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The Proprietary Concept of Copyright in the Polish Act on Copyright and Related Rights of 1994

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The proprietary concept,[1] known in Polish literature as the "ownership concept",[2] is the most widespread concept in continental Europe relating to the construction of a subjective property right to a work. It is based on the assumption that the subjective property right to a work is modelled on the right of ownership of property. This concept is also alive in Polish legal doctrine, although it is not widely recognised.[3] The Polish Act on Copyright and Related Rights of 1994 was intended by its drafters to draw on the achievements of French, German and Czechoslovakian solutions, among others.[4] The specificity of Polish copyright law also includes the domestic tradition of this law, dating back to before World War II (which was also influenced by Austro-Hungarian and Russian law[5]), as well as experiences related to the legacy of the communist era. All these circumstances have influenced the regulation of property rights to works in Poland, making it unique. From the perspective of thirty years of the Polish Act being in force, this regulation needs to be considered in terms of how well it corresponds to the proprietary concept of copyright law popular in the continental system. From a comparative law perspective, the analysis of the Polish model of copyright may have significance beyond the domestic legal order. Poland, similarly to several other countries, including India, developed its modern legal institutions under conditions of limited state sovereignty, which fostered the reception and synthesis of solutions originating from foreign legal systems. As a result, the current legal framework constitutes, to a large extent, a composite of various legal traditions, subsequently shaped by distinct political and socio-economic transformations. The examination of such a proprietary concept of copyright may provide a useful point of reference for reflection on legal systems of a similar historical genesis, as well as on the mechanisms of adaptation and transformation of transplanted legal institutions.

Keywords: Copyright, Ownership, Triad of Rights, Temporal and Territorial Limits, Poland

The prevailing view in Polish legal doctrine is that the regulation of economic copyright contained in the Act on Copyright and Related Rights of 1994[6] remains in line with the copyright solutions of the continental system (also referred to as *droit d'auteur*), based precisely on the proprietary concept.[7] The concept of copyright monopoly, characteristic of common law legal systems,[8] is often presented as somewhat opposed to the proprietary concept. Unlike the concept of monopoly, the concept of ownership does not assume that copyright is only the sum of the rights of the creator or other entity entitled to the work but is the broadest possible right to the work.[9] In this understanding of the law, the catalogue of rights is not predetermined, and all use of the work falls within the scope of such rights. Thus, it can be considered that the concept of ownership is characterised by the view that the sphere of exclusivity granted to the holder of economic rights covers all forms of use of the work, except those that have been excluded from this sphere under the fair use of the work provided for by law.[10] This is therefore a situation different from the concept of monopoly, according to which the entitled entity has exclusivity only in respect of those forms of use of the work which are provided for in the Act.[11]

Under the continental system, two distinct models of copyright have emerged, often referred to as the Roman model and the Germanic model. The Roman model is based on the assumption that there are two rights or two groups of rights, one being “moral copyright” and the other being “economic copyright”. Hence, the Roman model is often referred to as the *droit double* model[12]. The Germanic model, on the other hand, assumes the existence of a single, uniform copyright that covers both moral and economic rights.[13]

Polish copyright regulations clearly indicate trends characteristic of the Roman model of the continental system.[14] The Act regulates moral rights in Chapter 3, Section 1 (Article 16 of the Act) and economic rights in

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Chapter 3, Section 2 (Article 17 of the Act). Consistent reliance on the dualistic model leads to the conclusion that the concept of ownership should be applied to economic rights. The Polish legislator made a similar assumption, introducing a synthetic definition of the concept of economic rights in the first provision of the chapter of the Act devoted to economic rights, i.e. in Article 17 of the Act. This definition is based on the content of property rights, which in Polish law is regulated by Article 140 of the Civil Code.[15] A common feature of economic rights and property rights is the nature of these rights, i.e. they are subjective rights of an absolute and economic nature.[16]

In accordance with the assumptions popular among proprietary concepts, the content of copyright property rights, modelled on property rights, also consists of three rights. These are the rights of use and disposal, modelled on the rights of the same name found in property rights. However, the third attribute of property rights, namely the right to possess, is not included in copyright regulations due to the intangible nature of the subject matter of the right, i.e. the work. As an intangible asset, a work cannot be physically held by a natural person. As a result, it cannot be possessed. In place of this right, the Polish legislator has introduced the "exclusive right to remuneration for the use of a work" (Article 17 of the 1994 Act *in fine*). This "triad" of rights, which constitute the content of economic rights, would undoubtedly indicate that the Polish legislator relied on the concept of ownership. However, it is impossible to state this definitively without considering the entirety of the regulation of economic rights in the Polish Act.

The content of the Economic Copyrights

A specific feature of Polish copyright law is that the legislator does not use the term "exclusive right to a work" to define the central economic right of authorship. Some continental European countries understand the term exclusive right to a work (English: *exclusive right*[17], French: *droit exclusif*[18], Russian: *исключительное право*[19]) to mean a copyright based on the concept of ownership. Although Polish legislators use the collective term "economic rights" to describe this right, it is also an "exclusive" right under Polish law. Pursuant to Article 17 of the Act, "the author shall have the exclusive right to use and dispose of the work in all fields of exploitation and to receive remuneration for the use of the work". A linguistic interpretation of Article 17 of the Act would suggest that each of the three rights is a separate, exclusive right to: 1) use the work in all fields of exploitation; 2) dispose of the work in all fields of exploitation; 3) receive remuneration for the use of the work.

The above may therefore raise doubts as to whether Polish legislators regulate a single copyright, covering the above exclusive rights, which in fact should be understood as rights constituting the content of a single exclusive right. Are we in fact dealing with a set of rights – comprising three interrelated rights (entitlements)? The prevailing view in domestic legal doctrine is that we are in fact dealing with a single subjective right, and that it was merely an oversight on the part of the legislator to use the plural term "copyrights". As a result, the prevailing view is that there is one exclusive right comprising three rights, namely the right to use, dispose of and receive remuneration for the use of the work. This view undoubtedly brings the concept of economic rights under Article 17 of the Act closer to the concept of ownership, which, according to Article 140 of the Civil Code, constitutes a single subjective right covering the traditional triad of owner's rights, i.e. the right to use the thing (*ius utendi, fruendi, abutendi*), the right to dispose of the thing (*ius disponendi*) and the right to possess the thing (*ius possidendi*).[20]

However, the above structural similarity requires further detailed analysis in terms of the extent to which the rights comprising copyright correspond to the rights comprising property rights, as well as in terms of the limits of the content of these rights.

The Right to Use the Work

The content of the ownership primarily includes the right to use a thing (*ius utendi*). This is understood to mean various factual actions in relation to the thing as a material object. Despite certain views formulated also in Polish doctrine on the possibility of factual use of a work, in essence, such use of a work consists in its exploitation by means of a material medium. These are factual activities undertaken not in relation to the work itself, but to the material object that expresses the work, where activities relating to the material medium are (indirectly) linked to the exploitation of the work. It seems that, following the solutions of the French Act of 11 March 1957, the Polish legislator divides the ways of using works ("fields of exploitation") into two groups - reproduction and distribution of a work.[21] Although the Polish Act does

not use the term "reproduction", this concept includes the fixation and reproduction of a work referred to in Article 50(1). Fixation is understood as the first embodiment of a work, allowing it to be perceived by a person other than the author. Reproduction, on the other hand, is the production of each subsequent copy of a work by any technique (e.g. printing, digital). To simplify somewhat, it could be said that the fixation of a work leads to the creation of its original, while reproduction leads to each subsequent copy of the original work. Distribution takes two forms, namely distribution: (1) via a physical medium of the work and (2) direct distribution. The fields of exploitation of a work that could be classified as the first form of distribution are regulated by Article 50(2) of the Act and include, among others, the sale, rental or lending of copies. In turn, the fields of exploitation of a work belonging to the second form of distribution are regulated by Article 50(3) of the Act and include all types of public disclosure of a work, consisting in its direct communication to the public (public display, performance of a work). At the same time, the catalogue of fields of exploitation of a work in Article 50 is very broad and, at the same time, is an open catalogue.[22] Thus, the Polish legislator takes a very broad view of the content of economic rights.[23]

In the context of the right to enjoy the benefits of property (*ius fruendi*), as a form of such "benefit" under copyright law, some researchers point to the remuneration due to the right holder for the exploitation of the work by other persons.[24] A work may be the subject of a legal transaction consisting in authorising its use. In essence, this refers to licence agreements.[25] These agreements undoubtedly constitute an important form of legal action in relation to a work, providing the creator with a significant source of financial benefits from its exploitation. This is also related to the fact that the vast majority of Polish legal scholars oppose the recognition of a licence agreement as a dispositive legal action.[26] As a result, licences, as not falling within the scope of the right of disposal, should be placed within the scope of the right to use a work, similarly to rental, tenancy or leasing agreements. However, as above, the "use" of a work as understood is difficult to classify as natural use. It does not constitute "fruits" or other "components" detached from a given good, as understood in property law (Article 53 §1 of the Civil Code[27]). Natural benefits understood in this way cannot be applied to a work as an intangible asset. The possibility of granting a licence and receiving remuneration on this basis is similar to the right to receive civil benefits from an item, i.e. in Polish law understood as income that "an item brings on the basis of a legal relationship" (Article 53 §2 of the Civil Code). Indeed, a licence agreement constitutes a legal relationship under which the licensor authorises the licensee to use the work in exchange for remuneration (Article 67(1) and 43(1) of the Act). However, the "authorisation to use the work" (Article 67(1) of the Act) seems to be a simplification. In fact, on the basis of a licence, the work itself is not used as such, as it is an intangible asset, but rather the authorisation to enter the sphere of exclusivity designated by economic rights. This, in turn, distinguishes the possibility of granting a licence and receiving remuneration on this basis from receiving civil benefits to which the owner of the work is entitled.

Finally, in the context of a work, it is impossible to claim the existence of a right corresponding to the right to use or destroy an object (*ius abutendi*). Even the possible destruction of the only medium of the work does not result in the elimination of the work as an intangible asset. It is sufficient that it has been documented or perceived by a person other than the creator once in order to become, as it were, a "permanent" part of cultural heritage. Furthermore, on the basis of the right to reproduce a work, documentation or knowledge of the work by a person other than the creator, the work can be presented on a new material medium, thus bringing it "back to life", as it were.

If, from the perspective of *ius abutendi*, the processing of the subject matter of protection is also considered, then in the context of Polish regulations this does not constitute the content of economic rights to a work. The exception applies to computer programmes, databases and audiovisual works. Any changes to a computer programme require the consent of the holder of economic rights (Article 74(4)(2) of the Act). With regard to databases, a qualified form of modification, which should be understood as a creative change to the database, i.e. an adaptation, requires the permission of the holder of the economic rights to the database (Article 2(2)(2) of the Act). Furthermore, it is accepted in legal doctrine that filming a literary work requires the permission of the author of that work, which does not follow from the content of the provision of the Act, but from the

"specific nature of film creation".[28] The above three cases therefore constitute an exception to the rule adopted in Polish law that the modification of a work, including of a creative nature, does not fall within the scope of exclusive economic rights. However, the author may object to changes in the work on the basis of Article 16(3) of the Act. This provision regulates the so-called right to the integrity of the work, which is a moral right, not an economic right.[29] The introduction of changes to a work is therefore referred to the sphere of the creator's moral rights, and not to economic rights.

In summary, under Polish copyright law the right to use a work differs significantly from the right to use a thing. In principle, it covers only a residual scope of certain rights to use an object, where essentially only the right to conclude licence agreements authorising the use of a work and collecting remuneration on this basis, is similar in content to the right to collect civil benefits from things. As in property law, this boils down to obtaining financial benefits on the basis of a legal transaction concluded by the entitled person. The right to use a work is characterised by its specificity, which differs from the right to use an item. In the latter case, it concerns actual actions in relation to an item, which are excluded in relation to an intangible asset such as a work. The "use" of a work therefore takes place predominantly by means of its media. In fact, the above rights in relation to a work take various forms of reproduction and distribution of the work, including not necessarily through the material medium of the work – an object (e.g. a work expressed in digital form). Finally, in the context of *ius abutendi,* a certain similarity can only be found in the context of processing a work in the same way as processing an object. However, this similarity only applies to the regulation of computer programmes, databases and audiovisual works. The rule for all other types of works is that modifying a work does not fall within the scope of economic rights. With regard to the wear and tear or destruction of the object of protection, as a formof *ius abutendi*, this is out of the question due to the intangible nature of the work.

The Right to Dispose of the Work

The content of ownership distinguishes the right to dispose of a thing (*ius disponendi*). The Polish legislator also mentions this right in the content of economic rights. However, the wording of Article 17 of the Act referring to the right to dispose of the work may raise doubts, and indeed it does raise them in Polish legal doctrine.[30] The literal wording of this provision would suggest that we are dealing with the right to "dispose of the work in all fields of exploitation". In fact, it is not a question of disposing of a work as an intangible asset that cannot be "transferred", but of disposing of the right to a work, more precisely, the economic rights of authorship.

Furthermore, from a structural point of view, this solution appears to be unique in the copyright regulations of continental European countries. In the regulations of other countries based on the concept of exclusive rights to a work, it is the content of these rights that constitutes the right to use the work.[31] At the same time, legislators often indicate that the exclusive right to a work, as formulated, may be subject to disposition.[32] However, it is rare to find a solution in which the right to dispose of a work is listed alongside the right to use a work, as if they were equivalent, constituting the content of a single right (as is the case in Polish legislation in Article 17 of the Act). This is due to the fact that placing such a right within the content of an absolute subjective right could suggest that this component – the right to dispose – is also absolute.[33] The solution adopted in Polish law, which places the right to dispose alongside the right to use, has become the subject of serious disagreement, not only in Polish doctrine. With a view to including the right to dispose of property rights in the content of copyright, one of the rulings stated that this right (just like the right to use) should be seen as falling within the sphere of exclusivity of the entitled entity.[34] The effect of this view was the ruling that the mere inclusion in the contract of a provision on the transfer of economic rights by a person not entitled to those rights constituted an infringement of the above-mentioned sphere of exclusivity, which, in the opinion of the court, constituted an infringement of another person's economic rights. As a result, measures to protect copyright as absolute subjective rights were taken against the "infringer". This was met with an unequivocal, critical response from part of the Polish legal doctrine, which argued that the mere conclusion of a contract for the transfer of copyright by an entity that is not entitled to dispose of those rights and therefore not resulting in the acquisition of those rights (with regard to economic rights, the principle of *nemo plus iuris in alium transferre potest quam ipse*

habet fully applies), and without any act of exploitation of the work, it cannot be claimed that the economic rights to such a work have been infringed.[35] As a result, the prevailing view is that the right to dispose of the work, which forms part of the economic rights of authorship, is not absolute and is not linked to the prohibited sphere of economic rights of authorship. In this context, it seems that the introduction by the Polish legislator of the right to dispose of a work in the content of economic rights, modelled on property rights, was unnecessary and perhaps even harmful, as it is misleading for the authorities applying the law.

Disposition of economic copyright is, as a rule, understood in the same way as disposition of ownership of a thing. In principle, it comprises three forms of disposition: the transfer of the right, the encumbrance of the right, and its extinguishment.[36] Only in the context of the latter is it difficult to consider that it also applies to economic rights. Even under the previously applicable Copyright Act of 1952, the possibility of abolishing economic rights was questioned.[37] In property law, the abolition of ownership rights to movable property is conditional upon the disposal of the property in question with the intention of relinquishing ownership rights (abandonment – Article 180 of the Civil Code). In the context of the intangible nature of a work, it is not possible to abandon it. As a result, once a work has been created, economic rights may only expire after the period for which they are valid under Polish law. Pursuant to Article 36 of the Act, this period is, as a rule, 70 years from the date of the author's death in full years, which is the standard applicable in European Union law.[38]

Among the forms of disposing of subjective rights, in the context of economic rights, it is possible to transfer these rights and encumber them. Undoubtedly, limited property rights, such as usufruct or pledge, may be established on economic rights.[39] In accordance with the regulations in force in Polish law, resulting from the provisions of the Civil Code concerning property rights, the provisions on the transfer of this right apply accordingly to the establishment of usufruct and pledge on rights. Thus, the encumbrance of copyrights is based on the relevant application of the provisions on the transfer of these rights.

However, the regulation of the transfer of copyrights in Polish law is characterised by far-reaching specificity, which is significantly different from the regulation of the transfer of ownership rights. Under Polish law, it is not possible to acquire copyrights in their entirety.[40] The Polish legislator has introduced a requirement to specify the fields of exploitation also for agreements transferring copyrights. The obligation to specify the fields of exploitation in every case of transfer of economic rights by *inter vivos,* regulated in Article 41(2) of the Act, requires that the fields of exploitation of the work to which these rights are to be transferred be clearly indicated. This, in turn, leads to the conclusion that, theoretically, only if all fields of exploitation existing at a given moment in time are listed could it be claimed that all economic rights have been transferred. However, it is difficult to imagine in practice the formulation of such a contractual provision in the context of the continuous development of technology and methods of exploitation of works. Furthermore, Article 41(4) of the Act provides for the invalidity of contractual provisions that would concern fields of exploitation of a work that did not exist at the time of its conclusion. Thus, economic rights, the content of which is understood in the broadest and most flexible sense, i.e. covering any newly created forms of exploitation of a work, in accordance with the above regulation of Polish law, exclude the possibility of transferring rights with such content on the basis of a contract. The purchaser under the agreement therefore always obtains economic rights with limited content, covering only the rights corresponding to the fields of exploitation of the work specified in the agreement. This is therefore a situation different from the model of acquisition of ownership of an item, which assumes the acquisition of that right in its entirety and excludes the partial transfer of that right.[41]

Polish regulations in this area are unique. Bearing in mind that in the legislation of other countries, despite the obligation to specify the fields of exploitation characteristic of licence agreements, also for transfer agreements, however, the parties are given the option of transferring the economic rights to the work as a whole.[42] Incidentally, this is a departure from the regulation in force until 1994, also in Polish law, which allowed for the sale of copyrights "in their entirety".[43] Such rigour in the scope of the possibility of disposing of economic rights by way of an agreement was supposed to be dictated by the protection of the creator's interests against excessive disposal of these rights.[44] There is no analogous

regulation in the field of property rights, which the entitled entity may dispose of only in their entirety by way of an agreement (e.g. sale or donation). It is not possible to transfer ownership "in part". Polish legal doctrine notes that such a solution under copyright law is not conducive to the security of legal transactions.[45] It allows for the shaping, by means of a legal act (e.g. a contract or a will), of the limits of an absolute subjective right, which is what economic rights are. This may result in uncertainty on the part of other participants in legal transactions, who are obliged not to interfere with the exclusivity of such rights, as to who and to what extent is entitled to economic rights. Polish law does not provide for any register of such legal acts.

Polish legal doctrine even puts forward more far-reaching views, namely that it is possible to dispose of economic rights by specifying the place and time of the exploitation of the work. While property law does not allow for the transfer of ownership with territorial or temporal restrictions[46], this issue is the subject of debate in copyright law. Some representatives of Polish doctrine are of the opinion that the provisions of the Copyright and Related Rights Act do not preclude the possibility of transferring economic rights with the specification of the territorial and temporal limits of such rights[47], which would lead to the fragmentation of economic rights not only within the limits of the fields of exploitation of the work, but also in terms of territory and time of exploitation. However, in our opinion, such provisions of the transfer agreement should be opposed[48], pointing out that, as a rule, the transfer of absolute subjective rights, including ownership rights or economic rights, is definitive, i.e. in the form and content in which the right was vested in the legal predecessor. Exceptions to this rule may only result from an explicit provision of the Act. The Polish legislator introduces such an exception, but in relation to the fields of exploitation of works (the Article 41(2) of the Act). However, there are no analogous statutory provisions for the possibility of formulating territorial or temporal restrictions in the transfer agreement.

To sum up, the Polish legislator has introduced a very important difference between the transfer of ownership rights and economic rights, namely by enabling, or even imposing, an obligation on the parties to specify in the agreement the fields of exploitation of the work to which the transfer of economic rights is to apply. Due to the fact that economic rights are absolute subjective rights, allowing for the additional establishment of temporal and territorial limits to such rights in the agreement would create a huge risk to the certainty of legal transactions. This is because an absolute subjective right, the content of which should be clearly derived from the provisions of the Act, may, in accordance with Polish copyright law, be freely shaped by the parties to the transfer agreement in terms of the fields of exploitation. This is the basis for the specificity of Polish copyright law, that the legislator allows such a far-reaching departure from the principle of transferring an absolute subjective right with unchangeable content, i.e. it requires the limits of the transferred right to be defined by the fields of exploitation of the work. In this area, the disposal of economic rights clearly differs from the disposal of ownership rights to property.

The Right to Remuneration for the Use of the Work

The third attribute of ownership, which forms part of the triad of owner's rights, is the right to possess a thing, including actual control over it. The right to possess cannot be applied to a work. This is because a work, as an intangible asset, cannot be the subject of possession. As the third of the rights comprising copyright, the Polish legislator lists in Article 17 of the Act the "right to remuneration for the use of a work".

The law, or more precisely, the right to remuneration, has been linked by the legislator to the act of using a work, and not to the disposal of a work (rights to a work). In legal doctrine, it is sometimes linked to the institution known in property law which grants the owner a claim for remuneration for the use of his property (Articles 224 and 230 of the Civil Code).[49] In turn, the content of the right to remuneration for the use of a work under Article 17 of the Act combines the need to pay an equivalent for each act of use of the work, except where the obligation to pay such remuneration is excluded by virtue of a provision of the Act (cf. Article 34 of the Act). This understanding of the right, which constitutes the content of an absolute subjective right, which is itself effective *erga omnes*, is the subject of dispute in Polish doctrine.[50] Authors opposed to the concept of an absolute "right to remuneration" under Article 17 of the Act argue for the relative nature of this right. In their opinion, the possible failure to pay

compensation for a specific act of use of a work will therefore not give rise to liability for infringement of an absolute subjective right. It is not possible within the scope of this study to consider all positions on the dispute concerning the nature of the right to remuneration. In any case, for the purposes of this discussion, it is sufficient to recognise that the right to remuneration for the use of a work is a component (attribute) of copyright that has no equivalent in the triad of rights that constitute property rights. It is therefore the right that most distinguishes economic rights from property rights in terms of structure and is characteristic of the former rights.

Limits of the Economic Rights

It is significant that Article 17 of the Act does not expressly define the limits of the content of economic rights. Article 140 of the Civil Code, which regulates the content of ownership, explicitly indicates the limits of this right. According to this provision, "within the limits specified by law and the principles of social coexistence, the owner may (...) use the property in accordance with the socio-economic purpose of his right". The absence of a similar provision in Article 17 of the Act raises the question of the limits of copyright. It is true that Article 17 of the Act *in principio*contains the phrase: "unless the law provides otherwise", which may indicate the intention to set the limits of copyright by law. It should be noted, however, that even the absence of a relevant provision in Article 17 of the Act does not preclude the setting of limits on economic rights in another provision of the same Act or in another Act, as a normative act of equal legal force. Some consider the provisions on fair use of a work to be such provisions.

However, the regulation of fair use in Polish law also raises doubts as to the clarity of the boundaries of economic rights set out in these provisions. On the one hand, the legislator indicates cases in which the exploitation of a work does not require the permission of the holder of economic rights, which could indicate the boundaries of these rights. At the same time, Article 35 of the Act specifies that "Permitted use may not interfere with the normal use of the work or prejudice the legitimate interests of the author." Thus, it "closes" the scope of fair use with undefined phrases such as "normal use of the work" or "legitimate interests of the author". Therefore, each case of permitted use of a work must be considered on a case-by-case basis, taking into account the above-mentioned undefined terms. This is undoubtedly at the expense of legal certainty on the part of participants in legal transactions – users of the work on the basis of permitted use.

Therefore, bearing in mind that the sphere of exclusivity of economic rights covers an unlimited scope of exploitation of a work, in which only certain areas of use with very vague contours do not interfere with the sphere of this exclusivity, it should be recognised that the content of economic rights is more extensive than property rights. As a side note, however, it should be mentioned that the exercise of economic rights, like ownership, is subject to the restrictions of Article 5 of the Civil Code (abuse of rights).

However, in comparison to ownership as a right that is not limited in time, economic rights, as indicated above, are limited in time. In principle, they cover a period of 70 years, counted in full years after the death of the author. The shaping of economic rights as limited in time is dictated by the public interest in access to creative works.[51] In turn, moral rights have been shaped as rights protecting the "unlimited in time (...) bond between the creator and the work" (Article 16 of the Act).

Conclusion

Polish doctrine rightly pointed out that referring to property rights in the context of copyright considerations has axiological justifications, serving to strengthen the position of creators by referring to the situation of the owner.[52] However, the economic rights referred to in Article 17 of the Act are not equivalent to ownership.[53] Although the model of property rights (ownership) undoubtedly served as a basis for the authors of the Polish Act in constructing the content of economic rights, it is not possible to refer to a work in the same way as the rights that a property owner has in relation to a thing. Not only did this construction fail to produce the expected results, but it also proved to be a breakneck undertaking. It has resulted in endless disputes in the doctrine about the content of a key property right among copyrights. In turn, in case law, it has been the source of erroneous decisions, such as the one which held that the conclusion of an agreement to transfer these rights by a person who is not the holder of economic rights infringes those rights because the agreement mentions the right to dispose of the work. If the Polish law were

limited to the concept of the exclusive right to use a work, such doubts in case law would probably not have arisen. Finally, the right to remuneration for the use of a work, which is an inherent part of economic rights, does not "derive" from the concept of property rights. It is an institution specific to copyright law.

With regard to the right of use, although economic rights are time-limited rights, while ownership rights are not limited in time, economic rights are not subject to the same restrictions as ownership rights when it comes to the use of a work. As a result, economic rights under copyright law may in fact be regarded as "supra-proprietary rights".[54] Their content, in which an almost unlimited scope of exclusive use is combined with the right to remuneration, according to which the creator is entitled to appropriate remuneration for each instance of exploitation of the work, places the holder of economic rights in an incomparably stronger position than the owner of the property. In this respect, in our opinion, economic rights appear to prevail over ownership in Polish law.

The analysis presented also allows for broader conclusions extending beyond Polish law. A model of copyright shaped as a synthesis of various foreign legal traditions may give rise to original legal constructions. The Polish experience demonstrates both the potential for the creative transformation of transplanted legal institutions and the risks associated with their systemic inconsistency. In this sense, the analysis of the proprietary concept of copyright in Polish law may serve as an inspiration for further comparative research and as a point of reference for legal systems which—similarly to Poland, such as India—have developed through the reception and adaptation of foreign legal solutions.

References

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13 Traple E, [in:] Barta J, (ed.), *Private Law System. Copyright*, 13 (Warsaw) 2017, 141.
14 Traple E, [in:] Barta J, (ed.), *Private Law System. Copyright*, 13 (Warsaw) 2017, 145.
15 Błaszczyk C, *Copyright and constitutional protection of property*, PS 2 (2019), 70.
16 Błeszyński J, [in:] *Experientia docet. Jubilee book dedicated to Professor Traple*, Kostański P, Podrecki P, Targosz T, (eds.), (Warsaw) 2017, p. 50.
17 Example: the United Kingdom of Great Britain and Northern Ireland Act, i.e. the Copyright, Designs and Patents Act of 1988, Article 2(1).
18 Example: French law, i.e. the Code de la propriété intellectuelle of 1992, Article L123-1.
19 Example: Russian law in Article 1225(2)(1) of the Civil Code of the Russian Federation (Part Four) of 2006.
20 Gniewek E, [in:] Gniewek E, (ed.), *Private Law System. Property Law,* 3, (Warsaw) 2020, 118, 121; Ignatowicz J, Stefaniuk K, *Property Law*, (Warsaw) 2022, 77-78; Matusik G, [in:] Borysiak W (ed.), *Civil Code. Commentary*, (Warsaw) 2024, Article 140, Nt 12; Szydło W, [in:] Gniewek E, Machnikowski P (eds.), *Civil Code. Commentary*, (Warsaw) 2023, Art. 140, Nt 2; Machnikowska A, [in:] Załucki M (ed.), *Civil Code. Commentary*, (Warsaw) 2023, Art. 140, Nb 19; Orlicki M, [in:] Gutowski M (ed.), *Civil Code. Volume I. Commentary on Articles 1–352*, (Warsaw) 2021, Article 140, Nb 15.
21 Art. 26 of Loi n°57-298 of Act of 11 March 1957, “la propriété littéraire et artistique” (non-binding now).
22 Niewęgłowski A, *Copyright Commentary*, (Warsaw) 2021, 620.
23 Czajkowska-Dąbrowska M, [in:] Kidyba A, Skubisz R (eds.) *Contemporary Problems of Commercial Law, Jubilee Book Dedicated to Professor Poźniak-Niedzielska*, (Kraków) 2007, 48.
24 Giesen B, *The proprietary model of copyright – analysis of the concept adopted in Polish law*, RPEiS 2 (2015), 61.

25 Pursuant to Article 67(1) of the Copyright and Related Rights Act, "[t]he author may grant authorisation to use the work in the fields of exploitation specified in the agreement (...)".

26 Traple E, *Agreements on the exploitation of works in Polish law*, (Warsaw) 2010, 26.

27 According to this provision: "The natural benefits of a thing are its fruits and other components separated from it, provided that, according to the principles of proper management, they constitute normal income from the thing."

28 Traple E, [in:] Barta J, Markiewicz R, (eds.), *Act on Copyright and Related Rights. Commentary*, (Warsaw) 2011, 55.

29 Its prototype is the right expressed in the Berne Convention to "object to any distortion, mutilation or other modification" of a work (Article 6 bis(1) of the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works, drawn up in Paris on 24 July 1971 (Journal of Laws of 1990, No. 82, item 474)).

30 The distinction between the right to dispose and the right to manage is opposed by Czajkowska-Dąbrowska M, [in:] Kidyba A, Skubisz R (eds.), *Contemporary Problems of Commercial Law, A jubilee book dedicated to Professor Poźniak-Niedzielska*, (Krakow) 2007, 57-58.

31 Article 1270 of the Civil Code of the Russian Federation (Part Four) of 18 December 2006 No. 230-FZ. Similarly in French law – Article L122-1 Code de la propriété intellectuelle, where droit d'exploitation covers two basic forms of use of a work, i.e. droit de représentation and droit de reproduction.

32 Article 1270(1)(2) of the Civil Code of the Russian Federation (Part Four) of 18 December 2006 No. 230-FZ. As well as Article L122-7 of the Code de la propriété intellectuelle, where the French legislator provides that the components of droit d'exploitation – droit de représentation and droit de reproduction – are transferable. This is also recognised in Polish doctrine: "there is no need to separately mention the right to dispose of property if other provisions indicate that this right is transferable" (Czajkowska-Dąbrowska M, [in:] Kidyba A, Skubisz R (eds.), *Contemporary Problems of Commercial Law, A jubilee book dedicated to Professor Poźniak-Niedzielska*, (Krakow) 2007, 58).

33 In property law, the doctrine uniformly accepts that the right to dispose of property is absolute and belongs exclusively to the owner of the property (Gniewek E, [in:] Gniewek E (ed.), *Private Law System. Property Law,* 3 (Warsaw) (2020) 135).

34 Judgment of the Polish Supreme Court of 18 June 2003, II CKN 269/01, OSNC 2004, No. 9, item 142.

35 As Traple E, stated: "Copyright is infringed by anyone who encroaches on the scope of exclusivity covered by the copyright monopoly, i.e. who exercises those rights in a manner reserved for the exclusive disposal of the creator. Since the mere performance of an act by which a third party does not acquire any rights does not encroach on the copyright monopoly" (Traple E, A work *as the subject of a contract for specific work. Commentary on the Supreme Court judgment of 18 June 2003, II CKN 269/01*, Glosa, 2 (2005) 87).

36 Gniewek E, [in:] Gniewek E (ed.), *Private Law System. Property Law,* 3 (2020) 128.

37 Kopff A, [in:] Grzybowski S, Kopff A, Serda J (eds.), *Issues of Copyright Law*, (Warsaw) 1973, 104–105.

38 In accordance with Article 1(1) of Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (OJ EU L 372, 2006, p. 12, as amended).

39 Baliga B, Kućka M,*Use of copyright: use and lease versus licences*, TPP 2 (2008).

40 Targosz T, [in:] Targosz T, Włodarska-Dziurzyńska K (eds.), *Agreements transferring copyrights*, (Warsaw) 2010, 19.

41 Targosz T, [in:] Targosz T, Włodarska-Dziurzyńska K (eds.), *Agreements transferring copyrights*, (Warsaw) 2010, 21.

42 For example, under Russian law, it is possible to transfer exclusive rights to a work only in its entirety (cf. Article 1285 of the Civil Code of the Russian Federation (Part Four) of 18 December 2006 N 230-FZ).

43 Błeszyński J, [in:] *Experientia docet. Jubilee book dedicated to Professor Traple*, Kostański P, Podrecki P, Targosz T (eds.), (Warsaw) 2017, 59.

44 Szczotka J, [in:] Kidyba A, Skubisz R (eds.), *Contemporary Problems of Commercial Law, A jubilee book dedicated to Professor Poźniak-Niedzielska*, (Krakow) 2007, 369.

45 Czajkowska-Dąbrowska M, [in:] Kidyba A, Skubisz R (eds.), *Contemporary Problems of Commercial Law. A jubilee book dedicated to Professor Poźniak-Niedzielska*, (Krakow) 2007, 49.

46 In Article 140 of the Civil Code, the legislator defined ownership as the most comprehensive and indefinite property right of an absolute nature relating to a thing. Therefore, the transfer of ownership of a thing with a restriction on the "existence" of the ownership right to a specific territory is inadmissible. The transfer of ownership of a thing with a time limit on the "existence" of the right of ownership (i.e. with a final deadline) should be assessed in a similar manner. In the case of the transfer of ownership of immovable property, the specific regulation contained in Article 157 §1 of the Civil Code expressly excludes this possibility. However, there is no analogous solution for movable property. In view of the above, both case law (cf. Polish Supreme Court decision of 7 March 2018, I CSK 663/17, Legalis) and doctrine (cf. Gniewek E, [in:] Gniewek E (ed.), *Private Law System. Property Law,* vol. 3, (Warsaw) 2020, p. 84) allow for the construction of contractual temporary ownership (ownership divided in time) in the case of trade in movable property. In our opinion, this view appears unjustified, as it is contrary to the essence of ownership as a perpetual right. The provision of Article 157 §1 of the Civil Code should not be interpreted as consent to the creation of contractual temporary ownership, but rather as an unambiguous confirmation of the perpetual nature of the right of ownership. An explicit prohibition in relation to immovable property is justified by the need to ensure the security of legal transactions. In the case of movable property, however, the above conclusion follows from the interpretation of Article 140 of the Civil Code. If the legislator wished to allow the existence of temporary ownership, it should have explicitly regulated this issue in the provisions. It is indisputable that the legislator did not explicitly adopt the concept of temporary ownership in the Civil Code. For more details: Grzesiowski K, *On the admissibility of acquisitive prescription of non-separate*

premises, or a new look at the institution of acquisitive prescription of premises, Nieruchomości@ 1 (2024) 31 and Grzesiowski K, *Usucapio as a means of acquiring real property ownership – a comparative legal outline based on Polish, Italian, and Lithuanian law*, *Journal Legal and Administrative Studies*, Supplement (2025), Romania, 109-125.

47 Markiewicz M, *Legal consequences of not specifying the territorial scope of a contract transferring economic rights*, PiP 2 (2021).

48 Czajkowska-Dąbrowska M, [in:] *Disputes over intellectual property. A jubilee book dedicated to Professors Barta and Markiewicz*, Matlak A, Stanisławska-Kloc S (eds.), (Warsaw) 2013, 176.

49 Giesen B, *The proprietary model of copyright – analysis of the concept adopted in Polish law*, RPEiS, 2 (2015) 67.

50 Sokołowska D, The *author's right to remuneration in copyright law*, (Poznań) 2013, 196, 214.

51 Błeszyński J, [in:] *Experientia docet. Jubilee book dedicated to Professor Traple*, Kostański P, Podrecki P, Targosz T (eds.), (Warsaw) 2017, 51.

52 Czajkowska-Dąbrowska M, [in:] Kidyba A, Skubisz R (eds.), *Contemporary Problems of Commercial Law. A jubilee book dedicated to Professor Poźniak-Niedzielska*, (Krakow) 2007, 48.

53 Błeszyński J, [in:] *Experientia docet. Jubilee book dedicated to Professor Traple*, Kostański P, Podrecki P, Targosz T (eds.), (Warsaw) 2017, 49.

54 Sokołowska D, *The author's right to remuneration in copyright law*, (Poznań) 2013, 141.