



## **BH Journalists Association's User's Guide to Copyright for Journalists**



**Top 10 things you should know about copyright in BiH:**

1. Any form of creative expression of a human being can be work of authorship! Minimum legal requirements are rather low!
2. Original work of authorship is automatically protected by copyright from the moment it is created. It is not necessary to be registered or published!
3. The author has legal authority and control over the vast majority of possible uses of his work!
4. The author may request a special fee to be paid for each separate use of his work!
5. It is not permitted to use someone else's work without the permission of the author or the legal authorization!
6. The law allows the use of copyright-protected work without obtaining the author's permission and without paying a fee only in strictly defined cases of very few authorized persons and within the limits defined by law; this is called free use! BiH does not have the *fair use* such as in the United States of America!
7. An idea from an author's work is never protected, and the expression of an author's work always is. Daily news, political speeches, laws and other decisions are not covered by copyright protection!
8. Copyright infringement (use of the work protected by copyright law without legal permission) may potentially be a civil tort, misdemeanour or criminal offense! The author may request compensation for damages and other measures in civil proceedings before the competent court. The Prosecutor's office and market inspectors initiate other court proceedings which may result in high fines or even imprisonment!
9. Copyright protection lasts for a very long time – 70 years after the death of the author!
10. Permission by which the author authorizes someone to use his work must be in writing (but not necessarily in the form of a contract or written in *legal language*; it is sufficient that identification of the authorized user of the work, manner and time of use of the work are clearly seen)!

**What is copyright?**

Copyright is a form of legal authority and protection by which the state gives control over certain forms of use of author's work to the person who created that work (the author) and to the person's the author has transferred those rights (right holder). All persons are prohibited from using someone else's work without the legal permission of either the author or the law. The author benefits from his work by conditioning granting of the permit by payment of remuneration or other fees. If someone uses an author's work without a valid license, the author may request remuneration or other preventive measures through civil proceedings in court. Some types of copyright infringement are considered as misdemeanours or criminal offenses punishable by a fine or imprisonment, and prosecuted by the competent state authorities (criminal prosecution and market inspectorates for misdemeanours), before the competent courts.

## **Where to find the rules governing copyright?**

The most relevant regulation is the Law on Copyright and Related Rights (Official Gazette, 63/10) (hereinafter LCRR) from 2010. It has not been changed or amended so far.

Law on Collective Management of Copyright and Related Rights (Official Gazette, 63/10) (hereinafter LCMCRR) is also relevant, but exclusively for collective management of author's rights. In addition to these two laws, the Constitution of BiH, the Constitutions of the Entities and the Statute of Brcko District provide certain copyright guarantees. Copyright protection is not possible without the application of other laws whose norms supplement those of LCRR and LCMCRR, such as laws governing criminal offenses and their processing, misdemeanour, litigation, obligations, labour relations and similar. International conventions are also important, particularly the Berne Convention for the Protection of Literary and Artistic Works, as well as numerous EU Directives that are part of the EU Copyright Acquis. These rules do not have direct application in BiH, but the legislator must add them to the existing BiH laws because he is obliged to act in compliance with these conventions, i.e. he must sign the Stabilization and Association Agreement (regarding *EU Directives*).

## **What is author's work? (Major Articles: 4 and 5 of the LCRR)**

With reference to the Article 4, paragraph 1 of the LCRR: "A copyright work is an individual and intellectual creation in the field of literature, science, arts, and other domains of creation, regardless of the type, manner and form of expression (...)." An author's work is an original product of the human being's mind, in the sense that the author did not copy the work from others or take it from nature, but created it with his own creative expression. An author's work is individual because it is shaped by the individuality of its author and bears the *imprint* of his personality. In order for something to be work of authorship, the following is irrelevant: scope (single word can be an author's work), quality (principle of aesthetic neutrality), registration (protection is automatic), value, money, effort put in creation, legal or moral permissibility of content, qualification and the recognition of the author, the purpose of the work, etc. Nota bene: the threshold for qualifying something as a work of authorship is extremely low and easy to meet. It is safest to treat each aesthetic creative creation of a human being as an author's work. In case of any doubt whether something is an original work of authorship, the decision can ultimately be made only by the court.

If the parts of the author's work and elements such as the title, characters, individual sentences or paragraphs, music and individual scenes in films, etc., represent individual and spiritual creations, they will be copyright protected as separate works of authorship.

## **What types of works are protected by copyright? (Major Articles: 4, 5, 6 and 7 of the LCRR)**

Any form of creative expression can be protected by copyright in our country. The situation is different in other countries (for example, in Great Britain). In other words, the type of creation of an individual and spiritual work is irrelevant for the work to be protected by copyright. In BiH, each type of the work of authorship is protected by copyright law.

For instance, the Law lists some of the possible types of copyright works (the list is neither final nor exclusive): written works (literary texts, studies, manuals, articles and other writings, as well as computer programmes); oral works (speeches, lectures, sermons and other works of the same type); drama, drama and musical works and the works of puppetry;

choreographic works and works of pantomime; musical works with or without words; audio-visual works (cinematographic works and works created in a manner similar to filmmaking); works of fine arts (drawings, paintings, graphics, sculptures and other works of the same type); works of architecture (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 the scientific, educational or technical type (technical drawings, sketches, charts, forms, expertise, expert reports, presentations in plastic form and other works of similar character). Nevertheless, we can notice that web-pages and video games are not listed as subject matter of copyright although they actually are. Collections and databases are separate types of works. These are collections or other works which, according to the selection, purpose or arrangement of their contents, constitute an individual and intellectual creation. Modification is also specific type of the work. This happens when a person adds his own creative contribution to an existing work of authorship (for instance, editing an image using a computer programme).

### **What type of work is not work of authorship and what type of work is not protected by copyright? (Major Article 8 of the LCRR)**

Each author's work consists of at least one idea (as the greatest abstraction of what the author wants to tell with his work) and expression (making the idea tangible). An idea of the author's work is not subject to copyright but an expression is. Everyone can use each of the ideas from any of the authors' work as they wish, however they must not use the individual manner in which the author expressed those ideas and made them tangible. In addition to ideas, the following cannot be subject matters of copyright: 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 variety of information which are characterized as short news; items contained in press release; literary and artistic works and works of folklore. Facts are not and cannot be subject matter of copyright because they arise in nature and not in the mind of the author.

Other types of intellectual creations (such as inventions) are not protected by copyright law but by other branches of law.

The functionality of the work is not copyright protected (e.g. the recipe for the meat pie is protected by copyright, but making a meat pie is not).

### **Who can be an author? (Major Articles: 9 and 10 of the LCRR)**

Only a human being can be an author. Legal entity (business organization, company, firm) cannot be an author, however it may be the copyright holder. Any human being, including persons who are not of legal age or those who have been deprived of their legal capacity due to mental illness, can be an author.

The author shall be only the person who created the unique work, and not someone who financed, gave an idea, supported or in other ways helped the author, and even commissioned the creation of the work but did not create the work himself. A person whose

name or trademark appears on a copy of a work in the usual manner (e.g. name on the cover) will be considered the author of the work (until proven otherwise).

If two or more people work together to create a unique, indivisible work of their contribution, this is called co-authorship. Each author has the share in the copyright and it is regulated in proportion to their actual contribution to the creation of the work. It is desirable that co-authors regulate their rights by an agreement.

### **How to obtain copyright protection? (Major Article 14 of the LCRR)**

Copyright protection is automatic, it occurs as soon as a work is created! It does not require any procedure or application to any organization. Neither the work nor the author has to be *esteemed* or *evaluated* to be protected by copyright. Author's work does not have to be published in order to be protected. Author's work is copyright protected whether published or unpublished.

### **Should an original work of an author be registered to be copyright protected? (Major Articles: 14, 164 and 165 of the LCRR)**

No, for the work to be protected by copyright, it is not necessary or obligatory to be registered in any organization. An author may, but does not have to, put sign to the copy of his work (example: © Name Surname, 2020) to mark it copyright protected. If an author puts this sign, he will be in better position in case that someone disputes his authorship or has to prove authorship and seek protection of an infringed copyright. An author is not obliged but is allowed to deposit a copy of his work to the Institute for Intellectual Property of BiH. In such case, the author does not obtain additional copyright protection but a better position in case he has to prove his authorship or he has to seek protection of his right (in a procedural sense). Neither copyright sign nor depositing affects the existence and scope of copyright protection. The protection is automatic and it is not subject to any formalities!

### **What are the authorities of the author? What means to have copyright? (Major Articles: 15–39, 110 of the LCRR, particularly Article 20)**

An author has control over nearly all ways of using his work. Copyright is applied to everyone (everyone has an obligation to respect it) and it is exclusive as well (only the author himself is authorized to use the work in that way and allow others to use the work in that way). All other persons are expressly prohibited from using the copyright work unless they have a valid permission. Permission may be obtained either by the author (as well as the one who is authorized by the author or to whom the author has transferred the right) or it is given by law, in strictly defined cases. The author has control over all forms of use of his work, excluding those expressly exempted by the Legislator. The author is entitled to special allowance for each form of use of his work, which he may request in exchange for granting permission. The author, of course, may decide to allow granting permission without financial compensation, but that decision is solely his.

The Law specifically regulates some of the most typical and most profitable ways of using the work, which are, among other things, the part of the content of a unique right of the author regarding his work: the right of reproduction (making copies of the work); the right of

distribution (first selling copies of the work and importing copies of the work); the right of leasing (giving copies of works for use in exchange for money for a limited time); the right of adaptation (translation, modifying and making changes in the work) and the right of informing the public about the content of the work. The term "public" refers to a large number of persons who are not connected by family relations or other personal relationships (this is a legal standard and it is left to the courts to determine whether in a particular case the use of the work involved or did not involve the *public*, on the basis of specific facts from the case). Communication to the public means: public performance of the work, broadcasting transmission (for instance, use of loudspeakers in another room), public presentation through technical devices (film or photograph), announcing the performance from the recording, broadcasting (via TV, radio, satellite and similar), retransmission and secondary use of the work by broadcast transmission (for instance, when a football match is on TV in a pub), and making it available to the public (posting on the Internet).

Law on Copyright protects the spiritual and personal connection that an author has to his work by giving the author right to decide when to publish the work, right to acknowledge authorship (and prevent others from claiming to be authors), and to protect the integrity of the work if modifications and use of the work offend honour and reputation of the author.

Among other things, an author is also entitled to compensation for giving works to public libraries, to participate in the professional resale of works of art, the right to compensation for the import and sale of blank materials that could reproduce his works (such as CDs, copiers, hard disks, vinyl records, etc.), the right to access and obtain unique copies of his work, and the right to repent.

### **What about the work of authorship created in the course of employment? (Major Article 100 of the LCRR)**

When an employee creates the work within the scope of his work obligations or according to the instructions of the employer, the copyright (copying, selling copies, communicating to the public ...) are transferred to the employer for the period of five years from the day of completion of the work. The employer is not obliged to pay the author additionally for this transfer (salary is considered to be sufficient compensation). After five years, the rights are returned to the author, unless the employer requests re-transfer before the deadline and pays for that additionally.

### **How long does copyright protection last? (Major Articles: 55–62 of the LCRR)**

Copyright protection expires 70 years after the death of the author, or 70 years after the death of the last living co-author regarding co-authored work. In special cases (anonymous work or collective work (encyclopaedias, etc.)), the time period may be different, but this is an exception. All time periods used to determine expiration date of copyright protection are calculated from the 1<sup>st</sup> January of the year following the one in which the event relevant for the beginning of the period had occurred (e.g. the death of the author). The rights always expire on the 1<sup>st</sup> January!

### **Which are the things an author is not authorized for? (Major Articles: 40–54 of the LCRR)**

The author (or heirs and right holders) does not control the use of the work in respect of which the protection has expired.

The author has no control over what cannot be protected or is excluded from copyright protection (such as daily news or laws).

The author can control all ways of using his work, except for those for which the law has given explicit permission to certain persons to use them in certain cases and in specific manner. Unlike other countries, BiH does not have fair use, or an open content rule that authorizes a judge to allow some forms of use simply because that is fair. Instead, a copyright protected work can be used without permission only when explicitly permitted by law, and even then it can be used only in the manner and scope permitted by law, and in accordance with the intent the Legislature intended to achieve and in accordance with good custom. On the basis of a legal permission, copyright work can be approved for use either with a legal licence or free use. With a legal permit, the user does not have to ask for permission, but must pay a fee to the relevant organization for teaching materials (textbooks, for example) or in press reviews (clipping). It is allowed to use someone else's work in *free use* manner without the permission of the author and without payment of remuneration only in the following cases (respecting the legal limits): to meet the needs of persons with disabilities; as a necessary technological process (temporary reproduction, e.g. on servers); to inform the public; for teaching, for private and other personal use; when the work is quoted; when the work is an irrelevant element; for public exhibitions or auctions of works; modify works for parody or caricature drawing, for private use, use of works permanently located in public places, use works in official proceedings or to inspect devices. Only the persons authorized by law may use the author's work in this way. Crossing those boundaries will be regarded as copyright infringement. In order to inform the public about current events, the following is allowed: to copy the author's work in case when it is a part of the event; to adapt and copy press reviews on the event; to copy political, religious and other speeches held in state or local government bodies, religious institutions or during state or religious ceremonies; and free use of daily news and news that have the character of a newspaper report.

### **How to give authorisation for the use of the author's work? (Major Articles: 63–99 of the LCRR)**

An author may authorize someone to use his work by either giving that person a permission to use the work or transferring specific authority to use the work from himself to that person.

Both the permit and the transfer of rights must be in writing. This does not mean that they must be in the form of a contract *per se*, but that the content must be noted in certain way (via email or SMS, video or audio, etc.). The only exception is the publishing contract for the publication of articles, drawings and other works in the daily and periodical press; these do not have to be in writing. The permit does not have to be written in *legal language* - it is enough to be clear enough to be seen who is authorized, in what manner and for how long he will use the work.

The author may transfer his economic rights to other persons exclusively (the author will no longer be allowed to use the work in this way) or non-exclusively (both the author and other

persons may use the work). Apart from that, the author may limit the transfer of the copyright by subject matter (to specific works), by content (to only some forms of use of the work), spatially (e.g. on the territory of BiH) and temporally (e.g. to one year). If the author permits or transfers the right only to one form of the use, other persons must not use the work in other ways without additional permission. It is assumed that the transfer of rights is done for a fee (if it is free, it must be explicitly written).

Other persons are not allowed to transfer the right or give permits if they are not authorized for that by the author himself.

**How to deal with infringement of copyright? (Major Articles: 156–163 of the LCRR (civil procedure), 170–174 of the LCRR (offence), 242–246 of the Criminal Code of BiH (criminal procedure), 166–169 of the LCRR (customs measures), 152–153 of the LCRR (protection of technological measures))**

Any use of the work protected by copyright law without valid legal permission (obtained either by the author or by the Law) is copyright infringement. Infringement of copyright may be sanctioned by civil measures (through the civil procedure litigated by the author) and by misdemeanour and criminal protection measures (initiated by the state through criminal and misdemeanour procedure).

The author is authorized to request litigation for compensation of the damage resulting from copyright infringement from the competent court. This form of protection must be initiated by the author/right holder, it will not be initiated (ex officio) by state authorities or a court. The general rules on compensation for damage from the obligation law are applied (the same is with other types of damage). The author may claim payment of the triple amount of agreed or the customary remuneration when the infringement is committed intentionally or through gross negligence (which must be proved). In practice, this measure is rarely used. The author may also request compensation for non-substantial damage due to violation of the personal and spiritual connection with the author's work. In addition to compensation for damage, the author/right holder may request the court to establish the alleged infringement, prohibit committing further infringement ordering to stop or refrain from it; order the conditions resulting the infringement of copyright to be removed; withdraw copies of copyright work that offend the copyright and the object of infringement from the economic flows; eliminate the objects of infringement; eliminate means used to commit infringement, give objects of infringement to the author and pay the costs, and he may even request a judgement to be published. Infringement of copyright may be defined by law as misdemeanour. The law specifies high fines (they may range from 1,000 to 200,000 BAM for legal entities; from 1,000 to 20,000 BAM for entrepreneur; from 3,000 to 20,000 BAM for a responsible person in the legal entity or entrepreneur; from 3,000 to 10,000 BAM for a natural person). Infringement of copyright cannot be processed by the author himself; the market inspection supervision at the entity level is competent for that.

Infringement of copyright may be defined as a minor offense as well. In this case, the law specifies fine or imprisonment (up to three years). The Prosecutor's Office and the Court of BiH are responsible for prosecuting and sanctioning this type of copyright infringement (the author cannot initiate or process this type of infringement).

The author may request the Indirect Taxation Authority to apply measures of prohibiting the import of items which infringe his rights in accordance with a special administrative procedure. The author may also protect his work by technological measures (for instance,

through Digital Rights Management - DRM), and it is forbidden to remove or circumvent these measures.

### **What are related Rights? (Major Articles: 116–146 of the LCRR)**

Some people use works legally protected by copyright or act in a way that the legal order gives them rights that are inherently related to copyright. Rights related to copyright belong to: performers (actors/actresses, musicians, singers, dancers and other) who perform or interpret works of authorship; producers of phonograms (recording of performance sounds or other sounds) who take the initiative and are responsible for the first recording of performance sounds or other sounds; film producers as persons who give the initiative, raise funds, organize, manage and take responsibility for the recording of an audio-visual work (film); broadcasting organization (TV, radio, etc.) as a legal entity responsible for the production of the show (audio, visual or audio-visual content that is broadcast in the form of a signal for communication to the public); publisher (in specific cases); and the creator of the database as a person who makes a significant investment of human, technical or financial resources in the creation of the database (regardless of whether the database is suitable for protection as a copyright work or not).

Publisher (as a person who reproduces and distributes copies of the work of authorship) has the right to compensation for private use, and has certain rights if he legally publishes or communicates to the public an unpublished copyright work for which the copyright protection has expired or if he publishes scientific editions or editions with critical reviews for which the copyright protection has expired. We can notice that related rights of the publishers are very poor. Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (which has no direct legal effect in BiH) introduces new related rights for publishers, including a *link tax*, specifically, it gives significantly greater control over the use of copyright works for which they are holders of rights on the Internet, with the obligation to share profits with authors. All related rights are appropriately subject to copyright rules. Related rights last significantly shorter (usually 50 years after the publication).

### **What is collective management of copyright? (Major Article: 147 of the LCRR and complete LCMCRR)**

The author can exercise his copyright individually, for example by granting permits himself, controlling the use and collecting the fee, and initiating lawsuits in case of infringement (among other things).

For some types of copyright works, such as musical works, it is very difficult, perhaps impossible, for the author himself to control each use of the work. There is one author and many users. For this reason, the author can exercise his right collectively. Collective management of copyright is exercise of copyright for more works of many authors together, through legal entity specialized in such activity only and operating on a non-profit basis where there can be only one organization in the whole country for a certain type of work and right and where the legal entity operates under the supervision of its members and the Institute for Intellectual Property. Collective management is regulated by the Law on Collective Management of Copyright and Related Rights (Official Gazette of BiH,

63/10). Currently, there is no collective organization in BiH especially if it is about the copyright protection for journalists' works.

## **Recommendations**

1. Adopt special rules (which would significantly accelerate and facilitate litigation) and remove the obligation to pay fees if journalists file suits for infringement of copyright to the competent court;
2. Establish collective organizations for the copyright protection of journalists' works (for example, photographs or certain types of journalistic texts) modelled on best and proven practices in other countries; meanwhile, establish a clearing centre for journalists who wish copyright protection;
3. Establish an organization (or give authorities to a collective organization from the previous point) for collecting fees regarding the legal permit for press reviews, i.e. clipping;
4. Give more freedom to journalists to use other people's works for the purpose of informing the public;
5. Extend the rights of publishers following the example of EU Directive 2019/790;
6. Clarify the rules for using the orphan works (works that are copyright protected, but the authors/right holders are not known or cannot be contacted) for the purpose of informing the public, following the example of EU rules;
7. Establish a journalists insurance fund in case of copyright infringement, following the examples from other countries;
8. Organize trainings for journalists about their copyrights. Start a campaign to promote copyright and problems in the protection of journalists' copyright in public. In cooperation with the competent organizations, create and implement permanent education of judges and prosecutors, inspectors and other government officials on competencies regarding copyright protection. Potentially establish a joint fund to finance court proceedings for copyright infringement of journalists hoping to achieve a positive effect, as in the case of Republic of Croatia;
9. Establish cooperation of "BH Journalists" with non-governmental organizations, competent state institutions and individuals for the purpose of providing advice and assistance to journalists regarding infringement of their copyright;
10. Carry out a thorough research of practical experience and practical application of measures that protect the copyright of journalists in BiH. Propose amendments to the law, based on the results of the research, including the possibility of granting special or sui generis rights to journalists regarding their works.

### **Copyright protection of journalistic texts**

Although the Law on Copyright and Related Rights of BiH ("Official Gazette of Bosnia and Herzegovina", 63/10), hereinafter LCRR, does not explicitly mention journalists or media professionals as employees, the legal definition that an author is any natural person who has created a work also applies to journalists who, in the course of their professional activity, create original works, and therefore, they are holders of both economic and moral rights. Correspondingly, copyright protection of journalistic texts is also possible, considering that author's right arise and belong to the author upon creation of the author's work and it is not conditioned upon the fulfilment of any formalities or requirements regarding its content, quality or purpose. Furthermore, the author may deposit his work in the Institute for Intellectual Property of Bosnia and Herzegovina, which is not a condition for acquiring copyright protection, but it is one of the ways for future safer treatment of the author and his work.

Considering provisions of LCRR which define that the author shall have the right to remuneration for any exploitation of his/her work by another person, unless otherwise provided by this Law or in a contract (Article 20, paragraph 3 of LCRR), it can be concluded that in some cases the economic right to remuneration is missing because journalists as media workers are already in a certain contractual relationship and they create specific works of authorship on the basis of that agreement. In most cases, these are texts that inform the public about current issues and daily news or various information in the form of short news contained in a press release, and the Legislator has determined them as not subject to copyright protection. However, if the art form predominates or the journalist has written an investigative text, then further use requires the permission of the author. Therefore, journalistic texts enjoy the same legal protection as other written works listed in the LCRR. Although there is a Law on Copyright and Related Rights, if there is a commissioning agreement between the employer and the media worker, the provisions of the agreement apply. Even in this case (when a journalist is bound by commissioning agreement or any other agreement with the employer), it is necessary to act properly when exploiting an author's work for the purpose of preventing violation of other rights of the author.

#### **How to act when reposting texts?**

As with reposting any type of copyright work, the same is with reposting journalistic texts: it is necessary to respect both the economic and moral rights of the author or the copyright holder. If the author of the text is not the holder of economic rights, the permission for use must be obtained from the right holder. Hence, if a journalist does not perform the activity independently, but he is in a certain contractual agreement, e.g. a journalist in a contractual agreement with a web portal which is the right holder (for instance, a service contract), the web portal needs to give permission for the use of the text, with limitations on the scope and manner of use. In addition to the consent of the right holder for the use of the work, it is necessary to respect moral rights of the author of the text, and the main moral right of the author (after publication) is recognition of authorship (right to indicate his name) and use of

the work (right of the author to oppose any modification or use of the work if such modification or use offends his honour and reputation).

When the author (journalist) intends to use parts of the text of another author (journalist) in his text, LCRR allows citation of passages and quotations, but with obligatory respect of the author's moral rights, indication of the author's name and the title of the work from which the passage was taken. With reference to the large presence of online media outlets, it is desirable to provide a link to the website where the published text is available. Almost all media outlets have rules on downloading and use of the content, therefore it is very important to be well informed about that before downloading and using particular text.

**In the jurisprudence of Bosnia and Herzegovina, there are often cases when an online media outlet is in the role of a defendant that has republished the text from another (original) media outlet irregularly without respecting the regulations on reposting the text. The claimant (a person who considers himself damaged for certain reasons), not knowing who the author of the text is, demands compensation from the wrong person, i.e. the media outlet that did not indicate where the text was originally taken from. We conclude that - in addition to the importance of proper reposting of texts in order to respect the economic and moral rights of authors - proper reposting is important to exclude doubts about the identification of passively legitimized person (defendant) in case of litigation on other legal grounds.**

### **Protection of an original work before court**

In addition to exercise and protection of copyright and related rights through collective organizations established for that purpose, the author may protect his rights by himself or through a competent court. Article 156 of the LCRR defines that an author or a person whose right is infringed may request:

- determining that infringement has been committed,
- prohibition of further infringement and future similar violations by termination or refraining from actions that infringe the rights,
- eliminating the situation caused by copyright infringement,
- withdrawal of subjects to infringement from economic flows, respecting the interests of conscientious third parties,
- complete removal of the subject to infringement from the economic flows,
- destroying the subject to infringement,
- destroying means that are exclusively or predominantly intended or used for copyright infringement, means that are the property of the defenders,
- leaving the subject to infringement to the right holder, with payment of production costs,
- publishing the judgement.

According to the provisions of the Civil Procedure Act, a suitor may file a proposal to impose a precautionary measure. The court may grant this measure if the claimant/affected party makes the existence of his right plausible, and if there is a possibility that the defendant/offender could prevent or significantly complicate the exercise of the claimant's rights without such measure. Also, the author or copyright holder has the right to

remuneration for substantial and/or non-substantial damage due to the infringement of his moral or economic rights. Although the Law provides judicial protection, dispute resolutions for copyright infringement out-of-court is a more efficient way due to the longer court proceedings, and due to the fact that the Legislator left the possibility to implement protective measures and propose fines in case of distribution, broadcast or communication of works without the transfer of appropriate copyright.

### **Compensation and the amount of damage caused by copyright infringement**

In case of any form of copyright infringement, an author has right to compensation for substantial and non-substantial damage, depending on whether moral or economic right has been infringed. The amount compensated to the author for the damage is not defined by law and depends exclusively on the each case individually and on the discretionary assessment of the court, which will make a decision on the amount of damage to be compensated to the affected party based on all presented evidence and after establishing relevant facts.

With regard to illegal use of a certain text, for the purpose of defining the amount of damage, it is important to determine the duration of using the work illegally, the degree of guilt of the infringer (offender), and the amount of lost profits that the author (affected party) could have made if the infringement had not been committed.

Article 157 of the LCRR defines that the general rules on compensation for damage and liability for damage shall apply to all forms of copyright infringement from this Law, unless otherwise determined by this Law. Determining the right to compensation for damages is decided according to the rules of the Law on Obligation Relations and the amount of damage is determined by an expert testimony. In some cases, in addition to determining the amount of damage (based on the agreement or current market value), an expert can determine existence of copyright.

The amount of non-substantial damage is also estimated depending on each specific case and represents a monetary amount that will provide the affected party with a form of satisfaction due to the mental pain suffered. Non-substantial damage may be claimed for infringement of the moral rights of the author, for example for infringement of the right to indicate the name of the author or infringement of the integrity of the work itself. Additionally, if the author's work is published in an altered form without the author's permission, he may request correction of the published work through the same media or in another way, and in case this is refused, he can request compensation for non-substantial damage due to violation of the integrity of the work or deformation of the original work.

Considering the non-substantial damage is also compensated according to the general rules of compensation, in certain cases the defendant may be obliged to compensate non-substantial damage after it has been determined on the basis of Orientation criteria and amounts for determining fair monetary compensation for non-pecuniary damage, determined at the session of Civil Department of the Supreme Court of the Federation of BiH, held on January 27, 2016, with the professional opinion of an adequate expert who will prepare his findings in accordance with the Orientation Criteria.

## **Criminal copyright protection**

In addition to the civil protection enjoyed by the author or copyright holder, state-level criminal law also provides criminal protection of copyright works. Article 242 of the Criminal Code of Bosnia and Herzegovina ("Official Gazette of BiH", 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) provides a penalty for misuse of copyright, stating that a person who, under his own name or under the name of another person, publishes, shows, performs, transmits or in other way communicates to the public another person's work which, in accordance to the law of Bosnia and Herzegovina, is considered an author's work, or allows such act, shall be fined or imprisoned for up to three years. This article also defines punishment for a person who publishes, shows, performs, transmits or in other way communicates to the public another person's work without giving the author's name or pseudonym when the author's name or pseudonym is indicated on the work, or the person who illegally inserts parts of someone else's work into his own work or allow such thing to be done, as well as punishment for a person who destroys, distorts, change or modifies another person's work without the author's permission in any other way. Article 242 of the Criminal Code of Bosnia and Herzegovina also reads that 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, puts into circulation, rents, imports, brings across the state border, shows, performs, transmits, transfers, makes available to the public, translates, adapts, modifies, revises or uses the author's work in any other way, shall be fined or imprisoned for up to three years.

Accordingly, it is clear that copyright infringement can be the subject to both civil and criminal disputes, and that in the first case the affected party (author or copyright holder) may claim protection from the court in the manner described in the section about compensation for substantial and non-substantial damage of this paper, and in the section about judicial protection as well. With regard to criminal liability, when the competent prosecutor's office finds that there is a reasonable suspicion of copyright infringement after an investigation, the court will act in accordance with the responsibility of the offender, and the affected party (author or copyright holder) will, if the court has awarded a civil claim, assert that claim in civil procedure or he will be settled by deprivation of the property benefits gained by the accused by committing an offense, in case when the benefit has been gained.

## **Recommendations**

1. Copyright is increasingly liable to infringement, especially in the digital age, and in this respect it is necessary to harmonize legislation in our country with international legal instruments. The most important instrument for the protection of journalists' copyright in this field is "Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market".
2. Strive to achieve out-of-court settlement as a faster and more cost-effective way of resolving disputes, and enable the effective provision of legal advice on copyright to all journalists.
3. With regard to the speed of information exchange, it is necessary to spread awareness of the fact that the text of a journalist which is more accessible due to the

presence of online media is not therefore deprived of legal protection. The easiest protection measure is to download texts/information properly, indicate the author of the text, and inform in advance whether the author or copyright holder has previously given permission to use the copyright work, which also applies to journalists who used the work of another person/journalists. Nevertheless, it is always necessary to consider the respect moral rights of the author as well, regardless of fees for a particular journalistic text.

4. In accordance with their specific work obligations and jobs, journalists and other media workers should take into consideration that their employment contracts or service contracts have expressly specified provisions for the protection of their copyrights for the purpose of prevention of misconduct, at least partially, by both the employers and third parties.

**Tatjana Vitomir**

### **Collective management of copyright and related rights in Bosnia and Herzegovina**

Law on the Collective Management of Copyright and Related Rights (Official Gazette, 63/10) manages a system of exercising the rights of the author and holders of related rights in Bosnia and Herzegovina in a collective manner. Collective management of copyright and related rights means the exercise of copyright for a number of works by more authors collectively through legal entities specialized in such activity only, which fulfil all the conditions under the provisions of this Law and have the authorization granted by the Institute for Intellectual Property of BiH. This means that the collective exercise of copyright and related rights is possible only if the following conditions are cumulatively met: the legal entity is specialized in that activity only, it meets all conditions provided by law, and that it obtained a permit for those activities from the Institute for Intellectual Property of Bosnia and Herzegovina.

Considering the collective organization is founded by authors, it is in a binding relationship with the authors and carries out all activities in its own name and for the account of the authors, which is one of the most important characteristics of the entire system of collective exercise of rights.

Article 3 of the Law on the Collective Management of Copyright and Related Rights limits the activities that a collective organization is allowed to do and at the same time determines what activities the collective organization is obliged to do. The legal form of a collective organization is determined in Article 8, paragraph 1 of the Law, which stipulates that a collective organization is a legal entity that has the status of an association operating within the entire territory of Bosnia and Herzegovina and that is registered with the Ministry of Justice of Bosnia and Herzegovina. The procedure for the grant of authorization is defined in Articles 10 and 11 of the Law and the Rulebook on the manner and form of fulfilling the conditions for granting a license to legal entities to perform collective activities of copyright and related rights (Official Gazette of BiH, 44/11). One of the peculiarities of the system of collective exercise of rights is the introduction of the so-called legal monopoly to an organization for the collective management of copyright relating to the same type of rights in the same category of works. According to this decision, there can be only one organization that can obtain a permit for one type of right in the same category of work (Article 6, paragraph 3 of the Law).

The law regulates the relation between a collective organization and authors in detail. Article 15, paragraph 1 of the Law states that a collective organization may not refuse a request of an author for the conclusion of contract for collective management of rights in the area of its activity. Article 16 states that the authors who entrust the management of their rights to a collective organization become its members. The introduction of a system of legal monopoly for one organization creates the obligation of that organization to act on behalf of all authors (both those who are members and who signed the contract, and those who are not) within the framework of the type of rights and categories of works for which it is specialized. The presumption of collective management of rights of all authors, as regulated in Article 18, paragraph 1 of the Law, gives the possibility to the authors who do not wish their rights to be managed collectively to exclude themselves from the system of collective management of rights in writing.

Basic principles and standards on which the modern system of collective management of copyright is based are:

- non-profit type of organization;
- specialization of the organization for the collective management of certain rights in certain types of subject matters of protection;
- de jure or de facto monopoly position of the organization (since the practice of collective management of copyright has shown that, both in terms of reducing transaction costs and legal safety of users, competition among organizations does not give good results, one of the first things arranged by special regulations on collective management is to introduce a monopoly of an organization);
- democratic management of the organization (authors' decision-making on the work and activities of the organization and the distribution of collected remunerations throughout the bodies of the organization);
- transparency of activities;
- prohibition of discriminatory practice of the organization towards certain right holders, as well as towards certain users;
- fairness in the distribution of collected remuneration to right holders;
- efficiency in substantial management;
- supervision over the activities of the organization by the state.

A collective organization does not have its own resources and it generates income exclusively from the use of the property rights of its members and thus manages other people's money. The international standard regarding the distribution of collected funds on behalf of remuneration for the use of copyrighted works is that, out of all total obtained funds, the collective organization allocates only funds to cover its work, and it is obliged to distribute all other funds to its members according to pre-established rules.

To assess the amount of funds to cover the labour costs of a collective organization, the international standard for calculating the economic viability of the organization is applied. According to the standard, distribution is done as follows:

- up to 30% of copyright and performance management revenue,
- up to 25% of the management of reprographic rights.

Exceptionally, the statute of a collective organization may provide that a total of up to 10% of the net income of the collective organization is provided for two types of purposes:

- for cultural purposes,
- to improve the health care and retirement security and social status of its members.

The Law allows copyright authorization regulated by the Law on Copyright and Related Rights, to be managed collectively if the authors decide that and if they establish appropriate collective organizations for that purpose. Exceptions to the voluntary exercise of rights in the system of collective management are four types of rights that can only be, or must be exercised in the system of collective management of rights (so-called mandatory collective management of rights), without a contract with the author.

One of these rights important for journalists is the right to reproduce current newspaper and similar articles on current issues in press reviews (clipping). The remuneration obtained on the basis of a legal license for the reproduction of newspaper and similar articles in press reviews (clipping) is distributed between authors and publishers in a ratio of 30:70. There is still no collective organization for management of these rights in Bosnia and Herzegovina, therefore it would be necessary to examine the possibility of applying to the BH Journalists Association for a license to collective management of the right to reproduce current newspaper and similar articles on current issues in press reviews. The procedure for granting a license for collective management of copyright is defined by Article 10 of the Law and by the Rulebook on the manner and form of fulfilling the conditions for granting a license for legal entities to perform collective management of copyright and related rights.

### **Deposition of works in the Institute for Intellectual Property of Bosnia and Herzegovina**

Despite the fact that copyright arises on the basis of the creation of author's work, it is necessary to additionally protect the original works and make them as protected as possible in the sense of illegal copying and using. The exclusive copyright holder may place the © Copyright mark on the original work or copies of his work before his name or company name and the date of publication.

In addition, the Law on Copyright and Related Rights provides the possibility of depositing works of authorship and subject matters of related rights within the Institute for Intellectual Property of Bosnia and Herzegovina. The deposit is made for the purpose of preserving evidence or for other reasons. Deposited works are entered into the book of records of authorship works maintained by the Institute. The Institute issues a deposit certificate to the applicants for deposit, which contains all the essential elements related to the original work (type and title of the work, data on the author and the exclusive copyright holder, and the date and ID number of the entry in the register of copyright works). It is considered that the rights over works and subject matter of related rights that are entered in the book of records of authorship works exist and belong to the person indicated as their holder, until proven otherwise. The book of records of authorship works is public and unique for the entire territory of Bosnia and Herzegovina. More detailed regulations on the manner and form of depositing works and entry in the book of records of authorship works are defined in the Rulebook on the manner and form of depositing copyright works and related rights and on the entry in the book of records. Deposit application forms can be found on the Institute's website: [www.ipr.gov.ba](http://www.ipr.gov.ba)

The role of the Institute for Intellectual Property of BiH in copyright protection in Bosnia and Herzegovina

The competencies of the Institute for Intellectual Property of BiH are regulated by the Law on the Establishment of the Institute for Intellectual Property of Bosnia and Herzegovina. In the field of copyright and related rights, the competences of the Institute relate to:

- "administrative and professional affairs relating to the rights of authors for the works in the field of literature, science, art, the rights of phonogram producers, the rights of broadcasting organizations, the rights of producers of videograms and databases, in accordance with the provisions of international conventions, treaties and agreement,

ratified by Bosnia and Herzegovina, and the laws and implementing regulations governing this matter,

- supervision over the work of associations for the collective management of copyright"

Thus, the Institute has no jurisdiction to prosecute copyright infringements nor it has a role in civil, criminal or misdemeanour copyright protection.

The Institute has an important role in the system of collective management of copyright and related rights. It grants authorization to collective organizations for managing copyright and related rights, and supervises their work. The Institute supervises the operation of a collective organization in order to determine whether it performs the entrusted tasks in compliance with the issued license, the provisions of the Law on Collective Management of Copyright and Related Rights, and other relevant regulations and general acts. In accordance with Article 13, paragraph 1 of the Law, if the Institute finds irregularities in the operation of a collective organization in compliance with authorization and the legal order of Bosnia and Herzegovina, the aim of supervision is to order the organization to remove such irregularities and modify its operations in accordance with regulations of its general and individual acts.

In addition, the Institute is responsible for the legislative regulation of copyright and related rights in BiH and amendments to legal provisions, in cooperation with international organizations - such as the World Intellectual Property Organization.

**Milica Samardzic**

## **The role of the BH Journalists Association in the copyright protection of media professionals**

The authors' rights of media professionals in Bosnia and Herzegovina are barely discussed, although respecting copyright is one of the fundamental principles of journalistic ethics. Media outlets have a professional and moral obligation not to publish journalistic content such as texts, videos, photographs, etc. without clearly indicated signature of the author. However, in the era of digital communications when everyone fights for as many clicks and views as possible, journalistic content is copied and posted without any control, regulations and restrictions, but also without sanctions. Media professionals are the ones who talk the least about themselves and the problems they face due to the theft of their labour and work, and even less often they decide on lawsuits due to infringement of copyright.

Article 4 of the Charter of Freelance Rights of the European Federation of Journalists reads: *"Every freelance has the right to hers/his authors' rights. All freelances must have unwaivable moral rights. Freelances must have the right of collective bargaining regarding their authors' rights."*<sup>1</sup>

Copyright laws give authors (including media professionals) two basic sets of rights. The first set allows the author to control who can reproduce his works and make them available to the public (economic rights), while the second set allows the author to be recognized and acknowledged as the creator of his work (moral rights), and that the integrity of the work is respected as well.

If a journalist does not have the right to collect financial compensation for the distribution of his/her work, anyone can download it and sell access to that work. If a media worker does not have the moral satisfaction to be indicated as an author, on the one hand his existential survival is undermined because it is questionable how he will earn a salary if clients or employers do not know how to value the quality of the work not signed by the author. On the other hand, such situations demoralize journalists and they gradually leave their journalistic profession and try to recognise themselves in more organized occupations which will provide them with a steady and fair wages, which at the same time reduces the possibility of strengthening journalism as one of the pillars of a democratic society. Another aspect of signing the author below his work is related to ethical journalism and taking responsibility for what is written.

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<sup>1</sup> [http://europeanjournalists.org/wp-content/uploads/2016/10/EFJ\\_handbook\\_2016\\_CR.pdf](http://europeanjournalists.org/wp-content/uploads/2016/10/EFJ_handbook_2016_CR.pdf)

When media professionals repost someone else's media content, they need to have the approval of the holder of the author's work or the author himself, in written form. When publishing someone else's content, it is necessary to specify the author of the work (in addition to the media outlet). In cases when the author is unknown, it is advisable to avoid posting and use similar content which is a public asset. Journalists must also take into account the integrity of the work they repost, i.e. that they do not violate the integrity of the work while using the content.

The most effective way to protect the copyright of media workers is the existence of copyright awareness, as well as collective advocacy and work on the protection of journalistic products. Media outlets and journalists can fight for the copyright protection of the content they produce by creating rules for their use by establishing the manner and scope of reposting. These rules include stating the way in which media outlets want to be indicated as a source (name of the media outlet, link to the page or linking the media), the format in which is possible to download certain content, information on whether only part or complete content is reposted, and the fee that has to be paid in case of reposting the content.

### **BH Journalists Association and copyright protection of media professionals**

From the viewpoint of BH Journalists Association as a professional organization, media professionals rarely complain about copyright infringement, partly due to the belief that it is impossible to confront this problem in the era of web portals, partly due to mistrust of journalists in the judicial system, and due to the long duration of judicial proceedings as well.

There is a Help Line within the BH Journalists Association that has been helping journalists (Free Media Help Line – FMHL)<sup>2</sup> since 2003, or for 17 years, and it functions as a mechanism for effective monitoring and recording of attacks, threats, pressure and other forms of violations of the rights of journalists and media freedoms in BiH.

Journalists whose copyrights have been infringed can report the infringement online<sup>3</sup> on the website of BH Journalists<sup>4</sup> and, after the lawyer analyses the situation and gets in touch with the media professional, a decision will be made on what to do and what legal remedy to use to respond to the theft of the author's work. When a journalist decides to file suit on a copyright infringement, the Journalists' Help Line and the BH Journalists Association provide free legal assistance, in cooperation with legal teams throughout Bosnia and Herzegovina. A

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<sup>2</sup> <https://bhnovinari.ba/bs/linija-za-pomoc/>

<sup>3</sup> <https://bhnovinari.ba/bs/linija-za-pomoc/>

<sup>4</sup> [www.bhnovinari.ba](http://www.bhnovinari.ba)

journalist can get free legal assistance if he is a member of the BH Journalists Association, and he can become a member if he registers online<sup>5</sup> and pays an annual membership fee.

Over the past few years, the FMHL database has shown that there have been only a few requests for legal advice regarding journalists' copyright infringement. One of those cases concerned the theft of photos of a journalist from a local media outlet. Namely, a journalist / photographer<sup>6</sup> followed the music festival in a city in BiH and took photographs of the bands. A world class brand took his photos and signed them as a band's author's work, without mentioning the media where the photo was published or the author of the photograph. The journalist contacted an American company that deals with copyrights, he authorized them to represent him, and the company represented him in negotiations with the lawyers of that world brand. The journalist managed to prove that it had been his work, and after three or four months the dispute was resolved in his favour and he received compensation for using photographs as a copyright work.

Another case when the Help Line provided legal advice concerned using complete shows and parts of the shows for another show without indicating the author and without the author's approval. After analysing the situation, the Line Coordinator addressed the journalist to the Institute for Intellectual Property in Bosnia and Herzegovina.

However, none of these cases ended up in court, nor was the legal team of the Help Line hired, regarding that journalists sought legal advice. In general, journalists rarely or almost never report infringement of copyright; hence there is no accurate data to what extent copyright is infringed in Bosnia and Herzegovina.

The reasons why journalists do not report infringement of copyright partly lie in the lack of education of media professionals about copyright, as well as in the fact that they are not familiar enough with the laws or protection mechanisms. Also, when copyright is infringed, the journalist is often in a dilemma of choosing relevant organization / institution / body to address to, because this topic is quite unexplored in BiH and it is not discussed about so often.

### **Recommendations:**

1. Educate media professionals on copyright;
2. Control the contracts that journalists sign with the employers regarding copyright because journalist is always in a weaker position;
3. Create rules for copying and posting media content in each type of the media and specify them below the text / video / report / article;

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<sup>5</sup> <https://bhnovinari.ba/bs/baza-clanova/>

<sup>6</sup> Help Line was asked for legal advice in this case.

4. Establish a unique authority that will deal with the copyright protection of all media professionals;
5. Speak as much as possible about journalists' copyrights in public.

**Dzenana Burek**

**Author's work in online media – professional and ethical principles, recommendations of the Press and Online Media Code, the role of the Press Council in BiH in the protection of journalists' copyrights**

With regard to the media, and therefore the press and online media which are under the jurisdiction of the Press Council and Online Media in BiH, copyright is specific.

Journalists are the authors of their works, they have the copyright protection for those works, and during writing texts they are often in a situation to use someone else's works protected by copyright. For that reason it is very important that they are familiar with the way they can protect their copyrights, but also how to respect the copyrights of others and comply with the ethical principles of journalism and the dignity of the profession.

Copyright protected content can be used by journalists if they have permission for use or if they respect the fair use rule. Permission can be obtained from the copyright owner in writing or orally. Approval can also be obtained from the terms of use, posted on the content creator's website. It can refer to part of the content or to entire content.

For instance, some media outlets allow the use of their content with indication of the source (in regard to online media and linking to the source, or to the specific text being cited), some media outlets allow the use of part of the text only, and they request waiting for certain period of time for the use of the entire text with the additional written permission of the copyright holder.

Regardless of whether a particular source/media outlet has clearly stated terms of use or not, copyright in the press and online media in BiH is protected by Article 14 of the Press and Online Media Code of BiH.

**Press and Online Media Code of BiH**

The Code has been drawn from existing European standards of journalistic practice. It aims to establish the foundations of a system of self-regulation in print and online media, which shall be considered morally binding for journalists, editors, owners and publishers of print and online media.

Journalists and editors of the press and online media shall respect generally accepted ethical principles and protect the professional integrity of journalism. In addition to this Code, laws and other regulations constitute a framework in which print and online media operate in Bosnia and Herzegovina. The Code includes the basic principles of the Memorandum of Understanding signed by: Independent Union of Professional Journalists of BiH, the Association of Journalists of BiH, the Independent Union of Journalists from the Republic of Srpska, the Association of Journalists of the Republic of Srpska and the Syndicate of Professional Journalists of the Federation of BiH, and it is accepted by the Association of Croat Journalists in BiH.

Editors and publishers of print and online media shall ensure that all relevant personnel is informed about this Code and they shall further ensure that the provisions of this Code are fully complied with.

Press and Online Media Code was adopted on 29th of April in 1999 by all Journalists' Associations in BiH, and amended in February 2005, in August 2006, in December 2006 and in June 2011 by the Press Council of BiH, upon consultation with all Journalists' Associations in BiH.

It consists of general provisions and 15 articles.

**Authors' rights in print and online media in BiH are protected by Article 14. Copyright and author's rights:**

*Journalists may use reasonable amount of summaries of the original work with limited use of quotations, material from other publications or copyright holders, without explicit permission, as long as the source is indicated properly.*

*Use or reproduction of the entire material protected by copyright requires explicit permission from the copyright holder unless such permission is stated in the material.*

**Council and appeal procedure**

Press Council in Bosnia and Herzegovina is the self-regulatory body which has enabled the filing of complaints against unprofessional reporting of the press and online media since 2000, following the professional standards covered by the Press and Online Media Code of BiH.

In accordance with the principles of self-regulation of the media, the Council resolves all potential disputes between the public and the press and online media using exclusively journalistic methods, such as the right to reply, publication of a correction, apology or denial. Mediation procedure is simple, free and fast, unlike the procedures that are initiated and conducted before other bodies.

It also refers to the protection of the copyrights of journalists in the press and online media. If the copyrights of journalists/media are infringed, they will address the Press and Online Media Council in BiH, following the procedure (attaching copyright protected text and proof that their copyright has been infringed - screen shot of the text in the media outlet that infringed copyright or a newspaper clipping when it comes to the press).

Imposing any kind of sanction (fine, suspension or closure of the media outlet) in case of violation of the Press and Online Media Code of BiH is not within the mandate of the Council. All legal entities and natural persons, including the media, have the right to appeal, regardless of whether they are directly affected by reporting.

Complaints can be addressed to all print and online media (information web portals) in BiH, regardless of whether they are members of the Council or not. The deadline for filing complaints is one month for daily newspapers, or two months for magazines, and it starts from the day the text is published, i.e. the editor's response to an earlier complaint sent directly to the journalist or the editor. With reference to online media, a complaint can be sent as long as the content is available on the web portal.

To start the mediation procedure, it is necessary to send a complaint to the media outlet and the Press Council in BiH at the same time. Complaints are sent exclusively in writing, via e-mail, fax or mail. The contact details of the Council are as follows: e-mail: info@vzs; fax: 033/272-270 or 033/272-271; address: Trampina 8, 71 000 Sarajevo.

The appeal procedure is the same, regardless of the type of the media and violation of professional standards.

With regard to the formal conditions that the complaint must meet, it is important to state when and where the text whose content is being complained was published, an explanation of what is being complained about, what is supposed to be corrected, and what information and evidence show that the journalist reported incorrectly or made a mistake. Along with the complaint, it is desirable to submit a copy or screen shot of the text to which the complaint is referred to. More evidence that support the statements in the complaint contribute to a faster and more successful resolution of the dispute. In regard to unauthorized use of texts and/or photographs, it is useful to provide a copy/screen shot of both the originally published republished text and photographs.

Upon receiving the complaint which was previously determined to meet all formal requirements, the Press Council in BiH contacts the editor-in-chief and requests a statement regarding the due complaint and the published text. Regarding this is a mediation process, the Council always urges the publication of a reaction, denial, correction or apology.

If no agreement is reached with the editor, the complaint is considered by the Complaints Commission of the Press Council in BiH.

Complaints Commission of the Press Council in BiH is an independent body in charge of reviewing citizens' complaints about inaccurate and unprofessional reporting of the press and online media, as well as infringement of copyright. It consists of nine members (+ 2 backup members) from different parts of BiH. They are editors, journalists, lawyers, judges, professors...

The Commission reviews public complaints about the press and online media in Bosnia and Herzegovina, reviews the results of press and online media monitoring, monitors the implementation and raises issues of violations of the Press and Online Media Code of BiH in all newspapers and Internet portals in Bosnia and Herzegovina and publicly reacts to the violation of ethical standards of journalism, stated in the Press and Online Media Code of BiH.

If complaints received by the Press Council in BiH are not resolved through mediation, it will be necessary to hold a session of the Complaints Commission, which will carefully consider all complaints and identify possible violations of the Code.

The Complaints Commission of the Press Council may validly make and adopt decisions if more than half of its members are present. All members of the Commission have the right to vote, and voting is public.

Decisions of the Complaints Commission are public, they are sent to the editorial office and the complainant for inspection, and they can be found at the web site of the Press Council:

www.vzs.ba, on the social networks Facebook and Twitter, and in the media outlet which the complaint was referred to.

## **Merima Topic Avdic**

### **Protection of authors' rights of journalists in electronic media in BiH**

The authors' rights of journalists in electronic media can be viewed in two ways: from the aspect of the media outlet where journalists are employed and from the aspect of journalists as the bearer of responsibility in creating, downloading and sharing authors' works.

Media outlets are obliged to protect author's rights, citing the author of the text, report, article, photograph or infographic, as well as the co-author of the audio-visual work.

Opening and closing credits serve as the technical signature of the participants in the creation of the audio-visual work, as well as the holder of that work.

There has been a recent infringement of rights in the media in the form of:

- broadcasting unauthorized audio-visual recordings, without seeking the consent from the holders of exclusive broadcasting rights,
- the use of modifications of a musical work as an audio background for advertising campaigns, without the author's approval,
- the use of reporters' photos without permission and signature,
- unauthorized downloads and reposting without indicating the source,
- plagiarism - taking other people's ideas and using them as one's own,
- inadequate formulation of the contract provisions relating to the authors' rights of journalists.

The reasons are various:

- financial - which can be viewed in two ways: on the one hand, the market demands from journalists to be first who published the news and achieve reach, and on the other hand, there is a saving on texts and avoiding to pay compensations to the authors,
- neglect of editorial standards and written rules of media outlets,
- absence of awards, benefits and adequate financial compensation in media outlets for the purpose of encouraging high quality original texts.

In local TV companies, general managers used to make decisions on rewarding journalists who had had the greatest number of texts published on web portals within the television company, and these rewards were a form of stimulating the number of articles and texts. The result was only quantity, and not necessarily quality.

Current concept of the media industry implies various organizational forms of electronic media (media outlets), which also affects the expanded possibilities of creating, broadcasting, using, distributing, reproducing, and storing content.

Within the scope of performing journalistic activities, various types of authors' (co-authored) works are created on a daily basis, and they are mostly created during the course of employment.

If the author creates the work during the course of employment, while performing his work obligations, the employer has the right to publish the work. In other words, he is the holder of exclusive economic rights when using that work within his economic activity, five years after the work is ended.

After this period is expired, all copyrights are acquired by the author. The law leaves the possibility for the employer to agree on different rights and obligations with the employee by a general act, or employment contract, so the employee is given the opportunity to negotiate better conditions, especially compensation for the exploitation of the work, but also to waive property rights after a period of five years. In regard to the nature of moral rights, they belong to the author from the very beginning, they are not allowed to be traded, and the employer must specify the author's name when using the work.

According to the data of one television station, a large number of authors' works are created on a daily basis, specifically 615 individual original works per month, regarding only informative editorial offices (reports, author's texts, articles, graphics, etc.).

Forms of use of author's work are regulated by the Law on Copyright and Related Rights of BiH.

If there is a commissioning agreement between the employer and the media employee, the provisions of the agreement are applied.

An employment contract in electronic media usually includes a section that provides approval that all intellectual property rights to all performances, works and recorded material created and formed by an employee within the scope of employment and in connection with it, regardless of the time and place the works were created belong to media outlets as employers.

The intellectual property assignment refers to the broadcasting works and performances on television via terrestrial and satellite network, cable television, IPTV and OTT systems, TV stations network, on the official web portal, official Facebook account, YouTube channel, via web TV, and in all other forms of signal transmission that will appear in the future in the form of videotape, video disc or CD. The employer is allowed to use, reproduce, publish, display to the public, broadcast, distribute, adapt or in any other way use the works or part of the works created by the employees during their employment, in all versions of the program.

In practice, copyright in electronic media is mainly regulated by contracts.

### **Recommendations:**

1. Continuously educate journalists about copyright and authors' rights and ways of content transmitting;

2. Organize professional preparation of TV companies for the new EU Directive on copyright;
3. It takes a lot of time to create good investigative stories, therefore it is important to discharge journalists from editorial boards for news and media programs from normative writing of texts for the portal and support investigative journalism and creative authors' works in this way;
4. Involve collective organizations in education and information exchange;
5. Stimulate the creation of quality and creative journalistic environments for media outlets with the recommendations of institutes, Communications Regulatory Agency and professional organizations;
6. Form a collective organization for journalistic and photojournalistic collective copyright as a form of preparation for the changes in legal regulations that will follow;
7. Create a unique digital space for sharing author's content, which will enable transparent sharing and where it will be possible to resolve property relations between authors and users of copyright works.

**Andrijana Pisarevic**

### **The role of media unions and experience of media professionals in BiH**

Media unions do not deal with the protection of the copyrights of journalists and other media workers and they do not have direct impact on it. Considering the nature of the work of labour organizations, as well as the apparently poor conditions in the media, the subject of protection of media unions is mainly the labour rights of journalists and other media workers, their contracts, salaries and working hours, illegal dismissals, labour exploitation by employers, working without any form of agreement, as well as other related issues.

However, this does not mean that the union cannot deal with copyright protection. The connective tissue that joins these two points is reflected in the economic component, and it is manifested in the theft of content that has its real value, as well as in lowering the labour costs of journalists.

The general view is that what is published on the Internet becomes *public property*. This is how we often treat texts, photographs and videos and their authors. And that is usually true, because there are no effective mechanisms that would prevent theft or automatically send a bill to the one who stole something. Author's works thus become everyone's property with just two clicks, and the tiny signature below the text, if there is one, gives little consolation only to journalists. The reader himself will rarely pay attention to who really did all the work.

Although formally protected by the Law on Protection of Copyright and Related Rights in BiH, the authors continue to enjoy protection that is only declarative in nature, because there is no serious action. No one files suits or seeks financial compensation for copyright theft because the processes are long, expensive and ineffective, especially if one doesn't know who stands behind the portal that stole the content or simply has no financial means for compensation because it is run by a man from his living room. For all these reasons, texts and photographs are downloaded, shared and uploaded, and few people think about whether there is an author behind them whose rights are being infringed in this way.

Part of the copyright infringement can easily be called the theft of content protected by copyright, whether it is text, photo or video, but only if the material value of the work is taken into account, in other words to what extent the author is affected, and how it can be expressed in adequate financial equivalent. However, this makes the problem more complicated.

If the employer is obliged to provide the journalist or other media worker with the necessary working conditions and a legally defined hourly rate, as well as to pay salaries contributions, after which the journalist has the obligation to create an author's work, then it is logical that

the one who takes over the product should defray part of the obligations, or pay for the download of the content.

The question is who should be paid, the journalist or the media outlet that the person works for? For the purpose of getting an answer, it has to be considered whether the journalist is a freelancer or a full time employee and whether that payment would go to the person to whom the copyright has been transferred or to the owner of copyright or the third solution would be required. In that case, logically, the financial benefit would probably go to the media outlet to which the journalist transfers his copyright, with a possible share that could go to the journalist because his *original work* has been sold several times.

With regard to lowering the labour costs, it has mostly reflected on the growth of the number of web portals and on a new solution for filling the vacant space in the columns, bringing us copy / paste journalism. General copying and downloading content without asking or permission brings us, as one of the consequences, uncontrolled burial of media space by multiplying exactly the same information whose author is only one, and who has no financial benefit.

It is considered that there are about 1,000 *news* portals in BiH, and that perhaps only 30-50 of them meet the requirements of a real newsroom with employed journalists, cameramen, editors, etc. Then we come to the conclusion that at least 950 of them are engaged exclusively in the transfer of news. This further means that each portal transfers/reposts an average of 50 to 200 texts and photographs, created by employees of a small number of newsrooms who carry the burden of authorship on their backs.

The transfer of texts is part of the everyday life of each portal, and we all more or less agree with it and use it. However, in reference to infringement of copyright, a clear distinction must be made between local news, reports and investigative journalism topics. While reports, local news and daily topics can still be reposted while indicating the source and links, investigative texts are subject to copyright protection of the journalistic work, and journalists themselves are not often familiar with that at all.

Press and Online Media Code of Bosnia and Herzegovina specify the amount of the author's text that can be transferred. It allows reposting smaller parts of the text, indicating the source and the author. In cases when multiple parts or the entire text and photo are transferred, this must be approved by the author or media outlet. It is evident that this regulation is rarely followed or not followed at all.

The reasons for this also lie in ignorance and lack of education that it is someone else's intellectual work that must be completely respected by indicating the name of the author and the source. There is a lot of misunderstanding in distinguishing whether the texts is subject to copyright protected. Unfortunately, journalists as the authors are often not informed about their rights at all, however they are not informed enough on using someone else's work as well.

By simply copying or stealing texts, if done without agreement, permission and, of course, payment, many journalists, instead of creating new values, actually spend most of their working time copying others. By working on quantity rather than quality of content, they indirectly reduce their own salaries, in the long term, turning themselves into copyists instead of well-paid authors.

Such practice brings prolonged devaluation of the work of journalists who seek time and resources to create an original author's text or video of high quality, but also a good wages to write exclusive news or investigate various topics. Reducing the labour cost of journalists, their salaries, and other working conditions as well, is certainly a topic that the union deals with and must deal with. This phenomenon, among others, hides the cause-and-effect relationship between the professional work and labour rights of journalists, specifically the freedom and salaries of journalists.

Whereas, how else to explain the theft of texts or photos made by media employees than as illegal confiscation of property and obtaining financial benefits. Everything that is stolen from a journalist, even if it was done by another journalist, harms him and has its economic value.

The theory is that copyright is infringed primarily because of ignorance and unconsciousness. The latter usually refers to the content on the Internet and the generally accepted approach that everything that is found on the Internet is available for everyone to use. There are also *newsrooms* that purposely repost other people's texts without indicating author's name and sources, refusing to sign them, even when requested.

It is even more difficult when authors' rights are intentionally infringed. Occasional intervention, in the sense of insisting that the author signs his work, still remains in the good will of the media outlet that transfers the content. And it usually ends there.

Occupied by transferring other people and agencies' news, often without mentioning the author or source, a considerable number of media owners and editors accepted the cheaper practice of reposting other people's works instead of investing their own capacities in investigation and writing original author's stories, forgetting that they undermine their profession on the long term in this way.

When the news is copied several hundred times, the story itself loses its power and does not bring readability to the one who actually wrote, investigated or discovered it, but also to the one who copied it. This relationship can only result in harm to the one who has invested both human capacities and tangible assets in the creation of the work and who cannot get the maximum out of the publishing of news due to rapid copying and sharing.

Consequently, creation of a text with accompanying photos has become unprofitable for many media outlets today, which is the reason why they turned to cheap repackaging of existing content. Every journalist who invests his time and effort in writing an investigative

topic is aware that everything he does will belong to himself and his editorial office for only a few minutes after the moment of posting. This further leads to the loss of journalistic identity, the general degradation of an honourable vocation, and the fulfilment of the demands of political elites who do not choose means to eliminate investigative journalism.

Although the laws clearly define what is allowed and what is not allowed to do with other people's original texts, very few journalists are familiar with these provisions. Even fewer of them know how to use protection mechanisms, to request compensation, remuneration, and even to file a lawsuit against the one who stole their work. Hence, the education of journalists and editors in this field is necessary, and it is a great pity that almost no attention is paid to it.

### **Recommendations**

1. Media owners and editors should prominently display the warning rules for transferring/reposting texts, in the form of a warning. This is probably the simplest thing to do for web portals, because they can put an automatic signature under each text, prohibit copying of the whole content, or allow only as much as that media outlet decides.
2. Journalists should react when they realise that their work has been stolen and report the thief, especially if the identification of the author and the media outlet that first published the story were lost during reposting, because that is currently the only way to prevent the authorship from becoming meaningless. Giving up taking legal actions and thinking that reaction to such phenomena is complicated and without results is giving credit to further thefts of authors' texts and copyrights.
3. For this reason it is desirable for a journalist who recognizes the theft of his/her author's work to report it to the Press and Online Media Council of BiH and ask for protection of his/her rights. There are several very specific articles of the Law that put an end to these thefts. They state precisely what can be downloaded and shared, which amount, in what manner the source is indicated and that the author's permission for using the text must be obtained, even when it is signed by the author.
4. If the other side ignores the Council's reactions, the journalist and the media outlet that were stolen should seek justice in court. They should first send a request for remuneration and try to get a peaceful, out-of-court solution. First of all, it is necessary to ask for indication of the author and source and an apology. Only if an out-of-court conciliation is not reached, justice should be sought in court.