[PL] Changes in the Polish Intellectual Property Rights Regime

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Małgorzata Pęk
National Broadcasting Council of Poland

On 9 May 2007, the Parliament finally adopted an Act amending the Copyright and Related Rights Act and some other legal acts (the Code of Civil Procedure, the Act on Legal Protection of Databases and the Act on Legal Protection of Plant Species).

The Act aims at transposing Directive 2004/48/EC on the enforcement of the intellectual property laws, as well as achieving a more adequate transposition of certain provisions of other directives that have been implemented at national level before, namely: Directive 93/83/EEC on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, Directive 93/98/EEC on harmonising the term of protection of copyright and certain related rights, and Directive 96/9/EC on the legal protection of databases.

The newly adopted Act provides additional measures for a better enforcement of intellectual property rights. It envisages a wider application, *mutatis mutandis,* of authorship presumption in the area of related rights, while in the area of database protection a presumption of ownership for database producers is foreseen. The new Act further covers some changes regarding corrective measures, injunctions, as well as the recovery of profits within relevant intellectual property laws. Greater changes have been introduced in the area of damages that are supposed to reflect measures described in the Enforcement Directive. However, it is apparent that the transposition of relevant provisions of the Directive has not been made in the same way within the regimes of copyright, industrial property, database and protection of plant species. Basically, rightsholders can claim damages to the amount established under the general rules of the Civil Code, or to the amount (one or multiplied) of the remuneration that would be payable for authorising the usage of the protected subject matters. What distinguishes the different IP regimes is the question as to whether damages are payable only in cases where the infringement was caused by fault (that is the case of patent and trademark protection regimes) or irrespective of a culpability (in case of copyright and related rights regimes, database protection and plant species protection regimes). The second major difference is the amount of damages; while in the case of an industrial property protection regime this is limited to the amount equal to the relevant remuneration, intellectual property laws provide for the

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possibility to recover a multiple (up to a triple) amount of the relevant remuneration that would be payable for authorising the usage of protected subject matter.

Further amendments provide that in certain special, limited circumstances when an infringement was not intentional the judicial authority can - upon the application of the infringer, where accepted by the rightsholder - order a payment of an appropriate amount of money instead of a cessation of the infringement or corrective measures. Similar amendments have been introduced to industrial property law; however, in this case there is no need to get the rightsholder's consent with the application.

Other standards transposed include *inter alia* the requirement for a (single or repeated) public announcement in a press or alternative publication of a judicial decision (partial or whole), and provisions on evidence, as well as the right to information on the origin and distribution networks of goods or services, which infringe intellectual property rights.

The Act also contains some smaller amendments directed at a more precise transposition of certain provisions of other directives, notably introducing the notions of "satellite" and "communication of the work to the public by satellite, on the Polish territory" in the spirit of Directive 93/83/EEC.

Moreover, it establishes the terms of protection of phonograms and videograms according to Directive 93/98/EEC and reflects the provisions of Directive 96/9/EC stating that the *sui generis* right for the maker of a database is applied irrespectively of the eligibility of that database for the protection by copyright; consequently, a cumulative protection can be claimed.

The new Act will enter into force 14 days after its publication in the Official Journal.

Ustawa z dnia 9 maja 2007 r. o zmianie ustawy o prawie autorskim i prawach pokrewnych oraz niektórych innych ustaw

http://www.sejm.gov.pl/

Act of 9 May 2007 amending the Copyright and Related Rights Act and some other legal acts, document no. 1241

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