[PL] The right to "revoke" a licence or transfer of rights in the context of draft amendments to the Copyright and Related Rights Act

IRIS 2023-7:1/16

Marta Botiuk-Filip

Poland's 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 European Union L 130 of 17 May 2019, p. 92) (the so-called "Digital Single Market" Directive), hereinafter referred to as the "DSM Directive", made it necessary to amend the Copyright and Related Rights Act.

The proposed draft act introduces a significant change with regard to the author's rights in the event that the rights acquirer or licensee fails to distribute the work or to make it available to the public. This is a result of the introduction into the Polish legal system of, *inter alia*, Article 22 of the DSM Directive.

According to the draft proposal, in a situation where the acquirer of an author's economic rights or the licensee who has been granted an exclusive licence fails to undertake exploitation of the work within two years from the date of transfer of the author's economic rights or granting of the licence, the author could withdraw from the agreement or terminate it. The proposed amendment was widely criticised during the public consultation. Many entities were of the view that the amendment to the provision in question and the proposal to replace the existing term "distribution" with "exploitation" is not correct. The term "exploitation" is a broad concept and the wording used by the legislator is quite general. It was finally accepted that the possibility to exercise the right of withdrawal or termination would depend on the absence of "distribution" of the work by the rights acquirer or licensee.

The provision in question in the Polish Copyright and Related Rights Act (Article 57) also aroused much controversy regarding the extent to which it allowed the author or the performer to retain the remuneration in the case of withdrawal from or termination of an agreement by the creator. Under the influence of remarks made during the public consultations, the legislator decided to maintain the currently binding regulation allowing a double remuneration claim in relation to the remuneration specified in the agreement in the event that the lack of dissemination of the work results from circumstances for which the purchaser of the economic copyright or the licensee is responsible. Such a procedure is intended to protect the interests of creators and performers, who are usually the

© European Audiovisual Observatory (Council of Europe) 2026

weaker party to the agreement. However, it should be noted that the creator has the choice of whether to claim damages under the general rules or to receive double remuneration.

Particularly threatened by the change resulting from the implementation of Article 22 DSM would be works of a certain nature. Such works include, *inter alia*, audiovisual works which, due to their specificity, require special attention and a special approach. However, it is worth emphasising that the legislator has confirmed that, in the case of a certain type of works, those specific provisions concerning the acquisition of rights in works used in audiovisual works will remain in force and unchanged.

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

https://eur-lex.europa.eu/eli/dir/2019/790/oj

Projekt ustawy o zmianie ustawy o prawie autorskim i prawach pokrewnych oraz niektórych innych ustaw

https://legislacja.rcl.gov.pl/projekt/12360954/katalog/12887995#12887995

Draft Act amending the Act on copyright and related rights and certain other acts

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026