

HUNGARY

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2010 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Hungary remain on the Watch List in 2010.¹

Executive Summary: The copyright industries continued to actively cooperate with Hungarian law enforcement officials on investigations and prosecutions and have provided educational training to police, customs, prosecutors, and judges during 2009. The police, who have generally done a good job supporting Internet piracy investigations, are still under-resourced and under-equipped to tackle this grave problem. Onerous requirements to prove ownership of rights and requests for expert opinions on all goods seized continue to strain limited resources of both the government and the rights holders. In general, prosecutors and judges are still reluctant to treat copyright infringements as serious crimes, and those rare instances in which criminal charges are brought, the sentences issued are not deterrent. Some criminal cases involving Internet piracy resulted in indictments several years ago and prosecutions are still underway. Last year there were several large Internet actions and one criminal sentence issued involved a significant penalty of two years' imprisonment. The copyright sectors are optimistic that the government's public awareness and trainings to implement the 2008 national anti-piracy structure and action plan will continue to lower the piracy levels of both hard goods and Internet piracy in Hungary.

Priority actions requested to be taken in 2010: The copyright industries recommend that the following actions be taken in the near term in Hungary in order to improve the adequate and effective protection of copyrighted materials:

Enforcement

- Implement the national action plan against piracy that was developed in mid-2008 through the inter-ministerial task force known as HENT (the National Board against Counterfeiting). The official report on the implementation of the action plan shall be submitted to the Hungarian government in 2011.
- Allocate more resources, including trainings for police and infrastructure (open Internet access and PCs) to police forces to fight increasing Internet piracy.
- Specify to the police, prosecutors and courts that copyright and intellectual property cases are a priority.
- Encourage Internet Service Providers (ISPs) to cooperate with the content industries in the fight against piracy.
- Take action against piracy in workplaces and educational institutions.
- Ban street sales of pirated products.
- Have the APEH (Tax and Fiscal Control Administration) initiate actions on online piracy cases.
- Develop procedural systems for enforcement investigations to help aid the police how to conduct copyright infringement investigations.
- Impose stiff criminal penalties to deter 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 in and around educational institutions (schools, colleges, universities).

¹ For information on Hungary under Special 301 review, see Appendix D at <http://www.iipa.com/pdf/2010SPEC301USTRHISTORY.pdf> and Appendix E at <http://www.iipa.com/pdf/2010SPEC301HISTORICALSUMMARY.pdf> of this submission. See also IIPA's cover letter to this submission at <http://www.iipa.com/pdf/2010SPEC301COVERLETTER.pdf>.



Legislation

- Revise the expert opinion system to allow for sampling methodologies, and increase resources allocated to fund the requisite expert opinions.
- Clarify that the private copy exception does not extend to those cases where the persons making the copies have actual or constructive knowledge about the illegal nature of the source.
- Adopt optical media regulations to control optical media production and distribution and to combat pirate optical disc production.
- Adequate norms should be included in the Copyright Law to eliminate the legal monopoly of poorly functioning collective management organizations like the FILMJUS. The monopoly-related provisions disputed by the European Commission in an official infringing proceeding (a proceeding which has been suspended) were not modified by the February 2009 copyright law amendments.

COPYRIGHT PIRACY IN HUNGARY

Internet piracy: Hungary's Internet user population is approximately 5.87 million people, reflecting about 59% of the population; this is a 721% increase in number of users from 2000 to 2009 (according to www.internetworldstats.com). Hungary has the highest broadband penetration in Central and Eastern Europe, amounting to 1.724 million subscribers as of October 2009.² Internet piracy occurs in two basic ways: (1) marketing and distribution support for offline piracy (ordering burned CDs on the Internet, etc.); and (2) the fast-growing online piracy occurring through peer-to-peer (P2P) file-sharing activity, FTP (File Transfer Protocol) servers, and simple uploading of files to private web pages. More specifically:

- There are an estimated 600,000 peer to peer users in Hungary. The most commonly used P2P service is DC++, although it is losing popularity. The music and recording industry, led by ProArt, initiated several criminal actions against operators and major uploaders, and criminal cases against the DC++ hub operators began in 2008. Complaints filed by rights holders against the Top 20 DC hubs and their operators continued in 2009. It is important to note that the police also takes ex officio action in P2P cases.
- Video streaming sites (such as YouTube and videa.hu) continue to gain popularity.
- The recording and films industries also have successfully filed complaints with police who in turn have run several major raids against BitTorrent and FTP sites.³ There are torrent cases currently pending in Győr and in Budapest. Each month sees a successful official action where FTP servers are seized. The National Investigating Office holds the records for the largest FTP seizure, which involved nearly 50 content servers were seized, with an estimated content of 300 terrabytes, and six arrests.

The Entertainment Software Association (ESA) reports that online piracy, particularly file-sharing and commercial FTP servers offering pirated content, remain a growing concern for the entertainment software industry. ESA estimates 104,022 completed downloads⁴ of select members titles by Internet users in Hungary during December 2009, placing Hungary in the top 10 nations in terms of infringing downloads per capita during this period. These figures do not account for downloads that occur directly from hosted content, such as games found on FTP sites, "cyberlockers" or "one-

² Source: <http://nhh.hu/index.php?id=hir&cid+9712&mid=614>.

³ The FTP servers typically host content which is available for download through a "store front" website that provides information to users on how to register and pay via SMS for access to the illegal content on the servers. Though some copyright holders have had success in shutting down these "store front" websites through takedown notices to ISPs, the associated FTP servers remain in operation as they are typically associated with more than just one "store front."

⁴ This figure is representative only of the number of downloads of a small selection of game titles. Consequently, this figure is under-representative of the overall number of infringing downloads of entertainment software made during the period.

click” hosting sites, which continue to account each year for progressively greater volumes of infringing downloads. Breakdowns by ISP show that subscribers of Hungarian Telecom, Invitel, UPC, and DIGI were responsible for approximately 71% of this activity occurring in Hungary -- more than 74,082 downloads during the one-month period. This particularly high level of illegal downloads, which also concerns other categories of works and objects of related rights, confirms the need for legislative clarification concerning the prohibition of private copying in those cases where the persons making the copies have actual or constructive knowledge about the illegal nature of the source, as well as a government effort to encourage ISPs to cooperate with rights holders in the fight against piracy.

Domestic “burning” and street/stadium piracy: Street piracy seems to have declined slightly in 2009. Street raids are regularly conducted by the customs and police officers at the well-known “piracy markets” of Budapest. Nevertheless, it remains a serious problem and the industries continue to request that such street sales be banned. All the industries report problems with locally mass-produced CD-R and DVD-R pirate materials, which are common because of the relatively low local prices of CD and DVD-R burners and blank CD-Rs. CD-burning is done by private users—especially students and small retail operations, and organized syndicates in the case of music products, that supply many, if not all, of the vendors at flea markets.

There is recent positive news in that the public notary of Budapest ordered the closure of Verseny market based on evidence that vendors engaged in the sale of pirated goods. The largest market for illegal movie DVD-Rs has been the Verseny street market. There as many as 20 vendors may be found each weekend, selling illegal movie copies. In Budapest’s largest weekend flea market (Petőfi Hall), there are about a few stalls (2-3 stalls during most of the year, peaking to about 3-4 in December) where customers can place orders for pirate product after consulting lists or inlay catalogs of available titles (a practice also employed by small retail outlets that also appear to sell legitimate video game product). Pirate DVD-Rs are also found at other flea markets across Budapest. The Verseny street market and Petofi Hall have been the primary sources of pirated video game product. It is common to find musical albums stored in MP3 format on DVDs; this means that as many as 10-20 albums, even an artist’s complete collection, can be obtained on one DVD. ProArt requested increased surveillance of flea markets specializing in burned CDs (e.g. at Petőfi Hall, Verseny street market, Gyáli-street market, Veresegyház market), and almost weekly raids now take place there.

The special enforcement groups composed Customs, Police and Tax Authorities (APEH—Tax and Financial Control Administration), and led by APEH, will cooperate with ASVA and ProArt to conduct continuous inspections in ten regions nationwide. Surveillance cameras were set up in the market at Petőfi Csarnok. Vendors are more and more afraid to do sales in the open, and the content industries have convinced customs officers to conduct random searches at least once a month at each flea market in Budapest. The situation has improved as far as flea markets are concerned. The main locations for burned discs to appear are increasingly the online advertising platforms (apronet.hu, expresssz.hu); such advertisements have to be checked by trial buying, and based on these, rights holders can file complaints at the competent authorities. ProArt has initiated dozens of such cases, and the police has successfully found the guilty persons.

There is one optical disc factory in Hungary. There is no evidence or reason to believe that this factory is used for illegal industrial activities.

Business software piracy: Business Software Alliance (BSA) reports that during 2009, the more traditional forms of piracy have been stagnating, while Internet piracy is rising at a moderate pace. The consumer (non-business) market is more affected by hard goods piracy, with respect to the fact that there is a relatively high level of pirated software in small PC shops selling PCs and computer equipments for individuals. However, BSA is seeing signs that the economic recession is having a negative impact on the use of illegal software, since small enterprises are tending to reduce their operation costs by using cheaper illegal software. BSA has seen that successful enforcement actions (such as the outstanding police raid in April 2009 mentioned below) have visible positive effects on the Internet piracy. BSA campaigns, such as the new SoftVisit campaign launched in October 2009, serves to inform consumers and businesses by warning them of detrimental effects of software piracy. BSA believes its active campaigns in Hungary have helped halt

further declines in the legitimate business software market.⁵ BSA estimates that the preliminary trade losses due to business software piracy in 2009 have remained at a steady pace, with the estimated piracy rate dropping 1 point to 41%, with a preliminary estimate for losses due to piracy in 2009 of US\$79 million, down from \$88 million in 2008.⁶

Entertainment software piracy: In addition to the extensive downloading of games in Hungary described above, ESA also reports that locally burned pirated game discs, produced in small quantities or on demand by mom-and-pop operations in homes and in burning labs, continue to be available at flea markets and through small retail shops that also appear to sell legitimate game products. The small retail shops are also known to accept orders for specific titles, which are then delivered to the customer by messenger or through the post. Markets in Budapest, such as Petőfi Csarok (PECSA), Verseny street, and Soroksár, continued to be a source of hard goods piracy in 2009. It is ESA's hope that the closure of the Verseny market will be sustained and serve as a template for action against other markets with similar reputations.

Piracy of sound recordings and musical compositions: Online piracy (mostly file-sharing, especially the DC++ system and BitTorrent) is now probably the number one concern for the music industry in Hungary. Although the use of file-sharing systems is widespread, ProArt reports that the number of users has not grown in large part due to its active enforcement efforts. Even though music piracy was slowed in 2007, ProArt reports of new piratical developments; there are more and more compilations of a single recording artist found in MP3 format. The online sales of physical copies of pirated recordings continues. A relatively new development in the distribution of burned CDs is that these products are advertised on the Internet. In addition, the more traditional sale of pirate optical discs at flea markets continues. ProArt still finds high quality pirated copies in the second-hand stores. However, some of these stores have now closed, while others seem to carry fewer copies in response to criminal cases initiated by ProArt against such second-hand stores. It should be noted, however, that neither the police, nor the judiciary have actively followed up on the well-documented complaints filed by the music industry against these highly organized pirate shops. Cumbersome formalities and a clear lack of drive from the judiciary are slowing down the process. On the commercial side, further shrinkage in floor space dedicated to music at supermarkets occurred along with a significant drop in local releases. Overall sales volume is expected to be nearly flat compared to last year.

Piracy of books and journals: The book and journal publishing industry reports that unauthorized photocopying of academic textbooks in and around university campuses continues to be problematic. While there has been some improvement in the market, progress remains slow. Law enforcement authorities have been responsive to rights holder requests for actions against copy shops while also undertaking a few actions *ex officio*. Prosecutions, when they occur, unfortunately continue to be very slow.

Audiovisual piracy: The motion picture industry also is harmed by the widespread Internet and optical disc piracy problems. The sale of locally burned pirate DVD-Rs at flea markets, by street vendors, in video retail shops as well as in corporate offices remains a concern. MPA has worked with local theaters and police to address Hungary's camcord problem. The good news is that physical copies audiovisual works caused by street piracy appears to have decreased slightly.

⁵ According to a 2008 report issued by BSA-IDC, the information technology sector's contribution to the Hungarian economy could be even bigger if Hungary's PC software piracy rate was lowered 10 percentage points over the next four years. This would create an additional 1,094 jobs, \$274 million in local industry revenues and \$63 million in additional tax revenues for national, regional, and local governments. See The Economic Benefits of Reducing PC Software Piracy, released January 22, 2008, and posted at <http://www.bsa.org/idcstudy>.

⁶ BSA's 2009 statistics are preliminary, represent the U.S. software publishers' share of software piracy losses in Hungary, and follow the methodology compiled in the Sixth Annual BSA and IDC Global Software Piracy Study (May 2009), available at www.bsa.org. 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. Final BSA 2009 data will be made available later in 2010.

COPYRIGHT ENFORCEMENT IN HUNGARY

Inter-Ministerial Task Force (HENT): Three years ago at a U.S. Embassy-organized workshop held in January 2007, the Hungarian government agreed to establish an Inter-Ministerial IP task force. This Task Force, known as the National Anti-Counterfeiting Body (HENT), is under the Ministry of Justice and Law Enforcement and coordinated by the Hungarian Patent Office and is composed of government and industry representatives. HENT's objectives include cooperating in developing the national strategy against piracy and counterfeiting, preparing awareness campaigns, coordinating the activities of the state bodies and non-governmental organizations, and preparing legislative proposals, among others. The government accepted a new National Strategy on October 1, 2008. The three pillars of the strategy involve: statistics, raising public awareness, and enforcement.⁷ In 2009, warning labels were placed on computers (and other equipment) and information leaflets were given to the customers in the shops of major electronic device distributor channels, information campaigns and related art competitions for high school students were launched, anti-piracy exhibitions were held, and HENT's highly informative website has been operating since early 2009.

In accordance with its objective to improve enforcement, HENT organized the conference "Enforcement co-operation in criminal actions related to copyright infringements" for police officials, public prosecutors and court judges. Also in mid-2009, HENT ordered a nation-wide public research on attitudes concerning counterfeiting activities. For example, the research revealed that 1 of every 5 youngsters regularly uses illegal software. HENT is in the process of preparing its official report on the implementation of the action plan to the Hungarian government in 2011.

Criminal enforcement efforts continue as does cooperation with industry: The copyright industries have been working with law enforcement agencies for years. On October 25, 2005, ASVA (the local film industry anti-piracy group), BSA and ProArt (together the three groups are known as 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. These three groups also signed a similar agreement with APEH (the Tax and Financial Control Administration) aimed at assisting government efforts to crack down on the "black economy" and the losses sustained by Hungary's economy as a result of piracy. Parties to the cooperation agreements provide expert assistance, training and technical information.

The copyright industries are pleased that police cooperation on raids and seizures continued in 2009, and authorities continued to take *ex officio* actions. Street raids are continuously made by the customs and police officers at the well-known "piracy markets" of Budapest, with the recent closure of the infamous Verseny market a notable success.

A new sub-department of the Budapest Police was established in 2007 to deal specifically with on-line infringements. In addition, these industry groups have good relationships with the tax authorities and hope for increased involvement by them in 2010. As a new and negative development, the police budget for judicial expert fees has been seriously decreased, which will clearly undercut effectiveness in criminal actions. The overarching problem is converting the police actions into full prosecutions leading to deterrent sentencing.

BSA reports that its relationship with the enforcement authorities is good. In the past few years BSA entered into cooperation agreements with the authorities, which are still valid and in force. Hungarian authorities conducted approximately 90-100 raids during 2009. The authorities regularly take *ex officio* actions in Hungary, but mostly against private individuals. The majority (80-90%) of copyright case judgments were issued in criminal actions.

⁷ The three major industries involved in HENT's plan were the food industry, the pharmaceutical industry, and the information technology industry. After the acceptance of the National Strategy, the following six working groups have been set up: statistics, criminal, pharmaceutical, trainings, IT, and Internet. One example of public awareness activities arising from this plan is the fixation of warning labels on all computers and equipment warning about the risk of illegal software and the value of genuine products; such warnings were found major electronic device distributor channels/stores starting in December 2008.

In general, the authorities tend to conduct *ex officio* investigations against small targets, taking only very few against business users, which is the sector that causes the largest commercial harm to BSA members. BSA did refer cases against business users to the authorities, and the authorities ordered the investigations. On a very positive note, BSA saw efficient actions taken by the National Investigation Office against the trading of illegal software. In the wake of a raid of the largest scale ever, in April 2009 the National Investigation Office seized approximately 250 terabytes of illegal contents, that is, software, movies and music stored on 43 computer servers, which BSA considers as an outstanding result in the region. The criminal actions based on copyright infringement are in many cases combined with other computer and Internet related crimes (e.g. prohibited pornography acts). Acting in the name of the right-holders, BSA generally joins the criminal cases by filing civil claims with the criminal authorities. This means that BSA may receive information on the status of the matters, may take initiatives and may enforce the eventual compensation claims of the right-holders within the criminal action.

ESA reports that its members in the entertainment software sector that are active in Hungary continue to have a positive relationship with law enforcement authorities. In 2009, a video game publisher supported over 200 new cases, based on raids in which the quantity of seized products ranged from 1-250, averaging 20-30 titles per raid. Law enforcement has done relatively well in initiating criminal actions on their own, and then contacting the relevant rights holder for information as to product pricing, title verification and damages incurred. However, such notification and request for information does not consistently occur. It has been the experience of the publisher that early notification and involvement of the rights holder has produced better results as the investigation is then typically pursued further along the distribution chain, with law enforcement more thoroughly pursuing the matter. Consultation with rights holders has the added benefit of reducing the cost of consulting with experts in order to determine the price of legitimate products for damages calculations. Transparency is, however, lacking and should be encouraged in law enforcement efforts – there is a strong need for regular communication on new files and on progress on initiated cases from law enforcement and prosecutors to rights holders' representatives. In addition to initiating actions *ex officio*, law enforcement also follow leads provided by a rights holder, initiating investigations into targets and organizing raids. Although Hungarian authorities must be applauded for their willingness to accept leads from rights holders, the speed of their response has varied greatly, with law enforcement at times slow to respond to rights holder referrals for raids and criminal actions. As IPR crimes are not accorded priority, it sometimes takes months before a raid is conducted on a long-identified target. Raids, however, do result in the confiscation of the pirated products and CD-R burning equipment found on the premises, which are eventually destroyed following any forensic examination conducted by state experts.

The music industry reports indicate that both police and customs initiated *ex officio* cases concerning piracy. Law enforcement officers were supplied with the Hungarian version of the IFPI/MPA Z-Card which contains practical information for on-the-spot identification of pirate optical discs. As a result, they are handling some of the simpler cases with more efficiency. ProArt has established good working connections with investigative authorities.

Internet cases: The industries report that cooperation with Hungarian authorities improved including with the National Bureau of Investigation, the Internet Department of the Budapest Police, Tax authorities, the Budapest Police Central Captainty/Division of Economy, and Customs, among others.

As mentioned above, the April 2009 Internet action in which the Hungarian National Bureau of Investigation ran a large warez raid in Budapest and seized 43 servers which had approximately 300 terabytes of capacity was very successful. On just 12 of those 43 servers there were 21,000 copies of films, computer programs, sound recordings etc. This warez site "published" spam messages offering cheap downloads. The downloaders had to register themselves, study a catalogue, and then pay by elevated-priced SMS messages. The price list extended from 200 to 9,000 Hungarian forints (~US\$1-\$45). For example, one infringing high-end software program costs 2,000 forints (US\$10) where the price of the legitimate product was 1.5 million forints (US\$7,500). Six people were arrested and remain in custody. Expert continue to gather data.

Some criminal cases involving Internet piracy have moved forward in recent years. Customs officials were involved in online cases and prosecutors issued indictments (such as against DC++). Even though these cases have not yet made it to court, the industries are hopeful that the educational trainings they provided to judges will help them understand the technological and legal elements of these cases.

Cross-industry cooperation on Internet cases: Many industries report that cooperation with Hungarian ISPs is relatively good. For example, ProArt sent 2,000 notice and takedown requests, of which more than 98% were successfully resolved. BSA's cooperation with local ISPs is sufficient; the ISPs usually fulfill BSA's notice and takedown requests without any problems. At the same time, it is important to clarify that BSA's campaign focuses on end-user enforcement, not Internet actions, and ISPs are generally not affected in BSA enforcement cases.

Hungarian ISPs should cooperate with the content industries in the fight against piracy. In fact, the first round table discussions among the parties concerned was held in November 2009, and the next one is expected to happen in the Spring of 2010.

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 border patrol is being integrated into the police. The IPED (Intellectual Property Enforcement Department within Customs) consists of one dedicated IP customs officer in each of the six customs regions. As mentioned above, border officials are also taking part in Internet piracy investigations. Customs officers conduct searches and controls often in a joint effort with officers from the tax administration, and if they see signs implying tax felonies, they initiate tax cases.

Prosecutorial bottlenecks with expert reports: Revising the current situation regarding expert reports is an important goal within HENT, and the copyright sectors hope to gain more support on this issue with the new government after elections in April. In order to reduce costs, ProArt made a specific proposal within HENT to setup a database, making it easy to determine the plaintiffs (this process currently consumes a large amount of time and money, it could however be easily automated), unfortunately this was not supported by the relevant government bodies.

Here is the problem. 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 Hungarian Copyright Experts Council (appointed by the Minister of Justice and Law Enforcement and linked to 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. The expert opinion system should be revised to allow for sampling methodologies. Resources allocated to fund the requisite expert opinions should also be increased (the police budget for judicial expert fees has been significantly decreased).

A continuing obstacle to effective enforcement particularly for the online environment is the lack of engagement of qualified experts. That being said, the police and customs are now using better trained experts to help them with online cases, which is clear from the growing number of successful actions in that realm. Rights holders are unable to give expert opinions, as they are considered to be interested parties; at best, rights holders can only act as consultants in criminal cases. Ideally rights holders should be accepted as experts in these cases. Insufficient resources for basic infrastructure (computers, open Internet access) as well as qualified experts continues to hinder effective enforcement and may result in further delays in proceedings. Recognizing that strained resources continue to be a challenge, ProArt initiated the creation of a database that includes titles, rights holders and retail price information, providing police and customs officials fast, inexpensive and accurate information.

Delays and non-deterrent penalties: Historically the level of criminal sanctions in copyright piracy cases in Hungary has been rather low. Court decisions are still very rare in the field of the Internet-based piracy, due to the fact

that the identification of the perpetrators of this type of piracy is the most difficult, therefore the investigating authorities (police, customs) do not spend their resources on investigating these kinds of cases. Two positive developments that provide the industries with some optimism. First, a landmark judgment was passed by the County Court of Pest as second instance court in September 2009 in a copyright infringement criminal action. The infringer was sentenced to imprisonment of two years (enforcement suspended for five years) and a high amount of financial penalty, which shows the tendency that criminal courts intend not to depreciate IP and copyright infringement related crimes. Second, HENT is working to improve training for police and prosecutions, such as the nation-wide conference "Enforcement co-operation in criminal actions related to copyright infringements" held in April 2009.

Despite generally good cooperation from the police, Hungarian prosecutors and judges remain reluctant to treat copyright infringements as serious crimes. In most instances, if the matter only involves small scale infringement and the associated damages not deemed significant, the prosecutor typically only issues a reprimand and terminates the investigation. Where an indictment is actually made, the case often languishes before the court for one to three years, with the rights holders typically uninformed of any developments in the proceedings. An ESA member company reports that although most of its pending cases made progress in Hungarian courts in 2009, 48 of its cases were simply terminated. Proceedings in Budapest also typically last longer given the congestion in the courts of the capital. For cases that actually reach resolution, the usual sentence is a small fine (a few hundred dollars) and a suspended jail sentence (of up to 2 years) or community service. Where a rights holder claims damages, through a civil procedure that is initiated either after or simultaneous with the criminal procedure, the claimant must pay a duty of 3% or 6% of the claimed damages.⁸

Civil copyright cases: As mentioned above, BSA is aware that the Hungarian civil courts issued approximately 70 judgments in software cases in 2009, mostly against targets of smaller significance. There have been only a very few civil judgments.

The range of damages generally vary from HUF 50,000 (~US\$250) up to HUF 500,000 (~US\$2,500) there were only a few cases where higher damages (HUF 1,000,000-1,500,000, or ~US\$5,000-\$7,500) were involved. However, BSA itself does not initiate civil actions against individuals; most of its actions take the criminal route.

IPR TRAINING AND PUBLIC AWARENESS

During 2009 many events and campaigns were held and coordinated by HENT, in which the affected industries also participated. For example, there was a professional conference "Enforcement co-operation in criminal actions related to copyright infringements" organized by HENT was specifically aimed for warning police officials, public prosecutors and court judges of the significance of copyright cases and the benefits of the cooperation in this area.

In addition, the copyright sectors, particularly the music and sound recording and business software industries (individually and collectively) continued in 2009, as they have in prior years, to provide trainings for police officials, judges and public prosecutors. BSA has always been ready to provide information upon the requests of the authorities in piracy matters, and always held seminars and educational courses in the frames of its co-operation agreements in the past few years. Most recently BSA conducted its SoftVisit campaign from October-November 2009 by visiting companies and offering presentations in educational institutes; similar activities are also planned for 2010. Under HENT's operations, the Hungarian Patent Office and ProArt have signed an agreement with RTF (Police Officers' Training College) to hold a one semester long course on copyright and patent laws and infringements. This course was held in the fall of 2009, and will be held again in 2010. Another training was also made possible by partial financing from HENT; ProArt held this online training in April 2009 for police officers in 23 different locations (all the county seats plus Budapest), and this dealt with

⁸ The applicable duty rate depends on the amount of damages claimed (if above 1 million HUF – 6%), and on the defendant's denial (6%) or acknowledgment (3%) of the facts.

both traditional infringements and online infringements. This law enforcement conference will take place again on April 7, 2010, at the Hungarian Judge Training Academy, organized by ProArt and HENT, and will target senior officers.

HENT has also engaged in a variety of public awareness campaigns. ProArt joined the public awareness activities of HENT and also held its own campaigns, taking part in school forums, holding open discussions at the largest festivals in the country, and organising a year-long effort aimed at boosting CD-sales, with significant prizes going to the lucky winners. ProArt had its own stand at the largest musical equipment, sound & light exhibition in Central Europe (Hangfoglalás – Soundquest), and took the message to upcoming local musicians and their fans by working together with various talent competitions.

In addition to the programs dedicated to law enforcement officers, the Hungarian government should also organize campaigns aimed at the general public, to increase copyright awareness in the whole of society, because law enforcement officials cannot distance themselves from the general expectations of society. With respect to public awareness, ProArt is conducting such campaigns on music; they are continually reshaping its public relations activities and messages as new developments arise. An important focus of its PR activities is placed on sales-boosting efforts; as more and more ISPs are willing to cooperate in the shift towards legal download opportunities in the digital world, ProArt's messages are gradually moving away from CD buying, and towards obtaining music legally in various digital formats. For example, a "PPP" campaign was conducted in the spring of 2009, with HENT providing the background and ASVA, BSA and ProArt supplying the funds. Leaflets were attached to hardware products or handed to their buyers, with the message "genuine hardware should be used with legal software and content."

COPYRIGHT LAW DEVELOPMENTS IN HUNGARY

Copyright law: In recent years, Hungary has amended its copyright law (the Copyright Act No. LXXVI of 1999, as amended) to comply with international norms and accede to the European Union. It also has implemented the relevant EU Directives, including the EU Information Society Directive, the EU Enforcement Directive, and the EU Resale Right Directive. In Hungary the Electronic Commerce Act (Act CVIII of 2001) contains detailed regulation with respect to the ISP liability and also the notice and takedown procedure. The Act is in full compliance with the EC requirements laid down in the relevant EC Directives (basically 2000/31/EC and 98/27/EC). There are no specific laws on P2P/file-sharing; these activities are interpreted on the basis of the Copyright Act and in the view of related court practice.

At the end of 2008, the Parliament adopted a law to amend the Copyright Act (in particular, extending the application of the public lending right and regulating the use of "orphan works"). The amendments entered into force on February 1, 2009; however, the entry into force of the orphan works provisions was postponed until the publication of the implementing government decree, and that entered into force on May 16, 2009. With respect to orphan works, the Hungarian Patent Office will grant a non-exclusive license to use the work for five years upon request to a person who has taken reasonable measures to locate the author but was unable to locate that author. This license is granted against a fee to be paid in escrow handled by the Office in case the owner of the rights is located (the possibility of which is facilitated by an online database about such licenses) in respect of works and rights not covered by extended collective management (in the latter case, orphan works are licensed in the framework of the collective system). In addition, IIPA members are also concerned that the private copy exception might be interpreted to extend to copies from illegal sources; the law must be clarified that the exception does not apply in such a case. Moreover, the new provisions also introduced a more complex system regarding the determination of royalties for collecting societies. The Copyright Act's current provisions on collective rights management ensures a monopoly position for such poorly functioning organization as FILMJUS. Although the European Commission has suspended its official infringement proceeding initiated against Hungary (which were aimed at the monopoly provisions for collecting societies), there is a need to solve the problems caused by the statutory monopolies, preferably through adequate modification of the Copyright Act.

Optical media regulations: The 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 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 plant closure. The copyright industries look forward to working with Hungarian authorities to draft, implement and enforce such comprehensive optical disc regulations.

MARKET ACCESS IN HUNGARY

Fair compensation for audiovisual producers' shares: Hungary imposes a levy on audio and video carriers and allocates collections among audiovisual rights holders, including authors (scriptwriters), directors and producers. Current Hungarian legislation has empowered the local collection society FILMJUS to collect and administer all shares of levies (such as those generated from these levies). The U.S. audiovisual sector shares the concerns of the European Commission which has initiated infringement proceedings against Hungary regarding certain provisions of the Hungarian Copyright Law which guarantee monopoly position for collective management organizations. To address these problems, adequate norms should be included into the Copyright Act to eliminate the legal monopoly of poorly functioning collective management organizations like the FILMJUS.

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.