

Hungary Intellectual Property Rights Agreement

AGREEMENT ON INTELLECTUAL PROPERTY

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF HUNGARY

The Government of the United States of America and the Government of the Republic of Hungary agree as follows:

ARTICLE I

GENERAL OBLIGATIONS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets and layout designs for integrated circuits by, inter alia, giving effect to the international agreements to which both are Parties, including this Agreement, in particular to the substantive provisions of:

(a) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention)

(b) the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) as revised at Paris in 1971; and

(c) the Paris Convention for the Protection of Industrial Property (Paris Convention) as revised at Stockholm in 1967.

2. Each Party shall endeavor to become a Party to future international agreements that it considers will promote the protection of intellectual property.

3. Each Party shall accord to the nationals of the other Party treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property, including trade secrets, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

4. Parties may avail themselves of the exceptions permitted under paragraph 3 of this Article in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Party, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

ARTICLE II

COPYRIGHT AND RELATED RIGHTS

1. Each Party shall protect the works listed in Article 2 of the Berne Convention (Paris 1971) and any other works now known or later developed, that embody original expression within the meaning of the Berne Convention, including but not limited to the following:

(a) all types of computer programs (including application programs and operating systems) expressed in any language, whether in source or object code which shall be protected as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works and works created by or with the use of computers; and

(b) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected if they constitute intellectual creation by reason of the selection, coordination, or arrangement of their contents.

Rights in works protected pursuant to paragraph 1 of this Article shall include, inter alia, the following:

(a) the exclusive right to make or to authorize the first public distribution, including importation, of the original or each authorized copy of a work by sale, rental, or otherwise;

(b) the exclusive right to authorize or prohibit the commercial rental of the original or a copy of a computer program after the first public distribution of that program; and

(c) the exclusive right to make or to authorize the public communication of a work (e.g., to perform, project, exhibit, broadcast, transmit, or retransmit a work); the term "public communication" shall include:

(i) communicating a work in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(ii) communicating or transmitting a work, a performance or a display of a work, in any form, or by means of any device or process to a place specified in clause (c) (i) of paragraph 2 of this Article or to the public, regardless of whether the members of the public capable of receiving such communications can receive them in the same place or separate places and at the same time or at different times.

3. Each Party shall extend the protection afforded under paragraph 2 of this Article to authors of the other Party, whether they are natural persons or, where the other Party's domestic law so provides, companies and organizations, and to their successors in title.

4. Each Party shall permit protected rights under paragraph 2 of this Article to be freely and separately exploitable and conferrable.

5. In cases where a Party measures the term of protection of a work from other than the life of the author, the term of protection shall be no less than 50 years from authorized publication or, failing such authorized publication within 50 years from the making of the work, 50 years after the making.

6. Each Party shall confine any limitations or exceptions to the rights provided under paragraph 2 of this Article (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

7. Each Party shall ensure that any compulsory or nonvoluntary license (or any restriction of exclusive rights or a right of remuneration) shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

8. Each Party acknowledges its Article 6bis obligations under the Berne Convention for the Protection of Literary and Artistic Works and provides for these rights through its copyright law or by other federal law, state law or common law principles.

9. Each Party shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(a) the direct or indirect reproduction of the recording by any means or process in whole or in part; and

(b) the exercise of the distribution, including importation and rental, as provided in subparagraph 2(a) of this Article; and

(c) the authorization or prohibition of the commercial rental of the original or a copy of a sound recording after the first public distribution of that sound recording. The rental right shall leave intact and shall in no way affect the protection of literary and artistic works embodied in any sound recording.

10. Paragraphs 3, 4, and 6 of this Article shall apply mutatis mutandis to sound recordings.

11. Each Party shall:

(a) protect sound recordings for a term of at least 50 years from first fixation, and

(b) apply this agreement to all sound recordings which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through expiry of the term of protection. If, however, through the expiry of the term of protection which was previously granted, a sound recording has fallen into the public domain in the country where protection is claimed, that sound recording shall not be protected anew.

12. Parties shall not subject the acquisition or validity of intellectual property rights in sound recordings to any formalities, and protection shall arise automatically upon creation of the sound recording.

ARTICLE III

TRADEMARKS

Protectable Subject Matter

1. Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one national, company or organization from those of other nationals, companies or organizations.

2. The term "trademark" shall include service marks, collective and certification marks. For purposes of this Agreement, protection for certification marks may be provided under provisions for the protection of service marks.

Acquisition of Rights

3. A trademark right may be acquired by registration or by use. Each Party shall provide a system for the registration of trademarks. Use of a trademark may be required as a prerequisite for registration.

4. Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

Rights Conferred

6. The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all other parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

7. Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that the reputation of the well-known trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

8. The owner of a trademark shall be entitled to take action against any unauthorized use which constitutes an act of unfair competition or passing off.

Term of Protection

9. The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years when conditions for renewal have been met. Initial registration of a trademark shall be for a term of at least 10 years.

Requirement of Use

10. If use of a registered mark is required to maintain trademark rights, the registration may be canceled only after an uninterrupted period of at least two years of non-use, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

11. Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder (such as import restrictions or other government requirements for products protected by the trademark) which constitute an obstacle to the use of the mark.

Other Requirements

12. The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

Compulsory Licensing

13. Compulsory licensing of trademarks shall not be permitted.

Transfer

14. Trademark registrations may be transferred.

ARTICLE IV

PATENTS

Patentable Subject Matter

1. Patents shall be available for all inventions, whether products or processes, in all fields of technology, with the exception of any invention which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon.

2. Parties may exclude from patentability

(a) inventions, prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, and

(b) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body.

Rights Conferred

3. A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

4. Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer at least in one of the following situations:

(a) the product is new, or

(b) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used. (When the patented process is the only one known, a substantial likelihood exists, *prima facie*.)

In gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

5. A patent may only be revoked on grounds that would have justified a refusal to grant the patent.

Exceptions

6. Parties may provide limited exceptions to the exclusive rights conferred by a patent, such as for acts done for experimental purposes, provided that such exceptions do not unreasonably conflict with normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner taking account of the legitimate interests of third parties.

Term of Protection

7. Each Party shall provide a term of protection of at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent.

Transitional Protection

8. Subject to the exceptions provided in paragraph 9 of this Article, the Government of Hungary agrees to provide protection in the form of exclusive marketing and manufacturing rights for any U.S. pharmaceutical product that was not eligible for product patent protection in Hungary but is claimed in a U.S. patent, based on a priority filing date on or before the date that is twelve months prior to the date on which patent protection for pharmaceutical products becomes available in Hungary and not earlier than January 1, 1987. The term of such protection shall expire at the same time as the original term of the U.S. patent in which that product is claimed. A request to obtain transitional protection provided under this paragraph must be submitted to the competent Hungarian authority within one year from the date on which patent protection for pharmaceutical products comes into effect in Hungary.

9. A product will be excluded from protection under paragraph 8 of this Article if:

(a) it was marketed in Hungary prior to the date on which patent protection for pharmaceutical products comes into effect in Hungary, or

(b) it was manufactured in Hungary prior to the date on which patent protection for pharmaceutical products comes into effect in Hungary provided that:

(i) the right to manufacture such product shall be exclusive to the company of manufacture at the time patent protection for pharmaceutical products comes into effect and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license; and

(ii) the manufacturer of such product must provide proof that it was in fact manufacturing such product prior to the date on which product patent protection becomes effective in Hungary. Such proof must be in the form of a certificate of Good Manufacturing Practices or other Government document completed prior to the date on which product patent protection becomes effective in Hungary.

10. In cases where the provisions of paragraphs 8 and 9 of this Article affect rights acquired by patent owners under the present Hungarian patent law before the product patent protection comes into effect, either Party may request consultations. The other Party agrees to consult promptly. Such consultations would be held with a view to identify the ways and means by which such acquired rights and the rights of patent owners acquired pursuant to paragraphs 8 and 9 of this Article could be exercised and the interests of the owners of the respective rights could be substantiated.

Compulsory Licenses

11. Where the law of a Party allows for use of the subject matter of a patent, other than use allowed under paragraph 6 of this Article, without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

- (a) authorization of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized;
- (d) such use shall be non-exclusive;
- (e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) any such use shall be authorized predominately for the supply of the domestic market of the Party authorizing such use,
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Party;
- (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Party;
- (k) Parties are not obligated to apply the conditions set forth in sub-paragraphs (b) and (f) above where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;
- (l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent") the following additional conditions shall apply:
 - (i) the invention claimed in the second patent shall involve an important of considerable economic significance in relation to the invention claimed in the first patent;
 - (ii) the owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent; and
 - (iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

12. Patents shall be available and patent rights enjoyable without discrimination as to the field of technology and whether products are imported or locally produced.

ARTICLE V

LAYOUT-DESIGNS OF SEMICONDUCTOR CHIPS

1. Each Party shall provide protection for original layout-designs incorporated in a semiconductor chip, however the layout-design might be fixed or encoded.

2. Each Party may condition protection on fixation or registration of the layout-design. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

Rights Acquired

3. Each Party shall provide to right-holders of integrated circuit lay-out designs of the other Party the exclusive right to do or to authorize the following:

(a) to reproduce the layout-design;

(b) to incorporate the layout-design in a semiconductor chip; and

(c) to import or distribute a semiconductor chip incorporating the layout-design and products including such chips.

4. The conditions set out in paragraph 11 of Article IV of this Agreement shall apply, *mutatis mutandis*, to the grant of any compulsory licenses for layout-designs.

Neither Party is required to extend protection to layout-designs that are commonplace in the industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

6. Each Party may exempt the following from liability under its law:

(a) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of preparation of: a layout-design that is itself original;

(b) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(c) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected, provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock, but is liable for a reasonable royalty on the sale of each item after notice is received.

Term of Protection

7. The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the design, if required, whichever is earlier.

ARTICLE VI

ACTS CONTRARY TO HONEST COMMERCIAL PRACTICES

AND THE PROTECTION OF TRADE SECRETS

1. In the course of ensuring effective protection against unfair competition as provided for in Article 10bis of the Paris Convention, each Party shall provide in its domestic law and practice the legal means for nationals, companies and organizations to prevent proprietary information from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices insofar as such information:

(a) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(b) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(c) has been subject to reasonable steps under the circumstances to keep it secret.

Duration

2. Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph I of this Article exist.

Licensing

3. Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

Government Use

4. Parties, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Parties shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

ARTICLE VII

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall ensure that enforcement procedures are available under its national civil, criminal or administrative laws so as to permit effective action against any act of infringement of intellectual property rights that are covered by this Agreement, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringement. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

3. Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

4. Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in national laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on merits of a case concerning the protection of an intellectual property right shall also be provided.

5. Notwithstanding the other provisions of this section, when a Party is sued for infringement of an intellectual property right as a result of public, non-commercial use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

ARTICLE VIII

NATIONAL SECURITY EXCEPTION

The provisions of this Agreement shall not be construed to prevent either Party from taking any action obligations under the United Nations Charter for the maintenance of international peace and security or which it considers necessary for the protection of its essential security interests:

(a) relating to fissionable materials or the materials from which they are derived;

(b) relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as carried on directly or indirectly for the purpose of supplying a military establishment; or

(c) taken in time of war or other emergency in international relations.

ARTICLE IX

CONSULTATIONS

The Parties agree to consult promptly at the request of either Party upon any matter concerning the interpretation, implementation or operation of this Agreement. The Parties further agree to work constructively toward a resolution of any problems that may arise in this regard.

ARTICLE X

RELATIONSHIP TO OTHER OBLIGATIONS

1. Nothing in this Agreement shall be construed to prevent Hungary from honoring its commitments in Article 65 and Annex XIII of the Europe Agreement concluded with the European Communities on December 16, 1991.
2. Nothing in this agreement shall be construed to prevent Hungary from formulating and/or adjusting its national laws and regulations relating to the protection of intellectual property in accordance with its commitment under the Europe Agreement concluded with the European Communities on December 16, 1991, to ensure conformity with the European Communities' regulations, decisions, directives, and European Court decisions, the taking over or application of which is binding for EC Member States. If European Communities regulations, decisions, directives, and European Court decisions allow choice as to the manner of their implementation, including a possibility that ensures that the obligations of this Agreement are maintained, Hungary will exercise its rights under this paragraph in a manner that gives effect to the provisions of this Agreement.
3. In the event that either Party believes that the exercise of Article X would contravene an obligation in this Agreement, that Party may request consultations. The other Party agrees to consult promptly on this Agreement are maintained to the extent possible.

ARTICLE XI

IMPLEMENTATION

Each Party agrees to submit for enactment no later than December 31, 1993, the legislation necessary to carry out the obligations of this Agreement, and to exert its best efforts to enact and implement this legislation by June 10, 1994.

ARTICLE XII

DEFINITIONS

For purposes of this Agreement:

- (a) "right-holder," means the right-holder himself; any other natural or legal persons authorized by the rightholder, who are exclusive licensees of the right; or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights; and
- (b) "a manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

ARTICLE XIII

TERM AND TERMINATION

1. This Agreement shall enter into force upon exchange of diplomatic notes by the Parties. It shall remain in force for an initial period of five years and shall continue in force unless terminated in accordance with paragraph two of this Article.
2. Either Party may, by giving one year's written notice to the other Party, terminate this Agreement at the end of the initial five year period or at any time thereafter.

3. The protocol shall form an integral part of this Agreement.

IN WITNESS WHEREOF, the respective representatives have signed this Agreement.

DONE in duplicate at Washington, D.C. on the 24th day of September, 1993.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: FOR THE GOVERNMENT OF THE REPUBLIC OF HUNGARY:

[signature of Charlene Barshefsky]

[signature of Bela Kadar]

PROTOCOL

1. Public Performance --Right of Display

It is understood that the right to exhibit includes a right to display the copyrighted work publicly.

2. National Treatment --Performers and Producers of Phonograms

It is understood that the United States and Hungary protect performers and producers of phonograms without any criteria of nationality.

3. Enforcement --Article VII

It is understood that the provisions of this Article do not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws in general, nor does it affect the capacity of a Party to enforce its laws in general.

4. Regulatory Approval of Products

The Parties agree that the following procedure is in conformity with the provisions of paragraph 4 of Article VI of this Agreement:

When applying for an application for marketing approval of a generic product, the applicant (the "second" submitter) can prove the equivalence of its own product with the original one, on the basis of a sample of the commercially available original product, while referring to the original documentation if needed.

When deciding on the approval of the "second" application, the competent authority bases its decision on the examination of the documentation attached to this application.

During the procedure the authority in question does not reveal any information in any form on the documentation of the original product.

Washington, September 24, 1993

Dear Mr. Minister:

I have the honor to provide the following information regarding performers' rights in the United States.

In the United States performers are eligible to be joint authors of a sound recording under the copyright law, and thus foreign performers are entitled to national treatment under Article 5 of the Berne Convention. In addition, state courts and legislators have taken strong steps to protect performers against the unauthorized fixation of their performances without regard to international obligations of the United States --thus extending the protection of United States law to performers of all nationalities regardless of where the performance took place, provided that some restricted act occurred within the jurisdiction of a relevant court.

Two underlying principles of the protection of performers' rights in the United States deserve mention. The first is that the ability of a performer to prevent unauthorized fixations and reproductions of his or her live performance is deemed to be so fundamental that legislators and courts alike are willing and prepared to find creative solutions to ensure basic fairness and justice. The second, in many respects related to the first, is that because

such protection is so fundamental, it is not tied to reciprocity or obligations under existing international conventions. The nationality of the performer and the location of the performance have no relevance to any determination under United States law. Under the statutes referenced herein, the analysis is simple. If a person fixes the sounds of a live performance, or reproduces, distributes, or sells such a fixation, he or she commits an offense that in many states is punishable by up to five years imprisonment and/or a fine of up to \$250,000. United States law would obviously have no application to acts committed outside the jurisdiction of United States courts, but it would give rise to cognizable offense if the reproduction, distribution or sale were committed in a territory within the jurisdiction of a relevant court, even if the actual fixation was lawful but nonconsensual under the relevant law of the place where that act occurred.

Whereas U.S. copyright law at a federal level does not protect against the unauthorized fixation and reproduction of the sounds of a live performance unless such sounds were simultaneously fixed with the consent of the performer, many states have undertaken to provide specific statutory remedies against such activities, and to ensure that performers or their agents can take effective action to prohibit such unauthorized fixation and reproduction.

Honorable Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

As of today, there are twenty-six states that have criminalized the unauthorized fixation of live performances, on the reproduction, distribution or sale of such fixations made without the consent of the performer. These include the critical states of New York, Illinois, Tennessee, Texas and California. Interested parties have targeted an additional fourteen states for legislation this year which would bring the number of states to 40. The twenty-six states with existing statutes constitute nearly seventy percent of the population in the United States, and an even larger percentage of the record buying public. If laws are passed in the fourteen targeted states, they would cover an additional twenty-six percent of the U.S. population.

In addition to these statutory provisions, there is a burgeoning body of law emanating from principles of common law copyright, unfair competition and rights of publicity, that recognizes a property interest of a performer in the sounds of her or her voice and his or her physical likeness, and to control the commercial exploitation of these interests. Recent cases have expanded this property interests to include misappropriation of the likeness of a performer's voice, even when the actual sounds have not been created by the aggrieved performer.

I would be grateful if you would confirm the receipt of this information by your government.

Sincerely,

[signature]

Charlene Barshefsky

Deputy United States Trade Representative

Washington, September 24, 1993

Dear Mr. Minister:

I have the honor to provide the following information regarding protection of moral rights in the United States.

When the United States Congress agreed to adhere to the Berne Convention for Literary and Artistic Works, it was determined that current federal, state and common law provided sufficient protection to meet the test of Article 6bis. The Ad Hoc Working Group on U.S. Adherence to the Berne Convention (convened by the State Department) concluded in its final report that:

Given the substantial protection now available for the real equivalent of moral rights under statutory and common law in the U.S., the lack of uniformity in protection of other Berne nations, the absence of moral rights provisions

in some of their copyright laws, and the reservation of control over remedies to each Berne country, the protection of moral rights in the United States is compatible with the Berne Convention.

The Ad Hoc Group's final report identified those various federal and state laws which meet the test of Article 6bis and their conclusions were reprinted in the House and Senate committee reports.

The Ad Hoc Group's report noted two sections of the copyright act: sections 106 (2) [the right to prepare derivative works] and 115 (a) (2) [the mechanical license for phonorecords].

The Ad Hoc Group also identified the Lanham Act (federal law), state statutes and state and federal decisions "protecting various rights equivalent to those granted in Article 6bis under state common law principles," including contract, unfair competition, tort, libel, and right of privacy/publicity.

In December 1990, Congress enacted the Visual Artists Rights Act (Pub. L. 101-650), which created additional federal moral rights for certain classes of works -- known as "works of visual arts." The law creates a new section 106A establishing new rights of attribution and integrity, in a unified federal system, effective June 1, 1991. The right of attribution (also called a right to paternity) includes the right to claim authorship or to disclaim authorship -- to have one's name removed from a work. The right of integrity creates a right to prevent the intentional distortion,

Honorable Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

mutilation, and other modification of a work which would be prejudicial to the honor or reputation of the author. The new federal rights run for the life of the author (the state laws go into force after the life of the author). The new rights also preempt all legal or equitable rights that are equivalent to any of the rights conferred by section 106A.

I would be grateful if you would confirm the receipt of this information by your government.

[signature]

Charlene Barshefsky

Deputy United States Trade Representative

Washington, September 24, 1993

Dear Mr. Minister:

I have the honor to confirm the receipt of your letter dated September 24 describing Hungary's current practice regarding contract rights for copyright.

The United States would regard any deviation from Hungary's current practice as described in your letter with respect to rights and benefits provided now and in the future as a serious matter that would require immediate consultations.

[signature]

Charlene Barshefsky

Deputy United States Trade Representative

Honorable Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

Washington, September 24, 1993

Dear Mr. Minister:

I have the honor to confirm receipt of your letter dated September 24, regarding the proposed amendments of Hungarian legislation that will be submitted to conform with the Agreement on Intellectual Property of September 24 between our countries.

[signature]

Charlene Barshefsky

Deputy United States Trade Representative

Honorable Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

Washington, September 24, 1993

Dear Madame Ambassador:

I have the honor to inform you that in order to give effect to the provisions of the Agreement on Intellectual Property concluded on September 24, 1993 between the United States of America and the Republic of Hungary, the Government of Hungary will submit, in conformity with Article XI, to the Hungarian Parliament the proposed amendments of legislation with respect to the following laws:

Article I I, paragraph 9.

b, new rights to be introduced in the Hungarian Copyright Act (Law No.III. of 1969 as amended by the Law Decree No.27. of 1978, HCA)

c, new rights to be introduced in the HCA

Article I I, paragraph 11.

a, new term of protection to be introduced in the HCA

b, to be added to the HCA

Article IV, paragraph 1. (Patentable Subject Matter)

Article 6, paragraph 3a, of the Law on the Protection of Inventions by Patents (Law No II. of 1969. as amended (HPL)) to be amended

Article 3 paragraph 1 of the Joint Decree No. 4/1969 (XII.28.) of the National Committee for Technical Development and of the Minister of Justice, as amended on the implementation of the HPL (HPD) to be amended

Article IV, paragraph 4. (Burden of Proof)

Article 6 of the HPD to be amended

Article IV, paragraph 8. (Transitional protection)

The law on the amendment of the HPL to contain provisions relating to transitional protection.

Article IV, paragraph 11. (Compulsory Licenses)

Article 21-23 of the HPL and eventually Article 9 of the HPD to be revised.

Honorable Charlene Barshefsky

Deputy United States Trade Representative

The Government of Hungary does not intend to initiate changes in the legislation concerning other provisions of the above Agreement, as the existing legislation is considered to be in conformity with those provisions.

I would be obliged if you could confirm that the United States take note of the contents of this letter.

Please accept, Sir, the assurances of my highest consideration.

Sincerely,

[signature]

Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

Washington, September 24, 1993

Dear Madame Ambassador:

I have the honor to provide the following information regarding contract rights in Hungary.

The national treatment principle, the cornerstone of the Berne Convention (Article 5(1)), applies unequivocally to all rights under copyright (authors' rights) and benefits flowing from those rights. Benefits include the same possibility to exploit and enjoy rights in the national territory of a country of the Berne Convention as the respective country grants to its own nationals. Additionally, Hungarian legislation provides protection for performers, producers of phonograms and broadcasting organizations as related rights without any criteria of nationality.

Therefore, Hungary gives effect to foreign, including U.S., voluntary agreements on copyright, including employment contracts, but the copyright terms of the contract are interpreted according to Hungarian copyright law (national treatment). The legal persons considered under certain foreign laws as original owners of copyright are regarded as successors in title; the assignment is considered as exclusive license without territorial or time limitation. The same principle applies to contracts concerning related rights. The scope of the conferred economic rights is, generally, not limited by these Hungarian laws. In special cases, however, there may be certain limitations applicable to owners and users of copyright (e.g., moral rights)

I would be grateful if you would confirm the receipt of this information by your government.

Sincerely,

[signature]

Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

Honorable Charlene Barshefsky

Deputy United States Trade Representative

Washington, September 24, 1993

Dear Madame Ambassador:

The Government of Hungary agrees to consult promptly at the request of the Government of the United States with respect to your letter in response to my letter describing Hungary's current practice regarding contract rights for copyright dated September 24, 1993.

Sincerely,

[signature]

Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

Honorable Charlene Barshefsky

Deputy United States Trade Representative

Washington, September 24, 1993

Dear Madame Ambassador:

I have the honor to confirm receipt of your letter dated September 24, regarding United states current practices with respect to the protection of performers' rights.

Sincerely,

[signature]

Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

Honorable Charlene Barshefsky

Deputy United States Trade Representative

Washington, September 24, 1993

Dear Madame Ambassador:

I have the honor to confirm receipt of your letter dated September 24, regarding United states current practices with respect to the protection of moral rights.

Sincerely,

[signature]

Bela Kadar

Minister of Foreign Economic Relations

Republic of Hungary

Honorable Charlene Barshefsky

Deputy United States Trade Representative

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.

