

# Intellectual Property Protection

## part IIa: Copyright law – The work and the author BA and MA programmes in English

*Report says that you, Fidentinus,  
recite my compositions in public as if they were your own.  
If you allow them to be called mine, I will send you my verses gratis;  
if you wish them to be called yours, pray buy them, that they may be  
mine no longer. (XXIX).*

(Source: Martial, Epigrams. Book 1. Bohn's Classical Library (1897)  
[http://www.tertullian.org/fathers/martial\\_epigrams\\_book01.htm](http://www.tertullian.org/fathers/martial_epigrams_book01.htm), 25/05/2018)

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# Copyright law – introduction

- Copyright and neighbouring rights as protection of intellectual activity of human being (except those protected by Industrial Property Rights) – according The Convention establishing WIPO, 1967.
  - literary, artistic and scientific works
  - performances of performing artists
  - phonograms (sound), broadcasts (radio and television recordings)
- ***copyright*** vs ***droit d'auteur*** (European model)
- **Synthetic definition of copyright:** protected by law **exclusivity** (monopoly) of a particular person ( $\approx$ author) in **using** and **receiving benefits** from the **effects of intellectual effort (works)**, combined with the **respect for personal interests** such as identification of the author with his/her work (authorship) and the integrity of content and form of the work.

# Copyright law – introduction

- Neighbouring (*related*) rights – protection of human effort effects that are not a manifestation of the unique personality of the creator – protection of economic aspects (for a financial contribution / investment):
  - Rights to (Artistic) Performances
  - Rights in Phonograms and Videograms
  - Rights to Programme Broadcasts (Services)
  - Rights to First Publications (Editions) and Scientific and Critical Publications (Editions)
  - Right to press publications as part of the provision of electronic services (*new from 2024*)

**Shorter (?) and "weaker" protection  
than in case of copyright**

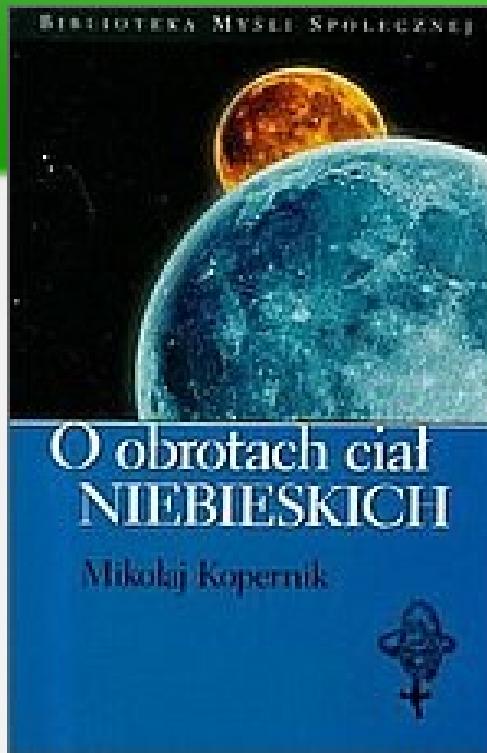
The changes in 2015 increased  
the protection of above rights;  
other changes also in 2024

# Sources and basic principles

- The Act on copyright and neighbouring rights from 1994 (Journal of Laws 1994 item 24 no. 83 as amended) - CL
  - coverage of The Act (art. 5 CL): *The author is Polish or the work was published in Poland and ...*
- The Berne Convention for the Protection of Literary and Artistic Works 1886 (Paris revision 1971)
- TRIPS - WTO (1994)
- Other international conventions (esp. regarding neighbouring rights)
- Directives (*not Regulations*) of EU – harmonisation only
- **Principles:**
  - territoriality
  - “assimilation clause” (national treatment principle)
  - minimum standards principle / common rules principle
  - **irrespective of complying with any formalities – automatically**
  - independence of protection (from other form of protection)
- **Cooperation, but everyone protects differently - the need for international protection due to the nature of creativity (work).**

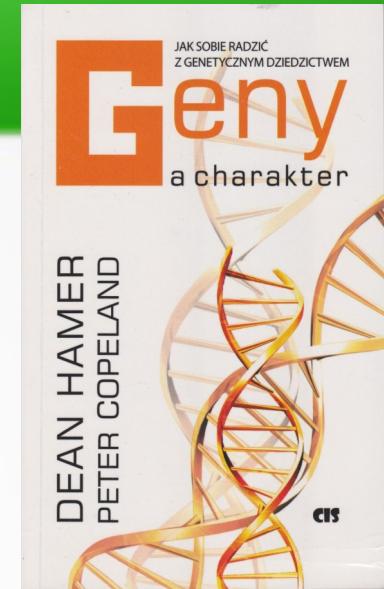
# Copyright – the subject matter

- Copyright is absolute subjective right (similar to ownership /of physical goods/)
- It has the **Owner (Right-holder)**, the **Subject matter** and the **Content**.
- **The subject matter of the copyright is WORK!!!**



# What is the work...?

- “*O obrotach sfer niebieskich*” Mikołaj Kopernik
- Bachelor thesis review
- A flower drawn for your friend
- Student assignments
  - test
  - descriptive
  - essays
- Computer program?
- This lecture ?



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# The Work

- The object of copyright shall be any manifestation of **creative activity** of **individual nature**, **established** in any form, irrespective of its value, purpose or form of expression (work) (art. 1 par. 1 CL)
  - the original and unique definition – present in Polish law
  - The essential features / criteria of the work:
    - [human] activity\*
    - creative [activity]
    - individual nature
    - established

**The above criteria to be fulfilled jointly !!!**

# The work – essential features

- **human activity** – what about computer graphics?
- **creative activity (“originality”, ~novelty)**
  - The appearance of new intellect creation –  
NOT copying, different between already existed and the created one  
 (“minimalistic” conception)
  - And what about the cultural value / importance? (strict / rigorous conception) – value vs. novelty?
- **individual nature**
  - Stigma of particular person → perception of the world
  - The work must reflect personality of the creator – the work is so, because it was created by the particular man
  - Again: if we are sure that another piece does not take such form, it is a work

# The work – essential features

- **establishing** (NOT!!! *fixing*)
  - Leaving the mind/intellect ☺ and availability for “the world”
  - Potential availability, not necessarily the actual availability
  - Any form that could be available for at least one person
  - **establishing ≥ fixing** (a performance without recording, lecture)
- When and how does the legal protection arise?:
  - The work shall be copyrighted since being established, even though **its form is incomplete** (art. 1 par. 3 CL)
  - The author shall enjoy copyright protection **irrespective of complying with any formalities** (art. 1 par. 4 CL)

# The work – formal examples

- And if we can not precisely decide, than ... (art. 1 par. 2 CL) :

In particular, the object of copyright shall include:

- 1) works expressed in words, mathematical symbols, graphic signs (literary, journalistic, scientific, *cartographic works* and *computer programs*);
- 2) artistic works;
- 3) photographic works;
- 4) *string musical instruments*;
- 5) industrial design works;
- 6) architectural works, architectural/urban planning works as well as urban planning works;
- 7) musical works as well as musical/textual works;
- 8) theatrical (stage) works, theatrical (stage)/musical works as well as choreographic and pantomime works;
- 9) *audiovisual (including cinematographic) works*.

- **But: always should be examined in the light of formal features / criteria (from art 1 CL)!!!**

# The work – non-formal examples

- Books
- BA/MA Thesis
- Projects for classes / semester paper
- Presentations for classes
- Movies
- “Musical work” (melody, words)
- Lectures (!)
- Computer programs (also computer games)
- BA/MA Thesis Reviews
- Calendars
- Wedding dresses
- Musical instruments
- Derivative works (e.g. translations of foreign work into polish, adaptation etc.)
- .... (and many more, even not intuitive objects according to the court verdicts)

# The work – special cases

- **AN ORIGINAL WORK and A DERIVATIVE WORK**
  - The derivative work has the features (fulfils the criteria) of a work, but also contains or uses elements of the original work
  - Any copy is not the derivative work
- **Adaptations:** The work derived from another author's work, in particular its **translation, modification or adaptation**, shall be copyrighted **without detriment to the original work.** (art. 2 par. 1 CL)
  - Derivative right appears unless the author's economic rights to the original work have expired (art 2 par. 2 CL) – The disposal and use of the derivative work shall depend on the permission of the author of the original work
  - The copies of the derivative work shall indicate the author and the title of the original work (art 2 par. 5 CL) – **always due to the author's moral rights**
  - The work created under the inspiration of another author's work shall not be considered as the derivative work. (art 2 ust. 4 CL)
- Examples of derivative works: a new arrangement of the song, **any kind of translation** (e.g. computer program), a script (a screenplay) based on other works (books), a computer game based on the screenplay of the move etc.

# The work – special cases

- **Collections, databases etc.**: Collections, anthologies, selections, and data bases **showing the features of a piece of work** shall be copyrighted even if they contain unprotected materials in so far as the nature of their order, arrangement or composition is creative without detriment to the rights of the works used. (art. 3 CL)
  - because of the new way of arrangement, the new recognition of the content.
    - e.g. teaching materials, scripts, but also databases "creatively" arranged
- **Databases** in the extent to which they are **not a work**, they are **also protected** by **the Act on the databases protection**:
  - regardless of the protection arises from copyright law (only under the Act on DB protection if not a work)
  - **15 years of protection**
  - the use of an insubstantial part permissible
  - for substantial part allowed only (without permission of the creator):
    - personal fair use
    - for teaching and research purposes (with indication of source and non-commercial use)
    - for judicial, security, administrative procedures
    - (**new from 2024**) **text and data mining** (*unless otherwise specified by the creator*)

# The Work excluded from protection

- NOT WORKS – not meeting the formal criteria (*ironically*)
- Protection may apply to the form of expression only and **no protection** shall be granted to **discoveries, ideas, procedures, methods and principles of operation** as well as **mathematical concepts**. (art. 1 par. 2<sup>1</sup> CL)  
– *distinction between content and form (and item)*
- *Content is protected on the basis of Civil Code (art. 23,24 CC) – protection of personal interest (rights / “goods”)*
- (art. 4 CL) The copyright shall not apply to:
  - 1) legislative acts and their official drafts;
  - 2) official documents, materials, logos and symbols;
  - 3) published patent specifications and industrial design specifications;
  - 4) **simple press information.**

# Protection – curious examples

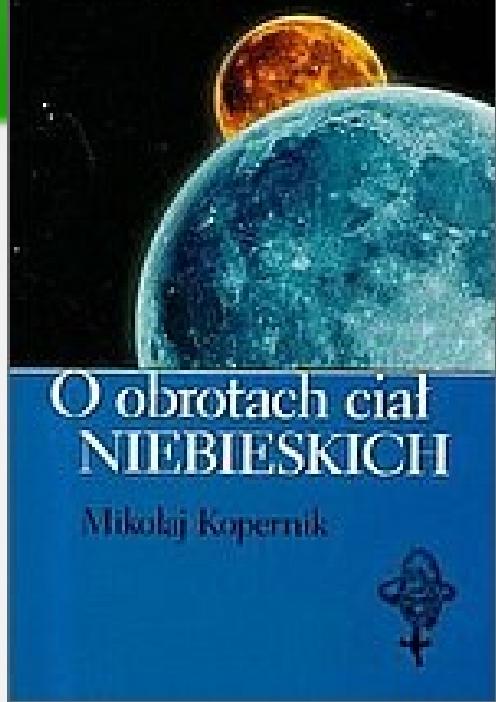
(some examples by <http://www.prawoautorskie.gov.pl>, Orzecznictwo)

- Protected – **unauthorized use is subject to the consequences:**

- Composition of flowers (SN z 25.04.1973 r., OSN 1974, poz. 50).
- Information book on the (sea)port (SN z 27.03.1965 r., I CR 39/65).
- Mycological-construction expertise (SN z 30.06. 2005, IV CK 763/04).
- “Wheeled” calorie counters (SN z 26.01.2006, I CK 281/05).
- SIWZ in the public contract (SN z 27.02.2009, V CSK 337/08)
- Furniture (SA Poznań z 18.05.2006, I ACa 1449/05)
- Internet (mail) spam (SA Warszawa 14.03.2006, VI ACa 1012/05)

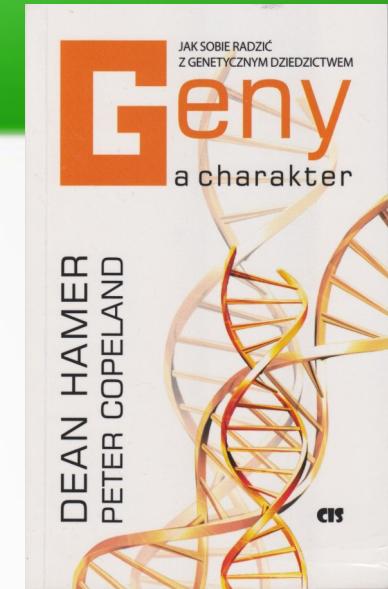
- Without protection – **allowed to use under copyright law:**

- Uniform embroidery (SN z 13.01.2006 III CSK 40/05)
- Design of the shelf for the store (SA Warszawa z 12.11.2008 I ACa 227/08)
- „I see darkness. Darkness”. (SA Kraków z 5.03.2004 I ACa 35/04)
- The word „Jogi” – but not Yogi bear ☺ (SN z 22.06.2010 IV CSK 359/09)
- Official documents (SA w Lublinie z 31.03.2005 r., I ACa 83/05)
- The work in the form of the city bus (SN z 15.11.2012 r., V CSK 545/11)



# What is the work...?

- Book: item (media) vs work itself
- Photography:
  - SA Warszawa 5.07.1985 I ACr 453/95 – NO
  - Documentary photo – probably not
  - Other photo – conflicting views
- Thesis review – can be
- Student assignments
  - Test - ??? (depends what we are looking at)
  - descriptive – probably yes
- This lecture – YES
- Flower drawn for a friend – YES
- Computer program - YES



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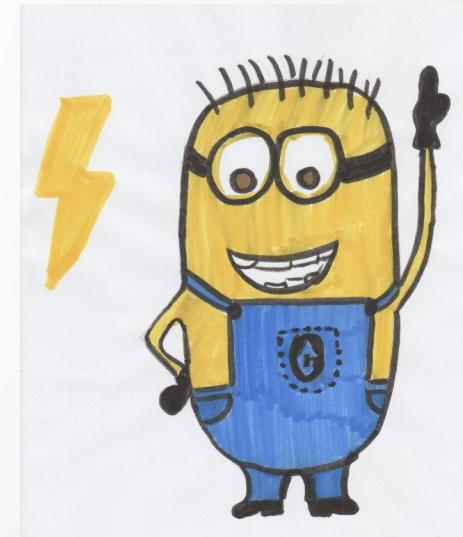
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# The Author (*the Creator*) – The Owner of the Copyright

- The Author = The Creator (under the Polish law)
- An ordinary situation: The author shall be the owner of the copyright – so called “originally entitled” (art. 8 par. 1 CL)
  - It shall be presumed that the author is the person whose name has been indicated as the author on copies of the work or whose authorship has been announced to the public in any other manner in connection with the dissemination of the work. (art 8 par. 2 CL)
- The Author (the Creator) – a **natural person**, who personally created the work
  - also a minor and an incapacitated



Author: Franciszek Kopyt



Author: Julia Kopyt

# The Author

- Co-authorship and combined or collective works:
  - **The co-authors** shall enjoy copyright jointly (art 9 par. 1 CL)
    - Joint efforts and contributions to the work
  - If authors have combined their separate works in order to disseminate them jointly, each of them may request from the other authors their permissions for the dissemination of the so created whole, unless there are reasonable grounds for withholding such permissions and the contract does not state otherwise. (art 10 CL)
  - The producer or publisher shall enjoy the author's economic rights in a collective work and in particular the rights in encyclopedias or periodical publications, and the authors shall have economic rights in their specific parts which may exist independently. It shall be presumed that the producer or publisher have the right to the title. (art 11 CL)
- *The other situation of “originally entitled” only Author's Economic Rights (AER) – exceptions:*
  - **The producer or publisher** of a collective work (art 11 CL)
    - Does not apply to audiovisual works – co-authorship
  - **The employer whose employee created a computer program within the scope of his/her duties (art. 74 par. 3 CL)**
    - *Unless otherwise specified in the contract, the employer shall be entitled to the property rights to a computer programme created by an employee in the course of performing their duties under the employment relationship [own translation]*

# The owner of the **author's economic rights** – other than the Author

- Acquisition of copyrights (only Author's **Economic Rights**):
  - Inheritor (successor)
  - **The purchaser** under an agreement of transfer of AER (*but AMR?*)
  - **The employer** (except for computer programs):
    - Unless this Act or a contract of employment states otherwise, the employer, whose employee has created a piece of work within the scope of his/her duties resulting from the employment relationship, shall, upon acceptance of the work, acquire the author's economic rights within the limits resulting from the purpose of the employment contract and the congruent intention of the parties.(art. 12 par. 1 CL)
      - but in par. 2 time limitations – 2 years for dissemination, otherwise the rights may come back to the employee.
- **The special status of research employees (art. 14 CL):**
  - the research institutions shall have **the priority in publishing** a scientific work when its employee created such work as a result of performing his/her duties under the employment relationship (up to 2 year after acceptance) – *often not executed*
  - The author shall have the right to remuneration (compensation)
  - The research institution may use the scientific materials included in the work and may make the work accessible if results from the agreed designation or contract

## Habilitation, doctoral, graduate dissertation, student papers

- While the author is an employee than art. 14 CL
- In case of graduate dissertation – art. 15a CL (university shall enjoy the right of priority to publish a diploma work of its student for the period of 6 months from “the defence”) – similar to art.14 CL
  - *(new in 2024) in general not necessary with remuneration :)*
  - ***also amended due to checking with the Unified Anti-plagiarism System (JSA)***
- Other students' works – lack of clear regulation, but rather **according to the general rules** – (economic) rights belong to the author without any special limitations
  - unless there is a contract with the university stating that economic rights are transferred *(or with reference to the Rules of study etc. – not fully clear)*
- The Interpretation of the Ministry of Culture (*quite old*):
  - Archiving by the university without restrictions (as official document) – also art. 15<sup>1</sup> (amend.)
  - Use for educational purposes, exhibit – allowed
  - Sales, donation, destruction – rather not without author's permission
- The Supervisor of a thesis vs Student – co-authorship? (**NO?**)

# The content of copyright

**The creator (author) has put effort and resources into creating the work. It is recognised that it is necessary to protect the relationship with that work and remuneration.**

Copyright as a bundle of rights:

**Copyright(s)**

**Author's Economic Rights**

**Author's Moral Rights**

*The right to permit for exercising derivative rights*

# Author's Moral Rights (art. 16 CL)

- Protect the link between the author and the work, the dignity of the author
- **Are independent of any waiver or transfer**
- **Unlimited in time**
  - Remain in force after the death of the author
  - The action to protect the moral rights of the deceased may be brought by the spouse, descendants, parents, siblings, and descendants of siblings (in that order) and by the association or the collective management organisation of copyright (art. 78 par. 2-4)
- Are not subject to court / juridical execution

**THE AUTHOR CAN NOT BE DEPRIVED OF HIS/HER MORAL RIGHTS.**

**These are in particular:**

- 1) *to be the author of the work;*
- 2) *to sign the work with the author's name or pseudonym, or to make it available to the public anonymously;*
- 3) *to have the content and form of the author's work inviolable and properly used (integrity of the work);*
- 4) *to decide when the work is to be made available to the public for the first time;*
- 5) *to control the manner in which the work is used.*

# Author's Moral Rights

- Other issues
  - **how to protect the authorship of research results?**
    - only by art. 23,24 of the Civil code – protection of personal interests
  - **Is there any way to “get rid of” the AMR?**
    - It seems that one can promise in the contract not to exercise the AMR or authorise someone (e.g. publisher) to exercise the AMR on behalf of the Author – **very problematic.**

# Author's Economic Rights

- Unless this Act states otherwise, the author shall have an exclusive right to use the work and to dispose its use throughout all the fields of exploitation and to receive remuneration for the use of the work. (art. 17 CL) – monopoly on certain activities (profit-oriented)
- The fields of exploitation
  - the way on which the work is used characterised by technical or economic distinctiveness
  - lack of clear definition – only doctrine and case law (court decisions)
  - (Art. 50 CL) The separate fields of exploitation shall be, in particular:  
3)... making the work publicly available in such a manner that anyone could access it at a place and time on his/her own choice.

# Author's Economic Rights

- **AER are:**
  - Transferable – not permanently tied to the author as *AMR*, *can be transferred – subject to licensing*
  - Inheritable
  - (art. 36 CL) Limited in time - expire **70 years**
    - **after the death of the author or the last co-author**
    - from the date of first dissemination if the author is unknown
    - from the date of dissemination or the date of establishment if right holder other than the author
    - in the case of an audiovisual work - from the death of the last of the following: the main director, the author of screenplay, the author of dialogues, the composer of the music written for the audiovisual work
  - (*generally*) *not subject to court enforcement proceedings*

These rights allow the author to make money from his or her work.  
by charging for the use of the work.  
This motivates them to create new works in the future.

# Author's Economic Rights

The right to remuneration for the use is generally executed by the author, but ...

- **Depletion:** exhaustion of the right to permit further trade (art. 51 CL)
  - Sale of original or copy → no control over further trade of this item
    - Existence of a “secondary market” : e.g. Internet auctions, classifieds, etc.
  - *does not apply to letting for use or rental*

# Author's Economic Rights – what after ...

- What happens after the expiration of AER (70 years)?
  - The Author's Moral Rights are still in force!!! (according to Polish law ...)
  - the work enters to the so-called Public Domain (PD)
    - PD – not fully clearly defined in the Polish legal system
    - The common property, unlimitedly available intellectual goods
    - **PD does not exclude Author's Moral Rights!!!**
    - In the Public Domain you can find works that have never been subject to the author's (economic) rights.
  - **the right to copy, modify and distribute without the author's permission (with respect to AMR)**
- **PUBLIC DOMAIN DAY (January 1<sup>st</sup>)**
  - **January 1<sup>st</sup>, 2026 → the Authors died in 1955**
    - <https://www.euipo.europa.eu/en/news/copyright-artworks-entering-the-public-domain-in-2024>
    - <https://publicdomainreview.org/>
    - <https://web.law.duke.edu/cspd/>
    - <https://lektury.gov.pl/>
    - <https://wolnelektury.pl/>

# Thank you for your attention

*(I'd like to thank for the inspiration and for some of the materials used on these slides  
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