*Summary*

# Claim for Payment of a Multiple of the Respective Remuneration in Copyright Law

The monograph analyses the following issues, related to Article 79(1)(3)(b) of the Act on Copyright and Related Rights of 4 February 1994: the claim for payment of a multiple of the appropriate remuneration in relation to Polish private law, other Polish provisions regulating compensation of a „lump sum" nature, „lump sum" compensation in the copyright law of European countries, the legal position prior to the judgment of the Constitutional Tribunal of 23 June 2015, the judgment of the Constitutional Tribunal of 23 June 2015, the legal position immediately after the judgment of the Constitutional Tribunal of 23 June 2015, the judgment of the Constitutional Tribunal of 25 January 2017 and the judgment of the Supreme Court of 7 December 2017, the judgment of the Constitutional Tribunal of 5 November 2019, the claim for awarding a multiple of the respective remuneration in *de lege lata* and *de lege ferenda* copyright law.

The publication is based primarily on Polish legislation, case law and jurisprudence, and, to the extent necessary, refers to EU legislation and jurisprudence. The regulation of „lump sum" claims in the legislations of 47 European countries is also presented within the framework of comparative research.

The monograph makes the assumption that the issue of claims for awarding a multiple, i.e. three times or two times the respective remuneration, is determined by the following dates and events in Polish copyright law as of July 2020:

1) 1 July 2015, i.e. the Constitutional Tribunal's judicial decision of 23 June 2015 and assertion of the unconstitutional nature of the norm contained in Article 79(1)(3)(b) of the Act on Copyright and Related Rights, which stipulates that „a rights holder whose author's economic rights have been infringed may demand from the person who infringed those rights, in the case where such infringement is culpable, compensation for the damage caused by payment of a sum of money in the amount corresponding to three times the respective remuneration which, at the time of its assertion, would be due for the right holder's granting consent to use the work";
2) 25 January 2017, i.e. the judgment of the Court of Justice of 25 January 2017, stating, inter alia, that Article 13 of Directive 2004/48/EC on the enforcement of intellectual property rights does not preclude a national regulation, such as Article 79(1)(3)(b) of the Copyright Act, referring to an amount double the respective remuneration. The judgment of the CJ had, inter alia, a direct effect in the form of the judgement of the Supreme Court of 10 November 2017, leading to the application of the single respective remuneration only;
3) 7 December 2017, i.e. the judgement of the Supreme Court of 7 December 2017, which, in considering the above-mentioned judgements, stated that the redress of damages under Article

79.1.3(b) of the Copyright Act shall be effected under the general rules of civil liability or by payment of a sum of money corresponding to twice the respective remuneration that would be due if the rights holder person had granted consent to use the work;

4) 5 November 2019, i.e. the judgement of the Constitutional Tribunal of 5 November 2019, issued following a legal question submitted by the Supreme Court on 9 April 2019 concerning the compatibility of Article 79(1)(3)(b) of the Copyright Act with the Constitution. The Court held that Article 79(1)(3)(b) of the Copyright Pr. „to the extent to which the rights holder, whose author's economic rights have been infringed, may demand from the person who infringed these rights to redress the damage caused by payment of a sum of money equal to twice the amount of the respective remuneration which, at the time of its claim, would be due as a result of the rights holder granting consent to use the work, is consistent with Article 64, sections 1 and 2 in connection with Article 31, section 3 in connection with Article 2 of the Constitution of the Republic of Poland".

The monograph assumes, as of 1 July 2020, that the current interpretation of Article 79, paragraph 1, subparagraph 3, letter b) of the Copyright Act, which results from the application of the above-mentioned judgments, should lead to the conclusion that *de lege lata*, a rights holder, whose economic rights as author have been infringed, may demand that the person who infringed these rights redress the damage caused by payment of a sum of money amounting to twice the respective remuneration which, at the time of claiming it, would be due for the rights holder granting consent to use the work. Consequently, this claim serves the rights holder both in the case of culpable and nonculpable infringement. However, this kind of *status quo* should be assessed as dysfunctional and *per se* unstable, as the *ratio legis* of the existence of such a claim has been completely nullified. The current legal position is even more defective than the legal position preceding the judgment of the Constitutional Tribunal of 23 June 2015.

In view of the above, it is assumed that the debate concerning Article 79, paragraph 1, subparagraph 3, letter b) of the Copyright Act should not be regarded as concluded. A detailed analysis of the provisions, jurisprudence and literature may lead to the conclusion that not all issues related to the claim for awarding multiples of the respective remuneration have been taken into consideration thus far. There are grounds for posing a question regarding the possibility of reconstructing Article 79(1)(3)(b) of the Copyright Act in order to establish such a wording that would reflect not only the sense of the case-law from 2015-2019, but would also take into account the broader context related to preserving the purpose of the Copyright and Related Rights Act.

*Translated by Rob Pagett*