

Theatrical Performance and Authorship in Copyright Law

Abstract of PhD Thesis

Author: mgr Klaudia Frączkiewicz-Maćków

Supervisor: prof. dr hab. Piotr Machnikowski

The reasons for undertaking this research study into the issue of copyright in theatre derive from the observation that for as long as the Copyright and Related Rights Act has been in place, this form of art, though one of the most ancient ones, has received but little attention on the part of copyright law dogmatists. And yet it was fairly within the general purview of the investigative interest in the former state of the law. Two titles in particular deserve a mention here: "Prawo teatralne. Kontrakt sceniczny" by Seweryn Wandycz (1930) as well as "Prawo teatralne. Zbiór przepisów prawnych z objaśnieniami według stanu prawnego na dzień 1 IX" by A. Bądkowski and J. Stankiewicz (1957). Both monographs contemplate this topic from the perspective of legal relationship that stems from theatrical performances. The primary aim of this thesis is to shed some light on the nature of the latter in the context of actual copyright regulations, and additionally, to inquire into the problem of authorship in the theatre. With this purpose in view, the author will examine the validity of the interpretation of the Supreme Court's judgement of 15 September 1986, which states that stage art is commonly regarded as an enactment of a work of art, and as such, is tantamount to the author's creation. Thus, this sort of artistic activity is essentially of a reconstructive nature. The Supreme Court ruling bears a crucial importance and will be touched upon at various points in the following chapters, as many of legal commentators quote it while dealing with the definition of a theatrical work that Article 1(2)(8) of the Copyright and Related Rights Act talks about. Consequently, this dissertation will also attempt to determine what constitutes the notion of a stage play.

The first chapter is aimed at defining the notion of a theatre performance, its characterisation and explanation of its individual elements. Also, various features of work as the object of copyright protection are presented. The essence of this part is an attempt to state that the goal of a performance is not solely to stage the drama in the form awarded to it by the author but also to create a stage creation, including based on existing text. The various forms of stage expression allowed the author to list the performance features that prove its creative and individual character. In this chapter the theatre performance was discussed from the perspective of features defining the work in accordance with art. 1 sec. 1 of the Act on copyright and related rights.

In the next chapter, the author presents and discusses different perspectives on the theatre performance as a form of expression on stage. She distinguishes the protected area (form of expression) from the unprotected one (idea) and presents its legal consequences. The author tries to grasp the copyright aspect of the performance creation from the perspective of the thesis resulting from the recalled decision of the Supreme Court. She discusses drama exploitation consisting in its presentation and staging in theatre as well as the moment when the performance staging in theatre ceases to be solely a reproduction and starts being a manifestation of creative activity. Finally, in this chapter she attempts to define the stage work from the perspective of a performance. The continuation of deliberations on stage work is the presentation of a German concept where the performance is seen as an autonomous object of copyright and art domain existing in a way apart from the drama.

Chapter three is dedicated to the legal consequences of the impact of someone else's work on the performance, presentation of how the inspiration transpires in a stage play and what its legal consequences are. The dependencies on someone else's works existing in the theatre performance consist in the reworking of other works, their adaptation and explanation. Taking into account the multi-element character of this type of art, derivative work refers both to the performance as a whole and to its contributions. Attention was also paid to the discussion of what staging is. In fact, the creation of reality on stage makes it possible to see the performance as a separate object of copyright.

The character of created on stage manifestation of someone else's work leads to the necessity to define the theatre performance creator. Also, since the performance is created as a coexistence of numerous contributions on stage (scenography, costumes, choreography, and text) the analysis of dependencies between these contributions was conducted along with their creative impact on the final result. In consequence, a conclusion was drawn that it is difficult to unanimously classify it as one type of work. However, in relation to other categories of works it has certain characteristic features. These manifest themselves in the first place in its construction, way of dissemination, establishment and relations with other works (music, choreography, scenography, costumes, and finally the text). The similarity between the theatre performance and film work (due to its multi-material structure) determines searching for the features of a work of joint authorship therein. However, such assumptions depend in the first place on the assumption by the legislator of the concept of audio-visual work structure based on joint authorship.

The lack of regulation of the theatre performance and difficulties in allocating it to legal institutions existing in the applicable provisions lead to problems in practice. Theatres, trying

to secure their interest against possible claims, demand transferring the copyright to works created in result of the theatre performance creation in all fields of exploitation, not only for the purpose of staging a specific performance which would be desirable taking into account *ratio legis* of the copyright act aimed at protecting the creators and their just interests.

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Klaida Tregler-Šuš

