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Violation of Copyright in the Hungarian Regulation of the Late 19th and Early 20th Century

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Abstract. Hungarian Criminal Code provides sanctions for the most serious cases of violation of copyright by determining the state of facts of infringement (usurpation). In practice it is rarely applied; usually civil law means must be used against occurring violations of rights; therefore, it is an important task of the act to develop methods in the field of civil law consequences that are suitable for repressing unlawful conduct and efficient redress of injuries. The principle of separating moral rights from economic rights followed by the act prevails also in determination of legal consequences; for this reason, it contains special legal consequences in case of infringement of moral rights. The act sanctions infringement of economic rights usually by compensation for damage. Compensation for damage is mostly equal to the fee due to the author in the case of lawful use. This consequence itself does not represent a repressive factor: the unauthorised user's risk is no more than he pays back the amount that he would have been obliged to pay anyway in case of conclusion of contract according to rules. For this reason, in each case when unauthorised use can be imputed to the user the act prescribes that the court proceedings in the case must impose the amount also as a fine to the debit of the user; which fine can be mitigated by the court solely under circumstances that deserve appreciation. This fine that can be imposed in civil proceedings is a peculiar institution, its introduction rests basically on the deliberation that in terms of legal policy it would be improper if the court awarded fine-type extra service to be discharged by one of the parties for the benefit of the other party. Accordingly, the implementing decree of the act will specify the public benefit goal on which the fine so received must be spent. Consequences of infringement of copyright must be as appropriate applied to cases of infringement of the so-called neighbouring rights too. The system of legal consequences corresponds with rules in force in the rest of the fields of intellectual property. The legal institution of fine that can be imposed in case of infringement of rights imputable to the user, however, must be terminated. The institution of copyright fine comes from the period of planned economy; originally it was due to the legal predecessor of the Ministry of National Cultural Heritage and the Central Statistical Office. In

the present system of civil law consequences, when in case of infringement of copyright, deprivation of the offender's enrichment can be requested from the court in addition to compensation for damage, and it is possible to enforce criminal law consequences, in terms of retaliation of infringement of rights it does not seem to be reasonable to maintain the institution of the fine. It is an outdated institution; it can be disputed in principle too, since it punishes infringement of private titles by obligation to make payments for the benefit of the State.

Keywords: copyright, Hungary, late 19th and early 20th century

I. Infringement of Copyright

In accordance with Act XVI of 1884,[1] infringement of copyright is implemented through exercise of the author's exclusive rights by an unauthorised person; acts implementing infringement can be various.

Infringer is the person who makes an alien intellectual work public as his own; thereby he deceives the buyer of the reprinted work, who for that matter does not incur any loss, and not the author. The sate of facts of the offence of infringement of copyright requires that the original work (which is to be reprinted) should belong to the scope of writer's works, the author's work should be reproduced, reproduction should be carried out mechanically, and mechanical reproduction should be performed without the copyright owner's consent. Having studied the act profoundly, it can be declared that mechanical reproduction is reproduction where several copies of the writer's work are produced by external appliances or aids simultaneously, at the same time, or where procedures apply technological means that enable production of a large number of copies in such form that the entire work or a part of it is produced at the same time.

It is indifferent whether the author intends to make his work public or not since works not meant to be made public ever by their authors are also covered by protection. Also, it is irrelevant whether the reproducer benefits from the activity or not because anybody who markets an alien author's work for charitable purposes or free of charge, without the author's consent, also commits infringement of copyright.[2]

Infringement of copyright means unauthorised reproduction of alien author's works. Unauthorised reproduction can be carried out in whole or part or connected with the reproducer's intellectual activity. The implementation of the

1 On the history of copyright in Hungary see Arany 1876. 225–257; Balás 1927; Balás 1942; Balogh 1991. 149–172; Boytha 1994. 42–58; Kelemen 1869. 305–317; Kenedi 1908; Knorr 1890; Kováts 1879; Mezei 2004; Nótári 2010; Petkó 2002. 23–27; Senkei-Kis 2007. 322–331; Szalai 1922; Szalai 1935.

2 Kenedi 1908. 135.

state of facts of infringement of copyright does not necessarily require that the work should be reproduced word for word; an expert should decide if the partly supplemented work is considered reprint. Partial reproduction is equal to full reproduction. This case, however, calls for circumspection since the act allows to quote smaller parts of a work already made public word for word, or to adopt already published papers in reasonable volume and form into works deemed larger independent scientific works, for ecclesiastical, school and educational purposes, with the source specified. It will qualify infringement of copyright solely when a fragment of an alien author's work is published without the reprinter's own contribution as an independent writer's work. The same applies to publication of the abridgement of a work in a foreign language. Quoting in critical activity does not qualify as infringement of copyright either, except when intention to publish the work is behind the critical study, review.[3]

It is a necessary condition of the occurrence of infringement of copyright that reproduction should be carried out without the copyright owner's permit. The person charged with unauthorised reproduction is obliged to prove, if he alleges it, that the reprint has been made with the copyright owner's consent. Consent can be manifested without any required formalities; therefore, it can be given either orally or in writing. Foreign writers' works will be protected solely to the extent to which protection is provided for foreigners by the cited act or international agreements. Publication of a work in Hungarian within the territory of the country in another language is a different issue. The answer is again negative; yet, this is no longer the case of unauthorised mechanical publication of the work but translation of the original work without the author's consent.[4]

Mechanical reproduction is to be interpreted as a procedure that makes it possible to reproduce whole works or their specific sheets by using external means. Writing down is the opposite of mechanical reproduction; in this case the original process of producing the work is repeated. Letters and punctuation marks are shaped one by one, individually; yet, the act considers writing down mechanical reproduction when its function is to substitute mechanical reproduction.

Section 6 of the act enumerates the cases that implement the offence of infringement of copyright in accordance with the general concept of infringement of copyright. The act specifies the manuscript not published in printing as the object of protection. Protection is provided solely for the author of the manuscript, irrespective whether the manuscript or a copy of it made in any form is lawfully in possession of another person.[5]

3 Kenedi 1908. 67.
4 Knorr 1890. 28. ff.; Kenedi 1908. 90. ff.
5 Knorr 1890. 31. f.

Oral presentations are usually held either freely or on the basis of a manuscript by reading – in the latter case there is a (written) writer's work and reading it corresponds to copying or duplicating it; so, it is clearly covered by protection. Free presentations, however, are not writer's works because they are held not for the purposes of putting them into literary circulation; in spite of that, the act provides protection for them in certain cases. As a matter of fact, these presentations must also meet the requirement that they should be suitable for being the object of literary circulation. Protection is not influenced by the fact whether the person holding the presentation has intended to reproduce it or sell it as literature.

In accordance with the provision regulating publisher's transactions[6] the author commits infringement of copyright against the publisher when he publishes the work assigned by him to the publisher again at another publisher or in his own edition. It is regarded identically as the above when the author has his work published in the edition of his complete works, without having applied for the publisher's consent or otherwise being entitled to do so. The publisher commits infringement of copyright when it issues the work in more copies than it is entitled to, or when it carries out a new edition in spite of the contract or the law, or when it separately publishes papers assigned to literary or scientific periodicals or includes them in a collected work.

Section 7 expounds cases of infringement of copyright that arise from translation of the original work without the author's consent. Translation of a writer's work into another language should be considered infringement of copyright in accordance with general principles, since the translator communicates the thought and original form of the work, and changes the language only. However, practice has narrowed the scope of protection: it covers only the language in which the author has made his work public. As legislation allowed reprinting foreign works, it had to permit their translation into Hungarian too, to enable transplantation of significant alien literary works into Hungarian literature through translation.

When a work published in several languages at the same time is published in translation into one of these languages, this is considered infringement. The reason for this prohibition can be that if, for example, a work is published both in Hungarian and German, and then somebody translates the German copy into Hungarian, then in content it is equal to reproduction of the original work issued in Hungarian. In this case it is irrelevant whether editions in different languages are from a single author or not. The term of protection in this case is five years; the reason for this short period is that translators would be injured if a foreign author, expecting his work to sell well in Hungary, had it published in Hungarian, in addition to the edition written in the original language, thereby providing himself with longer term of protection. It should be noted that this

6 Section 517 of Act XXXVII of 1875.

five years' protection applies to right of translation only because it is protected against reproduction just as any other original work.

Except for the cases expounded in the above paragraph, the act does not qualify translation of a work as infringement of copyright; yet, it gives the option to authors to ensure that others should not translate their works instead of them. They can do that by clearly reserving translation rights on the title page or at the beginning of the original work, and by ensuring that the translation comes out indeed within the time frame set out in the act, or by notifying the translation for registration. The act stipulates that the author who reserves translations rights shall make a part of the translation public within one year, or else the right will be lost, and the complete translation shall be made within three years. Registration, that is, notification to a public authority is required to enable the person who intends to translate the work to make sure that the author has indeed asserted right of reservation. Also, the act deems translation of manuscripts not published yet or presentations, recitations, readings held for education, entertainment purposes infringement of copyright.[7]

Section 8 states that translated writer's works – irrespective whether the translator has had translation right, or if translation rights reserved for the author of the original work have been injured by such translation – are provided with protection equally as original works. Section 9 of the act regulates the exceptional cases when author's rights are restricted.

General literary circulation demands that articles of newspapers and periodicals should be used freely since very rarely does the original newspaper or periodical suffer any pecuniary loss thereby.

Section 10 declares that statutes and decrees must be taken out of the scope of public files; their publication is regulated in a separate act, which stipulates that it is the State's exclusive right to publish and sell translations of statutes and decrees, which can be arranged for solely by the Government. The Minister of the Interior defines the forms of publishing and sale, makes arrangements to ensure that such editions should be easily obtainable throughout the territory of the country, determines the price of specific copies, and can apply administrative measures to seize editions published or sold unlawfully.

Officials of lawmaking must transfer the works written by them to the State, who, in accordance with this act too, is exclusively entitled to reproduce them, which right unambiguously belongs to author's rights and as such is provided with protection.

Finally, the act on copyright provides protection for works published by legal persons. It follows from the above that the State has copyright over statutes and decrees published in its own name as writer's works, however, this right is not original but derivative, more specifically copyright derived from civil servants as natural persons.

7 Knorr 1890. 34 ff.

Section 58 properly extends the provisions pertaining to legal consequences of infringement to public performing rights; this section does not refer to Section 22, which in its entirety is not suitable for being extended to public performance. It is certain, however, that commercial use mentioned there can be carried out through public performance.[8] Section 59 properly extends rules set out under writer's works with regard to judicial proceedings, copyright expert committee, limitation and registration, on condition that they are suitable for it, to public performing rights.

Section 61 uses the term 'remaking' in summary for any act that infringes copyright of fine art works to be able to contain various conducts of the widest scope. Remaking is different from reprint to the extent that committing this act does not require solely mechanical reproduction but any imitation by which, actually, the original work is produced. Regarding fine art works, it is unauthorised remaking and not making public that the act prohibits, for the right of making public and marketing belongs to the author, which is not lost and not restricted by the work being made public by somebody else instead of him. Remaking can be committed by several persons jointly, who are to be punished as perpetrators or parties privy to the act. A perpetrator is the person who prepares remaking or under whose assignment preparations are made. Persons who act under assignment given by others must be considered abettors, in this case again the general rules applicable to parties privy to the offence must be applied to them.

In accordance with Section 62 of the act, imitation is different from remaking: the latter conveys the artistic content of the work remade, while the former constitutes borrowing of the technique, form of representation of the artist's specific works only, and as such imitation does not convey the material content of a work; for this reason, the act does not qualify it as infringement of copyright.

Although the act refers photographs to the scope of copyright protection, and in Section 71 it describes the possibility of their infringement, with respect to portraits Section 72 contains special regulations.

Act XVI of 1884 on copyright does not stipulate what attacks, what persons it desires to protect authors against. The act takes the identity of the person infringing copyright into consideration only in the event that the attack has been committed abroad, and even then solely to the extent whether the perpetrator is a Hungarian citizen or not. Act LIV of 1921 calls the concept of violation copyright infringement. Without the consent of the author (including his legal successor) either reproduction or making public or marketing of the work itself is sufficient for infringement of copyright. One of the forms of unauthorised reproduction is plagiarism. We can speak about plagiarism when somebody communicates somebody else's intellectual product as his own. Also, plagiarism is realised when the infringer does not reproduce, make the whole work public

8 Kenedi 1890. 165 ff.; Knorr 1890. 146 ff.

word for word but carries out the above with changes, inclusions, deletions, in other words, by reworking that conceals infringement, or under a new title, other author's name. Use, reworking of somebody else's work which results in a new original work is not plagiarism.

If somebody makes his own work public unlawfully under somebody else's name, he will be responsible for prejudicing another person's personal rights in accordance with general private law only. The author is restricted in new use, adaptation of his own work already published to the extent that thereby he shall not prejudice the rights of the person who has acquired copyright from him on his already published work. The act forbids unauthorised reproduction by any procedure. Infringement will have been implemented already when the first copy of a work reproduced in spite of the law or the first copy of unauthorised remaking has been made; the act, however, allows production of a single copy free of charge without the author's consent, when it is intended for non-commercial use. Producing more copies than the permitted single copy is also production of a single copy against a fee; furthermore, production of a single copy free of charge but for commercial use, when the author's consent is missing, will establish infringement of copyright one by one. Commercial use is to mean use beyond the scope of private life for profitable or business purposes. The produced single copy can be used even for presenting the work by optical equipment only in case that presentation is free of charge, non-commercial; otherwise, commercial presentation as reproduction will become infringement. Presentation of already published writer's and musical works by optical equipment does not require the author's consent, and only presentation through phototelegraph, photoradio to an unlimited number of audience is bound to the author's special permit.

Section 6 of Act LIV of 1921 deals with infringement of copyright in details. The author has moral and economic interests in ensuring that his work should not be made public in spite of his will; therefore, only he can be vested with the right to communicate his work and its content for the first time.

Even if the manuscript or reproduced copy of the work has been taken possession of by somebody else lawfully, copyright with regard to the work will not devolve without any special transfer; it follows from this that copyright will be even less due to anybody purely on the grounds that he has acquired ownership right of the publication that embodies the work. The act forbids reproduction, marketing, making public and communication by radio of presentations, recitations, readings without the author's consent only in case it serves educational or entertainment purposes. Presentations, recitations and readings to this effect without the author's consent cannot be published in newspapers either.[9] The publisher commits infringement to the author's injury if it publishes translation of the work, or makes unauthorised changes to the work; if it issues a publication where it breaches the author's orders

9 Alföldy 1936. 47.

regarding the shape and price of copies; if it issues a new edition unlawfully; if it publishes a collected edition instead of single works or single works instead of a collected edition. Also, the publisher commits infringement when it produces the work in more copies than it is entitled to in accordance with the contract.[10]

In the event that the author makes changes subsequently to the work not prejudicing the publisher's lawful interests and the publisher publishes the work omitting such changes, this edition is to be considered an edition carried out in defiance of the law or contract and so will be qualified infringement by the publisher. And if the publisher refuses to publish a work with changes made subsequently by the author that prejudice the publisher's lawful interests, and thereupon the author himself publishes or causes to publish the work with such changes, then the author will commit infringement in defiance of the law or contract.[11]

If, however, the author or the publisher is in breach of the contract in any other form, then the legal consequences determined in private law will be incurred. The author will be responsible for the offence of infringement if the author, having transferred copyright of all his works to be created during a determined period to somebody under contract, transfers copyright on his work created during the contractual period to a third party, contrary to the contract, although such copyright has devolved to the other party from the first, and this third party publishes the work. The same applies to an individually determined work to be created in the future. If, however, the author has committed himself to somebody merely to write a certain number of works for him for publication, then this person will acquire copyright on the work completed later only in the event that he makes a special agreement with the author on publishing that work, without which the author can freely dispose over the completed work against third parties, and will be responsible for failure to fulfil obligations in accordance with general private law. The above, in a wider sense, is applicable to publisher's transactions whenever publication is in conflict with the contract concluded with the person whom the author has transferred his copyright to.[12]

The provisions of the act shall be properly applied to public performances; therefore, anybody who performs or causes to perform a theatre play, musical work, musical play or motion picture work in public in defiance of the law or contract concluded with the author will commit infringement.[13] Anybody who stages a play under right acquired for performance at a determined theatre without the author's consent at another theatre commits infringement in accordance with the provisions of the act. The relevant clauses of the act shall be applied properly to fine art, applied art and photographic works.

10 Alföldy 1936. 49.
11 Alföldy 1936. 49.
12 Alföldy 1936. 49 f.
13 Szalai 1935. 37.

If publication, public performance, presentation by mechanical or optical equipment, communication by radio has been unauthorised due to prohibition under the law, then infringement will be implemented. Co-authors' acts regarding publication of the joint work without consent of the rest of the authors will be considered unauthorised if they use the work made jointly without the other co-author's consent, unlawfully. If a co-author disposes over only his own separable part, then the other party will be responsible merely in accordance with general private law.[14]

The provisions of the act protect the author against unauthorised adopting of news of newspaper correspondence offices. Such companies deal with gathering reports and telegrams on daily events, and, having collected and reproduced them in a special edition, make them available to subscribers, and thereby subscribers acquire right to directly adopt news. However, newspapers that are not subscribers of such companies can adopt their reports and telegrams only in the event that the reports and telegrams have already appeared in the newspaper entitled to adopt them. The act considers breach of this prohibition infringement; here it protects activity of gathering news rather than author's intellectual work. If copyright on the so appeared announcement holds, then the author will be entitled to take action in case of further unauthorised adopting. Obviously, reports of newspaper correspondence offices can be communicated to the public by radio without their consent only in the event that they have already appeared in any newspaper entitled to adopt them.[15] It is the newspaper correspondence company that will have the right to take action due to infringement committed to their injury against anybody who adopts news of such company in defiance of the prohibition set out in law.

In accordance with Article 13 of the Rome Convention, it is the author's exclusive right to transmit his work to means, equipment that serves mechanical performance of the work. Mechanical performance is to mean that the equipment to which it has been transmitted is capable of reproducing it mechanically. In legal terms, appliances must be distinguished whether they are able to reproduce the work several times owing to the same adoption, or they are able to reproduce the transmitted work only once but at several places simultaneously. Transmission of the work to equipment that can reproduce the work mechanically repeatedly is to be considered reproduction. Anybody who makes or duplicates a gramophone record or roll of film of the work without the author's permit will commit infringement according to the law; however, a person who acquires right to transmit a musical work, musical play, play to such equipment and to duplicate the work by such equipment will not be entitled, purely for this reason, simultaneously to right of public performance through such equipment.

14 Alföldy 1936. 51 f.
15 Alföldy 1936. 52 f.

The question arises what should be considered infringement of copyright. By the provisions set out in section 9 the act sets exceptions for the sake of general education, criticism, news service of newspapers, publicity of political, administrative and court proceedings.

The given provision inures to the benefit of only independent scientific works, i.e., the benefit of works that, in terms of their content, constitute mostly their author's own intellectual product, and do not contain merely materials borrowed from others. Borrowing is allowed into collections that serve solely ecclesiastical or school use. To protect the authors' interests, the act deliberately does not mention educational use, in addition to school use; so, it forbids borrowing for the purposes of any education beyond education carried out strictly at school. According to proper interpretation of the act, wilful or negligent failure to specify the source or the author is offence, and will involve legal consequences. Text images, figures, drawings set in published works, on condition that they are protected as original works, are regarded identically as specific minor parts of larger writer's works in terms of the rules properly applicable to them; consequently, they can be included again only in independent scientific works or solely in collected works serving ecclesiastical and school use subject to specifying the source or the author.[16]

In accordance with paragraph 2, except for literary and scientific papers, other newspaper articles can be used in other newspapers, except when reprint is expressly forbidden, but the source and the author possibly indicated in it must be clearly named. So, borrowing literary articles requires the author's consent also in the event that prohibition of reprint is not indicated on them.

In case of using newspaper articles in newspapers these provisions cannot be applied in the event that the article has appeared or is used in a periodical and not in a newspaper. In accordance with Section 10 of Act LIV of 1921, separate rules of law govern reproduction, making public, marketing of statutes and decrees.

In accordance with Section 18 of the act, prejudicing copyright is infringement; copyright is covered by both criminal and private law protection.

II. Penalties

It is in the chapter *Penalties* that Act XVI of 1884 sets forth regulation, sanctions of infringement of copyright and other unlawful conduct related to it.

The state of facts distinguishes three forms by the content of consciousness related to the act: malice, negligence and accidental infringement. The perpetrator commits malicious infringement if with the aim of making a writer's work public he carries out or causes to carry out mechanical reproduction, being aware of the fact that thereby he prejudices another person's copyright. The perpetrator

16 Alföldy 1936. 78 f.

commits negligent infringement when, without being aware of the unlawfulness of his act, he carries out or causes to carry out mechanical reproduction of a writer's work, and by making it public he prejudices another person's copyright, although with due care he could have avoided this injury.[17]

To declare offence, it is not necessary that the writer's work should be reproduced for distribution since Section 5 of the act unambiguously sets forth that mechanical reproduction, making public and marketing of the work, when it is carried out without the copyright owner's consent, must be considered infringement. Section 22 declares that the act becomes completed by the fact that the first copy of the duplication of the work in defiance of the law has been made, and to declare penalty does not require that the perpetrator should intend to make public and market too.

The subject, i.e., perpetrator of infringement is a person who carries out or causes to carry out reproduction for himself or on his own account so that he could market them as the owner of the so reproduced copies.[18] This is usually the publisher since it is the publisher that makes reproduced copies so that it could market them as its property.

Obligation to compensate for the damage will bind the person who has committed infringement of copyright, or who has induced another person to commit infringement of copyright, or who has been party privy to infringement of copyright, finally, who has wilfully distributed, marketed the unlawfully reproduced copies. In case of attempt compensation does not lie. On the other hand, compensation claim must be distinguished from action for enrichment. For, if the person who has suffered injury has submitted compensation claim only, but later the injury has not been declared (accidental infringement of copyright), the perpetrator cannot be obliged to pay damages up to the extent of his enrichment because it has not been resolutely requested in the claim. [19]

Obligation to compensate applies both to real damage and lost profit. The act contains no measures to determine the amount of compensation. In a strict sense, the basis of damages shall be the value of the items not sold due to unauthorised reproduction from among the lawfully published copies; however, since it is not easy to determine the above in practice, it is more expedient to set out from the fact that saleability of a work is shaped by need and the audience's interest, in other words, just as many of the lawfully published copies would have been sold as many of the unlawfully reproduced ones have been sold – yet, this can be applied only if the original work is completely reprinted. Or else it is the duty of the court to declare the extent of the loss paying regard to circumstances. In setting the amount of damage, it is always mandatory to set out from the price

17 Knorr 1890. 85 f.
18 Kenedi 1908. 125 ff.; Knorr 1890. 87 ff.
19 Knorr 1890. 95 ff.; Kenedi 1908. 120 ff.

of the original work, since the author has hoped to gain profit from that; so, his loss will be the deficit arising from the price of such copies. Domestic approach represents the view that the gross price should be taken as basis, which means the actual shop price since the public can buy the work only at this price.[20]

If the number of copies made through unauthorised reproduction and sold exceeds the number of sold copies of the original work, then it will be a question whether indemnification from the difference is due to whom. The answer to this can be found in the publication contract, for if the author has transferred copyright without any reservations to the publisher, then his right has completely terminated, and the compensation can be due solely to the person empowered to publish the original work, i.e., the publisher. If, however, the author has assigned his right to the publisher only for publication of a determined number of copies, then compensation payable from the difference will be due to the author because the publisher has already received compensation on copies in stock for sale and its right resting on the publication contract has been fully enforced.[21]

Furthermore, the state of facts provides for the case when the perpetrator is not responsible for either malice or negligence in his act, i.e., he was in error in fact or error in law when committing the act, and acted in good faith (accidental infringement of copyright). Penalty will be imposed on an accidental infringer too, specifically by compensation up to the extent of his enrichment because the lawmaker cannot permit that anybody should gain benefit at somebody's expense from any unlawful act, albeit, innocently. However, he can prove that he has produced enrichment beyond the loss caused to the author, which he can keep, since he must repay it solely to the extent of the damage of the injured party.

Section 20 provides for parties privy to the act – instigators, abettors and accessories after the fact – and states that the penalties and obligations to compensate applicable to them are determined according to general legal principles. Section 21 sets the rules of confiscation. Equipment necessary for unauthorised reproduction will be confiscated in order to prevent continuation and repetition of infringement. Such equipment will be also confiscated if the perpetrator is not responsible either for malice or negligence because confiscation is not the consequence of offence but a title arising from the author's exclusive right that can be enforced against the possessor of all unlawfully reproduced copies; however, it is allowed to confiscate only the copies that are possessed for the purposes of distribution, but it is not allowed to confiscate copies that have been acquired for own use. Confiscation can be effected only with regard to objects that can be used solely for unauthorised reproduction.

Unlawfully reproduced copies still on hand, which are found in possession of the printer, bookseller, industrial distributor, the perpetrator or the instigator

20 Knorr 1890. 92 ff.; Kenedi 1908. 127 ff.

21 Kenedi 1908. 130 ff.

and are confiscated, must be annihilated. Annihilation of special tools intended to be used for unauthorised reproduction means that their shape will be changed so that they could not be used for their original purpose; yet, the material of the tools will be returned to the owner. Annihilation and confiscation can be performed on request, because the author has the right to purchase copies and equipment on hand. The author can exercise this right freely both in case he has suffered any loss indeed and in case he has not because this right of the author can be restricted solely by the right of a third party interested. For, if the author has assigned his work to the publisher for a single edition of one thousand copies, then neither the author nor the publisher can demand to hold unlawfully reproduced copies because thereby the other party's right would be injured. Partly unauthorised reproduction occurs when it affects certain parts of the work only; so, for example, the title page, the foreword, certain pages, full or half sheets. In this case, confiscation can extend only to these specific parts or the equipment necessary for producing them, on condition that these parts can be separated mechanically from the whole work.

Section 22 sets forth the stages of the state of facts of offence. Offence of infringement of copyright becomes completed when the first copy reproduced in defiance of the law has been made; it is not necessary for it to be made public or marketed. If somebody has made only a single copy of an alien work without having planned to make more copies of it, thereby he has commenced but has not finished offence, i.e., his act can be considered an attempt only. Regarding infringement of copyright, attempt can be declared only in the event that mechanical reproduction has already been started. This requires certain preparatory works, without which reproduction could not be carried out, and if preparatory works have been commenced, mechanical reproduction will become possible, i.e., infringement reaches the stage of attempt. The parts and equipment so produced can also be confiscated. If, however, no more than purchasing has been carried out, but other work activities have not been started, we cannot speak about attempt either. To commit offence, the act demands that at least the first copy should have been made in a publishable form. For this reason, if certain parts of the work have been completed only, we can again speak about attempt at infringement.

Section 23 formulates the state of facts of the offence of commercial distribution, and orders to punish it equally as infringement of copyright. As Section 22 considers the offence of infringement of copyright completed by the first copy having been made, therefore, distribution following it cannot be punished as being privy to the act either. This is supplemented by the provision that regards businesslike offering for sale, sale or distribution in other form, if they are committed by the perpetrator deliberately, as an act of committing offence too. If the distributor is responsible for negligence only, he will not be subject to any penalty or obliged to pay compensation because a bookseller cannot be expected

to be familiar with all works involved in bookselling and to know which is considered unauthorised reproduction and which is not.[22]

Thus, conducts of committing offence are offering for sale, sale and distribution in other forms. Distribution in other forms can be any act that makes it possible to acquire, get familiar with the unlawfully reproduced work.[23]

In accordance with Act LIV of 1921, the act implementing infringement will be subject to penalty and can be both deed and omission. Penalty will lie only in the event that the injured party submits his application seeking penalty in action at law. Penalty by fine is the criminal law consequence of infringement; private law consequences of infringement include compensation and confiscation, but the act does not mention claim seeking discontinuance of infringement in the enumeration of the legal consequences of infringement, although it is beyond doubt that the injured party can institute an action seeking measures to oblige the infringer to discontinue the act of infringement and to bar him from repetition or continuance of infringement. The act regulates the issue of compensation to the extent that in case of malice, negligence the infringer will be obliged to give proper pecuniary compensation to the injured party for both pecuniary loss and non-pecuniary loss. Pecuniary compensation extends to damage actually suffered as well as lost profit expected under normal circumstances. The infringer is obliged to recompense non-pecuniary loss, in addition to pecuniary loss caused by infringement.

Judicial practice acknowledged the right of compensation of non-pecuniary loss of the person whom the author has transferred his copyright to. In accordance with the act, the amount of compensation cannot be less than the infringer's enrichment. The infringer is obliged to surrender his enrichment even if it exceeds the pecuniary loss caused to the injured party. In accordance with the act, in case the infringer is not responsible for either malice or negligence, penalty does not lie, and the infringer will be liable up to the extent of his own enrichment only.[24] In general, enrichment is the amount that is usually paid to the author for the relevant use. Paying regard to general private law principles, an accidental infringer is responsible for enrichment only in the event that he still has the enrichment at the time when he learns of the infringement.[25]

It might happen that the injured party seeks declaration that a legal person has committed infringement to his injury and requests to punish the legal person in its medium specified by name. A natural person named by name can be punished only in the event that he has been sued personally as a party. His penalty and condemnation cannot be decided on the basis of the defence of the legal person involved in the lawsuit; however, if the individual empowered

22 Kenedi 1908. 135 ff.; Knorr 1890. 105 ff.
23 Kenedi 1908. 135.
24 Alföldy 1936. 91 f.
25 Alföldy 1936. 91.

to act on behalf of the legal person has committed offence contrary to the act within the scope of his duties of his employment, then the legal person will be also responsible for the demandable pecuniary and non-pecuniary loss or enrichment. Furthermore, it follows from the provisions of Act LIV of 1921 that if the legal person's enrichment due to infringement exceeds the amount of the loss caused by the natural person, then the legal person will be liable up to the extent of its enrichment. If the acting natural person is not responsible for either malice or negligence with respect to infringement, then the legal person will be again liable to the extent of its enrichment.

It might occur that an article appears in a newspaper, periodical that implements infringement. Responsibility for infringement will undoubtedly bind the person who has sent the article as his own to the newspaper, periodical for publication. However, commission of infringement will be assisted by the person who arranges the compilation of the journal and who has right of disposal over the content and articles that appear in the journal – this person is the responsible editor of the paper,[26] whose criminal liability with respect to infringement committed in the journal must be judged in accordance with general criminal law rules.

Only by deliberation of all the circumstances of the case being judged can it be decided whether the responsible editor has breached the obligation to review binding him. Against the injured party the responsible editor cannot refer to the fact that he has entrusted another person with editing the paper because regarding third parties it must always be presumed that publication has been carried out with the responsible editor's knowledge and approval; so, he can be held responsible by virtue of negligence even in this case. At the request of a person who finds an article published in the paper injurious on the grounds of Act LIV of 1921, the responsible editor is obliged to name the person who has sent in the article as his own for publication. If the responsible editor fails to fulfil his obligation to supply information, he will expose himself to the injured party bringing an action against him, and if the identity of the perpetrator is revealed in the lawsuit, the responsible editor, even if he wins the lawsuit, can be obliged to bear costs in accordance with the provisions of the civil procedure on the grounds that he has given cause for the lawsuit. In case publication of the article can be attributed to the responsible publisher's act, the responsible publisher's copyright responsibility cannot be higher than the responsible editor's responsibility.[27]

In accordance with Section 20, the injured party can request confiscation of the stock of copies produced through infringement and special tools and equipment used for infringement. Confiscation lies only in the event that the injured party has submitted special application to this effect, which specifies the objects in details that are requested to be confiscated. Confiscation can be the object of the

26 Alföldy 1936. 93 f.
27 Alföldy 1936. 95 f.

relief sought. The stock subject to confiscation is to mean copies that are meant to be marketed, which can be established from the circumstances of the case; it can be a single copy if it has been meant to be sold. Copies transferred from the infringer to the ownership, possession of persons where they are waiting for being sold will be also subject to confiscation. If the judgment has ordered to confiscate the copies in the stock in whole, they must be annihilated. [28]

Application for confiscation can be submitted against those who possess the copies as infringer, seller, or other commercial distributor, public exhibitor; confiscation of copies at members of the public, closed readers' circles, casinos, libraries and collections is not permitted. In accordance with the act, confiscation lies also against the person who is not responsible for either malice or negligence with respect to infringement as well as against inheritors and legatees. In accordance with the act, attempt at infringement will bring about confiscation, what is more, tools and equipment used for preparing infringement can be confiscated too. The injured party can request to use the copies, tools and equipment, but only in the event that third parties do not suffer any legal injury thereby. The above provisions must be properly applied to public performances, fine art exhibitions. [29]

Reasons for confiscation hold in case of advertising that prejudices another person's copyright as preparation, according to the nature of the thing, just as in case of attempt. If the planned reproduction, marketing of a work is advertised by a person who does not have copyright on the work, then such advertisement is suitable for thwarting publication of the work by the person who is actually entitled to copyright. If the unauthorised advertisement advertises a cheaper edition or an edition under otherwise more favourable terms, then everybody will refrain from buying the copies published by the person empowered to do so. By keeping in circulation the act means offering for sale, sale, distribution in other forms or use of copies. Offering for sale is implemented when the bookseller keeps the copies in stock in his shop ready for sale. Distribution is making the work available to the public or making the work public in other form, but only in case of malice and businesslike manner shall offering for sale, sale, distribution in other forms or use be considered offence that brings about penalty and compensation. The state of facts of this offence can be implemented only wilfully; negligence is not enough.[30]

In accordance with the act, copies kept unlawfully in circulation will be subject to confiscation at the distributor (user) even if he is not responsible for malice or negligence. In accordance with Section 23, offence will be committed by a person who breaches his obligation to name the source and possibly the

28 Alföldy 1936. 99 ff.
29 Alföldy 1936. 99 f.
30 Alföldy 1936. 104 ff.

author as well as who indicates or omits the author's name on the work in spite of his will; consequently, indication of the name of an author with pseudonym or an anonymous author is offence subject to this provision.[31]

This provision must be properly applied to public performances.

III. Procedural Rules

Chapter four of Act XVI of 1884 sums up procedural rules of infringement of copyright. Section 25 determines the jurisdiction rule, which states that infringement of copyright will be judged, based on the lawmaker's will – in spite of its criminal law character – in civil law proceedings. In accordance with Section 26, conducting proceedings on infringement of copyright will always fall within the jurisdiction of royal courts of justice irrespective if the claim seeks compensation, confiscation or penalty. The injured party can freely decide competence of courts of justice; so, he can choose the court of justice of the place of committing the act, or the domicile, residence of the perpetrator, or any of them if the two are not located at the same place; in case of several perpetrators he can choose the competent court of the domicile or residence of any of them.[32]

Section 27 regulates commencement of the proceedings. Infringement of copyright is an act subject to private complaint with request for prosecution, i.e., proceedings can be commenced solely upon the application of the injured party, for infringement contains violation of private law and it is usually not in the interest of the State to punish infringement if the injured party does not require it. It is different in criminal cases and civil cases against whom the injured party is obliged to submit his claim. In criminal actions, in case of several perpetrators, when proceedings can be commenced solely upon the motion of the injured party, then the motion submitted by the injured party against any of them will involve the rest of the perpetrators being subjected to proceedings, i.e., the injured cannot choose from them. In civil actions, however, the injured party can choose from joint obligors; consequently, he can sue one, several or all of them with regard to the same loss. Infringement of copyright, although it is a lawsuit conducted before civil courts, is determined by the lawmaker's intention due to its criminal law nature in such fashion that the injured party should not be able to choose from among those whom the law orders to be punished; so, the injured party is obliged to submit his claim against all the perpetrators known to him. A perpetrator subjected to lawsuit will have the right to name his accomplices having taken part in committing the act, and so the injured party can submit an accessory claim, until judgment is passed, against the perpetrators he has

31 Alföldy 1936. 106 f.

32 Kenedi 1908. 196 ff.; Knorr 1890. 112.

subsequently learned of. It is also in the interest of the injured party to sue all the perpetrators since they are jointly and severally responsible for compensation, i.e., in case of several perpetrators he will have greater security to ensure that one of them will compensate for his loss.[33]

The act provides the injured party with the right to withdraw his motion any time before pronouncement of judgment; in this case, penalty does not lie. The perpetrator's obligation to compensate will always continue to hold, except when the injured party expressly waives his right to this effect. Also, the question might arise whether the injured party can choose from among several perpetrators against whom he withdraws his claim. Setting out from the fact that he does not have the right to choose from among those against whom he submits his motion, so he does not have right to choose against whom he withdraws his claim; so, if he manifests his intention to withdraw his claim against any of the perpetrators, thereby the rest of the perpetrators will be released from penalty. Claims due to infringement of copyright can be submitted by those whose copyright has been prejudiced or endangered; accordingly, it is primarily the author who is entitled to right of action; however, if he has transferred the right of reproduction, making public or marketing of his work to another person, then such other person can become copyright owner in determining right of action.

This section sets up the reversible presumption that it is the person whose name is indicated on the work as the author that must be considered the author of a work already made public. This presumption is true with regard to the translator and the editor of collected works too because Sections 2–7 of this act states that in the cases regulated therein they are regarded identically as the author.[34] On the other hand, it sets up no presumption that the publisher indicated on the title page of the work as publisher of the work is indeed the authorised publisher of the work, for the publisher's right is set out in contract, for this reason, its right can be proved only by this contract or other tools of demonstration. In case of works published under pseudonyms or without any name, the act allows that the author's name should be subsequently notified for being registered and that it should be entered in the register; this, however, does not provide grounds for the presumption that it is him who must be considered the real author of the work because registration takes place at the unilateral request of the party concerned, and revision by court whether this fact is true is missing; furthermore, registration extends the term of protection only, and does not prove that the registered person has written the work. If the author's real name is indicated on the new edition of a work published under pseudonym or without any name, then the presumption will be valid with regard to the new edition; yet, this will have no effect on the first edition.[35]

33 Kenedi 1908. 196 ff.; Knorr 1908. 112 ff.
34 Knorr 1890. 116 ff.
35 Kenedi 1908. 196 ff.

If a work has been published in several editions by several publishers, then each publisher will be entitled to assert author's rights but only with regard to its own edition. [36]

If the author has transferred his copyright to the publisher not unconditionally, then he can at his discretion disclose his real name and can prove that he has written the work, and then he himself can take action against any person committing infringement of copyright, for the author has not lost his copyright by hiding behind a pseudonym because the act does not demand that he should have his real name registered in order to maintain right of action. Consequently, the aim of this section is to protect the rights of the author who intends to stay without any name. The other case is when the publisher or the commission agent asserts its right of action as the author's legal successor. For, in accordance with general rules, they could do that by proving that they are the copyright owners through attaching their contract concluded with the author, by which, however, they would disclose the author's name. As this is contrary to the lawmaker's will, it states that the publisher or commission agent indicated on the work will be without any further demonstration considered the author's legal successor; which, as a matter of fact, does not exclude that the perpetrator could prove that the publisher or commission agent indicated on the work is not the real publisher or commission agent.[37] Section 29 provides courts with the opportunity to proceed with respect to deliberation of evidence in accordance with the theory of free demonstration, which accepts a fact as having been proved not in the case set out in the rule of law but when it is made certain by the court, i.e., it demands the judge's personal conviction resting on reasonable causes complying with general laws.[38]

If the court deems that the evidence submitted by the parties is not sufficient for fully clarifying the circumstances of the case, but it hopes to reach success by continuing the proceedings, the court of first instance will have the right to order to extend the proceedings and conduct new demonstration.

The court can order hearing of experts if it deems it necessary for judging the case profoundly; the court is not bound by the parties' motion in deciding appointment of experts. In general, expert opinion is requested when a technical question arises that needs to be answered by all means in order to determine the fact of infringement, the volume of loss, or the extent of enrichment.

Section 31 of the act, by setting up permanent expert committees, ensures that courts should receive reliable opinion they can base their judgment on. As a matter of fact, courts are not obliged to invite these committees and are not bound by their opinion. Contacted experts must have sufficient technical information, literary and bookseller's experience, knowledge of relevant laws on

36 Knorr 1890. 117 f.
37 Knorr 1890. 118 ff.
38 Knorr 1890. 120 ff.

protection of copyright to be able to give full scope and well-founded opinion; for this reason, the committee consists of persons pursuing various occupations. Rules of procedure of expert committees were governed, temporarily, by the 1876 directive of the German imperial chancellery, which sets out the following: special committees consisting of seven members operate separately for writer's works, musical works, fine art works and photography; adoption of resolution requires presence of five members; resolutions are adopted based on the submission of two appointed experts by majority of the votes cast; in case of equality of votes the chairman will decide the case.

Section 25 of Act LIV of 1921 refers assertion of claims arising from infringement to civil action, which is supported by compelling reasons examined with knowledge of earlier regulation. Section 26 contains merely fundamental causes of competence: proceedings must be commenced before the court of the defendant's domicile. Section 27 stipulates that the proceedings seeking enforcement of both criminal and private law consequences of infringement can be commenced only upon the application of the injured party, and are governed by the rules of civil procedure. Section 28 intends to make it possible – in the lawful interest of the injured party, specifically in case of danger, and in order to prevent occurrence of any further legal injuries and losses – for the court to bar the infringer from continuance and repetition of infringement or to sequester tools, to prevent marketing, further unauthorised production, by temporary injunction, upon the application of the injured party. Before commencement of proceedings, ordering sequestration will fall within the competence of the court of justice on the territory of which sequestration must be effected. In case of several courts of justice having competence, ordering of sequestration can be applied for from any competent court of justice. Sequestration can be ordered in accordance with Section 22 of Act LIV of 1921 against the distributor or user also in the event that they are not responsible for malice or negligence, i.e., if they keep the infringed copy in circulation in good faith or perform the work in public in good faith. Based on condemning judgment, if the defendant has exercised contestation or appeal delaying enforcement, sequestration can be ordered. Ordering sequestration does not lie if the opponent of the party applying for sequestration makes it probable that the complainee has properly acquired right of reproduction, translation, remaking, putting into circulation, keeping in circulation, public performance or presentation. In this case the court will withdraw the sequestration ordered without hearing the parties. Endangering of the plaintiff's claims can be made probable from the mere fact that the defendant can market the work published by it.[39] Even surrendering all of the purportedly existing copies will not lead to exemption from ordering sequestration because the authorised party will be entitled to search for and find copies anywhere in

39 Pk. V. 6030/1923.

stocks. Sequestration should be preferably restricted to the part of the work, tool or equipment or performance or presentation that contains infringement. During or after effecting sequestration, the parties can make an agreement set out in minutes by the delegate to ensure that the sequestrator could carry out reproduction and remaking, sell the copies in stock, hold public performance, place the amount remaining after deduction of costs fruitfully until the lawsuit is finally decided or sequestration is withdrawn.[40] Section 30 regulates declaration of the fact and volume of loss and enrichment. This provision, however, does not prevent the judge from effecting inquiry and demonstration regarding the issue of pecuniary loss and enrichment, in accordance with other rules of civil procedure. The judge will have free hand especially in declaring the volume of non-pecuniary loss because the volume of such loss can be usually determined only by general deliberation of the circumstances of the case; consequently, declaration of such loss does not depend on particular data so much as declaration of pecuniary loss. Paragraph 2 of the section provides for making the judgment public. Making the judgment adopted on the issue of infringement public in some inland periodical paper can be applied for by the winning plaintiff or winning defendant in case infringement is declared if the court has dismissed the plaintiff's claim based on infringement. The judge will deliberate according to the circumstances of the case whether the party applying for it has any interest in making the judgment public in need of such protection. In this respect it should be taken into account that making the judgment public in a periodical paper incurs significant cost; therefore, obliging imposes pecuniary loss on the condemned party. At the party's request, the court may as well resolve that obligation of publication should be restricted to the enacting part of the judgment.

IV. Regulation of Limitation

It arises from the nature of infringement of copyright that legal injury can be redressed properly only within a short time. Among others, it is conditional upon the injured party submitting its claim within a short time because if he fails to do so, it can be presumed that he has not suffered any material loss. For this reason, Section 36 of Act XVI of 1884 shortens the ordinary deadline open for right of action (thirty-two years) to three years in case of infringement of copyright.

Limitation starts from the day when distribution of unlawfully reproduced copies has started; the reason for this is that Section 22 of this act states that offence must be considered completed when the unlawfully reproduced first copy has been made. If limitation started on this day – i.e., criminal law limitation were applicable to it – then the unauthorised reproducer could avoid penalty by

40 Alföldy 1936. 112 f.

making reproduction of as well a thousand copies and keeping it secret until three years have elapsed from making the first copy, then he could distribute them without being punished; that is why the day of distribution in this case is declared as the date of commencement. In case of infringement, limitation starts on the date of distribution, in other words, the day when distribution has started must be calculated as part of the deadline. The court does not need to take limitation into account ex officio.[41]

The deadline open for submitting the claim in case of committing this offence (identically with the offence of infringement of copyright) is again three years, however, there is a difference as to when this term of limitation begins.

The perpetrator cannot be punished if the injured party has not submitted its claim within three months; however, the perpetrator will not be exempted from obligation to compensate even in this case, because payment of damages is the consequence of the act and not penalty of the offence. Action for damages must be submitted within three years' term of limitation. In calculation the three months must include the day when the injured learns of commission of the offence or the identity of the perpetrator, and the last day of the deadline will be the day which owing to its number corresponds to the date of commencement.

Section 39 determines the deadline of confiscation and annihilation. Confiscation can be enforced independently as injunction, it is not bound to penalty, i.e., as long as unauthorised copies and their appliances exist they can be confiscated. No deadline applies to it, and it can be applied in spite of the injured party having failed to submit its claim during the term of limitation.

The injured party can submit its right of action within three months from commencement of distribution of the printed publication in the following cases:

– if the author or the source has not been clearly indicated when quoting specific points or minor parts of the already published work word for word,

– in case of adopting already reproduced or published minor papers in limited volume in a larger work that can be considered independent scientific work in terms of its content, or in collections that have been edited from several authors' works for ecclesiastical, school, educational purposes,

– against the person who makes the author's name public in spite of the author's will.

Section 41 states that interruption and rest of the term of limitation are governed by general rules; however, it does not specify if it refers to the rules of criminal law or civil law. As infringement of copyright is 'public offence' but proceedings can commence solely upon private complaint with request for prosecution, which is referred by the act to the jurisdiction of civil courts, and the criminal code usually contains measures regarding offences and infractions, it can be said that in this case again a peculiar mixture of the rules of the two

41 Kenedi 1908. 141 ff.

fields of law prevails. According to criminal law, limitation is interrupted by the resolution or measure of the court due to the offence against the perpetrator or the party privy to the act, while according to civil law, by commencement of the action, and, in case of offences and infractions committed in the scope of infringement of copyright, by the resolution or measure of the court adopted with regard to the submitted motion.[42]

Limitation will be interrupted only with regard to the scope of object which the claim applies to. Limitation will be interrupted only with regard to the person who the measure of the court applies to. If commencement of the action depends on decision adopted on some preliminary issue (and it becoming final and unappealable), then limitation will rest until such decision.[43]

In accordance with Act LIV of 1921, the proceedings that can be commenced due to penalty and compensation in case of infringement will lapse in three years. The claim seeking compensation for the damage, including the claim that can be laid with regard to enrichment, will lapse in three years too. The act sets compensation claim jointly with limitation of penalty for expediency purposes lest calculation should become more difficult and prosecution of infringement should become more complicated due to different limitation in public circulation. Paragraph 2, by setting up material preconditions, regulates commencement of limitation; accordingly, commencement of limitation is independent of when the injured party has learned of infringement and the identity of the infringer. In case of unauthorised reproduction, limitation will commence on the date it is completed; consequently, the injured party cannot take action seeking penalty and compensation due to unauthorised reproduction if three years have passed from completion of reproduction. If the injured party intends to assert his claims arising from unauthorised putting into circulation, he can do that within three years from commencement of unauthorised putting into circulation, irrespective when unauthorised reproduction has been completed. Accordingly, if the infringer has concealed the stock of unlawfully produced copies from the injured party for three years, and as such he cannot be held responsible for unauthorised reproduction, the author can take action due to subsequently occurred unauthorised marketing (putting into circulation), within three years from its commencement. This also applies to the case when reproduction of the copies has been carried out lawfully, but putting the copies into circulation is infringement due to unauthorised changes or lack of indication of the source or for other reasons.[44]

In case of unauthorised putting into circulation, the act calculates commencement of term of limitation from commencement of putting into circulation because putting into circulation is to mean commencement of the

42 Knorr 1890. 136 f.
43 Knorr 1890. 136 f.
44 Alföldy 1936. 119 f.

marketing of copies, and in several cases the date of completion of putting into circulation could not be determined. The injured party can take action due to unauthorised publication of unlawfully produced copies within three years from it. If only an attempt has been made at reproduction, making public or marketing, then limitation of enforceable compensation claim will begin upon discontinuance of the attempt.[45]

Paragraph 3 sets the term of limitation of the imposed penalty as being equal to the term of limitation of commencing proceedings. The provisions must be properly applied to unauthorised public performance and unauthorised presentation by mechanical or optical equipment.

The proceedings commenced in case of unauthorised keeping in circulation referred to in Section 22 and proceedings seeking compensation for the damage caused will also lapse in three years. In this case, limitation will start on the day when distribution or use was carried out for the last time. In case of offence of infringement, claim seeking penalty can be asserted, even within the three years' term of limitation, only during three months from the date of learning of the fact.

The act removes the claim seeking annihilation, confiscation of copies produced through infringement or the tools, equipment used for producing them – as a claim seeking termination of a permanently unlawful status – from the scope of short limitation and that for the full period of protection. It follows from the nature of the thing that this applies also in case of confiscation that can be enforced due to attempt at infringement or preliminary advertising, although the act does not specifically refer to it. The rules of general private law must be applied to interruption and rest of limitation of claim that can be laid due to infringement or an act regarded identically as that by virtue of damage.

Conclusion

This paper has set the task to present the regulation through the history of the violation of copyright in Hungary in the late 19th and early 20th century. This approach enables deeper understanding of specific legal institutions of copyright and their regulation as well as the underlying lawmaker's intention and economic reason. Comparison of the solutions of Act XVI of 1884 and Act LIV of 1921 clearly shows the arc of development these legal institutions have gone through, and how regulation of copyright – wanting to meet challenges posed by technological development – has been renewed and has been reinterpreting regulatory concepts again and again.

45 Alföldy 1936. 120 f.

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