

Kluwer Copyright Blog

‘Old’ copyright contracts and new forms of exploitation – Supreme Court, December 2, 2010, I CSK 33/10

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The commented decision may at first glance appear to be of limited importance only, but after closer examination it contains two interesting points of more general significance.

The basic facts are the following: the plaintiff, a collecting society ZAIKS, brought a claim against two companies demanding payment for selling copies of the film “Rejs” (“Cruise”), which was bundled with a monthly “Cztery K?ty” (i.e. a disc with the movie was sold as a bonus with the magazine). One might add that the movie “Rejs” is a cult movie in Poland, many expressions and dialogues from it having entered the everyday language, but in this case it did not matter at all.

Polish copyright law provides that coauthors of audiovisual works are entitled to the so-called additional remuneration if the work has been used in one of the forms stipulated in art. 70 (21) of the Polish Copyright Act, one of which includes making copies intended for private use. It could not be denied that such copies had been made, as copies sold with the magazine were clearly intended for private use.

There were in fact two controversies involved. The first was whether the use in question constituted an act of infringement. This was relevant because when the film was made, the law then in force in Poland stated that the producer was the original owner of copyright. However, it was held by the judiciary that even under this regulation the authors were not deprived of copyright entirely. For example the courts maintained that the acquisition of rights did not cover such forms as adaptations. The question of infringement arose because the current Polish Copyright Act explicitly forbids copyright assignments with regard to future forms of exploitation. Since digital formats were unknown in 1970s, when the film was made, it was argued that the defendants could not have acquired these rights. This view was supported by Supreme Court decisions of November 8, 2000, case no. V CKN 693/00 and December 13, 2007, case no. I CSK 321/07, in which the court found that such prohibition had been inherent in the ‘old’ law as well, as it would have been contrary to good morals to allow copyrights assignments with regard to uses unknown at the time the assignment took place. If these views had been applied to the case at hand, making copies of the movie and selling them would have probably constituted copyright infringement. The Supreme Court disagreed. The court stated that the previous copyright legislation did not prohibit copyright transfers covering future forms of exploitation (thus rejecting its own views from the above mentioned judgments). The scope of transfer had to be assessed based on the law in force at the time the transfer was done. Consequently, there was no copyright infringement because copyright had been acquired in its entirety, including the then unknown digital forms of exploitation. This, however, only brought the court back to the main legal basis of the plaintiff’s claim, i.e. the “additional remuneration”. Here the Supreme Court had to answer the question who should be

considered “user” in the light of art. 70 (3) of the Copyright Act. To some the user can be anyone who participates in the chain of actions eventually allowing the work to be made available to the public. The Supreme Court adopted a narrower definition. According to the commented decision “users” in the meaning of art, 70 CA must directly make the work available to the public, since only then is it possible to assess the revenues from disseminating the work and thus calculate the additional remuneration.

The Supreme Court’s decision emphasises that the validity and scope of copyright contracts must be assessed based on the legislation in force when the contract was concluded. Future improvements of the authors’ position will be therefore inapplicable, unless expressly provided otherwise. Secondly, the court seems to understand the concept of use of copyright works rather narrowly. We must be of course aware of the context of this case, but the general problem could be relevant for the hugely controversial debate about the so-called “indirect infringements”. The approach taken by the court suggests that indirect infringements could not be handled as a form of illegal use of copyright works, but rather as assisting in third party torts (a form of vicarious liability).

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