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Protection of the creations of the mind in the history of Hungarian law. Copyright and patent rights; primacy and ethics in science.

One of the defining moments of Szent Györgyi Albert's work was when it was proved that the hexuronic acid he had examined is actually vitamin C. I want to introduce this discovery from the legal and legal history background in respect of the copyright law. The copyright and patents law is a modern legal institution which deals with the so-called intellectual property. Intellectual property rights are in the area of private law related in part to specific individuals, as entities, and in part related to ideas, writers work and invention within proprietary rights. It has long been the subject of debate in the legal literature where it is to be structurally regulated. Should it be linked to privacy rights and thus treated as a fundamental right enjoyed by natural persons or within the property law, related to ownership, and treated as legal power of subjects to deal with it as an embodiment of objects. In the debate it was finally decided that the human thoughts can not be independent objects from the man. As Bálint Kolosváry puts it, "the intellectual property is an elusive and integral part of the individual and it is so far under control that it depends on us if we want to express our thoughts or not?"[1] When the law

[1] Kolosváry even further stated: "It is therefore incorrect to say that the idea manifested in a specific form being a concrete work of a personality is an independent, separated thing. Just the contrary. Every picture, every statue, every book is an integral part of the spiritual world the author,s personality which is not to be identified with the expressions of publication, functions of letters, drawings or other materials e.g. with marble in the case of statues." Bálint Kolosváry: *A magyar magánjog tankönyve*. Budapest, *Politzer-féle Könyvkiadó vállalat*, 1907. pp. 233.; Károly Szladits wrote in 1933: "However, there are other kinds of things apart from intangible assets in respect of which the law provides the holder a right that is similar to property right i.e. an exclusive power (absolute right). In this sense we can talk about intellectual property. These exclusive rights are generally characterized by the fact that they grant defense to a certain product of thought. These rights stand in the middle between the direct ownership rights of belongings and the legal protection of the personality i.e. personality rights. Károly Szladits: *A magyar magánjog vázlata*. I. Budapest, *Grill Kiadó*, 1933. pp. 362

protects the individual's intellectual creation, it does nothing other than save and protect the intellectual product from the abuse of others.

How does the wording and legal regulation of intellectual property link to Albert Szent-Györgyi? To understand the question we should examine the discussion and relationship of three men: Albert Szent-Györgyi, C.G. King and Joe Svirbely. What was the background of the debate? In the early 20th century all three of those were involved to some extent in vitamins research. Originally, Szent-Györgyi did not want to deal with vitamins, however, once a student of Svirbely and King knocked on his laboratory in Szeged, who wished to expand his work as a Szent-Györgyi scholar. Szent-Györgyi put a bottle in the hands of the young researcher, in which the so-called hexuronic acid was, and asked him to prove that it is the substance of ascorbic acid, that vitamin C. In the spring of 1930 to 1931, in parallel with Szent-Györgyi's research, C.G. King was also dedicated to research, but done it in a different direction and slipped in time compared to Szent-Györgyi.

In 1931 Svirbely knocked on Szent-Györgyi's room to say that it has been demonstrated that the material, which Szent-Györgyi put in the hands of the scholar and called hexuronic acid is the ascorbic acid. Szent-Gyorgyi, the scientist, however, was cautious and instructed his disciple to carry out the experiments again, because you can only stand in front of the world with evidence. The experiments were repeated and the result confirms their expectations. In fact, hexuronic acid is vitamin C.

Joe Svirbely, the honest student says to Saint-Györgyi: "I am a student of Professor King, he is researching the vitamin C and we research that too. Here at Szeged we found out what vitamin C is. What do I do? "Szent-Györgyi said:" If you were my disciple and I would not say what results you have accomplished at another professor, you'd be a nasty guy."[2]

So, in March 1932, Svirbely wrote a letter to Professor King, explaining that hexuronic acid is the same as ascorbic acid that is vitamin C. From Professor King's letter of response it is clear that his research is not yet there to say that he had found vitamin C, but he is pleased that this has succeeded in Szeged.

A few days after the exchange of correspondence, King announced that he had found the vitamin C, and this is announced on April 5, 1932 in The New York Times. Then on 1 April 1932, the journal Science published the results of Professor King. When Szent-Györgyi found this out he says that this is plagiarism that is theft. "King and just published the letter which we wrote him,

[2] Ralph W. Moss: *Albert Szent-Györgyi*. Budapest, Typotex, 2004. pp. 98

with all the consequences of the discovery. […] I thought it will be noticed that the article has no scientifically valuable measurements."[3]

This sentence of Szent-Györgyi was the subject of debate, and this should be illuminated by legal historians.

In 1932, when this story took place, the concept of intellectual property has already evolved in the jurisprudence, and in relation to this, the regulation of copyright. In the jurisprudence, certain terms are used to describe certain phenomena. Thus, it protects property, which means that people have the legal power over a defined physical object.

Property right is an absolute structural right because it excludes anyone from the use of the given thing that is protected and forbids anyone from violating the thing, which is legally protected by the right. Thus, protects the law each person's idea from manifestation as well. The question, however, is basically what is protected by the law during the process of the research of natural sciences: the research process itself, or the outcome of the research.

May it be that when two people within the same time and parallel with each other conduct research, only just one, or just the other or both are entitled to protection?

In the everyday life, of course, it has happened quite frequently, and happens also today that scientists perform experiments in the same area.

The jurisprudence, therefore, developed the view that from results of the scientific life the one that is granted intellectual property is the one that was first made public. To establish who has the first place every day has importance, and in determining the protection of scientific results, it is taken into account whether a scientific magazine accepts for publication the article with the results of the research study.

In the Hungarian legal history in the National Judicial Conference by the Provisional Legislative Rules (PLR) Section 23 the following has been declared: "It is finally stated that the creation of the mind form such property which is protected under the law."[4]

As the rules of the Hungarian private law are primarily determined by the common law, it raises the question: how does the protection of intellectual property come into the scope of legislation?

The National Judicial Conference considered it a main task to end with the foreign, Austrian, rules of law, and with a compilation work, make an attempt to reconcile the feudal era legal system from before 1848 with the changes that were

[3] Same pp. 100

[4] Provisional Legislative Rules, Pest, Landerer és Heckenast, MDCCCLXI.

created as a result of the April 1848 laws, and the new accepted norms that entered into force during the neo-absolutism in Hungary. The result of this compilation work has been the Provisional Legislative Rules, which will be decisive for the development of the Hungarian legal institution as regards copyright laws.[5]

Before elaborating on this justification, it is necessary to examine what the reason was that the creation of the mind, that is literary and scientific work, needed the emergence of legal protection.

From the ancient times we know literary works, but even if we know the author, he did not make his fortune from that. In ancient times, the students copied these works, while with the spread of Christianity in the monasteries the codices were copied. In the middle ages, they did not even consider it to be important to give the name of an author at the end of a work.[6] First in the Renaissance age comes the importance of ensuring that future generations should learn about the authors, and later the absolute rulers raised the awareness of the dangers of published ideas because of fear of their power from the proliferation of unwanted thoughts.

As long as there was no printing, there was no fear from the rapid spread of ideas. The situation has changed with the invention of the printing press. Gutenberg's invention has made possible to reproduce works.[7] Another reason for the development of legal protection was the realization of the freedom of the press, that is, as the effect of the Enlightenment there was an increased

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[5] György Ráth: *Az országbírói értekezlet a törvénykezés tárgyában*. Pest, 1861.; Provisional Legislative Rules as legal sources see: Bálint Kolosváry: *A magyar magánjog tankönyve*. 1907. pp. 41–43

[6] As an example let's mention the Corvinae: famous pieces from the library of Matthias Corvinus. Academic life calls Corvinae those sums of codices that were ordered by Matthias for his own library. In these there are works, copied by the monks, by known or anonymous authors from different eras.

[7] „As long as the printing technique was not known, which makes it possible in almost unlimited numbers to print the same literary or artistic creations in perfectly equal text and content format thus makes the writer's works or art across time and space infinitely available. Until this it was possible there was no copyright." Elemér Balás P.: *Szerzői jog.* In. Szladits Károly (ed.) *Magyar magánjog.* I. Budapest, Grill K., 1941. pp 676. compare Dezső Alföldy: *A szerzői jog újabb fejlődése. Magyar Jogászegyleti értekezések*. Új IV. évf. 1936. ; Elemér Balogh: *A Szemere-féle szerzői jogi törvényjavaslat*. In: *Szemere Bertalan és kora*. Borsod-Abaúj-Zempléni Történelmi Évkönyv, 7. Miskolc, 1991. pp 149.; Katalin Krisztina Part: *A szerzői jogi szabályozás kialakulása Angliában, Németországban és az Egyesült Államokban*. In: Iparjogvédelmi és Szerzői Jogi Szemle, 111. Nr 4. 2006. Aug. 141. (thereinafter: Part:); Mezei Péter: *A szerzői jog története a törvényi szabályozásig* (1884. XVI.tc.) In: *Jogelméleti Szemle* 2012. 5. pp 1–2.(thereinafter: Mezei: 2012.)

demand for "everyone to communicate its views and thoughts freely." [Article XVIII. 1848.] The two seemingly unrelated reasons are the foundation for the creation of protection of intellectual property.

The invention of printing made it possible for a literary work to be replicated, and the owner of the printing press gained income from their sale. This invention, however, started another process as well. The rulers feared their power from the opportunity that any thoughts, which may also be targeted against them, may be published freely. Therefore, on the one hand, the establishment of a printing press was a royal privilege. This privilege was general, and ensured that the owner of the printing press, excluding everyone else, had the right to reproduce the works of authors.[8] However, the privilege could be granted to issue a particular work such as the case of Henry, Bishop of Bamberg, who was granted the right in 1490

to print the liturgical book of Hamburg, or the right of the University of Trnava in 1584 to issue the *Corpus Iuris Hungarici*.[9] On the other hand, censorship was introduced, the rights of pre-audit. These ensured for them that the published and reproduced "thoughts" are under control.[10]

As any restrictions, censorship and printing privileges were getting stronger revolt. The end of the foundation of the royal privilege printing press formed a new threat to the authors. If anyone, depending on the financial conditions, may found a printing press, how could you determine the number of copies of an author to print, how many times to repeat this process and how to price the printed work? How could one establish the value of a literary or scientific work?

Censorship still hampered the sharp increase in the revenue of printing owners, but in the period following the abolition of the censorship there has been a growing conflict between the press owner and the authors. The printer's owner bought the manuscript for publication from the author, but after this, the authors had no control over what the owner of the printing press does

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[8] The privilege of Johann Speier in 1496 in the city of Venice or the privileges of the British rulers. Hesse, Carla: A szellemi tulajdon. Könyvtári Figyelő. 2008. Nr. 1. 2010. October 8. http://ki.oszk.hu/kf/2010/10/a-szellemi-tulajdon downloaded: 2014. January 1.; Mezei: 2012.; Katalin Krisztina Part: pp. 142.

[9] Mezei: 2012. pp. 3

[10] "The rulers formed an alliance with the religious authorities to control the thoughts, the production and circulation of intellectual and technical information within their empire. In the early modern era the whole world established means of sophisticated complex systems of before publication censorship, state monopolies leased to monitor publishing and printing professionals and royal privileges or patent letters of exclusive monopolies to print and issue authorized texts." Hesse Carla.

with the manuscript. While the printing press owners have gained a good income, the authors have received nothing from the profits.

There was no guarantee whether the once, with the author's permission, printed manuscript was published by another press without a license and even change the original text. The age of literary piracy has started.[11]

However, the development of the legal institution of copyright only became possible when the private law dogmatism established the principle that literary and scientific works, as intellectual products, should be given legal protection. However, this protection is not realized on the book, painting, graphics, sculpture, as physical, i.e. tangible object, to be legally protected, but the legal protection is to be granted to the intellectual property, i.e. the intangible things of the authors. (If we think that by book-burning what intellectual property have been destroyed, then we can understand that it is not about the legal protection of books as physical and material objects, but rather about the individual, spiritual artworks, which is embodied in the printed book published.) The process, established in the private legal dogmatism, began to emerge only in the turn of the 18-19 century. First, the protection of personality had to evolve; secondly, a legal structure had to be constructed that has a feasible personnel and material side. As set out by Elemér P. Balázs: "The roots of the copyright law go down to privacy law; its technically developed rules show common features with material law – expressed as a paradox: the copyright is nothing more than the personality side of property.[12]

This duality is translated into everyday practice in a way that the law must protect the person himself as a person. (This includes the individual's life, his reputation, honour and name, the protection of his image: this is summarized in the literature as personality rights.) Copyright protection merged into the individual's personality protection the protection of his own, unique, unmistakable intellectual property. (This includes copyrights of works of literature, visual arts, music, etc, as well as the legal protection of patents, inventions and brands.)

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[11] Éva Jakab: *Szerzők, kiadók, kalózok. A szellemi alkotások védelmének kialakulása Európában*. Budapest, Akadémiai Kiadó, 2012.*;* Bodó Balázs*: A szerzői jog kalózai*. Typotex Kiadó http://www.typotex.hu/konyv/bodo_balazs_a_szerzoi_jog_kalozai

[12] Elemér P. Balás: pp 675. "The intellectual property, on the one hand, is the symbolic expression of the human spirit, on the other hand, demands a substrate material that in itself is based on the personal and material synthesis approach i.e. itself a result of a dynamic approach to the use of material aspects. Of course, this is mostly in cases when the writer,s work or works of art are expressed through mechanical reproduction through the use of printing and other reproduction techniques"

The material side of copyright is the intangible intellectual property of people: books, manuscripts, paintings, music sheet, sculpture, etc, which are the material side of law.

The development of the Hungarian copyright law is inseparable from the European legal trends. Therefore, if only briefly, a reference must be made to those international solutions which led to the emergence of the idea of intellectual property.

In this process, the British played a leading role. Under the privileges it was a significant historic step when Mary I granted the right to Book Guild of Craftsmen (Stationers' Company) to exercise control over the book publishing and book sales. This guild, in 1557, gained the right to "seek out and confiscate all writings that are against the crown or the Church. To publish a book, the guild members asked for the sole right of publishing from the officials of the Guild chairman."[13] At the end of the 16th century, a phrase appeared: right to copy i.e. the rights of reproduction. This meant not only the right to print, but the exclusive reproduction right for the given book as well.

In 1709, the Statute of Anne was born, which is considered to be the world's first copyright law. This Act introduced two new concepts: on the one hand it stated that the author is the owner of his own work, on the other hand, it first determines that the legal protection of printed works is only valid for a period of specified time.[14]

The development of copyright law is also strongly influenced by philosophers. By the 18th century, it was the general perception that the ideas embodied in books are God's gifts. The man, the writer, the poet just passes it on to others.[15]

The Enlightenment philosophers formulated the opinion that to the artist embodies the ideas in his work, makes up the novel, the sculpture, the painting and, therefore, these are his property. In England John Locke explained that people are free to use their intellectual property, as these are their own property.[16] In Germany, Immanuel Kant said first, that the unauthorized reprint is *furtum usus*: stolen to be used.[17]

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[13] Katalin Krisztina Part: pp. 142; Jakab: pp. 31–45; Mezei; C. Hesse

[14] Katalin Krisztina Part: pp. 143; Jakab: pp. 67–71

[15] C. Hesse

[16] John Locke: *Második értekezés a polgári kormányzatról*. Budapest, Polis, 1999. Chapter V: *A tulajdonról*. compare. Jakab: p. 89

[17] Elmar Wadle: *Beiträge zur Geschichte des Urheberrechts*. Berlin. Duncker-Humblot, 2012. pp. 17–18; Jakab: pp. 94–102

The intellectual property as property is linked in the mind of writers and philosophers in the 18th century. However, the legal protection was still missing.

The property right is an absolute right, which excludes everyone except the owner from the possession, use and disposal of the given thing. However, the jurisprudence could only interpret this property right in the terms of the physical object.

The creations of the mind are not simply the embodiments of artworks, but about the individual thing which could be formulated by a single author. Thus, for the definition of intellectual property the subjectivity of the artist and his unique character has become an essential element.[18]

Another trend has also emerged that has maintained the view that ideas come from nature, available for everyone, therefore, intellectual creations should be judged on the basis of their usefulness to the community.

At the same time when these discussions took place among philosophers, writers continued to have fundamental problems with the almost uncontrollable activities of book publishers. Writers have sought to enter into an agreement with the publisher, which is valid for only one release. In everyday practice, a publishing contract appeared between the writers and the publishers the so-called publishing deal.

In Germany, after the Statute of Anne, it was Article 996 in the *Allgemeines Landrecht* that first determined the publishing rights, according to which a bookseller may obtain the publishing rights only on the basis of a written agreement entered into with the author. This started the development of copyright law in a different direction: it did not primarily defend the author, but approached from the side of commercial law and defined those rights and obligations of the publisher which are related to the publishing, reproduction and distribution of written works.[19]

In Hungary, the development of copyright law formed in the same way as in Europe. Originally, only printers with royal privilege had the right to publish. The struggle for the protection of authors and their works started in the reform era. A prominent figure in this struggle was Ferenc Toldy. He first formulated the criterion for writer ownership: "Everything we write on our

[18] C.Hesse: "A thought to be looked at like a piece of real property, says Fichte, some distinctive features should be given, so as to allow a single person, and only him, to recognize ownership."

[19] Florian Vogel: *Urheber- und Erfinderrechte im Rechtsverkehr.* Ebelsbach, Aktiv Druck Verlag GMBH, 2004. pp. 53–55

own, with our inner talent or with outside tools, while not violating others' rights, becomes our real and inalienable property; our belonging".[20]

The need for legislation was forced by the practice of reprint. Allegedly it was Ádám Takács, a reformed pastor, who drew the local council's attention to the fact that "the work of Paczkó printers, which publishes his funeral sermon speeches, is disgraced by Landerer printers by reprinting the entire volume…"[21] As a result, the royal patent in the subject of reprint was enacted by the Austrians in 1793. The patent punished domestic reprints and defined a compensation for the author. The patent did not cover the protection of books that were published abroad and reprinted in Hungary, but, extended the protection to the successor of the writer. The patent issued in 1794 has established reciprocity between Austria and Hungary: it intended to punish the Hungarian reprint of books published in Austria and vice versa.

These patents gave the opportunity for a variety of copyright protections, but they could not result in a long-term solution for Hungary. First, the jurisprudential background was missing which could actually give the protection to intellectual property. Secondly, there still lived the institution of prior censorship, which basically prevented the free communication of ideas.

By the initiative of Ferenc Toldy[22], the *Kisfaludy Társaság* had attempted to settle the matter in a legal way. The draft prepared by the *Társaság*, was reassessed by Bertalan Szemere. He presented this on the district meeting at the National Assembly on September 23, 1844. The Board of Orders and Arms and later the Board of Peerage accepted the draft of Szemere. The proposal was presented to the monarch as a parliamentary ruling, but it has not been sanctioned – perhaps because legislation with similar content was not yet ready for the hereditary provinces.[23]

In the preamble of his proposal, Szemere has the following reasons for the laws to protect copyright: "Science and art, especially in our age, belonging

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[20] Tamás Nótári: *A magyar szerzői jog fejlődése*. Lectum, 2010.

[21] Mór Kelemen: *Adatok az írói tulajdonjog hazai történelméhez*. Budapesti Szemle, 1869. XIV. p. 311

[22] "This property, which is violated by reprint, I consider one of the property rights based on natural law. Because if all this, what we get with our own talents without violating others' rights is our property not to be taken away. Ferenc Toldy: *Beszéd egy írójogi törvény ügyében*. in: *Toldy Ferenc irodalmi beszédei*. 1834–1872. Budapest, 1888. 2: pp. 304

[23] Legal history of copyright legislation in Germany see: Elmar Wadle: *Beiträge zur Geschichte des Urheberrechts*. Berlin, Duncker-Humblot: 2012.; Florian Vogel: *Urheber- und Erfinderrechte im Rechtsverkehr. E*belsbach, Aktiv Druck Verlag GMBH, 2004.

to the high conditions of life and well-being in the state, and we believe that neither one nor the other would be produced with enthusiasm and diligence if legal protection is not given to rights acquired with them … "[24]

The proposal by Szemere was the first to record: "Only the writer has exclusive rights, as they live, to publish, as original, his work in whole or in parts in print, lithography and engraving or by any means."

In this way Szemere would have granted exclusive rights to the author to dispose of his own works. This right included the arrangement between the living as well as the provisions in the event of death. With a between the living agreement, the author had the right to delegate the right of publishing his work to the publisher, and in case of his death, the author was entitled to make a will stating to whom he delegates the above-mentioned exclusive rights related to his intellectual creation.[25]

Considering the age, the provisions relating to the inheritance of copyrighted intellectual material is remarkable. If the author had never made a will about his work during his lifetime, then the rights of his copyright works goes to the author's legitimate heirs. For Szemere, the legal heirs also included, in contrast with the right of succession in this era as defined exclusively by customary law, the surviving spouse.

"If the author dies without a will, the full publishing rights of his work, under the laws of the personal assets earnings inheritance, go only to the descendant and ascendant blood lineal kinship and the spouse."

This meant that with assets, in the absence of a will, legitimate children, namely boys and girls can have an equal ratio for the legal succession. With the absence of lineal descendants, as acquired assets are concerned, the heir is the surviving spouse, in the absence of a spouse, the legitimate ascendants or sidelines step in as heirs.[26]

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[24] Balogh: p. 167

[25] "This right of his, the writer, between the limits of the law, shall as gift, sale and by other means for shorter and sometimes longer periods may delegate to others." in: Balogh: pp 170.

[26] Nánásy Benjamin: *A magyar polgárnak törvény szerént való rendes örökösse*. Pest, 1799.; Czövek István: *Magyar hazai polgári magános törvényről írtt tanítások*. II. Pest, 1822.; Frank Ignác*: A közigazság törvénye Magyarhonban*. I. Buda, 1845. In connection with this issue, it should be noted that the literature highlights, by Szemere's proposal of this section, that Szemere grants the surviving spouse private property rights and unlike the feudal practice does not provide a right of interest. However, Szemere speaks explicitly in the proposal as the inheritance of movable property earnings which is in the common law system of the given feudal age, with lack of children, meant that

This provision of the proposal demonstrates that for Szemere the intellectual creation under legal protection is the property of the author. This reflected the English, French, German literature with the concept of the subjective standpoint. This is important to be emphasized because with this the Hungarian legal practice accepted the position that an author's literary or scientific work, "intellectual creation" is the author's own, unique thing and his exclusive property.

However, the structure of this intellectual property is different, in two respects, from the ownership of things in a physical sense. The content of intellectual property can not be expanded indefinitely, even though the author may change his own work without limitation as long as his copyright for reproduction is not be given to the publisher. Therefore, the practice has evolved in the case of intellectual property protection that laws created later in time gave an exhaustive list of what intellectual works are given legal protection.[27] In judicial practice, however, the copyright protection in Hungary was provided in a general sense i.e. it was extended to all intellectual property, even if they are not identified in the law.[28]

Another limitation of this property right is that it is limited in time. In both continental and Anglo-Saxon jurisprudence copyright protection is a legally precisely defined period: covers the author's life and the period after his death. In Szemere's proposal this protection period was 50 years. This was considerably different from the existing practice in Western Europe at this time.[29]

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the surviving spouse had the right of inheritance. From this evolved in the civil era that the surviving spouse had the right not only to inherit movable property but also for unmovable property.

[27] Szemere's proposal: in Chapter I deals with the writer's works, chapter II. and IV. on plays, music works and the works of painting and drawing. in: Balogh.; 1884 Act XVI Chapter I deals with the writer's works, chapter II. and VI deals with music works, plays, public performance of music and musical theater works, the art works and maps, science, geometrical, architectural and other technical drawings and detailed diagrams and finally photographs. 1921 Act LIV deals with the writer's works music works, plays, public performance of music and musical theater works, the art works and maps, illustrations, maps, typographic illustrations, science, geometrical, architectural and other technical drawings with scientific relevance and detailed diagrams, sketches and plastic works, photographic works and cinematographic works. *Magyar Törvénytár*. Budapest

[28] Balás P. Elemér: p. 678

[29] Section 3. The writer's and his successor's exclusive rights, unless the law makes clear exception, always ends 50 years after the author's death. Compare Balogh, Mezei

After the suppression of the freedom uprising, together with the patent in November 1852 that enacted the Austrian Civil Code, came into force the 1846 Austrian patent, which regulated copyright for the hereditary provinces. This was in force in Hungary until 1861 until the PLR was formulated. The 1846 patent granted property rights to the authors and the term of protection was established in 30 years.[30]

This was the history of the provisions of the PLR which deals with the protection of the creations of the mind. Let's face it, the one-sentence provision of the PLR says almost nothing. Neither does it respond whether an individual intellectual work, created by the author, is his property, nor on how to regulate the question of reprint, nor the nature of inheritance. However, it should be emphasized that the wording: creations of the mind make a much broader interpretation possible for subjects that may fall under the legal protection of intellectual property then the proposal by Szemere. The exhaustive list of that one limited the law in what intellectual property is drawn into the scope of protection.

After the Austro-Hungarian Compromise, it was necessary that beyond the one-sentence PLR regulation, detailed standards are adopted by the Parliament to protect intellectual property.

This has become important, because Act XVIII 1848 stipulated the freedom of the press, which abolished censorship in Hungary. As stated in Section 1 of the Act, "everyone may communicate his thoughts freely through the press." The same law allowed the setting up of newspaper publishing and printing presses. Both activities are tied to placing a deposit. Instead of the censorship, it introduced the institute of afterwards liability, which meant that if someone has committed a libel, he was liable for the published misdeed within the framework of jury proceedings. Within the framework of progressive liability, first the author then the editor, then the publisher and finally the owner of the printing press was held accountable.

Article XXX, 1848 provided for the establishment of theaters and made sure that plays performed freely.

The freedom of the press, the possibility to establish a printing press and the freedom of theatre operation are closely related to the protection of intellectual property. The judicial practice, in the absence of appropriate legislation was unable to handle the increasingly frequent law violations. The solution was seen in the upcoming commercial law.

[30] Mezei.p. 8

However the law in the regard of copyright lagged behind expectations. Article XXXVII, 1875 regulated the publishing legal business as a special contract as part of the commercial transactions.[31] It held that "a business by which a person (the publisher) acquires exclusive rights from an author or his legal successor to reproduce, publish and sell finished or unfinished literary, technical or art work that business is a publishing business. If this provision is compared with the first section of the initial Szemere proposal, it is easy to see that while in the proposal of Szemere it is the writer's right to determined what he wants to do with his work in his life, in the Commercial Law, because of safety of commerce, the issue is regulating from the side of the publishers, and the publishers are granted exclusive right for the reproduction of intellectual property. Thus, the commercial law puts the protection of intellectual property on an entirely physical, material basis.[32]

The emerging literary and intellectual life representatives were not satisfied with the amenities covered by the law, and it is due to this, that the *Kisfaludy Társaság* and the Hungarian Academy of Sciences established a committee to develop a draft. The Committee requested Laszló Arany to work out the draft, who published his proposal in the *Budapest Szemle*. By the revision of this work was the XVI, 1884 copyright law completed.

The provisions of this law are very similar Szemere's proposal. It confirms the author's exclusive rights, ensures that the author has rights over the disposal of his intellectual property both in his life and in his death and regulates the inheritance of copyright.[33]

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[31] *Magyar Törvénytár*, 1875: XXXVII. Articles: 515. - 533.

[32] In the last third of the 19th century in Hungary similar legal-dogmatic issues were debated similarly to Western Europe at the turn of the 18-19 century.

[33] 1884: Act XVI. Article 1 "The mechanical reproduction of the writer's art, publishing and putting into circulation, within the protection time set by the present law, is the exclusive right of an author. Section 3. The author,s right, in event of contract or action taken for death, either indefinitely or with limits is transferable. In the absence of such action, the author's right is transferred to the legal heirs. Section 11. "The protection that is provided by this Act against infringement of copyright is valid for the author,s whole life and after his death for 50 years. Compare Kolosváry: What is meant by literary works? The law does not specify which, with the considerable clarity and common sense of the concept, is a difficulty if the nature of the writer's work and the fine arts occurring together with a spiritual work is a question whether it is writer,s work or artwork. In general, writers work is to be understood as any intellectual creation which has been written in words or markings (writing notes, score notes), so may be made in writing and shall be made in writing as well." pp. 234

The violation of copyright should be mentioned. Szemere called this "false publishing", and gave an exhaustive list of activities which were in this scope. [Articles 12-13]

Szemere stipulated the punishment of the perpetrators doing false publishing as follows: "*All who violates these rights in this article by publishing, or such action which is regarded as false publishing under this Act, shall be fined by HUF 600 to be paid to the national museum, additionally forced to full compensation of the damage to the rights holder.*"[34]

In contrast, XVI, 1884 already stipulates the infringements of copyright: "The mechanical reproduction, publication and sales of a writer's work, if made without the consent of the rights holder, is an infringement of the copyright and prohibited." Subsequently, this Law also gives an exhaustive list of deeds, which may be within the scope of the infringement.

Perpetrators of the infringement were punished in accordance with the law:

"*Who wilfully or negligently commits infringement of copyright, shall be penalized for this crime up to HUF 1000 in addition to the damages payable to the author or his successors*".

As the two are compared, it may be concluded that in addition to the complete damages payable to the author, perpetrators of the copyright infringement are threatened to fines. The 1884 Act also ordered the confiscation of unlicensed reproduced copies.

The amendments of this law were forced out partly by the domestic judicial practice and partly by international jurisprudence. It has become necessary, at the turn of the 19th and 20th century, to settle the copyright law in international agreements between individual states. This gave rise to the so-called Berne Convention in 1886, which was codified in Hungary by Article XIII, 1922. This was complemented by the Rome Convention in 1908 (Article XXIV, 1931).

"*If the Convention provides for the benefit of the author a right that is not recognized by a country's domestic law, then, for foreign works, this country shall apply the provisions of the Convention even in cases when the foreign works enjoy a better protection than the domestic works*".[35]

That is why the National Assembly amended the 1886 Act and Act LIV 1921 was created. This again did not specify what is understood by a writer's work, however, the Act listed the exact cases of copyright infringements and regulated its legal consequences.

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[34] Balogh: p 171.

[35] Alföldy: p 475

"Anyone who intentionally or negligently infringes the copyright commits a misdemeanour and shall be fined up to eighty thousand crowns; also the perpetrator shall give monetary compensation (damages) for the material and non-material damage for the victim. The compensation shall not be less than the wealth acquired by the perpetrator." Act LIV 1921 Section 18)

Copyright protection, its content and scope was developed by the Curia during its case-law practice. It said the following: "copyright protection is given only to those works which works bear the creator's separate, unique and individual marks. [Curia P.I. 277/1930, 1634/1934]

The law on copyright protection is bound to publicity. What do we understand by publicity? The concept of publicity in the copyright sense has been developed partly by legal literature and partly by judicial practice.

"Falls within the definition of public performance, in the copyright sense, a performance which goes beyond the scope of the family environment and marital domesticity, in which case the performance shall be regarded as public, even if in the attendance of the performance was not tied to buying a ticket and the a number of persons attended was limited."[36]

In respect of copyright the Rome Convention stated that "the taking of literary and scientific articles that appear in the press is unconditionally banned." It has made it clear that if someone has published his scientific research results then starting from the moment of publication he reported results are under legal protection. It was forbidden for anyone to take it or communicate it because that infringed the right of the author for his intellectual property and under the provisions of the law infringement had been committed.

Let,s return to the case of Albert Szent-Györgyi. It can be seen that in 1932, when he calls for plagiarism Act LIV 1921 was in force in Hungary covering copyright protection. In 1886, Hungary joined the international Berne Convention, and in 1931 the Rome Convention providing intellectual property protection in the international scene. This meant that in the international scene for professor C.G. King the same rules applied than for Szent-Györgyi in Hungary.

At the beginning of the lecture, I broke off the story by saying that after the letter from Joe Svirbely, King replied to his scholar on March 15, 1932 stating that he has not yet identified vitamin C. However, in April 1, 1932, King published an article in the scientific journal Science, also published it in April 5 in the New York Times, declaring that he had found vitamin C.

[36] compare. Kúria P.I. 980/1928. *Grill-féle új Döntvénytár.* 1928. Budapest, Grill ;

When Szent-Györgyi says to his scholar to inform his professor on the results of their research work, on March 18, 1932, before King makes his announcement in the New York Times, Szent-Györgyi says on the Hungarian Medical Association meeting that "for the first time we say it in public that vitamin C is the same as hexuronic acid." The publicity announcement does not specifically require a publication in a scientific journal or other periodical. According to the official of the Rockefeller Foundation: 24 March 1932: Szent-Györgyi announced that vitamin C has been found and later on 16 April 1932, Szent-Györgyi made his announcement to the journal Nature in which he describes his experiments and states that hexuronic acid is identical with vitamin C.[37]

It cannot be denied that the announcement in Science that vitamin C is the same as hexuronic acid had happened earlier in time. However, Szent-Györgyi was right that this article did not contain anything more than what Svirbely's letter described and the letter did not included the description of experiments and the concomitant results.

The primacy goes to Albert Szent-Györgyi. But this still did not convince the scientific public. If we read the study by C. G. King published in the journal Science, it may be concluded that it contains nothing more than what was formulated in Svirberly's letter i.e. a mere claim. The research process, which Szent-Györgyi made his scholar redo, was published only by Szent-Györgyi in Nature.

There's another issue what should be referred to briefly in the context of this story. Beyond copyright, intellectual works have another area too. In Szent-Györgyi's era this was referred to as patent law, now more widely known as industrial property protection. "Patent law i.e. copyright law on inventions, is an amendment on personality protection. […]

All commercially marketable new invention can be the subject to patent law."[38] The laws regulating this legal institution have also come a long way. In terms of our topic, Act XXXVII, 1895 is relevant. Here also prevail those international treaties that bind both professor King and professor Szent-Györgyi.

As the issue of primacy has not been decided for a long time, in 1933, King submitted a patent application, which was rejected by saying: "The appellants were not the first to discover or produce in a pure form hexuronic acid, which is identical to vitamin C. They did not discover that vitamin C is the specific medication of scurvy. The appellants argue however that the invention that hexuronic acid is the same as vitamin C should be considered a discovery. If

[37] R. W. Moss: pp. 100–102

[38] Kolosváry: p 240.

this material had not been known when the appellants isolated it, this claim could not be questioned. However, they produced a substance that had been known to the profession from Szent-Györgyi's publications."[39]

The aim of the presentation was to show how the science of law can help to protect the scientific results. In the 21st century, when researchers are forced to publish scientific results even faster, it is particularly important to know that the law, with its own tools, can help to protect a researcher's intellectual property, but for that moral attitude of the people in the scientific life is also necessary. It must not be forgotten that the most important thing is that people respect the moral norms because the violation of these cannot be prevented with legal tools only a later remedy may be possible.

[39] R. W. Moss: p. 105