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Abstract:

The purpose of this article is to identify what may be expected from the violator in case of intellectual property infringement if an entitled person demands that the ineligible person surrender the unlawfully obtained profits. Regardless the amendments introduced to Polish law as a result of the implementation of the EU 2004/48 Directive, the judicature and doctrine views do not explain remaining interpretative doubts. The above mentioned situation justifies the use of untraditional methods of legal interpretation. The nature of a legal institution of the surrender of unlawfully obtained profits is considered to be quite complex and ambiguous. It is a subject of several legal acts the provisions of which do not share the same definitions nor do they contain cohesive terminology.

The economic analysis of law (i.e. law and economics) can be a valuable tool in considering alternative methods of interpretation of legal texts. Taking into consideration the principle of proportionality and economic efficiency, the law and economics may be helpful in establishing the scope of liability for infringement of intellectual property law rights.