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Scope of copyright contracts – decision of the Supreme Court of March 24, 2011, I CSK 450/10

Tomasz Targosz (Institute of Intellectual Property Law, Jagiellonian University Kraków) · Monday, July 4th, 2011

One of the recent judgements of the Polish Supreme Court provides a good opportunity to review the basic rules applying to copyright contracts in Poland. The Polish copyright law treats copyright contracts in a rather strict and formal way. It specifically states that both assignment and license contracts only cover the co-called fields of exploitation of copyright works (i.e. uses of works economically and/or technically independent) that have been explicitly named in the contract itself. If a contract does not name a field of exploitation, no assignment or license with regard to the omitted kind of use may take place. This rule seeks to protect authors, making them aware of the scope of the contract (i.e. the scope of rights they license of transfer).

Obviously this requirement is onerous, especially for non-professionals, who are not well versed in legal terminology and have often trouble listing the necessary fields of exploitation. Professionals, on the other hand, usually draft lengthy transfer/license clauses, naming all possible existing copyright uses.

The judiciary, and most prominently the Supreme Court, have several times attempted to relax the statutory rule, applying to copyright contracts the general principles of civil law, including rules concerning the interpretation of contracts according to the mutual intentions of the parties. The judgment of March 24, 2011 is another such attempt, but at the same time illustrates quite well the dangers the Supreme Court has created for itself by departing from statutory provisions and fostering a legal construct clearly different from what the legislator had intended. In this case the dispute was between a photographer and a publisher of a magazine. The plaintiff had taken photos later used on the cover of the magazine and in advertising for this magazine in various media, including television. The Court concluded that the parties had entered into a non-exclusive license contract the subject-matter of which was the right to use the photos on the cover. The use of the photograph (the cover with the photo) in the advertising campaign was however another field of exploitation for which the parties had not reached any understanding. Consequently, the use of the photo in advertising constituted copyright infringement and the plaintiff was entitled to additional compensation. This may very well be the correct decision in this very case, but the explanation the Supreme Court has given is nonetheless really troubling. The judgment is full of contradictory statements that make one wonder whether naming a field of exploitation is after all necessary or not and if not, how the scope of the contract should be defined. Although the decision certainly confirms the relaxation of the strict statutory rules (and is in this respect consistent with the Court's previous judgments), it is still much safer to name all the required fields of exploitation in the

contract.

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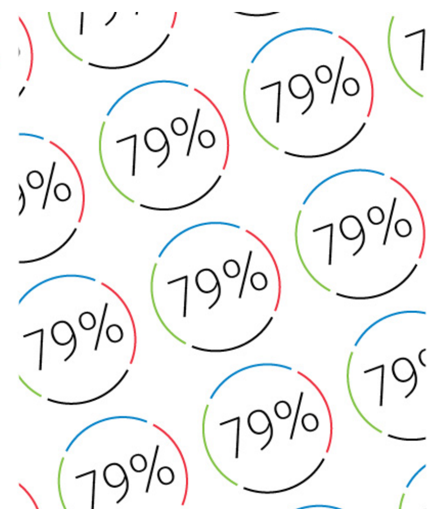

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