

Copyright & design right overlap
Focus on Polish regulation

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Partial Cumulative Protection

Copyright/Design Overlap

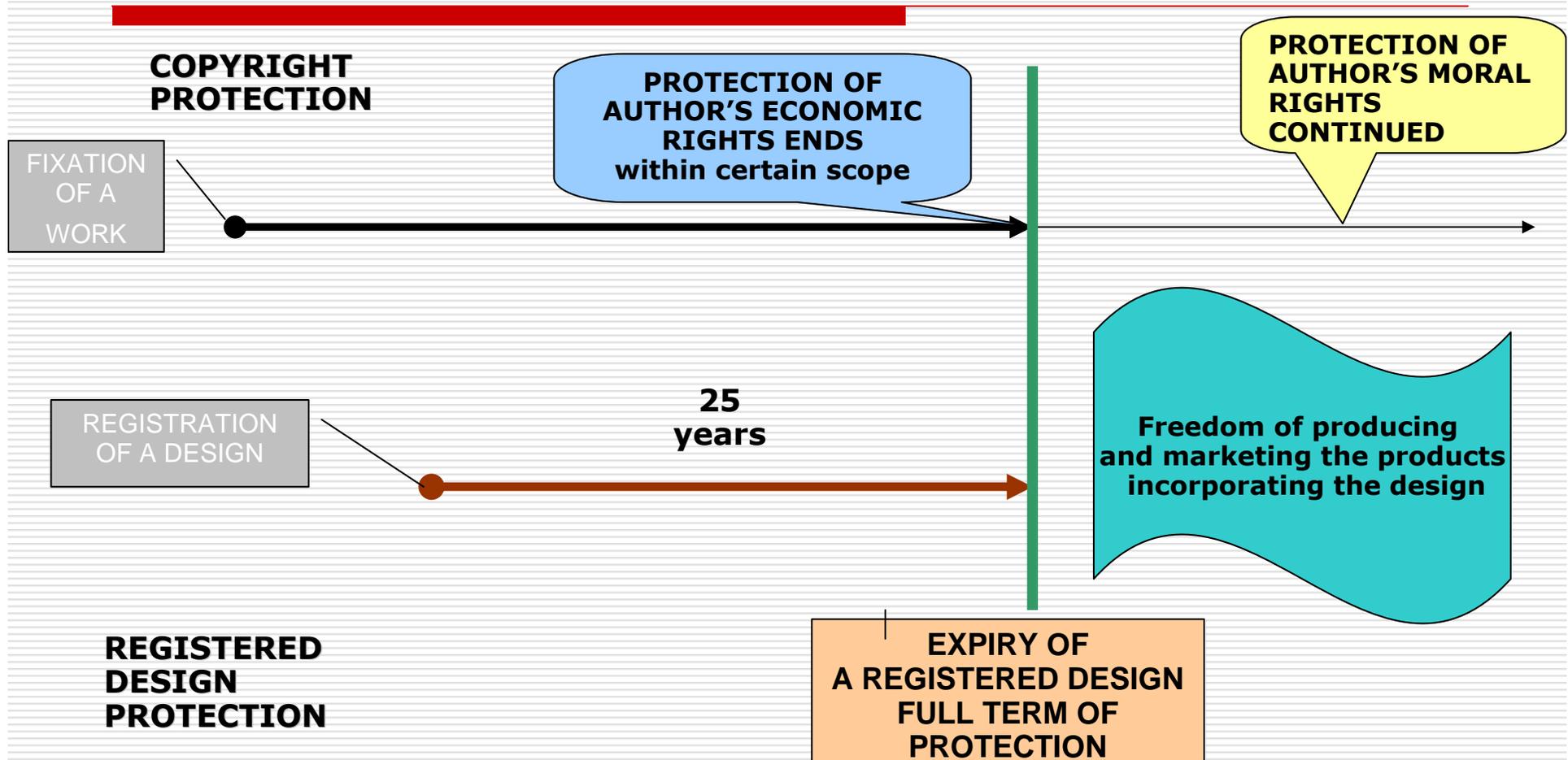
- **Polish Industrial Property Law of 2001 (Article 116):**

„The protection of author’s economic rights to a design which stems from the Copyright Act shall not cover the objects incorporating the registered design, produced and put on the market after the expiry of the registered design.”



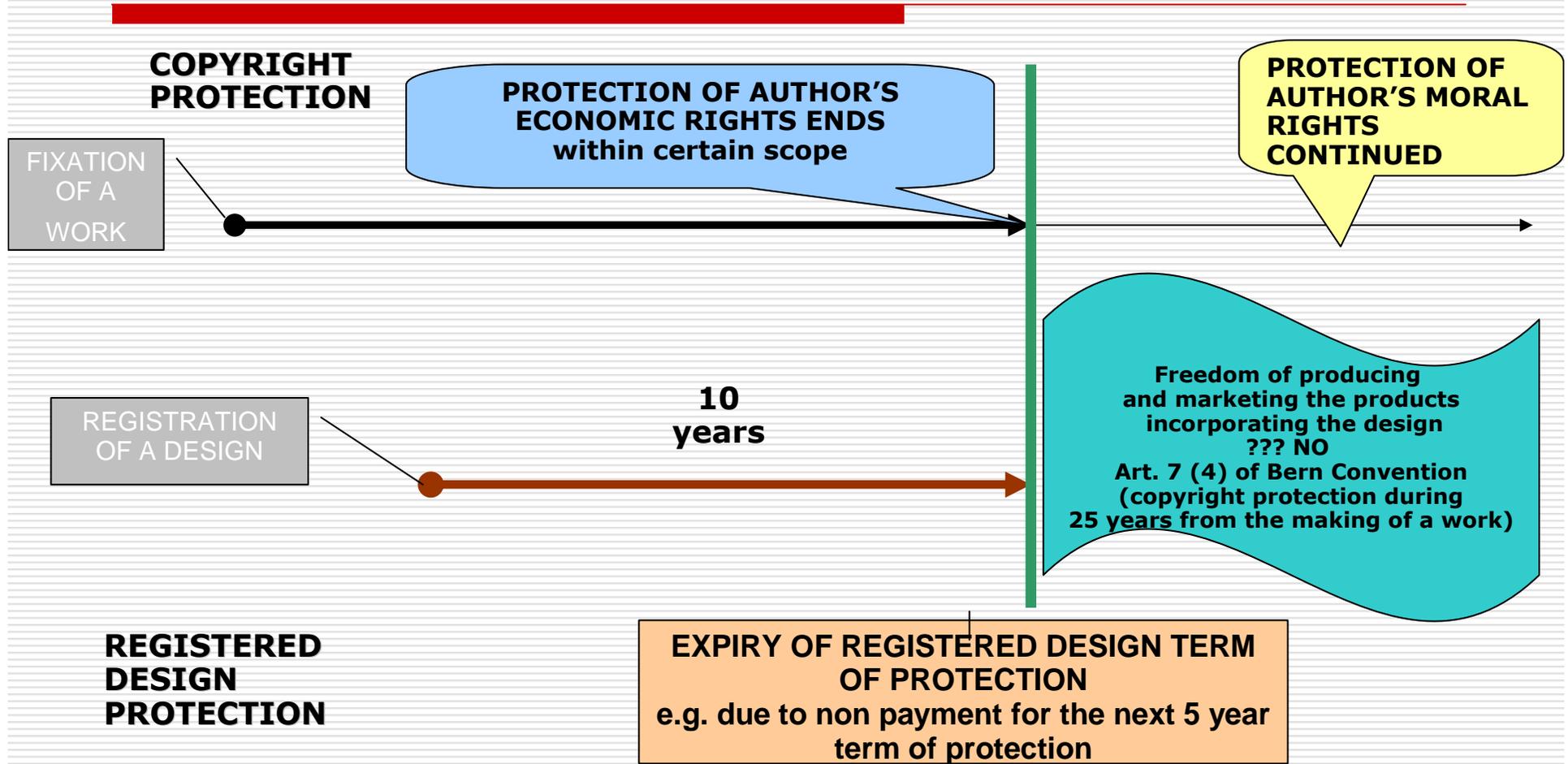
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- ❑ **In Poland the full cumulative protection of designs under both regimes exists only until the lapse of the registered design.**
- ❑ **The decision on registering a design excludes further protection of author's economic rights (as regards reproduction and marketing of products to which a design is applied) – a **NEGATIVE CHOICE** of a rightholder.**



Appraisal of the Polish solution

- ❑ prohibits overprotection, gives legal and practical certainty, has a positive clarifying influence on the market situation and free competition => in accordance with Art. 7 of the TRIPS Agreement
- ❑ it shows *explicite* that subject matter of both rights may be in practice the same => it is against the logic and intentions of European legislator (so called *design approach*) as the scope of copyright protection depends on the strategy of design protection – i.e. registration of a design
- ❑ contrary to the rule of cumulative protection (Art. 17 of the Design Directive 98/71/EC) as the protection under design system constitute in practice a hindrance to invoke copyright protection (the need to verify the content of this rule?)
- ❑ contrary to Art. 1.1 of the Term Directive 2006/116/EC
- ❑ in certain situation may be contrary to Art. 7 (4) of the Berne Convention



General conclusions:

- ❑ **Scrapping design law ? – NO (non-efficient)=> Limiting hypertrophy of copyright ?**
- ❑ **Urgent need for unification of the issue within EU (imagine applying the Polish solution to the Community registered designs...)**

