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PROTECTING INTELLECTUAL PROPERTY IN POLAND

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1. PIRACY IN POLAND

Losses caused by violators of copyrights and related rights concerning sales of CDs, tapes, DVDs and computer programs in Poland in the year 2002 amounted to approximately **491 million USD**. However, the sum does not include losses incurred by TV broadcasters, publishers, book authors and other trademark infringements. In 2002 Polish custom officers seized more than **1 million items** of counterfeit goods. Furthermore, the cultural domains such as limited book editions and the market for phonograms has also been in decline.

It seems that the people trading in the pirated products – both those who sell and those who buy are not aware of the principles of trademark protection. The market forms a kind of intellectual and industrial property law free zone. Due to the great scale of infringements of copyrights and related rights **Poland is now on the watch list of The International Intellectual Property Alliance (IIPA).**

2. COPYRIGHTS PROTECTION

DVD piracy is estimated to be about **30%** of all DVDs sold in Poland. Pirated **computer programs** and professional software amount to **65%** of the total sale of these goods. **45%** of **CDs** sold are pirate copies. What is more, every day the scale of internet piracy is increasing – mainly due to free access to works on the web. In connection with IP protection, the situation in Poland is bad although copyrights and related rights are protected by Polish legislation.

Copyrights and related rights are protected in Poland by:

- **Act of 4 February 1994 on copyright and related rights protection.**

Poland is also a signatory of:

- **Bern Convention - the Rome text of the Convention (description of the Convention)**
- **Rome Convention for the Protection of Performers, Producers and Phonograms and Broadcasting Organisations, Rome, 1961**
- **WIPO World Copyright Treaty, 1996**
- **WIPO World Performances and Phonograms Treaty, 1996**
- **TRIPS Agreement**

Polish law on copyright protection comply to a large extent with European Union legislation. The Copyright Act takes into account the following directives:

- **Legal protection of computer programs, 14 May 1991.**
- **Rental right and lending right and certain rights related to copyright in the field of intellectual property, 19 November 1992.**
- **Co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, 27 September 1993.**
- **Harmonisation of the term of protection of copyright and certain related rights, 29 October 1993.**
- **Harmonisation of certain aspects of copyright and related rights in the information society (in progress).**

The Copyright Act protects:

- copyrights
- performing rights
- phonogram and video (which are owned by producers)
- broadcasting rights (which belong to radio and TV stations)
- right to first edition of works (which belong to publishers)
- right to scientific and critical editions (belonging to publishers)

The Act provides for civil and criminal law sanctions in cases of infringements of copyright or related rights.

Plaintiffs, whose copyrights or related rights have been infringed, may demand:

- ceasing the infringement
- rendering acquired benefits
- payment of double remuneration or, in cases where the infringement was caused with fault – the amount can be triple.

Besides civil law sanctions, there are also criminal law sanctions – which refer to the following acts:

- unlawful dissemination, fixation, copying of works
- plagiarism
- trade in or aiding and abetting in the trade of counterfeit goods and pirated phonograms
- storage or selling of devices allowing the evasion of technical protection measures.

Most of these offences are prosecuted on a motion for an injured party.

Apart from the protection provided in copyright law Polish legislation protects also databases:

- **Act of 27 July 2001, Journal of Laws 2001; No 128, pos. 1402 as amended;** this Act introduces protection of traditional and electronic databases (apart from the databases that are protected by copyrights).

A step forward in the process of introduction of laws protecting the lawful use of works and broadcasts is:

- **Act of 18 July 2002, Journal of Laws 2002 No 144, pos. 1204 as amended** on services provided by electronic means; this Act describes among others the principle of liability of internet service provider

and

- **Act of 5 July 2002, Journal of Laws 2002, No 126, pos. 1068 as amended,** which describes the rules governing the protection of TV signal.

3. INDUSTRIAL PROPERTY LAW

Poland is a party to the:

- **Paris convention on protection of industrial property**

and in 2003 became a member of:

- **European Patent Organisation.**

In its domestic law, Poland complies with the guidelines and principles developed in the EU. On 30 June 2000 the Polish Parliament passed an act:

- **Law of industrial property**, which strongly modernised and regulated all the issues concerning industrial property.

And so the above mentioned regulates the following issues:

- patents on inventions (which belong to creators)
- protection rights for utility models.
- rights in registration for industrial designs
- right of protection for trademarks (owned by the company which asked for registration or the holder of a renown trademark)
- right in protection of geographical indications (belonging to organisation representing companies acting on a specified territory)
- right in registration of topographies of integrated circuits (belonging to the creator or their legal successors)

The above mentioned act was amended in 2002 thereby adding protection for medicines and plan protection products.

Any claims arising from infringements of rights mentioned above and protected by industrial property law are similar to those pertaining to copyright protection law.

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What are the reasons for the scale of piracy in Poland then? There are few issues worth mentioning:

- inefficient prosecution machinery and the administration of justice
- lengthy proceedings
- classification of infringements as acts causing only minimal damage to the society.
- lack of IP protection awareness within the society.

However, Polish legislation in IP matters meets all European and international standards. Even though there are some difficulties in law enforcement, Poland has the suitable law instruments to protect IP rights. Moreover, this state of affairs is continuing to improve.

In addition, the society's IP protection awareness is growing daily. Furthermore, the war being waged by the holders of IP rights and their lawyers is beginning to result in some success.

Disclaimer: these notes are provided for general information purposes only and should not be applied to specific circumstances without prior consultation with Maciej Slusarek.

KUNACHOWICZ, SLUSAREK & PARTNERS

The law firm Kunachowicz, Slusarek and Partners was founded in Warsaw in 1998. It provides assistance to corporate and private clients in the fields of civil and administrative law. The main areas of practice are:

- Corporate & Commercial
- Mergers & Acquisition
- Banking
- Capital Investment
- Privatisation
- Taxation
- Employment
- Intellectual property
- Media, Internet
- Pharmaceutical
- Advertising
- Data protection
- Sport
- Litigation

Apart from international practice within the Euro-Link association Kunachowicz, Slusarek & Partners provides an extensive range of legal assistance in Russia, Belarus and Ukraine. Within the scope of this area of specialization the firm is involved in joint commercial ventures, preparation of agreements and establishing companies having Polish capital participation.

MACIEJ SLUSAREK

Maciej Slusarek practices in intellectual property law, the protection of industrial property rights and litigation. His practice area involves the provision of a full range of legal services connected with all manner of undertakings in the field of arts and entertainment as well as activities of producers. Maciej Slusarek prepares license and sale contracts related to copyright and related rights. He looked after all the legal aspects of polish largest firms and phonographic producers. For many years now, he has acted as a legal advisor and authorized representative of the largest press and books publishers and also advised and cooperated with advertising agencies, producers of advertisements, and persons involved with new Internet-related ventures.

Maciej Slusarek is a member of Warsaw Bar Association, Polish-British Legal Association and Competition Law Association.

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