

ACT
of 9 June 2000
on Amendment to the Act on Copyright and Neighbouring Rights

Article 1. In the Act of 4 February 1994 on Copyright and Neighbouring Rights (Dz.U. 1994 No. 24, item 83, No. 43, item 170, and Dz.U. 1997 No. 43, item 272, and No. 88, item 554) the following amendments are hereby introduced:

1) article 21 shall read as follows:

“Article 21

1. Radio and television organisations may broadcast published musical works and small textual or textual-musical works only under a contract concluded with an organisation for collective administration of copyright or neighbouring rights.
2. Broadcasters shall apply the right to the first broadcast of the works ordered by them under the other contract than specified in paragraph.
3. The author may present organizations for collective administration of copyright or neighbouring rights with a written declaration, under pain of nullity, that they will make personal decisions concerning the broadcast of their published works specified in paragraph 1.
4. Operators of cable networks may rebroadcast in their cable networks the works broadcasted in programmes of radio or television organisations only under a contract concluded with the competent organisation for collective administration of copyright or neighbouring rights.”;

2) in article 25, paragraph 1:

a) subparagraph 1, letters b) and c) shall read as follows:

- ”b) current articles on political economic or religious issues, unless further dissemination thereof has been expressly prohibited,
- c) current statements and reporter’s photographs,”;

b) subparagraph 2 words "articles and statements" shall be replaced by the word "articles";

3) in article 36:

a) in the first sentence, the word “fifty” shall be replaced by the word “seventy”;

b) points 2 and 3 shall read as follows:

“2) if the author of the work is not known – from the first dissemination, unless the pseudonym adopted by the author leaves no doubt as to his identity or the author has disclosed his identity;

3) if under this Act a person other than the author owns the author's economic rights – from the date of dissemination; and if the work has not been disseminated – from the date of establishment thereof.”;

c) the following point 4 shall be added:

“4. in the case of audiovisual work – from the death of the last member of the group consisting of: the main director, the screenwriter, the author of dialogues, the composer of music for that audiovisual work.”;

4) article 37 shall read as follows:

“Article 37.

If the time of the expiration period of the author's economic rights starts to run from the dissemination of the work and the work has been disseminated in parts, episodes, fragments or insertions, the time of the period shall run separately from the date of dissemination of each of those parts.”;

5) article 38 shall be deleted;

6) in article 39, the words “articles 36 to 38” shall be replaced by the words “article 36 and article 37”;

7) article 69 shall read as follows: :

“Article 69

Coauthors of audiovisual work shall be persons who made a creative contribution to its completion, and in particular : the director, the cameraman, the authors of adaptation of a literary work, the author of musical or textual and musical works created for the audiovisual work and the author of the screenplay.”;

8) Article 70 shall read as follows:

“Article 70

1. It shall be presumed that the producer of an audiovisual work has acquired, under a contract for creation of the work or for use of the existing work, exclusive economic rights to exploit those works within the scope of the audiovisual work as a whole.
2. The main director, the cameraman, the author of the screenplay, authors of the other literary or musical works which have been created for an audiovisual work or have been used therein, as well as artistic performers shall be entitled to:
 - 1) remuneration proportional to revenues from showing of the audiovisual work in cinemas;
 - 2) appropriate remuneration for rental of copies of audiovisual works and public playing thereof;
 - 3) appropriate remuneration for broadcasting of the work in television or other mass media;
 - 4) appropriate remuneration for reproduction of the audiovisual work on a copy intended for own personal use.

3. The user of the audiovisual work shall pay the remuneration specified in paragraph 2 through the organisation for collective administration of copyright or neighbouring rights.
4. The appropriate remuneration for the use of a Polish audiovisual work abroad or a foreign audiovisual work in Poland may be established as a lump sum.”;

9) in article 74:

a) paragraph 2 shall read as follows:

“2. Protection accorded to computer programme shall cover all the forms of expression thereof. Ideas and principles which underline any element of a computer programme, including those which underline its interfaces, shall not be protected.”;

b) in paragraph 4:

- in point 1 the word “no” shall be deleted;
- point 3 shall read as follows:

“3) dissemination, including rental of a computer programme or a copy thereof.”;

10) in article 75:

a) in paragraph 2, subparagraph 2 shall read as follows:

“2) to observe, study and test the functioning of the computer programme in order to learn about its ideas and principles, by a person who has the right to use the copy of the computer programme, if such a person is entitled to do the same and does it while loading, displaying, using, transmitting or storing the computer programme,”;

b) paragraph 3 shall read as follows:

“3. Information specified in paragraph 2, subparagraph 3, may not be:

- 1) used for purposes other than to achieve interoperability with an independently created computer programme;
- 2) given to other persons, unless it is necessary for achieving interoperability with an independently created computer programme;
- 3) used for developing, manufacturing or putting into circulation of a computer programme substantially similar in form or applied to other acts infringing the copyright.”;

11) after article 77, the following article 77¹ shall be added:

“Article 77¹.

The entitled person may demand the user of a computer programme to destroy technical means possessed thereby (including computer programmes), used only to facilitate illegal removal or by-passing of technical security protections.”;

12) in article 79:

- a) in paragraph 2, after the word “infringement”, the word “culpable” shall be added;
- b) the following paragraphs 3 and 4 shall be added:

“3. The provision of paragraph 1 shall apply to removal or by-passing of technical protections against access, reproduction or dissemination of a work, if such acts aim at illegal use of the work.

4. The provisions of paragraphs 1 and 2 shall apply accordingly to the cases of unauthorised removal or modification of any information that identifies the work, the author, the subject of copyright to the work or information about the terms of exploitation of the work, if such information is attached to the copy of the work or exists in connection with dissemination thereof, as well as to the cases of culpable dissemination of works with such information removed or modified without authorisation.”;

13) article 85 shall read as follows:

“Article 85

1. Any artistic performance of a work or product of folk art shall be protected irrespective of its value, purpose or way of expression (artistic performance).
2. Artistic performances, within the meaning of paragraph 1, shall include, in particular, the actions of: actors, reciters, conductors, instrumentalists, singers, dances, mimes and other persons making a creative contribution to the creation of performance.”;

14) article 89 shall read as follows:

“Article 89

The right referred to in article 86, paragraph 1, subparagraph 2, and paragraphs 3 and 4 shall expire after fifty years following the year in which the artistic performance was established. However, when in that time the fixing of the artistic performance is published or played, the period of protection shall count from such an event or, when both of them take place, from the earlier.”;

15) after Division 3, the following Division 3a “Rights to First Publications and Scientific and Critical Publications” shall be added:

“Article 99¹

The publisher who, after expiry of copyright protection, for the first time legally publishes or otherwise disseminates the work, and the copies of which have not been provided to the public, shall have the exclusive right to dispose and use the work in all the fields of exploitation for 25 years after the date of publication.

Article 99²

The person who after expiry of the term of protection of the copyright to the work prepares a critical or scientific publication thereof, which is not a work, shall have the

exclusive right to dispose and use the publication within the scope specified in article 50, paragraph 1, subparagraphs 1 and 2, for 30 years after the date of publication.

Article 99³

The provisions of articles 99¹ and 99² shall apply accordingly to the works and texts, which because of their nature or time of creation have never been covered by a copyright protection.

Article 99⁴

The period of protection provided in articles 99¹ and 99² shall be set in accordance with the provisions of articles 37 and 39.”;

16) article 100 shall read as follows:

“Article 100

The exercise of the rights to artistic performances, phonograms, videograms, broadcasts of programmes, first publications and scientific or critical publications shall be subject to respective restrictions resulting from the provisions of articles 23 to 35.”;

17) article 101 shall read as follows:

“Article 101

The provisions of articles 1, paragraphs 4 and 5, article 6, article 22, article 39, article 51, article 79, paragraphs 1 and 3, article 80, article 80¹ shall apply respectively to artistic performances, phonograms, videograms, broadcasts of programmes, first publications and scientific or critical publications.”;

18) article 103 shall read as follows:

"Article 103

Disputes about neighbouring rights shall lay within the competence of district courts.”;

19) in article 115:

a) paragraph 1 shall read as follows:

“1. Whoever usurps the authorship or misleads others as to the authorship of a whole or part of another person’s work or artistic performance

shall be liable to a fine, restriction of liberty or imprisonment up to 3 years.”;

b) paragraph 3 shall read as follows:

“3. Whoever in order to gain material benefits in a manner other than specified in paragraph 2 infringes another person’s copyright or neighbouring rights specified in articles 16, 17, 18, 19, 20, 20¹, 28, 40, 86, 94, paragraph 4, and article 97,

shall be liable to a fine, restriction of liberty or imprisonment up to 1 year.”;

20) in article 117, paragraph 1 shall read as follows:

“1. Whoever, without authorisation or against its conditions, for the purpose of dissemination, fixes or reproduces another person’s work in the original or derivative version, artistic performance, phonogram, videogram or broadcast

shall be liable to a fine, restriction of liberty or imprisonment up to 3 years.”;

21) article 118 shall read as follows:

“Article 118

1. Whoever, in order to gain material benefit, purchases or assists in selling or accepts or assists in concealing objects being carriers of a work, artistic performance, phonogram or videogram disseminated or reproduced without authorisation or against its conditions

shall be liable imprisonment from 3 months to 5 years.

2. If the perpetrator made the crime specified in paragraph 1 a permanent source of income or organises or manages criminal activity, as specified in paragraph 1,

shall be liable imprisonment from 1 to 5 years.

3. Where on the basis of circumstances the perpetrator of the crime specified in paragraph 1 or 2 should and could presume that the object has been obtained through an illegal act, he

shall be liable to a fine, restriction of liberty or imprisonment up to 2 years.”;

22) after article 118, the following article 118¹ shall be added:

"Article 118¹.

1. Whoever produces objects provided for removing or avoiding technical protection from playing or reproducing of the work, or objects provided for unlawful or receiving of broadcasted programs for closed audience accessed after paying fee to the broadcaster, or introduces it into circulation,
shall be liable to a fine, restriction of liberty or imprisonment up to 2 years.

2. Whoever poses, stores or uses objects referred to in paragraph 1,
shall be liable to a fine, restriction of liberty or imprisonment up to 1 year."

23) article 119 shall read as follows:

“Article 119

Who makes impossible or hinders the exercise of the right to supervise the use of a work, artistic performance, phonogram or videogram or refuses information provided in article 47, article 92 and article 107, paragraph 3,

shall be liable to a fine, restriction of liberty or imprisonment up to 1 year.”;

24) article 120 shall be deleted;

25) in article 121 paragraph 1 the words “or 118” shall be replaced by the words: “118 or 118¹”;

26) article 122 shall read as follows:

“Article 122

Crimes specified in articles 115, 116, paragraphs 1, 2 and 4, article 117, paragraph 1, article 118, paragraphs 1 and 3, and article 119 shall be prosecuted upon a motion of the injured person.”;

27) after article 122, the following article 122¹ shall be added:

“Article 122¹

In the cases of crimes specified in articles 115 to 119, the injured person shall also be the competent organisation for collective administration of copyright or neighbouring rights.”;

28) article 123 shall read as follows:

“Article 123

The Minister of Justice may, by a regulation, appoint local courts competent to hear the cases of crimes specified in articles 115, 116, 117, 118 or 119 – within the area of jurisdiction of a given district court.”;

29) in article 124:

a) in paragraph 1, subparagraph 3, the words “whose copyright has not expired” shall be replaced by the words “who are not subject to copyright”;

b) paragraph 3 shall be deleted;

30) in article 125, paragraph 1, subparagraph 2, the sentence “This shall not apply to artistic performances established earlier than twenty years from the date of its coming into force.” shall be deleted;

31) in article 126:

a) in paragraph 1, subparagraph 3, the sentence: “This shall not apply to phonograms, videograms or radio and television programmes made or broadcast earlier than twenty years before this Act coming into force.” shall be deleted;

b) paragraph 2 shall read as follows:

“2. The rules referred to in paragraph 1, subparagraph 3 shall not apply to use by schools, for teaching purposes, of broadcasts, phonograms and videograms, which are not feature films or theatre performances, made prior to this Act coming into force, as well as to use artistic performances recorded on phonograms and videograms.”;

32) after article 127, the following article 127¹ shall be added:

“Article 127¹

The President of the Council of Ministers, upon request of the Minister responsible for culture and protection of national heritage, shall by a regulation appoint a team to counteract infringements of copyright and neighbouring rights and shall set its composition, tasks and procedures.”

Article 2.

1. The provisions of this Act shall apply to use, after the Acts coming into force, of works, artistic performances, phonograms and videograms, which are accorded protection under the provisions thereof.
2. Where the use of an artistic performance, phonogram, videogram or radio or television programme commenced before this Act took effect was permissible under the provisions applicable hitherto but upon this Act coming into force requires a permit, such a use may be completed on condition that the entitled subject obtains a relevant remuneration.
3. This Act shall not infringe the ownership of copies of works disseminated before it took effect, as well as copies of phonograms and videograms on which an artistic performance had been recorded before it took effect.
4. Completion of use of a phonogram or videogram shall also apply to completion of sale of copies within twelve months of the day on which this Act takes effect, provided that such copies are notified within one month of that day to the Minister responsible for culture and protection of national heritage. The notification shall contain a catalogue number of the recording and shall indicate the works, the artistic performers, the duration of the recording and the number and kind of copies.
5. The provision of paragraph 1 shall apply to works of foreign nationals who permanently reside abroad, on condition of reciprocity.

Article 3.

The Minister responsible for culture and protection of national heritage shall announce in the Journal of Laws of the Republic of Poland a single text of the Act on Copyright and Neighbouring Rights, with consideration of changes stemming from provisions announced before the day of publication of the single text.

Article 4.

This Act shall take effect 14 days after promulgation.
