

Monika Nowikowska*

Internet „Piracy” and Fair Personal Use

Abstract

The article aims to analyze the institution of fair personal use in Polish law. The article discusses the concept of fair personal use regulated in Art. 23 of the Act of February 4, 1994, on Copyright and Related Rights. The article also attempts to indicate the boundaries of fair private use and answers what can be downloaded from the Internet under fair use and when such action becomes illegal. In the era of the constantly developing Internet, the legality of uploading and downloading multimedia files is of fundamental importance. The article tries to show when downloading files constitutes Internet piracy and what are the characteristics that prove that the crime of Internet piracy was committed, as well as the legal consequences associated with it.

Key words: fair personal use, legality, online piracy, copyright law

* Monika Nowikowska, PhD, Institute of Law, War Studies University in Warsaw, e-mail: m.nowikowska@akademia.mil.pl, ORCID: 0000-0001-5166-8375.

Introduction

Copyright law requires constant revision, adapting this field of legal science to the realities associated with the development of new technologies. The subject of this article is an attempt to indicate the limits of fair personal use and to answer what can be downloaded from the Internet under fair use and when such action becomes illegal. It seems that the issue that needs to be brought closer in the era of the constantly developing Internet is the legality of uploading and downloading multimedia files. The question of when downloading files constitutes Internet piracy and what are the characteristics and legal consequences of committing an Internet piracy offense.

Polish legislature regulated the issue of fair personal use in Art. 23 of the Act of February 4, 1994, on Copyright and Related Rights¹. The *ratio legis* for the introduction of boundaries on the exclusive rights of creators stems from the fact that the actions taken by individual users of works very often escape the control that creators have. This led to the need for a legal regulation permitting the use of a work for personal use without the need to obtain permission from the copyright holder. For purely practical and expedient reasons, the creator's monopoly has been statutorily limited. However, this type of normative restriction is casuistic and is an exception in the realm of the „proprietary” shaped monopoly of the creator². Despite the legal regulation of the institution of fair use, it is important to define the boundaries of individual use of resources subject to copyright protection.

It should be emphasized that in Directive 2019/790 of the European Parliament and of the EU Council of April 17, 2019, on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC³ the EU legislator extended the existing permitted use to the exploitation of texts and data, use of works in teaching activities, making copies for the preservation of cultural heritage⁴. However, the problem of the boundaries of „fair personal use” outlined in the introduction and the volume

1 Act of February 4, 1994, on Copyright and Related Rights (consolidated text of the Journal of Laws of 2021, item 1062).

2 J. Szczotka, *Dozwolony użytek chronionych utworów* [in:] M. Poźniak-Niedzielska, J. Szczotka, *Prawo autorskie. Zarys problematyki*, Warszawa 2020, p. 119.

3 Official Journal of the European Union 2019, L 130, p. 92.

4 R. Markiewicz, *Prawo autorskie na jednolitym rynku cyfrowym. Dyrektywa Parlamentu Europejskiego i Rady (UE) 2019/790*, Warszawa 2021, p. 21.

of the article does not allow us to address the general issues of fair use raised by Directive 2019/790, which deserve a separate discussion.

The concept and content of fair personal use of works

The issue of fair personal use is defined in copyright law. The disposition of Art. 23 of the Copyright Act regulates the issue of boundaries of the exclusive rights of authors, i.e. the institution of fair personal use. This institution is also provided for in Directive 2001/29/EC of the European Parliament and of the Council of May 22, 2001, on the harmonization of certain aspects of copyright and related rights in the information society⁵. Following Art. 5 sec. 2b of that directive, Member States may provide for exceptions and limitations to the reproduction right in the case of reproductions on any medium made by a natural person for personal use and for purposes which are neither directly nor indirectly commercial, provided that the rights-holders receive fair compensation which takes into account the application or non-application of technical protection measures for the works.

It should be emphasized that the legislator has not formulated a legal definition of fair personal use, however, attempts to define this concept are made in the literature on the subject. The concept of fair personal use is explained by referring to the essence of the institution in question. Janusz Barta and Ryszard Markiewicz emphasize that fair personal use allows every natural person⁶ to use already distributed work for their personal use. The form of use is arbitrary, meaning that it applies to all fields of exploitation of the work⁷. According to the Authors, the sources of limitations on the rights of authors are broadly understood public interests related to, among others, education, scientific research, or personal interests of the users⁸. Krzysztof Gienas points out the features of fair use, i.e. the gratuitous character of the activity, the scope of exploitation of the work, within which the exploitation of both the whole work and its fragments is allowed, and the subjective scope, which is

5 Directive 2001/29/EC of the European Parliament and of the Council of May 22, 2001, on the harmonization of certain aspects of copyright and related rights in the information society (Official Journal of the European Union 2001, L 167, p. 10).

6 Legal persons cannot therefore invoke this institution.

7 J. Barta, R. Markiewicz, *Prawo autorskie*, Warszawa 2016, p. 227.

8 Eidem, *Ilustrowane prawo autorskie*, Warszawa 2018, p. 317.

limited only to natural persons⁹. In W. Machała's opinion, fair use is a form of restriction of the rights-holder's freedom in the field of author's economic rights, consisting in the lack of legal possibility to oppose the exploitation of their work by the rights-holder, which meets the requirements of Art. 23 of copyright law, i.e. own and personal character of exploitation¹⁰. Marcin Kruszyński additionally emphasizes that fair personal use is a right ascribed to a person or a group of persons, causing a certain breach in the integrity of a set of rights vested in an author, commonly referred to as copyright monopoly¹¹. Fair personal use is therefore a restriction on the content of the author's economic right. This restriction may be applied in certain specific cases and must not interfere with the normal use of the work or cause unreasonable harm to the legitimate interests of the copyright holders¹².

According to the provisions of Art. 23 sec. 1 of the Copyright Act, it is allowed to use an already distributed work for one's personal use without the author's permission. The analysis of the provision in question and the above definitions allows to indicate the features of the institution of fair personal use: 1) the scope of the use of the work, 2) the non-commercial purpose of the use, and 3) the gratuity.

Re 1) The scope of use of a work includes the use of single copies of works by a group of persons who are in a personal relationship, in particular by way of kinship, affinity, or social relationship¹³. The Court of Appeal in Warsaw, in its judgment of 7.06.2017, emphasized that the reproduction of copies of a larger quantity cannot, by definition, fall within the limits of personal use, because this use by law is limited to single copies of works¹⁴.

Re 2) The non-commercial purpose of using a work under fair use is the personal use of the person exploiting someone else's work. For example, it

9 K. Gienas, *Użytek osobisty* [in:] *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz*, ed. E. Ferenc-Szydełko, Warszawa 2021, p. 155–156.

10 W. Machała, *Dozwolony użytek prywatny w polskim prawie autorskim*, Warszawa 2003, p. 52.

11 M. Kruszyński, *Dozwolony użytek osobisty w świetle stosowania zabezpieczeń technicznych*, „Zeszyty Naukowe Uniwersytetu Jagiellońskiego” 2008, no. 102, p. 57.

12 Z. Zawadzka, *Ograniczenia treści autorskich praw majątkowych* [in:] *Prawo własności intelektualnej. Teoria i praktyka*, ed. J. Sieńczyło-Chalbic, Warszawa 2021, p. 215.

13 Ł. Maryniak, *Odpowiedzialność za stosowanie hipertączy (linków)*, „Prawo Mediów Elektronicznych” 2021, no. 1, p. 20.

14 Ruling of the Administrative Court of June 7, 2017, I ACa 1851/14, Lex no. 2326561.

could be for entertainment, hobby, science, or collecting purposes¹⁵. This means that the institution of fair personal use does not apply to a person who runs a business and makes profits from that business¹⁶. This makes it possible to assume that online downloading of music or audiovisual files does not constitute a criminal act because as long as the files are merely used for personal purposes, we are not committing a crime.

Ad 3) Gratuity of personal fair use means that the user of a work under fair personal use is neither legally nor actually obliged to pay remuneration for the exploitation. The rights-holder whose work is used within the scope of fair personal use receives compensation for that use, however, not from the users themselves but from those who derive a financial benefit from the marketing of private copying equipment and media and from the provision of reproduction services to the persons using the work within the scope of fair personal use¹⁷.

Article 23 of the Copyright Act does not expressly require the legality of the source as a prerequisite for fair use¹⁸. This would mean that personal use could be invoked even if the source from which the work was obtained for personal use was illegal¹⁹. In this context, the judgment of the CJ of April 10, 2014, in *ACI Adam BV and Others v. Stichting de ThuisKopie and Stichting Onderhandeligen ThuisKopie vergoeding*²⁰ plays an important role. The Court of Justice has held that national legislation which does not distinguish between the situation where the source on which the private copying is based is lawful and the situation where that source is unlawful cannot be accepted. In the case at hand, the CJ indicated that fair personal use is limited only to the ability to use works from lawful sources. Also relevant here is the situation of a user acting in good faith, who when using works from illegal sources is not aware of this fact, and thus of the illegality of their conduct, while being unable to check

15 J. Preussner-Zamorska, *Dozwolony użytek chronionych utworów* [in:] *System prawa prywatnego*, ed. J. Barta, vol. 13, Warszawa 2017, p. 567.

16 Ruling of the Administrative Court of February 5, 2003, IACa 601/02, Lex no. 1680981.

17 W. Machała, „Standard Padawana”. *Oplaty od sprzętu zwielokrotniającego oraz czystych nośników po wyrokach Trybunału Sprawiedliwości Unii Europejskiej z 21.10.2010 r. i z 16.06.2011 r.* [in:] *Oblicza prawa cywilnego. Księga jubileuszowa dedykowana profesorowi Janowi Błeszyńskiemu*, ed. K. Szczepanowska-Kozłowska, Warszawa 2013, p. 268.

18 A. Żyrek, *Przytapani na nielegalnym źródle – o dozwolonym użytku prywatnym z perspektywy orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej i prawa polskiego*, „Zeszyty Naukowe Uniwersytetu Jagiellońskiego” 2019, no. 4, p. 56.

19 J. Barta, R. Markiewicz, *Prawo autorskie...*, p. 231.

20 CJ judgment of April 10, 2014, C-435/12, *ACI Adam BV and Others v. Stichting de ThuisKopie and Stichting Onderhandeligen ThuisKopie vergoeding* (EU:C:2014:254).

whether the work has been uploaded to the Internet with the consent of the rights-holder, i.e. legally²¹. Therefore, the view should be adopted that acts of reproduction that have as their object a copy of a work originating from an illegal source, if the user is aware of such nature, are excluded from the scope of fair personal use. On the other hand, the question of the legal assessment of actions taken by users in good faith remains open²².

To conclude, one of the most important practical problems at the interface of piracy and the boundaries of fair personal use is the question of the possibility to invoke fair personal use when the source of a work for that use was made available unlawfully, e.g. as a „pirated copy”²³. This includes, for example, the situation of obtaining works in a *peer-to-peer* network. The interpretation that this circumstance is irrelevant because Art. 23 of the Copyright Act does not explicitly mention such a condition was changed by the judgment of the Court of Justice in the ACI Adam case. This ruling determines the inconsistency with EU copyright law of member states, which adopt fair personal use also for obtaining works from an illegal source. The question arises, therefore, whether the ruling of the Court of Justice determines a change in the interpretation of the existing copyright law in Poland, or whether it is necessary to amend this law²⁴.

It seems that it would make sense to amend the copyright law in this regard. It should be noted that no regulation in Polish law states that fair personal use does not include obtaining works from illegal sources. Polish copyright law is characterized by restrictive copyright protection. Narrowing the scope of fair use based on the Court of Justice’s interpretation could expose online users of works to unexpected legal liability. It is, therefore, necessary to have clear standards to protect Internet users’ confidence in the written law.

The legality of downloading and uploading multimedia files

From the point of view of the limits of fair personal use, the issue of the legality of sharing computer files which are multimedia versions of works on the Internet,

21 A. Żyrek, op. cit., p. 59.

22 Ł. Gołba, W. Rodak, *Nowa przesłanka dozwolonego użytku prywatnego? Legalność kopii źródłowej w świetle art. 23 ustawy o prawie autorskim i prawach pokrewnych*, „Transformacja Prawa Prywatnego” 2017, no. 1, p. 39.

23 J. Barta, R. Markiewicz, *Ilustrowane prawo...*, p. 341.

24 Ibidem, p. 342.

i.e. making files available on the Internet, is important. In this regard, the phenomenon of uploading and downloading can be distinguished. Uploading means placing a work on the Internet or making it available directly from your computer, which constitutes making a work available to the public, i.e. making it available in such a way that everyone can access it at a time and place of their choosing. The public sharing of a work should be distinguished from the first public sharing of a work. It should be pointed out that the legislator has left the creator the exclusive right to decide when, in their opinion, the work is ready enough to be presented to the public²⁵. As the Supreme Court emphasized in its May 6, 1976, judgment, the author's moral rights include the author's right expressed in the free choice of whether or not to publish their work²⁶. This means that the author has the exclusive right to decide when by whom and under what conditions the work is first made available to the public²⁷. The purpose of this right is to guarantee the creator the ability to decide the final form of the work to be communicated to the public.

The concept of making a work available to the public has been defined in the case-law of the Court of Justice. In its judgment of August 7, 2018, in the Land Nordrhein-Westfalen v. Dirk Renckhoff²⁸ case, the CJ held that the concept of communication to the public must be interpreted to include the posting on a website of a photograph that has previously been published on another website without restrictions preventing downloading and with the consent of the copyright holder.

Communication of a work to the public must also be distinguished from dissemination. The dissemination of a work, under Art. 6 sec. 1 item 3 of the Copyright Act is any form of making a work available to the public with the author's permission.

Internet piracy often pertains specifically to the distribution of a work in violation of copyright. According to Art. 116 sec. 1 of the Copyright Act, anyone who distributes another person's work without authorization or in violation of the terms of the authorization shall be subject to a fine, penalty of restriction of liberty, or imprisonment for up to 2 years. In addition to the

25 Z. Zawadzka, *Autorskie prawa osobiste* [in:] *Prawo własności intelektualnej. Teoria i praktyka...*, p. 163.

26 Judgment of the Supreme Court of May 6, 1976, IV CR 129/76, „Orzecznictwo Sądu Najwyższego” 1977, no. 2, item 27.

27 J. Barta, R. Markiewicz, *Prawo autorskie...*, p. 148.

28 Judgment of the CJ of August 7, 2018, C-161/17, Land Nordrhein-Westfalen v. Dirk Renckhoff, Legalis.

basic type, the legislator has established two qualified types of the crime in question. Paragraph 2 of this provision provides for a penalty of imprisonment of up to 3 years in the case where the distributor of the works carried out the practice for financial gain. However, under Art. 116 sec. 3 of the Copyright Act, if such an act constitutes a regular source of income, e.g. a service consisting in providing access to pirated files which is conditional on making a bank transfer, the penalty shall be from 6 months to 5 years imprisonment.

In light of the above provision, it should be assumed that recording or even multiplying someone else’s work, if it was not made available further with the intention of making it known to an indefinite number of recipients, cannot be considered dissemination. This means that the reproduction of a music or video file within your close family circle, as well as your friends, without the intention of further sharing, does not constitute a crime. In the literature, making a work available on a website, newsgroup, public e-mail discussion list, or P2P network²⁹ is considered to be the dissemination of a work over a network.

An important issue, from the point of view of making a work legally available online, is the phenomenon of encryption. It is important to note that if a form of encryption, or other restriction on access to an uploaded work, is applied in connection with its placement on the Internet, such work is considered to be made available to the public. The use of „password protection” to access files may determine the legality of such an action. Decisive in this matter is the evaluation of the ease with which other users can obtain such a password. If the disseminator of works prevents the downloading of works while providing the password to the website’s folder in a separate link or by providing an obvious pointer to it, such protection is superficial. Liability under Art. 116 of the Copyright Act is unquestionable in such a case. Despite file protection, there is a *de facto* download of illegally shared works. The offense provided for in Art. 116 of the Copyright Act is not committed by a person who places works on the Internet, in a folder with access limited by a password known only to themselves, e.g. as part of making backup copies, i.e. for permitted personal use.

Downloading files is the opposite of uploading. This process involves downloading files or other data from networks (i.a. a server, websites, P2P

29 J.M. Doliński, *Dozwolony użytek prywatny a piractwo internetowe*, „Monitor Prawniczy” 2012, no. 19, p. 1023–2024.

clients). Downloading within the framework of fair personal use, whereby it is permitted to use a work already distributed free of charge for one's personal use without the author's permission, should be regarded as a legally permissible activity³⁰. However, as indicated above, the work must be obtained from a legitimate source³¹.

Piracy, following Art. 117 of the Copyright Act, may also refer to cases of unauthorized recording or reproduction of works, dictated by the purpose of their further dissemination. The terms „recording” and „reproduction” should be interpreted from the perspective of the meaning given to them in the light of Art. 50 sec. 1 of the Copyright Act relating to fields of exploitation of works³². The recording of a work is therefore the creation of a copy of the work using a specific technique. The process of copying must be considered reproduction. It does not matter what technique or device is used to reproduce the work. Similarly irrelevant is the medium on which the work is recorded, such as a CD. A single reproduction of a work is sufficient for the fulfillment of the elements of a prohibited act. However, it is important to show that the perpetrator acted with the purpose of disseminating the reproduced work.

Types of Internet piracy

The doctrine distinguishes different types of computer piracy: 1) piracy among end-users (occurs when a user e.g. obtains software without authorization. It may take the form, for example, of installing a program from one licensed copy on several computers); 2) unauthorized use of software on a server (this occurs when too many people working in a network use a master copy of a program at the same time; if a company has a local network and installs programs for many users on a server, it should make sure that the license authorizes it to do so); 3) Internet piracy (occurs when files are downloaded from the Internet; it should be emphasized that the principles of purchasing goods online are the same as those of purchasing in the traditional way; Internet piracy can take the form of peer-to-peer file sharing, allowing the illegal transmission of copyrighted

30 Ibidem, p. 1022.

31 Ł. Gołba, W. Rodak, op. cit., p. 39.

32 K. Gienas, *Bezprawne utrwalanie lub wielokrotnianie* [in:] *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz*, ed. E. Ferenc-Szydełko, Warszawa 2021, p. 625.

programs); 4) software counterfeiting (involves the illegal reproduction and sale of copyrighted materials).

From the point of view of the limits of fair personal use, the phenomenon of obtaining works in *peer-to-peer* networks deserves special attention.

Obtaining works in peer-to-peer networks under fair personal use

Peer-to-peer (P2P) is a model of communication on the Internet that provides all computers of given users with the same privileges. This model relies on sharing files from users' computers, without hosting them on any servers. Napster was the first *peer-to-peer* network allowing the transfer of mp3 files on a global scale. In its case, information about the file being searched for went to systems requiring central servers that provided the user with information about the file's location on other users' computers³³. From the perspective of copyright law, such indication of the location of a searched file exposed the network operator to charges of aiding and abetting Internet piracy.

A more advanced model is multi-tenant networks, like BitTorrent, composed of numerous and unconnected servers. Such a solution was intended to protect the file-sharing system in case one of the servers was shut down. Internet users shared torrent files through social networking sites, which through so-called clients connect the computers of the downloading and sharing user to transfer the material.

Another form of the system is decentralized networks, which are characterized by the absence of central servers. These networks allow users to make availability requests and transfer files directly between them.

The file transfer models described above hinder the fight against Internet piracy.

Another issue is the transfer of works using email between two users. Such a transfer does not constitute a distribution within the meaning of copyright law, due to the absence of the public nature of the act.

Conclusion

The issue of fair use in the context of audiovisual and music file sharing on the Internet raises many controversies. Summarizing the above considerations, it should be recognized that the determination of the boundaries of fair personal use requires consideration of the principles provided by law. Firstly, personal use cannot be treated as permissible if the file has been posted online as not previously disseminated. According to Art. 23 of the Copyright Act, fair use applies only to disseminated works, whereas under Art. 6 of the Copyright Act, dissemination means making it available to the public with the consent of the author. Thus, a person downloading a film „introduced” to the Internet before its world premiere cannot invoke fair personal use.

Secondly, the legislator does not regulate the issue of fair use of the source of works subject to exploitation in Art. 23 of the Copyright Act. This issue implies many legal problems. In the case of legal evaluation of downloading, the user is not obliged to check whether the files are made available legally, nor is it possible to verify the legality of the files. This may mean that downloading files from a legally questionable source may not preclude fair personal use. This issue has been addressed by the Court of Justice, which has held that acts of reproduction in respect of an illegally sourced copy of a work are excluded from private copying where the user is aware of the illegality of the copy. Therefore, this problem requires an amendment to the copyright law by the Polish legislator.

Thirdly, the considerations carried out allow us to conclude that the Internet is a huge challenge for the legislator. The rapid development of new technologies not only affects the possibilities of using works on the Internet but also changes the way works are created and distributed. We must keep in mind that the same copyright laws apply online as in the real world. All the solutions concerning the concept of a work, its creator, types of rights or ways to protect them are valid in relation to the Internet resources. The Internet is not a phenomenon that is entirely devoid of control. Some companies provide Internet access services, entities that provide servers, and we have the person who puts material online through them and the person who ultimately uses that material.

As technology advances, newer ways of committing criminal acts emerge that go beyond the current „standard” characteristics. What does not change is the impact of criminal activity. The biggest problem is the invasion of privacy, and the use of various fraud techniques for financial purposes, including theft

of property and possessions. The advancement of new technologies and the development of the information society are having a tremendous impact on copyright law while opening up new opportunities for copyright infringement. The Internet is an inseparable part of life in almost every society. It should be emphasized that the positive role of the Internet is difficult to overestimate. From a copyright perspective, however, there are a growing number of legal problems with the use of works on the Internet³⁴. Many new phenomena escape the traditional legal solutions contained in the Act on Copyright and Related Rights. This creates difficulties in adapting existing solutions to new facts related to the use of works on the Internet. This may indicate that the development of new technologies and related processes requires a new regulatory approach and also a redefinition of the principles of copyright protection on the Internet.

Bibliography

- Barta J., Markiewicz R., *Ilustrowane prawo autorskie*, Warszawa 2018.
- Barta J., Markiewicz R., *Prawo autorskie*, Warszawa 2016.
- Doliński J.M., *Dozwolony użytek prywatny a piractwo internetowe*, „Monitor Prawniczy” 2012, no. 19.
- Gienas K., *Bezprawne utrwalanie lub zwielokrotnianie* [in:] *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz*, ed. E. Ferenc-Szydełko, Warszawa 2021.
- Gienas K., *Użytek osobisty* [in:] *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz*, ed. E. Ferenc-Szydełko, Warszawa 2021.
- Gołba Ł., Rodak W., *Nowa przesłanka dozwolonego użytku prywatnego? Legalność kopii źródłowej w świetle art. 23 ustawy o prawie autorskim i prawach pokrewnych*, „Transformacja Prawa Prywatnego” 2017, no. 1.
- Kruszyński M., *Dozwolony użytek osobisty w świetle stosowania zabezpieczeń technicznych*, „Zeszyty Naukowe Uniwersytetu Jagiellońskiego” 2008, no. 102.
- Machała W., *Dozwolony użytek prywatny w polskim prawie autorskim*, Warszawa 2003.
- Machała W., „Standard Padawana”. *Opłaty od sprzętu zwielokrotniającego oraz czystych nośników po wyrokach Trybunału Sprawiedliwości Unii Europejskiej z 21.10.2010 r. i z 16.06.2011 r.* [in:] *Oblicza prawa cywilnego. Księga jubileuszowa dedykowana profesorowi Janowi Błeszyńskiemu*, ed. K. Szczepanowska-Kozłowska, Warszawa 2013.
- Markiewicz R., *Prawo autorskie na jednolitym rynku cyfrowym. Dyrektywa Parlamentu Europejskiego i Rady (UE) 2019/790*, Warszawa 2021.
- Maryniak Ł., *Odpowiedzialność za stosowanie hipertączy (linków)*, „Prawo Mediów Elektronicznych” 2021, no. 1.
- Nowikowska M., *Odpowiedzialność za naruszenie prawa autorskiego w Internecie*, „Cybersecurity and Law” 2019, no. 2.
- Preussner-Zamorska J., *Dozwolony użytek chronionych utworów* [in:] *System prawa prywatnego*, ed. J. Barta, vol. 13, Warszawa 2017.

³⁴ M. Nowikowska, *Odpowiedzialność za naruszenie prawa autorskiego w Internecie*, „Cybersecurity and Law” 2019, no. 2, p. 136.

- Zawadzka Z., *Autorskie prawa osobiste* [in:] *Prawo własności intelektualnej. Teoria i praktyka*, ed. J. Sieńczyło-Chalbic, Warszawa 2021.
- Zawadzka Z., *Ograniczenia treści autorskich praw majątkowych* [in:] *Prawo własności intelektualnej. Teoria i praktyka*, ed. J. Sieńczyło-Chalbic, Warszawa 2021.
- Żyrek A., *Przytapani na nielegalnym źródle – o dozwolonym użytku prywatnym z perspektywy orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej i prawa polskiego*, „Zeszyty Naukowe Uniwersytetu Jagiellońskiego” 2019, no. 4.

Piractwo internetowe a dozwolony użytek prywatny

Streszczenie

Celem artykułu jest analiza instytucji dozwolonego użytku osobistego w prawie polskim. W artykule omówiono koncepcję dozwolonego użytku osobistego uregulowaną w art. 23 ustawy z 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych. W artykule podjęto także próbę wskazania granic dozwolonego użytku prywatnego oraz odpowiedzi na to, co można pobrać z Internetu w ramach dozwolonego użytku, i kiedy takie działanie staje się nielegalne. W dobie nieustannie rozwijającego się Internetu podstawowe znaczenie ma legalność ściągania plików multimedialnych, tzw. uploading i downloading. W artykule starano się wykazać, kiedy ściąganie plików jest internetowym piractwem oraz jakie znamiona świadczą o popełnieniu takiego przestępstwa i jakie prawne konsekwencje się z tym wiążą.

Słowa kluczowe: dozwolony użytek osobisty, legalność, piractwo w sieci, prawo autorskie