce writers' works in a single word, nor did there be an action to enforce claims arising from such transactions. It can therefore be stated that at that age, although the legal institution itself existed in a rudimentary form, these transactional agreements were not legally protected[4].

The Middle Ages brought about a big change in copyright protection in this regard. The book-printing revolution started by Johannes Gutenberg brought a new level of reproducibility to literary works, and also gave way to the development of press products, which implied the changes and incentives that led to the widespread dissemination of written works and encouraged the writing and artistic communities to disseminate their writings and ideas to a wider audience.[5]

[3] Preamble of Act 16 of 1884 about copyright.
[4] MEZEI, Péter: A szerzői jog története a törvényi szabályozásig [The history of copyright until its legislation (Act 16 of 1884)]. *Jogelméleti Szemle [Jurisprudential Muster]*, No. 3, 2004.
[5] *Ibid.*

In addition to this material stimulus, one should not forget about the theoretical and ideological side. By the 15th century, the early medieval period, dominated mainly by religious works (in which most of the written works were seen as divine inspiration, which meant that there was no real close protective relationship between the work and its author), had been replaced by the Renaissance, a human-centred spirit, more humanist, individualist ideology, which gave a greater role to the work of the creator, and thus the need for some form of legal reward for this work and some form of encouragement for the arts[6].

On the third side, it was the social change itself that reformed the attitude towards printing products. Firstly, by making printing more cost-effective, more and more people could afford to buy books, so interest in this sector has boosted economically. In addition, of course, literary and reading have become more and more prominent in noble and civic environment, so people have developed a sense of need for the consumption of press products and the possession of books.[7]

As a result of these factors, it can be observed that with the growing demand and the business part of literary and scientific publishing, the need for some kind of regulation or protection appeared on both the creative appreciation and the property side of the activity. However, because of the double image, this regulation could not be developed along the general private law regulations and commercial patterns so that it was necessary to bring to life a completely new way to create a legal form to solve this phenomenon.[8]

The first such legal solution appeared in the system of granting certain privileges. These privileges, patents granted legal advantages either to the author or to the publisher, but in the early days only to the publisher.[9] These special privileges were therefore granted to certain persons in order to ensure that a certain work has a

[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*

monopoly on printing and publishing. The granted privilege was laid down in a charter of privileges, which specified the works covered by the patent, the content of the legal relationship between the author and the publisher, and the temporal nature of the patent.[10] Two types of these privileges can be separated in this era. The first type generally granted the author party the exclusive right to print books, an activity from which it therefore intended to prohibit everyone else. Another form of privilege letter differs from the former in that it granted the privileged printing and publishing rights only in relation to specific works, but in this case, everyone else could not continue to publish this work.[11]

This causal and highly personalised method could only be substantially reformed by a new breakthrough after the Enlightenment, which led to the introduction of legislation in the field of copyright. In Western Europe, the first general state-wide regulation was introduced in England in the statute under the reign of Anna Stuart, but this process began to appear on the continent only towards the end of the century.[12] As a common element of these statutory regulations, it can be noted that they have already turned to the authors from the publisher, their claim and protection of rights became the main criterion, and thus all infringements (unauthorised reprinting) were punished by sanctions.[13]

The third stage in this history of development involved international contracts, since the publication of foreign works in other countries has also grown increasingly. These treaties and conventions have been implemented by the Contracting Countries into their own internal legal systems in such a way as to satisfy the conditions contained in the contract as much as possible[14]. Here, therefore, we can see that these contracts had to be incorporated directly into their own legal system by legislation or decree issuance.

[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*

Considering the stages of development, we can therefore see that more and more general rules have become characteristic of copyright from causal, individual treatment[15]. In addition to domestic legislation, there is also the international dimension, which generally takes the form of contracts and, more generally, general clauses incorporated into the domestic legal systems of the contracting States. It should be noted, however, that this procedure was not the only one that was known in the continental system, since in some states the equality of rights of foreign authors in the field of copyright was inherently guaranteed by law (e.g. Saxony). A common feature of the trends in content regulation is that, following the exclusive protection of literary works, scientific and artistic developments have led to the copyright protection of performances and then of works of visual art.[16]

3. History of Hungarian copyright

There is little data available on the first period of copyright law in Hungary, but there are some sources that prove that the Hungarian legal system also knew about the privilege-based protection of publishers, but not much of these documents have survived[17]. One of the most significant and certainly legally relevant letters of pure privilege in the field of publishing law dates from 1584, granting the college of Nagyszombat the exclusive right to publish and print the Corpus Iuris Hungarici, and penalising the reprinting of this work by a third party with a compensation of ten gold marks[18]. Based on this patent, we can therefore see that although the legal institution in Hungary was known, its sanctioning did not have a perfect framework, and, together with many other legal institutions, the era was strongly characterised by causality[19].

[15] *Ibid.*
[16] *Ibid.*
[17] TOLDY (SCHEDEL), Ferencz: Az írói tulajdonról [About the copyright of authors]. *Budapesti Szemle [Budapest Muster]*, 1840, p. 192.
[18] *Ibid.*, p. 192.
[19] MEZEI, *op. cit.*

The first country-wide copyright law is also linked to a decision of the Locotenential Council in a specific case, as Ádám Takács, Calvinist pastor of Göny, drew the attention of the Locotenential Council to the fact that the first volume had been published by the Landerer printing house, along with the Paczkó printing house, which had published his funeral orations, and thus the Paczkó printing house had stopped the second edition, in order to avoid incurring losses from the publication[20]. It was thanks to this case that the Locotenential Council created Royal Decree 12157 of 1793, which transformed the provisions of an Austrian Decree of 1775 into the Hungarian legal order. This decree punished reprinting in Hungary with severe penalties, confiscation and compensation, but did not extend these provisions to books already published abroad or reprinted by others in Hungary, so anyone could publish them without any further consequences. In addition, the royal decree included the transfer of copyright rights to successors in the event of death, and already provided for the statute of limitations on copyright, which meant that after a certain period works became "public property" and could be published by anyone, but the detailed regulations were not yet in place[21]. This provision was supplemented by Royal Decree1812 of 1794, which prohibited the reprinting of Hungarian works in Austria and the reprinting of Austrian works in Hungary[22]. The scope of the protected works was expanded with copper and woodcuts in addition by Court Decree 4232 of 1831, except for fashion images and drawings[23].

However, the real breakthrough in Hungarian legislation was brought by the second half of the 19th century, when the Hungarian artistic achievements reached their peak. It was at this age that press products with a wide range of topics began to become widespread for the first time. Literary life boomed with the birth of great works such as Bánk bán, Toldi, Csongor and Tünde, as well as the poems of Petőfi, Arany and

[20] KELEMEN, Mór: Adatok az írói tulajdonjog hazai történelméhez [Data to the domestic history of copyright]. In: *Budapesti Szemle [Budapest Muster]*, 1869, Vol. 14., p. 311.
[21] MEZEI, *op. cit.*
[22] KNORR, Alajos: *A szerzői jog magyarázata [Explanation of copyright]*. Budapest, 1890, Ifj. Nagel Otto.
[23] MEZEI, *op. cit.*

Vörösmarty. Hungarian acting began to develop as well, the first Hungarian theatre company was formed, and increasingly impressive works were born in the field of fine arts, not to mention the musical world. However, there has been an increasing frequency of violations due to the insufficiently developed structure of copyright law, which have also reached legislation in the form of complaints[24]. One prominent example of this is that N. G. published more than half of the works of Dániel Berzsenyi, without the permission of the heirs.[25] It can therefore be seen that due to Hungarian conditions, the need for a comprehensive law has developed in society, which both the Hungarian and Austrian legislatures felt this as their task.

One of the great initiators of this movement was the Kisfaludy Society of literary interest, which handed a bill drafted by convention to Bertalan Szemere for proofreading in 1844. During the revision, Szemere created the final bill based mainly on the Prussian copyright law of 1837 and the Hungarian criminal law concept of 1843, which eventually got stuck in the legislative procedure, as Ferdinand V criticised the gaps and lack of normative clarity of the law in his letter, so he sent it back to the Parliament for a new discussion. However, the renegotiation never took place because of the dissolution of the Parliament. The real reason for the royal letter was that there was already a copyright patent to be issued for the entire empire at the Austrian court.[26] The patent was published in 1846, and at the same time it was proposed for its inclusion in the Hungarian legal system, through the revision of the Szemere bill, but eventually this initiative was hampered by the ever-upcoming political events, and thus in Hungary it continued to be The Royal Decree of 1794 remaining prevalent.[27]

During revolutionary atmosphere, the April laws did not bring much change in this matter, even though freedom to spread thought was declared, and Articles 18 and

[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*

30 abolished censorships for theatres and printers,[28] yet copyright as with so many other specific regulations, the legislature has been deferred to subsequent Parliamentary Assemblies[29].

Of course, after the defeat of the War of Independence, the Austrian court carried out its coveted legal harmonisation when, by imperial decree of 1853, it enacted the 1846 patent in our country, alongside the Civil Code of Austria, which was in force until 1861[30]. This condition was changed by the National Magistrates' Conference convened in 1861 for the purpose of legal settlement, which did not wish to inherit the Austrian copyright system, so it was decided in principle that intellectual goods were the subjects of property as any physical object.[31] The significance of this decision was the transfer of copyright disputes previously covered by criminal law to the jurisdiction of civil courts, but the practical reality has not yet been established here, so the courts had a huge margin of manoeuvre in the judgment of such cases. This also explains the fact that the authors did not really put their disputes on the judicial path, thus creating another barrier to a more uniform application of the law.[32]

The next stop was the bill compiled by the Kisfaludy Society of 1867, which, in the absence of the criminal law concept, did not come before the legislation and did not come closer to the vote after the revision by the Hungarian Society of Fine Arts[33]. The next attempt was launched by the Society of Hungarian Writers and Artists, led by Gyula Kováts in 1874, but this initiative went into the background because the trade law was under construction. The irony of fate is that in Part II of Act 37 of 1875, a separate title was devoted to publishing and copyright relations. This legislation defined the concept of a publishing transaction, the content, formation and

[28] GOSZTONYI, Gergely: Censorship and law in Hungary in the past. *Romanian Journal of Legal History*, 2021, No. 1., pp. 37–46.
[29] KNORR, *op. cit.*
[30] MEZEI, *op. cit.*
[31] *Ibid.*
[32] Kelemen, *op. cit.*, p. 315.
[33] MEZEI, *op. cit.*

termination of the contract, the rights and obligations of the two parties, as well as provision for respect and liability, as well as the creation of a separate copyright law.[34]

The series of codification experiments (providing a framework for this initiative) ended with the assistance of the Kisfaludy Society. In this case, the Society also involved the Hungarian Academy of Sciences in the process of drafting the law, and the wording was entrusted to László Arany. The bill was submitted to the House of Representatives on 20th November 1882 before the Minister of Justice Tivadar Pauler. The bill was accepted with unified satisfaction by the National Assembly, and the final text of the proposal was certified by the House of Representatives on 12th March 1884, and the Upper House adopted it unchanged on 28th March. The emperor finally promulgated the first Hungarian copyright law on 7th May 1884, Act 16 of 1884, which is the first independent and uniform copyright law in the legal history of Hungary.[35]

4. Regulation and justification of the law[36]

Act 16 of 1884 ultimately prepared detailed regulations not only for Hungary, but as stated in Section 9 of Act 30 of 1868, the regulation of copyright is considered a common matter with Croatia and Slavonia, so these rules, except for photographic works, were also incorporated into the Croatian legal system at the same time[37]. In the justification of the law we can read that the purpose of legislation was not to define theoretical issues, such as what could be considered a work of art, what is the actual content of copyright, but in addition, the legislator also tried to avoid caustics and thus introduce a general regulatory system.

The law itself is divided into seven chapters, the first of which is about writers' works, in which separate titles include the exclusivity of copyright, the content of this right, the forms of punishment in the event of infringement, the basic procedural

[34] *Ibid.*
[35] *Ibid.*
[36] Act 16 of 1884 about copyright – Preamble of Act 16 of 1884 about copyright.
[37] MEZEI, *op. cit.*

provisions, the details of which are laid down by decree, the statute of limitation and enactment provisions. The Act then states that the provisions relating to works of writers shall apply, with minor differences, hereinafter referred to musical works, musical and theatrical performances, works of fine art, certain scientific or technical drawings and diagrams, as well as photographic works.

The provisions of the law itself have many similarities with the copyright measures we know today, of course, not yet so mature. In the exclusivity of copyright, the law protects, of course, works derived from individual productions, for which the author is the number one entitled, both for publication and reproduction, but he may have transferred this right to others in a certain form (contract or in the event of death). Furthermore, the Act deals specifically with works created by several authors, for which it distinguishes between separable and non-separable co-authors, and defines the powers of enforcement and disposition on this basis. In addition, in some cases, the law provided the editor himself with the possibility of legal protection (Article 2). It should also be noted that the law specifically states that the State does not have a right to control copyright, so that right is terminated in the absence of any perpetual or traditional nature, and the work becomes public domain, which can then be considered freely available. Then, the law defines the cases of infringement of intellectual works, including the reproduction of unlawful translation and legitimate translation (Article 5-8), but it also defines cases in which the exclusive rights of the author cannot be enforced, such as the quotation of a minor work or the inclusion of another work in a larger but independent work, as well as publications from certain press products. The protection of rights, as the current legislation on copyright is determined in two time periods, during the author's lifetime, as a personal right, he was entitled to legal protection until the end of his life, and after his death his successors were entitled to this right for 50 years, and in the case of translations the legislator set the limitation period at 5 years, but the only stipulation was that the author's name must appear at least once in a place in the work, failing which no legal remedy could be sought.

In the area of penalties, the legislation also imposed three sanctions in the event of infringement. First, it imposed an obligation to compensate the infringer towards the author or his successor, and in addition, he was punishable by a maximum fine of 1000 Crowns. If this was not possible, then avoiding the possibility of going unpunished, a jail penalty could be imposed, the specific content of which was not specified by the law, only that a daily jail penalty can be imposed per 10 Crowns. The only possibility of exemption was if the defendant proved that the infringement was neither intentional nor negligent. The third sanction was the confiscation of the means of reproducing the pirated work. A similar penalty could be imposed on a third party to the infringement, and a more lenient penalty could be imposed if a person failed to include the author's name during the reproduction or indicated it against his will.

From the penalty, it can therefore be seen that civil sanctions prevailed more in the case of copyright law, so there was no question that, as in the previous legislation, the judicial jurisdiction of civil courts was the legislature. In addition, it was stipulated that only the claimant had the right to initiate the proceedings, so, as with other personal rights, only the claimant himself could bring the action, the limitation period of which was set for three years (Articles 36-37). In addition, the legislature established expert bodies in both Budapest and Zagreb that could provide expert opinions to the courts on disputes. The detailed procedural rules, as I have already mentioned, were derived from the law to regulation.

Among other branches of art, musical works are classified under similar protection by law as literary works, full copying was completely prohibited here, while minor citations and receipts were allowed here as well. However, a freer space was provided for the performances of musical works, because, in the opinion of the legislator, musical works are intended directly for performance purposes, so the consent of the author is not necessary for these performances. In the case of theatrical works, however, a piece could only be performed if the author himself gave his consent to the performance. In the case of works of fine art, the purpose of legislation was to protect independent artistic works, so illegal reproduction and copying were punished

by law, but a small number of copies were allowed. In addition, it was stipulated that in the case of sculptures and reliefs, it is only possible to make copies of the work freely in other branches of art. In the case of photography, a regulation similar to that of fine art has been adopted, except that when it comes to an image of another work of art, the photographer is protected only for a certain period of time in relation to this piece of his work. In addition, it was recorded that only the customer has the right to reproduce the picture in the case of portrait photographs.

5. Epilogue

We have seen how the development of copyright in general and in our country has evolved until the first comprehensive legislative regulation, and how this law provided for copyright law. After its creation, Hungary also had the opportunity to channel the masterpieces of foreign art into domestic public life by concluding bilateral agreements with other countries, the first example of which was the contract concluded with Austria in 1887[38]. Although the law was not without its gaps, and in some respects left something to be desired, and new legislation was inevitable because of the continuous development, for almost 40 years this law was the governing law in copyright disputes, and it was only in 1921 that new legislation was needed on this issue.

[38] *Ibid.*