SUMMARIES

WILL THE CUT HEAD OF THE DRAGON ALWAYS BE REPLACED BY TWO NEW ONES? THE FIGHT AGAINST FILE SHARING IN THE LIGHT OF THE RESPONSIBILITY OF P2P SERVICE PROVIDERS, USERS AND INTERNET SERVICE PROVIDERS

Péter Mezei

The article tries to examine a basic dilemma of the copyright law of our ages, the problems of file sharing, from a comparative aspect. In order to do this it is necessary to introduce the importance and effects of file sharing, and the distinction between the P2P technologies and "traditional" file sharing. It is possible only after this to bed this type of use into the adequate social and legal context. Following this the article introduces the liability of the developers of file sharing programs, and the other promoters of uses executed by P2P software, that is, operators of websites and databases acting as search engines and content providers. The liability of the operators of the three generations of file sharing seems to be practically the same: in all the inquired countries they bear liability, although under different regulations, for the infringements committed by the users. The second part of the article starts with the discussion of the liability of private users for their activity. The introduction of the rules of private copying exception has a significant emphasis here. It is a central question of the legal procedures against the private individuals, and generally the debates on file sharing, whether it is also an infringement, if someone downloads a song with the help of a P2P application for private purposes (and without the aim of making profit of it). The answer should be given in the light of the dynamics of file sharing. Since it is an essential element of file sharing to share (upload) the downloaded files simultaneously, therefore the private individuals can hardly refer to the privilege of free use exceptions in the continental regimes, or to the fair use doctrine in the United States. Besides this the responsibility of internet service providers for the prevention of illegal activities earned a great echo in the past few years. The latest developments of this area, throwing light on the uncertainties (mainly that arose from the French HADOPI statute) are summarized. Finally the last chapter gathers those manifestations that may be able to change the present social and legal deadlock. One thing is sure: file sharing is unstoppable. The only question is whether it can be effectively used for the benefit of both the society and the right holders, or (as the deepening of the "war") should the sword of the right holders chop off any head from the fictive dragon, there may grow always a new one.

AGAIN OF MARKS WITH REPUTATION: ECJ'S INTEL JUDGEMENT

Dr Sándor Vida

The INTEL mark has huge reputation relating to microprocessor products, multimedia and business software. It's owner requested declaration of invalidity of the INTELMARK trademark, registered for marketing and telecommunication services. The application was dismissed by the Hearing Officer of the British Trademark Office, as well by the High Court of Justice. The owner of the INTEL mark filed appeal arguing that both Article 4(4)(a) and Article 5(2) of the Trademark Directive protect marks with reputation against dilution. The Court of Appeal requested ECJ's preliminary ruling. As there were some precedent cases, the new question was whether at the average consumer a „link" ought to be established between the prior mark and the later one to grant protection for the reputed mark. The judgement (C-252/07) contains helpful series of statements in respect of the „link". – Commentaries of *Hunt* and *Kemp*, *Engelman*, *Nurton*, *Porter* and *Albertini*, *Knaak*, *von Mühlendahl* are summarized. – Finally the case ZARA is reported, in that the Hungarian Patent Office, considering the opposition refused protection to the sign Zara Hotel, referring to the famous mark ZARA used for clothing.