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ANALYSIS OF THE POLISH COPYRIGHT LAW AND RELATED LAWS

Abstract. The article discusses issues of copyright and related rights in the light of the provisions that are in force in Poland. The concepts of 'work' and 'creator' are presented, and attention is called to abuses related to attributing authorship of someone else's work. The topic of disposing of the rights to a work created under an employment relationship and the issue of contracts concluded are discussed. The problem of intellectual property rights in projects carried out for the Ministry of National Defence is also raised.

Keywords: copyright, work, author, intellectual property, invention, licence.

1. INTRODUCTION

One of the most important issues related to areas of creative work, such as writing, painting, film and theatre directing or technical innovative activities (inventions, new devices and products) is the protection of the creator and his works against use by unauthorized persons and/or institutions.

Over the years of the 20th and 21st centuries, a number of countries have given negative examples of the unlawful copying of devices, machines and objects of everyday use. Losses on this account mainly affect highly industrialized countries which spend millions of dollars on scientific research and projects that determine the technological progress of all mankind. Currently, in the age of the Internet, a particularly difficult issue is counteracting and combating the widespread phenomenon of the so-called music and movie piracy.

Governments around the world are undertaking various, often broad, legal actions to protect authors and their works through laws and regulations, bilateral agreements, conventions or the application of trade sanctions against countries not complying with copyright law.

Appropriate provisions have also been developed and implemented in Poland: the Act on Copyright and Related Rights [1].

2. POLISH REGULATIONS

Issues regarding the protection of intellectual property in Poland are regulated by the Act [1] of 4 February 1994. According to art. 1 of that Act, a 'work' is any and all manifestation of creative activity of individual nature, established in any form, regardless of the value, designation or manner of expression. In the definition of a work, the key element is the creative nature of activity, or the creative nature of the result of that activity, i.e. the resulting work. The result of human work, in order to be classified as a work, should meet two criteria - the criterion of originality and that of individuality.

The creator creates his/her work by his/her actions and it is him/her, who should be entitled, as a rule, to legal protection. The creator can only be a human as a natural person. There are no restrictions as to the age or mental state of the creator [1]. Work can be created by more than one person. Then we have the case of co-authorship. Co-authors are jointly entitled to copyright.

First, copyright protects the so-called personal copyright, that is the creator's ties with the author, unlimited in time and not subject to renouncement or alienation [6]. The task assumed by copyright is to protect the personality of the author who expressed it in his/her work. The Act specifies that there is a special tie between the author and the work. It is special because it is not subject to any waiver or transfer. The Act on Copyright and Related Rights specifies, in art. 16, the following author's moral rights: the right to be the author of the work, the right to sign the work with the author's name or pseudonym, or to make it available to the public anonymously, the right to have the contents and form of the author's work inviolable and properly used, the right to decide about making the work available to the public for the first time, the right to control the manner of using the work [12]. It should be remembered that this list is open [7]. Secondly, the copyright law provides protection for author's economic rights. According to the Act on Copyright (art.17), unless the Act states otherwise, the author has an exclusive right to use the work and to dispose of its use in all the fields of exploitation and to receive remuneration for the use of the work. This means that, unless the law says otherwise, the creator is the entity entitled to receive financial benefits from his or her work.

a. Copyright protection

Copyright protection covers only the result of creative work of a person, its result in the form of a work [12]. The copyright protection of a work commences at the moment that work is established. In other words, it is the moment when other people besides the author can become familiar with the work. When the work is established, both the author's moral and economic rights arise. However, the moments of cessation of author's moral and economic rights are different. The author's moral rights never cease. The author's economic rights expire after the lapse of seventy years:

- from the death of the author;
- in case of joint works – from the death of the co-author who has survived the others;
- if the author of a work is unknown – from the date of the first dissemination of the work, unless the pseudonym adopted by the author leaves no doubt as to his/her identity or the author has disclosed his/her identity;
- if, under the Act, a person other than the author owns the author's economic rights – from the date of the dissemination of the work; and if the work has not been disseminated – from the date of the establishment thereof.

b. Plagiarism

By analyzing the nature of the works and moving from original autonomous works to inspired works and studies, we will come to the results of human work that are not original because they take creative elements from other works [1]. Making use of someone else's work in a manner exceeding the permitted scope is a violation of copyright law and is commonly called plagiarism. Plagiarism has become a very common phenomenon in recent years. Plagiarism [13] is a notion in the field of copyright law that means copying someone else's work (or a part of it) and attributing the right to that work. The notion of plagiarism is not defined in copyright law, because it is extremely difficult to formulate a legal definition of plagiarism. The doctrine of law distinguishes two types of plagiarism: explicit plagiarism, when the author directly signs with his name someone else's work, and hidden plagiarism, in which the author in

his work appropriates the authorship of only a fragment of someone else's work or incorporates someone else's work in the structure of his own.

Two types of legal liability are provided for copyright infringement or its use without permission. The first is civil liability [2].

The other is criminal responsibility [3] for committing a crime.

c. The nature of other works

The copyright law also specifies which creations cannot be considered a work and what works that law does not protect [9], e.g.: discoveries, ideas, procedures, methods, principles of operation, or mathematical concepts. However, this does not mean that these issues are not subject to any legal protection. The instrument that serves their protection is the protection of personal rights provided for in arts. 23 and 24 of the Civil Code [2]. Creations do not include inventions, industrial patterns, trademarks, which are subject to the provisions of the Industrial Property Law. Industrial property includes those areas of intellectual property that are covered by the Industrial Property Law. The Polish legislation identifies six types of industrial property: invention, utility model, industrial pattern, trademark, integrated circuit topography and geographical indication. Intellectual property items that cannot be included in any of these types are not legally protected under the said Act. When talking about know-how - we mean professional knowledge and experience in the field of technology and the process of manufacturing a specific product. The know-how agreement entitles to exercise certain rights. Know-how has no inventive nature, it cannot be patented, which does not mean that the entrepreneur cannot protect it in any other way. Protection is provided by the regulations contained in the Act on Suppression of Unfair Competition [10].

3. USE OF COPYRIGHT ARISING FROM AN EMPLOYMENT RELATIONSHIP

According to Art. 12 of the Act on Copyright, if that Act or a contract of employment does not state otherwise, the employer, whose employee has created a work within the scope of his duties resulting from the employment relationship, upon acceptance of the work, acquires the author's economic rights in accordance with the arrangements specified in the contract of employment. The author's moral rights to such a work still remain with the creator. The work is acquired at the moment of accepting it or within six months from the date of delivery thereof. If, within two years from accepting the work, the employer does not start the dissemination of the work specified in the contract of employment, the author may fix in writing a time limit for the employer to disseminate the work with the effect that upon its expiry, the rights acquired by the employer together with the ownership of the object return to the author. It is worth noting that the employee and the employer may agree upon other terms regulating these issues.

4. COPYRIGHT CONTRACTS

The transfer of the author's economic rights is effected mainly through a contract [11]. The transfer of author's economic rights does not take place automatically, as it is necessary to conclude a separate agreement in which individual issues of intellectual property transfer will be included. It is important to determine the fields of exploitation within which such transfer will occur. The contract for the execution and financing of a given project also regulates the issues of licensing. It is necessary to separately acquire a permit for the use of derivatives of the original works developed as a result of their modification, translation, etc., by the Rightholder (e.g. Ministry of National Defence) and the Project Contractors. For further development, which is in most part the effect of R&D projects in the area of security and defence, this is an important issue. The transfer of author's economic rights is not synonymous with regulating

derivative copyrights. Copyright contracts are very diverse and can cover many issues. They often include elements of various types of contracts, e.g. of a contract of commission. The contracts may differ because of the type of work concerned. Each contract should specify expressly who is the creator. The creator can only be a natural person. The contract should contain such elements as the creator's statement indicating that it is him/her that is the creator and that the work does not infringe the rights of third parties. The contract for the transfer of author's economic rights or for the use of the work must include information on the fields of exploitation. The field of exploitation defines the manner in which a given work can be used. Unless the contract provides otherwise, the author is entitled to a separate remuneration for using the work in each separate field of exploitation. A contract for the transfer of author's economic rights must be made in writing under the pain of nullity.

5. EMPLOYEE'S WORK WITHIN THE CONTRACT FOR EMPLOYMENT WITH A RESEARCH INSTITUTION

Another issue is that of employee works when the employer is a scientific institution. According to Art. 14 of the Copyright Act, unless the contract of employment states otherwise, the research institution has the priority in publishing a scientific work when its employee created such work as a result of performing his duties under the employment relationship. However, this priority expires if within 6 months from the date of delivery of the work no publication contract has been made with the author or if, within two years from the date of its acceptance, the work has not been published. This is the so-called statutory license that establishes priority of publication for the employer. Speaking of employee research works, it must be stated that they are works created by research employees. The employee's research work is a work that was created as part of his/her duties under the employment relationship. The author's economic rights may be vested in the author, but the author may decide to transfer these rights to another entity [8].

6. MANAGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF WEAPON MANUFACTURERS IN PROJECTS IMPLEMENTED IN THE NATIONAL DEFENCE SECTOR

The manner of managing IPRs is important from the point of view of properly securing the interests of the State Treasury in a key area for the national security – the national defence. The Program of Technical Modernization of the Polish Armed Forces for 2017-2022 provides for the acquisition of various types of armament from domestic and foreign suppliers, and thanks to the IPR management system, the Ministry of Defence will take care of the security of supply and the development of purchased military equipment in Poland.

On May 16, 2018, the Minister of National Defence signed Decision No. 58/MON [5] in connection with the management of intellectual property rights resulting from the implementation of projects in the national defence sector [13]. The legal act developed by the Inspectorate for the Implementation of Innovative Defence Technologies normalizes the issue of management of copyrights and industrial property rights in the national defence sector, which result from the research and development works carried out for the Ministry of National Defence, aimed at securing the needs of the Polish Armed Forces. The document sets out the concepts for implementing a given issue in the national defence sector and the rights of participants in a particular system. The decision of the Minister of National Defence specifies the Inspectorate for the Implementation of Innovative Defence Technologies as the organizational unit for supervising and coordinating the possibilities of acquiring and managing intellectual property

rights and administering the data in question. The regulations set by the Ministry of National Defence require manufacturers of armament and military equipment without financial security which used state funding for research and development to hand over technical documentation for new equipment. The Contractor and Co-contractors are to transfer to the State Treasury the ownership of prototypes created as a result of a given project, at the express request of the State Treasury submitted within a few months from the date of delivery of the relevant list to the State Treasury. The manufacturing companies are opposed to this, claiming that the demand to give away rights to new developments and prototypes, without any guarantee that the army will order a serial product, most often chosen on the market by tender, deprives the company of the possibility of obtaining income from the production and commercialization of the invention [14]. When creating innovative solutions, companies often use, in addition to the results of research financed by the Ministry of National Defence or the National Centre for Research and Development (NCBiR), prior intellectual achievements of their own engineers and designers. Know-how is more than the effect of specific studies ordered by the army or the NCBiR. The passing of documentation and intellectual property rights to a government body limits the possibilities of its updating and then modernizing [15]. Entrepreneurs would consent to hand over the documentation of their work if the Ministry of National Defence guaranteed them a licence to manufacture equipment created at their plants, but in accordance with EU rules, military purchases must primarily be preceded by open tenders in which competition is increasing.

7. REFERENCES

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