Copyright Matters! Libraries and National Copyright Reform Initiatives

THE POLISH EXPERIENCE

Monika Mitera
National Library of Poland
Prawa Autorów i Artystów.

Przez Maksymiliana Glücksberga.

Odczyt publiczny odbył się w Sali Ratusza Warszawskiego w dniu 15 marca r. b.

Czy autor, kompozytor i artysta mają istotne, z natury rzeczy wypływające prawo własności do utworzonego przez siebie dzieła, czy też twórcy ci korzystają jedynie z przywileju, udzielanego im przez prawodawcę, w zamian za wyświadczone przez nich społeczeństwu usługi?

Czy służy autorowi wieczne prawo do utworzonego dzieła?

Uwagi nad projektem ministra sprawiedliwości o prawach autorskich do utworów literatury, muzyki, sztuki i fotografii.

Czy prawo reprodukcji jest wieczystem?
BACK INTO HISTORY (2)

1918  1919  1920  1926  1934
16. Oświadczzenie Rządowe z dnia 13 maja 1921 roku w przedmiocie przystąpienia Rzeczypospolitej Polskiej do międzynarodowej konwencji dotyczącej ochrony utworów literackich i artystycznych podpisanej w Berlinie dnia 9 września 1908 r., a przejrzanej w Berlinie 13 listopada 1908 r.

Podobie się niniejszym do wiadomości, że w wykonaniu art. 19 ustaw. i Traktatu Paktu między Państwami Sprzyspieszonymi i Zniszczonymi z Polski, podpisanego w Warszawie dnia 28 czerwca 1919 r., a następnie przez Polskę zgodnie z ustąpią z dnia 11 lipca 1919 r. (Dz. U. z. P. r. 1920 Nr 120, poz. 755), Rząd Polski, przystępując w dniu 25 stycznia 1920 r. do Konwencji międzynarodowej dotyczącej ochrony utworów literackich i artystycznych podpisanej w Berlinie dnia 9 września 1908 r., przejrzanej w Berlinie 13 listopada 1908 r., wraz z protokołem dodatkowym, podpisany w Berlinie dnia 20 marca 1914 r., o treści następującej:

Prof. Dr Fryderyk Zoll (1865-1948)
It is rather remarkable that, as will be seen, as early as 1900, it was recognized in the Paris International Convention that there was an imperative need of achieving an international ordering of competitive relationships by providing against acts of unfair competition. But it was at the Conference of The Hague in 1925 that the nature of the problem was fully recognized.

At that Conference, Professor Zoll of the University of Cracow, representing Poland, made an illuminating statement on unfair competition.
Zenon Przesmycki (1861-1944) nicknamed “Miriam”
COPYRIGHT ACT OF 1926

the core concept & basic assumptions shared with protection against unfair competition law

• the attractive force exercised on the buying public

• an intangible kind of property

• it may be infringed in two ways:
  when appropriated or encroached upon
  when the attractive force is injured or its value diminished
COPYRIGHT ACT OF 1926

the first copyright legislation to capture the concept of “work” as the subject matter of copyright

“any manifestation of spiritual activity – upon its coming into existence – bearing the features of individual creativity”
COPYRIGHT ACT OF 1926

vs definition by example

“The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.”

The Berne Convention
COPYRIGHT ACT OF 1926

• the copyright as:
  a single, comprehensive right – not a bundle of specific powers
  → presumption of copyright ownership
  an exclusive right, with *erga omnes* effect, enforceable against
  anyone infringing it
  a natural, innate right, not conferred by law

• moral rights (*droit moral*) given priority over economic rights –
  comprehensive & universal protection
  not limited to specific, detailed personal interests
  regardless of time, place & nationality
  independent of economic rights
USTATWA:

1. Przedmiot prawa autorskiego;

2. Rozpowszechniać wydane dzieło muzyczne przez odnajmowanie egzemplarzy, przez wygloszanie;

3. Wydawca muzyki italiano;

4. Wydawca muzyki italiano;

5. Wydawca muzyki italiano;

6. Wydawca muzyki italiano;
USTAWA O PRAWIE AUTORSKIM
Z DNIA 26 MARCA 1926 R.
Z MATERIAŁAMI

POLSKA USTAWA O PRAWIE AUTORSKIM I KONWENCJI BERNEŃSKIEJ
Z ORGANYMI

PROF. DR. FRANCYLOWA ZOLL
CENA ZE. 10.

WARSZAWA C 1926 O PALAC STAŚKOWA


Krótsza ta, zawierająca tezty utworów i konwencji, obejmuje kon-
nawianie podział zbiorów, jednogłosu, atutów, autora, artysty i powinna.

DO NABYTCIA W WYDAWNICTWIE RIECZARZHACH.
And whereas satisfactory official assurances have been received that on and after February 16, 1927, citizens of the United States shall be entitled to obtain copyright for their works in Poland which is substantially equal to the protection afforded by the copyright laws of the United States, including rights similar to those provided by section 1 (e) of the copyright act of the United States, approved March 4, 1909.

Now, therefore, I, Calvin Coolidge, President of the United States of America, do declare and proclaim

That on and after February 16, 1927, the conditions specified in sections 5 (d) and 1 (e) of the act of March 4, 1909, will exist and be fulfilled in respect to the citizens of Poland, and that on and after February 16, 1927, citizens of Poland shall be entitled to all the benefits of the act of March 4, 1909, including section 1 (e) thereof and the acts amendatory of the said act.
BACK INTO HISTORY (3)

2011
- First proposal of directive on orphan works
- The Professors Group
- Second proposal of directive on orphan works
- Workshops on Copyright Reform
- Opening Report

2012
- The Professors Group

2013
- The Copyright Forum
- Public consultation on public interest purposes and public domain
- Public consultation on EU copyright reform

2014
- The Copyright Forum
- Public consultation on the draft law

2015
- The Copyright Forum
- Final report on public consultation on the draft law
- Public consultation on „A Digital Single Market Strategy for Europe”
- Public consultation on draft regulations to the Copyright Act
THE COPYRIGHT FORUM

- launched on January 2013 by the Minister of Culture and National Heritage

- an ongoing platform for discussion and debate on copyright and related rights, the review of the existing legislation and setting out directions for change

- 77 permanent participants + debaters admitted on request
  professional associations of individual creators and performers
  copyright collecting societies
  creative industries
  chambers of commerce
  cultural institutions
  NGOs
  commercial users
THE COPYRIGHT FORUM

• 7 sessions

**March 27, 2013** – orphan works & out-of-commerce works

**June 6, 2013** – orphan works, out-of-commerce works & domaine public payant

**October 2, 2013** – limitations & exceptions for public interest purposes, public lending right

**December 9, 2013** – criminal enforcement of the copyright law

**January 29, 2014** – public consultation on the EU copyright reform

**November 19, 2014** – content licensing

**October 21, 2015** – extended collected licensing
COPYRIGHT ACT OF 2015

• first draft issued on September 24, 2014
• further drafts released on:
  October 9, 2014
    public consultation held until November 12, 2014
  January 29, 2015
  February 26, 2015
  March 30, 2015
  April 29, 2015
• the bill introduced to the Parliament on May 22, 2015
• the law passed on September 11, 2015
• announced and published on October 19, 2015
• in force since November 20, 2015
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 22, 2015</td>
<td>Application form to register out-of-commerce works announced November 4, 2015 in force since November 20, 2015</td>
</tr>
<tr>
<td>October 23, 2015</td>
<td>Specification of sources to be consulted as part of orphan works diligent search &amp; documenting the search results announced November 6, 2015 in force since November 20, 2015</td>
</tr>
<tr>
<td>October 23, 2015</td>
<td>Rules for competition for a collecting society to be authorised to conclude agreements for use of out-of-commerce works announced November 9, 2015 in force since November 20, 2015</td>
</tr>
<tr>
<td>November 2, 2015</td>
<td>Rules for PLR payments and competition for a collecting society to be authorised to distribute payments announced November 20, 2015 in force since November 20, 2015</td>
</tr>
</tbody>
</table>
DIRECTIVE 2001/29/EC

on the harmonisation of certain aspects of copyright and related rights in the information society
<table>
<thead>
<tr>
<th>Year Range</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994-2004</td>
<td>Research and educational institutions are allowed to use published works in the original and in translation for the purpose of teaching or their own research and to make copies of parts of a published work to this end.</td>
</tr>
<tr>
<td>2004-2015</td>
<td>Research and educational institutions are allowed to use works communicated to the public in the original and in translation for the purpose of teaching or their own research and to make copies of parts of a work communicated to the public to this end.</td>
</tr>
<tr>
<td>2015-</td>
<td>Educational institutions, higher education institutions and research entities within the meaning of the Research Financing Act are allowed to use works communicated to the public in the original and in translation for the purpose of illustration for teaching or scientific research and to reproduce minor works communicated to the public or parts of larger works to this end. Whenever works are made available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them the use of works is only allowed for a restricted group of learners, teachers or researchers who are identified by beneficiaries of the exception.</td>
</tr>
</tbody>
</table>
TEACHING & RESEARCH

- the use of published works
  - for the purpose of teaching or their own research
  - making copies of parts of a published work

- the use of works communicated to the public
  - for the purpose of teaching or their own research
  - making copies of parts of a work communicated to the public

- the use of works communicated to the public
  - for the purpose of illustration for teaching or scientific research
  - reproducing minor works communicated to the public in whole or larger works in parts
  - the use of works through the Internet allowed for a restricted group of learners, teachers or researchers who are identified by beneficiaries of the exception
are libraries (not) educational institutions?
## PROVIDING ACCESS & REPRODUCTION

<table>
<thead>
<tr>
<th>1994-2004</th>
<th>2004-2015</th>
<th>2015-</th>
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<tr>
<td>Libraries [, archives and schools] are allowed to:</td>
<td>Libraries [, archives and schools] are allowed to:</td>
<td></td>
</tr>
<tr>
<td>1) make available free of charge, within their statutory duties, copies of published works,</td>
<td>1) make available free of charge, within their statutory duties, copies of works communitated to the public,</td>
<td></td>
</tr>
<tr>
<td>2) make or request the making of single copies of published works which are no longer available in the marketplace for purposes of supplementing and preservation of their own collections and making them available free of charge.</td>
<td>2) make or request the making of copies of works communitated to the public for purposes of supplementing, preservation or protection of their own collections,</td>
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<td></td>
<td>3) make collections available for research or general study by terminals installed on their premises.</td>
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<tr>
<td></td>
<td>[Educational institutions, higher education institutions, research institutes (if offering postgraduate education),] libraries [, museums and archives] are allowed to:</td>
<td></td>
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<tr>
<td></td>
<td>1) lend, within their statutory duties, copies of works communicated to the public,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2) reproduce works from their own collections for purposes of supplementing, preservation or protection of those collections,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3) make collections available for research or general study by terminals installed on their premises - if the reproduction or distribution are made without any purpose of direct or indirect economic advantage. Reproducing may neither increase the number of copies nor enhance collections to be lent or made available to the public. The statutory exception for providing access to collections by terminals does not apply to collections made available under a prior purchase or license agreement with a rightholder.</td>
<td></td>
</tr>
</tbody>
</table>
PROVIDING ACCESS

1) make available free of charge, within their statutory duties, copies of published works

1) make available free of charge, within their statutory duties, copies of works communicated to the public

3) make collections available for research or general study by terminals installed on their premises

1) lend, within their statutory duties, copies of works communicated to the public

3) make collections available for research or general study by terminals installed on their premises

Reproduction may neither increase the number of copies nor enhance collections to be lent or made available to the public.

The statutory exception for providing access to collections by terminals does not apply to collections made available under a prior purchase or license agreement with a rightholder.
REPRODUCTION

2) make or request the making of single copies of published works which are no longer available in the marketplace for purposes of supplementing and preservation of their own collections and making them available free of charge.

2) make or request the making of copies of works communicated to the public for purposes of supplementing, preservation or protection of their own collections.

2) reproduce works from their own collections for purposes of supplementing, preservation or protection of those collections.

Reproducing may neither increase the number of copies nor enhance collections to be lent or made available to the public.
• no legal definition of “a copy” of a work

• exceptions for libraries – interrelated or independent?

• “supplementing [...] [their own] collections” under the current statutory exception
DIRECTIVE 2006/15/EC

on rental right and lending right
and on certain rights related to copyright in the
field of intellectual property
PUBLIC LENDING RIGHT

- lendings by **public libraries** only
  - more that 80% of all libraries in Poland – 8094 establishments
  - more that 50% of all library book collections
  - more than 60% of all expenditure on book collections
  - 80% of all acquisitions to library book collections (in number of volumes)
  - nearly 90% of all lending (including book lending) for out-of-library use
- exemption for on-the-spot reference use
- loan-sample scheme – 60 public libraries
- **works expressed in words**, produced or published in Polish, *in a printed format*
  - over 80% of all expenditure on public library collections
  - over 90% of all lendings by public libraries for out-of-library use
PUBLIC LENDING RIGHT

• 5% of the value of acquisitions by public libraries in the previous calendar year

• beneficiaries:
  - authors of works expressed in words, originated or published in Polish, in a printed format
  - translators into Polish of works expressed in words, originated in a foreign language and published in Polish
  - co-authors (?) of such works whose contribution is a visual work
  - editors of works expressed in words and published in Polish

• remuneration payments & operating costs met by the State

• administration by a collecting society appointed by competition

• right to PLR remuneration subject to registration by a beneficiary
ZA SZAFĄ
Anna Onichimowska
Czytaj wersję elektroniczną w aplikacji eBOOKIUM
Książka zatytułowana "Za szafą" to opowiadanie dla dzieci, które opisuje przygodę dwóch dzieci: Karol i Kryszta.

Karol i Kryształ, dwie małe dzieci, które spędzają wieczory w lesie, decydują się na eksplorację tajemniczej szafy.

- To byłby jakiś wspaniały sprzedaż, na którą nie był zadowolony Karol. - powiedział Karol, przysiadając na słupie. Zrozumiał to samo. - Przeźrebał za coś dobra, więc wywiązał po Kryształ.

Zgodziłem się, bo w trakcie była, miał być konieczne na najemkowwy swój i jako też mogłem mieć szansę.

Zobowiązany pierwsze przygodę – z dwoma pochmurnymi z przechyłu i z nocy, ale nie miałem wiedzieć o tym wnikliwej głowy. Zdawałem na naszych czapkach nie przypominał w leżerze pasiak, ale przypominał się najpierw zajęcia z rzeczywistością.

W końcu wpadła mi na wzrok nasz czapka Kryształ. Miała co prawda pomarańczową, ale od czego się rozwijać?
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100 1 Onichimowska, Anna|d(1952- )
245 10 Za szafą |cAnna Onichimowska ; il. Anna Wielbut.
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336 Tekst|btxt|2rdaccontent
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710 2 Wydawnictwo Literatura.|4pb1
830 0 To Lubię
920 978-83-7672-433-1 :|czl 22,90
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KATALOGI : BIBLIOTEKI NARODOWEJ

Szukaj: Gotowanie jest super

Powrót do wyników

Gotowanie jest super / Adam Kozanecki, / Adam Kozanecki

Pozycje

Sygnatura

Status

Magazyn Książek

w opracowaniu

Magazyn Książek

w opracowaniu

Show fewer items

Więcej szczegółów

Adres wydawnictwa

Lokalizacja

Opis fizyczny

208 s., il. kolor., 27 cm.

Uwagi

Na 1. b.t., okl. nazwa bloga. Bażant potuje
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Klasyfikacyjne

Książki kucharskie

Klasyfikacja

Wydawnictwo J.K

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100 1 Kozanecki, Adam|d(1984-)
245 10 Gotowanie jest super |/cAdam Kozanecki.
300 205 s. :|bilk. kolor. ;|c27 cm.
336 Tekst|btxt|2rdaccontent
337 Bez urządzenia pośredniczącego|bn|2rdamedia
338 Wolumin|bnc|2rdacarrier
500 Na s. tyt. i okł. nazwa bloga: Bażant gotuje.
504 Indeks.
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710 2 Wydawnictwo JK.|4pbl
920 978-83-7229-555-2 :|czł 49,90
998 ik
999 zkd|bboesk|x29|y16
DIRECTIVE 2012/28/EU

on certain permitted uses of orphan works
ORPHAN WORKS

implementation in conformity with the Directive

beneficiaries
types of works
type & scope of use
eligible institutions
- archives
- educational institutions
- higher education institutions
- research institutes (if offering postgraduate education)
- libraries
- museums
- film & audio heritage institutions
- public-service radio & TV broadcasting organisations

non-commercial use only – in order to achieve aims related to the public interest mission of a beneficiary
- reproduction
- making available to the public in such a way that members of the public may access works from a place and at a time individually chosen by them
ORPHAN WORKS

- Works in collections of eligible institutions
- Works published in books, journals, newspapers, magazines or other printed writings
- Works commissioned or incorporated into audiovisual works or fixed in videograms for the purpose and to the extent of using an audiovisual work or a videogram as a whole
- Works fixed in phonograms
- Audiovisual works
- Works never published or broadcast if made publicly accessible by an eligible institution with the consent of the rightholders
ORPHAN WORKS

subject matter of related rights

- artistic performances
- phonograms & videograms
- programme broadcasts
- first editions
- scholarly & critical editions

never published or broadcast if made publicly accessible by an eligible institution with the consent of the rightholders
ORPHAN WORKS

- anonymous works
- works not originated in the EU or the EEA
- audiovisual works, works commissioned or included into such works, works fixed in videograms, works fixed in phonograms produced by public broadcasting organisations since January 1, 2003
- visual works not contained in printed writings
- pseudonymous works

works in collections of eligible institutions
ORPHAN WORKS

made publicly accessible by an eligible institution with the consent of the rightholders but one cannot reasonably assume that the rightholders would not oppose to reproducing them or making them publicly available on the Internet.

journals & diaries

private collections

works / subject matter of related rights held in collections of eligible institutions never published or broadcast

private writings

private correspondence

not made publicly accessible by an eligible institution with the consent of the rightholders

antiquarian market

private writings

journals & diaries

private collections

works / subject matter of related rights held in collections of eligible institutions never published or broadcast

private writings

private correspondence

not made publicly accessible by an eligible institution with the consent of the rightholders

antiquarian market
ORPHAN WORKS

• item-by-item & base-by-base search

• sources to be consulted specified in the regulatory law – no optionality

• a trap of good faith
  an independent condition to be met by a user (?)
  sources to be consulted – necessary but insufficient
  no presumption of diligence (?)
  no provision for a reasonable search
ORPHAN WORKS

• the case for intestate succession (article 935 § 1 of the Civil Code)

„If the deceased leaves no spouse, relatives by consanguinity or children of the deceased's spouse called to the succession by law, the estate falls to the municipality of the deceased's last place of residence as the statutory heir. If the deceased's last place of residence in the Republic of Poland cannot be established or the deceased's last place of residence is abroad, the estate falls to the State Treasury, as the statutory heir.”

• the hurdle of nonresponsiveness

• no time limit set for keeping evidence supporting the diligent search

the preliminary draft required to keep the evidence until the user got informed that the copyright to the work had expired
• who does the search?
ORPHAN WORKS

Preliminary draft

- a voluntary agreement with a collecting society managing the rights to a certain type of works to pay royalties due to a reappearing author/rightholder before making use of a work
- royalties retained by the collecting society for 3 years, to be transferred afterwards to the Fund for Promotion of Creative Activity held by the Minister of Culture and National Heritage
- a statutory indemnity clause – any claims for royalties by a prospective reappearing author/rightholder may prohibit any further use of the work
- the amount of royalties depending on the public interest fulfilled by the use of the work
- a prospective reappearing author/rightholder may prohibit any further use of the work
ORPHAN WORKS

Preliminary draft

- A voluntary non-exclusive license agreement by an eligible user with a collecting society.
- Works published or broadcast for the first time on the territory of Poland for no more than 5 years.
- Royalties for a reappearing author/rightholder paid through the collecting society.
- A prospective reappearing author/rightholder cannot put an end to further use of the work until the license is terminated.
- Other types of use than covered by the Directive.

A prospective reappearing author/rightholder cannot put an end to further use of the work until the license is terminated.
ORPHAN WORKS

• 4 institutions from Poland have been registered in the EUIPO (OHIM) databases, including the Ministry of Culture and National Heritage and the National Library of Poland

• a search by the National Library of Poland for one illustrator has been under way for 6 weeks by now

• 1 inquiry has been received by the National Library of Poland

• no orphan works from Poland have been recorded in the EUIPO databases so far
MEMORANDUM OF UNDERSTANDING

Key Principles on the Digitisation and Making Available of Out-of-Commerce Works
OUT-OF-COMMERCE WORKS

works published in books, journals, newspapers, magazines or other printed writings if they are not available in stock for purchase with the consent of the rightholders

in tangible copies sufficient to meet the reasonable needs of purchasers

first editions, scholarly & critical editions

in digital formats available to the public in such a way that members of the public may access works from a place and at a time individually chosen by them

other than copies available from second-hand sellers or antiquarian bookshops
OUT-OF-COMMERCE WORKS

- published for the first time on the territory of Poland before May 24, 1994
- works held in collections of eligible institutions
- other than translations into Polish of works which originated in another language
OUT-OF-COMMERCE WORKS

eligible institutions
- archives
- educational institutions
- higher education institutions
- research entities within the meaning of the Research Financing Act
- cultural institutions

non-commercial use only – in order to achieve aims related to the public interest mission of a beneficiary
- reproduction
- making available to the public in such a way that members of the public may access works from a place and at a time individually chosen by them
OUT-OF-COMMERCE WORKS

• agreement by an eligible institution with a collecting society appointed by competition
• the collecting society held responsible for verification whether the work is no longer commercially available
• the work recorded in the register for out-of-commerce works on application made by the collecting society
• presumption of management of outsiders’ rights
• any outsider may opt out of the scheme within 90 days of the entry of the work as out-of-commerce being revealed or withdraw particular works at any time
OUT-OF-COMMERCE WORKS

No competition for a collecting society to be authorised to conclude agreements for use of out-of-commerce works has been announced yet.
LAST BUT NOT LEAST

“It is everything to have your army moving forwards and confident. [...] There is nothing worse than being forced to turn and fight.”

*The Constant Princess* by Philippa Gregory
LAST BUT NOT LEAST

- first things first
- keeping an eye on the law-making process
- “no time for silence” (Joel Blackwell)
- every voice counts
- and who is my ally?
- like Caesar’s wife
ACKNOWLEDGEMENTS

Mr Tymoteusz Barański – advocate, the Warsaw Bar Association
Dr Bartłomiej Czarski – assistant professor, the Early Printed Books Collection (NLP)
Ms Grażyna Federowicz – head of the Cataloguing Department (NLP), member of the Bibliography Section Standing Committee (IFLA)
Mr Janusz Fiołka – advocate, the Cracow Bar Association
Ms Martyna Marcinkowska – head of the Digital Collections Department (NLP)
Ms Lilianna Ludwisiak-Koziróg – head of the Copyright Work Group for the Digital Collections Department (NLP)
Mr Wojciech Połaski & Mr Michał Połaski – senior software engineers, the IT Department (NLP)
WORKS CITED & REFERENCE SOURCES

• The Copyright Act of March 29, 1926 with Resources by Stanisław Gołąb – www.rcin.org.pl/ifis, Dital Repository of Scientific Institutes, the Institute of Philosophy and Sociology of the Polish Academy of Science; cited slide 13.
• Za szafą (Behind the Wardrobe) by Anna Onichimowska, Łódź : Wydawnictwo Literatura, 2016; cited slide 34.
• Gotowanie jest super (Cooking is Great) by Adam Kozanecki, Łódź: Wydawnictwo JK – Feeria, 2016; cited slide 35.