



# **POLISH COPYRIGHT LAW 2015 ANALYSIS OF LIBRARY-RELATED PROVISIONS**

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**EIFL webinar, 29 June 2016**





## COPYRIGHT REFORM IN POLAND

Library services in Poland enter the twenty-first century

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**More on the project:** <http://www.eifl.net/eifl-in-action/copyright-reform-poland>

# Consultation process

- **Copyright Forum** – permanent platform established by the Ministry of Culture and National Heritage for discussion of copyright issues

## Trzecie Forum Prawa Autorskiego 2 października 2013 r. (cz.3)

10-10-2013



Uczestnicy Forum Prawa Autorskiego zastanawiali się również nad tym, czy systemem public lending right powinny zostać objęte wszystkie biblioteki w Polsce, czy należy wprowadzić wyjątki od tej reguły np. dla bibliotek dla niewidomych. Podczas spotkania dyskutowano również nad tym, czy system public lending right powinien objąć tylko tradycyjne książki, czy również e-booki.

# Consultation process

- **Consultation of the draft law and regulations**  
(draft, explanatory note, impact assessment, consultation report)

Projekt ustawy o zmianie ustawy o prawie autorskim i prawach pokrewnych oraz ustawy o grach hazardowych (dozwolony użytek, utwory osierocone, utwory out-of-commerce, public lending right)

Etap rządowy - UC159 (procedura zakończona)

Etap sejmowy - druk nr 3449 (procedura zakończona)

Etap senacki - druk nr 1000 - pkt nr 29 (procedura zakończona)

Sejm przyjął poprawki Senatu (procedura zakończona)

Ustawa podpisana przez Prezydenta RP w dniu 5 października 2015 roku

Ustawa ogłoszona w dniu 19 października 2015 roku (Dz. U. z dnia 19 października 2015 r., poz.1639);  
większość przepisów weszła w życie z dniem 20 listopada 2015 roku

More on the website: <http://www.prawoautorskie.gov.pl/pages/strona-glowna/zmiany-w-prawie/prawo-autorskie/projekt-zmiany-ustawy-o-prawie-autorskim-i-prawach-pokrewnych.php>

# Legal Framework

**Act of 4 February 1994 on Copyright and Related Rights**

**2004 Poland joined EU**

**20 November 2015** - the Act of 11th September 2015 on amendments to the Copyright and Related Rights Act and the Law on Gambling

+ regulations

- Regulation on out-of-commerce works: template to apply for the use of out-of-commerce works
- Regulation on orphan works: sources for diligent search and documentation
- Regulation on out-of-commerce works: tender for collecting societies authorized to conclude contracts for use of out-of-commerce works
- Regulation on Public Lending Right payments tender for collecting societies authorized to collect and distribute PLR

# EU Legal Framework

- „Better” implementation of the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the **harmonisation of certain aspects of copyright and related rights in the information society**
- „Revised” implementation of the Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on **rental right and lending right** and on certain rights related to copyright in the field of intellectual property
- Implementation of the Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on **certain permitted uses of orphan works**
- Implementation of the Memorandum of Understanding on Key Principles on the Digitization and Making Available of **Out-of-Commerce Works**

# Key amendments

- permitted uses by libraries
- permitted uses of orphan works
- permitted uses out-of-commerce works
- permitted uses in education and science
- introduction of a public lending right (PLR)
- abolition of the paying public domain

# Permitted uses by libraries

- extended list of beneficiaries – museums, research and scientific institutions, etc.
- requirement - institutions whose activities are not for direct or indirect financial gain
- from providing access to lending - new definition
- extended preservation exception – digital form and unpublished works
- clarification in the provision on the access on premises at the dedicated terminals



# Digital preservation

## From:

Exception for making **copies** of **disseminated** works in order to supplement them, maintain or protect one's **own collections**

## To:

Exception for reproduction of **works** constituting a part of **their own** collections to supplement, maintain or protect such collections

# Dedicated terminals

## TU Darmstadt case

- number of copies made available at terminals must not exceed the number of physical copies held by the library
- digitisation and making available of physical works on library terminals is permitted only if the resource in question is not *already* available in the library in digital form (on the basis of contract or licence agreement)
- printing from terminals is possible under the private copy exception

More on TU Darmstadt case [www.eifl.net/news/tu-darmstadt-copyright-case-neatly-explained](http://www.eifl.net/news/tu-darmstadt-copyright-case-neatly-explained)

# Orphan works

## Types:

- works published in a form of books, newspapers, magazines and in other types of printed publications, audiovisual works and other works fixed on video and on phonograms
- photographs and pictures embedded into works

## Not covered:

- standalone photographs and works of art
- works which were published anonymously or under a pseudonym

More on OW directive <http://www.eifl.net/resources/european-orphan-works-directive-eifl-guide>

# Orphan works

## **Beneficiary organisations:**

publically accessible educational institutions, universities, research institutes and scientific institutes of the Polish Academy of Sciences, libraries, archives and museums, government and local authority organization with a statutory obligation to collect, protect and promote film and phonographic heritage, public national and regional radio and television organisations

# Orphan works

## **Permitted uses:**

- reproduction, including for the purposes of preservation
- cataloguing and digitisation of collections, and making available on the Internet for the purpose of culture and education

Uses apply only to works that belong to the collections of the institution.

**Limited to non-commercial activities - the entities may charge for the use of orphan works.**

# Orphan works

Diligent search in good faith:

- list of sources broader than in the Directive, ex.
  - online film databases
  - certain types of libraries
- other resources – if the entity carrying out the diligent search concludes that in any given case, information about rightholders may be found in any other source
- record keeping

A diligent search may be carried out either by the beneficiary institution itself or it may be sub-contracted to third party.

# Orphan works

End to the orphan works status:

## Final text (2015)

Fair compensation:

- the nature and manner of use of the work
- possible income derived from its use
- damage suffered by the rightsholder due to such use

## Draft (2014):

Remuneration only when the entity using the work derived income from its use. In determining the amount to be paid, the public interest was to be taken into account.

# Out of commerce works

**Works still protected by copyright but no longer available on the market**

**Works which are not available to commercial end-users in the number that satisfies the reasonable needs of the end users, or by way of making them publicly available in such a manner that everyone could access them at the place and time selected thereby.**

- licence solution - based on contract between the library and the collecting society
- works published in books, newspapers, magazines or other forms of print publishing
- only works published for the first time in the territory of the Republic of Poland prior to 24 May 1994
- translations into Polish of works created in a foreign language are excluded
- non commercial use only
- not working yet



# Permitted uses in education and science

- enumerated list of entities
- entities must not be of a commercial nature and their primary objective should not be to obtain financial gain
- no remuneration for rightholders
- illustrating any content presented for educational purposes or for the purposes of conducting scientific research
  - use of disseminated works in the original and in translation
  - reproduction of minor works or fragments of larger works
  - standalone works, such as photographs and poems, may be used in their entirety
- New exception for virtual learning environments

# Public Lending Right

## Payment for lending by libraries

- lending (not e-lending) in public libraries - only
- „works expressed in words” created or published in Polish or translated into Polish
- special public fund - the Fund for the Promotion of Creativity
- amount to be paid for library lending shall be equal to 5% of the value of purchase of library materials
- 75% to authors (including authors of graphical or photographic elements) and translators into Polish, and 25% to publishers
- Based on lending statistics from 60 libraries

# **Abolition of the Paying Public Domain**

The paying public domain system was seen as an anarchonism that discouraged access and did not provide value for money.

Current cultural policy goals of the Republic of Poland are aimed at providing wide legal access to creative content.



# Copyright reform in Poland

New copyright law of Poland. Analysis of library-related provisions:

[www.eifl.net/sites/default/files/resources/201605/poland\\_copyright\\_analysis\\_online.pdf](http://www.eifl.net/sites/default/files/resources/201605/poland_copyright_analysis_online.pdf)

Read more about the project:

[www.eifl.net/eifl-in-action/copyright-reform-poland](http://www.eifl.net/eifl-in-action/copyright-reform-poland)