THE ISSUE OF THE DEFINITION OF “SOUND RECORDING” IN THE SLOVAK AND CZECH LEGISLATION

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Abstract: Sound recording a posteriori Slovak as well as Czech legislation represents the unity of the recorded information and the medium in which the information is stored. However, the medium of audio information can take various forms. This diversity is on the one hand determined by the technical development and on the other hand by the fact that the term “sound recording” can be interpreted broadly, which means that under the term “sound recordings” need not be understood only carriers of audio information that are directly reproducible by means of a technical equipment intended for sound reproduction but even such objects which are already technically outdated (e.g. musicboxes or automatic musical instruments) or that are relatively new but specific or rare (e.g. music roads). Therefore in some case unclear or imprecise definition of “sound recording” may lead to doubt whether a particular object ought to be protected as a sound recording or not.

Keywords: Intellectual property, sound recording, legislative definition, Slovak regulation, Czech regulation

1. Sound recording, phonorecord or phonogram?

The collocation “zvukový záznam”² is usually translated in English as: “sound recording” or “phonogram”. A slian more complicated form “phonorecord of sound recording” could be also used. Translations of Slovak authorship law, as well as Czech authorship law, are available on the internet site of WIPO. One of the xxx of these translations is that the term “phonogram” is used. It is questionable why the collocation “sound recording” has not been used, as it is a literal translation which render the text from one language to the other “word-for-

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- 2 There is no difference between this collocation in the Slovak and Czech language.

word". At the outset of this article I would like to point out the issue of whether the term "phonogram" is an appropriate translation of the collocation "zvukový záznam". I believe that it was not reasonable to use the word "phonogram" because there were no shades of meaning, which could influence or even change meaning given by the lawmaker in the (Slovak or Czech) original language. On the other hand, use of the word "phonogram" in legal texts does not respect the common usage of legal terms in English, especially usage by legislatures which originated in English. Therefore it might be useful to compare relevant provisions in copyright acts of selected English speaking countries, focused on definitions of the collocation "sound recording" or its synonymic alternatives.

UK Copyright, Designs and Patents Act 1988 defines the collocation "sound recordings" in the section F85A in the following manner:

(1) *In this Part "sound recording" means—*

*(a) a recording of **sounds**, from which the sounds may be **reproduced**, or*

*(b) a recording of the whole or any part of a literary, dramatic or musical **work**, from which **sounds reproducing** the work or part may be **produced**,*

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

(2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

The collocation "sound recordings" as legal significance is used also in the Canadian Copyright Act. In section 2 (Interpretations) it is defined as follows: "Sound recording" means a recording, fixed in any material form, consisting of sounds, whether or not of a performance of a work, but excludes any soundtrack of a cinematographic work where it accompanies the cinematographic work.

According to the Copyright Act of New Zealand, Section 2 (Interpretations) the collocation "sound recording" means:

a) a recording of sounds, from which the sounds may be reproduced; or

b) a recording of the whole or any part of a literary, dramatic, or musical work, from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced

The collocation "sound recordings" is also used in the Australian Copyright Act 1968. But the term "record" and the collocation "sound recording" are there distinguished. Both are defined under section 10 (1). "Record" means a disc, tape, paper or other device in which sounds are embodied. Interesting is that a record can be also a paper or a device. "Sound recording" means the aggregate of the sounds embodied in a record. The word "record" thus indicates carriers and the collocation "sound recording" denotes recorded information. These definitions in the Australian Copyright Act 1968 are basic but there are also complementary

definitions. For example: “Sound recording” means a sound recording in which copyright subsists (see definitions under section 189) or definition of “sound recording of a live performance” which means a sound recording, made at the time of the live performance, consisting of, or including, the sounds of the performance (this definition is also provided under section 189).

South African Copyright Law is governed by the Copyright Act of 1978 and subsequent amendments. The term “record” as well as the collocation “sound recording” are defined under section 1 (1). The term “**record**” means any disc, tape, perforated role or other device in or on which sounds, or data or signals representing sounds, are embodied or represented so as to be capable of being automatically reproduced or performed therefrom.³ “**Sound recording**” means any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, but does not include a sound-track associated with a cinematograph film.⁴ The word “record”, therefore, indicates carriers and the collocation “sound recording” means recorded information. According to section 2 (Works eligible for copyright) subsection 1 (e) *subject to the provisions which appeared of this Act, the following works, if they are original, shall be eligible for copyright “sound recordings”*.

Even though the meaning of the word “record” and the collocation “sound recording” are defined and consequently strictly distinguished under the terms of the copyright acts of Australia and South Africa, the word “record” might have different meanings in different linguistic contexts. For instance, according Cambridge Advanced Learner’s Dictionary the word “record” denotes “to keep (information) for the future, by writing it down or storing it on a computer” or “a record is a piece of information or description of an event which is written on paper or stored on a computer”. Contrasting the word “recording” according Cambridge Advanced Learner’s Dictionary denotes “a record, disc or tape on which you can hear speech or music or watch moving pictures” or “the process or business of putting sounds, especially music, onto records or magnetic tapes use electronic equipment”.

The legislation of the United States of America, however also uses the collocation “sound recording” (see, for example, Title 17 of the United States Code ch. 11 (Sound recordings and Music Videos) or section 1101 (Unauthorized fixation and trafficking in sound recordings and music videos). However, the collocation “sound recording” is not used in the text of any provision. Instead of the word “record” the words “fix” or “fixation” are utilized there. For example: *Anyone who ... fixes the sound .../... an unauthorized fixation/... regardless of wheather the fixation occured in the United States*. Last but not least the term “phonorecord” is employed there.

3 Definition of “record” substituted by sect. 50 (g) of Act No. 38 of 1997.

4 Definition of “sound recording” substituted by s. 1 (v) of Act No. 125 of 1992 and by s. 50 (h) of Act No. 38 of 1997.

Chapter 17 of the US Code (Copyright) defines a *phonorecord* in section 101: *Phonorecords are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.*

According to other definition: *Phonorecord is a **physical object** that contains a permanent **record** of a **sound**.*⁵

It follows that the distinction between the carrier and the recorded content (or information) in the context of this legislation can be expressed also by the collocation "phonorecords of sound recordings." However, according to the USC Title 17, Chapter 1, section 102 (a) objects of copyright are "sound recordings" and not "phonorecords".

According to a statement of the United States Copyright Office in Circular 56 - Copyright registration for Sound Recording (page 1) "Sound recordings are defined in the law as „works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work.”...Copyright in a sound recording protects the particular series of sounds that are "fixed" or embodied in a recording... Generally, copyright protection extends to two elements in a sound recording: (1) the contribution of the performer(s) whose performance is captured and (2) the contribution of the person or persons responsible for capturing and processing the sounds to make the final recording. A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. Throughout this circular, the word „phonorecord“ includes CDs, cassette tapes, LPs, and other vinyl discs, as well as other formats."

Finally, in U.S. legal terminology the word "phonogram" is also used. For example, it is used under Title I of the Digital Millennium Copyright Act. Interesting is that this Act amended U.S. copyright law to comply with the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, which is mentioned below.

In contrary to English speaking countries where prevails usage of the collocation "sound recording" in their legislations (with the exception of diversity of terms "sound recording", "sound fixation" and "phonorecord" in the U.S. legislation), international agreements such as TRIPS (Agreement on trade-related aspects of intellectual property rights) or WPPT (WIPO Performances and Phonograms Treaty) use the term "phonogram". Whereas TRIPS presents the term "phonograms" as a synonym of the collocation "sound recordings"⁶ WPPT uses the term "phonograms" exclusively and without any definition. The word

5 Retrieved from <http://www.wordnik.com/words/phonorecord>. Web. 2.9.2012.

6 See for instance Article 14: Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations.

“phonograms” is used there in two conjunction: Firstly, with the word “original” (original of phonogram) and secondly with the word “copy” (copies of phonogram). The word “original” is always in singular form, from which it is clear that the original is always just one and conversely copies can be multiple objects. However, only copies are to be considered “phonograms” - see, for example art. 12 para. 1 of WPPT: *Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their phonograms.* xxx a difference as compared with the strict division of the terms “copies”⁷ and “phonorecords” under U.S. Code, where both terms are referred to in the plural and are always separated by the conjunction “or”.

As far as use of the word “phonogram” is concerned I must also point out that interpretative dictionaries define the term “phonogram” not as a synonym of the collocation “sound recording” in general, but merely like any written symbol standing for a sound or syllable, morpheme, word. Also, on the Internet no sites have (been?) found conjunctions between the word “phonogram” and the collocation “sound recordings” even though a comprehensive explanation of the meaning, involving the history of the origin of the word “phonogram”, has been provided.⁸

The term “phonogram” in the first half of the twentieth century may have been synonymous with the collocation “sound recording”, because phonograms as carriers of sounds, developed to be reproduced by phonographs, were for some the only manner of sound recordings, it means recording of such sounds which existed in the past in a certain time and space. However, because of the evolution of other technical ways of audio recording as well as other kinds of media (carriers of recorded information), the designation “phonogram” has become a narrower concept, which in recent time cannot be accepted unreservedly as a synonym of the collocation “sound recording”. One might argue that the word “phonogram” can be understood in the strict sense as a kind of carrier of information which can be reproduced by a phonograph as well as in a broad

7 According to 17 USC article 101 “copies” are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed. It means “copies” are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. “Phonorecords” are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or LPs. Thus, for example, a song (the “work”) can be fixed in sheet music (“copies”) or in phonograph discs (“phonorecords”), or both.” (see <http://www.loc.gov/copyright/circs/circ01.pdf>)

8 See for instance <http://www.wisegEEK.com/what-is-a-phonogram.htm>: *The word phonogram literally means sound-write: it is a sound that has its own written symbol. It is a term that was coined in the mid 1800s by Isaac Pitman, a shorthand expert and teacher. The word itself most likely is based on the then-popular word telegram. Since that time, it has become an important tool for teaching and learning to read.*

sense as the equivalent of the collocation “sound recording”. Nevertheless, I consider use of the term “phonogram” in the broad sense of sound recording to be an archaism which makes the boundaries of the term’s meaning ambiguous and therefore use of the term “phonogram” should be considered counterproductive in current normative texts. Last but not least, use of the term “phonogram” could lead to a semantic shift because of the different scope of denomination, xxx the ambivalence of the broad and narrow senses of the word.

Sound recordings as a protected objects according to Slovak and Czech legislation

Slovak authorship law (Slovak Copyright Act) defines the collocation “sound recording” under section 5 para 25 as following:

*Zvukový záznam je len záznam zvukov **vnímateľný sluchom** bez ohľadu na to, akým spôsobom a na akom nosiči sa tieto zvuky zaznamenávajú; záznam zvuku, ktorý je obsiahnutý v zázname audiovizuálneho diela, sa za zvukový záznam nepovažuje.*

*Phonogram is a fixation of sounds, which are **perceivable by hearing**, regardless of the manner of recording and the medium at which these sounds are recorded; the phonogram contained in the audiovisual recording shall not be deemed to be a phonogram.*

Although this definition is formulated positively as well as negatively, the most important point is that “sound recording” under this definition cannot be considered solely as sounds but rather as a unity of recorded information and the carrier of this information. Perhaps the Slovak lawmaker considered the verbal link “sound recording” self-evident and therefore did not consider xxx it should be more closely circumscribed or specified.

The Czech definition in section 75 para. 1 of the Czech authorship law (Czech Copyright Act) is different in some details:

A phonogram is exclusively by hearing perceivable fixation of the sounds of the performer’s performance or of other sounds, or the expression thereof.

*Zvukový záznam je výlučne sluchem vnímateľný **záznam zvuků** výkonu výkonného umělce či jiných zvuků, **nebo jejich vyjádření**.*

It is noticeable that “sound recording” is delimited alternatively, either as:

- a) sound record of a performance of a performer)
- or
- b) a record of other sounds

I have no fundamental objections against this dual determination. However, it is worth of discretion whether it would not be better to edit out the part concerning *the sounds of the performer’s performance* and in the interest of purer

legislative to define sound recording as a record of any sounds, under which it is possible to subsume:

- a) the sounds, which have arisen as a result of natural processes,⁹ as well as
- b) the sounds of the animals and last but not least
- c) also such sounds that have arisen as a result of human activities.

Regarding that what is mentioned above it can be also considered whether for sound recordings in the legal sense should be counted also records of such sounds, whose frequencies are outside the range of sensitivity of human hearing.¹⁰ It is clear that from the physical point of view also these records of sounds are sound recordings because outside the frequencies hearable to human ears there are also ultra-sounds and infra-sounds, which existence is demonstrable by technical means. Moreover, certain spectrum of ultra-sounds or infra-sounds can be perceived by (perceivable for) some animals.¹¹ On the other hand, it cannot be excluded that the Czech as well as Slovak authorship law operates with certain conditions of quality which are related to the expression of the object of protection. However, the context in which these conditions are referred to is different when we compare the Slovak and the Czech authorship law.

According Slovak copyright law “work is expressed in any objectively perceivable form”.¹² This provision under sect. 15 para. 1) of the Slovak copyright law can be applied, *mutatis mutandis*, also to the performer and his artistic performance (see section 71 para. 1) of the same law, as well as the producer of the phonogram (see section 71 para. 2 of the same law. Logically, it can be concluded that sensual perception must be interpreted restrictively. It means the legislator had in mind the senses of an ordinary man. Therefore a recorded audio expression in the field of ultra-sound, although it could be a performance of a performer, respectively it is recorded, would not be eligible object of legal protection.

Czech authorship law, in connection with beginning of the protection of copyright work, requires under section 9 para. 1 that work must be “expressed in any objectively perceivable form”¹³ In the English translation (available on

9 Sounds of seismic activity for instance.

10 The human ear can respond to minute pressure variations in the air if they are in the audible frequency range, roughly 20 Hz - 20 kHz.

11 For example highfrequency sounds of dog pipes is not hearable by human ear, however for dogs it is hearable and usually serves as a training signal.

12 See Slovak authorship law sect. 15 para 1. This provision relates also to performers and their performances (see sect. 71 para 1 of the same law) as well as to makers of sound recordings (see sect. 71 para. 2 of the same law)

13 Here might be considered what the Czech legislator had in mind under the word link “objectively perceivable”. On the one hand this verbal link can be interpreted in conformity with the Slovak regulation, under the word “perception” to understand sensory perception and under the word “objective” from this point of view it should mean potentialities of an ordinary man’s perception. However on the other hand I reckon that other manner of interpretation of the Czech provision which is in question does not exclude that the legal protection can arise even on the basis of technical documentation of a work’s existence, it means that human perception

the WIPO web site) it is the same as in the Slovak authorship law but when we compare these in original languages there is a difference.¹⁴ According Czech authorship law, section 78 producers of phonograms and its phonograms are not involved under section 9 para. 1,¹⁵ what is different when it is compared with Slovak authorship law. By the way, it seems to be logical in the context of section 75 para. 1 of Czech authorship law where it is stated that a sound recording is just such record which can be perceived exclusively by hearing.¹⁶ I reckon that also in this case should be applied the restrictive definition of the concept of “hearing” what is boundared by ability of auditory sensation of normal humans and spreading such ability also to hearing of animals must be excluded.

As far as sound records from the range of entertainment industry are concerned, generally, those objects are not touched by theoretical considerations on the protection of the ultra-sonic (as well as infra-sonic) records mentioned above.¹⁷ However, if sound records are made in the framework of scientific research the presence or absence of sensory perceiving sound recording may be crucial, because according to Slovak legal regulation as well as in the case of restrictive interpretation of Czech legal regulation ultra-sonic or infra-sonic records should not be covered by legal protection on the ground that reproduction of such records is out the range of percievability by human hearing.

would not be necessary. I do not have in mind reception works through reproduction of the phonogram (if there would be a musical work) or through the optical zoom (for example, usage a microscope) if this would be a miniature artwork. I have in mind specific cases that do not permit the reception on the basis of direct use of the rack of information in the relevant technical equipment. For example, if there is a musical work by means of improvisation which was recorded and the specificity of this recorded improvisation consisted in that a set of ultrasound pipes was used. Although, such recorded musical work is unperceivable by human hearing there is no doubt that through a technical device should be determined both the high and duration of individual tones and on this basis, it would be possible to transcript it into musical notation. While under the Slovak authorship law the protection of such musical work would not arise before editing it in a percievable form (for instance by editing it via graphical record), using the extensive interpretation of section 9 para. 1 of the Czech authorship law such work performed and recorded in ultrasonic range should be protected already in the moment when the record of such performance was completed. Extensive interpretation would thus mean that the accent lies on the word line “work is expressed” whereas the word line “objectively perceivable form” should then be interpreted as the ability to be transformed by usage of technical devices into different forms, which are perceivable by human senses. However, I reckon that neither by the Slovak nor Czech legal regulation can not arise rigts of performer to the ultrasonic performance, because here is not accomplished the condition of possibility to perceive a primary output by human hearing.

14 Expressed In Czech it is: “vyjadrenie v akejkoľvek objektívne vnímateľnej forme”, and expressed in Slovak it is “vyjadrenie v zmyslami vnímateľnej forme”.

15 All provisions of section 9 are according sect. 74 applicable to performers. But as far as makers of sound recordings are concerned there are applicable only para. 2 and 4 of sect. 9 of Slovak authorship law.

16 Expressed in Czech: *zvukový záznam je výlučně sluchem vnímatelný záznam...*

17 The problem could be only so called subliminal information.

As far as the definition of the phonogram according sect. 75 para. 1 of Czech authorship law is concerned there instead of dual signs, which determine phonograms as “recording of sounds of a performance of a performer or other sounds”, can be still found other pair of signs which determine phonograms as:

- a) recording of sounds,
or
- b) expression of these sounds.

For comparison, I can quote Czech authorship law sect. 75 para. 1 again:

A phonogram is exclusively by hearing perceivable fixation of the sounds of the performer's performance or of other sounds, or the expression thereof.

Zvukový záznam je výlučně sluchem vnímatelný záznam zvuků výkonu výkonného umělce či jiných zvuků, nebo jejich vyjádření.

I consider the collocation “expression of these sounds” is redundant and consequently unreasonable for the following reasons:

On the basis of lingual interpretation it is not possible to decide whether the word “expressed” means technically non specified alternative to the word “recorded”, or it should be understood as a reproduction of a record. If the word “expression” is not understand as a synonym of the word “record” therefore the word “expression” must be distinguished from the collocation “sound record” in current meaning¹⁸ as record of sounds which is stored on a media and ready to be reproduced by an appropriate technical device. Therefore following meanings of the collocation “expression of sounds” could be considered:

1) Recording of sound organisation by means of traditional musical notation. It is any system that represents aurally perceived music, through the use of written symbols, but it was different in various countries. Modern music notation originated in European classical music and is now used by musicians of many different genres throughout the world. Now a days use an appropriate computer programme it is possible to transform every musical notation into sound performance, but considering musical notation for sound recording can be in my opinion far off.

2) Graphical notation is the representation of music through the use of visual symbols outside the realm of traditional music notation. Graphic notation evolved in the 1950s, and it is often used in combination with traditional music notation. Composers often rely on graphic notation in experimental music, where standard musical notation can be ineffective.¹⁹ Graphical notation is not

18 I have on my mind a sound recording stored on some carrier of information which is every time reproduceable when appropriate technical device is used.

19 Retrieved from http://en.wikipedia.org/wiki/Graphic_notation, Web. 11.11.2012.

as standardized as traditional musical notation. Graphical notation is usually only an indicative plan of the sound organization in the time (and sometimes also in the space), therefore automatic transformation into a sound production (which can be perceived by human hearing) would occur only in the case if for each such a graphic notation would exist special computer program able to read and interpret a particular set of used signs. It can not be excluded also alternative approach of the compositor which is based on the exploitation of signs which are already adopted to an existing visual programming language. Exploitation of such programming languages as, for instance, Pure Data (PD) which was developed in the 1990s for creating interactive computer music and multimedia works enables live collaboration across networks or the Internet, allowing musicians connected via local area networks or even in disparate parts of the globe to create music together in real time. Modular, reusable units of code written natively in PD, called “patches” or “abstractions”, are used as standalone programs and freely shared among the PD user community, and no other programming skill is required to use PD effectively. One of the key innovations in PD over its predecessors has been the introduction of graphical data structures, which can be used in a large variety of ways, from composing musical scores, sequencing events, to creating visuals to accompany PD patches or even extending PD’s graphical user interface.²⁰

The picture shows Pure Data with many patches open

The picture shows Hans-Christoph Steiner's score for *Solitude*, created by Pure Data's data structures.

20 In computing, a graphical user interface (GUI, commonly pronounced *goeey*^[1]) is a type of user interface that allows users to interact with electronic devices using images rather than text commands.

3) It might be that Czech lawmaker has understood under the word line “another expression of sounds” a mechanical device producing music. As an example can serve a player piano (also known as pianola or autopiano). It is a self-playing piano, containing a pneumatic or electro-mechanical mechanism that operates the piano action via pre-programmed music perforated paper, or in rare instances, metallic rolls. The rise of the player piano grew with the rise of the mass-produced piano for the home in the late 19th and early 20th century.²¹ Other example of automatic musical instrument could be musical boxes.²² „A music box is a 19th/20th century automatic musical instrument that produces sounds by the use of a set of pins placed on a revolving cylinder or disc so as to pluck the tuned teeth (or lamellae) of a steel comb. The cylinders were normally made of metal and powered by a spring. In some of the models, the cylinders could be removed to change melodies. The cylinder is the programming object, a metallic version of a punched card which, instead of having holes to express a program, is studded with tiny pins at the correct spacing to produce music by displacing the teeth of the comb at the correct time. The tines of the comb ‘ring’, or sound, as they slip off the pins. The disc in a disc music box plays this function, with pins perpendicular to the plane surface.”²³ I reckon that in the case of automatic musical instruments we can talk about sound record even though the record is not kept on a separate device but it is integrated into the technical equipment used for a reproduction of sounds.

As a special kind of mechanical devices also musical roads should be mentioned. “A musical road is a road (or part of a road) which when driven over causes a tactile vibration and audible rumbling transmitted through the wheels into the car body in the form of a musical tune. Musical roads are known to exist in four countries: Denmark, Japan, South Korea, and the United States of America. The first known musical road, the Asphaltophone, was created in October 1995 in Gylling, Østjylland, Denmark, by Steen Krarup Jensen and Jakob Freud-Magnus, two Danish artists. The Asphaltophone is made from a series of raised pavement markers, similar to Botts’ dots, spaced out at intermittent intervals so that as a vehicle drives over the markers, the vibrations caused by the wheels can be heard inside the car. In Japan, Shizuo Shinoda accidentally scraped some markings into a road with a bulldozer and drove over them, and realised that it was possible to create tunes depending on the depth and spacing of the grooves.”²⁴ In this case it was not created intentionally therefore it is questionable whether in this case is possible to talk about a record of music. „2007, the Hokkaido National Industrial Research Institute refined Shinoda’s designs to create the Melody Road. They used the same concept of cutting grooves into the concrete at specific intervals and found that the closer the grooves are, the higher the pitch of the sound; while

21 Retrieved from <http://en.wikipedia.org/wiki/Player-piano>. Web. 12.8.2012.

22 Musical boxes must be distinguished from jukeboxes.

23 Retrieved from http://en.wikipedia.org/wiki/Music_box. Web. 10.9.2012.

24 Retrieved from http://en.wikipedia.org/wiki/Musical_road. Web. 10.9.2012.

grooves that are spaced further apart create lower pitched sounds.²⁵ The Singing Road can be also found close to Anyang, Gyeonggi, South Korea, and was created using grooves cut into the ground, similar to the Japanese Melody Roads. Unlike the Japanese roads, however, which were designed to attract tourists, the Singing Road is intended to help motorists stay alert and awake – 68% of traffic accidents in South Korea are due to inattentive, sleeping or speeding drivers. The tune played is “Mary Had a Little Lamb”. The Civic Musical Road was built on Avenue K in Lancaster, California, United States, on 5 September 2008. Covering a quarter-mile stretch of road between 60th Street West and 70th Street West, the Musical Road used grooves cut into the asphalt to replicate part of the Finale of the William Tell Overture from Rossini. The rhythm is recognizable, but the pitches are so far off that the melody bears only a slight resemblance to the William Tell Overture. The intonation is not affected by the design of the car or the travel speed. It is likely the designers made a systematic miscalculation which affected all the groove spacings.”²⁶

4) Under the word line “other expression of sounds” can be also understood a sound realisation. The word “realisation” in this case should denote the transformation of sounds existing in the latent, time-less and space-less form to the form perceivable by human senses in a certain space and time. In other words, with a different expression of sounds can be understood either reproduction of a sound recording or a lively performance. Here it should be noted that the content of the record is something else as a carrier of information. The carrier is tangible, and its functionality is limited to whether intentional or accidental destruction, or destruction of material as a result of aging. It is logical that a sound realisation of a record (whether digital recorded on CD, analog record on the tape or on classical sheet music) can not be regarded as a sound record. For these reasons, the reproduction of a sound record as a form of use of a sound record can not be confused with the existence of a sound recording as the content which is recorded on a carrier of information and hence the collocation “other expression of sounds” can not be interpreted as a transformation of a sound record in the form perceivable by human hearing.

25 There are three permanently paved 250 m stretches of Melody Roads;^[4] one in Hokkaido, another in Wakayama where a car can produce the Japanese ballad “Miagete goran yoru no hoshi wo” by Kyu Sakamoto, and a third in Gunma, which consists of 2,559 grooves cut into a 175 m stretch of existing roadway and produces the tune of “Memories of Summer”. The roads work by creating sequences of variable width groove intervals to create specific low and high frequency vibrations. The pavements were designed so that the songs were heard right only when a car drove at a certain speed, encouraging drivers to observe speed limits.

26 Retrieved from http://en.wikipedia.org/wiki/Musical_road. Web. 10.9.2012.

2 Conclusion

From the above it is clear that the space of meaning of the collocation "sound recording" need not to be so obvious as it seems to be at a first impression based on imagination or experience of ordinary CD's users. The definition of a sound recording should take into account the different types of "sound recordings" including types technically obsolete as well as forms that may appear in the future. A satisfactory definition can largely eliminate vagueness of defined object. Use of general terms in law is a necessity, because only in this way casuistry can be restrained. Something else, however, is the "uncertainty of a term" which cannot be confused with "generality". Vague legal concepts might be rooted in a dilatory compromise which is a solution of the extensive diversity of meaning of the denoted content resulting also from the advancement of technical development. "However, uncertain legal terms disrupt the common legal certainty, because from the very text cannot be apparent for an addressee the content and the scope of such a vague term."²⁷ Czech authorship law²⁸ defines sound recording via two signs: 1) *fixation of the sounds* or 2) *the expression thereof*. Use of the word "expression" causes an extensive hypertrophy of uncertainty and consequently the interpretation of a such concept may be very wide what results in the ambiguity in what can be regarded as a sound recording. Last but not least the broad uncertainty of legal terms is contraproductive also in the case of translation because it could redound to the shift of meaning.

27 Melzer, Filip: Metodologie nalázení práva, Tribun EU, Brno 2008, ISBN 978-80-7399-358-0, p. 82

28 sect.75 para. 1