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Copyright protection of dramatic works

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1. The aim, subject and structure of the dissertation

Dramatic works are recognized as an integral part of copyright and culture. It is true, however, that the dramatic works have entertained the public long before the appearance of copyright, without any protection of the intellectual creation of the author. Copyright law was born as a result of a long development, but this type of work has played a major role almost from its initial phase. It is enough to think that even our first copyright act[1] has protected the dramatic works.

Copyright law is a relatively autonomous area of civil law which operates with a specific logic, with a complex set of rules and whose general aim is the promotion of the creative work. The Hungarian Copyright Act[2] stipulates in its first section that dramatic works are protected by copyright if the fundamental conditions of legal protection are met.[3] Despite the clear provision, however, the law does not constitute special rules for stage works, although there are some types of work e.g. software, database, film, and architectural works for which special provisions can be found in the law. We believe that the absence of special rules does not indicate that dramatic works are not worthy of attention of copyright law and that they have no specialty. Rather, we find that the complexity of this type of work generates a number of situations where the case law needs to be drifted apart from the engrained points of view for a more efficient problem solving.

In the dissertation, we essentially aim to comprehensively present the copyright of theatrical works from the development of the legal protection to the still unresolved issues. The dissertation focuses on the currently effective domestic copyright legislation, but it also analyses the German and Anglo-Saxon (primarily British, partly American) copyright law in connection with the most important issues. During the preparation of the treatise, we realized that the complete theatrical (copyright) law is such a huge area, whose examination would extend beyond the framework of a PhD dissertation, therefore it was important to define the scope of the research and to limit it from several points of view. Nevertheless, we tried to give the fullest possible picture of the area concerned and we continually tried to keep the holistic nature of the dissertation.

[1] Act XVI of 1884 on Copyright

[2] Act LXXVI of 1999 on Copyright (hereinafter referred as HCA)

[3] Point d) of Subsection 2 of Section 1 of the HCA

In the dissertation, we do not intend to deal with the public law[4] and labour law[5] regulations affecting theatres, but we rather focus on copyright law. The deep analysis of the legal protection of performers is also excluded from the scope of the dissertation. The reason of it is not the fact that we do not consider the actors to be important for the success of a piece. On the contrary, their complete legal protection and the analysis of their role deserves an independent dissertation which would exceed the scope of this thesis. For this reason, we focus on persons who play creative activities in the dramatic work, therefore, we only deal with the performers to the extent necessary, where we find it essential for the complete protection of stage works.

The dissertation is divided into nine parts. In the first part, we intend to introduce the role of theatre in the culture and in the economy. We consider the discussion of this question important because of two contiguous viewpoints. On the one hand, the objective of copyright law is the encouragement of the creation and the enhancement of the culture, in which dramatic works play an indispensable role. On the other hand, it is an acknowledged fact that copyright law and culture have a positive impact on the economy, which would also require that dramatic works should have a clear copyright law background. For this reason, this part also analyses the economic weight of copyright-intensive sectors. The second part of the thesis examines the evolution of the copyright protection of theatrical works. In this section, we first outline the development of English and German copyright law. English and German law has dealt with copyright law earlier then the domestic law, it is therefore justified to discuss it earlier. It is followed by the presentation of Hungarian regulation. The third part deals with international and EU legal protection. The backbone of the dissertation are the following chapters which focus on the theoretical and practical aspects of the copyright protection of theatrical works. The fourth great unit of the dissertation analyses the concept of dramatic work. Regarding the fact that there is no uniform definition, we also attempt to give a definition of this type of work based on the analysis and summary of the standpoints of the most important authors in the Hungarian and foreign legal literature. The fifth part deals with the stage-specific features of the moral rights, while the sixth part mostly deals with the two economic rights which are the most important in the traditional use of a stage work according to our point of view. These are

[4] See in connection with this topic: CSEPORÁN Zsolt: *A művészeti élet alkotmányjogi keretei Magyarországon* (PhD dissertation). Pécsi Tudományegyetem, 2017.

[5] See in connection with this topic: CASSELMAN, Carolyn: Staffing the 21st Century Theater: Technological Evolution and Collective Bargaining, *Columbia Journal of Law & The Arts*, 2003/4, 401-428.

the right of public performance and the right of adaptation. This part shortly outlines the issues of merchandising, which gains ever more ground in connection with theatrical works too. The seventh part of the dissertation presents the process of licensing of dramatic works, including the characteristics of the stage licensing contracts. In the eighth part we deal with the copyright law status of the persons taking part in the creation of a dramatic work. Most importantly, we focus on the theatre director whose legal status is disputed in our country. Finally, we conclude our work by summarising and evaluating our thesis and by offering possible solutions and recommendations for the practical difficulties and for filling the legal gaps.

2. The methods of the research

Hereinafter, we will briefly describe the sources used, after which we present the research methods used during the preparation of the dissertation. During the dissertation, we relied on the relevant legal acts, legal literature, case law and practice of the legal experts.

Among the legal acts, the Hungarian copyright act naturally enjoyed the primacy, but we also examined not only the existing but our previous copyright acts during the research.

We could also rely on the opinions of the Council of Copyright Experts, primarily with regard to the interpretation of norms and the specific logic of copyright law. We also analysed the court decisions relevant to this issue, but we also consider important to point out that there is not a large number of court decisions in connection with stage works. But at the same time, however, it is true that we could use the relevant decisions in connection with a number of topics because they contain a number of guidelines related to several important questions.

During our research we have reviewed very colourful domestic copyright law literature. We put the emphasis on the basic works, which deal with the basic legal institutions which are indispensable for this topic (e.g. the right of public performances, the right of adaptation, licence contracts), even if they do not deal specifically with stage works. In this regard, it is important to highlight that there is not any work in the domestic legal literature which has focused on a holistic and comprehensive approach to the copyright issues of dramatic works. Nevertheless, we can formulate the appropriate conclusions and specialties for the type of work in question based on the aforementioned basic works as well. The dissertation is not of a comparative nature; therefore, it is primarily intended to analyse Hungarian regulation, but where necessary, we briefly present the examples of other countries – typically Germany, the United Kingdom

and sometimes the United States. With examination of the legal regulation of other state, we primarily want to analyse the extent to which the legal solutions of the other states can be examples for the Hungarian legislation and law enforcement. In particular, we considered important to incorporate the legal regulation and the reasoning of the copyright lawyers of these three countries into the treatise, because several answers and solutions in connection with the copyright issues related to stage works can be found in these foreign examples.

Among the methods used in the research, we first highlight the normative and dogmatic method we consider the most accentuated. The dissertation aims primarily at analysing the rules of copyright law which are of primary importance in the creation of dramatic works. During the study, where it was necessary, we used the method of the grammatical, logical, historical and systematic interpretation of norms. We conducted a critical and dogmatic analysis of the relevant legal institutions as well. This goal is primarily realized in the dissertation during the presentation of misuse of terminology, the different interpretation of the notion of adaptation in the field of copyright law and in the field of theatrical science and the disorganization of the legal situation of the theatre director.[6] In practice, it is particularly difficult to find out whether the modification of a particular work can be considered as adaptation in the sense of copyright law or it does not reach or even exceeds this level. In connection with this, the so-called "aleatoric" nature of dramatic works as well as the associated interpretative discretion of the director has to be mentioned. Considering these three elements, there is a serious debate in the – typically in foreign – legal literature in connection with legal status of the director. Therefore, we put special emphasis on the presentation, collision and evaluation of the different opinions and on the formulation of our own standpoint on the basis of these.

The conceptual method also played a particularly important role in the dissertation. One of the most important objectives of the research was to clarify the concepts related to the topic. The definition of dramatic work is not unified in the legal literature and in the legal acts. Therefore, the dissertation presents the different conceptual approaches used by the authors dealing with the topic, the similarities and differences between them, after which we also attempt to define the concept of dramatic works.

The historical method is also important, which is not limited to the bare presentation of the different stages of the development of the of copyright of dramatic works at the beginning of the dissertation. Although the dissertation essentially examines the currently effective legal

[6] In order: Parts IV, VI and VIII of the dissertation

situation, where it is necessary, it pays attention to the presentation of the previous legal regulation and the evolution of each legal institutions. This is particularly pronounced when we examine the contracts for the performance and writing of stage works, as well as in connection with the use of terminology (play – dramatic work).

Although the dissertation is not a comparative work, we used the comparative method in every part of it. It means that we compared the foreign – German, British or American – example with the domestic regulation we consider it relevant or worth to follow. At the same time, it is important to emphasize that we did not aim to compare the individual institutions in the whole system, but we analysed the same or similar institutions and rules of the aforementioned legal systems. However, we did not want to put more emphasis on the foreign examples as necessary, since – as it was mentioned before – the thesis itself is not a comparative work, but we consider that it is also worth taking a look at foreign regulation regarding to certain issues.

During the formulation of the dissertation we also frequently used the deductive and inductive method. Regarding the fact that there are no separate, special rules in the copyright system regulating only the dramatic works, the general copyright principles and legal institutions have to be applied on stage works. The inductive approach i.e. the case law approach means that we attempted to deduct general conclusions relating to dramatic works from the relevant – domestic and sometimes foreign – judgments. As it was mentioned earlier, the number of domestic judicial decisions in connection with stage works is not high, but the issues before the courts are complex, in line with the characteristic features of stage works, which we consider to be of paramount importance.

Finally, the empirical method is also worth mentioning. The research has been largely assisted by the professional contacts with a number of theatres and agencies. During the interviews and consultations, a number of questions has been answered which is not properly settled in the legal literature and in the judicial practice. As a result of the professional cooperation, we were able to examine concrete license contracts and our previous view was confirmed according to which the lack of judicial practice in connection with dramatic work is not be brought back by the fact that there is no dispute between the parties but because in most cases the dispute is closed with a perpetual agreement.

III. The summary of the result of the dissertation

In the treatise we showed the most important questions in relation to dramatic works: the historical development, the theatre-specific features of the relevant economic and moral rights, the process of licensing and the legal status of theatre agencies, and the legal situation of participants who are in creative community.

III. 1. The impact of theatres on the culture and economy

It has to be admitted, that theatres have a positive impact on the economy, cultural life and cultural tourism in the given country. The activities of theatres are important from the point of view of the business. Hungarian theatre professionals – directors, performers and authors – have also been recognized at the international level. For example, it is enough to think that the Madách Theatre obtained the first non-replica performance right in the world for most of the musicals of Webber, or that the pieces of Ferenc Molnár are played not only in Hungary but in other countries with great success as well. Theatres also play an important role in the cultural tourism, but its revitalization requires a clear legal environment and the elimination of the legal gaps. We are sure that a clear, crystallized legislative background is needed to exploit all of the positive artistic and economic impact of theatres. In order to achieve it, however, the jurisprudence and the legislation need to find solutions to the obscure situations which were pointed out in the dissertation and in connection of which we also outlined possible solutions.

III. 2. The results of the conceptual analysis

It can be stated, that there is no coherent definition about dramatic works in the legal literature. The lack of a uniform concept is not the particularity of the Hungarian law, since the same is true in the German[7] and Anglo-Saxon copyright law. Nevertheless, we do not feel that it is an irreplaceable shortcoming that the concept of this type of work is not fixed in the act. Therefore, the question arises whether there is any need to construct a definition, since the case law can decide whether a work in question can be considered to be a dramatic work. On the other hand, it is true that the conceptual definition of a certain thing is never an easy task; some thinkers

[7] WANDTKE, Artur-Axel – OHST, Claudia: *Praxishandbuch Medienrecht*, Walter de Gruyter GmbH, Berlin, 2014. 267.

even doubt that it is possible to give the exact concept of anything.[8] This idea is not exaggerated, since it is almost impossible to create an objective, fair and correct concept, therefore there is a reason that the definitions are mostly abstracted. Concepts should be flexible enough not to be too narrow and exclusive due to the pursuit of precision. In spite of all these, we feel that a scientific work should include the examination of the particular type of work whose legal regulation, practical questions and problems it analyses.

Therefore, we carried out a conceptual analysis in the dissertation, during which we have taken into account the ideas of domestic legal experts and the points of view in the German, British and American legal literature. We put a proposal on the notion of dramatic works after a conceptual analysis in line with the domestic and foreign interpretations. After the conceptual inquiry – using the domestic and foreign examples – we proposed a legal concept. According to our point of view, this jurisprudential concept can be shaped as follows:

"The dramatic work is a directed plot – with or without music – based on a literary artwork, usually involving the creative work of more than one person, which is suitable for public performance. A dramatic works are especially dramas, comedies, plays, musicals, operettas, operas, puppets or ballets."

It is important to emphasize that it is an important characteristic of dramatic works that they are directed works. Every dramatic works is directed irrespectable form the fact whether the role of the director is performed by a professional director or by a dramatic teacher of a school drama group. This feature can be traced back to the fact that the dramatic work actually represents a "system" since a dramatic work is performed along a concept.

As a consequence of the conceptual analysis, we think, the terminology „play" (színmű) in the Hungarian Copyright Act (HCA) is not the most proper expression. Therefore, it would be better if the terminology returns to the former expression: „dramatic works". The terminology of dramatic work would not be strange to legal language since it is used not only in the previous acts, but as synonymous term, in the present practice and literature as well. The notion of dramatic work expresses better than the subject of the legal protection is the finished, stage production itself. The notion "stage-play" may also be used, but we think that it mostly used in the common language, as an explanation, but this expression would be less appropriate for the language of the law.

[8] SZABÓ Miklós: Jogforrás és jogalkotás. In: Szabó Miklós (szerk.): *Bevezetés az állam- és jogtudományokba*. Bíbor Kiadó, Miskolc, 2006, 63.

The modified terminology would also advance the copyright position of the stage director, because it would be clearer from the grammatical point of view that the protection covers the complete, directed, staged work, while it would not harm the drama i.e. the literary work since it would still be protected.

III. 3. The examination of the moral rights

During the research, we analysed the theatre-specific features of the relevant moral rights, among which we think the most important is the right to integrity. The right to integrity can often be harmed due to a theatrical adaptation, but there are only few published legal disputes in relation to the right of integrity. This situation can be traced back to three reasons, which can limit the real enforceability of the harm of the right of integrity. On the one hand it can be observed, that such radical interventions into the spirit of the original work are often done for works whose term of protection has already been expired. On the other hand, disputes between the theatre and the author are often closed with a perpetual agreement. Thirdly, the provisions of the Act themselves[9] can limit the reference to the protection of the integrity of the work. For these reasons, it is often difficult to "catch" the harm of the integrity of the given work in the stage, even if it is felt that the original piece has barely stayed on the stage.

In general, the right of integrity is considered to be of paramount importance among the moral rights of authors. We think it is essential that works have to be brought to the public in a way that the author has created and "wish to see" them.

The regulation of Section 13 of the HCA has been criticized by several authors.[10] According to this provision, *"the moral rights of an author shall be considered violated by every kind of distortion and mutilation or alteration in any manner or any form of misuse of his/her work which prejudices the integrity or reputation of the author."* According to our point of view, the phrase "violation" in the legal text is apt. It would be preferable to find a little less "flexible" expression which orientate better to the wording of the HCA.[11]

[9] Sections 49-50 of the HCA

[10] See for example: FALUDI Gábor: A szerzői mű egysége védelmének egyes kérdései, *Infokommunikáció és jog*, 2011/5. 163-169; GRAD-GYENGE Anikó: Első oldal, *Infokommunikáció és Jog*, 2013/3. http://www.infojog.hu/szam/54; GYERTYÁNFY Péter: A szerzői jog bírói gyakorlata 2006-tól: a védelem tárgya és a mű egysége, *Iparjogvédelmi és Szerzői Jogi Szemle*, 2012/4. 35-51.

[11] It is interesting to note that the term „violation" can be found in the HCA solely in connection with the rule of integrity (Section 13 and Subsection 2 of Section 75 of the HCA) and we regard it as extraneous among the terms of the law.

In the context of integrity, it is also necessary to speak about the exercise of rights of the successors and heirs, because in many cases it is not the author but his heir who strictly guards over the work. This situation can be basically explained by the fact that authors are more familiar with the process of creative work and with the particularities of the work, therefore they handle the changes perhaps more flexible. It is typical especially in Germany, but in Hungary as well, that in some case the heirs of the author watch more strictly over the original spirit of the dramatic work than the author himself, and they do not allow even the "good faith" modifications and revisions of the works which does not harm the right of integrity. We are not convinced that the absolute denying and rejective attitude of the heirs to any intervention into the work serves the best interest of the work.

In connection with the rule of integrity regulated in Section 13 of the HCA, the most important consideration is that this right may be different for each type of work and for each – less susceptible – authors. In a dispute over the interpretation of integrity, when we have to answer the question whether the unity of the work was harmed or not, we can only give a correct answer by considering all aspects.

III. 4. The traditional use of dramatic works

Dramatic works are regularly exploited by public performance and adaptation. In the last few years, the merchandising also obtained an important position in the world of theatres. It is true that merchandising cannot be classified as one of the classic, "ancient" form of use of copyright, but it is gaining more and more importance in connection with many types of work. Dramatic works also cannot be excluded from this very "fashionable" type of usage. Merchandising is regulated in the HCA from the point of view of the so-called title and actor protection.[12] Merchandising, which in fact represents image transfer[13], can be well used for business and marketing purposes. Although *"the expansion of the copyright merchandising is primarily*

[12] Section 16 of the HCA:
(2) The author's permission is also necessary for using the particular title of a work.
(3) Authors are entitled to make commercial use of the typical and original characters that appear in their works. They, furthermore, hold the exclusive right to authorize such uses.

[13] TATTAY Levente: A merchandising és a film. In: Tattay Levente (szerk.): *Emlékkönyv Ficsor Mihály 70. születésnapja alkalmából barátaitól.* Szent István Társulat, Budapest, 2009, 337.; GÖRÖG Márta: Gondolatok a merchandising jelentéstartalmához, egyes típusaihoz, *Iparjogvédelmi és Szerzői Jogi Szemle*, 2011/3. 20.

connected to films"[14], the so-called *"stage merchandising"*[15] evolved in the United States in the 90's with the world-famous Broadway musicals. We can also find domestic examples for theatrical merchandising – mostly in connection with musical pieces. The Operetta Shop in the *Budapest Operetta Theatre* sells posters and other souvenirs related to its repertoire, and this was the first years when the best theatre merchandising product was awarded at the *National Theatre Meeting of Pécs*.[16] From the point of view of the marketing, merchandising has a particularly beneficial effect on theatres, therefore it is no coincidence that they increasingly urge these efforts in Hungary as well. It is true that in many cases the contractual conditions behind the merchandising are running on millions of threads, whose unravel is a complex task, although we find it certain that in the future it will become more and more popular in the theatrical world as it serves as an excellent advertising.

Between the *right of public performance* and the *right of adaptation*, public performance is the less problematic. In relation to public performance right, problems can occur in line with the strict regulations of free use, especially to define the subject of „*amateur artistic groups"* and the agreements which license only the part of the work. These issues were analysed in the thesis.

On the other hand, interpretation of the copyright features of the *adaptation right* is much more difficult. During the research we ascertained that the notion of adaptation in the field of copyright law and in the field of theatrical science is different. In theatrical literature and practice, the adaptation for stage has a broader sense than the adaptation in the area of copyright. The difference can cause problems in relation to theatrical participants and artists, when they are trying to form an opinion about their own artistic contribution through the eye of copyright law, since they are basically start from the theatrical approach rather than the narrower and more restrictive copyright approach. The discrepancies arising out of this difference do not help the – otherwise volatile – relationship[17] between theatre art and copyright law. Therefore, although Section 29 of the HCA does not necessarily have to be amended, it is important to

[14] GÖRÖG Márta: Gondolatok a merchandising jelentéstartalmához, egyes típusaihoz, *Iparjogvédelmi és Szerzői Jogi Szemle*, 2011/3. 27.

[15] SZILÁGYI István: A szerzői jog. In: Juhász Sándor – Kalmár Péter (szerk.): *Mr. Producer. Színházi management könyv.* OperocK, Budapest, 1993, 183.

[16] https://szinhaz.org/csak-szinhaz/csak-szinhaz-hirek/2018/06/09/iden-dijazta-legkreativabb-szinhazakat-teatrumi-tarsasag/ (Downloaded: 2018. 08. 03.)

[17] VEREB Tamás: Amikor Shakespeare kabátját lopják – A szerzői jog magyarországi állapotáról, *Színház*, 2005/1. 43-48.

approximate the concept of theatrical and copyright adaptation in the practice and during the interpretation of law.

III. 5. Characteristics of license contracts of dramatic works

There are no specific rules on license agreements which only refer to theatrical use of the given works. Consequently, the "general" rules of the HCA regulating the license contracts shall also be used for the licensing of dramatic works.

In connection with the licensing of dramatic works, we have to distinguish between two type of contracts. The first case is where a theatre intends to perform an existing, domestic or foreign, prose or musical dramatic work. The former legal terminology denominated this type of contract as *performance contract*. In case of the second type of contract, the work which is intended to be performed by the theatre is not yet available because it does not exist. In this case, the work has to be created before the staging. For this purpose, the theatre intending to perform the piece and the author conclude a so-called *"writing contract"* in which the theatre "orders" the work from the author(s). The currently effective HCA calls this type of contract as *contract for works to be created in the future*.[18] The public performance contract may also be related to a writing contract, but only when its subject is the public performance of a new work in connection with which the theatre concludes a contract with the author.[19]

Among the performance contracts, we can also talk about *replica and non-replica licenses*, which are common if successful foreign – mostly *Broadway* – pieces are intended to be presented in other countries. If a theatre receives a *replica* license for a dramatic work, it means that the domestic piece will be the copy of the original piece, including the copy of costumes, scenery and choreography as well. By this method, the original piece is actually duplicated on another stage. Contrary, a *non-replica* licence means that a piece presented– of course with the permission of its original author – abroad will not be the copy of the original work.[20] In case of replica licenses, the creative group of the original piece travels to the country where the license is intended in order to provide the costumes, scenery and the other necessary

[18] Section 49 of the HCA

[19] PÁLOS György: Színpadi művek (X. fejezet). In: Petrik Ferenc (szerk.): *A szerzői jog*. Közgazdasági és Jogi Könyvkiadó, Budapest, 1990, 183.

[20] BOURSIQUOT, Christina Marie: *Forging new roads: expanding the theatrical touring market internationally*, Columbia University, 2014, 23.

conditions which match the original ones.[21] In fact, the replica license actually completely restricts and effectively excludes the actual creative activity since the original work is "just" copied. This staging lacks the *originality and individuality* in the sense of copyright, since the piece is practically "replicated" with the author's permission. This is a kind of *licensed copying* which cannot be considered as unlawful copying as a result of the license, but the production will not meet the criteria of the copyright protection, as the piece is not *original* in the sense of copyright law. This is not an adaptation either, since the author does not agree to any modification due to the content of the replica license. Therefore, it is conceptually excluded that the dramatic work can be adapted. It can be said that we cannot speak about directors in connection with these "turnkey" pieces, but only about a "technical crew". Therefore, it can be stated that a non-replica license allows for a greater creative space from a point of view of copyright law.

In Hungary, it is not uncommon that theatres get non-replica licenses for musicals. For example, *Madách Theatre* staged *The Cats*, *The Phantom of the Opera*, *Mamma Mia!*, *The Producers*, *Joseph and the Amazing Technicolor Dreamcoat*, *Jesus Christ Superstar*, and *Mary Poppins* according to non-replica agreements.[22] Furthermore, the same can be said about *The Beauty and the Beast* musical in the Operetta Theatre, which is originally also a Broadway musical piece.

During the research, we concluded that the main reason of the debates in connection with theatrical performances and theatrical work is that in many cases the parties regard the tight contractual legal relationship as unnecessary and distrustful. For this reason, they do not conclude a written contract, or if they conclude a contract, the content is in many cases incomplete. And these are the missing elements which can cause problems.

III. 6. The clarification of the legal position of the stage director

The most important is the clarification of the copyright status of the contributors who making up the stage works. While the act clearly regulates the legal protection of the stage author, the

[21] This was the case, for example, with the external replica licensing of the Broadway musical *Wicked*. BOURSIQUOT, Christina Marie: *Forging new roads: expanding the theatrical touring market internationally*, Columbia University, 2014, 29.

[22] The Madách Theatre started its repertoire of non-replicas with the musical *Cats*, in 1983. After one year of the premier of the piece of London, it was the first non-replica license in the world. Later, the Madách Theatre also gained the first non-replica license in the world of *The Phantom of the Opera* and *Mamma Mia!*, but in the latter case it was preceded by a more than ten-year long negotiation process.

costume designer and the scenery designer, and the performers, the situation two other elemental contributors – the director and the dramaturg – is still unsettled despite their importance.

In the Hungarian copyright law, the legal status of theatrical director is still unresolved. However, we believe that its position is need to be and can be settled at the legal level. In connection with this, we have outlined the possible directions in order to clarify the copyright position of the stage director.

Ad 1) It is an absolutely exceptional case when the director sets the dramatic work on a stage within the framework of a replica "turn-key" license. Due to the special nature of the license, it is not permitted to make any changes on the piece in this case, which means the director even has to expressly refrain from doing so. In fact, the director does not perform directing activities in this case. The replica licence can be considered as a "licensed copying", which inherently excludes any individuality from the side of the director.

Ad 2) The other "extreme" situation is when the staging of the director is so individual, original that the original features of the genuine work begins to become obscured. Therefore, the new dramatic work cannot be considered as an adapted derivative work, but as a new independent work. In such cases, the director shall be considered the author of the dramatic work.

Ad 3) The director is an adapter and therefore he enjoys copyright protection if the staging of the dramatic work is following the legal requirements of the adaptation. In this case, we have to refer again to the fact that it would be worth considering the concept of theatrical adaptation, its elements and the concept of copyright adaptation, and furthermore, it would be necessary to approximate their practical interpretation to one another, and to possibly widen the framework of copyright interpretation.

Ad 4) The director – with the exception of replica pieces – necessarily displays his own personality and perspective during the staging of the dramatic work, which has to be evaluated from the point of view of the copyright law. In this circle, the protection structure of joint works seems to be the most appropriate which means the director is comparable to the editors of the collection of works. According to the HCA, *compilations are protected by copyright if the collection, arrangement, or editing of their content is individual and original (collection of works). Collections of works are protected by copyright even if their parts or components are not or cannot be protected by copyright.*[23] *Editors are entitled to copyright in the entire*

[23] Subsection 1 of Section 7 of the HCA

collection of works. This, however, does not concern the independent rights of the authors of the individual works and the owners of related rights that have been included in the compilation.[24] This rule can also be applied to the works resulting from the stage arrangement because:

- the director collects, arranges, "edits" the dramatic work, the scenery, the play of the actors and the movements to an integrated, complete art work;[25]
- his own perspective and intellectual activity are manifested in this activity, which is individual and original;[26]
- the dramatic work itself as a complete work is protected even if certain elements of it (e.g. some elements of the scenery, certain dialogues) cannot be protected by copyright;[27]
- the director (as a quasi-editor) may have the copyright over the entire work, but his rights cannot undermine the rights of other authors (author, composer, costume designer, stage decorator).[28]

Ad 5) As the last construction, the legal institution of joint works may also arise. According to Subsection 1 of Section 5 of the HCA, if the parts of a joint work produced by several authors cannot be used independently, the joint authors shall be entitled to copyright protection jointly and, if there is any doubt, in equal measure. In this case, however, it is important to have a joint decision relating to the joint creation of the work by the parties.[29] This agreement between the author and the director can only be concluded if the dramatic work is put on stage by the director during the life of the author, and they jointly participate in the staging process of the work, i.e. the author is also involved in the staging.

The relationship between these participants and their impact on the given work is the backbone of the copyright protection of dramatic works. Other issues – such as the integrity, adaptation, contractual relations – are all around and linked to them, especially to the director. However, as long as the position of the key figure is not properly clarified, additional issues are often only hanging in the air.

[24] Subsection 2 of Section 7 of the HCA

[25] First sentence of the Subsection 1 of Section 7 of the HCA

[26] First sentence of the Subsection 1 of Section 7 of the HCA

[27] Second sentence of the Subsection 1 of Section 7 of the HCA

[28] Subsection 2 of Section 7 of the HCA

[29] GYERTYÁNFY Péter (szerk.): *Nagykommentár a szerzői jogi törvényhez*. Wolters Kluwer, Budapest, 2014.

IV. Publications related to the PhD dissertation

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2. SÁPI Edit: Copyright Protection of Dramatic Works in the Law of the Europan Union, *European Integration Studies*, Vol. 13, No. 1. 2018. 74-89.

3. SÁPI Edit: Aleatoric nature of dramatic works. In: Kékesi Tamás (szerk.): *MultiScience – XXXI. microCAD International Multidisciplinary Scientific Conference*, Miskolci Egyetem, Miskolc, 2017. 1-8.

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5. SÁPI Edit: A magyar szerzői jogi kodifikáció fejlődéstörténete, különös tekintettel a színpadi művekre, S*tudia Iurisprudentiae Doctorandorum Miskolciensium – Miskolci Doktoranduszok Jogtudományi Tanulmányai*, Tomus 17, 2017. 341-361.

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