

Double voice - Intellectual Rights in Poland’s Perspective

Part I

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Introduction

Property rights are the foundation of a free-market economy. Several studies indicate the fact that the ownership of movable and immovable property, has a positive impact on the disposition of this movable and immovable property.

The problem of intellectual property rights, however, is different. If we work not with material objects, but abstract things, the matter becomes even more complex. Intellectual property includes a broad concept of all spectrums of legally defined rights, grown with different types of intellectual creativity. Ownership rights to intellectual property give rights to intangible things - to the idea expressed (copyrights) or its practical implementation (patents).

Ownership of the physical objects (movable and immovable property) and non-physical objects (ideas, concepts), should be treated separately. While the physical properties of objects such as movable or immovable are easy to define, it is hard to define the ownership of the effects of just an intellectual work. State law, however, make up, on this type of property, which closes precisely the concept of intellectual property. Poland also created such law.

Intellectual rights in Poland

In Poland, the most intellectual property rights are included in copyright regulations (under civil law) and patents or trademarks regulations (in the context of industrial property rights). Understood intellectual property rights give eligible individuals the opportunity to prohibit another full use of songs, concepts or characters which are the subject of protection.The regulations on the individual intellectual property rights are defined in separate branches of law.

The key laws governing intellectual property rights in Poland are:

- Law on copyright and related rights,

- Industrial property law

- Law on the protection of databases, law on unfair competition.

The scope of protection of individual rights of intellectual property in Poland is different, depending on the nature of these rights.

Good copyrighted are protected from the moment of their creation, without the need for their registration. On the basis of international agreements, this protection applies in almost all countries of the world.

In the case of industrial property, full legal protection requires notification to the Patent Office and its connected with a decision on the grant of a patent, trademark rights or registration rights. The scope of this protection is limited to the territory of the Republic of Poland and the eventual extension requires applications in patent offices of countries in which the rights are covered by such protection.

Problem of intellectual property rights in the case of competition.

While in the case of physical property, there is no problem in terms of competition. If a company has more land or machines than the other, there is no justification for the taking parts of machines or land belonged to larger company and donate it to smaller ones. Another thing is with intellectual property. One company would like to build a machine similar to the one owned by the other company. Whether this second company should have the exclusive right to use a particular technology which is built machine? And if so, how long would be this right last? So it is very simply looks at the problem of the relationship between intellectual property and free competition.

The founder of the Free Software Foundation, Richard Stallman argues that despite the term intellectual property should be abandoned because "Constantly distorts and misleads in relation to these issues, and its use was and is promoted by units deriving from this confusion profits . It is a collective term that brings together the various laws that have evolved separately, evolved differently, relate to different types of activities are characterized by other rules and move other issues of public policy and that it creates a bias by confusing these monopolies with having limited material goods, comparing them to property rights.”[[1]](#footnote-1)

In other words, the idea of ​​intellectual property is often abused by large corporations to gain competitive advantage. Having a large cash, rich legal entities can afford to have a large research centers. Intellectual capital accumulated allows to generate competitive advantage. The problem is the far reaching commercialization of research results. While in the scientific world, there is a prevalence of sharing achievements in the areas of research, the commercial entities carrying out research activities are focused on profits from the results of this work, so they restrict forwarding it.

The solution to the problem could be to cede the intellectual property rights for individuals. Such a solution, however, may be difficult to implement. Firstly, the research results are rarely the result of the work of only one individual. Secondly, the individual rarely disposes of sufficient research apparatus to achieve really significant results of intellectual work. Such resources provide, in the current technological conditions, only corporations with adequate capital. The solution would be to limit the time of intellectual property rights of legal persons in relation to individuals.

Problem of relations between intellectual rights and competition in a case of competition between developed and developing countries.

A matter of competition between large and old companies and young and smaller companies, also applies to competition between developed and developing countries. This problem also concerns the European Union. For the purposes of the article, this division will be presented as a division between EU countries adopted to it before 2004 and this countries, which have been adopted after that date. In this case, as developing countries are those from the first example, and developing, like Poland, these from the second example.

Expenditure on research and development in the European Union shows the chart below.

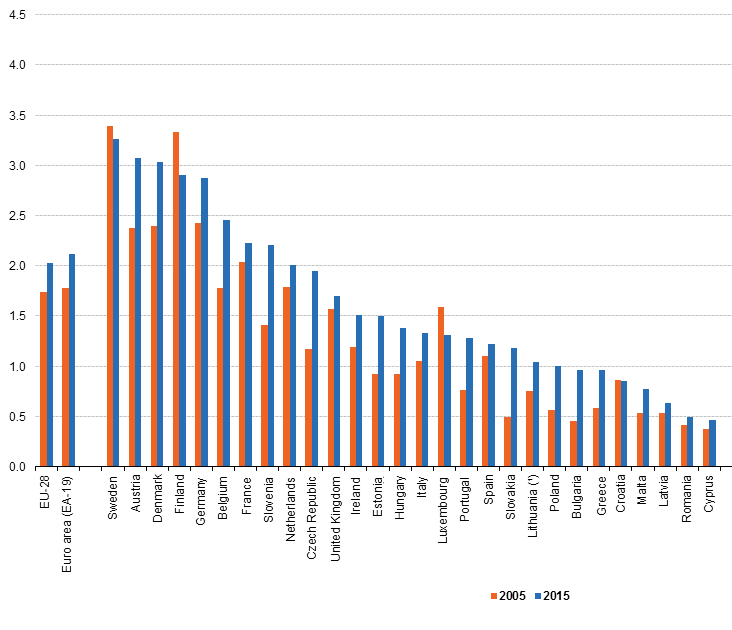
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Chart 1. R&D expenditure in European Union countries (% of GDP). Source: Eurostat, ec.europa.eu

You can see the disparity in this type of expenditure in developed countries and developing countries, in the EU. In developed countries, it is often higher. The difference is more evident if the nominal value of these expenses is taken. GDP of developing countries are smaller, so the percentage of a spent on R & D is nominally smaller. And it often makes the economies of developing countries less competitive.

The solution is to transfer technology in the form of know-how coming to a developing country with the investor from developed countries. However, this solution meets the problem of policy on intellectual rights, as described in the earlier part of the study. Companies treat intellectual property as a tool for achieving profit. They are not interested in full access to its technology for the suppliers from the country in which they do their investments.

Both the European Union law and international agreements such as CETA, protect intellectual property rights. Polish law concerning the protection of intellectual property, the grounds were described earlier, derives from these regulations. However, it may be an obstacle to technological development of the economies of developing countries, including Poland.

Technological development is very important for developing countries such as Poland. It is very important for countries economy and for individual citizens. Therefore, the assessment of the importance of intellectual property must be considered in the same way as an economic development. Accordingly, the scope of its protection must be established.

Conclusion

As a research institute, we look at the issue of intellectual property through the prism of our values, and through the utilitarian prism. In this first aspect, in our opinion, there are many doubts about intellectual property. In this second aspect, we note that many countries, at the stage of transition from developing country to developed country, have been very liberal about protecting intellectual property. On the other hand, the protection of intellectual property was one of the pillars of the free market economy.

Therefore, based on our research on this issue, we propose to the developing countries, such as Poland, the model proposed above. For individuals, the protection of intellectual property would be longer than for legal persons. Of course, they could freely cede that right. Such solution is saturated in the opinion of intellectually honest, and gives economic benefits. At the same time, this solution appears to be acceptable to the European Union and to the countries which are the parts to the agreements Poland has signed with its foreign partners.

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Part II

Dr. Kamil Miliszewski

The protection of intellectual rights in Poland in the perspective of innovation and global competitiveness.

We encounter the intellectual property every day in almost every aspect of taking actions, the effect of which is making use or only becoming acquainted with another’s thought or figment. The reader of these words becomes not only their recipient, but potentially also their user. Sometimes it may cause a number of interpretative problems as well as questions if any use of work or idea remain within the area of protection of intellectual property rights. The problem becomes even more powerful when the rights will be considered in the context of the wide process of globalization and potential problem of the functioning of intellectual property rights within the protection of competitiveness and innovation. Since the beginning of 1990s Poland has been the place of the liberalization of law, adjustment domestic law to international standards and the growth of influence of business entities from other countries. Is it possible for countries such as Poland to fulfill all the rules in conditions of intensified competitiveness on both internal and global market? It is about an influence of intellectual rights on the growth of the level of innovation and competitiveness of Polish economy.

The intellectual property involves the wide area of rights, which regulate the formation of content, change, discontinuation and protection of incorporeal chattels. An author has a presumptive right to use their own work. In Poland these are all sorts of literary, scientific, artistic (composition) works, inventions, trademarks, trade names, geographic marks of origin as well as new plant varieties[[2]](#footnote-2). The intellectual property is regulated by the Copyright and Related Rights Act and the Industrial Property Law. The law, however, is not that restrictive as it may seem to be. The intellectual rights, especially copyright, have not the nature of a monopoly. Reading a book in a bookstore is not its subject matter, for it is a passive exercise. Only conscious and repetitive use of a work or a part of it falls within the rights of an author of the monopoly.

The intellectual property rights in Europe are regulated and unified by the union directives and due to the adjustment of legislation of countries seeking the membership in the European Union. Adherence to the intellectual property rights is connected with submitting for sanctions the unauthorised use of works and industrial property. Such claims vest in the owners of a work or invention, patent, trademark or geographic sign.

In Polish legislation the field of intellectual property right constitutes the issue connected with the branches of economy, the meaning of which is nowadays considered the reason of the increase of competitiveness and innovation of contemporary economies. Innovation and competitiveness may be considered as the one of the most important elements of growth and improvement of economy by planning the actions and, as the result, achieving the positive economic results comparable to countries from so-called the centre of globalization.

Poland placed 39th in the last year’s Global Innovation Index ranking co-financed by the Cornell University, INSEAD and the World Intellectual Property Organization (WIPO, the agency of the United Nations). In comparison to the previous year this is a leap of 7 points, but unfortunately Poland is still at the end of the European countries with the position of 27. Polish political conditions and business environment were evaluated better, as well as the increase of expenses for education. There was an increase in the number of people employed in knowledge-based enterprises. Involvement in both industrial and public sectors was evaluated better as well. There was also an increase in the scale of issued patents, capability to acquire knowledge by markets, the export of cultural services and participation of media companies on the global market. Expenses for research and development increased remotely.

A significant decrease in the field of the protection of investors has been observed (by 13 positions), still with the weak position of 82 in the global scale. Unfortunately, there has not been an increase in the number of start-ups. The results of report place Poland behind countries such as Switzerland, Sweden, Great Britain, the United States, Finland, Singapore, Ireland, Denmark, The Netherlands, Germany, which constitutes the top ten. The results place us in the averaged position despite the fact that our beginning seems to be high because of the highest grade, which we have been granted for years in ranking in terms of elementary study, that is reading, mathematics and learning with the position of 9 in the world.

How Poland and countries similar to it can compete with the richest countries in the world? And do the intellectual property rights help or interrupt in this range? How in this range ideas can be distinguished from laws, which may comprise the barrier in the increase of innovation? Do the right to use the new technologies is just an idea? These questions concern the whole branch of activities and knowledge based on innovation.

The dynamic of conducting he interests causes the need to adapt to the variability of competitiveness conditions, which are limited by the system of intellectual property rights. The proposal of Lester Thurow is an interesting idea within this scope, who claims that “do not put in a worse situation those who wish to develop”[[3]](#footnote-3). L. Thurow suggested that in order to make the economic development easier, there should be the following principle within the scope of the application of intellectual rights introduced: the lower income per capita, the lower rate a country pays for reproducing the intellectual property. In accordance with this principle, the poorest countries would not pay for patents and the the wealthiest ones according to the market rates.

Consequently, the developing countries will invest in research. It will provide the countries remaining behind the globalization with the motivation to develop and it will bring the products, which owing and access to is necessary in order to emerge from both crisis and poverty. Unfortunately, these ideas have not met with great enthusiasm. Despite the fact that such a great attention seems to be paid to adjustment programs for markets lagging behind. This is hard to compete on the global markets with entities, which apply to the principles of the intellectual property rights. For instance Israel, which has not paid attention to patent rights for years, is now in the 21st place in the abovementioned Innovation Index.

The new legislation does not help within this scope as well. Nowadays, international free trade and the freedom of investment agreements: Transatlantic Trade and Investment Partnership (TTIP), Trade in Services Agreement (TISA), Comprehensive Economic and Trade Agreement (CETA) are widely criticized within this scope. Despite the fact that the process of introduction of such agreements has not been completed, there appear controversies connected with boosting the influence of transnational corporations on the intellectual property rights. These are suggestions of transnational corporations: an increase of cross-border personal dataflow, prohibition of sharing the source code for providing the public sector with the IT services. Consequently, it will cause the better commercialization of public services. The system of investment courts (ICS) arouses controversy as due to them corporations will have a possibility to sue countries for pursuing policy against a company’s activities, which means limiting its profits.

There is a wide article in CETA concerning the intellectual property rights, which introduce detailed restrictions such as a ban on recording films in cinemas under penalty. This clause directly guarantees the interests to commercial film distribution network. CETA suggests at the same time an increase of importance an agent function in the trade of/in intangible goods, imposing payments for any diffusion of movies. Copyright has a territorial nature. Accessibility of foreign works in Poland is regulated by legislation of separate countries as well as international contracts concluded by Poland. Availability of music of a non-native publisher in media is not surprising, because the actual owner of rights are concerns, not its author. Opponents of globalization call the intellectual property rights the virtual rights. Using alternative tools such as Creative Common rights may be the solution for the growth of innovation and competitiveness. They allow authors to preserve copyright, as well as copy and spread determining the scope of protection, for example usage for noncommercial purposes. Such a solution guarantees the intellectual property rights to author, not a mediator such as publisher or a possible patent right owner. The contemporary media market is a market of interpersonal contacts, where product are spread in a commercial way via social contacts[[4]](#footnote-4). Therefore, restricting the market is not to advantage of business entities as well as consumers as it limits the free choice and has a bad influence on creation of the civil society.

The negative solutions described above largely focused on the corporations interests may impede the growth of innovation and modernization of Poland. They impose the greater control of individual users, products, which are subject to the intellectual property rights and limit the process of invention in underdeveloped countries. Controlling and regulating the markets is possible due to the patent right, for example Polish pharmaceutical market, which has been flourishing for two years in spite of the increase in prices of medicines. The development of pharmaceutical market results from the introduction of new medicines for sale[[5]](#footnote-5).

To conclude, it may be perversely claimed that the more right for authors, the more restrictions within the scope of applying the elements, which this work consists of. Creating something new demands the usage of the previous experience. No one in the past has thought about banning the usage of accomplishments of previous generations the name of profits. The problem is that today markets and their branches develop much more dynamically. Therefore, the time of implementing an invention is much shorter. It is better for the growth of innovation not to open already open door. It may help to strengthen the development of innovation if there is a possibility to use inventions with skipping the restrictive patent right. All the more so as the potential in our country largely depends on the finance and internal patents with the use of human capital from Poland.

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2. M. Załucki, *Intellectual Property Law*, Warsaw 2010, p21. [↑](#footnote-ref-2)
3. L. Thurow, *Fortune Favors the Bold: What We Must Do to Build a New and Lasting Global Prosperity*, Warsaw 2007, p348. [↑](#footnote-ref-3)
4. N. Klein, *Fences and Windows: Dispatches from the Frontlines of the Globalization Debate*, Warsaw 2008, p193. [↑](#footnote-ref-4)
5. *We spend billions on medicines. The pharmaceutical market is growing in strength*, [online] http://www.forbes.pl/wydajemy-miliardy-na-lekarstwa-rynek-farmaceutyczny-rosnie-w-sile,artykuly,196761,1,1.html [access: 07.03.2017]. [↑](#footnote-ref-5)