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COPYRIGHT IN THE REPUBLIC OF CROATIA IN LIGHT OF THE NEW COPYRIGHT AND RELATED RIGHTS ACT

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Abstract The aim of this paper is to analyse the key changes introduced by the Croatian Copyright and Related Rights Act of 2021, particularly in the context of harmonisation with European Union law. Special attention is devoted to the historical development of copyright, the legal framework, and the digital environment, including the liability of online platforms, new rules governing the use of content, and the expansion of the rights of right holders. The paper also examines criticisms of the new Act, as well as the challenges and issues that have emerged in practice following its adoption. A range of scientific methods is employed, including inductive and deductive reasoning, methods of analysis and synthesis, abstraction and concretisation, generalisation and specialisation, classification, description, historical analysis, compilation, and comparative analysis. The paper concludes by confirming the initial hypothesis. It finds that the new Act represents an important step in the modernisation of the Croatian copyright system; however, its full effectiveness will depend on how its provisions are applied and interpreted in legal practice.

Keywords
copyright,
digital single market,
Directive (EU) 2019/790 (DSM Directive),
online platforms,
publishers of press publications

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1 Introduction

The new Copyright and Related Rights Act[1] was published on 14 October 2021 and entered into force on 22 October 2021.[2] This paper analyses the changes introduced by the 2021 Act (ZAPSP/21) in comparison with the previous Copyright and Related Rights Act of 2003[3], together with its amendments from 2007, 2011, 2013, 2014, 2017, and 2018.[4]

Although the subject matter of copyright is most comprehensively regulated by the 2021 Act, it had already been addressed in earlier legislation. Copyright and related rights existed even prior to the adoption of the 2003 Act (ZAPSP/03), having been regulated by the Copyright Act (Copyright Act, 1978) of 30 March 1978, as amended on 24 April 1986 (Act on Amendments to the Copyright Act, 1986) and 11 April 1990 (Act on Amendments to the Copyright Act, 1990[5]). This legislation was subsequently taken over by the Republic of Croatia through the Act on the Taking Over of Federal Laws in the Field of Education and Culture (Act on the Taking Over of Federal Laws in the Field of Education and Culture, 1991[6]). That Act was substantially amended on 2 June 1993 (Act on Amendments to the Copyright Act, 1993[7]), after which a consolidated text of the Copyright Act was published in 1999[8]. Following this, the Act was amended three more times: twice in 1999[9] and once in 2001[10] and remained in force until the adoption of the 2003 Copyright and Related Rights Act.

The digital transformation of society and the development of online platforms have significantly affected the manner in which copyright works are created, distributed, and used. In response to such changes, the Republic of Croatia adopted a new Copyright and Related Rights Act in 2021, which modernised the national copyright protection system and ensured its alignment with the *acquis communautaire* of the European Union, in particular with Directive (EU) 2019/790 on copyright in the

[1] Hereinafter: ZAPSP/21 or the New Act.
[2] Copyright and Related Rights Act, Official Gazette 111/21.
[3] Hereinafter: ZAPSP/03 or the Previous Act.
[4] Copyright and Related Rights Act, Official Gazette 167/03, 79/07, 125/11, 80/11, 141/13, 127/14, 62/17, 96/18.
[5] Copyright Act, Official Gazette SFRY 19/78, 24/86, 21/90. Hereinafter: ZAP with amendments.
[6] Act on the Taking Over of Federal Laws in the Field of Education and Culture, Official Gazette 53/91.
[7] Official Gazette 58/93.
[8] Official Gazette 9/99.
[9] Official Gazette 76/99, 127/99.
[10] Official Gazette 67/01.

Digital Single Market ("Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market", 2019).[11]

This paper analyses the most important novelties introduced by the new Act, including the expansion of the catalogue of copyright works, amendments concerning works created in the course of employment, the regulation of the liability of online content-sharing platforms, the introduction of a new related right for publishers of press publications, as well as new provisions on the exercise of performers' rights on the internet. Special attention is devoted to a critical analysis of certain controversial provisions and to the reactions of the professional community to the new Act. The historical overview forms part of the paper's analytical framework. It enables the identification of key continuities and changes in the development of Croatian copyright law that preceded the current legislative framework. In this respect, the historical perspective supports a more precise understanding of the 2021 reform, particularly in distinguishing between genuinely new provisions and those reflecting the evolution of existing legal institutions. Moreover, the historical analysis provides contextual grounding for the process of harmonisation with the EU *acquis*, including the implementation of Directive (EU) 2019/790. As such, these sections serve an interpretative function in the assessment of the legal and systemic significance of the Copyright and Related Rights Act of 2021.

In the preparation of this paper, various scientific methods were useed, including the normative (dogmatic) method, which is used to analyse the legal provisions of the new Act and to interpret them; the comparative method, which is used to compare Croatian legislation with European Union law and earlier national solutions; the historical method, which demonstrates the development of copyright law and the reasons for the adoption of the new Act; as well as the inductive method (the application of inductive reasoning, whereby general conclusions are drawn on the basis of the analysis of individual facts) and the deductive method (the application of deductive reasoning, whereby specific and individual conclusions are derived from general propositions). Furthermore, the methods of analysis (the decomposition of complex concepts, judgments, and conclusions) and synthesis (the combining of simple judgments into more complex ones), the method of abstraction (the separation of the general and the elimination of the particular, or the separation of the particular and the disregard of the general) and concretisation (the

[11] Hereinafter: DSM Directive.

understanding of the unity of the abstract-general in the particular or of the abstract-particular with the general), the method of generalisation (deriving general conclusions from individual observations) and specialisation (deriving a new concept of narrower scope and richer content from a general concept), the method of proof (incorporating all methods to establish the correctness of a certain cognition) and refutation (proving the incorrectness of a thesis), the method of classification (the systematic and comprehensive division of a general concept into particular ones), the method of description (describing facts), and the method of compilation (the use of other authors' scientific research results with proper citation, accompanied by the compiler's personal contribution) were also applied.

2 Legal Sources

Legal rules governing copyright and related rights are contained in certain formal sources of law, which include:

a) direct sources, namely: the constitution, statutes, international treaties, subordinate general acts, and legal customs;

b) indirect sources, such as case law and legal science (Henneberg, 2001: 39).

2.1 Constitution

The Constitution is the highest legal act of a state and represents a set of fundamental legal norms by which the political and legal order of a state is established or constituted. Such a supreme general normative act contains, inter alia, provisions on the fundamental political and social rights and freedoms of individuals and citizens (Visković, 2006: 184). Accordingly, the Constitution of the Republic of Croatia, in Chapter III entitled "Fundamental Freedoms and Rights of Man and Citizen", and under subsection 3 "Economic, Social and Cultural Rights", in Article 69, contains provisions on copyright (Constitution of the Republic of Croatia, 1990).

For copyright, particular importance is attributed to paragraph 4 of the aforementioned Article, as the addition of the expression "intellectual and other creativity", alongside scientific, cultural, and artistic creativity, extends the scope of protection to all intellectual property rights (Henneberg, 2001: 41).

The importance of the Constitution as a formal source of copyright and related rights lies precisely in the fact that such rights cannot be abolished by statute as a legal act of lower hierarchical legal force. It may therefore be concluded that

copyright and related rights, as forms of intellectual property rights, have been further strengthened through constitutional regulation (Henneberg, 2001: 41).

2.2 Laws

Laws, in all branches of law, represent the foundation and the primary legal source for the regulation of a particular subject matter. It is well established that all laws must comply with the Constitution of the Republic of Croatia (the principle of constitutionality) while all subordinate and other acts must comply with statutes (the principle of legality).

The following section presents an overview of the statutory regulation of copyright prior to the entry into force of the Copyright and Related Rights Act (ZAPSP/03), as well as the regulation of copyright under ZAPSP/03 (Copyright and Related Rights Act, 2003).

The majority of legal norms governing copyright are contained in specific copyright statutes, while in certain countries, such as Italy, the fundamental provisions on this right are also included in the civil code (Henneberg, 2000: 41).

2.2.1 Law regulation from independence until the entry into force of ZAPSP/03

Shortly after gaining independence, the Republic of Croatia adopted the federal Copyright Act (Copyright Act, 1978) through the Act on the Adoption of Federal Statutes in the Field of Education and Culture (Act on the Adoption of Federal Statutes in the Field of Education and Culture, 1991), together with the amendments. For the purpose of aligning Croatian legislation with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights, as part of the Agreement Establishing the World Trade Organization (TRIPS Agreement), as well as with the provisions of the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 1961), the Act was again amended on 19 July 1999. – important amendment: rights were granted to phonogram producers and broadcasting organisations (History of Protection, n.d.).

So, following the dissolution of Yugoslavia and the beginning of the Homeland War, and prior to the adoption of ZAPSP/03, the chronology of statutes relating to copyright may be presented as follows:

1. 1991 - Act on the Adoption of Federal Statutes in the Field of Education and Culture (Official Gazette of the SFRY 19/78, 24/86 and 21/90), by which the Copyright Act was adopted
2. 1993 - Act on Amendments and Supplements to the Copyright Act
3. 1999 - Copyright Act: consolidated text
4. 1999 - Act on Amendments and Supplements to the Copyright Act; in the same year, a Correction to the Act on Amendments and Supplements to the Copyright Act was also published
5. 2001 - Act on Amendments to the Copyright Act
6. 2003 - Copyright and Related Rights Act (Copyright and Related Rights Act, 2003) (Velagić & Hocenski, 2014: 232–233).

The Parliament of the Republic of Croatia, in June 1991, adopted the "Decree on the Promulgation of the Act on the Adoption of Federal Statutes in the Field of Education and Culture Applied in the Republic of Croatia as Republic Statutes". Among the statutes adopted by this Act were the Copyright Act, together with its amendments, and the Act on the Register of Scientific, Cultural, Educational and Technical Cooperation with Foreign Countries (Act on the Register of Scientific, Cultural, Educational and Technical Cooperation with Foreign Countries, 1981). In doing so, all provisions of the 1986 Copyright Act were adopted, except for the provision contained in Article 40(3) (Copyright Act, 1986).

Furthermore, for the statehood and the integrity of the newly established Republic of Croatia, the Act on Amendments and Supplements to the Copyright Act (Act on Amendments and Supplements to the Copyright Act, 1993) was of particular importance. Pursuant to this Act, terms such as "Croatia" or "persons who are not citizens of the Republic of Croatia but have their habitual residence in the Republic of Croatia" were introduced into the Act (Act on Amendments and Supplements to the Copyright Act, 1993).

In 1999, a consolidated text of the Copyright Act was published, which included, in addition to the standard Copyright Act of 1978 adopted in 1991, its amendments and supplements from 1993 (Copyright Act - consolidated text, 1998). The field of copyright in the Republic of Croatia, from its independence until the adoption of the Copyright and Related Rights Act, was regulated by the Copyright Act (1991), which largely constituted the adopted Copyright Act that had already been amended and supplemented several times in the former state (Duraković Jug, 2009: 613).

According to Article 3 of the Copyright Act 1978 (ZAP/78), "a copyright work is considered a creation in the fields of literature, science, art, and other areas of creativity, regardless of its type, manner, or form of expression, unless otherwise

specified by this Act" (Copyright Act, 1978). The same Act stipulates that the works of foreign nationals are also protected under this law, and defines an author in Article 8 as the person who created the work. As in previous statutes, a person whose name is indicated on the work is considered the author. According to Article 12 of the cited Act, the holder of copyright may also be a person to whom, based on law, a will, or a contract, all or certain copyright rights belong (Copyright Act, 1978).

Subsequently, the House of Representatives of the Parliament of the Republic of Croatia, at its session on 30 June 1999, adopted the Act on Amendments and Supplements to the Copyright Act. A particularly important amendment concerns Article 81, which was modified to read: "Economic copyright lasts for the lifetime of the author and seventy years after his death; if these rights jointly belong to collaborators in the creation of a copyright work, the term shall be calculated from the death of the collaborator who died last" (Act on Amendments and Supplements to the Copyright Act, 1999).

Naturally, with the amendments and supplements, all Articles from Article 82 to Article 87 were repealed, except for Article 86. These provisions primarily concerned the duration of protection for cinematographic and photographic works, as well as works created collaboratively. Provisions regarding criminal offences were also amended, and all monetary fines are expressed in kuna. After certain errors were discovered, a correction to the Act was enacted in the same year (Correction to the Act on Amendments and Supplements to the Copyright Act, 1999). Another amendment was introduced in 2001 (Act on Amendments to the Copyright Act, 2001).

2.2.2 Changes brought by the Copyright and Related Rights Act (ZAPSP/03)

The development of technology affects copyright more than any other branch of law. Therefore, it was necessary to adapt the Croatian copyright system to the requirements of a modern, information-based society. The draft proposal of the new Act also introduced its new title, "Copyright and Related Rights Act," which corresponds to the actual content of the law (Duraković, 2009: 614). By adopting the new Act, Croatia aligned its legislation with EU directives regulating intellectual property issues (Horvat & Živković, 2009: 17). With the adoption of the Copyright and Related Rights Act, the Republic of Croatia obtained a modern law that not only achieved compliance with the *acquis communautaire* and Internet agreements but also

made progress in "keeping pace" with modern technologies, which pose a significant challenge to copyright (Duraković, 2009: 614).

The most important change, which is at the core of the Act regulating copyright and related rights, lies precisely in the definition of a copyright work. According to Article 5 of this Act, a copyright work is defined as "an original intellectual creation in the literary, scientific, or artistic domain that has an individual character, regardless of the manner or form of expression, type, value, or purpose, unless otherwise provided by this Act" (Copyright and Related Rights Act, 2003). An author is defined as a natural person who created the copyright work and to whom copyright belongs by the very act of creating the work itself (Copyright and Related Rights Act, 2003). For comparison, the 1846 Act (Act for the Protection of Literary and Artistic Property Against Unauthorised Publishing, Printing, and Reproduction, 1846)[12] did not provide a separate definition of the author. However, in its first section, it states that copyright works are the property of the person who created them, their author. The indivisibility of the author from the work is entirely clear; the author is defined by the work and becomes the author by the very act of creating the copyrighted work (Velagić & Hocenski, 2015: 231).

The Copyright and Related Rights Act (ZAPSP/03), through Articles 10–12, defines authors of collective works, co-authors, the presumption of authorship, and the exercise of copyright when the author is unknown. When the author is unknown, copyright may be exercised by: 1) for a published work - the publisher who lawfully issued the work, 2) for an unpublished work - the person who lawfully made it public (Copyright and Related Rights Act, 2003).

According to Article 13, copyright encompasses the moral rights of the author, the economic rights of the author, and other rights of the author (Copyright and Related Rights Act, 2003). The author is also entitled to other rights, such as the right to remuneration (for reproducing the copyrighted work for private or other personal use, and for public lending). The author has the right to appropriate remuneration if their works are lent through public libraries. Lending, under this Act, is defined as granting the use of a work for a limited period without obtaining direct or indirect economic or commercial benefit (Copyright and Related Rights Act, 2003).

ZAPSP/03, in Articles 51-56, regulates the general part of copyright contract law, emphasising that such contracts must be concluded in written form. Furthermore,

[12] Hereinafter: Law from 1846.

Articles 57-75 regulate the special part of copyright contract law (Copyright and Related Rights Act, 2003).

Furthermore, regarding important aspects of ZAPSP/03, the Act defines the concept of "appropriate remuneration" as the compensation that must be fairly granted in legal transactions, taking into account the probable damage to the author when their work is reproduced without authorization for private or other personal use, the application of technical protection measures, and other circumstances that may affect the proper assessment of the form and amount of appropriate remuneration. The Act also addresses ensuring the enforcement of substantive limitations of copyright and related rights when technical protection measures make enforcement otherwise impossible (Duraković Jug, 2009: 627).

It establishes that the Council of Experts, which is neither a state nor a judicial body and whose opinion has the character of a professional recommendation, may, by mediating in matters of cable retransmission agreements between broadcasting organisations and cable operators, also mediate in enabling access to and use of copyrighted works in accordance with the limitations established by ZAPSP (Duraković Jug, 2009: 627).

In 2007, the Act on Amendments and Supplements to the Copyright and Related Rights Act was adopted, correcting grammatical errors, modifying certain words and terms, deleting some paragraphs of certain articles, and adding new paragraphs to other articles (Velagić & Hocenski, 2014: 244).

Further amendments to ZAPSP/03 occurred in 2011 through the Act on Amendments and Supplements to the Copyright and Related Rights Act (2011), aligning the original Act with new EU directives.[13] Among significant changes, Article 100(a) was added, stipulating that the term of copyright for a co-authored work is calculated from the death of the last surviving author of the music/lyrics if the text/music was created specifically for that musical work. If the music or lyrics

[13] Some of them are: Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, 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 the 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 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/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights.

were not created specifically for that musical work with words, the general rules on the duration of copyright apply.

Another notable amendment was the addition of a new provision under Article 137(a), which, unlike the original Act, defines the conditions for the termination of contracts between performing artists and phonogram producers, and Article 137(b), which establishes an additional annual remuneration for the performing artist (Act on Amendments and Supplements to the Copyright and Related Rights Act, 2011).

ZAPSP/03 was further amended in 2013, 2014, 2017, and 2018. The 2013 amendments also aimed to align Croatian legislation with EU law. A key concept introduced in Article 3 by these amendments is the notion of an "orphan work" (Act on Amendments and Supplements to the Copyright and Related Rights Act, 2013), whose definition was added as Article 12(a). In the same article, paragraph (b) includes provisions concerning the procedure for determining the status of an orphan work and recording relevant data. In lay terms, orphan works are copyrighted works whose author is unknown or cannot be located. The issue of utilising orphan works is so significant that Google faced legal challenges and was compelled to reach a settlement. This concerned the Google Books project initiated in 2005, which aimed to make 32 million works from around the world accessible over a 10-year period (Orphan Work, 2017).

Further amendments will be discussed in subsequent chapters.

2.3 International Treaties

Due to the use of copyrighted works across national borders, legal difficulties arose concerning their translation, publication of such translated works, display, and performance. National laws alone could not ensure international recognition of copyright, nor provide sufficient protection of works from unauthorized exploitation (Henneberg, 2001: 21). To address these issues, the conclusion of international copyright treaties began already in the 19th century, initially as bilateral agreements and later as multilateral ones (for example, the Treaty between Austria and Sardinia in 1840, followed by many others) (Henneberg, 1983: 3). Given the large number of international copyright treaties, only the most significant treaties will be discussed in this text.

At the Congress in Rome in 1882, the proposal of the secretary of the organisation of German librarians was accepted to establish a convention creating an international union for the recognition of authors' rights. At the following congress in 1883, a

draft convention was prepared, after which the Swiss government took over further preparatory work on the text of the convention. Several diplomatic conferences were held, and finally, on September 9, 1886, the Convention for the Protection of Literary and Artistic Works was signed, together with two additional acts: the Additional Article and the Final Protocol.[14] The Convention entered into force on December 5, 1887, and became known as the Berne Convention.

Although the Convention marked a significant step forward in the protection, preservation, and international integrity of authors and their rights, to ensure a certain minimum of international protection for copyrighted works in countries where the provisions of the Berne Convention were not acceptable, the Universal Copyright Convention, also called the Geneva Convention, was signed on September 6, 1952, through the efforts of UNESCO (Henneberg, 2001: 29).

Furthermore, the Republic of Croatia is a party to the following international treaties:

- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention, 1961) (International Treaties, 1999a)
- Universal Copyright Convention, revised in Paris (1971) (International Treaties, 1993; International Treaties, 1999b)
- Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms (Geneva, 1971) (International Treaties, 1999a)
- Convention on the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels, 1974) (International Treaties, 1994)
- World Intellectual Property Organisation Copyright Treaty (Geneva, 1996) (International Treaties, 2000)
- WIPO Performances and Phonograms Treaty (International Treaties, 2000).

It should also be noted that, in addition to the conventions listed above, there exists a wide range of multilateral international treaties regulating the field of copyright, such as: the Nairobi Treaty on the Protection of the Olympic Symbol, the American Conventions on Copyright, the WIPO Copyright Treaty, as well as numerous multilateral treaties regulating related rights, such as the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting

[14] The signatory states were Switzerland, Germany, Belgium, Spain, France, the United Kingdom, Haiti, Italy, Liberia, and Tunisia.

Organizations (the Rome Convention), the WIPO Performances and Phonograms Treaty, European treaties in the field of broadcasting, and others (Henneberg, 2001: 46).

3 The origin and development of copyright

Regarding the origin of copyright as a distinct type of law, different opinions exist. Some authors argue that it already existed in ancient times, while others maintain that it was not known during that period and that only after the introduction of the printing press could the issue of copyright in relation to literary works be seriously considered (Copinger & Skone, 1971: 7).

The fundamental premise is that the development of copyright can be divided into three periods:

1. the period before publishing and authorial privileges,
2. the period of publishing and authorial privileges,
3. the period of copyright legislation and international treaties (Henneberg, 2001: 11).

3.1 The Period Before Publishing and Authorial Privileges

This period encompasses historical eras of antiquity and, predominantly, the Middle Ages. In ancient times, the creation and use of literary and various artistic works developed on a significant scale. Book trade was carried out by merchants who organized the production process in such a way that in one hall a reader would read the text aloud, while a larger number of scribes copied the text. The primary purpose of this activity was to derive profit from the sale of such manuscripts. Therefore, it can be concluded that the subject of the sales contract was not only the manuscript as a material object, but also the right to reproduce it and sell the reproduced copies. Roman law did not distinguish between the ownership of the manuscript and the right to reproduce it; the reproduction right was encompassed within the ownership of the manuscript. Accordingly, the right to publish or reproduce such works was included in the property right of the object in which the work was fixed. It should be particularly emphasized that, regarding the development of copyright, historical accounts note that in ancient Rome there was awareness of the author's moral right to be recognized as the creator of a literary work.

The absence of specific legal rules in Roman law concerning the rights of literary works is explained by the lack of social need for such regulations, as authors of literary works enjoyed special honors and material support. During the Middle Ages, the status of the author did not change substantially - the reproduction of books was performed by manual copying, and under such conditions, there were no circumstances for the development of moral or economic rights of authors (Henneberg, 2001: 12).

During this period, it is evident that despite the existence of creative works, there was no developed awareness of the need for legal protection of authors in the modern sense. The reason for this lies in the fact that there was no market for mass distribution of works, and consequently no need to protect the economic interests of authors. It can be concluded that the development of copyright was not conditioned merely by the existence of works, but primarily by social and economic circumstances that allowed their exploitation).

3.2 The Period of Publishing and Authorial Privileges

After Johannes Gutenberg applied a new method of reproducing text by printing it on paper, the publishing industry began to develop. This occurred in Mainz, when he employed movable metal type (typography) and a printing press to print the Bible, known as the Gutenberg Bible or the 42-line Bible (Rebić, 2003: 225). The printing process allowed for the reproduction and sale of books, but it also incurred significant costs, particularly those related to acquiring and preparing manuscripts for print (Henneberg, 2001: 13). Gutenberg began printing the Bible in 1452 and completed it by the end of 1455 or the beginning of 1456 (Rebić, 2003: 225).

To enable the development of such publishing activities and to protect the interests of publishers, exclusive rights to print and sell books for a specified period were gradually recognized in the form of individual publishing privileges issued by the highest state authority (Henneberg, 2001: 13). A publishing privilege granted the publisher the exclusive right to reproduce a particular work and sell the reproduced copies for a limited time, with sanctions for violations in the form of confiscation of unauthorized copies and fines (Henneberg, 2001: 14).

However, in addition to publishing privileges, at the end of the 15th century, authorial privileges began to be granted to individual authors as recognition for their work (Hubmann, 1984: 12).

The period of privileges represents an important transitional stage in the development of copyright, as legal protection for the reproduction of works was introduced for the first time. However, this protection was not directed at authors, but primarily at publishers, which indicates that economic interest took precedence over recognition of authorship. It can therefore be concluded that the privileges laid the foundations for modern copyright law, but still did not constitute an author's rights in the true sense of the word.

3.3 The Period of Laws and International Copyright Conventions

In the 18th century, there was a transition from individual privileges to statutory regulation of copyright (Henneberg, 2001: 15).

In England, as early as 1556, by decree of Queen Mary Tudor, an organisation of librarians was established, which brought together London publishers with the aim of preventing the publication of writings supporting the Reformed faith. This organisation was tasked with supervising the printing of such writings. Members of the organisation were obliged to respect the so-called copy right, but violations of these rights were not subject to any sanctions other than compensation for proven damages under the general rules of common law. Consequently, on January 11, 1709, a proposal was submitted to Parliament to recognise such rights by law and to establish stricter sanctions for their violation (Henneberg, 2001: 15).

As a result, on April 10, 1710, Parliament passed a law protecting such rights, providing authors with oversight over printed books. This law later became known as the Statute of Anne. This statute finally granted authors certain rights that form the foundation of authorship, and it is considered the first copyright law (Henneberg, 2001: 16). Under the Statute of Anne, a copyrighted work was protected for a maximum of 28 years (Bogdanović, 2017: 78).

Furthermore, in France, the first legal rule on copyright emerged through decisions of the Royal Council on August 30, 1777. Later, in 1791, a decree – the Theatres Act – was issued, and finally, in 1793, a decree on authors' property rights was enacted (Henneberg, 2001: 16).

In the United States, following the model of the first English copyright law, the first federal Copyright Act was passed on May 31, 1790, which applied to books, maps, and charts (Henneberg, 2001: 17).

When discussing international agreements, the conclusion of international copyright treaties began already by the end of the first half of the 19th century, initially in the

form of bilateral treaties. The first such agreement is considered to be the treaty between Austria and Sardinia in 1840, followed by numerous treaties between Great Britain and France with other European countries (Henneberg, 1983: 3).

Regarding multilateral international agreements – multilateral conventions – the first of such to regulate copyright was the aforementioned Berne Convention – the Convention for the Creation of the International Union for the Protection of Literary and Artistic Works, along with two additional instruments: the Additional Act and the Final Protocol. Soon after the Berne Convention entered into force, the first American multilateral copyright agreement was signed in Montevideo on January 11, 1889 (Henneberg, 2001: 22).

In the 20th century, authorship significantly developed, driven by technological advances, particularly various technical inventions such as the phonograph and the cinematograph. Relations arising in phonographic, cinematographic, and broadcasting production not only influenced the development of copyright but also led to the emergence of new relations, thereby necessitating regulation of such rights – rights related to copyright (Henneberg, 2001: 23).

During the 20th century, newer and more organised copyright laws were enacted. In Germany, two new copyright laws were introduced in 1901 and 1907. In Great Britain, a new copyright law was also enacted, while in France, the provisions on copyright were codified by the enactment of the Law on Literary and Artistic Property in 1957. In the Federal People's Republic of Yugoslavia, after World War II, the Law on Copyright Protection was passed on May 25, 1946 (Law on Copyright Protection, 1946), followed by a new Copyright Law on July 10, 1957 (Copyright Law, 1957).

The enactment of the Statute of Anne represents a key turning point in the development of copyright, as it legally recognised the rights of authors for the first time, not just those of publishers. In this way, copyright acquired the characteristics of a subjective right belonging to the creator of the work. Subsequent developments through national laws and international agreements show a trend toward increasingly stronger protection of authors, as well as adaptation of the legal system to technological changes, which continuously create new challenges.

The further history and the way authorship has been regulated through various laws in Croatia, or in the FPR and later SFR Yugoslavia, was presented in the previous chapter on the laws that historically governed the field of copyright.

4 Reasons For Adopting The New Copyright And Related Rights Act 2021

The new Copyright and Related Rights Act was published on October 14, 2021, in the *Official Gazette* 111/2021 and entered into force on October 22, 2021. The new law was passed by the Croatian Parliament on October 1, 2021, with 76 votes "FOR," 43 votes "AGAINST," and one abstention (ZAPRAF Annual Report, 2022).

The new law modernises the national system for the protection of copyright and related rights in accordance with the needs of the digital society and the development of the EU legal framework. In formal terms, the law implements the alignment of national regulations with Directive 2019/790 on copyright and related rights in the Digital Single Market, and Directive 2019/789 on establishing rules for the exercise of copyright and related rights applied to certain online transmissions by broadcasting organisations and retransmissions of television and radio programs (New Copyright and Related Rights Act published, n.d.). The new law is aligned with fifteen European Union directives and nine international agreements in the field of copyright and related rights, and it also establishes the prerequisites for implementing two EU regulations in the same legal area (Vučković, 2021).

The main objectives of the new law are to adapt the copyright legal framework to the Digital Single Market of the European Union and to ensure a fair balance between the highly conflicting and multifaceted interests of various stakeholder groups (Vučković, 2021). In the past, copyright was considered technologically neutral in legislation; however, with the development of new channels and methods for the dissemination and consumption of protected content, there emerged a need to regulate the copyright framework depending on technological developments. Consequently, this is a highly complex regulation filled with specialized and technical terms (Vučković, 2021).

The Copyright and Related Rights Act aims to be a systemic regulation that provides a unified legal framework for all types of very diverse copyrighted works, as well as for the protection of various objects of related rights, while respecting all European and international standards and also taking into account Croatian legal tradition (Vučković, 2001).

It should be noted that experts, musicians, artists, authors, and holders of related rights are divided regarding the solutions introduced by the new Copyright and Related Rights Act (ZAPSP). Such differences in opinion and varying interpretations

of the law are precisely the reasons why the new law provoked a strong public reaction, raising doubts about whether the new law regulating copyright and related rights is even in accordance with the Constitution.

Representatives of the Croatian Phonographic Association (HDU) and the Association for the Protection, Collection, and Distribution of Phonogram Rights (ZAPRAF) submitted a proposal to the Constitutional Court to review the constitutionality of the new law. They consider some provisions of the new law harmful and unconstitutional and argue that they are not in line with European Union directives. Meanwhile, associations such as HUZIP (Croatian Association for the Protection of Performers' Rights) and HGU (Croatian Music Union) accused the law of attempting to monopolize and secure additional remuneration for themselves, to the detriment of performers (Providing details about the protest against the new Copyright Act: "We fight for the freedom of choice and the rights of performers and record labels," 2022).

In addition, DZNAP sent a letter to the Copyright Department of the Directorate - General for Communications Networks, Content, and Technology of the European Commission, requesting a review of the compliance of the Copyright and Related Rights Act with European Union legislation ("DZNAP sent a letter to the European Commission – compliance check of the Copyright Act requested," n.d.).

On the other hand, the Croatian Composers' Society (HDS), together with its professional service ZAMP, welcomed the adoption of the new law, stating that while the new law will give ZAMP more work, it should provide authors and rights holders with a fairer "online playing field" (HDS welcomes the new Copyright and Related Rights Act, 2021).

5 The most significant changes introduced by the new law

The new Copyright and Related Rights Act modernised the national system for the protection of copyright and related rights in accordance with the needs of the digital society and the development of the European Union legal framework (Publication of the new Copyright and Related Rights Act, n.d.). The law introduces a series of innovations to achieve more effective protection of creators of creative, cultural, and media content on the Internet. Exceptions and limitations to copyright and related rights are adapted to the digital and cross-border environment, and measures are introduced to facilitate licensing for the use of works protected by copyright and related rights to ensure broader access to content.

The law also facilitates cross-border distribution of television and radio programs and ensures more favourable conditions for the use of copyrighted works and related rights in digital and online education, scientific research, and by institutions for the protection of cultural heritage. Furthermore, the law provides a more favourable position for cultural, creative, and media industries in relation to online platforms regarding the fairer distribution of revenue from the use of copyrighted works and other protected content on these platforms (Publication of the new Copyright and Related Rights Act, n.d.).

The following section will explain some of the more significant changes introduced by the new law.

5.1 Concept of a copyrighted work

Croatian law defines a "copyrighted work" as an original intellectual creation in the literary, scientific, or artistic domain that has an individual character, regardless of the manner or form of expression, type, value, or purpose, unless otherwise provided by law. From this definition, it follows that the intellectual creation in question must first meet two conditions: (i) it must be original, and (ii) it must have an individual character. Furthermore, the creation must belong to the literary, scientific, or artistic domain. Copyrighted works are enumerated in Article 14, paragraph 2 of ZAPSP/21 (Stanković, 2024).

The Republic of Croatia is, for now, perhaps the only country in the world that has specifically defined journalistic works in this way, continuing the trend of enhanced copyright protection in the media sector. Until now, the print media industry has not particularly relied on copyright as an important component of its business. However, with the transition to the digital market, the copyright system has been recognised as a potentially significant tool in the commercialisation process of print media, which in recent years has undergone a complete transformation toward the digital world (Vučković, 2001).

Traditionally, journalistic works have been classified among existing literary written works, audiovisual works, or photographic works, so copyright theorists may consider this intervention unnecessary, arguing that journalistic works were already protected in the same way. Nevertheless, Croatian journalistic associations strongly advocated for the recognition of journalistic works as a distinct category of works and pushed for parliamentary discussion in this direction, which resulted in this solution (Vučković, 2001).

Furthermore, besides journalistic works, Article 14, paragraph 2, item 9 of ZAPSP/21, compared to ZAPSP/03, recognizes the copyright status of video games and other multimedia works. In some Croatian regulations, video games are classified as audiovisual works, although they are not merely audiovisual works because they include, among other things, computer programs (Vučković, 2021). Therefore, following suggestions from the video game creators' association, and considering that the video game industry in Croatia is highly dynamic and export-oriented, as well as after a comparative analysis of other legal systems regarding copyright protection of video games, it was decided that video games should also be included in the catalog of copyrighted works as a separate category. This does not mean that video games were not protected under previous regulations, but now they are given greater importance through explicit mention. Multimedia works had also not previously been included in the exemplary catalog of copyrighted works (Vučković, 2021).

5.2 Transfer of presumption of copyright ownership from author to employer

If copyrighted works are created in the performance of employment duties, the employment contract determines, among other things, whether the employer acquires the right to exploit the copyrighted work, and, in particular, if such a right is acquired, the scope and duration of the exploitation rights. If not otherwise provided by this law, an employment contract, or any other act regulating the employment relationship, the copyright in a work remains with the author without limitation.

This provision was previously regulated by Article 76 of the 2003 law, which made it clear that the rights to a work created in an employment relationship belong to the author unless otherwise agreed, without restrictions.

In contrast, the new ZAPSP/21, in Article 100, stipulates that:

"Unless otherwise provided by an employment contract, another act regulating the employment relationship, or any other agreement concluded between the author and the employer, it is presumed that the employer has acquired the exclusive economic copyright exploitation rights to a work created in the course of employment, to the extent necessary for the performance of the activity they carry out, without spatial or temporal limitation, regardless of the termination of the employment relationship during which the work was created."

Thus, ZAPSP/21 introduces a completely new and detailed regulation of ownership of rights to works created in employment and public service. Until the entry into force of the new 2021 law, the employer could acquire exploitation rights to a work created in employment only by an employment contract, another agreement, or another act regulating the employment relationship. Now, a rebuttable presumption has been established, according to which the employer automatically has exclusive exploitation rights to the work, to the extent necessary for performing their activities, without spatial or temporal limitation (Vučković, 2021).

This regulation aims to strengthen the position of Croatian employers in both the digital single market and the traditional environment, placing employers in a position to assert full ownership of the rights to creative works they bring to market under conditions of strong European competition (Vučković, 2021). Relationships with authors can always be regulated differently through contracts. The author retains their moral rights, such as the right to be named, the right to respect for their work, and protection of honour and reputation, among others.

Remuneration is provided as part of the regular salary of the employee. An employment contract or other act may provide for the right to additional appropriate compensation if the employer significantly increases the scope of business, profit, or income by exploiting a work created in employment, regardless of when the work was created and regardless of the termination of employment (Grubešić, 2023).

On the other hand, for works created in teaching and educational activities within faculties, higher education institutions, or research institutes, the provisions applicable to works created in public service apply accordingly to academic staff and their works, with the described regulation of copyright ownership in employment also applying in such cases (Grubešić, 2023).

Although at first glance the proposed statutory presumption may seem entirely in favour of the employer to most of the public, it should be noted that this provision is of a dispositive nature. Therefore, the employee and employer can always agree otherwise in a specific case (and/or retain certain rights and arrange them additionally), either through an employment contract, another act regulating the employment relationship (e.g., work rules, collective agreement), or another agreement concluded between the employee as the author and the employer (Copyright in Employment, 2021).

Furthermore, the new law introduces provisions regarding computer programs and architectural works created in the course of employment.

In the case of architectural works (for the legal security of the employer – a legal entity – to fully complete a project on time and deliver it to the Client), a presumption has been established that the economic copyright, if the architectural work is created in employment, belongs to the employer and covers all elements of the architectural work (sketches, studies, models and other representations, drafts, conceptual designs, main projects, implementation projects and plans, interventions in space in the fields of architecture, urbanism, and landscape architecture).
The employer is authorised to use all or some elements of the architectural work created in employment for the creation of other elements of the same or another architectural work, without limitations and without any additional permission from the author. However, in this case as well, the parties may agree otherwise explicitly between the employer and the author (Copyright in Employment, 2021).
Regarding computer programs, the legal regime remains the same concerning the essential provisions. It is stipulated that if a program is created by an employee in the course of performing their work duties, the employer is authorised to exercise all economic rights related to the resulting computer program, unless otherwise agreed in the employment contract ("Copyright and Related Rights Act", 2021).
This novelty, introduced by the new law, has sparked significant public debate and has become a subject of discussion among various experts. Although the new statutory presumption regarding the transfer of economic rights to the employer contributes to legal certainty and facilitates market exploitation of works, some authors emphasise that such a solution may weaken the bargaining position of employees as authors. In practice, employees often do not have a real opportunity to negotiate the terms of their contract, which can result in a disproportionate transfer of rights in favour of the employer.

5.3 Addressing the Problem of the Value Gap

The Digital Single Market has brought a range of challenges. The regulation of intermediary liability in the provision of services under the existing E-Commerce Directive and, consequently, the E-Commerce Act (E-Commerce Act, 2003), which has been used by content-sharing platforms such as YouTube and social networks, as well as media giants like Google News, has led to the so-called value gap. According to these regulations, intermediaries providing services on the internet are in a "safe harbour," meaning they are not liable for content they transmit unless they know that the content infringes any rights, including copyright (Vučković, 2001).

This situation is unsustainable for creators of cultural, creative, and media content, because business models based on such legal interpretation do not allow creators of protected content to monetise it for their own account; instead, the platform monetises it for itself (Vučković, 2001). The European-level response to this situation was sought through additional regulation of the right of communication to the public via the internet. Following the model of the EU Directives on copyright in the Digital Single Market (Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC (Text with EEA Relevance), 2019 OJ L 130), the new Copyright and Related Rights Act (ZAPSP) introduced provisions on communication to the public via the internet when done through platforms that share protected content.

On the other hand, developments in television signal transmission and related services provided by broadcasters over the internet also created the need for additional regulation of communication to the public of television signals in the case of retransmissions, such as MaxTV, and accompanying online television services like HRT and other platforms (Vučković, 2001). Consequently, significant changes and innovations were introduced with the entry into force of the new law, as reflected in Articles 50 to 54.

An important issue addressed in a completely new way in ZAPSP/21 is the liability of platforms that share content over the internet (e.g., YouTube). Previously, under ZAPSP/03, the so-called safe harbour rule applied to content-sharing platforms, with liability for protected content resting on the end user who shared it. Under the new ZAPSP/21, liability has been fully shifted to the platforms, which are now required to arrange agreements with rights holders regarding communication to the public, making content available to the public, and reproduction rights (Copyright and Related Rights Act, 2021).

All acts of reproduction, communication to the public, and making available to the public by non-commercial users, including those who do not generate significant revenue from such acts, are covered by licenses obtained by the platform from the rights holders. The ZAPSP also contains detailed provisions regarding limitations of platform liability, the manner in which they must act regarding protected content and rights holders, and complaints related to content-sharing services (Copyright and Related Rights Act, 2021).

The co-author concludes that regulating the liability of content-sharing platforms represents an attempt to address the so-called "value gap", yet some legal scholars

warn that stricter obligations for platforms such as YouTube could lead to excessive content removal and restriction of users' freedom of expression. This raises the question of balancing copyright protection with the fundamental rights of users of digital services.

5.4 Agreement on the Exploitation of Musical Performances on the Internet - Exercising Performers' Rights Online

ZAPSP/21, unlike the previously applicable ZAPSP/03, in Article 149 lays down in detail the manner of exercising performers' rights on the Internet. It provides that, under a contract on the exploitation of a musical performance on the Internet, the performer undertakes to grant to the phonogram producer the right of making the performance available to the public, as well as the corresponding right of reproduction. On the other hand, the phonogram producer undertakes to exploit the performance in the agreed manner, to pay the performer the agreed remuneration (unless otherwise stipulated), to take care of the successful exploitation of the performance on the Internet, and to provide the performer with data on such exploitation in accordance with the law. Furthermore, it is explicitly prescribed that such a contract must be concluded in written form.

A particularly important novelty is the obligation of the phonogram producer to conclude a contract with all performers participating in the performance, and not only with the main performer, which used to be common practice. This further protects the rights of session and accompanying performers and ensures their participation in the remuneration for the exploitation of the performance (Guidelines on how to exercise performers' rights on the Internet under the new Act - Past notices, 2021).

If the phonogram producer fails to conclude such a contract with all performers, or if the contract does not contain the essential elements prescribed by Article 149(1), it is deemed that the rights of those performers regarding the exploitation of their performance on the Internet are exercised collectively *vis-à-vis* the phonogram producer.

However, certain concerns are raised by a provision contained in the transitional and final provisions of the Act, according to which contracts concluded before the entry into force of the Act must be aligned with its provisions within three years. Otherwise, it shall be deemed that the phonogram producer has not acquired the rights to exploit the performances on the Internet, and that the performers' rights

in this respect are exercised collectively. This provision has been subject to criticism, as it retroactively affects existing contractual relationships and may lead to legal uncertainty.

Namely, the right to use performances on the Internet was introduced into Croatian legislation for performers as early as 2003 under the term "right of making available to the public" (a term which has been replaced in the new Act by "making available to the public"), while the first streaming service Deezer entered the Croatian market in 2015. Accordingly, phonogram producers had 18 years to align existing contracts with the legislation then in force, and are now granted an additional period of three years to do so (Guidelines on how to exercise performers' rights on the Internet under the new Act - Past Notices, 2021).

Regrettably, the ultimate consequence of this provision is that the Act effectively allows phonogram producers, within the three-year period, to harmonise existing contracts, while in the meantime continuing, as before, to make such older recordings available to online services without a proper legal basis and to collect remuneration for such use without justification, without distributing an appropriate share of that remuneration to the performers who participated in those recordings (Guidelines on how to exercise performers' rights on the Internet under the new Act - Past Notices, 2021).

5.5 New related right – the right of publishers of press publications

ZAPSP/21, in comparison with ZAPSP/03, expands the catalogue of related rights, thereby also granting protection to publishers of press publications.

Generally speaking, publishers of press publications in the Member States of the European Union, as a rule, do not have a legal basis that would confer upon them original copyright in respect of the media content they publish. Their legal position in proving the acquisition of economic rights in such media content varies across individual Member States of the European Union. It should first be noted that there is no uniform system of copyright or related rights throughout the European Union; rather, there exist 27 separate national copyright regimes (Matanovac Vučković & Begić, 2020: 193). Thus, although these systems are harmonised to a certain extent, they remain far from constituting a unified system. On the other hand, even where, in a particular Member State, the situation regarding the acquisition of copyright in the content they publish is somewhat more favourable to publishers of press publications (for example, due to the existence of a presumption of transfer of rights

in works created within an employment relationship), this is not the case in other Member States (Matanovac Vučković & Begić, 2020: 193). In such jurisdictions, proving the acquisition of copyright in media content is linked to demonstrating a multitude of individual contracts with individual authors - creators of individual copyright works contained in press publications (Matanovac Vučković & Begić, 2020: 193).

Pursuant to Article 163(1) ZAPSP/21, a press publication is defined as a collection consisting predominantly of written journalistic works, which may also include other types of works or subject matter of related rights, including photographs and video content, and which constitutes an individual item within a periodical or regularly updated publication published under a single title, for the purpose of informing the public about current news or other topics, such as newspapers or magazines of general or specialised content, and which is published on any medium under the initiative, editorial responsibility, and control of the editor of a newspaper or publication, or of a press publisher, media publisher, or media service provider. Paragraph 4 of Article 163 ZAPSP/21 provides that a publisher of press publications is a press publisher, media publisher, or media service provider, as defined by the legislation governing media and electronic media (for example, a news publisher or news agency), when they publish press publications. Pursuant to Article 164 ZAPSP/21, a publisher of press publications shall be deemed to be the publisher whose name or designation is regularly indicated in the customary manner in or alongside the press publication, by means of a visual sign or otherwise, as the designation of the rightholder in the press publication, unless proven otherwise.

A publisher of press publications, in respect of its press publications or parts thereof, shall have the following economic rights:

- the exclusive right of reproduction
- the exclusive right of distribution, including the right of rental and the right to equitable remuneration where its press publications, in respect of which further distribution is permitted, are lent through public libraries; the rental right and the right to remuneration for public lending shall be exercised mandatorily through collective management
- the exclusive right of communication to the public by any means, including making available to the public, and
- the exclusive right of adaptation.

All of the aforementioned rights shall not apply to information society service providers. In such cases, where press publications or any parts thereof are used

online by an information society service provider, the publisher of press publications shall, in respect of its press publications, have the exclusive right of reproduction and of communication to the public by any means, including making available to the public (Copyright and Related Rights Act, 2021)

Article 167 provides that professional journalists and photojournalists whose works are included in press publications shall be entitled to an appropriate share of the equitable remuneration obtained by publishers of those press publications when their press publications are used online by information society service providers, and such right shall be exercised collectively.

ZAPSP/21 further regulates the rights of publishers of press publications when they appear in the capacity of a commissioning party/employer, as well as their rights in specific cases.

It is our position that the introduction of a new related right for publishers of press publications constitutes a significant step forward in the protection of the media sector; however, some authors consider that such solutions may lead to further fragmentation of the copyright system. It is also pointed out that there is a risk that the greatest benefit from these rights will accrue to large media publishers, while smaller publishers and individual journalists may experience limited effects.

5.6 Other amendments

Within such limited scope, it is not possible to summarise all the novelties introduced by ZAPSP; therefore, only the most important ones are presented in this text. The remaining changes may only be listed in a general manner, such as new substantive limitations to copyright and related rights, primarily aimed at relaxing the framework of exclusive rights vis-à-vis heritage and scientific institutions, as well as in relation to teaching. Particular attention has also been devoted to the archive of the Croatian Radiotelevision, which is likewise considered a cultural heritage institution within the meaning of copyright law. In relation to the new regulation of exclusive copyright and related rights, the catalogue of rights that may and must be exercised collectively has also been significantly amended (Vučković, 2021). Attention has also been given to the relationship between phonogram producers and performers with regard to contracts on the use of artistic musical performances on the internet (Vučković, 2021).

Furthermore, the Act introduces a series of novelties aimed at achieving more effective protection of creators of creative, cultural, and media content on the

Internet; exceptions and limitations to copyright and related rights are adapted to the digital and cross-border environment, and measures are introduced to facilitate the licensing of the use of works protected by copyright and related rights in order to ensure broader access to content. It also facilitates the cross-border distribution of television and radio programmes and ensures more favourable conditions for the use of copyright works and subject matter of related rights in digital and online teaching, scientific research, and by cultural heritage institutions. The Act also ensures a more favourable position for cultural, creative, and media industries *vis-à-vis* online platforms with regard to a fairer distribution of revenues generated from the use of copyright works and other protected content on such platforms (Published new Copyright and Related Rights Act, n.d.).

Moreover, the new Act improves existing provisions and removes deficiencies observed in their implementation, which will lead to greater clarity and simpler application of the rules, as well as to the overall enhancement of the national system of copyright and related rights protection. The issue of works created within an employment relationship, in state or public service, is regulated in a more appropriate and detailed manner, as are contracts for the creation of commissioned works, contracts for the creation and use of copyright works and other subject matter of protection in specific areas, the rights of publishers of press publications, the conditions for carrying out the activity of collective rights management by independent management entities, and the specification of copyright and related rights exercised within the system of collective management. Misdemeanour provisions are improved, specific issues relating to Croatian audiovisual works in archives and programmes of Croatian Radiotelevision are regulated, and other minor amendments are introduced with a view to improving existing provisions. Certain linguistic and nomotechnical improvements to the text of the Act are also introduced, particularly in terms of adopting more appropriate terminology in specific regulatory areas (Published new Copyright and Related Rights Act, n.d.).

5.7 Criticisms in the public sphere regarding the new ZAPSP

The Society for the Protection of Journalists' Copyright (hereinafter: DZNAP) sent a letter to the Copyright Unit of the Directorate-General for Communications Networks, Content and Technology of the European Commission, requesting a review of the compliance of the Copyright and Related Rights Act with European

Union legislation (DZNAP sent a letter to the European Commission - requesting verification of the compliance of the Copyright Act with EU legislation, n.d.).

Furthermore, representatives of the Croatian Phonographic Association (hereinafter: HDU) and the Association for the Protection, Collection and Distribution of Phonogram Rights Remuneration (hereinafter: ZAPRAF) submitted a proposal for the review of the constitutionality of the Copyright and Related Rights Act, considering certain provisions to be harmful and unconstitutional (Proposal submitted for the review of the constitutionality of the Copyright and Related Rights Act, n.d.). On 5 March 2024, the Constitutional Court of the Republic of Croatia adopted a decision rejecting the proposal to initiate proceedings for the review of conformity with the Constitution of the Republic of Croatia of Article 149(3) and (4) and Article 306(5) of the Copyright and Related Rights Act (Official Gazette, 111/21). In its reasoning, the Constitutional Court, inter alia, stated that there can be no question of retroactive application of the law, since previously established legal relationships for the preceding period are not affected by the provision in question. Rather, it merely requires, for the future - i.e. for the period following the entry into force of ZAPSP - the alignment of existing contracts with the mandatory content set out in Article 149 of ZAPSP (Decision of the Constitutional Court of the Republic of Croatia U-I-48/2022, 2024).

In its reasoning, the Constitutional Court further emphasised that the provision does not interfere with previously established relationships and therefore does not produce retroactive effects, but instead imposes an obligation for future compliance of existing contracts with the statutory requirements.

In response to the claims of phonogram producers and their proposal for the constitutional review of the new Act, the Ministry of Culture and Media stated that "the Copyright Act was adopted in a participatory manner, and the contested provisions represent a compromise solution between the interests of phonogram producers and performers" ("We present details of the opposition to the new Copyright Act: 'We are fighting for freedom of choice and the rights of performers and phonogram producers'", 2022). Furthermore, the Ministry asserted that "the Act is fully aligned with the provisions of Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market, as well as with other European Union directives and regulations governing this field (a total of 16)". It also rejected the claim by HDU and ZAPRAF that the Act introduces retroactive application, emphasising that it provides for a transitional period for alignment with the amended provisions. Regarding phonogram producers and publishers, the Ministry noted that

they have adopted maximalist demands, while asserting that the contested provisions aim to correct a globally present anomaly whereby a significant number of musical performers do not receive remuneration for the use of their performances via digital music services as a modern and growing mode of music consumption ("We present details of the opposition to the new Copyright Act: 'We are fighting for freedom of choice and the rights of performers and phonogram producers'", 2022).

In March 2023, the Croatian Phonographic Association submitted the Appeal for the Protection of the Digital Market of Croatian Music, in which the main criticisms emphasised that the Act destabilises the digital music market, infringes the freedom of contract between performers and phonogram producers, and may trigger a large number of legal disputes (Appeal for the Protection of the Digital Market of Croatian Music, 2023).

In November 2023, an expert roundtable was held in Zagreb at which legal scholars warned of potential legal issues arising from the Act. The main conclusions were that certain provisions of the new Act could lead to numerous court disputes, undermine legal certainty, and create difficulties in the functioning of the music industry (Contested provisions of the new Copyright and Related Rights Act, 2023).

On 12 December 2025, at the premises of the Croatian Employers' Association, authorised representatives of HUZIP, the national organisation for the protection of performers' rights, together with representatives of Croatian record companies, presented mutually signed agreements constituting a significant step forward in the exercise of performers' rights with regard to the use of their performances on digital platforms (Agreement on the protection of performers' digital rights presented, 2025).

In conclusion, the co-authors take the view that the positions of the Society for the Protection of Journalists' Copyright point to a broader issue in contemporary copyright law, namely the gradual weakening of the individual protection of authors in favour of collective and market interests. Some scholars warn that such solutions increasingly distance copyright law from its original purpose of protecting creativity, transforming it into an instrument for regulating market relations. The opposing positions of interest groups further confirm that copyright law is an area in which it is exceptionally difficult to achieve a balance between different stakeholders. As noted by certain authors, normative solutions in this field are often the result of compromise rather than an optimal legal model, which may lead to legal uncertainty and divergent interpretations in practice. The decision of the Constitutional Court of the Republic of Croatia confirms the tendency of judicial practice to accord

deference to legislative discretion in regulating complex socio-economic relations. However, legal theory emphasises that formal constitutionality does not preclude the existence of substantive shortcomings in legislative solutions, particularly with regard to their fairness and balance.

6. Comparison of the implementation of the DSM Directive with other European legislative frameworks

Directive (EU) 2019/790 on copyright in the Digital Single Market (DSM Directive) represents one of the most significant reforms of the European copyright system in the past decade. Its primary objective was to adapt the existing legal framework to the digital environment, while striving to achieve a balance between the interests of rightholders, digital platforms, and users of online services. Member States were required to implement the Directive into their national legislation by 7 June 2021, although some States exceeded this deadline.

Germany implemented the Directive by adopting a specific legislative framework aimed at adapting its existing copyright system to the digital environment. One of the most significant novelties was the enactment of a separate statute, the *Urheberrechts-Diensteanbieter-Gesetz* (UrhDaG), which regulates in detail the liability of online content-sharing service providers. Unlike some other Member States, the German legislator did not transpose Article 17 of the Directive verbatim, but instead developed a more detailed and normatively elaborated system of liability for digital platforms (Deutscher Bundestag, 2021).

Under this model, platforms are considered liable for the communication of copyright-protected works to the public when users upload content to their services. However, such liability may be excluded if the platform undertakes certain measures, for example, by making efforts to obtain licences for the use of content or by promptly removing content upon notification by the rightholder (Deutscher Bundestag, 2021: 131-133).

In the field of fair remuneration for authors and performers (Articles 18-23 of the Directive), German legislation already contained a well-developed system of author protection even prior to implementation. Consequently, the amendments were relatively limited and primarily concerned increasing transparency and the obligation to regularly inform authors about the exploitation of their works.

France, on the other hand, was among the first Member States to implement certain provisions of the Directive into its national legislation, including the neighbouring

right that enables remuneration for the digital use of content by news publishers. In practice, this led to a number of decisions by the French *Autorité de la concurrence*, which on several occasions sanctioned Google for failing to comply with its obligation to negotiate remuneration with publishers and for not introducing appropriate licences for the use of their content (Debroux, 2024).

A comparative analysis shows that, despite formal harmonisation through Directive (EU) 2019/790, significant differences in approaches to copyright regulation persist among Member States. Such a situation confirms the thesis that European copyright law still does not constitute a unified system, but rather a set of partially harmonised national regimes, which may hinder legal certainty and the consistent application of law within the Digital Single Market. A comparison of the implementation of the Directive across different Member States demonstrates that national legislators had relatively broad discretion in the normative elaboration of certain legal institutes. While some States, such as France, implemented the Directive relatively faithfully to its text, others, such as Germany, developed more detailed and specific regulatory models. The Croatian legislator largely relied on the normative framework of the Directive, with certain specificities arising from the national legal system and the structure of the domestic cultural and media industry.

In this respect, it may be concluded that the Croatian model of implementation largely follows European trends, while at the same time introducing certain specific legal institutes, such as a more pronounced regulation of copyright works created within an employment relationship and specific protection of journalistic works. It is precisely these elements that have become the subject of professional debate and criticism in domestic legal scholarship and practice.

7. Relevant Case Law of the Court of Justice of the European Union in the Field of Copyright in the Digital Environment

The development of the case law of the Court of Justice of the European Union (CJEU) has played a crucial role in shaping modern European copyright law, particularly in the context of the digital environment and the implementation of Directive (EU) 2019/790 on copyright in the Digital Single Market. The Court's contribution is especially significant in the interpretation of the concept of "communication to the public", as well as in the development of criteria for determining the liability of online intermediaries and content-sharing platforms (Rosati, 2021).

In Svensson and Others (C-466/12), the CJEU for the first time systematically developed criteria for assessing whether the provision of hyperlinks constitutes an act of communication to the public. It held that linking to lawfully freely accessible content does not amount to a new communication to the public, thereby drawing a distinction between mere referencing and a relevant act of exploitation of a work (Court of Justice of the European Union, 2014a) (Angelopoulos, 2017: 32-35).

This approach was further developed in GS Media (C-160/15), where the CJEU introduced the criteria of knowledge of the illegality of the content and potential profit-making as relevant elements for establishing liability for linking to unlawfully published content (Court of Justice of the European Union, 2016). This significantly broadened the scope of liability of users and online platforms (Angelopoulos, 2017: 32-35).

The issue of platform liability was further addressed in Stichting Brein v Ziggo (C-610/15), known as the Pirate Bay case, where the CJEU held that platforms actively facilitating and organising access to protected works may be regarded as engaging in an act of communication to the public (Court of Justice of the European Union, 2017). This judgment is particularly relevant for determining the legal position of content-sharing platforms (Groom, 2017: 965-968).

In the more recent joined cases YouTube and Cyando (C-682/18 and C-683/18), the CJEU examined the scope of liability of platforms for user-uploaded content. While it held that platforms do not automatically engage in an act of communication to the public, the CJEU emphasised their obligation to take appropriate measures in cases of unlawful content, which is particularly relevant in the context of Article 17 of Directive 2019/790 (Court of Justice of the European Union, 2021) (Quintais & Angelopoulos, 2022: 533-546).

Of particular importance for balancing copyright protection and fundamental rights are the cases Spiegel Online (C-516/17) and Funke Medien NRW (C-469/17), in which the CJEU stressed the need to reconcile copyright protection with freedom of expression and information guaranteed by the Charter of Fundamental Rights of the European Union (Court of Justice of the European Union, 2019a; 2019b). A similar approach was confirmed in Pelham (C-476/17), concerning the limits of permissible sampling in musical works (Court of Justice of the European Union, 2019c) (Griffiths, 2019: 35-50).

In Cofemel (C-683/17), the CJEU established a uniform originality standard at the EU level, holding that the only requirement for copyright protection is the existence of the author's own intellectual creation (Court of Justice of the European Union,

2019d). This judgment has significant implications for national legal systems, including the Croatian legal framework (Rosati, 2019: 931-932).
In VG Bild-Kunst (C-392/19), the CJEU addressed framing and technological protection measures, confirming that circumvention of such measures may constitute a relevant act of communication to the public (Court of Justice of the European Union, 2021b). Finally, in Poland v Parliament and Council (C-401/19), the CJEU reviewed the validity of Article 17 of Directive 2019/790, confirming its compatibility with fundamental rights, while emphasising the need for effective safeguards against over-blocking of content (Mazei, 2021: 461-463).

8. Conclusion

The new Copyright and Related Rights Act of 2021 represents a significant reform of the Croatian copyright system. Its adoption was primarily driven by the need to harmonise national legislation with the acquis of the European Union, in particular with Directive (EU) 2019/790 on copyright in the Digital Single Market.
The Act introduces a number of important novelties, among which particular emphasis is placed on the expansion of the catalogue of copyright works, new rules on the allocation of copyright in works created within an employment relationship, the regulation of the liability of online content-sharing platforms, the introduction of a new related right for publishers of press publications, and a more detailed regulation of contractual relations in the field of the music industry.
On the one hand, these amendments are aimed at modernising the copyright system and adapting it to the digital environment, in which online platforms play an increasingly significant role in the distribution of cultural and media content. On the other hand, certain provisions of the Act have triggered significant debate within the academic and professional community, particularly with regard to the allocation of copyright in works created within an employment relationship and the regulation of relations between phonogram producers and performers.
These debates point to the complexity of establishing a balance between the various interests involved - those of authors, publishers, producers, digital platforms, and the general public. Future judicial practice and the further development of legal doctrine will play a crucial role in the interpretation of specific provisions of the Act and in assessing their actual effectiveness in practice.
It may therefore be concluded that the new Act constitutes an important step in the modernisation of the Croatian copyright system, while its full effectiveness will

depend on the manner in which its individual provisions are applied and interpreted in legal practice.

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Povzetek članka v slovenskem jeziku (abstract in Slovene language):

Namen tega članka je analizirati ključne spremembe, ki jih je uvedel hrvaški Zakon o avtorskih in sorodnih pravicah iz leta 2021, zlasti v okviru usklajevanja s pravom Evropske unije. Posebna pozornost je namenjena zgodovinskemu razvoju avtorskih pravic, pravnemu okviru in digitalnemu okolju (vključno z odgovornostjo spletnih platform), novimi pravili, ki urejajo uporabo vsebin, ter razširitvijo upravičenj imetnikov pravic. V prispevku so obravnavane tudi kritike novega zakona ter izzivi in vprašanja, ki so se pojavila v praksi po

njegovem sprejetju. Uporabljene so različne znanstvene metode, vključno z induktivnim in deduktivnim sklepanjem, metodami analize in sinteze, abstrahiranja in konkretizacije, generalizacije, klasifikacije, deskripcije, zgodovinske analize, kompilacije in primerjalne analize. Članek se zaključi s potrditvijo izhodiščne hipoteze. Ugotavljamo, da novi zakon predstavlja pomemben korak v modernizaciji hrvaškega sistema avtorskega prava; vendar bo njegova polna učinkovitost odvisna od tega, kako se bodo njegove določbe uporabljale in razlagale v pravni praksi.