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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 63.2 OF THE AGREEMENT

Poland

Revision

By means of a communication from the Permanent Mission of Poland, dated 24 December 1997, the following communication has been received from Poland under Article 63.2 of the Agreement.

I have the honour, in the name of the competent authorities of the Republic of Poland, to inform and submit to the TRIPS Council the Polish intention to avail itself of the right, under Article 65.3 of the TRIPS Agreement, to delay the date of the application of the provisions of this Agreement other than Articles 3, 4 and 5, beyond 1 January 1996.

Please find attached herewith the list of the Polish main laws and regulations pertaining to the subject-matter of this Agreement, that have been already brought into conformity with the provisions of the TRIPS Agreement, accompanied by their English translation.¹

However, Poland is not obliged to notify the above-mentioned laws and regulations; this notification is made well in advance in order to give the TRIPS Council the possibility of its exercising a review in May 1998.

In addition, I have the honour to inform you that the preparatory works on a new Polish Industrial Property Law are far advanced and it is expected to be adopted in the first half of 1998. The entering into force of a new Industrial Property Law will be notified to the TRIPS Council in a due time.

At the same time, I would like to clarify the text of the communication dated 21 December 1995 (contained in the WTO Secretariat's document IP/N/1/POL/1 of 19 February 1996), where Poland has notified its laws and regulations on industrial property under Article 63.2 of the TRIPS Agreement, stating that they had already been brought into conformity with the provisions of said Agreement. This communication should have been understood that the submitted laws and regulations have been brought into conformity with the provisions of Articles 3, 4 and 5 of the Agreement.

¹ The present notification from Poland was also accompanied by four annexes, as reproduced below (page 4 and following), entitled:

- Description of the civil procedure applied during examination of cases regarding the protection of copyright;
- The Principles of Polish Law on Civil Procedure;
- Description of the administrative procedure applied during examination of cases regarding copyright;
- Description of a penal procedure applied in cases concerning the violation of copyright.

NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 63.2 OF THE TRIPS AGREEMENT

The Polish authorities would like to inform and submit to the TRIPS Council their intention to avail themselves of the right, under Article 65.3 of the TRIPS Agreement, to delay the date of application of the provisions of this Agreement other than Articles 3, 4 and 5 beyond the date of 1 January 1996.

Poland submits the attached list of its main laws and regulations pertaining to the subject matter of this Agreement, that have already been brought into conformity with the provisions of the TRIPS Agreement, together with their English translation.

AN ADVANCE NOTIFICATION BY THE REPUBLIC OF POLAND
UNDER ARTICLE 63.2 OF THE TRIPS AGREEMENT
OF LAWS PERTAINING TO THE SUBJECT-MATTER OF THIS AGREEMENT

1. Act of 4 February 1994 on Copyright and Neighbouring Rights, published in the Official Journal No. 24/1994, item 83;²
2. Regulation of the Minister of Culture and Art on the level of fees to be paid to the Fund for Promotion of Creative Activity from sales of works whose protection period in relation to author's economic rights has elapsed, along with detailed rules of disbursements from the Fund and granting of scholarships and social assistance, of 22 December 1994, published in the Official Journal No. 138/1994, item 735;³
3. Regulation of the Minister of Culture and Art on the detailed rules and procedures of the Copyright Commission, remuneration of its members and the scale of fees for proceedings before the Commission as well as rules of their remittance, of 22 December 1994, published in the Official Journal No. 138/1994, item 736;³
4. Regulation of the Minister of Culture and Art on the amount, detailed rules for collecting and remitting fees from blank carriers and devices for fixing works for purposes of personal use and the designation of collective administration organizations competent to collect such fees, of 5 December 1995, published in the Official Journal No. 1/1996, item 5.³

² The text of this law can be found in document IP/N/1/POL/C/1.

³ The text of this regulation can be found in document IP/N/1/POL/C/2.

DESCRIPTION OF THE CIVIL PROCEDURE APPLIED DURING EXAMINATION OF CASES REGARDING THE PROTECTION OF COPYRIGHT

Material jurisdiction of courts is specified in Article 17 of the Code of Civil Procedure (hereinafter the "CCP"). According to this provision cases concerning the protection of copyright are examined by voivodship courts as higher courts of the first instance.

Courts of appeal are competent to examine cases in the second instance. If the value of the complaint exceeds the amount of Zł 5000, a cassation may be applied with respect to the judgment of the court of appeal, which shall be considered by the Supreme Court.

Territorial jurisdiction of a court is specified by general principles, i.e. the competent court shall mean a court of a competent jurisdiction for the seat of the defendant (Article 27 of the CCP). In the event that the defendant committed an illegal act, a court within the jurisdiction of which the event resulting in a damage was committed, may also be considered as competent (Article 35 of the CCP). Article 80, Section 1 of the Act, dated 4 February 1994, on Copyright and Neighbouring Rights (Dz. U. No. 24, poz. 83) provides that the case for violation of an author's economic rights shall be examined by a court of competent jurisdiction with respect to the place in which the perpetrator conducts its business or where his property is located.

The court protection covers both the author's moral rights (Article 78 of the Act on Copyright) and his economic rights (Articles 79 and 80 of the Act on Copyright). Claims related to the intellectual property may be raised by the author of the work, the author of the adaptation of a work (e.g. translator, author of modifications and adaptations), and the performer (e.g. singer, reciter).

An advocate, legal counsel or an organization of copyright and neighbouring rights management may act as the attorney of an injured party (Article 87 of the CCP and Article 78, Section 4 of the Act on Copyright and Neighbouring Rights). As a rule, there is no obligation for the party to attend the legal proceedings in person, but in a particular case the court may admit evidence obtained as a result of hearing of the parties, and call upon a party to attend the proceedings in person (Articles 216 and 199 of the CCP). It is also possible to use the legal advice and have the parties heard by another court, the presence in which is more convenient and less expensive for the party (Article 235 of the CCP). The court may oblige a person who infringes an author's economic rights to provide information and give access to documents specified by the court, which is important for the claims of an author (Article 80, Section 1, Item 2 of the Act on Copyright).

The court may order that the proceedings be conducted with their openness quashed in order to protect the confidential nature of information revealed in the course of proceedings (Articles 153 and 154 of the CCP).

In the event that the court considers claims as justified, it may issue a judgment in which, depending on the circumstances, damages are adjudged or a specific behaviour of the defendant is prohibited or ordered. The court decides on the forfeiture, for the benefit of the State Treasury, of objects used directly for an illegal production of copies of works, or objects used for the purpose of violating the right (Article 80 of the Act on Copyright).

Costs of the proceedings, i.e. court fees and attorney fees, court expert opinions shall be borne by the losing party and the court shall order the defendant to pay them to the plaintiff (Article 98 of the CCP).

If a party was sued without justified reasons for damages related to the violation of copyright, the statement of claim shall be dismissed and the court shall order the plaintiff to pay the costs of proceedings incurred by the defendant (Article 98 of the CCP).

Costs of proceedings in such cases are specified in § 31 of the Act, dated 13 June 1967, on Court Fees in Civil Cases (Dz.U. Nr 24, poz. 110, as amended). According to this provision, in cases for intangible rights or in cases related to tangible rights whose value cannot be determined at the commencement of the case, a temporary registration fee is determined (this is a type of a court fee).

In the decision ending the proceedings in the first instance, the court determines the amount of the final fee in cases for intangible rights - taking into account the financial position of a party charged with costs and in cases for tangible rights - depending on the value of the case, as determined in the course of the proceedings.

In similar cases, a temporary registration fee is determined in the amount varying from Zł 30 to Zł 600 (§ 11 of the Ordinance of the Minister of Justice, dated 17 December 1996, on specifying the amount of fees in civil cases - Dz.U. Nr 154, poz. 753)

Article 6 of the CCP and Article 80 of the Act on Copyright contain provisions imposing a discipline on the court in the course of proceedings. In particular, they order the examination of the motion for securing evidence and claim not later than within three days and the complaint within seven days.

As regards temporary measures which the court may issue, they comprise securing evidence without any need to be afraid that their analysis will become impossible or considerably difficult.

In addition, the court may secure the claim by way of issuing a temporary restraining order after it has become probable that the failure to secure the claim may result in a lack of settlement of the claim.

The court may decide on temporary measures before the statement of claim is filed.

A temporary restraining order of the court issued in order to secure the claim has a form of a decision. Before issuing the decision, the court is not obliged to hear the other party. The court may issue the decision on a closed session and service it only to the creditor. The service to the debtor shall be made by an execution authority concurrently with commencing the execution of a decision (Article 740, § 1 of the CCP). The decision of the court may be subject to complaint of the parties (Article 711 of the CCP).

Evidence may be secured before the initiation of proceedings upon the motion of a party. During the proceedings, evidence may be secured *ex officio*. The court calls upon all interested persons to attend the session during which evidence is to be examined (Article 314 of the CCP).

Procedures of requesting, deciding on, and maintaining in force temporary restraining orders are specified in the CCP in Articles 230 - 246, although those provisions of the CCP which refer to matters regulated in a different way in the Act on Copyright are excluded, as they constitute *lex specialis*. This refers, e.g., to the period of examination of a motion for securing the claim. Copyright law provides that this period shall be three days, whereas the CCP grants seven days. A motion for issuing a temporary restraining order should include arguments for making it probable that the motion for securing the claim is justified. One may also indicate an amount in the motion, the payment of which by the debtor is sufficient as a security (Article 237 of the CCP). When issuing a temporary restraining order, the court itself designates the manner and scope of security (Article 239 of the CCP).

THE PRINCIPLES OF POLISH LAW ON CIVIL PROCEDURE

In Poland, after 1989, in connection with reforms in the political and economic systems, changes in the organization of the courts and in the rules of civil procedure have followed. State economic arbitration which had resolved disputes between business entities under the command-and-control economy, has been abolished. So-called economic cases (cases concerning business) have been transferred to the competence of common courts, where they are examined in the course of special proceedings by specialized departments of these courts, called economic courts. Proceedings before these courts have some special features; the aim of these special provisions is to expedite and simplify proceedings, which reflects the needs of the economy.

In 1990, appellate courts were set up and were given the task of considering appellate measures pertaining to the decisions of provincial courts, which had previously fallen under the competence of the Supreme Court.

Polish civil procedure is regulated by the Code of Civil Procedure of 17 November (Journal of Laws - Dziennik Ustaw - No. 43, item 296), changed by the amended Act of 11 March 1996 (Journal of Laws - Dziennik Ustaw - No. 43, item 189).

The Code (later abbreviated as C.C.P.) is divided into three parts devoted to the examination of civil law cases, claims and executory proceedings, and international civil procedure.

In the initial examination of civil cases, the court rules on the rights and obligations of the parties; in executory proceedings the court orders enforced execution of court decisions; and the provisions regarding international civil procedure regulate domestic jurisdiction, legal assistance, and recognizing and implementing the decisions of foreign courts, with the priority, of international agreements ensured.

The civil procedure before a Polish court conforms to Article 6, clause I of the European Convention on Human Rights and Fundamental Freedoms, ratified by Poland (Journal of Laws - Dziennik Ustaw - of 1993, No. 61, item 284). Civil cases are heard by independent and impartial courts established by legislation, in open proceedings and are dealt with within reasonable time. A party has a right to be heard in public proceedings and utilize its right to defence. The possibility to appeal to a court of the second instance is assured.

In the resolution, dated 12 June 1992, the Supreme Court stated that an act of the Parliament consenting to ratification of an international agreement introduced it into the system of law with the same effect as any Parliamentary act. The European Convention on Human Rights and Fundamental Freedoms does not require transformation and its norms could be directly applied in the domain of domestic law (I PRN 54/93, Państwo i Prawo 1994, No. 2, p. 107).

Proceedings are instituted on the request of an interested party.

The appropriateness of the court proceedings and the possibility of examining the matter depend on presence or absence of certain circumstances.

The parties must each have the capacity to be a party to civil proceedings and the capacity to be a party in a given civil case. Apart from these, there must be the admissibility of the proceedings in court and domestic jurisdiction. The proceedings should take place in a competent court under the proper mode of procedure. The proceedings may not go ahead if the matter has been already adjudicated on (*res indicata*), or when the case regarding the same claim between the same parties is in process (*lis pendens*) or if it is under arbitration.

Competence of the court

Civil cases are examined by common courts including: district courts, provincial courts and appellate courts. The Supreme Court is the cassation court.

District courts examine all cases except those reserved to the competence of provincial courts. Only these two kinds of courts hear cases in the first instance (Article 16 C.C.P.).

Provincial courts examine civil cases above a certain value of the matter under litigation (from 1 July 1996 it is over Zł 15,000), as well as most cases of a non-financial nature: cases involving protection of copyright, patent rights to inventions, registered practical or decorative designs and also trademarks, as well as claims under the press laws (Article 17 C.C.P.).

The territorial competence of the court may be general, alternative or exclusive. With general competence, the suit is brought to the court of the first instance, in the area where the defendant has his/her place of residence or, in the case of a juridical person, has its seat. The place of residence of a natural person is the locality where this person lives with the intention of staying permanently.

In case of alternative competence, the plaintiff can choose the court. A suit for a claim resulting from an unlawful act can be brought either in the place of residence of the defendant or in the area where the event causing the damage occurred (Articles 31-37 C.C.P.).

Exclusive competence of the court is envisaged *inter alia* for suits claiming ownership or other property rights. In these suits, the only competent court is the one where the real property is located (Articles 38-42 C.C.P.).

The court that declared itself not competent in the case, does not return the claim or reject it but transfers the case to a competent court (Article 200, § 1 C.C.P.). The court to which the case has been transferred is bound by this decision. These provisions do not apply when a case is transferred to a court of the higher instance (Articles 200, § 2 C.C.P.).

Composition or the court panel

In the first instance the court examines, with a panel of one judge as the presiding judge and two lay judges, the cases under the labour code and those regarding social security as well as the cases arising from family relationships, except those involving alimonies (Article 47, § 1 C.C.P.). The president of the court has, however, the power to order the case to be examined by three career judges if advisable because of the unusual intricacy of the case (Article 47, § 4 C.C.P.).

The appellate court examines cases with a panel of three judges.

Disqualification of the judge

According to the Polish Constitution, the judge is independent in his judgement and is subject only to the law. The judge may examine a given case if not disqualified by provisions of law or if not disqualified on his own initiative or upon the request of a party to the proceedings. There cannot be any doubt as to the impartiality of the judge.

The judge is disqualified by law from cases to which he is a party; from cases involving his or her spouse, direct-line relatives and relatives by marriage, lateral relatives up to the fourth degree and relatives by marriage up to the second degree; in cases of persons associated through adoption,

custody or guardianship; if he was or still is representing one of the parties, or was a legal counsel to same; if, at a lower instance, he participated in issuing the decision which is being appealed; in litigation proceedings regarding the validity of a legal act prepared with his participation, or examined by him; and in cases where he served as a prosecutor (Article 48 C.C.P.).

Independent of these reasons, the court disqualifies a judge on his request or on the request of a party, if between him and one party there is a personal relationship of the kind which could raise doubts as to the impartiality of the judge (Article 49 C.C.P.).

Participation of a judge disqualified by law invalidates the proceedings (Article 379, item 4 C.C.P.). Also, a binding decision can be appealed if the deciding judge was disqualified by law.

Qualified parties in civil procedure and civil cases

Any natural or juridical person has the capacity to be a party to court proceedings.

Community organizations allowed by law to operate can be parties to civil cases even if they are not juridical persons (Article 64 C.C.P.).

Economic entities that are not juridical persons can also be parties to economic court proceedings if they were set up in accordance with the law, if their scope of activity include business activities (Article 479 C.C.P.).

Any natural person having a full capacity to take part in legal transactions, juridical persons and the organizations having the capacity to be a party in civil cases can act in court proceedings, that is, can act in civil cases.

Representation of parties in proceedings

Apart from the cassation (annulment) procedure, in Polish civil procedure there is no obligation to be assisted by a lawyer. The parties or their authorities or statutory representatives may act before the court in person or through an attorney. This attorney may be a trial lawyer (advocate), legal counsel, a joint party to the dispute, as well as the parents, spouse, siblings or descendants of the party and also persons related by adoption (Article 87, § 1 C.C.P.).

An employee of a business entity, or of its superior authority, may act as its attorney. The juridical person which performs, under separate provisions, legal counselling of a business entity, may provide the power of attorney on behalf of this entity, to a trial lawyer (advocate) or a legal counsel, if it has been authorized to do so by this entity (Article 87, § 2 C.C.P.).

The Act of 1 March 1996 gave trial lawyers (advocates) and legal counsels equal rights in civil proceedings.

Obligation of the court to inform the parties

The lack of an obligation to be assisted by a trial lawyer (advocate) or a legal counsel in the proceedings before the courts of the first and second instances justify the existence of provisions obligating the court to inform the parties about provisions governing civil proceedings.

The court should give parties and participants who are not assisted by a trial lawyer (advocate) or a legal counsel all necessary guidance regarding actions in proceedings and should explain to them the legal consequences of these actions and the consequences of negligence

(Article 5 C.C.P.). Whenever the circumstances of the case require it, the court indicates to the plaintiff the formal inadmissibility or an obvious lack of grounds for litigation.

This obligation of the court is limited to providing information about the provisions of law of procedure and does not include giving advice.

This provision represents the principle of the equal legal standing of the parties by giving an equal chance to the party acting without a lawyer.

In the absence of a party at the trial, the presiding judge or a reporting judge assigned by him presents the party's motions, statements and evidence included in the dossier.

During the proceedings, before hearing evidence the presiding judge gives the parties appropriate instructions and guidance, and according to the circumstances draws their attention to the advisability of appointing an attorney for the proceedings.

To a party acting without a lawyer or a legal counsel and which is present at the delivery of the decision, the presiding judge provides guidance as to methods and deadlines for filing an appeal. To a party acting without lawyer or a legal counsel and absent from the delivery of the decision because of being in custody, the court, acting ex officio, delivers, within a week of delivering the decision, a copy of the decision, and its conclusion, with instructions on deadlines and ways of filing an appeal.

Litigation costs are adjudicated only on a motion, but the costs due to a party acting without a lawyer or a legal counsel are adjudicated ex officio by the court.

The principle of appropriate determination of factual situation as the basis for court decision

The aim of this principle is to assure that in the judgement closing the proceedings a legal norm is applied which reflects the actual set of relationships. Each judgement should result from findings in accord with the true factual situation.

The Act of 1 March 1996 changed the way to achieve the appropriate establishment of factual situation as a basis for judgement by limiting the court's power to act ex officio, and emphasizing that most of all the parties should show an active approach in pursuing their claims and defending their rights.

Article 3 C.C.P. was amended by deleting the provision which obligated the court to comprehensive examination of all essential aspects of the case and to clarify the content of all factual and legal relationships. Prior to this amendment, the court could undertake ex officio, given status of a case, any action which it deemed necessary in order to supplement material and evidence submitted by the parties and participants of the case.

Also repealed is Article 381, § 1 C.C.P., providing that the court of the second instance should take into consideration any lack of clarification regarding circumstances essential for a decision in the case.

The provision obligating parties to provide clarifications about the circumstances in accordance with truth and without withholding anything and to present evidence remained in force (Article 3 C.C.P.).

In the new language of Article 232 C.C.P., the parties are under obligation to indicate tile evidence for establishment of facts from which they derive legal consequences. The court may admit evidence not indicated by a party, thus acting ex officio. But the provision stating that the court could

order relevant investigation to establish the evidence was deleted; instead, the court facilitates obtaining necessary evidence by the parties, because under Article 208, § 1 C.C.P. the presiding judge may demand from a state organizational unit or a local government organizational unit the evidence remaining at their disposal when the party alone cannot obtain such evidence.

Even before hearing the evidence, the presiding judge, by putting questions to the parties, should determine which of the essential circumstances of the case are contentious and attempt to clarify them. (Article 212 C.C.P.).

In order to explain better the state of a case, the court may order parties or one party to appear either in person or by an attorney (Article 216 C.C.P.).

Article 224, § 1 C.C.P. remains unchanged; under this provision the presiding judge closes the proceedings when he deems the case satisfactorily clarified. For a party the case is clarified only when all the evidence produced by it has been considered. The evidence produced by the party can only be omitted when the party wants to establish a fact that has already been considered proven by the court. In connection with this, Article 217, § 2 C.C.P. stipulates that the court omits evidence when the disputed circumstances have been sufficiently clarified or when the party produces evidence for the sole purpose of causing delays.

When delivering a judgement by default, the court accepts as true the statements of the plaintiff on the circumstances of the case submitted in the claim or in written statements delivered to the defendant before the trial if they do not raise reasonable doubts as to their agreement with factual situation (Article 339, § 2 C.C.P.).

Principle of concentration of materials of the case

The principle of concentration of case materials is of basic importance to efficient and expeditious proceedings, which is essential in terms of the economics of the judicial process. The court is obliged to combat protraction of proceedings and try to reach a decision at the first session, if that is possible, without impairing clarification of the case, that is, without impeding the clarification of the case (Article 6 C.C.P.). Even in the case of a joint motion of both parties. the court may adjourn a hearing only for an important reason (Article 156 C.C.P.).

The powers of the presiding judge help to implement the principle of appropriate determination of factual situation. Prior to the proceedings, the presiding judge, depending on the circumstances, issues orders to prepare proceedings, based on the claim and other written statements. The judge may thus summon before the court the witnesses and experts indicated by the parties and persons appointed as experts by the parties, order presentation of documents or things to be inspected.

Economic cases should proceed expeditiously because of the requirements of economic life. For this reason, the so-called economic court is obligated to decide on a case within three months of the date the claim was filed.

The principle of expeditious proceedings has also been expressed in the provisions on appeal proceedings in these cases. Apart from cases of invalidity of the proceedings, the court of the second instance will suspend an appealed judgement only when a decision on the central matter would require instituting anew the whole process or a substantial part of it.

Openness

Cases are examined openly, with participation of members of the public unless a specific provision stipulates otherwise, for example in divorce cases. The court ex officio orders the entire session or part of it closed if public examination of the case threatens public order or morality, or when circumstances covered by state or official secrets may be revealed.

The court may order a closed session also on the motion of a party if it deems the reasons presented are justified, or when details of family life are to be aired.

Announcement of the decision ending the proceedings is made in public (Articles 152-154 C.C.P.).

The principle of the parties' free exercise of their rights

The Act of 1 March 1996 enhanced the principle of the parties' free exercise of their rights, because it limited the possibilities for court intervention in the exercise of these rights regarding their claims. According to Article 213, § 2 C.C.P., the court was not bound by the admission of a claim. It could content itself with this admission if it was justified by the circumstances of the case.

According to the Act of 1 March 1996, the court is always bound by the admission of claim, unless the admission contradicts the law or intends to circumvent the law.

Also changed is the treatment by the court of withdrawal of the suit, abandonment or reduction of the claim. According to the previous provisions of Article 203, § 4 C.C.P., the court had to disallow withdrawal of the suit, and abandonment or reduction of the claim when such abandonment contradicted the law or the principles of community life or if it flagrantly prejudiced the interests of entitled persons. Any actions, even these undertaken out of court, in order to avoid the effect of such disallowing were null and void.

After 1 July 1996, Article 203, § 4 C.C.P. reads as follows:

"The court may disallow withdrawal of the suit, abandonment or reduction of the claim only when the circumstances of the case indicate that this action contradicts the law or principles of community life or if it aims at circumventing the law.

"In economic cases the court may disallow withdrawal of the suit, abandonment or reduction of the claim only when the circumstances of the case indicate that this action results from prohibited monopolistic practices or practices which limit independence of business entities (Article 479(13), § 1 C.C.P.).

"In economic cases, the court may disallow the settlement reached between the parties only when its content contradicts the law or principles of community life or if it aims at circumventing the law and also when such decision is required to protect the environment or to protect the appropriate quality of production (Article 479(13), § 2 C.C.P.)."

The principle of the parties' free exercise of their rights is also manifested in the fact that the court may not decide on a matter that has not been included in the claim, nor may it adjudicate beyond the claim (the principle *ne eat iudex ultra petita partium*). The exceptions include cases of claims for alimony or for damages resulting from an unlawful act. But in these cases the court decides about the claims which stem from the facts presented by the plaintiff (Article 321 C.C.P.).

The court may not go beyond the scope of factual circumstances justifying the claim of a party. This is because the court may not change ex officio the factual grounds for the claim.

The function of the principles of community life on which the provisions of the code of procedure refer to has been stated in the civil code in Articles 5 and 58, § 2 of the Civil Code. According to these provisions, a right cannot be exercised in a way that would contradict the social and economic intentions of this provision or contradict the principles of community life. Such acts or withdrawal of acts by the entitled person is not regarded as exercise of a right and is not protected. A legal act contradicting the law is invalid.

The Polish legislation does not define the concept of the principles of community law which was introduced to the legislation after World War II. The content of these principles are explained by court decisions which indicate that these principles are similar to the concept of good morals known in the 1934 Commercial Code and 1993 Act on combating unfair competition.

Right to refuse to make depositions

In Polish civil proceedings no one has the right to refuse to make depositions as a witness except the spouses of the parties, their descendants, ascendants and siblings and relatives in the same line and degree, as well as persons remaining in an adoptive relationship.

A witness may refuse to answer questions put to him, if such testimony threatens him or his relations listed above with criminal liability or would bring infamy, direct and serious harm to property, or if the testimony would involve violating a confidence connected with exercising a profession (Article 261 C.C.P.).

Principle of freedom in evaluating evidence

The court appraises the credibility and importance of evidence according to its own conviction, on the basis of complete consideration of the materials gathered (Article 233, § 1 C.C.P.). In order to ensure the opportunity to verify this evaluation before the court of the second instance, the proceedings before the court of the first instance are recorded as minutes. The minutes contain the results of hearing the evidence. The court evaluation of the evidence must be presented in the decision (which includes the justification) which is prepared at the demand of a party intending to file an appeal.

The principle of freedom in evaluating evidence is a necessary means to ensure that the court passes judgement in accordance with the factual situation.

Polish civil procedure has only a few rules and limitations regarding evidence.

Generally known facts do not require evidence; the court considers them even without reference to them by the parties (Article 213, § 1 C.C.P.).

When a party does not respond to the opposite party's statement of facts, the court, with a view to results of the whole proceedings, may deem these facts conceded (Article 230 C.C.P.).

The court may recognize as established these facts that can be derived from other recognized facts.

Legal presumptions are binding on the court; they may, however, be contested unless it is precluded by law.

Official documents prepared in the prescribed format by appropriate state authorities within their scope of activities are evidence of what was officially certified in them (Article 244, § 1 C.C.P.).

If the law or the agreement between the parties requires a legal transaction to be in written form, evidence from witnesses, or hearing the parties in a case between the parties to that transaction about the fact of its having been made, is admissible when the document has been lost, destroyed or taken by a third party, or when the written form was required only for the purpose of evidence.

Evidence from witnesses or from hearing the parties which goes against or beyond the essential of a document containing a legal transaction may be admitted between the parties to this transaction only when it will not circumvent the regulations on the form stipulated on pain of invalidity, and when the court deems it necessary because of the special circumstances of the case (Article 247 C.C.P.).

A civil court is bound by the findings of a final sentence issued in criminal proceedings regarding the perpetration of a criminal offence.

Right to defence

The right to defence is one of the fundamental principles of Polish civil procedure and any violation of it results in the invalidation of the proceedings.

Proceedings may go ahead only with the participation of the party on whom the process was served and who was properly notified of the hearing. The party should be properly represented, may be assisted by a trial lawyer (advocate) or a legal counsel.

If the party is a natural person, the service is made to him personally. The parties and their representatives are under obligation to notify the court of any change of their place of residence.

In case this obligation is neglected, the judicial writ is filed as if served unless the new address is known to the court. At the first service, the court should notify the party of this obligation and of the effects of non-compliance (Article 136 C.C.P.). Substitute service is only a presumption which may be contested.

If a person whose place of temporary residence is not known is to be served with a claim or other process resulting in the need to defend his rights, until this person or his representative or attorney reports, the service may only be effected to the hands of a custodian appointed by the court upon the request of the interested party.

The Act of 1 March 1996 introduced new regulations in this field.

According to Article 133, § 2a C.C.P., the service to business entities of writs, summons and other documents relating to the proceedings is made to the address indicated in the register unless the party indicated other address for service.

According to the new language of Article 139 C.C.P., the service of writs, summons and other documents to legal persons and organization subject to registration, when it is impossible to serve them in the manner provided for in preceding Articles because this obligation was neglected, is filed as if served unless the new address is known to the court.

Upon announcement or delivering the decision of the first registration, the court instructs the party of the effects of non-compliance with respect to providing register with information about changes.

The hearing must be adjourned when the court finds any irregularity in serving notice or if the absence of a party results from an extraordinary event or other obstacle known to the court which cannot be overcome (Article 214 C.C.P.).

The provisions on failure to comply with the time limit and on reinstatement of a term contain a guarantee of the right to defence. An action in civil procedure undertaken by a party after the time limit has expired has no effect. When a party has not acted in time through no fault of his own, the court will decide on reinstatement of the term on the motion from the party (Articles 167-172 C.C.P.).

A judgement by default can only be delivered when the defendant, although properly served with a summon, has not appeared at the hearing or if the defendant, although appearing, did not participate in the proceedings.

The right to defence is implemented by lodging appeals.

All appealable judgements of the court must be substantiated with factual grounds and references to the provisions of law applied. Valid decisions of courts of the second instance must provide grounds for the judgement.

Aiming at settlements of disputes

Amenable cases may be solved by court settlements made before the statement of claim is submitted. The court disallows a settlement made by the parties only when its content contravenes the law or the principles of community life or if it blatantly infringes on justified interests of one party (Article 184 C.C.P.).

Apart from this, the court should, at every stage of the proceedings, encourage the parties to settle the dispute amicably. During the hearing, the presiding judge should encourage the parties to reconcile, especially during the first session after the initial explanations of the parties' positions. A settlement made before the court is entered into the record of the proceedings and the parties sign it.

The court settlement is an executory document.

The principle of two instances

The common courts in Poland are organized as a two-instance system. There is a right to appeal decisions of courts of the first instance. If the first instance is a district court, the second instance is the provincial court. If a provincial court has decided as the first instance, the appellate court constitutes the second instance.

The Supreme Court examines cassation (annulments) and considers legal issues presented by the courts of the second instance in the cases where cassation may not be requested (Article 390, § 1 C.C.P.). The resolution of the Supreme Court resolving a legal issue is binding in the given case.

In an appeal, any reservations may be brought up. The court of the second instance examines the case within the scope of the petition of appeal, but it reverses the judgement *ex officio* if the proceedings before the court of the first instance has been invalid or if that court has not examined the essence of the case (Article 378 C.C.P.).

The procedure is invalid *inter alia* when a party has been deprived of the opportunity to defend its rights; when proceedings were brought earlier for the same claim between the same parties, or when such a claim has already been finally decided (in violation of *lis pendens* and *res iudicata*).

principles); when the composition of the bench has violated relevant provisions or when a judge disqualified by law has participated in the proceedings (Article 379 C.C.P.).

The appellate court decides on the basis of the material obtained in the proceedings before the court of the first instance (Article 382 C.C.P.). The court of the second instance may omit new facts and evidence if a party was able to produce them in the proceedings before the court of the first instance, unless the need to refer to them has arisen later (Article 381 C.C.P.).

In the appellate procedure, the statement of claim may not be extended nor new claims are allowed. However, in the case of new circumstances, instead of original object of the dispute, its value or other object may be requested, and in cases regarding repeatable considerations. the statement of claim may be extended to cover considerations for subsequent periods (Article 383 C.C.P.).

The court may not reverse or change a decision to the disadvantage of the party lodging an appeal unless the opposing party has also appealed. (Article 384 C.C.P.).

The Act of 1 March 1996 limited the possibility of reversing judgements and returning cases for re-examination. The court of the second instance may reverse the appealed judgement and return the case to be re-examined only when making a judgement as to the essence of the case requires that hearing evidence is repeated in whole or in substantial part (Article 386, § 4 C.C.P.).

The court re-examines the case by a different panel of judges.

The legal appraisal and guidance pertaining further proceedings which are expressed in the decision of the court of the second instance bind the court to which the case has been returned and also the court of the second instance in re-examining the case (Article 386 § 6 C.C.P.).

In order to improve the judicial protection of parties, the Act of 1 March 1996 cancelled the extraordinary appeal which could not be made by the parties but only by some authorities, such as the Minister of Justice.

From 1 July 1996 on, it is only a party which could decide on making a cassation request from the judgement or decision issued by a court of the second instance, closing the proceedings in the case (Article 392 C.C.P.). The right to cassation does not apply only to cases of lesser importance (Article 393 C.C.P.).

The cassation may be requested only when:

- the substantive law has been violated through misinterpretation or incorrect application;
- the provisions of procedure have been violated if this irregularity could essentially affect the outcome of the case (Article 393(1) C.C.P.).

The cassation can only be made by an attorney who is a trial lawyer (advocate) or a legal counsel, unless the party involved is a trial lawyer (advocate), judge, prosecutor, legal counsel, notary or a Professor of Law or Doctor of Law (with higher academic title) at a Polish university (Article 393(2) C.C.P.).

The Supreme Court examines the case within the scope of cassation but it considers ex officio the invalidity of the proceedings (Article 393(11) C.C.P.).

The Supreme Court rejects the cassation when there are no justifiable grounds for it or when the judgement in question complies with the law, despite defects in its justification (Article 393(12) C.C.P.).

In allowing cassation, the Supreme Court reverses the appealed judgement and transfers the case for re-examination to the court of the second instance which made the decision or to other court of the same level.

When the Supreme Court decides that there is no violation of the procedural law but only of substantive law, it may issue a judgement as to the essence of the case; in such a development, the Supreme Court is bound by the factual situation in the case which constitutes the basis for the appealed judgement (Article 393(15) C.C.P.).

The court to which the matter was conveyed is bound by the interpretation provided for the case by the Supreme Court. The cassation petition regarding the judgement issued after the re-examination of the case could not be based on grounds contravening the interpretation issued for this case by the Supreme Court (Article 393(17) C.C.P.).

Finality of a judgement

A decision becomes final if there are no longer any means of appeal or challenge. A final judgement binds not only the parties and the court that issued it but also other courts and state authorities (Articles 363, 365 C.C.P.).

Reinstatement of proceedings

Reinstatement of proceedings may be demanded on the grounds of invalidity if the composition of the court included an unauthorized person, or if the judge in the proceedings was disqualified by law; when a party had no capacity to take part in legal transactions, or a party was not properly represented, or, as a result of the breach of law, a party was deprived of opportunity to act (Article 401 C.C.P.).

Reinstatement of proceedings may also be demanded on the grounds that the judgement was based on a falsified or forged document or on a sentence in a criminal case which was subsequently reversed, and also on the grounds of late discovery of factual circumstances or sources of evidence which could have had an effect on the course of the case, which a party could not use at the previous proceedings (Article 403 C.C.P.).

Reinstatement of the proceedings may also be demanded after a late discovery of a final judgement regarding the same legal relationship. In such a case, the matter examined by the court includes not only the questioned judgement, but also, examined ex officio, other final judgements regarding the same legal relationship (Article 403 C.C.P.).

The request for reinstatement of proceedings may only be made within three months of the day on which a party discovered the grounds for reinstatement.

Special proceedings

Cases arising from certain kinds of legal relationships require examination under a modified procedure. The Code of Civil Procedure provides for special proceedings in matrimonial cases, in disputes between parents and children, in labour code and social security matters, cases of infringement of ownership and in economic cases.

Economic cases are those arising from relations under civil law between economic entities acting within their scope of business activity. Economic cases also include:

- disputes regarding relationships under company agreement;
- suits against economic entities to desist from damaging the environment and to restore it to its previous state, or to remedy associated damage, or suits to prohibit or limit activities threatening the environment;
- matters within the competence of the courts on the basis of regulations on combating monopolistic practices (Article 479(1) C.C.P.).

The Anti-Monopoly Office has been established to combat monopolistic practices in the economy. The appeals from the decision of this office can be made to the Anti-Monopoly Court (which is the Provincial Court in Warsaw) (Articles 479(28) - 479(35) C.C.P.).

Writ of payment proceedings

Upon the demand from the plaintiff, the court issues the writ of payment, if it is satisfied that the circumstances substantiating the claim are entirely justified by attached official or private documents. When there are no grounds for such writ, the proceedings follow the ordinary course (Article 485 C.C.P.).

The court also issues the writ of payment against a person whose obligations result from a bill of exchange or a cheque whose originality or content do not raise doubts (Article 486 C.C.P.).

Upon its issue, the writ constitutes a warrant to secure the claim, and if issued on the basis of bill of exchange or a cheque it is enforceable immediately upon expiry of the deadline to satisfy the claim.

Objections may be raised against the writ of payment, and then ordinary proceedings take place.

Costs of proceedings

The losing party is obligated to reimburse the opposing party - upon demand - the costs necessary for reasonable exercise of rights and proper defence.

In particularly justified cases, the court may impose only part of the costs on the losing party, or may refrain from imposing any costs at all.

A claim for reimbursement of costs expires if a claimant of costs does not provide the court with a list of the costs incurred, no later than the close of hearing immediately preceding the delivery of judgement.

International civil proceedings

The Polish law of court procedure provides for the precedence of international agreements. The provisions of the code of procedure regarding international civil proceedings which differ from international agreements to which Poland is a party do not apply. Instead of those code provisions, the relevant provisions of international agreements apply.

The code of civil law procedure regulates national jurisdiction, exemption from national jurisdiction, securing litigation costs by foreign nationals, legal assistance and services, securing evidence, securing inheritance from estates of foreigners, recognition and execution of decisions of foreign courts.

The jurisdiction of the Polish court may be provided for in an international agreement, and in the absence of such provision the jurisdiction is defined by the provisions of the code of civil procedure.

Under this code, matters examined in the proceedings are under domestic jurisdiction when:

- the defendant stays, resides or has its seat in Poland at the time the claim is served;
- when the defendant has property in Poland or is entitled to property rights;
- when the case pertains to a matter of litigation in Poland, a line of succession originating in Poland, or to an obligation which arose or is to be fulfilled in Poland.

Polish courts have sole jurisdiction in a few cases, for example in matters of substantive law, ownership of real property situated in Poland, and rental or lease arrangements involving such property, except for disputes over rent payments.

The parties may agree in writing to submit litigation to the jurisdiction of Polish courts regarding property. In the field of contractual obligations, business entities may agree to exclude the jurisdiction of Polish courts in favour of courts in a foreign state, if such a change is effective under the law of the country concerned. The parties may also agree in writing to exclude the jurisdiction of Polish courts in favour of a court of arbitration seated abroad, if at least one of the parties resides in or has its seat abroad or operates the concerned enterprise abroad and when such an agreement is effective under the law of the country in which such court of arbitration is to proceed.

In general, Polish law allows matters to be submitted to the decision of a court of arbitration. The parties may submit to arbitration a dispute over property rights except for disputes about alimonies and employment relationship. Until such an agreement is in force one may not demand examination of the matter by a state court. There is no appeal of the decision of a court of arbitration; however, a complaint may be lodged with a court of law for reversal of the decision by the court of arbitration, but only in strictly enumerated cases *inter alia* when a party has been deprived of the opportunity to defend his rights before the court of arbitration.

The award of a court of arbitration and a settlement made before it have the same legal force as a decision by the state court or a settlement made before such a court, after the state court determines its enforceability.

In Poland, the decisions of foreign courts that are not amenable to execution are recognized, under the condition of reciprocity.

On the basis of the Act of 1 March 1996, the enforcement of judgements by foreign courts and settlements made before such courts are now easier. Prior to this legislation, a prerequisite for enforcement of such judgements and settlements was the existence of an international agreement. After 1 July 1996, the decision of foreign courts in civil cases which are subject to court proceedings in Poland are execution documents. and they are enforced in Poland under conditions of reciprocity, if:

- the decision is enforceable in the country where it was issued;

- the matter under consideration is not subject to the sole jurisdiction of Polish courts or courts of the third country, according to Polish law or an international agreement;
- the party has not been deprived of the opportunity to defend;
- the matter has not been finally decided by a Polish court, or if the case had not been instituted before a Polish court before the decision of the foreign court became final;
- the decision does not contravene the basic principles of legal order in Poland;
- in the decision Polish law was applied whenever it should be applied, unless the foreign law applied in the case does not essentially differ from Polish law.

The same recognition as to the decisions of foreign courts is granted to arbitration awards issued abroad (Article 1150 C.C.P.).

The settlement made before a foreign court constitutes an execution document in Poland, under the condition of reciprocity, if it is enforceable in the country where it was made and if it does not contravene the basic principles of the legal order in Poland (Article 1152 C.C.P.).

Executory procedure

The second part of the Code of Civil Procedure regulates proceedings to secure claims and to execute judgements. Under procedure to secure claims, the court issues interim orders if this is necessary to secure the enforcement of a decision in further executory proceedings.

1. Status of the court sheriff officer

The sheriff officer is a state official employed by the district court. His immediate official superior is the president of the district court who is empowered only to exercise general supervision regarding the efficiency of the executory proceedings and may not intervene in the domain where the sheriff officer is autonomous as an executory authority. With respect to this activity the court exercises its supervision by examining complaints against the actions by sheriff officers. Apart from this, the court may give orders to a sheriff officer ex officio with the aim of ensuring proper execution and may order him to correct irregularities (Article 759, § 2 C.C.P.).

2. Executory authorities and their jurisdiction

Execution matters are dealt with by district courts and sheriff officers.

The sheriff officer undertakes all executory actions unless they belong to the jurisdiction of the court (Articles 758-759 C.C.P.).

3. Execution document

Execution may only be effected on the basis of the writ of execution, that is, the document with an executory formula (*feri facias* clause) issued by the court (Article 776 C.C.P.).

Executory writs include: a court judgement and a settlement reached before the court; an award of a court of arbitration or a settlement reached before such a court; a notary deed in which the debtor submits to the execution and which includes an obligation to pay a sum of money or to convey other exchangeable articles defined in the act by quantity, or including an obligation to deliver an

individually designated item when the date for payment, conveyance or delivery is indicated in the deed (Article 777 C.C.P.).

Under Article 53 of the Banking Law of 31 January 1989, banks are empowered to issue executory documents covering claims resulting from the bank records without the need to obtain court authorization. The debtor may defend himself against such an execution by filing a suit to the court demanding discontinuance of execution if the claim covered by the executory document does not exist or if its amount is lower.

4. Instituting execution

The execution proceedings are instituted upon a request from the creditor who indicates the type of execution. When several ways of execution are possible the creditor should select this one which is the least troublesome to the debtor.

5. Enforcement of payments

Court decisions most often regard certain payments to be made, which are then obtained by execution concerning movables, execution against proceeds from work, against bank deposits or other sums due as well against the property rights.

6. Execution concerning movables

The sheriff officer carries out execution concerning movables by seizure and auction. The disposition by the debtor regarding these movables does not affect the course of the executory proceedings because it may be continued against the buyer.

7. Execution against bank deposits

The execution against bank deposits is effected by their seizure which include sums which were not deposited on the bank account at the time of seizure but were transferred to the account later. A bank that violates the regulations on execution is liable for damage caused to the creditor.

8. Disclosure of property

Upon a request from a creditor who has proven that despite the execution he has not been satisfied with regard to the amount of the whole claim, the creditor might be obliged to submit an account of his assets disclosing items of property and their locations and to disclose the sums due and other property rights. The debtor may also be made to submit promise to confirm that the account is true and accurate. The account and the promise is made before the court.

9. Execution regarding real property

The record of instituting execution against real property is entered in the perpetual land and property register. Any disposition of the property, such as selling it, does not affect the further course of executory proceedings. The executory action is effective against both the debtor and the buyer of the property.

The property seized is sold at a public auction under supervision of a judge. The court issues a decision adjudicating the ownership of the property.

10. Distribution of sums obtained from execution

When many creditors participate in the distribution of the sum obtained from execution and when it is not sufficient to cover all claims, the sheriff officer prepares a plan of distribution. The Code of Civil Procedure provides for the following order of satisfying claims: costs of execution, alimony claims, claims regarding remuneration for work and pension payments, taxes, repayment of bank loans, amounts secured by mortgages, other liabilities.

11. Execution of non-pecuniary claims

The execution of non-pecuniary claims includes, for example, removal of a certain item from the debtor and its conveyance to the creditor, or carrying out necessary measures enabling the creditor to take possession of a real property or space, particularly by removing movables belonging to the debtor.

Under court execution procedure, the court may force the debtor to perform certain actions or to desist from other actions.

12. Claims against execution and complaints for the actions by the sheriff officer

In court proceedings the debtor may demand a removal of enforceability clause from a writ of execution, in the case of an event resulting in cancellation of claim or its enforceability. A third party which is the owner of a seized item may claim its rights by litigation to remove that item from the scope of execution (Articles 840-841 C.C.P.).

Both sides, the creditor and debtor may submit to the court complaints regarding the actions of the sheriff officer if they find that his actions violate the law or when the sheriff officer has failed to undertake actions (Article 767 C.C.P.). A complaint against the court decision on executory proceedings may be made to the court of the second instance.

13. Responsibility of the sheriff officer

The sheriff officer is obligated to remedy damage done intentionally or by neglect, when the harmed person could not prevent this damage by the means provided for in the code. The State Treasury has joint and several responsibility with the sheriff officer to remedy the damage. The claim for remedying such damage is subject to limitation within two years of the date at which the affected party has learned about the action or failure to act by the sheriff officer which resulted in the damage (Article 769, § 1 C.C.P.).

14. Costs of executory proceedings

The creditor demanding execution must pay fees and make other payments prescribed in the Regulation by the Minister of Justice regarding fees for executory actions carried out by sheriff officers, and to pay an advance towards necessary expenditures. The fees depend on the amount of pecuniary claim or on the type of executory actions to be taken.

The sheriff officer will not undertake any action before the payments are made. The creditors which are exempted from the court fees by law or by court decision are also exempted from the sheriff officer's fees and advances. The cost of execution is then collected from the debtor.

DESCRIPTION OF THE ADMINISTRATIVE PROCEDURE APPLIED DURING
EXAMINATION OF CASES REGARDING THE COPYRIGHT

Polish administrative procedure is regulated in the Act - Code of Administrative Procedure (Dz.U. z 1980 r, Nr 9, poz. 26, as amended), hereinafter referred to as the CAP. The Code regulates proceedings before the governmental administration authorities or local authorities in individual cases covered by the competence of these authorities and settled through administrative decisions.

The CAP shall be applied in the following cases related to the scope of the copyright and neighbouring rights law:

- (1) proceedings for license - concerning the granting of a permit to organizations in which authors, performing artists, producers of phonograms and videograms and broadcasting agencies are associated, for collective management of authors' rights and neighbouring rights in accordance with Article 104 of the Act on Copyright and Neighbouring Rights, hereinafter the Copyright Law;
- (2) proceedings before the Copyright Law Committee - within a scope specified in Article 108, Section 4 of the Copyright Law:
 - (a) in cases for approval of remuneration tariffs presented by organizations for the collective management, charged for the use of works or artistic performances which are subject to a collective management (Article 108, Section 3 of the Copyright Law);
 - (b) in the case of indicating an organization competent for managing rights of an author or a performing artist who do not belong to any organization or did not reveal their authorship (Article 108, Section 3).

Administrative procedure shall be initiated upon demand of a party or ex officio. The government administration body is obliged to decide a case without an unnecessary delay. The decision on a case requiring explanatory proceedings should take place not later than within one month, and the decision on a particularly complicated case not later than within two months of the date of initiation of proceedings, and in appeal proceedings, this should occur within one month of the date when the appeal was received.

Government administration body shall decide a case by way of issuing a decision. In administrative proceedings, cases are decided in a written form -(Article 14, § 1 of the CAP). The decision is served to the parties in writing. It should contain a justification based on the facts - indication of facts which were considered by the administrative body to be proved, indication of evidence which created a basis for the decision, and reasons for which the authority denied credibility and force with respect to other evidence. The decision should also contain a legal justification together with an indicated legal basis for the decision and relevant legal regulations.

Proceedings are conducted in courts of two instances. The decision issued by the court of first instance may be appealed only to one instance. The appeal shall be considered by an authority of the higher degree.

The decision issued in the first instance by the Supreme Administrative Authority may not be appealed, although the dissatisfied party may refer to that authority with a motion for a

reconsideration of the case. Provisions concerning the appeal against decisions (Article 127, § 3 of the CAP) shall be applied to that motion.

In cases within the scope of copyright and neighbouring rights law, Article 127, § 3 shall be applied to the proceedings for license. Decisions of the Minister of Culture and Arts which is the supreme body of government administration concerning permits for a collective management of copyright and neighbouring rights are final. The party may file a motion for a reconsideration of the case.

In cases before the Copyright Law Committee, which is the authority of the first instance in the meaning of the CAP, the appeal may be lodged with the Minister of Culture and Arts (Article 108, § 4 of the Copyright Law).

The appeal does not require any particular justification. It should only imply that one party is dissatisfied with the decision issued.

Appeal shall be lodged within 14 days of the date of delivery of the decision, through the body which issued the decision.

The appellate body shall issue a decision in which:

- (1) it maintains in force the appealed decision; or
- (2) it repeals the appealed decision in full or in part and, within that scope, decides on the merits of the case or, when repealing the decision, discontinues the proceedings in the first instance; or
- (3) it discontinues the appeal proceedings.

In addition, the appellate body may repeal the appealed decision in full and transfer it for reconsideration to the court of first instance, if the settlement of the case requires prior explanatory proceedings to be conducted in full or in part.

The administrative decision may be appealed to the Supreme Administrative Court according to a procedure and upon the rules regulated in the Law, dated 11 May 1995, on the Supreme Administrative Court (Dz.U. Nr 74, poz. 368, as amended).

The proceedings before the Supreme Administrative Court shall be initiated on the basis of a complaint of an entitled entity which may be:

- (a) each person who has legal interest in such complaint;
- (b) prosecutor;
- (c) Ombudsman;
- (d) social organization within the scope of its statutory activity, in cases concerning legal interests of other persons.

The complaint may be filed after the appellate measures have been exhausted within 30 days of the date of delivery of a settlement to the complaining party.

The court shall decide cases by way of issuing a sentence or a decision. A judgment shall be delivered to the parties of the proceedings together with a justification. Judgments of the Court are valid.

Description of a penal procedure applied in cases concerning the violation of copyright

Pursuant to Articles 16 and 21 of the Code of Penal Procedure, in cases regarding offences against intellectual property, district courts competent with respect to the place where an offence was committed shall issue judgments. Pursuant to Article 14, § 1 and Article 16, § 1 of the Code of Procedure applied in cases regarding misdemeanour, courts of misdemeanour established at district courts competent with respect to the place where a misdemeanour was committed shall issue judgments in cases concerning misdemeanours against intellectual property rights.

Regulations which penalize acts of violation of copyright are contained in the Law, dated 16 July 1987, on Cinematography (Dz.U. No. 22, poz. 127, as amended) and in the Law, dated 4 February 1994, on Copyright and Neighbouring Rights (Dz.U. Nr 24, poz. 83, as amended).

Such regulations are also to be found in the Penal Code passed on 6 June 1997 (Dz.U. Nr 88, poz. 553) which will come into force as of 1 September 1998.

Pursuant to Article 58, Section 1 of the quoted Law on Cinematography, whoever, without a permit referred to in Article 51, Section 2 and Article 52, Section 4 or other provisions of the Law, performs:

- (1) production or adaptation of a film;
- (2) distribution of a film,

shall be subject to a penalty of imprisonment up to one year and a fine, or one of these two penalties.

Pursuant to Article 115, Section 1 of the quoted Act on Copyright and Neighbouring Rights, whoever attempts to take into possession the authorship or misleads other persons as to the authorship of a whole or a part of another person's work or an artistic performance, shall be subject to a penalty of imprisonment up to two years or a fine.

Section 2 of the quoted Article 115 provides that the same penalty should be imposed on a person who disseminates, without indicating the name or the pseudonym of the author, someone else's work in the original or a derivative version, or publicly disfigures such work, an artistic performance, phonogram, videogram, or a broadcast. In accordance with Section 3 of this Article 115, whoever in order to gain material benefits in a manner other than specified in Section 1 or 2 violates someone else's copyright or neighbouring rights specified in Articles 16, 17, 18, 86, 94 Section 2 and Article 97 shall be liable to imprisonment of up to one year or a fine.

Pursuant to Article 116, Section 1, whoever, without authorization or against its terms and conditions, disseminates someone else's work in the original form or as an adaptation, or someone else's artistic performance, phonogram, videogram or broadcast, shall be liable to a penalty of imprisonment of up to two years, restriction of liberty or a fine. Section 2 of Article 116 provides that if the perpetrator commits the act specified in paragraph 1 above in order to gain material benefit, he shall be liable to a penalty of imprisonment of up to three years. According to Section 3 of this same Article, if the perpetrator makes the offence specified in Section 1 above a regular source of income or a criminal activity specified in Section 1, or organizes or manages such activity, he shall be liable to a penalty of imprisonment from six months up to five years. And further, Section 4 of Article 116 provides that if the perpetrator of the act specified in Section 1 above acts unintentionally, he shall be liable to a penalty of imprisonment of up to one year, a restriction or a fine.

Pursuant to Article 117, Section 1 of the cited Act on Copyright and Neighbouring Rights, whoever, without authorization or against its conditions, fixes or reproduces someone else's work in the original form or as an adaptation, or someone else's artistic performance, phonogram, videogram or broadcast, and consents to its dissemination, shall be liable to a penalty of imprisonment of up to two years, restriction of liberty or a fine. Section 2 of Article 117 provides that if the perpetrator makes the offence specified in Section 1 above a regular source of income or a criminal activity specified in Section 1, or organizes or manages such activity, he shall be liable to a penalty of imprisonment of up to three years.

Section 1 of Article 118 of the cited Act on Copyright and Neighbouring Rights, provides that whoever in order to gain material benefit purchases, assists in the sale of, accepts or assists in concealing objects being carriers of a work, artistic performance, phonogram, videogram or broadcast, disseminated or reproduced without authorization or against its conditions, shall be liable to a penalty of imprisonment from of up to two years, restriction of liberty or a fine. In accordance with Section 2 of Article 118, if the perpetrator made the offence specified in Section 1 above a regular source of income or a criminal activity specified in Section 1, or organizes or manages such activity, he shall be liable to a penalty of imprisonment of up to three years.

Pursuant to Article 119 of the cited Act on Copyright and Neighbouring Rights, whoever renders impossible or hinders the exercise of a right to supervise the use of a work or artistic performance or denies information provided for in Article 47, shall be liable to a fine.

The Penal Code, passed on 6 June 1997, shall come into force on 1 September 1998. Pursuant to Article 278, § 2 of this Code, whoever, without consent of an authorized person, comes into possession of a computer software in order to gain material benefit, shall be liable to a penalty of imprisonment from three months up to five years. Article 278, § 1 of this Code provides that whoever, in order to gain materiel benefit or do a damage to another person, influences, without authorization, automatic processing, collection or transmission of information, or changes, removes, or introduces new files on a computer disk, shall be liable to a penalty of imprisonment from three months up to five years. And, in accordance with Article 293, § 1 of this Code, provisions of Articles 291 and 292 shall apply respectively to computer software, as they penalize both intentional receiving of stolen goods and impose a penalty of imprisonment from three months up to five years and unintentional receiving of stolen goods, where they impose a penalty of imprisonment of up to two years, a restriction or a fine.

Proceedings resulting from offences specified in Article 58 of the quoted Act on Cinematography, Article 116 Section 3, Article 117 Section 2, and Article 118, Section 2 of the Act on Copyright and Neighbouring Rights are conducted ex officio. In such cases, preparatory proceedings shall be initiated by the police or the public prosecutor. Cases for offence conducted on the basis of Articles 278 § 2, 287 § 1 and 2, and 293 § 1 of the new Penal Code shall be conducted according to a similar procedure, but if the act specified in Article 287 is committed to the detriment of the nearest person, prosecution shall be initiated upon motion of the injured party.

Prosecution of acts specified in Articles 115, 116 Sections 1, 2 and 4, 117 Section 1, 118 Section 1 and 119 of the Act on Copyright and Neighbouring Rights shall be initiated after a private accusation was brought. However, in this place it should be noted that, pursuant to Article 50, § 1 of the Code of Penal Procedure, in cases for offences prosecuted based upon a private accusation, the prosecutor may initiate proceedings or join proceedings which had been initiated before, if, in his opinion, this is required by public interest. A similar solution is provided by the Code of Penal Procedure, passed on 6 June 1997, which shall come into force on 1 September 1998 (cf. Article 60, § 1).

Pursuant to Article 55, § 1 of the Code of Penal Procedure, in cases for offences prosecuted upon a public accusation, in the event that the prosecutor issues for a second time a decision on the

refusal to initiate or on the discontinuation of proceedings, if the judgment is upheld by a superior prosecutor, the injured person may bring the accusation to the court by himself/herself.

Regardless of the penalties listed above, which are imposed for the offences mentioned, in the event of a conviction for an offence specified in Article 115, 116, 117, or 118 of the Act on Copyright and Neighbouring Rights, the court shall decide on the forfeiture of property involved in the offence, even if such property did not belong to the perpetrator.

The court may also decide on the forfeiture of objects used for the purpose of committing an offence, even if they did not belong to the perpetrator in the event of a conviction for an offence specified in Article 115, 116, 117, or 118 of the Act on Copyright and Neighbouring Rights, or Article 58 Section 1 of the cited Act on Cinematography.

After the new penal codification has come into force, the court may also decide on the forfeiture of a computer software referred to in Article 293, § 1 of the new Penal Code, even if such software did not belong to the perpetrator.

Preparatory proceedings in cases for offences against intellectual property are usually conducted in the form of an investigation. Pursuant to Article 266, § 1 of the Code of Penal Procedure, investigation should be completed within one month from its initiation. Section 2 of the cited Article 266 provides that the prosecutor may prolong this period up to three months. Pursuant to § 3 of Article 266, in the event of failure to complete the investigation within three months, files of the case shall be submitted to the public prosecutor who supervises investigation, who may prolong it for a specified period or accept it for investigation, if there are no premises for a discontinuation of proceedings.

The Code of Penal Procedure which is applicable at the moment does not contain any provisions regulating the duration of legal proceedings.

A similar solution is contained in the new Code of Penal Procedure which shall come into force on 1 September 1998, although pursuant to Article 310, § 3 of the Code the maximum duration of investigation may not exceed six months.

Pursuant to Article 542 of the applicable Code of Penal Procedure, unless the Act provides otherwise, all expenses incurred in the course of penal proceedings shall be temporarily borne by the State Treasury. Exceptions from this rule are contained in Articles 543 and 544, § 1 of that Code. Article 543 provides that costs of the counsel for defence and attorney-ad-litem shall be paid in the course of proceedings by a party which appoints such counsel and attorney, and pursuant to Article 544, § 1 a private prosecutor shall submit a receipt for payment of a lump sum equivalent of the costs of proceedings to the court cashier, enclosed with the act of indictment or a statement on joining the indictment, or with a statement on sustaining the indictment from which the prosecutor has withdrawn.

Pursuant to Article 546 of the Code of Penal Procedure, the court, when issuing its final decision, always specifies who bears the costs of the proceeding. Article 547, § 1 of the cited Code provides that the court awards cost of the proceedings from the convicted person for the benefit of the State Treasury. These costs include expenses incurred during preparatory proceedings. Meanwhile, Article 547, § 2 provides that, in a case initiated on the basis of a private accusation, the court shall award from the convicted person for the benefit of the private prosecutor the costs of proceedings which were incurred by him. And, in accordance with Article 547, § 4, the provisions of § 1 shall apply respectively, in the event of a conditional discontinuation of proceedings. Article 549, § 1 of the Code of Penal Procedure provides that, if the accused was acquitted or the proceedings were discontinued, the costs of the proceedings shall be borne, in cases based on private accusation, by a

private prosecutor, and in the event that parties reach an agreement, the accused and the prosecutor or one of them according to the rule of equity, unless the parties agreed upon in the settlement otherwise. In other cases, such costs shall be borne by the State Treasury, except for fees payable to solicitors offices, if selected counsels for defence or attorneys participated in the proceedings.

The new Code of Penal Procedure, which shall come into force on 1 September 1998, as a rule maintains the existing legal status concerning the costs of proceedings. The most important amendment is introduced in Article 622 of that Code, which provides that, in proceedings based on a private accusation, in the event of reaching an agreement before the commencement of proceedings, a conditional discontinuation of proceedings, discontinuation of proceedings due to the insanity of the perpetrator or a scarce social noxiousness of the act, or due to detection of elements of an offence prosecuted ex officio in the claimed act, a change of the procedure of prosecution due to a prosecutor's joining the proceedings initiated by a private prosecutor and completion of these proceedings according to the procedure applicable for public complaints, the president of the court shall award the reimbursement of lump sum expenses incurred by the private prosecutor in full, and in the event that the parties reach an agreement after the proceedings commenced, in part.

Both the presently applicable Code of Penal Procedure (cf. Article 545) and the new Code of Penal Procedure (cf. Articles 623 and 624) provide for a possibility of exemption from costs of proceedings by the court.
