

## **Draft of the Law on the Amendments of the Copyright Law**

### **Article 1**

In Article 2 of the Copyright Law ("Official Gazette of the Republic of Croatia", No. 9/99 - final draft) after paragraph 3, paragraphs 4, 5, and 6 shall be added reading as follows:

"An author's work shall be considered to be published if it has been made accessible to the public in the manner whatsoever, with the will of the author or other entitled person.

The public, within the meaning of the provisions of this Law, shall mean a larger number of persons outside the usual narrow circle of closely related persons or friends.

Public exploitation of an author's work shall comprise any exploitation of the work accessible to the public or its exploitation in the area accessible to any person.

### **Article 2**

In Article 3, paragraph 2, subparagraph 1 shall be amended to read as follows:

" - written works of any kind, including computer programs".

Subparagraph 12 shall be deleted.

### **Article 3**

Article 4 shall be amended to read as follows:

"Author's works shall also include collections of author's works or other material including the databases, irrespective of whether they are in the machine readable or other form, which, by reason of the selection or arrangement of their material constitute independent creations.

The protection enjoyed by the collection of other material shall not extend to the material itself.

### **Article 4**

Article 30 shall be amended to read as follows:

"The author shall have the exclusive right to authorise the publication, reproduction, or multiplication of the work, putting into circulation the original or the

copies of the work, including the importation thereof, the presentation, performance, alteration or the exploitation of the work in any other form, unless otherwise provided by this Law.

The exclusive right of putting the original or a copy of the work into circulation referred to in paragraph 1 of this Article, shall be exhausted with respect to such original or such copy of the work, through the first sale thereof or any other transfer of the right in the original or in the copies of the author's work, done with the author's authorisation in the Republic of Croatia.

The provision referred to in paragraph 2 of this Article shall not affect the right of the author to authorise the importation of the copies of the work into a particular State, unless otherwise provided for by the international treaty binding the Republic of Croatia."

#### Article 5

After Article 30, Article 30a shall be added, reading as follows:

##### "Article 30a

"The authors of the computer programs, cinematographic works and works analogous to them referred to in Article 3, paragraph 2, subparagraph 6, of this Law, and of the works fixed on sound carriers (phonograms) shall have the exclusive right to authorise the rental of the originals or the copies of those works.

The provision referred to in paragraph 1 of this Article shall not apply to the rental of computer programs if the program itself is not an essential object of the rental".

The exclusive right of rental referred to in paragraph 1 of this Article shall not be exhausted with respect to the original or the copies of the work respectively, put into circulation with the author's authorisation through sale or in any other way."

#### Article 6

Articles 35, 42, 43, 44, 45, and 46 shall be deleted.

#### Article 7

In Article 47, paragraph 1, subparagraph 5), the word "reproduction" shall be replaced with the word "publication".

#### Article 8

Article 90 shall be amended to read as follows:

"The activity of administering copyrights may be, with the authorisation of the State Intellectual Property Office (hereinafter: the Office), carried out by associations of authors and other copyright holders as well as by other legal entities specialised for the administration of copyrights.

The Office shall give authorisation referred to in paragraph 1 of this Article, if the association of authors or, as the case may be, other legal entity meet the criteria prescribed by the Director of the Office.

The administration of copyright carried out by the association of authors or other specialised legal entity referred to in paragraph 1 of this Article shall require the power of attorney given by the author or other copyright holder.

Exceptionally, copyrights in public performances of non-scenic musical or literary works, including the rights referred to in Article 32 and Article 36 of this Law (petits droits), may be administered by the association of authors even without the power of attorney of the author or other copyright holder".

If the association of authors or other legal entity specialised for the administration of copyrights cease to meet the prescribed criteria for carrying out such activity, the authorisation referred to in paragraph 2 of this Article shall be put out of effect."

#### Article 9

In Article 91, the second sentence reading: "If the Croatian Radio and Television broadcasting is concerned, the amount of the remuneration determined in the general act of the authors' organization shall be authorized by the Ministry of Culture.", shall be deleted.

#### Article 10

Article 97 shall be amended to read as follows:

"On the proposal of the author, or other copyright holder, or their association respectively, whereby it is made likely that the concerned copyright was infringed or that the infringement is imminent, the court may order:

1) the provisional seizure or withdrawal from circulation of articles or means respectively, infringing the copyright, or used for the infringement thereof, or which resulted from the infringement of the copyright, or which may be used as evidence of the infringement thereof;

2) the prohibition of the continuation of activities already started that would infringe copyright or the prohibition of the continuation of activities infringing it.

If there is a risk that the later provision of evidence on infringement of copyright could be difficult or impossible, or if there is a risk of irreparable damage, or if there is a risk that the provisional measures laid down in paragraph 1 of this Article would not be effective, the court shall order such measures, without the prior notification of the other party to that effect.

The procedure concerning the proposal for ordering provisional measures shall be urgent.

The corresponding provisions of the Law on Enforcement shall be applied to any matter concerning the ordering of provisional measures, not regulated by this Law ”.

#### Article 11

In Article 104, paragraph 1 shall be amended to read as follows:

"If not otherwise provided by this Law, the performer has the exclusive right to authorise:

- 1) radio or television broadcast of his performance;
- 2) communication to the public of his performance by means of a loud-speaker or other technical devices from the room or place the performance is taking place;
- 3) sound or visual, or sound and visual fixation of the performance;
- 4) direct or indirect reproduction of his fixed performance in its entirety or in parts;
- 5) putting into circulation of the original or the copies of his fixed performance including the importation and the rental thereof.

After paragraph 1, paragraph 2 shall be added reading as follows:

The provisions of Article 30, paragraphs 2 and 3, and Article 30a, paragraph 3, of this Law shall apply to the performers' rights in the corresponding way.

The former paragraphs 2, 3, and 4 shall become paragraphs 3, 4, and 5.

#### Article 12

Article 105 shall be deleted.

## Article 13

Article 107 shall be amended to read as follows:

“If the fixed performance which has been put on sale is used for the radio or television broadcasting or for other communication to the public (secondary use), the performer shall be entitled to a remuneration.”

“In the absence of the contract for broadcasting or other communication to the public of the performance or in case the contract doesn’t fix the amount of the remuneration, the association of performers may obtain the remuneration for the performer in the amount fixed by that association in its general act.”

## Article 14

In Article 113, number "20" shall be replaced with the word "fifty".

Subparagraph 3) shall be deleted.

## Article 15

Article 116 shall be amended to read as follows:

"The activity of administering performers' rights shall be, with the authorisation of the State Intellectual Property Office, carried out by the associations of performers and other holders of the performers' rights as well as by other legal entities specialised for the administration of performers' rights.

The Office shall give the authorisation referred to in paragraph 1 of this Article, if the association of performers or, as the case may be, other legal entity meet the criteria prescribed by the Director of the Office.

For the administration of performers' rights the association of performers or other specialised legal entity referred to in paragraph 1 of this Article, shall need the power of attorney given by the performer, or by other holder of performers’ rights.”

If the association of performers or other legal entity specialised for the administration of performers’ rights cease to meet the prescribed criteria for carrying out such activity, the authorisation referred to in paragraph 2 of this Article shall be put out of effect.

## Article 16

In Article 119, paragraph 2, subparagraph 1) the word “defendant”... shall be replaced with the word “defendant”.

Paragraph 3 shall be amended to read as follows:

“On the proposal of the performer or other holder of the performers’ rights or, as the case may be, of the association thereof, whereby it is made likely that the performer’s right has been infringed, or that the infringement is imminent, the court may order:

1) the temporary seizure or withdrawal from circulation of the objects or means respectively infringing the performers’ rights or serving for the infringement of the performers’ rights, or resulting from such infringement, or the objects or means respectively which may serve as evidence of the committed infringement of the performers’ rights;

2) the prohibition of the continuation of activities already started which might infringe the performers’ rights, or the prohibition of the continuation of activities infringing the performers’ rights”.

After paragraph 3, paragraphs 4, 5, and 6 shall be added reading as follows:

“If there is a risk that the later provision of evidence concerning the infringement of the performers’ rights could be difficult or impossible, or if there is a risk of irreparable damage, or if there is a risk that the provisional measures laid down in paragraph 3 of this Article wouldn’t be effective, the court shall order such measures without previously notifying the other party to that effect”.

The procedure concerning the request for ordering provisional measures shall be urgent.

The corresponding provisions of the Law on Enforcement shall be applied to all other matters concerning the ordering of provisional measures not regulated by this Law”.

## Article 17

After Article 120 a part shall be added reading as follows:

### “Part Two A

## RIGHTS OF THE PRODUCERS OF PHONOGRAMS

### Article 120a

“Producer of phonograms shall be considered the person who first fixes the sounds of a performance or other sounds.

If not otherwise provided by this Law, producers of phonograms shall have the exclusive right of giving authorisations for:

- 1) the direct or indirect reproduction, in whole or in part, of their phonograms;
- 2) putting into circulation of the original or copies of their phonograms, including the importation and rental thereof ;

In cases referred to in paragraph 2 of this Article, producers of phonograms shall have the right to a remuneration, if not otherwise provided by this Law or by a contract.

Producers of phonograms shall also have the right to a remuneration if the phonogram which is put on the market is used for the radio or television broadcast or for other communication to the public (secondary use).

The rights of the producers of phonograms shall last for fifty years, counting from the end of the year in which the phonogram was published, and if it has not been published, from the end of the year in which the fixation took place.

The provisions referred to in Article 30, paragraphs 2, and 3, Article 30a, paragraph 3, and Articles 106, 115, 116, 117, and 119 of this Law shall apply to the rights of the producers of phonograms in a corresponding way.

The foreign producers of phonograms shall have the rights prescribed by this Law within the framework of the obligations assumed by the Republic of Croatia under international treaties or on the basis of the de facto reciprocity.

The rights of the producers of phonograms shall not affect in any way the rights of authors or the rights of performers”.

#### Article 18

After Article 120a a part shall be added reading as follows:

#### “Part Two B

#### RIGHTS OF THE BROADCASTING ORGANIZATIONS”

#### Article 120b

“If not otherwise provided by this Law, a broadcasting organization has the exclusive right to authorise:

- 1) the re-broadcasting of their broadcasts by wire or wireless means;
- 2) the fixation of their broadcasts;

- 3) the reproduction of fixations of their broadcasts;
- 4) the communication to the public of their television broadcasts, if such communication is accessible to the public against the payment of an entrance fee.

Broadcasting is, within the meaning of this Law, any transmission by wire or wireless means or by satellite intended for the public reception of sounds, or of images and sounds, or the representation thereof, including the transmission by the encrypted satellite signal where the means for decrypting such a signal are provided to the public by the broadcasting organization or with its authorisation.

In cases referred to in paragraph 1 of this Article, the broadcasting organization shall have the right to a remuneration, if not otherwise prescribed by this Law or by a contract.

The rights of the broadcasting organizations shall last for fifty years, counting from the end of the year in which the broadcasting took place.

The provisions referred to in Article 106 and 119 of this Law shall apply, in a corresponding way, to the rights of the broadcasting organizations.

The foreign broadcasting organizations shall have the rights prescribed by this Law within the framework of the obligations assumed by the Republic of Croatia under international treaties or on the basis of the de facto reciprocity.

The rights of the broadcasting organizations shall not affect in any way the rights of authors, the rights of performers or the rights of the producers of phonograms.”

#### Article 19

After Article 120b, a part shall be added reading as follows:

#### “Part Two C

#### SUPERVISION AND ADMINISTRATIVE MEASURES

#### Article 120c

Inspection control over the work of associations referred to in Articles 90 and 116 of this Law shall be carried out by the State Intellectual Property Office.

The control referred to in paragraph 1 of this Article may be carried out by the authorised official of the Office, a lawyer having passed the vocational exam (inspector).

In the course of the control referred to in paragraph 1 of this Article the inspector shall be entitled to require the presentation of documents and working documentation



relating to the activity of administering copyrights, performers' rights and the rights of the producers of phonograms.

If she/he finds out that the association referred to in paragraph 1 of this Article doesn't proceed in compliance with the issued authorisation, the inspector shall, in a decision, fix a time limit for it to remedy the deficiencies.

If the association referred to in paragraph 1 of this Article doesn't comply with the decision referred to in paragraph 4 of this Article, the inspector shall submit a request for the institution of the magistrate court proceedings regarding the offence referred to in Article 127b of this Law."

#### Article 120d

Supervision and control over the importation or transfer across the border line of the original or of the copies of the author's work, of the fixed performance or of the phonogram shall be carried out by the competent customs authority.

On the request of the right holders referred to in this Law, the competent customs authorities shall, under conditions and in the manner provided for by the customs provisions, stop the distribution of unauthorised copies of the authors works, fixed performances, or phonograms respectively.

The competent customs authority referred to in paragraph 1 of this Article shall bring criminal charges for the commitment of a criminal act, or shall file a request for the institution of the magistrate court proceedings regarding the offence respectively, to the competent State authorities."

#### Article 20

Articles 121, 122, 123, and 124 shall be deleted.

#### Article 21

After Article 124, Article 124a shall be added reading as follows:

#### "Article 124a

"Whoever without the authorisation of the lawful distributor of the encrypted satellite signal, manufactures, assembles, modifies, imports, exports, sells, rents or otherwise distributes a tangible or intangible device or system for decoding such a signal, knowing or having reason to know that the device or the system serves primarily for decoding an encrypted satellite signal,

shall be punished for a criminal act by a fine or by imprisonment up to three years (Article 120b, paragraph 2).

If the commitment of a criminal act referred to in paragraph 1 of this Article has resulted in a substantial financial gain or has caused a substantial damage, and if the perpetrator has acted with the aim of acquiring such financial gain or causing such damage, she/he

shall be punished by imprisonment from 6 months up to five years.

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

## Article 22

After Article 124a, Article 124b shall be added reading as follows:

### “Article 124b

“Whoever receives an encrypted satellite signal that has been decoded without the authorisation of its lawful distributor and further distributes such a signal, knowing or having reasons to know that such a signal is decoded without authorisation, shall be punished for a criminal act by a fine (Article 120b, paragraph 2).

If the commitment of a criminal offence referred to in paragraph 1 of this Article has resulted in a substantial financial gain or has caused a substantial damage, and if the perpetrator has acted with the aim of acquiring such financial gain or causing such a damage, she/he

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

## Article 23

Article 125 shall be amended to read as follows:

Any legal entity shall be punished for an offence by a fine amounting from 5.000,00 up to 50.000,00 kunas if it:

1) under its name or under the name of another publishes, presents, performs, transmits or otherwise communicates to the public the author's work of another or allows it to be done (Article 27);

2) destroys, deforms, distorts or otherwise modifies the author's work, without the author's authorisation, or uses it in a manner which is offensive to the author's honour or reputation (Article 27).

3) without indicating the name or the pseudonym of the author, except where the author wants to be anonymous, publishes, presents, performs or otherwise communicates to the public his author's work (Article 28);

4) without the authorisation of the author or other holder of copyright, the association of authors or other legal entity specialised for the administration of copyrights referred to in Article 90, paragraph 1 of this Law, where such authorisation is required under the provisions of this Law, or, contrary to their prohibition, publishes, reproduces or multiplies, imports or distributes the original or the copies of the work, presents, performs, fixes on a material surface, broadcasts, communicates through mass media, translates, adapts, arranges, or otherwise alters the author's work or uses it in any other form (Article 30);

5) without the authorisation of the author or other holder of copyright, the association of authors or other legal entity specialised for the administration of copyrights referred to in Article 90, paragraph 1 of this Law, where such authorisation is required under the provisions of this Law, or, contrary to their prohibition rents the original or the copies of the computer program, the cinematographic and analogous work or of the work embodied in the phonogram (Article 30a).

The responsible person in a legal entity shall be also punished for the offence referred to in paragraph 1 of this Article by a fine amounting from 5.000,00 up to 50.000,00 kunas.

If the offence referred to in paragraph 1 of this Article has been committed by a natural person, she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.

## Article 24

Article 126 shall be amended to read as follows:

"A legal entity shall be punished for an offence by a fine amounting from 5.000,00 up to 50.000,00 kunas if it:

1) under its name or under the name of another, publishes, presents, performs, transmits or otherwise communicates to the public the performance of another or allows it to be done (Article 103, paragraph 3);

2) without indicating the name or the pseudonym of the performer, except where the performer wants to be anonymous, publishes, presents, transmits or otherwise communicates to the public his performance ( Article 103, paragraph 3);

3) without the authorisation of the performer, destroys, deforms, distorts, or otherwise modifies his fixed performance, or uses it in a manner which is offensive to the performer's honour or reputation (Article 103, paragraph 3);

4) without the authorisation of the performer or other holder of the performer's right, the association of performers, or other legal entity specialised for the administration of the performers' rights referred to in Article 116, paragraph 1 of this Law, where such

authorisation is required under the provisions of this Law, or, contrary to their prohibition, broadcasts or communicates the performance to the public, fixes the performance, reproduces the fixed performance, imports, distributes or rents the original or copies of the fixed performance (Article 104);

The responsible person in a legal entity shall be also punished for the offence referred to in paragraph 1 of this Article by a fine amounting from 5.000,00 up to 50.000,00 kunas.

If the offence referred to in paragraph 1 of this Article has been committed by a natural person, she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas”

#### Article 25

After Article 126, Article 126a shall be added reading as follows:

##### “Article 126a

"A legal entity, which without the authorisation of the producer of a phonogram, where such authorisation is required under the provisions of this Law, or, contrary to their prohibition, reproduces, imports, distributes or rents the original or the copies of the phonogram (Article 120a, paragraph 2), shall be punished for the offence by a fine amounting from 5.000,00 up to 50.000,00 kunas;

The responsible person in a legal entity shall be also punished for the offence referred to in paragraph 1 of this Article by a fine amounting from 5.000,00 up to 50.000,00 kunas.

If the offence referred to in paragraph 1 of this Article has been committed by a natural person, she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.”

#### Article 26

After Article 126a, Article 126b shall be added reading as follows:

##### “Article 126b

The legal entity shall be punished for an offence by a fine amounting from 5.000,00 up to 50.000,00 kunas, if it:

1) without the authorisation of the broadcasting organization, where such authorisation is required under the provisions of this Law, or contrary to its prohibition,

re-broadcasts or fixes its broadcast, reproduces the fixation of its broadcast or communicates to the public its television broadcast (Article 120b, paragraph 1);

2) without the authorisation of the lawful distributor of the encrypted satellite signal manufactures or assembles, modifies, imports, exports, sells, rents or otherwise distributes a tangible or intangible device or system for decoding such a signal, if such a device or system is primarily used for decoding the encrypted satellite signal (Article 120b, paragraph 2);

3) receives an encrypted satellite signal that has been decoded without the authorisation of its lawful distributor or further distributes such a signal (Article 120b, paragraph 2).

The responsible person in a legal entity shall be also punished for the offence referred to in paragraph 1 of this Article by a fine amounting from 5.000,00 up to 50.000,00 kunas.

If the offence referred to in paragraph 1 of this Article is committed by a natural person she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas."

#### Article 27

Article 127 shall be amended to read as follows:

"A precautionary measure shall be ordered comprising the seizure of the objects intended or used for, or resulting from the commitment of the offences referred to in Articles 125, 126, 126a and 126b, of this Law, irrespective of whether they are the property of the perpetrator or not.

The decision relating to the offence referred to in paragraph 1 of this Article shall order the destruction of the seized objects."

#### Article 28

Article 128 shall be amended to read as follows:

"A legal entity which doesn't submit complete data on the performance or on the presentation of the work to the association of performers or to other legal entity specialised for the administration of the rights of performers (Article 94), shall be punished for the offence by a fine amounting from 3.000,00 up to 30.000,00.

The responsible person in the legal entity shall be also punished for the offence referred to in paragraph 1 of this Article by a fine amounting from 3.000,00 up to 30.000,00 kunas.

If the offence referred to in paragraph 1 of this Article is committed by a natural person she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.”

#### Article 29

Article 129 shall be amended to read as follows:

"A legal entity which doesn't submit complete data on the use of the performance, or the copy of the performer's contract to the association of performers or to other legal entity specialised for the administration of the rights of performers (117), shall be punished for the offence by a fine amounting from 3.000,00 up to 30.000,00.

The responsible person in the legal entity shall be also punished for the offence referred to in paragraph 1 of this Article, by a fine amounting from 3.000,00 up to 30.000,00 kunas.

If the offence referred to in paragraph 1 of this Article is committed by a natural person she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.

#### Article 30

After Article 129, Article 129a shall be added reading as follows:

##### “Article 129a

"A legal entity which performs the activity of administering copyrights, rights of performers, or rights of the producers of phonograms without the authorization of the Office, or contrary to its authorisation, (Article 90, paragraph 1, and Article 116, paragraph 1) shall be punished for an offence by a fine amounting from 5.000,00 up to 50.000,00 kunas.

The responsible person in a legal entity shall be also punished for the offence referred to in paragraph 1 of this Article, by a fine amounting from 5.000,00 up to 50.000,00 kunas.

If the offence referred to in paragraph 1 of this Article has been committed by a natural person, she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.”

#### Article 31

After Article 129a, Article 129b shall be added reading as follows:

#### Article 129b

"A legal entity which commits the offence referred to in Articles 125, 126, 126a, 126b, 128, 129 and 129a of this Law for the purpose of acquiring financial gain, shall be punished by a fine amounting from 20.000,00 up to 200.000,00 kunas

The responsible person in a legal entity shall be also punished for the offences referred to in paragraph 1 of this Article, by a fine amounting from 20.000,00 up to 200.000,00 kunas.

If the offence referred to in paragraph 1 of this Article is committed by a natural person for the purpose of acquiring financial gain, she/he shall be punished by a fine amounting from 5.000,00 up to 20.000,00 kunas."

#### Article 32

This Law shall apply to all authors' works and to all performers' performances in respect of which economic rights have not ceased to exist up to the day of entering into force of this Law.

#### Article 33

This Law shall also apply to the phonograms and to performances fixed thereon, the first fixation of which took place less than fifty years ago counting from the beginning of the calendar year in which this Law entered into force.

#### Article 34

Pending procedures instituted under Articles 96, 98, 119, and 120 of this Law for the purpose of protecting the rights of authors and the rights of performers shall be carried out in compliance with the provisions being in force up to the date of entry into force of this Law.

#### Article 35

The regulation referred to in Articles 8, and 15 of this Law will be enacted by the Director of the Office within the period of six months counting from the date of entry into force of this Law.

#### Article 36

In the text of the Law, in the corresponding grammatical case, the words: "organization of authors" shall be replaced with the words "association of authors", the words: "other organizations referred to in Article 90, paragraph 1 of this Law" with the

words: "other specialised legal entities referred to in Article 90, paragraph 1 of this Law", the words: "or the organization respectively referred to in Article 90 of this Law" with the words: "or specialised legal entity respectively, referred to in Article 90 of this Law", the words "or organizations respectively referred to in Article 90, paragraph 1 of this Law" with the words "or association of authors respectively or specialised legal entity referred to in Article 90, paragraph 1 of this Law", the words: "the organization administering copyright", "the organization for the administration of copyright", with the words: "association of authors or other legal entity specialised for the administration of copyrights", the words: "organizations of performers" with the words. "association of performers", the words: "organization representing a performer" with the words: "association of performers or other specialised legal entity representing a performer".

#### Article 37

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