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The Development of Hungarian Copyright Law until the Creation of the First Copyright Act (1793-1884)

The historical development of copyright law is a well-known and thoroughly researched area. Without a doubt, scholars and students of copyright will have encountered the circumstances and stages of the development of the German *Urheberrecht*, the French *droit d'auteur*, and the English or American *copyright law*. This goes without saying, because most countries in the world have developed their own modern rules based on the above regimes. However, it does not imply that the two or three century long history of copyright law in other countries – including Hungary – will not reveal unique features, commendable concepts, or interesting Bills.

The development of Hungarian copyright law spans more than two centuries. Over this period, journals teemed with legal disputes similar to those of the Western world, and jurisprudence took a comparable course in unfolding its wings. Classical Hungarian copyright scholars were expected to provide answers to analogous theoretical and practical challenges. But legislative developments lagged behind those of the West. It was only in 1884 that the first Hungarian Copyright Act made up this lag in the progress of copyright legislation. This backlog was further reduced by the Hungarian legislator when the country became a signatory to the Berne Convention in 1922.[1]

This, however, does not imply that the early, primarily nineteenth-century, period did not have curiosities in store for those showing interest in the history of copyright law. Indeed, three issues shall be highlighted, which existed well before the 19th century, and which contributed significantly to the emergence of the need for copyright legislation. These were the privileges, censorship, and piracy – both the unauthorized importation of foreign works and the reprinting of domestically published books.

First, the oldest form of what is currently regarded as copyright protection was *privileges*, referred to in the past as "patents." Privileges were widely used on Hungarian soil, and "were given to either the author or the publisher; however, in times past[,] exclusively and as a rule[,] to the publisher."[2] The College of Nagyszombat acquired the first ever privilege in Hungary to publish the Corpus Iuris Hungarici in 1584. The privilege imposed a penalty of ten gold marks on anyone having unlawfully reprinted and sold the handbook.[3]

The privileges of Hungarian publishers were, however, restrictive in nature: most publishers had acquired permission to publish either a given or a few selected works; or publications were

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[1] As a part of the Austrian-Hungarian Empire, Hungary did not join the Berne Convention after its acceptance. Later, after the Big War (or First World War), Hungary – as a new, independent country – was obliged to ratify Berne Convention under the peace treaty of Trianon. Compare to: Szalai Emil (ed.): *Az irodalmi és művészeti művek védelmére alakul nemzetközi Berni Unió (1922. évi XII. t.-cikk)*, Athenaeum Irodalmi és Nyomdai R.-T., Budapest, 1922.

[2] Knorr Alajos: *A szerzői jog magyarázata*. Ifj. Nagel Otto kiadása. Budapest. 1890, p. V.

[3] Ferencz (Schedel) Toldy: Az írói tulajdonról. *Budapesti Szemle.* Publisher: Heckenast Gusztáv. Pest. 1840, p. 192.; Kelemen Mór: Adatok az írói tulajdonjog hazai történelméhez. *Budapesti Szemle.* Publisher: Ráth Mór. Pest. 1869/XIV., p. 306-307.; Molnár Antal: *Az irodalmi szerzőjog*. In: Magyar Igazságügy. Publisher: Zilahy Sámuel. Budapest. 1874/I., p. 225.; Knorr, supra note 2 at V.; Kenedi Géza: *A magyar szerzői jog*. Athenaeum Irodalmi és Nyomdai Részvénytársulat. Budapest, 1908, p. 7.

allowed to be sold solely in their own cities.[4] Further, it was determined by the patent what the content of the existing legal relation between the publisher and the author was, and the duration of the monopoly on publication was also laid down.[5]

The system of privileges was ultimately abolished in 1867, and from that year, anyone could open a printing house.[6]

Second, censorship appeared in Hungary shortly after the first printing press was installed in Buda in 1473. Censorship was originally exercised by the Church in order to block the spread of the reformatory ideas of Luther and other thinkers. Later, and most importantly from the 18th century, censorship became a tool of suppression of Hungarian cultural reform by the Austrian Emperors.[7] Censorship was temporarily abolished in Hungary during the short reign of Joseph II, and later, officially, during the glorious, but unsuccessful War of Independence of 1848-1849. Still, some form of censorship existed during the period following the defeat in the war and the acceptance of the Hungarian Copyright Act in 1884.

Third, pirate copies or reprints of both domestic and foreign works were widely available in Hungary during the 18th century. Ballagi claimed that foreign works were imported to Hungary under fake religious titles and covers, and that importers thus evaded border control.[8] As, however, no real protection existed in Hungary – nor elsewhere in Europe – in favour of foreign authors, such a practice did not underscore the need for legislation. On the contrary, harms caused by *domestic* reprints ultimately led to the birth of Hungarian copyright law.

This study attempts to outline the development of Hungarian copyright law from 1793 until the enactment of Act XVI of 1884. It focuses primarily on Hungarian events; however, it is inevitable that we will need to set our sights beyond Hungarian borders at points, and especially evoke German, Austrian, and French events, to which the Hungarians were also paying close attention.

1. The first legal disputes and the initial regulation of copyright law

The "exclamation" directed at legislators by Ádám Takács in 1793 is considered to be the starting point of an awareness of the need to regulate copyright in Hungary. In it, the Calvinist pastor of Göny drew the attention of the Royal Council of Governors to the fact that the Landerer printing house, defiling the work of Ferenc József Paczkó, a printer from Pest who published obituaries, reprinted the whole volume without authorization. Because of the damage incurred by this act, Paczkó refrained from publishing Takács's second volume, afraid that Landerer would also pilfer it.[9]

To prevent the continuation of this undue development, the pastor turned to the Royal Council of Governors. As a result, the Royal Decree No. 12157 was issued on 3 November 1793, which was the revised version of the Austrian decree dated 11 February 1775. This document

[4] Ballagi Aladár: *A magyar nyomdászat történelmi fejlődése 1472-1877*, Franklin Társulat, Budapest, 1878, p. 113-118.
[5] Knorr, supra note 2 at V.; Kenedi, supra note 3 at 7.
[6] Ballagi, supra note 4 at 209.
[7] Ibid. at 67-72., 108-114.
[8] Ibid. at 137.
[9] Kelemen, supra note 3 at 311.; Arany László: Az írói és művészi tulajdonjogról. *Budapesti Szemle*. Publisher: Ráth Mór. Budapest. 1876/XX. p. 226.

sanctioned inland reprinting of printed materials with a serious fine, confiscation, and recompense for the author. However, it did not apply to books that had been published abroad and reprinted in Hungary by a third person: these were free to be published by any person.

The Royal Decree extended protection to the writer's legal successor (known as *cessionarius*), as well. The decree further made the act of a new publication contingent upon the consent thereto by the author or his successor.

The theoretical foundations of the period of protection were also laid when it was established that, upon expiry of a certain period after the death of the author, the work would enter the public domain, and anyone could publish it. However, the Royal Decree failed to offer detailed rules defining the period of protection.

Irrespective of the above, modern features of the Royal Decree, it strictly required an official licence, known as *imprimatur*, which was equivalent to sovereign censorship, to authorize the publication of a book.[10]

The Royal Decree No. 1812, issued in 1794, relied heavily on the principle of reciprocity, and supplemented the above regime by providing that works printed in Austria could not be subject to reprinting in Hungary, while works published on Hungarian territory enjoyed the same protection regarding Austrian reprints.[11]

The Royal Decree No. 4232 of 22 April 1831 enlarged the scope of protected works by including "designs and line engravings," as well. Exceptions from this inclusion were "pictures and drawings of fashion" published in periodicals, even if they were not in violation of respective rules of censorship.

Towards the middle of the 19th century, Hungary's literary, scientific, and political life was in an upsurge. It is no coincidence, therefore, to that this time was a Period of Reforms. Periodicals were published one after the other (such as *Aurora*, *Tudományos Gyűjtemény, Koszorú*, *Athenaeum*, *Figyelmező, Pesti Divatlap*), and literary works followed in quick succession, each one more beautiful than the last (*Bánk bán*, *Himnusz* as the National Anthem of Hungary, *Zalán futása, Csongor és Tünde, Szózat, A falu jegyzője,* etc.). Revolutionary musical works were composed, such as Ferenc Erkel's composition of the National Anthem of Hungary and other operas of Erkel. The Hungarian theatre was undergoing considerable development, as well, and the number of world-class pieces of fine art attained a new summit (see, for example, the paintings of Miklós Barabás and Mihály Zichy). Thanks to all of the above, the ideals of the Hungarian elite could now be conveyed to more and more people, rekindling the hope for change.

Simultaneously with this surging progress, abuse of the author's rights was all the rage, with the consequence of a soaring number of complaints objecting to such practices. An example among the cases that became national news was when Kunoss complained about the unlawful reprinting of his work entitled *Szófüzér (Garland of Words),* in 1837.[12] It was not only because of this that attacks rained down on the person initialled G. N., who was accused of infringement. A year had barely passed when Toldy brought tidings of G. N. publishing more than half of the poet Dániel Berzsenyi's poems under the title *Anthologia* without having been authorised by his heirs to do so. Szenvey also fell victim to similar abuse translating Schiller's poems, before the

[10] Toldy, supra note 3 at 211-213.; Kelemen, supra note 3 at 311-312.; Arany, supra note 9 at 226-228.; Kováts Gyula: *Mi a jogunk s milyen legyen a törvényünk az írói és a művészi munka védelmében*. Separate Print from the periodical of Magyar Igazságügy of 1882. Pesti Könyvnyomda Rt. Budapest. 1882, pp. 2-3.; Knorr, supra note 2 at IX-XII.; Kenedi, supra note 3 at 9.

[11] Knorr, supra note 2 at XI.; Kenedi, supra note 3 at 9.

[12] *Figyelmező*, 1837/21, p. 174.

publication of his manuscript was reprinted in Transylvania by Ferencz Soproni Fidler without authorisation.[13]

2. The beginnings of copyright literature – the works of Ferencz (Schedel) Toldy

The first academic achievements of sufficient quality to have offered a potential basis for legislation may be associated with the writings of Ferencz (Schedel) Toldy. His works appeared in the columns of the *Athenaeum* in 1838, and he then published them in a revised and upgraded form in the *Budapest Szemle* in 1840. Regarding the circumstances of the period, it was not surprising for Toldy to focus merely on writers in his works. He defined the intellectual property of a writer as follows: "what one acquires either by one's internal talents or by external means without violation of another's rights constitutes one's true and inalienable property".[14]

In 1838, he explained his justifications for the property approach in terms of three factors. One the one hand, he determined the intellectual property of a writer to be *original possession* as a work of art, as it is the fruit of any person's innate talent. On the other hand, Toldy also viewed it as *acquired possession*, since, "to be formed in the profession of a writer, one needs time during which one shall miss earning any material possession, preparations, and financial means, all of which present themselves in costs (*capitale investitionalis*)."[15] Further, he also linked his definition to a third type of possession, meaning "possession to be respected above all in moral considerations seen as the fruit of offering the noblest of talents to the noblest of ends (*meritus publicus*)".[16]

Although one cannot consider Toldy's thoughts as systematic, these categorisations unquestionably pointed in the right direction for subsequent thinkers of the period. A parallel may be drawn between the first factor, explaining the association of copyright with aspects of property, and the requirement of personal and original creativity, the basic motif of copyright in our age. The second factor sheds light on the interests behind the protection of economic rights. The third factor was not included by Toldy in his revised study from 1840; however, this idea may be considered to be the Hungarian precursor of the moral rights concept, which became clearer in Western European copyright systems during the 19th century.

Toldy's other, less mature, yet not less significant, classification examined "previous intellectual property of a writer" in terms of three different perspectives. From a *historical* point of view, the author had the exclusive right to profess his work to be his own, and bore the risks involved in doing so, as well. In a *moral* sense, the author Toldy conferred upon the author, the right of altering, correcting, abridging and extending, revising, or destroying his work, and forbidding its distribution under his name. In *commercial* terms, he referred to the writer's intellectual property as a source of income and an object of trade.[17]

This classification similarly offers a very valuable perspective on the doctrinal framework of copyright law in Hungary. The *historical* approach is reminiscent of the author's right of first publication. The *moral* guarantee provides the roots of the right to modify the work and decide on its disposition, as well as both the economic rights (the right of use) and the (moral) right to

[13] For the latter two examples, see Toldy (Schedel) Ferencz: Néhány szó az írói tulajdonról. *Athenaeum*, 1838, p. 713-714.
[14] Toldy, supra note 3 at 157.
[15] Ibid. at 158.
[16] Toldy, supra note 13 at 705.
[17] Toldy, supra note 3 at 164-167.

integrity. The *commercial* dimension also throws light on the exclusivity of economic rights ensured to authors.

Toldy also stressed the need to regard the author as the original subject of the intellectual property right, whereas the term, "lawful user," was attributed to the publisher, in the case of *derivation* (authorization or conveyance regarding the work), and to society at large in the case of *abandonment* (or waiver) of rights.[18]

As the representative of an academic line of thought on copyright, the excellence of Toldy's work was to visualize clearly the legal and political elements of the protection of creativity. Furthermore, without explicitly expressing it, or incorporating it in legal provisions, he drew up a proposal of a progressive nature for legislators in the twenty-page conclusion of his 1840 article. The proposal additionally outlined questions such as the legal assessment of theatre plays, the settlement of disputes arising from the transcribing and unauthorized publication of university lectures, the legal situation of translation and citation, anonymous publication or publication under a pseudonym, or the waiver of rights and prescription, known as term of protection in modern copyright terminology.[19]

3. The Bill written by Bertalan Szemere

The Kisfaludy Society – oriented towards Hungarian literature – had long been viewed as being committed to Hungarian copyright legislation. The first attempt of the society to draft a copyright bill can be dated to 1844, the middle of the Period of Reforms. The elected committee including József Bajza, László Bártfai, Sándor Bertha, András Fáy, János Fogarasi, Károly Kiss, Florent Simon, and Mihály Vörösmarty, drafted a bill. The Bill reached one of the most cultivated and widely travelled nobleman of the period, Bertalan Szemere who, under the influence of the 1837 Prussian Copyright Act and the 1843 draft Hungarian Criminal Code rectified significant disparities in the text.

The Bill deserves a more serious appreciation than the rudimentary concept outlined by Toldy, primarily by reason of its progressive spirit and, secondly, by virtue of its doctrinal integrity and systematic structure. In addition to literary works, Szemere proposed extending the scope of protection to the field of music and performing arts as well as drawings and paintings. The Bill's progressive nature is best evidenced by Szemere's proposal to extend the term of protection to post mortem auctoris 50 years, well before the same length of term was accepted by the Berne Convention, although several exceptions were also made thereto.

Szemere elaborated a uniquely mixed system of remedies against infringements. Criminal law and private law elements were strongly amalgamated in this system. This mixed nature of his proposal was generally due to the fact that it was far from settled in the 1840s into which field of law copyright would ultimately be categorized. In fact, copyright infringements were usually seen as intrusions into the State's interests. Consequently, the disposition of unauthorized publications (or in Szemere's terminology, "pseudo-publications"), punishing the person causing damage and those aiding and abetting the crime, alongside more serious criminal punishments for recidivists and confiscation could be assigned. As a general rule, in case of infringement, the Bill prescribed a fine payable to the National Museum and not the state in general. Should the fine not be paid properly, it was convertible to incarceration. Among the private law elements, awarding damages, known as compensation in the terminology of the period, joint and several liability for

[18] Ibid. at 169-172.
[19] Ibid. at 215-237.

damages, the possibility of entering into an obligation of bearing costs by the losing party, may primarily be mentioned. It is Szemere's indefeasible merit that he laid down the relating procedural rules as well.

It may be considered a revolutionary innovation that Szemere proposed the establishment of an expert body. The statement of the body of experts on infringement, which would have bound the proceeding authority, would have served as the basis for its decision. The only exception would have been the statement on the amount of compensation for the offense, which would have served as an opinion for the authority.

Similarly, in opposition to established practice in the matter of the governing inheritance law at the time, which was the most besieged bastion of political battles in the Period of Reforms, a novelty was presented in the Bill: apart from the descending and ascending line, the surviving spouse would not have been conferred *usufruct*, but ownership. It was also a reformatory thought because, in the feudalist legal system of Hungary, the surviving spouse had only been able to acquire *usufruct* as a general rule in the framework of the right of survivorship (known as *ius viduale*) over the bequest until 1861, when the Provisory Judicial Rules were created. The Szemere Bill also ensured the right to initiate legal proceedings for the heirs to take successful action against pseudo-publications.

The section of the Bill that granted rights to Transylvanian writers and artists even prior to Hungary's reunion with Transylvania excellently mirrored the prevailing public mood before the revolution and War of Independence of 1848-49.

Finally, in the last section of the Bill, Szemere emphasized that all laws, customs, and privileges that are contrary to the Act in progress, would cease to have force or effect. This step was indispensable for Hungarian copyright law to shed its feudal character.[20]

Although in some opinions, "the history of the Hungarian legislature may not render a fairer and more illustrious work in this field,"[21] and the Bill reached the monarch without any countervote or amendment, the sovereign refused to sign it. The returned Bill could not be re-examined by the National Assembly as it had been dissolved. The reasoning for the royal refusal only noted, "[L]et the principles formulated in the Bill be amended by reason of higher clarity and the elimination of disparities."[22] However, it is more likely that the real reason for the refusal lay in the fact that preparation of the Austrian Copyright Act was at full throttle. The monarch had no intention of breaking the legal unity reached by that time between Austria and the Hungarian territories.[23]

4. Stormy decades (1846-1876)

The above-mentioned Austrian Copyright Act was promulgated on 16 October 1846. At the same time, the monarch ordered the Chancellor to draw up a report on the applicability of the Act in Hungary. The Chancellor forwarded the mandate to the Royal Council of Governors, which, in turn, delegated the task to the Hungarian Royal Censorship Authority. The latter submitted its

[20] For a more detailed analysis and the exact text of the Bill, see Balogh Elemér: *A Szemere-féle szerzői jogi törvényjavaslat*. In: Ruszoly József (Ed.): *Szemere Bertalan és kora, 1. kötet*. Miskolc. 1991, p. 149-172.
[21] Csengery Antal: Adatok Szemere Bertalan életrajzához. 2. közlemény. *Budapesti Szemle*. Kiadó: Ráth Mór. Pest. 1869/XIII, p. 251.
[22] Knorr, supra note 2 at XIII.
[23] Kelemen, supra note 3 at 313.; Arany, supra note 9 at 227-228.; Kenedi, supra note 3 at 10.

report before the King on 27 July 1847; it provided the basis for a new Draft by *Pál Jászay*.[24] However, due to the ever-increasing momentum of events in the country on its way to revolution, discussion of this document never took place.[25] As a result, the 1793, 1794, and 1831 Decrees continued to remain in effect in the territory of Hungary.

15 March 1848 marked the outbreak of the Hungarian Revolution. Two pieces of legislation saw the daylight which, indirectly, had a considerable effect on the development of copyright law and cultural and creative work. These important considerations constituted the basis for embedding copyright law into Hungarian fundamental rights. Statute No. XVIII of 1848 established the freedom of the press and, at the same time, abolished censorship. As a result of this decision, not only were the freedoms of expression and creativity laid down, but, as in the examples offered by 18th century France and England, censorship (permission or denial of the right to publish selected works) was also terminated. In other respects, the law provided that establishing a printing-house was subject to complying exclusively with the provisions of the Statute No. XVI of 1840, as well as placing 4,000 forints into deposit.[26] However, based on general rules of commerce, the sale of books was not subject to authorization. In addition, Statute No. XXX of 1848 on establishing theatres secured the freedom of theatrical performances.

As noted above, the Revolution prevented the entry into force of the 1846 Austrian Copyright Act. Following the repression of the Revolution, however, Article VII of the Imperial Decree ordering the application in Hungary of the Austrian Civil Code (ABGB) also led to the entry into force of the Austrian Copyright Act as of 1 May 1853.[27]

The rules provided ownership to authors over their works, which encompassed, in general, the right of disposal, especially reproduction, distribution, and conveyance. Furthermore, they provided uniform protection to literary and artistic works, specifically mentioning maps, drawings, lyrics, musical works, and public performances. As a general rule, the term of protection was set at 30 years. Exclusive rights of musical and theatrical performances were regarded as exceptions to the rule, because their protection ceased to exist 10 years following the author's death. Moreover, works published by scientific or artistic institutions enjoyed a special protection of 50 years. In addition, in specific instances and in the case of creative works incurring substantial costs, the *State Government*, retaining the heritage of the privilege system, could, after the expiry of the term of protection, extend it by a period determined by them in a charter of privilege.[28]

The Imperial Decree contained detailed provisions on the procedural rules applicable in case of infringement. Under these rules, political authorities were entitled to proceed in the case of unlawful acts. In any other respect, the relevant provisions of the Austrian Criminal Code were applicable. The jurisdiction of civil courts of law was reduced to a single case: where the title of a previous work was used as the title of a subsequent work in unaltered form, however, lacking unlawful purpose.[29] As regards sanctions, confiscation was prescribed as a cumulative element, as well as an imposable 25-1,000 forint fine which was convertible to incarceration. The aggrieved author or, perhaps, his heirs were entitled to damages, known as compensation in the

[24] Contrary to the significant efforts of legal historians and copyright lawyers the text and thu the exact content of the Jászay Draft is not known (neither in manuscript nor in printed version).
[25] Kelemen, supra note 3 at 314.; Arany, supra note 9 at 228.; Knorr, supra note 2 at XIII.; Kenedi, supra note 3 at 10.
[26] The complete freedom of the printing sector was only achieved by the provisions of Statute No. VIII of 1872.
[27] Imperial Decree of 29 November 1852, p. 80.
[28] Imperial Decree, p. 96-97.
[29] Imperial Decree, pp. 86-87, 106.

terminology of the period. In case of multiple (at least three-count) recidivism, the forfeiture of the right to exercise a trade might be imposed as well. A person that carried out commercial activities with the infringing copies while being aware of the unauthorized reprinting activity of the infringing person was also punishable. In current terminology, to initiate a procedure was subject to filing a private motion. However, it was determined that revoking the private motion did not exclude examination of the case and the imposition of a sentence.[30]

In accordance with the Imperial Decree, apart from legal successors, neither the National Treasury, nor any other party, could inherit intellectual property rights.[31] With respect to the copyright protection of foreign citizens, the principle of reciprocity was enshrined in the Imperial Decree.[32] It was also decreed that the bilateral treaties concluded by Austria were also applicable to Hungary. Thus is how and when the 1844 treaty between Austria, the Papal States, and Sardinia became part of the laws in force in Hungary.[33]

The Imperial Decree did not acknowledge freedom of the press. In this spirit, the Press Decree of 27 May 1852 constituted an attempt at preventing all press infringements of state oversight by introducing, instead of censorship, a procedural act known as *prior notification*. To restrict publication of all other literary works was merely a step away. Selling books and operating printing-houses could only be authorised with a *concessio*.

The previously mentioned provisions remained in force until 1861 in Hungary, and 1864 in Transylvania. In 1861 the Judex-Curial Conference compiled the country's rules of civil procedure, both substantive and procedural, in the aforementioned Provisional Judicial Rules. One of its provisions rather curtly stated that, "the products of the mind shall constitute ownership that enjoys the protection of the law."[34]

According to the copyright literature at the turn of the 19th and 20th centuries, this concise clause made it perfectly clear that not only literary works were protected, but also, all the products of the mind – that is, literary, musical and other artistic works, even translations. All this must have incorporated the right of public performance and reproduction concerning relevant types of works. On the other hand, it seemed that a long-debated issue had come to an end, and the protection of intellectual property was placed in the framework of copyright and private law. Although lacking detailed legal provisions, as will be seen, this categorisation was only realised in 1884. According to analysts – although the author of this paper does not necessarily agree – the above provision yielded an inference that copyright protection did not extend beyond the author's death.[35] A few decades following the creation of the Provisional Judicial Rules, Géza Kenedi established that no real *corpus* of case law developed based on the short rule included in the Provisional Judicial Rules. Among the obstacles were the obvious uncertainties of these provisions, on the one hand, and Kenedi's statement on the other, remarking that, "public custom and strict public opinion on plagiarism stigmatised copyright infringement as an abominable act."[36] It can therefore be said that authors and their rights had been greatly revered in Hungary more than a century before they were formally established in Hungarian law.

[30] Imperial Decree, p. 100-107.
[31] Imperial Decree, p. 93. This provision was among the first ones to be overruled by the Provisional Judicial Rules adopted in 1861.
[32] Imperial Decree, p. 110.
[33] Arany, supra note 9 at 228.; Kováts, supra note 10 at 6.; Knorr, supra note 2 at XV.
[34] In Hungarian: „az ész szüleményei is oly tulajdont képeznek, mely a törvény oltalma alatt áll".
[35] Kelemen, supra note 3 at 315.; Arany, supra note 9 at 225 and 229.; Kováts, supra note 10 at 7-8.; Knorr, supra note 2 at XV-XVI.
[36] Kenedi, supra note 3 at 12.

In Hungarian history, the year 1867 is mostly remembered by reason of the Compromise;[37] however, it also offered copyright lawyers two major events. First, by virtue of the international treaty concluded between Austria and France, the author's rights to the translation and public performance of his or her work were acknowledged as exclusive rights. Further, following the then existing French example, registration of the works as a precondition of protection was also introduced.[38]

It was also in 1867 that the Kisfaludy Society prepared its second Bill, the wording of which was finalised by the contribution of the aforementioned Ferencz Toldy, as well as Ferencz Pulszky, Pál Gyulai, Lőrincz Tóth and Pál Vadnay. The Bill was a departure from what Szemere and Jászay elaborated, but it revisited the path taken by the first Bill prepared by the Society. The Bill was not crowned a success, mostly because the Hungarian Criminal Code Concept had not been finished, and there was, therefore, nothing to which the issue of penalties and the procedures could be compared.[39]

Similarly, another Draft drawn up by the Society for Hungarian Writers and Artists had little success. This document was published under the name of Gyula Kováts; it followed the 1870 German Imperial Act and was submitted as a Bill to the National Assembly in 1874. Adoption, however, was hindered by the preparatory works of the Commercial Act.[40]

The reason why the Commercial Act (Statute No. XXXVII of 1875) was viewed with high expectations by those in favour of the codification of copyright, was that Title 8 of Part II of the Statute (§§ 515-533) defined the publishing contract, the scope of rights and obligations, duration of the contract, liability, remuneration, and termination of the publishing contract, as well as its conclusion with a person not regarded as a legal successor. *Mutatis mutandis*, it was not the intellectual creation that was included in the publishing contract, but its material manifestation, the physical medium. Nor was a term of protection determined. As a consequence, this legislation was unfit for regulating the entirety of copyright relations, even if it laid down a proper framework for creating a balance of interests between the publisher and the author.

5. The years of preparation of the first Copyright Act (1876-1882)

1876 marked the third time that the Kisfaludy Society made an attempt at preparing copyright norms, but this time, it did so in close cooperation with the Hungarian Academy of Sciences. On the committee set up on these grounds, the Academy was represented by János Fogarasy, Tivadar Pauler, Ferencz Toldy, Lőrincz Tóth, Antal Zichy, and László Arany, while the Society was represented by Pál Gyulai, Károly Keleti, István Bartalus, and Ede Szigligeti.

The Committee mandated László Arany with preparing the Bill. Arany published his Bill in 1876. It had several flaws, and therefore, he soon revised it, with particularly in view of the recent German Copyright Act of 1870. Finally, this modified, but undisclosed, Bill was presented to the Academy which, having approved it, forwarded the Bill to the Minister of Justice. The latter convened an experts' meeting to study the Bill.

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[37] The Compromise was the deal that the Habsburg Emperor concluded with the Hungarian nobility on the future of the Hungarian parts of the Austrian Empire. Consequently, the Empire was known as Austrian-Hungarian Empire, where Hungary had a relative independence, most notably with respect to interior affairs, including cultural questions.

[38] Kováts, supra note 10 at 9-10.; Knorr, supra note 2 at XVI- XVII.

[39] Kelemen, supra note 3 at 316-317.; Arany, supra note 9 at 229.; Kováts, supra note 10 at 13.; Knorr, supra note 2 at XVII-XVIII.; Kenedi, supra note 3 at 13.

[40] Arany, supra note 9 at 229-230.; Knorr, supra note 2 at XVIII.; Kenedi, supra note 3 at 13.

Arany's Bill extended protection to literary, musical, and artistic works. The term of protection was determined at 30 years, mostly based on international examples. The violation of rights was termed infringement, as old expressions, like reprinting or pseudo-publication did not cover all relevant unauthorized activities. Arany ranked damages (compensation) first for penalties, together with the optional imposition of a fine. The latter could, in exceptional cases, be converted to imprisonment. Arany's bill also included several other expressions stemming from criminal law, including perpetrator-accessory, confiscation, recidivism, and the commercial scale of infringements. Also, private law elements could be discerned in the document. Besides compensation, good faith, and joint and several liability, were also present. The assumption of liability was subject to the submission of a private motion available only to the aggrieved party. The Bill required wilful misconduct or gross negligence for a penalty to be imposed.

Arany designated the Royal Court of Law of Pest and Kolozsvár (Cluj Napoca) as courts of first instance. The competence of these two fora would have been based on the place of residence of the infringing person. Arany explained that he chose to designate these courts competent, in part, because he regarded the two university cities as the seat of expert bodies consisting of university lecturers, representatives of the literary and artistic world, and booksellers, who Arany expected, albeit a little naively, to implement the law in practice.[41]

As the legacy of the 1866 Austro-French agreement, registration was included in the Bill. Apart from French traditions, Arany also drew upon the German law, in terms of both structure and content, during its preparation. However, he departed from the German Copyright Act at several points, for example, in the case of detailed rules concerning political speeches or edited works.[42] Finally, the Bill excluded the State's right of inheritance – a Hungarian doctrine that allowed the State to inherit all real and personal property in the absence of descendants, or a will.

Although Gyula Kováts paid tribute to Arany's objectivity,[43] he thought that the Bill was inherently flawed. Kováts criticised Arany's use of the term, "ownership," in the title of the Bill when he did not refer to it in a consistent manner in the text.[44] Kováts sharply criticised the Bill in that the settlement of legal disputes was under the exclusive jurisdiction of the Royal Court of Law of Pest and Kolozsvár, yet they were referred to as "ordinary" courts. Kováts must be contradicted at this point, since the adjective "ordinary" was not present at all in Arany's 1876 article aimed at referring the draft to public debate. It is undisputed that the person proposing the Bill assigned "exclusive" jurisdiction to these courts; however, the only thing for which he might be reproached is that he failed to incorporate this point *expressis verbis* in the relevant provision. It is, however, a much more serious problem that the 1876 draft designated the national Bill-of-Exchange Court as a forum for appeal,[45] whereas the Court itself was discontinued as of 1872.[46] The soundness of the idea of establishing an expert body, delegated, by Arany, with a cardinal

[41] „Their hands are the repositories of future of the Act. They are to elaborate on its details filling its principles with life". See Arany, supra note 9 at 257.
[42] Ibid. at 230-257.
[43] "The creation that is to have an effect on not one but several human lives requires careful review". See Kováts Gyula: *Az írói és művészi tulajdonjog*. Wickens F.C. és fia Könyvnyomdája. Budapest, 1879, p. 5.
[44] Kováts did not acknowledge the ownership characteristic of copyright by excluding it from the set of economic rights, yet the term at issue is included in the title of his writing. Cf. Ibid. at 27-29.
[45] Arany, supra note 9 at 246.
[46] Section 2 of the Statute No. XVI of 1870 incorporated its jurisdictional rules in those of the Regional Court of Pest. See Bónis György - Degré Alajos - Varga Endre: *A magyar bírósági szervezet és perjog története*. Zalaegerszeg 1996, p. 217.

role in copyright law cases, was not disputed by Kováts either. However, he thought that specifying in the law, that the judge would not be bound by the expert opinions, was justified.[47]

Historically speaking, it is a point of interest that Arany reacted to the above criticism with subjective fervour, which is reflected in the title of his short missive, *As a Source of Enlightenment*. In it, he was unhappy that Kováts had placed the initial version under analysis, although he later corrected it.[48] Kováts, in turn, and no less subjectively, dismissed Arany's reaction as a misleading sleight of hand. On the one hand, he remarked that not one artist was to be present at the session of the expert body convened by the Minister of Justice, although the invitation of authors and artists would have been justified.[49] Moreover, lithographic copies of Arany's second version were only received by the members present, thus not by Kováts. He thought lithography was *a priori* a sign that this draft had not been meant for the public.[50]

6. Debate on the Bill and its adoption (1882-1884)

The Bill was submitted to the Lower House on 20 November 1882, which forwarded it to the Justice Committee. Lajos Horváth presided over the Committee with István Apáthy as rapporteur.[51] Although the report of the Committee had been finalized by 9 February 1883, the detailed debate over the Bill could only be initiated on 21 February 1884. As rapporteur of the Lower House, István Teleszky drew the attention, in his opening speech, to the fact that the time had come for authors to be protected in connection with their intellectual works. By this, he primarily meant state support to exploit the economic value of such works. Teleszky did not regard copyright as forming a right *in rem*, since it lacked some features indicative of ownership. During an almost fortnight-long Lower House debate, scores of reasonable and unreasonable points were made.[52]

Many, however, voiced criticism concerning the Bill mainly because it seemed to be an entire and at some points literal, translation of the German Act, which thus resulted in several unnatural-sounding Hungarian structures.[53] The term "copyright" evoked the antagonism of Károly Eötvös, and he suggested the expression "literary and artistic rights" which had been used formerly. At the vote concerning the issue, the majority, accepting the opinion of Pál Mandel and Minister of Justice Tivadar Pauler, approved the term "copyright" as it was incorporated in the draft, and which had become commonplace in everyday use. Particularly by the motions of Sándor Nikolich, and productive writer and then-Member of Parliament, Mór Jókai, the term of protection was established as 50 years following the author's death, instead of 30 years. Furthermore, intense debate developed around letters, press literature, the translation of foreign literature susceptible of ruining the morals of the society, pseudonyms, rules on liability, and expert bodies to be set up based on the Act. Apart from this, Ottó Hermann fiercely attacked the

[47] Kováts, supra note 43 at 11.

[48] Arany summarises Kováts's conduct as follows: "it is not abhorrent for those assessing a bill to examine the text which is ready to hand." See Arany László: *Felvilágosításúl*. In: Kováts, supra note 43 at 42-43.

[49] Arany, supra note 9 at 230.; Kováts, supra note 43 at 4.

[50] Ibid. at 44-48.

[51] This is why the later Act is associated with Apáthy although he had a smaller role in its preparation than Arany.

[52] For the debate on the Bill, see in detail *Az 1881-1884. évi Országgyűlési Képviselőházi Napló 304-327., Volume No. XV.*

[53] Regarding these, it was Kálmán Thaly that made the most amendments. Pál Hoitsy rather wittingly stated that "if one had a right that protected the writer and ensures a foreign writer against plagiarised content and translations, then this Bill might not lie before the House because their provisions should firstly be applied against its authors." See Ibid. at 163.

overly monetized view of the Act concerning the protection of telegrams, and the lack thereof regarding private letters.[54]

It is thus to be concluded that the Copyright Act had mobilised a large number of MPs, prompting a rather fruitful and passionate debate in the Lower House. The final text was adopted on 12 March 1884, which the Upper House also approved without objection and in an unaltered form. The monarch promulgated Statute No. XVI on 7 May 1884.[55]

The Act passed in such circumstances may briefly be characterised as parting ways with the theory of intellectual property, and instead, incorporating the concept of autonomous copyright. The scope of protection, extending the one determined by Arany, included all literary and artistic work forms known at the time. Literary works (§§ 1-10), musical compositions (§§ 45-48), theatrical (§§ 49-59) and artistic works (§§ 60-66), global and regional maps, scientific, geometric, architectural, and other technical drawings and graphs (§§ 67-68), as well as photographs (§§ 69-75), were listed in the Act. Economic rights traditionally encompassed reproduction, publication, and distribution, as well as public performance. Apart from a minor exception, the concept of moral rights had not in effect taken root in this document.[56] According to the exception, the unauthorized use of a manuscript resulted in infringement (§ 6.1.).

The term of protection was 50 years following the author's death; however, several exceptions were made (§§ 11-18). With regard to infringement, the Act provided ample regulation (§§ 5-9 and 23-24), and the procedure, subject to the submission of a private motion, was assigned to civil courts, including the award of damages and the imposition of penalties (§§ 25-35).

Different from Arany's proposal, and as a result of the creation of the Codex Csemegi on criminal law in the meantime, sections 19 to 24 of the new Act extended the possibility of sanctions to include, not only wilful misconduct, but also, misconduct in general terms. The law qualified infringement as an offence, differentiating it from misdemeanours jeopardising the legal order and more serious crimes. Part of the regulation concerned conversion to incarceration, criminal-accessory dichotomy, confiscation, recidivism, and the commercial scale of the infringement.[57]

Arany's idea that only two Royal Courts of Law should be competent in copyright cases failed. All courts of first instance had jurisdiction. The rules of competence were modified, in that the competent Royal Court of Law of the place of the infringing person's residence could be joined by the competent forum of the place where the infringement had been committed (§ 26). Registration (from the French *enregistrement*) introduced in the Hungarian legal system by the 1866 Austro-French treaty was also regulated (§§ 42-44).

Finally, a Commission of Copyright Experts was set up in Budapest and Zagreb (§ 31). The initial 23 members of the Commission were appointed from those experts who played some role

[54] Ottó Hermann's outburst proved to be so radical that Mór Jókai himself could not comprehend "whether he had heard about a Bill on copyright, the theories of Darwinism, the reform of press legislation or that of the Parliament". István Teleszky quite wittily said that "I have just remembered the parable that sometimes it is customary to shoot sparrows with a canon". See Ibid. at 334-335.

[55] Knorr, supra note 2 at XVIII.; Kenedi, supra note 3 at 14.

[56] Copyright law scholars rejected the primacy of the protection of moral rights even in 1957, emphasising, however, that the second Hungarian Copyright Act adopted in 1921, as a result of, among others, the accession to the Berne Union, contained provisions that aimed at protecting the personal link between the author and his work. See Palágyi Róbert: *A magyar szerzői jog zsebkönyve*. Közgazdasági és Jogi Könyvkiadó, Budapest 1957, p. 11.

[57] For a detailed commentary, see Knorr, supra note 2 at 84-129.; *Magyar Jogi Lexikon VI*., Pallas irodalmi és nyomdai Rt. Budapest. 1907, p. 406-409.; Kenedi, supra note 3 at 118-135 and 195-199.

in the acceptance of the Copyright Act. The first president of the Commission was Mór Jókai. László Arany was appointed the Commission's first Vice President.[58]

In his assessment on the Act, István Apáthy drew attention to several significant details. On the one hand, he emphasised the necessity of creating the Copyright Act, which was justified, among others, by fulfilling previous obligations, honouring multiple legislative attempts, and bringing uniformity to the entire territory of the country, as well as matching the ambition of adherence to future international treaties. Apáthy regarded the uniform structure of the Act as a remarkable feat: unlike some European laws regulating subfields of copyright protection, the Hungarian Act incorporated them into a single norm.[59]

Conclusion

This paper has made an attempt at gradually introducing the reader to the external and internal, social, political, and economic needs that shaped the development of Hungarian copyright law over nearly a century. It may have become clear that, by reason of Austrian authority, the Hungarian copyright law was radically affected by the German-Austrian concept of *Urheberrecht*. However, through Austrian channels, elements of the French *droit d'auteur* also appeared in the Hungarian legal practice. The new Act was in the fullest possible compliance with the requirements of the period. This study, however, did not undertake and could not have undertaken the task of examining how Hungarian legislation developed after 1884. The conformist view, however, heralds the Hungarian legislature as a mighty fortress protecting authors' interests even after 1884.

[58] Tószegi Zsuzsanna: A szellemi tulajdonszolgálatában működő tanácsok, testületek. In: Tószegi Zsuzsanna (Ed.): *Egy hivatás 120 éve - A Magyar Királyi Szabadalmi Hivataltól a Szellemi Tulajdon Nemzeti Hivataláig*. Typotex. Budapest. 2016, p. 202.

[59] Apáthy István: *A szerzői jogról szóló törvény. Értekezések a Társadalmi Tudományok köréből*, Volume 8, MTA. Budapest. 1887, p. 13-14.