140 YEARS LATER, LOOKING AHEAD

WHOSE RIGHT IS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

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QUESTIONNAIRE

CROATIAN REPORT

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Each reply to these questions should indicate if the answer is the same or different (if so, how) with respect to related rights compared with authors' rights.

I. Initial ownership [Session 2]

A. To whom does your country's law grant initial ownership? (please indicate all that apply)

1. **The author (human creator) of the work**

    a. **Does your country's law define who is an author?**

Yes. The Croatian Copyright and related rights Act (CA) explicitly defines an author as the *natural person who has created the work* (Art. 19(1) CA). This rule firmly excludes legal persons or non-human entities from initial authorship. Authorship arises *ex lege* with the creation and is not contingent on registration or formalities (Art. 19(2) CA).

    b. **For joint works (works on which more than one creator has collaborated), does your law define joint authorship? What is the scope of each co-author's ownership? (may joint authors exploit separately, or only under common accord)?**

Yes. If several persons jointly create a work whose parts cannot be used independently, they are considered co-authors (koautori) and share a joint copyright (Art. 21(1–3) CA). Each co-author holds an equal share, unless otherwise agreed or proven (Article 21(3)). The exploitation of the work requires the consent of all co-authors, but refusal of consent must not be contrary to the principle of good faith (Art. 21(4)). In the event of a dispute, the court can decide.

For compiled works where the contributions are separable (e.g. anthologies, encyclopaedias, music work with words), each author retains the rights on their individual work, while the

compiler may hold rights in the selection and arrangement as a separate work (Article 20(1) CA).

2. Employers

a. Under what conditions, e.g., formal employment agreement, in writing and signed? Creation of the work within the scope of employment?

Under the Croatian copyright law, the author is always the original rightholder, including in the context of employment (Art. 19(1) CA). However, Articles 100–111 CA provide a detailed regime under which employers or related entities acquire economic rights in works created in fulfilment of an employment or similar duties.

The conditions vary depending on the context:

i. General employment (Article 100 CA)

A work is considered created in the course of employment (*autorsko djelo stvoreno u radnom odnosu*) if the author creates it during the term of employment while fulfilling contractual obligations.
Unless otherwise agreed in the employment contract or internal regulations, the employer automatically acquires the exclusive economic rights to exploit the work to the extent necessary for the performance of its activity, with no temporal or territorial limitation, and regardless of whether the employment relationship ends (Art. 100(2) CA).

This includes the presumed authorisation to:

- Publish, adapt, translate, merge, or incorporate the work into collections or databases (Art. 100(3)),
- Complete unfinished works if the author leaves or is unable to complete them (Art. 100(4)),
- Use architectural works or parts thereof without additional authorisation (Art. 100(5)),
- Exploit computer programs fully and without limitation (Art. 100(6)).

The author is entitled to a salary as default remuneration (Art. 101(1) CA) and may receive a special equitable remuneration if the work significantly increases the employer's income or performance, provided this is regulated by a contract, internal act, or collective agreement (Art. 101(2–3)).

ii. Transfer of enterprise (Article 102 CA)

If the business or the part thereof in which the work is exploited is transferred to another legal or natural person, all economic rights are transfered to the acquirer, unless otherwise agreed. This applies regardless of whether the author remains employed.

iii. Executives and board members (Article 103 CA)

Articles 100-102 CA apply *mutatis mutandis* to board members and persons in comparable executive functions in companies and other legal persons, including associations, institutions, and foundations even in the absence of a formal employment relationship.

iv. Public administration (Articles 104–106 CA)

Works created by civil servants in the performance of their duties are presumed to be subject to exclusive economic rights held by the Republic of Croatia, if not otherwise regulated by act regulating civil service or by the act of the head of the public body in which the civil servant performs its duties. These rights are exercised by the competent authorities (Art. 105(2) CA). The state may exploit such works similarly to private employers (Art. 105(3–4) CA). The author's right to remuneration is compensated with a salary, but a special remuneration may be provided for if the work has commercial value, and such remuneration is foreseen by internal acts or agreements (Art. 106 CA).

v. Elected officials (Article 107 CA)

The rules for civil servants apply *mutatis mutandis* to state officials (*državni dužnosnici*) when they create works as part of their official duties.

vi. Local and regional government (Article 108 CA)

Articles 105–107 CA apply equally to works created by officials and staff of local and regional self-government units.

vii. Public service (Article 109 CA)

Articles 100–103 CA apply to employees in public services, such as health, education, and culture.

viii. Universities and research institutions (Article 110 CA)

A distinction is made between:

- Works created in educational and instructional duties - employers may acquire rights under Articles 100–103 and 109, unless otherwise agreed (Art. 110(1) CA);
- Works created as part of scientific or artistic activity - the rights remain with the authors, unless otherwise provided by contract or institutional rules (Art. 110(2) CA). Institutions may adopt internal rules for the management of these rights (Art. 110(3) CA).

3. Commissioning parties

a. All commissioned works, or limited to certain categories?

Croatian copyright law applies a general and uniform rule to all commissioned works, regardless of category or form. This regime is governed by Articles 96–99 CA.

Under Article 96(1) CA, an author retains original ownership of copyright in a commissioned work (*autorsko djelo stvoreno po narudžbi*), even when the work is created following a

contractual order by another person. There is no automatic transfer of rights to the commissioning party - be it natural or legal person.

This applies to all domains (e.g. literary, visual, architectural, software), unless a different regime applies (such as employee-created works under Articles 100–111 CA).

b. Under what conditions, e.g., commissioning agreement, in writing and signed by both parties?

Under Croatian law, the legal consequences of a commissioned work are governed by Articles 96–99 CA. A commissioning contract is required to establish the legal basis for the creation and use of a commissioned work. The general rule is that the contract on basis of which the copyright exploitation rights are acquired must be concluded in written form (Art. 65 CA). However, the general rules of the civil obligations law apply (Art. 71 CA), and it is possible that an agreement that does not comply with the proper form will be declared invalid (Article 294 of the Croatian Act on Obligations, Official Gazette Nos. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018, 126/2021, 114/2022, 156/2022, 145/2023, 155/2023).

Under Article 96(3) CA, unless the contract provides otherwise, the commissioning party acquires only those exclusive economic rights of use to the extent necessary for the fulfilment of activity it performs without space and time limitations. If the commissioning party is a natural person who orders a work for private use, it is presumed that he/she has acquired exclusive economic rights of use to the extent necessary for the fulfilment of this purpose.

4. The person or entity who takes the initiative of the work's creation

(e.g. Producers; publishers) of certain kinds of works, e.g., audiovisual works; collective works

a. Scope of ownership of, e.g. all rights, or rights only as to certain exploitations; what rights do contributors to such works retain?

Croatian copyright law recognizes special presumptions of economic rights acquisition in favour of persons or entities who take the initiative in the creation and coordination of specific types of works, particularly audiovisual works and collective works.

Audiovisual works

According to Article 150(2) CA, an audiovisual producer is a natural or legal person who initiates, finances, organises, and takes responsibility for the creation of the first fixation of a videogram. The producer is not presumed to be the author, but enjoys a related right distinct from authorship.

Under Article 152 CA, the audiovisual producer holds the exclusive related rights to:

- Reproduction of videograms;
- Distribution and rental;
- Public showing;
- Making available to the public, including via online and streaming platforms.

These are neighbouring (related) rights and do not displace the copyright of the authors.

The authors of audiovisual works are determined by Article 22 CA and include:

- The director (as main co-author),
- Scriptwriter,
- Director of photography,
- Editor of image and sound,
- Composer of original music,
- Chief animator (for animated works).

These authors retain their moral and economic rights, unless assigned otherwise. The law does not presume transfer of rights to the producer; transfer must be regulated by contract.

Collective works

For compiled works where the contributions are separable (e.g., anthologies, encyclopaedias, music work with words), each author retains the rights on their individual work, while the compiler may hold the rights in the selection and arrangement as a separate work (Art. 20(1) CA).

The mutual relations between the authors of a compiled work are governed by a contract. If no such contract has been concluded or if such contract or the rules of the relevant collective management organization do not provide otherwise, the presumption is that all authors of a compiled work are entitled to an equal share in the remuneration for the use of that compiled work.

5. Other instances of initial ownership vested in a person or entity other than the actual human creator? (Other than 6, below.)

Under Croatian copyright law, initial ownership of copyright is always vested in the human author. The CA defines a copyright work as an author's (Art. 20(1) CA) "…original intellectual creation…" (Art. 14(1) CA).

Accordingly, only natural persons can be authors, and initial ownership is inseparable from individual authorship.

6. If your country's law recognizes copyright in AI-generated works, who is vested with original ownership? (e.g., the person providing the prompts to request an output? The creator of the LLM model and/or training data? someone else?)

Croatian law does not recognise copyright in works generated exclusively by artificial intelligence systems without sufficient human creative contribution.

The term "author" is defined exclusively as a natural person (fizička osoba) who creates the work (see also Art. 19(1) CA). This fundamental concept precludes AI systems - or legal

persons, data providers, model developers, or prompting users - from being considered authors, unless their contributions qualify as human intellectual creation under copyright standards.

Thus, where an AI system is used merely as a tool, and the resulting output reflects the creative choices of a human user, copyright may subsist. In such cases, the prompting user or operator may be recognised as the author, provided their contribution meets the originality threshold.

In that sense, the Croatian phonogram producers' collective management organisation (ZAPRAF) included the following provision in their Ordinance on collective protection of phonogram producers' rights and distribution of fees of 27 May 2025:

> "If the sound of a performance, another sound or what represents sound is generated exclusively or predominantly by means of artificial intelligence, the fixation of such performance or sound shall not constitute a phonogram within the meaning of the provisions of this Ordinance. If the sound of a performance, another sound or what represents sound is generated with the assistance of artificial intelligence technology, where the artificial intelligence is used only as a tool to help or improve the artistic process, the fixation of such performance or sound shall be considered a phonogram, unless it is determined that the contribution of a person is not sufficient for such performance or sound to enjoy copyright protection in terms of the CA."

[b. For presumptions of transfers, see II (transfers of ownership, below)]

B. Private international law consequences

1. **To what country's law do your country's courts (or legislature) look to determine initial ownership: Country of origin? Country with the greatest connections to the work and the author(s)? Country(ies) for which protection is claimed**?

In the context of initial ownership of copyright, the applicable rule remains grounded in the *lex originis* principle - the law of the country of origin of the work.

This approach is also reflected in practice through the application of the Berne Convention (Art. 5(2)), to which Croatia is a party, and the consistent jurisprudence, which determines the existence, scope, and transferability of copyright according to the law of the country in which protection is sought (*lex loci protectionis*), as well as the International Private Law Act (Art 24; Official Gazette Nos.101/17, 67/23), but ownership (title) according to the country of origin.

II. Transfers of ownership [Session 3]

A. Inalienability

1. **Moral rights**

a. Can these be granted to the grantee of economic rights? To a society for the collective management of authors' rights?

The moral rights of both, authors (the right of first disclosure, the paternity right, the right to integrity of the work, the reputation right, and the revocation right, Arts. 27 - 31 of the CA) and performers (the paternity right, the right to integrity of the performance, the reputation right, (Art. 131 - 133 of the CA) are not transferable with *inter vivos* legal disposition. On the other hand, moral rights are not completely inalienable and after the author's (or performer's) death, they pass to the heirs together with the economic rights.

However, due to the general principle of private law, the principle of disposition, the author can decide that someone else exercises his rights. There is no obstacle for the author to entrust another person, including collective management society, to exercise his moral rights. Still, this is not the granting of moral rights, but entrusting that other person exercise them.

Regarding the exercise of the paternity right, there is a special rule on its limitation in Art. 28(2) CA, according to which the person who legaly uses a copyright work is not obliged to indicate the author if the manner of a certain public use is such that prevents the indication of the author. Regarding the integrity right, if the author has approved the alteration of his work, he may not exercise the integrity right if the alteration has been made in accordance with the purpose for which the author gave his approval (Art. 29 (3) CA).

b. May the author contractually waive moral rights?

The author (and the performer as well) may not waive moral rights. This does not specifically apply to moral rights, but to the copyright as such (Art. 64 CA). In addition to this general rule, there is a rule on the revocation right which strictly provides that the author cannot waive his revocation right, and that any contractual provision on such renouncement is null and void (Art. 31(3) CA).

2. Economic rights

a. May economic rights be assigned (as opposed to licensed)? May an author contractually waive economic rights?

In the Croatian legal order, copyright cannot be transferred (assigned) by legal transactions during the author's life (Art. 56 CA), nor can it be waived (Art. 64 CA). As regards *inter vivos* legal disposition, copyright is not transferable either as such or in parts which is a direct consequence of the monistic concept of copyright accepted in the Croatian copyright law. The copyright can only be transferred by inheritance and by transfer for the benefit of co-heirs in the event of a partition of an estate.

The author may legally grant another person the right to use his work (which is referred to in the CA as the right of use) in a particular or general form of use in the form of a licence. Strictly dogmatically, the holder of a right of use is not an owner of the copyright, but rather the holder of the new right that burdens the copyright (the copyright remains with the author, who is burdened with the right of a derivative right holder). Therefore, the author is not entitled to

exercise his copyright to the extent that the burden exists and he is obliged to refrain from acts that would impede the holder of the right of use to exercise this right. The right of use may be granted as an exclusive or a non-exclusive right, limited in terms of content, time, or space, or without such a limitation. The holder of an exclusive right of use may exclude any person, including the author himself, from using a copyright work in accordance with the content of his right.

The same applies to the performer's right.

b. Limitations on transfers of particular economic rights, e.g., new forms of exploitation unknown at the time of the conclusion of the contract.

The author cannot grant the right of exploitation of all of his future works. If a contract contains such a provision, it is null and void (Art. 66(3) CA). The same applies to the performer's right.

B. Transfers by operation of law

1. Presumptions of transfer:

a. to what categories of works do these presumptions apply?

In the Croatian CA there are many presumptions for the granting of the right of use. These presumptions concern: the computer programme created by an employee in the course of employment, works created in the course of employment (Arts. 100-103), audiovisual works (Arts. 91-95), architectural works (Arts. 100(5), 115), works on commission (Arts. 96-99), work created by persons in management positions in legal entities, work created in a state and public service (Arts. 104-109), work created in scientific, artistic, teaching and professional work at higher education institutions and scientific organisations (Art. 111), the work of person who is not a professional and who on its own initiative or at the non-binding general or individual invitation delivers a work to the broadcasting organisation (Art. 159) or to the publisher of press publications (Art. 169).

b. are they rebuttable? What must be shown to prove that the presumption applies (or has been rebutted)?

In all the cases mentioned the presumptions are rebuttable. To prove that a presumption applies, it is sufficient to prove that the work was created in accordance with the relevant provision of the CA.

In order to rebut a presumption, it must be proven that the contract provides otherwise.

c. Scope of the transfer: all rights? Rights only as to certain forms of exploitation?

Regarding computer program that is created in the course of an employment, it is presumed that the employer has all the exclusive rights to exploit that computer program, without limitations in terms of content, time or space.

Regarding the other works created in the course of employment, the employer is presumed to have acquired exclusive economic copyright to exploitation of a work without space and time limitation, but only in terms of content and to the extent necessary for the realisation of the activity he performs. Regarding all the works created in the course of employment it is also presumed that the employer has the right to complete the unfinished work.

The same rule applies to the works on commission.

In relation to audiovisual works, the CA stipulates the presumption regarding works of authors of contributions - namely, that the film producer acquires the exclusive right to use their work to the extent necessary to fulfil the purpose of the contract on audiovisual adaptation. The other presumption applies in the event that one of the coauthors or authors of a contribution refuses to, or is unable to continue to collaborate in the creation of an audiovisual work: it is then presumed that the audiovisual producer has the right to use that contribution for the purpose of completing such audiovisual work, but they do not lose their respective rights in relation to the contributions already made. A similar presumption applies in the event that a performer is unable to complete his performance in an audiovisual work.

d. Conditions for application of the presumption (e.g. a written audiovisual work production contract; provision for fair remuneration for the rights transferred)?

Without a valid legal base for the use the copyright work (or performance) there are no conditions for the application of the presumptions. Each of the presumptions implies that the author (and the performer) has the right to to an appropriate and proportionate remuneration.

2. Other transfers by operation of law?

According to Art. 61 CA the author can prevent the transfer of the right he has granted to a particular person to another person. The right of use can only be transferred from one person to another without the author's approval in the framework of the transfer of a business. In this case, however, the person who acquires the right of use is jointly and severally liable for the fulfillment of the obligation which the person transferring such a right has in respect of the author. The author has only limited possibilities to refuse to give his authorization, as he would have to prove that the refusal does not violate the principles of conscientiousness and fairness (Art. 62 CA). A performer is, mutatis mutandis, entitled to the same rights.

C. Transfers by contractual agreement

1. Prerequisites imposed by copyright law to the validity of the transfer, e.g., writing, signed, witnessed, recordation of transfer of title?

All copyright (and the performer's right) contracts must be concluded in a written form (Art. 65 CA). The exception are the so-called petty publishing contracts - a contract relating to the publication of copyright works in the daily and periodical press, in publications or electronic

publications. If the contract is not concluded in a written form, it is null and void. However, if both parties fulfil their obligations in full or in a large part, the contract is valid in accordance with the general rules of the civil obligations law (Art. 71 CA).

2. Do these formal requirements include an obligation to specify what rights are transferred and the scope of the transfer?

In general, there is an obligation to specify what rights are granted (Art. 52 CA). However, if this is not the case, and the contractual works and the person authorized to use the work are specified, the law considers that the person acquiring the right has acquired the right to use the copyright work in a way that is necessary to fulfil the purpose of the contract. The CA contains numerous legal presumptions about the content of a contract if the contract lacks clarity on certain points. If it is not clear from the purpose of the contract whether the right was granted as an exclusive or non-exclusive right, and whether it is limited as to territory, the law considers that it was granted as a non-exclusive right for the territory of the Republic of Croatia. The Croatian CA also contains special rules on the remuneration for use. If the remuneration is not explicitly mentioned in the contract it is presumed that the author (and also the performer) has the right to an appropriate and proportionate remuneration (CA Art. 67). This presumption is rebuttable and if it is agreed that the author (or performer) grants the right of use to another person free of charge, this must be explicitly stated in the contract.

With regard to the interpretation of a contract, in case of doubt, a contract must be interpreted in favour of the author (*in dubio pro auctore principle*).

3. Does your country's law permit the transfer of all economic rights by means of a general contractual clause?

As already mentioned, copyright is not transferable under the Croatian law either as such or in part. On the other hand, it can be licenced, and the author can grant the right of use of his work in a particular or general form of use. The right of use may be granted as an exclusive or a non-exclusive right, limited in terms of content, time, or space, or without such a limitation. The same applies to the performer's right.

4. Does your country's law permit the assignment of all rights in future works?

It is prohibited to grant the right of use for all of the author’s future works. Any contractual provision to the contrary is legally null and void. However, the subject of a copyright contract can also be a work that has not yet been created, provided that it defines the type of the work and the manner of use of the future work, but again, not all of the author’s future works.

The same applies to the performer's right contract.

D. Private international law

1. Which law does your country apply to determine the alienability of moral or economic rights and other conditions (e.g. the country of the work's origin? The country with the greatest connections to the work and the author(s)? The country(ies) for which protection is claimed?)

The question of law which is applicable to the transferability of moral or economic rights is not regulated by the CA, but this issue would fall under Art. 24 of the International Private Law Act (Official Gazette Nos. 101/17, 67/23), in which it is prescribed that "*For original acquisition, existence, validity, content and substantive limitations, scope, duration, the possibility of waiving the right, as well as the transferability of intellectual property rights and the effects of the transfer towards third parties, pledge and other security rights over intellectual property rights, and for all other matters relating to the intellectual property right itself, the applicable law shall be the law of each country for which protection is sought.*"

Therefore, the *lex loci protectionis* would apply here.

III. Corrective measures, subsequent to transfers of rights, accorded to authors or performers in view of their status as weaker parties [Session 4]

1. Does your law guarantee remuneration to authors and performers?

Yes. Croatian law guarantees remuneration to authors and performers through multiple legal mechanisms. A general rule is set forth in Article 26, which states that the author is entitled to remuneration for every use of their work unless otherwise provided by law or contract, and such remuneration is determined as the market value in private law relations. Applies accordingly to performers (Article 139).

Professional journalists and photojournalists whose works are included in press publications have a right to a fair share of the appropriate remuneration received by publishers when such press publications are used online by information society service providers. This right is exercised compulsorily through collective management and is not considered part of their salary (Article 167).

In the case of statutory limitations for educational and research purposes (Article 197), authors and other rightsholders whose works, performances, phonograms, or videograms are included in collections have a right to appropriate remuneration for reproduction and distribution, which is also subject to mandatory collective management (Article 197(3)).

a. By requiring payment of proportional remuneration in certain cases (which)?

Yes. Proportional or appropriate remuneration is required in the following cases:

- Public lending of works or performances – remuneration must be paid to authors (Article 34(3)) and performers (Article 135).
- Rental of works – unwaivable remuneration must be paid to authors (Article 34(6)) and performers (Article 135).

- Use of works on online content-sharing platforms – Article 50(5) requires that contracts between authors and such platforms be fair and balanced, and provide for appropriate remuneration.
- These provisions apply mutatis mutandis to performers under Article 139.

b. By a general requirement of appropriate and proportionate remuneration?

Yes. Article 67 establishes a general rule that authors are entitled to appropriate and proportionate remuneration for all uses of their works, and sets forth criteria for its determination, including:

- Type and scope of use,
- Actual or potential commercial value,
- Contribution of the author,
- Duration of use,
- Market success,
- Relevant industry practices and collective agreements.

Where remuneration is not stipulated in a contract or where it is manifestly inadequate, the author may claim appropriate and proportionate remuneration. Lump-sum remuneration may also be considered proportionate if it corresponds to the circumstances of the case. This principle does not apply to authors of computer programs. All provisions apply equally to performers (Article 139).

c. By adoption of mechanisms of contract reformation (e.g., in cases of disproportionately low remuneration relative to the remuneration of the grantees)

Yes. Article 68 provides a statutory mechanism for the adjustment of originally agreed remuneration when circumstances change, following the *rebus sic stantibus* principle:

- Collective agreements between representative associations of authors and users may regulate this.
- If no such agreement exists, the author may unilaterally request additional fair remuneration if the agreed amount proves to be disproportionately low in light of the revenues generated from the exploitation.
- This "best-seller clause" takes into account all relevant circumstances including author contribution and sector-specific practices.
- This right is unwaivable, and disputes may be resolved through:
    - Mediation before the Council of Experts,
    - Arbitration (if agreed), or
    - Judicial proceedings.
- These provisions apply equally to performers (Article 139), but do not apply to authors of computer programs. Any contractual clauses contrary to this are null and void**.**

d. By providing for unwaivable rights to remuneration in the form of residual rights?

Yes. Croatian law provides for several unwaivable residual remuneration rights, including:

- Public lending – Article 34(7), enforced through mandatory collective management.
- Rental right – Article 34(6) (authors), Article 135 (performers), also collectively managed.
- Resale right (*droit de suite*) – Article 35(7), cannot be waived by the author.
- Audiovisual adaptation – Under Article 89(2) and (3), if the audiovisual adaptation right is granted exclusively, the author retains an unwaivable right to remuneration for each rental of the videogram containing the original work.
- Audiovisual production contracts – Article 92(2) and (4) states that where the right of rental is transferred to the producer, co-authors retain unwaivable rights to remuneration for rental of the audiovisual work, exercised through mandatory collective management.
- Performers' rights – Performers are entitled to an unwaivable share in a single equitable remuneration for broadcasting and any other communication to the public of their fixed performances (Article 136(2)). Where music performances are integrated into audiovisual works, performers retain their exclusive communication rights and corresponding unwaivable right to remuneration (Article 136(3)).

2. Does your law require that the grantee exploit the work?

Croatian copyright law requires grantees of exclusive rights to actively exploit the work. If they fail to do so, authors are entitled to terminate the agreement or revoke exclusivity, and, under certain circumstances, request the extinction of the exclusive right**.** These protections cannot be contractually waived and serve to uphold the author's economic and moral interests.

a. Does your law impose an obligation of ongoing exploitation? For each mode of exploitation granted?

Yes. Croatian law imposes an obligation on the grantee (holder of exclusive rights) to actively exploit the granted rights. According to Article 59(1) of the Copyright and Related Rights Act, if the grantee fails to exercise the exclusive right or exercises it inadequately in a way that harms the legitimate interests of the author, the author may request termination of the exclusive right, unless the grantee can prove the lack of fault for such non-use.

This duty to exploit applies to each granted mode of exploitation, provided the inactivity causes material harm to the author's economic or professional interests.

This obligation is further reinforced by Article 70, which regulates the author's right to unilaterally terminate the contract in cases of non-exploitation. If the grantee fails to begin exploitation within the agreed, statutory, or reasonable time, the author may set a supplementary period for compliance. If the grantee still does not act, the author may terminate the contract by written declaration (Article 70(1)).

The obligation of ongoing exploitation, and the associated remedies, apply to all exclusive rights granted, but do not apply to:

- Authors of computer programs, and
- Co-authors or contributors to audiovisual works (Article 70(5)).

This applies accordingly to performers (Article 139.)

The additional "use it or lose it" clause (Article 146) applies to the right of the performers to request that the phonograms containing their fixed performance are offered by the phonogram producers to the public in a reasonable quantity or made available to the public (50 years after the first publication or first communication to the public). If phonogram producer fails to fulfil his obligation in a year following the performer's notification, the performer may terminate the contract.

b. What remedies if the grantee does not exploit the work?

Croatian law provides multiple remedies in case of non-exploitation:

- Termination of exclusive rights (Article 59(1))
  If the grantee does not exercise the exclusive right at all or inadequately, causing harm to the author's interests, the author may request termination of that right. This does not apply if the grantee proves that they are not responsible for the failure.
- Automatic expiration of rights in specific legal circumstances (Article 59(2) and (3))
  - If the grantee ceases to exist and has no legal successor, the exploitation right expires automatically.
  - If bankruptcy proceedings are initiated and no party acquires the right, it also expires.
- Unilateral termination of contract by the author (Article 70(1))
  The author may issue a unilateral declaration of termination if, after receiving a notice and being granted an additional reasonable period, the grantee still fails to exploit the work.
- Removal of exclusivity instead of termination (Article 70(4))
  As an alternative to termination, the author may unilaterally revoke the exclusivity of the exploitation right, thereby converting it into a non-exclusive right.
- Limits on justifications for non-use (Article 70(3))
  The grantee may only avoid termination if:
  - The failure is due to reasons they can remedy themselves, or
  - There are justified and remediable reasons invoked within 8 days of the author's notice, in which case the author must allow a further grace period.
- Nullity of contractual derogation (Article 70(6))
  Any contractual clause that excludes or limits the application of Article 70 is null and void.

  This applies accordingly to performers (Article 139), with the additional "use it or lose it" clause for a period after 50 from fixation/publication. Additional consequence for the phonogram producers is that, if the performer terminates the contract following the lack of usage, phonogram producer's rights shall expire upon the expiration of 50 years from the publication or communication to the public (article 146 (5)). However, the performer shall enjoy 70 years of protection.

3. Does your law impose a transparency obligation on grantees?

Croatian law imposes a clear transparency obligation on grantees to report usages and revenues of the work to authors at least annually, including information on sub-licensing

arrangements. Should a licensee fail to honor this obligation, the author has statutory means to enforce it. This transparency obligations applies accordingly to performers, pursuant to Article 139 of the Copyright and Related Rights Act.

a. What form does such an obligation take (accounting for exploitations? informing authors if the grantee has sub-licensed the work, etc.)

Under the Croatian Copyright and Related Rights Act, licensees (grantees) have a clear statutory transparency obligation towards authors. In particular, Article 69 of the Act requires that a grantee regularly, at least once per year, provide the author with up-to-date, relevant, and comprehensive information regarding the use of the author's work. The law specifies the content and scope of this information duty, including:

- Modes of Exploitation
- Generated Revenues
- Deductions or Costs
- Author's Royalties

Additionally, if the original licensee grants further sublicenses or transfers exploitation rights to other parties, the author's transparency right extends to those downstream exploitations. The primary licensee is obliged to identify any sub-licensees, and the author may request the required exploitation data directly from a sub-licensee if the primary licensee has not provided it. In other words, the author can obtain information on exploitation even when rights have been sub-licensed, ensuring no gap in transparency. The primary licensee remains responsible for facilitating this by naming the further rights holders.

The Act also emphasizes that the transparency obligation must be proportionate and effective. In cases where providing all details listed above would be disproportionate relative to the revenues generated by the work (for example, if the work generated minimal income), the licensee's duty is limited to the types and level of information that can reasonably be expected under the circumstances. This proportionality clause prevents an excessive burden on licensees when the economic outcome of exploitation is very small, while still requiring that meaningful information be given.

There are certain exceptions to the transparency requirement. Notably, the obligation to provide exploitation data does not apply if the author's contribution to the work is not significant in relation to the overall work. For instance, if the author's input is minor in a larger collaborative work. However, even in that case, if the author requests information for the purpose of invoking their rights which deals with adjustment of remuneration in case of significantly changed circumstances or disproportionate compensation, then the information must be provided despite the minor contribution. Furthermore, Article 69 explicitly excludes certain contexts: the transparency rules do not apply to collective management organizations or independent management entities (in respect to their members), nor do they apply to authors of computer programs.

Importantly, the transparency obligation is mandatory and cannot be contracted away; any contractual provision that attempts to override or limit the author's right to receive these exploitation reports is deemed null and void by the Act. This ensures that the author's right to information is inalienable and must be observed by the licensee.

This applies accordingly to performers (Article 139).

b. What remedies if the grantee does not give effect to transparency requirements?

If a grantee fails to comply with the transparency obligations, Article 69(5) specifies that disputes regarding the transparency right can be resolved through mediation, arbitration, or court proceedings. The law affirms that such actions can be initiated by the author individually or by their representative organizations (e.g. an authors' association) on behalf of one or more authors. This collective enforcement option is significant because it allows authors' guilds or unions to help enforce transparency on behalf of multiple creators in similar situations.

As noted, any contract term purporting to exclude or limit the transparency duty is void.

This applies accordingly to performers (Article 139).

4. Does your law give authors or performers the right unilaterally (without judicial intervention) to terminate their grants?

Yes, Article 59 of the Act provides a general rule whereby the author (or performer) may independently request the termination of the exclusive right of exploitation if the grantee does not exercise it at all or exercises it insufficiently, unless the holder of the exclusive right of exploitation proves there are justified reasons to fail the exercise of the granted right.

The additional rule is given to the performer for the period following 50 years from the first publication or communication to the public if the phonogram producer fails to fulfil the request of the performer in respect to the making availeble the phonograms to the public in a sufficient quantity (Article 146.).

a. Under what circumstances?

i. After the lapse of a particular number of years?

The Act does not grant a general right to cancel a transfer after a set number of years. However, certain grants are statutorily time-limited. Notably, if an author grants exclusive audiovisual adaptation rights, the author retains the exclusive right to make a new audiovisual adaptation of the work after 20 years from the contract (Article 89(2)). This means the original grantee's exclusivity is effectively capped at 20 years, after which the author can license a new adaptation.

For performers, the Act implements an EU "clean slate" rule for sound recordings (Article 148(1)). If a phonogram producer fails to adequately exploit a recording after 50 years, the

performer can demand contract adjustment, and if no fair agreement is reached, the producer's rights terminate at the 50-year mark (Article 148(3,4)).

In practice, aside from these specific provisions, Croatian law does not allow authors or performers to simply reclaim rights unilaterally just because a certain time has passed, unless such a right was contractually reserved.

ii. In response to the grantee's failure to fulfil certain obligations, under what conditions?

Yes. The Act gives authors a unilateral right to terminate a grant if the grantee fails to exploit the work as agreed. Article 70 provides that if an exclusive licensee or assignee does not begin exploiting the work within the agreed, statutory or a reasonable time, the author may first call upon them to perform, and if they still do not start exploiting within an additional reasonable period, the author may terminate the contract by a unilateral written declaration. This right of cancellation for non-use is automatic (no court needed) once conditions are met, and any contract clause waiving it is null (Article 70(6)). There are some limits: the author cannot terminate if the non-use is due to remediable circumstances and the grantee promptly remedies them and the rule does not apply to computer programs or contributors to audiovisual works (Article 70(5)). Article 70 applies accordingly to performing artists (Article 139).

Additionally, the law spells out similar unilateral termination rights in specific contracts: for instance, under publishing contracts, if the publisher fails to publish the work (or an agreed new edition) within the contracted or legal deadline, the author may rescind the contract by a unilateral written notice (Article 82(1)). In that case, if the failure was the publisher's fault, the author may keep any advance payment in addition to claiming damages (Article 82(2)). Likewise, in audiovisual production deals, if a film producer does not complete the film within 5 years or fails to release (make it public) within 2 years of completion, the author(s) can terminate the contract unilaterally (Articles 90(1) and 95(1)). For example, the author of an adapted screenplay may cancel the adaptation contract if the producer never actually produces or releases the film in time. Notably, via Article 85 author's grant of the right to live public performance ends automatically if the organizer fails to use the work as agreed.

The additional "use it or lose it" clause (Article 146) applies to the right of the performers to request that the phonograms containing their fixed performance are offered by the phonogram producers to the public in a reasonable quantity or made available to the public (50 years after the first publication or first communication to the public). If phonogram producer fails to fulfil his obligation in a year following the performer's notification and request, the performer may terminate the contract.

iii. As an exercise of the moral right of "repentance"? (Examples in practice?)

Yes, Croatian law recognizes an author's moral right to withdraw their work from circulation to protect their personal reputation. Article 31 stipulates that an author may unilaterally revoke a granted right of exploitation if continued use of the work would violate the author's honor or reputation, provided that the author indemnifies the rights holder for the damage caused by the withdrawal. This is essentially the "right of repentance": the author can, without court

intervention, stop further publication or use of the work on moral grounds. The revocation takes effect once the author deposits a security for compensation of the licensee's costs/losses. The law also requires the author, if he republishes the work within 10 years of using this right, to first offer the exploitation right to the original grantee he withdrew it from (Article 31(4)). Importantly, the author cannot waive this moral right in a contract (Article 31(5)). In practice, this right is used very rarely (because the author must compensate the publisher or producer), but it exists as a last resort to protect the author's personal integrity. The Act does not grant performers a comparable unilateral "repentance" right to cancel performance rights once granted. The moral withdrawal right is unique to authors of works.

IV. Streaming, transfer of rights, and the management of large catalogues [Session 5]

1. Applicable statutory right

a. What specific statutory right applies to licensing the streaming of works and performances?

i. Is it the right of communication to the public modelled after Article 8 WCT for authors, and the right of making available modelled after Articles 10 and 14 of the WPPT for performers and phonogram producers?

ii. Another right or a combination of rights?

Yes, Art. 8 WCT corresponds to Art. 36 CA – the right of communication of the copyrighted work to the public, which also includes the right of *making available* of the work, within the appropriate internet service (set forth in the Art. 48 CA). In Art. 46 CA it is specified that the right of *making available* of the work to the public includes the communication to the public of the copyrighted work, over the wire, or wireless, in a way that members of the public can access the work from a place and in time of their choosing.

Art. 10 WPPT corresponds to Art. 136. CA entitling the performers to an exclusive right to *communication* of performance to the public – including the right to allow public to access such performance of content sharing platforms over the internet.

Art. 14 WPPT corresponds to Art 142. CA entitling the phonogram producers to the exclusive right to *communication* of performance to the public – including the right to allow public to access such performance on content-sharing platforms over the internet.

b. For authors, does this right cover both musical and audiovisual works? For performers, does this right cover both performances fixed in phonograms and audiovisual fixations?

For authors, this includes copyright work – having in mind the definition of the copyrighted work (Art. 14 CA). Therefore, yes, this right covers both musical and audiovisual works.

For performers, this covers both the (*fixed*) musical and audiovisual performance (Art. 136 CA).

2. Transfer of rights

a. Are there any regulations in your country's law that limit the scope of a transfer or license to the forms of use already known at the time of the transfer or license?

No, there is no such limit – according to Art. 58 CA, the author may transfer the license to another person either by defining rights which are transferred, or by permitting every type of use of a certain work. If there are no limitations in the forms of exploitation, the license includes all the forms of exploitation, even the ones not known at the time of transfer.

b. If there are such regulations, when the statutory right referred to in section 1 was introduced into your law, was it considered a new form of use to which the limitation in subsection 2 a. above applies?

There is no such limitation.

c. Are there any cases in your country's law when the statutory right referred to in section 1 is presumed to have been transferred to the producer of a phonogram or audiovisual fixation?

Since there is no such limit – there is also no specific provision on the presumption of the transfer of rights.

3. Remuneration

a. Are authors/performers entitled to remuneration for licensing the streaming of their works/performances?

Yes. Under Croatian law, authors and performers are entitled to appropriate remuneration for licensing the streaming of their works or performances.

According to the general rule in Art. 26(3) CA, for each use of a copyrighted work, the author is entitled to a fee, unless otherwise provided by law or contract. This fee is determined as the price of use within a private-law relationship.

Unless otherwise agreed, the remuneration must be appropriate and proportionate to the use of the work or performance (Art. 67 CA). It may be negotiated individually or, in some cases (e.g., music), managed collectively through collective management organizations.

However, there is a specific solution in Croatian CA in respect to the internet usage of fixed performances and for the purpose of securing the appropriate remuneration. If there is no proper written contract with every performer whose performance is contained on the phonogram, and if phonogram producers fail to regulate the internet usage (streaming etc.) with every performer on the phonogram, as of 22.10.2024. it shall be presumed for these performers that the rights of exploitation of their musical artistic performance online are exercised collectively, and the phonogram producer shall be, in such case, treated as user, and shall be obliged to regulate the usage of such performances collectively with respective collective management organization of performers. (Art. 149). The phonogram producers got three-year period after entering into

the force of CA, for the proper regulation of the internet usage in the contracts with the performers. Following this period, for all the performers that were left without contracts, the rights are managed collectively (Article 149(4), Article 218 (1) 1. c), d), e)).

b. Does authors and/or performers retain a residual right to remuneration for streaming even after licensing or transferring the statutory right referred to in section 1?

In some instances, yes.

The general rule is that if the amount of remuneration is determined unreasonably, authors and performers retain the right to appropriate and proportionate remuneration (Art. 67 CA). They are also entitled to additional appropriate and proportionate? remuneration if, due to changed circumstances, the agreed original remuneration proves to be disproportionately low compared to the income subsequently generated from the use of the work or performance (Art. 68 CA).

Concerning specific provisions regulating residual rights, an author or a rightholder of a related right has:

- the author's right on the appropriate remuneration for renting his/her copyright work (Art. 34(6) CA) - mandatory collective management,
- the author's right to the remuneration for public renting (Art. 34(7)) - mandatory collective management,
- the author's resale right - the author's right to a share of the sale price in all resales of original works of visual art that follow the first sale by the author, when art dealers are involved in the resale activities or if the resale is carried out through the mediation of art market specialists, such as showrooms and art galleries (Art. 35 CA),
- the author's right to the appropriate remuneration for each renting of videograms containing original work (Art. 89 CA),
- the author's right to the appropriate remuneration for renting audiovisual work (Art. 92 CA) - mandatory collective management,
- the performer's right to the appropriate remuneration for renting and public renting of fixed performance (Art. 135 CA) - mandatory collective management,
- the performer's right to a share in a single appropriate remuneration if an unfixed musical performance or a musical performance fixed on a phonogram is incorporated into an audiovisual work (Art. 136 CA),
- the phonogram producer's right to a share in a single appropriate remuneration if a phonogram published for commercial purposes is incorporated into an audiovisual work (Art 142 CA) - mandatory collective management,
- the performer's right to an annual supplementary remuneration from the phonogram producer (Art. 147 CA) - mandatory collective management,
- the author's right to the appropriate remuneration for reproduction for private use (Art. 184 CA) - mandatory collective management.

4. Collective management

a. In your country's law, is collective management prescribed for managing the right referred to in section 1? If so, what form of collective management is prescribed (e.g. mandatory or extended)?

Yes. Croatian law prescribes collective management and is mandatory in cases explicitly listed in Art. 217 CA. In addition to the rights from para. 1 of Art. 217 CA, other copyright rights can also be managed collectively if para. 3 of Art. 217 does not prescribe that they must be managed collectively (Art. 217(2)).

For music performers see IV. 3.a. last paragraph (Article 149 and Article 218).

b. If authors and/or performers retain a residual right to remuneration (ss 3 b.), is collective management prescribed for managing this residual right to remuneration? If so, what form of collective management is prescribed (e.g. mandatory or extended)?

See IV.3.b.

5. Transparency and the management of large catalogues

a. Does your law (or, in the absence of statutory regulations, industry-wide collective agreements) guarantee that authors and performers regularly receive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights? If yes, what is the guaranteed periodicity and content of such information?

Yes. Croatian law provides specific provisions on transparency and reporting. The general rule is that authors and performers have the right to be informed regularly about their works and other subject matters, at least once a year (Arts. 69, 84 CA).

Specific provisions are provided for CMOs' obligations (Sec. V, Ch. 6 CA). Reports must be given at least once a year (Art.247 CA) or upon an elaborated request of a rightholder (Art.249, 251 CA).

b. Are you aware of any case law where the complex chains of copyright titles, typical of large streaming catalogues, have made the management of works or performances non-transparent or otherwise challenging, such as, for example, the case of Eight Mile Style, LLC v. Spotify U.S. Inc. (https://casetext.com/case/eight-mile-style-llc-v-spotify-us-inc-1)?

There is an ongoing case of the Croatian Performers' Rights Collecting Society - HUZIP (Croatian performers' CMO) against Hrvatski telekom (Croatian telecommunications company) and Deezer. However, as this case has not yet been finalised, there is no publicly available data on it.