[PL] Amendments to the Polish Copyright and Related Rights Act and transposition of the DSM Directive

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Due to the obligation to implement Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Official Journal of the EU L 130 of 17.05.2019, p. 92) (the DSM Directive), there has been a need to amend the Polish Copyright and Related Rights Act of 4 February 1994 (Dz.U.2022.2509 consolidated text of 6 December 2022 – the Act). The amendment to the Act, from 26 July 2024 (Journal of Laws 2024, item 1254) entered into force, with few exceptions, on 20 September 2024.

The DSM Directive introduces, *inter alia*, an obligation of transparency (Article 19). It is intended to ensure that authors and performers receive, at least once a year, relevant information from the parties on the exploitation of their works, in particular, the revenue derived therefrom. This information is intended to ensure that the remuneration received by authors and performers for any exploitation of their work is not disproportionately low compared to all revenues generated and due remuneration.

Until now, the existing Article 47 of the Act entitled an author to obtain information and to inspect relevant documentation, but only when significant for determining the amount of the remuneration. Such a situation might be encountered when, in a contract concerning the exploitation of a work, instead of agreeing on a lump sum (a one-off remuneration payment), the parties had agreed, for example, on a remuneration payment calculated as a percentage of the revenue generated from the exploitation of the work.

Article 47 [1] has been added to the Act in order to fully transpose Article 18 of the DSM Directive. It ensures that authors are provided with information and documents on the current revenue for the exploitation of the work in question and separately for each use. This applies both to contracts transferring economic copyrights and to licensing contracts. This means that this entitlement will be extended (with certain exceptions – see Article 47 [1] sections 4 and 6 of the Act) to a broader and much larger group of authors than previously and regardless of the wording of the relevant contractual provisions. This provision will also apply to performers of artistic performances under the current Article 92 of the Act.

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This change will enable authors to independently verify whether or not the remuneration they receive for the exploitation of their work is disproportionately low in relation to the revenue for the exploitation of the work. Information/documentation obtained in this way may be useful in a court case aimed at increasing the remuneration due to the author under a previously concluded agreement transferring the author's economic rights or a licence agreement according to Article 44 of the Act.

The legislator specified that this type of information/documentation should be provided, taking into account the type of activity to which it relates, at least once a year, but no more frequently than once a quarter. If this would entail disproportionately burdensome costs, there is the option of limiting the scope of the information to be provided only to the total revenue from use and the total remuneration due to the author. These solutions should be assessed favourably as they maintain a balance and compromise between the interests and protection of the author or the performer and the parties exploiting the work or artistic performance.

added by Linda Byrne on Sep 22

Ustawa o prawie autorskim i prawach pokrewnych z dnia 4 lutego 1994 r. (Dz. U.2022.2509 t.j. z dnia 6 grudnia 2022 r.)

https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19940240083

The Act on Copyright and Related Rights of 4 February 1994 (Journal of Laws 2022.2509, consolidated text of 6 December 2022)

Ustawa z dnia 26 lipca 2024 r. o zmianie ustawy o prawie autorskim i prawach pokrewnych, ustawy o ochronie baz danych oraz ustawy o zbiorowym zarządzaniu prawami autorskimi i prawami pokrewnymi (Dz. U. 2024 poz. 1254)

https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20240001254

The Act of 26 July 2024 on amending the Act on Copyright and Related Rights, the Act on Protection of Databases and the Act on Collective Management of Copyright and Related Rights (Journal of Laws 2024, item 1254)

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