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EMPLOYEE'S PROPRIETARY COPYRIGHT IN THE STRATEGY OF MANAGING INNOVATIONS

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Abstract: Contemporary strategies for the competitiveness of enterprises are based more and more on innovations. Therefore, innovations generate higher and higher costs in the budgets of modern enterprises. As a result of investing in innovations, products and technologies that have specific, measurable value are created. They can be used, shared or disposed of so that they can be effectively managed. As a rule, proprietary copyrights belong to the author. However, this does not apply to the so-called employee's works, that is, works created as a result of performing official duties. The discussed matter, although legally regulated, raises legitimate controversies of a legal nature. The paper deals with proprietary copyrights to works created as a result of performing official duties. The purpose of the publication is to analyse the abovementioned issues from a legal perspective and dispel doubts of interpretation in the discussed aspect. The analysis of the above issues is based on available literature and legal acts.

Keywords: proprietary copyrights, a piece of work, intellectual property

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Introduction

The modern market economy is based more and more on knowledge and modern technologies. It is a consequence of the ever-deepening processes of economic globalization and the liberalization of world trade (Janasz 2012, p. 742). The abolition of customs barriers and the development of communication result in increased trade and the creation of a single common market at the expense of the depreciation of regional and local markets. Therefore, raising the level of competitiveness in such conditions may take place mainly through investments in innovations. These can be investments in new products, modern technologies, but also organizational changes (Konopka 2013, p. 177). These investments generate higher and higher costs in the budgets of modern enterprises, but in the future they allow to raise the level of competitiveness of these enterprises on the market (Kozerska 2015, pp. 181-191). The investment is cost-effective because innovations are the primary development factor of enterprises (Nogalski, Niewiadomski 2015, p. 460). It should be mentioned that the analyzed innovations in the form of patents granted for inventions, industrial designs, utility models, trademarks or know-how constitute a concrete, measurable value and can be traded. Therefore, it is essential to define the rights to the above products of human thought. Regardless of industries, trades or types of enterprises, innovations are

created by people. In this respect, one can speak about the author of the work as its creator. The Copyright Act (CA) uses the term *work*. According to art. 1 of the CA "A work is any manifestation of a creative activity of an individual nature, established in any form, regardless of the value, purpose, and manner of expression". What is important is the premise of creative activity, understood as activity which is creative, original and new. However, the premise of "individual character" is understood as uniqueness both in the thematic and expression approach (Błeszyński 1985, p. 43). As a rule, proprietary rights belong to the author. The exception to this rule is the so-called employee creativity, under which works are created as a result of the performance of employee duties. An employer investing in the development of innovation bears specific, measurable costs; hence on the basis of the applicable regulations, he has the copyright to the work created in his company. However, the existing legal regulations in this respect are not consistent and leave room for interpretation. The aim of the article is, therefore, an in-depth legal analysis of the indicated issues and the elimination of any interpretation doubts.

Sources of law

The analysis of sources of intellectual property law allows us to state that particular provisions regulating the subject matter are specified in the Constitution of the Republic of Poland, ratified international agreements, acts, and ordinances. The most important of them are:

- Berne Convention for the Protection of Literary and Artistic Works, 1886,
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994,
- WIPO Copyright Treaty, 1996,
- Act on Copyright and Related Rights,
- Industrial Property Law,
- Civil Code.

However, the basic meaning of this aspect is expressed in the Act on Copyright and Related Rights and Industrial Property Law.

Employee's work

The Act on Copyright and Related Rights (hereinafter referred to as the CA), which is the primary source of law in the discussed aspect, distinguishes personal copyrights and proprietary copyrights. According to art. 16 of the CA, author's personal rights "protect the bond between the author and the work in a manner unlimited in time". This "bond" means in particular the right to:

- authorship of the work;
- mark the work with the author's name or pseudonym or make it available anonymously;
- inviolability of the content and form of the work and its fair use;
- decide on the first work publication;

- supervise over the ways in which the work is used.

On the other hand, proprietary copyrights provide for:

- the right to use the work;
- the right to manage the work in all fields of use;
- the right to receive remuneration for using the work (Article 17 of the CA).
- The basic principle of copyright law, according to which the rights to the work (both personal and property) are vested in the author of the work, is regulated in art. 8 of the CA. However, it has many limitations, among which one can find the so-called employee's works (Flisak 2006, p. 35).

An employee's work in accordance with art. 12 of the CA is a work created by an employee as a result of performing duties under an employment relationship. The proprietary copyrights to such work are vested in the employer entirely. It means that in the above situation, the employer has the right to use the work, the right to manage the work in all areas of use and preserves the right to remuneration for using the work. Interpretation doubts concern the "employment relationship".

According to art. 22 of the Labor Code, "by entering into an employment relationship, the employee undertakes to perform a specific type of work for the employer, under his/her direction, in the place and time appointed by the employer, and the employer – undertakes to employ the employee for remuneration". According to the labor law, fulfilling the above requirements always constitutes the establishment of an employment relationship regardless of the name of the contract concluded by the parties.

On the other hand, an employee is a person employed on the basis of an employment contract, appointment, election, assignment or a cooperative employment contract (Article 2 of the Labor Code).

Therefore, according to art. 12 of the CA in conjunction with art. 2 of the Labor Code, an employee's work is only and exclusively a work created by a person employed under the contract of employment, appointment, election, assignment or a cooperative employment contract. Consequently, a work created by a person providing work on the basis of the so-called non-employee employment is not an employee's work, for example, managerial contract, commission contract, task contract or agency contract.

Further analysis of art. 12 of the CA indicates that the employee's work is exclusively "created as a result of the performance of employee duties". Employee (service) obligations under labor law can result from employment contracts, work regulations, or collective labor agreements. The direct verbal command of the employer may also be a source of professional duty (Domańska-Baer 2009, p. 67). Therefore, a work created in the workplace, with the use of employer's equipment and during working time is not an employee's work, if the creation of the work did not constitute a clearly defined duty of the employee. Inaccuracies in the aspect mentioned above may, therefore, lead to ambiguities in the determination of proprietary copyrights to the work. Therefore, employment contracts (as well as other grounds for employee-employment relationships) should include provisions as precise as possible regarding employee obligations and copyrights to created

employee works. In uncertain cases, the employer acquires all property rights to such a work. However, such acquisition is a derivative acquisition because from the moment the work is established to the moment the rights are transferred to the employer, all copyrights (both personal and property rights) remain with the author. However, the author is obliged to deliver the work to the employer. Then the employer may submit a statement on acceptance of the work, a statement on its rejection or he or she may refuse to make a statement.

Submission of the statement of work acceptance is the basis for the employer to acquire derivative property rights to the work. Submitting a work rejection statement results in leaving the proprietary copyrights to the author. Failure to submit any statement on acceptance or rejection of the work by the employer results in the acquisition of property rights to this work by the employer (Article 13 of the CA).

The Act on Copyright and Related Rights in a special way regulates the right of a scientific institution to a work created by a researcher as part of his/her duties as an employee. On the basis of art. 14 of the CA, such institution has the right of priority in publishing this work. However, this priority is limited in time and expires if within six months from the delivery of the work, the contract for the work publication has not been concluded with the author, or if within two years from the date of its acceptance, the work has not been published (Article 14 of the CA.). A scientific institution may also, without the requirement of separate remuneration, use the scientific material contained in the work and make this work available to third parties if it results from the intended use of the work or has been decided in a separate agreement.

In particular, copyright law also regulates employee's computer programs. In contrast to the general principles contained in art. 12 of the CA, these programs, if created as a result of performing official duties, are ex-lege owned by the employer. Acquisition in this case is of primary nature. Therefore, it is not necessary to deliver the work to the employer, and the employer does not have to submit a declaration of will on its acceptance. Once the work has been determined, the employer has the right to:

- reproduction of a computer program;
- translation, adaptation, layout changes;
- disseminating, including lending or renting a computer program or a copy thereof (Article 74 paragraph 4 of the CA).

As in the case of "ordinary work", employee's computer programs must be the result of performing work duties under the employment relationship. They shall not be subject to civil law contracts such as the contract of mandate or contract for specific work.

Legal regulation of employee's works in the Act on Copyright and Related Rights is not, however, mandatory. Derivative acquisition by the employer of the proprietary copyrights to the work will take place only when the employment contract does not provide otherwise. This means that the parties to the employment relationship may regulate the rights to works created as a result of performing

official duties in a different way, and statutory regulations will apply only if the employment contract does not regulate this matter.

Employee's invention projects

A similar regulation applies to the so-called employee's invention projects (Szewc 2013a, p. 6). According to art. 11 par. 3, the industrial property right (hereinafter referred to as the IPR), a utility model or an industrial design that arose as a result of the performance of duties from an employment relationship or other contract is vested in the employer unless the parties agreed otherwise. It means that the provisions of the Act are not mandatory and may be in the specified scope set aside by the provisions of the employment contract. The lack of such provisions results in the acquisition of property rights to an invention, utility model or industrial design by the employer. Producing an employee's invention must be closely related and result from a professional duty. According to T. Kuczyński, the employee's invention is not an invention "in a relationship" or "on the occasion" of official tasks (Kuczyński 2002, p. 2). This argument is confirmed by the ruling of the Supreme Court of 08.03.2010, according to which "the fact that an employee of a research and development unit is obliged to carry out research work from the essence of his duties does not mean that this unit is entitled to a patent for every invention he/she designs, irrespective of whether it arose under the conditions resulting from art. 11 para. 3 of the IPR. To recognize that an invention was designed as a result of the author's performance of employee duties must not only be confirmed by the fact that the employee for this purpose used the knowledge, skills, and experience acquired during the specific employment. It is necessary that the performance of employee duties takes place at the expense of the employer, as part of its organizational structure, using its technical and personnel facilities".

In contrast to the regulations contained in the Act on Copyright and Related Rights, art. 11 par. 3 of the IPR in addition to the employee forms of work, also allows "other contracts" to be applied, and the proprietary right may be vested in "employers or contractors". It means that the analyzed provision extends the circle of rights also to orderers who do not have the employer status. This provision can, therefore, be used by parties that conclude civil law agreements, such as an assignment contract, a contract for a specific task or a management contract. However, it should be remembered that art. 11 para. 3 of the IPR is limited to inventions, utility models and industrial designs that are only a part of potential works within the meaning of copyright law.

A separate category of inventive projects are "inventions, utility models or industrial designs" created by the author with the help of an entrepreneur (Article 11 (5) of IPR). This provision may apply to contracts of mandate and contracts for specific work concluded between the creator and the entrepreneur. In such a situation, the employment relationship does not take place, but "the entrepreneur may use this invention, utility model or industrial design on his/her own" (Article 11 (5) of IPR). There is no doubt that the "help" in question must be significant, and thus

contribute to the creation of the work. In this sense, it must take place before the creation of the work, and not just, for example, in the effective management of it.

The remuneration for the author is a separate issue. According to art. 22 par. 1 of the IPR The author has the right to remuneration for the use of his/her invention, utility model or industrial design by an entrepreneur when the right to use it is vested in an entrepreneur pursuant to article 11 par. 3 and par. 5 of the IPR The parties should, pursuant to art. 22 par. 2 of the IPR, agree "in advance" on the amount of remuneration for the work. In the absence of such an arrangement, the remuneration is set in a reasonable proportion to the benefit of the entrepreneur from the invention, utility model or industrial design, including the assistance given to the designer by the entrepreneur (Kostański 2010, p. 142). The statutory provisions in the given scope are not precise. The "benefits achieved by the entrepreneur" undoubtedly constitute a general clause, hence an indefinite term. The literature on the subject indicates any benefits achieved by the entrepreneur in connection with the acquisition of property rights to the invention, utility model or industrial design. A. Szewc points to, inter alia, improving the entrepreneur's economic condition, increasing his/her competitive ability and avoiding bankruptcy and liquidation (Szewc 2013b, p. 10).

Conclusions

Effective management of innovations is a condition for the development of enterprises in today's market. The human factor has a significant impact on innovation. That is why it is essential to determine the rules of creating inventions in enterprises (Romanowska 2016, p. 33).

The issue of proprietary copyrights to a work in the field of Polish legislation is regulated in two important normative acts: the Copyright and Related Rights Act and the Industrial Property Law Act. In both cases, the statutory provisions are not necessarily binding, which means that the provisions of the employment contract, and in the case of inventions, utility models or industrial designs, also provisions of civil law agreements may regulate the analyzed issues differently.

The employee's works within the meaning of the Copyright and Related Rights Act consists only of works created as part of job duties within an employment relationship. The lack of detailed provisions in agreements regarding proprietary copyrights to a work carried out under civil law contracts results in leaving these rights to the author.

The industrial property law regulates only the sphere of inventions, utility models and industrial designs. All other works created as a result of performing official duties are subject to the regulation of copyright.

Apart from the basic model of a work, copyright also provides for modified versions of it a scientific work and a computer program. Property rights to a scientific work created as a result of performing official duties remain with the author. The scientific institution is entitled only to the first publication of the work and concerns only the materials contained in the work. In this case, the employer's entitlement to the employer's work is smaller than in the case of the basic model. In

the regulation, employee computer programs are similar to the basic model. If the employment contract does not provide otherwise, the proprietary copyrights are vested in the employer.

Therefore, it follows from the above that employers have full freedom in shaping proprietary copyrights to employee works. The only condition is based on the provisions of the employment contract, which must contain a precise catalog of official duties and indicate the entity entitled to author's property rights to works created as a result of performing official duties (Szczepanik, Szewc 1993, p. 181). When analyzing a work created as a result of performing official duties, one should also determine whether the work meets the statutory definition requirements of the "work", and therefore whether it is original and whether it has an "individual character". Similarly, in the case of industrial property rights, the employee's inventive project must comply with the statutory criteria of the invention, utility model or industrial design.

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UTWORY PRACOWNICZE W STRATEGIACH ZARZĄDZANIA INNOWACJAMI

Streszczenie: Współczesne strategie konkurencyjności przedsiębiorstw oparte są w coraz większym stopniu na innowacjach. Stąd też innowacje generują coraz wyższe koszty w budżetach współczesnych przedsiębiorstw. W wyniku inwestycji w innowacje powstają produkty i technologie, które mają określoną, wymierną wartość. Można je wykorzystywać, udostępniać czy zbywać, a więc efektywnie nimi zarządzać. Co do zasady autorskie prawa majątkowe do utworu przysługują twórcy. Nie dotyczy to jednak tzw. utworów pracowniczych, a więc tych, które powstały w wyniku wykonywania obowiązków służbowych. Omawiana materia, choć prawnie uregulowana, budzi uzasadnione kontrowersje natury prawnej. Artykuł dotyczy autorskich praw majątkowych do utworów, które powstały właśnie w wyniku wykonywania obowiązków służbowych. Celem publikacji jest dokonanie prawnej analizy ww. problematyki oraz rozwianie wątpliwości interpretacyjnych w omawianym aspekcie. Autor dokonał prawnej analizy ww. problematyki w oparciu o dostępną literaturę oraz akty prawne.

Słowa kluczowe: autorskie prawa majątkowe, utwór pracowniczy, własność intelektualna