



ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE

ALAI
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Madrid



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COPYRIGHT, COMPETITION AND INNOVATION

QUESTIONNAIRE – NATIONAL REPORT OF HUNGARY

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Notes: This questionnaire aims at collecting information of law, caselaw and practices available in each country.

Please refer to the ALAI2021 program for further explanation on the Sessions and Panels.

Please, keep your answers short and factual.

Please send national report to rxalabarder@uoc.edu.

Deadline: 15 August 2021.

1. INTERNAL ADJUSTMENTS IN COPYRIGHT LAWS

Identify and explain any specific instances where market competition and innovation concerns haven been specifically addressed by copyright law or caselaw in your country. This may include by means of:

- 1.1.- Defining (or interpreting) the scope of exclusive rights to account for competition and innovation concerns.
- 1.2.- Defining (or interpreting) the scope of exempted uses (E&L) on account of competition and innovation concerns.
- 1.3.- Imposing licensing conditions (statutory licensing, compulsory licensing, compulsory collective management, ECL, etc) or "joint-tariffs", "one-stop-shops" ... and explain their impact in the market
- 1.4.- Explain any relevant licensing practices existing in your country that favor market competition and innovation. Please refer to any copyright markets (i.e., software, publishing, news, audiovisual. ...)
- 1.5.- By any other means?

Note: given that, to date, Hungary is amongst those few European countries, which have already implemented the CDSM Directive, and it might be interesting also to others to see how some of the new instruments the Directive had introduced were transposed, the answers below include the full text of the relevant provisions on a) text and data mining; b) out-of-commerce works; c) content-sharing service providers; and d) publishers of press publications. Unless noted otherwise, all excerpts in italics are from the Act LXXVI of 1999 on Copyright; hereinafter the "CA").



Text and data mining: a new exception

Section 33/A

(1) For the purposes of this Act:

[...]

3. 'text and data mining' shall mean any automated analytical technique aimed at analysing text and data in digital form in order to derive information.

Section 35/A

(1) Free use shall cover reproductions made in order to carry out text and data mining of works if:

- a) they had lawful access to the works used,*
- b) the rightholder has not expressly objected to such free use in an appropriate manner, such as machine-readable means in the case of content made publicly available online, and*
- c) the copies required for text and data mining are retained for as long as is necessary for the purposes of text and data mining.*

(2) Free use shall cover reproductions made in order to carry out text and data mining of works by research organizations and cultural heritage institutions [Point 2 of Subsection (1) of Section 33/A¹] for scientific research, provided that

- a) the person using the works had lawful access to the works used,*
- b) the copies of works made within the framework of free use are stored with an appropriate level of security, and*
- c) they may be retained for the purposes of scientific research.*

(3) Authorized users may provide access to the reproduced copies made under Subsections (1) and (2)

- a) within the framework of the relevant research cooperation, or*
 - b) for the professional assessment of the scientific work,*
- for a closed group of users, upon request, on condition that it does not serve the purposes of gainful activities or to generate more income neither directly nor indirectly. Communication to the public may be maintained solely to the extent required for the purpose and for the duration prescribed in this Section.*

“Joint-tariffs” and “one-stop-shops”

Collective management organisations ("CMOs") are statutorily bound to set up joint tariffs and offer one-stop-shop licensing to users in case of

- broadcasting and other communication to the public of a phonogram published for commercial purposes ("equitable remuneration"); the rightholders concerned are performers and phonogram producers;
- simultaneous, unaltered, and unabridged retransmission by cable or other means for reception by the public of an initial transmission (with the involvement of an organization other than the original) by wire or other means of television or radio programs ("simultaneous retransmission"); the rightholders concerned are producers, scriptwriters and other creators of films, visual artists, composers and lyricists, performers, and phonogram producers;

¹ "Section 33/A (1) For the purposes of this Act: [...] 2. 'cultural heritage institution' shall mean a publicly accessible library or museum, an archive or pictures and sound recordings held in public collections;"



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- private copying; the rightholders concerned are
 - in the case of sound recordings, composers and lyricists, performers, and phonogram producers;
 - in the case of audiovisual recordings, producers, scriptwriters and other creators of films, visual artists, composers and lyricists, and performers;

Joint-tariffs and one-stop-shops are known to streamline the licensing process for users. They also compel rightholders' groups to address and resolve their internal dissents, if any, before approving the tariffs. However, joint-tariffs and one-stop-shops do not seem to have direct impact on competition, or innovation.

Other cases of imposing licensing conditions

a) Orphan works

The Hungarian Intellectual Property Office on the request of the user shall grant a license, and shall establish reasonable remuneration consistent with the manner and degree of use for the use of orphan works. The license of use shall be granted for a maximum term of five years. The licence applies throughout the territory of Hungary, it is non-exclusive, it cannot be transferred, and it carries no right to grant additional licenses for the adaptation of the works in question. According to the online registry of [licences issued \(\[https://www.sztnh.gov.hu/sites/default/files/2021_06_22_arva_mu_nyilvantartas.pdf\]\(https://www.sztnh.gov.hu/sites/default/files/2021_06_22_arva_mu_nyilvantartas.pdf\)\) less than a hundred such licences were granted since 2010, so the impact on the market of this type of licensing seems to be very limited.](https://www.sztnh.gov.hu/sites/default/files/2021_06_22_arva_mu_nyilvantartas.pdf)

b) Out-of-commerce (OOC) works

Chapter IV/B

OUT-OF-COMMERCE WORKS

Interpretative Provisions

Section 41/L

(1) For the purposes of this Chapter:

- 1. 'third country' shall mean any State other than Member States of the European Economic Area;*
- 2. 'out-of-commerce works' shall mean any work or subject matter protected by rights related to copyright where it can be presumed in good faith that the work or other subject matter is not available to the public through customary channels of commerce, after a reasonable effort has been made to determine whether it is available to the public. Where a work or other subject matter protected by rights related to copyright is available in any of its different versions, not including adaptations, that work or other subject matter protected by rights related to copyright should not be considered out of commerce.*

(2) Sets of works may also be considered out of commerce, except if on the basis of reasonable efforts to determine their availability there is evidence that the works constituting the components of such sets predominantly consist of:

- a) works first published in a third country;*



b) cinematographic or audiovisual works, of which the producers have their headquarters or habitual residence in a third country; or

c) works of third country nationals, where no Member State or third country could be determined pursuant to Paragraphs a) and b).

(3) Sets of works may be considered out of commerce also in the case under Subsection (2), where having regard to the components of such sets the collective management organization is sufficiently representative, within the meaning of Subsection (1) of Section 41/M, of rightholders of the relevant third country.

(4) For the purposes of this Chapter, out-of-commerce works shall include literary works that were last published in the territory of Hungary on or before 31 August 1999. Literary works that were published inside a period of eight years since the date when last published shall not be considered out-of-commerce works.

Use of Out-of-Commerce Works

Section 41/M

(1) A contract for the authorization of reproduction, distribution, communication to the public of out-of-commerce works that are permanently in the collections of cultural heritage institutions [Point 2 of Subsection (1) of Section 33/A]², including the amounts of fees payable in consideration shall be concluded with the cultural heritage institution by the collective management organization on behalf of authors and holders of copyright and related rights, unless the author or holder of copyright and related rights has made a statement of objection provided for in Subsection (2) hereof.

(2) As regards the uses provided for in Subsection (1), the author or holder of copyright and related rights may, at any time, object to the authorization of use within the framework of collective rights management, including after the beginning of the use concerned. The objection raised against said type of use shall be governed by Subsection (1) of Section 18 of the New Copyright Act, with the derogation that the rightholder shall be entitled to object with respect to his or her specific works.

(3) The use rights provided for in Subsection (1) may also apply to uses in other Member States of the European Economic Area.

(4) The authorization of the author or holder of copyright and related rights is not required for the reproduction and communication to the public of out-of-commerce works, or for the adaptation and distribution of software, in order to allow cultural heritage institutions to make available out-of-commerce works that are permanently in their collections, on condition that:

- a) the name of the author or holder of copyright and related rights is indicated, if this is possible;
- b) communication to the public takes place on non-commercial websites; and
- c) in respect of exclusive rights relating to the type of work to be used, no representative collective management organization licensed for exercising the rights under Subsection (1) that has an effective tariff exists.

(5) The free use provided for in Subsection (4) shall be construed affected in the Member State where the cultural heritage institution is located.

(6) As regards the uses provided for in Subsection (4), the author or holder of copyright and related rights may, at any time, object to the authorization of use, including after the beginning of the use

² "Section 33/A (1) For the purposes of this Act: [...] 2. 'cultural heritage institution' shall mean a publicly accessible library or museum, an archive or pictures and sound recordings held in public collections;"



concerned. In such cases, any ongoing use should be terminated within a reasonable period after the objection. Before that time the author or holder of copyright and related rights shall not be entitled to remuneration for the uses referred to in Subsection (4).

(7) The availability of the works through customary channels shall be assessed (availability check) by the cultural heritage institution requesting the use rights. In the availability check the cultural heritage institution shall take reasonable efforts to determine whether the works are available to the public.

(8) For the purposes of this Section, cultural heritage institutions shall use the revenue from the uses provided for in Subsections (1) and (4) exclusively for covering the costs of the license payable for the use rights and the costs of digitizing and disseminating the out-of-commerce works covered by the license.

Section 41/N

(1) Cultural heritage institutions [Point 2 of Subsection (1) of Section 33/A] shall keep records of their uses under Subsections (1) and (4) of Section 41/M and shall report to the Office by way of electronic means:

- a) information enabling the identification of out-of-commerce works;
- b) relevant information on the parties to the use contract;
- c) information on the territorial scope of the use rights; and
- d) information on the licensed uses.

(2) The Office shall forward the information referred to in Subsection (1) hereof - accompanied by information on the possibility of objection under Subsection (6) of Section 41/M - to the European Union Intellectual Property Office without delay for recording such information in a single publicly accessible online database established and managed by it.

(3) Use may take place after six months following the date when the information referred to in Subsection (2) is made available by the European Union Intellectual Property Office.

(4) For information purposes, the Office shall keep a register of the particulars provided for in Subsection (1), and shall make it available on its website. The Office shall not be held liable for the information thus published.

(5) The Office, and the institution undertaking the use provided for in Section 41/M and the collective management organization authorized for licensing shall post general information on their websites in English and Hungarian of the details of the uses licensed under Section 41/M. That information shall, in particular, cover the ability of collective management organizations to license works in accordance with Section 41/M, the details of the free uses provided for in Subsection (4) of Section 41/M, and the options available to rightholders for making objections in accordance with Subsections (2) and (6) of Section 41/M.

(6) The institution undertaking the use shall disclose information in relation to the uses under this Chapter that any specific use took place in accordance with the provisions applicable to out-of-commerce works.

c) Publicly funded research

Act LXXVI of 2014 on Research, Development and Innovation establishes special rules for subject matters of intellectual property protection (including copyright) created by national research institutes, or other publicly funded projects. By virtue of the law, all intellectual property rights in these creations



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are transferred to the research institution (operating in the form of a state-owned organisation or a state-owned non-profit company). The beneficiary of a project implemented with publicly funded research must ensure that the rights related to the intellectual property created within the framework of the project are transferred to the beneficiary to the maximum extent permitted by law.

2. A STUDY CASE: DATA ECONOMY

Data is called the “new oil” for our economy, as it is being used to develop new products and services. To the extent that this data includes copyrighted works, we want to identify how copyright laws and caselaw are addressing this issue and how different national solutions may have a different impact in the market. In the EU, this activity concerns the exceptions and limitations on Text & Data Mining as well as the regulation on Public Sector Information reuse (PSI)

Notice: we are not only talking about corpuses specifically prepared for TDM purposes (i.e., electronic journals, databases, etc), but also about processing (machine reading) of works, in general, (texts, images, etc) available either online, in digital form or in analogue form.

2.1.- Is “machine reading” an act of reproduction? If so, is it being exempted (excluded) under an E&L or as fair use? Is it subject to licensing (if so, what kind of licensing)?

2.2.- Please provide any examples (laws, caselaw, licensing) regarding the development of databases, search engines, apps, services, etc based on reusing data produced by the Public sector.

2.3.- Is there any evidence of how these measures (law, caselaw, licensing) are fostering or deterring the development of new services and products and of downstream markets?

2.1.- Is “machine reading” an act of reproduction? If so, is it being exempted (excluded) under an E&L or as fair use? Is it subject to licensing (if so, what kind of licensing)?

There has been no court decision focusing on this issue in Hungary.

According to the general definition of machine reading it is endowing machines with the capability to read, understand, reason, and answer questions about unstructured natural language text.

From a copyright point of view, the use of unstructured natural language also means that the work is used in its non-copyrighted capacity. At present, a dedicated exception covering machine reading is not known in copyright. When an activity occurs by machine reading that must be judged under the current rules. This action can be temporary or permanent reproduction. An examination of the additional conditions may determine whether an exception or an activity subject to authorization takes place.

The text and data mining exceptions introduced by the DSM directive, we can follow the approach that “machine reading” is not an act of reproduction. The DSM directive has been implemented in Hungary in June 2021, it covers the text and data mining exceptions/limitations also.

2.2.- Please provide any examples (laws, caselaw, licensing) regarding the development of databases, search engines, apps, services, etc based on reusing data produced by the Public sector.

Act LXIII of 2012 on Reuseability of data produced by the public sector regulates the topic generally. Executive government decrees give detailed rules on the different sectors (e.g. cultural data, local data



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etc.) The law follows the regulatory model of the PSI directive (licensing). According to the law, a contract must be concluded with a public institution for reuse of public data. The contracts are not public, but can be requested with a public interest request. For this reason, however, the number of services based on reuse of public data is not public.

2.3.- Is there any evidence of how these measures (law, caselaw, licensing) are fostering or deterring the development of new services and products and of downstream markets?

According to the law mentioned above public data cannot be withheld by the state, access is based on public tariffs and terms of contracts. State may not withhold public tariffs and must publish the terms of contracts.

A clear legal restriction on the re-use of public data is the right of third parties to existing intellectual property (including in particular copyright), ie copyright protected works cannot be re-used in general within this system. In principle, an organization performing a public task may also have an intellectual property right in a document containing public information, or an organization performing a public task can be entitled to sui generis protection in a database produced by it. The latter is not excluded from the scope of reusable public data.

3. EXTERNAL ADJUSTMENTS: ANTI-TRUST AND BEYOND

Please provide examples (law, caselaw, market practices) of how anti-trust law, unfair competition or any other legal adjustments apply to copyright licensing markets (offline and online). For instance, provide examples regarding the following scenarios:

- 3.1.- “Essential facilities” doctrines to foster the development of downstream markets
- 3.2.- Vertical integration of markets (producers/distributors); tying sales (e. g. exclusive sale of decoders by pay-TV platforms)?
- 3.3.- Bundling of rights/means of exploitation (cable, satellite, internet, cellphones): upstream and downstream competition issues.
- 3.4.- Licensing prices (also under collective licensing) deemed unfair, discriminatory, anti-competitive by courts; arbitration or mediation procedures to set prices; government price-setting ...

The scope of the answers to Q3

Since both copyright and competition regulations are fully harmonized with EU law, we limited the scope of answers to cases resolved under national authority. Some cited cases, however, predate the affiliation of Hungary to the EU (2004). Courts decided upon these based on laws harmonized only partially then with the European acquis.

CMO tariffs: government price control

Tariff setting by CMOs is usually subject to some sort of state supervision or government control in most countries, as is the case also in Hungary. We are however not aware of any other country where approving tariffs would require the decision of the entire government. Ordinarily, tariffs are approved



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by the minister of justice upon a proposal by the president of the Hungarian Intellectual Property Office. According to the CMO Act, however, any tariff, which proposes

- a) to raise fees over the consumer price index established by the Central Statistical Office for the previous calendar year, or
 - b) to expand the coverage of tariffs to users hitherto not bound to pay royalties, unless such expansion was prescribed by new legislation,
- shall be approved by the government.

CMO tariffs: tariffs claimed to be unfair, restricting and discriminatory

In this case³, Filmmúzeum ("Movie Museum"), a television channel for vintage movies and tv-shows, filed a complaint with the Hungarian Competition Authority ("HCA") against FILMJUS, the Hungarian CMO of Film Authors and Producers, claiming that FILMJUS's tariffs for the re-runs of films and tv-shows were disproportionate and discriminatory and thus abusing its dominant position.

The main findings of the HCA in the case were as follows:

[As regards unfair pricing] According to the established practice of the HCA, a price shall be deemed unfair (excessively high) if it exceeds the amount of (fair) profit, based on economically justified costs and the return proportional to the risk of investment in the given trade. This method, however, the HCA resolved, cannot be applied to copyright fees, therefore, in this case, instead of weighing the price itself, the method by way of which it has been set must be assessed. Art. 16(1) of the CA stipulates that copyright licence fees must be proportionate to the revenue relating to the use, a fee setting method the HCA considered acceptable also in the context of competition law. The fee charged by FILMJUS for re-runs of films and tv-shows was based on the length of the audiovisual work used and the number of subscribers of the Filmmúzeum channel. In connection with the consideration of the "number of subscribers" the HCA assumed that users (broadcasters) can receive revenues from two main sources: from the fees programme distributors (cable television undertakings) pay them on a per subscriber basis, and from advertisements. Both sources seem to be proportionate to revenues. The programme distributor fee is directly linked to the "number of subscribers", and the advertising revenue is also very closely related thereto (the wider the audience reached, the more the advertiser is willing to pay). The length of the film broadcast is also linked to the broadcaster's revenues as it corresponds the same portion of the broadcaster's airtime as it represents in the programme distributor fee paid for the full airtime. The HCA therefore resolved that a fee based on the length of the audiovisual work used and the number of subscribers satisfies the criteria of the licence fees having to be proportionate to the revenue relating to the use, and thus shall not be considered unfair.

[As regards restriction of trade] In view of the HCA, 37) In the view of the Competition Board, in addition to the fact that the price applied by FILMJUS shall not be considered unfair, an excessively high price is anti-competitive only if is applied "to the detriment of consumers" and notably, if it has a direct and abusive impact on the supply-side (e.g., unjustified use of obsolete technologies), which were not identifiable during the investigation.

³ Vj-97/2004/37. https://www.gvh.hu/dontesek/versenyhivatali_dontesek/archiv/dontesek_2004/3877_hu_vj-97200437 (downloaded on 09/11/2021)



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[As regards undue discrimination] Filmmúzeum also claimed that FILMJUS, abusing its dominant position, discriminated its trade partners by way of applying, without any justification, different prices in its contractual relations with them. The HCA noted that applying different prices vis-à-vis different trade partners is a necessary but not sufficient precondition to conclude that those prices were discriminative. Therefore, the HCA examined the relationship between the fees published in the tariffs and those applied in the various individual contracts. The outcome of the scrutiny was that while FILMJUS indeed used different methods vis-à-vis its different trade partners to calculate applicable licence fees, this differentiation in itself did not constitute unjustified discrimination because the differences in the methodology are justified by the differences in the status and operation of the user concerned, namely when in one case the user is a film distributor and in another case it is a broadcaster.

CMO tariffs: economic justification of tariffs

In a procedure started in 2014⁴, the HCA examined the tariff of ARTISJUS⁵, the CMO of literary and music authors, for private copying. The objectives of the scrutiny were to establish a) whether discounts on published private copying fees were applied fairly and non-discriminatively to all users; and b) whether the methodology of setting the fees was adequate also in the context of competition law. While the HCA did find the practice of applying discounts objectionable, it believed that the methodology used for the economic justification of fees did not take into account certain aspects of competition law to a sufficient degree. The case was closed with an agreement in which ARTISJUS and the other CMOs concerned agreed

- to conduct an independent consumer survey and to commission a study on the basis of which the assessment of the private copying fee ecosystem were to be carried out, including an assessment of whether the current system may have imposed disproportionate burdens on certain groups of consumers bound, ultimately, to pay the fees, and to present the results of these works in the course of the statutory tariffs approval procedures for the years 2018, 2019 and 2020;
- the development of a system of reimbursement to consumers who would use, in a verifiable manner, the blank carriers purchased at a price inclusive of the fee for private copying only for the storage of their own artistic or professional content, as well as to launch an information campaign to make consumers aware of this system of reimbursement.

The "rightholders' cartels"

a) Visual artists

In this case⁶, the HCA initiated proceedings against three of Hungary's major visual artists' societies, the National Society of Hungarian Creative Artists, Hungarian Society of Designers, and the Association of Visual Artists and Industrial Designers, allegedly restricting competition by developing for their members so-called "price catalogues" ("Catalogue") containing "recommended" and "minimum" fees for certain typical designer's activities.

⁴ https://www.gvh.hu/dontesek/versenyhivatali_dontesek/dontesek_2014/vj_15_2014_166

⁵ Although the tariffs are issued by ARTISJUS, the terms and conditions in the tariff must be approved beforehand also by the CMOs of performers, sound recording producers, visual artists, and film authors and producers.

⁶ https://www.gvh.hu/dontesek/versenyhivatali_dontesek/archiv/dontesek_2004/3926_hu_vj-98200437



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The main findings of the HCA in the case were as follows.

Undoubtedly, the artistic quality of the works of professional designers may represent a separate submarket on the national market of graphic design. However, artistic quality, which depends on individual perceptions and artistic competence is an indifferent criterion when defining the relevant market, because these products also enter the market of graphic design and compete with other products, whether of higher or lower quality, and therefore the works of professional designers do not constitute a separate relevant market. The very fact that by producing price catalogues professional designers aimed to defend themselves from the adverse effects of having to compete with other ("non-professional") designers only reinforces the findings of the HCA.

From the point of view of a possible competition infringement, it is indifferent that the organisations only intended the Catalogue to be used as informative, given that the publication of minimum tariffs in itself had already been suitable for influencing the business decisions of designers. While it is true that the fees included in the Catalogue were only "recommendations", the mere publication of a price catalogue should be considered problematic, since if an undertaking could only be hired "in return for a fee" (as opposed to "free of charge"), this amounts already to a restriction of price competition. Further, the "minimum price" sets fees regardless of the individual costs of the undertaking or the quality of the service, and as a result undertaking that work at lower costs or provide services at lower levels are not forced to reduce their prices.

In its decision, the HCA imposed a fine on all three organisations, the amount of which was reduced later by the court reviewing the case.

b) Journalists

In a similar case⁷, the conduct of the National Associations of Hungarian Journalist was found infringing when it published "recommended minimum prices" for its members. The HCA rejected the argument of the association that the recommendations in question were never applied and that it only served as a tool similar those used by trade unions or professional guilds. It also rejected the argument that, many manufacturers of goods publish "recommended prices", a practice never considered infringing. Mostly on the same ground than in case of visual artists, the practice of issuing "recommended minimum prices" was deemed restrictive of competition and a fine was imposed on the National Associations of Hungarian Journalist. On appeal, the case was reviewed by first by the Budapest Regional Court and then by the Budapest Court of Appeal but the decision of the HCA was approved at both instances.

Price control: downstream market competition

The case⁸ is related to the distribution of the blockbuster movie, Titanic. According to the facts of the case, Intercom, a distributor controlling at that time approximately 58-60% of the legitimate VHS distribution market, refused to deliver copies of the Titanic movie to the TESCO supermarket chain as

⁷ https://www.gvh.hu/dontesek/versenyhivatali_dontesek/archiv/dontesek_2008/5575_hu_vj-362008023

⁸ https://www.gvh.hu/dontesek/versenyhivatali_dontesek/archiv/dontesek_1998/3030_hu_vj-161199822



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TESCO launched an advertisement campaign offering to sell the cassettes at a price below Intercom's recommended consumer price.

In defence, Intercom claimed that while it truly had a dominant position on the relevant market, TESCO also had a dominant position on the end-consumer market of VHS distribution and it was, in fact, TESCO that abused its dominant position by refusing to raise the purchase price offered to end-consumers to the price recommended by Intercom. It also claimed that because of the particularities of the video distribution market its behaviour was justified, as it merely sought to avoid the disruptive effect of a substantial deviation from the recommended consumer price.

The HCA rejected the arguments of Intercom. The motivation of the decision reasoned that, typically, publishers obtain the right to put VHS cassettes into commercial circulation from the copyright owner, usually under exclusive agreements, and therefore most films can lawfully be marketed in Hungary only by one publisher. Intercom, in all its contracts, whether selling to wholesalers or to retailers, used the recommended consumer price as a starting reference only, and then re-adjusted the actual purchase price depending on the buyer's market status, average turnover and advertising activities. Traders were encouraged to purchase larger quantities by giving them a higher discount from the average consumer price. It is true that retail supermarket chains have the potential to limit competition. Unlike the wholesaler, the publisher does not have an effective tool to control and influence all links in a multi-stakeholder chain. However, in the case of direct retail distribution, the refusal to serve a retail chain, with which weapon Intercom not only threatened but also used, constitutes a direct interference with the business of an independent undertaking, which is capable of limiting economic competition in itself.

4. ONLINE MARKETS: "VALUE GAPS" (ONLINE PLATFORMS)

*Notice that complete and valuable information resulting from the stakeholders' dialogue and written consultations currently launched by the EU Commission will be available at the time of the Congress. https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=68591
<https://ec.europa.eu/digital-single-market/en/news/directive-copyright-digital-single-market-commission-seeks-views-participants-stakeholder>*

Please include only information that is specific to your country.

4.1.- Is there any norms and/or relevant caselaw addressing the value gap issue, as applied to UGC platforms?

If you are an EU country, have you addressed the transposition of Art.17 CDSM Directive?

4.2.- Is there any norms and/or relevant caselaw or licensing addressing news aggregation?

If you are an EU country, have you addressed the transposition of Art.15 CDSM Directive?

4.3.- Is there any norms and/or relevant caselaw addressing other value gaps?

For instance, regarding cloud storage and compensation for private copying



4.1.- Is there any norms and/or relevant caselaw addressing the value gap issue, as applied to UGC platforms?

Provisions applicable to content-sharing service providers

Section 57/A

For the purposes of this Act 'content-sharing service provider' shall mean a service provider specified in Paragraph k) of Section 2 of Act CVIII of 2001 on Electronic Commerce and on Information Society Services (hereinafter referred to as "ISSA") of which the main or one of the main purposes is:

- a) to store,*
- b) to communicate to the public, including to give the public access to, and*
- c) to organize and promote for profit-making purposes a large amount of copyright-protected works or other protected subject matter uploaded by its users.*

Section 57/B

A content-sharing service provider performs an act of communication to the public or an act of making available to the public when it gives the public access to copyright-protected works or other protected subject matter of related rights uploaded by persons using the services.

Section 57/C

Where a content-sharing service provider obtains an authorization for communication to the public of a work or subject matter of related rights protection, it shall also cover acts carried out by users of the services for the purpose of provision of content-sharing services, when they are not acting on a commercial basis or where their activity does not generate revenues on a commercial scale. Where authorization for communication to the public is granted to the user of the service, it shall also apply to the content-sharing service provider within the framework of the use rights given to the user.

Section 57/D

The limitation of liability established in Section 10 of the ISSA shall not apply to uses carried out by content-sharing service providers according to Section 57/B.

Section 57/E

(1) Content-sharing service providers shall be liable for unauthorized acts of communication to the public by the user of works or subject matter of related rights protection used without authorization.

(2) Content-sharing service providers shall be relieved of liability if able to demonstrate that they have:

- a) made best efforts within reason under the circumstances to obtain an authorization for use;*
- b) made, in accordance with high industry standards of professional diligence, best efforts within reason under the circumstances to ensure the unavailability of specific works and other subject matter of related rights protection for which the rightholders have provided the service providers with the relevant and necessary information for identification; and*



c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders relevant to unauthorized use, to disable access to, or to remove from their websites, the notified works or other subject matter of related rights protection, and made best efforts within reason under the circumstances to block future access to the works or other subject matter of related rights protection indicated in the notice.

(3) The proceedings under Paragraph c) of Subsection (2) hereof shall be governed by the provisions applicable to the proceedings under Section 13 of the ISSA, with the proviso that in Section 13 of the ISSA the service provider shall be construed as a content-sharing service provider.

(4) The implementation of the measures specified in Subsection (2) by content-sharing service providers shall not result in the prevention of legitimate uses.

(5) In determining whether the content-sharing service provider has complied with the conditions set out in Subsection (2), and in light of the principle of proportionality, the following elements, in particular, shall be taken into account:

a) the size and type of the service supplied by the content-sharing service provider, including its users;

b) the type of works or subject matter of related rights protection accessed by persons using the services within the framework of the content-sharing service provider's services; and

c) the availability of suitable and effective means used for compliance with Subsection (2) for the content-sharing service provider, and their cost for the service provider.

(6) The application of this Section shall not lead to any general monitoring obligation.

Section 57/F

(1) In respect of new online content-sharing service providers:

a) the services of which have been available to the public in the territory of the Member State of the European Economic Area for less than three years, and

b) which have an annual turnover below 10 million euro, calculated in accordance with Commission Recommendation 2003/361/EC, shall be subject to compliance only with the condition set out in Paragraph a) of Subsection (2) of Section 57/E for the purpose of liability exemption, and shall act expeditiously, upon receiving a sufficiently substantiated notice, to disable access to the notified works or other subject matter of related rights protection or to remove those works or other subject matter from their scope of services in accordance with Paragraph c) of Subsection (2) of Section 57/E.

(2) Where the average number of monthly unique visitors of the content-sharing service providers specified in Subsection (1) exceeds five million, calculated on the basis of the previous calendar year, the content-sharing service providers shall also demonstrate that they have made best efforts within reason under the circumstances to block future access to the works and other subject matter of related rights protection indicated in the notice.

Section 57/G

(1) Content-sharing service providers shall have in place an effective and expeditious complaint and redress mechanism that is available to users of their services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter of related rights protection used by them.



(2) Complaints lodged in connection with disabling of access to, or the removal of, specific works or other subject matter of related rights protection shall be duly justified.

(3) Content-sharing service providers shall process duly reasoned complaints submitted by users of services without undue delay. Decisions made in connection with complaints shall be subject to human review.

(4) The complaints procedure defined in this Section shall be without prejudice to the right to have recourse to judicial remedies or to the possibility of accessing alternative dispute resolution mechanisms.

(5) Content-sharing service providers shall not be held liable for contents made available again resulting from a complaint lodged under this Section by the user of the service.

Section 57/H

(1) Online content-sharing service providers shall inform their users in their terms and conditions that they can use works and other subject matter of related rights protection freely.

(2) At the rightholder's request the content-sharing service provider shall provide information of its proceedings under Subsection (2) of Section 57/E, and on uses implemented under authorization given for making an act of communication to the public.

4.2.- Are there any norms and/or relevant caselaw or licensing addressing news aggregation?

Provisions relevant to the protection of publishers of press publications

Section 82/A

(1) For the purposes of this Subtitle, 'press publication' shall mean a collection composed mainly of literary works of a journalistic nature, but which can also include other works or other subject matter of related rights protection, and which:

a) constitutes an individual item within a periodical or regularly updated publication under a single title;

b) has the purpose of providing the general public with information related to news or other topics; and

c) is published in any press products under the initiative, editorial responsibility and control of a service provider.

(2) Periodicals that are published for scientific purposes are not press publications.

Section 82/B

(1) The authorization of the publisher of a press publication is required for the press publication to be

a) made available to the public by cable or any other means or in any other manner so that members of the public may access the press publication from a place and at a time individually chosen by them, and

b) reproduced electronically for the purpose provided for in Paragraph a), if use is implemented by a service provider referred to in Paragraph k) of Section 2 of the ISSA.

(2) Unless otherwise provided by legislation, the publisher of press publication shall be remunerated for the uses referred to in Subsection (1).



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(3) Publishers of press publications shall provide an appropriate share of the revenues received for the uses referred to in Subsection (1) to the authors of works incorporated in the press publication.

Section 82/C

The consent of the publisher of a press publication is not required:

- a) for using the hyperlink to the press publication;*
- b) in respect of the use of individual words or very short extracts of the press publication; or*
- c) for private or non-commercial uses of the press publication by individual users.*

4.3. Is there any norms and/or relevant caselaw addressing other value gaps?

In 2019, the CMOs concerned submitted for approval their new joint-tariffs on private copying fees that would have extended the fee to personal cloud storage services. The reason behind the extension was that recent surveys on tendencies of user habits have shown increasing use of these services for private copying of sound recordings and audiovisual works. Commercial (non-private) cloud storages would not have been covered by the new tariffs. The Ministry of Justice rejected the proposal essentially with the following arguments:

- a) According to Article 20 (2) of the CA “*the remuneration (for private copying) shall be paid by the manufacturer of blank video and audio carriers, in the case of manufacturing abroad by the person obliged under the legislation to pay customs duties, or – in the absence of obligation to pay customs duties – by the person who imports the carriers and by the first domestic distributor thereof, under joint and several liability, to the collecting society performing the management of rights in literary and musical works.*” The remunerations for private copying are not meant to be a consideration for reproduction, but are to be valued as compensation for lost royalties. The rightholder shall be entitled to appropriate compensation, but the CMO shall not have any individual right under EU or national law to claim the fee from any or all users. Defining the compensation framework is a matter for the legislature. The rules of the CA clearly oblige manufacturers or importers of physical carriers to pay a private copying fee, so the CA does not provide a legal basis for extending this obligation to operators of personal cloud storage services.
- b) There is no provision in the InfoSoc Directive that would prevent compensation from being provided otherwise than through the payment of a fee by cloud service operators.