Tamás Nótári

Remarks on Early Hungarian Copyright Regulation

The present paper has set the aim of providing the presentation of the development of Hungarian copyright law in the 19th century. In our paper we focus on the history of the evolution and regulation of Hungarian copyright law from the age of the Enlightenment against the backdrop of European development and regulation, and compares domestic and foreign lawmaking. Special attention has to be paid to Ferenc Toldy's and Bertalan Szemere's copyright law bills, and Act XVI of 1884.

Keywords: Hungarian copyright law, Act XVI of 1884, Ferenc Toldy, Bertalan Szemere

I. Turning points in the international history of the legal protection of intellectual property

I.1. Copyright law in the national codification of modern age

Although as early as in Roman law there were contracts that were entered into between the author and booksellers on multiplication of literary works and under which publisher's rights were protected by trader's business habits, these transactions were not provided with legal protection because legal sources do not mention the right of multiplying author's works and there were no action-at-law by which a possible claim could have been enforced.[1]

The privileges provided by rulers or other superior authorities for merely certain individuals appeared as the first legal sources, which *"were granted to the author or the publisher, and in earlier times exclusively and usually to the publisher only"*.[2] As we can see action could be taken against reprints, impressions through privileges granted solely in individual cases: the point of these privileges was that the publisher—for example, subject to the prince's right of supervision—obtained right to printing and publishing of books under "monopoly". For lack of rule of law, it was determined in charters what works the privilege applied to, what the content of the legal relation between the publisher and the author was, and what its limitations in time were. Two great types of patents can be distinguished. One of them ensured printing of books in general for the person obtaining charter, and simultaneously barred everybody else from this activity; whereas the other type made it possible to print particular books, while excluding everybody else. In this respect, Hungary was not lagging behind considerably since, for example, in 1584 the College of Nagyszombat obtained the exclusive right of publishing *Corpus Iuris Hungarici*, being aware of the clause set out in the charter that impression and unauthorised sale by other persons shall be punished by ten golden marks.[3] In the Middle Ages, guild rules provided some collective protection with respect to product markings on the grounds of charters; from the 15th c. more and more privileges were issued, primarily in England, Switzerland and city-states of North Italy. This regulation aimed at the legal protection of the user, i.e., printer-publisher rather than that of the author, although privileges granted to the author can be also found in records.[4]

Privileges were replaced by regulation at the level of law effective for the entire country rather slowly in Western Europe too. First, such a statute was adopted in England in 1709; the real wave of enacting laws started from the end of the 18th century only. Laws were usually

[1] Cf. Visky 1977. passim; Lendvai 2008. 57–79.
[2] Knorr 1890. V.
[3] Senkei-Kis 2007. 325.
[4] See also Mezei 2004. passim;Petkó 2002. 23. ff.

determined by aspects of prevailing state and economy policy and definitely showed the traces of the system of privileges. After several Austrian decrees and Hungarian attempts at making laws in the late 18th c., the Hungarian national assembly passed a law on this subject in 1884 only.

The 1709 statute of Ann Stuart (1702–1714) and the judicial practice that evolved from it can be considered a scheme that broke through the feudal model and arrived at the concept of copyright law in the modern sense.[5] It can be established that codification with regard to intellectual properties reached consistent solutions that suited the capitalist economic system in countries where social/political transformation was also radical; so, in France and the United States of America, which can be considered the model of consistent bourgeois revolution.

During the 19th c. in Europe, codification of copyright and patent law in the modern sense evolved, consistently enforcing civil law approach and development of exclusive rights to intellectual property. The capitalist legal system consistently acknowledged the authors' rights, protection of works; this protection, however, as a result of the principle of formal equality before the law, continued to leave authors economically exposed to users in stronger economic position. In copyright law, guarantee rules protecting the weaker contracting party, i.e., the author, had developed only by the 60's and 70's in the 20th c.

The ancestor of every copyright law is the *Copyright Act* of 1709 of the Protestant Ann Stuart (*Statute of Ann*), which ended the monopoly of the *Stationers Company* and provided for exercise of censorship. It set forth that on the copies of a work published for the first time subject to entering it into proper register exclusive right would be created in favour of the author or the person to whom he transferred this right. After fourteen years had elapsed, the transferred right reverted to the author, who could transfer it to another person for fourteen years again. After a total of twenty-eight years had passed, the *copyright* terminated. When Bertalan Szemere started to prepare his bill, as we shall see, a regulation adopted in England in 1842 extended this protection merely to expiry of seven years following the author's death and to forty-two years (i.e., three times fourteen years) from the date the book was published.

The twice fourteen-year term of protection included in the pan-federal copyright law passed in 1790 in the United States of America following Ann Stuart's lead was raised in 1831 to twice twenty-eight years from the first edition, making renewal for the second period subject to compliance with determined scope of persons and new registration.[6] In the United States, as early as in the beginning of the 19th c. under pain of forfeiture of right, it was required that each reproduced copy should contain a *"copyright"* mark showing the year of the first edition; this made it possible to calculate the duration of the term of protection everybody was expected to meet and substituted publication in the official *Gazette* read by only a few people. It was not long ago that this generally known requirement terminated, more specifically after the accession of the US to the Berne Union in 1989.

In France, revolutionary decrees on theatre performances adopted in 1791 and on ownership rights of authors, composers, painters and draughtsmen in 1793 provided for the exclusive and transferable *"most sacred author's ownership"* for five and ten years following the author's death respectively, and it was the users and not the authors of relevant works who benefited from it. In 1810 the term of protection was extended to twenty years from the author's death.

On German territories, in the shadow of recipiated Roman law, authors' and publishers' rights were interpreted theoretically. In 1734, Böhmer asserted that by purchasing the manuscript its ownership would devolve to the publisher *"cum omni iure"*—including the right of publishing. In 1785, Kant stated that the author was entitled to inalienable and most personal right *(ius personalissimum)* on his work, and he could be addressed even in the form of

[5] Lontai 1994. passim

[6] Senkei-Kis 2007. 326.

publishing only with his permit.[7] In 1793, Fichte distinguished between the thoughts communicated in the work, casting these thoughts into an expounded work and the book embodying the work: the thoughts constitute public domain, the work is the author's inalienable property, and the publisher is entitled to rights on reproduced copies. The ownership concept was reinforced at the beginning of the 19th c. by Schopenhauer and Hegel. In his lectures published in 1820 Schopenhauer expounded that actual property is that can be taken away from a person only unlawfully, and the property that he can protect ultimately can be what he had worked on. Hegel made it clear that the person who obtains a copy of a work will be its unrestricted owner, however, the author of the writing will remain the owner of the right to reproduce the intellectual property.

Against the backdrop of such theoretical arguments and on the basis of increasingly prevailing natural law, the makers of the Prussian *Allgemeines Landrecht* of 1794 deemed it unnecessary to establish copyright; instead; they set out publisher's right in section 996 of the code, stipulating that as a general rule a bookseller shall obtain publishing rights only on the grounds of written contract entered into with the author. Given this concept, the issue of protection did not even emerge. In Prussia, copyright law was created only on 11 June 1837: it was at that time when with the assistance of Savigny they made law on the protection of rights on scientific works and works of art against reprints and remaking. This law provided for protection of author's property for thirty years from the author's death.

In the same year, the *Deutscher Bund* quite modestly resolved that member states should acknowledge the author's right, at least for ten years, that a work published by a publisher indicated in it should not be reprinted without their permit. What we have here is mostly a rule of protecting publishers. In 1830, Russian legislation stipulated that the term of protection was twenty-five years. It is worth adding that when Szemere's proposal was completed, in 1844, Bavaria, for example, did not have a copyright law yet; it was made in 1865 only. However, at that time no copyright law was in force in Switzerland either where the Contract Law Act regulated publisher's transactions in 1881 only; a pan federal copyright law was made first in 1883. Even in Austria, the copyright patent entered into force only on 19 October 1846; since 1775, an imperial decree against reprints had been in force merely for the eternal provinces. So, the Austrian *Allgemeines Bürgerliches Gesetzbuch* of 1811 regulated copyright only *filius ante patrem*.

The third step was constituted by international agreements and treaties, once it had been realised that necessity of protection crosses borders. The signatories of such bilateral or multilateral international agreements developed their internal regulations so that they should comply with the content of the agreement as much as possible. Hungary entered into such an agreement first with the Austrians, in 1887, which provided for mutual protection of author's rights in literary and artistic works. Furthermore, in the 19th century, similar state agreements were entered into with Italy (1890), Great Britain (1893) and Germany (1899). From among multilateral international agreements the Berne Union Convention should be highlighted, which was entered into in 1886; however, Hungary became its member only in 1922—for that matter, this fact also contributed to making Act LIV of 1921, that is, the second copyright law.

Looking at these three forms, it should be seen that they move from the individual to the general. Privileges were issued by rulers, yet to single persons only, to print—usually one—book, simultaneously barring everybody else from this activity.[8] Subsequently, this could provide opportunity to enforce claims only against those who belonged to the jurisdiction of cities (city-states). Later on, laws focused on authors, and as part of that provided every author with protection of rights, and threatened everybody else, who committed abuse on the

[7] Senkei-Kis 2007. 323.
[8] Senkei-Kis 2007. 324.

territory of the country, with penalty. International agreements determined frameworks of copyright protection in the most general terms, under which foreign works were also protected, however, actual substantive and procedural rules were contained always in national legislations. With respect to the subject of copyright protection, i.e., protected works, it can be stated that, albeit, in the beginning they prohibited reprints of writer's works, as technology developed protection of performances and works of art followed it at an increasingly fast speed.

I.2. International copyright treaties

As international copyright laws applied to the territory of the issuing country only, they did not provide protection for foreign authors. Fundamental principles of mutuality between countries were set out first by the Berne Convention in 1886. Contrary to that, Emil Szalai writes that mutuality is not contained even at the level of reference in the text of the Convention.[9] The document clarified basic principles of copyright, and summed up the principles of settlement of disputed international issues; however, it left specification of details to the laws of the countries of the Union.[10] This basic document inspired several international requirements, agreements made later. Three types of these international agreements can be distinguished: universal, regional and bilateral agreements.

The highest level acknowledgement of copyright is set forth in Section 27 (2) of the United Nations General Assembly Declaration on Human Rights of 1948, which determines copyright as *"a fundamental right"*. This taciturn statement, however, is sufficient for this entitlement to be respected by practically all the states of the world. Universal agreements are more practical than that, and determine basic institutions of copyright usually as a framework rule. Agreements are mostly aimed at ensuring that the author should get at least basic level protection in each country from which specific ratifying countries can deviate maximum within the frameworks determined by the agreement. One of these basic rules is, for example, term of protection, which was determined as fifty years from the death of the right owner.

The first copyright meeting held a session in 1858 in Brussels; international regulation of copyright was discussed here for the first time. Chaired by Victor Hugo the *Association Littéraire Internationale* was founded in 1878 already, which provided framework for consultations of writers, artists and publishers in every second year until the First World War. From among them, the Rome meeting in 1882 is an outstanding event where on the proposal of Paul Schmidt (secretary general of *Börsenverein der deutschen Buchhändler*) an international meeting was convened to Berne to set up a copyright law union, and the Federal Council of Switzerland was requested to provide administration of the process. The meeting was held in September 1883; in the following year, the subject was discussed already at a diplomatic conference where Hungary represented itself officially—for the first and last time. After the 1885 conference, the year 1886 saw the founding of the Union: nine countries—England, Belgium, France, Germany, Spain, Switzerland, Sweden, Tunis and Haiti—signed the first Union document together with the supplementary article and final protocol of Berne, all of which entered into force on 5 December 1887. The Convention provided for further meetings too, of which it is necessary to mention the 1896 meeting in Paris ("additional document of Paris" and its supplementary statement) and the 1906 Berlin meeting, where codification of the right of the Union was formulated as a goal. As a result of that, "the modified Berne Convention for the Protection of Literary and Artistic Works" was created—this is the *corpus iuris* of the Union, together with the 20 March 1914 supplement. Hungary (together with fourteen countries) acceded both of them without reservations. Member states

[9] Cf. Szalai 1922. 8. f.
[10] Szalai 1922. 15., 22.

of the Union in 1922[11] were as follows: Austria, Belgium, Bulgaria, Czechoslovakia, Denmark (including the Faroe Islands), France (Algeria and colonies),[12] Greece, Haiti, Japan, Poland, Liberia, Luxembourg, Hungary, Morocco (except for the Spanish zone), Monaco, Great Britain (including its colonies and several protectorates), the Netherlands (including Dutch India, Dutch Antillas/Curacao and Suriname), Germany (including its protectorates), Norway, Italy, Spain (with its colonies), Portugal (with its colonies), Switzerland, Sweden and Tunis.[13]

Although the text of the Convention adopted in Berlin is authoritative, contrary to the principle of *lex posterior derogat legi priori*, member states may proceed against each other, against countries outside the Union and newly accessing countries against the rest of the countries on the grounds of earlier provisions. It should be added that acceding countries are obliged to accept the Berlin modifications, while specifying parts of earlier documents intended to be applied.[14] Deviation from the Berlin Convention is allowed with respect to term of protection, protection of works of applied arts, etc.; consequently, the Union did not have a uniform legal source.

The Convention is divided into three parts: the organisation of the Union; substantive law of the Union (relation of the members of the Union to each other and cogent copyright rules within the frameworks of the Union); the administration of the Union. Its coercive force and system of sanctions, mutuality are not even mentioned in it. Based on that we can declare that the Convention is *lex imperfecta*, its application is based on solidarity, that is, each member state presumes that in the event that it complies with the provisions of the Convention, then the rest of the countries will also do so.

Hungary was obliged by Section 222 of Act XXXIII of 1922 (on ratifying the Trianon Peace Treaty) to accede to the Berne Union within twelve months, which had been *de facto* in progress since 1913. The relevant bill was made, but the outbreak of the First World War prevented the law from being enacted, what is more, the chaotic inland and international conditions after the world war made it definitely impossible to submit the bill to legislature. Eventually, the bill was submitted to the legislature in 1921, and was approved by the National Assembly on 23 December 1921, and it was sanctioned on 25 February 1922 (after Hungary acceded to the Union). Hungary announced accession to the government of the Swiss Confederation on 14 February 1922. In our country, the law providing for the above was published in the 4 February 1922 issue of the National Statute Book under the title Act XIII of 1922 ”on Accession of Hungary to the International Berne Union Founded for Protection of Literary and Artistic Works”.

The Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works set forth some fundamental principles (minimum standards of protection) that efficiently help universal protection of author’s works.[15] These fundamental principles are as follows: a) principle of national treatment under which a country extends the same protection to foreigners that it accords to its own authors; b) principle of automatic protection without any required formalities; c) principle of independent protection (a foreign artist will be provided with protection complying with domestic rules of law even if his work is not under protection in the country of origin). It sets forth the concept of work; definition of the copyright owner; the author’s minimum moral and economic rights. The Convention was originally signed by ten countries, today more than one hundred and fifty countries have adopted it. It has been revised on seven occasions: in Paris (1896), Berlin (1908), Berne (1914), Rome (1928),

[11] Szalai 1922. 30.
[12] Szalai 1922. 14.
[13] Szalai 1922. 14.
[14] Szalai 1922. 29.
[15] Szalai 1922. 34. f.

Brussels (1948), Stockholm (1967) and Paris (1971). Hungary acceded to the Berne Convention in 1922. Hungarian legislature included the text of the Convention revised on 24 July 1971 in Paris into Hungarian legal order by the law-decree 4 of 1975.
The Universal Copyright Convention signed on 6 September 1952 was made under the auspices of the UN; its necessity was justified by political reasons. Its essence is protection of copyright without any required formalities for foreigners. Promulgation of its text revised on 24 July 1971 in Paris in our country was provided by law-decree 3 of 1975.
The 1961 Rome Convention is for the protection of performers, producers of phonograms and broadcasting organisations. In Hungary it was implemented by Act XLIV of 1998. The Geneva Convention made on 29 October 1971—for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms—was promulgated in Hungary by law-decree 18 of 1975. The *Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS),* constituting Annex "I. C" of the Marrakech Treaty, which set up the World Trade Organisation, promulgated by Act IX of 1998, provided for enforcement of rights based on reciprocity of form and the greatest allowance and for settlement of disputes between states.
They are differentiated from universal treaties by the number and geographical location of ratifying countries. The most important ones for Hungarian legislature are the Treaty of Rome founding the European Economic Community, and the directives affecting copyright adopted by the European Union recently. Directive 91/250/EEC on the legal protection of computer programs by copyright determines the concept of software, the right owners, their economic rights and special limitations of rights. Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property creates a "rental and lending right" as part of copyright protection, and sets out minimum standards of protection for the related rights of performers, phonogram, and film producers and broadcasting organisations. Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights ensures that there is a single duration for copyright and related rights across the entire European Union, increases the duration of protection and provides for protection of works from the death of the author. Directive 96/9/EC on the legal protection of databases and their special limitations.
As part the European Union integration process, one of the tasks of Hungarian legislation is to develop proper legal environment for the Union law, paying special regard to Union directives. Based on that it can be declared that these directives are present as a quasi norm in Hungarian law, although they do not have direct effect; therefore, they bind the lawmaker but do not bind law enforcers.
In Article 65 of the Europe Agreement promulgated by Act I of 1994, Hungary assumes obligation to provide protection of an extent similar to the protection that prevails in the Community, within five years from signing the Agreement, which Hungary has completed, among others, by making the new copyright law. Regarding the European Union, it needs to be added that drafts, proposals and other preparatory documents, which constitute parts of the Union lawmaking process but have no binding force, represent important guidance for Hungarian legislation. They include, for example, the White Paper, whose annex deals with copyright protection; or the Green Paper published by the European Commission in June 1995 entitled "*Copyright and Related Rights in the Information Society*". The most recent directive is the EU directive on copyright adopted by the European Parliament on 14 February 2001.
Although universal and regional agreements profoundly regulate copyright, the framework regulation is to be filled and specific procedural issues are to be regulated mostly by the legislature of specific states. So, bilateral agreements do not play a significant part, they have political or diplomatic significance; see, for example, the international agreement 26/1993 (*Agreement between the Government of the Republic of Hungary and the Government of the*

United States of America on intellectual property). In harmony with its title, Article II of the Agreement extensively deals with protection of copyright and related rights, however, the greatest emphasis is given to protection of phonograms and computer programs, which obliges Hungary to implement legal harmonisation.
Operation, harmonisation and organisation frameworks of international conventions on copyright are provided primarily by the World Intellectual Property Organisation (WIPO) of the UN from 1970, in co-operation with the UNESCO. Its task is, in addition to administration, to advance creative intellectual activity and further transfer of technologies to underdeveloped countries. The World Trade Organisation as the entity to manage the TRIPS Agreements co-operates with WIPO in certain implementation issues.

II. Hungarian copyright acts

Given the peculiarities of historical development, modern codification efforts evolved with a delay in the Age of Reforms in the eighteen-thirties; with respect to copyright the Bills related to Bertalan Szemere are worth mentioning. After suppression of the War of Independence (1849) and the Compromise (1867), basically Austrian laws were applied.
In the Central-Eastern European countries after the Second World War, intellectual property rights bore certain traces of central economic administration, foreign exchange management, income regulation and censorship. To different extent and for different reasons from country to country, this branch of law nevertheless preserved its main traditional features owing to, at last but not least, several decades' long membership in international agreements. The legal field of intellectual property shows continuous progress, without injuring essential principles. Just as in the phase of its evolution, in the appearance of modern development tendencies, economic circumstances and technological conditions constitute the key driving forces. General features of historical development are reflected by the progress made in this legal field in Hungary too.
Centuries long traditions of Hungarian copyright law, experience of domestic legal development cannot be ignored in working out the new regulation. Enforcement of international legal unification and European legal harmonisation requirements do not exclude respecting domestic copyright law traditions at all—they make it definitely necessary to integrate regulation harmonised with international conventions and European Community directives into Hungarian legal system and legal development organically; therefore, we must not put aside the assets of our copyright law in order to fulfil our legal harmonisation obligations. What Hungarian copyright law needs is reforms: renewal that maintains continuity of domestic regulation by exceeding former regulation while preserving the values achieved so far.
The history of Hungarian copyright law is characterised both by successful and unsuccessful attempts at codification, although aborted bills failed due to changes in historical circumstances rather than the standard of proposals.
The Bill submitted by Bertalan Szemere to the National Assembly in 1844 was not enacted for lack of royal sanctioning. Following the age of imperial patents and decrees, after the Compromise (1867) the Society of Hungarian Writers and Artists put forth—again an unsuccessful—motion for regulation; however, the Commercial Code, Act XXXVII of 1875 devoted a separate chapter to regulation of publishing transactions.
The first Hungarian copyright law, Act XVI of 1884, was made following László Arany's initiative,[16] upon István Apáthy's motion. The Act implemented modern codification adjusted

[16] On Arany's views see also Arany 1876.

to bourgeois conditions, setting out from theoretical bases of intellectual property not superseded ever since.

Later re-codification of Hungarian copyright law[17] was required by the need to create internal legal conditions of the accession to the Berne Union Convention. Act LIV of 1921 harmonised our copyright law with the current text of the Convention, and adjusted our regulation to the results of technological development.[18]

The last attempt at modernising bourgeois copyright law can be linked with the name of Elemér Balás P.; his Bill drafted in 1934 was published in 1947, however, due to political changes this Bill could not become an act.[19]

The development of copyright law of the bourgeois epoch was dominated by the concept of intellectual property, qualifying copyright as proprietary (economic) right similar to property, which was in line with the requirements and needs of market economy and trade. Gradual acknowledgement of authors' moral rights also began; however, protection of these rights did not become the central element of copyright law approach either in theory or in practice. Paradoxically, as a special impact produced by the current ideology, this happened only during the period of plan economy and one-party system.

Our Copyright Act III of 1969—which is the third one following Act XVI of 1884 and Act LIV of 1921—was and has remained a noteworthy codification achievement in spite of the fact that it bore the traits of the age when it was made. Due to the economic policy trend prevailing in that period, there was no need to break away from fundamental principles and traditions of copyright; regulation did not distanced copyright eventually from its social and economic function. (Fortunately, it was only theory rather than regulation that was imbued with the dogmatic approach arising also from ideological deliberations that worked against enforcement of the authors' proprietary (economic) interests by overemphasising the elements of copyright related to personality (moral rights).) Perhaps, it was owing to this that Act III of 1969, albeit with several amendments, could for a long while keep up with international legal development and new achievements of technological progress just as with fundamentally changing political and economic circumstances.

Hungarian copyright law in the late 1970's and early 1980's was in the vanguard of world-wide and European legal development: as one of the first legal systems, our copyright law acknowledged protection of copyright to computer programs, provided for royalty to be paid on empty cassettes, settled copyright issues related to so-called cable television operations. Regulation of right to follow (subsequent right) and paying public domain was huge progress too.

After coming to a sudden standstill temporarily in the second half of the 1980's, new significant changes were brought by the period between 1993 and 1998. In terms of actions taken against violation of law, amendment to the Criminal Code in 1993 was of great significance, which qualified infringement of copyright and related rights a crime (see Section 329/A of the Criminal Code (Btk.) set forth by Section 72 of Act XVII of 1993). Act VII of 1994 on the Amendments to Certain Laws of Industrial Property and Copyright, in accordance with international and legal harmonisation requirements, provided for overall re-regulation of the protection of related rights of copyright—i.e. rights that performers, producers of phonograms and radio and television organisations were entitled to. Furthermore, the Act extended the duration of the protection of author's economic rights from fifty years to seventy years from the author's death, and the duration of protection of related rights from twenty to fifty years. In addition to that, the Act withdrew the rental and lending of computer programs, copies of motion picture works and phonogram works from the scope

[17] On the attempts of a re-codification in the first decade of the 20th c. see Szladits 1906.

[18] Szalai 1922. 3. f.

[19] Cf. Balás 1927; Balás 1938; Balás 1942.

of free use; and, it required, in addition to the author's consent, the approval of the producer of phonograms and performers for rental and lending of marketed copies of phonograms. It was also an important progress that the 1994 Amendment to the Copyright Act terminated the statutory licence granted to radio and television for broadcasting works already made public in unchanged form and broadcasting public performances, and thereby modernised rules on broadcasting contracts. Act LXXII of 1994 implemented partial modification of the Act.
Following Constitutional Court resolution 14/1994. (II. 10.) AB, instead of a decree in a statute, it regulated the legal institutions of "right to follow" *(droit de suite)* and "paying public domain" *(domaine public payant)* important in terms of fine arts and applied arts. Act I of 1996 on Radio and Television Broadcasting also modified the Copyright Act; furthermore, it contains provisions important in terms of copyright. Govt. Decree Number 146/1996. (IX. 19.) as amended on collective copyright and related rights management provided for overall and modern regulation of collective management of copyright and related rights that cannot be exercised individually, and determined the transitory provisions related to termination and legal succession of the Copyright Protection Office as central budgetary agency, aimed at maintaining continuity of law enforcement. Decree Number 5/1997. (II. 12.) MKM on rules of register of societies that perform collective copyright and related rights management was made to implement the Govt. Decree. Decree Number A 19/1996. (XII. 26.) MKM raised the maximum duration of publisher contracts to eight years. The amendments implemented by Act XI of 1997 on Protecting Trademarks and Geographical Product Markings and entered into force on 1 July 1997 affected legal consequences that may be applied due to infringement of copyright and measures that may be applied in lawsuits brought due to such violations of law. And, on the grounds of the authorisation granted in the new Trademark Act, Govt. Decree Number 128/1997. (VII. 24.) on measures that may be applied in customs administration proceedings against infringement of intellectual property rights was adopted. Accelerated legal development in recent years could become complete through overall re-regulation of copyright and related rights.
Act LXXVI of 1999 satisfies these demands, while it builds on recently achieved results. The Act is based on several years' preparatory work. The Minister of Justice set up an expert team in 1994 to work out the concept of the new regulation; furthermore, the Minister of Justice invited the World Intellectual Property Organisation (WIPO) of the UN to assist in preparing the new copyright act; also, on several occasions it was possible to have consultations with the experts of the European Commission. Taking the proposals of the expert team into account, by June 1997 the concept of the overall revision of our copyright law had been completed, which was approved by the Government by Govt. Resolution Number 1100/1997. (IX. 30.). In accordance with Section 4 of this Government Resolution, the Minister of Justice set up a codification committee to develop the new copyright regulation from the representatives of ministries and bodies with national powers concerned, courts, joint law administration organisations as well as interest representation organisations of right owners, users and other copyright experts. The draft Bill has been discussed by the Committee both in details and on the whole on several occasions; the content of the proposal reflects the consensus reached in the Committee in every respect.

III. Hungarian copyright drafts in the 19th c.

III.1. Ferenc Toldy and copyright

In the Age of Reforms members of Hungarian society met with several fields that had not been legally regulated until then. That is how placement of intellectual works in the legal system must have arisen as a fundamental problem because until the beginning of the Age of

Reforms the "profession" of writers had not developed, there had been no periodicals, newspapers, and dramatic art and play-writing could not develop as an independent genre.
Two articles of Ferenc Toldy calls the attention to filling this gap in the law and reveal extraordinary expertise and rhetorical competence. His first article written on the topic was published in the columns of Athenaeum in 1838 entitled *"A few words on writer's property and petition to publishers of periodicals"*,[20] the other one in the Budapesti Szemle in 1840 under the title *"On writer's property"*.[21]
First, he defines the concept of property clearly as follows: *"Everything that we acquire by either our own internal talents or external tools without harm to alien rights is our unalienable true property, mortmain."* The definition contains every important element concerning the criteria of property. After that he translates the term of property to intellectual works and proves that once having obtained a form through printing it becomes property and unalienable property at that.[22] Furthermore he defines the term of *reprint/impression/*: *"misappropriation committed on true property"*.[23]
Once he has clarified fundamental terms, he expounds them in details: first of all, everybody can freely dispose over his property *(ius disponendi)*. He can do it in the following forms according to Toldy: *"He may transfer his original right to other persons at his discretion, … he may disclaim the property … until he does not do that clearly or, knowing that, does not abandon it or does not let it lapse, nobody shall encroach upon his rights to this natural property"*.[24] Toldy expounds the process how a writer's thought becomes a thing. If he disposes of it by gift or sale, he always does it conditionally. He does not sell the work of intellect; instead, he lets some *unique thing, copy, instrument* on moral lease. By his work the author conveys ideas, information to the buyer, and the buyer processes them and integrates them in his store of knowledge. *"The author has not attached, cleverly could not have attached, has not put up for sale any other right to any copy of his work on sale: the buyer has not bought, could not have bought anything else so he does not have anything more than such intellectual utilisation"*.[25] This is a consensual contract that—in the absence of any stipulations to the contrary—cannot be attacked or doubted either morally or legally.
Toldy's reasons contain statements valid even today. Regulation of writer's property in an act is an indispensable task of the State because the writer and his intellectual work is public domain, which shapes the edification, intellectual and ethical moral of society. Society's task is to appreciate the writer and to ensure that the writer could spend all his time and power on creation, development of his own intellect: thereby he will produce works that serve the edification, progress of the whole country. If a writer does not see the reward of his talent and efforts or not even recovery of his financial expenses certified, he will leave this career, which makes society, science poorer. In his opinion it is a fundamental condition that each state should protect its own intellectual products and based on reciprocity should not authorise reprinting or sale of foreign literary works. (Several countries authorised or did not forbid reprinting of foreign works or sale of reprints:[26] France, Belgium, the United States of America, the states of the *Deutscher Bund* and Austria too—the latter was a hotbed of unrestricted reprinting both of foreign and the greatest German literary works: these printing houses were protected by the state too.) Toldy asserts that the really blissful situation would be if states did not authorise reprinting and they purchased original works from each other,

[20] Toldy 1838. 705–717.
[21] Toldy 1840. 157–237
[22] Toldy 1838. 705.
[23] Toldy 1838 706.
[24] Toldy 1838. 706.
[25] Toldy 1840. 160. § 4.
[26] Toldy 1838. 707.

and the rate of imports/exports would depend merely on *"which country provides its citizens with more instruments, support, which is indispensable and necessary in the world of science"*.[27]

Toldy claims that only one reason can be raised as an excuse, which somewhat explains advocacy for reprints: *"and that is expensiveness of original editions"*.[28] As a matter of fact, he does not accept this reason either, as he knows that these books are more expensive because publishers can cover their costs from sold copies only. In his opinion publishers could sell their books cheaper if they should not be afraid of reprinters, since more copies could be printed and sold with greater safety: the less a reprint costs and the more certain buyers win, the more lawful owners, publishers and writers lose. The writer because the publisher cannot pay for his efforts according to his merits and the publisher because its profit from the enterprise is dubious. Yet, it is not only the individual but also the state that incurs loss because thereby in the long run scientific life, scientific development will be endangered and society will lag behind in development. Writer's work cannot be distinguished from other breadwinner activities, so it should be paid for. However, the issue of paying a fee is a rather complicated task. Toldy raises several possibilities.

On the one hand, it would be possible that the state should give salary to writers. This would not be a path to be followed because it could not be financed from the country's budget and it is problematic also because a standard to measure writers should be determined and only those who comply with this measure would be given salary. To avoid this, a reward of equal rate could be set, which is not a suitable method because there are huge differences between writers: *"And intellect cannot be measured by a man's arm."*[29] He raises the possibility that the state should make writer's property free *"by giving the right to writers to claim dividend from publishers on each printed or already sold copy. … But who will set this dividend? Who will check the number and sale of copies?"*[30] Questions, questions, questions, to which Toldy claims there is only one answer: when the state acknowledges writers' property right on their works, or to put it in other words, forbids reprinting. *"The public—vox populi—will reward its writers this way."*[31]

The solution could be only to make law. He considers the German act promulgated on 9 November 1835 an example to be followed in this subject, which obliged each province of the German Federation individually and mutually to acknowledge and protect both scientific and artistic property at least for ten years against reprinters as well as prohibited sale of reprints brought in from abroad and threatened with penalty. Penalty determined by the laws of provinces were imposed on reprinters and sellers of reprints, each copy and the instruments used for preparatory works were confiscated from them, and they were obliged to give full redress and compensation to the writer and the publisher. The Prussian government made an even stricter law covering all aspects, to consist of thirty-eight sections, which now regulated the issue of reciprocity and *"retaliation" concerning foreign states*.

Until then the issue of writer's property had not been put on the agenda of legislation in Hungary *"because there was no reason for worrying about it"* and *"if it has been injured, the injury has been overlooked or has not become subject of any complaint"*.[32]

Toldy, however, looks into the future with hope: he mentions Kazinczy's language reform efforts, publication of count István Széchenyi's book entitled *Credit*, foundation of the Hungarian Academy of Sciences and thereby the foundation of a new layer in civil society:

[27] Toldy 1838. 708.
[28] Toldy 1838. 709.
[29] Toldy 1840. 161. § 5.
[30] Toldy 1840. 162. § 5.
[31] Toldy 1840. 162. § 5.
[32] Toldy 1838. 711.

the layer of writers. Literature came to life because now it had permanent audience, especially through the work of the press, and this participation, no matter how low its rate was compared to the five million population, did not give cause for dissatisfaction. Editors of periodicals were considered pioneers such as Károly Kisfaludy who paid honorarium on larger studies published in the columns of *Aurora* edited by him. József Bajza was the first who paid for all the studies published in his almanac, and in a predetermined system at that. Thereby intellectual work began to become goods and the idea of ownership involved in goods became reality.

III.2. Bertalan Szemere's role in inland regulation of copyright

Bertalan Szemere noticed the necessity of protection of property in copyright law. Owing to the technological revolution, works of authors and artists became unprotected, so it was reasonable to make a duly worked out act.
Szemere's modern approach to ownership superseded the approach prevailing in the age both on international and national level, which made legal regulation simpler in several respects. The legal scientist combined the jurist's thoughts on theory and practice in his works, which is expressed the best in one of his most significant works, his report and bill on providing literary and artistic rights drafted in 1844. [33]
He presented his bill on 23 September 1844, it was adopted with a few modifications. The bill was approved by the session of the members of the Upper House on 9 November 1844, however, the ruler did not sanction it as the court was already working on a copyright patent governing the whole empire, which entered into force also with respect to Hungary by the imperial decree dated 29 November 1852.[34] In determining the core of copyright Szemere surmounted the concept of ownership prevailing both home and abroad, which simplified legal regulation in several respects.[35]
It was the 1865 Bavarian act that used the term copyright *(Urheberrecht)* for the first time on German territories; five years later it was followed by the German federal copyright act. On French territories for the first time in 1886 the Belgian legislation used the phrase *"droit d' auteur"* instead of the term *propriété*. In Hungary Act XVI of 1884 reflected Szemere's approach already, with Gyula Kováts's significant contribution, who successfully proposed the concept of "*copyright"* as a general technical term.[36]
Szemere interpreted the author's rights on his works as the author's moral rights, which is clearly reflected by his sections proposed for asserting and exercising rights. According to his approach, rights regarding the work were regulated by law in a form inseparable from the author and the author could transfer uniform copyright only with respect to its exercise. This clearly shows how much his approach to copyright was ahead of his age for in Austria it was the 1895 Act that started to follow this interpretation.[37]
Protection of the author's right enjoys priority since the author retains his right even if he has transferred exercise of such right to the authorised publisher and he can assert it by lawsuit if the empowered publisher fails to do so.[38]
By harmonising the action of the author as original copyright owner and the exclusively authorised user of the work before court against a third party and by laying the legal grounds of author's contracts, he formulated thoughts again ahead of his age. An example for the latter

[33] Boytha 1994. 48; Senkei-Kis 2007. 328.
[34] Boytha 1994. 53.
[35] Boytha 1994. 53.
[36] Boytha 1994. 55.
[37] Boytha 1994. 55. f.
[38] Boytha 1994. 56.

is section 44 in Chapter VII entitled *"General provisions"*, which states that *"as the number of editions is not determined in the contract, […] only one edition shall be considered before the law. And as the number of copies is not determined, each edition is calculated to contain 1000 copies."*[39] It is important that the author does not transfer his own right, instead gives licence to publish, that is, such rights possessor may exercise the author's right only with respect to publishing and therefore it seems to be authorisation rather than transfer of property rights. [40]

Besides author's rights, Szemere separately discussed theatre plays, musical works as well as drawing and painting works, and regulated them in summary in an act. Following foreign example, he called editions without licence, referred to as *pirated edition*, *fake edition*, and would have imposed punitive sanctions. In the comparative analysis he finds that a fine is used for fake editions abroad too, which is converted to captivity in case of failure to make payment. [41]

Szemere's reasons also emphasises the importance of protection of author's rights stating that in Western Europe, more specifically France, being an author is a rank just as being a nobleman, a priest, a merchant. Szemere set legal regulation and social prestige of French literary life as an example to Hungarian legislation. He stressed that "civilised nations" already had laws to regulate copyright at the level of an act.

III.3. The first Hungarian copyright act

Regulation of copyright in Hungary was strongly linked to the Austrians. Its starting point was the *exclamation* by Ádám Takács addressed to lawmakers, in which the protestant minister from Göny called the attention of the Governor's Council to the fact that *having defiled the work of printer Paczkó in Pest who published his funeral orations, printer Landerer reprinted the whole volume, … due to the loss caused by it Paczkó withdrew from publishing the second volume being afraid of Landerer stealing it again*.[42] To prevent continuation of this foul play, the minister turned to the Governor's Council as a result of which on 3 November 1793 the royal decree number 12157 was issued, which was the revised version of the decree dated 11 February 1775 in Austria. It sanctioned inland reprint by penalty and confiscation as well as compensation to be paid to the author. All this, however, did not apply to books published abroad and already reprinted inland by others, they could be freely published by anybody. It extended legal protection to the writer's legal successor *(cessionarius)* and formulated the institution of limitation well-known from later periods, which stated that after a certain period elapsed after the author's death the work became public domain and could be published freely by anybody but it did not set its detailed rules yet. In 1794 by another royal decree (no. 1812) it added reciprocity to it: it was prohibited in Hungary to reprint works printed in Austria, and the same protection was provided for works published on Hungarian territories against Austrian reprints. This rule was in force until the above mentioned Hungarian-Austrian international agreement (Act IX of 1887) was entered into.[43] Protection, however, proved to be underdeveloped because only the "preliminary path" formulating censorship existed instead of the judicial path. The scope of protected works was further widened by the court decree no. 4232 dated 22 April 1831, which extended protection to "drawings and copper engravings".

---

[39] Boytha 1994. 56.
[40] Boytha 1994. 56.
[41] Boytha 1994. 56. f.
[42] Kelemen 1869. 311; Balogh 1991. 151.
[43] Kenedi 1908. 9.

In the middle of the 19th century, however, literary, scientific and political life in our country flourished, strongly helped by reproduction. Simultaneously with progress, claims were received on abuses of copyright. The first highly significant writings on the topic can be linked to Ferencz Toldy, as it has been described above already.

The Kisfaludy Society seemed to be a committed adherent of lawmaking for a long time. They made their first attempt in 1844 when the board worked out a draft. This bill was forwarded to Bertalan Szemere to make it more accurate, who made the final version heavily under the influence of the 1837 Prussian copyright act and the 1843 Hungarian criminal law concept. On the one hand, he extended the scope of protection (in addition to author's works, theatre plays, musical works, drawings and paintings were defined); on the other hand, he defined the term of protection as a period of fifty years different from the average because thereby both the author and his legal successor could feel safer. Fine to be paid to the National Museum dominated (which could be converted to captivity in case of insolvency), however, reimbursement of the loss of the injured party was also carried out by obliging the injuring party to pay "compensation", considered private law sanction. It was his innovative and significant merit that he provided procedural law regulation too. The bill was progressive because contrary to the right of inheritance practice governing at the time the surviving spouse should obtain ownership rather than right of enjoyment on the work. In section 47 of his bill he set forth that *"at the same time the protection under this act shall be extended to insuring the rights of writers and artists of Transylvania until union with Transylvania is accomplished"*. In other words, foreseeing the union formulated (set) as a political aim he strove to extend copyright protection to eastern territories. He urged that all acts, customs and privileges contrary to the act in the making should be repealed, and he set the aim of regulating copyright in an act instead of unwritten law.

The ruler, however, threw back the bill giving the reasons that *"the principles set in the bill … should be modified for greater clarity and to fill certain gaps."*[44] Yet, the national assembly dissolved in the meantime did not have the opportunity to analyse the returned bill again. The ruler's real reason could be searched for in the fact that, given the intention to enact the Austrian copyright law vigorously being made, he did not want to break up the unity attained. The Austrian patent was published in 1846 and at the same time the king redebated Szemere's bill in order to create harmony with the patent. The next step was the Hungarian Royal Book Reviewer Office, which submitted its report to the king on 27 July 1847. Paying regard to all that Pál Jászay made his bill, which, however, was not debated due to accelerating political events, so the above mentioned decrees continued to be in force in our country.

During the revolution two significant statutes were made that highly affected the subject area, however, none of them was a direct copyright act. First, Act XVIII of 1848 should be mentioned, which covered the freedom of the press and as part of that abolished censorship. It stipulated that setting up a printing house was conditional upon compliance with Act XVI of 1840 on traders and depositing the mandatory four thousand forint security. Bookseller activity could be performed without any permits. Act XXX of 1848 provided for setting up theatres and ensured that theatre plays could be performed freely. The above mentioned 1846 patent, entitled *"Act to protect literary and artistic property against unauthorised publication, reprint and remaking"* was entered into force by the open order of 29 November 1852 in our country effective as from 1 May 1853.

These statutory provisions were in force in our country until 1861 (in Transylvania until 1884) when the National Judge's Conference implemented the program of gathering valid rules of civil law (that is how the collection of Temporary Judicial Rules was made), which served as source for all proceedings until governing statutory provisions were developed.

[44] Knorr 1980. XIII.

According to these rules, intellectual works enjoyed the same legal protection as any other property, now not only books were protected but ”creatures of the mind” too, that is, literary, artistic and musical works as well as translations. All this included the right of public performance and reproduction. At the same time, they declared that copyright was rooted in civil law and that the content of copyright would not extend beyond the author’s death; at the same time, printing of books and reprint was no longer made subject to authority’s licence.[45] Real practice, however, did not develop because these provisions were rather uncertain.

In 1867 the Kisfaludy Society took the thread dropped in 1844, and worked out the draft of the new copyright bill, however, it reached the Ministry of Justice only. Yet, after entry into force of the German statute of 1870, preparation of the act was carried out with greater success in the Society of Hungarian Writers and Artists where especially owing to Gyula Kováts’s efforts the bill was completed in 1874 already. The bill paid special regard to Hungarian conditions that required independent regulation in several respects, however, the bill was forced into the background due to the political conditions of the period and other tasks to be fulfilled in codification deemed more important, such as the Commercial Code of 1875.[46]

In the meantime, the German legislation, now having become uniform, continued codification of copyright. In 1876, the act on copyright of artistic works and unlawful imitation of photographs was made. So, exhaustive sample acts meeting requirements of scientific demands were already available to inland reform efforts: it was again the Kisfaludy Society that now for the third time, this time joining forces with the Hungarian Academy of Sciences, continued the work of codification. László Arany made a single draft of the law on literary, artistic and photographic copyrights, Tivadar Pauler Minister of Justice submitted this draft to the professional conference and, after it had been reworked, to the House of Representatives on 20 November 1882. The judicial committee of the House of Representatives submitted its report to the House of Representatives as early as on 9 February 1883, however, general debate commenced there on 21 February 1884 only. Upon the instruction of the House of Representatives the judicial committee redrafted the text of several sections. The final text of the bill was attested by the House of Representatives on 12 March 1884, and the Upper House approved it without any changes on 28 March. The act so completed was sanctified by the king on 26 April 1884, and it was promulgated in the National Statute Book on 4 May and in the House of Representatives by Act XVI of 1884.[47]

Bibliography

Arany 1876.
Arany L.: *Az írói és művészi tulajdonjogról [On writer’s and artistic property rights]*. Budapesti Szemle, 20. 1876. 225–257.

Balás 1927.
Balás P. E.: *Rádió, szerzői jog, sajtójog [Radio, copyright, press law]*. Budapest, 1927.

Balás 1938.
Balás P. E.: *Szerzői magánjogunk de lege ferenda [Our copyright private law de lege ferenda]*. In: Menyhárt-emlékkönyv. Szeged, 1938.

[45] Kelemen 1869. 315.
[46] Kenedi 1908. 13.
[47] Kenedi 1908. 14.

Balás 1942.
Balás P. E.: *A magyar szerzői jog szabályozásánk kiterjesztése a felszabadult kelet-magyarországi és erdélyi részekre [Extending regulation of Hungarian copyright law to liberated East-Hungary and Transylvania parts]*. Kolozsvár, 1942.

Balogh 1991.
Balogh E.: *A Szemere-féle szerzői jogi törvényjavaslat [Szemere's Copyright Bill]*. In: Ruszoly J. (szerk.): *Szemere Bertalan és kora, I. [Bertalan Szemere and his age, I]* Miskolc, 1991. 149–172.

Boytha 1994.
Boytha Gy.: *Szemere Bertalan és a „jövő zenéje" [Bertalan Szemere and "music of the future"]*. In: *Emlékkönyv Nizsalovszky Endre születésének 100. Évfordulójára [Essays in honour of Endre Nizsalovszky to commemorate the 100th anniversary of his birth]*. Budapest, 1994. 42–58.

Kelemen 1869.
Kelemen M.: *Adatok az írói tulajdonjog hazai történelméhez [Data to the Hungarian history of writer's property right]*. Budapesti Szemle, 14. 1869. 305–317.

Kenedi 1908.
Kenedi G.: *A magyar szerzői jog [Hungarian copyright law]*.
Budapest, 1908.

Knorr 1890.
Knorr A.: *A szerzői jog magyarázata [Explanation of copyright law]*. Budapest, 1890.

Kováts 1879.
Kováts Gy.: *Az írói és művészi tulajdonjog [Writer's and artisctic property right]*. Budapest, 1879.

Lendvai 2008.
Lendvai Zs.: *Szerzői jog az ókorban [Copyright in the Antiquity]*. Iparjogvédelmi és Szerzői Jogi Szemle, 113, 2008/3. 57–79.

Lontai 1994.
Lontai E.: *Polgári jog: a szellemi alkotások joga: szerzői jog és iparvédelem [Civil law: law of intellectual products: copyright and industrial protection]*. Budapest, 1994.

Mezei 2004.
Mezei P.: *A szerzői jog története a törvényi szabályozásig (1884:XVI. tc.) [History of copyright law until statutory regulation (Act XVI of 1884)]*. Jogelméleti Szemle, 2004/3.

Petkó 2002.
Petkó Mihály: *A szerzői jogi szabályozás története [History of copyright regulation]*. Collega, 6 (2002/5) 23–27.

Senkei-Kis 2007.
Senkei-Kis Z.: *A szerzői jog kialakulása és fejlődése [Evolution and development of copyright]*. Első Század, 2007/1. 322–331.

Szalai 1922.
Szalai E.: *A Berni Únio-Egyezmény magyarázata [Explanation to the Berne Union Convention]*. Budapest, 1922.

Szladits 1906.
Szladits K. (szerk.): *A szerzői jogról szóló törvény reformja. A Magyar Jogászegyletben 1906. évi március havában tartott vita. Márton Miksa, Kenedi Géza, Szalai Emil, Marton Sándor és Fényes Samu felszólalásaival [Reform of the Copyright Act. Debate at the Hungarian Lawyers' Society in March 1906. Speeches of Miksa Márton, Géza Kenedi, Emil Szalai, Sándor Marton and Samu Fényes]*. Budapest, 1906.

Toldy 1838.
Toldy (Schedel) F.: *Néhány szó az írói tulajdonról [A few words on writer's property]*. Athenaeum, 1. 1838. 705–717.

Toldy 1840.
Toldy (Schedel) F.: *Az írói tulajdonról [On writer's property]*. Budapesti Szemle, 1. 1840. 157–237.

Visky 1977.
Visky, K.: *Geistige Arbeit und die „artes liberales" in den Quellen des römischen Rechts.* Budapest, 1977.