

Polish copyright law and libre¹ licenses. Introduction

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According to Polish copyright law most of the products created in the In Dialogue project will have to be considered „copyrighted works”. Moreover, most certainly many of the products will in turn build upon or use copyrighted works of third parties. This has certain consequences.

Note to reader: this document is written based on Polish copyright law and describes the legal situation in Poland only; please refer to local laws and regulations regarding copyright for your jurisdiction.

Copyright law defines rights that authors hold over their works. In Polish copyright law these are divided into two categories:

- moral rights;
- copyrights.

They differ in scope and consequences for works being created and used in the project.

What is a “copyrighted work”?

Copyrighted work, or “work” for short, is the central term in Polish copyright law, defined in Section 1 of the law:

„Section 1. subsection 1. The Subject of copyright law is any manifestation of creative work with individual character, recorded in any form, regardless of its value, purpose, and means of expression (work).

1 http://en.wikipedia.org/wiki/Gratis_versus_libre

(...)

2¹. Copyright law only covers a particular form of expression; ideas, discoveries, procedures, methods and rules of operation, and mathematical concepts are not covered.

3. A work is covered by copyright law from the moment of recording, even if unfinished in its form.

4. Author is entitled to these rights regardless of any formalities.”

For instance this very document becomes a “work” the moment its first few sentences are written. As an author I do not have in any way any obligation to formally register its creation and my will for it to be covered by copyright – this happens automatically. Also, the value of a work is irrelevant, as is the way it is recorded or expressed, and its purpose.

Crucially, copyright law does not cover ideas, procedures, methods of operation, and similar – it does cover only the particular form they have been expressed/recorded in, and only if that form exhibits “individual character” of the author. For example, a user manual for a fridge would not be considered a “copyrighted work”, as it rather does not exhibit the “individual character” of the author.

This criterion is unclear and problematic, but quite important nonetheless in the context of possible products of this project. A good rule of thumb to use is asking: “would a different person create this product in a largely similar way?”

In case of a technical description (e.g. user manual for a fridge), the answer would be “probably yes”; in case of a poem or a novel – “most certainly not”. Hence the former would not be covered by copyright, the former – yes.

Databases, anthologies and collections are also copyrighted works, provided they do fulfill the same criteria (for example, the rule by which elements of the collection are chosen is creative in its character), even if their elements are not copyrighted works themselves.

Explicitly, normative acts and their drafts; official/governmental documents, signs and symbols; patent descriptions; simple news items – all are not covered by copyright.

Moral rights

According to the act, moral rights protect “creators bond with their work”, or specifically:

- a). authorship of a work – infringement of this element of copyright law is of course plagiarism; regardless of the particular reason we are allowed to use somebody's work, we are always required to provide information on its author and title.
- b). signing the work with a name, pseudonym, or publishing it anonymously – author has the sole right to decide how they are going to be identified in the context of a particular work, and our obligation, when we do use the work, is to provide authorship information exactly the way the author wanted (for instance, even if a real name of a pseudonymous author is widely known, we are still required to use the pseudonym on works that have been undersigned with it).
- c). inviolability of content and form of the work, and its honest use – we are not to change anything in a copyrighted work while undersigning it with original title and authors' name; if we modify the “Illiad”, it becomes a derivative work of our authorship; when quoting, we're obliged to quote exactly, without alterations.
- d). first publication – if a work has been created and put “in a drawer”, we have no right to use it in any way until the author publishes it themselves, or explicitly gives us permission to do so; this also means that no fair use uses of such a work are permitted (for instance, it cannot be quoted).
- e). supervision of how the work is being used – this one is quite problematic and unclear, and is usually understood to relate above all to how paintings are being displayed in galleries; it will not, most probably, be relevant to any products of this project.

Moral rights are non-transferable, and do not expire. In other words, Homer will always be “Illiad's” author, and I shall remain the author of this document even though I receive remuneration for creating it. What these cases differ in are the copyrights.

Copyrights

According to the Copyright Act, authors have the sole right to administer the work and receive remuneration for its use by others. In contrast to moral rights, however, copyrights expire (usually 70 years after authors' death) and are transferrable.

All works to which copyrights have expired create the **public domain**. Public domain works can be used without limitations and authors' permission, of course provided that there is no infringement of moral rights.

Polish copyrights are divided into **areas of exploitation**, as follows:

- 1). in the scope of recording and copying – manufacturing copies of the work using a given technique, including print, reprography, magnetic recording, and digitally,
- 2). in the scope of circulating the original or copies, on which the work has been preserved – introducing into circulation, lending or leasing of the original or copies,
- 3). in the scope of dissemination of the work in a way other than described in pt. 2 – public performance, show, projection, playback and broadcast, and reemiting, and also publicly making the work available in a manner allowing anybody to access it in place and time of their choosing.

Each of these areas of exploitation the author (or other rights holder) can license separately; such licenses can be exclusive (excluding the possibility of licensing the same area to other people or entities) or non-exclusive; they can contain the right to sub-license the work to other people or entities on the given areas of exploitation, or without such right.

Alternatively, the author (or rights holder) can transfer their copyrights on a given area of exploitation (or on all of them) completely – which means they lose the right to administer the work, but retain all moral rights.

Licensing and rights transferring agreements are required by law to have a written form. Both have to explicitly enumerate areas of exploitation they are supposed to relate to – the phrase “to all areas of exploitation” is not binding by law.

A peculiar kind of non-exclusive licenses are libre licenses, which are covered in a separate document: *“Open standards and libre licenses in In Dialogue project – recommendations”*. Current document is made available on a libre license as well.

Without obtaining a license or transferring the rights from authors (or rights holders) to a given area of exploitation it is unlawful to use a given work – with the exception of fair use, or use of public domain works (works to which copyrights have expired).

Personal fair use

According to Section 23 of the Copyright Act, published works (with the exception of software!) can be copied and used for people being in close personal relationship without obtaining authors'/rights holders' permission to do so, as long as no money changes hands. This means that it is legal in Poland to download (but not upload!) a copyrighted work from the Internet, and we can copy it for our friends and family – as long as we are not being paid for it.

Clearly personal fair use will not be helpful in the project as far as using third party works is concerned:

- authors of project's products receive remuneration;
- these products will be distributed beyond friends and family.

Non-personal fair use

However, non-personal fair use (or rather some of its elements) is much more relevant to the project.

Without obtaining a separate permission it is legal to quote published works, as long as authorship is properly attributed. The quote should contain a fragment of the work (unless the work is very short), and be justified by “explanation, critical analysis, teaching or rules of the genre”.

It is also lawful to copy works (in whole or in fragments) for the purpose of education, for a given class of students, and to modify and adapt these works within that group. It is unlawful, though, to publish or distribute these works or their modifications outside the group of students without

original work authors' explicit permission!

The Copyright Act includes a few other cases of fair use, but they are much less relevant to the products of the project.

Fair use and software

It is crucially important to note that fair use (personal and non-personal) does not pertain to software! Use (including modification) of software always requires obtaining a license. A solution here would be to use software available on libre licenses, as discussed in *“Open standards and libre licenses in In Dialogue project – recommendations”*

Copyright and the In Dialogue project

Use of works covered by copyright in products of the project requires obtaining licenses or transfer of copyrights. Without proper license, or with too limited a license (for example, software license for a limited number of users) can result in problems with dissemination of project's results.

It is of high importance to take note of sources and licenses for third party works used in products of the project, and – as often as possible – using works from public domain, or available on libre licenses.