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# Analysis of the Legal Framework for Copyright and Related Rights in BiH

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## 1. The term "journalist" and position of journalists in the copyright system in Bosnia and Herzegovina

The term "journalist"<sup>1</sup> does not appear in any of the articles of the Law on Copyright and Related Rights (Official Gazette of BiH, No. 63/10)<sup>2</sup>. This, of course, does not mean that journalists have no copyright or that the role of journalists in the copyright system is not legally regulated, but copyright system does not consider as relevant whether the work has been created by a person who is qualified to be a "journalist" or not. Copyright norms are applied in the same way to persons who are "journalists" and to persons who are not journalists.

„Journalist“ is an occupational term which has relatively wide but potentially fluid meaning, especially due to the evolution of journalistic performances we are witnessing. There is no official definition of a journalist in Bosnia and Herzegovina at the time of writing this report<sup>3</sup>. For the purpose of this research we define the term journalist in the widest possible way - as any person who creates a "journalistic"<sup>4</sup> work or media content<sup>5</sup> in any way which can be qualified as author's original work according to the copyright criteria.

Legal copyright rules will be equally applied to any other person who cannot be qualified as "journalist" but who either uses or contributes to the performance of a journalist in a professional capacity which we collectively refer to as the "media". These are certainly the employer of the journalist<sup>6</sup> (who is often but not always the publisher)<sup>7</sup>, the contractor of the work<sup>8</sup>, etc. The publisher, the performer and the broadcasting organization may have rights related to copyright specifically governed by copyright rules<sup>9</sup>. On the other hand, we have all the persons whose works are used by journalists in his work, regardless of who those persons are. If they created copyright works, they are called "authors" and they are given copyright protection in the copyright system regardless of their professional qualification or occupational nature. A journalist is subject to "copyright" and must comply with "copyright norms", but a journalist may also have or be the holder of "copyright". This potentially ambiguous linguistic situation is due to the fact that the term "copyright" has two separate and distinct meanings in our languages<sup>10</sup> - copyright in the objective sense and copyright in the subjective sense.

In the objective sense, copyright<sup>11</sup> is a systematic set of legal rules governing the legal relations between entities, primarily authors<sup>12</sup> on the one hand, and users of works subject to copyright work on

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<sup>1</sup> The use of the term "journalist" means male, female, as well as all other possible genders. The use of this term is not intended to discriminate women or other genders but primarily for clarity of expression.

<sup>2</sup> In the work below we use the abbreviation "LCRR" unless otherwise is specifically indicated. LCRR is the most important source of positive copyright in BiH. Nota bene: the term "journalist" is not mentioned in the Law on Collective Management of Copyright and Related Rights (Official Gazette of BiH, No. 63/10) or in the Criminal Law of BiH (Official Gazette of BiH, No. 3/2003, 32/2003- corr. 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 and 35/2018) (in the text below Criminal Code of BiH) which are also important sources of the positive copyright in BiH.

<sup>3</sup> At this point, Association of BH Journalists does not insist on the official definition of the term "journalist" due to the fact that defining this term might possibly be used as a tool of censorship, as well to the possibility that the definition of this term may become outdated and thus discriminatory for those groups of journalists that would not be included in the definition and thus omit our fellow journalists from the protection that our society gives to journalists.

<sup>4</sup> As we can see from the text below, LCRR also appoints, particularly separates or governs works that could be "journalistic" by their type. However, since BiH has opted for a general definition of copyright work which includes all sorts of author's original works, all works subjects to copyright that we can in the broadest possible sense qualify as "journalistic" will be copyright-protected. There will be more words on the concept of copyright work afterwards.

<sup>5</sup> The same is with the author's works that can be considered as "media content" which is also a term that does not appear in LCRR. This term is used in the broadest possible sense in this report.

<sup>6</sup> Article 100 of LCRR, about dispositively arranged assumption of the transfer of copyright from a journalist to his employer, when the work was created within the scope of employment.

<sup>7</sup> Section A, Chapter IV, Part three of LCRR about publishing contract and Chapter V, Part five of LCRR about related right of the publisher about special editions.

<sup>8</sup> Article 98, which dispositively arranges essential characteristics of the contract about creating commissioned work.

<sup>9</sup> Part five of LCRR, Section I (Art. 116-125 for the performer, for example newsreader on the Internet, on the radio or TV; Section IV (Art.135-137) for broadcasting organizations such as radio or TV media outlets; Section V (Art. 138-140) for publishers such as newspaper or magazine publishers or similar. These are not the subject of this research so their rights will not be discussed in this report.

<sup>10</sup> In addition to the two highlighted meanings in the text below, the term copyright means the fact that it is a branch of the Civil Law as well as the branch of the Intellectual Property Law, and also separate branch of jurisprudence. Understanding and familiarity with copyright necessarily means understanding and familiarity with other branches of law and jurisprudence as well as with other disciplines, especially occupational and artistic ones. In other words, it requires multidisciplinary approach above all.

<sup>11</sup> The equivalent in English language is the term "law".

<sup>12</sup> As the universal legal successors of the author (heirs) or singular successors authors (who acquired the copyright from the authors on the basis of a legal transaction (e.g. contract) or other valid legal grounds). These persons, together with the author are called "copyright holders".

the other hand, regarding the copyright work as a subject matter of protection, and which regulate the criteria for something to be subject to copyright (and therefore be protected by copyright norms and mechanisms), and govern legal issues related to exploitation, use and implementation<sup>13</sup> of the original work. In other words, these are all the legal rules governing what may or may not be done in connection with one's work.

A journalist can be an author if his creation meets the legal criteria. Copyright protection is automatic, occurs as soon as a work is created and does not require the completion of any formalities or application to any state or other organization<sup>14</sup>. If a journalist is an author, the legal system gives the journalist legal authority over the work in the form of a set of exclusive legal powers related to the control of the use of that copyrighted work which we call "copyright" in the subjective sense. Therefore, in the subjective sense, copyright<sup>15</sup> is a specific set of exclusive legal powers or individual subjective rights related to control of the use of the author's original work which are the author's rights and powers regarding his particular work towards any other person<sup>16</sup>. In other words, this is what the author is empowered to request from other persons with regard to his work, and the State as a holder of the monopoly of force provides legal protection for the author and the legal successors of the author if there is an infringement of copyright. Any other person is not permitted to use the copyright work of that journalists in any way, unless there is a permission of the journalist or if the use of the work is expressly authorized by specific legislation. A journalist has a legal right to a special remuneration for any use of his work unless otherwise provided by law<sup>17</sup>. On the other hand, the nature of journalistic performance also means that journalists use works of others; in this case they must respect the copyrights of these persons over those works. The use of a copyright-protected work without valid legal grounds is an infringement of copyright. If a journalist uses the work of others without valid legal grounds he is exposed to risk of being civilly sued in court<sup>18</sup> to provide compensation for the damage caused by such action<sup>19</sup>, and a copyright holder who was infringed by a journalist may request the court to order certain measures to this journalist<sup>20</sup>, which means that he can be fined for infringement<sup>21</sup> and fined or sentenced to prison if the competent court decides that the journalist's copyright infringement suits elements of the criminal offense<sup>22</sup>.

Since a journalist in the copyright system may be the author and copyright holder to his own works on the one hand and the user of copyright works of others on the other hand, the way in which legal copyright rules will be applied on journalists depends on the position of the journalist concerning copyright-protected work. Therefore, the position of journalists in this study will be examined from the aspect of a journalist as the author and copyright holder of the works that he created, and a journalist as a user of the works of others.

## 2. Sources of copyright in BiH

Copyright<sup>23</sup> is protected by the Constitution of Bosnia and Herzegovina as a fundamental human right, by the provision of Article II/4 which provides the enjoyment of the rights and freedoms of all persons in BiH. It is also protected by the international agreements listed in Annex I of the Constitution of BiH, which in the Article 8 incorporates the International Covenant on Economic, Social and Cultural Rights from 1966, where Article 15, paragraph 1, item c, states that: "States Parties to the present Covenant recognize the right to everyone to: ...(c) the enjoyment of moral and substantial interests resulting from any scientific, literary or artistic production of which he or she is the author." The Constitution of BiH also contains the provision in Article II/3/k on the protection of the right to

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<sup>13</sup> These three concepts have slightly but significantly different meaning in legal theory. For simplicity in this paper and primarily for clarity of expression we will use the term "use" of the copyright-protected work, which will imply all three terms.

<sup>14</sup> Article 14 of LCRR.

<sup>15</sup> The equivalent in the English language is the word "right".

<sup>16</sup> Article 20 of LCRR. The copyright theory says that the copyright is absolute, or applied "erga omnes" or to everyone. All persons must comply with the author's rights regardless of whether they had a "contract" or other legal relationship with the author.

<sup>17</sup> Particularly Article 20, para. 3, which explicitly defines this.

<sup>18</sup> Articles 156-163 of LCRR.

<sup>19</sup> Articles 157, 158 and 159 of LCRR.

<sup>20</sup> Article 156 of LCRR, for the claims which may be referred to the court due to the infringement of copyright.

<sup>21</sup> Article 170 of LCRR.

<sup>22</sup> Primarily Articles 242-246 of the Criminal Law of BiH that governs activities over the copyright work and under what conditions they are considered as criminal offenses. Nota Bene: entity criminal laws do not contain provisions that criminalize actions regarding the author's work and as such they are not significant for copyright or their significance is limited.

<sup>23</sup> In the subjective sense.

property<sup>24</sup>, where subjective copyright is a part of the property<sup>25</sup> of the author or the legal successor of the author<sup>26</sup>.

Basic laws providing positive copyright in BiH are Law on Copyright and Related Rights (Official Gazette of BiH, No. 63/10)<sup>27</sup>, The Law on Collective Management of Copyright and Related Rights (Official Gazette of BiH, No. 63/10)<sup>28</sup> and Criminal Law of BiH (Official Gazette of BiH, Nos. 3/2003, 32/2003- corr., 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 and 35/2018) regulating criminal liability for infringement of copyright and related rights. LCRR derogated<sup>29</sup> Law on Copyright and Related Rights (Official Gazette of BiH, Nos. 7/02, 32/02 and 76/06). This law was put to force in 2010 and has not been modified or amended by the moment of writing this report (the end of 2019). Comparing LCRR with laws governing copyright in the Republic of Croatia<sup>30</sup>, Republic of Serbia<sup>31</sup> and Montenegro<sup>32</sup>, we can note relative<sup>33</sup> similarity of structure, principles and institutes as well as protection mechanisms. This is to be expected taking into consideration relatively high level of harmonization of copyright protection in the world due to the effects of international sources, especially directives and legal legacy or the EU *acquis*. It is necessary to notice the fact that all three countries in the past decade carried out a number of amendments to their copyright legislation, therefore adapting legal norms to the identified needs and correcting the identified shortcomings. BiH did not take these actions, and that can indicate the relative neglect of this segment of real protection of Legislator in BiH. Other countries, especially Croatia, have harmonized their legislation with new international conventions, especially with the new EU directives, while this is not the case with LCRR although it should be. Actually, the greatest difference with copyright protection in BiH comparing to the neighbouring countries is not in legal norms but in the application of these norms. BiH provides lower level of copyright protection than its neighbouring countries not because of the laws but because of the applying of these laws. Despite relatively positive official assessments, copyright protection in BiH in practice has proven as ineffective, inadequate, slow, expensive, and from the standpoint of the right holder, alienating.

Additional sources of copyright protection in BiH are: Entity laws governing obligation relations<sup>34</sup>, right in rem<sup>35</sup>, inheritance<sup>36</sup>, employment relations<sup>37</sup>, offences<sup>38</sup>, civil proceeding<sup>39</sup>, enforcement

<sup>24</sup> Read in conjunction with the Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>25</sup> Given the fact that the property represents a collection of subjective property rights of a subject of law and copyright is a subjective right which consists of individual property and legal powers and rights, this means that copyright is the property of a certain subject of law and that constitutional provisions protect the copyright in the same way as they protect property from inappropriate and unauthorized entry by the state. Of course, other provisions of the Constitution also have general significance for the functioning of the legal system and they are also the sources of copyright.

<sup>26</sup> The provisions that can be applied to copyright of persons in BiH can also be found in the entity constitutions as well as in the Statute of Brcko District.

<sup>27</sup> The version in Bosnian language is available at: [http://www.ipr.gov.ba/upload/documents/dokumenti\\_podstranice/pravna-regulativa/bosanski/Zakoni\\_i\\_drugi\\_propisi\\_BiH\\_iz\\_oblasti\\_intelektualnog\\_vlasni%C5%A1tva/autor.bos.pdf](http://www.ipr.gov.ba/upload/documents/dokumenti_podstranice/pravna-regulativa/bosanski/Zakoni_i_drugi_propisi_BiH_iz_oblasti_intelektualnog_vlasni%C5%A1tva/autor.bos.pdf); the version in Croatian language is available at: [http://www.ipr.gov.ba/upload/documents/dokumenti\\_podstranice/pravna-regulativa/Hrvatski/Zakoni\\_i\\_drugi\\_propisi\\_BiH\\_iz\\_oblasti\\_intelektualnog\\_vlasni%C5%A1tva\\_HR/autor.hr.pdf](http://www.ipr.gov.ba/upload/documents/dokumenti_podstranice/pravna-regulativa/Hrvatski/Zakoni_i_drugi_propisi_BiH_iz_oblasti_intelektualnog_vlasni%C5%A1tva_HR/autor.hr.pdf); the version in Serbian language is available at: [http://www.ipr.gov.ba/upload/documents/dokumenti\\_podstranice/pravna-regulativa/serbian/Zakoni\\_i\\_drugi\\_propisi\\_BiH\\_iz\\_oblasti\\_intelektualnog\\_vlasni%C5%A1tva-SERB/autor.sr.pdf](http://www.ipr.gov.ba/upload/documents/dokumenti_podstranice/pravna-regulativa/serbian/Zakoni_i_drugi_propisi_BiH_iz_oblasti_intelektualnog_vlasni%C5%A1tva-SERB/autor.sr.pdf); the version in English language is available at: [http://www.ipr.gov.ba/upload/documents/dokumenti\\_podstranice/pravna-regulativa/Engleski/IP\\_Laws\\_and\\_Regulations\\_in\\_BiH/law\\_on\\_copyright\\_and\\_related\\_rights.pdf](http://www.ipr.gov.ba/upload/documents/dokumenti_podstranice/pravna-regulativa/Engleski/IP_Laws_and_Regulations_in_BiH/law_on_copyright_and_related_rights.pdf)

<sup>28</sup> Governs issues of Collective Management of Copyright and Related Rights as a system of copyright for more co-written works by many authors together with the help of persons specialized for this activity who operate with license and supervision of the Institute for Intellectual Property.

<sup>29</sup> That is repealed or replaced.

<sup>30</sup> Law on Copyright and Related Rights (Official Gazette of Republic of Croatia, Nos. 167/03, 79/07, 80/11, 125/11, 141/13, 127/14, 62/17, 96/18).

<sup>31</sup> Law on Copyright and Related Rights (Official Gazette of Republic of Serbia, Nos. 104/2009, 99/2011, 119/2012, 29/2016 –decision of Constitutional Court and 66/2019)

<sup>32</sup> Law on Copyright and Related Rights (Official Gazette of Montenegro, No. 37/2011 and 53/2016).

<sup>33</sup> Apart from the fact that the Legislator in BiH opted to regulate collective management by specific law, which is not the case in the other three states, but that is not of a special relevance except the *Nomo* technical one.

<sup>34</sup> Primarily though not exclusively: Law on Obligations of FBiH ("Official Gazette of SFRJ", Nos. 29/1978, 39/1985, 45/1989 – decision of Constitutional Court of Yugoslavia and 57/1989, "Official Gazette of Republic of BiH", Nos. 2/1992, 13/1993 and 13/1994 and "Official Gazette of FBiH", No. 29/2003 and 42/2011) and Law on Obligations of RS ("Official Gazette of SFRJ", Nos. 29/1978, 39/1985, 45/1989 – decision of the Constitutional Court of Yugoslavia and 57/1989 and "Official Gazette of RS", Nos. 17/1993, 3/1996, 37/2001 – State Law, 39/2003 and 74/2004).

<sup>35</sup> Primarily but not exclusively: Law on Rights in Rem of FBiH (Official Gazette of FBiH 66/13 and 100/13) and Law on Rights in Rem of RS ("Official Gazette of RS", No. 124/2008, 3/2009 - corr., 58/2009, 95/2011, 60/2015 and 18/2016 – decision of the Constitutional Court)

<sup>36</sup> Primarily: Law on Inheritance of FBiH (Official Gazette of FBiH, No. 80/14) and Law on Inheritance of RS ("Official Gazette of the Republic of Srpska", No.1/2009, 55/2009 - correction and 91/2016) ZAISP in Article 63 expressly provides that the regulations on inheritance are applied to the transfer of copyright by inheritance and these legal rules provide that.

procedure, criminal proceedings<sup>40</sup>, entity laws on courts, Law on Customs Policy in BiH<sup>41</sup>, Law on Electronic Legal and Business Transactions<sup>42</sup>, Law on establishing the Institute for Intellectual Property<sup>43</sup> and others. Bylaws<sup>44</sup> and informal sources<sup>45</sup> complement the legal organization of copyright in BiH.

Bosnia and Herzegovina is a member of the following international conventions and treaties in the field of copyright: Berne Convention for the Protection of Literary and Artistic Works adopted in 1886, the text revised in 1971<sup>46</sup>; International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) from 1961; WIPO Copyright Treaty (WCT) from 1996; WIPO Performances and Phonograms Treaty (WPPT) from 1996; The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms from 1971; Convention Related to the Distribution of Programme-Carrying Signals Transmitted by Satellite from 1974. ZAISP is harmonized with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) from 1994, despite the fact that BiH is not its member at the time of writing this report. BiH has not become a member of the Beijing Treaty on Audio-visual Performances adopted in 2012 or the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind and Visually Impaired from 2013, although it should be. LCRR should be harmonized with these treaties.

Considering that BiH is not a member of the EU, it is not under an obligation to transpose the provisions of the EU Directives governing copyright to domestic legislation nor the EU Directives have legal force in Bosnia and Herzegovina as they have it in other Member States. However, in Article 73, para. 3 of the Stabilization and Association Agreement between the European Communities and their Member States on the one hand and Bosnia and Herzegovina on the other hand, Bosnia and Herzegovina committed, among other things, that: *"Bosnia and Herzegovina shall take all necessary measures to guarantee a level of protection of intellectual, industrial and economic property rights similar to a level of protection in the Community, including effective means of enforcing such rights not later than five years after this Agreement entry into force"* Therefore, Bosnia and Herzegovina has an obligation to incorporate the level of protection that is compatible with the protection in the European Union. EU standards are generally very high quality legal solutions and their incorporation in the copyright system of BiH is practical and appropriate. LCRR is fully harmonized with all EU directives in the field of copyright, which were in force before 2010 and those are: Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission; Directive 96/9/EC on the legal protection of databases; Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society; Directive 2001/84/EC on the

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<sup>37</sup> Primarily: Labour Law of FBiH ("Official Gazette of Federation of BiH", No: 26/16 and 89/18) and Labour Law of RS ("Official Gazette of RS", No. 1/2016 and 66/2018).

<sup>38</sup> Primarily, the Law on Misdemeanours of FBiH (Official Gazette of FBiH, No. 63/14) and the Law on Misdemeanours of RS ("Official Gazette of the Republic of Srpska", No. 63/2014, 36/2015 – decision of the Constitutional Court, 110/2016 and 100/2017); The Law on Misdemeanours of BiH (Official Gazette of BiH, No. 41/2007, 18/2012, 36/2014 and 81/2015), complementing and processing the provisions on misdemeanours compared to Part VII, especially Article 170 of LCRR.

<sup>39</sup> Primarily the Law on Civil Procedure of FBiH (Official Gazette of FBiH, Nos. 53/03, 73/05, 19/06 and 98/15) and the Law on Civil Procedure of RS ("Official Gazette of the Republic of Srpska", Nos. 58/2003, 85/2003, 74/2005, 63/2007, 105/2008, 45/2009 - decision of the Constitutional Court, 49/2009 and 61/2013), complementing procedural provisions on civil protection of copyright in Section B, Chapter II of the Part six of LCRR.

<sup>40</sup> Criminal Procedure Law of BiH ("Official Gazette of Bosnia and Herzegovina", Nos. 3/2003, 32/2003 - corr, 36/2003, 26/2004, 63/2004, 13/2005, 48/2005, 46/2006, 29/2007, 53/2007, 58/2008, 12/2009, 16/2009, 53/2009- State Law, 93/2009, 72/2013 and 65/2018)

<sup>41</sup> Official Gazette of BiH, No. 58/15.

<sup>42</sup> Official Gazette of BiH, No. 88/07.

<sup>43</sup> Official Gazette of BiH, No. 43/04.

<sup>44</sup> Regulations on the amendments of the rules on the manner and form of deposition of copyright works and subject matter of related rights and on their registration into the book of records (Official Gazette of BiH, 28/11); Regulations on the amendments of the rules on the manner and form of deposition of copyright works and subject matter of related rights and on registration into the book of records (Official Gazette of BiH, 91/16); Decision on determining the identification number of copyright work and subject matter of related rights for registration in the book of records (No. IN-0293/11-03 VT); Regulations on the manner and form of completion of conditions for granting licenses to legal entities for the collective management of copyright and related rights (Official Gazette, 49/16); The decision on the amounts of compensation for reproduction for private and other internal use of copyright works and subject matters of related rights (Official Gazette of BiH, No. 77/11); Regulations on mediation for the purpose of making a collective agreement for cable retransmission of broadcast works (Official Gazette, 11/11); Decision on implementation of customs measures for the protection of the rights of holders of copyright and related rights (Official Gazette of BiH, No. 41/12).

<sup>45</sup> Such as jurisprudence of domestic courts, the courts of the former Yugoslavia, jurisprudence of the European Court of Justice, customs, etc.

<sup>46</sup> Available at: [http://www.ipr.gov.ba/upload/documents/dokumenti\\_podstranice/pravna-regulativa/bosanski/Me%C4%91unarodne\\_konvencije\\_i\\_ugovori\\_kojih\\_je\\_BiH\\_%C4%8Dlanica/bernska\\_konvencija\\_%20bos.pdf](http://www.ipr.gov.ba/upload/documents/dokumenti_podstranice/pravna-regulativa/bosanski/Me%C4%91unarodne_konvencije_i_ugovori_kojih_je_BiH_%C4%8Dlanica/bernska_konvencija_%20bos.pdf)

resale right for the benefit of the author of the original work of art; Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property; Directive 2006/116/EC on the term of protection of copyright and certain related rights; Directive 2009/24/EC on the legal protection of computer programs. LCRR is also harmonized with Directive 2011/77/EC on the term of protection of copyright and certain related rights. LCRR is not, but should be, harmonized with the EU directives regulating copyrights which entered into force after the LCRR's entry into force, and these are: Directive 2012/28/EC on certain permitted uses of orphan works; Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market; Directive (EU) 2017/1564 on certain permitted uses of certain works and other subject matters protected by copyright and related rights in favor of persons who are blind, visually impaired or have other difficulties in the use of printed materials, amending Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society; Directive (EU) 2019/790 on copyright and related rights in the single digital market and amending Directive 96/9/EC and 2001/29/EC; Directive (EU) 2019/789 laying down the rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmission of television and radio programmes, and amending Council Directive 93/83/EEC.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market<sup>47</sup> which was in the special focus of the wider public and professional communities last year and in 2019, might be of particular importance for journalists in BiH. A thorough analysis of this complex and lengthy<sup>48</sup> Directive is not appropriate for this publication, therefore we will only point out that the potential of the utmost importance for journalists is Section IV containing "measures for creating the market for copyright works", particularly Section 1 which contains "publication rights", namely Article 15 which contains provisions of the "protection of information publishings concerning online use" and establishes a new copyright authorisation for publishers regarding copyright works of "information publishing". The provisions are only applied to the public and "commercial" use, they are not related to linking and do not prevent the use of certain words or very short excerpts. These rights are not directly related to journalists but rather employers or commissioners of journalistic work but may have an impact on the value of journalistic copyright works in general. This Directive also contains provisions saying that an "appropriate" share of income should be given to the authors of copyright works which entered the informative publications, however it is upon the Member States to specifically regulate mechanism for these activities to be carried out. This right of the publisher is valid for two years after publishing informative publication. The Directive also regulates the mechanism of compensation claims related to the use of copyright works in the context of online services in the Article 16, Chapter 2, Section IV, and introduces a relatively controversial "tax links". The provisions of Article 17 are primarily aimed at "large" aggregators or collectors of journalistic copyright works such as Google News or similar and at ensuring a fair distribution of revenues from providing online services, primarily involving use of journalistic works and media content, among other things. It would be necessary to analyze in detail the potential impact of the provisions of this Directive on journalists in Bosnia and Herzegovina, and if it proves positive and desirable, the Legislator should be lobbied for transposition of relevant provisions into the LCRR.

### **3. Journalist as the author and copyright holder in the works that he created**

LCRR regulates that the author of the work subject to copyright is a person who created this work.<sup>49</sup> Creation of the work in copyright terms is specific action resulting from the expression of the work; specifically it is the creation of the author's work. Creation of the author's work does not imply giving ideas, financing, organizing, maintenance or support of any other kind, technical work (such as spelling correction), publishing copyright works, copying dictated text and similar<sup>50</sup>. Journalist is an author if he or she produced specific parts of the work which are copyrighted-protected, as a result of

<sup>47</sup> Official translation to Croatian language available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32019L0790&from=HR>

<sup>48</sup> Translated text of the Directive in Croatian and English language consists of 34 pages.

<sup>49</sup> Article 9 of LCRR.

<sup>50</sup> Editor, publisher, colleague or any other person who gives an idea or an order, or pays or causes to create, supports or organizes the creation of the author's work in any way will not be the author or the holder of the copyright of a journalistic author's work created by a journalist, on the basis of the authorship.

his or her mental activity; in other words if a result of his or her mental activity is in the expression and in the content of a particular author's original work.

In Bosnia and Herzegovina<sup>51</sup>, legal entity such as a business organisation or a company engaged in publishing, broadcasting organizations and the like, cannot be an author; however it can be a copyright holder when the right is obtained by legal transaction with the author, which means derivatively, as the legal successor of an author/journalist/right holder.

If two or more people work together to create a unique and indivisible copyright work, these persons are co-authors of this work and both have an equal copyright for such work. The share in the copyright and the benefits depend on the agreement of these co-authors or it is regulated in proportion to their actual contribution to the creation of the work. Co-authors decide on the use of the work jointly and the duration of their right shall start from the moment of death of the last surviving author. Each co-author individually cannot withhold his consent to the use of copyright work on the contrary to the principles of good faith and that is a legal standard which shall be resolved by the court in each specific case<sup>52</sup>.

### **3.1 The concept of subject matter to copyright**

In order to be an "author", journalist must create something that can be qualified as a work of authorship by the norms of copyright. Article 4, para 2 of LCRR defines author's work as follows: "the subject matter of copyright is an individual intellectual creation in the field of literature, science and art, regardless of the mode, manner and form of expression, unless otherwise provided by law". This definition can be difficult to understand and applied in practice.

Author's work is a creation or "asset" and the subject to copyright protection resulting from creative intellectual activity of human being by making connected series of free creative individual decisions influenced by the author and shaped by his personality and individuality, and the action of this work is focused on communication with communicative content expressing certain ideas<sup>53</sup> to other persons<sup>54</sup>.

In other words, work subject to copyright is "an individual intellectual creation" if a journalist created it using his own intellect, expressing an idea in a way that expression or resulting creation came from that part of the mind of a journalist which is specific to this particular journalist or which differs spirit of that journalists from other journalists or authors, and he did not copy<sup>55</sup> or imitate blindly works of others or copy inappropriately something that already exists, and that he did not say anything in a way someone else would say it, generically.

The field of "literature, science and art" does not imply scientific or technical definition of these areas but it is used primarily to make an author's work, as subject matter of copyright, distinguished from other intangible assets that are protected by other legal rules of intellectual property rights which are copyright protected, such as inventions, labels, industrial design, layout design, and the alike, or by other legal mechanisms and areas of law. For instance, the field of literature includes all possible types of written and oral expression, including computer programs, the field of science, all forms of systematic knowledge (excluding discoveries, principles, processes, facts, formulas, etc...) regardless of whether they imply utilization of scientific methods in their acquisition, and the field of art implies each possible aesthetic expression of a human being.

The criteria for classifying creative expression of human being as author's original work and therefore protected by copyright are low and easy to meet. Court will determine, usually by expert opinions, the presence of individuality in the work in which the individuality of the author designed that creation, and if the presence of individuality is identified, the court will qualify that entity as subject matter of copyright.

In Case C-5/08, the European Court of Justice concluded that potentially one word may be copyright-protected if it is the individual intellectual creation of its author<sup>56</sup>. Article 5 of LCRR expressly

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<sup>51</sup> It is possible in the USA, as well as in some other countries.

<sup>52</sup> Article 12 of LCRR about co-authorship.

<sup>53</sup> Nota Bene: an idea that is a required element in the content of the work has never been and cannot be copyright protected. Article 8, para. 1, item an of LCRR.

<sup>54</sup> This is an extended definition of author's work which was created under the influence of theoretical and practical understanding and especially as a result of judgments of the European Court of Justice: C-5/08; C-393/09; C-403/08; C-145/10 and C-604/10.

<sup>55</sup> This action would be characterized as plagiarism which, although not explicitly defined in LCRR, is an infringement of copyright law and a violation of journalistic ethics and moral outrage as well.

<sup>56</sup> As an example of the copyright work of only six words we can mention the famous story that consists of six words by Ernest Hemingway: "For Sale: Baby Shoes, Never Worn."

provides that any segment of the work including the title of the work<sup>57</sup> can be copyright protected independently if it is an individual intellectual creation of its author. The determination of eligibility of the author's work uses the principle of aesthetic neutrality. The term "artistic" work is separate from the "author's" work in terms of copyright qualifications. The quality of the author's work, as well as its cultural value is entirely irrelevant to be considered a copyright-protected work. In other words, something that has no cultural or quality values may be equally copyright-protected as something that the general consensus considers the world-class art.

Professionalism, qualifications and ability of a journalist or an author who creates the work, the time that a journalist spent in the creation of the work, other costs of creating the work and other similar considerations are completely irrelevant for the work to be considered copyright protected. For instance, a lot of money and effort can be invested in making the phone book but that will not make the phone book copyright work<sup>58</sup> because the phone book is not and cannot be "individual intellectual creation". Legal permission of the content of the work is also absolutely irrelevant to the question of whether something can be copyright work. Something may be a result of a crime or a crime itself<sup>59</sup> and it will be copyright protected as an author's original work.

Entities that are not copyright protected<sup>60</sup> and thus cannot be subject matters of copyright are: ideas<sup>61</sup>, concepts, actions, working methods, mathematical operations, principles or discoveries; official texts in the field of legislation, administration and judiciary (laws, regulations, decisions, reports, records, court decisions, etc.); political talks and talks held during court hearings; daily news and a variety of information which are characterized as short news items contained in a press release, and literary and artistic works of folklore. Therefore, journalists in their activities can freely make use of the above, taking into consideration that the specific determination of whether something is characterized as, for example, "a short story contained in a press release" or any other term mentioned above is usually difficult to distinguish, it is the legal standard<sup>62</sup> and can definitely be determined only by a competent court<sup>63</sup>.

Copyright in BiH uses general definition of the work subject matter of copyright, which means that anything that can be subsumed under this definition will be qualified as subject matter of copyright. This can be concluded from the fact that the Legislator says that the type, manner and form of expression are not considered as relevant for copyright. Type of expression or type of the author's work is not relevant for the work to be "subject matter of copyright." The Legislator, however, for illustrative purposes, in Article 4, para. 2, states certain types of copyright works as an example: written works (literary texts, studies, manuals, articles and other writings, as well as computer programs); oral works (speeches, lectures, sermons and other works of the same type); dramatic, dramatic-musical and puppetry works; choreographic and pantomime works; musical works with or without words; audio-visual works<sup>64</sup>; cinematographic works and works created in a manner similar to filmmaking); works of fine art (drawings, paintings, graphic arts, sculptures and other works of the same type); architectural works (drawings, plans, blueprints and constructed buildings); works of all branches of fine arts, graphic and industrial design; photographic works and works produced by a process similar to photography; cartographic works; presentations of scientific, educational or technical type (technical drawings, sketches, charts, forms, expertise, expert reports, plastic works and other works of the same type). The above list is not exhaustive in the LCRR, as can be seen from the

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<sup>57</sup> The opinion of the Supreme Court of the Republic of Croatia, Rev-42/97 from 07/05/1997.

<sup>58</sup> Although it may be subject matter of database creator's related right if it meets legal standards.

<sup>59</sup> For instance: hate speech, calling for the overthrow of the constitutional order or work related to the offense such as a video of a murder and similar.

<sup>60</sup> Article 8, para 1 of LCRR.

<sup>61</sup> The idea is generally considered to be the highest abstraction of communicative constructs which the author wishes to express in his work. The idea is exempted from copyright protection because copyright protection would make inappropriate obstacles for further copyright actions of subsequent authors without special benefits for the original author. The purpose of copyright, among other things, is to stimulate the creation of author's original works. This issue will be discussed later.

<sup>62</sup> The legal norm whose content is not clearly and unambiguously arranged on purpose, but left to the interpretation of the competent court on the basis of the relevant circumstances.

<sup>63</sup> Certainly it would be desirable that there is more clarity regarding the meaning limits of those terms.

<sup>64</sup> The Legislator defines "audio-visual" works of authorship in Article 109 as follows: "cinematographic, television, documentary, cartoon, advertising and short music-videos, and other audio-visual works expressed by sequence of images that create the impression of movement, with or without sound, regardless of the type of carrier to which they are fixed." In other words, audio-visual author's work can be any "video" clip and not just a "film" in the traditional sense. For instance, a video that a journalist makes on the phone or uses in his activities may be audio-visual author's work in the copyright sense.

use of the term "particularly". All other types of individual creations are also copyright-protected as works of authorship, although they are not specifically mentioned in the Law. For instance, websites and video games are the examples of works that are not mentioned but they are copyright-protected works. LCRR regulates collections<sup>65</sup>, databases<sup>66</sup>, audio-visual works of authorship<sup>67</sup>, computer programmes<sup>68</sup>, as separate types of works in a special way due to their type or characteristics in the copyright system, as well as the certain aspects of the use of architectural works and works of fine art and photography<sup>69</sup>, etc. "Journalistic works" or "media content" are not explicitly mentioned or particularly arranged in LCRR as separate type of works of authorship which, of course, does not mean that authors' works of journalists or media content are not subject matters of copyright and are not suitable for copyright protection. What can be considered as the possible result of professional journalistic performance and therefore the "journalistic" work of authorship can be subsumed under the terms of the article, reports, studies or written work, speaking works, photographic works, audio-visual works, presentations and other. However, this qualification is irrelevant due to the application of the general definition of copyright work or in other words, "journalistic" works of authorship are undoubtedly copyright protected as long as they represent individual spiritual work and not because of the fact that they were written by a "journalist" or because they have the media or other journalistic content. We particularly emphasize the fact that the work used by journalists their professional performances which has originally been created by other persons, may also be copyright-protected, and journalists who are the users of those works must comply with the copyright of the original authors.

Author's work subject to copyrights is not the same as a copy of the author's work. A copy of the author's work is something perceptible, something substantive to what a content of the author's work as an intangible object of legal protection is fixed. These are two different object or subject matters of legal protection and their use is arranged by different legal rules. A copyright work is, by its nature, a particularly intangible asset whose use is governed by copyright rules, and a copy of a copyright work is, by its legal nature, a thing<sup>70</sup> whose use is governed by the rules of the right in rem. The right of ownership of the copy of the work is legally separated from the copyright of the author's work that is fixed to this copy of a copyright-protected work<sup>71</sup>. For instance, the book is not copyright work but a copy of the copyright-protected work to which a content of the author's original work (written content) is fixed. A book is a thing. A thing is a property<sup>72</sup> of a person who acquired ownership rights in legally valid manner. However, a person who acquired ownership rights did not acquire the right to use that work<sup>73</sup>. For instance, when we buy newspapers, we have the right of ownership of that copy of the newspapers but that does not mean we are allowed to copy articles from this copy of the newspapers, to adopt it or to use authors' works that are fixed to the newspaper as a substantial carrier making them a copy of the authors' works in any other copyright relevant way. Giving permission to the use of the author's work or transfer of the copyright do not affect the right of property or other rights in rem over the copy of the work<sup>74</sup> as well. There are plenty of misconceptions in society on this issue.

### **3.2 Acquisition of copyright and content of journalists' copyright**

Author acquires copyright as soon as he creates work of authorship<sup>75</sup>. Therefore, author's original work is instantly protected immediately as soon as it is created even during the process of creation. Copyright protection is an automatic action and is not defined by the completion of any formalities. The author is not obliged to have his work applied anywhere, to any state or other organization or

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<sup>65</sup> Article 7, 60 et al. of LCRR.

<sup>66</sup> Database is unique in copyright system in a way that it can be copyright-protected work (Article 7, 51 et al. of LCRR) and as the subject matter of a related right of the creator of database (Article 141, para 1 of LCRR).

<sup>67</sup> Section II of Part four (Articles 109-115 et al.) of LCRR.

<sup>68</sup> Section I of Part four (Articles 102-108 et al.) of LCRR.

<sup>69</sup> See, for instance, Article 23, para. 2, item a; Article 46, para 4, item d; Article 70 et al. of LCRR for the first, and resale right in Article 35, 39 et al. of LCRR for the second.

<sup>70</sup> Although, not necessarily. For instance, sound waves or light pulses may be substantial carrier because they are revealed in the substantial nature and can be perceived by other people but they are not a "thing" under the rules of the right in rem.

<sup>71</sup> Article 67 of LCWW.

<sup>72</sup> The right of ownership gives control to the right holder about the use of the thing, primarily the right to possession, use and disposal of such item, as well as the right to prohibit all third parties to act upon that thing in any of the specified ways.

<sup>73</sup> Article 68, para. 2 of LCRR.

<sup>74</sup> Article 68, para. 1 LCRR.

<sup>75</sup> Article 14 of LCRR.

institution in order to be copyright protected. Therefore, when a journalist creates an author's work, he is not obliged to take any actions to make that work copyright protected. Each author's work of a journalist is copyright protected automatically, thanks to the fact that it was created at all, and in terms of the legal basis, a journalist who created work of authorship acquires ownership over such work (originally).

Author's work does not have to be "completed" in order to be copyright protected<sup>76</sup>, it only must meet the copyright criteria regardless of the stage of "completion". Author's work does not have to be published or edited to be copyright protected<sup>77</sup>.

Journalist does not have to put sign © to his work to mark it copyright protected as used to be the case before, although placing this sign, first and last name and year of publication are desirable<sup>78</sup>. Journalist does not have to deposit<sup>79</sup> his work to the Institute for Intellectual Property in order to make it copyright-protected, however such procedure may facilitate proof of authorship in court or in other circumstances. Journalist does not have to label the copies of the work by his own name or in any other way to make the copies protected by copyright; however labeling copies of the work gives the journalist a certain advantage in proving his authorship<sup>80</sup>.

Once the work has been created, legal order gives the journalist legal authority over the use of this work – copyright. This legal authority is absolute, applied to everyone, and each person has to comply with the author's control over the use of his work. It is exclusive as well – each person who is not the author is prohibited from using the work unless he has permission from the author/legal successor of the author or unless he has a license in the explicit provisions of this Law<sup>81</sup>. Legal authority of the author is direct as well because the author himself directly decides whom to allow using his work and on what terms.

Regarding the journalistic work of authorship, journalist is the first and most extensive copyright holder and all other persons who wish to use that work must obtain permission from the journalist, and the journalist can transfer his copyright to the employer, the publisher, the commissioner and other persons by legal transaction, after which they will become copyright holders. Using the legal vocabulary, journalist originally acquires the copyright over the work that he or she has created, and all other persons are legal successors of the journalist and they obtain their copyrights delicately from the copyright of the journalist, within the limits in which these rights have been transferred or the license has been given.

With regards to understanding the content of copyright more easily and adapt the purpose of providing protection, the Legislator separates the powers of authors which make the legal authority of the author over the work, into three groups: exclusive property authorisations or economic rights, exclusive personal and legal authorization or authors' moral rights and other powers of the author.

The content of the author's rights is abstractly defined. This means that every possible form of use of the work makes the content of the rights of the author and is controlled by the author himself<sup>82</sup>, unless otherwise is expressly specified in the law. The author has single and unique<sup>83</sup> copyright authority over the specific work that he created. Within his unique copyright, the author has a specific authority or the right to control every possible manner, form or aspect of use of his copyright-protected work excluding those the Legislator explicitly exempted from the control of the author. Copyright content also means control over the forms of using copyright works that were not known in the period when the work was created but they will be invented or become possible during the copyright protection.

A user who wants to use the copyright work is obliged to have valid legal grounds for that<sup>84</sup>.

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<sup>76</sup> Article 5 of LCRR.

<sup>77</sup> The only exception is for collective management of copyright where the author's work must be published with regard to the collective organisation to exercise the rights jointly, which stems from the provisions of the Article 2, para 3 of the Collective Management of Copyright and Related Rights.

<sup>78</sup> Article 165 of LCRR about the details and benefits of putting the sign, and particularly Article 165, para 4 of LCRR about placing or not placing this sign does not affect the copyright protection of the work.

<sup>79</sup> Article 164 of LCRR about institute for deposit of copyright works and advantages, particularly Article 164, para 5 on the fact that deposit the author's work does not affect the existence of copyright and copyright protection of the work.

<sup>80</sup> Article 10 of LCRR.

<sup>81</sup> Article 20, para 2 of LCRR.

<sup>82</sup> Article 20, para 1 of LCRR.

<sup>83</sup> Article 15 of LCRR.

<sup>84</sup> Article 20, para 2 of LCRR.

The legal basis for the use of the copyright work can be explicit, formal and legally valid license or transfer of rights of the author/copyright holder, or a legal provision<sup>85</sup>. Copyright holder is entitled to special allowance<sup>86</sup> for any form of use of the work by a person who is not the holder of the rights. In other words, the author may define granting permission to use his copyright work by financial or other compensation. Financial compensation for the use of the copyright-protected work is presupposed<sup>87</sup>. For enhanced legal security and order, the Law states and specifically regulates only some possible and typical uses of copyright works, out of which we mention only some of the economic and individual rights which are the part of the content of a unique right of the author: the Right<sup>88</sup> of Reproduction<sup>89</sup> of copies of the copyright-protected work or the right of making physical "copies" or versions of the work (giving physical form to a copyright work that is an intangible asset by its nature) including storage of the content of the work in electronic form; the right<sup>90</sup> to distribute<sup>91</sup> the copies of the work<sup>92</sup>, or the right of first selling of the first copy of the work; the right<sup>93</sup> of leasing<sup>94</sup> the copies of the work, or the right of renting copies of the work for money<sup>95</sup>; the right<sup>96</sup> of informing the public about the content of the copyright work<sup>97</sup>, or making the content of the copyright work available to public in different ways; the right<sup>98</sup> of adaptation<sup>99</sup> the content of the copyright work, or the right of modifying the content of the work, including translation into another language; the right<sup>100</sup> of audio-visual adaptation of the work, or as it is popular to say, making films based on the copyright-protected works or introducing copyright works in films, etc. There are more unmentioned and unfinished forms of use of the copyright work which also make the content of the subjective copyright regardless of the fact that they are not mentioned.

A journalist who is the author controls the use of the work by communication to the public about the content of the work in any way. In Copyright Law<sup>101</sup>, the public represents a number of people who are not connected by family relations or other personal relationships. This definition is the legal standard and it is left to the courts to determine its meaning in each specific case, therefore the meaning of the word "public" will be different from case to case and from situation to situation.

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<sup>85</sup> Ibid. Legal permission to use the author's work represents substantial limits of the authors' rights in BiH. Primarily we have two forms of substantial limits of copyright: legal permission (Article 41 of LCRR) and free use of the copyright work (Articles 42-54 of LCRR) et al.

<sup>86</sup> Unless otherwise is explicitly specified by law (substantial limits of the copyright by free use of the copyright work) Article 20, para 3 of LCRR.

<sup>87</sup> Article 81 of LCRR.

<sup>88</sup> Article 21 of LCRR.

<sup>89</sup> We have previously noted that a work of authorship is an intangible asset in the formal legal sense and as such it is not expressed in the substantive nature (it is not a thing). However, it must be somehow fixed to something that has a substantive dimension - the substantive carrier for the purpose of someone other than the author could use the work. Therefore, reproduction represents the use of the copyright work in a way that the content of the work is fixed to a substantive carrier to obtain a copy of the work. In other words, it is copying or duplication, making copies of the copyright work that carry the content of the work, directly or indirectly, temporarily or permanently, in part or in whole, by any means and in any manner, as regulated in the text of the relevant article of the Law. This is such important form of use of the copyright-protected work that in the precedent legal systems (such as the USA) the entire branch of law is named after this authorization - "copyright".

<sup>90</sup> Article 22 of LCRR.

<sup>91</sup> Distribution is such form of use of the copyright work where the copies of the work are put up for sale or presented in other legally valid means of transmission of economic rights, including import of the copies in the country (and export in some cases).

<sup>92</sup> The right to distribute copies of the work is exhausted and stops after the first legally valid transfer of ownership rights over the single copy of the work authorized by the author. That means that someone who sales a copy of the work for the first time must obtain legally valid permission from the author. Someone who bought the copy of the work may resell that copy later without the permission of the author. Exhaustion of rights is only valid for the territory of Bosnia and Herzegovina, which means that if someone wants to resell copy of the work outside the territory of Bosnia and Herzegovina must obtain a valid permission from the author or must be entitled to such action by the law. Article No. 71 of LCRR.

<sup>93</sup> Article 23 of LCRR.

<sup>94</sup> Leasing is the kind of use of copies of a copyright work for the purpose of achieving direct or indirect proceeds or economic benefits in a way that specific copy of the work is given to another person for the use and possession, for a limited period of time and for a fee.

<sup>95</sup> For instance, something that video rental shops used to do and it is less common now.

<sup>96</sup> Article 24 of LCRR.

<sup>97</sup> Like a Russian Matrioshka doll, this authorization consists of series of separate individual powers referring to the forms of use of the author's work, and due to its complexity, it will be discussed separately afterwards. This division is primarily made by the Legislator for the purpose of the transparency and clarity.

<sup>98</sup> Article 33 of LCRR.

<sup>99</sup> Adaptation is such kind of use of the copyright work where the content of the work is modified by translation or converted and treated in any way concerning dramatic or musical content. If the action that is necessary to change the content of the work is of such nature which is the same as the original work, a result will be potentially derivative copyright work which as such may be independently protected by copyright. See Article 6 of LCRR.

<sup>100</sup> Article 110 of LCRR.

<sup>101</sup> Article 2, para 2 of LCRR.

The author controls every possible aspect of communication to the public about the content of the work excluding the one that the Legislator explicitly placed out of the control of the author. However, even in this case the Law appoints and specifically regulates the most typical ways of use of the author's work in this manner for better arrangement, and these are: the right<sup>102</sup> of public performance, which consists of the following authorisations: the right of public recitation<sup>103</sup>, the right of public musical performance and the right of public stage performance; the right<sup>104</sup> of public broadcasting; the right<sup>105</sup> of public presentation or release of previously "taken" audio-visual or "film" and other exemplary copyright works to the public through technical devices; the right<sup>106</sup> of public communication by phonograms and ideograms, or release of the recorded recitation to the public (et al.); the right<sup>107</sup> of broadcasting and cable transmission<sup>108</sup> or the right<sup>109</sup> of broadcasting and cable retransmission<sup>110</sup>; the right<sup>111</sup> of secondary use of the work by broadcast transmission, or the right to play copyright work via radio, television or other applicable way in cafes and other public facilities, and the right<sup>112</sup> of making the content of the work available to the public<sup>113</sup> or right to post online or providing video-on-demand, audio-on-demand or other similar services.

Once when the work has been created, a special, deeply emotional, spiritual and personal connection between the author and his work is formed<sup>114</sup>. The Legislator protects this connection of the author and his work through the specific powers called moral rights of an author which are legally regulated differently than the other two types of copyright authorizations. In this case as well, the Law defines some of the usual modes of use of this kind of work, although this list is not exhaustive or exclusive: the right<sup>115</sup> of publishing<sup>116</sup> of copyright-protected work<sup>117</sup>; the right<sup>118</sup> to claim authorship, which consists of: the rights of the author to be recognized as the author of that work and that no one else can be declared the author of that work<sup>119</sup>; right on the labelling the copies of the work with the sign indicating the identity of the author<sup>120</sup> and the right of not labelling<sup>121</sup> the copies of the work indicating

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<sup>102</sup> Article 25 of LCRR.

<sup>103</sup> Form of use of the work in the field of literature or science through reading or reciting the content of the work to the public live. See Article 25, item a, of LCRR. Reading the written works by the "newsreader" is the example of that form of use of copyright work.

<sup>104</sup> Article 26 of LCRR.

<sup>105</sup> Article 27 of LCRR.

<sup>106</sup> Article 28 of LCRR.

<sup>107</sup> Article 29 of LCRR.

<sup>108</sup> It is a complex form of use of the copyright work which includes wireless broadcasting transmission of the content of the work via the radio or television broadcast signal intended for public reception (metaphorically speaking – go on the air), use of the content of the work by cable transfer through "wires" by radio or television program signal intended for public reception (metaphorically speaking - what "cable TV" does), and use of the copyright work by broadcasting the content of the work by satellite via radio or television program signals under the control and responsibility of the broadcasting organization, where the program signals are intended for public reception and are sent in an uninterrupted communication chain to the satellite and back to earth. It is about the effective use of the work in a way that the work is sent in the form of emissions or otherwise or transmitted in the electromagnetic radio spectrum or through any technological mechanisms that use conduction in the form of "wire", which are intended for public reception, by the persons who have technological devices needed to receive the signal. Legal provisions of LCRR are technology-neutral by their nature, which means that they do not refer to any specific technology but to all possible types of currently known technologies or technologies that will become known in future and which can be classified in broad terms used by the Legislator. This form of use of copyright work is of particular interest to the journalists who work under someone's direction, or employed by the broadcasting organizations (radio and TV media outlets).

<sup>109</sup> Article 30 of LCRR.

<sup>110</sup> A form of use of the copyright work when an organization takes the signal and immediately and without any changes communicates the public the whole content of the author's work which is being broadcast. In other words, this is, for example, what cable broadcasting organizations do when taking over a signal from CNN, for example, and then forward it to the users of their services without any modifications.

<sup>111</sup> Article 31 of LCRR.

<sup>112</sup> Article 32 of LCRR.

<sup>113</sup> Concisely, this is a form of use of the work by sharing its content on the Internet, or use of the copyright work in a way that the content of the work is communicated to the public either via wire or wireless transmission, in a manner that the user can access the copy of the work from a place and at a time that he chooses. The Legislator expressly cites the Internet, video-on-demand and audio-on-demand as examples; however this list is not exhaustive or comprehensive.

<sup>114</sup> Some authors, as a joke or seriously, consider and call their works their "children". This personal connection is the reason why criticism of the works can have a profound psychological effect on the author. Consider how you feel when someone criticizes something you wrote.

<sup>115</sup> Article 17 of LCRR.

<sup>116</sup> Publishing, as copyright relevant action to copyright work, is defined in Article 2, para 1 of LCRR as any action resulting the fact that the content of the work becomes available to the public for the first time and with the permission of an authorized person.

<sup>117</sup> Only the author is entitled to decide whether the work is ready for publication, when it will be published and in what way and form it will be published.

<sup>118</sup> Article 18 of LCRR.

<sup>119</sup> This authorization was traditionally called the right to paternity and it consists of the powers of the author to be recognized and indicated as the creator of the work and creates a prohibition to any person to emphasize authorship over the work that that person did not create. This provision is also a component of legal prohibition of plagiarism as a concept broader than the concept of infringement of the subjective copyright.

<sup>120</sup> Name and last name, pseudonym, specific sign (for instance, a symbol of Prince, a singer)

the identity of the author; and the right of<sup>122</sup> compliance with the work<sup>123</sup>, or the right to protect the integrity of the work related to modifying and using the work which, as such, adversely affect the honour and reputation of the author.

"The other powers of the author," as they Legislator explicitly call them<sup>124</sup>, are of a relative (inter parts) and not absolute nature, and holders of obligations are precisely certain persons and refer only to specific types of works or the characteristics of copies of the work. The other powers of the author are: the right<sup>125</sup> to compensation for leasing<sup>126</sup>; resale right<sup>127</sup>; the right<sup>128</sup> to compensation for private and other internal use<sup>129</sup>; the right<sup>130</sup> of access to the unique copy of the copyright work, and the right<sup>131</sup> to sell a unique copy of a copyright work.

The right<sup>132</sup> of withdrawal<sup>133</sup> is the exclusive authority of the author to withdraw the license or terminate the contract which allows the use of his work and eventually transfer of economic rights to another person, with a unilateral statement, provided that the author has serious reasons for that and in this case the author is obliged to compensate the harm caused to the other person. Use of this power of the author is legally regulated in detail<sup>134</sup> and it is the only authorisation that lasts only for the life of the author and cannot be transferred to another person in any way.

### **3.3 The exercise, collective management, granting permission to the use of the copyright work, distribution of the copyright of journalists, copyright inheritance and consequences of creating the work for the employer or commissioner**

Each author's work has an inherent, spiritual, aesthetic, cultural, societal and intellectual value.

However, each author's work and copies of the work in various forms also have irrefutable material or financial value. This is the reason why people are willing to buy newspapers, books, music CDs, cinema tickets, etc.

Copyright work has certain value in the ways that it can be used<sup>135</sup>, therefore the copyright rules govern the author's control over the use of his work. Control that the legal system gives to the author referring his work allows the author valorisation and realization of the value of his work. The vast majority of users in most cases cannot use copyright-protected work in a legally valid way unless they obtain explicit and legally valid permission from the author. The author may condition the granting of this permit by payment of allowances<sup>136</sup>, and that is his right according to the provisions of LCRR<sup>137</sup>.

The author realizes his copyright by giving permits to users to use his copyright-protected work, transfers specific transferable authorizations or individual copyright to other persons and obtains fees according to legal matters, takes compensation over the use, controls the use of his work, in the case of infringement of copyright requires appropriate copyright protection in court or action by other

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<sup>121</sup> Marked by "anonymous", or not marked.

<sup>122</sup> Article 19 of LCRR.

<sup>123</sup> The author can oppose to any form of change of the content of his work, the use of the copyright work, adaptation and subsequent use of the work if such modification or use insult the honour and reputation of the author. The honour and reputation of the author is a legal standard. The matter of fact is whether a modification or use insults the honour and reputation of the author. Modification and use, and modification and use which do not offend the honour and reputation of the author do not fall under this authorization of the author.

<sup>124</sup> Chapter D, Section 3, Part one of LCRR.

<sup>125</sup> Article 34 of LCRR.

<sup>126</sup> Regarding the use of copies of the work by public libraries or other similar facilities that perform that type of activity where the author is entitled to certain compensation.

<sup>127</sup> Article 35 of LCRR.

<sup>128</sup> Articles 36-38 of LCRR.

<sup>129</sup> The right of the author that can only be collectively exercised, where the author has the right to the part of financial compensation from the sale or importation of certain devices that can enable reproduction by photocopying, recording sounds, images or text, for private or other internal use whether it is allowed or not. This is an extremely complicated right and there is a lot of controversy over it.

<sup>130</sup> Article 39, para 1 and 4 of LCRR.

<sup>131</sup> Article 39, para 2, 3 and 4 of LCRR.

<sup>132</sup> Article 84 of LCRR.

<sup>133</sup> It is "sui generis" or the inherent right of the author. This is the only right that terminates with the death of the author and it is not transferrable by legal affairs *mortis causa* (as it is the case with the moral rights of copyright) or *inter vivos* (as is the case with intellectual property rights). The author cannot waive this right.

<sup>134</sup> Provisions of the Article 84, para 2-4 and para 6 of LCRR.

<sup>135</sup> We buy books to read them, CDs to play music, cinema tickets to watch audio-visual author's work ... but sometimes we also want to communicate the contents of the work to the public by reciting or to adapt or include certain author's work into our own work, as we do with photographs or illustrations, while in other cases we need the authors' works to help us in the business, like playing music in the shop or use pictures for office decoration as well as for countless other reasons.

<sup>136</sup> Of course, the author can give the permission without any payments, but that is a decision that only the author can make.

<sup>137</sup> Previously mentioned, Article 20, para 3 of LCRR, and Article 81 of LCRR.

competent state authorities and in other appropriate ways. Author may effectuate copyright personally<sup>138</sup>, through legal entities<sup>139</sup> expressly authorized by him, or collectively<sup>140</sup>.

Collective management of copyright is "exercise of copyright for more works of many authors together through legal entities specialized in such activity only"<sup>141</sup>, which meet provisions of the Law on Collective Management of Copyright and Related Rights (Official Gazette of BiH, No. 63/10) and operate under permission and supervision of the Institute for Intellectual Property in BiH<sup>142</sup>. The management of copyright for some types of works, such as music, is extremely difficult or almost impossible to exercise individually because there is an extremely large number of users and possible ways of use which an individual might control only with great cost and difficulties or might not control at all. For this reason, there is a system made to specialized organizations which are only engaged in the exercise of copyrights of all or the vast majority of authors concerning one type of works, jointly<sup>143</sup>, thus achieving efficiency, specialization and enabling individual authors to devote to community work of creating new works of authorship. Some of the copyrights can only be exercised collectively<sup>144</sup>. At the moment of writing this report, the Institute has issued permits to five collective organizations<sup>145</sup>, and four of them are not relevant to journalists. Association for Realization and Protection of Reproduction Rights "ORIGINAL" may be of indirect importance for journalists. This collective management organisation exercises the rights of authors to remuneration for private and other internal use, primarily written works, by photocopying. This right is exercised collectively, which means that this organization, by law, manages copyrights of journalists and the media that published<sup>146</sup> their works anywhere in BiH. There is still no collective organization in BiH<sup>147</sup>, that will obtain compensation for legal license for clipping, or reproduction of individual articles published in periodicals or press reviews or compensation for unknown authors<sup>148</sup>. Such collective organization would be of direct interest for journalists. The Council for Copyright has not been appointed in BiH yet<sup>149</sup>. All over the world, there are collective organizations for photos and other works of authorship that can be journalistic copyright works<sup>150</sup>. It would be useful to analyse the suitability of establishing collective organizations in BiH which would manage some of copyright powers of journalists, in appropriate cases.

The author may authorize another person to use his work by giving permission or transferring individual copyright powers by legal transaction. Licensing is a form of legal transaction between a journalist and a person who wants to use the copyright work of a journalist. Formally speaking, a permission is an unnamed,<sup>151</sup> consensual<sup>152</sup>, unilateral<sup>153</sup> or bilateral<sup>154</sup>, unilaterally<sup>155</sup> or bilaterally<sup>156</sup>

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<sup>138</sup> Article 147, para 1 of LCRR.

<sup>139</sup> Article 147, para 1, and Article 148 of LCRR.

<sup>140</sup> Article 147, para 2 and 3 of LCRR.

<sup>141</sup> Part of the Article 2, para 1 of Law on Collectiva Management of Copyright and Related Rights.

<sup>142</sup> More at: [ipr.gov.ba](http://ipr.gov.ba)

<sup>143</sup> Article 6, para 3 of Law on Collectiva Management of Copyright and Related Rights.

<sup>144</sup> Article 4 of Law on Collectiva Management of Copyright and Related Rights.

<sup>145</sup> Those are: The Association of Composers - Music Makers (AMUS) for collective management rights of authors of musical works, The Association of Performers and Musicians (AIS) for collective management rights of performers of musical works (related right), The Association for the Protection of Producers of Phonograms (FONOGRAM) for collective management rights of producers of phonograms (related right), Association of Film Industry (UFI) for collective management of rights to compensation for cable retransmission of Audio-visual works (mandatory collective management), and Association for Realization and Protection of Reproduction Rights (ORIGINAL) for collective management rights for private and other internal use (mandatory collective management of other rights of authors from Article 36-38 of LCRR).

<sup>146</sup> The author's work must be published for the collective management rights, Article 2, para 3 of Law on Collectiva Management of Copyright and Related Rights.

<sup>147</sup> Article 41, particularly para 1, item b of LCRR.

<sup>148</sup> Article 11, para of LCRR.

<sup>149</sup> Chapter I of the Part five of Law on Collective Management of Copyright and Related Rights.

<sup>150</sup> For instance, see the list at: <https://cb-cda.gc.ca/societies-societes/index-e.html> (last accessed in November 2019)

<sup>151</sup> Because LCRR nowhere specifically and formally appoints and separately regulates licence as a legal transaction or agreement.

<sup>152</sup> This means that as soon as the parties, the author/right holder and a journalist in our case, make an arrangement, the legal transaction becomes effective and produces legal effects.

<sup>153</sup> If the author/journalist voluntarily gives permission to unlimited number of persons who are qualified by the permission to a certain form of use of the work, such as, creative commons license.

<sup>154</sup> According to the regulations, the license will be bilateral legal transaction - a treaty, concluded between certain people - authors/ right holders on the one hand, and users, or in our case the journalists, on the other hand.

<sup>155</sup> In cases where the author/right holder gives the license for free, without requesting remuneration or favour of any kind.

<sup>156</sup> In cases where the author/right holder gives the permission requesting financial or another type of compensation or a favour of any kind.

binding, *inter vivo*<sup>157</sup>, commutative<sup>158</sup>, causal<sup>159</sup>, but also abstract<sup>160</sup>, lucrative<sup>161</sup> and onerous<sup>162</sup>, formal legal work.

Mandatory elements of the permission are: a copyright work to which the permission refers to, a person to whom the permission is entitled to, the way of use of the copyright work allowed by the permission, financial or other compensation, and form. To be legally valid and produce legal effect, the permission that the author gives to the user of the work must be in written form<sup>163</sup> with the specific exception of the publishing contract on the publication of articles, drawings and other copyright works in daily newspapers and periodicals where written form does not have to be used<sup>164</sup>, and with the exception of fulfilling a substantial obligation<sup>165</sup>.

Journalist authorizes another person to use his work in a specific way non-exclusively<sup>166</sup>, and he agrees not to use measures of copyright protection against the user of his work if the user uses the work in a specific way.

Permission must be given for each particular form of use of the author's work separately<sup>167</sup>.

A person who obtains permission, on the other hand, is obliged to use a copyright work in a specific way and, unless otherwise agreed, pay certain amount of money to the author/journalist for the use of his work.

With regard to the fee of a journalist for the permission that he obtains from the author/right holder, the author/right holder shall be entitled to special compensation for any use of the work. The journalist may waive that right on his own free will.

A journalist can restrict the other person temporally, spatially and by content to the manner of use of the particular work on the basis of the permission. If the journalist does not do so explicitly, the Legislator appointed analogously in Article 75 of LCRR, that permission has been given for the territory of Bosnia and Herzegovina, it is valid only for the period of time that usually takes for the use of specific copyright work<sup>168</sup>, and it is considered that only the specific powers are transferred to use and specifically to the extent that is needed to achieve the objective of giving permission<sup>169</sup>. If the purpose of permission is not defined or definable, it can become a question of fact and will be determined by the court.

We suggest that the journalist gives a narrower, more specific, more limited and short-term permit, which authorizes another person to use the work of the journalist only and exclusively in a way which is necessary to make this person do only what the author journalist agreed. A journalist should strive to retain as many rights for himself as possible, aim to achieve the highest possible but appropriate compensation for the use of his copyright work, trying to limit authorization of the users of his work as much as possible.

A journalist can transfer individual economic powers or rights included in copyright and other rights<sup>170</sup> to another person by contract or other legal transaction. The author cannot transfer personal legal powers or moral rights by legal transactions *inter vivo*<sup>171</sup>. The author cannot transfer copyright entirely

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<sup>157</sup> Unlike *mortis causa* legal transactions which are primarily related to the disposal of property after the death of the subject of law.

<sup>158</sup> This means that the elements of legal work including the expected results or prostrations are known in advance and there is no element of uncertainty or aleatory as it is called in the law of obligations.

<sup>159</sup> This means that cause and purpose that customers want to achieve by giving the permission are clearly seen in the permission. Most permission expressly states the purpose in order to ensure appropriate limitation of powers given to the user.

<sup>160</sup> The permission will be legally valid even when the purpose or the cause which customers want to achieve by giving or receiving permission for the use of particular work cannot be clearly seen.

<sup>161</sup> In accordance with the provision of the Article 20, Paragraph 3, and also Article 81 of LCRR, the author has right to the financial or other compensation for any use of his copyright work, and the legal presumption that the permission is given for a fee is rebuttable, unless otherwise expressly agreed or cannot be proved. Even when customers do not say anything about it in the permission, it is assumed that the permission was given for a fee.

<sup>162</sup> The author/right holder is exclusively the person who may decide to give permission for the use of his copyright work for free, but that must be expressly stated in the permission.

<sup>163</sup> Article 80, para 1 of LCRR.

<sup>164</sup> Article 88 of LCRR.

<sup>165</sup> Article 80, para 2 of LCRR.

<sup>166</sup> In the case of exclusive authority this would correspond closer to the transfer of copyright. Transfer of rights involves giving permission as well; however it is legally different from the permission, primarily referring to legal consequences.

<sup>167</sup> Article 76, particularly Paragraph 1 of LCRR, but also *nota bene* provisions of the Article 77, regarding assumptions about the joint transfer

<sup>168</sup> Article 75, para 1 of LCRR.

<sup>169</sup> Article 75, para 2 of LCRR.

<sup>170</sup> Article 64, para 3 of LCRR.

<sup>171</sup> For example, agreement. These rights can be inherited. See Article 64, Paragraph 2, and others.

or his status of the author<sup>172</sup>, which is understandable, considering that the author is personally and spiritually connected with his work.

The person to whom the author transferred transferable individual copyrights has the same rights as the author, to the extent in which these rights were transferred to that person, including the right to seek judicial protection in case of infringement of copyright<sup>173</sup>.

The journalist may transfer individual economic rights in whole or in part and exclusively or non-exclusively<sup>174</sup>. When the rights are transferred exclusively, the journalist will no longer be allowed to use his work without the permission of the person to whom he transferred the rights and will not be allowed to transfer his rights to another person. The non-exclusive transfer is governed dispositive unless the parties agreed otherwise.

As the case is with the permission, a journalist can limit<sup>175</sup> the transfer of the copyright by content<sup>176</sup>, spatially<sup>177</sup> and temporally<sup>178</sup>.

If a journalist does not do so, the Legislator dispositively limits the transfer only for BiH, only for the period of time typical for the transfer of this type, and only for those specific powers and to the extent necessary to achieve the goal of the transfer<sup>179</sup>.

The rights are transferred individually and separately each, unless otherwise agreed<sup>180</sup>.

The Legislator additionally regulates the issue of copyright remuneration for permission and transfer of copyrights in the Article 81 of LCRR that reads: "(1) It is believed that the transfer<sup>181</sup> of copyright or other rights of the author is always done for remuneration, unless the contrary is proved.

(2) When the level of remuneration has not been specified, it is defined by the usual fees for a particular type of work, depending on the scope and duration of use of the work as well as other circumstances.

(3) When the user generates revenues from the use of the work which is obviously disproportionate with agreed or specified remuneration, the author has the right to request modification of the agreement to determine more equitable share in the income or re-define the level of remuneration<sup>182</sup>.

(4) The author may not waive the right referred to in Paragraph (3) of this Article.

When the author transferred the right to another person but that person does not exercise that right, i.e. does not use that right to which he was authorized by the transmission of the right or by the permission, the author can terminate the contract or withdraw the permission by unilateral statement of will, if another person is responsible for non-fulfilment. The author is obliged to provide additional time for the exercise.

The author is considered the weaker party in the legal transaction of transfer of copyright, and all disputed transfer provisions are always interpreted in favour of the author (in dubious pro auctore). The author is protected by the right of repentance and other measures as well.

The person to whom individual copyright was transferred to, cannot transfer that right to another person unless specifically authorized to do so<sup>183</sup>.

In order to protect authors from exploitative contracting, the Legislator explicitly regulates that legal effect of the provisions will not be taken when the author transfers: complete copyright work, moral rights of the author, economic/property rights on the future works and economic/property rights to still unknown forms of use of the work<sup>184</sup>.

LCRR appoints and individually regulates four types of special agreements created for transfer of the copyright: publishing contract<sup>185</sup>, performances treaty<sup>186</sup>, commissioned work agreement<sup>187</sup> and film

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<sup>172</sup> Article 64, para 1 of LCRR.

<sup>173</sup> Article 66 of LCRR.

<sup>174</sup> Article 74 of LCRR.

<sup>175</sup> Article 73 of LCRR.

<sup>176</sup> With regard to authority, or right to control specific ways of use of the author's work which corresponds to the content of that specific authorization from the author who transferred this right.

<sup>177</sup> Meaning, in which state or in which part of the territory of the country the person will be the holder of the authorization to use specific work.

<sup>178</sup> Meaning, for what period of time the person will be authorized to use specific work.

<sup>179</sup> Article 75 of LCRR.

<sup>180</sup> Article 76 of LCRR.

<sup>181</sup> This is equally and analogously applied to the permission as well.

<sup>182</sup> This is known as the "bestseller" clause.

<sup>183</sup> Article 78 of LCRR.

<sup>184</sup> Unknown forms of use of the author's work automatically make the copyright content, due to the abstract nature of defining the content, found in the provision of the Article 20, Paragraph 1, 2 i 3 of LCRR.

<sup>185</sup> Governed by Section A of Chapter 4 of the Part three of LCRR, Articles 85-94 of LCRR.

<sup>186</sup> Governed by Section B of Chapter 4 of the Part three of LCRR, Articles 95-97 of LCRR.

<sup>187</sup> Governed by Section C of Chapter 4 of the Part three of LCRR, Articles 98-99 of LCRR.

production agreement<sup>188</sup>. The Legislator did this in order to facilitate the legal sales and introduce a greater deal of security in legal transactions. These are not all possible types of copyright agreements or legal transactions but only those that the Legislator decided to regulate separately because they are the most typical and most used or from other reasons. The author and the user can arrange any type of agreement and add any element of copyright, unless otherwise expressly regulated by relevant legal regulation. Concerning permissions and copyright circulation which are not expressly governed by LCRR, relevant *lex generalis* rules of contract law (Law of Obligations etc.) are applied. Copyright as a whole is inheritable<sup>189</sup>. After the death of the author, all copyright powers except the right of repentance passes to the heirs of the author by the same rules that other elements of property of the author are inherited. Copyright is not part of the matrimonial asset; only substantial benefit from the copyright is part of the joint property of spouses.<sup>190</sup> Copyright cannot be subject to execution or purpose, but only proceeds from the use of the copyright work<sup>191</sup>. The author cannot waive his copyright, which means that copyright waive does not make legal effects. In other words, the author will have copyright even if he does not want to, if he is not aware of it, or never realizes his copyright. Copyright is not time-barred if it is not realized, and copyright protection expires or terminates 70 years after the death of the author.

If a journalist, performing his work duties (i.e. as part of his "job"), or on the orders and instructions of his employer, created a copyright work, and otherwise is not expressly provided by the employment contract between the journalists and the employer or other relevant act, the author's rights and powers will be accordingly and exclusively<sup>192</sup> transferred to the employer as soon as the work of authorship is created<sup>193</sup>. This transfer to the employer shall last for five years. After that period, rights are returned to the journalist, unless the employer requests on another occasion exclusive transfer without limitations before the deadline, and pay the journalist for that. Agreement between the journalists and the employer can be arranged differently, to the benefit of journalist, or in favour of the employer. If a journalist creates a copyright work using the resources of his employer in his spare time, the same rules will be applied. If a journalist creates the same kind of work as "at work" but in his own free time, he must be able to prove that he created that work independently and in his free time without using the resources of the employer, otherwise the above mentioned rules will be applied. It would be practical to develop a model of relevant copyright provisions on the employment contract that would adequately protect the rights of journalists in a proper manner.

### **3.4 The concept of infringement and copyright protection of journalists**

Any use of the work protected by copyright law without valid legal permission is copyright infringement<sup>194</sup>.

Infringement of copyright causes various undesirable consequences, including substantial and non-substantial damage to the author, negative effects on the market or the economic trends of the country, on development of culture and creativity, and generally on society as a whole<sup>195</sup>.

Infringement of copyright is a criminal action, and the state has an obligation to prevent infringement of copyright by preventive actions, and if there is infringement of copyright, to restitute the author/right holder, or to bring him to the position he was in prior to infringement, and to sanction and prevent a person who has infringed the copyright to proceed with the infringement of copyright to the author/right holder in the future, especially to other authors/rights holders in general, as far as it is reasonably possible. Such action of the state is what is meant by the term of copyright protection.

Unauthorized use of a copyright work may potentially be: civil tort<sup>196</sup>, misdemeanour<sup>197</sup>, offence<sup>198</sup>, as well as a combination of the three<sup>199</sup>. The existence or classification of actions concerning

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<sup>188</sup> Governed particularly by Article 113 of LCRR.

<sup>189</sup> Article 63 of LCRR.

<sup>190</sup> Article 72 of LCRR.

<sup>191</sup> Article 65 of LCRR.

<sup>192</sup> This means that, on the basis of the copyright, the right of the use of copyright work and control of the use of the work belong to the employer and not to a journalist.

<sup>193</sup> Article 100 of LCRR.

<sup>194</sup> It does not matter whether the work is used with no intention of acquiring substantial benefit, whether it is used privately or publicly, whether it is for a good cause, for the benefit of society or even for the benefit of the author.

<sup>195</sup> Infringement of copyright functions contrary to the purpose of providing copyright protection, which is primarily stimulation of creative work and enrichment of the literary, artistic, scientific and creative work of society in general.

<sup>196</sup> Chapter 2 of the Part six of LCRR.

infringement of copyright, restitution and sanctioning of such actions will only be based on a legally binding substantive decision of the competent court<sup>200</sup>.

The primary state authorities responsible for implementation of copyright protection in BiH are: entity courts; the Court of Bosnia and Herzegovina; entity Prosecutions; The Prosecutor's Office of Bosnia and Herzegovina; interior ministries of the entities; other bodies that support and complement the work of competent authorities such as the Border Police; Market Inspectorates of the entities; entity ministries responsible for the field of flow of goods and services or market; State Investigation and Protection Agency; Indirect Taxation Authority as the customs authority; and Institute for Intellectual Property, and others.

<b>Types of Infringement:</b>	Civil tort
<b>Initiation of proceeding:</b>	The author/right holder
<b>Type of proceeding:</b>	Civil procedure
<b>Primary legal sources:</b>	<b>Substantive legal sources:</b> Law on Copyright and Related Rights, Law on Collective Management of Copyright and Related Rights; other procedural sources: Law on Copyright and Related Rights, Civil Procedure Act, Code of Civil Procedure and others
<b>State agencies that implement protection:</b>	Court, Municipal Court of general jurisdiction in the FBiH, District Court in RS, and Basic Court of Brčko District
<b>Type of sanctions:</b>	Financial penalty, the court may order other types of action and a failure to comply with a court order might be considered an offense or misdemeanour
<b>Focus on the protection:</b>	Interest of the author/right holder

The author's copyright is, by its nature, primarily private<sup>201</sup> right. This means that in the case when the infringement of copyright is defined as a tort and has no characteristics of an offense or crime, the state by itself or ex officio, will not initiate protection procedure, however it will allow the author/right holder to do so. In this case, the state will provide protection to the author. In the case of infringement of copyright, it exclusively depends on the author/right holder to decide if and when, to what extent and in which type of official request will seek protection of his jeopardised or infringed rights<sup>202</sup>. Therefore, the decision to seek protection and participation in the process depends on the author, not on the state. The author/right holder seeks protection of his jeopardised or infringed<sup>203</sup> copyright by filing a lawsuit or through litigation in civil procedure. In official request, the author/right holder may seek compensation or other measures of copyright protection from the one who infringed the copyright. The harm inflicted on the author by infringement can be real harm, impairment of value of assets (*damnum emergens*), and in the context of copyright law, can be and often is, a lost profit (*lucrum cessans*)<sup>204</sup>. The harm inflicted on the author by infringement of a copyright work may be causing mental anguish as well, and it is related to the violation of the personal connection between the author and his work. If the court makes a decision on the substance of the copyright infringement as a tort that caused substantial damage, the court shall order the person who infringed the copyright to compensate for the damage, and at the same time will apply general rules governing indemnification and liability rules for damage *lex generalis* sources of contract law<sup>205</sup> in FBiH<sup>206</sup> and in RS<sup>207</sup> (Law of Obligations).

The court may order paying the triple amount of damage when the infringement is committed intentionally or by gross negligence - this is called penalty<sup>208</sup>, but this is rarely used in BiH although it

<sup>197</sup> Article 170 of ZAISP.

<sup>198</sup> Article 242 - 246 of the Criminal Law of BiH ("Official Gazette of Bosnia and Herzegovina", No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15).

<sup>199</sup> Whether the infringement of copyright will be a tort, misdemeanour or offence, and to what extent will it depend on the specific circumstances of the case.

<sup>200</sup> Therefore, it is always the court that finally may or must take a decision concerning the infringement of copyright.

<sup>201</sup> This is a technical term of jurisprudence and this word has the same meaning as in the popular language.

<sup>202</sup> In accordance with the principle of optionality and adversarial principles of civil procedural law.

<sup>203</sup> Article 150, para 2 of LCRR.

<sup>204</sup> For instance, when someone makes the content of the written copyright work available to public online illegally, the author will lose profits that he could have got, for example, by advertising that content to the customers who would have visited his web page to consume the content of his work.

<sup>205</sup> Article 157, para 1 of LCRR.

<sup>206</sup> Law on Obligation Relations of FBiH ("Official Gazette of SFRJ", Nos. 29/1978, 39/1985, 45/1989 - decision of Constitutional Court of Yugoslavia and 57/1989, ("Official Gazette of RBiH", Nos. 2/1992, 13/1993 and 13/1994 and "Official Gazette of FBiH", No. 29/2003 and 42/2011).

<sup>207</sup> Law on Obligation Relations of RS ("Official Gazette of SFRJ," Nos. 29/1978, 39/1985, 45/1989 - and decision of Constitutional Court of Yugoslavia and 57/89, and "Official Gazette of RS, Nos. 17/1993, 3/1996, 37/2001 – State Law, 39/2003 and 74/2004).

<sup>208</sup> Article 158 of LCRR.

is expressly provided. If the court decides on the substance that the infringement of rights caused the author<sup>209</sup> suffers mental anguish, the court will order compensation for non-substantial damage<sup>210</sup>.

In the claim, in addition to compensation for damage, the author/right holder may request the court to<sup>211</sup>: establish the alleged infringement<sup>212</sup>; prohibit committing further infringements<sup>213</sup>; <sup>214</sup> order the conditions resulting the infringement of copyright to be removed; withdraw copies of copyright work that offend the copyright from the economic flows, thereby taking into account the interests of the third conscientious entities; completely remove copies of copyright work and other infringed objects or objects resulting from the infringement of copyright from the economic flows; eliminate the objects of infringement; eliminate everything that was exclusive or predominantly used to commit infringement<sup>215</sup> and belongs to the one that committed infringement; give the copies of the copyright work and other objects of infringement to the author/right holder, while the author/right holder will pay the owner of these items (including the infringer of rights) only the actual costs which the person had for the formulation of these items, and to publish the judgment in the media or in any other appropriate manner.

The competent authorities will be the trial entity courts, specifically business law departments of municipal courts of general jurisdiction in the FBiH<sup>216</sup>, district commercial courts in RS<sup>217</sup> and the Basic Court of Brčko District<sup>218</sup>. According to the regulations, in the first instance, the trial will be taken by a single judge, and the quality of this type of copyright protection will depend on his knowledge and skills in the field of copyright. For any issues that are not *lex specialis* specific rules provided by LCRR, legal norms governing civil procedure are applied by the principle of *lex generalis*.

According to some estimates, the rate of copyright infringement concerning computer programmes in BiH is 60%<sup>219</sup>, and the rate concerning copyright musical works is up to 90%<sup>220</sup>. These estimations are not scientifically justified but the product of subjective speculation. We have no precise data on the rate of copyright infringement to journalists. The fact is that the authors' works of journalists are taken and made available to the public without permission, without indication of the author or source, especially on online portals, and it seems as if this is a standard practice. Such action is infringement of copyright. If journalists want to suppress such activities, they must actively work on protection of their rights. At the beginning of this century, in the Republic of Croatia, this issue was observed and they carried out a strategic plan to raise as many lawsuits against copyright infringers as possible<sup>221</sup>. This is expensive and time-consuming activity, however it resulted much higher efficiency of court protection regarding copyright infringement for all authors in the Republic of Croatia. If journalists use the courts more, the quality, cost and certainty of the outcome of court proceedings will be better for them. Comparing the situation in Croatia and Serbia, we can notice that the level of judicial protection is much worse in BiH, partly because copyright protection is entrusted to specialized courts (but not for copyright but for commercial legal cases) by civil mechanisms in the neighbouring states, which is not the case in the FBiH but it is the case in RS; but also due to a greater experience of the

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<sup>209</sup> Primarily for the author; we believe that this restriction is not appropriate for other holders of copyright, including universal successors of the author.

<sup>210</sup> Article 159 of LCRR.

<sup>211</sup> Article 156, para 1 of LCRR.

<sup>212</sup> This is primarily about declaratory decisions of the court with all the procedural implications of that fact.

<sup>213</sup> Here and below is primarily about condemnatory decisions of the court with all the procedural implications of that fact.

<sup>214</sup> The Legislator asks the Court to take into account all the circumstances of the case to the following points, in particular, the proportionality between the severity of the infringement and demands for effective protection of copyright. Article 156, para 2 of LCRR.

<sup>215</sup> For instance, devices used for unauthorized reproduction of copies of the copyright work.

<sup>216</sup> The Law on Courts in the Federation of Bosnia and Herzegovina ("Official Gazette of FBiH", Nos. 38/2005, 22/2006, 63/2010, 72/2010 - corr., 7/2013 and 52/2014).

<sup>217</sup> The Law on Courts in the Republic of Srpska ("Official Gazette of the Republic of Srpska", No. 37/2012, 14/2014 - decision of the Constitutional Court, 44/2015, 39/2016 - decision of the Constitutional Court and 100/2017).

<sup>218</sup> The Law on Courts of Brčko District of Bosnia and Hercegovina ("Official Gazette of Brčko District of BiH", Nos. 19/2007, 39/2009 and 31/2011).

<sup>219</sup> Nota bene: data from 2011; available at: <https://www.akta.ba/kapital/stopa-piratstva-u-bih-i-dalje-66/23012> (last accessed in November, 2019).

<sup>220</sup> Nota bene: data from 2017; available at: <https://www.fokus.ba/vijesti/bih/bih-zaostaje-za-regijom-stopa-piratstva-od-60-do-90-posto/963384/> (last accessed on 11.2019).

<sup>221</sup> Lecture of P. Fellner on the topic: The Exercise of Copyright and Related Rights in the Courts and Government Bodies in the Republic of Croatia in the Proceedings Conducted by the Collective Management Organization for Copyrights, held on 13/06/2018, at the Workshop on Litigation to Resolve the Cases of Infringement of Intellectual Property, organized by the Centre for Education of Judges and Prosecutors of RS and FBiH and the Association of Composers - Music Creators.

courts, and the greater importance given to the copyright protection. In private conversations with some judges in BiH, we were told that they annually meet with a maximum of 10 cases in the field of copyright. Copyright is less than 5%<sup>222</sup> of the norm of some relevant judges and these are extremely complex legal issues that require expertise and understanding at high level, which is not justified by the volume of the case. Courts usually take a long time to resolve these procedures; they render verdicts that are not supported by the norms of substantive law, and there are numerous other problems with the action of the courts in copyright protection in BiH which are present in practice but not adequately investigated. In practice, we observe that right holders are losing faith in the courts and decide not to seek protection of their rights, even when the infringement happens<sup>223</sup>. The situation is different in the neighbouring countries. This status quo is unacceptable and must be worrying for journalists, government and the public that should be informed about it. We believe it is necessary to study rates of copyright infringement of journalists, the rate of use of civil protection mechanisms for copyright by journalists, and the level of faith in the system of protection. We believe that level is low. Nevertheless, the recommendation of this study is that the best solution for journalists is to actively seek protection of their rights in any case of infringement. Any infringement of copyright of journalists should be accompanied by lawsuits against the infringers/perpetrators. Journalists in BiH should consider providing free professional legal aid to journalists in this regard.

<b>Type of infringement:</b>	<b>Misdemeanour</b>
<b>Initiation of proceedings</b>	Market Inspectorate <sup>224</sup>
<b>Type of proceeding:</b>	Minor offence proceedings
<b>Primary legal sources:</b>	Substantive: Law on Copyright and Related Rights, Law on Collective Management of Copyright and Related Rights, Criminal Code of BiH <sup>225</sup> Procedural: Criminal Code of BiH and Criminal Codes of entities, codes governing criminal procedure, ZAISP
<b>State agencies that implement protection:</b>	Entity Ministries of Internal Affairs State Investigation and Protection Agency Entity Market Inspectorates Entity ministries responsible for the area of trade in goods and services The responsible entity Courts
<b>Type of sanctions:</b>	Fine
<b>Focus on the protection:</b>	Economic flows, through the protection of goods and services, indirect protection of the interests of the author/right holder

Use of the author's work will be defined as misdemeanour of the infringement of copyright if corresponds to the characteristics defined in the Part seven of LCRR and potentially Part six of the Law on Collective Management of Copyright and Related Rights (Official Gazette of BiH, No. 63/10). A penalty for infringement of copyright, which is defined as a minor offence is, fines. When the infringement is made by a legal entity, fines can range from 1,000 to 200,000 BAM<sup>226</sup>, 1,000 BAM to 20,000 BAM for entrepreneur, 3,000 BAM to 20,000 BAM<sup>227</sup> for a responsible person in the legal entity, and 3,000 BAM to 20,000 BAM<sup>228</sup> for a natural person. These penalties are in favour of the budget and not in the favour of the journalist<sup>229</sup>. Monitoring of compliance and implementation of the misdemeanour provisions of LCRR related to the circulation of goods and provision of services are, in the first instance, carried out by inspections in FBiH, RS and Brcko District, which are in charge of monitoring regulations in the area of circulation of goods and services<sup>230</sup>. In the second instance, entity ministries responsible for the area of circulation of goods and services are in charge.<sup>231</sup> The inspection is carried out by the relevant market inspectorate.<sup>232</sup> There are many problems in practice. Right holders complain that inspectors are inadequately trained, that they often call for lack of jurisdiction,

<sup>222</sup> A reader can notice that we do not mention sources for the assertions in this paragraph; this is primarily because there is very little science-based facts on this issue in Bosnia and Herzegovina or the information are given confidentially.

<sup>223</sup> We have already seen cases when the author resorted to use a curse against those who would eventually copy his work, instead of entrusting the case to legal mechanisms of copyright protection and have faith in them.

<sup>224</sup> Nota bene: in minor offence and legal protection of copyright, a journalist as an author/right holder does not initiate proceedings, however he has particularly significant or active role.

<sup>225</sup> Criminal Code of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", Nos. 41/2007, 18/2012, 36/2014 and 81/2015)

<sup>226</sup> Article 170, para 1 of LCRR.

<sup>227</sup> Article 170, para 2 of LCRR.

<sup>228</sup> Article 170, para 3 of LCRR.

<sup>229</sup> Journalist must request eventual compensation through the civil protection mechanism.

<sup>230</sup> Article 173, para 1 of LCRR.

<sup>231</sup> Article 173, para 1 of LCRR.

<sup>232</sup> Article 173, para 2 of LCRR.

that the inspections related to "private" copyrights are not included in the inspectors' standards, that the work of the inspections is more difficult due to the other regulations and the behaviour of the right holders, etc. These problems cannot be found in neighbouring countries. It would be necessary to analyse the functioning of the copyright protection mechanisms in BiH as well.

Type of infringement:	Criminal offence
Initiation of proceedings:	The Prosecutor's Office of Bosnia and Herzegovina
Type of proceeding:	Criminal procedure
Primary legal sources:	Substantive: Criminal Code of BiH, Law on Copyright and Related Rights, Law on Collective Management of Copyright and Related Rights and others Procedural: Criminal Procedure Code of BiH <sup>233</sup>
State agencies that implement protection:	The Prosecution of Bosnia and Herzegovina The Court of Bosnia and Herzegovina
Type of sanctions:	Fines and imprisonment
Focus on protection:	Public interest

The Criminal Code of Bosnia and Herzegovina provides that the following types of copyright infringement are offenses:

- Misuse of copyright - effective infringement of moral right of the author to claim authorship, punishable by sanctions of fines or imprisonment up to three years;
- Unauthorized use of copyright - effective use of a copyright work without valid legal basis in a way that makes the content exclusive property and legal powers (copying, which is equivalent to the reproduction, marketing and importing, equivalent to distribution, etc.), and punishable by a fine or imprisonment up to six months;
- Unauthorized use of the rights of producers of sound recordings<sup>234</sup>;
- Unauthorized use of broadcasting rights<sup>235</sup>; and
- Unauthorized distribution of satellite signals<sup>236</sup>.

The offense of copyright infringement by unauthorized use of copyright is governed by Article 243 of the Criminal Code of BiH, which reads: "(1) Any person who, without permission of the author or other copyright holder, or the person entitled to give authorization where the approval under the law of Bosnia and Herzegovina is necessary, or in the contrary to their prohibition, fixes to a material surface, reproduces, makes copies<sup>237</sup>, puts into circulation<sup>238</sup>, rents<sup>239</sup>, imports, brings across the state border<sup>240</sup>, shows<sup>241</sup>, performs<sup>242</sup>, transmits, transfers<sup>243</sup>, makes available to the public<sup>244</sup>, translates, adopts, modifies, revises<sup>245</sup> or uses the author's work in any other way<sup>246</sup>, shall be fined or imprisoned for up to three years... (4) The person who has possession of the objects intended to or used for the perpetration, or resulting from the criminal offense referred to in Paragraphs 1 to 3 of this Article, and who knew or could have known or ought to have known that, shall be fined or sentenced to prison up to six months. (5) If the perpetration of criminal offense referred to in Paragraphs 1 to 3 of this Article caused a substantial financial gain or caused a substantial damage, and the perpetrator acted with the aim of acquiring such financial gain or causing such damage, he shall be

<sup>233</sup> Criminal Procedure Code of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", Nos. 3/2003, 32/2003 - corr, 36/2003, 26/2004, 63/2004, 13/2005, 48/2005, 46/2006, 29/2007, 53/2007, 58/2008, 12/2009, 16/2009, 53/2009, 93/2009, 72/2013 and 65/2018).

<sup>234</sup> Article 244 of Criminal Code of BiH.

<sup>235</sup> Article 245 of Criminal Code of BiH.

<sup>236</sup> Article 246 of Criminal Code of BiH.

<sup>237</sup> Corresponds to the content of author's legal permit, that is to say, rights of reproduction of copies of the copyright work - Article 21 of LCRR.

<sup>238</sup> Corresponds to the content of author's legal permit, that is to say, the rights of distribution of copies of the copyright work - Article 22 of LCRR.

<sup>239</sup> Corresponds to the content of author's legal permit, that is to say, rental rights of copyrighted work - Article 23 of LCRR.

<sup>240</sup> Corresponds to the content of author's legal permit, that is to say, the rights of distribution of copies of the copyright work - Article 22 of LCRR.

<sup>241</sup> Corresponds to the content of author's legal permit, that is to say, rights of communicating the content of the copyright work by public presentation - Article 27 of LCRR.

<sup>242</sup> Corresponds to the content of author's legal permit, that is to say, rights of communicating the content of the copyright work by public performance - Article 25 of LCRR.

<sup>243</sup> Corresponds to the content of author's legal permit, that is to say, rights of communicating the content of the copyright work by broadcasting and cable broadcasting, retransmission and secondary use of the work which is transmitted by broadcasting or rebroadcasting - Articles 29, 30 and 31 of LCRR.

<sup>244</sup> Corresponds to the content of author's legal permit, that is to say, rights of communicating the content of the work by making it available to the public, primarily by posting online - Article 32 of LCRR.

<sup>245</sup> Corresponds to the content of author's legal permit, that is to say, any form of processing the work including translation of the work - Article 33 of LCRR.

<sup>246</sup> Additional confirmation of the abstract nature of the scope of control of the author regarding the use of copyright works, and corresponding to the provision of Article 20, primarily Paragraphs 1 and 2 of LCRR.

*punished by imprisonment of six months to five years. (6) The objects intended or used for the perpetration of the crime, or resulting from the criminal offense referred to in Paragraphs 1 to 3 of this Article shall be seized and destroyed."*

The Prosecution of Bosnia and Herzegovina in cooperation with appropriate competent consolidating state bodies and the Court of Bosnia and Herzegovina are responsible for the examination and processing of the existence of elements of criminal activity of this kind.

According to the official report of the Prosecutor's Office from 2016<sup>247</sup>, which are the latest available data, two (2) charges for a criminal offense of infringement of copyright referred to in Article 243 of the Criminal Code of BiH were submitted in 2016<sup>248</sup>! Unofficially, we have found out that this crime is not a priority either for prosecutors or to judges, and that they believe that the prescribed penalties are too harsh, while interest groups of right holders seeking stricter sanctions to make the prosecution work more properly.

High-quality protection of copyright must be efficient, prompt, relatively inexpensive and purposeful, but unfortunately we cannot say that this is the case in BiH right now. It involves a combination of good legal rules that we have, but also the adequate national authorities competent to provide the protection, people who are competent and motivated to understand the complex copyright rules or willing to implement them in accordance with political will. Public indolent, awareness of the significance of copyright and the presence of a desire for the respect of copyrights is a *sine qua non*. Application of mechanisms for the protection of copyright of journalists and other authors is ambiguous and worrying, and without a doubt, the weakest aspect of copyright law in our country. Once again we emphasize that the mechanisms of copyright protection of journalists primarily depend on the active and effective participation of journalists and the use of these mechanisms (especially concerning the civil protection). If journalists are more familiar with their rights and use protection mechanisms more, these mechanisms of protection will work better in favour of journalists, and the awareness among users of journalistic works and the wider public will increase. According to the experience of the Republic of Croatia, as well as many other countries, this statement appeared to be true.

#### **4. Journalists as users of copyright works**

A journalist uses the works of others in his professional performances on a daily basis.

Each written material is potentially the work of authorship and therefore copyright protected. The words of a person interviewed by a journalist may also be an author's work, and the recording of these words is an act of use of the copyright work<sup>249</sup>. Each photo and each video clip or any audio-visual author's work is potentially a copyright work, regardless of the professionalism of the photographer or cameraman, quality, volume, and similar. The maps, illustrations, caricature drawings and all other creative expressions also may be copyright works. Websites are collections full of potentially authors' works. Databases can be doubly protected in the system of copyright.

As we have previously pointed out, the criteria to qualify author's work as copyright-protected work is extremely low, therefore everything that possibly meets definitional elements of the work is protected unquestionably, regardless of whether the author is aware of it or not and even regardless of whether the author wants it or not.

Journalists should be aware of the fact that everything that was created by another person by his creative intellectual activity is a work of authorship and therefore copyright protected and should be treated as such. In other words, if journalists do not want to be sanctioned, the best thing they should do is to treat everything created by other persons and can be in any manner and to any extent subsumed under the concept of the work of authorship as copyright-protected, and to be complied with the copyright regarding that author's work. This is the only way a journalist can be protected. Great caution is advised!

A journalist should also assume that any part of the work that he uses may be independent work of authorship and thus copyright protected separately. The European Court of Justice in Case C-5/08 ruled that only 11 words may be copyright protected, pointing out that even only one word can potentially be copyright-protected. This is also provided by Article 5 of LCRR, which regulates that

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<sup>247</sup> Available at: [http://www.tuzilastvobih.gov.ba/files/docs/Informacija\\_2016-bosanski-\\_Finalno.pdf](http://www.tuzilastvobih.gov.ba/files/docs/Informacija_2016-bosanski-_Finalno.pdf) (last accessed in November, 2019).

<sup>248</sup> Available at: [http://www.tuzilastvobih.gov.ba/files/docs/Informacija\\_2016-bosanski-\\_Finalno.pdf](http://www.tuzilastvobih.gov.ba/files/docs/Informacija_2016-bosanski-_Finalno.pdf), page 41, table 20.

<sup>249</sup> Recording may even present infringement of several copyrights, for instance, when copyrighted piece of music that was played in the bar where the interview was made was recorded in the background unintentionally.

foundation of the work, incomplete work, title or other parts of the work are copyright protected as independent works when they are defined as individual spiritual creations. There are many misconceptions about this issue, and some say it is allowed to copy 20% of the work, or show 8 seconds of video clip, 8 beats of music, etc. ... There are no such provisions in LCRR, which means that it is not true, on the contrary, we see that the copyright law standards say that such actions may be treated as infringements of copyright.

"Copying" or reproduction of even a small part of the work is a form of use of copyright work, as quite explicitly and clearly and absolutely unambiguously stems from the provision of Article 21, Paragraph 1 of LCRR, which reads: *"(1) The right of reproduction is the exclusive right of fixing works to the tangible medium (copy of the work) directly or indirectly, temporarily or permanently, in part or in whole, by any means and in any manner."* It is a fact that the journalists' performances are socially useful and significant<sup>250</sup>, however that is absolutely irrelevant when the use of the work by journalist is defined as an infringement of copyright. The use of the work of another person without valid legal grounds, even in the best possible social interest or to save someone's life, will be treated as copyright infringement.

Constitutionally guaranteed human right to freedom of expression<sup>251</sup> including journalists is not in conflict with copyright laws. The right to freedom of expression guarantees the person that the state will not limit a person to express his own thoughts freely. Therefore, this human right is related to the own, personal, self-expression of thoughts or results of mental activities of a person. Copyright does not restrict the freedom of people to express their own, creative, individual, spiritual products of their own mind, but only limits the use of expression or qualified mental products of others<sup>252</sup>. In the cases when the use of somebody else's work is necessary or when it is for socially useful purpose, a copyright system expressly provides that and permits the use without permission and without paying compensation to the author, through the system of substance restrictions of the copyright content by free use of the work by another person, for the purpose of informing the public<sup>253</sup>, by quoting<sup>254</sup> and modifying for the purposes of parody and caricature drawings<sup>255</sup>, among other things.

Legally valid permission for the use of the work related to journalistic performance can be either an express provision of law, that is to say, an action outside the boundaries of control of copyright or written permission to use of the work provided by the author/right holder.

Author's copyright is by its nature limited in the following ways: temporarily<sup>256</sup>; spatially<sup>257</sup> (although the rights of BiH authors are effectively protected in most countries of the world); in content<sup>258</sup>: by legal permission and free use of qualified types of the work by a qualified person in a qualified way; by public domain, that is to say what is excluded from copyright protection and those for the copyright protection has already finished; by general prohibition of abuse of rights; and by manifestations of the legally relevant will, or when the author decides to limit the rights or agree to restrictions to transaction.

The legal system of copyright protects the author regarding his work for his lifetime<sup>259</sup> and seventy<sup>260</sup> years after his death<sup>261</sup>. After this period of time copyright protection ceases, the author's work enters into something called "public domain", and from the standpoint of copyright, anyone can use the work in any way without requesting and receiving permission from the author and without paying compensation. Copyright protection always expires on the first of January of the year following the year in which the starting point began<sup>262</sup>.

In certain cases, when the Legislator estimates that the interest of society or a specific group of users overrides the interest of the author, the Legislator limits copyright in content in order to protect that

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<sup>250</sup> "Democracy is dying in the darkness!" is a motto of Washington Post – this is a direct insinuation of a vital role of journalism.

<sup>251</sup> Article II.3, Item h of the Constitution of Bosnia and Herzegovina.

<sup>252</sup> It can be said that copyright promotes freedom of expression by providing extensive legal mechanisms to control the results of free expression.

<sup>253</sup> Article 44 of LCRR.

<sup>254</sup> Article 47 of LCRR.

<sup>255</sup> Article 50, item a of LCRR.

<sup>256</sup> Chapter V of the Part two of LCRR, about the time limits of copyright.

<sup>257</sup> Part eight of LCRR, about spatial limitations of copyright.

<sup>258</sup> Section IV of the Part two of LCRR, about content restrictions of copyright.

<sup>259</sup> The only copyright authority whose protection ceases with the death of the author is the right on repentance. Article 61 of LCRR.

<sup>260</sup> The reason why there is a copyright after the death of the author is for the heirs of the author to benefit from the work. The time interval of seventy years has been chosen because it corresponds to about two generations after the author's death.

<sup>261</sup> Article 55 of LCRR.

<sup>262</sup> Article 62 of LCRR.

interest. The legal basis of such use, as long as the use is within the limits regulated by law, is permitted by law. In other words, use that exceeds legally defined limits of free use or legal permits, interpreted restrictively by these two criteria, will be considered as an infringement of copyrights. The law enumerates<sup>263</sup> and explicitly states when and what kind of author's work can be used by whom, and at the same time, since the restriction of rights must be interpreted restrictively, requires that the scope of the use is interpreted in accordance with the intention that was supposed to be achieved by the restriction of copyright and that such use is in accordance with best practices<sup>264</sup>.

Legal license allows the user to use specific types of copyrighted work as intended, without obtaining permission<sup>265</sup> but by paying appropriate fees to the relevant collective organization<sup>266</sup> (Article 41 of LCRR). Free use allows qualified users to use the work within the limits set by law without obtaining permission and without paying any fees. Free use of the work is permitted in the following cases: for the needs of persons with disabilities; for temporary reproduction; for the purpose of informing the public; for teaching purposes; for reproduction for private and other internal use; for citation; free use of the work as irrelevant part of something; for the purpose of public exhibition or auction of the authors' works; for free processing of works as follows: in the context of parody and caricature drawing; private and other individual processing; processing in reference to the permitted use of the work; free use of databases; free use of works permanently located in public places; for the purpose of official proceedings and for the purpose of verifying devices<sup>267</sup>.

When a journalist uses the work of another person in any way, he or she must have a valid permission, otherwise that use is treated as infringement of copyright. Since the legal basis may be either a legal provision or permission from the author/right holder, it is recommended that before seeking permission from the author/right holder, the journalist check whether an explicit legal provision<sup>268</sup> allows the use of the work or whether the copyright protection passed or the use of the work is not in control of the author/right holder. Journalist should seek permission from the author/right holder only if this is not the case.

We suggest that the journalist first consider:

- whether the type of the work or element of the work a journalist is planning to use is excluded from copyright protection in Article 8 of LCRR or by the nature of copyright;
- whether this kind of use of the work is allowed by the legal permission;
- whether this kind of use of the work is allowed by free use of the work<sup>269</sup>;
- whether the period of copyright protection passed; and
- whether the author/right holder previously gave permission, restricted the rights or previously agreed to the use of the work;

The facts are not and cannot be copyright works and are not copyright protected. Facts are objective observation of the situations in nature and do not appear as a result of individualizing mental activity<sup>270</sup>, therefore they are not suitable for copyright protection. Accordingly, from the aspect of copyright norms, journalists are free to use the facts in any way and do not have to seek and get permission for their use<sup>271</sup>.

Functionality<sup>272</sup> of the work is also excluded from copyright protection by the nature of copyright protection<sup>273</sup>. A journalist is free to use the work to achieve the functionality contained in the expression.

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<sup>263</sup> Bosnia and Herzegovina is not familiar with the "fair use" or the norm that says that you can use the work in fair way or on other "open" basis. It is the institution of "copyright" in the case-law systems such as the United States for "fair use" or United Kingdom and Australia for "fair dealings". See more at: <https://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/> if it is, for example, in the public interest, or if it is not for realizing gain or similar.

<sup>264</sup> Article 40, para. 1 of ZAISP.

<sup>265</sup> There is an obligation of specifying the source and the author's name in cases when it is indicated on the work used in this way. Article 41, para 3 of LCRR.

<sup>266</sup> Article 4, para. 2, item d of the Law on Collective Management of Copyright and Related Rights (Official Gazette of BiH, No. 63/10).

<sup>267</sup> Articles 42-54 of LCRR.

<sup>268</sup> By all means, this can be relatively delicate, due to the fact that such judgment requires certain knowledge about copyright protection and can always be challenged in court.

<sup>269</sup> The reference here is especially but not exclusively: free use of works for informing the public (Article 44 of LCRR), quoting parts of the work (Article 47 of LCRR), processing for the purpose of parody or caricature drawing (Article 50 of LCRR) and works permanently placed at public places.

<sup>270</sup> Judgment of the Supreme Court of Serbia, No.11/02, March 7<sup>th</sup>, 2002.

<sup>271</sup> From the standpoint of copyright, other legal norms can possibly be applied to facts, though caution is recommended.

<sup>272</sup> Roughly speaking, functionality is the result as well as the procedure for obtaining this result which is expressed in author's work.

Article 8, para. 1 of LCRR reads: „*The following are not protected by copyright:*

*a) ideas, concepts, procedures, methods of operation, mathematical operations, principles and discoveries,*

*b) official texts in the area of legislation, administration and judiciary (laws, regulations, decisions, reports, minutes, court decisions, etc.),*

*c) political talks and talks held during judicial hearings,*

*d) daily news and a variety of information which have the character of short news items contained in a press release,*

*e) folk, literary and artistic creations. “*

Ideas are excluded from copyright protection. Each author's work has at least one and potentially unlimited number of ideas. It is the highest level of abstraction of something that somebody wants to communicate by the work or part of the work. Whether something is idea or not is a question of fact, which means that, in the end it can only be identified by court on the basis of the particular circumstances of the case, and it is not possible to give an objective criterion to determine the idea in each case. A journalist is free to use any idea, but must be careful not to use more than a concrete idea of the work. All of the above mentioned for an idea is true for concepts, procedures, working methods, mathematical operations, principles and discoveries as well.

A journalist is free, in the sense that without asking for permission or paying a fee, to use any of the official texts in the field of legislation, administration and judiciary. The Legislator cited as an example that it involves laws, regulations, decisions, reports, minutes, court decisions, however points out that this list is not exhaustive, and that other official texts also fall under this provision. It is necessary to pay attention to the fact that this provision is only applied to the texts that are official and that, as such, will not be applied to everything created by employees of state bodies, especially when it is not "official", which will be defined in separate legal norms. The journalist must pay attention to the provision of Article 8, Paragraph 2<sup>274</sup> with regard to the text translation and speeches which are copyright works in case when they are not published as official texts.

Speech can be copyright protected, but political talk *ex lege* or by the provisions of the law is not and cannot be copyright protected. From the standpoint of copyright, journalists are free to use all the talks which were held in the political context as well as during court hearings<sup>275</sup>. Whether the talk is "political" or not is also a question of fact, which means that the court will, in conclusion, be the only competent to determine whether talk is political or not, based on the particular circumstances.

From the standpoint of copyright, journalist is also free to use short news contained in a press release. The Legislator explicitly notes that they can be daily news or other "different" information.

The Legislator does not authorize journalists to use the entire content of press release freely but only news and it is expressly provided that the news is short in scope, and that it is the a part of that press release. Press release may be identified as copyright-protected work, therefore the use of press release should be considered as the use of copyright-protected work. Journalist can extract short news from press release and use it freely.

The Legislator does not define what is "news" or "daily news", which means that this is a legal standard<sup>276</sup>. Therefore, occupational definition of the "news" or potentially broader interpretation that includes everything that can be subsumed under this logical concept may be applied to the term "news" The news is not a fact but something that could be copyright protected work. However, the Legislator specifically exempts news from copyright protection with regard to ensure the wider public interest to be informed about events important to the community. Journalists are expected to use only short news and this can be interpreted only as the absolute minimum that is required to journalistic performance in this particular case. As previously mentioned, factual question is what the news is and what scope of the news is "short", and ultimately only a court can determine that.

A journalist is free to use literary and artistic works of folklore. The status of literary and artistic works of folklore is determined by the competent state body decision, according to relevant legal rules that govern that issue. Use and protection of literature and artistic works of folklore can be regulated by other legal norms as well.

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<sup>273</sup> For example, the recipe for meat pie can be copyright protected, but preparing meat pie on this recipe is not infringement of copyright.

<sup>274</sup> (2) Translations of texts and speeches referred to in Paragraph 1, Items b) and c) of this Article are copyright protected, unless they were published as official texts.

<sup>275</sup> Court hearings are public, which is guaranteed by the constitutions of Bosnia and Herzegovina as well as the procedural provisions, and the publicity is further emphasized and ensured by this provision. Court trials are public, what has been determined by the Constitution of BiH as well as by legal procedures, in this way such publicity is further emphasised and reinsured.

<sup>276</sup> Legal norm whose content is deliberately left vague and imprecise because of flexibility in its interpretation.

If a journalist or the media in general perform "clipping" or reproduce and publicly communicate individually published articles of others on current political, economic, religious and other similar current issues, in the periodicals or press reviews, the journalist is not obliged to obtain permission from the author/right holder however he must pay the appropriate remuneration, and must specify the source and the author's name if they were specified in the work<sup>277</sup>. The remuneration is paid only to collective organization<sup>278</sup>. We are not familiar with the fact that such collective organization to which the fee could be paid exists in Bosnia and Herzegovina at the time of writing this report. If and when this collective organization is established, it will determine the amount of financial compensation and collectively exercise this right on behalf of author journalist/copyright holder regarding articles used in this way, in accordance with the Law on Collective Management of Copyright and Related Rights (Official Gazette of BiH, No. 63/10).

A journalist is free to use work of authorship in a specific way for the purpose of informing the public, without having obtained permission from the author/right holder or paying remuneration, as is established in Article 44 of LCRR which reads: "(1) It is permitted, to the extent necessary to inform the public about current events, to:

- a) reproduce works that appear as part of the current event the public is being informed about,
- b) prepare and reproduce short excerpts or abstracts from published newspaper and other similar articles in press reviews,
- c) reproduce public political, religious and other speeches held in state or local government, religious institutions or at state or religious ceremonies,
- d) freely use daily information and news that are classified as newspaper reports.

(2) Provisions of Paragraph (1) of this Article are applied adequately to public communication of these works.

(3) In case of use of the work under Paragraph (1) of this Article, the source and author's name must be indicated, if specified in the work. "

This article must be interpreted in accordance with the provisions of Article 40 of LCRR, which requires that the scope of the use to which the journalist is permitted to, is limited by the intentions that the Legislator wanted to accomplish, limiting the right of the author of content in this way, and that the use is in accordance with good practices in the sense to prevent abuse of these provisions and limit the scope of use of the work on this basis to a reasonable and expected scope, and to extent which is not prejudicial to the usual use of the work, and which does not affect the legitimate interests of the author unreasonably<sup>279</sup>.

In order to inform the public about current events, exclusively to the extent necessary for such action, journalist or other person<sup>280</sup> can freely use certain work which is specifically associated with that event, in a manner that he will reproduce the author's work in terms of form of use the work defined in Article 21 of LCRR, as well as inform the public in terms of forms of use of the author's work defined in Articles 24-32 of LCRR. The question is what "current" event is, as well as whether the used work is related to the current event<sup>281</sup> and it is the court that can ultimately determine whether the conditions for free use are met or not. The journalist has to be cautious and use the work exclusively for the purpose of informing the public, and be sure that the event is current according to the interpretation in compliance with the provisions of Article 40 of LCRR, and that he is not allowed to use the work in ways for which he is not authorized by this legal provision. If a journalist exceeds these limits, that is infringement of copyright, therefore, special caution is recommended when the work is used on this basis.

Journalist may also, under the same conditions, modify short extracts or abstracts of certain published newspaper articles and similar articles in press reviews, through the preparation and reproduction, to reproduce public political, religious and other speeches held in state or local government, religious institutions or at state or religious ceremonies, which as such are not explicitly excluded from copyright protection by Article 8, para. 1, items c and d of LCRR. The journalist can also use daily information and news that are of the nature of newspaper reports which are also not excluded from copyright protection by Article 8, para. 1, item d of LCRR, within the limits of free use. There are many uncertainties and ambiguities in practical application on this issue and it would be justified to

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<sup>277</sup> Article 41, para. 1, item b and Paragraphs 2 and 3 of LCRR.

<sup>278</sup> Article 41 of LCRR and Article 4, para. 2, item d of Law on Collective Management of Copyright and Related Rights (Official Gazette, No. 63/10).

<sup>279</sup> This is called "three step test" in the international sources of copyright and we believe that it is not unreasonable to interpret the provisions of content restrictions on the rights of authors and request of the Legislator to respect good practice in this way.

<sup>280</sup> Since the Legislator allows anyone to use the work freely on this basis and not only and explicitly journalists.

<sup>281</sup> These issues are particularly illustrative in the judgment of the European Court of Justice: C-145/10.

explore in more detail the implications of this provision as well as other provisions which restrict copyright and these restrictions are important to journalists in their daily performances.

If a journalist must use an expression or other elements of the work of another person to be able to criticize, argue, confront, refer to the content and illustrate in another way and purposely use elements of the work, the legal system allows a journalist to do so by quoting certain types of published works, as governed by Article 47 of LCRR, which reads: "(1) It is permitted to cite passages and quotations from a published copyrighted work or individual works of photography, art, architecture, fine arts, industrial and graphic design for the purpose of scientific research, criticism, review, teaching and other reviews to the extent justified by the need to presentation, confrontation or referral to be achieved in accordance with good practice. (2) In the case of use under Paragraph (1) of this Article, the source and author's name must be indicated if they are specified at the used work."

A journalist is not allowed to quote complete work but only the relevant parts<sup>282</sup>, and this must be carried out exclusively for the purpose of scientific research, criticism, review, teaching and other reviews to the extent justified by the need of presentation, confrontation or referral to be achieved in accordance with good practice, and he can cite only those works that are published<sup>283</sup> and only specified types of work.

If a journalist creates a new work that represents a parody or caricature of the existing copyright work, he is allowed to freely process the work in the extent required for parody and caricature drawing, provided that the work was published in accordance with Article 50, Item a of LCRR. The crucial question is whether a journalist creates the work of parody or caricature, and the jurisprudence of the European Court of Justice regarding this issue is developed to a certain extent but the jurisprudence of national courts regarding this issue is less developed.

When journalists take photographs of the author's work of architecture, such action would be a form of use of that work. However the Legislator permits taking photographs as well as free use of copyright works which are permanently located in places that are accessible to the public in other ways, as referred to in Article 52, providing that the Legislator's restrictions are met.

After the expiration of copyright protection, which is seventy years after the death of the author<sup>284</sup>, from the standpoint of copyrights, anyone including journalists can feel free to use this work without seeking and obtaining permission and without financial compensation. Journalistic ethics prohibits the journalist to present himself as the author of the work that he did not create, although this would not be infringement of copyright.

It happens that the author/right holder gives permission to others to use his work independently and unilaterally or that he had previously granted permission to the journalist or organization where the journalist is employed or restricted his copyright in another way. The example of such permission is *creative commons* or CC permission,<sup>285</sup> it should be visible on a copy of the work and it is valid in BiH as well.

It is perfectly clear that uploading the work on the Internet is a form of use of the work by making it available to the public, and that is exclusively under the control of the author. However, there is a question whether a journalist is allowed to post web links which lead to copyright work that has already been placed on the Internet and whether it is an act of using works protected by copyright. LCRR does not clearly define this issue and we have no domestic case law that can give us clear answer, but the European Court of Justice gave extensive interpretation on this issue in several judgments. Briefly, the conclusion would be that a journalist can freely link to any content, even frame it<sup>286</sup>, provided that the content is available to everyone online. If the link enables the user to avoid certain methods of access control of the content on the Internet<sup>287</sup>, that link would be an example of the use of the author's work by making it available to the public and would be characterised as copyright infringement if it is done without legally valid permission. An important question regarding linking is whether the content was posted on the Internet with permission of the author/ right holder or

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<sup>282</sup> Once again we note that there is a lot of incorrect information on this fact regarding conviction that there is a certain percentage of the content that can be quoted - that percentage does not exist but the extent of quoting exclusively depends on the specific circumstances of the case.

<sup>283</sup> Article 2, para. 1 and Article 17 of LCRR.

<sup>284</sup> The time period of copyright protection used to be considerably shorter in the past. Therefore, journalists should not assume that it has always been such long time interval of protection and if they want to use older work where it is not certain whether the time interval for protection has passed or not, they must consult experts in the field of copyright.

<sup>285</sup> [creativecommons.org](https://creativecommons.org)

<sup>286</sup> [https://en.wikipedia.org/wiki/Framing\\_\(World\\_Wide\\_Web\)](https://en.wikipedia.org/wiki/Framing_(World_Wide_Web)) (last accessed in November, 2019).

<sup>287</sup> For example, paywall or similar.

not, and whether the person who posts links knows or must know that the content on the Internet was posted without permission of the author/copyright holder, which would be an act of making the work available to the public.

We especially stress the fact that posting the content on the Internet does not make the author /right holder lose any of his copyrights. Copyright works posted online are equally protected by copyright as any other copyright work and their use is a subject to control by the author/right holder. If a journalist cannot obtain permission in accordance with the relevant legal provisions or limits of copyright and still wants to use the work of another person, he must obtain legally valid permission directly from the author/right holder. The permission and its legal characteristics have been exhibited previously in this document.

If a journalist is not authorized to use the author's work by explicit legal provision and if he does not possess proper and legally valid permission of the author and still uses the work of another person, that is an infringement of copyright, potentially tort, misdemeanour or offence, and a journalist will be responsible and subject to sanctions. If a journalist is employed, copyright infringement while performing work duties may be grounds for termination of employment. A journalist cannot explain himself by saying that he did not know about copyrights or that he was not familiar with this matter because the law applies the rule "ignorance of the law harms"<sup>288</sup>. The permission can be valid when it is not given in writing if the contracting parties completely or mostly fulfilled the obligations arising from it<sup>289</sup>, but this is a relatively weak basis for journalists and is not recommended.

A journalist must obtain permission for any form of use of the author's work. For instance, if he wants to reproduce the work he must obtain permission, if he intends to do processing on the author's work he must obtain permission for it, if he intends to post the work online – he must obtain permission, if he intends to communicate to the public in any other way that is also something a journalist should have permission to. This is called the Rule of Traffic Separation and it clearly follows from the provisions of Article 76 and in particular Paragraph 1 of LCRR, which reads: "*(1) Individual economic rights or individual other rights of the author are transferred separately, unless this law or contract provides otherwise.*"<sup>290</sup>

Comparative Copyright Law includes institute of implicit permission where it can be assumed that the author/right holder implicitly rather than explicitly, and separately not formally written, gives permission for some forms of use of his work by certain actions such as posting on the Internet, consent to an interview and similar. Institute of Copyright does not exist in Bosnia and Herzegovina. We believe it would be sensible to propose its introduction because it would significantly facilitate the actions of journalists as users of copyright works.

A journalist cannot transfer permission to use a particular author's work received from the author/right holder to another person<sup>291</sup> unless the author/right holder expressly authorizes the user to transfer permission to another person<sup>292</sup>.

It is essential that journalists obtain permission from the person who actually is the copyright holder. It may not always be the author (for example if the author transferred exclusive right to someone else), and the journalist should not assume that the author knows who the right holder is. Only permission from the real copyright holder will be legally valid. Identifying the right holder can be daily problem for journalists. An additional complication is that, as copyright occurs automatically, without awareness or desire of the author, it is possible that the author does not think about his numerous works or he is not aware of their number. Also, copyright authorizes the author to hide his identity or not to specify it on his work, making finding the author or right holder complicated. All of these can cause problems for journalists who are supposed to use copyright works. A particular problem arises regarding the use of the "orphan" work.

EU Directive 2012/28/EU on certain permitted uses of orphan works, in Article 2, Paragraph 1, defines the orphan work as follows: "*1. Work or phonogram shall be considered orphan work if none of the holders of rights to the work or phonogram is not determined or even if one or more holders of rights is determined, and none of which were found despite careful search conducted and recorded in accordance with Article 3.*"

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<sup>288</sup> Effective – it is not exculpatory fact that someone does not know the relevant legal rules.

<sup>289</sup> In accordance with provisions of Article 80, para. 2 of LCRR.

<sup>290</sup> Nota bene: exception under Article 77 on the assumption of a common transfer of rights of reproduction and distribution which together imply the term publishing in copyright.

<sup>291</sup> Article 78, para. 1 of LCRR.

<sup>292</sup> This means that, for example, the publisher of journalistic work of authorship should obtain a separate permission by author/right holder with respect to all works that have been used and all forms of use that the journalist performed, unless the permission that the journalist obtained expressly states that journalist is empowered to authorize legal successor journalist on such action.

LCRR contains provisions for the treatment when the author is unknown in Article 11, which reads:

*"(1) In the case of anonymous or pseudonymous work, the publisher whose name is indicated on the work shall be considered representative author until contrary is proved, and as such is entitled to exercise the moral and economic rights. If the publisher is not indicated in the work, the person who published the work is authorized for management of copyright.*

*(2) Organization of authors realizes the copyright on unpublished works whose author is unknown.*

*(3) Provisions of Paragraphs (1) and (2) of this Article cease to apply from the moment the identity of the author is determined. A person who has accomplished copyright under the provisions of Paragraphs (1) and (2) of this Article shall be obliged to transfer the benefits of the copyright to the author if the contract is not agreed otherwise. The rules of law on the situation of conscientious holder are applied mutatis mutandis on the transfer of rights.*

*(4) Persons from Paragraphs (1) and (2) of this Article can transfer individual property rights to third parties only to the extent and duration, and under such conditions that are customary for the regular use of certain types of works and which are not in contrast with the legitimate economic interests of the author. Otherwise, the author has the right to request termination of the contract and compensation from persons referred to in Paragraphs (1) and (2) of this Article, as well as the third party to whom the rights conferred. "*

LCRR does not contain provisions for cases when it is not possible to find the author/right holder despite careful search as provided in the above mentioned EU Directive. We believe that it would be purposeful to explore amendments of LCRR for the purpose of taking it in accordance with this EU Directive and we would also expand the application of this institution on journalistic activity; that would significantly facilitate the use of certain types of works which are common in modern society. Taking all of these into consideration, it is recommended to all journalists to obtain completely legally valid and proper permission from the right holder, whether the author or not, before they start to use the work in any way, for each of the works of another person's that they use. It should be a permanent and professional practice of journalists to request and receive permission from any person who is interviewed regarding any possible copyright work used in their professional activity and store it properly.

The assessment of whether permission is required or a journalist is authorized to use copyright work in accordance with directly relevant copyright regulations, the process of creation and conclusion of the permission, examining legal regularity and validity of the permission and the determination of whether a permission is sufficient for the type of use of the work that journalist wants and needs is extremely legally demanding and complex. It is necessary to be familiar with the law in general, particularly copyright law. If a mistake is made, penalties provided for are extremely high and strict. This is why the practice of big news agencies abroad is to engage copyright experts and legal departments that check meeting copyright norms in the performance of individual journalists.

In other countries, we find that it is possible to conclude an insurance contract in case of infringement of copyright and there is also the services called "clearing" copyright. In Bosnia and Herzegovina, we are not aware of the existence of such services. We believe that it would be convenient to explore in detail the possibility of establishing and providing clearance and insurance services in the case of infringement of copyright and providing legal advice to journalists regarding copyright. We think it would be practical to consider that such services are provided by the BH Journalists Association.