

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE
2003 SPECIAL 301 REPORT
HUNGARY

EXECUTIVE SUMMARY

Special 301 recommendation: IIPA recommends that Hungary be placed on the Special 301 Watch List in 2003. Hungary has made great strides in modernizing its copyright legal regime over the past several years, including extensive legislative revisions and amendments to its criminal code. However, copyright owners report mixed results at best with on-the-ground enforcement operations and persistent prosecutorial issues in a market that could otherwise sustain good growth. Hungary currently is on the Priority Watch List, primarily for patent and data exclusivity problems.

Overview of key problems: Estimated trade losses due to copyright piracy in Hungary were \$50.2 million in 2002. The main problems adversely affecting the copyright industries in Hungary include—

- Continued prosecutorial delays;
- Failures in moving criminal cases forward;
- Low fines and generally weak sentences fail to provide sufficient deterrent;
- Failure to fully comply with TRIPS Agreement enforcement obligations (such as issuing non-deterrent penalties and the lack of a civil *ex parte* provision);
- Poor border enforcement; and
- Rapid growth of CD-R piracy and Internet piracy.

Actions which the government of Hungary should take in 2003: The minimum remedies the Hungarian Government should take to improve the situation include—

- Streamline the prosecutorial systems to counter delays and increase effectiveness of legal investigation;
- Highlight and develop the importance of IPR issues at the prosecutorial level;
- Impose higher penalties and harsher sentences to deter copyright pirates;
- Fully comply with its TRIPS obligations in countering copyright piracy;
- Strengthen the effectiveness of the border police;
- Fully enforce the 2001 Act on Electronic Commerce and Information Society Services and relevant new provisions in the Criminal Code to effectively combat Internet piracy through new legislation;
- Adopt optical media regulations to combat and control the optical media production and distribution;
- Launch a joint IPR campaign together with the copyright industries targeted to increase the public awareness detrimental effects of CD-R burning, especially in educational institutions (schools, colleges, universities).

HUNGARY
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 – 2002¹

| INDUSTRY | 2002 | | 2001 | | 2000 | | 1999 | | 1998 | |
|---|-------------|-------|-------------|-------|-------------|-------|-------------|-------|-------------|-------|
| | Loss | Level |
| Business Software Applications ² | 22.2 | 47% | 21.3 | 48% | 33.3 | 51% | 30.1 | 52% | 30.8 | 57% |
| Motion Pictures | 18.0 | 30% | 18.0 | 40% | 18.0 | 40% | 22.0 | 40% | 19.0 | 40% |
| Records & Music | 6.0 | 30% | 4.5 | 30% | 3.0 | 20% | 4.0 | 20% | 7.0 | 20% |
| Entertainment Software | NA | NA | 43.3 | 90% | 9.6 | 86% | NA | NA | 13.2 | 75% |
| Books | 4.0 | NA |
| TOTALS | 50.2 | | 91.1 | | 67.9 | | 60.1 | | 74.0 | |

COPYRIGHT PIRACY IN HUNGARY

For a country with a well-developed legal system like Hungary, piracy remains surprisingly high, and exacerbates the overall regional piracy problem due to poor border enforcement and remarkable prosecutorial delays.

Optical Media Piracy

The problem of illegal optical media production and distribution in this region continues to grow. Hungary continues to be a haven for the importation of pirate CDs—primarily music CDs and entertainment software—which being produced in and imported from Ukraine. The flow of lower quality musical cassettes and CDs from Romania and Bulgaria has lessened from previous years, however; these are gradually being replaced by recordable CD (CD-R) pirate materials because of the relatively low prices of CD burners and blank CD-Rs in the Hungarian market. For the recording industry, the copying or “burning” of CDs by private users is responsible for the majority of the local illegal CD production. In addition to burning by private users, students and small retail operations, IDSA reports that the trade in locally burned CD-Rs of entertainment software products is now becoming controlled entirely by organized crime syndicates.

Pirate DVDs, mostly imported from Russia and Ukraine, are another emerging problem, involving mainly pre-release titles carried in personal luggage to supply street vendors operating in the largest flea market in Budapest (Petöfi Hall). Pirate DVDs have also been found in retail outlets that were not previously known to be pirate and that now seem to be offering pirate DVDs as a “trendy” complement to their existing catalogue. Copies of DVDs on videocassette have also been encountered by ASVA (the local audiovisual anti-piracy

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2003 Special 301 submission, and is available on the IIPA website at www.iipa.com/pdf/2003spec301methodology.pdf.

² BSA’s estimated piracy losses and levels for 2002 are preliminary, and will be finalized in mid-2003. BSA finalized its 2001 numbers in mid-2002, and those revised figures are reflected above. BSA’s trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA’s trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

organization) investigators. VCDs (imported by the local Chinese community mainly from Malaysia and Thailand) and locally burned CD-Rs containing audiovisual content remain a persistent problem. In addition, locally burned DVD-Rs are also beginning to appear in the market.

Criminal syndicates appear to be moving in on the illegal CD-burning action, and are beginning to control all aspects of the duplication and distribution of entertainment software. The once small operations are expanding into sophisticated operations with runners, wide distribution reach, and organized groups of sellers being directed by others higher up in the organization. This controlled distribution is also taking place in locations such as Petöfi Stadium, which belongs to the local municipality. Products found at the stadium are also being found throughout the country, indicating that the same criminal groups are expanding distribution beyond the stadium into the surrounding region (one IDSA member company notes that pirate copies of its products have been cited in Germany).

In years past, there was some evidence that the production of pirate materials by CD plants in Hungary was being exported to other Central and Eastern European countries as a result of poor optical media production control systems and lax border enforcement. However, both the recording industry and the software industry now report improvement in this area. The entertainment software industry does report that exports of pirated product from Hungary are making their way in to Germany. At the present time, Hungary's two known replication facilities appear to use source identifying (SID) codes on their manufactured CDs. The manufacturing capacity of the two operating CD plants, with a total of eight lines, is estimated to be around 35-40 million discs per year.

In order to regulate the production, distribution, and export of optical media, the Hungarian government must set up plant monitoring procedures. There are several key elements necessary for inclusion in any such regime in order for it to be effective; see the detailed discussion regarding OD regulations at the end of this report.

CD-R Piracy and Internet Piracy

Pirates increasingly and massively are using the Internet to market infringing product. Pirate VCDs and CD burners are starting to appear throughout Hungary in greater quantities. The Internet is also being used to market technical equipment for circumventing copyright protection technologies. This is despite the 1999 copyright act amendments that contained important anti-circumvention provisions, as well as sanctions for signal theft. There are now more home-copied CDs appearing in markets and shops alike due in part to the falling prices of CD writers and CD-Rs. In addition, locally burned DVD-Rs are also beginning to appear in the market.

Internet piracy continues to be a growing problem in Hungary. The recording, audiovisual and business software industries have, to date, received good cooperation in Hungary from Internet service providers (ISPs). For the audiovisual industry, Internet piracy in the form of hard goods sales is a growing concern with pirates finding Hungarian dubbing or subtitles on websites located in neighboring countries, in order to burn pirate CD-Rs in DivX format. Furthermore, phonogram producers, performers and authors have concluded a joint co-operation agreement with the biggest ISPs in the country. The local recording industry group MAHASZ is monitoring illegal files on the Internet on regular basis. In 2002, MAHASZ sent out 120 "Cease & Desist" notices to the sites with the infringing files, and as a result ISPs closed 99% of these sites. The "take-downs" also included the closure of two popular websites, DLJ.hu and MP3Portal, the latter of which received wide media attention. Both cases are currently under criminal investigation, based on the complaints MAHASZ filed. As a rule, however, due to lack of knowledge and experience, police forces have not been effective nor cooperative in tackling new forms of piracy. Unfortunately, so far the 2001

Act on Electronic Commerce and Information Society Services has not been properly enforced.

Business Software Piracy

The Business Software Alliance (BSA) was generally pleased by a number of encouraging signs indicating that Hungarian authorities are beginning to take intellectual property protection seriously, from police to judges. In 2002, the piracy level for business applications software remained relatively constant, at 47%, and estimated trade losses were \$22.2 million.

The police conducted twelve criminal raids on end users during 2002. Additionally, the Prime Minister's office and the Ministry of Finance have each in previous years issued software asset management orders requiring the use of licensed software in government offices. This demonstrates that the Hungarian government has shown awareness of the value of managing software assets in a systematic and thorough manner, not only to comply with the law but to make the most out of its investment in information technology. The predominant concerns for the software industry are fourfold: (1) no effective civil *ex parte* measures to secure evidence of suspected infringements; (2) generally slow criminal and civil proceedings; (3) inadequate sanctions imposed in many cases; and (4) a growing tendency in the courts to compute damages caused to right holders as less than the retail value of the products concerned. According to the BSA, the average duration of court proceedings is approximately two to four years for civil or criminal claims; fact-finding examinations by experts that take six months to a year to conduct are routinely required by the courts, even when not strictly necessary. The experts took one year and nine months to prepare an opinion in one of the software industry's largest end user cases. Amendments to the criminal code, which now sanctions copyright infringements performed either for the purpose of gaining profit or causing financial injury to the right holder, were a welcome development, as was the extension of protection to computer databases.

Record and Music Piracy

The recording industry estimates the level of music piracy in Hungary in 2002 was 30% of the market. Trade losses to the music industry in 2002 were \$6 million, the third year of increasing losses. This rise is due to the growth of CD-R piracy in the country. MAHASZ reports that, in 2002, the total number of seized pirated music CD-Rs was 37,000 units, which is around three times more than in 2001, when around 14,500 CD-Rs with pirated music content were seized.

Audiovisual Piracy

As described above, pirate DVDs, mostly imported from Russia and Ukraine, are an emerging problem, involving mainly pre-release titles carried in personal luggage to supply street vendors operating in the largest flea market in Budapest (Petöfi Hall). Pirate DVDs have also been found in retail outlets that were not previously known to be pirate and that now seem to be offering pirate DVDs as a "trendy" complement to their existing catalogue. Copies of DVDs on videocassette have also been encountered by ASVA (the local audiovisual anti-piracy organization) investigators. VCDs (imported by the local Chinese community mainly from Malaysia and Thailand) and locally burned CD-Rs containing audiovisual content remain a persistent problem. In addition, locally burned DVD-Rs are also beginning to appear in the market. Internet piracy in the form of hard goods sales is a growing concern, with pirates finding Hungarian dubbing or subtitles on websites located in neighboring countries, in order to burn pirate CD-Rs in DivX format. Although progress has been made, there is still a high level of pay-TV signal theft through the use of pirate smart

cards and cable/satellite decoders. Local television and cable companies regularly transmit titles for which they do not have broadcast or retransmission rights. In some cases, pirate videocassettes are also broadcast, especially by small cable providers owned by local authorities in small villages.

Book Piracy

The book publishing industry continues to report that piracy of education texts, and in particular, their unauthorized photocopying, remains a problem. Estimated trade losses due to book piracy were \$4.0 million in 2002.

COPYRIGHT ENFORCEMENT IN HUNGARY

Criminal Enforcement

The ongoing high levels of piracy in Hungary are the result of ineffective criminal enforcement by Hungarian authorities. As they have for many years, rightsholders continue to report good police cooperation conducting raids and seizing infringing product. However, as a general rule police take action only upon the request of the rightsholders, therefore failing to carry out *ex officio* actions in copyright cases as set in Article 2 of the Criminal Procedure Law (Basic Principles of Criminal Procedure).

The local recording industry group MAHASZ reports that some local police officials (in Budapest as in other parts of Hungary) have shown some signs of corruption as several raids to tackle with the physical piracy (open markets, record shops) and the infringements of public performance right (public places, notably discos) have failed despite (or after) careful preparation and coordination with the local police. However, MAHASZ continues to raid the Petöfi Stadium in Budapest together with the police officials roughly twice in a month (MAHASZ and police conducted 25 raids on this stadium last year), and seize around 2,000–3,000 illegal optical discs with various contents (music, films, software) per raid. As a result of these regular raids the share of illegal music discs has substantially decreased. In total, police and customs officials conducted 296 raids (274 led by police, 22 led by customs) and seized a total of 61,600 pirated units (of those, 13,400 CDs, 37,000 CD-Rs, 11,200 MCs) in 2002. The largest amount seized in 2002 was 6,000 CDs from a private apartment in Budapest, where two persons made a regular business out of illegal reproduction of copyrighted products (the quantity of music albums alone was several thousands units), advertising the respective catalogue on the Internet. The case is currently under investigation.

Enforcement against duplication facilities in private homes has also improved. Despite the fact that searches of homes are based on “probable cause” and are undertaken under a very stringent standard, police searches at private residences have now become more systematic. When decided by the prosecutor, the Tax Administration also gets involved in the investigation process. Hungarian police have been active in a number of raids and seizures.

BSA reported that police cooperation in connection with crimes involving software infringement was good in 2002. The Hungarian police are willing to take action also against larger targets, unlike in many other countries in Central and Eastern Europe. BSA reports that in May 2002, the Sopron Police Department raided four companies suspected of using unlicensed software. During the investigation, the police discovered that all companies had been using illegal BSA member software on their business computers.

Prosecutorial and Judicial Delays, No Deterrent Penalties

Hungarian prosecutors and judges are generally reluctant to treat copyright infringements as serious crimes. Prosecutorial delays and the failure to impose deterrent penalties for those few criminal cases that do reach the judgment stage are serious problems. The court system is overloaded with a large number of cases, which contributes to delays in resolving pending copyright cases.

BSA reports 23 criminal law suits against end users in 2002 and the software industry continues to find that cases take approximately one year on average to reach an initial court hearing, with an additional delay of about a year for cases that are appealed. As an example, in a case in Győr in 1997 against a target accused of software piracy, the sentence was only issued by the court in 2002. Another case against a software pirate involves a crime committed in 1995. The first instance sentence against the target was handed down in 2001 and the case is now on appeal. The software industry reports that prosecutions that reached final judgment, generally resulted in probational sentences and small fines. The average sentence was between two and 12 months suspended. The software industry reported no fine above US\$1,000; in fact, criminal fines that are ordered by courts generally remain below US\$500 in cases involving software piracy. Obviously, these penalties are not deterring commercial piracy. For example, in one software piracy case, the target was fined only US\$400; the police had found 62 CD-Rs in the target's home loaded with illegally copied BSA member software programs with a retail value of approximately US\$28,000.

The recording industry reports that 180 of its criminal cases were pending in the courts in 2002. Fines are rarely in proportion with the damages caused. The average damage of one infringement is between 300,000 – 400,000 HUF (US\$1,316–2,634), whereas the average fine reaches only as high as 30,000 – 60,000 HUF (US\$132–264).

MPA confirms that the audiovisual industry's biggest issue in Hungary is inadequate enforcement. Indeed, despite generally good cooperation from the police, prosecutors and judges remain very reluctant to treat copyright infringements as serious crimes, and securing adequate prosecution and deterrent sentencing from the courts remains a very difficult problem. Despite the latest laws providing for tougher penalties (up to eight years' imprisonment for video piracy and two years for signal theft), prosecutorial indifference remains a major impediment to combating piracy.

Border Enforcement

Hungary adopted customs legislation in 1997 in order to meet its TRIPS obligations (Decree No. 128/1997). The Hungarian government reports that this decree applies to both the exportation and importation of infringing goods. The copyright industries remain concerned about its effective enforcement in practice. Because of the ease with which pirated product, particularly pirated digital product (CDs and the like), is imported into and exported from Hungary, it is critical that Hungary's border enforcement system improve.

Customs authorities have difficulty distinguishing between legal and illegal products. Since Hungary is both a market and a transit country for pirated optical disks, and Hungarian customs rules are not working, customs rules must be fixed immediately to stop the cross-border trade in illegal products.

Civil Enforcement

There are still no provisions in the Hungarian legislation providing for effective civil *ex parte* search orders. The 1999 copyright law amendments did not introduce new civil ex

parte provisions because Hungarian authorities insisted that such provisions already existed in the civil code. Since the 1999 revisions made no changes, the software industry tested the provisions in the Hungarian civil code even though these were not specifically intended to address IP violations. These provisions are set out at Articles 207-209 of the Civil Procedure Act, and permit the procurement of "preliminary evidence" before the commencement of an action. These uncertain and imprecise provisions did not prove effective and the test cases failed. In one case, the application was simply refused by the court and in another case, the court order proved unenforceable after the target refused to permit the entry of an independent expert executing the order. In the second case, a criminal raid was subsequently carried out. The software industry is convinced that new provisions are needed in the Copyright Act to obtain civil *ex parte* searches. As the slow criminal procedure currently is the predominant legal method of combating software piracy, effective civil *ex parte* provisions would significantly improve the situation.

Nevertheless, the BSA did manage to achieve some positive civil litigation results in 2002, similar to the situation in the last two years. BSA initiated 22 civil lawsuits, obtained one judgment against and reached 16 settlements with end users during 2002.

| CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS In HUNGARY: 2002 | | | |
|---|----------------------------|---|-----------------------------|
| ACTIONS | MOTION PICTURES | BUSINESS APPLICATIONS SOFTWARE | SOUND RECORDINGS |
| Number of Raids conducted | 322 | 14 | 296 |
| Led by Police | 312 | 14 | 274 |
| Led by Customs | 10 | | 22 |
| Number of cases commenced | 108 | 105 | 259 |
| Number of defendants convicted (including guilty pleas) | 105 | 25 | 255 |
| Acquittals and Dismissals | 49 | 49 | 63 |
| Number of Cases Pending | 316 | 237 | 180 |
| Total number of cases resulting in jail time | 0 | 0 | 9 |
| Suspended Prison Terms | 2 | 0 | 8 |
| Maximum 6 months | 1 | | 5 |
| Over 6 months | 1 | | 3 |
| Over 1 year | - | | - |
| Total Suspended Prison Terms | 14 months | | 52 months |
| Prison Terms Served (not suspended) | - | 0 | 1 |
| Maximum 6 months | - | | 1 |
| Over 6 months | - | | - |
| Over 1 year | - | | - |
| Total Prison Terms Served (not suspended) | - | 0 | 6 months |
| Number of cases resulting in criminal fines | 2 | 17 | 46 |
| Up to \$1,000 | 2 | 15 | 46 |
| \$1,000 to \$5,000 | - | | - |
| Over \$5,000 | - | | - |
| Total amount of fines levied | US\$1,000 | US\$6,336 | US\$10,000 |

LEGAL REFORM AND RELATED ISSUES

Copyright Law (1999)

On June 22, 1999, Hungary adopted amendments to its copyright law; the provisions entered into force on September 1, 1999. Act No. LXXVI of 1999 was aimed at bringing Hungarian law into compliance with numerous bilateral, regional and multilateral obligations. On September 24, 1993, the U.S. and Hungary entered into a comprehensive bilateral Intellectual Property Rights Agreement, which obligated Hungary to make significant and important improvements in their copyright laws. The 1999 amendments were also aimed at implementing most, if not all, of the provisions of TRIPS and the European Union Directives (including the software, rental/lending, satellite, duration and database directive), plus the new WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. Previously, in 1994 and 1996, Hungary amended its copyright law in light of the WTO TRIPS Agreement and the 1993 Bilateral Intellectual Property Rights Agreement with the U.S. The 1994 amendments (Act VII, entry into force July 1, 1994) extended terms of protection and expanded the scope of protection for producers of sound recordings, performers and broadcasters.

On a positive note, Hungary ratified both of the WIPO treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, in October 1998. In June 1999, in the copyright law amendments, it adopted provisions that, *inter alia*, implemented the two new digital treaty obligations. In 2001, Hungary passed its Act on Electronic Commerce and Information Society Services, to address the problem of online piracy. These developments are all very laudable, undertaken by the Hungarian government to lay the legal framework to combat digital piracy.

In sum, these legislative developments addressed the following major issues:

- Full retroactivity for sound recordings was provided, in compliance with the TRIPS Agreement. The 1994 amendments had failed to extend the term of protection for sound recording released prior to July 1, 1974 (20 years prior to the effective date of the 1994 amendments). As a transition matter, the 1999 amendments provided for a one-year sell-off of existing stock that ended on September 1, 2000. Hungary is also obligated under TRIPS (Articles 9 and 12) and Berne (Article 18) to clearly provide such protection for pre-existing foreign works as well as sound recordings. To date, there have been no judicial decisions, but the Hungarian government has assured the U.S. government and IIPA members that such protection is afforded by the existing Hungarian copyright law.
- Exceptions to the exclusive rights of copyright owners were narrowed to comply with the TRIPS Agreement. The 1999 copyright law also established a private copying levy; this provision came into force on September 1, 1999 (the exceptions are the provisions in Articles 21 and 22 relating to devices used for reprography which came into force on September 1, 2000). The Hungarian government should be urged to limit the private copying exception to ensure that it does not extend to digital copying of works or sound recordings. Nor should any private copying exception interfere with the ability of rightsholders to protect their works and sound recordings using technological protection measures. In addition, the 1999 copyright law amendments amended a 1994 Hungarian Law on Enforcement of Judicial Decisions to establish a special streamlined procedure for the enforcement of judicial decisions in all IPR infringement cases. However, the BSA has not noted any positive effects arising from this development.

- Communist-era provisions that prevented employers from exercising all economic rights with respect to software created by employees were eliminated. Employers are now able to exercise all economic rights for software created by employees in certain circumstances, and economic rights are fully transferable (assignable). The law's old provisions of fixed royalty rates in favor of author/employees were removed. The old provisions had acted to discourage foreign and local investment in software development and publishing and inappropriately interfered with the marketplace.
- Protection for encrypted signals was adopted, prohibiting the unauthorized retransmission of signals, and prohibiting the manufacture, distribution, possession, sale, rental and use of unauthorized descrambling devices.
- A notice and takedown regime for infringing online content was created, whereby ISPs must remove infringing content that they host within 12 hours of being made aware by the copyright owner.

However, certain other issues remain unaddressed, some of which have been highlighted in previous Special 301 reports by IIPA. The Hungarian Government should correct the following deficiencies in its copyright legal regime:

- Civil *ex parte* search procedures are still not clearly available as required for Hungary to meet its TRIPS obligations (Article 50). Hungary is required to provide this expeditious remedy to prevent infringements as an effective tool against end-user software piracy in particular. For years, the Hungarian government has argued that this remedy is available under existing law; however, these provisions have not proven as reliable and effective as officials have claimed them to be, and further amendments to the law and/or its implementation in the copyright act are needed to create an effective and streamlined process, as has been promised by the Hungarian government for several years.
- Currently, one of the main obstacles to effective enforcement is created by cumbersome and unnecessary requirements of proof of rights ownership imposed upon the rightsholders. The cumbersome burden of proof as to the ownership and subsistence of copyright and neighboring rights enables defendants to delay judicial proceedings, and in some cases even escape justice, even when it is clear from the outset that the plaintiff owns the copyright or neighboring rights in question. This issue has become particularly problematic now that hundreds of thousands of different infringing optical discs (CDs, CD-ROMs, VCDs, DVDs) are regularly seized during raids. Hungary should introduce a presumption of ownership for phonogram producers.
- The Copyright Act currently does not have provisions for the calculation of damages; the act only refers to general civil law rules on damages, which will not help to adequately compensate copyright owners or producers of sound recordings for infringements.
- The Act also broadens the scope and reach of obligatory collective management to an alarming extent. Article 27 denies rightsholders in certain literary and musical works the ability to determine the proper exercise of their exclusive rights on an individual basis, instead obligating them to submit to collective management—all in violation of Article 9 of the Berne Convention (the right of reproduction) and therefore the TRIPS Agreement, as well as Article 8 of the WIPO Copyright Treaty (the right of communication to the public). The extension

of obligatory collective management to interactive making available to the public of all literary and musical works conflicts with Hungary's international obligations. Article 27 must be amended to allow copyright owners to "opt out" of the collective management scheme, in the manner provided for other works in Article 91(2) of the Act.

- The law also requires the obligatory collective management of all exclusive public performance rights in musical works. Such provisions originally appeared in the communist-era 1969 Hungarian Copyright Act (Article 40(1) and (3) of Act III of 1969), and have been incorporated into the 1999 Act as Article 25(1) and (3), without any change whatsoever. These provisions have long been criticized as conflicting with the Berne Convention (Article 11(1)(i)) and TRIPS, and now conflict with the WIPO Copyright Treaty, too. Articles 25(1) and 25(3) also must be amended to allow copyright owners to "opt out" of the collective management scheme, in the manner provided for other works in Article 91(2) of the Copyright Act.
- Amendments to the customs and criminal codes to comply with TRIPS to improve border enforcement were not adopted.

In January 1996, the copyright law was amended by the Law on Television and Radio (the "Media Law") with respect to the broadcasting compulsory license; it entered into force on February 1, 1996. This law requires compliance with copyright as a condition for obtaining and maintaining broadcast licenses, and is an important tool in the fight against broadcast piracy.

Criminal Code (1993)

While the existing Hungarian Criminal Code is relatively good, it still needs improvement. In May 1993, the criminal code was amended to provide higher penalties for copyright infringement, including fines of up to 10.8 million Forints (US\$47,400) and jail sentences of up to five years. In January 2000, Hungary further amended the code, increasing the maximum jail sentence to eight years for general copyright infringement and making signal theft a criminal offense that carries a maximum sentence of two years. These amendments also provided evidentiary presumptions of copyright ownership. In December 2001, the criminal code was amended once more to ensure that proprietary databases are protected through the criminal law and that infringements causing financial harm to the right holder (but not necessarily profit for the infringer) are prohibited. Accordingly, in addition to criminal provisions regarding copyright and neighboring right violations, the code now also covers database infringement.

Optical Media Regulations

The Hungarian government should craft and issue optical media regulations. The global copyright community has agreed that the key elements of an effective optical disc law include the following 11 points:

- 1) Licensing of facilities: Centralized licensing (for a fixed, renewable term, no longer than three years) of manufacturing of optical discs and "production parts" (including "stampers" and "masters"), including requirements like production must take place only at the licensed premises, a license only be granted to one who has obtained "manufacturer's code" (e.g., SID code) for optical discs and production parts, the licensee must take measures to verify that customers have copyright/trademark authorization of the relevant rightsholders, etc.

- 2) Licensing of export/import of materials: Centralized licensing of export of optical discs, and import/export of production parts (including “stampers” and “masters”), raw materials or manufacturing equipment (an automatic licensing regime consistent with WTO requirements).
- 3) Requirement to apply manufacturer’s code: Requirement to adapt manufacturing equipment or optical disc molds to apply appropriate manufacturer’s code, and to cause each optical disc and production part to be marked with manufacturer’s code, and prohibitions on various fraudulent/illegal acts with respect to manufacturer’s codes (including making, possessing or adapting an optical disc mould for forging manufacturer’s code; altering, gouging or scouring a manufacturer’s code on or from a mould or any disc; selling a production part not marked with manufacturer’s code, etc.).
- 4) License record keeping requirements: Requirement to keep various records, for example, machinery and raw materials, orders received, quantity of raw materials, exemplars of each optical disc title manufactured, etc.
- 5) Registration requirement for commercial optical disc duplication: Requirement that commercial establishments that record copyrighted materials onto recordable optical discs for purposes of sale or other commercial dealings register with the government prior to engaging in such “commercial optical disc duplication,” giving the names and addresses of the responsible persons and the address of the premises at which the duplication takes place.
- 6) Plenary inspection authority: Possibility of inspection, without notice, at any time, to examine licensed or registered premises; prohibition on obstructing raid; possibility of forcible entry; possibility for rightsholder organization to assist; etc.
- 7) Search and seizure authority: Plenary authority to: enter and search any place, vessel, aircraft or vehicle; seize, remove, detain or seal contraband or other evidence of a violation of the law; forcibly enter when necessary; prohibit the removal of seal applied; etc.
- 8) Government record-keeping requirements: Maintenance of a register of applications filed and production licenses granted, available for public inspection; maintenance of a record of all inspection actions made publicly available; etc.
- 9) Criminal penalties for violations: Violation of any significant aspect of the regime is subject to criminal sanctions, including individual liability (fines and/or imprisonment).
- 10) Possibility of withholding, suspending, or revoking a license for prior copyright infringement, fraud in the application process, or violation of the Optical Disc Law.
- 11) Possibility of closure of a plant.

The copyright industries look forward to working with the Hungarian authorities to draft, implement and enforce comprehensive optical disc regulations.