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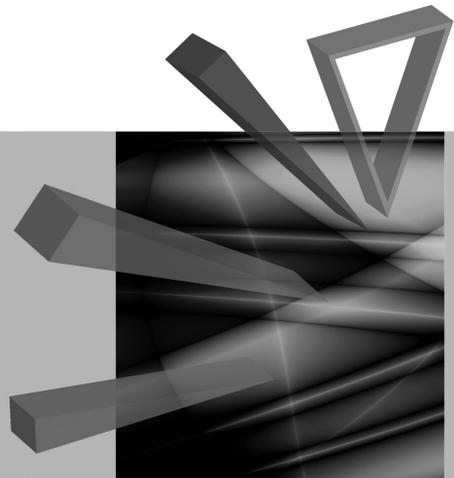
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## PROTECTION OF AUTHORS' RIGHTS IN KNOWLEDGE-BASED MARKET ECONOMY

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**Abstract:** Creating economy based on knowledge, modern and innovative, and at the same time more competitive is the main goal of market economy. Competition based on material resources is consecutively superseded by competition based on non-material resources (people, knowledge, technology). Intellectual capital comprises the most valuable ingredient of an enterprise. It enables its constant development and influences the competitiveness of the enterprise. The conscious usage of intellectual property protection law has a significant influence on the rational development of innovations and it translates into effective implementation of new ideas, especially in the field of economic activity. This in turn may lead to economic growth and result in raising the level of competitiveness of Polish entrepreneurs not only inside the country but also in the EU.

**Keywords:** intellectual capital, intellectual property, work, protection of authors' rights.

### 1. Introduction

Creating economy based on knowledge, modern and innovative, and at the same time more competitive is the main goal of market economy. Competition based on material resources is consecutively superseded by competition based on non-material resources (people, knowledge, technology). Knowledge, and especially its implementation and its influence on the development of enterprise in the times of economy based on knowledge, has become one of the factors which draw attention in the doctrine as well as in legal, management and economic practices. It is the intellectual capital which comprises the most valuable ingredient of an enterprise, because it makes its constant development possible and determines the competitiveness of an enterprise. The development of economy is imposed by its intellectual potential and scientific achievements. The knowledge itself is closely connected with human capital, because the effects of human work are diverse discoveries or innovations. The process of implementing innovations, i.e. innovativeness, is the basic subject of interest of contemporary economies.

In order to support the development of innovations many means have been created to support creativity. Among others, patronage, public means such as subsidies or grants, commissions and property rights can be mentioned. Innovativeness in Poland is also supported by many institutions, among them: the Polish Agency for Enterprise Development (Polska Agencja Rozwoju Przedsiębiorczości – PARP), the National Center for Research and Development (Narodowe Centrum Badań i Rozwoju – NCBiR), the Polish National Energy Conservation Agency (Krajowa Agencja Poszanowania Energii), Institute of Industrial Design (Instytut Wzornictwa Przemysłowego – IWP), Polish Patent Office (Urząd Patentowy RP), research and development centres, agencies of regional development Enterprises which base their development strategy on the innovative potential should use effectively the resources of intellectual capital assets they have. Thus, ensuring the development of intellectual property plays a significant role in connection with a general working strategy. It is essential to implement appropriate modes of planning integration and innovation implementation with connection to the strategic and operational analysis of the market in order to effectively build the individual market strategy of a specific entrepreneur. From this point of view it is important to provide intellectual property protection with simultaneous consideration of the necessity to exchange these goods between the entrepreneurs themselves but also other entities [Maczewski (Ed.) 2008, p. 20].

The conscious usage of intellectual property protection law has a significant influence on a rational development of innovations and it translates into effective implementation of new ideas, especially in the field of economic activity [Maczewski (Ed.) 2008, p. 2]. This in turn may lead to economic growth and result in raising the level of competitiveness of Polish entrepreneurs not only inside the country but also in the EU, particularly within a homogeneous market. The necessary management and proper intellectual property right protection will let the consumers use the work in every field of use in a broader and simpler way [Szymura 2012, p. 211].

## **2. Intellectual property as the subject of legal protection**

We assume as intellectual property the product of a human mind of a non-material character. The object of intellectual property cannot be perceived with senses, they can only help understand it, but the cognition itself is of a rational character, meaning intellectual [Sieniow, Włodarczyk 2009, p. 7]. That is why the object of protection is non-material goods (intellectual property) and not its manifestation, which should be recognized as material carriers of form or the contents of work. Among intellectual goods the objects of exclusive authors' rights should be mentioned in particular, such as ancillary works and rights, inventions not requiring individual or artistic character, trademarks and industrial marks and protected factual findings such as business secrets [Golat 2005, p. 11]. Absolute subjective rights of authors or other entitled subjects (producers, broadcasters, publishers) are always the object of protection.

It is worth indicating the similarity between intellectual property rights and real rights, especially property right. Admittedly, the subjects of property rights are the subjects of a material character, particularly objects (movables and immovables), and intellectual property refers only to the goods of a non-material character. However, the appearance of peculiar monopoly of an entitled entity, which takes place in both cases, should be emphasized. In accordance with Article 140 of the Civil Code, an owner can, within the limits described by the Acts and principles of community life, excluding other people, use the objects according to the social-economic purpose of its right, in particular they can collect benefits and other income from the objects. Within the same limits the owner can dispose of an object [Ustawa z 23 kwietnia 1964, art. 140]. Thus, in case of a property as well as an intellectual property, the control over an object and collecting any benefits and bearing the burden connected with using the object of protection comprises the domain of the entitled entity. Benefits in both situations can also be collected by a third person, i.e., a tenant or a licensee.

The notion of “an intellectual property” itself was introduced with the resolution of Stockholm Convention in 1967. Intellectual property rights, in accordance with the position of WIPO,<sup>1</sup> should be understood as rights referring particularly to: artists’ and interpreters’ interpretations, performances of artist performers, phonograms and pieces of literary, artistic and scientific work, radio and television programs, inventions in all fields of human activity, scientific discoveries, industrial designs, trademarks and service trade names, trade names and get-ups, protection against unfair competition.

An intellectual property includes diverse expressions of human activity. Traditionally they are divided into two categories, namely an industrial property and an author’s property. However, because of fast changes in the surrounding reality its range undergoes changes and today it includes traditional goods, e.g. patent protection, a business secret, author’s rights, trademarks and utility models, but also a growing number of new goods such as breeding rights, mask work rights and database rights [Pohulak-Żołądowska 2009]. An intellectual property also regards other goods such as: databases, folklore, traditional knowledge, gene resources, television and radio program formats, and Internet domains [Sieniow, Włodarczyk 2009, p. 6]. The problem of protecting these goods has become significantly important in the last several years. The range of regulations regarding an intellectual property right includes as well the rules of counteracting unfair competition [Ustawa z 16 kwietnia 1993]. That is why in today’s reality the traditional division of legal regulations including the protection of an intellectual property into “an industrial property right” and “an author’s right” has been extended with new objects of legal protection.

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<sup>1</sup> World Intellectual Property Organization, WIPO – one of 16 specialized UN organizations, located in Geneva.

It should be pointed out that an intellectual property right is not an independent legal branch. It is of a complex character and consists of diverse legal norms. Legal regulations of the intellectual property right comprises the norms of the private law (protecting the interests of an individual) as well as the norms of the public law (protecting the state and public interest), including crime or administrative norms [Sieniow, Włodarczyk 2009, p. 7].

The interest in this subject in the international arena is an evidence of the increased importance of the intellectual property right for economy. Among international sources of law the following need to be mentioned: Paris Convention for the protection of industrial property of 20 March 1883 [Konwencja Wiedeńska], Bern Convention for Protection of Literary and Artistic Work accepted in Berne on 9 September 1886 [Konwencja Berneńska], The Agreement on Trade Related Aspects of Intellectual Property Right (the so-called TRIPS Agreement) [Porozumienie w sprawie... 1994], The European Patent Convention (EPC) of 5 October 1973 [Konwencja o udzielaniu... 1993], Council Regulation of 20 December 1993 on the Community trademark [Council Regulation (EC) No 40/94].

Intellectual property rights comprise the basis for EU economy development and only when such European and state regulations are introduced, which create a coherent legal regulation, it is possible to realize the complex intellectual property right protection. Unifying the legal protection in the scope presented should guarantee the balance and promote creativity and innovativeness. The Commission Announcement to the European Parliament, which formulates the strategy of creating a uniform market in the area of an intellectual property, has a fundamental importance in this subject [Komunikat Komisji 2011]. The goal is to create a coherent system which can meet the demands of modern economy, with the simultaneous ensuring of appropriate remuneration for the creative effort and which will create the ground for the development of innovations in the EU [Szymura 2012, p. 213]. Among the European Union legal acts regulating intellectual property protection a directive should be mentioned regarding the enforcement of intellectual property rights, whose resolutions allow the author's right holders to claim intellectual property rights they are entitled to [Directive 2004/48/EC].

In the area of Polish legal regulations the resolutions of the act of an industrial property right of 30 June 2000 [Ustawa z 30 czerwca 2000], play the most important role and the act of authors' right and ancillary rights of 4 February 1994 [Ustawa z 4 lutego 1994].

### **3. The notion and range of protection of authors' rights**

An author's right comprises a part of an intellectual property right including the norms regulating the protection of authors and their works as well as the objects and subjects of ancillary rights.

A piece of work should be understood as a result of creative human work of an individual character, established in any form, independent of the value, purpose or the way of expression [Ustawa z 4 lutego 1994, art. 1, ust. 1]. Protection may include exclusively the way of expression. However, concepts, ideas, procedures or scientific discoveries etc. have been excluded from the protection of the provisions of the act [Ustawa z 4 lutego 1994, art. 1]. Among the objects of authors' rights protection the act mentions works: expressed by word, mathematical symbols, graphical signs (literary, journalistic, scientific, cartographic and computer programs), artistic, photographic, violin-making, industrial design, architectural, architectural and urban, urban, musical and verbal, musical, scenic, scenic and musical, choreographic, pantomimic and audio-visual [Ustawa z 4 lutego 1994, art. 2]. Attention should be drawn to the fact that this catalogue is of an open character and is not restricted to the application of act provisions to the types of creative activity mentioned in it. Works, according to the Supreme Court jurisdiction, may be recognized as for example an advertisement, a catalogue, a cookery book, a manual or technical documentation [Barta, Markiewicz 2005, p. 21]. The protection of authors' rights also includes the objects of ancillary rights (an artistic performance, a phonogram, a videogram, a broadcast, the first issues, scholarly and critical editions).

Authors' rights are divided into property rights (recording, copying or distribution) and personal rights (authorship, marking the work or integrity of the form and content). The first one is characterized by transferability and consequently heredity. Personal rights are not transferable and are not hereditary. Authors' property rights are characterized by limited time. These rights always expire after the deadline indicated in the provisions of the act. Personal rights are unlimited in time.<sup>2</sup>

As shown above, the work is a non-material good, thus there is no requirement for its preservation for the protection to start. The protection is not dependent of the work recording on a material carrier. However, in some cases it is an essential prerequisite to be established. It can be stated that preservation comprises a qualified form of establishment. In practice, not recorded forms of work establishment are rare.

The work should be of a creative and individual character. It is necessary for these prerequisites to coexist simultaneously, that is why they should always be considered as a mutual connection. Because of the fact that these two notions are not defined in the content of the act, the court jurisdiction is helpful in understanding it fully. "The requirement of the manifestation of creative activity is described by the name of originality, and requiring an individual character – by the notion of individuality, together as the term of creativity" [Wyrok Sądu 2002]. Verification of the originality feature is performed by a subjective evaluation of the addressee. The work comprises the reflection of the creation, is the result of a certain process, a creative process in fact, and as the final effect of this process it should be different

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<sup>2</sup> Authors' property rights expire 70 years after the author's death.

from other already established manifestations of a human activity. The object of authors' rights should include new, unprecedented values or contents, and they in turn are the consequence of the talent and creative abilities of the author [Golat 2005, p. 34]. It is worth emphasizing that for the work to be included in the legal protection it is not required to be characterized by originality in every aspect or fragment. It is enough for a part or even one of its integral elements to be of a proper creative level. It is possible for such a situation when the whole work is legally protected, but some of its integral elements, because of lack of creative value, are excluded from it and may be used by third parties without the author's consent.

Defining precisely the individual character of the work consists in evaluating the connection between the work and the author. In other words, it should be checked whether the work shows characteristics typical for the creativity of a given person and if it can originate only from them.

For the work to be included in legal protection its manifestation, familiarizing with its content or the form of other people than the author, the so-called establishing, is essential. As opposed to the English system of authors' rights protection, the so-called copyright system (e.g. the USA, Australia), in the Polish legal order it is not necessary to accomplish any formalities, in particular the work does not need to be registered or the author does not need to report the fact to proper authorities. It is worth paying attention to the fact that there is no requirement of placing a note regarding copyright or the following sign ©. The characteristic of authors' right is including in the protection all of the manifested human activities independent of the way of expressing the value, purpose or esthetic qualities.

A specific type of limiting intellectual property rights is the exhaustion of rights institution. The trading of work copies is allowed e.g. books, records after their introduction to the business trade [Ustawa z 4 lutego 1994, art. 51].

The author is entitled to the exclusive right to use the work and dispose it in all areas of exploitation and to remuneration for using the work [Ustawa z 4 lutego 1994, art. 17]. This monopoly is limited by an act by introducing a license of fair public use (e.g. use for didactic and scientific purpose) or private (fair private use). Thanks to the fair public use the work may be used, within the limit described by the act, without the entitled person's consent. Fair use cannot violate the normal use of the work or aim at correct interests of the author.

In practice, fair private use plays the basic part. Without the author's consent you can use for free the already published work for your own private use. This regulation does not allow for architectural or architectural and urban building according to somebody else's work [Ustawa z 4 lutego 1994, art. 23, ust. 1]. Fair private use is also excluded in case of computer programs and electronic databases whose protection is of a special character. The range of private own use includes a group of people in a personal relationship, especially relatives, kinship or social relations [Ustawa z 4 lutego 1994, art. 23, ust. 2].

Because of the fact that the act does not define the notion of private use, there appear many problems with its interpretation. In particular one question arises if the range of the legal license should also include the use of work for professional purposes. It needs to be accepted that a violation of fair private use will happen when the work is used and copied as a result of a direct order of authorities at the head of an organization unit [Barta, Markiewicz 2005, p. 72]. The use of work by a worker on their own initiative in order to facilitate the realization of work duties is not forbidden.

Among licenses of fair public use a quotation, a reprint, licenses for schools, libraries and documentation centres can be mentioned as well as the right for non-profit use of the work for the good of the disabled.

#### 4. Conclusions

Intellectual property rights are necessary for supporting the creation of innovations. The main goal of regulating the widely understood intellectual property right is to ensure the monopoly protection of the subjects of authors' rights and ancillary rights. Proper protection of these rights may limit the danger of their violation and change human creativity into resources of real market value.

High innovativeness ensures high productivity. Thanks to a high level of creativity new products are original and differ significantly from other products already functioning in the market, and this guarantees demand and leads to the increase of competitiveness of these entrepreneurs who implement innovations.

New products, technologies or machines find their way to the market almost every day. Intensified productive processes and using in them more and more modern techniques make it necessary to define the notion and range of protection of the intellectual goods behind them. Unfortunately, as often as the works help in the development of an enterprise, it is also often that improperly used and protected works may pose a significant barrier in benefiting from the manifestation of creativity of organization members. That is why the proper authors' right protection of works is such an important issue and in the wider range the intellectual property protection. Hopefully legal regulations in this area will become an effective tool in the fight against piracy and other violations of intellectual property rights which will help entrepreneurs achieve the expected technological progress and the position in the local as well as global market.

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## OCHRONA PRAW AUTORSKICH W GOSPODARCE OPARTEJ NA WIEDZY

**Streszczenie:** Kształtowanie gospodarki opartej na wiedzy, nowoczesnej i innowacyjnej, a tym samym bardziej konkurencyjnej to główny cel gospodarki rynkowej. Konkurencja oparta na zasobach materialnych wypierana jest sukcesywnie przez rywalizację opartą na zasobach niematerialnych (ludziach, wiedzy, technologiach). Kapitał intelektualny stanowi najcenniejszy składnik przedsiębiorstwa, umożliwia jego ciągły rozwój i wpływa na konkurencyjność przedsiębiorstwa. Świadome korzystanie z regulacji prawa ochrony własności intelektualnej ma istotny wpływ na racjonalny rozwój innowacji oraz przekłada się na skuteczne wdrażania nowych idei, w szczególności na polu działalności gospodarczej. To z kolei może doprowadzić do wzrostu gospodarczego i skutkować podniesieniem poziomu konkurencyjności polskich przedsiębiorców nie tylko w ramach wewnątrz krajowych, ale także na obszarze UE.

**Słowa kluczowe:** kapitał intelektualny, własność intelektualna, utwór, ochrona prawnoautorska.