

# **Report concerning the protection and enforcement of copyright and related rights, as well as other intellectual property rights in Poland for 2009 - 2011**

## **GENERAL PART – Coordinating activities undertaken by MKIDN in the field of intellectual property rights infringements**

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### **THE TEAM ON COMBATING THE INFRINGEMENTS OF COPYRIGHTS AND RELATED RIGHTS**

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On **15 January 2013**, there was a meeting of the Team on Combating the Infringements of Copyrights and Related Rights (hereinafter referred to as the Team). The meeting was very important because for the first time it was held with the participation of the extended number of members. The new members who joined the Team are the representatives of: Minister of Administration and Digital Affairs, Minister of Economy and of Patent Office of the Republic of Poland.

That was the first meeting of that authority after the amendment on 03 August 2012 (Official Journal “Monitor Polski” dated 2012, item 66) of the regulation No 83 of the Chairman of the Council of Ministers dated 9 November 2000 on the appointment of the Team on Combating the Infringements of Copyrights and Related Rights.<sup>1</sup>

The extension of the composition of the Team resulted from the need of establishing the complex network of contacts between experts having expertise in different disciplines. As a principle, their work is to contribute to strengthening the effectiveness of the activities undertaken in the field of

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<sup>1</sup> Official Journal of the Republic of Poland under name “Monitor Polski” is issued by the Chairman of the Council of Ministers, assisted by the National Legislative Centre. Since 1 January 2012 “Monitor Polski” has been issued in electronic form in line with the sequence of items in a given calendar year. <http://www.monitorpolski.gov.pl/>.

intellectual property rights' protection. The Team's work will be aimed at determining the so-called good practices. Additionally, thanks to expanding the composition of the Team members, the sector of culture will be in a position to collect more reliable information and data about the scale of infringements of the intellectual property rights. It will become possible thanks to undertaking talks with the representatives of statistical departments being part of the administrative structures created in some state bodies.

Moreover, the newly composed teamwork will facilitate the analysis of thoughts and ideas as well as it will help to come up with legislative and non-legislative solutions, incorporating different views.

The current composition of the Team is:

- 1) chairman – minister on cultural affairs and national heritage protection, or the nominated secretary, or undersecretary of state,
- 2) two vice-chairmen in the rank of secretary of state, or under secretary of state, nominated, respectively by:
  - a) minister of internal affairs,
  - b) minister of digital affairs,
- 3) members:
  - a) in the rank of the secretary, or undersecretary of state nominated as one representative, by:
    - minister of public finance,
    - Minister of Justice,
    - Head of the Chancellery Office of the Chairman of the Council of Ministers,
    - minister of foreign affairs,
    - minister of education,
    - minister of higher education,
    - minister of economy,

b) nominated as one representative of :

- Head of Customs Service,
- Chief Commander of Border Guards,
- Chief Commander of Police,
- President of the Patent Office of the Republic of Poland,

Moreover, the Chairman of the Team may invite the representatives of the General Prosecutor, or the representative of the National Broadcasting Council, of the Chairman of the Office for the Competition and Consumer Protection, of the President of the Office for Electronic Communication, of the General Inspector of Personal Data Protection, of the Ombudsman for Citizens' Rights as well as other persons, including the representatives of the organisations of collective management of copyrights and related rights and the representatives of the self-governing associations of which the core activity is the protection of copyrights and related rights, to participate in the Team's work. These representatives participate in the works of the Team in a capacity of advisors.

In the same time, it shall be added that despite the fact that there was no formal convening of the Team's meeting in the year 2012, standing government experts working in the field related to intellectual property rights' protection met on different occasions and exchanged their observations, conclusions and information in the field of intellectual property rights' protection, which will be covered below.

## **WORKSHOPS ON THE REFORM OF INTELLECTUAL PROPERTY RIGHTS**

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At the turn of May and June 2012 the workshop was held in the Ministry of Culture and National Heritage, under title "*Reform of intellectual property rights*".

The purpose of that workshop was to survey the legal rules being in force in Poland within legal act dated 4 February 1994 on copyrights and related rights

(Official Journal dated 2006, No 90, item 631 with further amendments) and then to indicate the legal rules which call for amendment.<sup>2</sup>

Social experts and the representatives of the state administration took part in the workshops. The social participation was represented by publishers, producers, representatives of telecommunication and information technology industry, collective management organisations and NGOs. The works initiated by the workshops were not in any way intended to replace the social consultation process stipulated by law. Their prototype pattern was British taskforces, which through their work initiated the legislative process.

The first workshops took place on 8 May 2012. During the workshop meeting, its participants focused mainly on public domain matters.

The second workshop was held on 15 May 2012. During the workshop meeting, the main discussion centred around the fair public use in real and virtual world with regard to different exploitation areas.

The third meeting held on 22 May 2012 was devoted to such matters as the fair public use and the definition of the terms – counterpart and copy.

Fourth workshop meeting took place on 29 May 2012. At that meeting the participants discussed the civil liability and criminal sanctions resulting from the infringement of copyrights and related rights. The participants of the meeting also tackled the issue of specifying the specialised court which will settle the cases related to intellectual property rights.<sup>3</sup>

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<sup>2</sup> Legal Act of 4 February 1994 on copyrights and related rights.  
[http://www.mkidn.gov.pl/media/docs/20110512\\_Act\\_on\\_Copyright\\_and\\_Related\\_Rights.pdf](http://www.mkidn.gov.pl/media/docs/20110512_Act_on_Copyright_and_Related_Rights.pdf)  
(English version).

<sup>3</sup> Minister of Culture and National Heritage sent a letter to the Minister of Justice in January 2013, in which he expressed his support for the initiative of creating specially dedicated departments considering the cases in the field of intellectual property within the structures of the Polish common courts' system.

The last workshop took place on 12 June 2012. At that time the draft of the document summing up the outcome of the activities undertaken so far, was also presented. It also contains the postulates in ordered manner, regarding the legislative changes and the collected commentaries to them.<sup>4</sup>

### **TEAM ON SETTING PRINCIPLES FOR MAKING AVAILABLE PRINTED MATERIALS TO THE BLIND AND THE VISUALLY IMPAIRED.**

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The 25<sup>th</sup> session of the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organisation (WIPO) was held on the 23<sup>rd</sup> November in Geneva. The Committee focused on the works referring to the document on fair use for persons with sight dysfunction and other disabilities preventing them from reading the printed materials.

After that last, the 25<sup>th</sup> session of the Committee, the delegation of the European Union in the last statement emphasised that the purpose of the European Union is to satisfy the special needs of the blind and the visually impaired by means of effective and sustainable instrument of WIPO. The delegation did not rule out that the drafted document may take form of a treaty.<sup>5</sup> Furthermore, it emphasised that the final outcome of those initiatives is to ensure that the persons with such dysfunctions could have the same equal access to books as persons without such dysfunctions.

In Poland the dissemination of press and books among persons with sight impairments may be conducted on commercial basis as well as within the fair use stipulated in art. 33<sup>1</sup> of the copyright law. The use as an exception may be executed if it refers directly to the disability, is on non-profit basis and is to the extent determined by the nature of the disability.

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<sup>4</sup> The final version of the report under tile “Opening Report” is available from the website: <http://www.prawoautorskie.gov.pl/pages/posts/raport-otwarcia-zostal-przekazany-do-ministerstwa-administracji-i-cyfryzacji-22.php> (only Polish version).

<sup>5</sup> The Diplomatic Conference will be held from 16 to 30 of June 2013 in Marrakech. At such time the treaty is to be negotiated and finally approved.

Despite the fact that such regulations have been in force, not more than 5% of the publications appears in such formats, which the blind or the visually impaired may in fact use today. What is even more, the persons with sight dysfunctions cannot make use of full press offer.

In connection with WIPO initiatives, bearing in mind the increase of the availability of printed materials for persons with sight dysfunctions, the Minister of Culture and National Heritage called into being in the year 2012 the Team on setting the principles for making available printed materials for the blind and visually impaired.<sup>6</sup>

The tasks of the team include: defining the needs of the blind and visually impaired in the field of access to the printed materials and defining the difficulties which the persons with sight dysfunction have to overcome. The Group also works on the mechanism which would help, on one hand, to make easier the access to the printed materials for the blind and on the other hand, to minimise the risk of publishers' rights infringements. The task of the Team that was called into being also includes the search for new sources of financing for the production and distribution of formats available for the blind.

Moreover, the team members would assist the Polish culture sector in collecting data confirming that the appropriate conditions have been created in Poland to implement the provisions of the agreement which was concluded in October 2010 under the auspices of the European Union (*Memorandum of Understanding*). It refers to the access to printed works for persons with disabilities preventing them from reading the printed materials. That agreement also set out the principles governing the distribution of works among the disabled on European level, including, in particular, the creation of the trustworthy distributors' network whose task will be to identify the

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<sup>6</sup> The Official Journal of the Minister of Culture and National Heritage dated 13 December 2012, item 81 [http://bip.mkidn.gov.pl/media/download\\_gallery/20121214p-81\\_Z\\_Zesp\\_mat\\_druk.pdf](http://bip.mkidn.gov.pl/media/download_gallery/20121214p-81_Z_Zesp_mat_druk.pdf) (only Polish version).

beneficiaries, transforming the works into the secure formats and distribution of formats to the beneficiaries.

The representatives of all the interested parties took part in the meetings of the team, such as, among other, the representatives of the associations: of the blind, of the Polish bookstores and Polish book, of the publishers of public and academic libraries press, of the government on the affairs of the disabled.

The organisational meeting of the team took place on 20 September 2012. At such time, the participants pre-identified the problems which the blind in Poland when reading the printed materials have to face. The participants of that meeting also indicated the troubles encountered by the publishers who try to make easier the access to the publications for the blind. Furthermore, the members of the team tackled the issue of creating the network of trustworthy intermediaries in Poland who could deal with distribution of materials in formats available for the disabled.

The second meeting of the Team on took place on the 8 October 2012 setting the principles for making available the printed materials for the blind and visually impaired. The models of making available printed materials for the blind and visually impaired existing in Poland were discussed during the meeting. The models of making available magazines in a legal way to persons with sight dysfunction and making available printed materials being part of the library collections in a legal way to the blind and the visually impaired were presented. Another topic was also tackled during the meeting, namely the one related to functioning of similar models in other member states of the European Union.

The third meeting of the members of the team took place on 7 November 2012.

The subject matter on the agenda for that meeting was the definition of the blind person, or the visually impaired person (beneficiary) to whom the digital copies of the works will be made available and the trustworthy intermediary (an entity

which will be involved in making available the digital copies to the blind and visually impaired).

The starting point for the discussion was the working translation of the definition of the beneficiary and the trustworthy intermediary originating from the currently discussed draft of WIPO treaty regulating the fair use in favour of the persons with disabilities preventing them from reading the print.

The members of the team making a reference to the definition being discussed on international forum wondered what conditions shall be met by a beneficiary in Poland; which entities in Poland could perform the function of a trustworthy intermediary in Poland; which entities could play a role of trustworthy intermediaries in Poland and what obligations shall be imposed on those entities. The proposal was also put forward during the meeting, regarding the establishment of a special register of trustworthy intermediaries.

The fourth meeting of the members of the team took place on the 23 January 2013. At that time the main topic on the agenda was the discussion on the existing technical security measures applied by the publishers in the electronic publications and what impact could that have on the access to e-books by persons with sight impairment.

## **FORUM OF COPYRIGHT LAW**

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Forum of Copyright Law was set up by the Minister of Culture and National Heritage. The members of the Forum will discuss the matters related to the Polish Law on Copyrights and Related Rights as well as will debate the topics referring to the broadly understood intellectual property law. The first meeting is scheduled for 27 March 2013. This Meeting will be attended by the representatives of the authors, creative industries, collective management organisations, from business and organisations involved in the information society issues.

The directions for the legislative changes will be proposed within the framework of works initiated by the Forum, which result from the necessity of implementing European Union law. In the same time, the Forum will discuss the topics connected with the social dialogue initiated by the European Union by issuing a Communiqué on the content on the uniform digital market (COM(2012)789).<sup>7</sup>

In the first place, the following topics are planned to be discussed:

- Determination of the principles of use the orphan works and ensuring the legal access to the out-of-commerce works,
- Alternative sources for financing the Fund for Promotion of Creative Activity in replacement of fees for the use of works which are in public domain,
- Manner of full implementation of the directive 2006/115/WE on public lending rights and transposing it into the Polish legal regime,<sup>8</sup>
- Scope of criminal liability in the law on copyright and related rights,
- Discussion on the mechanism of effective trading in licences including the facilitation of the rights acquisition by the users of copyrights and related rights and making possible the quicker generation of revenues for the authorised in order to make easier an offer for the available cultural goods.

## **SOCIAL CONSULTATIONS**

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Taking account of the need to prepare the detailed positions of the Government of the Polish Republic for the discussion on the legal rules of the European Union, not only in the year 2012, but also in the year 2013, the Ministry of Culture and National Heritage (IMKiDN) has conducted and is organising social consultations on the following matters:

- the content on the uniform digital market,

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<sup>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0028:0035:EN:PDF>

<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0028:0035:EN:PDF>

- granting multi-territorial licences regarding rights to music works for the purpose of their use in the internet exploitation field on the internal market
- civil measures for enforcing the intellectual property rights,
- *droit de suite* – creator’s rights and their heirs to remuneration for subsequent resales of the original plastic, or music works,
- draft of the directive on collective management.

## **INTERNET PORTAL OF THE MINISTER OF CULTURE AND NATIONAL HERITAGE ON COPYRIGHT LAW**

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In December 2012 the Ministry of Culture and National Heritage launched portal at the address [www.prawoautorskie.gov.pl](http://www.prawoautorskie.gov.pl). This website is entirely devoted to copyright law and media law. The portal is addressed to all persons who search for information related to that topic in internet. Majority of the materials printed there will take a form of messages containing the most updated content. Their lay-out was planned in such a way so that the interested parties could follow on current basis what has been going on in copyright law and media law in Poland, Europe and on the international forum.

The site contains the following bookmarks:

- Section “News” – the information will be provided here on all the events related to the copyright law and media law.

However, these are the events and initiatives which are unrelated to the legislative process. One may find here “Press Review” concerning that topic and the sections:

- Binding Law - collection of national legal acts, European Union legal acts and international legal acts in the field of intellectual property and media law.

“Amended Law” – this is the place for displaying information on legislative changes. The Information is compiled chronologically and hence, the interested

person may follow the legislative process related to the passing of a given legal act. It is also a place for displaying information on the social consultations being carried out and the positions submitted and the outcome of the negotiation process.

- “Judicial decisions” – collection of judgments which have been issued by the Polish courts and the decisions of the Tribunal of Justice of the European Union.

- “Collective Management” – here you may find basic information on the topic of collective management organisations and the collection of links to annual reports on the undertaken activities, which the organisations have published on their web sites. In addition to that there is also information about the Copyright Commission and the arbiters (photos and brief biographies).<sup>9</sup>

- “Data Base” – up to this moment there is a “Glossary” and the collection of reports. In future the FAQ section will appear (the most frequently asked questions).

At present the set of the selected questions is being prepared which refer to the public reproduction and private fair use.

## **INTELLECTUAL PROPERTY COURT**

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<sup>9</sup> Act of 4 February 1994 on copyright and related rights; article 110<sup>1</sup> paragraph 2:  
“The Commission shall:

- 1) examine cases for approval of tables of remuneration and for modification of approved tables of remuneration for the use of works or objects of related rights;
- 2) settle disputes regarding the use of tables referred in point 1;
- 3) settle disputes connected with the conclusion of the contract referred to in Article 21<sup>1</sup> paragraph 1;
- 4) indicate the competent organization within the meaning of this Act in the event referred to in Article 107;
- 5) examine cases for the reconstruction of files and for the supplement or correction of Commission rulings;
- 6) examine cases for interpretation of the Commission’s decisions.”.

Understanding that the development and the importance of innovations in contemporary economic systems calls for the appropriate legal protection system guaranteed by the state to protect the creative and inventive activities, Ministry of Culture and National Heritage revived the idea of creating special departments within the structures of national common court system, which will consider cases related to intellectual property (so-called Intellectual Property Court), extending the invitation to the Ministry of Justice for taking part in the discussion.

Such solution would provide for the inventor, or the creator, the legal security of their invention, or work and also it will help to harmonise nationwide the judgements made in the field of intellectual property rights. Furthermore, it lies within the interests of all the participants in the economic trading and of the citizens interested in the access to the cultural goods to have it available upon uniform and predictable legal rules.

**DETAILED PART – Activities undertaken by state services in the field of combating intellectual rights’ infringements.**

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**BORDER GUARDS**

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Border Guards is a body which investigates and combats criminality of transborder nature. The activities undertaken by the Border Guards in the field of protection of broadly understood intellectual property (copyrights and related rights and industrial property rights) refer to combating trafficking cases and related activities (eg.: selling at marketplaces), including also activities conducted by organised crime.

In the years 2009-2012 the Border Guards continued their activities aimed at intellectual property rights’ enforcement. Such activities were undertaken nationwide, with the special focus on border zones and marketplaces. They

referred mainly to the detentions of people and seizures of goods as well as to detections of the manufacturing sites and of the smuggling of goods.

The activities undertaken by the Border Guards brought in tangible results in combating this type of criminal behaviour. As a result of the activities, the objects originating from crime were secured for the estimated value of over 10 million zloty.

<b>2009 year</b>	<b>2010 year</b>	<b>2011year</b>	<b>2012 year</b>
<b>Over 6.5 million PLN</b>	<b>Over 2.7 million PLN</b>	<b>Over 1 million PLN</b>	<b>Over 0.3 million PLN</b>

The most frequently seized goods were: clothes and clothing accessories, cosmetics and cosmetic products as well as CDs, DVDs and BLU-RAY discs. The next products which were seized were: electric and electronic appliances, household chemistry accessories and pharmaceuticals.

The statistics representing the intellectual property infringements disclosed by the Border Guards show the declining tendency. In some parts of Poland, such type of criminal behaviour is relatively minor and the crimes happen rather rarely. It is confirmed by the analysis of the scale of that phenomenon, the results of which were sent to the Border Guards by the organisational units.

The declining tendency is mainly reflected in the production and smuggling of pirated discs containing pieces of music, films, games and computer programmes. In the era of advanced telecommunication and teleinformatics systems, transfer and reproduction of multimedia files by Internet minimises the pirated copying (reproduction) of CDs, DVDs and BLU-RAY discs. The common access to internet network considerably weakens the interest in pirated recordings on data carriers, which is translated into the number of the revealed pirated discs.

Despite the general declining trend, the criminal activity involving trading in counterfeit branded products is to be assessed differently.

As it was in the previous years, there was disclosed a big number of products with fake trademarks of such brands as *Adidas, Puma, Nike and Chanel, Versace, Hugo Boss, Calvin Klein*. The illegal products, which are still being put on the Polish market, originate mainly from Asian countries, which within the analysed period were distributed most frequently in big agglomerates, unusually in marketplaces.

It was also indicated within the above stated period of time that there had also been the infringements of industrial property under the so-called excise related crimes, with the special focus on tobacco products. The analysis of the activities which have been initiated so far, shows that the illegal production and trading in cigarettes violates the intellectual property rights of which the owners are the tobacco concerns. The unauthorised persons use the logo which is registered by a concern.

Such committed crimes do not only result in the breach of penal and fiscal rules (with regard to excise related crimes), but also in the infringement of industrial property rights.

Within the analysed period the Border Guards initiated **178** preparatory proceedings.

<b>2009 year</b>	<b>2010 year</b>	<b>2011 year</b>	<b>2012 year</b>
<b>41 preparatory proceedings</b>	<b>75 preparatory proceedings</b>	<b>42 preparatory proceedings</b>	<b>20 preparatory proceedings</b>

The activities referring to the protection of intellectual property were also conducted at marketplaces and goods exchanges (electronic exchanges, or car exchanges). They are undertaken in conjunction with the Police and Customs Services, with the assistance provided by the rights holders.

In connection with the organisation of European Football Championships in Poland EURO 2012, the needs arose for the intensification of the activities in the field of broadly understood intellectual property. Despite the increased border traffic and the special reservation of the rights of companies, or institutions organising or taking part in organising and sponsoring the tournament, the increased number of intellectual property rights' infringement have not been confirmed.

## **POLICE**

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As a result of the investigation conducted by the Police, the following threats have been identified, which result from the criminal actions done to the detriment of the owners of the copyrights and related rights (with regard to the rights' infringements in the field of music, film, books, television and computer programmes), such as:

- production (copying) and putting into trading of the data carriers with pirated works,
- illegal dissemination of works in Internet (film, music, books, computer programmes),
- public reproduction without permission of the copyright owner, of the music pieces and films,
- use of the illegal computer software in day-to-day economic activities, stealing of the television signal by illegal public dissemination of the recordings of television programmes, getting connected to the cable television receiving devices, co-sharing of the television signal through Internet,
- illegal sale of the copied books in copy centres.

The following results were achieved as a result of activities initiated by the Police in the field of combating intellectual property crimes in the year 2011 as compared to the years:

- the year 2010, data described in parenthesis ( ),
- the year 2011, data described in square brackets [ ]

results referring to **infringements of copyrights to films**, where the criminal activity has been discontinued:

- in **109** (99) [184] places (copy centres and sales points, rental shops, wholesales and producers)
- **103** (52) [39] persons committing crimes via Internet were detained

The following was secured:

- **20 688** (33 089) [142 512] pieces of CD and DVD discs;
- **723** (687) [2 306] pieces of other carriers;
- recording equipment for the value of **45 393** (2 200) [ no data] PLN.

The losses initially estimated by the harmed parties amount to about **459 978** (860 583) [10 000 000] PLN.

results referring to **infringements of copyrights in the field of phonography**, where the criminal activity has been discontinued:

- **80** (87) [142] places and **625** (125) [69] persons committing crimes via Internet were detained;

The following was secured:

- **6 387** (16 842) [ 51 982] pieces of CD and DVD discs;
- **617** (944) [2 168] pieces of other carriers;
- recording equipment for the value of **53 100** (16 400) [47 000] PLN.

The losses initially estimated by the harmed parties amount to about **554 903** (591 452,90) [1 500 000] PLN.

results referring to **infringements of copyrights in the field of computer software**, where the criminal activity has been discontinued:

- in **192** (222) [210] places

It refers to:

- **244** (172) [148] persons committing crimes via Internet were detained.

It was disclosed:

- **315** (343) [342] cases of using pirated computer programmes in the conducted economic activities.

The following was secured:

- **15 804** (18 970) [27 714] pieces of CD and DVD discs;
- **1 051** (1 091) [1 211] pieces of other carriers (HD);
- **1 892** (602) [no data] pieces of console for TV games, and
- **995** (1 548) [on data] pieces TV game
- recording equipment for the value of **1 626 388** (1 019 720) [380 533] PLN.

The losses initially estimated by the harmed parties amount to about **12 330 883** (4 451 578) [7 500 000] PLN.

results referring to **infringements of TV signal**, where the criminal activity has been discontinued:

in **42** (54) [54] places (illegal TV cable, points of sale of pirated decoders and code cards).

The following was secured:

- **53** (41) [81] pieces of code cards
- **54** (97) [no data] decoders and **40** (52) [no data] other electronic components;
- **7 945** (77 869) [no data] PLN worth of equipment for programming code cards.

The losses initially estimated by the harmed parties amount to about **80 715** (43 573), [110 000] PLN.

results referring to **infringements of book publishers' rights**, where the criminal activity has been discontinued:

- in **16** (12) [17] places (printing houses, publishing houses and reprographic points).

The following was secured:

- pirated books (including e-books), having value of **27 235** (32 000) [13 945] PLN.

In the year 2011 the actions initiated by the Police led to the curbing of criminal activities:

- in **439** (474) [607] places (copy centres, points of sale, rental points, wholesales and producers), and
- **972** (349) [256] persons committing crimes via Internet were detained.

In the course of the undertaken activities there were secured:

- **42 879** (68 901)[221 175] pieces of optical carriers;
- **2 391** (2 722) [5 685] pieces of other carriers, and
- equipment used for perpetrating a crime, having value of **1 732 826** (1 038 320) [no data] PLN.

The losses initially estimated by the harmed parties amounted to **13 453 714** (5 979 186) [20 000 000] PLN.

In the field of infringements of **intellectual property rights**, the criminal activities were discontinued:

- in **789** (847) [ 958] places (sellers, wholesales and producers).

The following was secured:

- the counterfeit products for the value of **27 129 333** (21 477 839) [19 000] PLN;

- equipment and machines for their production for the value of **1 055 530** (17 860) [no data] PLN.

<b>Crimes related to intellectual rights infringements</b>				
<b>Year</b>	<b>Initiated proceedings</b>	<b>Completed proceedings</b>	<b>Confirmed crimes</b>	<b>Detected crimes</b>
<b>2009</b>	4768	7269	40956	40215
<b>2010</b>	3577	5856	29498	28865
<b>2011</b>	3824	5018	27841	27258

The recorded decreased number of secured data carriers result from the constantly smaller number of persons making direct sales of pirated products in the marketplaces.

The kind of data carriers has also changed. CDs and DVDs are more and more often replaced by external memory sticks, or disc of considerably bigger capacity. Lot of data could be stored on such carriers (including, pieces of music, or films). During raids, the servers that were secured had in some cases discs of capacity measured in terabytes (the increase in the number of the secured other carriers), which shows that the bigger number of illegally disseminated files has been seized and secured as compared to the previous year.

Moreover, the dynamic development of technologies and new mechanisms of criminal behaviour resulted in that that the considerable part of intellectual property infringers transferred their illegal operations to Internet. The finding of evidence materials for the substantiation of the crime committed via network is usually time-consuming and requires from the investigators a lot of attention and diligence, not to mention, the technical expertise. What is even more, in such cases, the lengthening of the time needed for conducting the preparatory proceedings is caused by the necessity to call in IT experts and obtain an opinion on the criminal activity mechanism as well as the duration, quantity

and ways of making available the files and other circumstances of the given case.

Additionally, the difficulties in estimating losses suffered by the victims are caused by the fact that the losses can only be determined after the closing of the preparatory proceedings (especially, in case of dissemination of works via Internet, the losses could be conditioned by the so-called downloads of works, or the time of their dissemination). When analysing the illegal dissemination of works via Internet, one has to take into account such factors as: duration of the crime, number of files made available illegally, the number of downloads of a given work.

In the period covered by the analysis the demand for physical optic carriers containing illegal copies of the works has deteriorated, hence fewer cases related to them.

As compared to the year 2010 the number of instigated preparatory proceedings has gone up in the field of intellectual property rights' infringements. However, it is connected with the specialisation of the functionaries of the Departments on Combating Economic Crimes of the field Police units dealing with the eradication of criminal acts committed against intellectual property rights.

As for the marketplaces, especially, in eastern crossborder territories of the European Union, the Police has developed day-to-day cooperation with the Border Guards and Custom Service of the Ministry of Finance. Many jointly conducted activities in the crossborder marketplaces are aimed at limiting the number of intellectual property rights' infringements.

On the basis of the analysis carried out by the Police field units in the area of combating the intellectual property rights' infringements taking place in the marketplaces situated along the western border of Poland, it may be concluded that the operations conducted by the Police are relevant to the existing threat. Due to the drop in demand (especially, among the citizens of Germany) for the

data carriers with pirated works and counterfeit products, the number of instigated preparatory proceedings has gone down in recent years.

In the opinion of the Police, some declining trends reflected in the statistics also result from frequent agreements entered into by the victim and the offender prior to the instigation of the preparatory proceedings.

As far as the counterfeit pharmaceuticals are concerned, the number of initiated and closed proceedings has considerably become smaller. This is thanks to the on-going specialisation of the Police officers and the strengthening of the international co-operation in that field. The example for that can be Poland's participation in the second, third and fourth edition of PANGEA operations directed against illegal trading in medicinal products via Internet.

<b>Crimes related to pharmaceutical and medicinal products</b>				
<b>Year</b>	<b>Initiated proceedings</b>	<b>Completed proceedings</b>	<b>Confirmed crimes</b>	<b>Detected crimes</b>
<b>2009</b>	346	423	270	204
<b>2010</b>	344	397	585	518
<b>2011</b>	481	448	1042	942

Almost all illegal market for trading in counterfeit medicinal products is localised in Internet. The number of detected cases of illegal trading in medicines in the marketplaces, or in other points-of-sale represent a small share in the entire number of incidents. The experience Police has gained so far indicates that the websites in Polish offering counterfeit medicinal products are located outside not only the Polish borders, but also outside the borders of the European Union, which represents a major obstacle standing in the way of identification of the perpetrators of such crimes. It should be emphasised that the Police is closely co-operating with the Chief Pharmaceutical Inspectorate, Chief Sanitary Inspectorate, Trade Inspection as well as Veterinary Inspection

and other services of which the combating of crimes against intellectual property rights is part of their competencies.

Furthermore, it is clearly noticeable that there are incidents of production and putting into trading of counterfeit products, such as: dietary supplements, foods, toys, electric and electronic devices, car spare parts, cosmetics, household chemistry, footwear, clothes, or even wooden constructions used for transporting goods. Most of the enumerated counterfeit products may cause a real threat to human health and life.

Matters related to criminal acts against intellectual property rights were incorporated into the training programmes for the graduates of the police academies. Such trainings are organised by the Police Academy in Szczytno, by Police Academy in Piła and the Police Training Centre in Legionowo.

The example of such trainings maybe international XIV scientific seminar under title:” Technical aspects of Information and Communication Criminality”, attended by over 200 persons from Poland and abroad. It was organised by the Police Academy in Szczytno. Another example is the international conference under title: “Intellectual criminality an indication of transborder criminality.” It was organised by Regional Police Headquarters in Gdańsk. Moreover, specialist trainings are also organised by the Departments on combating economic crimes of the Regional Police Headquarters. It shall also be mentioned that in all initiatives related to combating broadly understood intellectual crimes, the representatives of the Criminal Office of the Chief Police Headquarters are actively participating.

## **CUSTOMS SERVICE**

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In the years 2009-2011 there was a significant improvement in effectiveness and efficiency of the Customs Service’s operations. The evidence for that is the

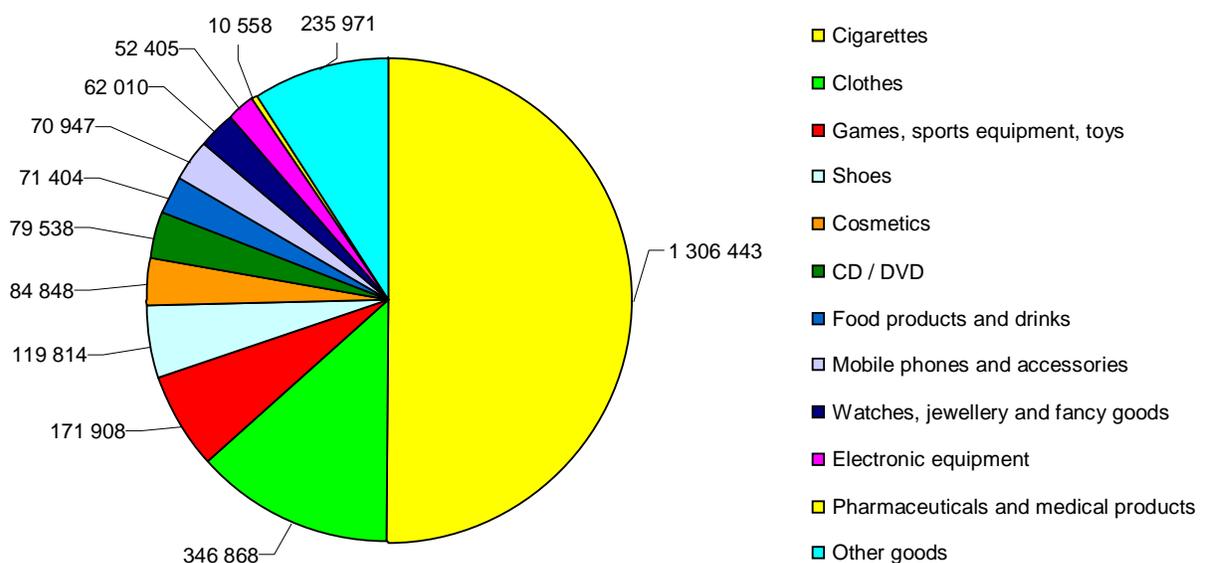
number of seized goods and also a noticeable change in *modus operandi* of the perpetrators.

The controlling activities conducted by the Customs Service in the years 2009-2011 brought in such results as **10673** detected cases of intellectual property rights' infringements. **12.4 mln** items of different products have been seized, for the total value exceeding **188 mln EUR**.

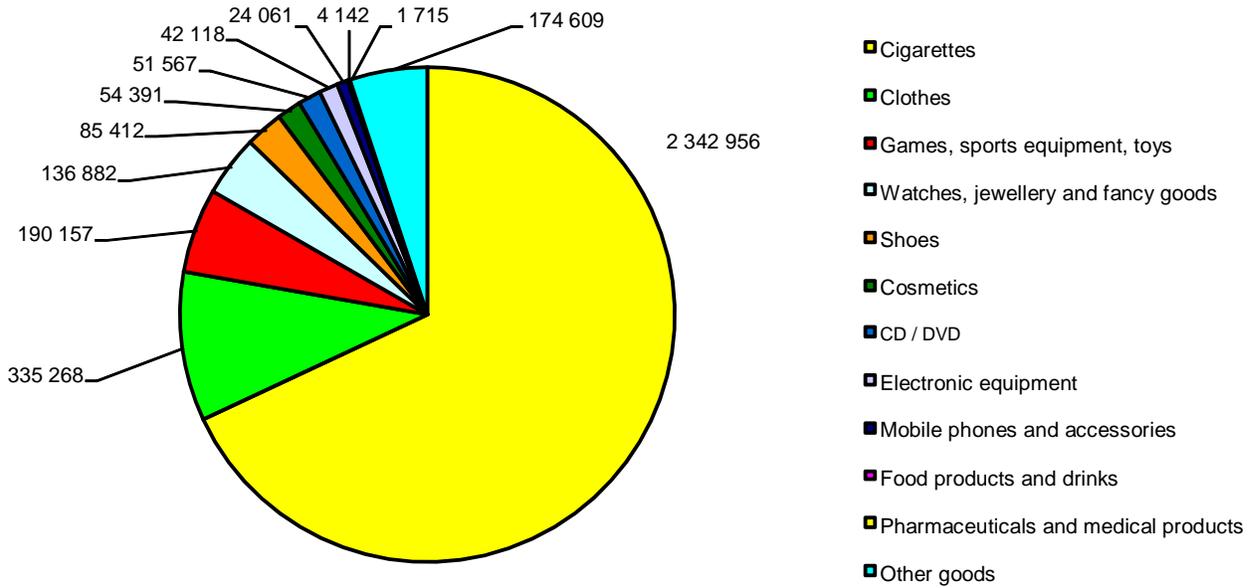
Year	Number of cases	Quantity of the products	Value of the products
2009	3 272	2 612 717	39 639 450
2010	3 557	3 443 278	115 372 969
2011	3 844	6 394 572	33 530 530

The seizures of the goods broken down by the quantity of products sized in particular years by product category are illustrated in the below presented pie charts.

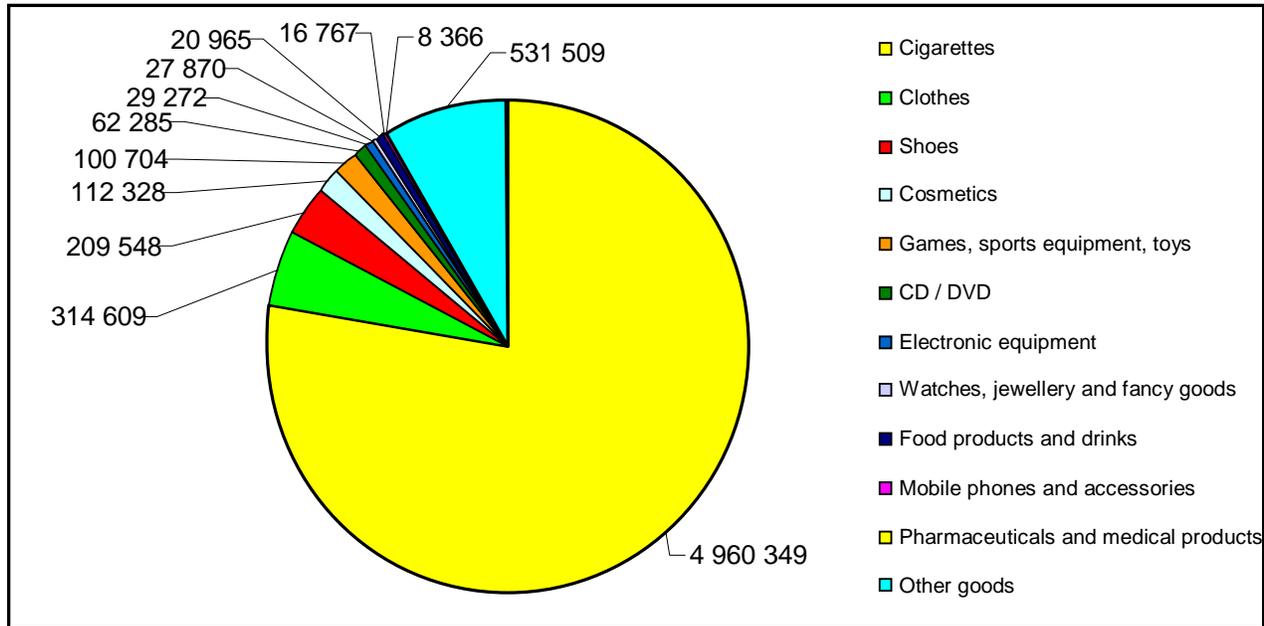
**Year 2009 – 2 612 717 items**



**Year 2010 - 3 443 278 items**



**Year 2011 - 6 394 572 items**



The analysis were conducted within the legislative and organisational activities, regarding seizures of pirated and counterfeit products. Thanks to the investigative actions the new tendencies have been identified in the trading of illegal goods. Small parcels (containing pirated and counterfeit products) delivered by courier companies and by post noted a considerable growth. That contributed to the starting of works on the special procedure which aims at the simplification of the working methods of the customs bodies regarding illegal goods sent in small parcels.

Due to the noticeable increase of the parcels containing products bought by internet, it was decided to intensify the activities of the customs bodies in the area of combating that type of crimes.

In quantitative terms small percentage in the group of the seized products in the years 2009-2011 goes to pharmaceuticals. However, due to fact that those preparations pose a real threat to the human health and life. the Customs Service worked out a special working method for detecting illegal pharmaceutical products. That method has been developed within membership in the *Team on Counterfeiting and Illegal Trading in Pharmaceutical Products and other Counterfeit Products Meeting the Criteria of Medicinal Product*.<sup>10</sup>

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<sup>10</sup>Official Journal of the Minister of Health dated 2010, No 11, item 67.

**Pharmaceuticals and other medical products infringing the  
intellectual property rights, seized by the Customs Services in the  
years 2009-2011**

	2009	2010	2011
<b>Number</b>	<b>10 558</b>	<b>1 715</b>	<b>8 366</b>
<b>Value (EURO)</b>	<b>39 145</b>	<b>21 626</b>	<b>89 085</b>

Many working meetings of the high rank officials of the Custom Service were held within European Football Championships – EURO 2012. During those meetings the plan of counteracting the intellectual property rights’ infringements was worked out. The cycle of trainings for the customs functionaries was also started on the practical aspects of the law enforcement and detection of counterfeit products. The active involvement of the Customs Service in such activities led to the minimisation of the unwanted practice. In the period proceeding EURO 2012 the customs officials seized **61,480 pieces** of pirated and counterfeit products.

In execution of the tasks described in the EU Action Plan of Combat IPR infringements 2009-2012, which the customs authorities are to take in the period from 2009-2012 in the field of combating the intellectual property rights’ infringements, the Polish Customs Service embarked on the execution of the benchmarking programme. It was agreed that the purpose of that programme will be a development of the effective methods for combating the intellectual property rights’ infringements which occur in the movement of post office correspondence and courier parcels as well as in the passenger traffic (small parcels). The representatives of the customs administrations from Czech Republic, Hungary and Poland took part in that programme. The conclusions

drawn were submitted to the European Union and were used for the works focused on the drafting of the new EU regulation on the operations of the customs bodies directed against illegal goods.

In the year 2009 the EU information system **COPIS** (*Anti-Counterfeit and anti-Piracy Information System*) started to be developed. COPIS system will enable the central management of the information for each Member State, concerning the infringement cases, starting from the submission of **Application for AFA Action**, delivered by the owner of the intellectual property rights till the moment of feeding the data regarding all the seizures of the goods suspected of infringing the intellectual property rights as well as the drawing up of the reports and the data analysis. COPIS system will be fed with both national Applications for NAFA Action as well as Community Applications for CAFA action.

The purpose of COPIS will be, among other:

- administration of the exchange of information between the competent customs departments of the Member States,
- processing data sent by the member states,
- delivering statistical reports,
- enabling communication with other systems.

COPIS system is built on the basis of the experience of the member states, which use their own systems for the protection of the intellectual rights on national level.

The solutions applied in the VINCI system used by the Polish Customs Service since the year 2008 were to a large extent used for the development of COPIS system. Within the development of VINCI system, a component has been

launched which enabled to get direct access from VINCI system to data base of the Patent Office of the Republic of Poland.

In order to satisfy the needs of the economic circles, the creators of the system introduced many improvements for the owners of the intellectual property rights.

Thanks to the system it is possible, among other, to:

- collect and process information submitted by the producers on the original goods as well as on the counterfeit goods (such as, photos, descriptions),
- create contact point for the exchange of information,
- introduce and process data on all seized illegal articles,
- draft various statistical documents.

**The protection of the intellectual property rights was regarded by the Customs Service as one of the most important tasks. The performance of that tasks in a responsible and reliable way will contribute to the reduction of the intellectual property rights' infringement cases and reinforcement of the Poland's credibility on the international forum.**

## GENERAL PROSECUTOR'S OFFICE

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The General Prosecutor's Office continues through the Prosecutor's Appellate Offices the tasks undertaken in the year 2007, which refer to cases related to the intellectual property rights' infringements.

That examination included crimes defined in the provisions of the acts:

- 1) dated 4 February 1994 on copyrights and related rights (Journal of Laws dated 2006, No 90, item 631 with further amendments);
- 2) dated 30 June 2000 on Industrial property right ((Journal of Laws dated 2003, No 119, item 1117 with further amendments);
- 3) dated 5 July 2002 on the protection of some services provided electronically based upon or involving conditional access (Journal of Laws No 126, item 1068 with further amendments);
- 4) dated 16 April 1993 on combating unfair competition (Journal of Laws dated 2003 No 153, item 1503 with further amendments);
- 5) dated 6 June 1997 Criminal Code Journal of Laws No 88, item 553, with further amendments).

It can be concluded that over the year 2011 in all the prosecutor's offices nationwide there was the following total number of cases initiated:

- 1) **3296** cases regarding prohibited acts defined in the Copyright and Related Rights Law;
- 2) **2693** cases regarding prohibited acts defined in the Industrial Property Law

- 3) **127** regarding prohibited acts defined in the Act on protection of some services provided by electronic means, based upon, or involving the conditional access ;
- 4) **168** cases regarding prohibited acts defined in the Law on combating unfair competition;
- 5) **1734** cases regarding prohibited acts defined in the Criminal code.

**There were in total 8018 initiated cases of all the categories.**

**The sentences of acquittal were pronounced only in 44 cases, this is, 2.15% of all the finalised cases which ended with indictment. Moreover, only in 42 cases (2.05%) the courts referred them back to the prosecutors due to material gaps in those proceedings.**

The conducted analyses show that in many cases, the submission of an application by the harmed person for criminal prosecution of the perpetrator of the intellectual property rights' infringements serves as a pressure measure. The propose that the harmed person usually wants to achieve is the satisfaction of financial claims. It is usually done in a form of a consent-based agreements reached prior to the initiation of the court proceedings. In most cases after fulfilling that goal the applications for prosecution are withdrawn by the authorised themselves. This, on the other hand, leads to a discontinuation of the started preparatory proceedings (lack of application for prosecuting submitted by the harmed person), an in consequence, to the artificial distortion of the statistical data.<sup>11</sup>

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<sup>11</sup> The similar evaluation is made by the Police in its report.

**REPORT OF THE MINISTRY OF JUSTICE ON THE COURT'S JUDGMENTS  
ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN THE  
YEARS 2009-2011**

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The result of the activities undertaken by the bodies running preparatory proceedings (Police, Prosecutor) is the indictment act which is made against the perpetrator of the prohibited act and submitted to the court.

The purpose of that survey that was conducted by the Department of Statistics and Analysis of the Law Enforcement of the Ministry of Justice was the presentation of the analysis of the judgements issued by the Criminal Divisions of the common courts on intellectual property rights as well as, for comparison purposes, to show the number of cases tried at the same time period in the civil divisions as well as the way of their settlement.

In order to show the uniformity of the whole process, from the moment of finding the offender, presenting charges to him and making a indictments act, till the moment of court's trying, the subject scope of the review was considered the same as was used for the analyses made by the police and prosecutor, namely, cases involving the acts prohibited on the grounds of the legal acts, such as:

- The Act on Fighting Unfair Competition (aFUC),
- The Copyrights and Related Rights Act (CRRa),
- The Industrial Property Law Act (IPLa),
- The Act on protection of some services provided by electronic means (aPSPE),

- Criminal code (art. 278 §2 and art. 293 §1) (Criminal Code).<sup>12,13</sup>

## **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN THE LIGHT OF THE CRIMINAL CASES**

In the years 2009-2011 **the number of 7 004 adults were convicted on the basis of a final court's verdict** for committing prohibited acts against intellectual property rights. These are the rights defined in the special acts (referred above) as well as in the Criminal Code. **In the year 2011, the number of 2713 adults were sentenced**, which represents 28% of three-years sentences. This is information obtained from the data base of the National Criminal Register and it presents the sentences broken down by **the commitment of the main crime**.

However, it shall be emphasised that the crimes against intellectual property rights are very often accompanied by other crimes (threatened with more serious punishment), which results in that that the perpetrator is only included in these statistics which show crimes subject to more severe punishments.

Analysing the convictions broken down by all types of crimes, it is possible to assess the scale of the phenomenon, knowing that in the year 2011, the number of 3 193 adults were sentenced for committing the above referred crimes, **which represents 46% of all the sentences given in the years 2009-2011**, broken down by the main crime.

The below presented analysis of the data regarding the sentenced persons on the basis of the final verdicts, is, however, based upon the data presenting the sentencing by main crime committed.

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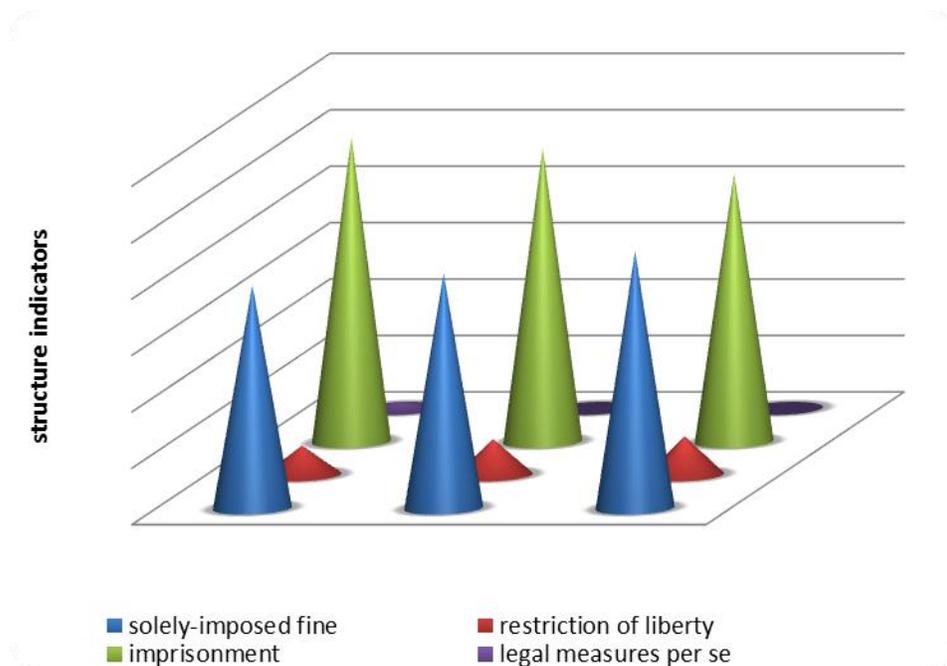
<sup>12</sup> For the transparency of the tables and the charts, the short names of the legal acts were written next to their full names.

<sup>13</sup> Art. 278 § 2 – appropriation of a computer programme in order to gain material benefits; Art. 293 § 1 – Handling of a stolen computer programme.

The number of adults sentenced on the basis of the final court's verdict is on a similar level over recent years, however, it shall be emphasised that it is going up in relation to the decreasing number of the sentenced persons in total in Poland.

It shall also be pointed out that the judgements are the same as in the previous years, namely, the imprisonment sentence and the fine, and then restriction of liberty (about 7%). It also shall be emphasised that in the recent two years there was no punishment ruled in the form of independent punitive measure. The structure of sentencing broken down by types over the described years is maintained in the comparable percentage values.

**Exhibit 1. Types of ruled punishments for crimes committed against intellectual property rights in the years 2009-2011**



In the year 2011 the common courts most frequently gave an imprisonment sentence (68.1%) for the theft of a computer programme (art 278 § 2 of the Criminal Code).<sup>14</sup> The next ruled punishment was independent fine (22.5%) and the restriction of liberty ruled in 9.4% of the total number of convicted persons for committing that crime.

The smallest percentage of imprisonment sentences given was in the year of 2011 for the prohibited act, defined in the legal act on protection of some services provided by electronic means. The imprisonment sentence represented 14.5% of the total number of sentences given and the independent fine constituted the remaining percentage of 85.5%. The crucial fact is that that relation has been gradually improved, since in the year 2009 this relation was 8.1% and 89.7% respectively, and in the year 2010 – 8.8% and 90.4%, respectively .

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<sup>14</sup> See footnote No 13.

**Table 1. The indicators of the structure of sentences given to adults on the basis of the final court's verdict (as per main crime)**

SPECIFICATION	solely-imposed fine	restriction of liberty	imprisonment	legal measures <i>per se</i>
	<b>2009</b>			
<b>IN TOTAL</b>	<b>39,6</b>	<b>5,2</b>	<b>54,0</b>	<b>1,2</b>
Article 278 paragraph 2 (C.C.).	21,9	4,9	72,1	1,1
Article 293 paragraph 1 (C.C.).	26,3	4,5	67,6	1,7
(aFUC)	50,0	0,0	50,0	0,0
(CRRa)	38,1	7,2	53,4	1,3
(IPLa)	46,5	5,3	47,4	0,9
(aPSPE)	89,7	0,9	8,1	1,3
	<b>2010</b>			
<b>IN TOTAL</b>	<b>41,6</b>	<b>6,3</b>	<b>52,1</b>	<b>0,0</b>
Article 278 paragraph 2 (C.C.).	20,0	9,2	70,8	0,0
Article 293 paragraph 1 (C.C.).	29,2	5,9	64,9	0,0
(aFUC)	50,0	25,0	25,0	0,0
(CRRa)	38,0	7,9	54,1	0,0
(IPLa)	53,4	4,5	42,0	0,0
(aPSPE)	90,4	0,9	8,8	0,0
	<b>2011</b>			
<b>IN TOTAL</b>	<b>45,5</b>	<b>6,9</b>	<b>47,6</b>	<b>0,0</b>
Article 278 paragraph 2 (C.C.).	22,5	9,4	68,1	0,0
Article 293 paragraph 1 (C.C.).	30,0	4,1	65,9	0,0
(aFUC)	50,0	0,0	50,0	0,0
(CRRa)	37,4	7,2	55,4	0,0
(IPLa)	62,4	6,7	30,9	0,0
(aPSPE)	85,5	0,0	14,5	0,0

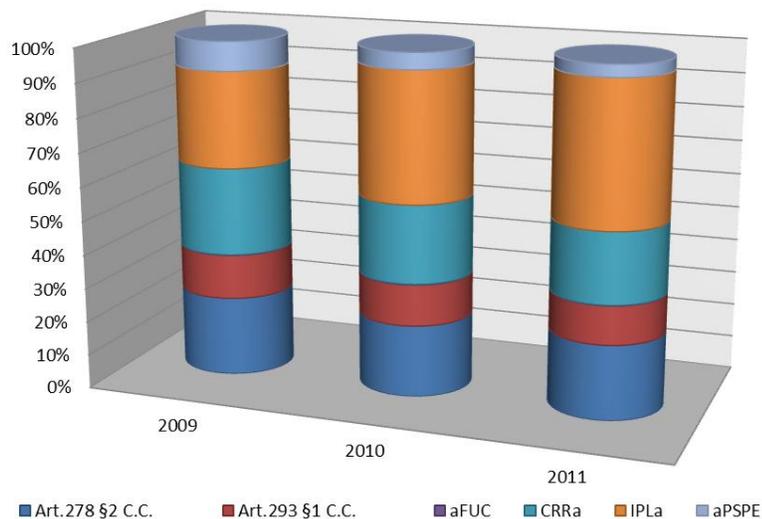
Making further analysis, one fact should be brought to attention, this is one of the basic measurement tools for the judgements, namely average imprisonment time.

The average imprisonment time in the year 2009, calculated for all the sentences given in Poland amounted to 10.4 months, whereas in the year 2011 – 10.1 month. It is important that the average punishment for the crimes against intellectual property rights was maintained on a similar level.

**The tightening of judgment policy is reflected in the considerable increase of the average punishment for the crimes under the Act on Fighting Unfair Competition, which in the year 2009 accounted for 3 months, and in the year 2010 – 6 months, whereas in the year 2011 – 12 months.**

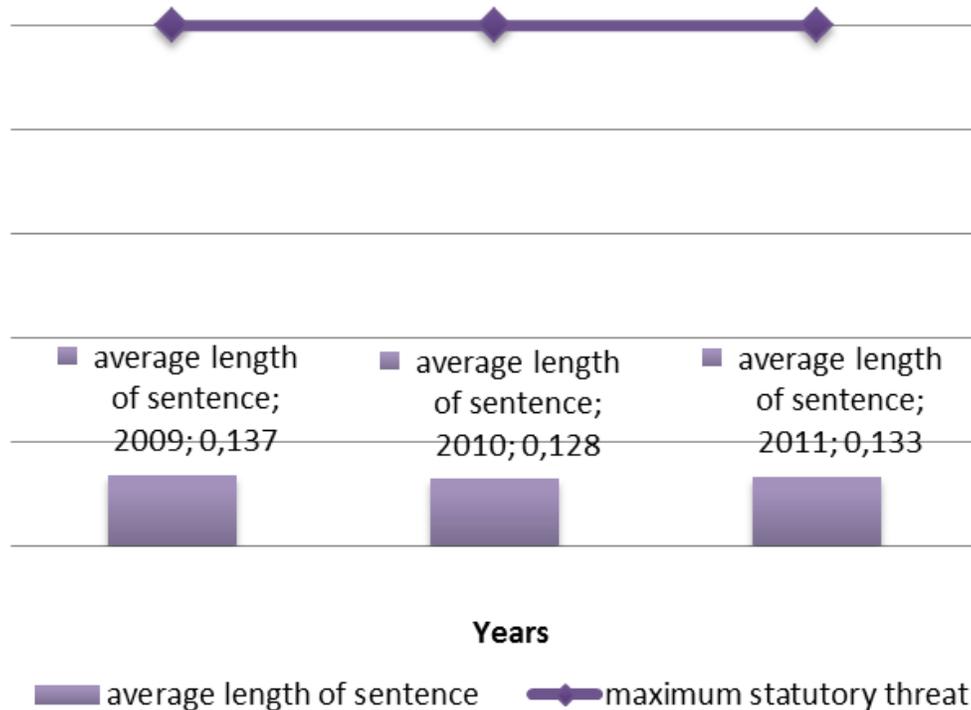
The bar chart below presents the shares of the sentences for crimes under a particular act as per the structure of the punishment types as well as per imprisonment sentence

**Diagram 2. Adults validly sentenced for selected crimes in the period from 2009 to 2011**

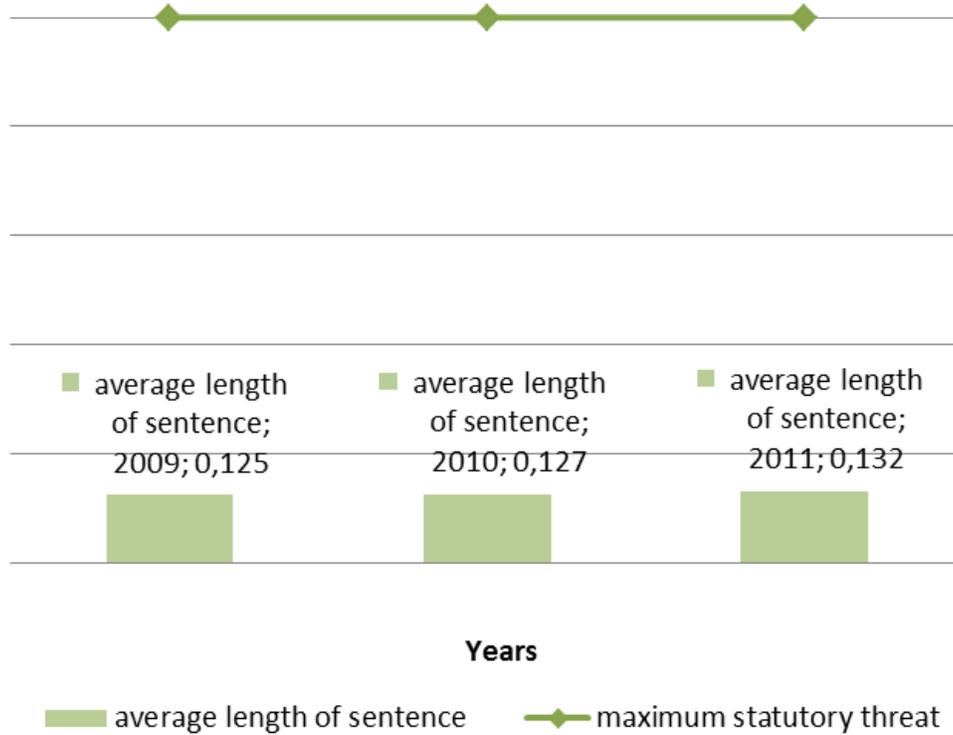


The graphs below present the sentences for the crimes under the legal acts described above as well as under the articles of the Criminal Code as compared to the maximum punishment stipulated in the legal acts.

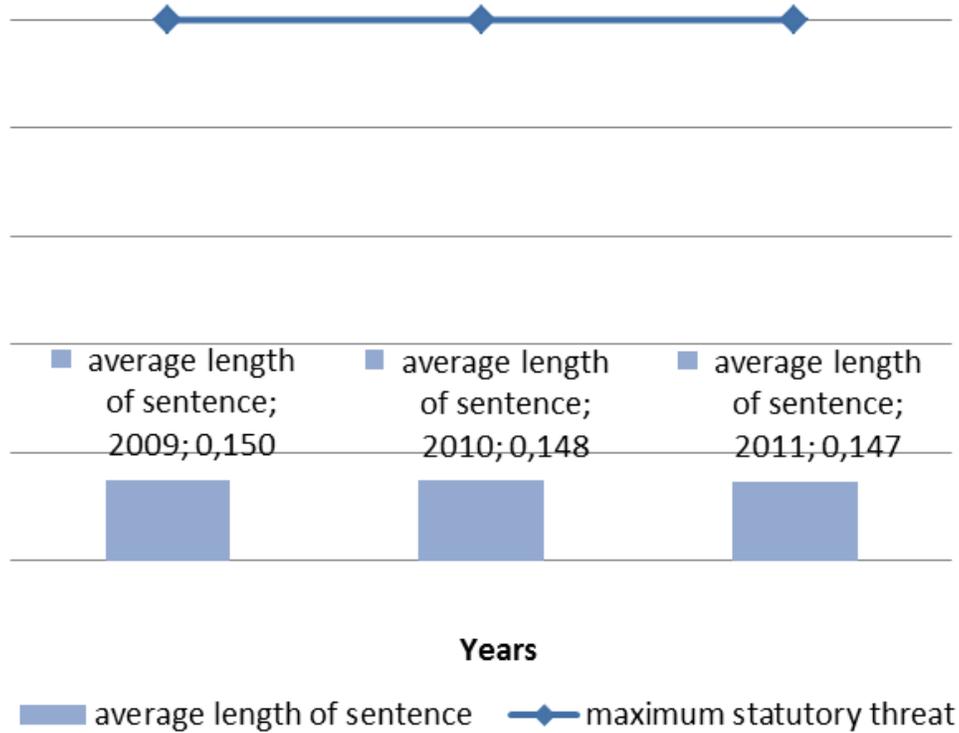
**Diagram 3.1. Average length of imprisonment sentences under Article 278, paragraph 2 (Criminal Code) with reference to the penalty time span specified in the Criminal Code** (in percentages to the maximum value marked as 100%)



**Diagram 3.2. 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 3.3. 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 3.4. Average length of imprisonment sentences under the Industrial Property Law Act with reference to the penalty time span specified in the Criminal Code (in percentages to the maximum value marked as 100%)**



The indicators of the dynamics representing the sentencing performed differently. The optimistic aspect is that the number of adults who have been sentenced on the basis of the final court's decision for the crimes under the Industrial Property Law increased in the year 2011 as compared to the year 2009 by 5.3%, but decreased by 9.5% as compared to the year 2010.

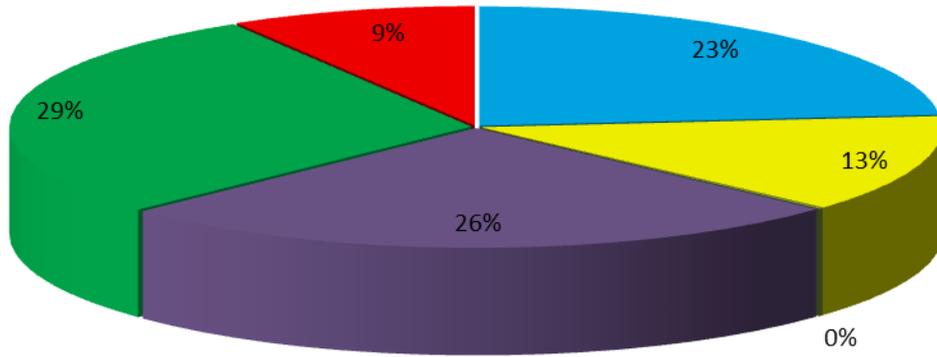
**Table 2. The indicators of the dynamics representing the sentencing of adults on the basis of the final court's decision.**

SPECIFICATION	2009	2010	2011
	<b>in absolute figures</b>		
<b>IN TOTAL</b>	<b>2 713</b>	<b>2 353</b>	<b>1 938</b>
Article 278 paragraph 2 (C.C.)	638	500	427
Art.293 paragraph 1 (C.C.)	358	288	220
(aFUC)	4	4	2
(CRRa)	704	545	404
(IPLa)	775	902	816
(aPSPE)	234	114	69
	<b>dynamics indicators (year 2009 = 100)</b>		
<b>IN TOTAL</b>	<b>100,0</b>	<b>86,7</b>	<b>71,4</b>
Article 278 paragraph 2 (C.C.)	100,0	78,4	66,9
Art.293 paragraph 1 (C.C.)	100,0	80,4	61,5
(aFUC)	100,0	100,0	50,0
(CRRa)	100,0	77,4	57,4
(IPLa)	100,0	116,4	105,3
(aPSPE)	100,0	48,7	29,5
	<b>dynamics indicators (previous year = 100)</b>		
<b>IN TOTAL</b>	<b>100,0</b>	<b>86,7</b>	<b>82,4</b>
Article 278 paragraph 2 (C.C.)	100,0	78,4	85,4
Art.293 paragraph 1 (C.C.)	100,0	80,4	76,4
(aFUC)	100,0	100,0	50,0
(CRRa)	100,0	77,4	74,1
(IPLa)	100,0	116,4	90,5
(aPSPE)	100,0	48,7	60,5

**Diagram 4. Structure of convictions for respective crimes in the years:**

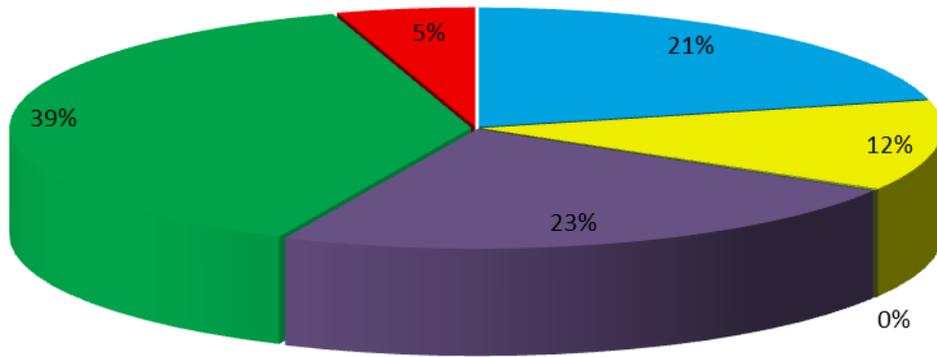
2009

■ Art.278 §2 C.C.    ■ Art.293 §1 C.C.    ■ aFUC    ■ CRRa    ■ IPLa.    ■ aPSPE



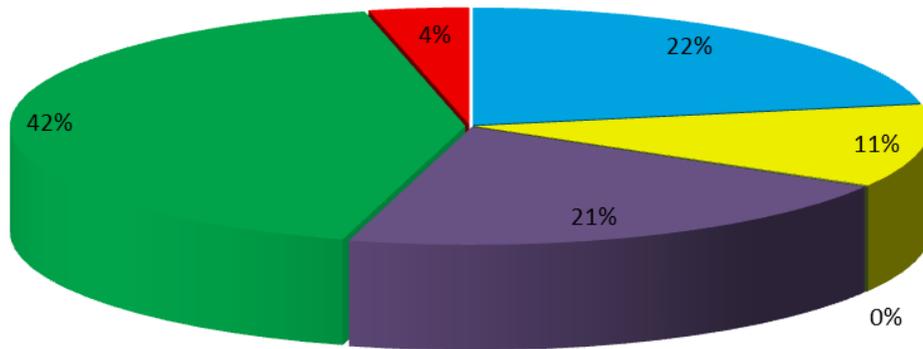
2010

■ Art.278 §2 C.C.    ■ Art.293 §1 C.C.    ■ aFUC    ■ CRRa    ■ IPLa.    ■ aPSPE



2011

■ Art.278 §2 C.C.    ■ Art.293 §1 C.C.    ■ aFUC    ■ CRRa    ■ IPLa.    ■ aPSPE



In the period covered by the survey, the number of sentences related to crimes against intellectual property rights decreased by 28.5%, and the biggest decrease was noted with regard to the sentences for the crimes under act on protection of some services provided by electronic means – by 70.5% (as compared to 234 in the year 2009 and 69 in the year 2011). Only the number of sentences for the crimes under the Industrial Property Law has increased by 5.3%.

#### **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CIVIL CASES**

In addition to criminal cases, there are also civil cases regarding compensation, or satisfaction for the infringement of intellectual goods. Such cases also refer to the industrial property law in addition to the above mentioned legal acts.

In the years 2009-2011 in civil courts there were 4763 cases to be judged, and the highest number of such cases was in the year 2011 – 1814 cases. Over the period of three years referred to above, the number of settled cases has increased by 20.8%.

**Table 3. Structure indicators**

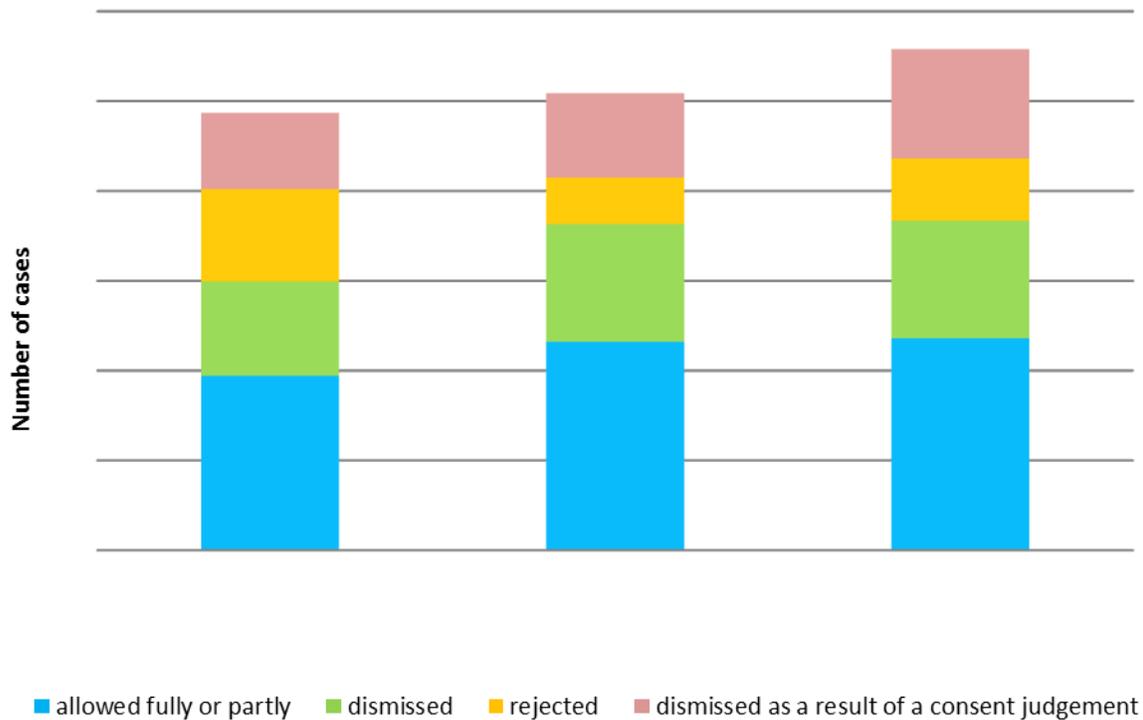
Specification	Cases which need to be examined	Examined cases					
		in total	including:			discontinued	
			cases allowed fully or partly	discontinued cases	returned cases	in total	including cases discontinued as a result of consent judgement
<b>2009</b>							
<b>Cases within:</b>							
<b>In total:</b>	<b>100,0</b>	<b>53,3</b>	<b>13,8</b>	<b>7,5</b>	<b>7,3</b>	<b>14,1</b>	<b>6,0</b>
(CRRa)	100,0	53,2	17,0	6,7	4,3	15,9	7,2
(IPLa) claims	100,0	39,1	13,8	4,6	4,6	9,2	3,4
(aFUC)	100,0	52,2	11,8	8,7	8,9	10,6	4,5
other invention projects specified in (IPLa) <sup>15</sup>	100,0	59,5	9,9	8,1	12,3	17,3	6,7
<b>2010</b>							
<b>Cases within:</b>							
<b>In total:</b>	<b>100,0</b>	<b>49,4</b>	<b>15,0</b>	<b>8,5</b>	<b>3,4</b>	<b>13,4</b>	<b>6,1</b>
(CRRa)	100,0	51,2	16,2	6,7	3,1	15,3	7,0
(IPLa) claims	100,0	42,3	7,2	3,6	6,3	16,2	4,5
(aFUC)	100,0	50,0	18,0	8,8	3,2	10,6	4,6
other invention projects specified in (IPLa)	100,0	47,0	10,0	13,5	3,2	14,2	7,8
<b>2011</b>							
<b>Cases within:</b>							
<b>In total:</b>	<b>100,0</b>	<b>49,9</b>	<b>13,0</b>	<b>7,2</b>	<b>3,8</b>	<b>15,2</b>	<b>6,7</b>
(CRRa)	100,0	55,2	16,3	4,1	4,5	16,1	7,3
(IPLa) claims	100,0	45,3	6,6	6,6	2,8	12,3	5,7
(aFUC)	100,0	43,9	11,5	7,8	3,2	13,1	5,9
other invention projects specified in (IPLa)	100,0	53,5	10,5	14,7	3,9	19,4	7,8

<sup>15</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.

On the basis of the analysis of the judgements, one can conclude that the highest number of the judgements belongs to the category of court settlement agreements (6.0 – 6.7%) and to the dismissal of petitions (7.5-7.2%), however, the later category shows the declining tendency.

In the years 2009-2010 the awarding in full was as often as the awarding in part (about 13.8 – 15.0%). It is represented by the figures from the table and the bar chart below.

**Diagram 5. Concluding the case according to the type of decision made in civil procedure concerning the protection of intellectual property rights in the period 2009 – 2011.**



IN SUMMARY:

In criminal cases. It must be emphasised that although the number of sentences for committing crimes against intellectual property rights stays on

similar level as in the past years, the share of that category of crimes in the general number of sentenced persons is slightly increasing. The percentage of the imprisonment sentences given in relation to the crimes for the breach of the provisions of Act on protection of some services provided by electronic means is also increasing.

In civil cases. It is important that in compensation or satisfaction cases regarding the infringement of intellectual goods, about 30% of settlements are judgments approving the claim in full, or in part. Another positive aspect of the copyright and the related rights protection is the emergence of a concept of creating special divisions on intellectual property within the national common courts' system.

There have been consultations between the Minister of Culture and National Heritage and the Minister of Justice on that matter.

## **ACTIVITIES AIMED AT STRENGTHENING THE SOCIAL AWARENESS IN THE FIELD OF COMBATING INTELLECTUAL PROPERTY RIGHTS' INFRINGEMENTS.**

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### **THE PATENT OFFICE**

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In the years 2009-2012 the Patent Office was running an extensive educational campaign disseminating knowledge on the intellectual property protection. The purpose of that educational action was the promotion of social culture and developing such attitudes in the society as creativity, pro-innovative thinking, protection of own creativity and respect for the third parties' rights. The conferences, seminars, workshops and competitions organised by the Office created a forum for the exchange of experience, observations and good practices implemented in other countries. Moreover, the Office undertook activities related to the educational internet platform and organisation of e-learning trainings on the protection of intellectual property. It also organised a poster exhibition on that topic and thematic competitions for the best PhD

dissertations, or Master's thesis as well as students' papers on the protection of intellectual property.

In the years 2009-2012 the Patent Office issued different information and promotional publications within the scope of intellectual property protection addressed to diversified group of readers - business representatives, artists, academic students and school youths. The edition of the comics on intellectual property issues was also renewed.

In the year 2009, 4 copies of educational booklets under the series "*Protection of Industrial Property*" have been published and in the year 2010 – 6 booklets.

In the year 2010 the publication of a quarterly magazine started, which is addressed to persons and entities interested in different aspects of the Office's work and industrial property related issues. That quarterly magazine was also issued in the years 2011-2012.

In the years 2009-2012 the Patent Office was an organiser of several conferences, symposia, exhibitions, workshops, open lectures, or different types of trainings. The lecturers participating in the above mentioned meetings were the experts in the field of intellectual property, both Polish and foreign.

In the year 2009 the Patent Office organised: 5 conferences (2 international), 3 international symposia, seminar for patent attorneys, open lectures popularising the industrial property related issues as well as the meeting for the students of post-secondary schools under title "Magic world of inventions".

In the year 2010 the Patent Office organised: 4 conferences (2 international), 1 international symposium, 2 seminars (including the seminar for patent attorneys and 3 workshop meetings).

In the year 2011 the Patent Office organised: 4 conferences (2 international), 1 international symposium, a seminar for patent attorneys and 2 workshop

meetings). It also organised 2 exhibitions devoted to Polish pattern designing industry (one of them took part in Geneva).

In the year 2012 the Patent Office organised: 2 conferences (1 international), 1 international symposium, a seminar for patent attorneys, 2 open lectures popularising the industrial property related issues, 6 trainings and 9 consultation and information meetings.

In the year 2010 the first edition of post-graduate studies on intellectual property protection was inaugurated in Warsaw University and Lublin University. The Office also cooperated with Warsaw University, Jagiellonian University and Technical University of Silesia when it developed the concept of effective fulfilment of the obligation by the universities to provide additional teaching to students on the topic of intellectual property protection and also when the Office prepared the teaching syllabus and teaching materials. The outcome of the cooperation was the textbook that was published in the year 2010 under title *“Intellectual Property Protection”*.

In the year 2012 the Office started works on the educational internet platform and e-learning training in the field of intellectual property protection. The platform will be the internet compendium of knowledge on intellectual property protection and also on rights management and technology transfer.

### **SOCIAL CAMPAIGN “LEGAL CULTURE”**

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On 12 April 2012 the nationwide social campaign “Legal Culture” was launched under the main patronage of the Ministry of Culture and National Heritage, which also was the co-financer.<sup>16</sup>

The main purpose of that initiative is the promotion of the legal sources of culture and education in the field of intellectual property protection. The

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<sup>16</sup> The main website of the campaign: <http://legalnakultura.pl/pl>

campaign is addressed to all end-users of culture products. 20 public and non-public institutions as well as 40 media partners got involved in that campaign. “Legal Culture” is supported by the most prominent Polish creators and artists (musicians, actors, composers, journalists, film directors). In total, 60 artists took part in that campaign.

The campaign is run in radio, television, cinema and in Internet. “Legal Culture” website contains the base of legal sources of culture.<sup>17</sup> This is a collection of links to internet portal where the works are made available (paid, or unpaid).

Thanks to those websites one may download, or watch films, listen to music; use audio books and e-books; get access to press articles; visit museums virtually; explore the digitalised archive resources. The data base referred to above is created by “Legal Culture” together with internet users. 150 sources have already been gathered and their number is constantly increasing.

Specially designed brochures were published for the purpose of that campaign with the answers to the questions that have been asked about the use of sources of culture in internet.

Special offer was also prepared for teachers, available from website at the address: [www.legalnakulura.pl](http://www.legalnakulura.pl).

After registration one can get access to the educational materials. The materials. Among other, include the lesson plans for the use of the legal sources and the above mentioned brochures.

The internet users may, through the website “Legal Culture”, ask a question to a lawyer. Educational initiatives undertaken by “Legal Culture” also include the organisation of workshops and conferences.

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<sup>17</sup> <http://www.legalnakulura.pl/pl/legalne-zrodla> .

At present, every four Pole declares that they are aware of the brand “Legal Culture”. 71% respondents (the examined sample n=1000), who had contact with that campaign, speaks positively of that idea. The biggest approval given for “Legal Culture” – as much as 86% was given by the subgroup of youngest respondents, within age range 15-18.

Before starting the campaign, 14% respondents said that in their opinion the downloading of music, or film files from illegal sources is “*fair*”.

After 7 months that figure dropped to 10% and in the group of respondents who had contact with the campaign project – up to 9%.

What is even more, in February only 31% of the respondents defined the downloading of that type of materials to one’s own computer as “stealing”. In October, that percentage grew to 36% and among the group of respondents who knew the project - to as much as 46%.<sup>18</sup>

## **SUMMARY**

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The intellectual property rights play a special role both in economy and in culture, through their impact on many aspects which constitute the basis for modern societies. In knowledge based economy such capital lies at a core of taking everyday economic decisions. New artistic works, products, patterns and trademarks as well as designs appear everyday on the market as a result of continuous innovation and human creativity

Polish state administration continues initiatives from previous years aimed at ensuring high standard for respecting intellectual property. The problems arising from criminal acts against intellectual property rights are closely monitored and carefully handled by the government of the Republic of Poland as one of the priority tasks.

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<sup>18</sup> As per the survey commissioned by “Legal Culture” Foundation.

The new big challenge for Poland is the organisation of European Football Championships EURO 2012. The tournament ere proceeded by a number of expert meetings, international exchange of experience and trainings of the services responsible for keeping public order on he topic of prosecuting the intellectual rights' infringers. All activities defined in a special document "*Actions and procedures*" which was drafted by the Rights Protection Committee, called into being by the group of experts from different disciplines of science. The close cooperation during championships between all the state units concerned enabled full fulfilment of the obligations under guarantees extended by Poland towards the organiser.

The analyses presented by state bodies and state services prove that the level of enforcing the intellectual property rights could be determined as very high.

The trend of more severe punishment resulting from criminal liability is clearly visible in the judgements issued. In spite of almost the same number of sentences for crimes involving intellectual property rights infringements, the share of that crime category in the total number of convicts is on the increase. The percentage of imprisonment sentences is also increasing.

MINISTER OF CULTURE  
AND NATIONAL HERITAGE



Bogdan Zdrojewski