

COPYRIGHT PROTECTION IN POLAND. EXPERIENCE USING DIGITAL PLATFORMS

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Abstract. On May 1, 2004 Poland joined the European Union (thereafter – EU). Thus, Poland has been a member of the EU for 18 years. During this time, after being more than 40 year (in 1947-1989) a part of Eastern Block (also known like Soviet Bloc), building a democracy since 1989 and eventually becoming a part of European Union, Poland built its own system of copyright protection which is reviewed in this article.

The most interest, the copyright protection in Poland, at author's opinion, is for post-soviet countries, for example like Ukraine, which guide efforts to become a part of EU and trying to escape from the ghost of socialism.

In this article author considered the copyright protection in Poland in general, registration procedures and the main interest is copyright protection through digital platforms in Poland.

Innovation moving this world, creators interested of innovation's protections, digital future involves digital interacting through digital platforms. That's why for the author of this article is so interesting to look behind the veil of the EU country which is Poland in terms of copyright protection procedures for their registration and experience in the use of digital platforms.

Keywords: copyright protection, copyright registration procedure, digital platform, European Union, Poland copyright law.

Author contributions

The authors made an equal contribution to the article. Together they selected literature, analyzed it and drew common conclusions.

Disclosure statement

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INTRODUCTION

The protection of intellectual property rights is especially important for the development of a business based on the production and distribution of innovative or high-tech products.

The protection of intellectual property rights is equally important for an artist whose works are the most valuable assets in his own business.

On 17 of April in 2019 in EU was adopted the 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. This Directive lays down rules which aim to harmonise further Union law applicable to copyright and related rights in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations to copyright and related rights, on the facilitation of licences, as well as rules which aim to ensure a well-functioning marketplace for the exploitation of works and other subject matter (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).

So, we are already in a digital society and use digital content, and this requires appropriate legal regulation.

But in order to receive protection, the copyright owner should prove that this work belongs to him. Therefore, according to the author of this article, it is important and necessary for the right holder to be able to fix the time and date of creation of his intellectual property object in the digital space.

Or for example, to have such possibilities to know from the digital platforms about the opportunities for copyright protection, in particular to fix the time and date of creation, for prevent further proving the primacy of creation if required.

Digital platform in general terms refers to the software or hardware of a website allowing for the interaction of its users. It is a digital space that provide facilities for users to collaborate, interact or transact digital.

The interest of the author of the article is the practical implementation of copyright protection in Poland after the object of intellectual property is created, in particular, registration of copyright, proof of authorship in court, the possibility of interaction of the author with state and private digital platforms for the implementation of copyright protection.

The purpose of the article is to research the institution in Poland or digital platforms, where owners of intellectual property can get official confirmation of copyright registration for their protection and provisions of Polish legislation, main approaches to copyright protection.

METODOLOGY

To achieve the purpose, several theoretical research methods were used, both general scientific and special.

In particular, the dialectical method allowed the author to analyse and evaluate the copyright protection system in Poland in its development.

The author used the formal-logical method to analysed the provisions of the legislation of Poland and the European Union on copyright, like Polish Act on Copyright and Related Rights, Berne Convention for the Protection of Literary and Artistic Works and others.

In addition to legislative acts, the empirical basis of the research was also the judicial practice of Polish courts, opinions of practising lawyers, investigation of digital platforms.

LITERATURE REVIEW

Iwona Kuś and Zofia Senda in their book “Copyright and Related Rights” considers changes in Polish copyright law in connection with the adaptation of provisions to European Union law. The authors notes, that the protection granted by copyright does not depend on meeting any formal conditions, e. g. in the form of placing the so-called copyright notices, placing the © mark, or registering works, paying fees. Again, the Polish system in this case is less formalized than, for example, American law, where the registration of the work and the marking of copyright ownership are important in order to obtain protection. The principle of informalisation of the granting of copyright protection has been expressed literally in the wording of Art. 1 clause 4 of Polish Act on Copyright and Related Rights “The creator is entitled to protection irrespective of fulfilling any formalities” (Iwona Kuś, Zofia Senda, 2004).

Janusz Barta and Ryszard Markiewicz in their book “Copyright” notes, that in order to obtain protection under copyright law, it is sufficient to establish the work externally – it is not necessary to complete any formalities (e.g. with regard to markings on a copy of the work or its registration). That an order to fulfill the formal requirements (registration, copyright notice) for granting copyright protection specific to the Anglo-Saxon system. (Janusz Barta, Ryszard Markiewicz, 2016)

In fundamental scientific work by Joanna Sieńczyło-Chlabicz, Monika Nowikowska, Magdalena Rutkowska-Sowa, Joanna Sieńczyło-Chlabicz, Zofia Zawadzka in their book “Intellectual property rights Theory and practice” the authors describe full system of Polish Intellectual Property Law and in particular of course Copyright law. The book contains scientific research connected with concept, theory, terms of copyright law, registration procedures for industrial property etc. (oanna Sieńczyło-

Chlabicz, Monika Nowikowska, Magdalena Rutkowska-Sowa, Joanna Sieńczyło-Chlabicz, Zofia Zawadzka, 2021).

So, thanks to these fundamental works, those who wish will be able to have a complete and clear picture of the Polish copyright system, and yet it remains more of a problem for practicing lawyers to prove that the person first created the work.

RESULTS AND DISCUSSION

The level of protection of copyright in Poland is similar to other legal systems and is basically the same as in other EU Member States. Poland has implemented all the EU copyright directives. The basic terms and rules of copyright and protection of related rights are the same all over the world because of international treaties signed in the fields of copyright, although specific rules, exceptions and limitations may differ in some countries.

Also, apart from Berne Convention for the Protection of Literary and Artistic Works from 9 September 1886, Poland is a signatory of major international copyright treaties, including: Universal Copyright Convention (Geneva) from 09 March 1977; Universal Copyright Convention (Paris) 09 March 1977; Agreement on Trade-Related Aspects of Intellectual Property Rights 01 July 1995 and WIPO Copyright Treaty 23 March 2004. Many of the EU directives reflect Member States' obligations under this Treaties.

The main legal rules on copyright in Poland are set out in the Act on Copyright and Related Rights (Ustawa o prawie autorskim i prawach pokrewnych) (hereafter – Act), which has been adopted on 4 February 1994. This act has been amended several times since then, mainly to adapt it to the changes taking place at European and international level (Polish Act on Copyright and Related Rights, 1994).

The provisions of the Polish Act on Copyright and Related Rights are similar to the ones applied in the majority of EU Member States from the continental copyright tradition.

Part 3 of Art. 1 of Act declared that a work is subject to copyright from the moment it is created, even if it is incomplete. In the part 4 of Art. 1 it is said, the author is entitled to protection regardless of the fulfillment of any formalities.

Thus, this article reflects the principle of *automatic protection*. This is one of the main principles proclaimed in the Berne Convention for the Protection of Literary and Artistic Works (often simply the Berne Convention), which is a key international copyright agreement adopted in Bern, Switzerland in 1886.

The principle of automatic protection means that copyright does not require any preliminary formalities (such as registration, a special statement of claims for copyright, permission from the authorities, etc.) and arises automatically at the moment the work is fixed in material form (for citizens of member countries convention) or first publication (for works by foreign authors published in these countries).

There is no public record, or Copyright Register, and you do not receive any public certificate of registration. There are some organizations or societies of authors that keep records of certain kinds of works, although such registration is completely voluntary and under no circumstances can be treated as a precondition to obtaining copyright protection.¹

The rule of Art. 8 proclaims that it is presumed that the creator is a person whose name in this capacity was given on copies of the work or whose authorship was made public in any other way in connection with the dissemination of the work.

So, in this article also one of the main international principles of copyright is fixed - the presumption of authorship. According to this principle, authorship is recognized as legally reliable until proven otherwise. It is also enshrined in Berne Convention.

So, there is no such institution in Poland where you can get official copyright registration confirmation.

¹ https://euipo.europa.eu/ohimportal/web/observatory/faq-pl?TSPD_101_R0=085d22110bab2000acd13aaa3b97fca6cf9e7f9d3714f51a8254bf70fd5ba8e00ec724b790f525000887e539681430009cde296ef03b395553a2451c97d45c58002cec57866d63e80ea0736745551746b972428703377a69660458f9ccb05738

As we already noted, The Polish system in this case is less formalized than, for example, American law, where the registration of the work and the marking of copyright ownership are important in order to obtain protection (Iwona Kuś, Zofia Senda, 2004)

Lawyer Anita Kozek-Kapuscinska, notes that labels ask her the question of how to confirm the authorship of their work in Poland, if it cannot be registered anywhere? She notes that although according to Polish copyright laws, works are not subject to registration. This means that you do not need to submit any applications to the offices in order to be a copyright holder. In copyright law, protection begins as soon as the work is identified (that is, when it is communicated to third parties). On the other hand, a creator is a person whose name has appeared in that capacity on copies of the work or whose authorship has been made public in any other way in connection with the distribution of the work - presumption of authorship. However, this presumption can be rebutted and most often is rebutted at trial (Anita Kozek-Kapucińska, 2019)

Practitioner lawyers says, the more evidence the better. Here are some ways how copyright can be protected, recommended by Polish lawyers:

1. Copyright reservation with a notary public.
2. Copyright disclaimer – WIPO Proof. Unfortunately, from February 1, 2022, the token generation service is no longer available. But it was great digital platform that was something like a digital notary. WIPO does not created copyrights, but conformed a formal creation of a proof of the existence of the work on a specific date. This is done to convince the judge that we have these rights. The court, analyzing the circumstances of the case, will either agree with it or not.
3. Mail a copy of work to owner's address by registered mail with return receipt requested. Or always ask for confirmation of receipt of a copy of your work by the person you are giving the copy to;
4. Create a photo documentation of the creative process and work – take a photo, do not forget to mark the date of the shooting.
5. Call as witnesses, people who are familiar with your work.
6. Copyright registration with the US Copyright Office.

The copyright registration may have more advantages than none.

Everything in accordance with the principle “prevention is better than cure”. According to lawyers, the lack of copyright registration can create unpleasant consequences for the author.

For example, a patent attorney Mikołaj Lech, writes on his professional blog, that paradoxically, the advantage of protection without formal registration is also a big disadvantage. The point is that it is nowhere noted who, and if at all, is entitled to these rights. If there is a dispute, for example about a company logo, how can you prove that you are its creator? A mere statement is not enough. A competitor may insist that he developed them. We then have a word against the word. Of course, the owner can call witnesses or engage an IT investigator to x-ray owner's e-mails, but the whole operation, however, becomes complicated and its result is uncertain (Mikołaj Lech, 2021).

In another legal blog, in the article of Jakub Bonowicz, the polish lawyer, express his opinion about evidence of copyright registration. Thus, he thot that registration of a work in the USA or Germany is confirmed by a specific document. As protection in Poland is granted without any formalities, so the significance of this document is purely evidential (and thus de facto crucial in the event of a possible trial) (Jakub Bonowicz, 2020).

In practice, if owner have such a registration certificate, it rather gives you a good position in the process.

There is no central official register of works in Poland (such as the register of entrepreneurs or the register of associations).

But there some digital platforms, registers of works kept by various organizations. They issue, for example, registration certificates confirming that, for example, you are the author of a given work and you created it on such and such a date. Such certificates can be used as evidence in a possible trial if someone is using your work unlawfully. Such a document is only ordinary evidence in the trial, which will be subject to the court's assessment.

One of such organization is *The Copyright Index*, which operates in Poland under international copyright agreements, and is recognized in countries all around the world as a copyright authority

providing official copyright registration. This organization declared that, registering original files with a date and time stamp, with alongside information about the work and proof of work concept and development, means that person have unequivocal proof of authorship and ownership. The owner can registrate copyright electronically and receive confirmation by email with an official certificate attached to that email.

Or for example, digital platform *ZAiKS* is the oldest and largest organization of collective copyright management in Poland. Its members are representatives of many fields of creativity. Owner can submit works for copyright registration both electronically and by traditional means.

If we turn to jurisprudence, we can see, for example, in the Decision of the Supreme Court of the Republic of Poland dated on September 15, 2011, in an action filed by “H. Inc.”, located in Pawtucket, United States of America versus “I. – Limited Liability Company”, on the cessation of copyright infringement on board games and elimination of their consequences, the following was established: The United States Copyright Office has registered a copyright for the work in the form of a game. Certificates provided by the plaintiff – excerpts from the register of the US Copyright Office confirming the above registration are not proof that the plaintiff has acquired property copyrights in the works referred to in the claim. These documents are valid official documents within the meaning of Art. 244 of the Code of Civil Procedure – it only follows from this that these rights belong to the subjects mentioned in it. The applicant did not provide any evidence to support the acquisition of these rights under Polish law. The Court of Appeal, when assessing the certificates issued by the Office of Copyright of the United States of America, did not deny them the value of official documents, but only found that they do not constitute – under Polish law – proof of the transfer of copyrights of the entities listed in them to the claimant. The substantive evidential value of an authentic document, i. e. its significance for the purposes of adjudication in a specific case, is subject to the court’s assessment according to the principle of the free assessment of evidence.

As can be seen in this case, the Certificate of Registration of Copyrights provided by The United States Copyright Office did not play a key role for the Polish courts.

Also, in Poland is the *SAiW COPYRIGHT POLSKA*, it is the Polish Association of Authors and Publishers, is the collective management organization designated by the Ministry for administration of rights in books and other text-based materials. It is a collective management organization working for publishers and authors to provide effective and adapted systems for the protection of rights holders, and provides measures to allow users of intellectual property to legally use works and works in both “analogue” and “digital” the world (*Stowarzyszenie Autorów i Wydawców COPYRIGHT POLSKA organizacja zbiorowego zarządzania prawami autorskimi*).

This organization offers authors membership thanks to which, as the company positions, it is easier to manage their intellectual rights and effectively protect them.

CONCLUSIONS

To confirm copyright in Poland, registration is not required, as well as the formula “all rights reserved” or a copyright mark. In the opinion of practicing lawyers, this lack of formalism becomes a disadvantage in the event of litigation.

Since the author of the work in this case bears the burden of proving the primacy of the rights to the work.

As we discussed in the article, registration of copyright through the WIPO digital platform is no longer possible.

Registration with the US Copyright Office for Polish courts does not have irrefutable probative value.

One of the most convincing ways is to confirm the date of creation with a notary. As well as ways to obtain informal evidence from commercial private organizations.

But to pass these steps you need to know about it, get advice from a practicing lawyer, spend money on getting legal advice and obtaining these certificates.

Thus, we can conclude that it might make sense to create, at the state level in Poland, a free digital platform that would provide copyright holders with clear information about copyright protection methods, which would be supported by court decisions confirming the effectiveness of these protection methods.

We believe it would be expedient to create a digital platform at the state level that would allow individuals who wish to register their copyrights to submit applications online, which confirms the registration of copyrights, or at least confirms the date of their creation.

For example, in connection with the military aggression of the Russian Federation against Ukraine, so that creators do not lose the opportunity to protect their copyrights, the State Enterprise “Ukrainian Institute of Intellectual Property” introduced electronic filing of applications for registration of copyright objects.

In addition, the DIYA portal has a free guide “Registration of the right to a work”, which describes the entire process of copyright registration step by step, in a language understandable to the average person, which results in obtaining a certificate of state registration of copyright.

Or, for example, the Ukrainian startup PatentBot, this is a chatbot for registering trademarks that allows you to check if a trademark is free and apply for its registration in a matter of minutes.

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ЗАХИСТ АВТОРСЬКИХ ПРАВ У ПОЛЬЩІ. ДОСВІД ВИКОРИСТАННЯ ЦИФРОВИХ ПЛАТФОРМ

Анотація. Під час цієї жахливої війни в Україні українське суспільство переконалося, наскільки важливою та корисною для українців була і залишається політика “цифровізації”, яку проводить українська влада. Як влучно зазначив Міністр цифрової трансформації України, цифрова інфраструктура є найбільш стабільною та ефективною під час війни. Тому що її неможливо знищити ракетами. Інновації рухають цей світ, творці зацікавлені в захисті інновацій, а цифрове майбутнє передбачає цифрову взаємодію через цифрові платформи.

Ось чому для автора цієї статті так цікаво зазирнути за завісу країни ЄС, якою є Польща, та дослідити, які є процедури реєстрації та захисту авторських прав у Польщі, а також досвід використання цифрових платформ у цій сфері. На думку автора статті це дослідження буде цікаве для науковців із пострадянських країн, наприклад таких як Україна, які прагнуть стати частиною ЄС і намагаються втекти від “примари” соціалізму.

У статті автор розглянув захист авторських прав у Польщі загалом, процедури реєстрації та головний інтерес – захист авторських прав через цифрові платформи в Польщі.

У результаті дослідження виявилось, що в Польщі немає такої установи, де можна отримати офіційне підтвердження реєстрації авторського права. Водночас польські практикуючі юристи зазначають, що реєстрація авторського права може мати більше переваг, ніж її відсутність, а відсутність реєстрації авторського права може створити неприємні наслідки для автора.

Таким чином, ми можемо зробити висновок, що може бути доцільним створити на державному рівні в Польщі безкоштовну цифрову платформу, яка б надавала правовласникам чітку інформацію про способи захисту авторських прав, що підтверджувалося б судовими рішеннями, що підтверджують ефективність цього захисту. методи.

Водночас, в Україні, у зв'язку з військовою агресією Російської Федерації проти України, щоб творці не втратили можливість захистити свої авторські права, ДП «Український інститут інтелектуальної власності» запровадив електронну подачу заяв на реєстрацію об'єктів авторського права.

Крім того, на державному порталі “ДІЯ” та державному порталі УКРПАТЕНТУ є безкоштовні “гайді” “Реєстрація права на твір”, де по кроку, зрозумілою для пересічної людини мовою описано весь процес реєстрації авторського права, результатом якого є отримання свідоцтва про державну реєстрацію авторського права.

Вважаємо за доцільне, що у Польщі можна також на державному рівні створити цифрову платформу, яка б дозволяла особам, які бажають зареєструвати свої авторські права, подавати онлайн заявки, що підтверджують реєстрацію авторських прав або підтверджують дату їх створення.

Ключові слова: захист авторського права, процедура реєстрації авторського права, цифрова платформа, Європейський Союз, закон про авторське право Польщі.

COPYRIGHT PROTECTION IN POLAND. EXPERIENCE USING DIGITAL PLATFORMS

Abstract. During this terrible war in Ukraine, Ukrainian society became convinced of how important and useful for Ukrainians the “digitalization” policy pursued by the Ukrainian authorities was and remains. As the Minister of Digital Transformation of Ukraine aptly noted, digital infrastructure is the most stable and effective during wartime. Because it cannot be destroyed by missiles. Innovation drives this world, creators have a vested interest in protecting innovation, and the digital future involves digital interaction through digital platforms.

That is why it is so interesting for the author of this article to look behind the curtain of an EU country, which is Poland, and investigate what are the procedures for registration and protection of copyright in Poland, as well as the experience of using digital platforms in this area. According to the author of the article, this study will be interesting for scientists from post-Soviet countries, such as Ukraine, which aspire to become part of the EU and try to escape from the “ghost” of socialism.

In the article, the author considered copyright protection in Poland in general, registration procedures and the main interest - copyright protection through digital platforms in Poland.

As a result of the research, it turned out that there is no such institution in Poland where you can get official confirmation of copyright registration. At the same time, Polish practicing lawyers point out that

copyright registration can have more advantages than its absence, and the lack of copyright registration can create unpleasant consequences for the author.

Thus, we can conclude that it may be appropriate to create a free digital platform at the state level in Poland, which would provide rights holders with clear information about copyright protection methods, which would be confirmed by court decisions confirming the effectiveness of this protection. methods.

At the same time, in Ukraine, in connection with the military aggression of the Russian Federation against Ukraine, so that creators do not lose the opportunity to protect their copyrights, the SE “Ukrainian Institute of Intellectual Property” introduced electronic submission of applications for the registration of copyright objects.

In addition, on the state portal “DIIA” and the state portal UKRPATENT there are free “guides” “Registration of the right to a work”, where the entire process of copyright registration is described step by step in a language understandable to the average person, the result of which is the receipt of a certificate of state registration of copyright rights

We consider it appropriate that in Poland it is also possible to create a digital platform at the state level, which would allow persons who wish to register their copyrights to submit online applications confirming the registration of copyrights or confirming the date of their creation.

Keywords: copyright protection, copyright registration procedure, digital platform, European Union, Polish copyright law.

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