

# **Team for Counteracting Infringements of Copyright and Related Rights**

## **SPECIAL REPORT**

**Protection of copyright and related rights, as well as other  
intellectual property rights in Poland in the years 2006 – 2008  
with a report on task completion for the first half of 2009 included  
in a government document “Programme for the protection of  
copyright and related rights 2008 – 2010”**

*Warsaw, November 2009*

SUMMARY .....	3
I. INTRODUCTION.....	7
II. GENERAL ISSUES .....	11
1. Current legal status .....	11
1.1. Polish legal acts.....	11
1.2. International agreements.....	12
1.3. The EU law .....	13
2. Counteracting infringements of intellectual property rights by special inter –ministerial working groups.....	15
2.1. Team for Counteracting Infringements of Copyright and Related Rights .....	15
2.1.1. Composition of the Team .....	15
2.1.2. Documents of the Team.....	16
2.1.3. Team Tasks .....	17
2.1.4. The “Internet Group” .....	18
2.2. Team for Counterfeit Medicines .....	20
2.2.1. Organization of the CMP Team work .....	21
2.2.2. Course of action adopted by the CMP Team .....	22
2.2.3. Accomplished activities.....	23
2.2.4. International Cooperation .....	29
III. DETAILED ISSUES.....	31
1. Systemic analysis of the achievements of law enforcement bodies and of the justice administration related to the enforcement of intellectual property rights in Poland in the years 2006 - 2009.....	31
1.1. Police report on the enforcement of intellectual property rights in the years 2006 – 2008.....	31
1.2. Report of the National Public Prosecutor’s Office on the enforcement of intellectual property rights in the years 2006 – 2008 and in the 1 <sup>st</sup> half of 2009 .....	39
1.3. The report of the Ministry of Justice on courts’ judicial decisions concerning the enforcement of intellectual property rights in the period 2006 - 2008 .....	68
2. Detailed analysis of activities undertaken by services subordinate to the Minister of the Interior and Administration (the Police and the Border Guard) and to the Minister of Finance (the Customs Service) aiming at combating infringements of intellectual property rights in Poland in the 1 <sup>st</sup> half of 2009 .....	84
2.1. Report prepared by the Police on activities relating to the protection of intellectual property rights in the 1 <sup>st</sup> half of 2009.....	84
2.2. Report prepared by the Polish Border Guard on activities relating to the protection of intellectual property rights in the 1 <sup>st</sup> half of 2009.....	88
2.3. Report prepared by the Ministry of Finance Customs Service on activities relating to the protection of intellectual property rights in the 1 <sup>st</sup> half of 2009 .....	90
CONCLUSIONS .....	97

## SUMMARY

### Context

A special report concerning the protection of copyright and related rights, as well as other intellectual property rights includes the definition and the description of activities undertaken by state administration bodies which form governmental teams created in order to counteract and to fight with piracy and counterfeiting in Poland.

**The Team for Counteracting Infringements of Copyright and Related Rights**, created in 2000, deals also with other intellectual property rights due to the fact that developing drafts of legal regulations, fighting economic crime (infringements of intellectual property rights belong to this group), protecting and safeguarding European Community customs area against the influx of fake and pirate goods, protecting borders and controlling border traffic, court jurisdiction policy, as well cooperation in other areas – mainly with social partners are closely correlated and concern problems common for all intellectual property rights.

The Ministry of Culture and National Heritage which presides over the Team is also a leading ministry of Polish administration in the TRIPS Council. Additionally, the Ministry actively participates in the WIPO forum and as a result, issues concerning other (than copyright and related rights) intellectual property rights belong to the Ministry responsibilities.

In view of a dangerous phenomenon of producing counterfeit medicines and other substances influencing human health, **the Team for Counterfeit Medicines** has been created. And although the scope of its responsibilities is significantly narrower, it still plays an important role as far as the protection of intellectual property rights is concerned.

### The aim of the document

The Special Report also presents the review of Polish, Community and international legal regulations, showing the depth of regulating issues related to the protection of intellectual property rights. Ratified **WIPO Treaties (WCT, WPPT)** play an important role, both with reference to copyright and to related rights.

However, the report **mainly includes detailed systemic analyses of law enforcement bodies and justice administration concerning the enforcement of intellectual property rights**, as well as **reports** prepared by the Police, the Border Guard of the Republic of Poland and by the Customs Service on activities related to the protection of intellectual property rights in the 1<sup>st</sup> half of 2009.

### **Methodology and conclusions**

**The analysis** covered the period from 2006 to 2008 (the Police, justice administration) and from 2006 to the 1<sup>st</sup> half of 2009 (public prosecutor's office).

It covered regulations specified in the following acts:

- The Copyright and Related Rights Act of 4 February 1994 (Journal of Laws of 2006, No. 90, item 631, as amended);
- The Industrial Property Law Act of 30 June 2000 (Journal of Laws of 2003, No. 119, item 1117, as amended);
- The Act on the protection of some services provided by electronic means based on or consisting in conditional access of 5 July 2002 (Journal of Laws No. 126, item 1068, as amended);
- The Act on Fighting Unfair Competition of 16 April 1993 (Journal of Laws of 2003, No. 153, item 1503, as amended);
- The Criminal Code Act of 6 June 1997 (Journal of Laws No. 88, item 553, as amended).

Despite the increase of the number of crimes against intellectual property rights, the survey conducted by the **Police** showed that effectiveness and efficacy of activities undertaken by law enforcement bodies in this area have improved.

The increase of trading with goods infringing intellectual property rights should also be ascribed to a wider range of fake goods, which is characteristic for the whole world.

Better efficacy of **prosecutor's preparatory proceedings** is also proved by very detailed data collected from different Appellate Prosecutor's Offices.

Above all, we can observe that the number of instituted proceedings is growing.

Data show that perpetrators of infringements are increasingly frequently sentenced to absolute imprisonment. Prosecutors more frequently demand more severe penalties. There are only some appeals which constitute exceptions.

We can also observe an increase in the number of proceedings ended with bringing a bill of indictment in comparison with proceedings which are discontinued.

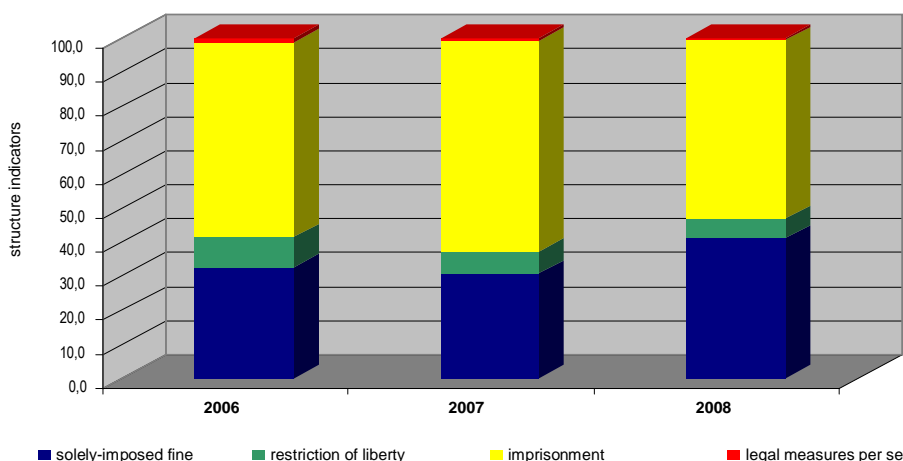
In the case of discontinuance of proceedings, the circumstance of the so called “insignificant social noxiousness” is raised less and less frequently.

Due to the motion character of crimes, as is the case of copyright and related rights, many proceedings are discontinued as entitled persons fail to file a motion.

Another significant factor is the fact that very often entitled individuals (including representatives of the above-mentioned rights) do not assert their claims in civil proceedings despite sufficient measures.

A positive trend is also visible in the **justice administration**.

Imprisonment predominates over other types of penalties. **We can observe the increase in the percentage share of imprisonment and the minimization of the restriction of liberty.**



In turn, in civil procedure (despite the disproportionate number of civil actions) the number of claims allowed by the court, both claims issued in the form of judicial decisions of full or partial adjudication of a claim, as well as in the form of court negotiated agreements is systematically growing. At the same time the number of claims discontinued by courts is decreasing.

From the presented statistical analysis of judicial decisions we may conclude that the efficiency and efficacy of criminal proceedings conducted by justice administration bodies and concerning crimes relating to the infringement of copyright and related rights, as well as other intellectual property rights have improved.

It can be seen in:

- an increase in the number of sentences;

- the number of convictions remaining at a similar level in comparison with a general, decreasing number of judgements in the analysed period;
- stricter jurisdiction policy (the increase in the number of imprisonment sentences and the decrease in the number of restriction of liberty sentences) resulting from the awareness of the gravity of these crimes;

**Periodical reports** (1<sup>st</sup> half of 2009) prepared by the Police, by the Border Guard of the Republic of Poland and by the Customs Service confirm the results of the systemic analysis, according to which intellectual property rights in Poland are fulfilled with increasing efficiency.

In the 1<sup>st</sup> half of 2009, the **Police** observed a significant decrease in the number of preparatory proceedings, which on the one hand can be ascribed to the reduction of the number of copies of fake and pirate goods (greater activity of the Police at market places) and on the other hand, to the fact that criminal activity has been transferred to the Internet.

**The Polish Customs Service** is said to be one of the most effective among Customs Services in other Member States of the European Community as far as the protection of intellectual property rights is concerned. Only in the period from the beginning of 2009 the Service has intercepted approx. 850 fake and pirate goods worth over EUR 19 million.

Due to significant scope of subject-matter, we authors of the report concentrated on the systemic analysis of law enforcement bodies and justice administration, only signalling the most important additional issues, crucial due to the document's aim, such as, for example:

- activities undertaken by the “Internet Group”, which deals both with legal issues and with management concepts in view of the necessity to create relevant licensing systems on the Internet;
- provisional and security measures employed in the proceedings in the case when the lack of security may prevent or seriously impede the fulfilment of a judicial decision made in a given case or when it will in other way prevent or seriously impede achieving an objective of proceedings in a given case;
- information exchange system for the Customs Service (VINCI),
- professional training courses for prosecutors and judges.

## I. INTRODUCTION

The Report on observing copyright and related rights, as well as other intellectual property rights in Poland (hereinafter referred to as “the Report”) was drawn up pursuant to article 3 of the Regulation of the President of the Council of Ministers of 9 November 2000 creating the Team for Counteracting Infringements of Copyright and Related Rights (hereinafter referred to as “the Team”).<sup>1</sup>

The document was prepared on the basis of detailed data and other information provided by government administration bodies.

Primary tasks of the Team consist in providing highly effective coordination of activities performed by government administration bodies and services within the framework of combating crimes against copyright and related rights.

It refers only to a certain, although very important and noticeable section of problems concerning the infringement of exclusive rights in general. However, due to the fact that legal regulations, common initiatives undertaken together with other government administration bodies, social partners, combating economic crime, preventing smuggling of illegal goods and products or providing a high level of security on the market (internal, common and global) are closely related and concern a much wider area than the protection of copyright and related rights, we should, particularly within joined projects, also discuss other intellectual property rights.<sup>2</sup> In such cases, we talk mainly about intellectual property rights covering also such rights as *sui generis* database rights or industrial property rights.

Trading with fake or pirate goods infringing intellectual property rights is to the detriment of legal producers and business entities, as well as to the owners of these rights. In

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<sup>1</sup> Regulation no. 83 of the President of the Council of Ministers of 9 November 2000 creating the Team for Counteracting Infringements of Copyright and Related Rights (M.P. No. 36, item. 727). „Section 3 The tasks of the Team are preparing motions and proposals related with facilitating coordination of activities of government administration in terms of fighting the infringement of copyright and neighbouring rights, in particular:

- 1) presenting the President of the Council of Minister with current analysis of the situation in terms of respecting copyright and related rights,
- 2) presenting the activities aimed at counteracting the infringement of copyright and related rights and fighting infringements,
- 3) preparing proposals of legislative changes aimed at more effective enforcement of copyright and related rights, carrying out interim evaluation of the development of activities undertaken within the framework of fighting the infringements of copyright and related rights.”

<sup>2</sup> Commission Statement concerning Article 2 of the Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights (2005/295/EC) (Official Journal of the European Communities L 94 of 13.04.2005, vol. 48; p. 37).

many cases it proves to be misleading and sometimes it can constitute a threat to consumer health and security.

Developing best practices and effective methods of preventing the infringement of intellectual property rights, as well as guaranteeing their efficient enforcement becomes increasingly necessary, particularly after Poland has signed Schengen Agreement and in the era of new digital technologies and information society.

An important argument in favour of undertaking activities relating to the protection of copyright and related rights, as well as other intellectual property rights is fulfilling commitments arising from contracts, conventions and international agreements adopted by Poland. One of the most important agreements is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).<sup>3</sup>

An important step was the adoption of the Act on changing the copyright and related Rights of 9 May 2007 and some other acts (Journal of Laws No. 99, item 662), implementing the provisions of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights.<sup>4</sup> It introduces detailed regulations related to civil procedure in the case of infringement of intellectual property rights, thus copyright and related rights, database rights, industrial property rights and rights to varieties of plants.

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<sup>3</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights which constitutes Annex No. 1 of the Agreement Establishing the World Trade Organization (WTO), done at Marrakesh on 15 April 1994 (Official Journal of 1996 No. 32, item 143).

<sup>4</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Official Journal of the EU L, No. 157 of 30.04.2004, p. 45; Official Journal of the EU Polish Special Edition, chapter 17, vol. 2, p. 32).

It has unified civil law measures employed in the case of infringement of intellectual property rights, namely:

- copyright and related rights,
- *sui generis* database rights,
- right in registration of a topography of integrated circuits,
- right of protection for a trademark,
- right in registration of an industrial design,
- right of patent and additional right of protection,
- right in registration of a geographical indication,
- right of protection for a utility model,
- exclusive right to a plant variety.

The Act came into force on 20 June 2007 and introduced changed in the following legal acts:

- The Copyright and Related Rights Act of 4 February 1994 (Journal of Laws of 2006, No. 90, item 631, as amended);
- The Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws, No. 43, item 296, as amended);
- The Industrial Property Law Act of 30 June 2000 (Journal of Laws of 2003 No. 119, item 1117, as amended);
- The Protection of Databases Act of 27 July 2001 (Journal of Laws No. 128, item 1402, as amended);
- The Act on legal protection of plant varieties of 26 June 2003 (Journal of Laws No. 137, item 1300, as amended).



Constantly raising the standards related to the protection of intellectual property rights becomes a necessity and a condition for further development of modern societies.

It guarantees keeping and developing creativity in the interest of inventors, creators, authors, artists, performers, producers, consumers, as well as within broadly conceived culture and economy.

Lowering the level of infringements of copyright and related rights, as well as other intellectual property rights and transparent procedures for the acquisition of achievements of modern thought and knowledge guaranteeing proper market functioning, creating mechanisms favouring healthy competition, they all constitute a particularly important challenge for the Polish government and have become one of the aims of activities undertaken by this government, which are significant from the point of view of our international position.

Continuing the use of tested methods of a system for effective prevention of infringements of copyright and related rights, as well as other intellectual property rights remains one of the basic aspects. Government services cooperating in the organization of collective management of these rights play a crucial role here. Lowering the level of the above-mentioned harmful phenomenon constitutes one of the lasting effects of this cooperation.

When conducting systemic activities, initiatives connected with raising civic awareness must be strongly emphasized and both counterfeiting and piracy must be viewed as an act of significant social noxiousness.

Together with an efficient and coherent copyright and related rights protection system it is one of the essential ways necessary to guarantee that new original works are created and that independence and dignity of inventors, creators, etc. is maintained.

Additionally, it should be particularly emphasized that due to the fact that Poland and Ukraine organize the European Football Championship “EURO 2012”, the Polish government adopted numerous guarantees and commitments for the benefit of UEFA which relate to the observance of intellectual property rights. In order to fulfill these guarantees and to improve civic awareness in terms of the protection of intellectual property rights, a cooperation platform, i.e. the Rights Protection Committee was created and it plays the role of a consultative and advisory body to the Minister of Sport and Tourism in terms of the protection of intellectual property rights and related issues concerning the European Football Championship “EURO 2012”. Additionally, this cooperation takes place within the structure

of local coordinators for intellectual property in host cities, as well as through contacts with Ukraine.

The Committee concentrates mainly on preparing the draft of an act which will fulfill guarantees given by Polish authorities concerning “EURO 2012” in terms of protecting intellectual property rights, preventing ambush marketing and public viewing football matches. At the same time, the assumption is that the regime of the act will also apply to other important sports events which may be held in Poland in the future, which is supposed to contribute to the increase of the number of such events by establishing high standards of the protection of intellectual property of organizers.

Another task of the Committee is to conduct campaigns promoting the observance of intellectual property rights and to actively contribute to raising civic awareness in this area.

The current Report is special due to the extension of problems. The authors of the Report tried to present the complexity of activities and the involvement of various Polish government administration bodies participating in activities related mainly to the protection of copyright and related rights, but also to other intellectual property rights, in the perspective of economic, legal and social changes appearing during the analyzed period.

It was particularly important to illustrate activities of law enforcement bodies and of the justice administration throughout the whole process, i.e. from detecting an offender, through bringing charges and issuing a bill of indictment, to the moment when the case is heard by the court.

The authors of the Report tried to show in the relevant period, by way of comparison, data concerning cases examined within the scope of civil procedure, where the leadership initiative lies with owners and holders of these rights.

## **II. GENERAL ISSUES**

### **1. Current legal status**

#### **1.1. Polish legal acts**

The Copyright and Related Rights Act of 4 February 1994 (Journal of Laws of 2006 No. 90, item 631, as amended) is the basic Polish legal act on the protection of copyright and related rights. The remaining auxiliary regulations include mainly:

- The Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws No. 43, item 296, as amended).
- The Radio and TV Broadcasting Act of 29 December 1992 (Journal of Laws of 2004 No. 253, item 2531, as amended).
- The Act on Fighting Unfair Competition of 16 April 1993 (Journal of Laws of 2003 No. 153, item 1503, as amended).
- The Criminal Code Act of 6 June 1997 (Journal of Laws No. 88, item 553, as amended).
- The Industrial Property Law Act of 30 June 2000 (Journal of Laws of 2003 No. 119, item 1117, as amended).
- The Protection of Databases Act of 27 July 2001 (Journal of Laws No. 128, item 1402, as amended).
- The Act on the protection of some services provided by electronic means based on or consisting in conditional access of 5 July 2002 (Journal of Laws No. 126, item 1068, as amended).
- The Act on providing services by electronic means of 18 July 2002 (Journal of Laws No. 144, item 1204, as amended).
- The Customs Law Act of 19 March 2004 (Journal of Laws No. 68, item 622, as amended).
- The Ordinance of the Minister of Justice of 16 October 2002 on designating regional courts hearing cases concerning infringements of copyright and related rights (Journal of Laws No. 180, item 1510, as amended).

- The Ordinance of the Minister of Culture of 2 June 2003 on specifying categories of equipment and optical discs for recording works and payments related to the equipment and optical discs on account of their sale by producers and importers (Journal of Laws No. 105, item 991, as amended).
- The Ordinance of the Minister of Culture of 27 June 2003 on the payments made by the owners of reprographic equipment (Journal of Laws No. 132, item 1232);
- The Ordinance of the Minister of Culture of 30 April 2004 on the register of information about the production of optical discs and types of identification codes (Journal of Laws No. 124, item 1301);
- The Regulation of the President of the Council of Ministers No. 83 of 9 November 2000 on creating the Team for Counteracting Infringements of Copyright and Related Rights (M.P. No. 36, item 727).

## **1.2. International agreements**

- International Convention for the protection of performers, producers of phonograms and broadcasting organizations adopted in Rome on 26 October 1961 (Journal of Laws of 1997, No. 125, item 800);
- Convention Establishing the World Intellectual Property Organization signed in Stockholm on 14 July 1967 (Journal of Laws of 1975, No. 9, item 49);
- Paris Act of the Berne Convention for the Protection of Literary and Artistic Works signed in Paris on 24 July 1971 (Journal of Laws of 1990, No. 82, item 474);
- Universal Copyright Convention as revised at Paris on 24 July 1971 (Journal of Laws of 1978 No. 8, item 28);
- Agreement on Trade-Related Aspects of Intellectual Property Rights constituting Annex 1 of the Agreement Establishing the World Trade Organization (WTO), signed in Marrakesh on 15 April 1994 (Journal of Laws of 1996, No. 32, item 143);
- The World Intellectual Property Organization (WIPO) Copyright Treaty adopted in Geneva on 20 December 1996 (Journal of Laws of 2005, No. 3, item 12);

- The WIPO Performances and Phonograms Treaty (WPPT) adopted in Geneva on 20 December 1996 (Journal of Laws of 2004 No. 41, item 375).

**It should be emphasized that before becoming a Member of the European Community, Poland ratified and submitted ratification documents concerning the Copyright Treaty (WCT)<sup>5</sup> on 23 December 2003 and concerning Performances and Phonograms Treaty (WPPT)<sup>6</sup> on 21 July 2003.**

### **1.3. The EU law**

- Directive of the Council of 14 May 1991 on the legal protection of computer programmes (91/250/EEC) (Official Journal of the European Communities L 122 of 17.05.1991, p. 42; Official Journal of the European Communities, Polish Special Edition, chapter 17, vol. 1, p. 114);
- Council Directive No. 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (Official Journal of the European Communities L 248 of 6.10.1993, p. 15; Official Journal of the European Communities, Polish Special Edition, chapter 17, vol. 1, p. 134);
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on legal protection of databases (Official Journal of the European Communities L 77 of 27.03.1996, p. 20; Official Journal of the European Communities, Polish Special Edition, chapter 13, vol. 15, p. 459);
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (Official Journal of the European Communities 167, of 22.06.2001, p. 10; Official Journal of the European Communities, Polish Special Edition, chapter 17, vol. 1, p. 230);
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work

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<sup>5</sup> *WIPO Copyright Treaty.*

<sup>6</sup> *WIPO Performances and Phonograms Treaty.*

of art (Official Journal of the European Communities L 272 of 13.10.2001, p. 32; Official Journal of the European Communities, Polish Special Edition, chapter 17, vol. 1, p. 240);

- Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (Official Journal of the European Communities L 196 of 02.08.2003, p. 7; Official Journal of the European Communities, Polish Special Edition, chapter 2, vol. 13, p. 469);
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Official Journal of the European Communities L 157 of 30.04.2004, p. 45; Official Journal of the European Union, Polish Special Edition, chapter 17, vol. 2, p. 32);
- Commission Regulation (EC) No. 1891/2004 of 21 October 2004 laying down provisions for the implementation of the Council Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (Official Journal of the European Communities L 328 of 30.10.2004, p. 16);
- Commission Recommendation of 18 October 2005 (2005/737/EC) on collective cross-border management of copyright and related rights for legitimate online music services (Official Journal of the European Communities L 276 of 21.10.2001, p. 54);
- Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version) (Official Journal of the European Communities L 376 of 27.12.2006, p. 28);
- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (Official Journal of the European Communities L 372 of 27.12.2006, p. 12).

## **2. Counteracting infringements of intellectual property rights by special inter – ministerial working groups**

### **2.1. Team for Counteracting Infringements of Copyright and Related Rights**

Successes of both phonographic and film markets translate into a general economic growth. Illegal music and film industries destroy creativity, hinder investments, lead to the reduction of the number of job posts and supports the development of organized crime.

Advanced and functional computer programmes play an increasingly important role in many industries and the technology of computer programmes may be viewed as a domain of fundamental importance for industrial development of our globe.

The development of computer programmes requires significant amount of personnel, as well as technical and financial expenditures, while copying such programmes requires only a fractional part of costs which would otherwise be necessary for their independent development. Pirate programmes reduce profits of entrepreneurs, which are to a large extent connected with design preparations leading to the development of computer programming and indirectly to the development of the whole industry.

In order to effectively protect entities and works of copyright and related rights, the Team for Counteracting Infringements of Copyright and Related Rights has been created under the auspices of the Ministry of Culture and National Heritage.<sup>7</sup>

#### **2.1.1. Composition of the Team**

The Minister of Culture and National Heritage is the Chairman of the Team, while the secretary or undersecretary of state nominated by the Minister of the Interior and Administration assumes responsibilities of the Vice-Chairman.

Pursuant to Article 2. 1. of the Decree, the Team shall also be composed of members in the rank of the secretary or undersecretary of state (in practical terms these are experts nominated by competent secretaries or undersecretaries of state) nominated by:

- a) the Minister of Finance (the Customs Service subordinate to this Ministry),
- b) the Minister of Justice,
- c) the Head of the Chancellery of the President of the Council of Ministers,

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<sup>7</sup> See footnote No. 1.

- d) the Chairman of the Committee for European Integration,
- e) the Minister of National Education,

Additionally, pursuant to the Decree, members of the Team are also individuals nominated by:

- a) the Commander-in-Chief of the Border Guard,
- b) the Commander-in-Chief of the Police.

Representatives of the Polish Patent Office, the National Broadcasting Council and the private sector, mainly collective management societies dealing with the management of copyright or related rights, as well as other organizations which deal with the protection of these rights may also participate in the works of the Team, invited by the Chairman of the Team.

### **2.1.2. Documents of the Team**

#### **Report on the protection of copyright and related rights in Poland**

Since 2001 the document entitled *„Report on the protection of copyright and related rights in Poland”* is prepared by the members of the Team twice a year.

The document is submitted to the President of the Council of Ministers, which indicates its importance.

Annual *„Reports”* are also presented to numerous national and foreign institutions, individuals and environments dealing with the problem of the protection of copyright and related rights.

#### **Programme for the protection of copyright and related rights in Poland**

The document previously entitled *„Strategy of action for the protection of intellectual property rights in Poland”* used to be prepared **every year since 2003** and adopted by the Committee of the Council of Ministers and after its acceptance, to the President of the Council of Ministers.

In 2008 the Team decided that the *„Strategy”* will be prepared every three years.

Such a mode when the *„Strategy”* is prepared every three or four years allows units of the government sector to plan their budgets more effectively. Previously, it was difficult to



undertake any financial responsibilities (eg. courses, competitions) as budgets have already been adopted by central units.

Due to a quite short time for accomplishing the “Strategy” (one year), commitments concerning necessary legislative changes were not possible either, taking into consideration the duration of consultations and of the legislative process.

Currently, a full title of the document is as follows: *„Programme for the protection of copyright and related rights in Poland for the years ...”*.<sup>8</sup>

### 2.1.3. Team Tasks

The tasks of the Team shall include the preparation of applications and proposals concerning the improvement of coordination of actions taken by the governmental administration bodies within the scope of an effective combating of the infringements of copyright and related rights.

The tasks shall in particular include:

- the presentation of the current analysis of the situation within the scope of observance of the copyright and related rights law to the President of the Council of Ministers – in the form of a semi-annual and annual *„Report on the observance of copyright and related rights in Poland”*,
- the presentation of proposals of actions aimed at the prevention of infringements of copyright and related rights and the combating of infringements – in the form of the *„Programme for the protection of copyright and related rights in Poland”*, according to a current formula, the *„Programme”* is prepared for the period of 3 years.
- the development of the proposals of legislative amendments leading to a more effective enforcement of copyright and related rights law;
- periodic evaluation of the progress of actions within the scope of combating the infringements of copyright and related rights.

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<sup>8</sup> Programmes for the protection of copyright and related rights in Poland for the years 2008 – 2010 is available on the official website of the Ministry of Culture and National Heritage:

[http://www.mkidn.gov.pl/cps/rde/xbcr/mkid/program\\_prawo\\_autorskie\\_2008\\_2010.pdf](http://www.mkidn.gov.pl/cps/rde/xbcr/mkid/program_prawo_autorskie_2008_2010.pdf) (Polish version);  
[http://www.mkidn.gov.pl/cps/rde/xbcr/mkid/Program\\_2008\\_en.doc](http://www.mkidn.gov.pl/cps/rde/xbcr/mkid/Program_2008_en.doc) (English version).

#### 2.1.4. The “Internet Group”

One of the most important objectives of the „*Programme*” (strategic objective No. 4, indirect objective 4.2. – *To continue the work of the “Internet Group” in order to draw up efficient methods of disclosing and protecting evidence of crimes against copyright and related rights and other intellectual property rights committed by means of the Internet*) is the accomplishment of specified tasks of the “Internet Group”.

Entities responsible for the operation of this group include:

- the Ministry of Justice (Prosecutor’s Office section),
- the Ministry of the Interior and Administration (IT sector and the Police responsible for pursuit of crimes),
- the Ministry of Finance (the Customs Service),
- the Ministry of Culture and National Heritage

as well as specialists from collective management societies dealing with the management of copyright and related rights and from social sector, e.g. the Association of TV Programme Distributors “Sygnał”; the Polish Chamber of Information Technology and Telecommunications, Electronic Media Committee.

Experts from the Higher Police School in Szczytno and from the Criminal Bureau of the Department for Combating Economic Crime of the Polish Police Headquarters also participate in the works of the Group.

We should emphasize the fact that representatives of Internet Service Providers and of the largest market purchasers and host providers have also been invited to take part in the works of the “Internet Group”.

Among measurable achievements of the „Internet Group” we may enumerate:

- a) creation, under the supervision of experts from the Higher Police School in Szczytno, of a complex IT communication tool connected with a discussion platform, the so called **Dedicated Portal for Knowledge Management**, used by the members of the Group to solve problems and to quickly transfer information about infringements, new technologies, etc. as well as
- b) development of effective methods of conduct aimed at reducing piracy on the web in the form of a document entitled „*Methodology of police work in disclosing and combating intellectual piracy on the Internet*”.

**This document has been implemented in the Police and handed over to the Ministry of Justice to assist prosecutors and judges dealing with the problem of piracy in their work.**

The most important issues include:

1. Undertaking long-term activities – common for government administration, partners from non-governmental organizations and private sector (phonographic companies, film producers, publishers, operators and Internet service providers) – in the form of:
  - a) a dialogue aimed at creating legal services and bulletins *on – line*;
  - b) social campaigns promoting these services and bulletins conducted by instituting, advertising, informing and shaping the content and price policy concerning various works.
2. Continuous improvement of the document „*Methodology of police work aimed at disclosing and combating illegal distribution of works protected by copyright and related rights on the Internet*”. The above-mentioned platform, i.e. **Dedicated Portal for Knowledge Management**, has been created also for this purpose. „*Methodology*” is effectively employed in the works of collective management societies dealing with the management of copyright and related rights, as well as in the works of the Police.
3. Discussing solutions for current legal regulations concerning “**fair personal use**” in the context of providing broad access to musical works on the Internet, as well as “**public use**”.
4. The need to amend criminal law regulations in the Copyright and Related Rights Act aimed particularly at strengthening the efficacy of procedure of prosecution *ex officio*, i.e. prosecution on the basis of a motion.
5. Necessity to conduct common training courses for the Police and public prosecutor’s office. They can be conducted with the participation of own experts, which will allow to minimize costs. What is more, some social partners have already expressed their willingness to conduct training courses *non profit*.
6. Introducing into the structure of every public prosecutor’s office unit a post for a person responsible for the protection of intellectual property.
7. In combating crime we should concentrate on “**agreement**”, on “**developing good practices**” employed by those who store content, i.e. the so called “*host providers*” in terms of combating illegal distribution by those who provide content (*content providers*) covered by exclusive rights, rather than concentrate exclusively on individual receivers.

Common use of musical works in digital form, their availability, a very low cost, on the one hand and the quality which is as good as the quality of the original, on the other hand (e.g. lossless compression files .flac, .ape), the possibility of continuous and easy way of copying files, they all result in the fact that copyright are not sufficiently protected.

## **2.2. Team for Counterfeit Medicines**

Counterfeit medicinal products and illegal marketing of these products become an increasingly common phenomenon which constitutes threat to health and life of consumers. This threat results from the fact that counterfeit products do not comply with quality requirements specified for medicinal products, that they contain inappropriate (usually too small) amount of active pharmaceutical ingredients and sometimes unauthorized active pharmaceutical ingredients of unknown safety of use. Thus, imitations of medicinal products constitute a serious threat to patients and consumers.

Distribution of medicinal products in places not intended for such distribution constitutes another significant problem. When introduced into illegal trade, such medicines lose their original quality due to inappropriate transport and storage conditions. Additionally, the identity of these products is not guaranteed. Among such products we can very often find medicines dispensed exclusively against prescription, which, when used independently, may constitute a serious threat to human health or life due to risk factors concerning administration of these medicines.

In order to counteract such threats, the Minister of Health, at the request of the Main Pharmaceutical Inspector, created the Team for Counterfeit Medicines (hereinafter referred to as CMP Team).<sup>9</sup>

Authorities supervising the production and the market of medicinal products and of dietary supplements, units responsible for inspection of these products and supplements, as well as bodies charged with counteracting and fighting crimes relating to medicinal products participate in the works of the CMP Team.

Apart from the **Main Pharmaceutical Inspector**, who plays the role of the Chairman of the CMP Team, the Team is composed of the representatives of:

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<sup>9</sup> Ordinance of the Minister of Health of 9 November 2007 on the creation of the Team for Counterfeit Medicines (Official Journal of the Ministry of Health of 2007, No. 17, item 92).

- a) the Minister of Health;
- b) the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products;
- c) the Chief Sanitary Inspectorate;
- d) the National Public Prosecutor;
- e) the Commander-in-Chief of the Police;
- f) the Head of the Customs Service;
- g) the Head of the National Medicines Institute.

The role of the Team is to undertake activities which are supposed to contribute to minimize trade with counterfeit medicinal products, medicines sold in places which are not intended for distribution, as well as with counterfeit dietary supplements, which due to undeclared content of active pharmaceutical ingredients used exclusively in medical practice meet criteria set for a medicinal product.

The main areas of Team activities include:

- a. operational activities,
- b. informational activities,
- c. legislative works.

So far the Team has been working during V regular meetings and during two working meetings when tasks specified in the *Ordinance of the Minister of Health of 9 November 2007 on the creation of the Team for Counterfeit Medicines*, hereinafter referred to as the CMP Ordinance, are completed.

### **2.2.1. Organization of the CMP Team work**

Since the CMP started operating in 2008, members of the Team first concentrated on issues concerning organization of the Team work.

By-laws of CMP Team work were adopted and a network for quick information exchange between different offices and units represented by CMP Team members and experts, based on a system of the so called contact points (SPOC) was created. The system allowed for immediate transfer of any information crucial from the point of view of safety of public health

and of information about counterfeit medicinal products, which are immediately passed on to competent authorities and units.

Currently, the Team is working on changes to the by-laws, which will make the Team work more effective. These changes consist, inter alia, in inviting the representatives of the President of the Office of Competition and Consumer Protection and of the Chief Veterinary Officer to participate in the works of the Team as their regular members.

### **2.2.2. Course of action adopted by the CMP Team**

In accordance with previous experiences gained by the members of the CMP Team and with recommendations developed by international organizations and institutions which fight with counterfeit medicinal products (inter alia recommendations developed by WHO – World Health Organization), the main objectives of undertaken activities have been specified as follows:

- a. creating channels for quick exchange of information between offices participating in the works of the CMP Team;
- b. efficient pursuit of illegal trade with medicinal products, including counterfeit medicinal products unauthorized on the Polish market and counterfeit dietary supplements;
- c. improving the efficacy of enforcement of the current legal regulations in pursuing crimes related to illegal trade of medicinal products;
- d. introducing changes in legal regulations aimed at providing definitions of a counterfeit medicinal product, aggravating penalties for crimes related to the production and trade with such products, as well as improving the efficiency of pursuing such crimes;
- e. conducting activities aimed at improving civic awareness in terms of threats resulting from taking medicinal products whose origin is unknown or which were purchased in places not intended for their distribution.

### **2.2.3. Accomplished activities**

#### **2.2.3.1 Analysis and evaluation of the scale of the problem**

So far, in Poland no attempts to distribute counterfeit medicinal products in a legal distribution chain supervised by the National Pharmaceutical Inspectorate have been registered.

The data collected by the CMP Team shows that the trade with counterfeit medicinal products and with medicinal products which have not been authorized for marketing, most frequently takes place:

- a) on the Internet,
- b) in sexshops,
- c) in gyms,
- d) on market places, in street trading.

The most frequently marketed products include medicinal products for treating erection dysfunction, medicines from a group of anabolic steroids and pharmacological slimming products. Additionally, the availability of medicinal products unauthorized for marketing on the territory of the Republic of Poland (usually products including Yohimbine) and counterfeit dietary supplements containing substances reserved for use in medical practice constitute another serious threat.

The above-mentioned products usually come from the Far East countries (particularly India and China) and from the Near East countries (Egypt, Turkey). The experience gained by the Customs Service and by the Police shows that these products usually arrive on the territory of the Republic of Poland in parcels which are delivered to private persons.

In the first quarter of 2008 fifteen postal parcels containing from 15 to 1400 packagings of medicinal products were questioned. Sometimes counterfeit medicinal products are brought from abroad by travellers.

Additionally, last year the Customs Services informed about an attempt to bring on the territory of the Republic of Poland a large amount of medicinal products in 104 509

packagings. These medicines had been confiscated on the territory of Poland before they were introduced into a legal distribution chain.

The last important event which took place in 2008 was the disclosure of a counterfeit medicinal product used in neurological diseases and in cosmetic procedures.

The lack of data concerning the scale of illegal trade with medicinal products, as well as funds (assigned to cover costs of conducting research trials on medicinal products coming from an illegal source) which do not cover all expenses, do not allow us to specify the percentage share of counterfeit medicinal products in comparison with the total trade with legal medicinal products in Poland.

Due to this fact, we should adopt data provided by the World Health Organization, which estimates that in developed countries the amount of counterfeit medicinal products constitutes 1% of the whole market of medicines.

#### 2.2.3.2. Cooperation and information exchange

If the need arises, members of the CMP Team are immediately notified about counterfeit medicinal products and dietary supplements.

In 2008, within the framework of information exchange between the countries, 11 notifications from abroad, concerning counterfeit medicinal products and dietary supplements dangerous for human health were handed over to members of the Team (15 products in total were notified).

On the basis of information submitted to the CMP Team, the Main Pharmaceutical Inspectorate keeps a register of all such notifications, including crucial data, such as serial numbers or expiry dates of medicines called into question. This register is made available to members of the CMP Team and to Provincial Pharmaceutical Inspectors. It allows for an on-going control of a legal distribution chain, in terms of the comparison of products available in trade with the existing list, as well as verification of medicinal products brought on the territory of the Republic of Poland which is conducted by the Customs Service.

Additionally, in 2008, seven notifications of suspicion of perpetration of a criminal offence, related to illegal trade with medicinal products and with counterfeit dietary supplements, were handed over to law enforcement bodies.



#### 2.2.3.3. Improving the efficiency of actions undertaken by law enforcement bodies

According to the CMP Team, in order to achieve a proper level of efficacy in terms of prosecuting pharmaceutical counterfeiting, we should emphasize issues concerning:

- a) training courses and other forms of training related to the issue in question, provided to officers of law enforcement bodies and concerning regulations governing the trade in medicines as well as investigation and jurisdictional practice in terms of infringements of provisions of the Pharmaceutical Law Act;<sup>10</sup>
- b) lowering the costs of studies on confiscated medicinal products, whose analyses are necessary to file possible charges against perpetrators;
- c) considering an idea to appoint, within the Police and within the public prosecutor's office, officers specializing in combating crimes committed within the area of pharmacy; currently, these tasks are performed by units engaged in pursuing and combating economic crimes;
- d) reducing time necessary to obtain expert's opinion within the framework of proceedings conducted by law enforcement bodies.

At the end of 2008, as well as in 2009 we started the 1<sup>st</sup> phase of preparations aimed at creating, among pharmaceutical inspectors, a permanent circle of court experts on pharmacy, which should improve the work of law enforcement bodies.

Additionally, there is a need to conduct training courses for prosecutors, as well as police and Customs Service officers, covering legal regulations which specify rules for trade in medicinal products. Thus, we have started to collect information concerning the possibilities of such training courses conducted by pharmaceutical inspectors from provincial pharmaceutical inspectorates. During the last meeting of the CMP Team, its members decided to refer to an issue which concerns the organization of training courses by separate proceedings. Taking into consideration time needed to obtain expert's opinions in conducted proceedings, which has been mentioned by the Police, the Main Pharmaceutical Inspector has undertaken to

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<sup>10</sup> The Act of 6 September 2001 – Pharmaceutical Law (Journal of Laws of 2008 No. 45, item 271, as amended).

prepare expert's opinions at the request of law enforcement bodies, within the scope of competencies of the National Pharmaceutical Inspection.

#### 2.2.3.4. Proposals of legislative changes

The CMP Team has prepared proposals of new wording of criminal law regulations in the Pharmaceutical Law Act, which it has presented in the form of a draft.

They are supposed to facilitate the procedure of bringing bills of indictment against individuals who are involved in illegal trade in medicinal products (both counterfeit and original).

The most important proposals include:

- a) introducing the definition of a counterfeit medicinal product;
- b) defining the trade in medicinal products in a place unauthorized for such trade as an act punishable with imprisonment for up to 2 years;
- c) a proposal of punishing acts related to counterfeiting medicinal products and to trading in these products with imprisonment for 3 to 10 years;
- d) an obligation to notify the Main Pharmaceutical Inspector about new counterfeit medicinal products imposed on individuals who trade in medicinal products.

Further legal changes will be analyzed by the CMP Team in 2009 and in 2010.

#### 2.2.3.5. Undertaken operational and control activities

In order to eliminate the phenomenon of counterfeit medicinal products, we should concentrate above all on fighting illegal trade in these products.

One of extraordinary meetings of the CMP Team in 2008 was devoted to the problem of illegal trade in medicinal products in sex shops. As a result of decisions made during the meeting, shops previously selected by the Police have been controlled. The control was conducted by police officers in cooperation with pharmaceutical inspectors from Provincial Pharmaceutical Inspectorates and with sanitary inspectors. Within the framework of the operation (conducted simultaneously in seven voivodships) 1 fitness club and 68 sex shops were controlled.

In these places, numerous cases of trade in medicinal products (in one place 400 packages of medicinal products used for treating erectile dysfunction were confiscated) and in medicinal products unauthorized for marketing (containing yohimbine) were detected and numerous dietary supplements were called into question.

According to the data as of December 2008, out of 14 preparatory proceedings 3 were dismissed (due to the lack of statutory features of a prohibited act or due to insignificant social noxiousness of an act) and 2 proceedings were suspended (due to extended time needed to obtain an expert's opinion). Three cases were handed over to a Regional Prosecutor's Office with a motion for the approval of bills of indictment. The remaining preparatory proceedings are in progress.

Similar operations were repeated in 2009.

As a result of these operations, 22 preparatory proceedings were instituted. In 6 of these proceedings charges have already been brought and 2 of them have ended with bringing bills of indictment.

In 5 cases proceedings were dismissed, while in 11 remaining cases proceedings are in progress.

In 3 cases sanitary inspectors imposed fines.

As a result of these operations, the Polish Police Headquarters prepared and sent to Regional Police Headquarters guidelines which specify how to behave in cases concerning the abuse of rights related to medicinal products.

The CMP Team paid particular attention to the problem of common illegal trade in these substances, conducted by means of the Internet.

As a result of conducted investigations, the Main Pharmaceutical Inspector provided the Polish Police Headquarters with a list of websites which illegally sell certain medicinal products.

The completion of further, more extensive activities aimed at reducing the illegal trade in medicinal products on the Internet, has been initiated by the CMP Team decision concerning Polish participation in an operation called "*PANGEA II – International Internet Week for Action*", coordinated by Interpol.

The aim of the operation is to reduce the number of websites illegally selling medicines (to a large extent counterfeit) and to enhance civic awareness about this phenomenon and its consequences.

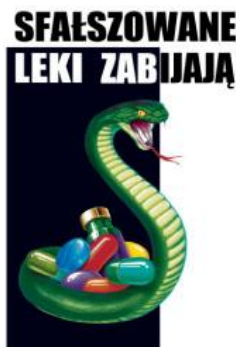
#### 2.2.3.6. Enhancing civic awareness

Enhancing civic awareness about threats connected with purchasing and taking medicinal products which originate from illegal or unknown sources has been classified by the CMP Team as one of the most important elements of actions aimed at fighting against this phenomenon.

Thus, a WHO poster “*Counterfeit Drugs Kill – Snake*”<sup>11</sup> has been prepared in a Polish version and it has been used together with a system of detailed warnings for patients concerning counterfeit medicinal products, as well as with recommendations and suggestions as to how we should buy safe medicines. Such information has been put on websites of:

- the Main Pharmaceutical Inspectorate;
- the Ministry of Health;
- the Polish Police Headquarters;
- the National Medicines Institute;
- the Ministry of Finance.

**Fig. I.2.2.1. A miniature of the Polish version of the WHO poster “*Counterfeit Drugs Kill – Snake*”**



The warning has also been placed on the Customs Service intranet and has been handed over to spokesmen of regional Customs Chambers.

The poster has been published in a large format and has been sent mainly to health care institutions where primary care physicians work.

<sup>11</sup> Rights given by the World Health Organization.

On the official website of the Main Pharmaceutical Inspectorate<sup>12</sup>, in the **FAQ section**<sup>13</sup> there are answers concerning issues under consideration, inter alia names of places where you can buy safe medicines and threats posed by medicines purchased in unauthorized places.

The CMP Team is also engaged in initiatives referring to the introduction of information campaign in the mass media.

Pharmaceutical self-governments and associations of marketing authorization holders and manufacturers have already declared they will help in the organization of the campaign.

#### 2.2.3.7. Conferences

During the conference “*A safe drug*”, which was held in Warsaw, with the participation of the media, on 10 April 2008, we could listen to a lecture presenting the problem of fighting with counterfeit medicinal products and describing activities which are undertaken within this framework in Poland and in other countries around the world.

During a conference “*Intellectual crime as a manifestation of cross – border crime*”, organized by the Regional Police Headquarters in Gdańsk on 15 – 17 October 2008, in which participated representatives of the Police and of the Public Prosecutor's Office, participants had the possibility to learn about current legal regulations and their application in the investigation practice.

#### 2.2.4. International Cooperation

Trade in counterfeit medicinal products constitutes an international problem. A representative of the Main Pharmaceutical Inspector, as one of the members of the CMP Team, participates in the works of:

- a) **the EU Working Group for Counterfeit Medicines – Head of Medicines Agencies Working Group of Enforcement Officers (HMA WGEO);**<sup>14</sup>
- b) “*WHO/IMPACT*” initiative of the World Health Organization.<sup>15</sup>

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<sup>12</sup> <http://www.gif.gov.pl/?aid=215>.

<sup>13</sup> *Frequently Asked Questions*.

<sup>14</sup> In the meeting of the Group, held twice a year, participate representatives of national Medicines Agencies, law enforcement bodies of almost all EU Member States, a representative of the European Commission and of Interpol. During the meetings, new directions and progress concerning activities undertaken by different countries in terms of fighting counterfeit medicinal products are presented. Participants of these meetings also discuss initiatives which may be jointly undertaken by all Member States, at the international level (e.g. proposals of legislative changes, common databases, etc.).

Additionally, a representative of the Main Pharmaceutical Inspector has been appointed as the one who cooperates with the European Medicines Agency, in the role of an expert for counterfeit medicinal products.

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<sup>15</sup> *International Medical Products Anti — Counterfeiting Taskforce* IMPACT is a global project, in which participate representatives of national Medicines Agencies, law enforcement bodies, national Ministries of Health, associations, pharmaceutical companies, medicines distributors and other marketing authorization holders. IMPACT works on recommendations for governments of the countries which are members of WHO and on developing various guidebooks and reference documents concerning counterfeit medicines. Additionally, it coordinates international operational activities (it has organized such operations as: STORM and MAMBA – Tanzania and Uganda). Currently, it participates in the organization of PANGEA II operation.

### **III. DETAILED ISSUES**

#### **1. Systemic analysis of the achievements of law enforcement bodies and of the justice administration related to the enforcement of intellectual property rights in Poland in the years 2006 - 2009**

##### **1.1. Police report on the enforcement of intellectual property rights in the years 2006 – 2008**

###### **Aim, subject and time scope of the survey**

The aim of the survey was to measure the efficiency of preparatory proceedings conducted by the Police which present the dynamism of changes and new tendencies in the years 2006 – 2008.

The adopted research method aims at presenting a collective picture of the problem. According to experts, there were no arguments which would be in favour of presenting problems related to the infringement of intellectual property rights in the local scale, i.e. with reference to units of administrative division adopted by the Police. This type of crime is evenly distributed on the territory of the whole country.

The survey covered crimes related to the infringement of intellectual property rights in terms of:

- ascertained and detected offences specified in the following acts:
  - The Copyright and Related Rights Act of 4 February, 1994 (Journal of Laws of 2006, No. 90, item 631, as amended);
  - The Industrial Property Law Act of 30 June 2000 (Journal of Laws of 2003, No. 119, item 1117, as amended);
  - The Act on the protection of some services provided by electronic means based on or consisting in conditional access of 5 July 2002 (Journal of Laws No. 126, item 1068, as amended);
  - The Act on Fighting Unfair Competition of 16 April 1993 (Journal of Laws of 2003, No. 153, item 1503, as amended);

- The Criminal Code Act of 6 June 1997 (Journal of Laws No. 88, item 553, as amended);
- instituted and concluded preparatory proceedings;
- preparatory proceedings which ended with a bill of indictment.

In the light of data collected by the Police conducting investigations concerning the infringement of intellectual property rights, in the years 2006 – 2008 we could observe the increase of this kind of crime.

However, this upward trend is standard and proportional for the whole Europe.

It is due to the fact that the focus has been shifted from luxury goods faked to a large extent in previous years. Range of fake and pirate goods has widened, covering also mass consumption articles, such as: food products, cosmetics, hygiene and cleaning products, spare parts for vehicles, various electric equipment (eg. broadly conceived household appliances), both utility and technical, as well as accessories to this equipment (batteries, battery chargers, toners), toys.

We can observe that medicinal products and other substances, as well as plant protection products are counterfeited more and more frequently.

**Higher demand for cheaper consumer goods is also due to global economic changes, i.e. to the so called financial crisis.**

Registered percentages of police statistical measures (year 2008 in comparison with 2006) look as follows:

- number of closed proceedings (increase by approx. 19%);
- number of detected crimes (increase by approx. 17%);
- number of suspects (increase by approx. 14%);
- number of motions for a bill of indictment, including also the number of cases handed over to family courts (increase by approx. 10%).

**These statistics, despite general trend, show that the effectiveness and efficacy of Polish law enforcement bodies within the framework of cases concerning the infringement of intellectual property rights have improved.**



In 2008, we could observe a slight decline in the number of preparatory proceedings instituted for the first time. It is probably due to the fact that there has been a significant transfer of these crimes from market places to the Internet.

As the Internet becomes more and more popular, the demand for optical storage devices with pirate copies of films, literary texts and computer programmes is falling. There are more and more people who use the ICT system to commit various crimes, including crimes related to the infringement of intellectual property rights.

In 2008 the number of instituted cases concerning the infringement of copyright and related rights by means of the Internet almost doubled, i.e. reached **695 cases** in comparison with **378 cases in 2007**.<sup>16</sup>

This increase is due to the characteristic nature of such crimes, namely the possibility to commit a crime without any direct contact with other people, the sense of anonymity and the belief that you can avoid possible punishment. This phenomenon is fostered by insufficient social education and consequently, by common belief that unauthorized use of intellectual property is not a crime.

The analysis of violations of regulations concerning intellectual property rights specified in the acts included in the survey allows for drawing the following conclusions:

1. **The Criminal Code** penalizes theft and receiving of stolen property (both intentional and unintentional) of a computer programme. **In 2008, in comparison to 2006**, we could observe an **increase by almost 30%** of the number of crimes concerning (including crimes committed by means of the Internet) the use of pirate software in business activity and crimes concerning both types of receiving of stolen property. At the same time, **in 2008** the number of closed proceedings included in this category remained at a level similar to the one from **2007**. However, in comparison with the **year 2006** an **increase by 16.5%** was observed.
2. **The Copyright and Related Rights Act** covers illegal distribution of films, music, books, computer programmes and TV programmes. Statistical data referring to this area show a **decrease in the number of instituted preparatory proceedings by 9% in 2008 in comparison with 2006**, which consequently results in the decrease in the

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<sup>16</sup> Data on the basis of: the Report on the observance of copyright and related rights for the year 2008 prepared by the Team for Counterfeiting Infringements of Copyright and Related Rights, p. 14, [http://www.mkidn.gov.pl/cps/rde/xbcr/mkid/20090320\\_RAPORT\\_2009.pdf](http://www.mkidn.gov.pl/cps/rde/xbcr/mkid/20090320_RAPORT_2009.pdf).

number of suspects by 30% and the decrease in the number of bills of indictment by 36% in the same period.

3. **The Act on the protection of some services provided by electronic means based on or consisting in conditional access** allows for the disclosure and prosecution of crimes consisting in stealing a TV broadcast signal for the detriment of operators of cable TV and of satellite TV platforms. In this area we observed an increase in the number of instituted proceeding by **135% (from 156 to 367)**, of the number of closed preparatory proceedings by 405% (from 154 to 779), of the number of suspects by 335% (from 121 to 527) and of the number of indictments by 309% (from 119 to 487) **in 2008 in comparison with 2006**. One of negative phenomena is a significant increase (by 401%) of discontinued preparatory proceedings (from 61 to 306), which probably resulted from difficulties which persons who conducted and supervised the proceedings had, as far as the interpretation of regulations was concerned.
4. **The Industrial Property Law Act** includes the interdiction to infringe trademarks, patents, utility models and industrial designs. August 2007, when the act concerning the so called *first marketing – producer and the first importer* was amended, was a key date for combating this type of crimes. **The amendment makes it possible to prosecute everybody who introduces counterfeit products on the market.**<sup>17</sup> This change resulted in the **increase in the number of detected crimes** in the following year by **140%** (from 574 in 2007 to 1390 in 2008). Additionally, it should be noted that the number of ascertained crimes relating to the Industrial Property Law Act in the same period increased by over 40%.
5. **The Act on Fighting Unfair Competition** is employed and treated as a supplementary document referring to the infringement of industrial property rights when fake products are introduced on the market at significantly lowered prices. The role of this act has diminished due to the possibility of instituting preparatory proceedings ex officio or upon the

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<sup>17</sup> Due to problems which resulted from the legal opinion, presented (in previous legal form) by the Supreme Court, concerning the term „marketing”, the legislator fulfilled the postulate to amend Article 305 paragraph 1 of the Industrial Property Law Act of 30 June 2000, so as to enable the prosecution of every perpetrator who participated in the act of trading infringing in this way the rights protecting trademarks.

According to the decision of the Supreme Court of 24 May 2005 case ref. number I KZP 13/05 (OSNKW 2005, No. 6, item 50), „marketing”, referred to in this provision, means transferring goods bearing fake trademark for marketing, for the first time, by a producer or by an importer. In such casus, however, individuals might only be accused of secondary marketing of fake goods or of purchasing these goods from such people. Defendants were acquitted usually due to the fact that the court assumed the behaviour of defendants didn't meet the statutory criteria of a crime.

In the Act of 29 June 2007 on the amendment of the Industrial Property Law Act (Journal of Laws No. 136, item 958) the above-mentioned problem has been taken into consideration by amending Article 305 of the Industrial Property Law Act. Regulations in his area came into force on 31 August 2007.

request of entitled aggrieved party, by virtue of industrial property right (pursuant to regulations amended in August 2007). It should be noted that in 2008 the total number of completed proceedings concerning the infringement of regulations specified in the Act on Fighting Unfair Competition constituted 1.5% of the number of all completed proceedings relating to the infringement of intellectual property rights.

In the case of intellectual property rights infringed by means of the Internet, an important element, as far as the detection of crimes and their perpetrator is concerned, is the command of new technologies employed in this domain. Identifying new services employed for committing criminal acts allows for appropriate use of regulations.

When analyzing cases concerning illegal distribution of files covered with copyright protection on the Internet, it should be noted that they are highly complex and require from persons conducting these proceedings both the command of ICT and law (frequently exceeding the scope of copyright and related rights).

What is characteristic for this type of crime is its cross-border nature, to which the following additional aspects are related: *name of Internet domain, hosting, collocation, server on which an Internet service is provided (webpage – http, ftp, email server – electronic mail, instant messenger, hub p2p)*.

These conditions require coordination and close cooperation of law enforcement bodies and of justice administration, sometimes of many countries, in order to identify perpetrators of Internet crimes and to secure evidence.

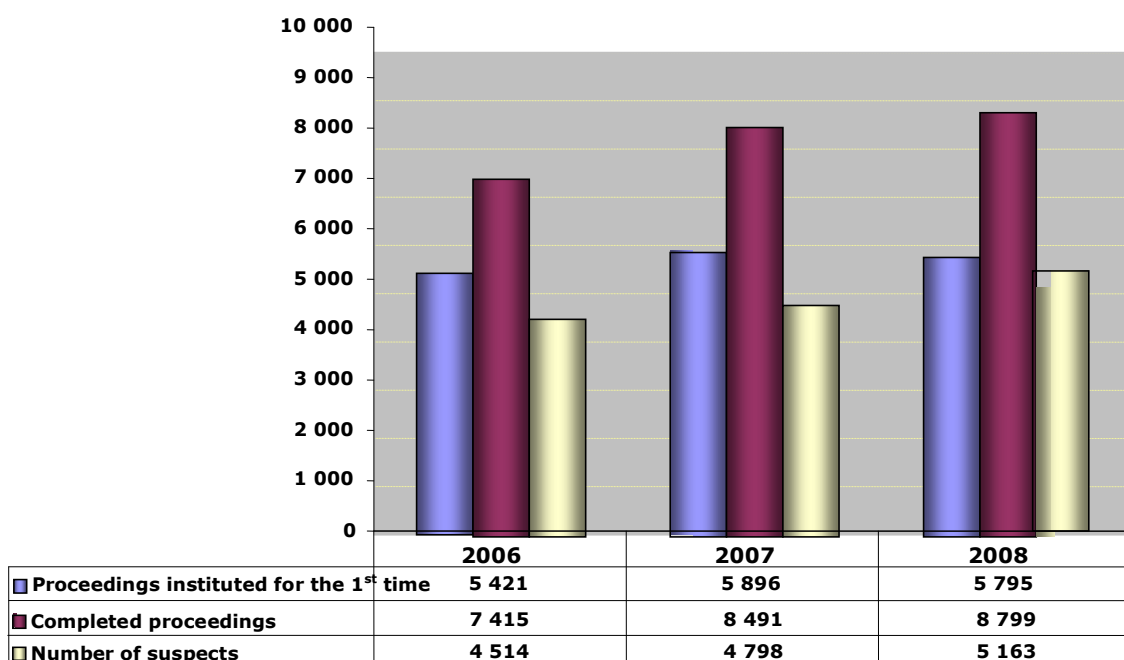
Cases concerning acts of stealing TV broadcasting signal can also be complicated. In the case of satellite TV, we deal with elements related to the IT (computer programmes allowing for coding and decoding TV broadcasting signal) and to electronics (a smart card and a satellite decoder).

Infringements of industrial property rights still appear mainly in their previous forms. It is increasingly frequent that sale offers of fake products are placed on the Internet and purchased products are delivered by courier companies. Different forms of payment (cash, domestic and foreign bank transfers, cash on delivery, payment and credit cards, e-transfers, by Internet agents – eg. *PayPal*, etc.) contribute to the increase of crimes related to the infringement of this type of rights.

It should be emphasized that a vital aspect of disclosing and fighting crimes committed to the detriment of the owners of intellectual property rights is active involvement of potential aggrieved parties and their proxies or representatives. The owner of copyright and of related rights to a given work is the only person who, on the basis of appropriate trade agreements, has necessary information to declare that the rights in question have been infringed. Situation is similar in the case of industrial property rights, where the owner of a trademark or of a patent is the only person who can verify whether or not such rights have been infringed.

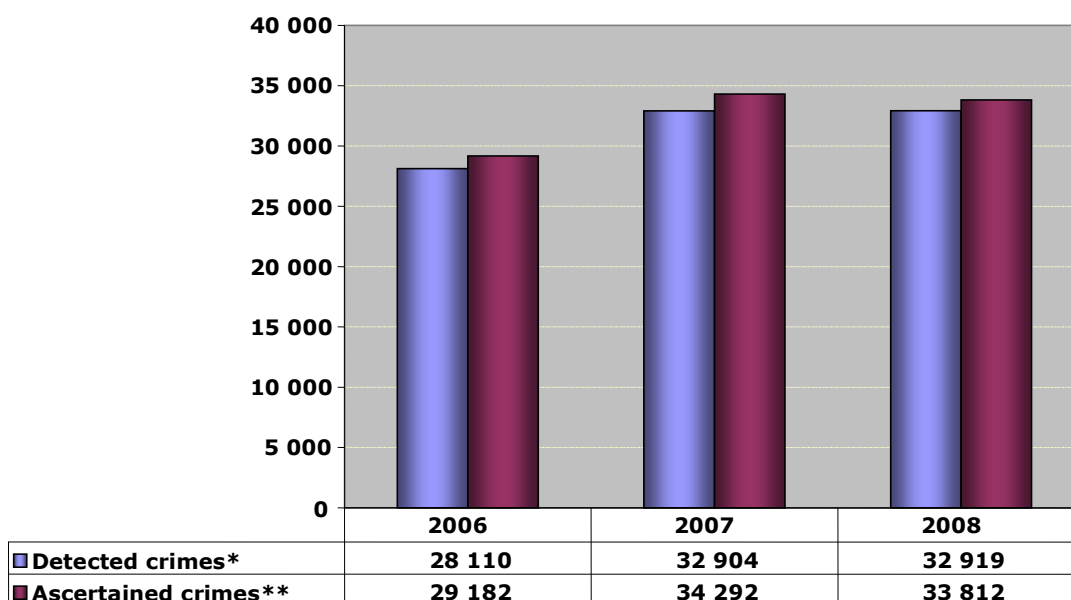
### Diagram III. 1.1.1.

**Intellectual property – instituted and completed proceedings and the number of suspects in 2006, 2007, 008**



### Diagram III. 1.1.2.

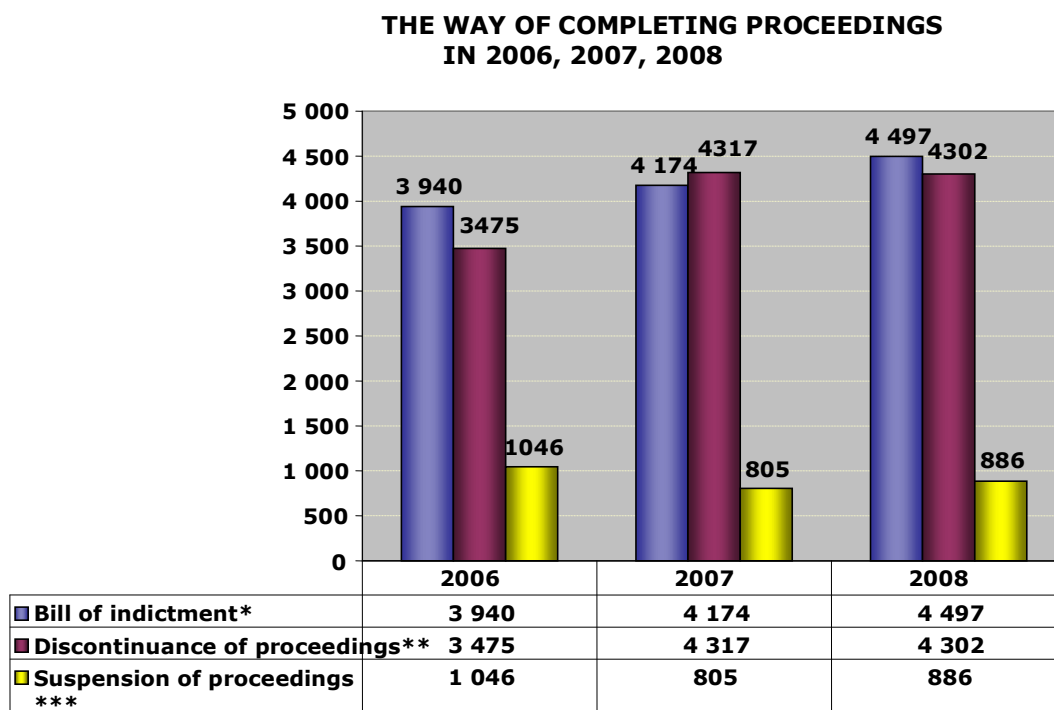
**Comparison of detected crimes with ascertained crimes  
in 2006, 2007, 2008**



\* A detected crime is an ascertained crime where in completed preparatory proceedings at least one suspect has been identified.

\*\* An ascertained crime is a crime or a misdemeanour prosecuted upon by public accusation, covered by preparatory proceedings, handed on by the Police to the Public Prosecutor's Office to complete the case.

Diagram III. 1.1.3.



\* – filing a motion to the public prosecutor to approve or to prepare a bill of indictment, including the approval of a motion to examine the case in accelerated proceedings, handed over to other bodies, and conditional discontinuance;

\*\* – filing a motion to the public prosecutor to approve or to prepare a decision on the discontinuance of proceedings;

\*\*\* – filing a motion to suspend or to approve a decision on suspending an investigation or an inquiry.

## **1.2. Report of the National Public Prosecutor's Office on the enforcement of intellectual property rights in the years 2006 – 2008 and in the 1<sup>st</sup> half of 2009**

### **Aim, subject and time scope of the survey**

When adopting its research method the National Public Prosecutor's Office decided that the method which presents information by showing interdependencies between the increase and the decrease in a given category of crimes within every jurisdiction of an appellate prosecutor's office (a superior, general organizational unit of the public prosecutor's office to which belong district and regional prosecutor's offices located on the area under the jurisdiction of a given appellate prosecutor's office) and which shows whether and how disclosed crimes have been detected is justified.

The Prosecutor's Office has also made a search query concerning adopted measures for acquitting judgements (by filing an appeal) and their outcomes.

Statistics originating from 11 appellate prosecutor's offices has thus been analyzed.

The survey covered the following categories of crimes:

- 1) from the Copyright and Related Rights Act (Article 115, Article 116, Article 117, Article 118, Article 119);
- 2) from the Industrial Property Law Act (Article 303, Article 304, Article 305);
- 3) from the Act on the protection of some services provided by electronic means based on or consisting in conditional access (Article 6, Article 7);
- 4) from the Act on Fighting Unfair Competition (Article 23, Article 24, Article 24a);
- 5) from the Criminal Code Act:
  - Article 278 paragraph 2 (also Article 294 paragraph 1) - illegal acquisition of a computer programme aimed at obtaining financial gain,
  - Article 291 paragraph 1, Article 291 paragraph 2 – intentional receiving of a stolen computer programme,
  - Article 292 paragraph 1, Article 292 paragraph 2 – unintentional receiving of a stolen computer programme,

The survey covered the above-mentioned cases registered in the period from the beginning of 2007 to the end of June 2009.

### **Subject of the survey**

The following data was the subject of the survey:

- number of registered cases concerning crimes referred to in points 1 – 5;
- number of preparatory proceedings instituted in these cases;
- number of cases from this category which ended with substantive decisions:
  - a) filing a bill of indictment;
  - b) discontinuance pursuant to Article 17 paragraph 1 (criminal proceedings shall not be instituted, or, if previously instituted, shall be discontinued) subparagraph 3 of the Code of Criminal Procedure;<sup>18</sup>
  - c) discontinuance pursuant to Article 17 paragraph 1 subparagraph 10 of the Code of Criminal Procedure;<sup>19</sup>
  - d) discontinuance pursuant to Article 17 paragraph 1 subparagraphs 1, 2, 4 – 9 inclusive;<sup>20</sup>
  - e) motion for conditional discontinuance of proceedings;
- number of judged cases:
  - a) sentence (absolute);
  - b) sentence (suspended);
  - c) acquittal;
  - d) number of appeals filed in these cases.

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<sup>18</sup> Insignificant social noxiousness of an act.

<sup>19</sup> Lack of a required leave to prosecute or of an application for prosecution filed by an entitled person.

<sup>20</sup> 1) the act has not been committed, or there have not been sufficient grounds to suspect that it has been committed.

2) the act does not possess the qualities of a prohibited act, or when it is acknowledged by law that the perpetrator has not committed an offence.

4) it has been established by law that the perpetrator is not subject to penalty.

5) the accused is deceased.

6) the prescribed statute of limitations has lapsed.

7) criminal proceedings concerning the same act committed by the same person has been validly concluded or, if previously instituted, is still pending.

8) the perpetrator is not subject to the jurisdiction of the Polish criminal courts.

9) there is no complaint from an entitled prosecutor.



Referring to the scope of research, it should be noted that from 31 August 2007, the wording of Article 305 paragraph 1 of the Industrial Property Law Act was changed. The analysis covers also this change.

The change in question has eliminated a legislative problem which appeared after presenting in the decision of the Supreme Court of 24 May 2005 a legal opinion concerning the interpretation of the term “**marketing**” and it allowed for effective prosecution of all individuals infringing rights which protect trademarks.<sup>21</sup>

### **The analysis of data concerning respective jurisdictions of appellate prosecutor's offices**

#### **➤ Appellate Prosecutor's Office in Białystok (1)**

The Appellate Prosecutor's Office in Białystok is composed of:

- District Prosecutor's Office in Białystok;
- District Prosecutor's Office in Łomża;
- District Prosecutor's Office in Olsztyn;
- District Prosecutor's Office in Suwałki.

Within the jurisdiction of Białystok Appellate Prosecutor's Office, in the period from 2007 to 30 June 2009, 1140 cases from the described category have been registered in total, including 504 cases in 2007 and 127 cases in 2009 (until 30 June 2009).

Within this jurisdiction in 2007 proceeding were instituted for 441 out of 504 registered cases – the most of them, namely 248, were instituted pursuant to regulations of the Copyright and Related Rights Act.

In 2008 proceeding were instituted for 448 out of 509 registered cases, 238 of which concerned the Copyright and Related Rights Act.

As a way of comparison – in total 7 registered cases (5 in 2007 and 2 in 2008) concerned provisions of the Act on Fighting Unfair Competition.

Within the jurisdiction of Białystok Appellate Prosecutor's Office, in the period covered by the analysis, the largest number of registered cases, as many as 234, concerned the crime under Article 116 of the Copyright Act, 106 of these cases were registered in the district

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<sup>21</sup> See footnote 17.

which is under the jurisdiction of the District Prosecutor's Office in Olsztyn (in the 2<sup>nd</sup> quarter of 2009 there were only 6 registered cases in this district).

Within the jurisdiction of Białystok Appellate Prosecutor's Office the largest number of instituted cases concerned the violation of Article 118 of the Copyright Act (257 cases), 239 cases were registered in the district which is under the jurisdiction of the District Prosecutor's Office in Olsztyn.

However, when we analyze these 239 cases, we can see that the greatest number of cases were registered in the 2<sup>nd</sup> quarter of 2008, namely 72, while in the 2<sup>nd</sup> quarter of 2009 there was only 1 instituted case which concerned the crime under Article 118 of the Copyright Act.

**Thus, comparing statistics from respective District Prosecutor's Offices in different periods covered by the analysis may not be reliable.**

Between the 1<sup>st</sup> quarter of 2007 and the 2<sup>nd</sup> quarter of 2008 within the jurisdiction of Białystok Appellate Prosecutor's Office 221 indictments referring to issues subject to the analysis were registered, in 249 cases proceedings were conditionally discontinued. There were 304 discontinuances in total, where 201 pursuant to Article 17 paragraph 1, 2, 4 – 9 of the Code of Criminal Procedure.

The analysis of substantive decisions made within the jurisdiction of Białystok Appellate Prosecutor's Office shows that in the period from the 1<sup>st</sup> quarter of 2007 to the 4<sup>th</sup> quarter of 2008 there were more conditional discontinuances (249) than bills of indictment (221).

However, a quarterly analysis shows a significant reduction of conditional discontinuances, from 82 in the 2<sup>nd</sup> quarter of 2008 to 7 in the 4<sup>th</sup> quarter of 2008. as a way of comparison, the number of bills of indictment in the same period was 32 and 23 respectively.

In 2007 within the whole jurisdiction of Białystok Appellate Prosecutor's Office, out of 395 concluded cases relating to the analyzed categories, the greatest number of cases ended with a motion for conditional discontinuance of proceedings (150). Respectively, in 2008 out of 379 cases the greatest number were discontinued pursuant to Article 17 paragraph 1, 2, 4 – 9 of the Code of Criminal Proceedings (in total). In the same year there were 109 cases closed with a motion for conditional discontinuance of proceedings.

In 2009 (until 30 June 2009) the greatest number of cases were concluded with discontinuance of proceedings pursuant to Article 17 paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Proceedings (37) and with a bill of indictment (32).

In 2007 judgement was passed in 45 cases in this category, in 2008 in 46 cases and in 2009 in 15 cases.

Suspended sentences prevailed (34 in 2007, 36 in 2008 and 12 in 2009).

### ➤ **Appellate Prosecutor's Office in Gdańsk (2)**

The Appellate Prosecutor's Office in Gdańsk is composed of the following District Prosecutor's Offices:

- District Prosecutor's Office in Bydgoszcz;
- District Prosecutor's Office in Elbląg;
- District Prosecutor's Office in Gdańsk;
- District Prosecutor's Office in Słupsk;
- District Prosecutor's Office in Toruń;
- District Prosecutor's Office in Włocławek.

Within the jurisdiction of Gdańsk Appellate Prosecutor's Office, in the period covered by the analysis, 3678 cases falling under this category were registered – 1545 in 2007 and 667 cases in 2009 (until 30 June).

In 2007 the greatest number of proceedings were instituted pursuant to the provisions of the Criminal Code (617) out of 1401 of all proceedings covered by the analysis.

In 2008 out of 1466 registered cases 1327 were instituted, the greatest number of them pursuant to provisions of the Criminal Code.

In 2007 out of 1465 concluded cases there were 472 discontinuances of proceedings pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure. A significant number of cases, namely 377, concluded with a bill of indictment.

Out of 221 judged cases there were 148 suspended sentences and 67 unsuspended sentences.

In 2008, out of 181 judged cases there were 143 suspended sentences and 29 unsuspended sentences.

In 2008, similarly to 2007, there were 12 appeals (in 2007 there were 8 of them) despite the increase in the number of acquittals from 6 to 9.

In the 1<sup>st</sup> quarter of 2007, 95 registered cases concerned the crime under Article 116, paragraph 1 of the Copyright and Related Rights Act, while 15 cases concerned the crime under paragraph 2 of this Article and 14 of them under paragraph 3, which in total amounts to 124 cases.

Out of these 124 cases, 105 proceedings were instituted and 15 bills of indictment were filed.

In total, 58 cases were discontinued, 35 of them pursuant to Article 17 paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure.

Only in 7 cases a one-year suspended imprisonment sentences were passed.

In the 2<sup>nd</sup> quarter of 2007 the largest number of cases, i.e. 81, were the cases concerning crimes under Article 305 of the Industrial Property Law Act.

Also in this category discontinuances (46) prevailed. Only 5 bills of indictment were filed.

Similarly as in the 1<sup>st</sup> quarter of 2007, a significant number of cases concerning crimes penalized under Article 291 of the Code of Criminal Procedure were registered, but in the 1<sup>st</sup> quarter of 2007 there were 89 of such cases, while in the 2<sup>nd</sup> quarter of 2007 – 76 cases.

One should note a significant number of bills of indictment filed against perpetrators of crimes penalized under Article 291 paragraph 1 of the Code of Criminal Procedure. In the 2<sup>nd</sup> quarter of 2007 there were 27 such cases, while in the 1<sup>st</sup> quarter of 2007, 17 bills of indictment were filed, 32 cases were discontinued, **but as many as 11 one-year absolute sentences for up to 1 year and 6 sentences for over 2 years were passed.**

In the 3<sup>rd</sup> quarter of 2007 there were 48 registered cases concerning crimes under Article 116, paragraph 1 – 4 of the Copyright and Related Rights Act and 67 cases concerning crimes penalized under Article 291, paragraph 1 of the Code of Criminal Procedure.

The largest number of cases registered in that period, i.e. 65, were cases concerning crimes under Article 305, paragraph 1 – 3 of the Industrial Property Law Act.

Due to an inconsistent structure of trends, the comparison of 3 quarters of one year (2007) indicates some difficulties with interpretation.

In the 4<sup>th</sup> quarter of 2007, similarly as in the 3<sup>rd</sup> quarter of the same year, there was a large number of registered cases concerning crimes penalized under Article 291, paragraph 1 of the Code of Criminal Procedure, i.e. 68, and 2 crimes penalized under Article 291, paragraph 2 of the Code of Criminal Procedure.

Out of this number, 61 proceedings were instituted (58 concerning crimes penalized under Article 291, paragraph 1 of the Code of Criminal Procedure), 22 bills of indictment were filed, but in total 62 cases were discontinued, which constituted a large number of all registered cases.

In the 1<sup>st</sup> quarter of 2008 the largest number of registered cases concerned crimes penalized under Article 291, paragraph 1 of the Code of Criminal Procedure, i.e. 74 cases. Out of these 74 cases 13 bills of indictment were filed, while 40 cases were discontinued, 34 of which pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal

Procedure. Two absolute sentences for up to 1 year of imprisonment and five absolute sentences for 1 year of suspended imprisonment were passed, there was also 1 sentence for 1 year of suspended imprisonment.

One appeal was dismissed.

Similarly as in 2007, also in the 1<sup>st</sup> quarter of 2008 a significant number of registered cases, namely 64 concerned crimes under Article 116 paragraph 1 – 4 of the Copyright and Related Rights Act.

Out of 33 concluded cases falling under this category, 25 were discontinued, including 13 pursuant to Article 17 paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure, with reference to 11 cases, bills of indictment were filed and 9 motions for conditional discontinuance of proceedings were filed to competent courts. In the period covered by the analysis, only two one-year suspended imprisonment sentences were passed.

Also in the 2<sup>nd</sup> quarter of 2008 a significant number of cases concerning crimes penalized under Article 291, paragraph 1 of the Code of Criminal Procedure were registered, i.e. 65 cases (74 cases in the 1<sup>st</sup> quarter), 46 of them were discontinued and with regard to 21 cases bills of indictment were filed. As a way of comparison, we may note that in the 2<sup>nd</sup> quarter of 2007, out of 76 registered cases concerning the crime penalized under Article 291, paragraph 1 of the Code of Criminal Procedure 27 cases ended with a bill of indictment, while 51 cases were discontinued (34 of them pursuant to Article 17 paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure).

More cases registered in the 2<sup>nd</sup> quarter of 2008 concerned crimes under Article 116 paragraph 1 – 4, i.e. 86 cases in total, 15 of which terminated with filing a bill of indictment and 39 were discontinued, 13 cases were discontinued pursuant to Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure.

Out of 15 bills of indictment there were: one suspended sentence for imprisonment up to 1 year and one suspended sentence for imprisonment for up to 2 years and 2 suspended sentences for imprisonment for over 2 years.

In the 3<sup>rd</sup> quarter of 2008 the largest number of registered cases concerned the crime penalized under Article 278, paragraph 2 of the Code of Criminal Procedure – 102 in total, while 62 cases concerned crimes under Article 116, paragraph 1 – 4 of the Copyright and Related Rights Act.

Out of 102 cases concerning crimes penalized under Article 278, paragraph 2 of the Code of Criminal Procedure, with regard to 31 cases bills of indictment were filed, and there were 2 motions for conditional discontinuance of proceedings.

Out of 29 discontinued cases in this category, 22 were discontinued pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure (one discontinuance pursuant to Article 17, paragraph 1, subparagraph 3 and one pursuant to Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure).

One absolute sentence for imprisonment for over 1 year and 10 absolute sentences for suspended imprisonment for up to one year were passed. Additionally, in each group there were two suspended sentences for imprisonment for up to 2 years and for over 2 years.

One acquittal was also passed, but no appeal was filed.

There was also a significant number of registered cases (80) concerning crimes under Article 305, paragraph 1 – 3 of the Industrial Property Law Act, where 12 bills of indictment were filed. As in other cases, discontinuances prevailed – there were 23 of them (2 proceedings discontinued pursuant to Article 17, paragraph 1, subparagraph 3 and 2 discontinued pursuant to Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure).

One suspended sentence for imprisonment for up to 1 year and two suspended sentences for imprisonment for over 2 years were also passed.

An appeal from an acquitting sentence was dismissed.

In the 4<sup>th</sup> quarter of 2008 there were 163 registered cases concerning crimes under Article 305, paragraph 1 – 3 of the Industrial Property Law Act. Also in this category as many as 56 cases were discontinued (19 pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure and 10 pursuant to Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure).

Bills of indictment were filed only with respect to 14 cases, 3 suspended sentences of imprisonment for up to 1 year and one suspended sentence for imprisonment for up to 2 years, as well as two suspended sentences for imprisonment for over 2 years were passed.

Apart from 14 bills of indictment, 3 motions for conditional discontinuance of criminal proceedings were filed.

In the 4<sup>th</sup> quarter of 2008 there was also a significant number of registered cases concerning crimes penalized under Article 278, paragraph 2 of the Code of Criminal Procedure, i.e. 77 and 13 crimes penalized under Article 294, paragraph 1 (90 in total).

In the 4<sup>th</sup> quarter of 2007 – 64 and 10 respectively.

With respect to 42 out of 90 cases, bills of indictment were filed and 49 proceedings were discontinued (the majority pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure).

Fourteen suspended sentences for imprisonment for up to 1 year and three suspended sentences for imprisonment for up to 2 years, as well as three for over 2 years were also passed. There were 2 acquittals and one appeal was allowed.

There was also a significant number of registered cases concerning crimes penalized under Article 291 paragraph 1, i.e. 70 cases, where 25 bills of indictment were filed and 49 cases were discontinued (the majority of them, i.e. 37, pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure).

In the 1<sup>st</sup> quarter of 2009 the largest number of registered cases concerned crimes penalized under Article 278, paragraph 2 (70 cases in the 1<sup>st</sup> quarter and together with Article 294, paragraph 1, eight additional cases, thus 78 cases in total). In total, 25 bills of indictment were filed and 26 cases were discontinued (17 pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure).

**In turn, a significant increase of the number of adjudications was observed – sentences for imprisonment up to 2 years and for over 2 years – 2 for each group, and in 17 cases suspended sentences for imprisonment for up to one year were passed.**

There was one acquittal and one appeal was dismissed.

In the 2<sup>nd</sup> quarter of 2009 the greatest number of registered cases concerned crimes under Article 305, paragraph 1 – 3 of the Industrial Property Law Act, i.e. 68 cases, 40 of which were discontinued, while 14 ended with filing bills of indictment. Only 5 suspended sentences for imprisonment for up to one year were passed.

There was also a significant number of cases concerning crimes penalized under Article 291, paragraph 1 of the Code of Criminal Procedure, i.e. 58 cases, 21 of which ended with filing bills of indictment and 13 of which were discontinued.

### ➤ **Appellate Prosecutor's Office in Katowice (3)**

The Appellate Prosecutor's Office in Katowice is composed of:

- District Prosecutor's Office in Bielsko Biala;
- District Prosecutor's Office in Częstochowa;
- District Prosecutor's Office in Gliwice;
- District Prosecutor's Office in Katowice.

In the 1<sup>st</sup> quarter of 2007, within the jurisdiction of Katowice Appellate Prosecutor's Office 313 cases concerning crimes which fall under the above-mentioned categories were



registered, proceedings were instituted in 238 cases. As a way of comparison, in the 1<sup>st</sup> quarter of 2008 there were 373 registered cases and proceedings were instituted for 331 of them. In the first quarter of 2009, there were 291 registered cases, out of which proceedings were instituted for 240.

In the 1<sup>st</sup> quarter of 2009, we can thus observe a decrease in the number of registered proceedings compared to the same periods in previous years, with the same proportion of notices to the number of instituted proceedings.

In the 1<sup>st</sup> quarter of 2007, fifty proceedings concerning crimes under Article 116 of the Copyright and Related Rights Act were instituted. In this category, 8 proceedings ended with filing bills of indictment, while 9 proceedings were discontinued. As a way of comparison, in the 1<sup>st</sup> quarter of 2008, there were 33 instituted proceedings relating to this kind of crime, 11 proceedings ended with filing bills of indictment and 11 cases were discontinued. In turn, in the 1<sup>st</sup> quarter of 2009, the number of instituted proceedings concerning the crime in question amounted to 29, 9 bills of indictment were filed and 11 proceedings were discontinued.

Within the framework of the Industrial Property Law Act (Article 303, 304 and 305) in the 1<sup>st</sup> quarter of 2007 there were 35 instituted proceedings (56 proceedings in the 1<sup>st</sup> quarter of 2008 and 57 proceedings in the 1<sup>st</sup> quarter of 2009). In the 1<sup>st</sup> quarter of 2007 bills of indictment were filed with regard to 4 cases and in the 1<sup>st</sup> quarter of 2008 this number amounted to 18 cases and to 23 cases in the 1<sup>st</sup> quarter of 2009. In the 1<sup>st</sup> quarter of 2007, four proceedings were discontinued, in the 1<sup>st</sup> quarter of 2008 the number of discontinued proceedings amounted to 13, and there were 14 discontinued proceedings in the 1<sup>st</sup> quarter of 2009.

**The presented data shows that within the jurisdiction of Katowice Appellate Prosecutor's Office, the number of cases falling into the category in question is systematically growing, the number of proceedings which end with filing bills of indictment is also growing, compared to the number of discontinued proceedings.**

The increase in the number of registered and instituted proceedings can also be observed with regard to cases qualified under the Act on the protection of some services provided by electronic means (Article 6 and 7 of the Act) – in the 1<sup>st</sup> quarter of: 2007 – 16 cases, 2008 – 48 cases, 2009 – 35 cases.

Comparing data collected within this jurisdiction in different years, it can be observed that in 2007 there were 1341 registered cases and proceedings were instituted in 1099 of them.



In 2008, there were 1478 registered cases, out of which proceedings were instituted for 1159. In the 1<sup>st</sup> and in the 2<sup>nd</sup> quarter of 2009, there were 634 registered cases, out of which proceedings were instituted for 508.

In 2007, there were 488 cases which ended with filing bills of indictment, 312 cases were discontinued and 51 cases ended with a motion for conditional discontinuance of proceedings.

In 2008, there were 631 cases which ended with filing bills of indictment, 428 cases were discontinued and 26 cases ended with a motion for conditional discontinuance of proceedings.

In the 1<sup>st</sup> and in the 2<sup>nd</sup> quarter of 2009, there were 304 cases which ended with filing bills of indictment, 195 cases were discontinued and 17 cases ended with a motion for conditional discontinuance of proceedings.

**The presented data show that within the described jurisdiction the number of cases that end with a bill of indictment, which significantly exceeds the number of discontinued cases, is gradually increasing.**

One should also note the fact that during the whole described statistical period 33 acquittals were passed. Additionally, 43 appeals were filed. It should be noted that in 2008, there were 20 acquittals, but 26 appeals were filed.

#### ➤ **Appellate Prosecutor's Office in Kraków (4)**

The following Prosecutor's Offices are subordinate to the Appellate Prosecutor's Office in Kraków:

- District Prosecutor's Office in Kielce;
- District Prosecutor's Office in Kraków;
- District Prosecutor's Office in Nowy Sącz;
- District Prosecutor's Office in Tarnów;

In 2007, in organizational units subordinate to the Appellate Prosecutor's Office in Kraków there were 937 cases registered and proceedings were instituted in 801 cases. As a way of comparison, in 2008 there were 1100 registered cases and 864 instituted proceedings. In the 1<sup>st</sup> and in the 2<sup>nd</sup> quarter of 2009, 568 cases were registered and 374 proceedings were instituted.

These statistics show that the number of registered and instituted proceedings is growing.

In 2007, these were mostly crimes specified in article 116 of the Copyright and Related Rights Act (185 cases) and crimes under Article 305 of the Industrial Property Law Act (171 cases), as well as crimes penalized under Article 278 paragraph 2 of the Code of Criminal Procedure (156 cases) which constituted the basis for instituting proceedings. Similar situation could be observed in 2008, when the greatest number of instituted proceedings, as many as 222, concerned crimes under Article 116 of the Copyright and Related Rights Act, there were 181 proceedings concerning crimes under Article 35 of the Industrial Property Law Act and 176 concerning crimes penalized under Article 278, paragraph 2 of the Code of Criminal Procedure.

In the 1<sup>st</sup> and 2<sup>nd</sup> quarter of 2009 the described trend remained unchanged, the only difference was visible in the number of instituted proceedings concerning crimes under Article 305 of the Industrial Property Law Act which diminished (reaching 53 cases).

In 2007, there were 245 discontinued cases, 281 cases ended with filing bills of indictment and 20 cases ended with a motion for conditional discontinuance of proceedings.

**Due to insignificant social noxiousness of an act (Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Proceedings) only 12 cases were discontinued, while due to the lack of a motion to prosecute from a person so entitled (Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure) 77 cases were discontinued.**

As a way of comparison, in 2008 there were 306 discontinued cases, 373 cases ended with filing bills of indictment and 58 cases ended with a motion for conditional discontinuance of proceedings.

Insignificant social noxiousness of an act (Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure) was the basis for discontinuing 7 cases, in 126 cases a decision concerning this issue was made due to the lack of a motion to prosecute (Article 17 paragraph 1, subparagraph 10 of the Code of Criminal Procedure).

In the 1<sup>st</sup> and 2<sup>nd</sup> quarter of 2009, there were 157 cases which were discontinued (5 cases pursuant to Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure and 46 cases pursuant to Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure), there were 137 cases which ended with filing bills of indictment and 30 cases concluded with a motion for conditional discontinuance of proceedings.

**The presented data shows that in comparison with 2007, the number of bills of indictment and of motions for conditional discontinuance of proceedings has grown (from 281 to 373 and from 20 to 58 respectively).**

In the described statistical period, i.e. from the beginning of 2007 to the end of the 2<sup>nd</sup> quarter of 2009, 15 acquitting sentences were passed. Additionally, there were 9 effective and 6 rejected appeals from judicial decisions.

The analysis of submitted results concerning passed sentences, including invalid sentences, shows that suspended imprisonment sentences constituted the largest number of penalties (98 in 2007, 123 in 2008 and 70 in 2009).

#### ➤ **Appellate Prosecutor's Office in Lublin (5)**

The Appellate Prosecutor's Office in Lublin is composed of the following District Prosecutor's Offices:

- District Prosecutor's Office in Lublin;
- District Prosecutor's Office in Radom;
- District Prosecutor's Office in Siedlce;
- District Prosecutor's Office in Zamość.

In 2007, in organizational units subordinate to the Appellate Prosecutor's Office in Lublin there were 762 registered cases concerning crimes covered by the analysis, among which the largest number, i.e. 272 were cases referring to crimes specified in the provisions of the Code of Criminal Procedure.

There were 664 instituted proceedings. As a way of comparison, in 2008 there were 974 registered cases and the largest number of these crimes, i.e. 396, concerned, as in the previous year, crimes penalized under the provisions of the Code of Criminal Procedure. The number of instituted proceedings amounted to 857. In the 1<sup>st</sup> and 2<sup>nd</sup> quarter of 2009, there were 448 registered cases and 364 instituted proceedings. The greatest number of cases, i.e. 162 concerned crimes penalized under the provisions of the Code. As in previous periods (173 proceedings in 2007, 187 in 2008) there were also numerous proceedings concerning crimes under Article 305 of the Industrial Property Law Act (130) and crimes under Article 116 of the Copyright and Related Rights Act (148 proceedings in 2007, 227 in 2008 and 86 proceedings in 2009).

It seems that within the jurisdiction of Lublin Appellate Prosecutor's Office the rate of analyzed crime, after an increase in 2008, remains at the same level.

In 2007, there were 119 proceedings which ended with discontinuance – 30 proceedings were discontinued pursuant to Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure, 31 proceedings were discontinued pursuant to Article 17,

paragraph 1, subparagraph 10 of the Code and 58 proceedings pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code.

In 2008, 155 proceedings were discontinued – 38 proceedings pursuant to Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure, 37 proceedings pursuant to Article 17, paragraph 1, subparagraph 10 of the Code and 80 proceedings pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code.

In the 1<sup>st</sup> and in the 2<sup>nd</sup> quarter of 2009, there were 60 discontinued cases, out of which 24 were discontinued pursuant to Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure, 12 were discontinued pursuant to Article 17, paragraph 1, subparagraph 10 of the Code and 24 pursuant to other provisions specified in Article 17, paragraph 1 of the Code.

The analysis of the number of discontinued cases shows that after an increase proportional to the increase in the number of cases registered in 2008, in 2009 we can observe a decrease in the number of discontinued cases. However, the number of cases discontinued due to insignificant social noxiousness of an act (27.25% of the total number of discontinued cases) and due to the lack of a motion to prosecute from a person so entitled (23.95%) still remain significant.

In 2007, there were 309 cases which ended with filing a bill of indictment and 24 in which a motion for conditional discontinuance of proceedings was filed. In 2008, there were 328 cases which ended with filing a bill of indictment and 22 in which a motion for conditional discontinuance of proceedings was filed. In the 1<sup>st</sup> and in the 2<sup>nd</sup> quarter of 2009 there were 147 cases which ended with filing a bill of indictment and 13 in which a motion for conditional discontinuance of proceedings was filed.

In 2007, there were 4 acquittals, in 2008 the number of acquittals reached 15 and in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009 five acquitting sentences were passed.

**On the basis of presented statistics we may assume that the efficacy of law enforcement bodies (not taking into consideration suspended proceedings) is, respectively: 73.67% (2007), 69.43% (2008) and 72.73% (1<sup>st</sup> and 2<sup>nd</sup> quarter of 2009).**

#### ➤ **Appellate Prosecutor's Office in Łódź (6)**

The following district prosecutor's offices are subordinate to the Appellate Prosecutor's Office in Łódź :

– District Prosecutor's Office in Ostrów Wielkopolski;

- District Prosecutor's Office in Łódź;
- District Prosecutor's Office in Piotrków Trybunalski;
- District Prosecutor's Office in Sieradz.

In 2007, in organizational units subordinate to the Appellate Prosecutor's Office in Łódź there were 694 registered cases concerning crimes covered by the analysis. Preparatory proceedings were instituted in 615 cases. Within this category of crimes the largest number of instituted proceedings concerned crimes under Article 116 of the Copyright and Related Rights Act (202 proceedings), under Article 305 of the Industrial Property Law Act (96) and under Article 291, paragraph 1 and 2 of the Code of Criminal Procedure (95).

As a way of comparison, in 2008 there were 740 registered cases concerning this type of crime and 674 proceedings were instituted. The greatest number of instituted proceedings referred to crimes under Article 116 of the Copyright and Related Rights Act (165), under Article 118 of this Act (122) and under Article 305 of the Industrial Property Law Act (157).

In the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009, there were 321 cases concerning analyzed crimes and 264 proceedings were instituted. In the same period there were also as many as 100 initiated proceedings referring to crimes under Article 116 of the Copyright and Related Rights Act, 37 proceedings concerning crimes under Article 305 of the Industrial Property Law Act and 29 proceedings related to crimes under Article 118 of the Copyright Act and the same number of proceedings concerning crimes penalized under Article 278, paragraph 2 of the Code of Criminal Procedure.

Presented statistics suggest that after an increase in 2007, in the first half of 2009 the number of registered and instituted proceedings concerning the crimes under consideration diminished. Within this jurisdiction, proceedings related to crimes penalized under Article 116 of the Copyright and Related Rights Act prevail.

In 2007, there were 219 discontinued proceedings and 211 cases in which bills of indictment were filed. Motions for conditional discontinuance of proceedings were filed with regard to 18 cases.

In the described period, due to insignificant social noxiousness of an act (Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure), only 5 proceedings were discontinued. Lack of a motion to prosecute from a person so entitled constituted the basis for making such a decision in as many as 74 cases.

In 2008, there were 20 discontinued cases, bills of indictment were filed in 308 cases and 49 cases ended with a motion for conditional discontinuance. Insignificant noxiousness of

an act (Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure) constituted the basis for discontinuance in 1 case only, while the lack of a motion to prosecute from a person so entitled (Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure) was the basis for discontinuance in 59 cases.

In the 1<sup>st</sup> and in the 2<sup>nd</sup> quarter of 2009, there were 74 discontinued cases (3 pursuant to Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure, 23 pursuant to Article 17, paragraph 1, subparagraph 10 of the Code). Bills of indictment were filed in 100 cases and motions for conditional discontinuance of proceedings in 18 cases.

**The analysis of the presented statistics, which are crucial for the evaluation of the efficacy of law enforcement bodies, leads to the conclusion that in 2008 within the jurisdiction of Łódź Appellate Prosecutor's Office there was a significant increase in the number of cases which ended with a bill of indictment – 308 in comparison with 211 such cases in 2007.**

In 2007, two proceedings ended with acquittals, in 2008 the situation was similar, and in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009 acquitting sentences were passed in 4 cases.

In the whole described period there were 4 discontinued and 2 allowed appeals.

The analysis of sentences passed in the cases under consideration leads to the conclusion that suspended sentences for imprisonment for up to 1 year prevailed (97 in 2007, 103 in 2008 and 37 in 2009).

In 2007, there was one, in 2008 there were two and in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009 as many as 11 absolute imprisonment sentences.

#### ➤ **Appellate Prosecutor's Office in Poznań (7)**

Appellate Prosecutor's Office in Poznań is composed of:

- District Prosecutor's Office in Poznań;
- District Prosecutor's Office in Zielona Góra;
- District Prosecutor's Office in Konin.

In 2007, in organizational units subordinate to the Appellate Prosecutor's Office in Poznań there were 505 registered cases concerning crimes covered by the analysis. Preparatory proceedings were instituted in 504 cases.

As a way of comparison, in 2008 there were 609 registered cases and 599 proceedings were instituted, while in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009 there were 241 registered and instituted proceedings.

**One should note a small difference between the number of registered cases in comparison with the number of instituted proceedings, which indicates a small number of cases where proceedings were not instituted or cases which were concluded in a different way.**

In 2007, the greatest number of proceedings, i.e. 248, referred to crimes under the provisions of the Copyright and Related Rights Act. We could observe a similar trend in the years that followed (347 cases in 2008, 145 cases in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009).

The number of instituted proceedings concerning crimes relating to the infringement of copyright penalized under provisions of the Code of Criminal Procedure, i.e. illegal acquisition of a computer programme – Article 278, paragraph 2 of the Code of Criminal Procedure (68 cases in 2007, 82 in 2008 and 50 in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009) and receiving of stolen computer programmes – Article 291, paragraph 1 of the Code and Article 291, paragraph 2 of the Code (71 cases in 2007, 84 in 2008 and 21 in the 1<sup>st</sup> and in the 2<sup>nd</sup> quarter of 2009) remain at an unchanged, however quite high level.

Within this jurisdiction a significant decrease in the number of crimes under Article 7 of the Act on the protection of some services provided by electronic means based on or consisting in conditional access has been observed (63 cases in 2007, 37 in 2008 and 10 in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009).

In 2007, there were 150 discontinued cases, 153 cases ended with bills of indictment and in 29 cases motions for conditional discontinuance of proceedings were filed.

In 2008, there were 223 discontinued cases, 210 cases ended with a bill of indictment and in 56 cases motions for conditional discontinuance of proceedings were filed.

In the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009, there were 80 discontinued cases, 76 cases ended with bills of indictment and in 39 cases motions for conditional discontinuance of proceedings were filed.

**Within the described jurisdiction there is a large number of cases which end with a bill of indictment, which in 2008 exceeded the number of discontinued cases. The statistics presented above, taking into consideration a significant number of cases where motions for conditional discontinuance of proceedings were filed, indicate high level of efficacy of law enforcement bodies within the jurisdiction of the Appellate Prosecutor's Office in Poznań.**



In the period from the beginning of 2007 to the end of the 2<sup>nd</sup> quarter of 2009, there were 51 cases discontinued due to insignificant social noxiousness of an act and 75 cases discontinued due to the lack of motion to prosecute.

In the described statistical period, 33 proceedings ended with acquittals, while in 2007 there were 32 such cases and in 2008 only one. Two appeals were filed.

**The analysis of judicial decisions leads to the conclusion that with reference to cases under consideration, sentences for imprisonment for up to 1 year with conditional stay of the carrying out of the sentence prevailed. In the whole analyzed period there were 98 suspended imprisonment sentences. Only 5 cases which ended with absolute imprisonment were registered.**

#### ➤ **Appellate Prosecutor's Office in Rzeszów (8)**

The Appellate Prosecutor's Office in Rzeszów is composed of the following District Prosecutor's Offices:

- District Prosecutor's Office in Rzeszów;
- District Prosecutor's Office in Krosno;
- District Prosecutor's Office in Przemyśl;
- District Prosecutor's Office in Tarnobrzeg.

In 2007, District Prosecutor's Offices subordinate to the Appellate Prosecutor's Office in Rzeszów registered 194 cases falling under categories covered by the analysis. It should be noted, however, that in 2008 there were 307 such cases and in the first two quarters of 2009 142 cases.

Out of 194 cases registered in 2007, the largest number of cases concerned crimes under Article 305 of the Industrial Property Law Act – 57 cases in total, 30 of which were registered in the 4<sup>th</sup> quarter of 2007. However, it should be noted that in the 1<sup>st</sup> quarter of 2007 only 5 cases falling under this category were registered.

In 2007, there was also a significant number of registered cases related to crimes under Article 116 of the Copyright and Related Rights Act, namely 53 cases, but in the 1<sup>st</sup> quarter of 2007 there were 18 registered cases, while in the 3<sup>rd</sup> quarter of the same year only 6 registered cases.

Out of 194 cases registered in 2007, 166 preparatory proceedings were instituted.



As a way of comparison, in 2008, out of 307 registered cases, 261 preparatory proceedings were instituted.

In the first quarter of 2009, 113 preparatory proceedings were instituted out of 142 cases registered in the period until 30 June 2009.

To summarize, we may observe that in comparison with 2007 (194 cases) and 2008 (307 cases) there was an increase in the number of registered cases by 113 and an increase in the number of instituted proceedings by 95.

**Further forecasts allow us to assume that since until the end of June 2009, 113 preparatory proceedings were instituted, until the end of 2009 figures will continue to grow.**

In the 1<sup>st</sup> quarter of 2007, out of 22 registered cases concerning the infringement of provisions of Copyright and Related Rights Act, 14 preparatory proceedings were instituted.

As a way of comparison, in the 1<sup>st</sup> quarter of 2008, 32 cases falling under this category were registered, out of which 23 preparatory proceedings were instituted.

In the first quarter of 2009, as many as 32 cases concerning the violation of provisions of Copyright and Related Rights Act were registered, 25 preparatory proceedings were instituted (until the end of June 2009, as many as 40 such proceedings were instituted).

**To summarize, we may state that in comparison with the 1<sup>st</sup> quarter of 2007, in the 1<sup>st</sup> quarter of 2009 there was been an increase in the number of registered and instituted proceedings concerning the violation of provisions specified in the Copyright and Related Rights Act.**

In the 1<sup>st</sup> quarter of 2007, out of 22 registered cases concerning violation of provisions of the Copyright and Related Rights Act, 9 cases ended with bills of indictment and in the 1<sup>st</sup> quarter of 2008 there were 3 bills of indictment out of 32 registered cases and 23 instituted proceedings.

In the 1<sup>st</sup> quarter of 2009, out of 32 registered cases 25 preparatory proceedings were instituted, in one case a bill of indictment was filed. However, it should be indicated that in the 2<sup>nd</sup> quarter of 2009, out of 17 registered cases 15 preparatory proceedings were instituted. In as many as 5 cases bills of indictment were filed.

In the 1<sup>st</sup> quarter of 2007, out of 14 preparatory proceedings, instituted pursuant to the Copyright and Related Rights Act, in 9 cases bills of indictment were filed and in 2 cases proceedings were discontinued pursuant to Article 17, paragraph 1, subparagraph 1, 2, 4 – 9 of the Code of Criminal Procedure.

Additionally, in the same quarter of 2007, two absolute imprisonment sentences for up to 1 year and 3 suspended imprisonment sentences for up to 2 years were registered.

There was also one acquittal and in one case an appeal was allowed.

In the 1<sup>st</sup> quarter of 2008, out of 32 cases registered pursuant to the provisions of the Copyright and Related Rights Act, 23 preparatory proceedings were instituted, 3 of them ended with a bill of indictment, in one case proceedings were discontinued pursuant to Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure and 2 motions for conditional discontinuance of proceedings were filed. One imprisonment sentence for up to 1 year with conditional stay of carrying out the sentence was also registered.

One acquittal ended with dismissal of an appeal.

In the 1<sup>st</sup> quarter of 2007, the second category of registered cases, after the category of cases concerning the infringement of provisions of the Copyright and Related Rights Act (22), was the one covering cases concerning the violation of provisions specified in Article 303, 304 and 305 of the Industrial Property Law Act – in total 6 such cases were registered. Out of these 6 cases, 2 ended with a bill of indictment. One suspended imprisonment sentence for up to 2 years was also registered.

In the 1<sup>st</sup> quarter of 2008, there were 17 registered cases belonging to this category, we could thus observe an increase by 11 registered cases in comparison with the 1<sup>st</sup> quarter of 2007.

The number of such cases registered in the 1<sup>st</sup> quarter of 2009 reached 20 and in the 2<sup>nd</sup> quarter of 2009 – 23 cases. We could thus observe a significant increase in the number of registered cases concerning the violation of provisions of the Industrial Property Law Act, in comparison with the 1<sup>st</sup> quarter of 2007 (6 cases).

It should be noted that in the 1<sup>st</sup> quarter of 2007 bills of indictment were filed in 2 cases falling under this category, while in the 1<sup>st</sup> quarter of 2008 five bills of indictment were filed. In the 1<sup>st</sup> quarter of 2009 there were 4 cases which ended with a bill of indictment, while in the 2<sup>nd</sup> quarter of 2009 the number of such cases increased to 14, which means that in the period until the end of June 2009 as many as 18 bills of indictment were filed in cases concerning the industrial property law.

**Comparing data from the 1<sup>st</sup> quarter of 2007 and the 1<sup>st</sup> quarter of 2009 referring to cases which concerned the industrial property law, it should be noted that there has been a significant increase in the number of cases from this category, from 6 to 23 (and 43 cases until the end of June 2009). An increase in the number of bills of indictment in**

**these cases from 2 (1st quarter of 2007) to 14 (1st quarter of 2009 and 18 until 30 June 2009) was also observed.**

With reference to provisions of the Industrial Property Law Act, the majority of cases concern crimes specified in Article 305 thereof. In 2009, for example, no cases concerning crimes specified in Article 303 and 304 of the Act have been registered in the described jurisdiction.

In turn, in the 1<sup>st</sup> quarter of 2008, sixteen preparatory proceedings under Article 302 of the Industrial Property Law Act were instituted (in the 1<sup>st</sup> quarter of 2007 there were 5 such proceedings). In the 1<sup>st</sup> quarter of 2008 no preparatory proceedings instituted under Article 303 and 304 were registered.

#### ➤ **Appellate Prosecutor's Office in Szczecin (9)**

The following District Prosecutor's Offices are subordinate to the Appellate Prosecutor's Office in Szczecin:

- District Prosecutor's Office in Gorzów Wielkopolski;
- District Prosecutor's Office in Koszalin;
- District Prosecutor's Office in Szczecin.

In 2007, District Prosecutor's Offices subordinate to the Appellate Prosecutor's Office in Szczecin registered 795 cases falling under categories covered by the analysis and instituted preparatory proceedings in 627 cases. In 2008, there were 752 registered cases and 566 instituted preparatory proceedings. In the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009, District Prosecutor's Offices registered 378 cases and instituted 273 preparatory proceedings.

The analysis of the presented data shows that the number of proceedings remains at the same level.

In 2007, out of 672 cases in which a decision about instituting preparatory proceedings was made, the largest number of cases, i.e. 317, concerned the violation of provisions of the Copyright and Related Rights Act.

In 2008, the largest number of proceedings, i.e. 224, concerned the violation of provisions of the Industrial Property Law Act.

Within the described jurisdiction, the largest number of cases concerned crimes specified in Article 305 of the Industrial Property Law Act. In 2007 proceedings concerning this type of crimes were instituted in 214 cases, in 2008 in 223 cases and in the 1<sup>st</sup> and the 2<sup>nd</sup>

quarter of 2009 in 100 cases. There was also a great number of instituted proceedings concerning crimes specified in Article 116 and 118 of the Copyright and Related Rights Act (in 2007 – 157 and 31 respectively, in 2008 – 79 and 70 respectively, in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009 – 33 and 32 respectively).

In 2007, there were 91 discontinued cases, bills of indictment were filed in 120 cases and motions for conditional discontinuance of proceedings in 23 cases.

As a way of comparison, in 2008 there were 215 discontinued proceedings, 179 bills of indictment and 19 motions for conditional discontinuance of proceedings.

In the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009, there were 101 discontinued cases, bills of indictment were filed in 108 cases and motions for conditional discontinuance of proceedings in 6 cases.

In the period from the beginning of 2007 until the end of the 2<sup>nd</sup> quarter of 2009, due to insignificant social noxiousness of an act (Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure), 43 proceedings were discontinued (9 in 2007, 27 in 2008, 7 in the 1<sup>st</sup> and 2<sup>nd</sup> quarter of 2009), on the basis of Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure (lack of a motion to prosecute), in the same period 168 cases were discontinued (71 cases in 2007, 78 in 2008 and 19 in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009).

**The analysis of statistical data indicates a gradual decrease in the number of cases concluded with a motion for conditional discontinuance of proceedings and an increase in the number of cases where a bill of indictment was filed. One should also note a large number of proceedings discontinued due to the lack of a motion to prosecute from a person so entitled, in comparison with the total number of cases discontinued in a given period.**

As far as sentences are concerned, the largest number of sentences, as within other jurisdictions, were suspended imprisonment sentences for up to 1 year (43 in 2007, 94 in 2008 and 34 in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009). During the whole analysed period, imprisonment sentences were passed in 28 cases, the majority of them for up to 1 year (26 cases).

In 9 proceedings acquitting sentences were passed. There were 21 appeals. Twelve appeals filed by a prosecutor were allowed, while in 9 cases appeals were dismissed.

### ➤ **Appellate Prosecutor's Office in Warsaw (10)**

The following District Prosecutor's Offices are subordinate to the Appellate Prosecutor's Office in Warsaw:

- District Prosecutor's Office in Warsaw;
- District Prosecutor's Office Warszawa – Praga;
- District Prosecutor's Office in Płock;
- District Prosecutor's Office in Ostrołęka.

In 2007, in organizational units subordinate to the Appellate Prosecutor's Office in Warsaw, 1651 cases concerning crimes under consideration were registered. In the same period 695 preparatory proceedings were instituted.

In 2007, the largest number of instituted proceedings, i.e. 422, concerned the violation of provisions of the Copyright and Related Rights Act.

In the years that followed this trend remained at an equally high level and the number of instituted proceedings reached 355 in 2008 and 233 in the period from the beginning of 2009 until the end of June 2009.

In 2008, there were 1390 registered cases, in 609 of them preparatory proceedings were instituted. As in the previous period, the largest number of instituted proceedings concerned violation of provisions of the Copyright and Related Rights Act – 355 in total. There was also a large number of proceedings concerning the violation of provisions of the Industrial Property Law Act – 128 in total.

In the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009, 610 such cases were registered, preparatory proceedings were instituted in 480 cases. The number of cases referring to the violation of provisions of the Copyright and Related Rights Act and of the Industrial Property Law Act remained at a high level – there were 233 and 141 cases respectively.

In 2007, there were 400 bills of indictment, 316 cases were discontinued and in 20 cases a motion for conditional discontinuance of proceedings was filed.

In 2008, bills of indictment were filed in 390 cases, 371 cases were discontinued and there were 4 motions for conditional discontinuance of proceedings. Due to insignificant social noxiousness of an act (Article 10, paragraph 1, subparagraph 3 of the Code of Criminal Procedure) 11 proceedings were discontinued and due to the lack of a motion to prosecute, 55 cases were discontinued.

In the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009, bills of indictment were filed in 175 cases, 155 proceedings were discontinued and in 5 cases a motion for conditional discontinuance of proceedings was filed.

#### ➤ **Appellate Prosecutor's Office in Wrocław (11)**

The following district units are subordinate to the Appellate Prosecutor's Office in Wrocław:

- District Prosecutor's Office in Wrocław;
- District Prosecutor's Office in Jelenia Góra;
- District Prosecutor's Office in Opole;
- District Prosecutor's Office in Świdnica.

In 2007, organizational units subordinate to the Appellate Prosecutor's Office in Wrocław registered 2086 cases concerning the crimes under consideration, 1890 proceedings were instituted, the largest number in the 3<sup>rd</sup> quarter of 2007 (668 proceedings).

In 2008, there were 1857 registered cases, 1655 proceedings were instituted, the largest number of them in the 1<sup>st</sup> quarter of 2008 (514 proceedings). In the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009, 712 cases were registered and 555 proceedings were instituted.

In 2007, the largest number of instituted proceedings, i.e. 1000, concerned the violation of provisions of the Copyright and Related Rights Act. There was also a large number of instituted proceedings referring to crimes under Article 291, paragraph 1 and Article 291, paragraph 2 of the Code of Criminal Procedure – 643 instituted proceedings in total.

As a way of comparison, in the same period there were 195 instituted proceedings concerning the violation of provisions of the Industrial Property Law Act, but 170 proceedings concerned crimes under Article 305, 24 under Article 303 and 1 under Article 304 thereof.

As far as the violation of provisions of the Act on the protection of some services provided by electronic means based on or consisting in conditional access (Article 6 and 7 thereof), only 35 proceedings were instituted.

As a way of comparison, in 2008 the largest number of instituted proceedings concerned crimes specified in the Criminal Code – 729 and crimes under the Copyright Act – 607.

Crimes specified in the Industrial Property Law Act were the basis for instituting 246 proceedings (222 under Article 305 and 24 under Article 303).

In 2007, 832 bills of indictment were filed and 718 cases were discontinued. In 84 cases a motion for conditional discontinuance of proceedings was filed.

In 2007, due to insignificant social noxiousness of an act (Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure) 142 cases were discontinued (the largest number, i.e. 77, in the 4<sup>th</sup> quarter) and due to the lack of a motion to prosecute (Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure) 160 cases were discontinued (the largest number, i.e. 89, in the 4<sup>th</sup> quarter).

As a way of comparison, in 2008, in 633 cases bills of indictment were filed, 829 cases were discontinued and in 28 cases a motion for conditional discontinuance of proceedings was filed. In 2008, 64 cases were discontinued pursuant to Article 17, paragraph 1, subparagraph 3 of the Code of Criminal Procedure and 139 cases were discontinued pursuant to Article 17, paragraph 1, subparagraph 10 of the Code of Criminal Procedure.

In the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009, bills of indictment were filed in 244 cases, 263 cases were discontinued and a motion for conditional discontinuance of proceedings was filed in 16 cases. In the same period, 27 cases were discontinued due to insignificant social noxiousness of an act and 42 due to the lack of a motion to prosecute.

**The analysis of presented statistical data leads to the conclusion that in the described jurisdiction the number of registered and instituted preparatory proceedings is gradually falling down. The number of cases discontinued due to insignificant social noxiousness of an act has significantly decreased (142 in 2007, 64 in 2008, 27 in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009).**

In all presented cases, in the period covered by the analysis, the largest number of sentences were suspended imprisonment sentences, the largest number of them were sentences for imprisonment for up to one year. In 2007 there were 254 such sentences (including 207 sentences for imprisonment for up to one year), in 2008 – 323 (including 260 sentences for imprisonment for up to one year), in the 1<sup>st</sup> and the 2<sup>nd</sup> quarter of 2009 – 133 (including 106 sentences for imprisonment for up to one year).

In the period from the beginning of 2007 until the end of the 2<sup>nd</sup> quarter of 2009, there were 27 acquittals. Twenty-nine appeals were filed. In 20 cases appeals were allowed and in 9 cases the court dismissed an appeal filed by a prosecutor.



## **Final conclusions**

In the period from 2007 to the end of June 2009, there were 27044 cases falling under the analysed category. The area under the jurisdiction of Wrocław Appellate Prosecutor's Office had the largest number of registered cases, i.e. 4655, while the area under the jurisdiction of Rzeszów Appellate Prosecutor's Office had the smallest number of registered cases, i.e. 643. In the latter area the number of cases registered in each period was small and reached 194 cases in 2007, 307 in 2008 and 142 until 30 June 2009.

It should be noted that in 2007, against 194 cases registered within the jurisdiction of Rzeszów Appellate Prosecutor's Office there were 2086 cases registered within the jurisdiction of Wrocław Appellate Prosecutor's Office.

However, except for the jurisdiction of Rzeszów Appellate Prosecutor's Office, where in 2008 there was a significant increase in the number of cases covered by the report of the National Public Prosecutor's Office (from 194 in 2007 to 307 in 2008), in the majority of other jurisdictions we can observe either a decrease in the number of registered cases (within the jurisdiction of Warsaw Appellate Prosecutor's Office from 1651 to 1390, while within the jurisdiction of Wrocław Appellate Prosecutor's Office from 2086 to 1857) or a slight increase, as e.g. within the jurisdiction of Białystok Appellate Prosecutor's Office (from 504 to 509) or the jurisdiction of Katowice Appellate Prosecutor's Office (from 1341 to 1478).

In 2009, a significant decrease in the number of such cases was observed, e.g. from 504 cases registered within the jurisdiction of Białystok Appellate Prosecutor's Office in 2007 to only 127 cases in the period from the beginning of 2009 until 30 June 2009. Also within the jurisdiction of Wrocław Appellate Prosecutor's Office, where in 2007 there were 2086 registered cases, until 30 June 2009 only 712 cases covered by the analysis were registered.

In 2007, there were 8948 proceedings concerning crimes under the analyzed legal acts, the largest number of proceedings were instituted under provisions of Copyright and Related Rights Act – 3953 proceedings. However, it should be noted that although in 2008 cases falling under this category were the most numerous (3548), in comparison with 2007 a decrease by 405 cases could be observed.

In 2007, out of 3953 proceedings instituted pursuant to provisions of the Copyright and Related Rights Act, the largest number of proceedings in this category were registered within the jurisdiction of Gdańsk Appellate Prosecutor's Office – 524. However, when we compare identical data collected by this Appellate Prosecutor's Office in 2008, we can see



that although the largest number of cases instituted pursuant to the provisions of the Copyright Act were also registered within the described jurisdiction (451 proceedings), in comparison with 2007 this number decreased by 73 cases.

It should also be noted that in 2007, within the area of the whole country there was a decrease in the number of proceedings instituted under the provisions of the Copyright and Related Rights Act by 405 cases.

It should also be noted that within the jurisdiction of Gdańsk Appellate Prosecutor's Office the largest number of proceedings covered by the analysis were not instituted pursuant to the provisions of the Copyright and Related Rights Act (524), but under the provisions of the Criminal Code (Article 278, 291, 292 of the Criminal Code) – 617.

Within this category in the year 2007, 583 proceedings instituted pursuant to the above-mentioned provisions of the Criminal Code were registered, thus in comparison with 2007 we could observe a decrease in the number of this type of proceedings by 34 cases.

In comparison with 2007, in 2008 there was an increase in the number of proceedings falling under this category from 2863 (in 2007) to 3117 proceedings. Until the end of June 2009 only 1291 such proceedings were instituted, although in comparison with 52 proceedings instituted pursuant to the provisions of the Act on Fighting Unfair Competition (Article 23, 24, 24a) this number is significant.

In 2007, the number of completed cases covered by the analysis reached 7222, the largest number of these cases ended with a bill of indictment – 3340 cases.

The largest number of completed cases were registered within the jurisdiction of Wrocław Appellate Prosecutor's Office, where in 832 cases a bill of indictment was filed.

Accordingly, in 2008 out of 8088 completed cases covered by the analysis, 3669 ended with a bill of indictment. The jurisdiction of Wrocław Appellate Prosecutor's Office registered the largest number of bills of indictment, i.e. 633.

Although in comparison with 2007, the number of bills of indictment increased from 3340 to 3669, in 2008, within the jurisdiction of Wrocław Appellate Prosecutor's Office, where both in 2007 and in 2008 the largest number of bills of indictment was registered – 832 and 633 respectively, in 2008 a decrease by 199 bills was observed.

Out of 3340 bills of indictment filed in 2007, 1520 cases were judged.

In 2008, out of 3669 cases which ended with a bill of indictment, there were 1799 judged cases. In the period covered by the analysis, suspended sentences prevailed – 1269 in 2007, 1559 in 2008 and 680 in the first half of 2009.

**Referring to criminal responsibility for committing crimes specified in the above-mentioned acts, civil responsibility cannot be disregarded.**

It is worth indicating the provisions of Article 79, paragraph 1 – 7 of the Copyright and Related Rights Act, which were amended in 2007.

The need to introduce these amendments arises from the necessity to adapt Polish law to the requirements of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, where a specific regulation of legal measures and trial issues referring to infringements of intellectual property right are provided.<sup>22</sup>

Article 79 of the Copyright Act includes a catalogue of claims to which a rightholder is entitled if his/her author's economic rights have been infringed. They can be applied to the infringement of related rights (Article 104). The regulation of civil law protection of author's economic rights does not exclude the need to refer to (if previously specified prerequisites of respective claims and complaints are met) the provisions of other acts, particularly to the Civil Code and to the Code of Civil Procedure.

**It should be noted that regardless of compensation claims, the entity whose author's economic rights have been infringed may request from the person who infringed these rights to render the acquired benefits.**

Independent civil law protection is also provided for in the provisions of:

- the Act on Fighting Unfair Competition and<sup>23</sup>
- the Industrial Property Law Act<sup>24</sup>

**Thus, regardless of criminal responsibility, the acts covered by the analysis also include provisions referring to civil responsibility, which, because of financial discomforts, may even be more effective and more deterrent for a perpetrator.**

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<sup>22</sup> See footnote 4.

<sup>23</sup> Chapter 3.

<sup>24</sup> Title IX.

**Table III. 1.2.1. Total number of registered cases covered by the analysis in the following periods: 2007, 2008 and 2009 (until 30 June 2009)**

The number of registered cases concerning crimes against intellectual property within the jurisdiction of Appellate Prosecutor's Offices in the period from 2007 to 2009				
	Total number of registered cases*	2007	2008	2009
Jurisdiction of Białystok Appellate Prosecutor's Office	1140	504	509	127
Jurisdiction of Gdańsk Appellate Prosecutor's Office	3678	1545	1466	667
Jurisdiction of Katowice Appellate Prosecutor's Office	3453	1341	1478	634
Jurisdiction of Kraków Appellate Prosecutor's Office	2605	937	1100	568
Jurisdiction of Lublin Appellate Prosecutor's Office	2184	762	974	448
Jurisdiction of Łódź Appellate Prosecutor's Office	1755	694	740	321
Jurisdiction of Poznań Appellate Prosecutor's Office	1355	505	609	241
Jurisdiction of Rzeszów Appellate Prosecutor's Office	643	194	307	142
Jurisdiction of Szczecin Appellate Prosecutor's Office	1925	795	752	378
Jurisdiction of Warsaw Appellate Prosecutor's Office	3651	1651	1390	610
Jurisdiction of Wrocław Appellate Prosecutor's Office	4655	2086	1857	712
<b>Total number of registered cases**</b>	<b>27044</b>	<b>11014</b>	<b>11182</b>	<b>4848</b>

\*within the scope of crimes against intellectual property within the jurisdiction of Appellate Prosecutor's Offices in the period 2007 – 2009 (together in the Appellate Prosecutor's Office and in District and Regional Prosecutor's Offices);

\*\*within the scope of crimes against intellectual property in Poland.

### **1.3. The report of the Ministry of Justice on courts' judicial decisions concerning the enforcement of intellectual property rights in the period 2006 - 2008**

#### **Aim, subject matter and time scope of research**

The result of effective activities undertaken by bodies conducting preparatory proceedings (the Police, public prosecutor's office) is filing a bill of indictment against an offender to the court.

The aim of research conducted by the Statistics Division of the Ministry of Justice was to present an analysis of judicial decisions made by criminal divisions of common courts of law concerning offences against intellectual property rights and, as a way of comparison, presenting in the same period the number of cases heard in civil divisions and the types of judicial decisions that were made in these cases.

In order to show uniformity of the whole process from the identification of a perpetrator, through bringing legal charges and filing a bill of indictment, to the moment of hearing the case by the court, a subject matter of research analogous for analyses conducted by the Police and public prosecutor's offices has been adopted, i.e. subject matter concerning offences specified in the following Acts:

- The Act on Fighting Unfair Competition (**aFUC**);
- The Copyright and Related Rights Act (**CRRa**);
- The Industrial Property Law Act (**IPLa**);
- The Act on the protection of some services provided by electronic means (**aPSPE**);
- The Criminal Code Act (under the Article 278, paragraph 2 and Article 293) (**C.C.**).<sup>25</sup>

The research covered the above-mentioned cases registered in the period from 2006 to 2008.

#### **Criminal procedure**

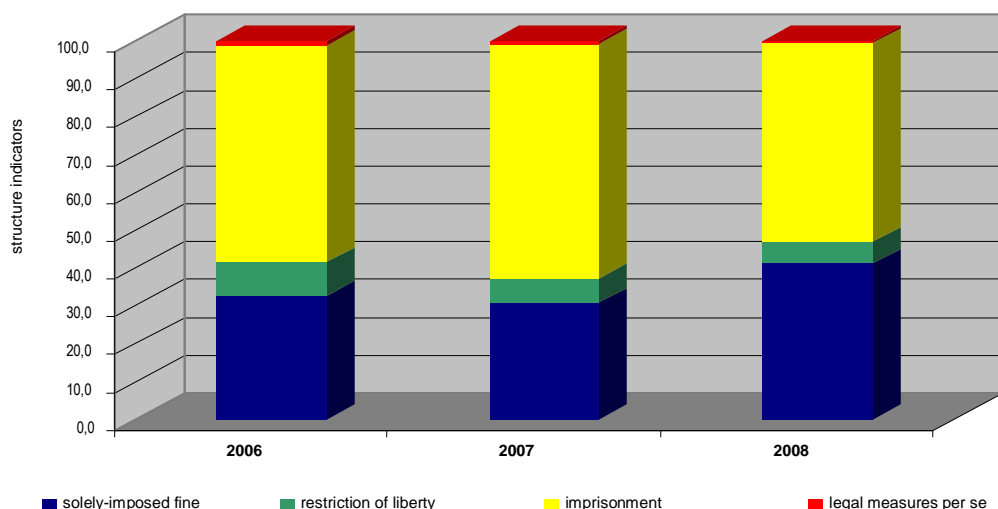
**Total number of convictions** in the cases referring to the protection of intellectual property rights in the period 2006 – 2008 amounted to 7876 and it was the highest in 2008 when 3051 convictions were registered.

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<sup>25</sup> To make the tables more clear, abbreviated names of the Acts covered by the analysis have been placed in brackets.

The structure of different types of penalties looked as follows:

**Diagram III. 1.3.1. Types of penalties in the years 2006 – 2008**



**Table III. 1.3.1. Structure indicators**

SPECIFICATION	solely-imposed fine	restriction of liberty	imprisonment	legal measures per se
<b>2006</b>				
<b>IN TOTAL</b>	<b>32.7</b>	<b>8.9</b>	<b>57.2</b>	<b>1.2</b>
Article 278 paragraph 2 (C.C.)	17.5	7.9	74.1	0.5
Art.293 paragraph 1 (C.C.)	29.8	8.4	61.6	0.2
(aFUC)	50.0		50.0	
(CRRa)	33.8	8.9	55.6	1.7
(IPLa)	51.4	10.6	37.0	1.1
<b>2007</b>				
<b>IN TOTAL</b>	<b>30.8</b>	<b>6.3</b>	<b>62.1</b>	<b>0.7</b>
Art.278 paragraph 2 (C.C.)	16.0	7.2	75.5	1.2
Art.293 paragraph 1 (C.C.)	29.9	5.6	63.9	0.6
(aFUC)	50.0	50.0		
(CRRa)	34.5	6.8	58.1	0.6
(IPLa)	54.4	2.8	42.2	0.6
<b>2008</b>				
<b>IN TOTAL</b>	<b>41.1</b>	<b>5.7</b>	<b>52.6</b>	<b>0.6</b>
Art.278 paragraph 2 (C.C.)	24.4	5.8	69.5	0.3
Art.293 paragraph 1 (C.C.)	27.6	6.0	65.6	0.9
Art.293 paragraph 2 (C.C.)			100.0	
(aFUC)	20.0	20.0	60.0	
(CRRa)	32.7	6.8	59.3	1.2
(IPLa)	52.6	6.6	40.7	0.1
(aPSPE)	94.4	0.3	5.0	0.3

**The structure of convictions according to their different types has remained at almost the same level throughout the whole analyzed period. Imprisonment constitutes the majority of all the convictions, solely-imposed fine is the second one and restriction of liberty is the least frequent (approx. 10%).**

When analyzing judicial decisions which have been made within this area according to acts under consideration, **we can observe an increase in the number of imprisonment sentences and the minimization of the number of restriction of liberty sentences.** For example, in 2006 under the Industrial Property Law Act restriction of liberty constituted 10.6% in the structure of judicial decisions and in 2008 - 6.6%, while imprisonment sentence constituted 37.0% in 2006 and 40.7% in 2008.

A similar trend can be observed with reference to the Copyright and Related Rights Act, in 2006 restriction of liberty sentences constituted 8.9% and in 2008 – 6.8%, while imprisonment sentences constituted 55.6% in 2006 and 59.3% in 2008.

Analyzing data within the general framework, we may indicate **average length of sentence** as one of the indicators of the level of judicial decisions.

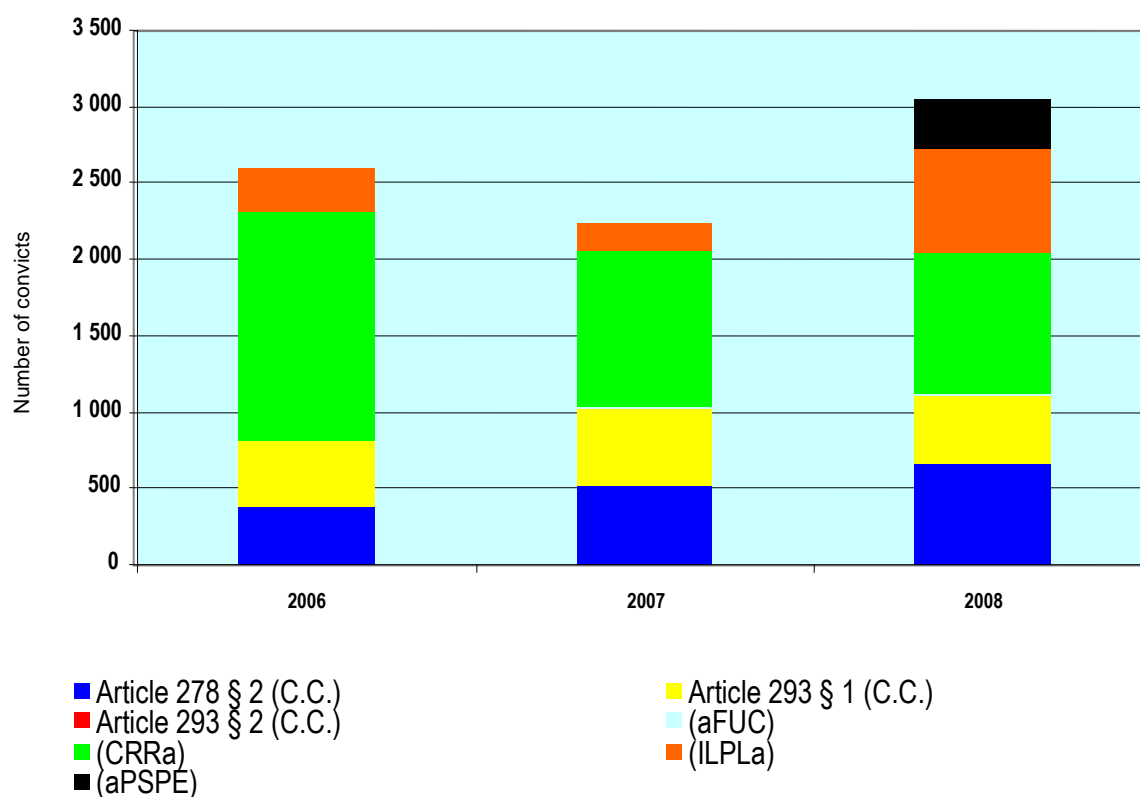
In 2006, an average length of imprisonment, calculated for all sentences in Poland in that year, amounted to 11.4 months and in 2008 to 10.9 months. Average penalties for crimes against intellectual property rights remained at similar levels.

**What can be conclusive is the fact that although in the period of three years the number of all convictions decreased, the percentage of crimes against intellectual property rights increased from 0.6% to 0.7%.**

Diagram III 1.3.2. shows the percentage share of convictions for crimes under different acts, according to the structure of different penalty types and to the length of imprisonment sentences.

### Diagram III. 1.3.2.

Adults validly sentenced for selected crimes in the period from 2006 to 2008



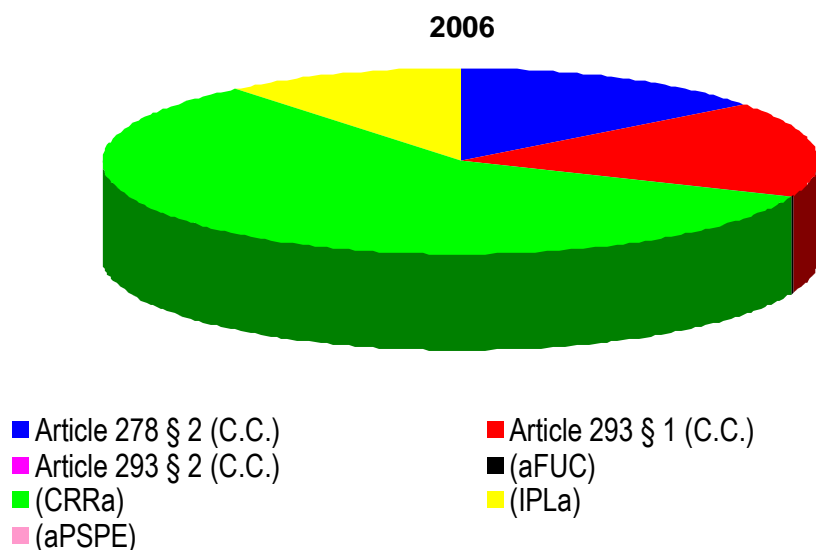
In order to present a complete chronology, diagrams III. 1.3.4. – 7 show information about penalties for respective crimes, provided for in the acts under consideration. Measures and lengths of sentences have been compared with the maximum penalty provided for in a given act.

Another important element of the analysis was the specification of **indicators of the dynamics of convictions for respective crimes under each act.**

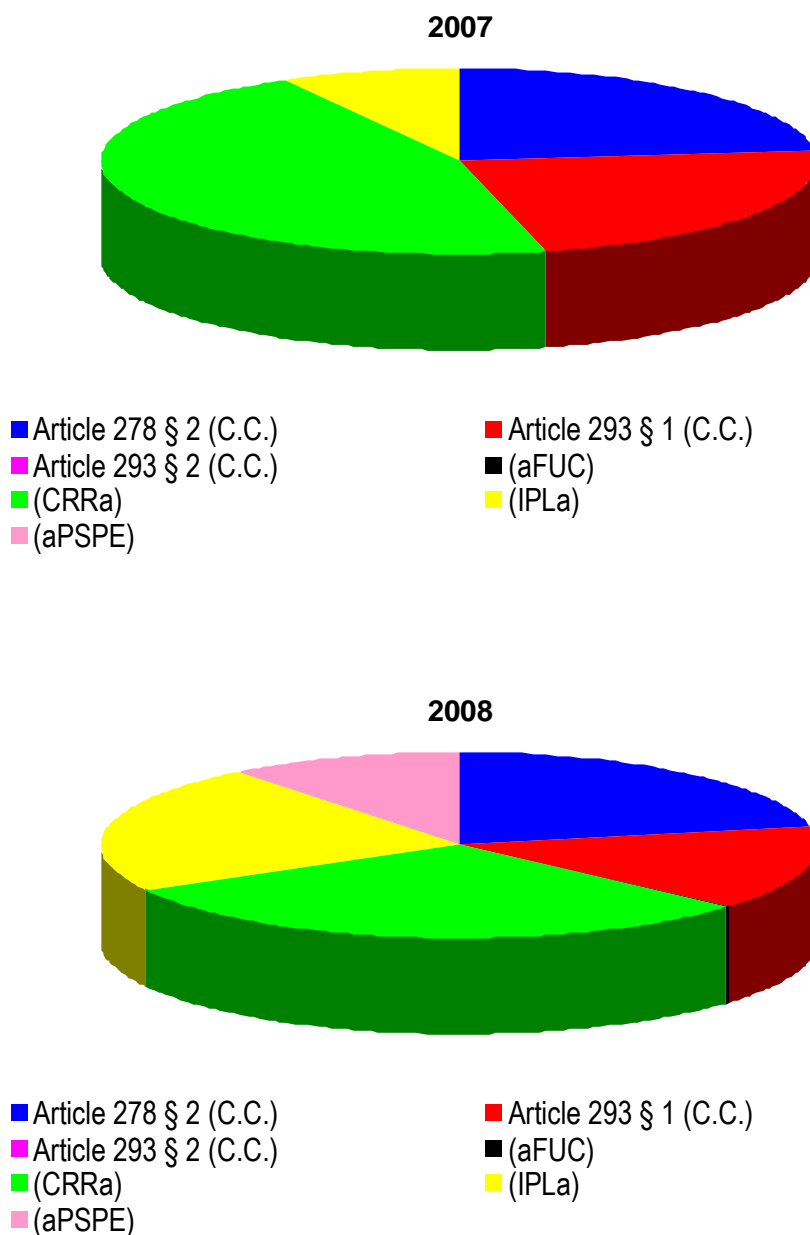
**Table III. 1.3.2. Dynamics indicators**

SPECIFICATION	2006	2007	2008
<b>in absolute figures</b>			
<b>IN TOTAL</b>	<b>2 597</b>	<b>2 228</b>	<b>3 051</b>
Art.278 paragraph 2 (C.C.)	378	511	660
Art.293 paragraph 1 (C.C.)	430	515	453
Art.293 paragraph 2 (C.C.)			1
(aFUC)	4	2	5
(CRRa)	1 501	1 020	926
(IPLa)	284	180	685
(aPSPE)			321
<b>dynamics indicators (year 2006 = 100)</b>			
<b>IN TOTAL</b>	<b>100.0</b>	<b>85.8</b>	<b>117.5</b>
Art.278 paragraph 2 (C.C.)	100.0	135.2	174.6
Art.293 paragraph 1 (C.C.)	100.0	119.8	105.3
Art.293 paragraph 2 (C.C.)	x	x	x
(aFUC)	100.0	50.0	125.0
(CRRa)	100.0	68.0	61.7
(IPLa)	100.0	63.4	241.2
(aPSPE)	x	x	x
<b>dynamics indicators (previous year = 100)</b>			
<b>IN TOTAL</b>	<b>100.0</b>	<b>85.8</b>	<b>136.9</b>
Art.278 paragraph 2 (C.C.)	100.0	135.2	129.2
Art.293 paragraph 1 (C.C.)	100.0	119.8	88.0
Art.293 paragraph 2 (C.C.)	x	x	x
(aFUC)	100.0	50.0	250.0
(CRRa)	100.0	68.0	90.8
(IPLa)	100.0	63.4	380.6
(aPSPE)	x	x	x

**Diagram III. 1.3.3. Structure of convictions for respective crimes in the years:**



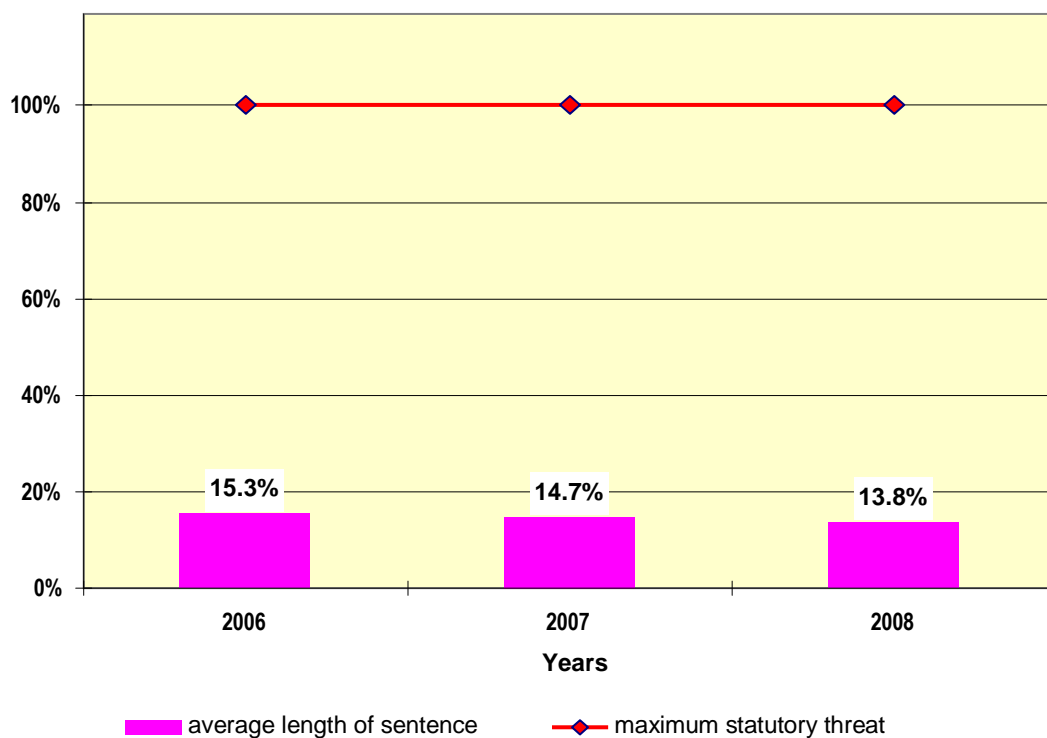




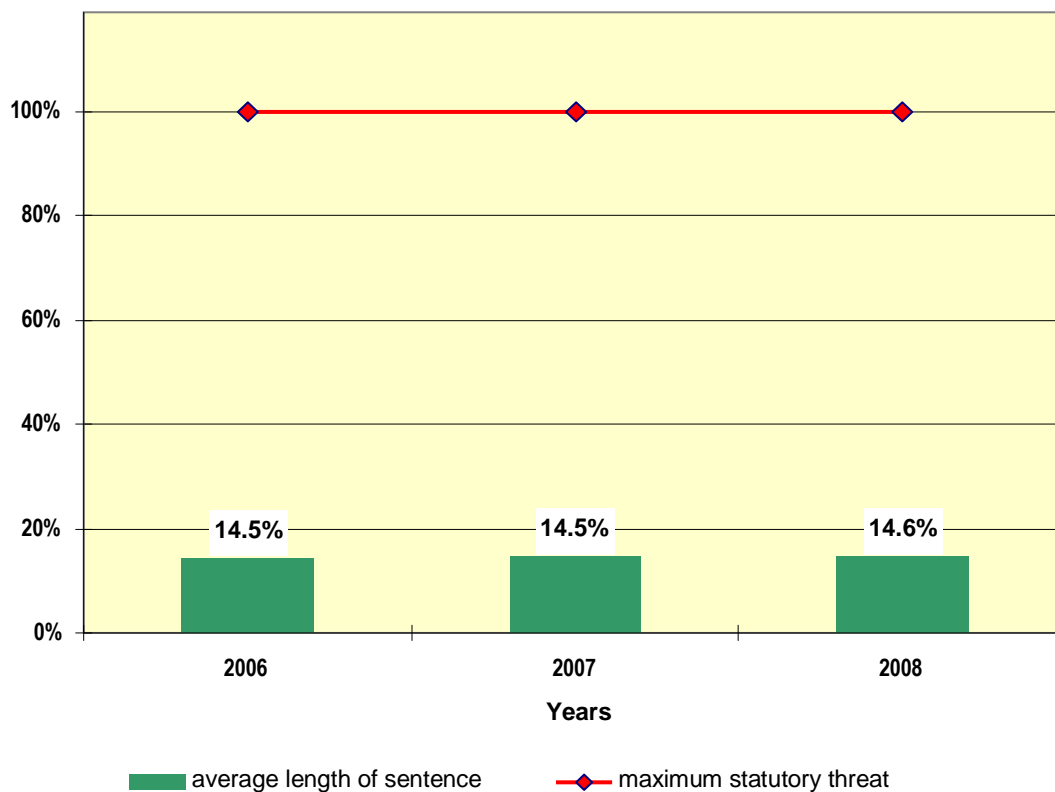
While in the case of the Copyright and Related Rights Act we can observe a decrease of the number of convictions (and thus of respective crimes as well), although to a diversified extent, convictions for criminal acts specified in the Industrial Property Law Act have increased by several times.<sup>26</sup> In 2008, a significant increase in the number of convictions under the Act on the Protection of some services provided by electronic means was observed for the first time.

<sup>26</sup> See footnote 17.

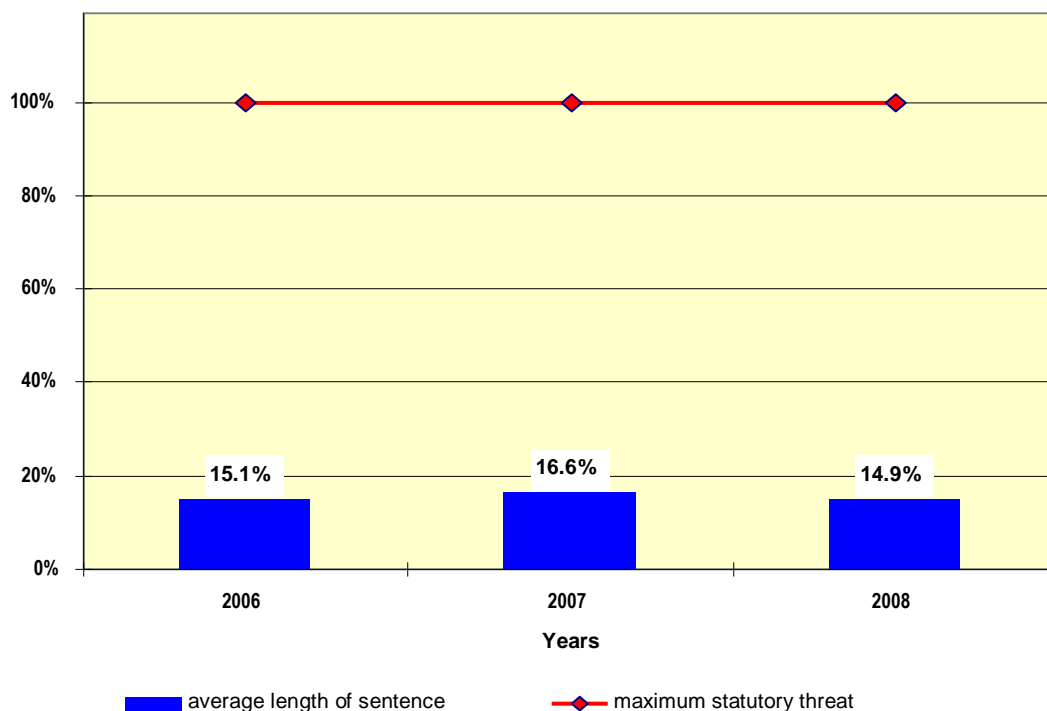
**Diagram III. 1.3.4. Average length of imprisonment sentences under Article 278, paragraph 2 (C.C.) with reference to the penalty time span specified in the Criminal Code (in percentages to the maximum value marked as 100%)**



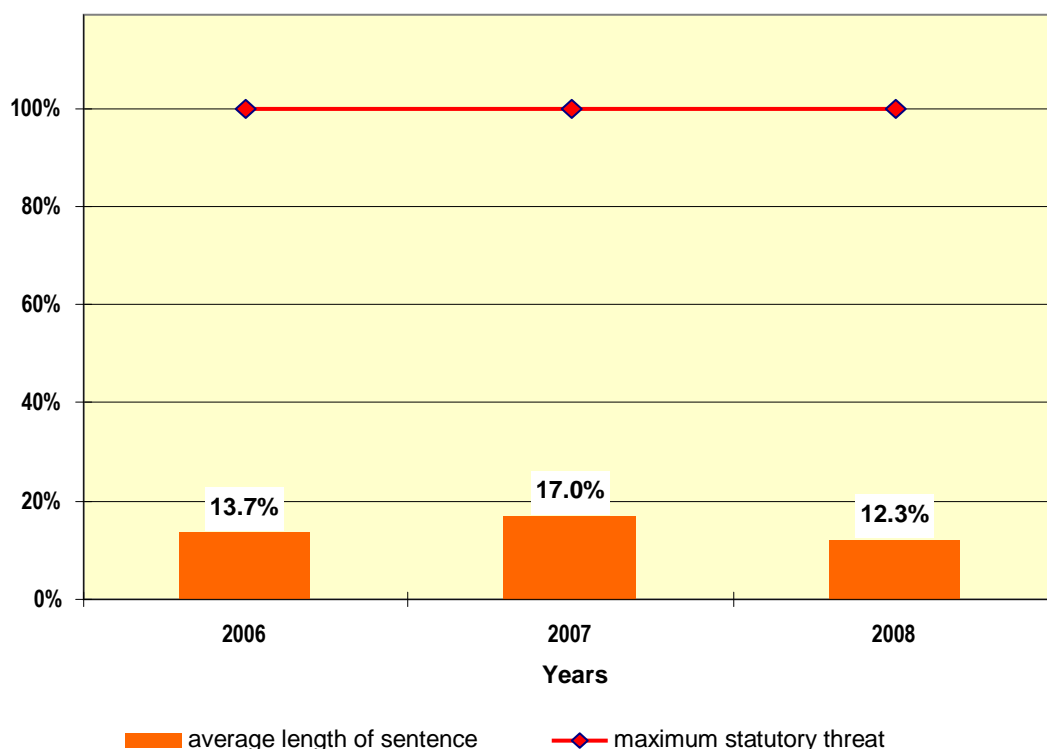
**Diagram III. 1.3.5. Average length of imprisonment sentences under Article 293,  
paragraph 1 (C.C.)  
with reference to the penalty time span specified in the Criminal Code  
(in percentages to the maximum value marked as 100%)**



**Diagram III. 1.3.6. Average length of imprisonment sentences under the Copyright and Related Rights Act with reference to the time span of imprisonment specified therein (in percentages to a maximum value marked as 100%)**



**Diagram III. 1.3.7. Average length of imprisonment sentences under the Industrial Property Law Act with reference to the time span of imprisonment specified therein**  
(in percentages to the maximum value marked as 100%)



### Civil procedure

In the period from 2006 to 2008, there were approximately 3900 cases examined in civil law courts.

In respective years figures were similar (1200, 1400).

The analysis of data shows that within the framework of civil procedure, **the number of allowed claims**, both those issued in the form of granting civil complaint in full or in part (approx. 13.5% - 15.0%) and those issued in the form of a consent judgement (5 – 7%) **is systematically growing**.

**A decreasing number of claims discontinued by the court is another positive trend.** While in 2006 they constituted 11.4%, in 2007 these percentages fell to 10.5% and in 2008 claims discontinued by the court constituted 9.5%.

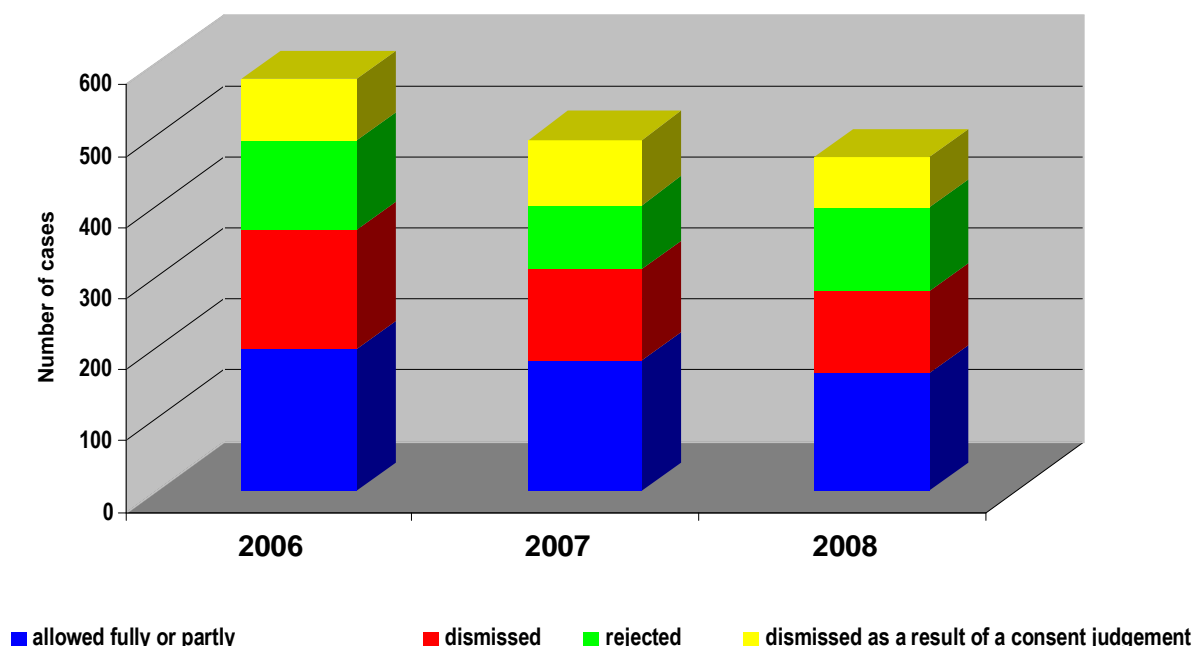
It is presented in the Table III. 1.3.3. and on the Diagram III. 1.3.8.

**Table III. 1.3.3. Structure indicators**

Specification	Cases which need to be examined	Examined cases					
		in total	including:				including cases discontinued as a result of consent judgement
			cases allowed fully or partly	discontinued cases	returned cases	discontinued	
in total							
2006							
Cases within:							
In total	100.0	59.7	13.7	11.4	8.6	13.5	5.9
(CRRa)	100.0	62.0	13.0	15.8	10.4	11.8	4.5
inventions (IPLa)	100.0	58.8	11.6	10.5	10.5	16.2	7.9
(aFUC)	100.0	59.6	15.1	8.7	6.6	14.2	6.1
other invention projects specified in (IPLa) <sup>27</sup>	100.0	52.7	12.9	12.9	9.7	8.6	4.3
2007							
Cases within:							
In total	100.0	59.2	14.9	10.5	7.3	14.9	7.5
(CRRa)	100.0	66.0	16.4	11.9	10.8	15.9	7.6
inventions (IPLa)	100.0	62.6	12.6	11.1	8.5	17.0	7.8
(aFUC)	100.0	52.8	14.6	9.1	4.9	13.4	7.8
other invention projects specified in (IPLa)	100.0	59.3	17.3	11.1	3.7	13.6	3.7
2008							
Cases within:							
In total	100.0	54.8	13.5	9.5	9.7	12.7	5.8
(CRRa)	100.0	58.5	11.1	11.1	14.6	13.5	7.3
inventions (IPLa)	100.0	60.2	11.9	11.5	15.6	13.0	5.6
(aFUC)	100.0	52.4	16.7	7.9	3.5	13.0	5.7
other invention projects specified in (IPLa)	100.0	32.9	10.0	5.7	5.7	5.7	0.0

<sup>27</sup> Other invention projects within the meaning of the Industrial Property Law Act include: utility models, industrial designs, topographies of integrated circuits and rationalization proposals.

**Diagram III. 1.3.8. Concluding the case according to the type of decision made in civil procedure concerning the protection of intellectual property rights in the period 2006 - 2008**



### Security measures

The issue of security measures (in the form of temporary restraining order) is fully regulated by the provisions of the Code of Civil Procedure (C.C.P.). General rules which refer to securing the claims cover the act of securing claims concerning intellectual property rights, in particular non monetary property claims (Article 755, of the C. C. P.).

Unlike Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, provisions of the procedure do not specify any types of provisional measures which can be imposed by the court.<sup>28</sup>

The directive specifies such regulations as seizure or delivery up of the goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

Pursuant to Article 755 of the C.C.P., in the case of securing non monetary claims the court may grant security as it deems suitable in a given case. Thus, security measures specified in the provisions of the Directive may also be employed.

<sup>28</sup> See footnote 4.

Additionally, Article 1051 of the C.C.P. provides for the possibility to impose a fine in the case of failure to fulfill the court's judicial decision to refrain from actions specified therein.

Securing of claims and the prohibition to desist from the infringement of intellectual property rights may be employed with regard to intermediaries pursuant to Article 422 of the Civil Code, which introduces the responsibility of an individual who induces to cause damage, of an assisting individual and of a person who benefited from the damage.

Claims may be secured regardless of whether infringements occur "on commercial scale".

Pursuant to Article 747, paragraph 1 of the C.C.P., monetary claims may be secured, inter alia, through an order to seize real estate, remuneration for work, debt claims on a bank account or other liability or other economic rights. Further security measures are possible pursuant to Article 755 of the C.C.P., which allows for any form of security, including the act of blocking a bank account.

Securing claims for payments arising from the infringement of intellectual property rights may also take a form of a commitment to pay certain amounts of money to an entitled individual on agreed dates. Such a decision is made after conducting a hearing the case, unless the court discontinues a motion or a person obliged to pay compensation has recognized the claim (Article 753-753<sup>2</sup>, of the C.C.P.).

An entitled person may request securing the claims if he/she makes the claim and a legal interest in securing such a claim plausible. Such a legal interest appears when the lack of security will prevent or seriously impede the fulfilment of judicial decision made in a given case or if it will in a different way prevent or seriously impede achieving of the aim of proceedings in a case (Article 730<sup>1</sup> paragraph 1 and 2 of the C.C.P.).

A person requesting security of claims is obliged to make the circumstances which justify such a request plausible (Article 736, paragraph 1, subparagraph 2 of the C.C.P.).

Article 735 of the C.C.P. specifies that the court examines the motion for security in an in camera session, without prior delivery of the copy of the motion to a participant. The obligation to hear the case has only been introduced in the Industrial Property Law Act (Article 286<sup>1</sup> paragraph 7 thereof).

Pursuant to Article 741 and Article 742, paragraph 1 of the C.C.P., a defendant has the possibility to demand the repeal, dismissal or amendment of a valid interim measure when the circumstances for security have changed. Pursuant to Article 742, paragraph 2 of the C.C.P.,



the ruling concerning the quashing or limiting of the interim order may only be given after a hearing.

Article 744 paragraph 1 and 2 of the C.C.P. specify that the security may be annulled in the case of rejecting or discontinuing a suit or an application, and also when proceedings have been discontinued (paragraph 1), as well as in the case when an application or a suit have not been filed within the time limit specified in the order, or in the case of instituting proceeding concerning a claim other than the one specified in the application for security (paragraph 2). The time limit specified for filing an application or a suit, if an application for security has been filed prior to instituting the proceedings, shall not exceed two weeks (Article 733 of the C.C.P.).

Pursuant to Article 739 paragraph 1 of the C.C.P. the court may make the execution of the security order conditional upon the provision of a deposit by the creditor to secure the claims by the debtor arising from the execution of the order.

The court may condition the issuance of a ruling to desist from the infringement from payment of a security deposit (Article 80, paragraph 4 of the Copyright Act, Article 11a, paragraph 4 of the Act on the protection of databases, Article 286<sup>1</sup> paragraph 6 of the Industrial Property Law Act and Article 36b, paragraph 4 of the Act on the protection of plant varieties).

The debtor has the right to seek from the creditor a redress of damage if the creditor has not instituted an action in the prescribed time limit or has withdrawn a suit, and also when such a request of his has been discontinued, proceedings have been discontinued or when the security has been annulled (Article 746 of the C.C.P.).

### **Final conclusions**

The presented statistical analysis of the court ruling shows that during the period covered by the analysis, the efficacy and the efficiency of criminal proceedings conducted by justice administration bodies and concerning crimes against copyright and related rights, as well as other intellectual property rights have improved. This improvement can also be ascribed to professional training of prosecutors and judges in the area of intellectual property rights.

It can be seen in:

- the increase in the number of sentences;
- the number of convictions remaining at a similar level in comparison with a general, decreasing number of judgements in the analysed period;
- stricter jurisdiction policy (the increase in the number of imprisonment sentences and the decrease in the number of restriction of liberty sentences) resulting from the awareness of the gravity of these crimes;
- changes introduced in legal regulations.

It should be noted that very frequently only a criminal law way of prosecuting infringements is chosen, despite wide possibilities of prosecuting claims in civil proceedings.

**Professional training of prosecutors and judges in the area of intellectual property rights.**

**In 2006**, the following training courses were conducted:

- training course for a group of **80 prosecutors** on the following topic: *“Crimes against business relations, including issues related to passing judgements in such cases”*, from November 29 – December 1, 2006;

**In 2007**, the following training courses were completed:

- three editions of a training course concerning the following topic: *“Intellectual property law”* in May 2007; **about 200 judges** passing judgements in civil and commercial divisions were provided with the training;
- two editions of a training course concerning the following topic: *“Protection of copyright and related rights, as well as industrial property rights. Substantive law and evidence issues.”*; in March and May 2007; **163 prosecutors and assistant judges at prosecutor’s offices** were provided with the training;

**In 2008**, the following training courses were conducted:

- three editions of a training course concerning the following topic: *“Protection of industrial property”* in March, June and December 2008; **144 judges** passing judgements in civil and commercial divisions were provided with the training;
- a training course on the following topic: *“Methodology of conducting criminal proceedings concerning crimes under the Copyright and Related Rights Act, as well as Industrial Property Law”*; training was conducted in September 2008 and within the framework of the course **59 prosecutors** were trained; while

**in 2009**, the following training courses were conducted:

- two editions of a training course concerning the following topic: *“Intellectual Property Law: Crimes and minor offences infringing property protected by copyright, industrial property law and provisions on fighting unfair competition”*, organized in March and October 2009; **141 judges** passing judgements in criminal proceedings were trained.

In accordance with the schedule of training courses, in 2009 one-year postgraduate studies concerning *“Intellectual and industrial property law”* have also been planned, it is organized in cooperation with the Jagiellonian University Intellectual Property Law Institute in Kraków.

**60 judges** will take part. Studies are planned to begin in December 2009.

## **2. Detailed analysis of activities undertaken by services subordinate to the Minister of the Interior and Administration (the Police and the Border Guard) and to the Minister of Finance (the Customs Service) aiming at combating infringements of intellectual property rights in Poland in the 1<sup>st</sup> half of 2009**

### **2.1. Report prepared by the Police on activities relating to the protection of intellectual property rights in the 1<sup>st</sup> half of 2009**

The Police fulfill their statutory obligations, as well as aims specified in a government document entitled: “*Programme for the protection of copyright and related rights in Poland for the years 2008 – 2010*”<sup>29</sup>, the Police continuously conduct operational and investigation activities in cases concerning criminal activity directed against intellectual property rights.

Additionally, police activities aiming at counteracting infringements of copyright and related acts are fulfilled in detail, in accordance with strategic aims specified in the above-mentioned document:

According to the data collected by the Police, threats arising from criminal activity conducted to the detriment of the owners of copyright and related rights in terms of infringing rights referring to music, films, books, television and computer programmes, are visible in the following areas:

- production (copying) and marketing of optical discs with pirate music works;
- illegal distribution of music works on the Internet;
- broadcasting music works in public places without the permission of the copyright owner;
- use of pirate computer software in current business activity;
- theft of television signal by illegal: public distribution of broadcasts of TV programmes, extending the package of TV programmes, illegal connecting to the devices that make it possible to receive cable TV signal, organizing local “payable cable TV”, illegal sharing of TV signal by means of the Internet;
- sale of illegally copied books and scripts in copy shops;

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<sup>29</sup> See footnote 8.

- illegal publishing of books without agreements with the owners of copyright and related rights and illegal increase of the number of printed copies of the most popular books.

We can observe that the Internet is used increasingly often to commit crimes against creators, authors, performers and producers. This situation is caused by an increased availability of ICT services.

Reducing piracy on the Internet constitutes a strategic direction of further activities and cooperation of all concerned entities.

In the 1<sup>st</sup> half of 2009, the following results of proceeding were achieved, depending on the type of infringement of copyrights and related rights within the framework of:

- **films** – **184** preparatory proceedings (*in the 1<sup>st</sup> half of 2008 there were 189<sup>30</sup> of them*) were instituted under Article 115 – 119 of the Copyright and Related Rights Act, property worth **PLN 48 616** (*PLN 71 000*) was secured;
- **phonography** – **270** (381) preparatory proceedings under Article 115 – 119 of the Copyright and Related Rights Act were instituted, property worth **PLN 86 690** (*PLN 122 000*) was secured;
- **computer software** – **526** (1087) preparatory proceedings were instituted, including: **123** (498) under Article 115 – 119 of the Copyright and Related Rights Act, **403** (589) under Article 293 and Article 278, paragraph 2 of the Criminal Code, property worth **PLN 935 800** (*PLN 321 958*) was secured;
- **theft of TV signal** – **107** (231) preparatory proceedings under Article 6 – 7 of the Act on the protection of some services provided by electronic means based on or consisting in conditional access were instituted, property worth **PLN 128 080** (*PLN 80 420*) was secured;
- **illegal broadcasting of music works** – **100** (155) preparatory proceedings under Article 115 – 119 of the Copyright and Related Rights Act were instituted, property worth **PLN 97 170** (*PLN 30 950*) was secured;
- **other** – **348** (373) preparatory proceedings under Article 115 – 119 of the Copyright and Related Rights Act were instituted, property worth **PLN 60 250** (*PLN 31 710*) was secured;

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<sup>30</sup> Figures in brackets written in italics refer to a comparative period from the 1<sup>st</sup> half of 2008.

In the 1<sup>st</sup> quarter of 2009, activities undertaken by the Police enabled to institute **1 535** (2 416) preparatory proceedings under Article 115 – 119 of the Copyright and Related Rights Act, Article 278 and 291 of the Criminal Code and Article 6 – 7 of the Act on the protection of some services provided by electronic means based on or consisting in conditional access.

Instituted preparatory proceedings allowed for the detection of **27 509** (14 018) crimes. In total **2 734** (3 981) preparatory proceedings were completed. Aggrieved parties estimated their losses at over **PLN 11 million** (PLN 7 million). The secured property was worth approx. **PLN 1.5 million** (over PLN 1.3 million).

**A significant decrease in the number of instituted preparatory proceedings results from the fact that the number of pirate products sold in market places has been significantly reduced. On the one hand, it can be ascribed to the improvement of efficacy of law enforcement bodies and on the other hand, to the increasingly broader access to the Internet and to the content that can be found on the Internet.**

Statistical analysis shows (almost double) increase in the number of cases referring to the commitment of several crimes at once. Furthermore, estimating losses of aggrieved parties in cases concerning infringements of copyright and related rights on the Internet proves to be problematic. Such an estimate is possible only after receiving expert's opinion of an IT specialist concerning the duration of a crime and the number of persons who downloaded a musical work which was distributed on the Internet illegally.

Among prevailing forms of infringing other intellectual property rights, mainly industrial property rights, we may find illegal import and production of fake products of brand companies, followed by marketing of such products.

Also in such cases the above-mentioned rights are infringed by means of the Internet. A sale offer of counterfeit products is increasingly often placed on the websites of Internet shops and Internet auction portals.

In the 1<sup>st</sup> half of 2009, identification of infringements of industrial property rights resulted in the institution of **878** (985) preparatory proceedings under Article 303 – 305 of the Industrial Property Law Act and under Article 23 – 24, 24a of the Act on Unfair Competition. Property worth **PLN 398 442** (PLN 675 359) was secured, illegal trade in fake goods amounted to **PLN 2.5 million** (approx. PLN 3.5 million).

In the 1<sup>st</sup> half of 2009, the Police conducted several significant operations, among which we should enumerate such operations as:

- Arresting members of international organized criminal group involved in the production (in Poland) and distribution on the territory of European Union Member States of CDs and DVDs with illegally copied films and music.

**About 54 thousand CDs and DVDs with music and films worth approximately PLN 5 million were secured.**

- Catching red-handed and arresting, on the premises of RTV Stock Exchange located in Kraków at 7 Balicka Street, seven persons involved in the distribution and assistance in selling of optical discs with illegally copied films, music and computer programmes. Control operations were conducted in cooperation with officers of the Customs Chamber in Kraków.

**About 15 thousand pirate optical discs worth PLN 900 000 and clothes with fake trademarks were confiscated and secured.**

- Securing over 20 computers and over 800 different optical discs with music, films and software. Students of two universities in Gdańsk, operating also at the premises of their universities, turned out to be the perpetrators of this criminal act.
- Closing an illegal optical discs plant.

Almost 300 optical discs were secured, including 150 of the so called “matrices” used in copying, computer equipment (including two central units), 8 CD/DVD burners, hardware of the capacity of 1.5 TB, memory cards, professional printer and over 100 covers.

Secured optical discs contained films, computer programmes, computer games and music in a digital form.

**It was estimated that the secured works, programmes and equipment are worth approximately PLN 50 000.** Investigations revealed that all these goods were intended to be sold on Warsaw market.

In fulfilling tasks aiming at the protection of intellectual property rights, the Police conduct operations at big market places, bazaars and computer exchanges on the territory of Poland. In order to fulfill their activities properly and to enforce the observance of legal regulations by administrators, the Police, pursuant to the provisions of the Act on the Police, cooperate with administrators of market places.

As has already been mentioned, the majority of these operations have been conducted in cooperation with the Polish Border Guard and the Ministry of Finance Customs Service.

Many of these operations are conducted on market places situated in eastern border areas of the European Union.

The cooperation of law enforcement bodies and other authorized services in this area requires comprehensive coordination of activities. Moreover, due to such cooperation, it is very often possible to fulfill one of the most important objectives of preparatory proceedings, namely identification of the origin of pirate and fake products.

## **2.2. Report prepared by the Polish Border Guard on activities relating to the protection of intellectual property rights in the 1<sup>st</sup> half of 2009**

When Poland became a member to Schengen Agreement, which abolishes the control of persons crossing borders between Schengen member states, there have been changes in the tasks of the Polish Border Guard which aim at reinforcing cooperation in terms of security, control of the legality of residence of foreigners and asylum policy.<sup>31</sup>

However, activities undertaken by the Polish Border Guard aiming at the protection of copyright and related rights, as well as intellectual property rights in Poland were still being conducted within the framework specified in the *“Programme for the protection of copyright and related rights for the years 2008 – 2010”*.<sup>32</sup>

In the 1<sup>st</sup> quarter of 2009, objects originating from different crimes, of estimated value of **PLN 765 327** were secured.

The greatest number of infringements of the Copyright and Related Rights Act and of the Industrial Property Law Act took place in the area of activity of the Border Guard of the

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<sup>31</sup> The Border Guard – uniformed and armed unit which was created in order to protect land and sea borders and to control border traffic.

<sup>32</sup> In the second half of January 2008 the Polish Border Guard arrested members of an international criminal organisation which dealt with smuggling, copying and distributing optical discs containing music and films. According to an estimate made by experts from the Polish Society of the Phonographic Industry the value of the secured products amounted to over PLN 30 million. During the operation, the Order Guard secured the whole laboratory used for copying, where equipment for illegal copying of CDs and DVDs was located: computers, burners, printers, pen drives. The criminal organization operated on the territory of the whole country and was well organized. It had a very well organized logistic infrastructure, cars, lorries and vans.

According to initial expert's inquiry, secured optical discs were produced mainly in Russia. The business started across the eastern Polish border and it was conducted in numerous EU Member States. Transports of manufactured CDs and DVDs were intended for intra-Community market. According to experts from the Polish Society of the Phonographic Industry and from Protection of Audiovisual Property Foundation, the effect of actions undertaken by the Order Guard is one of the greatest achievements in this area that has been made in the EU Member States in the last 3 years.



Republic of Poland from **Pomorskie** (worth PLN 122 798) and **Morskie** (worth PLN 402 166) units.

The range of goods in the catalogue is very wide, however, the most frequent still include:

- Optical discs – 7 308 CDs and DVDs with films and music;
- 1 605 clothing items with fake trademarks and clothes accessories;
- 367 cosmetic products.

Other goods include: electric tools, computer parts, slot-machines, DVD players.

**An important element of the coordination of activities is continuing the cooperation with the Police, with the Customs Service and with market place administrators started in 2007.**

It brings increasingly more benefits, as far as fighting this kind of criminal activity is concerned and prevention measures, as well as activities undertaken within the framework of control have become a priority.

It refers particularly to limiting the possibility of smuggling pirate phonograms and videograms, as well as to their distribution on the territory of Poland.

Thus, verification activities are conducted on bazaars, market places and commodity exchanges (electronic and car ones).

These activities, conducted in cooperation with the Police and with the Customs Service, have also a preventive character. They lead to a noticeable decrease in the number of identified infringements.

**A close cooperation with the administrators of market places and bazaars which frequently results in gaining information on marketing of pirate and fake goods, as well as on individuals who are involved in such an activity also plays an important role.**

Revealing pirate and fake goods is usually a result of the most important obligations that the Act imposes on the Border Guard, i.e. **controlling the legality of residence of foreigners** who earn their living mainly by selling products on bazaars and market places.

In the analysed period, the Border Guard participated in approx. **100** controls on bazaars and market places. In most cases these were operations conducted in cooperation with the Police and with the Customs Service.

In most cases individuals infringing intellectual property rights, as well as revealed and confiscated objects are **passed on to competent authorities**, who collect statistical data within this domain, **for examination**.

### **2.3. Report prepared by the Ministry of Finance Customs Service on activities relating to the protection of intellectual property rights in the 1<sup>st</sup> half of 2009**

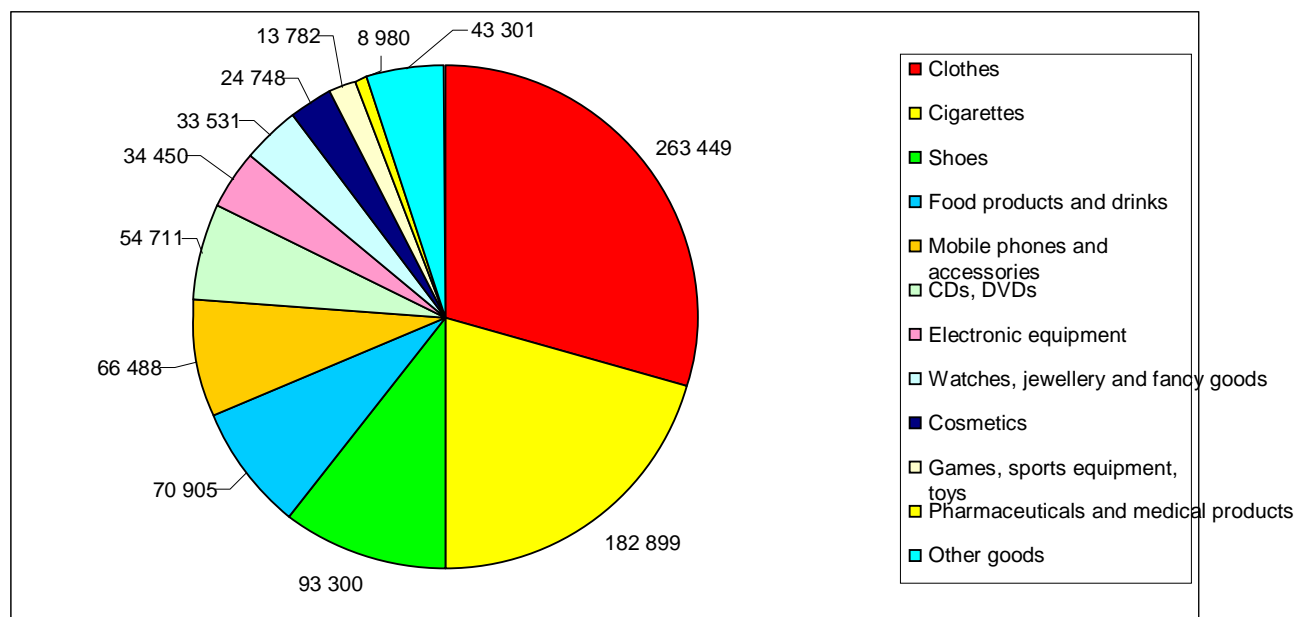
Control operations aiming at the enforcement of intellectual property rights and conducted by the Customs Service in the 1<sup>st</sup> half of 2009 resulted in confiscating **over 840 000 fake and pirate goods**.

Goods confiscated in the 1<sup>st</sup> half of 2009, divided into different groups, are shown in the following table and in diagrams.

**Table III. 2.3.1. The number of goods confiscated in the 1<sup>st</sup> half of 2009**

<b>Name of a product</b>	<b>Quantity (items)</b>
Clothes	263 449
Cigarettes	182 899
Shoes	93 300
Food products and drinks	70 905
Mobile phones and accessories	66 488
CDs, DVDs	54 711
Electronic equipment	34 450
Watches, jewellery and fancy goods	33 531
Cosmetics	24 748
Games, sports equipment, toys	13 782
Pharmaceuticals and medical products	8 980
Other goods	43 301
<b>In total</b>	<b>847 243</b>

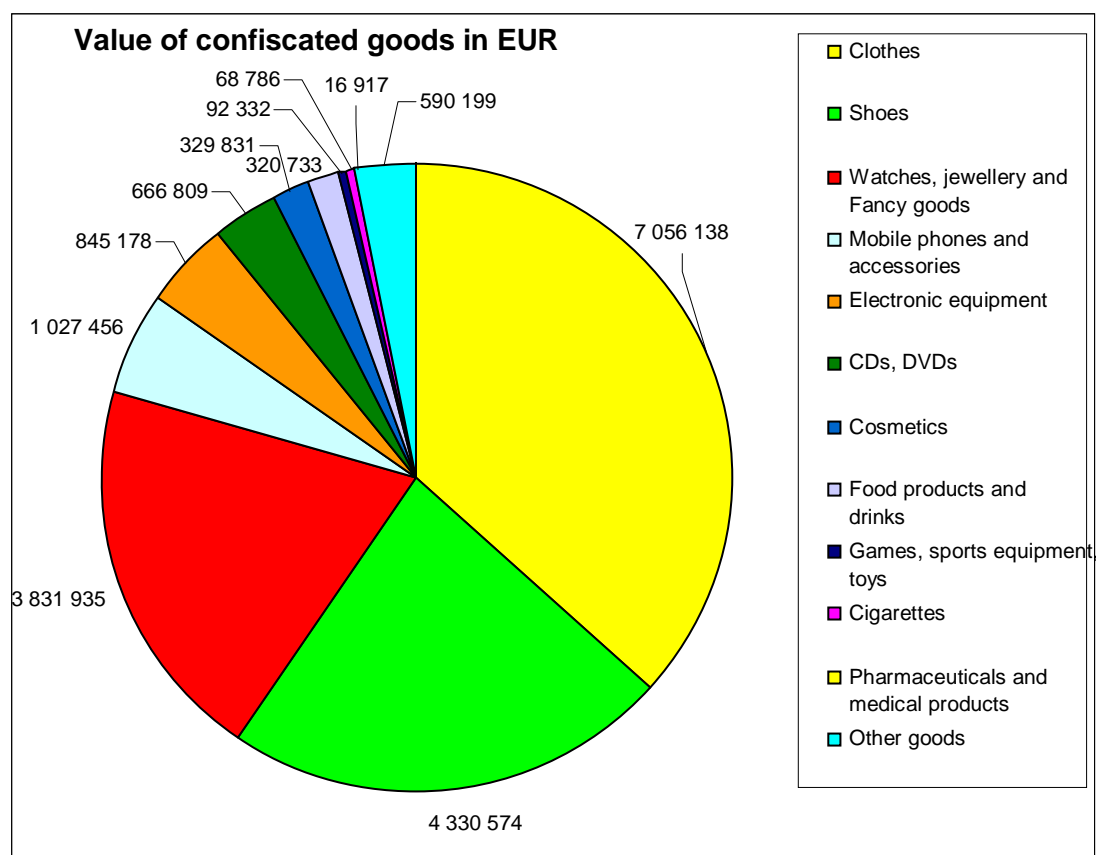
**Diagram III. 2.3.1.**



**Table III. 2.3.2.** The number of goods confiscated in the 1<sup>st</sup> half of 2009

Name of a product	Value (EUR)
Clothes	7 056 138
Shoes	4 330 574
Watches, jewellery and fancy goods	3 831 935
Mobile phones and accessories	1 027 456
Electronic equipment	845 178
CDs, DVDs	666 809
Cosmetics	329 831
Food products and drinks	320 733
Games, sports equipment, toys	92 332
Cigarettes	68 786
Pharmaceuticals and medical products	16 917
Other goods	590 199
In total	<b>19 176 888</b>

Diagram III. 2.3.2.



In the 1<sup>st</sup> half of 2009, there were **899 cases of confiscating pirate and fake goods**. Additionally, the Customs Chamber in Warsaw examined **114 applications for customs protection**, which were filed by the representative of intellectual property rights owners. Spectacular seizures of goods infringing intellectual property rights in the 1<sup>st</sup> half of 2009 included:

- Confiscating by officers of the Customs Chamber in Szczecin over 15 300 hairpin with **images of Disney cartoon heroes** (sea transport, container, country of origin – China);
- Confiscating by officers of the Customs Chamber in Rzepin 4 752 children's shoes bearing **the image of SPIDERMAN** and 3 780 shoes with clasps bearing **the image of the TWEETY bird**;
- Confiscating by officers of the Customs Chamber in Wrocław over 18 500 flip-flops since they infringed the rights of **“CROCS” utility model**;

- Confiscating by officers of the Customs Chamber in Kraków 22 000 mobile phone casings due to the infringement of the rights of **“NOKIA” industrial design**;
- Confiscating by officers of the Customs Chamber in Szczecin 2 300 **“REISHI” pharmaceutical products** in the luggage of one of the travellers from the USA;
- Confiscating by officers of the Customs Chamber in Katowice **3 000 „VIAGRA” tablets**, which were hidden in two metal tins and in a cigarette packet;

### **Reducing counterfeiting and piracy on bazaars and market places**

In the 1<sup>st</sup> half of 2009, the Customs Service continued activities aiming at the reduction of piracy on bazaars and market places within the framework of activities conducted in cooperation with the Police and with the Border Guard of the Republic of Poland.

It should be noted that in 2009 trade with pirate and fake goods near the 10<sup>th</sup> Anniversary Stadium in Warsaw has not disappeared and thus, it was still necessary to conduct control activities. Activities conducted by the Customs Chamber in Warsaw within the framework of combating crime, including activities conducted in cooperation with police officers and Border Guard officers resulted in **confiscating, on bazaars and market places, over 17 300 pirate and fake goods worth over PLN 5.4 million.**

Control activities on the territory of market places situated on the west border were also conducted.

### **Operational activities**

Within the framework of activities aiming at combating trade with fake products threatening human health and life, the Polish Customs Service participated, from June 3 – 5, 2009, in an operational action organized by the World Customs Organization (WCO) concerning the control of courier and postal mail to check whether they contain pharmaceuticals, if the trade with these pharmaceuticals infringes intellectual property rights and other provisions concerning health protection. Courier and postal mails are mails of small sizes, whose weight does not exceed 2 kilos.

Due to the lack of legal possibilities and IT systems controlling mails before customs declaration, customs control is conducted after goods have been declared for customs clearance.

An analysis conducted by customs officers in Poland consists mainly in checking documents after customs declaration, manual inspection of consignments or using available X-ray equipment to scan them.

An operation which was conducted in selected Customs Service's organizational units (post offices, airports, harbour) resulted in identifying and checking approx. 300 consignments containing pharmaceuticals. Fourteen consignments were confiscated since they infringed intellectual property law regulations and other regulations referring to life protection. The majority of counterfeit pharmaceuticals originate from India, China, United Arab Emirates, Egypt and from the USA. Identified counterfeit and fake pharmaceuticals found in courier and post mails were declared as "documents" (docs), "gifts", "samples", "dietary supplements", etc.

"*Viagra*" is the most often counterfeited pharmaceutical.

Pharmaceuticals are very often purchased on the Internet and sent to the ordering party's address in quantities allowed by the Polish pharmaceutical law.

**Additionally, the EU plan of actions which are supposed to be undertaken by customs services in the years 2009 – 2012 in terms of combating infringements of intellectual property rights (ACTION Plan), presented by a representative of the European Commission, assumes:**

- enhancing cooperation with rights' owners;
- strengthening operational cooperation between customs services in the EU and between these customs services and third countries;
- developing international cooperation in terms of enforcing intellectual property rights;
- improving access to information and enhancing civic awareness;
- finding solutions to the problem of Internet sales.

### **Legislative actions**

In the 1<sup>st</sup> half of 2009, the Customs Service continued to conduct activities aiming at combating infringements of intellectual property rights, at analyzing confiscated pirate and fake goods in order to identify trends and new risk areas for customs control.

At the same time, works of the Project Group for the Legislative regulations aiming at the Protection of Intellectual Property, created by the European Commission and composed of customs experts from 9 Member States, including Poland, continued to be performed. These

works resulted in publishing a Polish version of a document entitled „*Intellectual Property Rights. Guidelines for filing motions for undertaking an action by customs services*”. These guidelines aim at providing the owners of intellectual property rights with a tool supporting a better understanding of the procedure of filing applications for customs protection. Additionally, these guidelines guarantee more uniform rules governing the procedure of filling in EU application forms for customs protection, as well as equal treatment of all the owners of these rights on the territory of the European Union.

Starting from January 1, 2009 a new statistical form referring to the seizure of pirate and fake goods, developed by the Project Group for the Legislative regulations aiming at the Protection of Intellectual Property, has been in force in every Member State. One of significant changes is the possibility to use data from this form to prepare reports on the EU risk analysis.

At the same time, works on amending Community regulations aiming at strengthening and enhancing customs control methods in terms of intellectual property rights protection and at introducing simplifications for the owners of these rights were still conducted.

### **Information exchange system**

When talking about the achievements of the Customs Service we cannot forget about one of the most modern IT systems in the European Union which the Polish Customs Service has been provided with.

On 10 April 2008, a system for the protection of intellectual property rights “Leonardo da VINCI” (“**VINCI**”) was introduced.

Responding to the needs of economic environments, this system introduces numerous simplifications for the owners of intellectual property rights. It enables, inter alia: to collect and process information provided by producers on original and fake goods, necessary for customs services to identify pirate and fake products (eg. photos, contact points for the exchange of information), entering and processing data about all confiscated illegal products and preparing various statistical reports, including reports for the European Union.

**VINCI** presented in the European Commission is one of the most modern tools supporting both owners of intellectual property rights (business) and customs services in fighting counterfeiting and piracy. Assumptions underlying **VINCI** system have been used to create a Community system **IT IPR “COPIS”**.

It is possible that in the near future business will be able to have direct access to the system on the Internet.



## CONCLUSIONS

When creating masterpieces, works, inventions and new solutions we refer to the knowledge, traditions and experiences gained by many generations. The exchange of information, experience and ideas is indispensable to modern societies of the 21<sup>st</sup> century. However, objects of intellectual property rights cannot be illegally appropriated, which results in impoverishing their development, hampering progress and investments, budget receipts. Reducing the number of new, legal workplaces, counterfeiting and piracy do not lead to desirable growth of competition, both as far as industry and culture are concerned. In turn, they undoubtedly contribute to better development of organized crime.

When Poland became one of the Member States of the European Union, it became necessary to increase the standards of the protection of intellectual property rights. In recent years, Poland has made a lot of effort to reduce the number of infringements of these rights and to strengthen its credibility in the international arena. Results of research presented in this report confirm this thesis.

Polish government administration will continue to fulfill all tasks specified in the *“Programme for the protection of copyright and related rights in Poland for the years 2008 – 2010”*, it will develop new strategies, as well as shape any new initiatives aimed at guaranteeing an appropriate level of observance of intellectual property rights.

**One of such initiatives is the idea of concluding an accessory agreement between the Ministry of Culture and National Heritage, the Ministry of the Interior and Administration and the Ministry of Justice. It is supposed to make the fight with piracy and counterfeiting more efficient.**

The main idea underlying the agreement is that each Ministry will undertake to complete, apart from objectives specified in the *“Programme”*, additional priority issues specified during mutual negotiations.

It refers, inter alia, to:

- the protection of copyright and additional rights, as well as other intellectual property rights on the Internet,
- monitoring larger market places (bazaars),

- providing law enforcement and justice administration officers with training courses concerning intellectual property rights, also with the participation of social partners, as well as
- organizing common social campaigns.

Additionally, issues concerning the development of ICT systems for the exchange of information will also be considered. Electronic register of judgements and proceedings in progress, imitating the American “*docket*”<sup>33</sup> seems to be worth recommending.

Referring to the initiatives undertaken outside the framework of the “Programme”, it is worth emphasizing that on 29 June 2009 the Commander-in-Chief of the Police and the Ministry of Culture and National Heritage signed an agreement on the cooperation within the framework of mechanoscopic examination of secured evidence materials, collected during controls of entrepreneurs manufacturing and copying optical discs.

As it was specified at the beginning, the present edition of the report is special. So far, no comprehensive analysis illustrating the problem from the moment when law was infringed, through the procedure of avering such an infringement to its termination in court has been conducted.

Despite the need to make efforts aiming at more effective enforcement of copyright and related rights, as well as other intellectual property rights, the basic conclusions arising from the report suggest that the efficacy and efficiency of Polish law enforcement bodies and justice administration within the framework of infringements of intellectual property rights are improving.

In the European arena the Polish Customs Service is seen as one of the most efficient services undertaking actions which aim at the protection of intellectual property rights among all EU Member States.

The most important conclusions concerning different parts of the Report have been placed in special boxes and bolded or placed in the concluding part of each chapter.

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<sup>33</sup> By virtue of the Ordinance of the Minister of Justice of 15 September 2008, the Team engaged in creating the Polish national system for information management in the justice administration was created. The Team plans to create one uniform electronic repertory per unit, which will operate within the central system for information management. The system for information management will be based on cooperating Court repertories, Centrum for Information Management and the Centre for Information Management in the IT and Court Register Department. It is planned to develop a database for general use which will constitute an Information Centre of Polish Common Law Courts.

In Poland, as in the majority of countries around the world, problems concerning infringements of intellectual property rights will not be solved immediately.

However, the Polish government is aware of the fact that previous achievements in this area need to be continuously developed, also with the support of international organizations and social partners, as well as owners and holders of the rights in question.

We should also assume that due to the fact that Poland and Ukraine organize European Championship “EURO 2012” and that the Polish government has adopted various guarantees and undertaken numerous responsibilities on behalf of UEFA, the protection of intellectual property rights will be strengthened.

Broadly conceived intellectual property is not restricted by borders of one country only and constitutes heritage which should be subject to special protection.

Accepted  
Minister of Culture and National Heritage

*Bogdan Zdrojewski*