

LEGAL DEVELOPMENTS

THE NEW CROATIAN COPYRIGHT SYSTEM

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1. Introduction

A new Copyright and Related Rights Act (hereinafter: CA¹) was enacted in Croatia on October 30, 2003. The new law endeavoured to achieve several objectives: to adapt the copyright system to the requirements of the information society, i.e. to take into account the development of the new technologies (which has affected copyright law more significantly than any other branch of law); to provide prerequisites for a more effective enforcement of copyright and related rights; to implement Croatian obligations arising from the 1996 WIPO Treaties, as well as the obligations arising from the Stabilisation and Association Agreement between Croatia and the European Union (SAA), which provides for harmonisation of the copyright system with the *acquis communautaire*² of the European Union.

These main objectives have been achieved with the enactment of the new CA. At the same time, the enactment of the CA has led to significant changes in the Croatian legal system, which still need to find their way into practice. The new CA is a new national copyright law which repealed and replaced the copyright legislation which Croatia had taken over from former Yugoslavia's legal system (i.e. the Copyright Act (*Zakon o autorskom pravu*) of 1978³). Compared to other states, which had been part of former Yugoslavia, Croatia has taken longer time before enacting a new national copyright legislation.

2. Historic outline of Copyright Law development in Croatia

The tradition of copyright regulation in Croatia is almost two hundred years old, a fact widely unknown which indicates the traditional affiliation of the Croatian legal system to the

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¹ Copyright and Related Rights Act (*Zakon o autorskom pravu i srodnim pravima ZAPSP*), Official Gazette (OG) (*Narodne novine*), No. 167/2003, October 22, 2003.

² The entire body of European Union laws is known as the *acquis communautaire*. This includes all the treaties, regulations and directives passed by the European Union institutions as well as judgements laid down by the European Court of Justice.

³ The 1978 CA was taken over from the legislation of the former Yugoslavia via the Law on the Transfer of Federal Laws in the Field of Education and Culture (*Zakon o preuzimanju saveznih zakona iz oblasti prosvjete i kulture*) (OG No. 53/91), and it was amended in 1993, 1999 (OG No. 9/99, 76/99, 127/99 and 67/2001).

Western European provenance. Copyright relations were first regulated at the time of Napoleon's rule. At that time, a large portion of today's Croatia belonged to the Illyrian provinces.⁴ By virtue of the Imperial decree of January 1, 1812⁵, the Illyrian provinces were governed by French legislation, therefore the French laws regulating copyright (adopted after the French revolution) were applicable in the Croatian territories as well. Those acts were in force for a short period of time, until the demise of Illyria in 1813, after which the previous legal order was re-established.⁶ No specific copyright legislation existed on the territory of Croatia until 1846 when the Austrian Patent on the Protection of Literary and Artistic Property was enacted in Dalmatia and Istria (Croatian territories which were out of the legislative authority of the Croatian Parliament, as they were included in the Austrian part of the Austro-Hungarian empire). The same Patent was enacted in Croatia and Slavonia (Croatian territories which, at the time, were under the legislative authority of the Croatian Parliament) and came into force on May 1, 1853, at the same time as the corresponding law in Austria.⁷ This Patent was criticized for not providing sufficient protection to authors and was replaced by the Copyright Act, which was enacted by the joint Croatian-Hungarian Parliament on July 1, 1884.⁸ This act granted authors of literary, scientific, musical and artistic works copyright with regard to such works, as a separate and independent subjective right. In the Croatian territories belonging to the Austro-Hungarian Empire, the 1846 Patent was replaced by the Austrian Copyright Act for literary, artistic and photographic works of December 26, 1895, revised on February 26, 1907.

After the end of the First World War in 1918, all Croatian territories entered into a new community of states, a union of the southern Slavic nations. This had an impact on the regulation of copyright. Thus, as of 1929, copyright was regulated by the 1929 Act on the Protection of Copyright (*Zakon o zaštiti autorskog prava*) of the Kingdom of Yugoslavia, which replaced all the previously existing laws.

The troubled Croatian history continued, so after the end of World War II, Croatia found itself a member of a new community of southern Slavic nations, where the kingdom was replaced by a socialist republic. This brought significant changes to the private law

⁴ The Illyrian Provinces [*Les Provinces Illyriennes*, Illyria] comprised Dalmatia, the Dubrovnik Republic, which had been under the French rule since 1805, Istria, and the Croatian territories south of the river Sava. In addition to the Croatian countries, the Illyrian Provinces also included Slovenian Carniola and western Carinthia. The Illyrian Provinces were created in 1809 and were dismantled after Napoleon's defeat in Russia in 1813, see, Beuc, I.: *Povijest država i prava na području SFRJ* [History of states and legal systems on the territory of the SFRY], Zagreb, 1986, p. 19; Šišić, F.: *Pregled povijesti hrvatskog naroda* [Overview of history of the Croatian nation], Zagreb, 1962, pp. 383-390.

⁵ *Télégraphe officiel des Provinces Illyriennes* [Official Journal of Illyria], 1811, articles 249 and 250, section XII on publishing and the introduction of French laws in the Illyrian Provinces, p. 179.

⁶ When talking about a nearly two hundred years' tradition in the legislation on copyright on the territory of the Republic of Croatia, it should be noted that during that period there was a discontinuity – in the period from the demise of the Illyrian Provinces to the enactment of the Patent on literary and artistic property, copyright had not been specifically regulated, except that the civil code of the time (Austrian *Allgemeines Bürgerliches Gesetzbuch*, ABGB) contained provisions on publishing contracts (par. 1164-1171 ABGB) which regulated the rights and obligations of an author in case of publication of his/her work.

⁷ The enactment of the Patent on literary and artistic property in Croatia and Slavonia was linked to the enactment of the ABGB. Namely, by provision of Art. VII (5) of the Imperial Patent of November 29, 1852, by which the ABGB was introduced in Croatia and Slavonia, it was stipulated that for the sake of the protection of "literary and artistic ownership" this patent "should be added" and the provisions on publishing contracts should be "amended and revised".

⁸ *Zakon o autorskom pravu, zakonski članak, XVI*, 1884, zb. br. 30. It is interesting to note that this Act did not contain any provision which regulated the cessation of the 1846 Patent.

system. In 1946, a Copyright Protection Act was enacted. It was elaborated under the strong influence of the Soviet ideology, in accordance with the legal thinking of the day. Unlike the preceding laws, it strongly limited the rights of the authors to the benefit of the community, beyond the limits set out by the Berne Convention for the Protection of Literary and Artistic Works. However, as the strong Soviet impact in Yugoslavia was after all short-lived,⁹ the Copyright Protection Act of 1946 was relatively quickly replaced by the 1957 Copyright Act, which essentially brought the copyright system back to the continental legal tradition, thus catching up with contemporary tendencies of copyright law.

Then followed the 1968 Copyright Act,¹⁰ whose purpose was to bring the copyright legislation in conformity with the Universal Copyright Convention, which Yugoslavia had just ratified. The direct predecessor of the law currently in force, the 1978 Copyright Act was adopted in order to accommodate the changes resulting from the Stockholm and Paris revisions of the Berne Convention, as well as the 1971 revision of the Universal Copyright Convention. This was the law taken over into the Croatian legal system after Croatia became independent in 1991.

3. Legal sources of copyright in Croatia

3.1. The Constitution

Copyright in Croatia, as one of the fundamental human rights, is guaranteed by the Constitution, in accordance with the United Nations Universal Declaration on Human Rights,¹¹ and the guarantee stemming from the International Covenant on Economic, Social and Cultural Rights.¹² Article 68 (4) of the Croatian Constitution, in its part "Protection of Human Rights and Fundamental Freedoms", guarantees "protection of the moral and material rights¹³ in scientific, cultural, artistic, intellectual and other creations". Thus, copyright is not subject to the intervention of public authorities.¹⁴ Copyright is guaranteed by the Constitution – on the one hand, as a subjective, personal right, and on the other hand, - as a legal institute.

⁹ Unlike other countries of Central and Eastern Europe, which after World War Two came under the influence of the Soviet Union and Soviet type of socialism, Yugoslavia had since 1948 remained outside of the Soviet block and pursued "its own way to socialism", which nevertheless was significantly less rigid than the Soviet one and allowed larger liberties and stronger private rights.

¹⁰ On the development of the legislation in the field of copyright from the enactment of the 1929 CA until the enactment of the 1978 CA, see Henneberg, I.: "60 godina zakonodavstva o autorskom pravu u Jugoslaviji" [60 years of copyright legislation in Yugoslavia] in: *Nove tehnologije i autorsko pravo* [New technologies and copyright], Brioni, 1989, pp. 1-8; Krneta, S.: *Zur Entwicklung des Urheberrechts in Jugoslawien*, *GRUR Int.*, No. 11/81, p. 663 *et seq.*

¹¹ United Nations Universal Declaration of Human Rights of 1948, Art. 27 (2): "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

¹² International Covenant on Economic, Social and Cultural Rights of 1966, Art. 15 (1) (c): "The States Parties to the present Covenant recognise the right of everyone: [...]

c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

¹³ The "moral and material rights" in this Constitutional provision refer to the rights of personal and patrimonial nature.

¹⁴ However, the Constitutional guarantee of copyright does not prevent the public authority from limiting copyright, but it means that the public authority interventions would not exceed certain limits, under requirements specifically determined by law.

3.2. Laws

The basic law regulating copyright is the 2003 Copyright and Related Rights Act (CA). Along with the CA, other important legal sources of copyright include: the Penal Act,¹⁵ which prescribes criminal liability for infringement of copyright and related rights; the Customs Act,¹⁶ which regulated special border measures in cases of infringement of intellectual property rights;¹⁷ the Family Law,¹⁸ which contains provisions regulating the exploitation of works which have been created in a marital relationship. Along with these substantive laws, relevant provisions regulating jurisdiction of particular bodies are contained in the Judiciary Act,¹⁹ the Territories and Seats of Courts Act,²⁰ the Penal Procedure Act,²¹ and the State Inspectorate Act.²²

In addition, a number of by-laws should be enacted further to the provisions of the CA and a couple of some existing by-laws should be revised. These include, more particularly, the Regulation on Professional Criteria for the Activities Concerning the Administration of Authors' Rights and Performers' Rights,²³ which lays down the requirements for collective administration of copyright and related rights.²⁴ Further, it will be essential to enact a regulation on measures for the cases where technological protection measures are applied and where, despite of existing limitations and exceptions to copyright, the users, entitled to these exceptions, do not have the lawful access prescribed by the law.²⁵ Finally, rules are to be adopted with regard to the setting up of a Council of Experts on Royalties for Copyright and Related Rights. This will be a new body, prescribed by the new CA, with the aim to improve the management efficiency of collective administration of copyright and related rights.²⁶

3.3. International treaties

As a successor to former Yugoslavia, Croatia is a party to all multilateral international conventions in the field of copyright and related rights, including the Berne Convention for the Protection of Literary and Artistic Works, as revised in 1971, the Universal Copyright

¹⁵ OG No. 110/97 (entered into force on 1 January 1998) and No. 27/98.

¹⁶ OG No. 78/99, 94/99, 73/2000, 92/2001 and 47/2003.

¹⁷ Article 70 (3) of the Customs Act stipulates that the Government of the Republic of Croatia shall render special regulations on the customs procedure concerning the violation of intellectual property, such as: the Decree on the Implementation of Customs Measures Concerning the Goods whereby Intellectual Property Right is Violated (OG No. 106/2003) and the Regulation on the Manner of Depositing, Cashing and Return of Insurance Instruments for a Settlement of Expenditures for Keeping and Maintaining the Goods in the Process of Implementation of the Customs Measures in Respect of the Violation of Intellectual Property Rights (OG No. 167/2003).

¹⁸ OG No. 162/98.

¹⁹ OG No. 3/94 and 100/96.7

²⁰ OG 3/94 and 100/97.

²¹ OG No. 110/97, 27/98, 18/99 and 112/99.

²² OG No. 76/99.

²³ OG No. 1/94. The Regulation was passed by the Ministry of Culture, which was at the time competent for copyright and related rights.

²⁴ Pursuant to Art. 205 (1) (2), the Regulation should be passed within 6 months after the entry into force of the CA.

²⁵ Pursuant to Art. 205 (1) (2), the Regulation on Measures of Authorised Access to a Copyright Work and Related Rights Subject Matter Protected by Technological Measures should be passed within one year after the entry into force of the CA.

²⁶ Pursuant to Art. 205 (1) (2), these Regulations should be passed within six months after the entry into force of the CA.

Convention of 1952, as revised in 1971, and the 1974 Convention on the Distribution of Programme-Carrying Signals Transmitted by Satellite. On 20th April 2000, Croatia acceded to the 1961 International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organisations and to the 1971 Convention on the Protection of Producers of Phonograms against the Unauthorised Duplication of their Phonograms. Croatia is also bound by the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) from the day it became a WTO member, i.e. November 2000. The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) were ratified by Croatia in May 2000.²⁷ The country is therefore a party to these Conventions from the date of their entry into force.²⁸

In accordance with the Stabilisation and Association Agreement with the EC and its member states (Article 71) and with the Interim Agreement on Trade and Trade-Related Issues with EC (Article 36), Croatia is bound to guarantee a level of protection of copyright similar to the copyright protection in the EU Member States, which basically means harmonisation with the *acquis communautaire*.

4. New elements in comparison with the previous Act

4.1. Copyright – content and limitations

The new CA was built on a clearly defined legal basis, i.e. the monistic theory of copyright, according to which copyright is a unique right comprising different prerogatives, namely personal and patrimonial rights, as well as certain rights of heterogeneous nature. The repealed Copyright Act contained both characteristics of the monistic and the dualistic concept, which has, in some cases, led to confusion.

As far as the content of copyright is concerned, the new CA does not provide for an exhaustive list of exploitation rights, but defines the patrimonial rights in a way to enable the author to do whatever he or she wishes with his or her work, as well as with the benefits arising from its exploitation. The exercise of rights can be limited only in the cases expressly provided for by the CA and, in accordance with the three-step test, only if the limitations and exceptions do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right owner. The list of limitations has been harmonized with Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, which provides for some general limitations and exceptions to copyright protection, in particular reproduction for private use, as well as use by public libraries and similar institutions. The general limitations and exceptions to the protection of copyright are accordingly applicable to the protection of related rights. It is worth noting, however, that all related rights are subjective rights of limited content, and are therefore regulated by those limitations which correspond to the content of each particular related right.

Copyright protection is granted for 70 years following the death of the author or the last surviving co-author, or the publication date of a work if the author is anonymous, or the creation of a work if the work has not been published. Copyright will cease entirely after the expiration of the said period, but the law provides for an universal obligation to respect the

²⁷ OG – International Treaties No. 6/2000.

²⁸ The WCT entered into force on 6 March 2002, and the WPPT on 20 May 2002.

authorship and the integrity of the work, as well as the author's honour and reputation.

The rights of personal nature (moral rights) comprise the right of first publication, paternity right, the right of respect to the author's honour and reputation, as well as the right of withdrawal. A more significant novelty among the moral rights is the right of first publication, which was classified by the preceding law, somewhat unusually, among the patrimonial author's rights.

Another novelty of the CA are the so-called "other rights of the author" as the third component of copyright. This group comprises rights which are heterogeneous by nature, being neither of purely patrimonial nor purely personal nature, such as the resale right with regard to an original work of art, the right to access the work, when it is in a third person's possession, for the purpose of making of copies of the work. This group also comprises rights which are not of exclusive nature, but are reduced to a right to compensation for uses of the work permitted without the author's consent, e.g. for reproduction for private use and public lending. The group of "other rights of the author" includes also the right of the author of an unpublished work of art, or a photographic work, to prohibit in a written form the public exhibition of his or her work, which otherwise could be freely exhibited by the owner of the work.

Further to the traditional continental doctrine of copyright, only a physical person can have the quality of author, whereas legal persons (entities) cannot be original owners of copyright. The only exception made by the CA is for computer software, when the software has been created by an employee in the framework of an employment contract or following the instructions of the employer. In this case, the exploitation rights will belong to the employer, in accordance with art. 2 and 3 of the Directive 91/250/EEC on the legal protection of computer programs.

Along with the above rule, the CA contains a number of specific provisions regarding computer programs, as well as audiovisual works. Interestingly, the provisions on computer programs and audiovisual works are not positioned, as one would expect, in the "Copyright Works" chapter, but at the very end of the part dealing with copyright protection. This is a somewhat unusual placement, taken into consideration the fact that all provisions concerning other categories of works are also applicable for computer programs and audiovisual works, whereas special provisions only complement or derogate the general provisions.

4.2. Related rights

Along with the rights of authors, the CA regulates the rights of performers, the rights of phonogram producers, the rights of producers of first fixations of films, the rights of broadcasting organizations, the rights of makers of databases, as well as the rights of publishers in their publications. All said rights are protected as rights related to copyright.

It is to be noted here that the introductory section of the CA, as well as the sections relative to the protection and enforcement of rights are applicable both to copyright and related rights. However, some provisions of the "Copyright" chapter are applicable both to copyright and to related rights, in accordance with the content of each particular related right. This legal technique, defined in Article 4 of the CA, requires a permanent linking of

provisions on a particular related right with relevant provisions on copyright and may sometimes cause difficulties in interpretation.

The rights of performers include both personal (moral) and patrimonial rights. Performers have the right to be designated as performers (right of paternity), the right to oppose the destruction and distortion of the performance (right of integrity) and to uses of the performance which damage the performer's honour or reputation. With regard to patrimonial rights, performers have the right to authorize or to prohibit fixation of unfixed performances, as well as reproduction, distribution and rental, and communication to the public of unfixed and fixed performances.²⁹ Along with these exclusive rights, performers are entitled to claim compensation for the reproduction of performances for private use, when this is permitted pursuant to the relevant provisions on limitations and exceptions to related rights, as well as to a compensation for public lending. Performers' rights are protected for a period of 50 years starting from the date of the performance or the date of the first fixation or first communication to the public of the performance.

With regard to content, the rights of phonogram producers correspond to the WPPT provisions and include the rights to authorize or prohibit the reproduction of a phonogram, its distribution and rental, the making of a phonogram available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them, as well as the right to claim compensation for reproduction for private use and for public lending of the phonogram, as well as for broadcasting and other communications to the public of the phonogram. According to the CA, the phonogram producer is either a physical or legal person that takes the initiative and is responsible for the first fixation of sounds or representation of sounds. Rights of phonogram producers are protected for 50 years from the date of the first fixation or the date of the first publication or first communication to the public, respectively.

The right of broadcasting organizations contains the right to authorize or prohibit re-broadcasting of their broadcasts by wire or wireless means, fixation of their broadcasts, reproduction and distribution of their fixed broadcasts,³⁰ communication to the public of their broadcasts if such communication is accessible to the public against payment, and making available to the public of their fixed broadcasts. Duration of the broadcasting organizations right is 50 years counting from the date of first broadcast.

The producers of first fixation of films, makers of databases and the publishers are the new beneficiaries of protection. Croatia had to recognize all enumerated rights in order to bring its legislation in compliance with the EU *acquis communautaire*.

As far as content is concerned, the rights granted to film producers' rights are comparable to the already existing phonogram producers' rights. The object of that right is the fixation of either an audiovisual work, or of those moving images which do not have the

²⁹ According to Art. 125 CA, a performer has the right to authorize or prohibit communication to the public in any form, and listed among examples of communication to the public are broadcasting and rebroadcasting rights, the right of public communication of fixed performances and broadcasts, the right of public transmission, the right of public presentation and the right to make available to the public.

³⁰ Unlike other related rights, the right of broadcasting organizations does not contain the right to authorize or prohibit rental of fixed broadcasts, nor the right to compensation for public lending (which is not contained in the right of database makers either).

character of a protected work, such as the real time recording of the weather in an area by means of cameras. The rights granted to makers of databases provide protection with respect to non-original databases, i.e. databases which do not constitute protected works, but due to their production or presentation, have required significant investment of resources, effort or time. Such protection of databases is autonomous and independent from copyright protection, which covers databases that, with regard to the selection or arrangement of data, constitute intellectual creations (i.e. collections). The Croatian CA regulates this right as a related right. The EU Directive 96/9/EC on the legal protection of databases, which provides for an obligation to Member States to recognize the said right, has called it a *sui generis* right. As every related right is a *sui generis* right, it has not been considered necessary to create a third group of rights, *sui generis* rights, in addition to the authors' rights and related rights. The publishers of "paper" publications have also been granted a related right with respect to any written publication. The beneficiaries of this right are entitled to claim compensation for each reproduction of their written publications for private or other individual use, similar to authors regarding their works. Moreover, publishers are granted rights with respect to first editions of still unpublished works, even if those works are no longer protected by copyright. In this case, the content of the publisher's related right corresponds to the patrimonial component of copyright.

There is no retroactive clause concerning the protection of fixations of films and publications. The law protects only those which have been created after the said law was enacted. However, there is a specific rule concerning databases, based on the provisions of art. 14 (5) and art. 16 of Directive 96/9/EC on the legal protection of databases, according to which protection applies to the databases created after January 1, 1983.

4.3. Common rules for copyright and related rights

4.3.1. Transfer of rights

In comparison to the preceding CA, the provisions on transfer of copyright and performers rights represent a new element of the Croatian copyright legislation. Along with rather detailed regulations, the law provides for some limitations regarding the transfer of some rights, with the purpose to better protect authors and performers. The two rights in question are the right of paternity and the right of integrity, which are inseparable from the original beneficiaries of rights, i.e. authors and performers, and cannot be transferred except in the case of inheritance. The said limitation does not extend to other related rights, as they do not have a *moral* right component.

In case the author has transferred an exclusive right of exploitation in a particular manner or form, then it is the licensee who will only be able to exploit the work or the performance and will be authorized to prevent anybody, including the original right owner, from the specific use of which he has been exclusively entitled by contract. Should for any reason the transfer cease its effect, because of expiration of the licensing contract or any other reason, the burden which has existed on the respective right will be removed, and the author or the performer will be again free to deal with their rights, without any limitations. If the point in discussion were the transfer of the copyright or the performers' right, by cessation of the transferred right, it would cease for everybody, including the author or the performer

themselves, who, by this transfer had lost connection with their rights.³¹ Provisions on transfer of rights are contained in the chapter on Copyright, but are respectively applicable to related rights, in compliance with art. 4 of the CA.

The new law has introduced quite significant amendments with regard to works and performances created in the framework of an employment contract. According to the provisions of the previous CA, the employer was entitled, to use the work during a 5-year period after it was created. This was not a common solution in the copyright systems belonging to the continental legal tradition. The CA has regulated this issue in a more appropriate manner, which at the same time gives more protection to intellectual works, by providing that the conditions for use of works or performances, created under an employment contract, by the employer, must be defined in the employment contract or any other contract which regulates the employment, along with any other rights and obligations within the framework of employment.

The co-relation between copyright and related rights, on the one hand, and ownership of the material object into which the protected subject matter is embodied, on the other hand, has been specifically regulated, because in practice the interests of the author and the owner of the object are often quite different. This holds truth especially for works of architecture. The CA has sought to respect the principle of balance between the interests of the owner and the author. It has also taken into consideration the so-called theory of social adequacy, on the basis of which the socially "stronger" interest prevails.

4.3.2. Enforcement

Great attention has been paid in the CA to the exercise of rights, especially to collective administration, which has been not comprehensively regulated so far. This is one of the reasons for an inefficient collective administration, which results in low returns. Moreover, it has provoked a number of civil cases and misdemeanour proceedings against users who do not fulfil their obligations. It is worth noting that one of the reasons for non-payment is the fact that the system of collective administration is incomprehensible to users, which in turn leads to a lack of confidence.

Another new element of the copyright system is the setting up of a Council of Experts on Copyright and Related Rights Royalties, whose role is to examine tariffs and compensations set by collecting societies. This should, among others, contribute to increasing the trust of users regarding the justification of amounts charged by collecting societies. The Council of Experts is neither an administrative, nor a judicial, nor any other type of governmental body. Hence, its opinions do represent neither administrative decisions nor judgments, and therefore do not have any binding character. They are rather recommendations whose relevance is manifested by the expert authority of the Council. Such authority, as one could expect, would be manifested if there were a dispute over tariffs. Normally, the

³¹ Otherwise, for example, a waiver by a person to which the right of exploitation was transferred would result in the author and the performer losing benefit from their works or performances, respectively. This effect could be prevented by a contractual provision on the responsibility of the person acquiring the right of exploitation in case of waiving, but this could mean that the author or the performer, respectively, should, at the moment of concluding the contract, envisage all cases in which the rights of exploitation could cease, which is difficult to expect.

compensation is set by an agreement between the relevant collecting society and the user, and a list of fees is applicable for the cases where the negotiations between right owners and users have not been successful.

4.3.3. Litigation

While the provisions on litigation are not substantially different from the repealed ones, they are more detailed and precise. They regulate particular litigation issues that previously have not been regulated at all, or have not been adequately regulated, such as the right to sue concerning rights administered on a collective basis, the protection of rights of co-authors with respect to third parties as well as between each other, the publication of court judgements, the claim for seizure of infringing goods and of means by which the infringement has been committed. The new technologies have been taken into consideration by regulating new types of claims, such as the claim to seek protection against circumvention of technological protection measures and rights-management information. Further, according to a newly introduced rule, a double compensation in comparison to the usual rates may be claimed, if the respective right of economic nature has been infringed intentionally or by gross negligence. Besides the provisions on civil responsibility, the CA includes provisions on misdemeanours as well. Criminal acts against copyright and related rights are regulated by Art. 229-231 of the Penal Act.

4.4. Rights of foreigners

The status of foreign authors and owners of related rights in Croatia depends, on the one hand, on the international obligations of Croatia in this field, and, on the other hand, on factual reciprocity. Foreign persons shall have a status equal to nationals (natural persons who are nationals of the Republic of Croatia and legal persons having their principal place of business in the Republic of Croatia) if an international treaty provides for national treatment, or if such obligation does not exist but there is a factual reciprocity (assimilation principle).³² In other cases, foreigners shall only have the conventional rights, or not even those, if no international obligation or reciprocity exists. It is worth noting that the assimilation principle shall always be applied to moral rights, regardless of the obligations of the Republic of Croatia stemming from international treaties or reciprocity. With respect to the rights of makers of databases, the assimilation principle is limited to factual reciprocity. Therefore, foreign makers of databases shall have the status enjoyed by nationals, provided that the Croatian nationals are entitled to the same status in the state of the foreign person.

Along with the above general rules concerning the status of foreigners, there are some special rules as well. Among them is the application of the assimilation principle to authors who do not have Croatian citizenship but have a habitual residence in the Republic of Croatia, as well as to foreign authors with respect to the works of architecture and works of visual arts which form an integral part of a real estate located in the territory of Croatia. On the other hand, foreign authors of works of visual art are entitled to the resale right (*droit de suite*) only under presumption of factual reciprocity. Stateless persons shall enjoy the same status as the nationals of the country in which they have their habitual residence.

³² The Article 194 (2) of the CA establishes the rebuttable presumption of factual reciprocity. Therefore, anyone who claims that the foreign state in question does not provide for the adequate measure of protection would have to prove it.