

# Copyright And Related Rights Act

And

**THE ACT ON AMENDMENTS TO  
THE COPYRIGHT AND RELATED RIGHTS ACT\***

NN 173/2003 in force from October 30, 2003

\*NN 79/2007 in force from August 7, 2007

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Zagreb, Semptember 2007

### *SUBJECT MATTER OF THE ACT*

#### Article 1

This Act regulates:

1. copyright - rights of authors in respect of their works in the literary, scientific and artistic domains;
2. related rights:
  - a. performer's rights in respect of their performances;
  - b. rights of producers of phonograms in respect of their phonograms;
  - c. film producer's rights (producers of videograms) in respect of their videograms;
  - d. broadcasting organizations' rights in respect of their broadcasts;
  - e. publishers' rights in respect of their publications;
  - f. rights of producers of databases in respect of their databases;
3. management (individual and collective) of copyright and related rights;
4. protection of copyright and related rights in the case of infringement;
5. scope of the Act.

### *COPYRIGHT AND RELATED RIGHTS*

#### Article 2

- (1) Copyright shall belong, by its nature, to a natural person who has created a copyright work.
- (2) Performer's right shall belong, by its nature, to a natural person who has performed a work from the literary or artistic domain, or the expressions of folklore.
- (3) The holder of other related rights may be any natural and legal person, unless otherwise provided by law.
- (4) Copyright and related rights may be limited against the will of their holders only under the conditions and in the manner regulated by law.

### *DISCLOSURE, PUBLICATION, THE PUBLIC AND PUBLIC USE*

#### Article 3

- (1) A copyright work or a subject matter of a related right shall be considered to have

been disclosed if it has been made available to the public with the consent of the right holder.

- (2) A copyright work or a subject matter of a related right shall be considered published if, with the consent of the right holder, copies of that work or subject matter of a related right respectively have been offered to the public or put into circulation in the quantity sufficient to satisfy reasonable needs of the public.
- (3) The public, under this Act, shall mean a larger number of persons that are outside the usual circle of persons closely tied with family or other personal relations.
- (4) Public use of a copyright work shall be considered any use of a copyright work and a subject matter of related rights that is accessible to the public, or such use in the area that is accessible to members of the public, as well as, providing to members of the public access to the work and subject matters of related rights at a time and from a place individually chosen by them.

### *RELATION BETWEEN COPYRIGHT AND RELATED RIGHTS*

#### Article 4

- (1) The protection of related rights under this Act shall leave intact and shall in no way prejudice the protection of copyright. No provision of this Act concerning the protection of related rights shall be interpreted in a way to prejudice the protection of copyright. The exercise of the performers' rights of communication to the public of fixed performances referred to in Article 125, item 4, subparagraph 2 of this Act must not prejudice the exercise of copyright.
- (2) The provisions of this Act concerning the definitions of particular economic rights of the author, as well as the right to remuneration for reproduction of works for private or other personal use, and the right to remuneration for public lending, exceptions and limitations of copyright, the beginning of the terms of protection and the effects of expiration of the terms of copyright, legal transactions of copyright, and the relation between copyright and ownership shall apply *mutatis mutandis* to related rights, unless otherwise specially

provided for them, or arising from their legal nature.

## II. COPYRIGHT

### Chapter 1 SUBJECT MATTERS

#### *COPYRIGHT WORK*

##### Article 5

- (1) A copyright work shall be an original intellectual creation in the literary, scientific and artistic domain, having an individual character, irrespective of the manner and form of its expression, its type, value or purpose, unless otherwise provided for in this Act.
- (2) Copyright works shall be in particular:
  - works of language (written works, oral works, and computer programs);
  - musical works with or without words;
  - dramatic or dramatico-musical works;
  - choreographic works and works of pantomime;
  - works of visual art (in the field of painting, sculpture, and graphics), irrespective of the material they are made of, and other works of visual arts;
  - works of architecture;
  - works of applied art and industrial design;
  - photographic works and works produced by a process similar to photography;
  - audiovisual works (cinematographic works, and works created in a manner similar to cinematographic creation);
  - cartographic works;
  - presentations of a scientific or technical nature such as drawings, plans, sketches, tables, etc.
- (3) The subject matter of copyright may be any copyright work, except the one, which cannot be such work by its nature, and the one for which the provisions of this Act provide that it cannot be the subject matter of copyright.
- (4) The subject matter of copyright is the work as a whole, including an unfinished work, the title of a work, and the parts thereof

that fulfil the pre-conditions set out in paragraph (1) of this Article.

- (5) The title of the work, which does not fulfil the pre-conditions for being the subject matter of copyright, and which has already been used for a certain work, shall not be used for the same kind of work, if such title is likely to create confusion as to the author of the work.

#### *ALTERATIONS*

##### Article 6

- (1) Translations, adaptations, musical adaptations and other alterations of a copyright work, which are original individual intellectual creations, shall be protected as independent works.
- (2) Translations of official texts in the domain of legislation, administration and judiciary, shall be protected, unless made for the purpose of officially informing the public and are disclosed as such.
- (3) Provisions of paragraph (1) of this Article shall not affect the rights of the authors of the works, which have been altered.

#### *COLLECTIONS AND DATABASES*

##### Article 7

- (1) Collections of independent works, data or other materials, such as encyclopaedias, collections of documents, anthologies, databases, and the like, which by reason of the selection or arrangement of their constituent elements constitute personal intellectual creations of their authors shall be protected as such.
- (2) The protection enjoyed by the collection referred to in paragraph (1) of this Article, shall not extend to its contents and shall in no way prejudice the rights subsisting in the works and subject matters of related rights included in the collection.
- (3) Databases, under this Act, shall be collections arranged according to certain system or method, the elements of which are individually accessible by electronic or other means.
- (4) The protection provided for in this Act for databases, shall not apply to computer programs used in the making of databases accessible by electronic means or in the operation thereof.

### *UNPROTECTED CREATIONS*

#### Article 8

- (1) The subject matter of copyright shall include expressions and not ideas, procedures, methods of operation or mathematical concepts as such.
- (2) The subject matter of copyright shall not include:
  1. discoveries, official texts in the domain of legislation, administration, judiciary (acts, regulations, decisions, reports, minutes, judgments, standards, and the like) and other official works and their collections, disclosed for the purpose of officially informing the public;
  2. news of the day and other news, having the character of mere items of press information;
- (3) Folk literary and artistic creations in their original form shall not be the subject matter of copyright, but their communication to the public is subject to the payment of remuneration, as for the communication to the public of protected copyright works. The remuneration shall be the revenue of the budget, and shall be used for improving the creativity in the field concerned.

## **Chapter 2 AUTHORS**

### *THE AUTHOR*

#### Article 9

- (1) The author of the work is a natural person who has created the work.
- (2) Copyright in a work belongs to its author by the mere act of the creation of the work.

### *AUTHORS OF COMPOUND WORKS*

#### Article 10

- (1) If two or more authors join their created works for the purpose of a joint use, each of them shall keep the copyright in his own work.
- (2) Mutual relations between authors of the compound works shall be regulated by a contract. Unless otherwise provided by a contract or by rules set out in Article 167, paragraph (1) of this Act, all the authors of a compound work shall be considered to be entitled to an equal share in the

remuneration to be obtained for the use of such compound work.

### *CO-AUTHORS*

#### Article 11

- (1) Co-authors of a work shall be the persons who created the work jointly, and whose contributions cannot be used independently.
- (2) Co-authors shall have a joint copyright in the created work, so a part of such copyright calculated in proportion to the whole copyright (co-authors' shares) shall belong to each of them.
- (3) When in doubt as to the co-authors' shares, they shall be considered to be equal.
- (4) The consent of all the co-authors shall be needed for the disclosure, use and alteration of such work. An individual co-author shall not refuse to give his consent for the reason, which is contrary to the principle of conscientiousness and fairness, nor shall undertake any action, which unjustifiably prejudices or could be prejudicial to the legitimate interests of other co-authors. If the consent of all the authors concerning disclosure, use or alteration of their work has not been achieved, the decision to that effect shall be made by the court, at a request of any of the co-authors.
- (5) A share of each co-author in the benefits deriving from the use of the work corresponds to his co-author's part, unless otherwise provided for by a contract regulating their mutual relations.

### *PRESUMPTION OF AUTHORSHIP AND EXERCISE OF COPYRIGHT WHERE THE AUTHOR IS ANONYMOUS*

#### Article 12

- (1) The author is presumed to be a person whose name, pseudonym, artist's mark or code appears in the customary manner on the copies of the work or when the work is disclosed, until proven to the contrary.
- (2) If the author is not known, nor can be defined pursuant to the provision of paragraph (1) of this Article, the following shall be considered entitled to exercise copyright:
  1. for a published work - the publisher who has lawfully published the work;

2. for a disclosed, but unpublished work - the person who has lawfully disclosed the work.
  - (3) The provisions of paragraph (2) of this Article shall cease to apply once the author's identity has become known, in which case the publisher or the person who disclosed the work, shall deliver to the author the economic benefits derived from the exercise of his right, according to the rules concerning the legal status of a fair possessor who must deliver the object to its owner, unless otherwise provided for by a contract.
- (2) A person who publicly uses a copyright work, shall be obliged to indicate the author at each use, unless the author has declared in a written form that he does not want to be indicated, or if the manner of a certain use is such that prevents the indication of the author.

*RIGHT OF RESPECT FOR THE WORK AND HONOUR OR REPUTATION OF THE AUTHOR*

Article 16

The author shall have the right to oppose to any distortion, mutilation and similar modification of his work, and to destruction and any use of the work, in a manner jeopardizing his honour or reputation.

**Chapter 3**  
**CONTENT OF COPYRIGHT**

*CONTENT OF RIGHT*

Article 13

- (1) Copyright shall include moral rights, economic rights and other rights of authors.
- (2) Copyright shall protect personal and intellectual ties of the author with his work (moral rights of the author), economic interests of the author in respect of his copyright work (economic rights of the author) and other interests of the author in respect of his work (other rights of the author).
- (3) The author is entitled to remuneration for each use of his work, unless otherwise provided for by this Act or by a contract.

**3.1. Moral rights of the author**

*RIGHT OF FIRST DISCLOSURE*

Article 14

- (1) The author shall have the right to determine whether, when, where, how and under what circumstances his copyright work will be disclosed for the first time.
- (2) Until the copyright work is disclosed, the author shall have the right to reveal to the public the content or description of his work.

*RIGHT OF RECOGNITION OF AUTHORSHIP*

Article 15

- (1) The author shall have the right to be recognized and indicated as the author of the work.

*RIGHT OF REVOCATION*

Article 17

- (1) The author shall have the right to revoke a right of exploitation of his copyright work and its further use, compensating the damages to the user of such right, where further use would be prejudicial to his honour or reputation. Such right shall also be exercised by the author's heirs, if the author decided so in his will, or if they prove that the author, prior to his death, was entitled and tried to exercise such right, but was prevented from doing so.
- (2) The revocation referred to in paragraph (1) of this Article shall be effective from the day when the author deposits the security for the compensation for damages referred to in paragraph (3) of this Article.
- (3) The user of the right of exploitation of a copyright work shall, within three months as from the receipt of the notification of revocation referred to in paragraph 1 of this Article, communicate to the author the amount of outstanding costs incurred to him in the preparation for the use of his work up to the day of receipt of such notification. If the holder of the right of exploitation of a copyright work fails to do so, the notification of revocation shall become effective at the expiration of the time limit referred to in this paragraph.

- (4) If, within ten years as from his exercise of the right of revocation, the author decides to resume the exploitation of the work in respect to which he exercised his right of revocation, he shall be required to offer such right, under previous conditions, first to the person to whom such right was revoked.
- (5) The author may not renounce the right of revocation.
- (6) The provisions of this Article shall not apply to electronic databases and computer programs.

### 3.2. Economic rights of the author

#### *GENERAL*

##### Article 18

The author shall have the exclusive right to do with his copyright work and the benefits deriving from it whatever he likes, and to exclude any other person from it, unless otherwise provided for by the law. This right shall include in particular:

- right of reproduction (right of multiplication);
- right of distribution (right to put into circulation);
- right of communication of the work to the public;
- right of alteration

#### *REPRODUCTION*

##### Article 19

- (1) The right of reproduction shall be the exclusive right of making one or more copies of copyright works, in whole or in part, directly or indirectly, temporarily or permanently, by any means and in any form. The right of reproduction includes fixation which shall mean the fixing of copyright works in the material or other corresponding medium.
- (2) A copyright work is fixed and reproduced in particular by graphic procedures, photocopying and other photographic procedures with the same effect, by sound or visual recording, by building or carrying out works of architecture, by storage of the work in electronic form, and by fixing of the

work transmitted by computer's net on a material medium.

#### *DISTRIBUTION AND RENTAL*

##### Article 20

- (1) The right of distribution shall be the exclusive right to put into circulation the original or copies of the work by sale or otherwise, and to offer them to the public for such purpose.
- (2) The first sale of the original or copies of the work or other form of transfer of ownership, by the author or with his consent, in the territory of the Republic of Croatia shall exhaust the right of distribution in respect of such original and such copies respectively, for the territory of the Republic of Croatia. The exhaustion of the distribution right shall not cause the right of rental of a copyright work to expire, the right of the author to authorize or prohibit the export to or the import from a certain country of the original or copies of the work, and the right to remuneration for public lending of the work under Article 33 of this Act. In respect of collections, the exhaustion of the distribution right shall refer only to further sale.
- (3) The rental, under this Act, shall mean the making available for use of the original or copies of the work, for a limited period of time, and for direct or indirect economic or commercial benefit.
- (4) The right of rental of a copyright work, under this Act, shall not apply to already made architectural works and works of applied art.
- (5) The author who has given up his right of rental in favour of a producer of phonograms or of a film producer, or to any other person shall retain the right to receive equitable remuneration for the rental of his copyright work. The author may not renounce the right to the equitable remuneration. The remuneration for rental shall be paid by the person renting the copyright work.

#### *COMMUNICATION OF A COPYRIGHT WORK TO THE PUBLIC*

##### Article 21

The author shall have the exclusive right to communicate his work to the public. This right shall include in particular:



- right of public performance;
- right of public stage presentation;
- right of public transmission;
- right of public communication of fixed works;
- right of public presentation;
- right of broadcasting;
- right of rebroadcasting;
- right of public communication of broadcasting;
- right of making available to the public.

### *PUBLIC PERFORMANCE*

#### Article 22

The right of public performance shall mean the exclusive right to communicate to the public:

1. works in the domain of literature or science by live reading or reciting (the right of public recitation);
2. musical works by live performance (the right of public musical performance).

### *PUBLIC STAGE PRESENTATION*

#### Article 23

The right of public stage presentation shall mean the exclusive right to communicate to the public dramatic, dramatico-musical, and choreographic works or works of pantomime, by their live stage presentation.

### *PUBLIC TRANSMISSION*

#### Article 24

The right of public transmission shall mean the exclusive right to communicate a recitation, a music performance or a stage presentation of a copyright work to the public that is outside the place where the work is recited, performed or presented on stage live, by loudspeaker, screen or any other technical device.

### *Public communication of a fixed work*

#### Article 25

The right of public communication of a fixed copyright work shall mean the exclusive right to communicate to the public a work which is fixed in a phonogram or a videogram, by such phonogram or videogram.

### *PUBLIC PRESENTATION*

#### Article 26

The right of public presentation shall mean the exclusive right to communicate to the public the works of visual arts, architecture, applied arts and industrial designs, a photographic or audiovisual work, and a cartographic work, or a presentation of scientific or technical nature, by technical devices.

### *BROADCASTING*

#### Article 27

- (1) The right of broadcasting shall mean the exclusive right to communicate a copyright work to the public by radio or television program-carrying signals, intended for reception by the public, either by wireless means (including satellite), or by wire (including cable or microwave systems).
- (2) A satellite, for the purposes of this Act, shall mean any satellite operating on frequency bands reserved for the broadcasts of signals intended for reception by the public, or for closed, point-to-point communication. If a closed, point-to-point communication is concerned, the circumstances in which individual reception of the signals takes place must be comparable to those in which public reception of the signals takes place.
- (3) Communication to the public by satellite, referred to in paragraph (1) of this Article, shall exist where under the control and responsibility of the broadcasting organization program-carrying signals intended for the reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.
- (4) Where the program-carrying signals referred to in paragraph (2) of this Article are encrypted, communication to the public shall be deemed to have occurred on condition that the means for decrypting such signals are provided to the public by the broadcasting organization, or with its consent.

### *REBROADCASTING*

#### Article 28

The right of rebroadcasting shall mean the exclusive right to a simultaneous, unaltered and unabridged communication to the public of a broadcast of a copyright work:

1. where made by a broadcasting organization other than the one who initially broadcasted the work;
2. where made by cable or microwave system (cable retransmission).

### *PUBLIC COMMUNICATION OF BROADCASTING*

#### Article 29

The right of public communication of broadcasting shall mean the exclusive right to communicate to the public a broadcast copyright work, by a loudspeaker, screen or similar technical device.

### *Making available to the public*

#### Article 30

The right of making available to the public shall mean the exclusive right to communicate a copyright work to the public by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

### *ALTERATIONS OF THE WORK*

#### Article 31

The right of alteration shall mean the exclusive right to translate, adapt, musically arrange or otherwise modify a work.

## **3.3. Other rights of the author**

### ***3.3.1 Rights to remuneration***

#### *RIGHT TO REMUNERATION FOR REPRODUCTION OF A COPYRIGHT WORK FOR PRIVATE OR OTHER PERSONAL USE*

##### Article 32

- (1) Where a copyright work may be reproduced without the author's authorization pursuant to Article 82 of this Act, the author whose works are, due to their nature, expected to be reproduced without authorization, by photocopying or by recording on sound, visual or text fixation mediums, for private or other personal use, shall have the right to an appropriate remuneration upon sale of technical appliances and blank audio, video or text fixation mediums.
- (2) Apart from the right referred to in paragraph (1) of this Article, the authors shall have a right to an appropriate remuneration to be obtained from a natural or legal person who

provides services of photocopying against payment.

- (3) Any other reproduction techniques shall be assimilated to photocopying, and any other appliances providing the same effect shall be assimilated to appliances for sound or visual recording.
- (4) The remuneration referred to in paragraph (1) of this Article shall be paid by manufacturers of appliances for sound and visual recording, manufacturers of appliances for photocopying, manufacturers of blank audio, video or text fixation mediums, and jointly and severally with them importers of appliances for sound and visual recording, photocopying, blank audio, video or text fixation mediums, unless such imports concerns small quantities intended for private and non-commercial use, forming part of personal luggage. If the mentioned appliances and objects are not produced in the Republic of Croatia, the remuneration shall be paid by the importer.
- (5) The obligation to pay the appropriate remuneration referred to in paragraph (1) shall arise:
  1. in respect of the first sale in the Republic of Croatia or import in the Republic of Croatia of new appliances for sound and visual recording;
  2. in respect of the first sale in the Republic of Croatia or import in the Republic of Croatia of new blank audio or video fixation media;
  3. in respect of the first sale in the Republic of Croatia or import in the Republic of Croatia of new photocopying appliances.
- (6) The remuneration referred to in paragraph (2) of this Article shall be paid in the amount depending on the information on the number of photocopies made.
- (7) Authors may not renounce the rights to remuneration referred to in paragraphs (1) and (2) of this Article.

#### *RIGHT TO REMUNERATION FOR PUBLIC LENDING*

##### Article 33

- (1) The author shall have the right to equitable remuneration where the original or copies of his work of which further distribution is



- admissible, have been lent through public libraries.
- (2) The lending, under this Act, shall mean making available for use for a limited period of time and without direct or indirect economic or commercial benefit.
- (3) Provisions referred to in paragraphs (1) and (2) of this Article shall not apply to:
- (1) buildings and works of applied art;
  - (2) works that are mutually lent by institutions referred to in paragraph (1) of this Article.
- (4) The author may not renounce the right referred to in paragraph (1) of this Article.
- (5) By way of derogation from the provision of paragraph (1) of this Article, authors of databases shall have the exclusive right of public lending of the originals or copies of their databases.
- photography, where created by the author himself.
- (2) Copies of works of visual art which have been made in limited numbers by the artist himself or under his authority, shall be considered to be originals of works of visual art, referred to in paragraph (1) of this Article. Such copies shall normally be numbered, signed or authorized by the author.

### **3.3.2 Resale right**

#### *GENERAL*

##### Article 34

- (1) If the original of a work of visual art is resold, the author shall have the right to equitable share in the selling price for each time his original is resold after its first alienation by the author.
- (2) The right referred to in paragraph (1) of this Article shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as public auctions, art galleries or other art dealers.
- (3) By way of derogation, the provision referred to in paragraph (1) of this Article shall not apply, where the seller is an art gallery which has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed the equivalent value of EUR 10 000 in HRK.
- (1) A seller who resells the work referred to in Article 35 of this Act, at a price exceeding the equivalent amount of EUR 500 in HRK, shall pay to the author the equivalent amount in HRK of:
1. 5% for the portion of the selling price from EUR 500.00 to 50,000.00;
  2. 3% for the portion of the selling price from EUR 50,000.01 to 200,000.00;
  3. 1% for the portion of the selling price from EUR 200,000.01 to 350,000.00;
  4. 0.5% for the portion of the selling price from EUR 350,000.01 to 500,000.00;
  5. 0.25% for the portion of the selling price exceeding EUR 500,000.00;
- (2) The total amount, which, on the basis of the provision referred to in paragraph (1) of this Article belongs to the author, shall not exceed the equivalent amount of EUR 12,500.00 in HRK. Base for calculation of such amount shall be the selling price without tax.
- (3) If the resale of the original has been effected through a public auction, an art gallery or by intermediary of any other art dealer, the organizer of the public auction, the owner of the art gallery or the art dealer, shall share joint and several liability with the seller for the payment of the amount belonging to the author.

#### *ORIGINAL OF A WORK OF VISUAL ART*

##### Article 35

- (1) The original of a work of visual art, referred to in Article 34, paragraph (1) of this Act, shall mean a work of visual art such as picture, collage, painting, drawing, engraving, print, lithography, sculpture, tapestry, ceramics, glassware or

#### *RENOUNCEMENT, TRANSFERABILITY AND EXECUTION OF RESALE RIGHT*

##### Article 37

- (1) The author cannot renounce his resale right.
- (2) The resale right shall not be transferred by legal transactions during the author's life. After the death of the author, the resale

right passes on to his heirs, and the remuneration therefrom shall be paid to them.

- (3) The resale right shall not be subject to execution.

### *RIGHT TO RECEIVE INFORMATION*

#### Article 38

For a period of three years after the resale of his work, the author shall have the right to require from any person referred to in Article 34, paragraph (2) of this Act, to furnish any information that is necessary in order to secure payment of the amount that belongs to him in respect of the resale.

### *3.3.3 Other additional rights*

### *RIGHT OF ACCESS TO THE WORK*

#### Article 39

- (1) The author shall have a right to require from the owner or direct possessor of the original or a copy of his work to allow him access to the work, if such access is necessary for making copies of the work or its alteration under the provision of Article 31, paragraph (1) of this Act, and is not contrary to any legitimate interests of the owner or possessor.
- (2) Provisions of paragraph (1) of this Article do not oblige the owner or direct possessor to deliver to the author the original or a copy of the work.

### *RIGHT TO PROHIBIT PUBLIC EXHIBITIONS OF THE WORK*

#### Article 40

- (1) The author of an undisclosed work of visual art, applied art, industrial design, and an undisclosed photographic work, shall have upon alienation of the original or a copy of his work, the right to prohibit to its owner to exhibit the work to the public.
- (2) The author shall prohibit the public exhibition referred to in paragraph (1) of this Article, in the written form.
- (3) The author shall not have the right referred to in paragraph (1) of this Article, if the work belongs to a museum, gallery or other similar public institution.

## **Chapter 4 COPYRIGHT IN LEGAL**

## **TRANSACTIONS**

### **4.1 Basic Provisions**

### *INHERITANCE OF COPYRIGHT*

#### Article 41

- (1) Copyright shall be inheritable.
- (2) All the rights that would belong to the author shall belong to his heirs, unless otherwise provided for in this Act.
- (3) General regulations on inheritance shall apply to all other matters related to inheritance of copyright, which are not regulated by this Act.

### *TRANSFERABILITY OF COPYRIGHT*

#### Article 42

- (1) Copyright shall not be transferable, except by inheritance and transfer for the benefit of coheirs in the case of dissolution of community of heirs.
- (2) Other dispositions of copyright shall be allowed, unless otherwise provided for in this Act.

### *EXECUTION*

#### Article 43

- (1) Copyright shall not be subject to execution. Only economic benefits acquired in the use of a copyright work may be subject to execution, unless otherwise provided for in this Act.
- (2) If the author has, by non-finishing of work or non-publishing of manuscript, breached a contractual obligation, he shall not be forced to fulfil it, but shall be liable for damage resulting from it.

### *DISPOSITION OF COPYRIGHT BY GRANTING A RIGHT OF EXPLOITATION*

#### Article 44

- (1) The author may grant to another person a right of exploitation of a copyright work or may entrust him the exercise of copyright by a contract, by giving the authorization for use, or by other legal transaction.
- (2) The author may grant to another person a right on the basis of which he will be able to use a copyright work in any or in a certain manner (the right of exploitation of a copyright work). The right of exploitation may be granted as an exclusive or a non-

exclusive right, limited in terms of content, time or space.

- (3) The holder of the exclusive right of exploitation may use a copyright work in a manner which complies with the content of his right and exclude any other person, including the author, from such use, unless otherwise provided by this Act. When granting the exclusive right of exploitation, it may be defined that the author reserves the right of use of the copyright work.
- (4) The non-exclusive right of exploitation shall entitle its holder to use the copyright work in a manner which complies with the content of his right, but it does not entitle him to prevent other persons from any use of that work.
- (5) If the manner of use of a copyright work has not been expressly indicated when the right was granted, it shall be considered that the person acquiring the right has acquired a right to use a copyright work in a manner necessary to satisfy the purpose of a legal transaction on the basis of which the right has been acquired. If from the purpose of the legal transaction it cannot be established whether the right was granted as an exclusive or a non-exclusive right, limited as to territory, it shall be considered that it was granted as a non-exclusive right for the territory of the Republic of Croatia.
- (6) The author shall refrain from acts that would impede the holder of the right of exploitation to exercise his right.

#### *NON-EXERCISE OF THE EXCLUSIVE RIGHT OF EXPLOITATION*

Article 45

If the holder of the exclusive right of exploitation does not exercise his right or exercises it insufficiently, prejudicing thereby legitimate interests of the author, the author may demand revocation of the exclusive right of exploitation. The author shall not have such right, if the holder of the exclusive right of exploitation proves that he is not responsible for the reasons causing the non-exercise of the right.

#### *LATER GRANT OF THE EXPLOITATION RIGHT*

Article 46

Later grant of the exploitation right, even the exclusive one, shall not prejudice the earlier granted exploitation right, either exclusive or non-exclusive, unless otherwise provided by a contract on the grant of an earlier right.

#### *TRANSFER OF THE RIGHT OF EXPLOITATION*

Article 47

- (1) The right of exploitation may be transferred without the author's authorization from one person to another within transfer of the entire business or the part thereof constituting the entirety.
- (2) Where the right of exploitation can be transferred without the author's authorization the person acquiring the right of exploitation shall have joint and several liability for fulfilling the obligation which the person transferring such right has in respect of the author.

#### *GRANTING OF FURTHER RIGHTS OF EXPLOITATION*

Article 48

The holder of the exclusive right of exploitation may, on the basis of his right, grant to another person further right of exploitation only with the written authorization of the author. The author may not refuse to give his authorization, if it would be contrary to conscientiousness and fairness. The authorization shall not be necessary if the right of exploitation has been granted only for the sake of its exercising for the benefit of the author.

#### *DISPOSITION OF COPYRIGHT BY ENTRUSTING THE EXERCISE THEREOF*

Article 49

- (1) The author may authorize another person to exercise the copyright for his account. Copyright may be exercised for the account of the author on the basis of a legal transaction by which the author entrusts the exercise of his right, or, directly, by virtue of the law, complying with the pre-requisites provided by the law.
- (2) It shall be considered that the author has entrusted the exercise of his particular right to the collective rights management association which deals with the respective right, if the association exercises such a right for his benefit and for the benefit of other authors for their respective rights.

#### *RENOUNCEMENT OF COPYRIGHT*

Article 50

The author may not renounce his copyright.

### **4.2 General part of the contractual copyright**

### *COPYRIGHT CONTRACTS*

#### Article 51

A contract on the basis of which the right of exploitation of copyright (copyright contract) is acquired shall be concluded in a written form, unless otherwise provided by this Act.

### *CONTENT OF COPYRIGHT CONTRACTS*

#### Article 52

- (1) A copyright contract shall specify at least the work it concerns, the manner of use, and the person authorized to use the work (a user).
- (2) A copyright contract may also be concluded in respect of a work which is not yet created, provided that it defines the type of the work and the manner of use of the future work.
- (3) A contractual provision concerning the grant of the right of use of all author's future works shall be null and void.

### *FIXING OF THE AMOUNT OF REMUNERATION FOR THE USE OF A COPYRIGHT WORK*

#### Article 53

If the amount of remuneration has not been fixed by a legal transaction, or if the fixed amount of remuneration is not equitable, or if it has not been fixed under the provision of Article 162 of this Act, the author shall be entitled to equitable remuneration. An equitable remuneration shall be the one that has to be given fairly at the time of concluding a legal transaction, taking account of the type and scope of the use of a copyright work, its financial success in it, the kind and size of the work, the duration of use, the existence of agreement between the relevant associations of authors and the relevant association of users fixing the amount of equitable remuneration, as well as other elements on the basis of which a decision on the amount of equitable remuneration can be made.

### *RIGHT OF THE AUTHOR TO MODIFY A CONTRACT FOR THE PURPOSE OF MORE FAIR SHARE IN THE PROFIT*

#### Article 54

- (1) If the profit derived from use of the work is obviously disproportional to the agreed or fixed remuneration, the author shall be entitled to demand the amendment of the agreement for the purpose of fixing more equitable share in the profit deriving from the use of his work.

- (2) The author may not renounce the right referred to in paragraph (1) of this Article.

### *APPLICATION OF REGULATIONS ON OBLIGATORY RELATIONS*

#### Article 55

The provisions of the Act regulating obligatory relations shall apply to all the matters related to copyright contracts which are not regulated by this Act.

## **4.3 Special part of contractual copyright law**

### **4.3.1 Publishing contract**

### *GENERAL ISSUES CONCERNING THE CONTRACT*

#### Article 56

- (1) By a publishing contract the author undertakes to grant to the publisher the right of reproduction of his particular work by printing or other similar process, and the right of distribution of the copies of the work (the right of publication), while the publisher undertakes to publish the work as agreed, and to pay to the author the agreed remuneration, unless otherwise provided by a contract, as well as to take care about a successful distribution of the copies of the work, and to provide the author with the information on the distribution of his copyright work. A publishing contract shall contain a provision on the duration of the right of publication.
- (2) Unless otherwise provided by a publishing contract, it shall be presumed that the publisher has the exclusive right to publish the work referred to in paragraph (1) of this Article.
- (3) The presumption referred to in paragraph (2) of this Article shall not apply to the right of publication of articles in daily or periodical press or publications.

### *RIGHT OF TRANSLATION AND OTHER RIGHTS*

#### Article 57

By the contract referred to in Article 56 of this Act, the author may also grant to the publisher the right of translating his work in a certain language, and the right to publish such translated work, as well as other economic rights.

*VERIFICATION OF ACCURACY  
OF INFORMATION*

Article 58

- (1) The author shall have the right of insight and control, at any time, of the publisher's business records and documentation, to verify the accuracy of information provided to him by the publisher.
- (2) The author shall be authorized to require from a third person who has reproduced the work for the publisher, information concerning the number of copies made of his work, and such person shall be obliged to provide complete and true information to that effect.

*EXCEPTION TO THE RULE CONCERNING  
OBLIGATORY WRITTEN FORM OF A  
CONTRACT*

Article 59

A publishing contract relating to the publication of articles, drawings and other author's contributions in daily and periodical press or publications, does not need to be made in a written form (small publishing contract).

*CONCLUSION OF CONTRACTS THROUGH A  
REPRESENTATIVE*

Article 60

A representative of the author may conclude a publishing contract only for such works as are expressly indicated in the author's power of attorney.

*FIXING THE AMOUNT OF REMUNERATION*

Article 61

- (1) If the remuneration is fixed as a percentage of the retail price of the copies sold, the publishing contract must specify a minimum number of such copies of the first edition, and a minimum remuneration which the publisher has to pay to the author regardless of the number of copies sold.
- (2) If the remuneration is set as a lump sum, the publishing contract must specify the total number of copies agreed upon to be printed. If this number is not agreed upon, and unless otherwise deriving from fair business practices or circumstances of the case, the publisher may publish not more than 500 copies of the work.

*OTHER ELEMENTS OF THE CONTRACT*

Article 62

A publishing contract may also contain in particular:

- a time limit within which the author is required to deliver his correct manuscript or other original of the work. Unless otherwise provided by a contract, this time limit shall be one year from the date of the conclusion of the contract;
- a time limit within which the publisher is required to publish the work. Unless otherwise provided by a contract, this time limit shall be one year from the date of delivery of the correct manuscript or other original of the work;
- the number of the editions which the publisher is authorized to publish. Unless otherwise provided by a contract, the publisher shall have the right to publish only one edition;
- a time limit within which the publisher is required to publish a new edition, if stipulated by a contract. Unless otherwise provided by a contract, this time limit shall be one year from the date of delivery of such written request by the author;
- a provision concerning the ownership over a manuscript or other original. A manuscript or other original shall remain the ownership of the author, unless he undertakes to give it to the ownership of the publisher by virtue of a contract;
- appearance and design of the copies of the work

*IMPROVEMENTS AND OTHER  
MODIFICATIONS OF THE WORK*

Article 63

Unless otherwise provided by a publishing contract, the publisher shall be required to allow the author to make improvements or other modifications to his work when new editions are prepared, provided that this does not alter the character of the work.

*DESTRUCTION OF THE MANUSCRIPT  
AND OF THE PREPARED EDITION*

Article 64

- (1) If a manuscript or other original of the work is destroyed after its delivery to the



publisher, by fault of the publisher or by *force majeure*, the author shall be entitled to the remuneration that would belong to him if the work had been published. If the author has another copy of the work, he shall deliver it to the publisher, at the publisher's expense.

- (2) If a prepared edition of the work is completely destroyed by force majeure before it was put into circulation, the publisher shall be entitled to prepare a new edition, and the author shall have the right to remuneration only for the destroyed edition.
- (3) If a prepared edition of the work is partially destroyed by force majeure before it was put into circulation, the publisher shall be entitled to reproduce, without payment of remuneration to the author, only that number of copies that was destroyed.

#### ***PUBLISHER'S PRIORITY RIGHT***

##### Article 65

- (1) A publisher, who has acquired the right to publish the work, has among other publishers who offer equal terms, the priority right to publish the work in an electronic or any other form.
- (2) A publisher who intends to use the right referred to in paragraph (1) of this Article, shall submit his offer to the author, within 30 days as from the date of receipt of the author's written invitation.
- (3) The publisher's priority right referred to in paragraph (1) of this Article, shall last until the expiration of a period of two years as from the date of the conclusion of a publishing contract.

#### ***TERMINATION BY RESCINDMENT OF PUBLISHING CONTRACT***

##### Article 66

- (1) The author may demand the rescindment of a publishing contract if the publisher does not publish the work within the stipulated time or does not proceed to publish a new edition within the stipulated time or term determined by law.
- (2) If the contract is rescind due to a publisher's fault, the author shall have, apart from the right to compensation for damages, the right to keep the remuneration received, or

to demand payment of the stipulated remuneration.

- (3) A publisher may demand the rescindment of the publishing contract and claim damages, if the author does not deliver to the publisher a manuscript or other original of the work within the time limit stipulated by a contract or by the law.

#### ***DESTRUCTION OF COPIES OF THE WORK***

##### Article 67

- (1) A publisher who intends to sell the unsold copies of the work for recycling, or otherwise destroy them, or withdraw them from circulation, shall first offer the buy off thereof to the author, at the price he would have obtained if copies were sold for recycling. If he fails to do so, he shall incur responsibility for the infringement of the moral right of the author.
- (2) If the author does not accept the publisher's offer referred to in paragraph (1) of this Article, or accepts to purchase only a certain part of unsold copies, the publisher may sell the remaining copies for recycling.

#### ***4.3.2. Performance contract***

#### ***GENERAL INFORMATION ABOUT THE CONTRACT***

##### Article 68

- (1) By a contract of performance, an author gives the user the authorization for public recitation of the work or public performance of his musical work, in the manner and under conditions provided by a contract, while the user undertakes to pay to the author a stipulated remuneration for the right acquired, unless otherwise provided by a contract.
- (2) Provisions concerning a performance contract shall also apply to broadcasting and rebroadcasting, public communication of a broadcasting, public communication, public transmission and making available to the public of non-stage literary and musical works.

#### ***OTHER OBLIGATIONS OF A USER***

##### Article 69

A user of the copyright work shall be required to allow the author to access the performance of the work, to provide for adequate technical conditions

that assure respect of moral rights of the author, and to provide the author or his representative with a list of performed works, and to inform the author of the profit derived from the performance of his work, unless otherwise provided by a contract.

#### *CESSATION OF AUTHORIZATION*

Article 70

The authorization for public recitation, or public performance of a musical work, shall cease if the user does not use the work in the manner and under conditions provided by the authorization.

#### **4.3.3. Contract on stage presentation of the work**

#### *GENERAL ISSUES CONCERNING THE CONTRACT*

Article 71

- (1) By a contract on stage presentation, an author grants to the user the right of public stage presentation of a certain work, while the user undertakes to present the work on stage in the manner, within a time limit and under conditions provided by a contract, and to pay remuneration, unless otherwise provided by a contract.
- (2) The provisions concerning a contract on stage presentation shall also apply to broadcasting and rebroadcasting, public communication of a broadcasting, public communication, public transmission and making available to the public of stage presentations of the work, as well as public performance of stage works in the non-stage manner.

#### *OTHER OBLIGATIONS OF USERS*

Article 72

The provisions of Articles 69 of this Act shall apply mutatis mutandis to the contract on stage presentation of a copyright work.

#### **4.3.4. Contract on the creation of copyright work on commission**

#### *GENERAL ISSUES CONCERNING THE CONTRACT*

Article 73

By a contract on the creation of a copyright work on commission, an author undertakes to create a certain work and deliver a copy of such work to the person commissioning the work, while the latter undertakes to pay to the author a stipulated

remuneration, unless otherwise provided by the contract.

#### *CONTENT OF THE CONTRACT*

Article 74

- (1) The contract on the creation of a copyright work made on commission shall also specify characteristics, elements and time limits for delivering the commissioned work.
- (2) Unless otherwise provided by this Act or by a contract, the copyright in the commissioned work shall be retained by the author without limitations.

#### **4.3.5. Copyright works created while executing employment contract**

#### *COPYRIGHT WORK CREATED IN THE COURSE OF EMPLOYMENT*

Article 75

Copyright work created in the course of employment shall, under this Act, mean the work created by an author - an employee in the execution of his duties with a certain employer or following the instructions given by him. The relations with regard to a copyright work created in the course of employment shall be regulated by this Act, by an employment contract or by other act regulating the employment.

#### *RIGHTS TO USE THE COPYRIGHT WORK CREATED IN THE COURSE OF EMPLOYMENT*

Article 76

If copyright works are created in the course of employment, the employment contract shall specify, among other things, whether the employer acquires the right to use the copyright works, and if he acquires it, it shall specify in particular the scope and duration of such right. Unless otherwise provided by this Act, or by an employment contract or by other act regulating employment, the copyright in the work created in the course of employment shall be retained by the author without limitations.

### **Chapter 5 RELATION BETWEEN COPYRIGHT AND OWNERSHIP**

#### *GENERAL*

Article 77

- (1) Copyright is individual and independent from ownership and other proprietary rights in an object on which the work is fixed.

- (2) Ownership and other proprietary rights in an object on which a copyright work is fixed shall not be, without the authorization of the holder, exercised contrary to copyright, unless otherwise provided by this Act.

### *INDEPENDENCE OF LEGAL TRANSACTIONS*

#### Article 78

- (1) Disposition of copyright shall not affect the ownership in an object on which the work is fixed, unless otherwise provided by the law or a contract.
- (2) Disposition of ownership in an object on which the copyright work is fixed, shall not affect the copyright in such work, unless otherwise provided by the law or a contract.

### *DESTRUCTION OF COPYRIGHT WORK*

#### Article 79

- (1) The owner of an original of a copyright work who knows or has reasonable grounds to know that the author or any of the co-authors has a special interest in saving such original from destruction, shall be obliged, before destroying it, to notify them about the destruction and shall offer them to buy off the original at a price equivalent to its real value. Where the return of the original to the possession of the author is not possible, the owner shall allow the author to make a copy of the work in a corresponding manner. If the author does not want to buy off the original, the owner is free to destroy it, but shall, at the author's request, allow him to photograph it before destruction.
- (2) The owner of objects containing copies of a copyright work shall not have obligations referred to in paragraph (1) of this Article, unless he knows or has reasonable grounds to know that neither the original nor other copies of that work exist.
- (3) The owner of the object on which a copyright work has been fixed without his authorization, may destroy the object, without obligations referred to in paragraphs (1) and (2) of this Article.
- (4) The provisions set out in paragraphs (1) and (2) of this Article shall not apply to works of architecture. The owner of a work of architecture shall only be obliged to notify the author about the destruction, and shall allow him, at his request, to photograph the work and shall deliver to him a copy of the design of the work.

- (5) In respect of alterations of a work of architecture the interests of its owner must be taken into account. The author of a work of architecture shall not oppose to alterations of his work of architecture, which are necessitated by severe reasons such as safety or technical reasons. Where the work of architecture needs reconstruction, his author shall not oppose to the use of other materials, if the materials used in the construction thereof proved to have deficiencies, or if such materials could not be obtained, or if they can be obtained only with disproportionate difficulties or expenses. In such a case the author, where the work is designated by his name, shall be entitled to demand that the owner of the building, beside the name of the author make a note concerning alterations of the work and the time they were made.

- (6) If the owner acts contrary to the provisions of this Article, he shall be responsible for the infringement of the author's moral rights.

## **Chapter 6**

### **CONTENT LIMITATIONS ON COPYRIGHT**

#### *COMMON PROVISIONS*

##### Article 80

Disclosed copyright work may be used without the author's authorization, or without the author's authorization and without payment of remuneration, only in the cases which are expressly stipulated in this Act. The provisions concerning the limitations referred to in this Chapter cover only such uses of a copyright work which do not conflict with regular use of the work and do not unreasonably prejudice the legitimate interests of the author.

#### *TEMPORARY ACTS OF REPRODUCTION OF THE COPYRIGHT WORK*

##### Article 81

Temporary acts of reproduction of the copyright work, which are transient or incidental, and constitute an integral and essential part of a technological process, whose sole purpose is to enable a transmission in a network between third parties by an intermediary, or authorized use of the work, and which have no independent economic significance, shall be excluded from the exclusive right of reproduction referred to in Article 19, paragraph (1) of this Act. The provisions of this Article shall not affect the provisions of Article 97 of this Act.

*REPRODUCTION OF THE WORK FOR  
PRIVATE OR OTHER PERSONAL USE*

Article 82

A natural person may reproduce a copyright work in any medium if he does so for private use, or in the form of photocopying and other personal use if this copy is not intended for or accessible to the public and has no direct or indirect commercial purpose. It shall not be permitted to reproduce the whole book, unless the copies of such book have been sold out for at least two years, graphic editions of musical works (hereinafter: sheet music), electronic databases, cartographic works, nor the building of architectural structures, unless otherwise provided by this Act or a contract.

*EPHEMERAL RECORDINGS*

Article 83

- (1) Broadcasting organization, which has the authorization to broadcast a work, may record it on audio, video or text fixation mediums, by means of its own facilities and for its own needs (ephemeral recordings).
- (2) Broadcasting organization is obliged to destroy its ephemeral recordings referred to in paragraph (1) of this Article, at the latest one month after such a broadcast, or deposit them in its own or public official archive, where such recordings have particular documentary value.
- (3) Ephemeral recordings that are deposited in accordance with paragraph (2) of this Article, may not be rebroadcast without the authorization of the right holder.

*RESTRICTIONS FOR THE BENEFIT  
OF PARTICULAR INSTITUTIONS*

Article 84

Public archives, public libraries, educational and scientific institutions, preschool educational institutions and social (charitable) institutions pursuing non-commercial purposes may reproduce the work from their own copy to any media in not more than one copy.

*COLLECTIONS INTENDED FOR TEACHING  
OR SCIENTIFIC RESEARCH*

Article 85

- (1) It shall be permitted to reproduce on paper or any similar medium and distribute particular portions (parts) of lawfully disclosed works, or integral short works from the domain of science, literature and music, as well as disclosed individual works of visual arts, architecture, applied arts and

industrial design, photographic or cartographic works, and presentations of scientific or technical nature, in the form of a collection which contains contributions of several authors, and which is, by its contents, and systematisation exclusively intended for teaching or scientific research, as long as the source is indicated, unless the author expressly prohibits it. Reproduction and distribution of particular parts of copyright works shall not be considered as infringement referred to in Article 16 of this Act, unless the disclosure of particular part would jeopardize the honour or reputation of the author.

- (2) The authors of the works included in the collection referred to in paragraph (1) of this Article, are entitled to an equitable remuneration for the reproduction and distribution of their works.

*USE OF COPYRIGHT WORKS  
BY DISABLED PERSONS*

Article 86

The use of copyright works for the benefit of people with a disability shall be permitted where the work is used in a manner directly related to the disability of such people to the extent required by the specific disability, and where such use is of a non-commercial nature.

*USE OF COPYRIGHT WORKS FOR  
JUDICIAL, ADMINISTRATIVE OR  
OTHER OFFICIAL PROCEEDINGS*

Article 87

- (1) It shall be permitted to reproduce copyright works for the use in judicial, administrative and, except for collections, in arbitration or other official proceedings.
- (2) The provisions of paragraph (1) of this Article shall apply *mutatis mutandis* to communication to the public of copies of the works, which are made for the purpose of official proceedings.

*USE OF THE WORKS FOR TEACHING*

Article 88

It shall be permitted to publicly perform a work or to present it at stage in the form of direct teaching or at school events, to the extent justified by the educational purpose thereof to be achieved by such communication, where the works are not used for direct or indirect economic or commercial benefit by the educational institution, the organizers or third persons, where the performers



receive no payment (remuneration) for their performance and where the tickets are free of charge.

### *USE OF COPYRIGHT WORKS FOR THE PURPOSE OF INFORMING THE PUBLIC*

#### Article 89

(1) It shall be permitted, to the extent necessary for informing the public on current events by press, radio or television, to reproduce, to distribute and to communicate to the public:

1. works that are part of current event that is being reported on, provided that the work is used to the extent justified by the purpose and manner of reporting on current events;
2. newspapers' articles on and photographs of current political, economical or religious topics, which are released through other media of public communication, provided that the author has not expressly prohibited such use, and that the work is used to the extent justified by the purpose and manner of reporting;
3. public political, religious or other speeches made at state or local governmental bodies, religious institutions or at state or religious ceremonies, as well as excerpts from public presentations;

(2) In all the cases referred to in paragraph (1) of this Article, the source and authorship shall be indicated.

### *QUOTATIONS*

#### Article 90

It shall be permitted to make quotations of excerpts from a copyright work, which has already been lawfully made available to the public for purposes of scientific research, teaching, criticism, polemics, revision, review to the extent justified by the purpose to be achieved and in accordance with fair practice, provided that the source and the name of the author are indicated.

### *REPRODUCTION OF COPYRIGHT WORKS PERMANENTLY LOCATED IN PUBLIC PLACES*

#### Article 91

(1) It shall be permitted to reproduce the works, which are permanently located on streets, squares, parks or other places that

are accessible to the public, and to distribute and communicate to the public such reproductions.

(2) The works referred to in paragraph (1) of this Article may not be reproduced in a three-dimensional form.

(3) The source and authorship shall be indicated on the copies referred to in paragraph (1) of this Article, unless such indication is not possible.

### *REPRODUCTION OF ARCHITECTURAL STRUCTURE*

#### Article 92

The provisions referred to in Article 91, paragraph (1) of this Act shall apply only in respect of outer appearance of the architectural structure.

### *POSTERS AND CATALOGUES*

#### Article 93

(1) To organizers of public exhibitions or auctions it shall be permitted, for the purpose of promoting and to the extent necessary for such purpose, to reproduce on posters and in catalogues for such exhibitions or auctions, and to distribute by means of such posters and catalogues the works of visual arts, architecture, applied art, industrial designs and photographic works, which are displayed at a public exhibition or auction or are intended for such display.

(2) In the catalogues referred to in paragraph (1) of this Article, the source and authorship shall be indicated.

### *PARODIES AND CARICATURES*

#### Article 94

It shall be permitted to transform the work into a parody or caricature to the extent necessary for the purpose thereof, by indicating the work being transformed and its author.

### *USE OF COPYRIGHT WORKS FOR THE PURPOSE OF PRESENTATION AND TESTING OF EQUIPMENT*

#### Article 95

Shops which sell phonograms or videograms, or equipment for audio and video reproduction or reception, shall be allowed to record the works on audio, video or text fixation mediums, to communicate the works from such mediums, as well as to communicate the broadcast works, to the extent necessary for presenting to direct



buyers or for testing the functioning of phonograms or films or for the repair thereof.

### *ERASURE OF RECORDINGS*

#### Article 96

The recordings made pursuant to the provision referred to in Article 95 of this Act shall be erased without delay.

### *USE OF A DATABASE*

#### Article 97

- (1) A lawful user of a database or of a copy thereof shall be allowed to perform all acts of using, if this is necessary for the access to the content of the database and its normal use.
- (2) If a user is authorized only in respect of a part of the database, he shall be allowed to reproduce and alter only that part.
- (3) Any contractual provision contrary to the provisions of paragraphs (1) and (2) of this Article shall be null and void.

### *OBLIGATIONS OF THE RIGHT HOLDER*

#### Article 98

- (1) Where the use of a copyright work without the author's authorization is allowed under Articles 82 - 87 of this Act, and where the use of the work or the access to it are prevented by the application of technological measures referred to in Article 175 of this Act, the authors or other persons, who applied such measures or who are authorized or have the possibility to remove them, shall be obliged, by providing special measures or concluding contracts, to enable the users or their associations access to such works and the use thereof in accordance with the limitations referred to in Articles 82 - 87 of this Act. The provisions of this paragraph shall not apply to computer programs.
- (2) If the right holders or other persons referred to in the previous paragraph fail to comply with the provisions laid down in paragraph (1) of this Article, the works shall be used by the application of measures prescribed by the Minister competent for the State Intellectual Property Office (hereinafter: the Minister).
- (3) The technological measures applied voluntarily by right holders under this Act, including those applied in implementation of voluntary agreements, and technological

measures applied in implementation of measures referred to in paragraphs (1) and (2) of this Article shall enjoy the legal protection under Article 175 paragraph (1) of this Article.

- (4) The provisions referred to in paragraphs (1) and (2) of this Article shall not apply to works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

## **Chapter 7 TIME LIMITATIONS OF COPYRIGHT**

### *GENERAL PROVISIONS ON DURATION OF COPYRIGHT*

#### Article 99

Copyright shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully released, unless otherwise provided by this Act.

### *DURATION OF COPYRIGHT FOR CO-AUTHORS' WORK*

#### Article 100

- (1) If the co-authors referred to in Article 11 of this Act are the holders of joint copyright in the created work, the term referred to in Article 99 of this Act shall be calculated from the death of last surviving co-author.
- (2) For audiovisual works, the term referred to in Article 99 of this Act shall be calculated from the death of the last of the following persons to survive: the principal director, the author of the screen play, the author of the dialogue, and the composer of music specifically created for use in the audiovisual work.

### *DURATION OF COPYRIGHT FOR ANONYMOUS WORK*

#### Article 101

Copyright in anonymous works shall run for 70 years after the work has been lawfully disclosed. If the author discloses his identity during such period, the term of protection set out in Article 99 of this Act shall apply.

*DURATION OF COPYRIGHT FOR  
PSEUDONYMOUS WORK*

Article 102

Copyright in pseudonymous works shall run for 70 years after the work is lawfully disclosed. Where a pseudonym leaves no doubt as to the identity of the author, the term of protection set out in Article 99 of this Act shall apply.

*DURATION OF COPYRIGHT FOR  
THE WORK DISCLOSED IN SERIES*

Article 103

Where a work is disclosed in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully disclosed, the term of protection shall run for each such item separately.

*DURATION OF COPYRIGHT FOR  
UNDISCLOSED WORK*

Article 104

Where the term of protection is not calculated from the death of the author, and where the work has not been lawfully disclosed, the copyright shall expire upon the expiration of a period of seventy years from the creation of the work.

*CALCULATION OF TERMS*

Article 105

Terms of copyright laid down in this Act shall be calculated from the first day of January of the year following the year in which the relevant event has occurred.

*EFFECTS OF EXPIRATION OF TERMS*

Article 106

- (1) By the expiration of copyright, a copyright work shall become a public good, and may be used freely, with the obligation of recognizing authorship, paying respect to the work, and to the honour or reputation of the author.
- (2) Against those who do not comply with the obligation referred to in paragraph (1) of this Article the author's heirs, the associations of the authors the author belonged to, other persons having legal interest in it and the Croatian Academy of Sciences and Arts, shall be entitled to demand the termination of infringement of such obligation.

**Chapter 8  
SPECIAL PROVISIONS FOR COMPUTER  
PROGRAMS AND AUDIOVISUAL WORKS**

**8.1. Special provisions for  
computer programs**

*SUBJECT MATTER OF PROTECTION*

Article 107

A computer program, under this Act, shall be protected as the work of language if it is original in the sense that it is the author's own intellectual creation. The term "computer program" shall comprise the expression of a computer program in any form, including its preparatory design material. Ideas and principles, which underlie any element of a computer program, including those which underlie its interfaces, shall not be protected by copyright.

*COMPUTER PROGRAM CREATED IN THE  
COURSE OF EMPLOYMENT*

Article 108

If a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all the economic rights in the program so created, unless otherwise provided by a contract.

*RIGHT OF THE AUTHOR OF COMPUTER  
PROGRAM*

Article 109

- (1) The author of a computer program shall have, according to the provisions of Chapter 3, Title II of this Act, the exclusive right to do or to authorize:
  1. the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole; this includes loading, displaying, running, transmission or storage of a computer program which necessitate its reproduction;
  2. the translation, adaptation, arrangement and any other alteration of a computer program, and the reproduction of the results thereof, without prejudice to the right of the person who alters the program;
  3. any form of distribution of the original or copies of a computer program, including the rental thereof.
- (2) The provisions of Articles 17, 32 and 82 of this Act shall not apply to computer programs. Computer programs shall not be

subject to public lending, unless otherwise provided by a contract.

### *EXCEPTIONS*

#### Article 110

- (1) In the absence of specific contractual provisions the acts referred to in Article 109, paragraph (1), items 1 and 2 of this Act, shall not require authorization by the right holder, where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction.
- (2) The making of a back-up copy by a person having a right to use the computer program may not be prevented by a contract insofar as it is necessary for that use.
- (3) The person having a right to use a copy of a computer program shall be entitled, without the authorization of the author, to observe, study or test the functioning of a program in order to determine the ideas and principles that underlie any element of the program, if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.
- (4) Any contractual provision contrary to the provisions of paragraphs (2) and (3) of this Article shall be null and void.

### *DECOMPILATION*

#### Article 111

- (1) If the reproduction of the code and translation of its form, according to the provision of Article 109, paragraphs (1) and (2) of this Act, are indispensable to obtain the information necessary to achieve the interoperability of an independently created program with other programs, the authorization of the right holder shall not be required, provided that:
  1. these acts are performed by the authorization for use or by another person having a right to use a copy of a program, or on their behalf, by a person authorized to do so,
  2. the information necessary to achieve interoperability has not previously been readily available to the persons referred to in item 1 of this paragraph, and

3. these acts are confined only to those parts of the original program which are necessary to achieve interoperability.

- (2) Information obtained through application of the provisions of paragraph (1) of this Article may not be:
  1. used for goals other than to achieve the interoperability of the independently created computer program;
  2. transferred to other persons, except when necessary for achieving the interoperability of the independently created program; or
  3. used for the development, production or marketing of another program substantially similar in its expression, or for any other act that infringes copyright.
- (3) The provisions of this Article may not be interpreted in such a way as to allow its application to be used in a manner that unreasonably prejudices legitimate interests of the right holder or conflicts with a normal use of the computer program.
- (4) Any contractual provision contrary to the provisions of this Article shall be null and void.

### *SPECIAL MEASURES OF PROTECTION*

#### Article 112

Infringements of the rights in a computer program shall constitute, in particular:

1. any act of distribution of a copy of a computer program, knowing, or having reason to believe, that it is an infringing copy;
2. the possession, for commercial purposes, of a copy of a computer program, knowing, or having reason to believe, that it is an infringing copy;
3. any act of distribution, or the possession for commercial purposes, of any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of a technical device serving as protection of a computer program.

*CONTINUED APPLICATION OF  
OTHER LEGAL PROVISIONS*

Article 113

The provisions of this Act regarding the protection of computer programs shall be without prejudice to any other legal provisions, such as those regulating the protection of inventions by patents, protection of layout designs of semi-conductor products, trademarks, unfair competition, protection of business secrets or contractual obligations.

**8.2. Special provisions for  
audiovisual works**

*AUDIOVISUAL WORKS*

Article 114

Audiovisual works, under this Act, shall mean cinematographic, television, documentary, animated, advertising or other films, and other audiovisual works expressed by sequence of images giving the impression of movement, with or without a sound, irrespective of the type of the medium on which they are fixed.

*AUDIOVISUAL ADAPTATION*

Article 115

- (1) The right of adaptation of a copyright work into an audiovisual work (the right of audiovisual adaptation) shall be acquired by a contract on audiovisual adaptation. Unless otherwise provided by the contract it shall be considered that the exclusive right of audiovisual adaptation has been acquired.
- (2) If the right of adaptation of a copyright work has been acquired as the exclusive right, the author of the adapted work shall retain:
  1. the exclusive right of new audiovisual adaptations of the adapted work, which he may exercise after the expiration of twenty years from the conclusion of the contract referred to in paragraph (1) of this Article;
  2. the exclusive right of further alteration of the audiovisual work into any other artistic form;
  3. the right to an equitable remuneration for any rental of a videogram containing the adapted work.
- (3) The author cannot renounce the right referred to in paragraph (2) of this Article.

*CO-AUTHORS OF AUDIOVISUAL WORK*

Article 116

- (1) The following shall be considered as co-authors of an audiovisual work:
  1. the principal director,
  2. the author of screenplay,
  3. the author of dialogue,
  4. the principal cameraman,
  5. the composer of music specifically created for use in such work.
- (2) If a drawing or animation represents an essential element of an audiovisual work, the principal drawer or the principal animator shall be considered as a co-author of that work.
- (3) If another natural person proves that his original intellectual creation is an essential part of the audiovisual work and that he or she could be recognized as a co-author of that work under the general rules, this person will be recognized as a co-author of the audiovisual work.

*AUTHORS OF CONTRIBUTIONS  
TO AUDIOVISUAL WORK*

Article 117

A music composer, a principal drawer or a principal animator, who is not considered the co-author of an audiovisual work according to the provision laid down in Article 116 of this Act, a scenographer, a costume designer, a face makeup artist, an editor and other authors that participate in the creation of an audiovisual work, shall have the copyright in their individual contributions (authors of contributions).

*CONTRACT ON AUDIOVISUAL PRODUCTION*

Article 118

- (1) A contract on audiovisual production shall regulate the relations between the film producer, the co-authors of an audiovisual work and the authors of contributions thereof, as well as the relations between the authors of an audiovisual work.
- (2) Unless otherwise provided by the contract on audiovisual production between the film producer and the authors of contributions, it shall be considered that the film producer acquires all the economic rights of such authors to the extent necessary to fulfil the purpose of the contract.

- (3) If the co-authors have entrusted their right of rental to the film producer by the contract referred to in paragraph (1) of this Article, they shall retain the right to an equitable remuneration for the rental of an audiovisual work.
- (4) Notwithstanding the provisions laid down in paragraph (2) of this Article, the authors of contributions shall retain the right to use individually their contributions to an audiovisual work, provided that the rights of film producers are not prejudiced thereby.
- (5) Co-authors of an audiovisual work cannot renounce the rights referred to in paragraph (3), and authors of contributions cannot renounce the rights referred to in paragraph (4) of this Article.
- (6) The provisions of Article 17, Article 47, paragraph (1), and Article 48 of this Act shall not apply to audiovisual works.

*REPORT ON REMUNERATION FOR RIGHTS TO AUDIOVISUAL WORK*

Article 119

The film producer of an audiovisual work must at least once a year submit to the co-authors a report on the profits for each form of use of the work.

*COMPLETED AUDIOVISUAL WORK*

Article 120

- (1) An audiovisual work shall be deemed completed when, according to the agreement between the principal director and the film producer, the first standard copy of the work, which is the subject matter of the contract on production, is finished.
- (2) The destruction of the master of the first standard copy of the audiovisual work shall be prohibited.
- (3) If any of the co-authors or authors of contribution refuses to continue to collaborate in creation of the audiovisual work, or if he is unable to continue to collaborate due to force majeure, he may not oppose to the use of his contribution already made, for the purpose of completion of such work. Such author shall have respective copyright as to the contribution to the audiovisual work he has already made.

*RESCINDING OF CONTRACT*

Article 121

- (1) If a film producer of an audiovisual work does not complete the work within five years from the conclusion of the contract on the audiovisual production of such work, or if he does not distribute the completed work within two years from the time of its completion, the co-authors may demand that the contract be rescinded, unless any other term has been stipulated in the contract.
- (2) In the case referred to in paragraph (1) of this Article, the co-authors and authors of contributions retain the right to obtain remuneration.

**III. RELATED RIGHTS**

**Chapter 1  
RIGHTS OF PERFORMERS**

*PERFORMERS*

Article 122

Performers shall mean actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore. A director of theatrical performance and a conductor of an artistic ensemble shall be also deemed performers.

*REPRESENTATIVE OF AN ARTISTIC ENSEMBLE*

Article 123

- (1) Performers who are members of an artistic ensemble may authorize, in a written form, one of their members or a third person to represent them in the exercise of their performer's right.
- (2) The authorization referred to in paragraph (1) of this Article shall require the consent of the majority of members of an artistic ensemble, unless otherwise provided by the internal rules of the ensemble. It shall be deemed that performers who are not members of an ensemble but participate in a particular performance of that ensemble also have given their consent.
- (3) The provisions of paragraphs (1) and (2) of this Article shall not apply to conductors, soloists, directors of theatrical performances



and players of leading roles, who are not members of the ensemble, unless otherwise agreed between them and the artistic ensemble.

### *MORAL RIGHTS OF PERFORMERS*

#### Article 124

- (1) A performer shall have the right to be recognized and indicated as such, that is, to decide whether his name, or other indication of his identity will be indicated at the time his performance is used.
- (2) A person who publicly uses a performance shall at any use indicate a performer, except where the performer declares in a written form that he does not want to be indicated as such.
- (3) A performer shall be deemed a person whose name, pseudonym, artist's mark or code is regularly indicated on the copies of a performance or at its disclosure, until proven to the contrary.
- (4) A performer shall have the right to oppose to any destruction, distortion, mutilation or similar modification of his performance, and any use of the performance, which is jeopardizing or might jeopardize his honour or reputation.

### *EXCLUSIVE ECONOMIC RIGHTS OF PERFORMERS*

#### Article 125

A performer shall have the exclusive right:

1. to fix his unfixed performance;
2. to reproduce his fixed performance;
3. to distribute, including the rental, of his fixed performance;
4. to communicate to the public his unfixed and fixed performance including in particular:
  - the right of broadcasting and rebroadcasting
  - the right of public communication of fixed performances and broadcasting
  - the right of public transmission
  - the right of public presentation
  - the right of making available to the public

### *REMUNERATION FOR RENTAL*

#### Article 126

A performer, who entrusts his rental right to a producer of phonograms or to a film producer, shall retain his right to an equitable remuneration for the rental of his fixed performance. The performer may not renounce the right to an equitable remuneration. A remuneration for the rental shall be paid by the person renting the performance.

### *REMUNERATION FOR BROADCASTING AND PUBLIC COMMUNICATION OF A PERFORMANCE*

#### Article 127

- (1) A performer shall be entitled to a share in a single equitable remuneration for broadcasting and any other communication to the public of his fixed performance.
- (2) The single equitable remuneration referred to in paragraph (1) of this Article consists of individual remunerations which belong to the performers and the producers of phonograms.

### *RIGHT TO REMUNERATION*

#### Article 128

- (1) A performer shall be entitled to an equitable remuneration for any audio or audiovisual recording of his fixed performance for private or other personal use, as referred to in Article 32, paragraph (1) of this Act.
- (2) A performer shall be entitled to an equitable remuneration, where his fixed performance in respect of which further distribution is allowed is lent by intermediary of public libraries. The provisions of Article 33 paragraphs (2) and (4) of this Act shall apply *mutatis mutandis* to such right.

### *USE OF PERFORMANCE FOR COMPLETION OF AUDIOVISUAL WORK*

#### Article 129

If a performer refuses to complete his performance in an audiovisual work, or if he is unable to do so due to force majeure, he may not oppose to the use of his performance already made, for the purpose of completion of such audiovisual work. Such a performer shall have adequate rights as to the contribution he has already made.

*PERFORMANCE GIVEN IN THE FRAMEWORK  
OF AN EMPLOYMENT CONTRACT*

Article 130

- (1) A performance made in the course of employment shall, under this Act, mean a performance given by a performer - an employee in the execution of his duties with a certain employer or following the instructions given by him. The relations in respect to a performance given in the course of employment shall be regulated by this Act, by an employment contract, or any other act regulating employment.
- (2) If a performance is given in the course of employment, the employment contract shall specify, among other things, whether the employer acquires the right to use the performance, and if he acquires it, it shall specify in particular, the scope and duration of such right. Unless otherwise provided by this Act, or by an employment contract or by other act regulating employment, the performer's right in the performance shall be retained by the performer without limitations.

*DURATION OF RIGHTS*

Article 131

The economic rights of a performer shall run for 50 years as from the date of the performance. If, within this term, a fixation of the performance has been lawfully published or lawfully communicated to the public, the rights shall run for 50 years as from the date of the first such publication or from the first such communication to the public, whichever occurred earlier.

**Chapter 2  
RIGHT OF PRODUCERS OF  
PHONOGRAMS**

*DEFINITIONS*

Article 132

- (1) A phonogram shall mean the fixation of the sounds of a performance or of other sounds or of representations of sounds, other than in the form of fixations incorporated in audiovisual works. Fixation, within the meaning of this Article, shall mean the embodiment of sounds, or of the representations thereof, in a medium from which they can be listened, reproduced or communicated through a device. The rights

in a phonogram are not in any way limited with its embodiment in a videogram.

- (2) Producer of phonograms, under this Act, shall be a natural or a legal person, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or of other sounds or of the representations of sounds. It shall be considered that the producer of a phonogram is the one whose name or company name is regularly indicated as the holder of the rights of phonogram producers on the phonogram, until proven to the contrary.

*RIGHTS OF THE PRODUCERS  
OF PHONOGRAMS*

Article 133

- (1) A producer of phonograms shall have the exclusive right:
  1. to reproduce his phonograms;
  2. to distribute his phonograms, including the right of rental, except the right under Article 20 paragraph (5) of this Act;
  3. to make available to the public his phonograms.
- (2) Disposition with the rights of phonogram producers shall be free. The right of phonogram producers shall in no way prejudice the copyright and the right of performers.

*RIGHT TO REMUNERATION  
FOR PUBLIC LENDING*

Article 134

A producer of phonograms shall have the right to an equitable remuneration for lending of his phonograms, that is, the copies thereof, by intermediary of public libraries.

*RIGHT TO REMUNERATION FOR  
BROADCASTING AND PUBLIC  
COMMUNICATION OF PHONOGRAMS*

Article 135

A producer of phonograms shall be entitled, in accordance with the provision laid down in Article 127, paragraph (2) of this Act, to a share in a single equitable remuneration for broadcasting and any other communication to the public of his phonograms published for commercial purposes.

*RIGHT TO REMUNERATION FOR  
REPRODUCTIONS  
OF PHONOGRAMS FOR PRIVATE  
OR OTHER PERSONAL USE*

Article 136

A producer of phonograms shall be entitled to an equitable remuneration for each audio recording of his phonograms for private or other personal use, as referred in Article 32, paragraph (1) of this Act.

*DURATION OF RIGHTS*

Article 137

The rights of a producer of phonograms shall run for 50 years as from the date of the first fixation of a phonogram. If the phonogram is lawfully published during this period, the rights shall run for 50 years as from the date of the first such publication. If the phonogram is not published during this period but is lawfully communicated to the public, the rights shall run for 50 years as from the date of the first such communication to the public.

**Chapter 3  
RIGHTS OF FILM PRODUCERS  
(RIGHTS OF PRODUCERS OF  
VIDEOGRAMS)**

*FILM PRODUCER AND A VIDEOGRAM*

Article 138

- (1) A film producer (a producer of videograms), under this Act, shall mean a natural or a legal person, who or which in its own name takes the initiative, raises funds, organizes and takes the responsibility for making of the first fixation of an audiovisual work, as well as of sequences of moving images accompanied by sound or without sound (videogram). A film producer shall be deemed the one whose name or company name is regularly indicated as the holder of the rights of the videogram producer on a videogram, until proven to the contrary.
- (2) A videogram shall be, under this Act, a fixation of an audiovisual work, as well as of a sequence of moving images accompanied by sound or without sound.

*RIGHTS OF FILM PRODUCERS*

Article 139

- (1) A film producer shall have, in respect of copies of his videogram, the exclusive right of:
  1. reproduction;

2. distribution, including the right of rental, except the right under Article 20 paragraph (5) of this Act;
3. public presentation;
4. making available to the public.

- (2) Disposition with the right of the film producer shall be free. The right of film producers shall in no way prejudice the copyright, the right of performers and the right of phonogram producers.

*RIGHT TO REMUNERATION  
FOR PUBLIC LENDING*

Article 140

A film producer shall be entitled to equitable remuneration for the lending of videograms by intermediary of public libraries.

*RIGHT TO REMUNERATION FOR  
REPRODUCTIONS OF VIDEOGRAMS  
FOR PRIVATE OR OTHER PERSONAL USE*

Article 141

A film producer shall be entitled to equitable remuneration for any audio and visual reproduction of his videograms for private and other personal use, as referred to in Article 32, paragraph (1) of this Act.

*DURATION OF RIGHTS*

Article 142

The rights of film producers shall run for 50 years as from the date of the first fixation of a videogram. If the videogram is lawfully published or lawfully communicated to the public during this period, the rights of the film producer shall run for 50 years as from the date of the first such publication or the first such communication, whichever occurred earlier.

**Chapter 4  
RIGHT OF BROADCASTING  
ORGANIZATIONS**

*RIGHTS OF BROADCASTING ORGANIZATIONS*

Article 143

- (1) A broadcasting organization shall have the exclusive right:
  1. to rebroadcast its broadcasts by wire or wireless means;
  2. to fix its broadcasts;
  3. to reproduce its fixed broadcasts;

4. to distribute its fixed broadcasts, except the rights of their rental and lending;
  5. to publicly communicate its broadcasts if such communication is accessible to the public against payment of an admission;
  6. to make available to the public of its fixed broadcasts.
- (2) A cable distributor who merely retransmits by cable the broadcast of broadcasting organizations shall not be a broadcasting organization pursuant to the provisions of this Chapter.
- (3) Disposition with the right of broadcasting organizations shall be free. The right of broadcasting organizations shall in no way prejudice the copyright, the right of performers nor the right of film producers.

#### *DURATION OF RIGHTS*

##### Article 144

The rights of broadcasting organizations shall run for 50 years counting from the date of the first broadcast irrespective of whether it is by wire or wireless means.

### **Chapter 5 RIGHTS OF PUBLISHERS IN THEIR EDITIONS**

#### *RIGHT TO REMUNERATION FOR REPRODUCTION OF OWN WRITTEN EDITIONS FOR PRIVATE OR OTHER PERSONAL USE*

##### Article 145

- (1) The publishers shall have their own right to a remuneration for any reproduction of their written editions for private and other personal use, equal to the right of the author to a remuneration as referred in Article 32, paragraph (2) of this Act.
- (2) The right to a remuneration referred to in paragraph (1) of this Article shall run for 50 years as from the date of the lawful publication of the work, and may be freely disposed with.

#### *RIGHT IN THE FIRST EDITION OF UNRELEASED FREE WORKS*

##### Article 146

- (1) A person who for the first time lawfully publishes or communicates to the public a

still undisclosed work in which the copyright has expired, shall enjoy the right equal to the economic rights of the author under this Act.

- (2) The right referred to in paragraph (1) of this Article shall run for 25 years as from the date of the first lawful publication of the work, or its communication to the public, and may be freely disposed with.

### **Chapter 6 RIGHTS OF PRODUCERS OF DATABASES**

#### *DATABASE, PRODUCER OF DATABASES*

##### Article 147

- (1) A database, under this Chapter of the Act, shall mean a collection of independent works, data or other materials in any form, arranged in a certain systematic or methodical way and individually accessible by electronic or other means, whereby either the obtaining, verification or presentation of its contents requires a qualitatively and/or quantitatively substantial investment in terms of resources, time and efforts engaged.
- (2) A producer of database shall be a natural or a legal person, who or which takes the initiative and risk of the investment referred to in paragraph (1) of this Article.
- (3) The protection of a database referred to in paragraph (1) shall be independent of its protection by copyright or any other right.
- (4) Disposition with the right of the producers of databases shall be free. The right of the producers of databases shall in no way prejudice the copyright, the right of performers, the right of producers of phonograms, the right of film producers, nor the right of broadcasting organizations.

#### *SUBJECT MATTER OF PROTECTION*

##### Article 148

- (1) A subject matter of protection shall, according to the provisions of this Chapter, include:
  1. the whole contents of a database;
  2. any qualitatively and/or quantitatively substantial part of the contents of a database;

3. qualitatively and/or quantitatively insubstantial parts of the contents of a database, when these parts are used repeatedly and systematically, which conflicts with a normal use of the database or which unreasonably prejudice the legitimate interests of the producer of the database.
- (2) The protection regulated by this Article shall not apply to computer programs used in the making of databases, or for the operation of databases, which are accessible by electronic means.

#### *RIGHTS OF PRODUCERS OF DATABASES*

##### Article 149

- (1) The producer of a database shall have the exclusive right to do or to authorize:
  1. reproduction of his database;
  2. distribution of copies of his database, including the rental thereof, except the right under Article 20 paragraph (5) of this Act, and excluding any form of public lending;
  3. making available to the public of his database;
  4. other forms of communication to the public of his database.
- (2) The exhaustion of the distribution right extends only to the resale.

#### *EXCEPTIONS*

##### Article 150

An authorized user of a disclosed database may, without the authorization of its producer, use the substantial parts of its contents in the case:

1. referred to in Article 149, item 1 of this Act for private use of a non-electronic database;
2. referred to in Article 149, item 1 of this Act for use intended for teaching or scientific research, provided that the source is indicated and to the extent justified by the non-commercial purpose;
3. referred to in Article 149, items 1, 2, 3, and 4 of this Act for use required for public safety, or for administrative or judicial proceedings.

#### *RIGHTS AND OBLIGATIONS OF AUTHORIZED USERS*

##### Article 151

- (1) An authorized user of a disclosed database may not be prevented from using insubstantial parts of its contents for any purposes. Where the authorized user is authorized to use only a part of the database, this paragraph shall apply only to that part.
- (2) An authorized user of a database which is made available to the public may not perform acts which conflict with a normal use of that database, or which unreasonably prejudice the legitimate interests of its producer.
- (3) An authorized user of a database made available to the public may not cause damage to the holder of a copyright or related right in respect of the works or subject matter contained in that database.
- (4) Contractual provisions, which are contrary to paragraphs (1), (2) and (3) of this Article shall be null and void.

#### *DURATION OF RIGHTS*

##### Article 152

Rights of a producer of a database shall run for 15 years as from the date of the completion of the making of the database. If the database is lawfully disclosed during this period, the rights shall run for 15 years as from the first such disclosure.

#### *DURATION IN CASE OF SUBSTANTIAL CHANGE*

##### Article 153

Any qualitative or quantitative substantial change of part of the contents of a database, which is a qualitative or quantitative substantially new investment in contents of the database, shall result with a new term of protection referred to in paragraph (1) of this Article\*. A substantial change of the contents a database shall also include successive additions, deletions and alternation of the database.

#### **IV. MANAGEMENT OF RIGHTS**

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\* The correct expression shall read: Article 152 of this Act



*ACTIVITY RELATED TO THE MANAGEMENT  
OF COPYRIGHT AND RELATED RIGHTS*

Article 154

- (1) The management of copyright or related rights (hereinafter: management of rights) shall include the following tasks, in particular:
  - giving authorizations for the use of the subject matter of copyright and related rights (subject matters of protection), where this authorization is required by the Act;
  - collecting of remunerations for the use of the subject matter of protection, where used subject to payment of remuneration;
  - distributing of collected remunerations among the right holders;
  - supervising the use of the subject matters of protection;
  - initiating and carrying out protection proceedings in the case of infringement of the rights having been managed;
- (2) The management of rights may include all or some of the activities referred to in paragraph (1) of this Article.

*INDIVIDUAL MANAGEMENT OF RIGHTS*

Article 155

- (1) The management of rights that relates to an individual use of a particular subject matter of protection, in accordance with the relevant contract between the right holder and the user of the subject matter of protection, shall be carried out by the right holder himself or through a representative.
- (2) The tasks of an authorized representative may be carried out by an attorney at law, a specialized legal person for the management of copyright and related rights, and an association referred to in Article 157 of this Act.
- (3) A specialized legal person referred to in paragraph (2) shall be a company with at least one employee with a law degree.

*COLLECTIVE MANAGEMENT OF RIGHTS*

Article 156

- (1) Collective management of rights may include the following:
  1. Rights of authors:

- a. right of public performance, right of public transmission, right of public communication of a fixed work, right of broadcasting, right of rebroadcasting, right of public communication of a broadcasting and right of making available to the public of non-stage musical and literary works;
  - b. right of reproduction (audio recording) of musical works;
  - c. right of distribution, including the right of rental and the right to a remuneration referred to in Article 20 paragraph 5 of this Act;
  - d. right to a remuneration for public lending;
  - e. resale right when the original works of art are being resold;
  - f. right to a remuneration for reproduction of a work for private or other personal use;
  - g. right to a remuneration referred to in Article 85 paragraph (2) of this Act
  - h. right to a remuneration for communication to the public of folk literary and artistic creations.
2. Right of performers:
    - a. right of public communication of a fixed performance and broadcastings;
    - b. right of public presentation of a fixed performance;
    - c. right of broadcasting and rebroadcasting of a fixed performance;
    - d. right of making available to the public of a fixed performance;
    - e. rental right of a fixed performance, and the right to a remuneration referred to in Article 20 paragraph (5) of this Act;
    - f. right to a remuneration for public lending of a fixed performance;
    - g. right to a remuneration for reproduction of a fixed performance for private or other personal use.
  3. Rights of producers of phonograms:
    - a. right of making available to the public of a phonogram;

- b. right to a remuneration for broadcasting and public communication of a phonogram;
  - c. right of rental of a phonogram;
  - d. right to a remuneration for public lending of a phonogram;
  - e. right to a remuneration for reproduction of a phonogram for private or other personal use.
4. Rights of film producers:
- a. right to a remuneration for public lending of a videogram;
  - b. right to a remuneration for reproduction of a videogram for private or other personal use.
5. Rights of publishers:
- a. right to a remuneration for reproduction of their written editions for private or other personal use.
- (2) The right of broadcasting and rebroadcasting referred to in paragraph (1), items 1a) and 2c), the right to a remuneration for broadcasting referred to in paragraph (1) item 3b) the rental right referred to in items 1c), and where it regards recorded musical works, 2e) and 3c), the right to a remuneration for public lending referred to in items 1d), 2f), 3d) and 4a), and the right to a remuneration for reproduction for private and other personal use referred to in items 1f), 2g), 3e), 4b), 5a), shall be managed only through a collective rights management association.
- (3) The provisions referred to in paragraph (2) of this Article shall not apply to cable retransmission, where it concerns the broadcasting organization in respect of its own broadcasts, irrespective of whether the rights concerned are its own or have been transmitted to it by other holders of copyright and related rights.

#### *COLLECTIVE RIGHT MANAGEMENT ASSOCIATIONS*

##### Article 157

- (1) Collective management of rights may be carried out by an association of the right holders, which has the authorization granted by the State Intellectual Property Office (hereinafter: the Office) for performing such activity.

- (2) The authorization referred to in paragraph (1) of this Article shall be granted by the Office to an association which:
- a. has its principle place of business in the Republic of Croatia;
  - b. has adequate premises, equipment and technical service with at least one employee with a law degree;
  - c. is engaged in the collective management of rights as its only activity, unless its other engagements relate to the cultural or art activities, and to the activities aiming at professional or social interests of its members.
- (3) The association shall manage the rights in its own name and for the account of the right holders.

#### *MANAGEMENT OF RIGHTS THROUGH THE ASSOCIATION*

##### Article 158

- (1) A collective rights management association may manage one, two or more types of rights that usually relate to a particular category of the holders of copyright or related rights.
- (2) The association may entrust certain kind of tasks regarding the management of rights to some other association referred to in Article 157, paragraph (1) of this Act, in the form of a written contract. The entrusted association shall manage the rights in the name and for the account of the entrusting association, or in its own name and for the account to the entrusting association.
- (3) The association may entrust the administrative, technical or accessory works to another natural or legal person, in the form of a written contract.

#### *AUTHORIZATION FOR THE MANAGEMENT OF RIGHTS*

##### Article 159

- (1) The collective management of rights referred to in Article 156 of this Act, with respect to the same category of right holders can be entrusted by the Office to one association only, and that to an association to which the most right holders have given their powers of attorney for the management of their rights, and which has the most contracts on mutual representations with foreign associations, all

in accordance with the professional criteria referred to in Article 169, paragraph (2) of this Act.

- (2) It shall be presumed that the association referred to in paragraph (1) of this Article has powers of attorney of all domestic and foreign right holders of a respective right, unless a right holder has explicitly notified the association, in a written form, not to manage his rights.
- (3) A collective rights management association shall inform a user, upon his request, of the right holders whose rights it does not manage based on the notification referred to in paragraph (2) of this Article.

### *GRANTING OF AUTHORIZATION FOR USE*

#### Article 160

- (1) A natural or a legal person shall, prior to starting to use a particular subject matter of protection, submit to a relevant collective rights management association a request for the authorization of such use. The request shall include information on the type and circumstances of the use (such as manner, place and time of the use, and other information required for establishing the amount of remuneration).
- (2) The collective rights management association shall give to a user its authorization for the use of the subject matter of protection for the management of which it has been authorized. The authorization shall include the indication of the types of rights to which it applies, conditions of use in terms of manner, place and time, and the amount of remuneration for the use, where the use is subject to payment of remuneration.
- (3) A user shall submit to a collective rights management association, without delay, the information relating to any change of circumstances of such use or of its termination, in order to change the conditions under which the authorization has been granted or to withdraw the authorization.
- (4) A natural or a legal person who or which allows the use of her or its premises to another person who uses subject matters of protection in such space, shall check whether that person has the adequate authorization for the use of the subject matter of protection. Where a natural or a

legal person has allowed the use of her or its premises to a person having not such authorization, although knowing or having reasons to know that subject matters of protection will be used in such premises shall be jointly and severally liable to pay a corresponding remuneration for the use of the subject matter of protection.

### *COLLECTING OF INFORMATION*

#### Article 161

In case of insufficient information on or an unauthorized use of the subject matter of protection, the competent state administration bodies or other legal persons, shall submit to the collective rights management associations at their request the information from their own records that relate to the management of rights under this Act.

### *REMUNERATION FOR THE USE OF SUBJECT MATTERS OF PROTECTION*

#### Article 162

- (1) A remuneration for the use of the subject matter of protection shall be regulated by a contract between a collective rights management association and a user of the subject matter of protection, or between a collective management association and an association of users or their chamber.
- (2) If the remuneration is not fixed in accordance with paragraph (1) of this Article, it shall be paid according to the tariffs adopted by a collective rights management association.
- (3) Collective rights management associations shall, prior to adopting their tariffs, submit the proposal thereof for consideration to and the declaration by the Croatian Chamber of Economy, the Croatian Chamber of Trades and Crafts (hereinafter referred to as: the Chambers) and the associations of broadcasting organizations gathering the majority of users of subject matters of protection (hereinafter: the Associations of Broadcasting Organizations).
- (4) If the Chambers and Associations of Broadcasting Organizations fail to furnish a written declaration to a collective rights management association within 30 days, it shall be deemed that they do not oppose to the proposed tariffs.
- (5) If a collective rights management association does not accept or only partially accepts the objections of the Chambers, and

Associations of Broadcasting Organizations it shall, within 15 days following the receipt of such written objections, request the Council of Experts Dealing with Remunerations for Copyright and Related Rights (hereinafter referred to as: the Council of Experts) for their opinion on the subject matter of disagreement. The Council of Experts shall, within 30 days following the receipt of objections, render its opinion.

- (6) Until the procedure for adopting the tariffs referred to in paragraphs (3), (4) and (5) of this Article is completed, the remuneration shall be paid in accordance with the approved tariffs or as an advance payment according to the proposed tariffs if the tariffs for particular subject matter of protection are not approved.
- (7) The opinion of the Council of Experts referred to in paragraph (5) of this Article shall contain its evaluation of whether the tariffs relate to the rights for management of which a collective rights management association has the authorization granted by the Office, and whether the remuneration conform to the principles referred to in Article 165 of this Act. If the Council of Experts fails to give its opinion within the period referred to in paragraph (5) of this Article, it shall be deemed that it agrees with the proposed tariffs.
- (8) After the completion of the procedures referred to in this Article, the tariffs shall be published in the Official Gazette of the State Intellectual Property Office.

### *MEDIATION*

#### Article 163

- (1) The Council of Experts shall also act as a mediator between the broadcasting organizations and cable operators in the cases of conclusion of contracts on cable retransmission.
- (2) If the broadcasting organization and a cable operator fail to agree on the contents of the contract on cable retransmission of a broadcast of such broadcasting organization, each of the mentioned parties may call upon the mediation of the Council of Experts in respect of the conclusion of this contract. The Council of Experts will, as a mediator in negotiations, assist the parties to achieve the agreement. The Council of Experts shall be authorized to submit proposals to the parties concerning the regulation of their

mutual relations. The proposals shall be submitted in person, or by registered mail. If none of the parties expresses its opposition by registered post within three months as from the receipt of the proposal, it shall be considered that both parties accept such proposal, and are required to include it in the contract on cable retransmission.

- (3) The broadcasting organization and the cable operator shall enter, conduct and finish negotiations regarding a contract on cable retransmission in good faith. They shall be liable for any abuse of negotiations or negotiating positions, or their rights in compliance with the general legislation.

### *STRUCTURE AND RESPONSIBILITIES OF THE COUNCIL OF EXPERTS*

#### Article 164

- (1) The Council of Experts shall consist of a president and four members. They shall be appointed by the Government of the Republic of Croatia, on the proposal by the minister, for a period of four years. A president and the members shall be selected from among the renowned experts, who may contribute to the achievement of objectives of the Council of Experts owing to their prior accomplishments and expertise in issues related to the implementation of copyright and related rights.
- (2) The minister shall initiate the procedure of election of the president and members, by a public invitation.
- (3) If the minister considers that the proposed candidates are not adequate to assure the appropriate structure of the Council of Experts, he may repeat the election procedure.
- (4) The Council of Experts renders its opinions on a session by the majority of votes of all its members.
- (5) The Council of Experts may, prior to delivering its opinions, invite other competent persons having expertise in certain issues, to attend the sessions, without the right to vote. The sessions of the Council of Experts may also be attended, without the right to vote by the officials and other employees of the Office dealing with the subject matter of the session.
- (6) The president, the members of the Council of Experts as well as the invited experts

shall have the right to a remuneration for their work. The remuneration shall be paid by the parties involved in the respecting matter in the equal shares, unless otherwise decided by the Council of Experts.

- (7) The Council of Experts shall adopt its Rules of Procedure. The amount of the remuneration referred to in paragraph (6) of this Article shall be prescribed by the minister.

#### *PRINCIPLES FOR ESTABLISHING THE AMOUNT OF REMUNERATION BY TARIFFS*

##### Article 165

- (1) If the use of the subject matter of protection is essential for the activity of a user in a way that its activity depends on such use, as it is in cases of broadcastings, concert, dance or other uses of the subject matter against payment, the amount of remunerations shall be fixed in principle as a percentage of the income or earning from such use.
- (2) If the use of the subject matter of protection results with no income or earning, the amount of remunerations may be fixed as a percentage of expenses of the use, such as remunerations or salaries of performers, or expenses incurred for the utilization of premises, or other like expenses.
- (3) In addition to the remunerations fixed as a percentage, the minimum amount of remunerations shall be specified.
- (4) If a user fails to submit to a collective rights management association the information required for fixing the remunerations as a percentage, such association may establish the amount of remunerations according to information collected in compliance with Article 161 of this Act.
- (5) If the use of the subject matter of protection is not essential for a user, but is useful or enjoyable (accommodation facilities, exposition places, transport means and certain catering objects) the amount of remunerations shall be set as a lump sum for permanent and occasional uses.
- (6) When deciding on the amount of a lump sum and remunerations referred to in paragraph (3) of this Article, circumstances of the use of the subject matter of protection shall be taken into account, such as the type of the use, place and geographical location, category and size of

the facilities, duration and number of the uses, and difference in prices regarding a user's business.

#### *DISTRIBUTION OF REMUNERATIONS*

##### Article 166

- (1) The distribution of collected remunerations to the right holders shall be generally carried out in accordance with the information on the use of the subject matter of protection.
- (2) A user shall submit to a collective rights management association complete information concerning the place and time of the use of a particular subject matter of protection for the reason of distribution of collected remunerations, within a time limit stipulated in a contract on use. If such contractual provision does not exist, a user shall submit such information to a collective rights management association within 15 days from the date of the use.
- (3) If distribution based on the information on the use is not possible, or if such distribution would obviously be uneconomical, the distribution may be carried out by the application of a method of sampling corresponding to the greatest extent to the actual use.

#### *RULES RELATING TO THE DISTRIBUTION OF REMUNERATIONS*

##### Article 167

- (1) A collective rights management association shall have rules relating to the distribution of collected remunerations adopted by a body established by the statute of that association.
- (2) The rules shall contain in particular provisions concerning:
  - subject matter of protection and right holders to which the rules apply;
  - determination of a share of a particular right holder in collected remunerations, which may stimulate the subject matters of protection of a particular value for culture and national creativity;
  - determination of amounts to be paid after the deduction of cost incurred in managing of the right, the allocation for funds envisaged by law, the statute of the association or by international contracts on mutual representation of



collective rights management associations;

- terms for accounting and payment of distributed remunerations.

- (3) The collected remunerations shall be only used in accordance with the rules referred to in paragraph (2) of this Article.
- (4) Contracts on distribution concluded between the right holders of the same work shall override the rules of distribution.
- (5) Total costs of a collective rights management association may amount to no more than 30% of the collected remunerations.
- (6) Accounting and distribution of remunerations shall be carried out at least once a year.
- (7) General statement of account regarding distribution shall be established by a competent body of an association, and audited and evaluated by an authorized auditor.
- (8) An association shall deliver to the Office its statement of account regarding distribution referred to in paragraph (7) of this Article within 15 days as from receipt of the auditing report.

#### *SUPERVISION OF USE OF THE SUBJECT MATTER OF PROTECTION*

##### Article 168

- (1) A collective rights management association may supervise the use of the subject matter of protection in respect of which it has the authorization granted by the Office.
- (2) Users of the subject matter of protection shall provide a collective rights management association with information relevant for the management of rights, and enable the inspection of relevant documents.
- (3) At a request of a collective rights management association, the state administration bodies responsible for inspections, and the customs services, as well as, competent police administrations and police stations shall provide assistance to the collective rights management association in exercising supervision referred to in paragraph (1).
- (4) At a request of an author, or a collective rights management association the

competent police administration or a police station shall prohibit a performance at which subject matters of protection are used, if its organizer does not have the authorization of the author, that is, of a collective rights management association.

#### *ACTIVITIES OF THE OFFICE WITH REGARD TO THE COLLECTIVE MANAGEMENT OF RIGHTS*

##### Article 169

- (1) The Office shall grant authorizations to the collective rights management associations referred to in Article 157 of this Act.
- (2) The Minister shall prescribe the professional criteria and procedure of granting the authorizations referred to in paragraph (1) of this Article.
- (3) The Office shall keep the records of the collective rights management associations.
- (4) The Office shall revoke the authorization referred to in paragraph (1) of this Article, if an association ceased to comply with the prescribed criteria, and if seriously and repeatedly violates the provisions of this Act. In such case, prior notice in writing shall be given to the collective rights management association by the Office, and the Office shall set a time limit of 30 days for the collective rights management association to eliminate the found irregularities.
- (5) A decision on the grant of the authorization for collective management, and a decision of revocation of such authorization shall be published in the Official Gazette of the Office. The revocation of the authorization referred to in paragraph (4) of this Article shall take effect on the 30th day following its publication.
- (6) The Office conducts inspection of the work of the collective rights management associations.

#### *INSPECTION AUTHORIZATIONS*

##### Article 170

- (1) When conducting the inspection referred to in Article 169, paragraph (6) of this Act, an employer of the Office, responsible for carrying out inspection procedure (hereinafter: the inspector) shall be authorized to require insight in the documents and business records regarding the collective management of rights.

- (2) If during the inspection the inspector finds that a collective rights management association manages the rights contrary to the issued decision or contrary to the provisions of this Act, he shall, in the form of a decision, order such deficiencies and irregularities to be eliminated, within a certain time limit.
- (3) If the deficiencies and irregularities are not eliminated within the prescribed time limit, the inspector shall file a request for the initiation of a misdemeanour procedure in respect of the offence referred to in Article 191 of this Act, or he shall revoke the authorization referred to in Article 169, paragraph (4) of this Act.
- (4) Based on a report on the matter, the inspector may file a request for the misdemeanour procedure on the basis of his finding, and irrespective of the time limit prescribed in the decision for the elimination of deficiencies.
- (5) The inspector shall inform the state administration office, keeping the entry of the association in the register of associations, about the taken measures set out in paragraphs (2), (3), and (4) of this Article.

**PROFESSIONAL AND OTHER  
ACTIVITIES OF THE OFFICE**

Article 171

The Office shall perform professional, technical and administrative activities related to the establishment and operation of the Council of Experts Dealing with Remunerations for Copyright or Related Rights, and other activities within its competence in this field.

**V. PROTECTION OF RIGHTS IN  
THE CASE OF THE INFRINGEMENT**

**RIGHT TO PROTECTION**

Article 172

- (1) The holder of a right under this Act, which has been unlawfully infringed shall be entitled to protection of such right.
- (2) Unless otherwise provided by this Act, the right to protection referred to in paragraph (1) of this Article shall entitle its holder to claim from the person who has infringed his right or from her/his general successor to desist from acts infringing such right, and

further omission of such and the like acts (cease of disturbance), remedy of damages (compensation for damages), payment of compensation for unauthorized use, payment of penalty provided by law, return of all the benefits acquired unjustly by infringements of rights (return of unjustly acquired benefits), establishment of the committed infringement and the publication of the valid judgment by which the court has even partially complied with the claim for the protection of the right under this Act.

- (3) In addition to the original right holder under this Act, entitled to adequate protection shall also be the persons who have acquired a right derived from such rights on the basis of a legal transaction, and in compliance with the contents and nature of such derived right.
- (4) The right to protection shall pass on to heirs.
- (5) Where there are several holders of the same right under this Act, each of them is entitled to the protection of his right against other holders.
- (6) Provisions laid down in paragraphs (1), (2) and (3) of this Article shall also apply *mutatis mutandis* where there is a likelihood of infringement of such rights.
- (7) Creations resulting from the infringement of rights under this Act shall not enjoy protection provided by this Act.
- (8) The provisions of this Article shall not affect the claims provided by other provisions of this Act.

**SOLIDARITY**

Article 173

- (1) Where a right under this Act has been infringed each of the right holders of the same right may claim protection of the infringed right against third persons as if he is the only right holder, unless otherwise provided by this Act. He may claim the furnishing of a complete file from third persons only according to obligatory rules on undivided obligations. When the infringer meets the demands of one of the right holders, his liability towards the other right holders of the same rights, also terminates. In case of a pending court proceeding, the right holders of the same rights shall be considered to be a single party in such proceeding.

- (2) If several persons have jointly infringed any of the rights under this Act, their liability shall be joint and several.

*PROTECTION OF RIGHTS MANAGED  
COLLECTIVELY AND EVIDENCE  
OF THE INFRINGEMENT THEREOF*

Article 174

- (1) Collective rights management associations shall be entitled to initiate and carry out in their own name court and administrative proceedings for the protection of such rights, under this Act, which they have been granted authorization to manage collectively.
- (2) Where the collective rights management association proves an infringement of the rights which, under this Act, it is authorized to manage collectively, the infringement of the rights of individual right holders managed collectively shall not be necessarily established.

*PROTECTION OF TECHNOLOGICAL  
MEASURES*

Article 175

- (1) The circumvention of effective technological measures designed to protect the rights provided by this Act shall represent the infringement of such rights, unless otherwise specially provided by this Act.
- (2) The circumvention of technological measures shall also mean, under this Act, manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of technology, computer programs, devices, products or components, or the provision of services which:
- are promoted, advertised or marketed for the purpose of circumvention of technological measures,
  - have only a limited commercially significant purpose or use other than to circumvent technological measures,
  - are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures.
- (3) A request may be filed against a person who knew or had reasonable grounds to know that she or he was circumventing or

enabling the circumvention of technological measures. It shall be considered that the person who acts in the manner described in paragraph (2) of this Article has reasonable grounds to know that she or he is circumventing or enabling the circumvention of technological measures.

- (4) For the purposes of this Act, technological measures shall mean any technology, computer program, device, product or component thereof that in the normal course of its operation is designed to prevent or restrict acts, which are not authorized by the right holder under this Act. The technological measures shall be considered effective where the use of copyright works or subject matters of related rights is restricted by the right holders under this Act through the application of an access control or a protection process, such as encryption, scrambling or other alteration of the work or other subject matter or a copy control mechanism, which achieves the protection objective.
- (5) The provisions of this Article shall not apply to computer programs.

*PROTECTION OF RIGHTS-MANAGEMENT  
INFORMATION*

Article 176

- (1) Copyright and related rights under this Act, shall be also infringed by a person who knowingly, without authority, removes or alters any electronic right-management information, produces, distributes, imports for the purpose of putting them on the market, broadcasts, communicates to the public or makes available to the public a copyright work and subject matter of related rights from which the electronic right-management information has been removed or altered without the authorization of a right holder, and who knows or has reasonable grounds to know that she or he causes, enables, facilitates or conceals the infringements of the rights under this Act.
- (2) Right-management information, under this Act, shall mean, any information provided by the right holders identifying a copyright work or a subject matter of related rights, the right holder, the terms and conditions for use, and their relevant numbers and codes, where they are indicated on a copy of a copyright work or subject matter of

related rights under this Act or when they appear in connection with their communication to the public.

#### *CLAIM FOR CESSATION OF INFRINGEMENT*

Article 177

- (1) A right holder under this Act whose right has been infringed may claim the cessation and the prohibition of such or like future infringements.
- (2) To exercise his right referred to in paragraph (1) of this Article, it shall be sufficient that the right holder invokes it, and proves that the defendant disturbs him. If the defendant claims that he has the right to undertake the actions that disturb the right holder, he shall prove it.

#### *CLAIM FOR COMPENSATION OF DAMAGES*

Article 178

If the infringement of any rights under this Act resulted with damages, the right holder is entitled to claim compensation for damages, in accordance with the general rules on compensation for damages.

#### *CLAIM FOR COMPENSATION FOR UNAUTHORIZED USE AND CLAIM FOR BENEFITS ACQUIRED BY UNAUTHORIZED USE*

Article 179

- (1) If the unauthorized use of a work or a subject matter of related rights has infringed the right of a right holder under this Act, the right holder or a collective rights management association managing respective rights may claim remuneration which is usually obtained for such use or remuneration prescribed by the tariffs referred to in Article 162, paragraph (2) of this Act.
- (2) The right which is managed collectively shall be considered infringed as described in paragraph (1) of this Article, where the work or the subject matter of related rights are used without a contract or without the authorization of a collective rights management association or where a contract or an authorization are not valid.
- (3) If the unlawful use of any rights under this Act resulted in a benefit, the right holder shall be entitled to claim the benefit so acquired, in accordance with the general rules on unjustified acquisition.

#### *CLAIM FOR PUBLICATION OF COURT DECISION*

Article 180

A person whose right under this Act has been infringed, shall be entitled to claim that a valid court decision, complying even partially with the claim for the protection of such right, be published in public media at the infringer's expense. The court shall, at the plaintiff's proposal, decide in what public medium the decision shall be published and whether the decision would be published entirely or partially. If the court decides that only a part of its decision shall be published, it shall be at least a sentence, and the part of the decision indicating the kind of the infringement and the infringer of the respective right.

#### *CLAIM FOR DESTRUCTION, ALTERATION OR DELIVERY OF COPIES RESULTING FROM INFRINGEMENT AND OBJECTS BY MEANS OF WHICH INFRINGEMENT IS COMMITTED*

Article 181

- (1) The holder whose exclusive right under this Act has been infringed is entitled to claim the destruction or alteration of all the unlawfully made copies or such copies put on the market or intended to be put on the market.
- (2) Instead of the measure referred to in paragraph (1) of this Article, the person whose right under this Act has been infringed is entitled to claim that the infringer who is in possession of the copies referred to in paragraph (1) of this Article or is their owner, deliver such copies against compensation which shall not exceed the costs of the manufacture thereof.
- (3) The provisions of paragraphs (1) and (2) of this Article shall apply to architectural works only where there is a specially justified reason for the destruction or delivery thereof.
- (4) If the measures referred to in paragraphs (1), (2) and (3) of this Article are in a certain case disproportional with the nature and intensity of the infringement, and the infringement may be repaired otherwise, the court may order other necessary measures for such a case. In such a case, the right holder is entitled at least to remuneration in the amount not lesser than he would obtain for the authorized use of the respective right.
- (5) The measures referred to in paragraphs (1) and (2) of this Article shall not apply to

separable parts of copies, the manufacture and putting on the market of which are not unlawful.

- (6) The provisions of this Article shall apply *mutatis mutandis* also to the objects, which are used in or intended for the manufacture of copies, infringing the rights under this Act, or which are exclusively or predominantly intended for that purpose.
- (7) The provisions of this Article shall not apply if destruction of the objects referred to in paragraph (6) of this Article would cause greater damage than the damage caused by the infringement of the rights under this Act, unless it concerns the objects, which are exclusively or predominantly intended for the infringement of the rights under this Act.
- (8) The claims referred to in this Article in respect of third fair persons shall be subject to statute of limitations within 3 years following the date on which the right holder learned about the unlawful manufacture of the objects, or their putting on the market, or that they are intended for putting on the market, and not later than within 5 years as from the unlawful manufacture or putting on the market thereof.

***CLAIM IN THE CASE OF INFRINGEMENT  
OF THE RIGHT COMPRISING THE  
INDICATION OF THE AUTHOR  
AND PERFORMER***

Article 182

- (1) In addition to other claims envisaged by this Act, the author and the performer, whose name, pseudonym or other artist's mark, is not indicated with the use of his copyright work or his performance, or is indicated incorrectly or insufficiently, may claim from persons using the work or performance, to indicate them subsequently and correctly as the author or the performer.
- (2) The provisions of the previous paragraph shall apply *mutatis mutandis* where, contrary to the prohibition, the author or the performer is indicated with the use of the work or with the use of the performance.
- (3) The author or the performer shall not be entitled to claims referred to in this Article, if the work or the performance is used with their authorization, and if that use is such that it prevents the indication of the author or the performer.

***PENALTY***

Article 183

- (1) The person whose economic right or the right under Chapter 3.3 Other Rights of Authors under this Act have been infringed intentionally or by gross negligence, is entitled to claim payment of up to a double amount of remuneration (penalty) which is contractually agreed upon or if not contractually agreed upon, of the corresponding regular remuneration for such use from the person who infringed his right intentionally or by gross negligence.
- (2) In the case referred to in paragraph (1) of this Article it may not be proven that the damage did not occur.
- (3) In case that the actual damage exceeds the amount of penalty referred to in paragraph (1) of this Article, the right holder has a right to claim the difference to full actual damages.

***STATUTE OF LIMITATIONS***

Article 184

- (1) The right to protection of rights under this Act shall not be subject to the statute of limitations, unless otherwise provided by this Act.
- (2) The claims under this Act, which are by their nature obligatory, and for which special time limit as to statute of limitations is not provided, shall be subject to statute of limitations according to the general rules to that effect.

***PROVISIONAL MEASURES***

Article 185

- (1) At a proposal of an authorized person who makes it likely that a right under this Act has been infringed or that there is likelihood of imminent infringement of such rights, the court may order, in particular:
  - provisional seizure or exclusion from circulation of objects or means infringing such rights or serving for the infringement, or resulting from the infringement, or of objects and means that may serve as evidence of the committed infringement of such rights,
  - prohibition of continuation of acts which might infringe such rights, or are infringing such rights,



- prohibition of a performance unlawfully using the rights provided by this Act.
- (2) The court shall order a proposed provisional measure, if the other party, at the invitation by the court, and upon the proposal of the authorized person, fails to submit the relevant document or other proof showing that she or he does not infringe the respective right.
  - (3) If there is a risk that the later presentation of evidence on the infringement of the rights under this Act may be difficult or prevented, or if there is a risk of irreparable damage, or if there is a demonstrable risk of ineffectiveness of provisional measures provided in paragraph (1) of this Article, the court shall order such measures without prior notification of the other party (inaudita altera parte).
  - (4) The corresponding provisions of the Execution Act shall be applied to any matter concerning the ordering of provisional measures, not regulated by this Act.

#### *CUSTOMS MEASURES*

##### Article 186

On a request of the right holder of a copyright or a related right or of a collective rights management association under this Act, who makes it likely that the import, export, or crossing of the border line of certain goods would infringe the rights under this Act, the customs authorities shall take appropriate measures in accordance with special customs regulations regarding the procedure in respect of goods infringing the intellectual property rights.

#### *DUTY TO PROVIDE INFORMATION*

##### Article 187

- (1) Any person who, in the course of his business, learns of an infringement of a right under this Act, shall, at a request of a right holder or a collective rights management association, provide without delay any information and evidence related to the committed infringement, and in particular information regarding the origin of infringing copies and the manner of their putting on the market. Duty to provide information includes in particular, informing of the name and address of manufacturers, suppliers or previous owners of such copies, and information on the amount of such reproduced, distributed, received or ordered unlawfully manufactured copies.
- (2) Where the person referred to in paragraph (1) of this Article fails to give the required information or evidences in his possession, she or he shall be liable for damages that may be caused by his failure to comply.
- (3) The provision of paragraph (1) of this Article shall not apply in respect of persons who would in a civil proceeding have the right to refuse to testify or to answer to particular questions.

## **VI. PENAL PROVISIONS**

### **1. Criminal acts**

#### *INFRINGEMENT OF THE RIGHT OF DISTRIBUTOR OF ENCRYPTED SATELLITE SIGNAL*

##### Article 188

- (1) Whoever, without the authorization of a lawful distributor of the encrypted satellite signal, manufactures, imports, distributes, rents or otherwise makes available to the public, or, provides services of installing tangible or intangible device or system for decoding such signal, if he knows or has reasonable grounds to know that the device or system serves primarily for decoding an encrypted satellite signal, shall be punished by a fine or by imprisonment up to three years.
- (2) If the commitment of the criminal act referred to in paragraph (1) of this Article has resulted in a substantial financial gain or has caused a substantial damage, and the perpetrator has acted with the aim of acquiring such financial gain or causing such damage, he shall be punished by imprisonment from six months up to five years.
- (3) Whoever receives an encrypted satellite signal that has been decoded without the authorization of its lawful distributor or further distributes such signal, if he knows or has reasonable grounds to know that such signal is decoded without authorization, shall be punished by a fine.
- (4) If the commitment of the criminal act referred to in paragraph (3) of this Article has resulted in substantial financial gain or has caused substantial damage, and the perpetrator acted with the aim of acquiring such financial gain or causing such damage,

he shall be punished by a fine or by imprisonment up to three years.

- (5) The objects intended or used for the commitment of the criminal act or resulting from the commitment of the criminal act referred to in paragraphs (1) and (2) of this Article shall be seized and destroyed.

## 2. Misdemeanours

### *INFRINGEMENT OF COPYRIGHT AND RELATED RIGHTS*

#### Article 189

- (1) Any legal entity shall be punished for a misdemeanour by a fine amounting from HRK 5,000.00 up to 50,000.00, if it:

1. without the authorization of the author discloses for the first time or prior to disclosure reveals to the public the content or description of the copyright work, or uses the work without indication of the authorship unless the author has declared in a written form that he does not want to be indicated, or if certain use is such that prevents the indication of the authorship, or without the authorization distorts, mutilates or otherwise modifies a copyright work, or uses the work in a manner that is jeopardizing or would jeopardize the author's honour or reputation (Articles 14 - 16),
2. without the authorization of the author, or other copyright holder or a collective rights management association reproduces, distributes, stores, or undertakes other acts for the purpose of distribution, or otherwise communicates to the public a copyright work, or alters it, or uses the work without paying remuneration, or otherwise unlawfully uses the work (Articles 18 - 33),
3. distributes or possesses for commercial purposes a copy of a computer program, knowing or having reasons to believe that it is the infringing copy, distributes or possesses for commercial purposes any means the sole intended purpose of which is to facilitate unauthorized removal or circumvention of a technical device for the protection of a computer program (Article 112).
4. without indication of the name, pseudonym or any other mark of a performer, unless the performer has

declared in a written form that he does not want to be indicated, or if certain public use is such that prevents such indication, publicly uses his performance, or without the authorization of a performer distorts, mutilates or otherwise modifies the performance, or uses the performance in a manner that is jeopardizing or would jeopardize performer's honour or reputation (Article 124),

5. without the authorization of a performer or of a collective performer' rights management association fixes its unfixed performances, reproduces, distributes, stores or undertakes other acts for the purpose of distribution rents, publicly transmits performer's unfixed performances, publicly communicates by phonograms or videograms, publicly presents, broadcasts or rebroadcasts performer's unfixed and fixed performances, makes available to the public, or otherwise unlawfully uses his performance (Article 125),
6. without the authorization of a producer of phonograms or of a collective performers' rights management association reproduces, distributes, stores or undertakes other acts for the purpose of distribution, rents, makes available to the public or otherwise unlawfully uses his phonogram (Article 133),
7. without the authorization of a film producer or of an authorized distributor to whom the film producer has transferred his right reproduces, distributes, stores or undertakes other acts for the purpose of distribution, rents, publicly presents, makes available to the public or otherwise unlawfully uses the original of a videogram or its copies (Article 139),
8. without the authorization of a broadcasting organization rebroadcasts its broadcasts by wireless means or by wire, reproduces, distributes, stores or undertakes other acts for the purpose of distribution, publicly communicates a broadcast against payment of an entrance ticket, makes available to the public or otherwise unlawfully uses the fixations of its broadcasts (Article 143),

9. without the authorization of a lawful distributor of an encrypted satellite signal, manufactures, puts into circulation, distributes, rents, makes available to the public, installs or adapts a device or a system for decoding of encrypted satellite signal, or receives an unlawfully decoded satellite signal or otherwise unlawfully uses the encrypted satellite signal (Article 188),
  10. without the authorization of a publisher and without paying him a remuneration photocopies for private or other personal use his written editions (Article 145),
  11. without the authorization of a maker of databases reproduces, distributes, rents, makes available to the public, communicates to the public or otherwise unlawfully uses his databases (Article 149),
  12. circumvents the technological measures for the protection of copyright and related rights (Article 175),
  13. removes or alters the electronic right-management information on copyright and related rights (Article 176).
- (2) A responsible person in a legal person shall be punished for the misdemeanours referred to in paragraph (1) of this Article by a fine amounting from HRK 2,000.00 up to 10,000.00.
  - (3) A natural person, including a craftsman or a single trader shall be punished for the misdemeanours referred to in paragraph (1) of this Article by a fine amounting from HRK 2,000.00 up to 10,000.00.
  - (4) The objects resulting from the commitment of misdemeanours referred to in paragraph (1) of this Article shall be seized and destroyed, and the objects intended for or used in the commitment of misdemeanours referred to in paragraph (1) of this Article shall be seized.
  - (5) A legal or a natural person, including a craftsman or a single trader who commit the misdemeanours referred to in paragraph (1) of this Article in the course of their business activity, may be pronounced a safety measure prohibiting the performance of their business activities, or the part thereof infringing a copyright or a related right, for a period of one year, if the committed misdemeanour is especially serious, owing

to the manner of commitment, its consequences, repeated commitment or other circumstances of the committed misdemeanour which make it particularly severe.

### *FAILURE TO PROVIDE INFORMATION TO A COLLECTIVE RIGHTS MANAGEMENT ASSOCIATION*

#### Article 190

- (1) Any legal person which does not submit to the collective rights management association under this Act the complete information regarding the use of the rights which are collectively managed by such association within 15 days from the date of such use, unless otherwise provided by a legal transaction, shall be punished for a misdemeanour by a fine amounting from HRK 3,000.00 up to 30,000.00.
- (2) A responsible person in a legal person shall be punished for the misdemeanours referred to in paragraph (1) of this Article by a fine amounting from HRK 1,000.00 up to 5,000.00.
- (3) A natural person, including a craftsman or a single trader shall be punished for the misdemeanours referred to in paragraph (1) of this Article by a fine amounting from HRK 1,000.00 up to 5,000.00.

### *UNAUTHORIZED COLLECTIVE MANAGEMENT OF RIGHTS*

#### Article 191

- (1) Any legal person which, without the authorization, or contrary to the authorization of the competent authority performs the collective management of rights, shall be punished for a misdemeanour by a fine amounting from HRK 5,000.00 up to 50,000.00.
- (2) A responsible person in a legal person shall be punished for the misdemeanour referred to in paragraph (1) of this Article by a fine amounting from HRK 1,000.00 up to 5,000.00.

### *MISDEMEANORS COMMITTED FOR ECONOMIC BENEFIT*

#### Article 192

- (1) If any legal person commits the misdemeanours under this Act for economic benefit, it shall be punished by a fine

- amounting from HRK 10,000.00 up to 100,000.00.
- (2) A responsible person in a legal person shall be punished for the misdemeanours referred to in paragraph (1) of this Article by a fine amounting from HRK 4,000.00 up to 10,000.00.
- (3) A natural person, including a craftsman or a single trader shall be punished for the misdemeanours referred to in paragraph (1) of this Article by a fine amounting from HRK 4,000.00 up to 10,000.00.
- (4) Without prejudice to the provisions of paragraphs (2) and (3) of this Act, a foreign person shall not have more extensive protection in the Republic of Croatia than it has in the state of which he is a national or in which he has its principal place of business, if the persons referred to in paragraph (1) of this Article have in the state of the foreign person less extensive protection than they have been granted under this Act. "The actual reciprocity shall be considered to exist until proven to the contrary."

### *STATUTE OF LIMITATIONS*

#### Article 193

The procedures regarding misdemeanours under this Act may not be initiated after the expiration of three years as from the commitment of misdemeanours, and pronounced sentences regarding misdemeanours may not be executed after the expiration of two years following the day on which the decision on the misdemeanours becomes valid.

## **VII. SCOPE OF THIS ACT**

### *IN GENERAL*

#### Article 194

- (1) Protection under this Act shall be enjoyed by the authors and holders of related rights who are nationals of the Republic of Croatia or have their principle place of business in the Republic of Croatia.
- (2) Foreign natural or legal persons (foreigners) shall enjoy the same protection as is enjoyed by the persons referred to in paragraph (1) of this Article within the scope of obligations assumed by the Republic of Croatia under international agreements or on the basis of actual reciprocity.
- (3) Regardless of the provisions of paragraphs (1) and (2) of this Article, foreign nationals, under this Act, shall enjoy the protection:
1. with respect to the works written in the Croatian language;
  2. with respect to moral rights - in any case;
  3. with respect to resale right and rights to databases as the subject matter of related rights - based on actual reciprocity.

### *AUTHORS*

#### Article 195

In addition to persons referred to in Article 194 paragraphs (2) and (3) of this Act, the protection under this Act shall be enjoyed by foreign authors:

1. who have a habitual residence in the Republic of Croatia;
2. with respect to the works of architecture which are built in the territory of the Republic of Croatia and the works of visual arts, which are firm integral parts of a real estate located in the territory of the Republic of Croatia.

### *PERFORMERS*

#### Article 196

In addition to persons referred to in Article 194 paragraphs (2) and (3) of this Act, the protection, pursuant to Article 194 paragraph (4) of this Act, shall be enjoyed by the foreign performers, who have their habitual residence in the Republic of Croatia.

### *PRODUCERS OF PHONOGRAMS AND FILM PRODUCERS*

#### Article 197

In addition to persons referred to in Article 194 paragraphs (2) and (3) of this Act, the protection, pursuant to Article 194, paragraph (4) of this Act, shall be enjoyed by foreign producers of phonograms and film producers if the first fixation of their phonogram or videogram occurred in the Republic of Croatia.

### *BROADCASTING ORGANIZATIONS*

#### Article 198

In addition to persons referred to in Article 194 paragraphs (2) and (3) of this Act, the protection pursuant to Article 194, paragraph (4) of this Act, shall be enjoyed by foreign broadcasting

organizations that transmit their broadcasts through transmitters located in the territory of the Republic of Croatia.

#### *COMPARISON OF TERMS OF PROTECTION*

##### Article 199

- (1) The terms of protection under this Act shall apply to foreign authors who enjoy protection under this Act, but the terms of protection shall expire not later than on the day when the protection expires in the state of which these authors are nationals, and shall not exceed the terms under this Act.
- (2) Within the scope of application of international treaties, the terms of protection under this Act shall apply to foreign holders of related rights who enjoy protection under this Act, but the terms of protection shall expire not later than on the day when the protection expires in the state of which these holders are nationals or in which they have their principle place of business, and shall not exceed the terms provided by this Act.

#### *SPECIAL PROVISIONS CONCERNING COMMUNICATION TO THE PUBLIC BY SATELLITE*

##### Article 200

- (1) Protection under this Act shall be enjoyed by the foreign authors and holders of related rights according to Article 194, paragraph (4) of this Act, whose copyright work or subject matter of related rights has been communicated to the public by satellite, when, under the control and responsibility of a broadcasting organization, the relevant program-carrying signals have been introduced in the Republic of Croatia in an uninterrupted chain of communication leading to a satellite and down to the earth.
- (2) The protection under this Act shall be available when the condition referred to in paragraph (1) of this Article has not been fulfilled, but:
  1. an uplink station from which the program-carrying signals are transmitted is located in the Republic of Croatia, or
  2. a broadcasting organization, which commissioned the communication to the public by satellite, has its principle place of business in the Republic of Croatia.

#### *STATELESS PERSONS*

##### Article 201

- (1) Authors and holders of related rights that have no nationality or whose nationality cannot be determined, shall enjoy equal protection under this Act as the nationals of the Republic of Croatia, if they have their habitual residence in the Republic of Croatia.
- (2) If they do not have their habitual residence in the Republic of Croatia, they shall enjoy equal protection as the nationals of the state in which they have their habitual residence.

#### **VIII. TRANSITIONAL AND FINAL PROVISIONS**

#### *PROVISION ON THE APPLICATION OF THE ACT TO THE RIGHTS EXISTING BEFORE ITS ENTRY INTO FORCE*

##### Article 202

- (1) This Act shall apply to all copyright works, performances and broadcasts of broadcasting organizations in respect of which the rights have not expired before the date on which this Act enters into force.
- (2) This Act shall apply to phonograms and to performances fixed thereon, if 50 years from their first fixation, or lawful publication or lawful communication to the public have not expired counting from the beginning of the calendar year in which this Act entered into force.
- (3) This Act shall apply to videograms and publishers' editions, as subject matter of related rights, which have been first fixed or lawfully published after the entry into force of this Act.
- (4) This Act shall apply to databases, as subject matter of related rights, which were produced after 1 January 1983.
- (5) All the rights acquired before the entry into force of this Act, including those acquired under Articles 19 - 23 of the Copyright Act (Official Gazette of the Republic of Croatia nos. 9/1999, 76/1999, 127/1999 and 67/2001) shall remain intact, and collective copyright and related rights management associations' tariffs (price lists) shall apply even after the entry into force of this Act.
- (6) The provisions of the Copyright Act (Official Gazette of the Republic of Croatia nos. 9/1999, 76/1999, 127/1999 and 67/2001) shall apply for three years as from the date



of entry into force of this Act to copyright works created after this Act entered into force in the framework of employment contracts concluded before the entry into force of this Act.

- (7) All legal transactions made after the entry into force of this Act, which are not in compliance with the provisions of this Act on Copyright in Legal Transactions shall be null and void, if their contents cannot be brought under the provisions of this Act on Copyright in Legal Transactions.
- (8) The collective copyright and related rights management associations shall apply for the grant of the authorization referred to in Article 157 of this Act within 12 months as from the date of entry into force of this Act.

#### *SPECIAL PROVISION ON COMPUTER PROGRAMS AND DATABASES*

##### Article 203

The provisions of this Act on computer programs and databases shall also apply to computer programs and databases created before the date on which this Act entered into force, provided such application is without prejudice to contracts concluded and rights acquired before that date.

#### *PENDING PROCEDURES*

##### Article 204

Pending procedures regarding the protection of the rights laid down in Articles 177 - 182 of this Act, initiated before the date of entry into force of this Act, shall be carried out in compliance with the provisions being in force up to the date of entry into force of this Act.

#### *SUBORDINATE LEGISLATION*

##### Article 205

- (1) The Minister shall enact:
1. Regulations on Professional Criteria and Procedure of Granting Authorizations for Collective Management of Rights, referred to in Article 169 paragraph (2) of this Act;
  2. Regulations on Remunerations for Operation of the Council of Experts and Rules of Procedure of the Council of Experts, referred to in Article 164, paragraph (6) of this Act
- within 6 months as from the date of entry into force of this Act, and shall lay down

measures referred to in Article 98, paragraph (2) within one year as from the date of entry into force of this Act.

- (2) The Minister shall enact the Regulations and the measures referred to in paragraph (1) of this Article, in line with the prior opinion of the Office.

#### *OBLIGATION OF FURNISHING A GENERAL STATEMENT OF ACCOUNT*

##### Article 206

Collective rights management associations shall, within six months after the entry into force of this Act, furnish to the Office the first revised general statement of account regarding the distribution referred to in Article 167, paragraph (8) of this Act.

#### *CEASE OF THE VALIDITY OF LEGAL PROVISIONS*

##### Article 207

- (1) On the date this Act enters into force, the Copyright Act (Official Gazette of the Republic of Croatia NN nos. 53/1991, 58/1993, 9/1999 - Consolidated text, 76/1999, 127/1999 and 67/2001), and the Act on Publishing Activity (Official Gazette of the Republic of Croatia NN no. 28/1983) shall cease to be in force.
- (2) Subordinate legislation in force up to the date of entry of this Act into force, shall apply until the enactment of the subordinate legislation pursuant to this Act, unless contrary to this Act.

#### *ENTRY INTO FORCE OF THIS ACT*

##### Article 208

This Act shall enter into force on the eight day following its publication in the Official Gazette of the Republic of Croatia.

## THE ACT ON AMENDMENTS TO THE COPYRIGHT AND RELATED RIGHTS ACT

### Article 1

In the Copyright and Related Rights Act (Official Gazette 167/2003) in Article 4, paragraph (2) is amended to read:

“(2) The provisions of this Act concerning the definitions of particular economic rights of the author, the right to remuneration for reproduction of works for private or other personal use, the right to remuneration for public lending, as well as the exhaustion of the rights of distribution, exceptions and limitations of copyright, the beginning of the terms of protection and the effects of expiration of the terms of copyright, legal transactions of copyright, and the relation between copyright and ownership shall apply *mutatis mutandis* to related rights, unless otherwise specially provided for them, or arising from their legal nature.”

### Article 2

In Article 8, paragraph (2), item 1, the word “standards” is deleted.

In paragraph (3), the second sentence is amended to read:

“The remuneration shall be used for the stimulation of the respective artistic and cultural creativity of predominantly non-commercial nature and cultural diversity in the respective artistic and cultural field in accordance with Article 167a, paragraph (1) of this Act.”

### Article 3

In Article 20 paragraph (2), the words “in the territory of the Republic of Croatia” are replaced by the words “in the territory of any of the Member States of the European Union, or any of the States Parties to the Agreement Creating the European Economic Area, respectively.”

### Article 4

In Article 32, paragraph (5), items 1 and 3 the Croatian word translated as “appliances” is replaced by another Croatian word, with no relevance to the English translation.

In item 2 the words “audio or video” are replaced by the words “audio, video or text”.

After paragraph (7), paragraph (8) is added to read:

“(8) An appropriate remuneration referred to in this Article shall be the one that has to be given fairly in a legal transaction, taking into account the likelihood of damage incurred to the author, where

his work is without his authorization reproduced for private or other personal use, the application of technological protection measures, and other circumstances that may affect a proper decision on the form and amount of the appropriate remuneration.”

### Article 5

In Article 39, paragraph (1), the words “paragraph (1)” are deleted.

### Article 6

In Article 44, paragraph (5), a sentence is added to read:

“In the case of doubt, a legal transaction comprising a disposition of copyright shall in other cases be interpreted for the benefit of the author.”

In paragraph (6) the Croatian word translated as “exploitation” is replaced by another Croatian word, with no relevance to the English translation.

### Article 7

In Article 52, paragraph (3) the word “use” is replaced by the word “exploitation”.

### Article 8

In Article 86, a missing Croatian word is inserted with no relevance to the English translation.

### Article 9

In Article 98, in paragraph (1), the Croatian word translated as “technological” is replaced by another Croatian word, with no relevance to the English translation.

Paragraph (2) is amended to read:

“(2) If the authors or other persons, respectively, who applied technological protection measures to prevent access to a copyright work or the use of it, or who are authorized and have the possibility to remove them, fail to comply with the provisions of paragraph (1) of this Article, the person who claims to be authorized pursuant to any of the provisions of Articles 82 to 87 of this Act to use a copyright work without the author’s authorization or without the author’s authorization and without payment of remuneration, may institute a legal action against the author or other person, respectively, who has applied technological measures or who is authorized and has the possibility to remove them, claiming provision of access to the copyright work and its use in compliance with the limitation referred to in any of Articles 82 to 87 of this Act. The plaintiff shall prove in the legal action that the conditions laid down in Article 80 of this Act have been fulfilled.”

After paragraph (2), a new paragraph (3) is inserted to read:

“(3) Notwithstanding the provisions of paragraph (2) of this Article, the person who claims to be authorized pursuant to any of the provisions of Articles 82 to 87 of this Act to use a copyright work without the author’s authorization, or without the author’s authorization and without payment of remuneration, or the author or other person, respectively, who has applied technological protection measures to prevent the access to or use of copyright works, or who is authorized or has the possibility to remove them, may call upon the mediation of the Council of Experts referred to in Article 164 of this Act, in respect of the access to a copyright work and the use thereof in accordance with the limitation referred to in any of Articles 82 to 87 of this Act. The Council of Experts shall carry out the mediation in accordance with the provisions of Article 163 of this Act.

The former paragraph (3) becomes Paragraph (4).

In the former paragraph (4), which becomes paragraph (5), the Croatian word translated as “chosen” is replaced by the same Croatian word in its correct form.

After paragraph (5), a new paragraph (6) is inserted to read:

“(6) The right holder or other person, respectively, who applied the technological measures or who is authorized or has the possibility to remove them, must, for the purpose of ensuring the effective application of paragraph (1) of this Article, indicate clearly and distinctly the application of technological measures on every copy of the copyright work produced or imported for commercial purposes, including information on the technological measure and its effects, as well as her/his name and address for contact.”

#### Article 10

In Article 109, paragraph (3) is inserted to read:

“(3) The provisions of Article 20 of this Act on the exhaustion of the right of distribution shall apply mutatis mutandis to computer programs.”

#### Article 11

In Article 128, paragraph (1), Article 136 and Article 141, the Croatian word translated as “equitable” is replaced by another Croatian word translated as “appropriate”.

#### Article 12

In Article 143, paragraph (2) the Croatian word translated as “distributor” is replaced by another Croatian word translated as “operator”.

#### Article 13

In Article 145, paragraph (1), after the word “right to” the Croatian word translated as “appropriate” is inserted.

#### Article 14

In Article 163, paragraph (1) is amended to read:

“(1) The Council of Experts shall also carry out the mediation in respect of conclusions of the contracts on cable retransmission between the broadcasting organizations and cable operators, and the mediation in respect of the provision of the access to a copyright work and its use, in compliance with the limitation referred to in any of Articles 82 to 87 of this Act, between a person who claims to be authorized pursuant to the provisions of this Act to use a copyright work without the author’s authorization, or without the author’s authorization and without payment of remuneration, and the author, or other person, respectively, who applied technological protection measures to prevent the access to or the use of copyright works, or who is authorized and has the possibility to remove them.”

In paragraph (2) the Croatian words translated as “cable retransmission” are replaced by other Croatian words with no relevance to the English translation.

After paragraph (3), paragraph (4) is inserted to read:

“(4) The provisions of paragraphs (2) and (3) of this Article shall apply mutatis mutandis to the mediation referred to in paragraph (1) of this Article in respect of provision of the access to a copyright work and the use thereof in compliance with the limitation referred to in any of Articles 82 to 87 of this Act.”

#### Article 15

In Article 164 paragraph (7) number “7” is replaced by number “6”

#### Article 16

In Article 167, paragraph (3), the word “only” is deleted, and after the word “Article” the Croatian words translated as “and the provisions of this Act” are inserted.

In paragraph (5) two sentences are added to read:

“The total amount of expenses of an association shall also include the financial means spent on the improvement of the system of management and protection of copyright and related rights. Beside such established expenses, the bodies of the association may decide to spend maximum 3% of the total amount of the collected remunerations on measures against piracy and counterfeiting, as

well as on other measures aimed at raising the awareness of the value of copyright and related rights.”

#### Article 17

After Article 167, a heading and Article 167a are added to read:

“STIMULATION OF CREATIVITY AND CULTURAL DIVERSITY

Article 167a

(1) A collective management association shall provide for, in the powers of attorney for representation given by their members, and in international reciprocity agreements, allocations to the fund intended for stimulation of the respective artistic and cultural creativity of predominantly non-commercial nature and cultural diversity in the respective artistic and cultural fields, which fund shall be provided for by the association in the rules referred to in Articles 167, paragraphs (1) and (2) of this Act. The revenues of the fund shall not be used for other purposes, such as expenses referred to in Article 167 paragraph (5) of this Act.

(2) The association shall also allocate the total amount of collected remunerations, which have not been distributed during a period of 5 years due to justified impossibility to establish the right holders or the subject matters of protection, to the fund referred to in paragraph (1) of this Article.

(3) Without regard to the allocations referred to in paragraphs (1) and (2) of this Article, the association shall allocate 30% of the amount, collected from remunerations for reproduction for private or other personal use referred to in Article 32, Article 128, paragraph (1), Article 136, Article 141 and Article 145, paragraph (1) of this Act, to the fund referred to in paragraph (1) of this Article.

(4) A collective body of the association, established by the statute of the association shall decide on the distribution of financial means contained in the fund, and shall inform thereof the assembly of the association in accordance with the statute of the association. The association shall communicate a report on the allocations to the fund, referred to in paragraph (1) of this Article, as well as on the distribution of financial means contained in the fund, to the Office and the Minister of Culture, at the end of every year for the preceding year. The association shall distribute the funds exclusively for the purpose of stimulating the respective artistic and cultural creativity of the predominantly non-commercial nature and cultural diversity in the respective artistic and cultural field.”

#### Article 18

In Article 181 paragraph (4), in the first sentence, after the words “the court may” a comma is

inserted and is followed by the Croatian words translated as “within the limits of the claim”.

#### Article 19

A heading above Article 185 is amended to read: “PROVISIONAL MEASURES DUE TO THE INFRINGEMENT OF RIGHTS”

Article 185 is amended to read:

“(1) Upon the request of the right holder under this Act who makes it likely that her/his right has been infringed or threatened to be infringed, the court may order any provisional measure comprising the termination or prevention of the infringement, and in particular:

- order the opposing party to cease or desist from, respectively, the acts infringing the right conferred under this Act; the court may also issue such order against an intermediary whose services are being used by a third party to infringe the right conferred under this Act;

- order the seizure or removal from the market of the goods unlawfully infringing the right conferred under this Act.

(2) Upon the request of the right holder under this Act who makes it likely that his right has been infringed on a commercial scale for the purpose of acquiring commercial or economic benefit, and that such infringement has threatened to cause him irreparable damage, the court may, in addition to the provisional measures referred to in paragraph (1) of this Article, order the seizure of the movable and immovable property of the opposing party, not directly related to the infringement, including the blocking of his bank accounts and other assets.

(3) For the purpose of ordering and enforcing the provisional measure referred to in paragraph (2) of this Article, the court may require from the opposing party or other relevant persons disposing with it, the communication of the banking, financial and other economic information, or the access to other relevant information and documents. The court shall ensure the protection of confidentiality of such information, and prohibit any misuse thereof.

(4) The provisional measure referred to in paragraph (1) of this Article may be ordered without informing the opposing party thereof, if the applicant for measures makes it likely that otherwise the provisional measure would not be effective, or that irreparable damage is threatened to occur. The provisional measure referred to in paragraph (2) of this Article may be ordered without informing the opposing party thereof, if the applicant for measures makes it likely that otherwise the provisional measure would not be effective, or that, taking into consideration a very serious circumstances of the infringement, this would be necessary. If a provisional measure is

ordered without informing the opposing party thereof, the court shall communicate a decision on the provisional measure to the opposing party, promptly upon its enforcement.

(5) In the decision ordering a provisional measure the court shall specify the duration of such measure, and, if the measure has been ordered before the institution of a legal action, the period, within which the applicant for measures shall institute a legal action to justify the measure, which shall not be less than 20 working days and not more than 31 calendar days, from the communication of the decision to the applicant for measures, whichever expires later.

(6) The provisions of the Execution Act shall apply to matters, not regulated by this Article.

(7) The provisions of this Article shall be without prejudice to the possibility to order provisional measures pursuant to other provisions of this Act, and the provisions of the Execution Act.”

#### Article 20

After Article 185, headings and Articles 185a, 185b and 185c are added to read:

#### “PROVISIONAL MEASURES COMPRISING THE PRESERVATION OF EVIDENCE

##### Article 185a

(1) Upon the request of the right holder under this Act who makes it likely that his right has been infringed or threatened to be infringed, the court may order a provisional measure comprising the preservation of evidence.

(2) By the provisional measure referred to in paragraph (1) of this Article, the court may order in particular:

- preparation of a detailed description of the goods made likely to infringe a right under this Act, with or without taking of samples;
- seizure of the goods made likely to infringe a right under this Act;
- seizure of the materials and implements used in the production and distribution of the goods made likely to infringe a right under this Act and the documentation relating thereto.

(3) The provisional measure referred to in this Article may be ordered even without informing the opposing party thereof, if the applicant for measures makes it likely that there is a risk of evidence being destroyed or irreparable damage of incurring. If a provisional measure is ordered without informing the opposing party thereof, the court shall communicate a decision on the provisional measure to the opposing party, promptly upon its enforcement.

(4) In the decision ordering a provisional measure the court shall specify the duration of the measure,

and, if the measure has been ordered before the institution of a legal action, the period, within which the applicant for measures shall institute a legal action to justify the measure, which shall not be less than 20 working days and not more than 31 calendar days, from the date of communication of the decision to the applicant for measures, whichever expires later.

(5) The provisions of the Execution Act shall apply to matters, not regulated by this Article.

(6) The provisions of this Article shall be without prejudice to the possibility of the court to order provisional measures comprising the preservation of evidence pursuant to the provisions of the Act on Civil Proceedings.

#### TAKING OF EVIDENCE IN THE COURSE OF THE CIVIL PROCEEDINGS

##### Article 185b

(1) Where a party to the civil proceedings invokes evidence claiming that it lies with the opposing party or under its control, the court shall invite the opposing party to present such evidence within a specified time limit.

(2) Where the right holder under this Act as a plaintiff in a legal action claims that the infringement of the right conferred under this Act has been committed on a commercial scale for the purpose of acquiring commercial or economic benefit, and has made it likely during the proceedings, and where he invokes in the proceedings, banking, financial or similar economic documents, papers or the like evidence, claiming that they lie with the opposing party or under its control, the court shall invite the opposing party to present such evidence within a specified time limit.

(3) Where the party, which is invited to present evidence, denies that the evidence lies with it or under its control, the court may take evidence to establish such a fact.

(4) The provisions of the Act on Civil Proceedings relating to the right of refusal to present evidence as a witness shall apply mutatis mutandis to the right of the party to refuse to present evidence.

(5) The court shall, taking into consideration all the circumstances of the case, decide at its own discretion, on the importance of the fact that the party having the evidence refuses to comply with the court's decision ordering it to present evidence, or denies, contrary to the court's opinion, that the evidence lies with it.

(6) Against the decision of the court referred to in paragraphs (1) and (2) a separate appeal shall not be allowable.

#### EXPEDITIOUS PROCEEDINGS AND APPLICATION OF THE PROVISIONS OF OTHER ACTS

##### Article 185c



(1) A procedure concerning the infringement of the rights conferred under this Act shall be expeditious.

(2) The provisions of the Act on Civil Proceedings, and the Execution Act, respectively, shall apply to the procedures concerning the infringement of the rights conferred under this Act."

#### Article 21

The heading above Article 187 is amended to read: "CLAIM FOR PROVISION OF INFORMATION

Article 187 is amended to read:

"(1) The holder of the right under this Act who has instituted civil proceedings for the protection of the rights in the case of infringement may claim the provision of information on the origin and distribution channels of the goods infringing his right.

(2) The claim referred to in Article 1 may be made in the form of a legal action or a provisional measure against:

- a person who has been sued in the civil proceedings referred to in paragraph (1) of this Article;

- a person who is, within her/his economic activities, in possession of the goods suspected of infringing a right conferred under this Act;

- a person who provides, within her/his economic activities, services suspected of infringing a right conferred under this Act;

- persons who provide, within their economic activities, services used in the activities suspected of infringing a right conferred under this Act;

- a person who is indicated by any of the mentioned persons as being involved in the manufacture or distribution of the goods or the provision of the services suspected of infringing a right conferred under this Act;

(3) The claim referred to in Article 1 may also be included in a gradual legal action as the first claim, provided that a person acting as a counter party to the defendant is also included in the main claim.

(4) The claim for information on the origin of the goods and distribution channels of the goods and services referred to in paragraph (1) of this Article may include in particular:

- information on the names and addresses of the producers, distributors, suppliers and other previous holders of the goods and providers of the services, respectively, as well as the intended wholesalers and retailers;

- information on the quantities produced, delivered, received or ordered, as well as the price obtained for the goods or services concerned.

(5) The person required to provide the information referred to in this Article may refuse to provide such information on the same grounds as those allowing the refusal to present evidence as a witness pursuant to the provisions of the Act on Civil Proceedings. If the person concerned refuses to provide information without justified reasons, she/he shall be responsible for the damage incurred, pursuant to the provisions of the Obligations Act.

(6) The provisions of this Article shall be without prejudice to the provisions on the manner of use of confidential information in civil and criminal proceedings, the provisions regulating the responsibility for misuse of the right to acquire information, and the provisions regulating the processing and protection of personal data.

(7) The provisions of this Article shall be without prejudice to the provisions of Articles 185a and 185b of this Act, regulating the taking of evidence."

#### Article 22

In Article 189, paragraph (1) item 1, after the Croatian word translated as "in a manner that" the Croatian word is deleted, with no relevance to the English translation.

In item 5, the Croatian word translated as "videogram" is replaced by another Croatian word, with no relevance to the English translation.

In item 7, the Croatian words translated as "the original of a videogram" is replaced by the Croatian word translated as "videogram"

In paragraph (3), the words "including a craftsman and a single trader" are deleted.

After paragraph (3), a new paragraph (4) is added to read:

"(4) A natural person - a craftsman or other self-employed person, respectively, shall be punished for the misdemeanors, referred to in paragraph (1) of this Article, by a fine amounting from HRK 5 000.00 to 50 000.00, where the misdemeanor has been committed in the performance of her/his activities as a craftsman or other self-employed person, respectively."

The former paragraphs (4) and (5) become paragraphs (5) and (6).

#### Article 23

After Article 189, a heading and Article 189a are added to read:

"FAILURE TO ENFORCE THE LIMITATION OF COPYRIGHT AND RELATED RIGHTS

Article 189a

(1) Any legal entity shall be punished for a misdemeanor by a fine amounting from HRK 5 000.00 to 30 000.00, if it:

1. fails to provide the persons who are authorized, pursuant to the provisions of Articles 82 to 87 of this Act, to use a copyright work or the subject matter of related rights, and who have proved that the conditions laid down in Article 80 of this Act have been fulfilled, with the means enabling them to use a copyright work or a subject matter of related rights, in accordance with the limitations referred to in Articles 82 to 87 of this Act (Article 98, paragraph (1)).

2. fails to indicate the application of technological measures on a copy of the copyright work or the subject matter of related rights, produced or imported for commercial purposes (Article 98, paragraph 6).

(2) A responsible person in a legal entity shall be punished for the misdemeanors, referred to in paragraph (1) of this Article, by a fine amounting from HRK 1 000.00 to 5 000.00.

(3) A natural person shall be punished for the misdemeanors, referred to in paragraph (1) of this Article, by a fine amounting from HRK 1 000.00 to 5 000.00.

“(4) A natural person - a craftsman or other self-employed person, respectively, shall be punished for the misdemeanors, referred to in paragraph (1) of this Article, by a fine amounting from HRK 5 000.00 to 30 000.00, where the misdemeanor has been committed in the performance of her/his activities as a craftsman or other self-employed person, respectively.

#### Article 24

In Article 190, paragraph (1) number “3,000.00” is replaced by number “5 000.00”.

In paragraph (3) the words “including a craftsman or a single trader” are deleted.

After paragraph (3), paragraph (4) is added to read:

“(4) A natural person - a craftsman or other self-employed person, respectively, shall be punished for the misdemeanors, referred to in paragraph (1) of this Article, by a fine amounting from HRK 5 000.00 to 50 000.00, where the misdemeanor has been committed in the performance of her/his activities as a craftsman or other self-employed person, respectively.”

#### Article 25

In Article 192, paragraph (3) the words “including a craftsman or a single trader” are deleted.

After paragraph (3), paragraph (4) is added to read:

“(4) A natural person - a craftsman or other self-employed person, respectively, shall be punished for the misdemeanors, referred to in paragraph (1)

of this Article, by a fine amounting from HRK 5 000.00 to 100 000.00, where the misdemeanor has been committed in the performance of her/his activities as a craftsman or other self-employed person, respectively.”

#### Article 26

After Article 192, a heading and Article 192a are added to read:

“INJURED PARTY

Article 192a

An injured party in the criminal and misdemeanor procedures shall be a person who is the holder of the infringed right, as well as a collective management association, where the rights collectively managed by it or the rights that it manages on the basis of the powers of attorney have been infringed.”

#### Article 27

In Article 194, paragraph (4) the Croatian word translated as “persons” is replaced by the Croatian word translated as “a person”.

#### Article 28

In Article 197, after the words “are protected” the Croatian words translated as “under this Act” are inserted, and after the words “paragraph (4)” the Croatian words translated as “under this Act” are replaced by the Croatian words translated as “of this Act”.

#### Article 29

In Article 199, paragraph (1), the Croatian words are deleted, with no relevance to the English translation.

#### Article 30

In Article 205, paragraph (1) item 2, the words “and Rules of Procedure of the Council of Experts” are deleted.

### *FINAL AND TRANSITIONAL PROVISIONS*

#### Article 31

The procedures concerning the protection of copyright and related rights against infringement, pending on the date of the entry into force of this Act, shall be completed pursuant to the provisions, which were in force before the entry into force of this Act.

Article 32

This Act shall enter into force on the eight day following the day of its publication in the Official Gazette, with the exception of the provision of Article 3 thereof, which shall enter into force on the day of the acceptance of the Republic of Croatia into the full membership of the European Union.