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Judicial Cancellation of Commonality of Author's Economic Rights as the Proceedings Excluded from the Jurisdiction of the Intellectual Property Courts: Case Study

Sądowe zniesienie wspólności autorskich praw majątkowych jako postępowanie wyłączone spod kognicji sądów własności intelektualnej. Studium przypadku

ABSTRACT

The article is of a scientific and research nature and presents the problem of a possible cancellation of joint ownership of the copyright in non-litigious proceedings during litigation between the same parties concerning the infringement of copyright to an audiovisual work. In connection with the doctrinal dispute regarding the cancellation of commonality of copyright, the authors present arguments in favour for such a possibility in light of the provisions of both copyright law and civil law, and they discuss the procedural provisions related to such cancellation. An important aspect of the problem addressed in this paper is also the impact of the proceedings for the cancellation of commonality of

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Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

copyright on the ongoing litigation proceedings between the same parties concerning the infringement of the author's economic rights. As a result of the analysis of the current legal status, taking into account the events of a past court case, the authors present conclusions of the law as it stands with regard to the need for changes in civil procedure – the proceedings in intellectual property cases. It should be emphasized that the addressed research problem concerning the mutual relation between the substantive law provisions and the civil procedure in the scope of cancellation of commonality of the author's economic rights has not hitherto been described by legal scholars and commentators.

Keywords: copyright; cancellation of commonality of copyright; civil procedure; non-litigious proceedings; proceedings in intellectual property cases

INTRODUCTION

The paper is based on the litigation which involved the co-authors of this article as plenipotentiaries of one of the parties. The litigation led to the initiation of two entirely different court proceedings. The first proceeding, of a litigious nature, was initiated at one of the regional courts – commercial division and concerned litigation of entrepreneurs, joint holders of author's economic rights to an audiovisual work; as part of it, the plaintiff filed claims for compensation for the infringement of author's economic rights to an audiovisual work under Article 79 (1) (3) (b) LCRR.[1] The second, non-litigious proceeding, the nature of which is important for the issues described in this article, was initiated by the defendant in the course of the ongoing compensation proceedings. The defendant filed a petition to the district court for cancellation of the commonality of the author's economic rights to the disputed audiovisual work. In the petition, the petitioner requested granting him full rights to the audiovisual work, establishment of unequal interests in the right, cancellation of commonality and the settlement of benefits and expenses related to the exercise of the joint copyright.

To properly formulate the research thesis and research questions in this article, it is essential to clarify the circumstances of the litigation that occurred, as they are directly related to those issues. The entrepreneurs (the plaintiff and the defendant) appearing as parties in the litigation proceeding concerning the infringement of the author's economic rights before the regional court and as participants in the non-litigious proceedings for the cancellation of commonality of the author's economic rights before the district court were the legal successors of the authors who had contributed to the creation of the audiovisual work (advertising film). The plaintiff and the defendant were not bound to each other by any agreement, but they became joint holders of rights due to the acquisition of part of the author's economic rights to the film in question, as each of them acquired part of the creative contributions from the authors.

[1] Act of 4 February 1994 – Copyright and Related Rights Law (consolidated text, Journal of Laws 2022, item 2509, as amended).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

The plaintiff acquired the author's economic rights to the stage design projects, the artistic performances of some of the actors and the voice-over. The defendant acquired the author's economic rights to other contributions constituting the audiovisual work, including the rights to the script, direction, cinematography, editing, costume design, music and artistic performances of the remaining actors. For the sake of completeness, it should be noted that the audiovisual work, namely an advertising film, was made upon the order of the defendant, who was the initiator of its creation and the entity that financed the production but did not directly conclude any agreements with the individual creators of the work. Instead, the defendant commissioned a creative industry company to conduct a professional advertising campaign, part of which was also the production of the advertising film in question. It was ultimately the plaintiff who, as a subcontractor, led to the creation of the advertising film under the agreement with a marketing company. The creation of the film was followed by its successful release to the defendant, in the presence of all other parties.

So what was the reason for compensation claims being made? In fact, after the film had been broadcast, the plaintiff withdrew from the agreement due to the fact that, as it later appeared, they had not been paid the total remuneration from the actual ordering party; however, they failed to inform the defendant that, despite the fact that the film was released for broadcast, the majority of the rights had not been paid for by the plaintiff. What is disputed between the parties in the ongoing litigation proceedings before the regional court regarding the infringement of the author's economic rights is whether any entity was entitled to the status of a producer of the audiovisual work and whether the defendant, by broadcasting the advertising film without the plaintiff's consent, infringed the authors' economic rights.

It is undisputed that in the state of affairs thus outlined, the plaintiff and the defendant, in the light of Article 9 (1) LCRR, are to be regarded as joint holders of the author's economic rights to the audiovisual work, between whom the litigation proceedings concerning the infringement of the author's economic rights under Article 79 (1) (3) (b) LCRR are pending before the regional court. Due to the fact that the defendant is the co-proprietor of the majority of the creative contribution to the advertising film, he decided to initiate the second proceeding before the district court for the cancellation of the commonality of authors' economic rights to the advertising film under Article 618 CPC,[2] and for the settlement of the mutual claims for compensation in proceedings involving the estate partition. Along with the petition, the request was submitted to the regional court for the remittal of litigation proceedings concerning the infringement of the author's economic rights already pending before that court to the district court, pursuant to Article 188 of the Rules

[2] Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2021, item 1805, as amended).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

Governing the Operation of Common Courts[3] in conjunction with Article 618 § 1 CPC, and for discontinuation of the proceedings concerning the infringement of the author's economic rights pending before that court.

The purpose of this article is to present, on the example of the actual state of affairs presented above, legal aspects related to the mutual relations of the proceedings regarding the infringement of the author's economic rights between joint holders of rights and the cancellation of commonality of their rights. The research problem is primarily to answer the question of admissibility of cancellation of joint ownership of the author's economic rights, and then to address the issue of admissibility of such a petition for cancellation of commonality in the course of litigation proceedings for the infringement of copyrights and to indicate mutual consequences both for such proceedings and for the situation of the parties. The competent subject-matter jurisdiction of the court and the procedure for the cancellation of the author's economic rights are issues which raise significant doubts, as indicated by the court rulings cited in the case. The considerations are intended to answer the question of whether the currently binding provisions of substantive and procedural law regulating the described issues are constructed correctly, or whether they require legislative amendments (postulates of the law as it stands).

In the article, the formal-dogmatic method in conjunction with the comparative method was applied to allow the analysis of existing or currently implemented legal standards regarding the issues being the subject of the research. As already indicated and described above, the research is based on a case study of the court case pending before Polish courts.

RESEARCH AND RESULTS

1. Admissibility of cancellation of commonality of the author's economic rights

When considering the issue of cancellation of commonality of the author's economic rights, it should first be pointed out that, according to Article 9 (1) LCRR, creating a co-author's work results in granting, by virtue of the act, the original,

[3] In the proceedings for the cancellation of joint ownership of a property, it is necessary to determine whether proceedings are pending between the co-owners for the ownership of the joint property, for the right to seek cancellation of joint ownership of the property or for mutual claims for the ownership of the joint property. If it is determined that such proceedings are pending in any other court, the court hearing the case for the cancellation of joint ownership of a property requests that such cases be remitted to it. The request shall specify the subject and participants in the proceedings for the cancellation of joint ownership of a property. See Regulation of the Minister of Justice of 18 June 2019 – Rules Governing the Operation of Common Courts (consolidated text, Journal of Laws 2022, item 2514).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

joint author's economic right to each of the co-authors. "Although the Act does not explicitly stipulate this, it must be assumed that the commonality of law applies only to property rights and does not extend to personal rights".[4] As it is known, the commonality of rights in the Polish legal system may be either joint or fractional. The first is permanent and impossible to cancel, whereas the latter is of temporary nature and therefore it can be cancelled.

It should be noted that according to Article 9 (5) LCRR, each of the co-authors is entitled to a share in the joint right; the provision also states that in matters not regulated by the LCRR, to author's economic rights to which the co-authors are entitled, the provisions of the Civil Code[5] concerning joint ownership in fractions shall apply accordingly. The provisions of the Civil Code on ownership in fractions, i.e. Articles 195–221 concerning, i.a., the appointment of an administrator for a joint right, the demand for the management account and the cancellation of the joint right, shall apply accordingly to the author's economic rights of co-authors.[6] It would appear that the majority of copyright scholars and commentators is in favour of the admissibility of the cancellation of commonality of the author's economic rights vested in co-authors.[7] As pointed out by M. Poźniak-Niedzielska, the legislator allowed the possibility to cancel the commonality of the author's economic rights due to its property nature and the potential "paralysis" of the management of the right in the situation of refusal to exercise it by some of the right holders.[8] J. Barta and R. Markiewicz are unreservedly in favour of allowing the cancellation of commonality but, as one may assume, only in the case of a derivative acquisition of the right, e.g. by heirs. If, on the other hand, the cancellation of commonality concerns a right belonging to co-authors, according to the aforementioned authors, the court may allow its cancellation – under the appropriately applied Article 211 of the Civil Code – if this corresponds to the function of copyright, taking into account the

[4] J. Barta, R. Markiewicz, [in:] M. Czajkowska-Dąbrowska, Z. Ćwiąkalski, K. Felchner, E. Traple, J. Barta, R. Markiewicz, *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz*, Warszawa 2011, commentary on Article 9, thesis 12.

[5] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2022, item 1360, as amended).

[6] Cf. B. Błońska, [in:] *Prawo autorskie i prawa pokrewne. Komentarz*, eds. W. Machała, R.M. Sarbiński, Warszawa 2019, commentary on Article 9, thesis 54, and the references cited therein.

[7] Among others, see M. Poźniak-Niedzielska, [in:] *Prawo autorskie i prawa pokrewne. Zarys wykładu*, ed. M. Poźniak-Niedzielska, Warszawa 2007, pp. 34–35; J. Sobczak, *Prawo autorskie i prawa pokrewne*, Warszawa 2000, p. 87; J. Barta, R. Markiewicz, [in:] M. Czajkowska-Dąbrowska, Z. Ćwiąkalski, K. Felchner, E. Traple, J. Barta, R. Markiewicz, *op. cit.*, p. 194; S. Ritterman, *Komentarz do ustawy o prawie autorskim*, Kraków 1937, p. 67 ff.; K. Grzybczyk, *Reklama jako dzieło wspólne*, "Monitor Prawiczy" 1997, no. 11, p. 442; R. Golat, *Prawo autorskie i prawa pokrewne*, Warszawa 2021, p. 113; A. Niewęgłowski, *Prawo autorskie. Komentarz*, Warszawa 2021, p. 191, thesis 28.

[8] M. Poźniak-Niedzielska, *op. cit.*, pp. 34–35.

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Data: 22/11/2026 23:00:53

result of balancing the interests of the parties.[9] The cancellation of commonality, in particular with regard to co-authored works of a non-divisible character, may either consist in granting all the rights to one of the interested parties or in dividing the rights, e.g. by granting the joint holders of rights the possibility to exploit the work in specific forms.[10] Similarly, as it is rightly pointed out by A. Niewęgłowski, the procedure of cancellation of joint ownership of the author's economic rights (contractual or judicial) should be distinguished from the manner of its cancellation, which should take into account the nature of the author's economic right. As an example of a problematic case, the author indicates the cancellation of commonality by means of a "physical division" of the work, which would consist, e.g., in granting the authors exclusive rights to the parts they have created.[11] On the other hand, dividing the joint right in terms of fields of exploitation or in terms of territory is considered admissible in the literature.[12]

At the same time, a different view of legal scholars and commentators states that due to the necessity to respect the bond of the author with the work, the possibility of cancelling the commonality of rights is not obvious, but could only occur if the rights of joint holders of rights are duly respected.[13]

The authors of this paper agree with the view of those, who, as a matter of principle, are in favour of the cancellation of commonality of the author's economic right both by the legal successors of co-authors and by the co-authors themselves. We consider the key argument in this discussion to be the fact that the commonality of the author's economic rights has been regulated as fractional, not joint, commonality, which should dispel any doubts. As it is known, "fractional joint ownership is by its nature temporary, which is why the legislator facilitates its cancellation, whereas joint ownership is made permanent so that it can perform its social and economic function".[14] One has to agree with the opinion that only certain situations allow the possibility of cancellation of this right to be limited. The only normative basis for such a limitation of transferability (cancellation) of the author's economic rights in a joint work may seem to be Article 5 of the Civil Code indicating the premise of exercising one's right (in this case, the right to cancel commonality)

[9] J. Barta, R. Markiewicz, *Prawo autorskie*, Warszawa 2016, pp. 111–112.

[10] T. Targosz, [in:] T. Targosz, K. Włodarska-Dziurzyńska, *Umowy przenoszące autorskie prawa majątkowe*, Warszawa 2010, p. 7.

[11] A. Niewęgłowski, *Prawo autorskie…*, p. 191, thesis 28.

[12] S. Ritterman, *op. cit.*, p. 68, as cited in A. Niewęgłowski, *Prawo autorskie…*, p. 191, thesis 29.

[13] B. Błońska, *op. cit.*, commentary on Article 9, thesis 54; A. Nowicka, [in:] *System Prawa Prywatnego*, vol. 13: *Prawo autorskie*, ed. J. Barta, Warszawa 2013, p. 90; J. Banasiuk, *Współtwórczość i jej skutki w prawie autorskim*, Warszawa 2012, chapter VI, part 4.6.

[14] M. Nazar, *Współwłasność*, [in:] T.A. Filipiak, J. Mojak, M. Nazar, E. Niezbecka, *Zarys prawa cywilnego*, Lublin 2010, p. 203.

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Data: 22/11/2026 23:00:53

contrary to its social and economic purpose or the principles of social co-existence and possible infringement of personal author's rights of any co-author.

We believe that the issue under discussion should therefore not be whether joint copyright can be cancelled, as this has been unambiguously determined by the legislator, but only whether, taking into account the "appropriately applied" provisions of the Civil Code, this cancellation may in certain circumstances be somehow limited in terms of its implementation.

2. The issue of the cancellation of commonality of rights other than joint ownership

The Civil Code does not address the issue of commonality of rights other than ownership (co-ownership). Therefore, in situations in which one deals with a joint right other than co-ownership, the provisions on co-ownership in fractions applicable per analogy shall apply, such as Article 9 LCRR and Article 72 of the Industrial Property Law.[15] The literature has pointed out that co-ownership in fractional parts serves as a model for all kinds of commonality of property rights. Therefore, it has been postulated that the provisions on co-ownership in fractional parts should apply to all cases of co-ownership of rights other than property.[16]

A similar view has been presented in judicial decisions. For example, a case concerning the cancellation of joint ownership of an agricultural holding concluded it is clear that co-holders do not have the right to demand the cancellation of joint ownership, as this right is reserved only for co-owners (Article 210 of the Civil Code). Similarly, only co-owners have the right to demand a determination of the manner of management and use of the property, as stipulated in Article 199 ff. of the Civil Code. However, in accordance with the views of legal academics and commentators, as well as judicial decisions, these provisions have a broader scope, as it is assumed that in the absence of provisions in our legislation that would standardise the institution of commonality of rights, the provisions on co-ownership should be applied by analogy to the commonality of rights other than ownership. Neither are there any obstacles to the analogous application of the provisions on the management and use of a joint property – to co-ownership. On the contrary, the absence of more detailed provisions referring to this institution, on the one hand,

[15] Act of 30 June 2000 – Industrial Property Law (consolidated text, Journal of Laws 2021, item 324, as amended). Cf. A. Niewęgłowski, [in:] T. Demendecki, J. Sitko, J. Szczotka, G. Tylec, A. Niewęgłowski, *Prawo własności przemysłowej. Komentarz*, Warszawa 2015, commentary on Article 72, thesis 3.

[16] See E. Gniewek, [in:] *System Prawa Prywatnego*, vol. 3: *Prawo rzeczowe*, ed. T. Dybowski, Warszawa 2020, p. 431; E. Skowrońska-Bocian, [in:] *Kodeks cywilny*, vol. 1: *Komentarz do art. 1–449[10]*, ed. K. Pietrzykowski, Warszawa 2020, p. 649.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

and its significant social and economic significance in ownership relations in our country, on the other hand, fully justify such an interpretation.[17]

The cited legal regulations, statements of legal scholars and commentators and the judicial decisions clearly indicate that the cancellation of the author's economic rights must be performed in the same way as in the case of joint ownership. While, as presented, there are no doubts as to the application of substantive law provisions, it is unclear as regards the relevant formal law provisions.

3. Procedure and jurisdiction of the court in the case of the cancellation of the author's economic rights

Bearing in mind the above considerations, in the absence of an agreement of joint holders of rights, the only authority competent as to the manner of cancellation of a joint right is the court. Since the provisions of the Civil Code are applied accordingly to the cancellation of commonality of the author's economic right, then two questions arise: Which mode of civil proceedings such as cancellation of economic copyrights should be performed? What is the common court of competent subject matter jurisdiction to perform it?

As to the first question, there should be no doubt that the cancellation of the author's economic rights should be conducted according to the same rules as the cancellation of joint ownership, i.e. as non-litigious proceedings under the provisions of Articles 617–625 CPC (these are the provisions of Chapter IV "Cancellation of joint ownership", Division III "Cases under the property law", Book II CPC). However, the answer to the second question is not as obvious. On the one hand, in accordance with Article 507 CPC, cases being part of litigious proceedings are heard by district courts, except for cases for which the jurisdiction of regional courts is reserved. A petition for the cancellation of joint ownership of copyright or the cancellation of commonality of any other rights is not a case reserved for regional courts. On the other hand, however, one cannot lose sight of the fact that as of 1 July 2020 a new Division IVg "Proceedings in intellectual property cases" was introduced to the CPC in Title VII "Separate proceedings", the provisions of which apply to cases instituted after that date. Under Article 479^{89} § 1 CPC, the following are classified as intellectual property cases: cases for the protection of copyright and related rights, for the protection of industrial property and the protection of other intangible property rights; moreover, cases for preventing and combating unfair competition, of personal interests in so far as a given personal interest is used for individualisation, advertising or publicity of an entrepreneur, goods or services, as well as cases for the protection of personal interests in connection with scientific or inventive activity (Article 479^{89} § 2 CPC).

[17] Resolution of the Supreme Court of 16 June 1967, III CZP 45/67, OSNC 1968, no. 1, item 3.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

The list of the categories of cases classified as intellectual property cases identifies them in relative detail. This catalogue should be regarded as closed. We believe it is difficult to consider the above-mentioned provision as a basis for stating that a case concerning the cancellation of commonality of the author's economic right is within the jurisdiction of intellectual property courts appointed at the regional court level which, by applying the provisions of non-litigious proceedings, should cancel commonality of copyrights. However, based on the actual status of the case described at the beginning of this article, the District Court in Kalisz reached a different conclusion. After filing a petition for the cancellation of the commonality of the author's economic rights to this court, the district court, referring to the content of Article 200 § 1^1 CPC in conjunction with Article 13 § 2 CPC, declined its jurisdiction and decided to transfer the case to the competent court, i.e. the regional court, intellectual property division. Referring to Article 479^{89} § 1 CPC and the position of the Supreme Court,[18] expressed even before the date of the above-mentioned amendment to the CPC, in stating the grounds for its decision, the District Court found that it is reasonable to interpret the term "cases for the protection of copyrights" through the prism of the indicated function, which means that "protection of copyrights" should not, in such a case, be associated only with the protection of personal rights and author's economic rights, but should include all cases for claims under copyright law. The said court indicated that the solution assuming that copyright protection cases are all cases of claims under copyright law (in the substantive sense) has the advantage of allowing the cumulation of claims for remuneration for the transfer of copyright with claims for infringement in a single proceeding.

The regional court, intellectual property division to which the case has been transferred, as a result of the issued order, of its own motion and pursuant to Article 201 § 1 CPC examined in what mode the case should be heard and whether it should be heard in accordance with the provisions of separate proceedings. As a result, the court issued a decision stating that the present case does not belong to the catalogue of cases listed in Article 479^{89} §§ 1 and 2 CPC, at the same time declining its functional jurisdiction to hear the case and, pursuant to Article 479^{92} §§ 1 and 2 CPC, transferred the case to be heard by the District Court in Kalisz. In the statement of grounds, the regional court referred to Article 479^{89} § 1 CPC and Article 507 CPC, under which cases within non-litigious proceedings shall be heard by district courts, except for cases for which the jurisdiction of regional courts is reserved. It also indicated the court's obligation to examine in what mode the case should be heard, whether it should be heard in accordance with the provisions of separate proceedings, and in the event of finding that it was initiated or conducted in an improper mode, the court is obliged to hear the case in the proper mode or to

[18] Decision of the Supreme Court of 26 February 2015, III CZP 6/15, OSNC 2016, no. 2, item 26.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

transfer it to the competent court. However, the scope of the above obligation should be interpreted with consideration of the principle of disposition of proceedings, meaning that it is the party initiating the case who determines its subject matter. This is done by precisely specifying the demand, pursuant to Article 187 § 1 (1) CPC and Article 511 CPC. A specified demand, pursuant to Article 321 § 1 CPC, which applies accordingly (Article 13 § 2 CPC) also in non-litigious proceedings, binds the court (the situation is different only if the proceedings may be initiated by the court of its own motion [e.g. Article 570 CPC] or when the court is obliged to make certain findings of its own motion and include relevant decisions in the judgment [e.g. Article 684 CPC]). The court is also not entitled to specify the demand on behalf of the party.[19] The regional court found that, since the petitioner had filed a petition for the cancellation of commonality of the author's economic rights for which the non-litigious proceedings are applicable, the case should be heard by the district court. The court to which the case has been transferred is bound by the decision of the court having jurisdiction in intellectual property cases (Article 479^{89} § 3 CPC).

4. The consequences of filing a petition for the cancellation of commonality of the author's economic rights in the course of litigation proceedings concerning their infringement between joint holders of rights to a work

A doubtful issue, which has been neglected in the literature on copyright law and civil proceedings so far, is whether it is admissible to file a petition to cancel the commonality of the author's economic rights during litigation proceedings pending before a regional court with regard to the infringement of copyright in a situation where the parties to the litigation are at the same time joint holders of rights to the work. According to the authors of this article, such petition shall be considered admissible. It is justified by Article 9 (5) LCRR, according to which the provisions on joint ownership of property shall be applied accordingly to the commonality of copyright. As it is known, initiating and conducting proceedings for cancellation of joint ownership of a property during the litigation for the ownership right is allowed under property law.

Another issue worth considering is what actions should be taken by a regional court, commercial division (currently – intellectual property division) before which proceedings for compensation for infringement of author's economic rights are pending pursuant to Article 79 LCRR, upon becoming aware of the pending proceedings for the cancellation of commonality of author's economic rights between the same parties before the district court. The answer can be found in the Article 618

[19] Decision of the Supreme Court of 6 September 1994, III CRN 36/93, OSNC 1995, no. 1, item 20.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

§ 2 CPC which states that the commencement of proceedings for the cancellation of the commonality of authors' economic rights shall prohibit further proceedings for compensation under Article 79 LCRR. What is more, the case should be immediately transferred to the district court to be combined with the case for the cancellation of the commonality of authors' economic rights. In our opinion, the position well-established in the substantive law can be applied here, according to which the failure to transfer the case listed in Article 618 § 2 CPC, initiated when the proceedings for cancellation of joint ownership were already pending, to the court conducting the case for cancellation of joint ownership results in invalidity of the proceedings.[20] Should the court proceed with the case, contrary to the provision of Article 618 § 2 CPC, and thus the proceedings referred to in Article 618 § 1 CPC were initiated in the course of the proceedings for the cancellation of joint ownership and conducted in violation of the first sentence of Article 618 § 2 CPC, such a procedural defect justifies the annulment of these proceedings. Moreover, it should be taken into account by the court of second instance of its own motion (Article 379 § 3 and Article 378 § 1 CPC), which in its decision should therefore repeal the defective judgment, discontinue the proceedings in whole and transfer the case to the court conducting the case for cancellation of joint ownership. In the above respect, the resolution of the Supreme Court of 21 July 1970[21] remains valid, which states that if the court of second instance finds that the court of first instance failed to transfer the case belonging to the category of cases specified in Article 618 § 1 CPC to the court conducting proceedings for the cancellation of joint ownership, is obliged to repeal the contested decision of its own motion and transfer the case – pursuant to Article 618 § 2 CPC – to the court conducting these proceedings, unless the proceedings for the cancellation of joint ownership were initiated after the judgment and there are no grounds for revoking the judgment and referring the case for rehearing.

Therefore, taking into consideration the above position concerning proceedings for the cancellation of joint ownership and the content of Article 9 (5) LCRR, it should be assumed that the intellectual property court already conducting proceedings for compensation, after becoming aware of the petition for the cancellation of joint ownership, should, of its own motion and by means of an order, decline its subject-matter jurisdiction and refer the case to the district court for examination. By no means should one lose sight of the fact that Article 9 (5) LCRR appears to

[20] J. Gudowski, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 4: *Postępowanie rozpoznawcze. Postępowanie zabezpieczające*, ed. T. Ereciński, Warszawa 2016, commentary on Article 618; T. Zembrzuski, *Spory o prawo własności w postępowaniu o zniesienie współwłasności*, "Radca Prawny" 2010, no. 2, p. 84; A. Górski, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 3: *Art. 506–729*, ed. H. Dolecki, T. Wiśniewski, Warszawa 2013, commentary on Article 618.

[21] III CZP 39/70, OSNCP 1971, no. 2, item 25.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 22/11/2026 23:00:53

refer to the proper application of the substantive law provisions on the co-ownership of a property and not to procedural law. However, in the absence of unambiguous provisions of the legislator concerning the application of formal laws, having regard to the principles of reasoning per analogy, the appropriate application of civil procedural provisions on co-ownership, in addition to the application of substantive provisions on co-ownership, appears to be the only correct solution.

From the practical point of view, the important matter to be considered is the right moment for the intellectual property court hearing the case on compensation to issue an appropriate decision on declining its jurisdiction. As results from sentences 1 and 2 of Article 618 § 2 CPC it should be done upon initiating the proceedings for the cancellation of joint ownership. The court should refrain from issuing such a decision until a copy of the petition for the cancellation of the joint right has been provided to all participants in the proceedings initiated before the district court. Therefore, until it is established that the case for the cancellation of commonality is pending, the transfer of the case on compensation to the district court would be unjustified, and such a decision considered premature. The court hearing the case on compensation is thus free to issue a decision on this case until the formal initiation of the proceedings for the dissolution of commonality of copyright before the district court, without the risk of the proceedings being declared invalid.

The legal basis for the transfer of a case for a claim under Article 618 § 1 CPC, which was filed before the initiation of proceedings for the cancellation of joint ownership, is § 2 of this provision, while a case in this scope brought later is transferred to the court conducting proceedings for the cancellation of joint ownership pursuant to Article 200 in conjunction with Article 13 § 2 CPC, also if the regional court was of competent subject-matter jurisdiction for the case (Article 17 § 4 CPC). The court conducting proceedings for cancellation of joint ownership remains competent to hear the claims transferred to it under Article 618 § 2 CPC if a substantive decision is issued both in the event of accepting and dismissing the petition, since in the latter case there is no basis for "returning" it to another court. On the other hand, in the case of a formal decision (discontinuing the proceedings for cancellation of joint ownership or dismissing the petition), the claims under Article 618 § 1 CPC shall be transferred to the competent court for examination. The decision on the transfer should also contain a decision on the commencement of the proceedings for these claims by means of legal proceedings (Article 201 § 1 CPC).[22]

It should be added that § 188 of the Rules Governing the Operation of Common Courts provides that the court conducting proceedings for the cancellation of joint ownership should of its own motion determine whether proceedings are pending between the co-owners for the ownership of the joint property, for the right to de-

[22] Cf. A. Górski, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 3: *Art. 506–729*, ed. T. Wiśniewski, Warszawa 2021, commentary on Article 618 CCP, theses 11, 12 and 15.

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Data: 22/11/2026 23:00:53

mand the cancellation of the joint ownership of the property or for mutual claims for the ownership of the joint property.

When presenting the aforementioned reasoning, we are aware of the various uncertainties that may arise from it. One of the most important is probably the fact that while in the context of proceedings for cancellation of joint ownership, it is possible to unambiguously qualify the already pending litigations between the parties as matters of ownership of joint property, or mutual claims for the ownership of the joint property, the issue of interpretation of the notion of mutual claims of joint holders of copyrights may raise doubts in the context of copyright law. Moreover, while under property law, the mutual claims of co-owners for possession of a jointly owned thing may always be reduced to the settlement of benefits and expenditures resulting from the possession of the jointly owned thing by one of the co-owners, under the copyright law, apart from this settlement of benefits and expenditures resulting from the joint copyright, there is also the issue of possible infringement of copyright of one joint right holder by another joint right holder. Thus, if we consider the mutual property relations of co-authors or joint holders of the author's economic rights, their mutual claims may arise from:

- settlements of benefits and expenses related to the exercise of their joint right by third parties (including settlements of claims obtained from the infringement of their joint right by third parties);
- settlements of benefits and expenses related to the exercise of the joint right by joint right holders themselves;
- infringement of the author's economic rights of one joint right holder against the other(s) joint right holder(s).

Having the above in mind, when juxtaposing the construction of mutual claims of co-owners and mutual claims of joint holders of copyrights, one may wonder whether the provisions on joint ownership applicable to the commonality of copyrights should cover cases of infringement of copyrights of one joint right holder against the other joint right holder transferred to the court conducting proceedings for cancellation of the commonality of author's economic rights. Taking into consideration the procedural economy, one may assume that litigations of this type should as well be heard within one proceeding, in the course of which a comprehensive settlement of joint right holders will be performed, including possible claims formulated under Article 79 LCRR.

DISCUSSION AND CONCLUSIONS

The above-presented argumentation leads to the conclusion that due to the admissibility of cancellation of commonality of the author's economic rights, on the grounds of current regulations of the CPC and the copyright, the only court of com-

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Data: 22/11/2026 23:00:53

petent subject-matter jurisdiction to hear this type of petition is a district court. The said court should hear the petition by means of non-litigious proceedings and within the framework of these proceedings hear other pending litigations between the same participants concerning claims related to joint copyrights. Thus, the case files and requests submitted in the course of proceedings for infringement of copyrights should be included in the partition proceedings. The paradox of the presented solution reduces to the fact that the situation described herein will result in cases pending before regional courts – intellectual property courts – having to be transferred to the district court for the hearing. This kind of situation demonstrates the existence of a significant legal loophole in the provisions regarding the proceedings in intellectual property cases. There is probably no doubt that cases of this type should be combined into one proceeding pending before a specialised court, namely the intellectual property court, and applying the provisions of Articles 479^{89}–479^{129} CCP with appropriately applied provisions of the CCP on the cancellation of joint ownership.

We believe that within the scope described above it is necessary to amend legal regulations so that cases concerning the cancellation of joint ownership of copyright could be heard by intellectual property courts. Therefore, the cases that concern the cancellation of the commonality of intellectual property rights should also be included in the catalogue of cases listed in Article 479^{89} § 1 CPC, which specifies cases heard in this type of the proceedings. In view of Article 479^{91} CPC which permits to apply provisions of other separate proceedings in cases conducted under the procedure instituted in the Division IVg ("Proceedings in intellectual property cases") to the extent to which they are not contrary to the provisions of the latter, such a solution would, it appears, achieve the objective indicated above. This regulation should entail an amendment to § 188 of the Rules Governing the Operation of Common Courts that would require all cases pending before other courts and between the same parties concerning the same intellectual property right or claims related to it to be transferred to the court which has received the petition for the cancellation of intellectual property rights. It is also worth noting that this postulate does not violate the provisions of Article 507 CCP, allowing regional courts to hear cases in non-litigious proceedings.

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Data: 22/11/2026 23:00:53

ABSTRAKT

Artykuł ma charakter naukowo-badawczy i przedstawia problem możliwości zniesienia współwłasności prawa autorskiego w trybie nieprocesowym w trakcie trwania sporu sądowego pomiędzy tymi samymi stronami z tytułu naruszenia prawa autorskiego do utworu audiowizualnego. W związku ze sporem doktrynalnym co do możliwości zniesienia wspólności prawa autorskiego autorzy przedstawiają argumenty za taką możliwością w świetle przepisów zarówno prawa autorskiego, jak i prawa cywilnego oraz omawiają przepisy proceduralne związane z tego rodzaju zniesieniem wspólności praw. Istotnym aspektem poruszonego problemu jest także wpływ postępowania o zniesienie wspólności praw autorskich na toczący się między tymi samymi stronami proces o naruszenie majątkowych praw autorskich. W wyniku przeprowadzonej analizy aktualnego stanu prawnego, opierając się na zdarzeniach zapadłej sprawy sądowej, autorzy przedstawiają wnioski *de lege ferenda* w zakresie potrzeby zmian postępowania cywilnego – postępowania w sprawach własności intelektualnej. Należy podkreślić, że podjęty problem badawczy dotyczący wzajemnej relacji przepisów prawa materialnego oraz procedury cywilnej w zakresie zniesienia wspólności autorskich praw majątkowych nie został dotychczas opisany przez doktrynę prawa.

Słowa kluczowe: prawo autorskie; zniesienie wspólności prawa autorskiego; postępowanie cywilne; tryb nieprocesowy; postępowania w sprawach własności intelektualnej