

# ***NEWSLETTER***

*June 2015*

## **The amendment of the Act on Copyright and Related Rights**

Dear Sirs,

We would like to inform you that at present in the Parliament are ongoing proceedings on three acts, which result in an amendment of the Act of the 4<sup>th</sup> of February 1994 on Copyright and Related Rights. Amendments aim to adjust the provisions of that Act with EU regulations and their joint implementation will be the largest amendment of the Act on Copyright and Related Rights for years.

First of all, the draft of the Act of the 15<sup>th</sup> of May 2015 amending the Act on Copyright and Related Rights presupposes (amendment of Art. 95, adding Art. 95<sup>2</sup>, 95<sup>3</sup> and 95<sup>4</sup>) extending the term of protection for artistic works and phonograms to 70 years, introducing at the same time the mechanism of 'use it or lose it', which consists in the fact that if a phonogram producer does not market a sufficient number of copies of a work that would satisfy the reasonable needs of consumers, or does not publish it in a different way, so that anyone interested could have access to it, the creator or his heirs may terminate the agreement under which the rights to the work were transferred to the phonogram producer. The controversy in this regard could give rise to the same expression 'a sufficient number of copies', which could be the source of many disputes related to the termination of the contract by the creator.

Another draft amendment (paper No 3449 of May 22<sup>nd</sup>, 2015) covers much more extensive changes to the Act on Copyright and Related Rights, among which the most interesting changes include:

a) The addition of Art. 26<sup>1</sup> establishing another case of permitted use, the so-called *public speeches* - enabling you to use within the limits justified for information purposes, from public speeches, as well as fragments of political lectures and other speeches of similar nature. So far, this type of public use was allowed only for those professionally involved in the creation and distribution of information.

b) Division of Art. 27, relating to educational and scientific use, into two paragraphs. The first one allows for the use of published works by educational institutions, universities and research units - also through the reproduction of entire minor works

and excerpts from larger works, to illustrate the content transmitted for educational purposes or for research. The use of the concept of reproduction will allow the use of published works also in the context of e-learning. However, the drafted paragraph 2 introduces a caveat that sharing over distance is only possible in the case of e-learning designed for a restricted, identified circle of people.

c) Amendment of Art. 28 paragraph 1 subparagraph 2 - moving up the issue of the production of copies by libraries, schools or archives. The former term 'preparation of single copies' is to be replaced by the term 'reproduction', which is to allow you to create copies in digital form and allow digitization of collections.

d) Amendments in Art. 28 - the introduction of additional remuneration for creators (public lending right), whose formation is associated only with the lending of copies of works expressed in words (created or published in Polish) by public libraries. This does not mean introduction of payments for the use of public libraries - the remuneration will be paid from the Fund for the Promotion of Culture. In the proposed Art. 35<sup>1</sup> – 35<sup>4</sup> was set out a mechanism for the payment of remuneration.

e) Amendment of Art. 29 by extending the quotation right also to artistic and photographic works.

f) The addition of Art. 29<sup>1</sup>, which introduces separate from the quotation right the right to use the work for parody, caricature or pastiche - which is to regulate issues which have so far been unclear.

g) The addition of Art. 292, which provides a new institution of authorization for incidental and unintended inclusion of a work in other material - which is interpreted as a lack of significance of included work for the material to which it was incorporated and the lack of purposeful relationship.

h) Amendment of Art. 30 by including digital forms of development and storage of data and tracks.

i) Amendment of Art. 31 allows the use as part of religious ceremonies and official events organized by the state authorities of the works that have not been previously made public in any way.

j) Draft of Art. 35<sup>5</sup> – 35<sup>11</sup> - regulate the use of so-called *orphan works* - although subject to legal protection of the author, but whose authors or persons entitled can not be reached. Difficulties may arise either from the fact of the inability to identify authorized or obstacles in determining their whereabouts.

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