Questionnaire for the ALAI Study Days 2015 in Bonn

Remuneration for the use of works

Exclusivity v. other approaches

CROATIAN REPORT

Prepared by:
Dr.sc. Marko Jurić, Katarina Matanovac Furić, Dr.sc. Tihomir Katulić

A. Questions in relation to scope and enforcement of exclusive rights under existing law

In many areas, exclusive rights can be exercised and enforced in relation to users either on the basis of license agreements or, in cases of infringements, on the basis of enforcement rules and mechanisms. However, in particular in the internet environment, it may be difficult to identify users, who may be anonymous, so that a license agreement in the first place cannot be concluded and infringements are difficult to pursue. The first set of questions addresses these problematic areas. Since most problems arise in the digital environment, questions focus thereon.

1. How are the following acts covered by the copyright law of your country (statute and case law):

   i. Offering of hyperlinks to works

The Croatian Copyright and Related Rights Act[1] (hereinafter: CA) does not regulate offering of hyperlinks explicitly. Issues of offering hyperlinks to works protected either by copyright or related right have so far not given rise to any legal proceedings in the Republic of Croatia. It is possible to argue that offering of hyperlinks could constitute an act of communication to the public. In this context, it is necessary to take into account that the Republic of Croatia is (since 1st of July, 2013) a member of the European Union and its legislation has been harmonized with the EU law. In these circumstances, Croatian courts are required to interpret national legislation (including the CA) in accordance with the EU law, which includes also the case-law of the EU. Therefore, one might assume that any disputes in the Republic of Croatia, related to offering of hyperlinks, should be ultimately resolved in accordance with the legal standards established by the Court of Justice of the European Union.

However, in the context of offering hyperlinks to works under the Croatian legislation, it is necessary to look beyond the rules of copyright law. Croatian Electronic Commerce Act (hereinafter: ECA),[2] in addition to recognizing certain services which enjoy exemptions from liability according to the E-commerce Directive[3] ("Mere conduit",

[1] The Copyright and Related Rights Act (*Zakon o autorskom pravu i srodnim pravima*), Official Gazette of the Republic of Croatia nos. 167/2003, 79/2007, 125/2011, 80/2011, 141/2013, 127/2014.
[2] The Electronic Commerce Act (*Zakon o elektroničkoj trgovini*), Official Gazette of the Republic of Croatia nos. 173/2003, 67/2008, 36/2009, 130/2011, 30/2014.
[3] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Official Journal L 178 , 17/07/2000 P. 0001 - 0016

Caching and Hosting), also provides exemptions from liability for service providers who are offering links to internet users. This is prescribed on the basis of Article 19 of the ECA, which reads as follows:

LINKS

Article 19

The provider of services who by electronic links opens access to third information shall not be responsible for such information if:
− he does not know or could not know about the illegal activity of recipients or about the content of data in that information;
− upon finding out about illegal activity or data removes or disables access to data.

Therefore, while the act of offering links to works might fall under the scope of the CA, the liability for such an act might be limited on the basis of ECA.

ii. Offering of deep links to works

As explained above, the Croatian copyright legislation does not explicitly regulate offering of links, and the case-law is silent on this matter. Also, there are no differences in other sources of law (such as the ECA) between various modes of linking. In these circumstances, it is possible to expect that the Croatian courts would embrace the approach taken at the EU level, primarily by the CJEU.

iii. Framing/embedding of works

Considering the above, the Croatian legislation and case-law are silent on legal status of different linking techniques.

iv. Streaming of works

The Croatian CA contains no specific provisions which would deal with streaming of works explicitly. However, it is recognized in legal theory that offering of works to the public, by non-interactive streaming, is an act of communication of the work to the public, which enjoys protection under the general right to communication of the work to the public. On the other hand, offering of works by interactive streaming is as an act of making available to the public and is protected as such (right of making available to the public is recognized under the general communication to the public right). This is also the opinion of the Council of Experts Dealing with Remunerations for Copyright and Related Rights which, although not binding, might prove persuasive in possible litigation.

v. Download of works

Under the CA, offering of works for download would be qualified as an act which falls under the scope of the making available to the public right.

vi. Upload of works

Under the CA, upload of works, by itself, could be qualified as an act of reproduction.

vii. Supply of a platform for ‘user-generated content’

The Croatian copyright legislation does not contain any specific rules regulating the activities of platforms for user-generated content. However, these platforms might be subject to rules on limited liability for hosting service providers, which are stipulated in the ECA (see below 3.a)

viii. Other novel forms of use on the Internet

There are no significant novel forms of exploitation of works on the Internet in the Republic of Croatia which are not already known or in widespread use on the global level.

2. In cases in which there are practical obstacles to the conclusion of licensing agreements, in particular where multiple individual (end) users do not address right owners before using works (eg, users uploading protected content on platforms like Youtube), are there particular clearing mechanisms? In particular, are license agreements possible and practiced with involved third parties, such as platforms, regarding the exploitation acts done by the actual users (e.g., license agreements with the platform operator rather than with the platform users (uploaders))?

At present, no particular mechanisms for prior clearing of rights are provided by service providers who enable users to upload a protected content. However, a collective management organization in charge of authors’ rights is in contractual relation with Google, and under the terms of this agreement authors can request for a certain content to be removed if it infringes their rights. Similarly, since 2014 authors have been

receiving certain compensation for the exploitation of their works by Youtube's users, which is calculated on the basis of ad-generated revenue.

3. a) If there is infringement of copyright, in particular of exclusive rights covering the acts listed under 1. above, and the direct infringer cannot be identified or addressed, does your law (including case law) provide for liability of intermediaries or others for infringement by third persons, namely:

- for content providers
- for host providers
- for access providers
- for others?

Content providers could be considered liable under the CA. However, their liability is limited under the ECA in cases when their activities fall under the safeguards established for providers whose services consist of *hosting*, *mere conduit*, *cashing* and *linking*.

b) If so, under what conditions are they liable, and for what (in particular, damages, information on the direct infringer, information on the scope of infringement to estimate the amount of damage)?

Regarding damages, *access providers* will not be liable for possible infringement if conditions stipulated in Article 16(1) of the ECA are met. In essence, it is necessary to show that access provider did not (1) initiate the transfer of the content, (2) select the data of documents (content) which is the object of the transmission, (3) modify the content and (4) select the receiver of the transmission. Similarly, *hosting providers* enjoy limited liability under Article 18(1) of the ECA when they store information provided by a recipient of the service, on the condition that (1) the provider does not have or could not have had actual knowledge of illegal activity of the recipient or of the content of information, and (2) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information. Furthermore, there is also a limited liability regime for *linking activities* established in Article 19 of the ECA (see above point A.1.i)

In cases when it is necessary to find information about the direct infringer, Article 187 of the CA enables the holder of the right protected under the CA, who has instituted civil proceedings for the protection of the rights in the case of infringement, to request provision of information on the origin and distribution channels of the goods infringing his right. This claim can be made against, *inter alia*, business entities that provide services used in the infringement. Furthermore, Article 187 of the CA enables

right holders to request also information necessary to estimate the amount of the damages. However, application of the aforementioned rules may be limited on several grounds. Most importantly, it is possible to refuse to provide information on the same grounds as those allowing the refusal to present evidence as a witness pursuant to the provisions of the Civil Proceedings Act, as well as under the rules in the Personal Data Protection Act.

4. In these cases of infringement, who has standing to sue:

- the author
- the exclusive licensee
- the non-exclusive licensee
- the employer of the author
- the CMO that manages the exclusive right?

Holders (authors and holders of neighbouring rights) of the rights protected under the CA are in the position to initiate legal proceedings for the protection of their rights (Article 172(1) of the CA). According to Article 172(3), persons who have acquired a derived right (licensees) are entitled to protection in accordance with the content and the nature of their derived right. Finally, collective rights management associations are entitled to initiate and carry out court and administrative proceedings for the protection of rights which they have been granted authorization to manage collectively (Article 174(1) of the CA).

B. Questions regarding mechanisms to ensure adequate remuneration for creators and performers in their relationship with licensees

If authors and performers exercise their exclusive rights by licensing them to exploitation businesses, such as publishers, the question arises how they best may ensure an adequate remuneration from such licenses.

1. Does your law provide for legal rules, including by case law, on mechanisms for authors and performers to ensure an adequate remuneration in relation to exploitation businesses in the following cases:

- as a general rule for all kinds of contracts;
- as regards ‘best-seller’ situations (i.e., when parties did not presume that the work would become a best-seller);

- in the case of oppressive contracts;
- in other cases;

and if so, under what conditions?

Under the Croatian law, issues of (adequate) remuneration are covered firstly by the Civil Obligations Act (hereinafter: COA)[4] which contains general principles and rules in the field of contract law. Additional rules, relating to contracts in the field of copyright and neighbouring rights are entailed in the CA.

One of the fundamental principles of contract law is that of equal value of performances. According to Article 7 of the COA, in concluding payment legal transactions (contracts), parties must apply the principle of equal value of mutual performances. It is further stipulated that the legal consequences for violating this principle have to be prescribed by law. Building on this principle, Article 375 of the COA entails provisions governing the case of excessive loss (*laesio enormis*) due to evident imbalance of mutual performances. These provisions read as follows:

(1) If at the time of entering into a contract there was an evident imbalance between the performances of the contracting parties, the harmed party may request annulment of the contract, provided that at that time it did not know or had no reason to know of the true value.
(2) The right to apply for annulment of a contract shall lapse after a period of one year from the conclusion of contract.
(3) Any waiver of this right in advance shall have no legal effect.
(4) A contract shall remain valid provided the other party offers to increase its consideration to match the true value.
(5) In case of such imbalance, a party may not require annulment of a commercial contract, gaming contract, public contract of sale or a contract where a higher price was given as a result of particular preference.

The consequences for violating the principle of equal value of mutual performances are furthermore prescribed in Article 329 of the COA, dealing with the so-called “usury contracts”. Under these provisions,

(1) A contract is held void if a person, exploiting the state of need or difficult financial situation of another person, its lack of experience, levity or dependence, agrees a benefit for itself or for a third party that is manifestly disproportionate to whatever it has given to or performed for or undertaken to give to or perform for the other party.
(2) The provisions of this law relating to the consequences of nullity and on partial nullity of contract shall apply adequately to a usury contract.
(3) Where a harmed party requests a reduction of its obligation to an equitable amount, the court shall grant the request, if possible, in which case the contract shall remain in effect with the appropriate amendment.
(4) A harmed party may apply for a reduction of its obligation to an equitable amount within a period of five years from the date of concluding the contract.

[4] The Civil Obligations Act (*Zakon o obveznim odnosima*), Official Gazette of the Republic of Croatia nos. 35/2005, 41/2008, 125/2011

In the sphere of copyright and neighbouring rights, relevant provisions are those found in Articles 53 and 54 of the CA. These provisions build upon previously mentioned principles of the COA and are designed to ensure an appropriate remuneration for authors with regard to commercial exploitation of their works by publishers and other copyright contract parties. These rules apply to all kinds of copyright contracts.

Article 53 specifically deals with the situation where the commercial success of the work outweighs the initially stipulated contractual remuneration. Under these rules, if the amount of remuneration has not been agreed in the contract, or if the agreed amount is not equitable, the author is entitled to equitable remuneration. The equitable remuneration is “the one that has to be given fairly at the time of concluding a legal transaction, taking account of the type and scope of the use of a copyright work, its financial success in it, the kind and size of the work, the duration of use, the existence of agreement between the relevant associations of authors and the relevant association of users fixing the amount of equitable remuneration, as well as other elements on the basis of which a decision on the amount of equitable remuneration can be made”.

Furthermore, Article 54 provides for a specific bestseller clause. According to this Article, if a profit derived from use of a work is obviously disproportional to agreed or fixed remuneration, the author is entitled to demand an amendment to the agreement aimed at fixing more equitable share in the profit deriving from the use of his work. Authors may not renounce this right.

In addition to these rules, the CA provides the authors of works of visual arts with specific protection through the provisions on the resale right. Under Article 34 of the CA, “if the original of a work of visual art is resold, the author shall have the right to equitable share in the selling price for each time his original is resold after its first alienation by the author”. This right applies to all activities in which art market professionals are involved in the resale as sellers, buyers or intermediaries. On the contrary, the resale right does not cover cases where the seller is an art gallery which has acquired the work directly from the author less than three years before the resale and the resale price does not exceed the value of EUR 10,000.

2. If your law provides for rules as addressed under B. 1. above, does the law determine the percentage of the income from exploitation to be received by authors and performers, or does it otherwise specify the amount of remuneration?

The COA does not entail specific provisions with regard to actual percentage of income to be received by authors or performers, nor does it in any other way specify the amount of due remuneration. When it comes to the CA, it only refers to an "equitable amount" (Article 53) and "disproportionate amount" (Article 54), without supplying criteria

for considering the amount of remuneration equitable or proportionate. Only exception to this rule is Article 36, which determines percentage of profits, as well as the maximum amount to be paid to authors on the basis of the resale right. Under this Article, the reseller is required to pay to the author 5% for the portion of the selling price between EUR 500 and 50,000; 3% for the portion of the selling price between EUR 50,000 and 200,000; 1% for the portion of the selling price between EUR 200,000 and 350,000; 0.5% for the portion of the selling price between EUR 350,000 and 500,000; and 0.25% for the portion of the selling price over EUR 500,000, with the limitation that the total amount paid to the authors cannot exceed EUR 12,500.

3. Please indicate also whether these mechanisms that are addressed under B. 1. and 2. above are efficient in practice.

Although the exact data required for this estimation is difficult to come by for obvious reasons, it is safe to conclude that the practice of copyright contracts between authors and publishers and other exploitation businesses in Croatia unfortunately weighs heavily in favour of the businesses instead of the authors.

The music publishing business practice in Croatia, especially with regard to up and coming authors and performers without negotiating leverage puts authors into a comparably weaker position, with copyright contracts sometimes even going against material provisions of the Croatian CCRA. Unfortunately, the low general level of awareness among the authors (of all categories of works) of the standards of protection granted to them by the CCRA compounds the problem as these practices seldom, if ever, reach judicial epilogue.

C. Questions in relation to statutory remuneration rights

The questions below concern the question of the scope of remuneration rights and their enforcement (which usually takes place through collective management organizations (CMOs)) towards users.

1. In which cases do statutory remuneration rights exist in your country, e.g., public lending rights, resale rights, remuneration rights for private copying, or others (often, they are provided in the context with limitations of rights)?

In the Croatian copyright legislation there are several statutory remuneration rights. Some of them fall under regular remuneration rights and some of them are prescribed under limitations of rights (only private copying):

STATUTORY REMUNERATION RIGHTS **FOR AUTHORS:**

I) **The rental right** – under the Croatian CA implies the making available for use of the original or copies of the work, for a limited period of time, and for direct or indirect economic or commercial benefit.
The author who has given up his right of rental in favour of a producer of phonograms or of a film producer, or to any other person, retains the right to receive equitable remuneration for the rental of his copyright work.

II) **The public lending right** - under the Croatian CA implies making available for use or a limited period of time and without direct or indirect economic or commercial benefit.
The author (writer, translator or illustrator) has the right to equitable remuneration where the original or copies of his work of which further distribution is admissible, have been lent through public libraries. This right is compensation to the right owners for their work.

III) **Reproduction for private or other personal use (private copying)** – these are rights that fall under content limitations on copyright. Disclosed copyright work may be used without the author's authorization, or without the author's authorization and without payment of remuneration only in cases expressly stipulated in law and which do not conflict with regular use of the work and do not unreasonably prejudice the legitimate interests of the author.
The author has the right to an appropriate remuneration:
a) Upon sale of technical appliances and blank audio, video or text fixation mediums.
b) Apart from this right, the authors have a right to an appropriate remuneration to be obtained from a natural or legal person who provides services of photocopying against payment.

IV) **The resale right** - if the original of a work of visual art is resold, the author has the right to an equitable share in the selling price each time his original is resold after its first alienation by the author.

V) **Collections intended for teaching or scientific research** – this right also falls under limitations of rights, but the authors are entitled to an equitable remuneration for the reproduction and distribution of their works.

STATUTORY REMUNERATION RIGHTS **FOR PERFORMERS:**

I) **The rental right** - performers who entrust their rental right to a producer of phonograms or to a film producer, retain their right to an equitable remuneration for the rental of their fixed performance. The performers may not renounce the right to an equitable remuneration.

II) **Broadcasting and public communication of a performance** - performers are entitled to a share in a single equitable remuneration for broadcasting and any other

communication to the public of their fixed performance. The single equitable remuneration consists of individual remunerations which belong to the performers and the producers of phonograms.

III) **Reproduction for private or other personal use (private copying) –** performers are entitled to an equitable remuneration for any audio or audiovisual recording of their fixed performance for private or other personal use.

IV) **The public lending right** - performers are entitled to an equitable remuneration where their fixed performance, in respect of which further distribution is allowed, is lent by intermediary of public libraries.

STATUTORY REMUNERATION RIGHTS **FOR PHONOGRAM PRODUCERS:**

I) **The public lending right** - producers of phonograms have the right to an equitable remuneration for lending of their phonograms, i.e., the copies thereof, by intermediary of public libraries.

II) **Broadcasting and public communication of a phonogram** - producers of phonograms are entitled to a share in a single equitable remuneration for broadcasting and any other communication to the public of their phonograms published for commercial purposes.

III) **Reproduction for private or other personal use (private copying)** - producers of phonograms are entitled to an equitable remuneration for each audio recording of their phonograms for private or other personal use.

STATUTORY REMUNERATION RIGHTS **FOR FILM PRODUCERS:**

I) **Public lending right** – film producers are entitled to an equitable remuneration for lending of videograms by intermediary of public libraries.

II) **Reproduction for private or other personal use (private copying)** - film producers are entitled to an equitable remuneration for any audio and visual reproduction of their videograms for private and other personal use.

STATUTORY REMUNERATION RIGHTS **FOR PUBLISHERS IN THEIR WRITTEN EDITIONS:**

I) **Reproduction for private or other personal use (private copying)** - the publishers have their own right to remuneration for any reproduction of their written editions for private and other personal use, equal to the right of the author to remuneration.

2. Is there the possibility of obtaining compulsory licenses, and if so, under what conditions and for what categories of works?

There is no compulsory license under the Croatian CA.

3.

i. For which statutory remuneration rights does your law provide for obligatory collective management?

Obligatory collective management by law is provided for:

- the right to remuneration for broadcasting and public communication of a phonogram (phonogram producers),
- the right of rental and the right to remuneration (authors, performers, phonogram producers),
- the right to remuneration for public lending (authors, performers, phonogram producers and film producers),
- the right to remuneration for reproduction of a work for private or other personal use (authors, performers, phonogram producers, film producers and publishers of their written editions)

ii. For which statutory remuneration rights does your law not provide for obligatory collective management, but in practice, the right is managed by a CMO?

The resale right - if the original of a work of visual art is resold, the author has the right to equitable share in the selling price for each time his original is resold after its first alienation by the author. This is statutory remuneration right that is not provided for obligatory collective management, but is in practice managed by a CMO.

iii. Who has to pay the remuneration regarding each of these statutory remuneration rights – the user, a third person (e.g., a copy shop or a manufacturer of a copying equipment and devices) or a tax payer (through money allocated from the public budget)?

The remuneration regarding:

The rental right is paid by the person renting the copyright work, performance.

The public lending right is paid by libraries. However, the Ministry of Culture, by means allocated from the public budget, supports libraries in their obligation to pay the remuneration to authors (writers, translators or illustrators; performers, phonogram and film producers).

Reproduction for private or other personal use - private copying (for authors, performers, phonogram producers, film producers and publishers of their written editions as well as authors of their written works) remuneration upon sale of technical appliances and blank audio, video or text fixation mediums is paid by manufacturers of appliances for sound and visual recording, manufacturers of appliances for photocopying, manufacturers of blank audio, video or text fixation mediums, and jointly and severally with them importers of appliances for sound and visual recording, photocopying, blank audio, video or text fixation mediums, unless such imports concerns small quantities intended for private and non-commercial use, forming part of personal luggage. If the mentioned appliances and objects are not produced in the Republic of Croatia, the remuneration is paid by the importer. The remuneration is included in the price of a product and it is actually transferred to the buyer (third person).

Broadcasting and public communication of phonogram and performance – is paid by the broadcasting organization.

The resale right – is harmonized with Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art. It is paid by a third person who resales the original of a work of visual art (sellers, private persons as art market professionals, buyers or intermediaries such as public auctions, art galleries or other art dealers).

iv. How is the tariff / the remuneration for each of these remuneration rights fixed (in particular, by contract, by law, by a Commission, etc.)?

Remuneration for the use of the subject matter of protection is regulated in a contract between collective rights management associations and users of the subject matter of protection, or between collective management associations and associations of users or their chambers. If the remuneration is not fixed, it is paid according to the tariffs adopted by the collective rights management association. The collective rights management associations have to, prior to adopting their tariffs, submit the proposal thereof for consideration to and the declaration by the Croatian Chamber of Economy, the Croatian Chamber of Trades and Crafts and the associations of broadcasting organizations gathering the majority of users of the subject matters of protection. If the Chambers and Associations of Broadcasting Organizations fail to furnish a written declaration to the collective rights management association within 30 days, it is deemed

that they do not oppose to the proposed tariffs. If the collective rights management association does not accept or only partially accepts the objections of the Chambers, and Associations of Broadcasting Organizations it has to, within 15 days following the receipt of such written objections, request the Council of Experts Dealing with Remunerations for Copyright and Related Rights for its opinion on the subject matter of disagreement. The Council of Experts has to render its opinion within 30 days following the receipt of objections. After the completion of the procedures, the tariffs are published in the Official Gazette of the State Intellectual Property Office.

a) The tariff for rental right is set by contract between authors and persons renting the work, performance or phonogram.
b) The tariff for public lending right is set by contract between right holders and intermediary of public libraries.
c) The tariff for private copying is set by contract between authors, performers, phonogram producers, film producers and publishers of their written editions as well as authors of their written works and manufacturers or importers.
d) The tariff for broadcasting and public communication of phonogram and performance is set by contract between right owners and broadcast organizations.
e) The tariff for the resale right is set by law.
f) The tariff for collections intended for teaching or scientific research is set by contract.

v. Is there supervision of CMOs regarding tariffs, and if so, what are the criteria for supervision?

There is supervision of CMOs regarding tariffs that stems from the role of the State Intellectual Property Office in mediation between CMOs and the users of the subject matter of protection, or their chamber as described under 3.iv.

The Council of Experts acts as a mediator between broadcasting organizations and cable operators in the conclusion of contracts on cable retransmission. If the broadcasting organization and cable operator fail to agree on the contents of the contract on cable retransmission of a broadcast of such broadcasting organization, each of the mentioned parties may call upon the mediation of the Council of Experts in respect of the conclusion of this contract. The Council of Experts will assist the parties in reaching the agreement. The Council of Experts is authorized to submit proposals to the parties concerning the regulation of their mutual relations. The proposals must be submitted in person, or by registered mail. If none of the parties expresses their opposition by registered post within three months from the receipt of the proposal, it is considered that both parties have accepted it, and are required to include it in the contract on cable retransmission.

This procedure is also accordingly applied on providing the right of use of a copyright work without the author's authorization, or without the author's authorization and without payment of remuneration only in the cases expressly stipulated in the CA.

vi. What problems exist when right holders assert the statutory remuneration right in relation to users or others who are obliged to pay the remuneration (e.g., a claim is rejected and results in long legal proceedings; those who are obliged to pay in the meantime go bankrupt, etc.)?

Problems regarding the statutory remuneration right are the same as in the general national judicial procedure. The proceedings are unreasonably long, judicial decisions are not harmonised, those who are obliged to pay the remuneration in the meantime go bankrupt or close their businesses, etc.

vii. If problems to assert the remuneration exist, does your law provide for any solutions to these problems (e.g., an obligation to deposit a certain amount in a neutral account)?

The national law does not provide for any solutions, not even an obligation to deposit, but CMOs have joint their forces in the area of music, audiovisual rights, literature and represent jointly before of the court.

D. Mechanisms to ensure adequate remuneration for creators and performers

The questions below address the issue of existing mechanisms, in particular within CMOs, to ensure that authors and performers, also in relation to exploitation businesses such as publishers and phonogram producers, receive an adequate remuneration.

1. In respect of the statutory remuneration rights under your law, does the law determine the percentage of the collected remuneration to be received by particular groups of right owners (e.g., the allocation between authors and producers, among different kinds of authors, performers, and producers, et al.)?

The Croatian CA does not determine the percentage of the collected remuneration to be received. It is always the matter of mutual agreement of particular groups of right owners.

2. If so, what percentages are fixed by the law? Are these percentages different for different statutory remuneration rights?

Different agreements are signed for different statutory remuneration rights.

3. If there are no such legal determinations, how are the percentages or the otherwise fixed distribution keys for the different rights of remuneration determined in practice (in particular, by which decision-making procedures and by whom are these distribution keys determined inside CMOs)? Which percentages are in practice applied?

The right holders themselves argument their rights and percentages. These rights and percentages are always the subject of their mutual agreement. At the moment, the percentages are corporate secret.

4. If owners of derived rights (such as publishers who derived the rights from their authors) transfer these derived statutory remuneration rights to a CMO, how and on the basis of which agreement is the remuneration distributed between them in this case?

Derived rights are obtained through private, individual agreement between the author and a third person. However, based on the current practice there are no such agreements based on the statutory remuneration right for authors.

Currently performers and phonogram producers are quarrelling over whether it is possible to transfer performer's rights on the phonogram producers in on line environment under the same condition as in analogue environment.

5. Which mechanisms of supervision exist in your country to control the distribution keys applied by CMOs, if any?

There is no mechanism to supervise and control the distribution keys.

E. Questions on new business models and their legal assessment

1. Which new business models do you know in your country in respect of the supply of works via the internet?

Since 2012 *Deezer* has been available to Croatian customers. *Deezer* is a world-wide music streaming service, operated by Blogmusik SAS. In the Republic of Croatia *Deezer's* services are available through various subscription models or as part of service bundle provided by telecommunications operator and leading Croatian Internet service provider, *Hrvatski telekom*, subsidiary of Deutsche Telekom. In 2014, Google started offering music via the *Google Play* service to the Croatian customers.

2. Which of these business models have raised legal problems, which are, or have been, dealt with by courts? If there have been problems, please describe them and the solutions found

Currently, none of the aforementioned services have been subjected to litigation before the Croatian courts. However, there is a long-lasting dispute between the collective management organization in charge of performers' rights (HUZIP) and phonogram producers, which might upset some of the established business operations. In essence, phonogram producers are licensing rights to make available performances to service providers such as *Deezer*. In doing so, the phonogram producers have started from the premise that they are allowed to license these works to third persons, since they have gained exploitation rights in the works (including making available to the public right) pursuant to individual contracts with performers. HUZIP, on the other hand, claims that the phonogram producers have not concluded contracts with all the performers whose works they have been exploiting, and/or that vast majority of these contracts are not effective for various reasons (invalidity, expiration of time for which they were concluded, non-payment by phonogram producers, etc.). In February 2015, HUZIP initiated procedure to be granted the authorization to collectively manage the making available to the public right for fixed performances. Since the Croatian law allows that the right of making available to the public (for fixed performances) be managed collectively, the Council of Experts Dealing with Remunerations for Copyright and Related Rights gave a positive opinion and concluded that HUZIP is allowed to publish its tariff, thereby making it applicable to users such as *Deezer*. However, the Council also took a view that the tariff cannot apply to users who can prove that they have acquired right in performances they are making available to the public on the basis of individual contracts with relevant right holders (performers or phonogram producers). In these circumstances, since the issue of determining who is the rightful holder of rights in some performances is still pending, it is possible that these unresolved issues might give rise to litigation.

3. In your country, are there offers that are based on flat rates, 'pay-per-click' or on other micro-payment models? Please indicate how popular (frequently offered or used) each of these models is.

Other than previously mentioned services (*Deezer*, *Google Music*), which are available also as flat rates, there are no significant services provided under these models.

4. Within these business models, how do authors and performers get paid?

Within *Deezer* and *Google Play*, authors and performers are paid in accordance with individual contracts with right holders. Details of these contracts are not open to public. However, as substantiated above (point 2), the collective management organization in charge of performers' rights (HUZIP) claims that vast majority of performers does not receive any remuneration for the exploitation of their works by making them available to the public. In such circumstances, issues of remuneration for the exploitation of works through Internet-based services will surely give rise to future debates.