

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2007 SPECIAL 301 REPORT

# HUNGARY

**Special 301 Recommendation:** IIPA recommends that Hungary remain on the Watch List in 2007.

### **EXECUTIVE SUMMARY**

The copyright industries have identified several significant enforcement problems in Hungary over the years: the police are under-resourced and under-equipped to tackle Internet piracy; prosecutors and judges are reluctant to treat copyright infringements as serious crimes; there is a lack of deterrent sentencing; cumbersome and unnecessary requirements to prove ownership of rights remains embedded in the system; requests for expert opinions on all goods seized impose a major strain on the police's limited resources; and there is a paucity of experienced and well trained experts. There also exists a perceived (not actual) conflict between constitutional rights (privacy, data protection) and intellectual property enforcement.

### **PRIORITY ACTIONS IN 2007**

#### **Enforcement**

- Allocate more resources to police forces to fight increasing Internet piracy.
- Put into force the new amendments which implement the EU Enforcement Directive.
- Develop procedural systems to overcome judicial delays, including streamlining legal investigations.
- Make clear to the judiciary (including police and prosecutors) that IPR cases are a priority.
- Develop IPR training program for the judges and prosecutors.
- Impose stiffer penalties and sentences to deter copyright pirates.
- The Hungarian National Information Infrastructure Development (NIIF) Program should be closely monitored to prevent copyright infringements on its networks.
- Develop a national action plan against piracy through the Inter-Ministerial IP Task Force.
- Take action against piracy in workplaces and educational institutions.
- Initiate APEH (tax authority) procedures in online piracy cases.
- Put an end to the passive stance of ISPs with respect to internet piracy.
- Develop, with the copyright industries, a joint IPR enforcement public awareness campaign, including instructions on the detrimental effects of Internet piracy, CD-R/DVD-R burning and commercial scale photocopying of books by/in educational institutions (schools, colleges, universities).

#### **Legislation**

- Introduce legislation to ban street sales of copyrighted products.
- Adopt optical media regulations to combat and control optical media production and distribution and to combat pirate CD production.
- Find an appropriate legislative means to specify that the private copy exception does not apply to illegal sources.
- Revise the expert opinion system to allow for sampling methodologies, and increase resources allocated to fund the requisite expert opinions.

**HUNGARY**  
**Estimated Trade Losses Due to Copyright Piracy**  
*(in millions of U.S. dollars)*  
**and Levels of Piracy: 2002-2006<sup>1</sup>**

INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business Software <sup>2</sup>	67.0	44%	55.0	42%	65.0	44%	55.0	42%	32.8	45%
Motion Pictures <sup>3</sup>	NA	NA	102.0	73%	20.0	35%	20.0	30%	18.0	30%
Sound Recordings & Musical Compositions	20.0	35%	12.0	30%	11.5	38%	8.0	30%	6.0	30%
Entertainment Software <sup>4</sup>	NA	40%	NA	30%	21.5	59%	NA	NA	NA	NA
Books	NA	NA	4.0	NA	4.0	NA	4.0	NA	4.0	NA
<b>TOTALS</b>	<b>87.0</b>		<b>173.0</b>		<b>122.0</b>		<b>87.0</b>		<b>60.8</b>	

## COPYRIGHT PIRACY IN HUNGARY

**Internet piracy and P2P:** Internet piracy in Hungary is increasingly becoming the top piracy issue, as Internet household penetration has increased over the past year (now at 27%, up from 22% last year – and 55% are broadband users). The Internet is often used in two ways: (1) marketing and distribution support for offline piracy (ordering burned CDs on the Internet, etc.); and (2) the fast-growing significance of “real” online piracy, such as FTP servers, P2P activity, and simple uploading of files to private web pages.

Peer-to-peer (P2P) piracy is a serious issue in Hungary, with approximately 600,000 P2P users out of the total 2.8 million Internet users. Locally-based web sites linked to File Transfer Protocol (FTP) servers that offer downloads for money (typically via highly priced Small Messaging System, i.e. text messaging) is re-gaining in popularity. According to the local motion picture anti-piracy organization (ASVA), there are an estimated 100 public FTP servers and an estimated 900 web sites offering pay-per-download capabilities. Private and community-driven FTP servers with strict membership rules remain a concern, and ASVA estimates the number of such FTP servers to

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2007 Special 301 submission at [www.iipa.com/pdf/2007spec301methodology.pdf](http://www.iipa.com/pdf/2007spec301methodology.pdf). For information on the history of Hungary under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>2</sup> BSA's 2006 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Hungary, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2005 piracy statistics were preliminary at the time of IIPA's February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

<sup>3</sup> MPAA's trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

<sup>4</sup> ESA's estimated piracy rates for Hungary in 2006 reflect on the piracy rate for handheld products, which may differ from and often underestimate overall piracy levels in country. ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry “losses.” The methodology used by the ESA is further described in Appendix B of this report.

be 20 (but only 5 with over 5 TB of capacity). Another difficult problem in Hungary is the complex interrelationships between various online providers (ISPs, webspace providers, server farms, etc.).<sup>5</sup>

The National Information Infrastructure Development (NIIF) Program promoted by the Ministries of Education, Information and Telecommunications should be closely monitored to prevent network IP violations (the NIIF serves as a framework for the development and operation of the research network in Hungary; the Program covers the entire academic, research, and public collection community by providing them with an integrated computer networking infrastructure.

**Optical media:** According to local industries, there are currently four optical disc plants (all using SID codes), in Hungary, with a total of 14 lines in all the plants. There are no known dedicated DVD plants, but one of plants has three DVD lines. The total plant capacity is estimated to be as high as 49 million discs per year; the capacity being basically unchanged as compared to 2005. Manufacturing is also done for the local Hungarian market but probably mainly for other countries such as Serbia, Montenegro, and Romania. It is unclear how many of the plants are operational, or how many, if any, are engaged in illegal activity (undetectable unauthorized production or overproduction). However, the existence of these plants, without a comprehensive licensing and inspection scheme or transparency about their operations, clearly calls for regulations on the manufacturing and distribution of optical discs. The obligatory SID Codes should be a minimum requirement. The Hungarian government is urged to set up plant monitoring procedures like others in the region, to regulate the facilities and equipment where optical discs are manufactured. The Anti-Piracy Coalition of the Music, Film and Software Industry sent an extensive paper to the Hungarian Government in 2006 stressing the existing problems and need for action and including a list of key elements of an effective optical media law.

**Domestic “burning” and street/stadium piracy:** All the industries report problems with locally mass-produced CD-R and DVD-R pirate materials—these materials predominate in Hungary because of the relatively low local prices of CD and DVD-R burners and blank CD-Rs. CD-burning is also done by private users—especially students and small retail operations—but it is done in large measure by organized crime syndicates in the case of entertainment software and music products.

Thanks to constant raids, vendors offering burned musical CD-Rs at the flea market in Petőfi Hall have decreased in number. Unfortunately, there are still some offering copied albums, in some cases of good quality. The largest market for illegal movie DVD-Rs is the market at Verseny street, where as many as 20 vendors may be found each weekend, selling illegal movie copies. It is increasingly common to find musical albums stored in the mp3 format on DVD, thus as many as 10-20 albums, even an artist’s complete discography can be obtained on one DVD. The economic damage inflicted by such concentrated mass piracy is huge.

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<sup>5</sup> Unfortunately this problem remained troubling in 2006. For example, it may happen that the provider assists in re-linking the infringing content after a cease and desist procedure was initiated. This is, of course, very difficult to prove. Other pirate services, such as downloading an illegal file for a fee paid via SMS (short message service, used in mobile telephone text messaging) may actually generate significant revenues for the mobile phone providers: they are entitled to over 50% of the revenue on any SMS sent (revenue split: 50-60% MSP, 10-15% SMS service company, 10-20% web hoster, 10-20% content provider). These providers (which include international companies) are of course legitimate and they pay their taxes, but if they were more cooperative in filtering illegal operations, the pirates would have more difficulty in conducting their activities. This is one of the easiest and most widely used forms of payment today: traditional postage checks are more time consuming while online banking is not very widespread and/or card holders are reluctant to provide their card number to other parties. And finally, those providing broadband access partly owe their increasing revenues to piracy: legitimate broadband services (subscription, etc.) are not common, yet many users sign up for broadband because of all the available illegal material on the Internet.

The sale of locally burned pirate DVD-Rs at flea markets and in video retail shops remains a great concern. In Budapest's largest weekend flea market (Petőfi Hall), there are about ten stalls where customers can place orders for pirate product after consulting lists or inlay catalogs of available titles. Pirate DVD-Rs are also increasingly found at other flea markets across Budapest (including, for example, at the Józsefváros and Verseny-street markets).

**Imports of pirate OD products:** Hungary remains a major destination for illegal copies of CDs, and especially, in the case of entertainment software, factory-produced CDs and DVDs as well as DVD-Rs and CD-Rs. The two major sources of pirated entertainment software on optical disc sold in Hungary are Ukraine and Russia. The recording industry does not report a CD-R import problem; its problem is the importation of pirated music CDs from Russia, and to a lesser degree, Ukraine. For example, preliminary examinations of pirated discs seized in secondhand shops indicate that these discs are most probably produced in Russia. To compare, the motion picture industry reports that, for their products, this problem has improved and they do not experience this kind of import problem.

**Piracy of sound recordings and musical compositions:** The nature of piracy of music and sound recordings in Hungary has not changed significantly over the past year, but the number of online infringements (see Internet piracy discussion, above) is growing rapidly while the level of "traditional" physical piracy is stagnating. On-line piracy (mostly file-sharing and DC++ system in particular) is now probably the number one concern. Although the number of available warez sites has not increased, the operating ones are increasingly harder to find, working in an increasingly sophisticated fashion. Among P2P networks, BitTorrent types are becoming increasingly common, operating under a closed, invitation-only system. In 2006 the number of users on P2P network DC++ has decreased somewhat. This is due partly to the criminal cases initiated by ProArt against some of their major hubs, but also to the spreading of more modern P2P systems. As a positive point, it should be mentioned that the ringtone market is becoming more transparent.

However, traditional forms of piracy, i.e. pirate optical discs at flea markets (e.g. Petőfi Hall, Verseny-street market, Gyáli-street market, Veresegyház market), in secondhand CD shops etc. are still common. With respect to industrial piracy, most of these discs are produced in Ukraine and/or Russia, and they are of exceptionally good quality, with nearly faultless production and packaging. Thus it is very difficult to determine their illegal nature. Many of these are sold through secondhand CD shops, giving them a legitimate cover operation. The recording industry estimates the level of music piracy in Hungary in 2006 was 35% of the market, with estimated trade losses for the U.S. share placed at \$20 million.

MAHASZ reports that it has managed to involve customs officers more actively in off-line cases and that Customs has even ventured into the on-line field. Other positive news is that one of MAHASZ's five DC-hub cases has now finally gone from the police to prosecution, meaning that there is a good chance it will finally reach court.

**Business software piracy:** Business Software Alliance (BSA) reports that in 2005, although optical disc piracy of software is still the cause of considerable damage, the incidents and damages caused by Internet-based piracy increased dramatically. This is due to the increased penetration of broadband. While OD piracy is geographically limited (open market, acquaintances), Internet piracy is not, and the software industry experiences a mix of both, namely when the illegal software is ordered through the Internet, and the operator of the site sends the ordered software to the customer via regular mail, who pays for the software afterwards by check. BSA reports that its preliminary estimated trade losses due to business software piracy in 2006 rose to \$67.0 million, with the rate also increasing slightly to 44%.

**Audiovisual piracy:** The motion picture industry is harmed by the widespread internet and optical disc piracy problems, described above. In particular, the sale of locally burned pirate DVD-Rs at flea markets, by street vendors, in video retail shops and in corporate offices also remains a concern. In Budapest alone, there are six flea markets where customers can consult lists or inlay catalogues of available titles and then place orders for pirate product (Petőfi Hall, Verseny street, Józsefváros, Békásmegyer, Káposztásmegyer and Fáy street). According to ASVA, the local anti-piracy organization, there are an estimated 50 markets throughout the country (with about 500 traders) where customers can purchase pirate products. The industry continues to report problems with local television and cable piracy. Stations broadcast or retransmit films that they have no rights to or, in some cases, use pirate videocassettes for broadcast (especially by small cable providers in small villages, and often owned by the local authorities). ASVA reports the conduct of 40 investigations into cable piracy in 2006. MPA does not have 2006 piracy estimates available; for 2005, MPA reported that preliminary estimated losses in Hungary due to audiovisual piracy (including both hard goods and internet) were \$102 million, and the estimated piracy level was 73%.

**Entertainment software piracy:** Members report that there has been some improvement in the levels of game software piracy since last year. Retail channels for pirated optical disk game software are predominantly limited to street vendors, flea markets and websites. Counterfeit and pirated cartridge-based games continue to be exported to the country from China; piracy of these video game products appears to have grown worse in the last year. Pirated products on optical media are now predominantly of the burn-to-order variety (domestically produced) though a small amount of factory replicated product continues to enter the market from Ukraine and Asia. In addition to optical disc and cartridge-based video game piracy, there has been a substantial growth in Internet piracy of entertainment software, through P2P networks and websites using SMS payment systems. ESA reports an estimated piracy level of for entertainment software handheld products in Hungary at 40%.

**Piracy of books and journals:** The book and journal publishing industry reports that the same problems persist—the unauthorized photocopying of printed materials, and of academic textbooks in particular, in and around university campuses.

## **COPYRIGHT ENFORCEMENT IN HUNGARY**

**Cooperation Agreements between industry and law enforcement:** On October 25, 2005, ASVA, the BSA and ProArt (the Alliance for Copyright Protection) signed a co-operation agreement with the Anti-Crime Division of the National Police Headquarters, confirming their intention to collaborate in a united effort to address copyright crime. In addition, ASVA, the BSA and ProArt also signed a similar agreement with the Tax and Financial Control Administration (APEH). The objective of this cooperation is to assist government efforts to crack down on the “black economy” and the losses sustained by Hungary’s economy as a result of piracy. The parties to the cooperation agreements have undertaken to provide mutual help through expert assistance, training and technical information. During 2006, the industries continued to search for alternative ways to fight piracy, for example by involving APEH. For 2007, getting the tax authorities involved remains an objective, however, the control department of the tax authorities is currently subject to a complete restructuring, the results of which are expected to be in place by mid-March 2007.

**Inter-Ministerial Task Force:** With cooperation from the U.S. Embassy, in June 2006, a local Anti-Piracy Coalition of the software, music and film was formed. The Anti-Piracy Coalition identified a list of priority actions which was ultimately submitted to the Government. On January 17,

2007 at a U.S. Embassy-organized workshop, agreement was reached to establish an Inter-Ministerial Task Force composed of government and industry representatives. This Task Force, which will be established under the Ministry of Justice and Internal Affairs and coordinated by the Hungarian Patent Office, will develop a National Action Plan to combat piracy.

**Criminal enforcement and working with the police:** Many of the industries report generally good police cooperation on raids and seizures. However, the high levels of piracy in Hungary continue to be at troubling levels because deterrence is not parsed through the end of the criminal prosecution. Deficiencies in prosecution remain a big and worrying problem. Again in 2006, actions have not generally been pursued against upstream targets responsible for the importation and distribution of pirated products in the market (particularly the syndicates that operate through the Petöfi Hall). Cooperation between the police and the local copyright anti-piracy groups continued during 2006, but not without some glitches.

- On a positive note, the film industry reports several positive actions in 2006. "B-52", a Topsite FTP-server utilized by international release groups, was seized on January 11, following an investigation initiated by MPA in coordination with IFPI, and officers from the Economic-Protection Department of the Budapest Police. The servers contained multiple terabytes of movie, music, software, game and TV title files. B-52 was one of the best-established Topsites in Eastern Europe and served and fueled other local Topsites like MTX TSP, TWS, HWK and RNX that subsequently went down due to the raid. Customs (IPOD) and Tax Office (Rapid Groups) continued to take *ex officio* actions.
- The entertainment software industry (ESA) reports that some of its members have a positive relationship with law enforcement authorities. The local police make an effort to keep the markets and retail shops clean of pirated products and take *ex officio* actions against vendors of pirated product. For the most part, the targets are typically small-scale operations that source their product from Internet downloads which are then burned onto optical discs. Such targets generally have little pirate inventory on hand and generally have no financial assets.

The recording industry indicates that, in general, the number of cases handled by the police has not decreased (full year data is not yet available). However, only a small percentage of these cases reach court, due to the lack of commitment and/or awareness on the prosecutors' part. The authorities are taking *ex officio* actions, especially in the flea markets. ProArt initiated 1,644 notice and takedown procedures in 2006. In 99.6% of the cases, operators made the infringing content unavailable within the deadline stated by law. Police and customs have seized over 75,000 optical discs, 43 PCs, 97 hard drives, 34 CD/DVD burners and 16 servers with the help of ProArt. Customs seized an FTP pay-server in November (this was the first online case for Customs). ProArt cooperated very closely in the preliminary stage. ProArt is also trying to involve the internal revenue service (based on lack of receipts, etc., against those offering music and films privately via the Internet).

**Prosecutorial bottlenecks:** The biggest enforcement bottleneck in Hungary continues to reside with prosecutors and judges. One unfortunate practice of prosecutors is to dismiss criminal copyright cases. The industries are working hard to change the current practice by training prosecutors and holding judicial conferences.

An illustrative example of the existing deficiencies is the case related to the DIABLO hub. In the beginning of 2005, ProArt lodged a complaint against the DIABLO hub, which enabled several thousands of users to illegally share copyrighted content at the same time. The authorities failed to take any steps so ProArt lodged a second complaint some months later containing evidence in the

form of a forensic report showing that – at a random moment in time – 5,543 users had been connected. Each user had to make a share of at least 10 GB of data available to the others. The police then seized the server running the hub, but one week later the hub was up and running again. However, following a request to pursue this matter, the investigating authority stated that it was not in a position to use ProArt's earlier submissions in the matter (and made references to formal deficiencies of representation and inquired about the commission of the forensic consultant) and that "considering the difficulties of evidence referred to above it is not possible to instigate criminal proceedings against the individual users." ProArt challenged the decision, supplied answers to the questions of the authority and submitted another opinion detailing the process of entering the hub and performing a search there. There was also another enclosure, a declaration of ARTISJUS, the Hungarian Bureau for the Protection of Authors' rights stating that apart from ProArt no other person or institution had applied for or been granted an exploitation licence for making publicly available any copyright-protected content online. To date, ProArt has still not received an answer. The decree of the district attorney on the discontinuation of the investigation was dated March 27, 2006, and said: "...based on the data supplied by the investigation it could not be corroborated that an infringement had been committed and no further results are expected from the prolongation of the investigation." ProArt lodged a complaint against the decree but it was refused by the Municipal Office of the Director of Public Prosecutions (Fővárosi Főügyészség) on June 19, 2006. As far as ProArt is concerned, all forms of appeal are exhausted. ARTISJUS, the organisation representing the authors, instituted an action as a substitute private prosecutor (pótmagánvádló); the procedure is still in progress.

Furthermore, the recording industry reports that on many occasions, the expert opinions given to the police by registered experts of intellectual property are imperfect at best. There are a number of experts in the Organization of Intellectual Property Experts (which operates under the Hungarian Patent Office) who work with industry and are well versed in the nature of piracy, but it is always up to the authorities to choose the expert they wish to get the official opinion from. The practical problem is that the authorities have developed their "favorites," who are not necessarily fully qualified. ProArt has had difficulties in trying to convince the authorities to use the qualified experts only. At the same time, the right holders are unable to give expert opinions, as they are considered to be interested parties. At best, rightholders can only act as consultants in criminal cases. In order to try to solve previous problems with expert opinions, ProArt organized a one day, hands-on training for legal experts, involving presenters from IFPI. The training took place in the oldest Hungarian CD-factory (VTCD), along with a plant visit.

**Delays and non-deterrent penalties:** Unfortunately, even given the successes with raids and seizures, prosecutorial delays and weak sentences (for the few criminal cases that do reach judgment) remain a serious problem. Despite generally good cooperation from the police, Hungarian prosecutors and judges remain reluctant to treat copyright infringements as serious crimes. The motion picture industry reports that prosecutorial indifference remains a major impediment to combating piracy. AVSA has turned to alternative enforcement schemes including the use of tax authorities, consumer protection bodies, and local licensing offices. However, criminal penalties must be effectively utilized if the overall piracy levels are to improve.

ESA member companies report that the majority of these cases continue to wind slowly through the courts. Some have been pending since 2002 against small retail outfits (so-called "small fish"). While police cooperation, as noted above, remains good, the delay in resolving cases does not provide the hoped-for degree of deterrence.

**Border enforcement:** Border enforcement is a longstanding concern, especially because of Hungary's proximity to Ukraine, Slovak Republic, and Russia, which remain the primary producers and exporters of optical disc materials in the region. The IPED (Intellectual Property Enforcement Department within Customs) consists of one dedicated IP customs officer in each of the six customs regions. While the members of these units appear enthusiastic and cooperative, these units have only been in operation for two years. ASVA reports that Customs (IPED) and Tax Office (Rapid Groups) have increased the number of *ex officio* actions.

ProArt was only notified twice by customs when music albums were to cross the border. In one instance, this involved several cases of CD's to be taken out of the country (on a truck heading from Yugoslavia to the UK), and upon checking the load, they turned out to be genuine products. Because of a change in their jurisdiction, ProArt initiated contact with the chief investigator of the customs authority, and included case reports in presentations given to educate investigators. It was partly due to this that the customs authority held an IP-conference, where both the copyright industries and representatives of industrial patents took part. Unfortunately, this process has been slowed down, because customs officers have been assigned to new tasks (i.e. bankruptcy criminal cases) by the police, thus they are concentrating mainly on these matters.

## **COPYRIGHT LAW AND REFORM IN HUNGARY**

**Copyright Law:** Hungary amended its copyright law in 1999 and 2003 in order to comply with international norms and accede to the European Union (the Copyright Directive (2001/29/EC)). Amendments in Act CII of 2003 updated almost all of the Hungarian IP regulations, which entered into force on May 1, 2004, on the date Hungary became a member of the EU. As mentioned above, further amendments to the Copyright Law were accomplished in December 2005 to implement the Enforcement Directive. Implementation of the EU Resale Right (via Act CIII of 2005) was effective January 1, 2006.

**EU Enforcement Directive:** The Hungarian Parliament approved a law (Act CLXV of 2005) on December 19, 2005 to implement the EU Enforcement Directive (2004/48/EC); this entered into force on April 1, 2006. This package amended the Civil Procedure Code, the Copyright Law and other relevant legal acts, to implement the EU Enforcement Directive. It contains new legal institutions and terms, such as the presumption of authorship, measures for preserving evidence (importantly, *ex parte* actions before commencement of an action, the term of commercial scale, right of information, provisional measures, etc.). The law provides the right holders and the courts with more tools during civil enforcement cases. It is still early to evaluate how these measures will be implemented in practice, but the rights holders hope that these new provisions will improve enforcement.

**Criminal Code:** A new criminal procedure code passed in July 2006 gives authority to Customs to deal with IP infringements. Before this code was enacted, if customs experienced copyright infringements (i.e. flea market routine checks), it would seize the infringing products and hand them over to the local police department along with the entire case. The police department would then without much enthusiasm take over the case. Since July 1, 2006, the customs authority has been carrying the entire case through so that the mobile control group seizes the products and the investigators take the case. The other change is that economic crimes are also being investigated by customs officers, who have had no previous expertise in this area. Consequently, the change is quite difficult, especially with customs having to take over some earlier cases, along with a few police officers. MAHASZ has not seen any improvement in practice, but has organized

several meetings with customs officers. More training is needed to bring customs up to speed on their new responsibilities.

**Optical Media Regulations:** No progress was made during 2006 in developing optical media regulations. At a meeting held in the U.S. Embassy, Hungarian government representatives did not seem to support the idea of introduction an optical media regulation. They said that these sort of regulations are not in place in most of the EU countries and it will disadvantage local CD plants. Currently there are only three plants in Hungary. ASVA will continue to press this issue in 2007. Hungarian Government should craft and issue optical media regulations to better regulate the manufacture of optical disc products. The global copyright community is in agreement on the key elements of an effective optical disc law that include the licensing of facilities (and equipment) where discs are manufactured along with the export and import of materials used. Manufacturers should be obliged to use codes to identify genuine product, and to register for certification to be genuine duplicators, and to keep accurate records. Authorities in turn should have the right to inspect facilities and seize products and equipment where appropriate, with the power to penalize offenders under threat of revocation of license, fines, or the closure of the plant. The copyright industries look forward to working with Hungarian authorities to draft, implement and enforce such comprehensive optical disc regulations.

**Needed Reform:** In addition to optical media legislation (above), proper legislative vehicles should be found to ban the street sale of copyrighted products. In addition, it should be made clear by appropriate legislative means that the private copying exception does not extend to reproduction from illegal sources.

## **MARKET ACCESS**

**Fair Compensation:** Hungary imposes a levy on audio and video carriers and allocates collections among audiovisual right holders, including authors (scriptwriters), directors and producers. Claims by U.S. scriptwriters were, through 2004, accepted and remunerated via ARTISJUS; claims of U.S. directors and producers, however, fell to a collection society FILMJUS, which refuses to recognize U.S. producer claims, even with respect to claims for author-director remuneration. FILMJUS has refused to engage with U.S. producer requests to negotiate agreements whereby U.S. producers might receive author and producer levies payable for U.S. audiovisual works. In addition, FILMJUS has so far not remitted any levy collections to U.S. directors. Hungarian legislation has empowered FILMJUS to collect all shares of levies payable for scriptwriter, as well as director and producer remuneration rights; thus, U.S. right holders anticipate a complete breakdown in copyright protection via remuneration for loss of reproduction rights. Producer society AGICOA has asserted claims against FILMJUS for cable retransmission royalties collected in Hungary on account of retransmission of the audiovisual works of international producers (including U.S. producers). AGICOA claims were met with similar resistance from FILMJUS. Efforts of U.S. producers and directors and of AGICOA to engage FILMJUS are ongoing.

**Foreign Ownership Restrictions on Broadcasting:** Section 122 of Act 1 of the new Media Law requires that a joint stock company ("a company limited by shares") licensed to provide national broadcasting services must be such that 26% of its shares (or voting rights) are held by Hungarian citizens residing in Hungary or legal entities having a registered seat in Hungary. Neither a Hungarian nor a foreign enterprise, however, may hold shares in excess of 49% of the joint stock company's total shares. Foreign investment restrictions are discriminatory, limit competition and inhibit the potential growth of the television industry.

## **IPR TRAINING AND PUBLIC AWARENESS**

In cooperation with BSA and Pro-Art, ASVA organized a cross-industry press conference on April 26, 2006, to raise awareness on the economic importance of IP business in Hungary and on the local damages resulting from piracy. The chairman was the famous Hungaro-American producer Andy Vajna. In September 2006, ASVA, BSA and ProArt organized cross-industry training seminar for Judges during the opening of the brand new Judges Academy. The Seminar, which was very successful, was opened by the former President of the Hungarian Supreme Court and addressed various aspects of copyright infringement, including file-sharing, DRM and the European *acquis*. The seminar was attended by 23 judges from different courts whose participation was on a voluntary basis. At the conclusion of the conference, the attending judges proposed that an on-going training/education program be established. ASVA is liaising with the Judicial Academy to repeat the seminar next year. On October 17, 2006, ASVA, BSA and ProArt organized the first-ever, cross-industry training seminar for 45 prosecutors in Budapest. Topics discussed included the significance of intellectual property in the national economy and its losses due to piracy, Internet piracy, P2P and liability. ASVA is liaising with the Director of Education at the Prosecutor's office to repeat the seminar next year. Finally, ASVA also continued its training sessions to regional police officers in the form of road-shows, and to Customs offices.

In cooperation with the Ministry of Education, ASVA developed an educational program for secondary school students which is available on the Ministry's network, "SuliNet". Also, in cooperation with the local music industry, ASVA developed interactive educational comic material about copyrights targeting high school students (age between 14 and 18 years old). ASVA is searching for alternative ways to fight piracy, for example by involving the Tax and Financial Control Administration (APEH).

On the 2006 World Intellectual Property Day, ProArt held a joint press conference with BSA and the local MPA organization, and ProArt also plans this for 2007. ProArt also held "Autogram Day" for the second time in April, 2006, under the "Together for Music" campaign, where the most popular local artists raised their voices against piracy, signed autographs and talked to their fans. Apart from educating judges and prosecutors, ProArt held a training seminar for legal experts, and also plans to continue with this in 2007. After the TFM campaign, the comic strip produced in association with the local MPA organization (ASVA) was the major PR event in the fall of 2006. In October, ProArt initiated its new campaign for secondary school students: on "Open days" and other special events, ProArt members personally visit schools, along with a popular local artist, and during an interactive session, inform pupils about basic legal, economical and ethical aspects of using musical products.