

# Copyright And Related Rights Act

And

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

NN 167/2003 in force from October 30, 2003

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

\*\*NN 80/2011 in force from July 13, 2011

\*\*\*NN 141/2013 in force from December 5, 2013

\*\*\*\*NN 127/2014 in force from November 6, 2014

\*\*\*\*\*NN 62/2017 in force from July 8, 2017

\*\*\*\*\*NN 96/2018 in force from November 8, 2018



## I. INTRODUCTORY PROVISIONS SUBJECT MATTER OF THE ACT Article

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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.

### **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.
- (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.

#### **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.

### 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.

## 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 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.

## AMOUNT BELONGING TO THE AUTHOR

### Article 36

- (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.

## 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 of 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 destructing 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.
- (3) The author cannot renounce the right referred to in paragraph (2) of this Article.

## 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.

### 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.

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

## IV. MANAGEMENT OF RIGHTS

### 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.
- (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.

## 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.
- (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.

## DISTRIBUTION OF REMUNERATIONS

### Article 166

## 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 of 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.

### 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.

- (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."

### 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.

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

Article 1

In the Copyright and Related Rights Act („Official Gazette“ Nos. 167/03 and 79/07), in Article 157 paragraph (2) item a., the words “Republic of Croatia” are replaced by the words “European Union”.

Article 2

This Act shall enter into force on the date of accession of the Republic of Croatia to the European Union.

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

### Article 1

In the Copyright and Related Rights Act ("Official Gazette" No. 167/03, 79/07, 80/11 and 125/11) after Article 1, headings above Articles and Articles 1a and 1b are added to read:

#### "TRANSPOSITION OF THE EUROPEAN UNION ACQUIS COMMUNAUTAIRE

#### Article 1a

The provisions of this Act shall be in accordance with:

- Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ L 122, 17/5/1991),
- Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 346, 27/11/ 1992),
- Council Directive 93/83/EEC of 27 September 1993 on coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6/10/1993),
- Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (OJ L 290, 24/11/1993),
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27/3/1996),
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (OJ L 167, 22/6/2001),
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ L 272, 13/10/2001),
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30/4/2004),

- Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27/12/2006),
- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (OJ L 372, 27/12/2006),
- Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 (OJ L 265, 11/10/2011) amending Directive 2006/116/EZ of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights.

#### GENDER NEUTRALITY OF EXPRESSIONS

#### Article 1b

The expressions used in this Act, having a gender meaning, irrespective of whether they are used in the male or female gender, shall include equally the male and female genders."

#### Article 2

In Article 20 paragraph (5) after the word "producer", the comma and the words "or to any other person" are deleted.

#### Article 3

After Article 100, a heading above Article 100a and Article 100a are added to read:

#### "DURATION OF COPYRIGHT FOR A MUSICAL WORK WITH WORDS

#### Article 100a

As regards a musical work with words, the term referred to in Article 99 of this Act shall be calculated from the death of the last surviving among the authors of the music and the authors of the text who have created the music or the text, respectively, specifically for the use in such musical work with words. If the music or the text, respectively, has not been created specifically for the use in such musical work with words, the general rules on the duration of copyright shall apply."

#### Article 4

Article 131 is amended to read:

"(1) The economic rights of a performer shall run for 50 years as from the performance.

(2) If, within the period referred to in paragraph (1) of this Article, the performance fixed in a phonogram is lawfully published or lawfully communicated to the public, the rights shall expire upon the expiration of 70 years from the first such publication or the first such communication to the public, whichever occurred earlier.

(3) If, within the period referred to in paragraph (1) of this Article, a fixation of the performance which is not a phonogram is lawfully published or lawfully communicated to the public, the rights shall expire upon the expiration of 50 years from the first such publication or first such communication to the public, whichever occurred earlier.”.

#### Article 5

Article 137 is amended to read:

“(1) The rights of a producer of phonograms shall run for 70 years as from the first fixation of a phonogram. If, within this period, the phonogram is lawfully published, the rights shall run for 70 years as from the first such publication. If, within this period, the phonogram is not lawfully published, but is lawfully communicated to the public, the rights shall run for 70 years as from the first such communication to the public.

(2) The terms of protection of the rights of phonogram producers referred to in paragraph (1) of this Article shall not apply, if the circumstances referred to in Article 137a of this Act have occurred.

#### Article 6

After Article 137, Chapter 2a and headings above Articles as well as Articles 137a, 137b, 137c and 137d are added to read:

#### “Chapter 2a RELATIONSHIP BETWEEN THE RIGHTS OF PERFORMERS AND THE RIGHTS OF PHONOGRAM PRODUCERS

#### TERMINATION OF A CONTRACT BETWEEN A PERFORMER AND A PHONOGRAM PRODUCER

##### Article 137a

(1) If, 50 years after the phonogram was lawfully published, or failing such publication, respectively, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in the quantity satisfying reasonable needs of the public or does not make it available to the public, the performer may terminate the contract which was concluded for the whole duration of the protection of the performer’s rights and by which the phonogram

producer was granted the right of exploitation of the performance fixed on a phonogram.

(2) Prior to the termination of the contract referred to in paragraph (1) of this Article, the performer shall notify the phonogram producer that he shall offer copies of the phonogram for sale in the quantity satisfying reasonable needs of the public and make it available to the public within a period of one year, counting from the day of receipt of the written notification of the performer.

(3) The performer may not waive the right to terminate the contract referred to in paragraph (1) of this Article.

(4) If a plurality of performers participated in the creation of a performance, they may terminate the contract on the grant of the right of exploitation of their performance fixed in a phonogram in accordance with the provision of Article 123 of this Act.

(5) If the performer terminated the contract on the grant of the right of exploitation of a performance fixed on a phonogram in accordance with paragraph (1) of this Article, the rights of the phonogram producer in this phonogram shall expire upon the expiration of 50 years from the lawful publication of the phonogram or, failing such publication, 50 years from its lawful communication to the public.

#### ANNUAL SUPPLEMENTARY REMUNERATION OF A PERFORMER

##### Article 137b

(1) If, according to the contract between a performer and a phonogram producer, which was concluded for the whole term of protection of the performer’s rights and by which the phonogram producer was granted the right of exploitation of the performance fixed in a phonogram, the performer has acquired a right to obtain a non-recurring remuneration, the performer, according to this Act, shall acquire a right to obtain an annual supplementary remuneration. The phonogram producer shall pay to the performer an annual supplementary remuneration for each full year following the 50<sup>th</sup> year after the phonogram was lawfully published or, failing such publication, the 50<sup>th</sup> year after it was lawfully communicated to the public, respectively.

(2) The performer may not waive the right to obtain the annual supplementary remuneration referred to in paragraph (1) of this Article.

(3) The annual supplementary remuneration, according to this Act, shall amount to 20% of the revenue which the phonogram producer has derived from the reproduction, distribution and making available to the public of the phonogram containing the performance of the performer

referred to in paragraph (1) of this Article. The annual supplementary remuneration shall be calculated on the basis of the revenue derived by the phonogram producer in the year preceding the year for which it is due.

(4) The obligation to pay the annual supplementary remuneration, according to this Act, shall arise in the year following the 50<sup>th</sup> year after the phonogram was lawfully published or, failing such publication, the 50<sup>th</sup> year after it was lawfully communicated to the public.

(5) The phonogram producer shall, according to this Act, give to the performer who is entitled to obtain the annual supplementary remuneration, and to the person authorized by him as well as to the association managing the right to the annual supplementary remuneration collectively, any information necessary for its payment.

#### REBALANCE OF THE CONTENT OF CONTRACTS FOR THE BENEFIT OF PERFORMERS

##### Article 137c

(1) If, according to the contract between a performer and a phonogram producer, which was concluded for the whole term of protection of the performer's rights and by which the phonogram producer was granted the right of exploitation of the performance fixed in a phonogram, the performer has acquired a right to obtain a recurring remuneration, neither possibly earlier paid advances nor any possible other deductions defined by such a contract shall be deducted when calculating the amount of such a remuneration according to this Act.

(2) The provision of paragraph (1) of this Article shall apply after the expiration of 50 years from the lawful publication of a phonogram or, failing such publication, 50 years from its lawful communication to the public, respectively.

(3) A performer shall be, according to this Act, entitled to require rebalance of the contract referred to in paragraph (1) of this Act concluded before 1 November 2013, after the expiration of 50 years from the lawful publication of a phonogram or, failing such publication, 50 years from its lawful communication to the public.

(4) If a performer and a phonogram producer fail to achieve an agreement concerning an equitable rebalance of the contract referred to in paragraph (3) of this Article, the rights of the phonogram producer in such phonogram shall expire upon the expiration of 50 years from the lawful publication of the phonogram or, failing such publication, 50 years from its lawful communication to the public, respectively.

#### CONTRACTS REMAINING IN FORCE

##### Article 137d

A contract between a performer and a phonogram producer on the grant of the right of exploitation of a performance fixed in a phonogram, concluded before 1 November 2013 shall produce its effects up to the expiration of the term of protection of the performer referred to in Article 131 of this Act, unless otherwise expressly provided for by a contract."

##### Article 7

In Article 156 paragraph (1) item 1, at the end of subitem h., the full stop is replaced by the comma, and subitem i. is added to read:

"i. right of rebroadcasting of audiovisual works."

In item 2, at the end of subitem g., the full stop is replaced by the comma and subitem h. is added to read:

"h. right to the annual supplementary remuneration referred to in Article 137b of this Act."

Paragraph (2) is amended to read:

"(2)The right of broadcasting and rebroadcasting referred to in paragraph (1) items 1a) and 2c), the right of rebroadcasting referred to in paragraph (1) item 1i), the right to a remuneration for broadcasting referred to in paragraph (1) item 3b), the rental right referred to in paragraph (1) items 1c), 2e) and 3c), and if it regards recorded musical works and musical performances, the right to a remuneration for public lending referred to in paragraph (1) items 1d), 2f), 3d) and 4a), the right to a remuneration for reproduction for private and other personal use referred to in paragraph (1) items 1f), 2g), 3e), 4b) and 5a) and the right to a remuneration referred to in paragraph (1) item 2h) shall be managed only through a collective rights management association."

##### Article 8

In Article 164 paragraph (1), the words: "the Government of the Republic of Croatia, on the proposal by the minister" are replaced by the words: "the Minister whose scope of activity includes the supervision over the work of the Office, on the proposal by the Director General of the Office".

In paragraph (2) the word "minister" is replaced by the words: "Director General of the Office".



Paragraph (3) is amended to read:

“(3) If the Minister considers that the proposed candidates are not adequate to assure the appropriate structure of the Council of Experts, he shall order the Director General to repeat the election procedure.”.

In paragraph (7), after the word “shall be prescribed” the words “by the Regulations” are added.

#### Article 9

The name of Title VI reading: “VI. PENAL PROVISIONS” is amended to read: “VI. MISDEMEANOUR PROVISIONS”.

The names of Chapters reading: “1. Criminal acts” and “2. Misdemeanours” are deleted.

#### Article 10

In Article 189 paragraph (1) item 2 is amended to read:

“2. without the authorization of the author, or other copyright holder, or a collective rights management association reproduces a copyright work (Article 19),”.

After item 2, new items 3, 4, 5, 6, 7 and 8 are added to read:

“3. without the authorization of the author, or other copyright holder, or a collective rights management association distributes or rents stores or undertakes other acts for the purpose of distribution of a copyright work (Article 20),

4. without the authorization of the author, or other copyright holder, or a collective rights management association communicates to the public a copyright work in any manner whatsoever (Articles 22 to 26, Article 27 paragraph (1), Articles 28 to 30),

5. without the authorization of the author, or other copyright holder, or a collective rights management association alters a copyright work (Article 31),

6. without the authorization of the author, or other copyright holder, or a collective rights management association fails to pay a remuneration for the reproduction of a copyright work for private or other personal use, where he shall do so according to the law (Article 32),

7. without the authorization of the author, or other copyright holder, or a collective rights management association fails to pay a remuneration for the public lending, where he shall do so according to the law (Article 33),

8. without the authorization of the author, or other copyright holder, or a collective rights management

association fails to pay a remuneration for the resale right, where he shall do so according to the law (Article 34),”

The former items 3 to 8 become items 9 to 14.

The former item 9 is deleted, and former items 10 to 13 become items 15 to 18.

Paragraph (5) is amended to read:

“(5) The objects and means intended for or used in the commitment of a misdemeanour or resulting from the commitment thereof shall be seized in accordance with the provisions of the Misdemeanour Act.”.

#### Article 11

In Article 190 paragraph (1) after the word “provided”, the words: “(Article 166 paragraph (2))” is added.

#### Article 12

In Article 191 paragraph (1) after the word “authorization” the words: “(Article 157 paragraphs (1) and (2)) are added”.

#### Article 13

The heading above Article 193 and Article 193 are deleted.

#### Article 14

(1) The provision of Article 3 of this Act shall apply to musical works with words in which copyright of the author of the music or the author of the text is protected at least in one of the Member States of the European Union on 1 November 2013, as well as to musical works with words which come into being after that day.

(2) The provision of paragraph (1) of this Article shall be without prejudice to any acts of exploitation of musical works with words performed before 1 November 2013. Third parties having acquired in good faith certain rights in such works before that day may, according to this Act, continue to exercise such rights under the same conditions.

(3) The provisions of Article 6 of this Act shall apply to performances fixed in phonograms and phonograms in which the right of a performer, or the right of a phonogram producer, respectively, was protected in the Republic of Croatia on 1 November 2013, as well as to performances and phonograms which come into being after that day.

#### Article 15

This Act shall come into force on the eight day following its publication in the “Official Gazette”.

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

Article 1

In the Copyright and Related rights Act („Official Gazette” Nos. 167/03, 79/07, 80/11, 125/11 and 141/13), Article 1a is amended to read:

“This Act shall transpose the following Directives of the European Union to the legal system of the Republic of Croatia:

- Council Directive 93/83/EEC of 27 September 1993 on coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6/10/1993),

- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27/3/1996),

- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (OJ L 167, 22/6/2001),

- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ L 272, 13/10/2001),

- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30/4/2004),

- Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27/12/2006),

- Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version) (OJ L 376, 27/12/2006),

- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (OJ L 372, 27/12/2006),

- Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (codified version) (OJ L 111, 5/5/2009),

- Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights (OJ L 265, 11/10/2011),

- Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27/10/2012).”.

Article 2

In Article 4 paragraph (2), after the words “exceptions and limitations of copyright,”, the words “orphan works and diligent search,” are added.

Article 3

After Article 12, headings above Articles and Articles 12a and 12b are added to read:

**“ORPHAN WORKS**

Article 12a

(1) If, after carrying out and recording a search referred to in Article 12b of this Act, none of the authors or co-authors of a work is identified or, even if the author or one or more of the co-authors of the work is identified, but none of them is located, such a work shall be considered an orphan work.

(2) If, after carrying out and recording a search referred to in Article 12b of this Act, not all of the co-authors of a work are identified or, even if identified, located, Article 84a of this Act shall apply to them, but only if all the identified and located co-authors have given their authorization for the reproduction and making available to the public of such work in the manner as described in Article 84a of this Act. The rights of co-authors that are identified and located shall remain intact.

(3) Paragraphs (1) and (2) of this Article shall apply to:

- works published in the form of books, journals, newspapers, magazines or other writings contained in the collections of publicly accessible libraries, educational establishments or museums, and other legal persons carrying out the museum activity, as well as in the collections of archives or of film or audio heritage institutions;

- cinematographic or other audiovisual works contained in the collections of publicly accessible libraries, educational establishments or museums, and other legal persons carrying out the museum activity, as well as in the collections of archives or of film or audio heritage institutions; and

- cinematographic or other audiovisual works produced by public-service broadcasting organizations up to and including 31 December 2002 and contained in their archives; which are protected by copyright and which are first published in the Republic of Croatia or, in the absence of publication, first broadcast in the Republic of Croatia.

(4) Paragraphs (1) and (2) of this Article shall also apply to works referred to in paragraph (3) of this Article which have never been published or broadcast, but which have otherwise been made publicly accessible for the first time by publicly accessible libraries, educational establishments or museums and other legal persons carrying out the museum activity, as well as archives, film or audio heritage institutions and public-service broadcasting organizations established in the Republic of Croatia with the consent of the authors, provided that it is reasonable to assume that the authors of such works would not oppose the uses referred to in Article 84a of this Act.

(5) Paragraphs (1) and (2) of this Article shall also apply to works that are embedded or incorporated in, or constitute an integral part of, the works referred to in paragraphs (3) and (4) of this Article.

(6) The author or the co-author of the work which, according to paragraphs (1) to (5) of this Article shall be considered an orphan work may at any time put an end to the application of the mentioned provisions in relation to his rights.

(7) A work which is according to the law of any other Member State of the European Union considered an orphan work, shall also be considered an orphan work in the Republic of Croatia, without the need to carry out the search procedure referred to in Article 12b of this Act, and the provisions of Article 84a of this Act shall apply to it. The same shall also apply mutatis mutandis to co-authors' works in respect of which it was established in another Member State of the European Union that they have an orphan work status, because not all of the co-authors are identified or located, but only in relation to their co-authors' shares.

(8) Article 12 of this Act regulating the presumption of authorship and exercise of copyright where the author is anonymous (including copyright in

anonymous and pseudonymous works) shall apply to the extent to which it is not contrary to this Article.

## DILIGENT SEARCH FOR THE PURPOSES OF ESTABLISHING THE ORPHAN WORK STATUS AND RECORDS OF INFORMATION

### Article 12b

(1) Publicly accessible libraries, educational establishments or museums and other legal persons carrying out the museum activity, as well as archives, film or audio heritage institutions and public-service broadcasting organizations established in the Republic of Croatia shall, for the purposes of identification or location of authors or co-authors, or establishment of the orphan work status, respectively, carry out in good faith a diligent search in respect of each work. The diligent search shall be carried out prior to the use of the work, by searching the sources that are appropriate for the respective category of works. If there is evidence to suggest that the relevant information on right holders is to be found in other countries, sources of information available in those other countries shall also be searched.

(2) The appropriate sources referred to in paragraph (1) of this Article are:

1. for published books:

- a. legal deposit, in particular of national bibliography, library catalogues, biographical lexicons, authority files and bibliographic data bases maintained by libraries and other institutions;
- b. data bases and documentation maintained by the publishers' and authors' associations in the Republic of Croatia;
- c. existing databases and registries, WATCH (Writers, Artists and their Copyright Holders), the ISBN (International Standard Book Number) and databases listing books in print;
- d. the databases and documentation of the relevant collective rights management associations, in particular reproduction rights management associations;
- e. sources that integrate multiple databases and registers, including VIAF (Virtual International Authority Files) and ARROW (Accessible Registries of Rights Information and Orphan Works);

2. for newspapers, magazines, journals and periodicals:

- a. the ISSN (International Standard Serial Number) for periodical publications;
- b. indexes and catalogues from library holdings and collections;

c. legal deposit, in particular of national and special bibliographies;

d. databases and documentation maintained by the publishers' as well as authors' and journalists' associations in the Republic of Croatia;

e. the databases and documentation of relevant collective rights management associations, in particular reproduction rights management associations;

f. biographical lexicons;

3. for visual works, including fine art, photography, illustration, design, architecture, sketches of the latter works and other such works that are contained in books, journals, newspapers and magazines or other works:

a. the sources referred to in points 1 and 2 of this paragraph;

b. the databases and documentation of the relevant collective rights management associations, in particular for visual arts, and including reproduction rights management associations;

c. the databases of picture agencies, where applicable;

4. for audiovisual works, performances, phonograms and videograms:

a. legal deposit;

b. the databases and documentation maintained by the producers' associations in the Republic of Croatia;

c. databases and documentation of film or audio heritage institutions and national libraries;

d. databases with relevant standards and identifiers such as ISAN (International Standard Audiovisual Number) for audiovisual material, ISWC (International Standard Music Work Code) for musical works and ISRC (International Standard Recording Code) for phonograms;

e. the databases and documentation of the relevant collective rights management associations, in particular for authors, performers, phonogram producers and audiovisual producers;

f. credits and other information appearing on the work's or the subject matter's of related rights packaging;

g. databases and documentation of other relevant associations representing a specific category of right holders.

(3) A diligent search shall be carried out if the work was first published or, in the absence of publication, first broadcast in the Republic of Croatia. A diligent search for cinematographic and other audiovisual works shall be carried out, if the film producer has his principal place of business or habitual residence in the Republic of Croatia. A diligent search for the works referred to in Article 12a paragraph (3) subparagraph 3 of this Act shall

be carried out if the broadcasting organization that made them publicly accessible with the consent of the author or other right holder has his principal place of business in the Republic of Croatia.

(4) The institutions referred to in paragraph (1) of this Article shall keep records of the diligent searches as carried out. The information contained in such records shall be communicated to the State Intellectual Property Office, which shall forward it to the Office for Harmonization in the Internal Market without delay for the purpose of being recorded in a single publicly accessible online database established and managed by such Office in accordance with Regulation (EU) no 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights

(5) The records referred to in paragraph (4) of this Article shall include at least the following information:

a. the results of the diligent searches that such institutions have carried out and which have led to the conclusion that the works or the subject matters of related rights are considered orphan works or subject matters of related rights, respectively.

b. the use that such institutions make of orphan works or subject matters of related rights in accordance with Article 84a of this Act;

c. any change of the orphan work status of works or the subject matters of related rights, respectively, that the institutions use;

d. the relevant contact information of the institution concerned."

#### Article 4

Article 84 is amended to read:

"Public archives, public libraries, museums and other legal persons carrying out the museum activity, educational and scientific institutions, preschool educational institutions and social (charitable) institutions may reproduce a copyright work from their own copy to any media whatsoever for the purposes of preservation and safeguarding, technical restoration and reparation of the materials, management of a collection and other personal needs, if not acquiring thereby any direct or indirect commercial benefit."

#### Article 5

After Article 84, a heading above Article 84a and Article 84a is added to read:

## “FREE USE OF ORPHAN WORKS

### Article 84a

(1) Publicly accessible libraries, educational establishments or museums and other legal persons carrying out the museum activity, as well as archives, film or audio heritage institutions and public-service broadcasting organizations established in the Republic of Croatia may reproduce orphan works which are contained in their collections for the purposes of digitization, making them available to the public, indexing, cataloguing, preservation or restoration and may them make available to the public. The mentioned institutions may perform the acts of reproduction and making available to the public only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of and the provision of cultural and educational access to, orphan works contained in their collections. The institutions may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitizing orphan works and making them available to the public. The above mentioned shall not affect the freedom of contract of such institutions in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.

(2) In any use of an orphan work, the institutions referred to in paragraph (1) of this Article shall indicate in the usual manner the identified author and co-authors of such works, respectively.

(3) An author or a co-author that put an end to the orphan work status in accordance with Article 12a paragraph (6) of this Act shall have a right to a fair compensation for the use that has been made of his work according to paragraph (1) of this Article. The compensation shall be paid by the institution referred to in paragraph (1) of this Article that used the work. The amount of the compensation shall be determined according to the category of orphan works, taking into account, among other things, the aims of the Republic of Croatia in the field of cultural promotion, the non-commercial nature of the use made by the institution referred to in paragraph (1) of this Article in order to achieve aims related to their public-interest missions, such as promoting learning and disseminating culture, as well as possible harm incurred to authors. The fair compensation shall be paid retroactively, for not more than three years, counting from the day of putting an end to the orphan work status.

(4) A request for the payment of a fair compensation may be filed by the author or the respective collective rights management association, authorized by the author for filing such

a request. A request for the payment of a fair compensation shall be subject to the statute of limitations, counting from the day of putting an end to the orphan work status.

(5) The provisions of this Article shall not affect the obligations and rights acquired by other legal provisions concerning other intellectual property rights, conditional access, access to cable of broadcasting services, the protection of national treasures, legal deposit requirements, the protection of fair trading, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract, and rules on the freedom of the press and freedom of expression in the media.”.

### Article 6

(1) This Act shall apply to all the works, performances, phonograms and videograms that are protected by the Copyright and Related Rights Act (“Official Gazette” Nos. 167/03, 79/07, 80/11, 125/11 and 141/13) on 29 October 2014 or after that date.

(2) This Act shall apply without prejudice to the legal transactions made or the rights acquired before 29 October 2014.

### Article 7

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

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

### Article 1

In the Copyright and Related Rights Act («Official Gazette», No. 167/03, 79/07, 80/11, 125/11, 141/13 and 127/14) in Article 1a after subparagraph 11, the full stop shall be replaced by the comma and a new subparagraph (12) shall be added to read:

— Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20. 3. 2014).

### Article 2

In Article 13, paragraph (3) shall be supplemented with the second sentence to read: »Remuneration shall be determined as the price of use in private law relationship.

### Article 3

After In Article 32, after paragraph (5), new paragraphs 6 and 7 shall be added to read:

»(6) The obligation to pay the appropriate remuneration referred to in paragraph (1) of this Article shall arise also when appliances and fixation media referred to in paragraph (5) of this Article are imported in the Republic of Croatia from another Member State of the European Union.

(7) The obligation to pay the appropriate remuneration shall not arise where new appliances for sound and visual recording, new blank audio or video fixation media and new photocopying appliances are brought out of or exported from the Republic of Croatia.«.

Former paragraphs (6) and (7) shall become paragraphs (8) and (9).

The former paragraph (8), which shall become paragraph (10), shall be amended to read:

»(10) An appropriate remuneration referred to in this Article shall be the one that has to be given fairly in a legal transaction, whereby when determining the amount of an appropriate remuneration, in addition to the principles of setting the price of using subject matters of protection under Article 165 paragraph (1) of this Act, the likelihood of damage incurred to the author, where his work is reproduced for private or other personal use without his authorisation, the application of technological protection measures of access to use a work or another subject matter of protection, and other circumstances that may affect a proper decision on the form and amount

of the appropriate remuneration shall be taken into account. The appropriate remuneration cannot unreasonably burden the operation of manufacturers and importers referred to in paragraph 4 of this Article, so that when determining the amount of an appropriate remuneration, the price of technical appliances and blank audio, video or text fixation media, as well as other relevant market circumstances are to be taken into account. Before initiating a procedure to adopt the tariffs under Article 162 of this Act for new technical appliances and blank audio, video or text fixation media, a collective management organisation shall conduct research of these technical appliances and blank audio, video or text fixation media being actually used for reproduction of the subject matters of protection, and the results thereof shall be taken into account when determining the amount of the appropriate remuneration. The results of such research shall be publicly available at the website of a collective management organisation.

After paragraph (10), paragraphs (11) and (12) shall be added to read:

»(11) All collective management organisations entitled to remuneration referred to in paragraphs (1) and (2) of this Article shall authorise one of them by contract in writing to manage the rights to remuneration on equivalent technical appliances and audio, video or text fixation media referred to in paragraphs (1) and (2) of this Article on behalf and for the account of others participating in that contract or on its own behalf, and for the account of these other collective management organisations. If, after the contract in writing was entered into between collective management organisations, there shall come a new collective management organisation entitled to remuneration on equivalent technical appliances and blank audio, video or text fixation media, it shall enter into the current contract between organisations under the same conditions. There exists an obligation to provide the information under Article 161 of this Act only in relation to the collective management organisation managing the rights on behalf of other collective management organisations. The obligation of entering into the contract whereby collective management organisations appoint one organisation to manage their rights, as well as of providing information to only one collective management organisation as referred to in this paragraph, shall not be applied if there are justified reasons to refuse to enter into such contract, which have to be adequately explained.

(12) Until such time as the procedure of setting the tariff of remuneration referred to in paragraph (1) of this Article is completed as provided by Article 162 of this Act, the remuneration shall be paid in accordance with the current tariff. By way of exception from Article 162 paragraph (7) of this

Act, if the current tariff does not comprise an individual technical appliance or an audio, video or text fixation medium, until such time as the procedure of setting the tariff as provided by Article 162 of this Act is completed, the user shall pay the undisputed amount of remuneration as proposed by the tariff, and for the disputed amount a collective management organisation may request from the user to provide adequate quality payment insurance, which the user shall provide within the time limit set by the collective management organisation. If the user fails to provide quality payment insurance of the disputed amount of remuneration within the given time limit as requested by the collective management organisation, the user shall make an advance payment as proposed by the tariff.

#### Article 4

Above the heading of Article 154, the chapter heading shall be added to read: »Chapter 1 GENERAL PROVISIONS«.

#### Article 5

The heading above Article 154 shall be amended to read: »DEFINITIONS«.

Article 154 shall be amended to read:

»Individual definitions in terms of this Act shall have the following meaning:

a) »the management of copyright or related rights« shall include in particular:

- giving authorisations for the use of the subject matter of copyright and related rights (subject matters of protection), except in cases where this authorisation is not required by this Act,
- collecting of the price for the use of the subject matters of protection, where used subject to payment of remuneration expressed as the price of usage,
- distributing of collected income from the rights to the rightholders,
- 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;

b) »collective management organisation« is any organisation which is authorised by law, power of attorney or by a contract authorised to manage copyright and related rights on behalf of two or more rightholders regardless of whether it acts on its own behalf or on behalf of rightholders, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils the following criteria:

- it is owned or controlled by its members, and
  - it is organised on a not-for-profit basis;
- c) »specialised legal entity for the management of copyright and related rights« is a company or another legal person having individual management of copyright and related rights as its

main activity and employing minimum one person with an undergraduate or graduate university degree in law;

d) »independent management entity« is any organisation which is authorised by law or a contract to manage copyright or related rights on behalf of two or more rightholders regardless of whether it acts on its own behalf or on behalf of rightholders, for the collective benefit of those rightholders, as its sole or main purpose, and which is:

- neither owned nor controlled, directly or indirectly, wholly or in part, by its members, and
- organised on a for-profit basis, whereby neither producers, broadcasters and publishers who manage their own rights and other holders' rights transferred to them on the basis of individually negotiated agreements and who act in their own interest, nor rightholders' managers and agents acting as intermediaries and representing rightholders in their relations with collective management organisations, shall not be regarded as independent management entities;

e) »rightholder« is any person or entity, other than a collective management organisation, that holds a copyright or related right or, under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue;

f) »member« is a rightholder or an entity representing rightholders (including other collective management organisations and associations of rightholders), fulfilling the membership requirements of the collective management organisation and admitted by it;

g) »statute« is the fundamental general act containing the rules of constitution and operation of a collective management organisation in terms of regulations governing status issues of legal persons;

h) »general assembly of members« is the body of the collective management organisation wherein members participate and exercise their voting rights, regardless of the legal form of the collective management organisation;

i) »board member« is:

a. any member of the management board where the law or the statute of the collective management organisation provides for a unitary board,

b. any member of the management board or the supervisory board where the law or the statute of the collective management organisation provides for a dual board;

j) »rights revenue« is income collected by a collective management organisation on behalf of rightholders, whether deriving from an exclusive right or a right to remuneration;

k) »management fee« is the amount charged, deducted or offset by a collective management organisation from rights revenue or from any income arising from the investment of rights

revenue in order to cover the costs of its management of copyright or related rights;

l) »representation agreement« is any agreement between collective management organisations whereby one collective management organisation mandates another collective management organisation to manage the rights it represents, including an agreement concluded under Articles 168k and 168l of this Act;

m) »user« is any person or entity that is carrying out acts subject to the authorisation of rightholders or payment of compensation expressed as a price of use to rightholders, and is not acting in the capacity of a consumer;

n) »repertoire« is a set of copyright works or subject matters of related rights in respect of which a collective management organisation manages rights;

o) »multi-territorial licence« is a licence which covers the territory of more than one Member State of the European Union;

p) »online rights in musical works« are the rights of an author in musical works provided for under Articles 19 and 21 including the right under Article 30 of this Act, which need to be regulated for the provision of online services.«.

#### Article 6

Article 155, paragraph (2), the words: »an association referred to in Article 157 of this Act« shall be replaced by the words: »a collective management organisation«.

Paragraph (3) shall be deleted.

#### Article 7

In Article 156, a new paragraph (1) shall be added to read:

»(1) The collective management organisation shall act in the best interests of the rightholders whose rights they represent. The collective management organisation cannot impose any obligations on them which are not objectively necessary for the protection of their rights and interests and for the effective management of their rights.«.

In the former paragraph (1), which becomes paragraph (2), after the word: »include« the word: »the following« shall be deleted and the words: »in particular the following rights« added.

In the former paragraph (2), which becomes paragraph (3), the words: »paragraph (1)« shall be replaced by the words: »paragraph (2)«, and the word: »association« shall be replaced by the word: »organisation«.

In the former paragraph (3), which becomes paragraph (4), the number: »2« shall be replaced by the number: »3«, and the words: »of copyright and related rights« shall be deleted.

#### Article 8

The heading above Article 157 shall be amended to read: »REQUIREMENTS FOR COLLECTIVE

MANAGEMENT OF RIGHTS BY COLLECTIVE MANAGEMENT ORGANISATIONS«.

Article 157 shall be amended to read:

»(1) Collective management of rights on the territory of the Republic of Croatia may be carried out by a collective management organisation which has the authorisation granted by the State Intellectual Property Office (hereinafter: the Office) for performing such activity.

(2) the authorisation referred to in paragraph (1) of this Article shall be granted by the Office to an association or another collective management organisation on request which fulfils the following requirements:

a) has its principle place of establishment in the European Union,

b) has adequate material and human resources to perform the activity of collective management, whereby minimum resources are represented by adequate premises, equipment and technical service with at least one employee with an undergraduate and graduate university degree in law, and

c) is engaged in the collective management of rights as its sole or main activity.

(3) The collective management organisation shall manage the rights in its own name or on behalf of the rightholders, and for the account of the rightholder.

(4) For collective management of rights, the Office can grant an authorisation to only one collective management organisation for a particular category of rights and a particular category of rightholders, taking into account the number of members based on powers of attorney received, the number of joint representation agreements with collective management organisations in other states as well as other circumstances indicating that this collective management organisation would be the most efficient one in collective management of rights.

(5) It shall be presumed that the collective management organisation referred to in paragraph (4) of this Article has powers of attorney for collective management of rights for which it is authorised for all domestic and foreign holders of such rights, except for that rightholder who has notified the collective management organisation explicitly in writing not to manage his rights.

(6) The decision passed by the Office in the procedure of granting the authorisation referred to in paragraph (1) of this Article cannot be appealed, but an administrative dispute can be initiated.

(7) The collective management organisation shall inform a user on his request of the rightholders whose rights it does not manage based on the notification referred to in paragraph (5) of this Article.«.



#### Article 9

The heading above Article 158 shall be amended to read: »MANAGEMENT OF RIGHTS AND MUTUAL REPRESENTATION«.

Article 158 shall be amended to read:

»(1) A collective management organisation may manage, one, two or more types of rights that usually relate to a particular category of rightholders.

(2) The collective management organisation may entrust certain kind of tasks regarding the management of rights to another collective management organisation in the form of a written contract. The entrusted collective management organisation shall manage the rights on behalf and for the account of the entrusting collective management organisation, or on its own behalf and for the account of the entrusting collective management organisation.

(3) The collective management organisation may entrust certain administrative, technical or accessory works (for example, invoicing of users or distributing amounts due to rightholders) under its control to another natural or legal person, in the form of a written contract. Such contract shall not influence the duty of the collective management organisation to fulfil all the obligations pursuant to this Act.

(4) The collective management organisation established by this Act may enter into a joint representation agreement with another such collective management organisation established by the act of another Member State of the European Union or by the act of any other state for the management of the same kind of rights. In this case, the collective management organisation cannot discriminate the rightholders whose rights it manages, particularly in relation to applicable prices, management fee and the conditions of collecting the rights revenue and distributing amounts due to rightholders.«.

#### Article 10

The heading above Above the heading of Article 159, the chapter heading shall be added to read: »Chapter 2 RELATIONSHIP BETWEEN THE COLLECTIVE MANAGEMENT ORGANISATION AND A RIGHTHOLDER«.

#### Article 11

The heading above Article 159 shall be amended to read: »RIGHTHOLDER'S RIGHTS«.

Article 159 shall be amended to read:

»(1) The rightholder shall have the right to freely choose and to authorise a collective management organisation in any Member State of the European Union for the management of the rights, categories of rights or types of works or subject matter of related rights of his own choice, for the states of his own choice, irrespective of the Member State of nationality, residence or place of

establishment. The chosen collective management organisation resident or established in the Republic of Croatia shall accept the management of such rights, categories of rights or types of works or subject matters of related rights where such management falls within the scope of its activity, unless it has objectively justified reasons to refuse such authorisation.

(2) The rightholder shall have the right to grant licences for non-commercial uses of any rights, categories of rights or types of works and other subject matter that he may choose, and a collective management organisation shall inform the rightholders whose rights it manages of the conditions under which rightholders may grant licences for non-commercial uses of their rights or subject matter of the related rights which they authorised this collective management organisation to manage. Non-commercial use is considered to be the use with no economic benefit provided either directly or indirectly.

(3) The rightholder may terminate the authorisation to manage rights granted by him to a collective management organisation entirely or in relation to a particular right, a category of rights or a type of works or subject matter of related rights of his choice, for the territories of his choice, upon serving notice not exceeding six months, regardless of whether at the same time he authorised another collective management organisation to manage his rights. The collective management organisation may decide that such termination is to take effect at the end of the financial year.

(4) The rightholder shall retain all the rights against a collective management organisation in relation to the uses which occurred and the licences for the use granted by a collective management organisation before the termination as referred to in paragraph (3) of this Article took effect.

(5) Any authorisation to manage rights and the termination of such authorisation shall be evidenced in writing, documenting specific rights, categories of rights or types of works or subject matter of related rights covered thereby.

(6) A collective management organisation shall provide in its statute and/or membership rules that rightholders shall at least have the rights as referred to in this Article, publish it on its website, and inform rightholders of these rights before their granting licences for management.«.

#### Article 12

After Article 159, Articles 159a and 159b and headings above them shall be added, Chapter 3 with Articles 159c, 159d and 159e and headings above them to read:

»Membership Rules of a Collective Management Organisation

## Article 159 a

(1) A collective management organisation shall accept all rightholders and entities representing rightholders, including other collective management organisations and associations of rightholders, as members if they fulfil the membership requirements, which shall be based on objective, transparent and non-discriminatory criteria. Those membership requirements shall be included in the statute or another act to set out membership terms of the collective management organisation and shall be made publicly available. In cases where a collective management organisation refuses to accept a request for membership, it shall provide the rightholder with a clear explanation of the reasons for its decision.

(2) The statute of a collective management organisation shall provide for appropriate and effective mechanisms for the participation of its members in the organisation's decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.

(3) A collective management organisation shall ensure that its members communicate with it by electronic means, including for the purposes of exercising members' rights.

(4) A collective management organisation shall keep records of its members and shall regularly update those records.

Rights of Rightholders Who Are Not Members of the Collective Management Organisation

## Article 159 b

A collective management organisation shall accordingly apply all the rights pertaining to its members to the rightholders it represents based on a presumed power of attorney and to the rightholders who are not its members, but it represents them based on a contractual arrangement, except for the rights relating to the management and decision-making in the collective management organisation.

## Chapter 3

### INTERNAL STRUCTURE OF THE COLLECTIVE MANAGEMENT ORGANISATION

General Assembly of Members of the Collective Management Organisation

## Article 159 c

(1) A general assembly of members shall be convened at least once a year.

(2) The general assembly of members shall decide at least on the following issues:

– adopting of the statute, its amendments and deciding on presumptions for membership in the collective management organisation unless regulated by the statute;

– the appointment or dismissal of board members, review of their general performance and approval of their remuneration and other benefits, such as monetary and non-monetary benefits, voluntary pension funds, rights to awards and severance pay;

– the general policy on the distribution of amounts due to rightholders;

– the general policy on the use of non-distributable amounts and deciding on the use of non-distributable amounts, exclusively for the purpose of managing social, cultural and educational activities to the benefit of rightholders;

– the general investment policy with regard to rights revenue and to any income arising from the investment of rights revenue;

– the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;

– the risk management policy;

– the approval of any acquisition, sale or mortgage of immovable property owned by the collective management organisation;

– the approval of mergers and alliances, the setting-up of subsidiaries, and the acquisition of other entities or shares or rights in other entities;

– the approval of taking out loans, granting loans or providing security for loans.

(3) In a collective management organisation with a dual board system, the general assembly of members shall not decide on the appointment or dismissal of members of the management board or approve their remuneration and other benefits where the power to take such decisions is delegated to the supervisory board.

(4) The general assembly of members may delegate the powers listed in paragraph (2) subparagraphs (7) – (10) of this Article, by a resolution or by a provision in the statute, to the body exercising the supervisory function of the management of a collective management organisation.

(5) The general assembly of members shall be authorised to supervise the operation of a collective management organisation, in particular:

– to decide on the appointment and dismissal of auditors, and

– to approve of the annual transparency report as referred to in Article 168d of this Act.

(6) All members of the collective management organisation shall have the right to participate in, and the right to vote at, the general assembly of members. In its statute or membership terms, the collective management organisation may restrict on the right of the members of the collective management organisation to participate in, and to exercise voting rights at, the general assembly of members, on the basis of one or both of the following criteria, provided that such criteria are determined and applied in a manner that is fair and proportionate:

- duration of membership,
- amounts received or due to a member.

(7) Every member of a collective management organisation shall have the right to appoint any other natural person or legal entity as a proxy holder by a notarised special power of attorney to participate in, and vote at, the general assembly of members on his behalf, provided that such appointment does not result in a conflict of interest which might occur (for example, where the appointing member and the proxy holder belong to different categories of rightholders within the collective management organisation). The proxy holder's appointment shall be valid for a single general assembly of members. The proxy holder shall enjoy the same rights in the general assembly of members as those to which the appointing member would be entitled and shall participate in, and cast votes in accordance with the instructions issued by the appointing member, which are included in the power of attorney. Statute or another act of the collective management organisation can provide detailed restrictions regarding the appointment of proxy holders and their voting rights on behalf of the appointing members.

(8) The collective management organisation may set out in its statute that the powers of the general assembly of members may be exercised by an assembly of delegates elected at least every four years at the general assembly of members, provided that:

- appropriate and effective participation of members in the collective management organisation's decision-making process is ensured; and
- the representation of the different categories of members in the assembly of delegates is fair and balanced.

(9) Paragraphs 1-7 of this Article shall apply *mutatis mutandis* to the assembly of delegates under paragraph (8) of the Article.

(10) Where a collective management organisation, by reason of its legal form, does not have a general assembly of members, the powers of that assembly are to be exercised by the body exercising the supervisory function as referred to in Article 159d of this Act. In this case, the rules laid down in this Article, except for paragraphs (3) and (4) of this Article, shall apply *mutatis mutandis* to such body exercising the supervisory function.

(11) Where a collective management organisation has members who are only entities representing rightholders, all or some of the powers of the general assembly of members under this Article may be transferred to a general assembly of those entities. In this case, the rules laid down in this Article, except for paragraphs (8) to (10) shall apply *mutatis mutandis* to the general assembly of those entities.

## Supervisory Function

### Article 159 d

(1) A collective management organisation shall have a body to exercise a supervisory function for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation management organisation.

(2) There shall be fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function.

(3) Each member of the body exercising the supervisory function shall make an individual statement on conflicts of interest, containing the information referred to in paragraph (3) of Article 159e of this Act, to the general assembly of members.

(4) The body exercising the supervisory function shall meet regularly and shall have at least the following powers:

- to exercise the powers delegated to it by the general assembly of members, including the powers under Article 159c paragraph (2) subparagraph 2 and paragraph (4) of this Act, and
- to monitor the activities and the performance of the duties of the persons referred to in Article 159e of this Act, including the implementation of the decisions of the general assembly of members and, in particular, of the general policies listed in Article 159c paragraph (2) subparagraphs 3 to 6 of this Act.

(5) The body exercising the supervisory function shall report on the exercise of its powers to the general assembly of members at least once a year.

Obligations of the Persons Who Manage the Business of the Collective Management Organisation

### Article 159 e

(1) The persons who manage the business of the collective management organisation shall do so in an extra attentive, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

(2) A collective management organisation shall put in place and apply procedures to avoid conflicts of interest, and where such conflicts cannot be avoided, it shall identify, manage, monitor and disclose any actual or potential conflicts of interest in such a way as to prevent them from adversely affecting the collective interests of the rightholders whom the organisation represents.

(3) The procedures referred to in paragraph (2) of this Article shall include the obligation of an individual statement by each of the persons who

manage the business of the collective management organisation to the general assembly of members, containing the following information:

- any interests in the collective management organisation;
- any remuneration received in the preceding financial year from the collective management organisation, including in the form of pension schemes, benefits in kind and other types of benefits;
- any amounts received in the preceding financial year as a rightholder from the collective management organisation; and
- a declaration concerning any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations owed to the collective management organisation and any duty owed to any other natural or legal person.«.

#### Article 13

Above Article 160, the chapter heading shall be added to read: »Chapter 4 RELATIONSHIP WITH THE USERS OF SUBJECT MATTER OF PROTECTION«.

Article 160 shall be amended to read:

»(1) Prior to starting to use a particular subject matter of protection, a legal or a natural person shall submit a request for the authorisation of such use to a relevant collective management organisation. 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 management organisation shall respond to the request for the authorisation of such use within an appropriate time-limit, indicating in particular the information needed for the authorisation to be granted. Upon receipt of all the relevant information, the organisation shall grant the authorisation to a user or provide a reasoned reply why the authorisation cannot be granted. The authorisation 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. The requirements for the authorisation of such use shall be based on objective and non-discriminatory criteria.

(3) A user shall submit to a collective management organisation, without delay, the information relating to any change of circumstances of such use or of its termination, in order to change accordingly the conditions under which the authorisation has been granted or to withdraw the authorisation.

(4) A collective management organisation shall allow the users to submit the request for the

authorisation of such use and to communicate with it in connection with the authorisation by electronic means.

(5) A legal or natural person which or who allows the use of its or his/her premises to another person who uses subject matters of protection in such space, shall check whether that person has adequate authorisation for the use of the subject matter of protection. Where a legal or a natural person has allowed the use of its or his/her premises to a person not having such authorisation, 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..«.

#### Article 14

The heading above Article 161 shall be amended to read: »USER'S OBLIGATIONS«.

Article 161 shall be amended to read:

»(1) Users shall provide a collective management organisation within an agreed or pre-established time and in an agreed or pre-established format, with such relevant information at their disposal, as is necessary for the collection of rights revenue and/or for the distribution of amounts due to rightholders. When deciding on the format for the provision of such information, a collective management organisation and users shall take into account, as far as possible, the standards voluntarily applied in the related area (voluntary industry standards).

(2) a collective management organisation shall, as far as possible, allow users to provide the information as referred to in paragraph (1) of this Article by electronic means.

(3) In case of insufficient information on or an unauthorised use of the subject matter of protection, the competent state administration bodies or other natural and legal persons having such information at their disposal, shall submit to the collective management organisation at its request the information that relate to the management of rights under this Act, except in cases when such provision of the information would be contrary to special regulations.«.

#### Article 15

The heading above Article 162 shall be amended to read: »PRICE FOR THE USE OF SUBJECT MATTERS OF PROTECTION«.

Article 162 shall be amended to read:

»(1) A price and other requirements for the use of the subject matter of protection shall be regulated primarily by a contract between a collective management organisation and a user of the subject matter of protection or by a contract between a collective management organisation and a chamber of users of the subject matter of

protection. If users are not organised through a chamber or it results from the circumstances that users' interest will be better represented through another association of users of the subject matter of protection, a collective management organisation may enter into a contract with another association of users. Collective management organisations and users or their chambers or associations shall conduct negotiations for entering into such contracts in good faith and provide each other with all the information necessary to reach an agreement.

(2) If the price for such use is not set in compliance with paragraph (1) of this Article, it shall be paid according to the tariffs of a collective management organisation.

(3) Prior to setting the tariffs as referred to in paragraph (2) of this Article, a collective management organisation shall submit the proposal thereof for the declaration by a chamber or another association of users.

(4) If a chamber or another association of users fail to furnish a written declaration to a collective management organisation within 30 days upon receipt of the tariff proposal, it shall be deemed that they do not oppose to the proposed tariffs.

(5) If a chamber or another association of users does not accept the tariffs wholly or partly in a written declaration, it can agree on arbitration with a collective management organisation in order to determine the related tariffs, within 60 days upon receipt of the tariff proposal at the latest. A collective management organisation and users can agree on arbitration in advance, establishing to settle any dispute in the procedure of setting the tariffs in arbitration. Arbitration shall be conducted in compliance with the provisions as referred to in Article 162a of this Act.

(6) If a collective management organisation and a chamber or another association of users do not agree on arbitration within the time-limit as referred to in paragraph (5) of this Article, the collective management organisation shall request the Council of Experts Dealing with Remunerations for Copyright and Related Rights (hereinafter referred to as: the Council of Experts) for its opinion on the subject matter of disagreement within further 15 days. The Council of Experts shall render its opinion within 60 days upon receipt of the request. The Council of Experts may prolong the time-limit for rendering its opinion maximum by another 30 days, which shall be notified to the parties in the procedure of rendering the opinion prior to the expiry of the first time-limit of 60 days.

(7) Until the procedure for adopting the tariffs referred to in paragraphs (3), (4) and (5) of this Article is completed, the price shall be paid in accordance with the approved tariffs or as an advance payment according to the proposed tariffs if the tariffs for a particular type of using the subject matter of protection are not approved.

(8) The opinion of the Council of Experts referred to in paragraph (6) of this Article shall contain its evaluation of whether the tariffs relate to the rights for management of which a collective management organisation has the authorisation granted by the Office, and whether the prices 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 (6) of this Article, it shall be deemed that it agrees with the proposed tariffs.

(9) After the completion of the procedures referred to in this Article, the tariffs shall be published on the website of a collective management organisation, and they shall apply to all users who use the subject matters of protection as provided by the tariffs, starting from the day of initiating a procedure to set the tariffs pursuant to the provisions as referred to in paragraph (3) of this Article.«.

#### Article 16

After Article 162, Article 162a and the heading above it shall be added to read:

»Setting the tariffs before the arbitration court

#### Article 162a

(1) In compliance with the provisions as referred to in Article 162 paragraph (5) of this Act, the parties may enter into an agreement to finally settle their dispute over the tariffs in arbitration according to the valid Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Commerce (Zagreb Rules), unless provided otherwise by this Act.

(2) Arbitration on the tariffs shall be conducted pursuant to the provisions on the accelerated arbitration process in terms of the Zagreb Rules as referred to in paragraph (1) of this Article, regardless of the value of the subject matter in dispute, and to other applicable provisions of the Zagreb Rules. An accelerated arbitration process on the tariffs can take no longer than three months as a rule, counting from the date of the arbitration court being constituted in line with the provisions under Article 164a of this Act. Time-limits provided by the Zagreb Rules in relation to an accelerated arbitration process for the parties to undertake certain actions can be reduced by the arbitration court if it assesses this to be in the interest of the process efficiency, observing thereby the principle of equal treatment of the parties.

(3) If the tariffs are proposed by two or more collective management organisations, they are all together deemed to be one party to the arbitration process. If the interests of users whom the tariffs in arbitration process shall be applied to are represented by several chambers and/or other associations of users, they are all together deemed to be one party to the arbitration process.

(4) The tariffs of a collective management

organisation shall be determined by arbitration award in compliance with the principles as referred to in Article 165 of this Act.

(5) The tariffs determined by arbitration award as referred to in paragraph (4) of this Article, pursuant to Article 168c of this Act, shall be published on a website of the concerned collective management organisation and shall apply to all users who use the subject matters of protection as provided by the tariffs, starting from the day of initiating a procedure to set the tariffs pursuant to the provisions as referred to in Article 162 paragraph (3) of this Act. «.

#### Article 17

After Article 164, Article 164a and the heading above it shall be added to read:

»Structure and responsibilities of the arbitration court

#### Article 164a

Arbitration court has three arbitrators who are appointed from the List of Arbitrators in proceedings without international elements before the Permanent Arbitration Court at the Croatian Chamber of Commerce and who need to be experts in the field of copyright and related rights. President of the arbitration court needs to be a judge or an ex-judge of the High Commercial Court of the Republic of Croatia. Each party shall appoint one arbitrator in an arbitration agreement as referred to in Article 162 paragraph (5) of this Act. Thus appointed arbitrators shall appoint a president of the arbitration court no later than within 15 days upon conclusion of the arbitration agreement. If arbitrators appointed by the parties cannot agree on the president of the arbitration court, he will be appointed by the president of the Permanent Arbitration Court at the Croatian Chamber of Commerce. «.

#### Article 18

The heading above Article 165 shall be amended to read: »PRINCIPLES FOR SETTING THE PRICES FOR USING SUBJECT MATTERS OF PROTECTION«.

Article 165 shall be amended to read:

»(1) The price for the use of the subject matters of protection must be appropriate, regardless of whether it is a matter of exclusive rights or rights to remuneration. Tariffs must be reasonable in relation to, *inter alia*, the economic value of the use of the rights on the market, taking into account the nature and scope of the use of the subject matters of protection, the economic value of the service provided by a collective management organisation and accordingly the tariffs applicable in other Member States of the European Union for the same kind and form of the use and the same kind of the right.

(2) With setting the price as referred to in paragraph (1) of this Article, religious, social and

cultural needs of users who belong to sensitive social groups of pensioners, children and people with disabilities, shall be taken into account to an appropriate extent.

(3) A collective management organisation shall notify the user concerned of the criteria it has taken into account with setting the tariffs.

(4) With setting the price for using subject matters of protection online, a collective management organisation shall not be required to use the tariffs as a role model already determined for other kinds and forms of online services if it is a matter of the use in a new type of online service which has been available in the European Union for less than three years.

(5) 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 price shall be fixed in principle as a percentage of the income, or earning from such use.

(6) The price can be fixed as a percentage of the costs necessary for the use of the subject matter of protection, such as fees or salaries of performing artists, or the costs of using the facilities for the use of the subject matter of protection or another corresponding costs, if the costs necessary for the use of the subject matter of protection are disproportionate in relation to the income from such use.

(7) In addition to the prices fixed as a percentage, the minimum amounts of the prices shall be specified.

(8) If the use of the subject matter of protection is not essential for a user, but is useful or enjoyable (for example, in case of accommodation facilities, exposition places, transport means and certain catering objects), as a rule the tariff shall be set as a lump sum for permanent and occasional uses.

(9) When setting the price as a lump sum as referred to in paragraph (8) of this Article and the minimum amounts of the prices as referred to in paragraph (7) 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 for the use of the subject matter of protection, duration and number of the uses, and difference in prices regarding a user's business.

(10) If a user fails to submit the information required for setting the price for the use of the subject matter of protection, a collective management organisation may establish itself this information according to information collected in compliance with Article 161 or 165a of this Act, or in another appropriate way. «.

#### Article 19

After Article 165, Article 165a and the heading above it, the heading of chapter 5 and Article 165b and the heading above it shall be added to read:

»Monitoring the use of subject matters of protection

#### Article 165a

(1) A collective management organisation may, in compliance with the authorisation of a rightholder as referred to in Article 159 of this Act, monitor the use of the subject matter of protection for which it has authorisation for collective management of rights granted by the Office.

(2) Users of subject matters of protection shall provide a collective management organisation with information relevant for such management and enable the inspection of relevant documentation.

(3) At a request of collective management organisations, the state administration bodies responsible for monitoring and inspections in the internal market, and the customs services, as well as competent police administrations and police stations shall provide assistance to the collective management organisations in exercising monitoring as referred to in paragraph (1) of this Article regarding the use of the subject matter of protection.

(4) At a request of an author, or a collective management organisation, the competent police administration or a police station shall prohibit a performance at which subject matters of protection are used, if its organiser does not have the authorisation of the author, that is, of a collective management organisation.

### Chapter 5

#### MANAGEMENT OF RIGHTS REVENUE

##### Collection and use of rights revenue

#### Article 165b

(1) A collective management organisation shall be diligent in the collection and management of rights revenue.

(2) A collective management organisation shall keep separate in its accounts:

- a) rights revenue and any income arising from the investment of rights revenue; and
- b) any own assets it may have and income arising from such assets, from management fees or from other activities.

(3) A collective management organisation shall not be permitted to use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to rightholders, except where it is allowed to deduct or offset its management fees in compliance with Article 159c paragraph (2) subparagraph 6 or where it is allowed in compliance with a decision

taken in accordance with Article 159c paragraph (2) of this Act.

(4) Where a collective management organisation invests rights revenue or any income arising from the investment of rights revenue, it shall do so in the best interests of the rightholders whose rights it represents, in accordance with the general investment and risk management policy with regard to rights revenue and to any income arising from the investment of rights revenue referred to in Article 159c paragraph (2) subparagraphs 5 and 7 of this Act and having regard to the following rules:

- where there is any potential conflict of interest, the collective management organisation shall ensure that the investment is made in the sole interest of those rightholders;
- the assets shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole; and
- the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole.«.

#### Article 20

The heading above Article 166 shall be amended to read: »DISTRIBUTION OF RIGHTS REVENUE«.

#### Article 21

In Article 166 paragraph (1) the words: »collected remunerations« shall be replaced by: »rights revenue«.

In paragraph (2) the words: »collected remunerations« shall be replaced by: »rights revenue«.

#### Article 22

The heading above Article 167 shall be amended to read: »GENERAL POLICY ON DISTRIBUTION OF AMOUNTS DUE TO Rightholders«.

Article 167 shall be amended to read:

»(1) A collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to rightholders in accordance with the general policy on distribution referred to in Article 159c paragraph (2) subparagraph 3 of this Act.

(2) The general policy on distribution of amounts due to rightholders referred to in Article 159c paragraph (2) subparagraph 3 of this Act shall contain in particular provisions concerning:

- subject matter of protection and rightholders which the general policy on distribution of amounts due to rightholders applies to,
- determination of a share of a particular rightholder in collected rights revenue, 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 organisation or by international contracts on mutual representation of collective management organisations, and

– terms of accounting and payment of distributed amounts due to rightholders.

(3) Contracts on distribution concluded between the rightholders of the same work shall override the general policy on distribution of amounts due to rightholders.

(4) A collective management organisation or its members who are entities representing rightholders shall pay due amounts to rightholders as soon as possible but no later than nine months from the end of this financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject matters of related rights with rightholders prevent that deadline from being met.

(5) Where the due amounts cannot be distributed within the deadline set in paragraph (4) of this Article because the relevant rightholders cannot be identified or located, the exception to that deadline referred to in paragraph (4) of this Article shall not apply, and those amounts shall be kept separate in the accounts of the collective management organisation.

(6) The collective management organisation shall take all necessary measures to identify and locate the rightholders. In particular, at the latest three months upon expiry of the deadline set in paragraph (4) of this Article, the collective management organisation shall make available information on works and subject matters of related rights for which one or more rightholders have not been identified or located to:

– the rightholders that it represents or the entities representing rightholders, who are members of the collective management organisation; and  
– all collective management organisations with which it has concluded representation agreements.

The information shall include, where available, in particular:

– the title of the work or the subject matter of related rights;  
– the name of the rightholder;  
– the name of the relevant publisher or producer; and  
– any other relevant information available which could assist in identifying the rightholder.

The collective management organisation shall also verify the records referred to in Article 159a paragraph (4) of this Act and other available records. If the abovementioned measures fail to produce results, the collective management organisation shall make the information on the failure of identifying and locating the rightholder available to the public at the latest one year upon

expiry of the three-month period.

(7) Where the amounts due to rightholders cannot be distributed after three years from the end of the financial year in which the collection of the rights revenue occurred, and provided that all necessary measures to identify and locate the rightholder have been taken, those amounts shall be deemed non-distributable.

(8) The general assembly of members of a collective management organisation shall decide on the use of the non-distributable amounts in accordance with the policy referred to in Article 159c paragraph (2) subparagraph 4 of this Act, without prejudice to the right of rightholders to claim due amounts in accordance with the statute of limitations of three years.

(9) General statement of account regarding distribution shall be established by a competent body of a collective management organisation, and audited and evaluated by an authorised auditor.

(10) A collective management organisation shall deliver its statement of account regarding distribution referred to in paragraph (9) of this Article to the Office within 15 days upon receipt of the audit report.«

#### Article 23

The heading above Article 167a shall be amended to read: »MANAGEMENT FEES AND OTHER DEDUCTIONS AND PROMOTION OF CREATIVITY AND CULTURAL DIVERSITY«.

Article 167a shall be amended to read:

»(1) A collective management organisation shall provide the rightholder with information on management fees and other deductions from the rights revenue and from any income arising from the investment of rights revenue, before obtaining his consent to its managing his rights.

(2) Management fees shall not exceed the actual and justified costs incurred by managing the rights. Management fees shall be documented in compliance with the best accounting standards.

(3) A collective management organisation may decide, in addition to management fees in total provided by paragraph (2) of this Article, to spend maximum 3% of the rights revenue in total on measures against piracy and counterfeiting and other measures intended to raise awareness of the value of copyright and related rights.

(4) A collective management organisation shall provide for, in the powers of attorney for representation given by their members, and in international reciprocity agreements, allocations to the fund intended to enhance the respective artistic and cultural creativity of predominantly non-commercial nature and cultural diversity in the respective artistic and cultural fields. The revenues of the fund shall not be used for other purposes. Allocations to the aforementioned fund cannot exceed 10% of the rights revenue in total,



unless it is a matter of the rights revenue 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, in which case the allocations to the aforementioned fund cannot exceed 30% of the remunerations in total.

(5) All deductions from the rights revenue to the funds prescribed by this Act or the statute of a collective management organisation shall be reasonable in relation to the services provided by the collective management organisation to rightholders, including the services referred to in paragraph (6) of this Article, and shall be established on the basis of objective criteria.

(6) Where a collective management organisation provides social, cultural or educational services funded through deductions from rights revenue or from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair criteria, in particular as regards access to, and the extent of, those services.«.

#### Article 24

After Article 167a, Article 167b and the heading above it shall be added to read:

»Distribution, management fees and deductions under representation agreements

#### Article 167b

(1) The collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to other collective management organisations it represents under representation agreements.

(2) A collective management organisation shall not make deductions, other than in respect of management fees, from the rights revenue derived from the rights it manages on the basis of a representation agreement, or from any income arising from the investment of that rights revenue, unless the other collective management organisation that is party to the representation agreement expressly consents to such deductions.

(3) The collective management organisation shall carry out such distribution and payments to the other collective management organisation it represents under representation agreements as soon as possible but not later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and subject matters of related rights with rightholders prevent the collective management organisation from meeting that deadline.

(4) A collective management organisation or its members who are entities representing rightholders shall pay due amounts they received

from another collective management organisation under representation agreement to rightholders as soon as possible but no later than six months from the end of this financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject matters of related rights with rightholders prevent that deadline from being met.«.

#### Article 25

Above the heading of Article 168, the heading of chapter shall be added to read: »Chapter 6 TRANSPARENCY AND REPORTING«.

The heading above Article 168 shall be amended to read: »INFORMATION PROVIDED TO Rightholders ON THE MANAGEMENT OF THEIR RIGHTS«.

Article 168 shall be amended to read:

(1) A collective management organisation shall make available, not less than once a year, to rightholders to whom it has attributed rights revenue or made payments in the period to which the information relates, at least the following information:

- a) any contact details which the rightholder has authorised the collective management organisation to use in order to identify and locate the rightholder;
- b) the rights revenue attributed to the rightholder;
- c) the amounts paid by the collective management organisation to the rightholder per category of rights managed and per type of use;
- d) the period during which the use took place for which amounts were due to be attributed and paid to the rightholder, unless objective reasons relating to reporting by users prevent the collective management organisation from doing so;
- e) deductions made in respect of management fees;
- f) deductions made for any purpose other than in respect of management fees, including those for the provision of any cultural, social and educational services, and
- g) any rights revenue attributed to the rightholder which is outstanding for any period.

(2) Where a collective management organisation has as members entities which are responsible for the distribution of rights revenue to rightholders, the collective management organisation shall provide the information listed in paragraph (1) of this Article to those entities, if they do not have that information in their possession. In this case, these entities shall make this information available, not less than once a year, to rightholders to whom they have attributed rights revenue or made payments in the period to which the information relates.«.

### Article 26

After Article 168, Articles 168a, 168b, 168c and 168d and headings above them, Chapter 7 with Articles 168e, 168f, 168g, 168h, 168i, 168j, 168k, 168l, 168m, 168n and 168o and headings above them, Chapter 8 with Articles 168p, 168r, 168s, and 168t and headings above them shall be added to read:

»Information provided to other collective management organisations on the management of rights under representation agreements

### Article 168a

A collective management organisation shall make at least the following information available, not less than once a year and by electronic means, to collective management organisations on whose behalf it manages rights under a representation agreement, for the period to which the information relates:

- a) the rights revenue attributed, the amounts paid by the collective management organisation per category of rights managed, and per type of use, for the rights it manages under the representation agreement, and any rights revenue attributed which is outstanding for any period;
- b) deductions made in respect of management fees;
- c) deductions made for any purpose other than in respect of management fees, including those for the provision of any cultural, social or educational services;
- d) information on any licences granted or refused with regard to works and other subject matter covered by the representation agreement, and
- e) resolutions adopted by the general assembly of members of the collective management organisation in so far as those resolutions are relevant to the management of the rights under the representation agreement.

Information provided to rightholders, other collective management organisations and users on request

### Article 168b

In response to a duly justified request by any rightholder, any other collective management organisation on whose behalf it manages rights under a representation agreement or any user, a collective management organisation shall make at least the following information available by electronic means and without undue delay:

- a) the works or other subject matter it represents, the rights it manages, directly or under representation agreements, and the territories covered; or
- b) where, due to the scope of activity of the collective management organisation, such works or other subject matter cannot be determined, the types of works or of other subject matter it represents, the rights it manages and the

territories covered.

### Disclosure of information to the public

#### Article 168c

A collective management organisation shall make public on its website and continuously update at least the following information:

- a) its statute;
- b) its membership terms and the terms of termination of authorisation to manage rights, if these are not included in the statute;
- c) standard licensing contracts;
- d) standard applicable tariffs, including discounts;
- e) the list of the persons referred to in Article 159e of this Act;
- f) its general policy on distribution of amounts due to rightholders;
- g) its general policy on management fees;
- h) its general policy on deductions, other than in respect of management fees, from rights revenue and from any income arising from the investment of rights revenue, including deductions for the purposes of social, cultural and educational services;
- i) a list of the representation agreements it has entered into, and the names of the collective management organisations with which those representation agreements have been concluded;
- j) the general policy on the use of non-distributable amounts; and
- k) the complaint handling and dispute resolution procedures available in accordance with Articles 168p, 168r and 168s of this Act.

### Annual transparency report

#### Article 168d

(1) A collective management organisation shall draw up and make public an annual transparency report on its website, including the special report referred to in paragraph (3) of this Article, for each financial year no later than eight months following the end of that financial year. The annual transparency report published on the website shall remain available to the public on that website for at least five years.

(2) The annual transparency report shall contain at least the following information:

- a) financial statements comprising a balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash-flow statement;
- b) a report on the activities in the financial year;
- c) information on refusals to grant a licence pursuant to Article 160 paragraph (2) of this Act;
- d) a description of the legal and governance structure of the collective management organisation;
- e) information on any entities directly or indirectly

owned or controlled, wholly or in part, by the collective management organisation;

f) information on the total amount of remuneration paid to the persons referred in Article 159d paragraph (3) and Article 159e of this Act in the financial year reported, and on other benefits granted to them;

g) the financial information referred to in paragraph (3) of this Article; and

h) a special report on the use of any amounts deducted for the purposes of social, cultural and educational services, containing the information referred to in paragraph (4) of this Article.

(3) At least the following financial information is provided in the annual transparency report:

a) financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance), including information on the income arising from the investment of rights revenue and the use of such income (whether it is distributed to rightholders or other collective management organisations, or otherwise used);

b) financial information on the cost of rights management and other services provided by the collective management organisation to rightholders, with a comprehensive description of at least the following items:

- all operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;
- operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs and only with regard to the management of rights, including management fees deducted from or offset against rights revenue or any income arising from the investment of rights revenue in accordance with Article 165b paragraph (3) and Article 167a paragraphs (1), (2) and (3) of this Act;
- operating and financial costs with regard to services other than the management of rights, but including social, cultural and educational services;
- resources used to cover costs of rights management;
- deductions made from rights revenues, with a breakdown per category of rights managed and per type of use and the purpose of the deduction, such as costs relating to the management of rights or to social, cultural or educational services; and
- the percentages that the cost of the rights management and other services provided by the collective management organisation to rightholders represents compared to the rights revenue in the relevant financial year, per category of rights managed, and, where costs are indirect and cannot be attributed to one or more

categories of rights, an explanation of the method used to allocate such indirect costs;

c) financial information on amounts due to rightholders, with a comprehensive description of at least the following items:

- the total amount attributed to rightholders, with a breakdown per category of rights managed and type of use;
- the total amount paid to rightholders, with a breakdown per category of rights managed and type of use;
- the frequency of payments, with a breakdown per category of rights managed and per type of use;
- the total amount collected but not yet attributed to rightholders, with a breakdown per category of rights managed and type of use, and indicating the financial year in which those amounts were collected;
- the total amount attributed to but not yet distributed to rightholders, with a breakdown per category of rights managed and type of use, and indicating the financial year in which those amounts were collected;
- the reasons for the delay where a collective management organisation has not carried out the distribution and payments within the deadline set in Article 167 paragraph (4) of this Act;
- the total non-distributable amounts, along with an explanation of the use to which those amounts have been put;

d) financial information on relationships with other collective management organisations, with a description of at least the following items:

- amounts received from and paid to other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;
- management fees and other deductions from the rights revenue due to other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;
- management fees and other deductions from the amounts paid by other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;
- amounts distributed directly to rightholders originating from other collective management organisations, with a breakdown per category of rights and per organisation.

(4) A special report of the collective management organisation shall provide at least the following information on the use of the amounts deducted for the purposes of social, cultural and educational services:

a) the amounts deducted for the purposes of social, cultural and educational services in the financial year, with a breakdown per type of purpose and, for each type of purpose, with a breakdown per category of rights managed and

per type of use;

b) an explanation of the use of those amounts, with a breakdown per type of purpose including the costs of managing amounts deducted to fund social, cultural and educational services and of the separate amounts used for social, cultural and educational services; and

c) the amounts as referred in Article 167a paragraph (3) of this Act.

(5) The accounting information included in the annual transparency report shall be audited by one or more persons empowered by the Audit Act. The audit report, including any qualifications thereto, shall be reproduced in full in the annual transparency report. Accounting information shall comprise the financial statements referred to in paragraph (2) point a) of this Article, financial information referred to in paragraph (2) points g) and h) of this Article, and financial information referred to in paragraph (3) of this Article.

## Chapter 7

### MULTI-TERRITORIAL LICENSING OF ONLINE RIGHTS IN MUSICAL WORKS

Multi-territorial licensing in the internal market of the European Union

#### Article 168e

Collective management organisations established in the Republic of Croatia shall comply with the requirements of this Chapter of this Act when granting multi-territorial licences for online rights in musical works within the European Union (hereinafter: multi-territorial licences).

Capacity to process multi-territorial licences

#### Article 168f

(1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall have sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of such licences, including for the purposes of identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightholders.

(2) For the purposes of paragraph (1) of this Article, a collective management organisation shall comply, at least, with the following conditions:

- to have the ability to identify accurately the musical works, wholly or in part, which the collective management organisation is authorised to represent;
- to have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding rightholders;

– to make use of unique identifiers in order to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or the European Union level; and

– to make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.

Transparency of multi-territorial repertoire information

#### Article 168f

(1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall provide to online service providers, to rightholders whose rights it represents and to other collective management organisations, by electronic means, in response to a duly justified request, up-to-date information allowing the identification of the online music repertoire it represents. This shall include:

- the musical works represented;
- the rights represented wholly or in part; and
- the territories covered.

(2) where necessary, The collective management organisation may take reasonable measures protect the accuracy and integrity of the data, to control their reuse and to protect commercially sensitive information.

Accuracy of multi-territorial repertoire information

#### Article 168h

(1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall have in place arrangements to enable rightholders, other collective management organisations and online service providers to request a correction of the data referred to in Article 168f paragraph (2) and Article 168g of this Act, where such data, on the basis of reasonable evidence submitted with a request, prove to be inaccurate. Where the claims are sufficiently substantiated, the collective management organisation shall ensure that such data are corrected without undue delay.

(2) The collective management organisation shall provide rightholders whose musical works are included in its own music repertoire and rightholders who have entrusted the management of their online rights in musical works to it in accordance with Article 168m of this Act with the means of submitting to it in electronic form information concerning their musical works, their rights in those works and the territories in respect of which the rightholders authorise the organisation. When doing so, the collective management organisation and the rightholders

shall take into account, as far as possible, voluntary industry standards or practices regarding the exchange of data developed at international or Union level, allowing rightholders to specify the musical work, wholly or in part, the online rights, wholly or in part, and the territories in respect of which they authorise a collective management organisation.

(3) Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under Articles 168k and 168l of this Act, the mandated collective management organisation shall also apply provisions under paragraph 2 of this Article with respect to the rightholders whose musical works are included in the repertoire of the mandating collective management organisation, unless the collective management organisations agree otherwise.

#### Accurate and timely reporting and invoicing

##### Article 168i

(1) A collective management organisation shall monitor the use of online rights in musical works which it represents, wholly or in part, by online service providers to which it has granted a multi-territorial licence for those rights.

(2) The collective management organisation shall offer online service providers the possibility of reporting by electronic means the actual use of online rights in musical works and online service providers shall accurately report the actual use of those works. The collective management organisation shall offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data. The collective management organisation may refuse to accept reporting by the online service provider in a proprietary format if the organisation allows for reporting using an industry standard for the electronic exchange of data.

(3) The collective management organisation shall invoice the online service provider by electronic means. The collective management organisation shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or Union level. The invoice shall identify the works and rights which are licensed, wholly or in part, on the basis of the data referred to in the list of conditions under Article 168f paragraph (2) of this Act and the corresponding actual uses, to the extent that this is possible on the basis of the information provided by the online service provider and the format used to provide that information. The online service provider may not refuse to accept the invoice because of its format if the collective

management organisation is using an industry standard.

(4) The collective management organisation shall invoice the online service provider accurately and without delay after the actual use of the online rights in that musical work is reported, except where this is not possible for reasons attributable to the online service provider.

(5) The collective management organisation shall have in place adequate arrangements enabling the online service provider to challenge the accuracy of the invoice, including when the online service provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

#### Accurate and timely payment to rightholders

##### Article 168j

(1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall distribute amounts due to rightholders accruing from such licences accurately and without delay after the actual use of the work is reported, except where this is not possible for reasons attributable to the user (the online service provider).

(2) Together with each payment it makes under paragraph (1) of this Article, the collective management organisation shall provide at least the following information to the rightholder:

- the period during which the uses took place for which amounts are due to rightholders and the territories in which the uses took place;
- the amounts collected, deductions made and amounts distributed by the collective management organisation for each online right in any musical work which the rightholder has authorised such collective management organisation, wholly or in part, to represent, and
- the rights revenue collected for such rightholder, deductions made, and amounts distributed by the collective management organisation in respect of each user (online service provider).

(3) Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works on its behalf and for its account under Articles 168k and 168l of this Act, mandated collective management organisation shall distribute the amounts referred to in paragraph (1) of this Article accurately and without delay, and shall provide the information referred to in paragraph (2) of this Article to the mandating collective management organisation. In this case, the mandating collective management organisation shall be responsible for the subsequent distribution of such amounts and the provision of such information to rightholders, unless the collective management organisations agree otherwise.

### Agreements between collective management organisations for multi-territorial licensing

#### Article 168k

(1) Representation agreements between collective management organisations whereby a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works in its own music repertoire is of a non-exclusive nature. The mandated collective management organisation shall manage those online rights on a non-discriminatory basis.

(2) The mandating collective management organisation as referred to in paragraph (1) of this Article shall inform its members of the main terms of the agreement, including its duration and the costs of the services provided by the mandated collective management organisation.

(3) The mandated collective management organisation as referred to in paragraph (1) of this Article shall inform the mandating collective management organisation of the main terms according to which the latter's online rights are to be licensed, including the nature of the exploitation, all provisions which relate to or affect the licence fee, the duration of the licence, the accounting periods and the territories covered.

### Obligation to represent another collective management organisation for multi-territorial licensing

#### Article 168l

Where a collective management organisation which does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire requests another collective management organisation to enter into a representation agreement to represent those rights, the requested collective management organisation is required to agree to such a request if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collective management organisations.

#### Article 168m

(1) The requested collective management organisation as referred to in Article 168l of this Act shall respond to the requesting collective management organisation in writing and without undue delay.

(2) The requested collective management organisation as referred to in Article 168l of this Act shall manage the represented repertoire of the requesting collective management organisation on the same conditions as those which it applies to the management of its own repertoire and include the represented repertoire of the requesting collective management organisation in all offers it

addresses to online service providers.

(3) The management fee for the service provided by the requested collective management organisation to the requesting organisation as referred to in Article 168l of this Act shall not exceed the costs reasonably incurred by the requested collective management organisation.

(4) The requesting collective management organisation as referred to in Article 168l of this Act shall make available to the requested collective management organisation all information relating to its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested collective management organisation to meet the requirements of this Chapter, the requested collective management organisation shall be entitled to charge for the costs reasonably incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

### Access to multi-territorial licensing

#### Article 168n

Where a collective management organisation does not grant or offer to grant multi-territorial licences for online rights in musical works or does not allow another collective management organisation to represent those rights for such purpose by 31 December 2017, rightholders who have authorised that collective management organisation to represent their online rights in musical works can withdraw from that collective management organisation the online rights in musical works for the purposes of multi-territorial licensing in respect of all territories without having to withdraw the online rights in musical works for the purposes of mono-territorial licensing on the territory of the Republic of Croatia, so as to grant multi-territorial licences for their online rights in musical works themselves individually (personally), through a specialised legal person or through another collective management organisation.

### Derogation for online music rights required for radio and television programmes

#### Article 168o

The requirements under this Chapter of this Act shall not apply to collective management organisations when they grant, on the basis of the voluntary aggregation of the required rights, in compliance with the competition rules under Articles 101 and 102 TFEU, a multi-territorial licence for the online rights in musical works required by a broadcaster to communicate or make available to the public its radio or television

programmes simultaneously with or after their initial broadcast as well as any online material, including previews, produced by or for the broadcaster which is ancillary to the initial broadcast of its radio or television programme.

## Chapter 8

### ENFORCEMENT MEASURES

#### Complaints procedures

##### Article 168p

(1) Collective management organisations shall lay down for their members, and for collective management organisations on whose behalf they manage rights under a representation agreement, effective and timely procedures for dealing with complaints, particularly in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.

(2) A collective management organisation shall respond in writing to complaints by members or by collective management organisations on whose behalf they manage rights under a representation agreement as referred to in paragraph (1) of this Article and in case of rejecting a complaint, it shall give reasons.

#### Dispute resolution between a collective management organisation and users

##### Article 168r

Disputes between a collective management organisation and a user concerning their relationship, and in particular existing and proposed licensing conditions or a breach of contract, can be submitted to an arbitration court with expertise in intellectual property law in compliance with arbitration regulations or to a competent court in compliance with civil procedure.

#### Alternative dispute resolution procedures concerning multi-territorial licensing of rights in musical works for online use

##### Article 168s

(1) For the purposes of implementing the provisions under Chapter 7 of this Act (Multi-territorial licensing of online rights in musical works), the following disputes relating to a collective management organisation which grants multi-territorial licences for online rights in musical works, established in the Republic of Croatia, can be submitted to an arbitration court in compliance with arbitration regulations:

a) disputes with an actual or potential online service provider regarding the application of Articles 160, 168g, 168h and 168i of this Act;

b) disputes with one or more rightholders regarding the application of Articles 168g, 168h, 168i, 168j, 168k, 168l and 168m of this Act;

c) disputes with another collective management organisation regarding the application of Articles 168g, 168h, 168i, 168j, 168k and 168m of this Act.

(2) The parties in dispute as referred to in paragraph (1) of this Article may request the Council of Experts for the opinion on the subject matter of disagreement. The provision of the opinion shall be appropriately subject to the provisions as referred to in Article 162 paragraph (6) of this Act.

#### Protection of personal data

##### Article 168t

The processing of personal data carried out within the framework of this Act shall be subject to the application of the act providing for personal data protection.«.

##### Article 27

Article 169 shall be amended to read:

»(1) The Office shall grant authorisations to the organisations referred to in Article 157 of this Act.

(2) The Office shall keep the records of the collective management organisations on the territory of the Republic of Croatia.

(3) The Office conducts inspection of the work of the collective management organisations established in the Republic of Croatia in terms of performing the activity in compliance with this Act.

(4) As to the operation of collective management organisations managing the rights on the territory of the Republic of Croatia, but established in other Member States of the European Union, the Office conducts inspection of their work in compliance with corresponding regulations of that Member State having incorporated the Directive 2014/26/EU. Inspection is conducted pursuant to Article 170 paragraph (2) b) of this Act and as provided by Article 171a of this Act.

(5) The Office shall revoke the authorisation referred to in paragraph (1) of this Article by a decision, if a collective management organisation established in the Republic of Croatia ceased to comply with the prescribed criteria of managing the rights or if it seriously and repeatedly violated the provisions of this Act. In such case, prior notice in writing shall be given to the collective management organisation by the Office, and the Office shall set an appropriate time limit for the collective management organisation to eliminate the found irregularities. This provision shall be accordingly applied in compliance with the provisions of Article 171a to the collective management organisations established in another Member State of the European Union, and collectively managing the rights on the territory of the Republic of Croatia.

(6) The decision as referred to in paragraph (5) of this Article cannot be appealed, but it can be submitted to an administrative dispute resolution.

(7) A decision on the grant of the authorisation for collective management of rights to a collective management organisation as referred to in paragraph (1) of this Article and a decision of revocation of such authorisation shall be published in the Official Gazette of the State Intellectual Property Office.

(8) The Minister responsible for the operation of the Office shall enact the Regulations on Professional Criteria and Procedure of Granting Authorisations for Collective Management of Rights and Remunerations for Operation of the Council of Experts.«.

#### Article 28

Above Article 170, the heading of chapter shall be added to read: »Chapter 9 SUPERVISION OF COLLECTIVE MANAGEMENT OF RIGHTS«.

Article 170 shall be amended to read:

»(1) When conducting the inspection, an employer of the Office responsible for carrying out inspection procedure (hereinafter: the inspector) shall be authorised to require insight in the documents and business records regarding the collective management of rights.

(2) Inspection of the operation of collective management organisations can be regular and special, whereby:

a) regular inspection shall be conducted periodically, usually once a year;

b) special inspection can be conducted upon a duly justified request by members of a collective management organisation, users, another collective management organisation or another person legally interested in such inspection in order to warn of the actions or circumstances that represent, in the opinion of the requester, violation of this Act concerning collective management of rights, or it can be conducted *ex officio* if the Office in any way becomes aware of potential irregularities in the operation of a collective management organisation.

(3) If during the inspection the inspector finds that a collective management organisation established in the Republic of Croatia manages the rights contrary to the issued decision or contrary to the provisions of this Act, he shall order such deficiencies and irregularities to be eliminated within a certain time limit.

(4) If the deficiencies and irregularities are not eliminated within the prescribed time limit as referred to in paragraph (3) of this Article and if a collective management organisation established in the Republic of Croatia keeps managing the rights contrary to the requirements as prescribed or if it seriously and repeatedly violates the provisions of this Act, the inspector shall pass a decision on revoking the authorisation referred to in Article

169 paragraph (1) of this Act.

(5) The decision as referred to in paragraphs (3) and (4) of this Article cannot be appealed, but it can be submitted to an administrative dispute resolution.

(6) The provision referred to in paragraph (3) of this Article shall be accordingly applied in compliance with the provisions of Article 171a to the collective management organisations established in another Member State of the European Union, and collectively managing the rights on the territory of the Republic of Croatia.

(7) Where a collective management organisation is registered as an association, the inspector shall inform the state administration office keeping the registration records of associations about the measures undertaken as referred to in paragraphs (3) and (4) of this Article.

(8) The inspector has the right to participate in the general assembly as referred to in Article 159c of this Act with no voting right. The collective management organisation shall timely notify the Office about the place and time of the general assembly to be held.«.

#### Article 29

Article 171 shall be amended to read:

»The Office shall perform professional, technical and administrative activities related to the establishment and operation of the Council of Experts and other activities within its competence in this field.«.

#### Article 30

After Article 171, Article 171a and the heading above it and Chapter 10 and Articles 171b, 171c and 171d as well as headings above them shall be added to read:

»Cooperation with competent authorities in other Member States of the European Union and the European Commission

#### Article 171a

(1) The Office shall provide a reply within an appropriate time limit to the request for delivery of information on the application of Directive 2014/26/EU, including in particular the information on the activities of collective management organisations established in the Republic of Croatia, received from the authorities of a Member State of the European Union designated by a corresponding regulation of that State to supervise the operation of collective management organisations. The Office shall not reply to insufficiently justified requests.

(2) Where the Office considers that a collective management organisation established in another Member State of the European Union but acting within the territory of the Republic of Croatia may not be complying with the provisions of the national law of that Member State which have



been adopted pursuant to the requirements laid down in Directive 2014/26/EU, it may transmit all relevant information to the competent authority of the Member State designated by a corresponding regulation of that State to supervise the operation of collective management organisations. Where appropriate, the Office may accompany the information by a request to that authority to take appropriate action within its competence.

(3) Where the Office received the request referred to in paragraph (2) of this Article from the authority designated by a corresponding regulation of a Member State of the European Union to supervise the operation of collective management organisations, it shall provide a reply within three months upon receipt of the request.

(4) The request as referred to in paragraph (2) of this Article may also be referred by the Office to the expert group composed of representatives of the competent authorities of the Member States of the European Union, chaired by a representative of the European Commission.

(5) The Office shall provide a reply within an appropriate time limit to all the requests of the European Commission and cooperate with the European Commission for the development of multi-territorial licensing of online rights in musical works and fostering a regular exchange of all the relevant information between the European Commission and the Office, providing the European Commission with reports on the situation and development of multi-territorial licensing in the Republic of Croatia by 10 October 2017, regular reporting on changes to the list of the collective management organisations established in the Republic of Croatia and for the needs of the tasks to be performed by the expert group as referred to in paragraph 4 of this Article.

## Chapter 10

### INDEPENDENT MANAGEMENT ENTITIES

#### Notification of collective management organisations

##### Article 171b

(1) An independent management entity intending to collectively manage the rights on the territory of the Republic of Croatia shall notify this intention to the Office, regardless of its place of establishment. The written notification to the Office shall contain all the information on the types of rights and the category and the number of rightholders on behalf of whom it intends to manage the rights based on the authorisations granted. The Office may request such entity to provide other information as well (e.g. individual authorisations, identification of the rightholders and the subject matters of protection under license).

(2) During its performance of collective management of rights, an independent

management entity shall regularly notify the Office of all the changes to the information referred to in paragraph (1) of this Article.

(3) The complete correspondence between the Office and independent management entities collectively managing or intending to collectively manage copyright and related rights on the territory of the Republic of Croatia shall be in Croatian and Latin transcription.

(4) The Office shall keep records of independent management entities that collectively manage the rights on the territory of the Republic of Croatia.

(5) Where the Office receives a justified request from any person having legal interest therein or it becomes aware *ex officio* of the fact that an independent management entity collectively manages rights on the territory of the Republic of Croatia without prior notification to the Office as referred to in paragraph (1) of this Article, the Office may request this entity to provide information and documentation in order to determine if the collective management of rights is performed in compliance with the provisions of this Act.

#### Supervision of the operation of independent management entities and measures taken by the Office

##### Article 171c

(1) Authorised inspectors of the Office conduct the inspection of the operation of independent management entities established on the territory of the Republic of Croatia, in terms of activities performed in compliance with this Act.

(2) The provision referred to in paragraph (1) of this Article shall be accordingly applied in compliance with the provisions of paragraph (3) b) of this Article and Article 171a of this Act to the independent management entities established in another Member State of the European Union, and collectively managing the rights on the territory of the Republic of Croatia.

(3) Inspection of the operation of independent management entities can be regular and special, whereby:

a) regular inspection shall be conducted periodically, usually once a year:

b) special inspection can be conducted upon a duly justified request by a proxy of an independent management entity, users, another collective management organisation or another person legally interested in such inspection in order to warn of the actions or circumstances that represent, in the opinion of the requester, violation of this Act concerning collective management of rights, or it can be conducted *ex officio* if the Office in any way becomes aware of potential irregularities in the operation of an independent management entity.

(4) When conducting the inspection, an employer

of the Office responsible for carrying out inspection procedure shall be authorised to require insight in the documents and business records regarding the collective management of rights.

(5) If during the inspection the inspector finds that an independent management entity established in the Republic of Croatia manages the rights contrary to the provisions of this Act, he shall order such deficiencies and irregularities to be eliminated within a certain time limit. This decision cannot be appealed, but it can be submitted to an administrative dispute resolution.

(6) If the deficiencies and irregularities are not eliminated within the prescribed time limit as referred to in paragraph (5) of this Article, the inspector shall pass a decision on banning the operation of an independent management entity on the territory of the Republic of Croatia. This decision cannot be appealed, but it can be submitted to an administrative dispute resolution.

#### Application of other provisions of this Act

##### Article 171d

The provisions referred to in Article 162 paragraph (1), Articles 168 and 168b, Article 168c points a), b), c), f), g) and h), Article 168t and Article 171a of this Act shall be accordingly applied to the independent management entities.«.

##### Article 31

In Article 179 paragraph (1) the word: »remuneration« shall be replaced by the word: »price«.

##### Article 32

After Article 192a, Article 192b and the heading above it shall be added to read:

»Failure to provide information on request of a collective management organisation

##### Article 192b

(1) Any legal person which does not submit the information at its disposal upon request of a collective management organisation, regarding the management of rights under this Act, as referred to in Article 161 paragraph (3), 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.

(3) A natural 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.«.

## TRANSITIONAL AND FINAL PROVISIONS

##### Article 33

A collective management association authorised by the rightholders to manage their rights, categories of rights and types of works or subject matters of related rights up until this Act has entered into force, shall appropriately provide these rightholders with the information on their rights as referred to in Article 159 amended by Article 11 of this Act no later than within eight days upon the Regulations referred to in Article 35 paragraph (1) point 1 of this Act have entered into force.

##### Article 34

(1) Any collective management association established in the Republic of Croatia shall coordinate its acts, internal organisation and its business with the provisions of this Act no later than within four months upon the Regulations referred to in Article 35 paragraph (1) point 1 of this Act have entered into force.

(2) Within four months upon the Regulations referred to in Article 35 paragraph (1) point 1 of this Act have entered into force, all collective management associations shall submit a request for authorisation with the State Intellectual Property Office as referred to in Article 8 of this Act and accompany it with all the documents and other business records as evidence of their meeting the requirements for collective management of copyright and related rights as referred to under this Act.

(3) All the authorisations granted by the State Intellectual Property Office for collective management of rights effective on the day of this Act entering into force shall remain in force up until the decision by the Office on the request referred to in paragraph (2) of this Article has become enforceable if the request was submitted within a given time limit. In case that the request was not submitted within a given time limit, authorisations shall cease to be valid, which shall be specifically decided on by the Office within thirty days upon expiry of the time limit referred to in paragraph (2) of this Article.

(4) Any tariff of a collective management association valid on the day of this Act entering into force shall remain in force.

##### Article 35

(1) Within 60 days upon this Act entering into force, the Minister whose scope of activity includes the supervision of the operation of the State Intellectual Property Office shall coordinate the following regulations with the provisions of this Act:

1. Regulations on Professional Criteria and Procedure of Granting Authorisations for Collective Management of Rights and on

Remunerations for Operation of the Council of Experts (»Official Gazette«, No. 72/04, 151/08 and 90/13) and

2. Regulations on Remunerations for Operation of the Council of Experts (»Official Gazette«, No. 24/06 and 148/08).

(2) Regulations on Professional Criteria and Procedure of Granting Authorisations for Collective Management of Rights and on Remunerations for Operation of the Council of Experts (»Official Gazette«, No. 72/04, 151/08 and 90/13) and Regulations on Remunerations for Operation of the Council of Experts (»Official Gazette«, No. 24/06 and 148/08) shall remain effective up until the regulations coordinated as referred to in paragraph (1) of this Article have entered into force.

#### Article 36

This Act shall enter into force on the eighth day following the day of its publication in the »Official Gazette«.

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

### Article 1

Article 1 in the Copyright and Related Rights Act (»Official Gazette«, No. 167/03, 79/07, 80/11, 125/11, 141/13, 127/14 and 62/17) in Article 1a after subparagraph 12, the full stop shall be replaced by the comma and a new subparagraph (13) shall be added to read:

»- Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 242, 20.9.2017).«.

### Article 2

In Article 20, paragraph (2), the word: »certain« shall be replaced by the word: »third«.

### Article 3

The heading above Article 86 shall be amended to read: »USE OF COPYRIGHT WORKS BY PERSONS WITH DISABILITIES«.

Article 86 shall be amended to read:

»The use of copyright works for the benefit of persons with disabilities 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.«.

### Article 4

After Article 86, Articles 86a and 86b and the headings above them shall be added to read:

**»USE OF COPYRIGHT WORKS BY PERSONS  
WHO ARE BLIND, VISUALLY IMPAIRED OR  
OTHERWISE PRINT-DISABLED**

#### Article 86a

(1) For the purposes of the provisions as referred to in Article 86a and 86b the following definitions apply:

a) "copyright work or other subject matter" means a work in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks and in digital format, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available,

b) "beneficiary person" means, regardless of any other disabilities, a person who:

– is blind,

– has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment,

– has a perceptual or reading disability and is, as a result, unable to read printed works to substantially the same degree as a person without such disability; or

– is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading,

c) "accessible format copy" means a copy of a work or other subject matter in an alternative manner or form that gives a beneficiary person access to the work or other subject matter, including allowing such person to have access as feasibly and comfortably as a person without any of the impairments or disabilities referred to in paragraph 1 point b) of this Article,

d) "authorised entity" means an entity that provides education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a public institution or non-profit organisation that provides the same services to beneficiary persons as one of its primary activities, institutional obligations or as part of its public-interest missions, in compliance with special provisions.

(2) It shall be permitted, without authorisation of the author or the rightholder of any copyright or related right in a work or other subject matter and without compensation, to reproduce, distribute, communicate to the public and to adapt a work or other subject matter, including computer programmes and databases protected by copyright or related rights, for any act necessary for:

– a beneficiary person, or a person acting on their behalf, to make an accessible format copy of a work or other subject matter to which the beneficiary person has lawful access for the exclusive use of the beneficiary person; and

– an authorised entity to make an accessible format copy of a work or other subject matter to which it has lawful access, or to communicate, make available, distribute or lend an accessible format copy to a beneficiary person or another authorised entity on a non-profit basis for the purpose of exclusive use by a beneficiary person.

(3) Each accessible format copy of the copyright work or other subject matter shall respect the integrity of the work, with due consideration given to the changes required to make the work or other subject matter accessible in the alternative format.

(4) The exception provided for in paragraph 2 of this Article cannot be overridden by contract.

#### USE OF COPYRIGHT WORKS IN THE INTERNAL MARKET OF THE EUROPEAN UNION BY PERSONS WHO ARE BLIND, VISUALLY IMPAIRED OR OTHERWISE PRINT-DISABLED

##### Article 86b

(1) An authorised entity as referred to in Article 86a paragraph 1 point d) of this Act established in the Republic of Croatia may carry out the acts referred to in paragraph 2 of Article 86a of this Act for a beneficiary person or another authorised entity established in any Member State.

(2) A beneficiary person who is a citizen of or temporarily or permanently residing in the Republic of Croatia or an authorised entity established in the Republic of Croatia may obtain or may have access to an accessible format copy from an authorised entity established in any Member State.

(3) An authorised entity established in the Republic of Croatia carrying out the acts referred to in paragraph 1 of this Article shall establish and follow its own practices to ensure that it:

- distributes, communicates and makes available accessible format copies only to beneficiary persons or other authorised entities,

- takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available to the public of accessible format copies,

- demonstrates due care in, and maintains records of, its handling of works or other subject matter and of accessible format copies thereof; and

- publishes and updates, on its website if appropriate, or through other online or offline channels, information on how it complies with the obligations laid down in subparagraph 1 to 3 of this paragraph.

(4) The practices referred to in paragraph 3 of this Article shall be established and followed by an authorised entity in full respect of the rules applicable to the processing of personal data of beneficiary persons.

(5) An authorised entity established in the Republic of Croatia carrying out the acts referred to in Article 86a paragraph 2 of this Act shall provide the following information in an accessible way, on request, to beneficiary persons, other authorised entities or rightholders:

- the list of works or other subject matter for which it has accessible format copies and the available formats; and

- the name and contact details of the authorised entities with which it has engaged in the exchange of accessible format copies pursuant to paragraph 1 of this Article.

(6) The Office shall invite authorised entities referred to in Article 86a paragraph 1 point d) of this

Act established in the Republic of Croatia to communicate to them, on a voluntary basis, their names and contact details.

(7) The Office shall provide the information it has received pursuant to paragraph 6 of this Article to the European Commission. The Commission is authorised to make such information publicly available online on a central information access point and keep it up to date.

(8) The Office shall provide the European Commission with the necessary information on the improvement of availability, in accessible formats, of other kinds of works and subject matter protected by copyright and related rights for beneficiary persons who are blind, visually impaired or otherwise print-disabled and of works and other subject matter for persons with other disabilities and other relevant information necessary for the European Commission to prepare the report on exceptions of copyright and related rights in favour of the persons with disabilities.«.

##### Article 5

This Act shall enter into force on the eighth day following the day of its publication in the »Official Gazette«.