

## Table of Contents

Preface by Prof. Andreas Wiebe .....	9
The Authors .....	11
List of Abbreviations .....	13
<b>A. INTELLECTUAL PROPERTY .....</b>	<b>15</b>
<b>I. Copyright Law (Z. Okoń, transl. M. Ożóg) .....</b>	<b>17</b>
1. Harmonization of Polish Copyright Law with the EU Acquis....	17
2. The Subject Matter of Copyright .....	23
2.1 The Conditions and the Scope of Copyright Protection .....	23
2.2 Computer Programs .....	26
2.3 Databases.....	28
2.4 Multimedia .....	30
3. Copyright Holder.....	31
3.1 General Rule .....	31
3.2 Employee-Created Works .....	33
3.3 Works Created by Scientific Workers and Students.....	34
3.4 Collective Works.....	36
4. Scope of Copyright .....	37
4.1 Economic Rights.....	37
4.2 Right of Distribution .....	40
4.3 Rental and Lending Rights.....	43
4.4 Communication to the Public.....	43
4.5 Reproduction Right.....	44
4.6 Economic Rights in Case of Computer Programs .....	46
4.7 Copyright and Sui Generis Rights in Databases .....	48
5. Limitations of Economic Rights .....	50
6. Technical Measures of Copyright Protection .....	53
7. Liability for Copyright Infringements .....	55
7.1 “Direct” Infringement Liability.....	55
7.2. “Indirect” Infringement Liability .....	57
<b>II. Trademarks (Z. Okoń, transl. M. Ożóg) .....</b>	<b>65</b>
1. Harmonization of Polish Trademark Law with the EU Acquis ..	65
2. Temporal Scope of Application of the IPL .....	66

## Table of Contents

---

3. Scope of Protection .....	68
3.1 Trademark Definition .....	68
3.2 Absolute Grounds for Refusal .....	70
3.3 Relative Grounds for Refusal .....	72
3.4 Trademark Registration of Domain Names .....	73
3.5 Trademarks Protected beyond Registration.....	74
3.6 Renowned Trademarks Protection.....	75
4. Scope of the Right of Protection for a Trademark .....	77
4.1 Positive and Negative Aspects of the Protection for Trademarks.....	77
4.2 Use of Trademarks as Domain Names.....	78
4.3 Trademark Use in Metatags, Links and Webpage Content.	81
4.4 Exhaustion of Trademarks .....	82
5. Limitations of the Protection .....	83
6. Liability for Trademark Infringement.....	85
6.1 Trademark Infringement and Trademark Infringement Claims.....	85
6.2 “Indirect” Trademark Infringement .....	87
6.3 Implementation of Directive 2004/48/EC .....	88
<b>III. Patent Law (Z. Okoń, transl. M. Ożóg) .....</b>	<b>89</b>
1. Harmonization of Polish Patent Law with the EU <i>Acquis</i> .....	89
2. Scope of Protection .....	90
2.1 Invention.....	90
2.2 Inventions Exempt from Patent Protection.....	91
2.3 Computer-Implemented Inventions .....	93
2.4 Biotechnological Inventions .....	96
2.5 Supplementary Protection Certificate.....	98
3. Scope of Protection .....	99
3.1 Patent Right.....	99
3.2 Patent Exhaustion.....	101
4. Limitations of the Protection .....	101
5. Patent Infringement .....	103
<b>IV. Competition Law (D. Adamski) .....</b>	<b>105</b>
1. Subject Matter.....	105
2. Unfair Competition in Advertising .....	107
3. Spam.....	109
4. Information Duties.....	112

Table of Contents

---

5. Forms of Unfair Trade Practices on the Net .....	118
6. Remedies .....	128
<b>B. CONTRACT LAW .....</b>	<b>131</b>
<b>I. International Private Law and Jurisdiction (J. Golaczyński) .....</b>	<b>133</b>
1. Applicable Law .....	133
2. Choice of Law for Consumer Contracts.....	134
3. Country of Origin Principle .....	135
4. Jurisdiction .....	140
4.1. National Jurisdiction .....	140
4.2. Jurisdiction Contracts.....	141
4.3. Actions and Claims Arising from Contracts.....	141
4.4. Place of Performance of the Obligation .....	142
4.5. Polish Civil Proceedings Code.....	143
<b>II. Software Contracts (Z. Okoń, transl. M. Ożóg) .....</b>	<b>144</b>
1. Outline of the Polish Contract Regime for Copyright .....	144
2. Legal Classification of Software Agreements .....	146
3. Purpose of the Contract and Obligations of the Parties .....	150
3.1 License Authorization.....	150
3.2 Specification of Area of Exploitation.....	152
3.3 Particular Forms of License Agreements.....	155
4. Other Important Provisions in License Agreements .....	156
4.1 Territorial and Temporal Scope of the License .....	156
4.2 The Author's Remuneration.....	158
4.3 Termination of the License Agreement .....	159
5. Guarantee and Liability .....	160
5.1 Legal Basis for the Rightholder's Liability .....	160
5.2 Liability for Defects in the Future Work .....	163
5.3 Liability for Defects in the Existing Work.....	166
6. Contract Formation.....	168
6.1 Contract Form.....	168
6.2 Mass-Trade Contracting .....	169
<b>III. Online Contracts (J. Golaczyński) .....</b>	<b>174</b>
1. Electronic Contracts as Contracts between Present/Absent Parties .....	174
2. An Offer <i>Versus Invitatio ad Offerendum</i> .....	176

## Table of Contents

---

3. Online Auction and Tender .....	183
<b>C. LIABILITY .....</b>	<b>189</b>
<b>I. Liability of Internet Service Providers (M. Podleś, B. Soltys) ....</b>	<b>191</b>
1. General Information .....	191
2. Regulations Referring to Liability in Contracts with Intermediary Service Providers.....	191
3. Regulation of Liability of Intermediary Internet Service Providers.....	193
4. Exclusion of Liability of Intermediary Internet Service Providers.....	199
<b>II. Law applicable to Internet Service Providers – the Rule of the Country of Origin (J. Golaczyński) .....</b>	<b>202</b>
<b>III. Criminal Liability (J. Golaczyński) .....</b>	<b>207</b>
1. Overview.....	207
2. Hacking.....	209
3. Damage to Databases (Art. 268 of the Criminal Code).....	210
4. Computer (Information) Sabotage (Art. 269 of the Criminal Code).....	210
5. Interference with the Functioning of the Network (Art. 269a of the Criminal Code) .....	211
6. Illegal Use of Software (the so-called Hacking Tools) and Data (Art. 269b of the Criminal Code).....	211
7. Destroying Electronic Documents or Depriving them of Evidential Force (Art. 276 of the Criminal Code).....	212
8. Theft of Software (Art. 278 of the Criminal Code) .....	212
9. Computer Fraud (Art. 287 of the Criminal Code).....	212
10. Receiving stolen Software (Art. 293 of the Criminal Code) ....	212
11. Forgery of Payment Cards (Art. 310[1] of the Criminal Code).....	213
References .....	213
Legal Acts .....	223