



## 1. Copyright law and the copyright relationship in general

The foundation of copyright law is regulated by **Act LXXVI of 1999** on Copyright (hereinafter: "Sztj.").

Copyright is a subjective right and contains on the one hand inalienable and intangible moral rights, and on the other hand tangible economic rights. Copyright and as such the copyright relationship having an absolute character is established upon creation of the work by force of the law (*ex lege*), and requires no official license, registration or any other act of law. Copyright is protected by law and everybody is obliged to respect such rights.

### 1.1. Subject of the copyright

Subject of the copyright is the author, who as such is entitled to the rights arising there from. An author shall be the person, who created the work (i.e. wrote the novel, painted the painting, sculpted the sculpture, etc.). Intellectual creative work requires special concentration and effort, depending from the special capabilities and talents of the author. All persons are entitled to the right of creation as such, and law shall in no way limit or restrict the exercising of such rights.

A work can be created by several authors as well. As such a differentiation between joint authors and co-authors is necessary, on the grounds of whether separate parts of the joint work can be used independently or not. More authors shall be considered as joint authors provided the joint work is whole and indivisible and can't be separated to independent works, the authors have performed the creative work jointly and have influenced each other's will and conscience mutually (e.g. jointly written novel). Joint authors shall be entitled to joint copyright in a measure corresponding with their contribution (or if there is any doubt, in equal measure). If the parts of a joint work can be used independently the authors shall be considered as co-authors and their works shall be connected works. The co-authors shall be entitled to copyright independently with regard to their own part (e.g. a collection of essays).

A work shall be considered as a jointly created work provided the contributions to the creation of the work cannot be determined or located and as such determination of the measure of the rights of the authors cannot be determined either. A good example for a jointly created work can be software development (however, if the exact contribution of the authors can be determined the work shall be considered as connected works as described above). A natural person, legal person, or de facto corporation that publishes a work that has been created upon its initiative and under its direction and published in its own name is, as the authors' legal successor, entitled to copyright in the jointly created work.

Compilations are protected by copyright if the collection, arrangement, or editing of their content is individual and original (collection of works). Collections of works are protected by copyright even if their parts or components are not or cannot be protected by copyright. Editors are entitled to copyright regarding the entire collection of works. This, however, does not concern the independent rights of the authors of the individual works and the owners of any subsidiary right that have been included in the compilation.

### 1.2. Object of the copyright

The object of the copyright is the work. According to the provisions of the Sztj. works are literary, academic, scientific, and artistic works. A work is entitled to copyright

protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author and does not depend from quantitative, qualitative, or aesthetic characteristics or any judgment of the quality of the work. This means that the Szjt. does not impose any further requirements regarding the acquisition of the status as a work, as any further characteristics would necessarily be subjective, therefore it is for the public (market) opinion or judicial procedure to decide whether a given work qualifies as a work under the relevant legal regulations.

Typical works are: novels, poems, dramas, other literary works, paintings, copper engravings, photographic works, sculptures and other artistic works, natural-and social history works, dance performances, pantomime and other stage works, musical works, musical compositions and lyrics, motion picture and other audiovisual works, computer programs (software), public speeches, architectural works and their plans.

Rough translations, laws, other legal instruments, court rulings and regulatory resolutions, standards prescribed as mandatory by law, other official communications do not fall within the scope of copyright protection. Ideas, principles, theories, procedures, operating methods, and mathematical operations are also not entitled to receive copyright protection.

Copyright is a collection of moral and economic rights.

### 1.3. Contents of copyright: moral rights

Moral rights of the author are as follows:

Authors have the right to request the designation of their name on the work, or on the adoption, quotation or presentation thereof (or opposite to request not to be designated), furthermore the author of any work serving as basis for re-workings, adaptations, and translations shall be entitled to the same. The author is also entitled to use a pseudonym (authorial, a pen-name or alias). If the name of the author is identical to that of a preceding author, it shall be obliged to apply an elongation or recision to its name.

In case of any doubt of its quality as author it shall be entitled to take action on the grounds of the presumption of its quality as author.

Authors decide whether their works can be published or should be kept confidential. Authors usually work for the benefit of the public and the publishing of the work is a principle possibility for the public to learn of the work. Before a work is published, the public may only be informed of the basic content of the work by the author (or upon the author's consent). Works that are found after the author is dead must be considered as if the author had intended them for publication - unless the author or his/her legal successor made a statement to the contrary or if the opposite is proved otherwise.

Authors are entitled to withdraw their permission for the publication of works or to prohibit the further use thereof; which must be made in writing and for a well-founded reason (e.g. default of the work, or radical change of its views) under its compensation obligations.

The author may on the grounds of the right to the protection of the unity (undistorted character) of the work protest against any unlawful alteration of the work that is injurious to its honour or reputation.

The author is entitled under its moral rights to utilize or allow the utilization of the works. Any unauthorized utilization also harms the moral rights of the author.

Authors cannot assign or waive their moral rights or have the se ri ghts a ssigned to another person in any other manner. The moral rights of the author are unlimited in time, however the right of publishing can only be exercised once and the right of withdrawal can only be exercised during the life time of the author. The author shall be entitled to take action in protection of its moral rights personally during its life time, and following its death within the term of protection any person designated by the author ("the car etaker of the intellectual inheritance"), lacking such person i ts successor, and after termination of the term of protection organizations designated to protect the interests of the author upon infringement of the memory of the author.

#### 1.4. Contents of copyright: economic rights

The primary econom ic right of the author: to ut ilize its works in whole or any identifiable part and t o authorize each a nd e very use t hereof. Reproduction, distribution, public performance, presentation to the public by broadcast or some other manner, retransmitting broadcast works to the public through an organization other than the original, adaptation, exhibition shall be considered in particular as use.

Economic rights are limited in time and therefore only bear protection during the life time of the author and seventy years as of the first day after the year of the death of the author. The above deadline shall be calculated separately for co-authors and in case of joint authors as of the first day following the year of the death of the last remaining joint author. Economic rights shall be exercised by the author during its life time and by its successor (heir) afterwards. Following the term of protection the work shall be used freely without charge.

Unless otherwise stipulated authors are entitled to remuneration in return for granting permission to use their works, which must be in proportion to the income generated by the use – barring any agreement of the parties to the contrary.

Economic and moral rights regarding any work created in the framework of an employment r elationship or its scop e of activities th ere u nder ("employee's work") shall be governed by special regulations. As such barring any agreement to the contrary, the employer, as the legal successor to the author, shall obtain the economic rights once a work is handed over.

#### 2. The limits of copyright

As other absolute rights, also the copyright has limits: the author is obliged to respect others' subjective rights, in particular other authors' rights and tolerate public interest limits. T here are two reasons of the public interest limits. Firstly, before an author becoming an author, i.e. capable of creating works, he/she draws (must draw) from the knowledge of the whole society accumulated till then and then current. The society – through the state – is heavily funding public education, culture and science, thus it is fair and equitable to regain some from what it has given before. The second reason is that also the authors are part of the public community, so, as of every single member of the society, it is also their basic interest to raise the cultural level of the society, increase the number of e ducated people, and expand the accumulated knowledge of the society. The statutory limits mainly concern the author's property rights: in cases defined by law t he work may be used also wi thout the consent of the a uthor and without remuneration. These are the cases of free use. It is worth to emphasize that the fr ee u se i s all owed and ca n occur without r emuneration only in case i t i s not injurious to the regular use of the work and it does not damage the author's legitimate interests without justification. Only works that have already been made public may be used freely. Furthermore, under Hungarian law, free use must fulfill the requirements of decency and its goal cannot be inconsistent with its purpose.

## 2.1. Free use for cultural, scientific and informative purposes

Anyone is entitled to quote works - to the extent warranted by the character and purpose of the recipient work - by designating the source and the author specified therein.

Parts of works (or the whole of small works) may be borrowed (i.e. used to a degree that exceeds quotation or citation) for teaching in educational institutions and for the purpose of scientific research by designating the source and the author specified therein.

The mass media, only for the purpose of providing information and taking the topicality and expedience into consideration, may provide information: may borrow communications containing facts and news items by indicating the source, may use the content of public meetings and speeches, may borrow economic and political articles by indicating the source and the author - provided that the borrowing was not excluded by the original publication.

If a performance is not intended to generate or increase income even indirectly (there is no admission fee, the participants do not receive remuneration, etc.) works can be performed in the following instances: (1) in the case of dramatic works performed by amateur artistic groups, (2) for educational purposes and at school celebrations, (3) at celebrations held on national holidays, (4) at the religious ceremonies of churches and at church festivities, (5) within the framework of social care and care for the elderly, (6) for private use and at occasional private events (e.g. conferences and conventions).

Under the Szjt. copies can be made by publicly accessible libraries, educational establishments, museums, archives as well as pictures and sound recordings qualifying as public collections for their own internal purposes (other than entrepreneurial activities) in the manner and to the degree appropriate if such activity does not serve to generate or increase income in any way or form (this is the case of the so-called "free use by institutions").

## 2.2. Other cases of free use

Any natural person is entitled to make copies of works for private purposes if such activity does not serve to generate or increase income in any way or form. This provision however, does not apply to architectural works, technical structures, software, computer-operated data banks. Complete books and periodicals or dailies may be copied only by hand or typewriter, even for private purposes.

Using a work for the purpose of private education (reading, learning) is also considered free use.

It is also allowed to lend or allow the free use of privately owned copies of works; however, this does not apply to software, motion pictures and other audiovisual works (vinyl, CDs, pre-recorded audio and video cassettes). The latter may be used freely in public libraries operating as institutions financed by the state budget.

Having regard to the spread of info-communications technologies, the Szjt. sets out that the temporary reproduction of a work is considered free use, provided that the temporary reproduction is an inalienable part of a technical process designed for such use, has no economic significance of its own and the reproduction is necessary with regard to the features of the technical process.

### 2.3. Copyright infringement

Apart from the lawful cases of free use any other use without permission or infringing the author's rights is deemed as unlawful. The cases of unlawful use and any other conduct infringing copyright are summarily called copyright infringement (e.g. pirate editions, publishing another author's work under your own name, distortion, etc.). The infringement may be realized by infringing the author's moral rights (e.g. failing to indicate the name of the author) or by infringing the author's economic rights (e.g. using the work in a way not qualifying as free use and no license agreement was concluded by the parties or the party who concluded the contract with the author exceeds the limits specified in the contract).

### 2.4. Objective sanctions of copyright infringement

In the event his/her rights are infringed, an author (or the legal successor thereof) may assert the following objective claims (i.e. claims not depending on the culpability – wilfulness or negligence - of the offender) under civil law:

- may request a court finding that there has been an infringement of rights (which in itself may be sufficient satisfaction for the offended party but can also serve as a basis for his/her further claims);
- may request that the infringement of rights or the actions directly threatening therewith be terminated and that the offender be enjoined to cease any further infringement of rights;
- may request that the offender make amends for his action (and that such amends should be given due publicity);
- may request the offender to provide information concerning the persons involved in producing and distributing the objects and/or providing the services affected by the infringement of rights as well as information concerning the business contacts that had been used in the infringement of his rights (principally in case of the illegal copying and distribution of audio cassettes and software);
- may request that the infringement be terminated (e.g. the destruction of objects), the antecedent state of affairs be restored by or at the cost of the offender, and the device or material that has been exclusively or primarily used for the infringement of rights be destroyed or deprived of its capacity for being used in the infringement of rights;
- may request the reimbursement of wealth acquired through the infringement of rights (including the legally due license fee).

### 2.5. Other sanctions of copyright infringement

Should the infringement be imputable to the offender (i.e. the offender commits the infringement intentionally or negligently), the holder of the right may claim full (pecuniary and non-pecuniary) damages in addition to the above claims. If the amount of punitive damages that can be imposed is insufficient to mitigate the gravity of the actionable conduct, the court shall also be entitled to penalize the perpetrator by ordering him to pay a fine to be used for public purposes.

The graver cases of copyright infringement – in order to strengthen the protection of copyright – are considered acts of crime by and punishable under the Hungarian Criminal Code (Act IV of 1978) as legal facts "infringement of copyright and neighbouring rights", "circumvention of technological measures for the protection of copyright and neighbouring rights" and "falsifying data related to copyright management". It is to be noted that civil and criminal penalties may be used concurrently (i.e. in parallel).

**More information:** „Szerzői jog: enyém, miénk, kié?” című konferencia előadásai