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## **AN OVERVIEW OF INTELLECTUAL PROPERTY PROTECTION SYSTEM IN POLAND**

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by the lawyers of APLAW Artur Piechocki**

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The term “intellectual property” (IP) encompasses various aspects of human creativity, including any results of human intellectual activity. Providing protection for IP becomes increasingly important in the current environment of globalisation and high competitiveness. Given such environment, competitive advantage can only be achieved by companies implementing innovative solutions in their businesses. The awareness regarding IP protection, combined with proper management of IP rights, allows to effectively implement new business models and to benefit from using it. Intangible goods are usually regarded as the company’s most valuable asset, therefore, it is crucial to provide adequate protection thereof. Furthermore, the knowledge of IP protection regulation also contributes to limiting the risk of infringing the rights of other market participants.

Since in almost every business IP management plays a major role, the following overview aims to present certain aspects of the Polish legal framework for IP rights protection.



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## 1. Main statutes

The main legislation acts regulating IP rights in Poland are The Act of 4 February 1994 on copyright and related rights, and The Act of 30 June 2000 – Industrial Property Law. These Acts regulate, among others, protection of creative works, related rights, inventions, utility models, industrial designs, and trademarks. Databases, know-how, and business secrets are also protectable under The Act of 27 July 2001 on the protection of databases, The Act of 16 April 1993 on combating unfair competition, as well as Polish civil code. There is also a number of other European and international regulations, relating to IP protection, effective in Poland.

## 2. Copyright

Polish Copyright Act provides a legal framework for the protection of creative works and related rights.

Creative works are protectable under the Polish law if they constitute a manifestation of the human creative activity of individual nature. Therefore, protectable is every unique human work resulting from the creative process, regardless of its artistic value, purpose, a form of expression, as well as effort, competencies and experience of the creator and volume of the investment put in the work. Provided these conditions are satisfied, the scope of protection encompasses a wide variety of works, such as paintings, photographs, architectural designs, songs, computer software or structure of databases. The author of the works has an exclusive right to use it in any form, including the right to receive remuneration for the use thereof.

An important feature of the Polish copyright protection framework, distinguishing it from the common law systems, is the lack of obligation to satisfy any formal requirements in order for work to be protected (i.e. putting designations on the work like © or *all rights reserved*).

Effective governance of copyrighted works requires taking into account the limits of the available protection. Such protection does not cover ideas for works or information included therein. The institutions of private and public fair use also allow, under specific conditions, for the use of work without right holder's consent.

It is important to note the distinction between author's economic and moral rights. Only the former are transferable and may be the subject to licensing. They can be also created by an author for other subjects (i.e. author's employer). Protection of economic rights extends until 70 years after, generally, the death of the creator of a work.

Author's moral rights, entitling him to sign the work with his name, decide about the first publication of the work or ensuring the integrity of the work, always belong to the author himself. He cannot waive or



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transfer them, and they last indefinitely after his death. Therefore, when constructing an agreement with an author, it is important to note this distinction and, aside from provisions regarding transfer or licensing of the copyright, include conditions under which the author can exercise his moral rights.

Copyright protection covers not only works but also objects of related rights, such as artistic performances, videograms, phonograms, program broadcasts, first editions and scientific and critical editions. As opposed to works, protection of related rights extends only to fields of use explicitly stated in the statutes. Generally, such rights do not belong to the author, but to the producer of the work instead. Another feature of the objects of related rights, distinguishing them from copyrighted works, is a shorter protection period, lasting for 25 to 50 years, depending on the type of the right, from the date of the establishment or first publication.

There is a dozen of collecting societies in Poland, associating creators, performers, producers and broadcasters. Under agreements made with right holders, such organisations are entitled to manage and protect entrusted rights. The collecting societies are licensing protectable works and objects of related rights, collecting appropriate remuneration and distributing it to the right holders.

### **3. Industrial property rights**

Protection of industrial property in Poland includes inventions, utility models, industrial designs, trademarks, geographical indications and topographies of semiconductor products. Since the first four categories of goods are most significant in business practice, the following overview will provide more detail in this respect.

The common feature of industrial property rights is the entitlement of the right holder, to exclusively use the object of protection, commercially or professionally, on the territory of Poland. Obtaining such rights requires taking certain formal steps, including filing a motion to relevant authority, going through registration procedure, and periodical payment of fees during the period of protection.

In order to obtain protection for an invention, utility design, trademark or industrial design, an application should be filed with the Polish Patent Office, which can also be done online. During the registration procedure, an applicant can participate personally or through a representative, though it must be a patent attorney or – in a case of trademarks – also regular attorney or legal advisor.

The person being first to register in the Patent Office has the priority right in terms of protection. International agreements also enlist several circumstances, under which priority right may be obtained from an earlier date.



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Industrial property rights may be licensed or transferred. The transfer of rights requires a written form, and if it relates to patents or trademarks, the acquirer of rights must be disclosed in the register. The same rules apply to licensing of rights, but in this case registering the acquirer of rights is not obligatory.

## **A. Patent and utility model**

The patents are granted for inventions that are new, involve an inventive step and are suitable for industrial application. The invention itself must not be a part of the prior art, and must not be obviously apparent, for the experts, from the prior art. If these conditions cannot be satisfied, there is, however, a possibility to obtain a protective right for a utility model. A utility model is a new and useful technical solution pertaining to the shape, structure or configuration of a tangible object. Such model, therefore, must add up to the improvement of manufacturing or using certain products, and the technical solution used for this goal does not have to be innovative.

The protection period for inventions extends until 20 years after, and for utility models 10 years, the date of filing application with the Patent Office. The protection for medicinal products can be extended to 25 years, by granting the additional protective right.

The patent protection does not have to be limited to the territory of Poland, but may also be granted for the European and international market. Through application with Polish Patent Office, a European patent may be granted, providing protection for an invention in over 30 European countries. Compared to that, an international patent covers 148 countries, under the Patent Cooperation Treaty (PCT).

## **B. Trademark**

Trademarks are a valuable asset of every company. They help to identify the products and services of a company, allowing to distinguish them from products of competitors. Trademarks, therefore, contribute to the creation of brand image and reputation of the company, as well as promotion of goods and services.

Trademark (or service mark in case when services are offered) rights are granted to any marks which can be represented in a graphical way. Such marks may take many forms, but usually, they are expressed through words, sentences, graphic designs, sounds, melodies, spatial forms (i.e. a shape of product or packaging) or a combination of such elements. In order to be protected, the mark must also have a distinctive character, which means that it must allow distinguishing the products of the company using the trademark, from the ones of its competitors.



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If the goods and services are offered in different European countries, it is worth to consider registering the European Union trademark. One registration made in the European Union Intellectual Property Office (EUIPO) in Alicante allows obtaining trademark protection in all 28 member states.

The trademark registered in Poland may become protectable on the international market, by extending the right to countries, which are parties to the Madrid Agreement from 1891. The international registration of trademarks is governed by the World Intellectual Property Organization (WIPO) in Geneva.

The period of protection for Polish and European trademarks lasts for 10 years since filing the application for registration, but this term may be extended for the next 10-year periods. In the case of international trademarks, the protection lasts for 20 years and may be renewed in a respective way.

### **C. Industrial design**

Industrial design rights are granted for a new form of a product manufactured in an industrial or handcraft manner. Such new form should be original, which means it should make a different impression on consumers when compared to designs publically used before the date of registration. This original impression can be achieved by using a unique structure of a product, its shape, properties of the surface, colour, outline or ornament. The right allows, therefore, to protect the appearance of the product by prohibiting competitors to use the same or similar design. For example, the scope of industrial design protection may encompass the appearance of furniture, clothing, ornamental fonts, or products used in construction works.

Similarly to trademarks, registration of industrial design in the European Union Intellectual Property Office allows obtaining Community design, providing protection in the whole European Union.

The trademark registered in Poland may become protectable on the international market, by extending the right to countries, which are parties to Hague Agreement Concerning the International Registration of Industrial Designs. Obtaining international protection for industrial design requires going through registration procedure before International Bureau of World Intellectual Property Organization (WIPO) in Geneva.

The protection for Polish industrial design rights, as well as for Communal and international designs, is granted for a maximum period of 25 years, provided that every 5 years the right will be extended along with payment of fees.



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## 4. Databases

Polish law provides protection rights for databases, which are defined as sets of data or any other materials and elements gathered in accordance with a specified system or method, provided that the elements of datasets are individually available. The scope of protection covers not only electronic databases, but all sets and compilations of data, regardless of a method in which the data is organised or made available. Producer of dataset owns the right to a database, without the need of satisfying any kind of formal requirements. Rights to databases are also transferable.

As it was stated in the previous sections, a database can be also protected on the same grounds as works, provided it meets the conditions of originality, creative selection, and systematisation of data. In such case, however, only the structure of a database is protected, which does not cover its contents. The protection for the contents of a database is granted through, so called, *sui generis* right, which is granted to the producer of the database, if he provided significant investment outlays, whether in terms of quality or quantity, in order to compile, verify or present its contents.

The producer of a database has an exclusive right to extraction and re-utilisation of the whole or a substantial part of the contents of a database, which, however, is limited, to a certain extent, by the fair use provisions. The period of protection of the database *sui generis* rights extends until 15 years after the production date. This term, however, starts running again in case of applying substantial changes to a database, which, in many cases, allows to protect databases indefinitely.

## 5. Domain names

Promoting products and services through company's website is a necessary component of conducting a successful business on today's market. Properly chosen and recognisable domain name is a valuable asset for a company, which facilitates offering goods and services to consumers.

Since there cannot function two identical domain names, infringements of competitors' rights are increasingly common, through usage of their names, trademarks or products and services in registered domain names. Such actions may seek to take advantage of the popularity of competitor's brand and to take over his clients, create confusion relating to competitor's business and their offer, prevent registration of a domain name by the competitors. The goal may also be to register a domain with the aim of selling it at an inflated price.

There is no specific statute regulating rights to domain names, but the adequate protection is provided by provisions of different legislative acts. When a registered trademark is used in a domain name without authorisation, the right owner can seek to prohibit such actions under trademark protection regulation described in the previous section. If a domain name is misleading, with respect to company's identity or



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origin of the goods or services, or amounts to barring the access to the market, an effective prevention can be achieved through competition law measures. If a domain contains a name of another company, it may also constitute an infringement under provisions of the Polish civil code.

It is worth mentioning, that any disputes relating to domain names may be resolved amicably through the Court of Arbitration at the Polish Chamber of Information Technology and Telecommunications (PIIT). The proceedings before the Court are less formalised, which contributes to much faster dispute resolution when compared to regular courts, and parties may choose arbiters from a range of eminent experts in the field of domain system.

## **6. Liability for infringing intellectual property rights**

Infringing copyrights and industrial property rights entails liability of the violator on the civil, as well as criminal grounds. Criminal liability includes penalties for an appropriation of authorship (plagiarism), unlawful distribution of protected work, removing DRM protection mechanisms, imitation, and counterfeiting of protected marks, or removal of original designations from products.

In the case of infringement, the right holder may use a variety of civil claims against the infringer, including a demand to cease the illicit activity, to reinstate of a status compliant with the law, repay the wrongly received benefit. If the infringer acted intentionally or negligently, the right holder may also seek general damages, based on the legal framework outlined in the Polish civil code, or an adequate sum of money, based on which right was violated.

It should be also noted, that there is a number of procedural legal measures, which facilitate protection of intellectual property. This includes motions to secure evidence and claims, as well as customs protection from import, export or transit of products infringing intellectual property rights.



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APLaw is a Polish boutique law firm providing services particularly in IP and TMT areas.

APLaw was founded by Artur Piechocki in 2010, a legal advisor with a wide experience who worked for many years as a legal counsel at the Research and Academic Computer Network (NASK), representing the PL Register in Poland and international organizations.

Artur Piechocki is a co-founder and a member of the Council of the Domain Names Arbitration Court at the Polish Chamber of New Technology and Telecommunications (PIIT) PIIT, and a co-founder of domain case law at the Arbitration Court at the Polish Chamber of Commerce (KIG). Moreover, he is an expert at the European Network and Information Security Agency (ENISA) in regulatory, privacy and data protection. He cooperates with the Internet Corporation for Assigned Names and Numbers (ICANN) and the World Intellectual Property Organization (WIPO) and in the past has cooperated with the Council of European National Top Level Domain Registries (CENTR). He is an active participant in International Telecommunication Union (ITU) meetings and a counsel to the Cybersecurity Foundation.

The scope of APLaw's services include:

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