

COPYRIGHT IN POLAND: AN INTRODUCTION

Creative faculties are truly a wonderful trait of the human intellect. To create something from nothing, through sheer power of the imagination and of the human mind! Creativity is a prerequisite for correct civilisational development of a human being, in the commercial as well as the cultural aspect. As Albert Einstein put it, “without creative individuals capable of independent thought and judgement, development of societies would be just as inconceivable as development of individuals outside the fertile soil of the community” (after www.cytaty.eu/motyw/tworczosc.html, accessed on 13 June 2011).

As the most beautiful impression left by the individual upon the collective awareness, products of the human intellect are deserving of protection. Such protection is afforded by intellectual property law, with copyright and its secondary rights and industrial property protection rules accounting for some of the items in the IP law toolbox. Set out below is a brief overview of Polish copyright law.

Copyright law is comprised in the body of legal rules devised to safeguard the interests of creative artists and to regulate legal relationships having as their core objects of exclusive protection – the work, its creation, use of the work, and its protection.

Legal systems around the world generally draw upon one of two basic copyright protection models: copyright as understood in the Anglo-Saxon/common law jurisdictions (such as the United States or Australia) and *droit d’auteur* as developed in the Latin/continental system. Poland, being as it is a continental European jurisdiction with a legal system derived from the Latin model, applies the *droit d’auteur* solution. Leaving aside its exact history, this model provides for legal protection of personal copyright as well as financial copyright of creators. Within this model, we discern two approaches. The monistic approach (as followed, for instance, in German law) discerns a solid, uniform and inalienable copyright comprising a number of personal and economic legal titles. The dualistic approach (as followed, among other jurisdictions, in France, Spain, and Poland), meanwhile, discerns between personal copyright and economic copyright as two distinct constructs; only economic copyright can be the object of dealing, which proceeds by way of assignment of rights.

The Polish legislature has regulated artistic creative activity in the legislative Act of 4 February 1994 regarding copyright and neighbouring rights. This Act

extends the protection of Polish law to creative works and to related rights therefrom (artistic performance, audio and visual recordings, broadcast, first editions, and critical editions). The objects of such related rights, while not meeting the requirements applicable to works, benefit from legal protection on account of their high significance in day-to-day creative and commercial practice.

Within the meaning of the Act cited above, a copyrighted work is any manifestation of man's creative activities with an individual character. "Creative activity", meanwhile, comprises activities which, even in a small way, contribute to creation of an objectively new intellectual product. The "individuality" of a work essentially comes down to recognising its originality – the mark of the creator upon the work which makes for an unbreakable bond of the author and his creation. The market value, intended use, or format of the work are immaterial here, as is, indeed, whether it has been completed.

The work benefits from legal protection from the moment of its establishment (making); in other words, there is no need for the creator to complete any formalities, registration, etc. There is likewise no need for the artist to record the work in any way (for instance on a DVD), although the work – especially a visual artwork – may be recorded at the same time as it is created.

Whether a work belongs to the category of fine art or popular art is of no relevance to the scope of its protection, neither is its subjectively perceived quality or value. "Sunflowers" by Vincent van Gogh, Michelangelo's frescoes on the Sistine Chapel ceiling, the Eiffel Tower, J.R.R. Tolkien's "Lord of the Rings" trilogy, Bob Dylan's "The Times They Are A-Changin' ", the departures and arrivals times schedule at your local bus stop and the cookbook in your kitchen - from the legal point of view, they all qualify as works, subject only to fulfilment of the minimum requirements set out in the statute.

Protection under the Polish copyright Act extends only to means of expression. Discoveries, ideas, procedures, methods, operating principles, and mathematical concepts do not benefit from protection under the Act so as not to stifle scientific research and progress.

The Polish Act also sets out a catalogue of intellectual products which may qualify as a copyrightable work but which do not benefit from protection. These include (i) legal acts and their official drafts, (ii) official documents, materials, insignia and symbols, (iii) published patent/protection specifications and (iv) simple press items.

Considerable practical importance attaches to the concept of secondary creative activity. The result of such activity – a secondary, or derived, work – may assume the form of an elaboration, interpretation, or adaptation. Such a derived work benefits from legal protection independently from the original work – subject to a number of requirements, including obtainment by the derived work's author of permission from the author of the original work to use the derived work.

The creator is originally entitled to copyright in the work which he created. Exceptions to this general rule (with respect to financial rights) include collective works and computer programmes written by employees in performance of their employee duties. In the former case, copyright in the entirety of the collective work arises to the benefit of the producer or the publisher, and in the former – to the employer.

As already mentioned, copyright is divided into personal copyright (e.g. rights to authorship, to inviolability of the content and form, to proper use, and to prerogative with respect to first release to the general audience) and economic copyright. Only the creator is entitled to use the work and to dispose of it in all fields of use, also as regards collecting royalties for its use.

True to the general practice of European Union member states, personal copyright in Poland is perpetual. Economic copyright, meanwhile, expires upon the elapse of seventy years from certain events specified in the Act; here, the main rule is that this deadline is counted from the death of the last co-creator of the given work.

In compliance with international law and with European Union rules, the Polish legislature has implemented the institution of fair personal use. This is a type of compulsory (and, usually, gratuitous) licence for use of copyrighted works. Parties using a work may cite fair use under certain circumstances specified in the Act, usually where they wish to use a work for non-commercial purposes.

A very important issue is posed by the question of transfer of economic title in a copyrighted work. Polish law is quite strict in this respect, formulating a number of prerequisites which must be met in order for the transfer of title to be effective. The first of these concerns the scope within which title may be acquired; it is impossible to transfer all economic rights, but only rights with respect to fields of use known at the time of the agreement. Failure to duly specify in the agreement the fields of use with respect to which legal title has been transferred or to which a licence has been granted renders such an agreement invalid. Also, a creator is legally barred from disposing of rights in all his future works, or in all future works of a given type.

Polish law enforces dual liability for breach of copyright – civil liability vis a vis the copyright owner as well as (under circumstances specified in the Act) criminal liability.

Polish copyright law as outlined above meets the most stringent global and European standards for protecting the intellectual achievements of individuals. In particular, it incorporates adequate provisions against software piracy and against plagiarism. Also worth noting is the detailed provision made with respect to due transfer of copyright; if these rules are not followed, the alleged acquirer of copyright may find himself in violation of the law.

This newsletter is for informational purposes only and does not constitute legal advice. Use of this newsletter does not create an attorney-client relationship between the contributing law firm and the reader. Readers should contact appropriate legal counsel for advice on any particular issue. Entire content copyright is owned by the contributing law firm. Reproduction and distribution of this newsletter in whole or in part without the written permission of the contributing law firm is expressly prohibited.