

ALAI 2011 – Dublin Congress (16-17 June 2011)

Questionnaire – Boundaries and Interfaces

Answers of the ALAI - Croatia
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1. The Subject Matter of Protection – Works

- 1.1 How do your legislators or case-law define a literary work? In particular, how is speech protected? Is ex tempore speech a literary work and what are the conditions for protection?

Article 5 of the Croatian Copyright and Related Rights Act (OG Nos. 163/03 and 79/07, hereinafter referred to as the CRRA) defines a copyright work as an original intellectual creation in the literary, scientific and artistic domain, having an individual character, irrespective of the manner and form of its expression, its type, value or purpose, unless otherwise provided for in the Act. In the same Article works of language, which include written works, oral works and computer programs, are mentioned as examples of the copyright work. There is no case law available raising the question whether *ex tempore* speech is a literary work. But, taking into consideration the general approach of jurisprudence and courts to the question which creations might be protected by copyright, *ex tempore* speech might be protected by copyright if it is an original intellectual creation, having an individual character.

In Article 89 paragraph 1 point 3 of the CRRA there is a provision on limitation to copyright in speeches for the purpose of informing the public. It shall be permitted, to the extent necessary for informing the public on current events by press, radio or television, to reproduce, to distribute and to communicate to the public political, religious or other speeches made at state or local governmental bodies, religious institutions or at state or religious ceremonies, as well as excerpts from public presentations. In all these cases both the source and authorship have to be indicated.

- 1.2 For short works – headlines in a newspaper, phrases (including slogans), book titles, for example; are these covered by statute? Does case-law provide guidance on protection? Is this issue dealt with by de minimis rules? [In the EU discuss Infopaq and how the case is accommodated in national law].

According to the previously mentioned Article 5 of the CRRA, the subject matter of copyright is the work as a whole, including an unfinished work, the title of a work, and the parts thereof that meet general pre-conditions for copyright protection. In other words, the title of the work and its parts are also protected by copyright if it is an original intellectual creation in the literary, scientific and artistic domain, having an individual character. The title of a work, which does not fulfil pre-conditions for being the subject matter of copyright, and which has already been used for a certain work, shall not be used for the same kind of work if such title is likely to create confusion as to the author of the work.

Headlines in newspapers, phrases, book titles and other short works might also be protected by copyright if they are original intellectual creations having an individual character.

According to case law, "A title of a work that meets the requirements for copyright works is considered a copyright work in itself. However, the title of a work that fails to meet the requirements for being a copyright work, and which has already been used for a certain work, cannot be used for the same kind of work, if such title is likely to create confusion regarding the author of the work. It has been established that the defendant publishes a magazine of the new generation entitled "S", which is in its title and graphic appearance similar to the magazine "S" published for many years by the plaintiff. (...) The lower instance courts correctly concluded that the plaintiff is entitled to have the title of his magazine protected by copyright..." (Supreme Court - VSRH, II Rev-42/1997, 7 May 1997, IO VSRH 2/97)

Concerning *de minimis* rules, it has to be pointed out that, according to Article 8 of the CRRA, news of the day and other news, having the character of mere items of press information, cannot be protected by copyright.

1.3 How does your legislation define an artistic work? A closed and defined list of works? Open-ended definitions for greater flexibility?

Artistic work as such is not defined in the CRRA. In an open-ended list of examples of copyright works in Article 5 paragraph 2 of the CRRA, the following artistic works are listed: works of visual art (in the field of painting, sculpture and graphics), irrespective of the material they are made of, and other works of the visual arts; works of architecture; works of applied art and industrial design; and photographic works and works produced by a process similar to photography.

In Article 35 paragraph 1 of the CRRA there is a provision on the original work of art in respect of which the right-owner enjoys the resale right. In this respect, the original of a work of visual art shall mean a work of visual art such as a picture, collage, painting, drawing, engraving, print, lithograph, sculpture, tapestry, ceramics, glassware or photograph, that where created by the author himself.

1.4 Have court decisions provided any rulings on the availability of copyright protection for contemporary forms or types of artistic expression e.g.

- surveillance art, installations, collage.
- performance art.
- Conceptual art

There is no case law available on copyright protection for contemporary forms or types of artistic expression such as: surveillance art, installations, collage, performance art and conceptual art. Taking into consideration the general approach of jurisprudence and courts to the question which creations might be protected by copyright, the abovementioned artistic creations might be protected by copyright if they are original intellectual creations, having an individual character.

1.5 Are there any judicial decisions/ academic opinions on other forms of expression, whether protected or not (e.g. Perfumes)?

There are neither judicial decisions nor academic opinions available on other forms of expression, such as perfumes.

1.6 Is there case-law related to the protection of sporting events (soccer game, marathon race, ice skating competition, etc)? What is the basis of the protection? (dramatic or choreographic work, other?)

There is no case law related to the protection of sporting events. Generally, they are not considered eligible for copyright protection.

2. **Creativity – the Originality Standard**

2.1 How does your legislation set out the requisite originality standard?

The originality standard is regulated in Article 5 paragraph 1 of the CRRA. A creation shall be protected by copyright if it is an original intellectual creation in the literary, scientific and artistic domain, having an individual character. In order to be protected by copyright the work has to meet the criterion of originality. It has to be an intellectual creation with an individual character. For example, audiovisual works which fail to meet the creativity element are not protected by copyright, such as the so-called panoramic images showing current weather conditions in an area. It is the same with a pure recording of everyday life situations (such as an intercourse). Under Croatian law these recordings are protected by the related right – the right of phonogram producers.

There are plenty of decisions in case-law that involve a certain degree of creativity and the fact that not every contribution in the creation of a work implies copyright. Judicature particularly emphasises the originality of a work, and that “the contributions enabling architectural expression” as well as “cooperation in the realization of an architectural work in the technical sense, which is necessary for realising the author's idea,” are not enough for the work to be considered a copyright work. Courts have specially pointed out that ‘although all associates in the project essentially contributed to its creation, however not with components representing an artistic creation but by applying the technical propositions for the building’s construction”, Supreme Court - VSRH, Pž.250/83, 14 June 1983, Gliha I., *Autorsko pravo - sudska praksa* (Copyright Law - Court's Case-Law) Zagreb, *Informator*, 1996, dec. 40; ‘The plaintiff realised somebody else's idea and was intellectually dependent on the author of the stadium design, for he followed the author's ideas and was supervised by the author of the architectural work. His work is a technical kind of job which ought to be performed and was performed in accordance with the author's ideas and under his supervision.’ Supreme Court - VSRH, II Rev-17/84, 11 June 1985, *ibid.*, dec. 6.

Case-law developed the clear standing point that audiovisual works must have a certain degree of creativity exceeding the technical one in order to enjoy copyright protection. E.g.: "This Court entirely upholds the standings of the first instance court that the recording at hand (recording of an intercourse, author's remark) cannot be considered a copyright work since it fails to meet the fundamental criteria in Article 5/1 of the Copyright and Related Rights Act which provides that in order for a work to enjoy copyright protection it has to be an original intellectual creation having individual character.", High Commercial Court - VTS, Pž-1123/05, 27 July 2005.

2.2 Does the legislation or case-law suggest a different test of originality is imposed for different kinds of work?

Legislation does not suggest a different test of originality is imposed for different kinds of work. Case-law does not suggest it either. However, it can be understood that some types of works demand a lower level of creativity in order to be protected by copyright. For example, computer programs are protected by copyright almost as such; no one ever questions whether a particular computer program meets the pre-conditions for copyright protection.

2.3 For compilations / collections is the standard identical to that provided for in relation to works? [For common law jurisdictions there are significant differences on the standard e.g. IceTV (Aust) CCH (Canada). How has "sweat of the brow" been treated in recent case-law?]

According to Article 6 of the CRRA collections of independent works, data or other materials, such as encyclopaedias, collections of documents, anthologies, databases and the like, which by reason of the selection or arrangement of their constituent elements constitute personal intellectual creations of their authors, shall be protected as such. The protection enjoyed by the collections described shall not extend to their contents and shall in no way prejudice the rights subsisting in the works and subject matters of the related rights included in the collection.

Databases are collections arranged according to a certain system or method, the elements of which are individually accessible by electronic or other means. The protection of databases does not apply to computer programs used in the making of databases accessible by electronic means or in the operation thereof.

Since Croatia is a country that follows the continental European approach, the "sweat of the brow" principle does not apply. Databases that are not protected by copyright (including those which are protected as copyright works) may also be protected by the related right (sui generis protection of databases).

2.4 Does your legislation/case-law recognise copyright protection for collections such as television listings, yellow pages/white pages telephone directories? If yes, what is protected (headings, content, or both?) If not, why is protection denied (e.g. spin-off theory, competition law considerations).

There is no case-law available on the copyright protection of television listings, yellow pages/white pages telephone directories. Also, these types of creations are not mentioned in the CRRA. According to the general approach and current jurisprudence, it appears that these types of creations would not be protected by copyright due to the lack of originality and individuality. No specific theories or competition law issues would be raised here.

3. Achieving Access for the visually impaired

3.1 Does your national legislation provide exceptions or limitations in favour of the visually impaired? For wider categories of disabled persons? On what condition: is there a remuneration right or right to compensation?

The CRRA provides for exceptions in favour of all disabled persons, including the visually impaired. The use of copyright works for the benefit of people with a disability shall be permitted where the work is used in a manner directly related to the

disability of such people to the extent required by the specific disability, and where such use is of a non-commercial nature. No remuneration or compensation payment is required. In other words, the right owners have no right to remuneration or compensation when their works are used for the benefit of disabled persons, provided that the use directly relates to the disability of the user, to the extent required by the specific disability and provided that the use is of a non-commercial nature.

- 3.2 What kind of works are or would be subject to limitations or exceptions? Literary works only? Works and performances fixed in sound recording? Will the visually impaired or other beneficiaries of the exceptions or limitations obtain copies of covered works directly, or only via libraries or other institutions?

There are no limits in respect of the type or kind of work which may be used under the abovementioned exception related to disabled persons. The subjects of the related rights may also be used without permission of the right owner and without remuneration or compensation payment for the benefit of people with a disability if they are used in a manner directly related to the disability of such people to the extent required by the specific disability, and where such use is of a non-commercial nature.

There are no rules in the CRRA answering the question how will disabled persons obtain copies of protected subject matters. Therefore, it is to be concluded that disabled persons do not need an intermediary in order to access a copyright work, they may access it directly.

- 3.3 Are the exceptions and limitations confined to the reproduction of the work? If making available or adaptation is possible, on what conditions?

All types of use are covered by the exception in favour of disabled persons. They may reproduce the work, make it available or adapt it, or the subject matter protected by the related right, without the permission of the right owner and without remuneration or compensation payment. The conditions for such use are: that the protected subject matter is used in a manner directly related to the disability of disabled people, to the extent required by the specific disability, and that it is of a non-commercial nature.

- 3.4 Has your Government expressed a view on support for international initiatives (e.g. World Blind Council Treaty)?

No, so far.

- 3.5 On an extra-legal basis, are there any market initiatives, or business practices, that your national group are aware of?

No, there are none as far as the national group is aware of.

4. Access to the Internet as a Human Right

- 4.1 Does your legislation/constitution/case-law define access to the Internet as a specific [or human] right?

There has been no definition of access to the Internet as a specific (or human) right so far, but this remains an open issue.

- 4.2 Are there any specific restrictions or limitations on this right [Europe: it is not necessary to refer to ECHR but any national decisions or rulings on ECHR should be mentioned]?

At present, no case-law has been published on this issue.

5. **Orphan Works**

- 5.1 Are there extant legislative provisions allowing access/use in relation to orphan works? What kinds of work are involved? Performances?

No. Works or other subject matters where the author or other right owner is unknown are also protected by copyright or related rights and there are no provisions in the CRRA allowing the use of these works or other subject matters without the permission of the author or other right owner, except in cases where the use of all other subject matters is allowed without the permission of the right owner under the exceptions and limitations.

Concerning orphan works, there are provisions providing the list of persons entitled to exercise the rights deriving from these works (Article 12/2 of the CRRA). Also, Articles 101, 102 and 104 of the CRRA regulate the duration of copyright in anonymous, pseudonymous and undisclosed works.

- 5.2 On what conditions? Is there a remuneration right or right to compensation? Is there a court or administrative procedure to be satisfied prior to use?

Since there are no specific provisions allowing access/use in relation to orphan works, there is no answer to this question.

- 5.3 Are there proposals for the introduction of, or changes to, orphan works provisions?

There are no such initiatives as far the Croatian group knows.

6. **Graduated Response Laws or Agreements**

- 6.1 Within the specific context of p2p filesharing of audio-visual works and sound recordings, does your national law contain laws (or proposed laws) providing for a graduated response “solution”? On what conditions? Three strikes, etc.?

So far, there are no laws or proposed laws providing for a graduated response “solution”.

- 6.2 Do such proposals include an educational aspect – enhancing awareness of intellectual property protection, as well as measures to (1) make Internet access more secure in order to prevent illegal activity; (2) – favour availability of legal services?

Since there are no laws or proposed laws providing for a graduated response “solution”, this question cannot be answered.

- 6.3 Is there a court procedure and/ or administrative agency that oversees the proceedings or authorises interruption or termination of Internet access?

At present, there are no court procedures or administrative agencies overseeing the proceedings or authorising interruption or termination of internet access, as far as the Group knows.

6.4 Is it possible to assess the effectiveness of the implementation of these measures, both as a matter of stemming piracy, and with respect to the development of legal services ?

No, according to the information available there is no implementation of these measures, so it is not possible to assess the effectiveness of their implementation.

6.5 Is there any case-law on the possible (own initiative) use of blocking or filtering technology by an ISP, as distinct from situations where an ISP is required by a court or administrative agency to terminate subscribers access (i.e. injunctive relief)?

No, according to the information available.

6.6 Are there private agreements among copyright owners and Internet service providers that function similarly to “3-strikes” laws?

No, according to the information available.

7. **Private Agreements and UGC**

7.1 Are there private agreements among copyright owners and hosts of UGC content sites regarding the filtering of content posted to the sites? Are there inter-industry statements of “best practices” regarding filtering? Have government authorities in your country undertaken initiatives to encourage the adoption of such accords?

No, according to the information available.

7.2 How is the filtering to be accomplished?

The national group has no knowledge on this matter.

7.3 Have there been any cases concerning such agreements or “best practices”?

No, according to the information available.

7.4 Outside the existence of such accords, have courts themselves imposed remedies requiring measures such as "take down, stay down"?

No, according to the information available.