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Article

Current Challenges in the Relationship Between Slovenian Copyright Law and EU Law

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Abstract

The article explores the question how the new developments in the EU copyright law influence the Slovenian legislation. Presently, the Slovenian system of collective management of copyright and related rights is under scrutiny of European Commission, which recently opened infringement proceedings for failing to correctly apply the InfoSoc Directive and Collective Right Management Directive. The future Streamz decision of the Court of Justice of European Union, initiated by the Belgian Constitutional Court, could also significantly influence the Slovenian copyright rules, since the Slovenian legislator implemented the Digital Single Market Directive by similar means as Belgian legislator. One of the pressing issues in Slovenian copyright law, which was recently considered by the Higher Court of Ljubljana, is also the collection, management, and distribution of private copying levy as one of the permittable exceptions and limitations of exclusive authors rights under InfoSoc Directive. The thorough analysis of these pressing issues reveals complex intertwining of the EU and national law regarding collective management of exclusive author's rights and of various remuneration rights. The article, focusing on legal-dogmatic approach and the analysis of legal sources using grammatical, purposeful, systematical and comparative legal methods, offers overview of Slovenia's system of copyright protection, draws attention to its possible incompatibilities with EU law, and provides possible legislative solutions.

Keywords: EU copyright law, collective management organizations, exclusive rights, remuneration rights, private copying levy

1. Introduction

In the field of collective management of copyright and related rights in the Republic of Slovenia, we face numerous challenges related to the collection, management, and distribution of copyright royalties and equitable remunerations. Recenly, some of these challenges were criticaly observed by the European Commission, which decided to open and infringement proceedings for failing to correctly apply the Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive; European Parliament and Council 2001) and the Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (CRM Directive; European Parliament and Council 2014). The European Commission's main criticism of Slovenian legislation is that it does not allow authors to decide for themselves how to manage their exclusive rights of communication of their works to the public (European Commission 2026).

The latest amendment to the Copyright and Related Rights Act (CRRA-I; National Assembly 2022) has significantly reshaped the relationships between key stakeholders in the creation of audiovisual works, i.e., co-authors, performers, and film producers. Slovenia has followed the latest trends in comparative law, which, with the introduction of unwaivable and non-transferable

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remuneration rights, shall ensure the fair participation of creators in the income from the secondary exploitation of audiovisual works. This strengthens the position of collective management organisations (CMOs) in the European Union (EU), as national laws usually prescribe mandatory collective management for such rights. The relevant provisions of the CRRA-I (National Assembly 2022) transposed Art. 18 Directive (EU) 2019/790 of the European Parliament and of the Council of April 17, 2019, on copyright and related rights in the Digital Single Market (DSM Directive; European Parliament and Council 2019a). Directive imposes on Member States the obligation to ensure that the authors and performers, when transferring their exclusive rights, receive the appropriate and proportionate remuneration. However, the Belgian Constitutional Court (2024) referred the question to the Court of Justice of the European Union (CJEU) for a preliminary ruling, whether such mandatory, unwaivable, and non-transferable right to remuneration is compatible with EU law. The judgement of CJEU could therefore affect also Slovenian legislation.

The ability of individuals to legally make a private copy of a work that is otherwise protected by copyright ("private copying") is a central feature of many copyright laws around the world (Stierle 2024). Since this limitation of reproduction rights reduces the need for and likelihood of purchasing copyright-protected works, authors are entitled to an equitable remuneration to mitigate their loss and achieve a fair balance between all parties involved (Trampuž 2023). Fair compensation, which is unwaivabe, must be arranged in such a way that it reflects a "fair balance" between rights holders and users. Since the exclusive right of the author to allow reproduction of the protected work is the general rule, limitations and exceptions of this right are only permitted when they comply with the three-step test, which was initially introduced as Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works (WIPO 1886; Geiger et al 2013). The three-step test requires a clear definition of the exception in the law, that the exception does not affect the otherwise normal exploitation of work, and that equitable remuneration is provided to the rightsholders. In the cases V Cpg 248/2023 (Higher Court of Ljubljana 2024a) and V Cpg 249/2023 (Higher Court of Ljubljana 2024b), Slovenian CMO SAZOR GIZ demanded payment of reprography levy from 12 manufacturers and importers of mobile phones. The case raises the question of the relationship between the reprography exception and the private copying exception and the question, whether Slovenia has correctly implemented Art. 5 InfoSoc Directive (European Parliament and Council 2001)?

The thorough analysis of these pressing issues reveals complex intertwining of the EU and national law regarding collective management of exclusive author's rights and of various remuneration rights. The article offers overview of Slovenia's system of copyright protection, draws attention to its possible incompatibilities with EU law, and provides possible legislative solutions. The paper results show how the Member States can design an effective system for copyright protection, which respects the EU law.

2. Methods

From the methodological perspective, this paper primarily focuses on a legal-dogmatic approach and the analysis of legal sources, including national legislation and judicial decisions relevant to collective management, exclusive rights and the respective exceptions and limitations. When determining the scope of legal provisions, the paper uses grammatical, purposeful, systematical and comparative legal methods, contrasting the Slovenian legislation case law with the approach in other Member States to highlight broader trends in providing remuneration schemes for copyright owners. Since EU law limits Member States' ability to shape the copyright law rules, this paper put special emphasize on the legal framework set by the EU legislator.

 doi:10.20944/preprints202603.0396.v1

3. European Commission Proceeding Against Slovenia on Legal Trusteeship of Exclusive Rights

3.1. Key Features of Slovenian System of Mandatory Collective Management

Art. 9 of the Slovenian Collective Management of Copyright and Related Rights Act (CMCRRA; National Assembly 2016) severely restricts rightholders in the management of numerous exclusive rights, such as small musical rights (the communication to the public of non-theatrical musical and written works), the cable or other radio broadcasting retransmission of copyrighted works (except for broadcasting organisations' own broadcasts) and public communication (including the right to make available to the public) of audiovisual works, videograms and performances recorded on the videograms, excluding public presentation and broadcasting rights of film producers. The mandatory collective management, as understood in Slovenian law, means not only that the rightholder is able to manage his rights only through a CMO. Art. 18 CMCRRA (National Assembly 2016) explicity states that the CMO can, in the case of mandatory collective management, manage the rights on the basis of the law without the authorization of the rightholder (»*gesetzliche Treuhand*«, legal mandate or legal trusteeship). The rightholders become passive (extraordinary) members of the CMO, and the CMO becomes the compulsory trustee of their exclusive rights (Trampuž et al 1997). Art 14 CMCRRA (National Assembly 2016) in the case of mandatory collective managemet also establishes a legal monopoly. In terms of their ability to generate income from their rights, the rightholders are entirely dependent on the effectiveness of the one and only CMO, authorized by the state for management of their rights.

3.2. The EU Law Requirements

Art. 2-4 InfoSoc Directive (European Parliament and Council, 2001) regulate the exclusive rights of reproduction, communication to the public by wire or wireless means, including making works available to the public), and distribution. Among legal scolars, there is no complete consensus as to whether mandatory collective management changes their nature as exclusive rights. Von Lewinski (2004) points out that mandatory collective management only restricts the author in the choice of management method and does not interfere with the right itself. On the other hand, von Ungern Sternberger (2020) emphasizes that mandatory collective management is an exception and limitation of exclusive rights and that Article 5 InfoSoc Directive (European Parliament and Council 2001) provides for an exhaustive list of exceptions and limitations. Therefore, mandatory collective management of exclusive rights is only permissible where EU law expressly provides for it, as for cable retransmission (European Parliament and Council 2001) and retransmission of TV and radio programms (European Parliament and Council 2019b). This means that mandatory collective management of exclusive rights on the internet is not permissible (von Ungern Sternberger 2020). In Soulier, the CJEU (2016) emphasized that the protection under InfoSoc Directive (European Parliament and Council 2001) is not limited to enjoyment of rights, but also extends to their enforcement. Therefore, we believe that any mandatory transfer of rights to a CMO must be assessed in the light of Infosoc Directive (European Parliament and Council 2001). Recital 12 CRM Directive (European Parliament and Council 2014), on the other hand, emphasizes that this Directive "does not interfere with arrangements concerning the management of rights in the Member States such as individual management, the extended effect of an agreement between a representative collective management organization and a user, i.e. extended collective licensing, mandatory collective management, legal presumptions of representation and transfer of rights to CMOs." This recital quotes classic forms of collective management, which the Directive should not interfere with, but legal mandate is not among them. Recital 19 CRM Directive (European Parliament and Council 2014) also states: "Where a Member State provides for mandatory collective management of rights in accordance with Union law and the international obligations of the Union and its Member States, the choice of rightsholders is limited to other CMO." From this, we can conclude that under EU law,

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certain forms of restriction on the choice of rights management are permissible, but not all and not for all categories of rights. Such a conclusion is furthermore strengthened by the Recital 18 Directive (EU) 2019/789 (European Parliament and Council 2019b), which states that the rightsholders should have the choice to transfer their rights either to a broadcasting organisation or to a CMO, thereby allowing them to have a direct share in the remuneration paid by the operator of a retransmission service. Such a transfer of rights is not possible in the system of legal trusteeship, because the rights are transferred to the CMO by law. Mandatory collective management of rights is only compatible with fundamental rights and the relevant principles recognized in the Charter of fundamental rights (EU 2012), if its application is prescribed in a targeted manner and limited to specific cases. Mandatory collective management is therefore only permissible if the rightsholder retains the right to choose between CMO and if the rights in question cannot be effectively managed based on voluntary collective management or directly between rightsholders and users. Since Slovenian copyright legislation stipulates mandatory collective management for a very wide range of exclusive rights to public communication, and also prescribes legal trusteeship, we take the position that it is not in line with EU law.

3.3. The Reasons for the Action of the European Commission Against Slovenia

In Slovenian law, mandatory collective management of small music rights has been stipulated in Slovenian legislation since 1995 (National Assembly 1995). But it was the adoption of the CRRA-I (National Assembly 2022) that attracted the attention of the European Commission, since the law extended mandatory collective management to the communication of audiovisual works to public, even on internet. Since the CRRA (National Assembly 1995) presumes the transfer of all rights to an audiovisual work to its producer, it appears that in certain cases producers could effectively manage rights outside the mandatory collective management system. That being said, the law excludes mandatory collective management only in two cases of rights transferred to the film producer, that is in the case of public presentation rights and broadcasting rights. It appears that Slovenian legislation overly restricts the rightholders in the choice of rights management, so that we can expect the European Commission to establish an infringement of InfoSoc Directive (European Parliament and Council 2001) and CRM Directive (European Parliament and Council 2014).

3.4. Prospective Benefits of Greater Competition in the Field of Collective Rights Management

Greater competition among CMOs and other copyright managers could also contribute to the efficiency of the system. Currently, the financial indicators of Slovenian CMOs are not encouraging. In 2024, the costs of rights management of the CMOs managing the communication to the public right, varied from appx. 27 % (IPF 2025), 30 % (SAZAS 2025; AIPA 2025) to 36 % (ZAMP 2025) of revenues collected, although according to the French Commission for the Control of Copyright and Related Rights Management Organizations (Commission de contrôle des organismes de gestion des droits d'auteur et des droits voisins 2024) the appropriate ratio is 15 %.

The benefits of collective rights management include the reduction of transaction costs from the user's perspective, who thus obtains a license to use all works in the CMO repertoire instead of having to request permission from the author for each individual work. However, CMOs only reduce the transaction costs of searching for rights holders whose rights they manage on the contractual basis. When CMOs also represent non-members on the basis of a legal mandate, the transaction costs of searching for non-members are not reduced, but merely transferred from the user to the CMO (Katz 2012). This could also lead to accomulation of revenues at the CMO, which is a sing of ineffectiveness of the system. In 2024, the ratio between total liabilities to holders of rights on audiovisual works at the end of the year and yearly revenues from rights management amounted even to 179 % (AIPA 2025), although the appropriate ratio is 100 % (Commission for the Control of Copyright and Related Rights Management Organizations 2024). We believe that if rightholders could choose between CMOs, they could select the most effective one, and CMOs would strive for greater efficiency with even less state supervision.

 doi:10.20944/preprints202603.0396.v1

3.5. Possible Solutions and Legislative Changes

One possible solution would be to introduce extended collective licensing, as provided for in Article 12 DSM Directive (European Parliament and Council 2019a). In the system of extended collective licensing, an agreement between the CMO and the user can be extended to apply to the rights of rightsholders who have not contractually authorised the CMO to represent them. The right to issue extended collective licences can be only conferred on a CMO, which is, based on its mandates, sufficiently representative in the relevant type of works or other subject matter, under condition that the rightsholders can at any time easily and effectively exclude their works from the licensing mechanism.

An essential prerequisite for the admissibility of extended collective management is that such a licensing mechanism applies only to precisely defined areas of use where obtaining authorizations from rights holders on an individual basis is normally so difficult and impractical that the required licensing is unlikely to be carried out, due to the nature of the use or the types of works or other subject matter concerned, and that such a licensing mechanism protects the legitimate interests of the rightholders. Furthermore, the CMO must be subject to the national rules implementing CRM Directive (European Parliament and Council 2014) regarding the transparency and supervision. Recently, several Member States introduced extended collective licensing, for example Austria in § 25b Federal Law on Collecting Societies (Parlament 2016) and Germany in § 51 Collecting Societies Act (Bundestag 2016).

Extended collective management is always subject to additional conditions that the CMO must meet regarding transparency and supervision. It is only permissible when the Member State correctly implemented the CRM Directive (European Parliament and Council 2014). We believe that the effectiveness of the collective management system in Slovenia should first be enhanced, and then the possibility of introducing extended collective licenses should be examined. To improve the effectiveness of CMOs, it would first be necessary for exclusive rights to be managed solely based on the rightsholder's authorization, unless otherwise specified in EU law, such as for cable retransmission and retransmition of TV and radio programms. With the introduction of rebuttable judicial presumptions that the existing CMO manages the rights on the works exploited by users, such a system may be sufficiently predictable for users. We believe that to ensure predictability in the use of copyrighted content, legal mandate (legal trusteeship) is a disproportionate measure.

4. Prospective Consequences of the Streamz Judgement for the Slovenian Copyright Legislation

4.1. The »New« Remuneration Right for the Authors in Slovenian Law

The latest amendment to the CRRA (CRRA-I; National Assembly 2022) has significantly reshaped the relationships between key stakeholders in the creation of audiovisual works, i.e., co-authors, performers, and film producers. Slovenia has followed recent trends in comparative law to ensure fair participation of creators in revenues from the secondary exploitation of audiovisual works through irrevocable and non-transferable remuneration rights. This strengthens the position of CMOs in the EU, as national laws for such rights usually stipulate mandatory collective management of such rights (Senftleben and Izyumenko 2024). On the other hand, due to the constitutional right to legal security, it is necessary to prevent the new legal provisions from interfering with existing contractual relationships between creators and film producers.

CRRA-I (National Assembly 2022) supplemented Article 76 CRRA (National Assembly 1995) with a new fifth paragraph, which states that if the author transfers the right of retransmission of television or radio programms, he has an unvaiwable right to appropriate compensation for each use of the work in the case of retransmission. The new sixth paragraph of the same Article stipulates that if an author transfers the right of communication to the public within the framework of online sharing services, he has an irrevocable right to appropriate compensation for each use of the work in the case

 doi:10.20944/preprints202603.0396.v1

of communication to the public within the framework of online content sharing services. The user is liable for payment of appropriate compensation.

With this provision, the legislator aimed to transpose Article 18(1) DSM Directive (European Parliament and Council 2019a) into Slovenian law (Government of the Republic of Slovenia 2022). Article 18 states that Member States shall ensure that authors and performers, when licensing or transferring their exclusive rights to exploit their works or other protected subject matter, are entitled to appropriate and proportionate remuneration.

CRRA-I (National Assembly 2022) also introduces significant changes regarding the position of creators of audiovisual works. Notwithstanding the transfer of rights to the film producer (which is also regulated by an rebuttable legal assumption), the author of the original work and the co-authors of the audiovisual work are entitled to appropriate remuneration for each:

1. broadcasting of the audiovisual work;
2. communication of the audiovisual work to the public in the context of online content sharing services and video on demand; and
3. other making available of the audiovisual work to the public for the purpose of achieving direct or indirect economic benefit (Articles 15 and 16 CRRA-I; National Assembly 2022). Again, the respective legislation is an implementation of the first paragraph of Article 18 DSM Directive (Government of the Republic of Slovenia 2022).

4.2. The Nature of »New« Remuneration Rights

The »new« remuneration rights can be described as the so-called "remaining" or "residual" remuneration rights or direct claims of the author against users who use the work in a certain way. The author is only entitled to these rights if he transfers his exclusive rights of communication to the public to the producer, so this is not an independent remuneration right. "Residual" remuneration rights do not replace the author's exclusive rights, but coexist with them as part of the payment for the use of protected content, which the author cannot waive. This payment mechanism is usually applied in addition to any other payment to authors agreed in individual contracts with film producers. Such remuneration rights are usually irrevocable and non-transferable and are enforced through mandatory collective management of rights (Senftleben and Izyumenko 2024). At EU level, similar "residual" remuneration right is provided for in Article 5 Directive 2006/115/EC on rental and lending rights and on certain rights related to copyright in the field of intellectual property (European Parliament and Council 2006). The Directive expressly allows Member States to provide for mandatory collective management of this right.

A characteristic feature of remuneration rights is that the contractual relationship between the user and the rightsholder arises from the use of the work as a copyright-relevant act and on the basis of the law itself. On the basis of this statutory relationship, the beneficiary acquires a claim for compensation. Claims become due for payment immediately after they arise, and their limitation period is assessed according to the general rules on limitation (Melichar 2010).

On the other hand, due to the constitutional right to legal security, it is necessary to prevent the new legal provisions from interfering with existing contractual relationships between creators and film producers. "Residual" remuneration rights do not replace the author's exclusive rights, but coexist with them as part of the payment for the use of protected content, which the author cannot waive. This payment mechanism is usually applied in addition to any other payment to authors, which is agreed in individual contracts with film producers, therefore the issue of double payment could arise. The characteristic feature of "residual" remuneration rights is that, due to their irrevocability, which also implies non-transferability, they interfere with contractual freedom in the audiovisual field. The creators cannot transfer or waive these rights, regardless of their actual intentions or bargaining power.

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4.3. The Pending Case »Streamz« Before the CJEU

4.3.1. The Contested Belgian Legislation

With the Article 54 of the Law of June 19 2022 transposing Directive (EU) 2019/790 of the European Parliament and of the Council of April 17, 2019, on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Law of June 19; Belgian Parliament 2022), the Belgian legislator introduced a right to remuneration for authors and performers in cases where the right of communication to the public, including the right of making available, has been transferred to an online content-sharing service provider (Belgian House of Representatives 2022). The right to remuneration is non-transferable and cannot be waived by authors or performers. It can be only exercised by CMOs. The purpose of the legislation is, on the one hand, to facilitate the enforcement of the right to remuneration of authors and performers and, on the other hand, to facilitate the payment of remuneration by user by providing for CMO as a single point of contact. The system is mandatory, meaning that it is not possible to derogate from it by contract. In the legislative process, it was suggested that the adoption of respective provision is authorized by Article 18 DSM Directive (Belgian House of Representatives 2022).

Article 62 of the Law of June 19 (Belgian Parliament 2022) introduced a right to remuneration for authors and performers in cases where the public communication rights regarding uses by an information society service provider (streaming services) have been transfered to producer. The right to remuneration is also non-transferable, unvaiwable and may only be exercised by an CMO. The proposal empasised that Articles 60 to 62 aim to establish the same system for streaming as that provided for in Article 54 (Belgian House of Representatives 2022). This amendment should guarantee to authors and performers of sound or audiovisual works the appropriate remuneration for the exploitation of their works and performances by streaming platforms, such as Spotify, Deezer, Netflix, or Disney+. When introducing the respective amendments, the legislator refered to the European Parliament resolution (2021), which encouraged Member States and the Commission to make greater use of collective rights management mechanisms in the transposition of the DSM Directive and in future initiatives aimed at ensuring fair remuneration.

The preparatory works (Belgian House of Representatives 2022) emphasised that neither a new exclusive right nor a new category of the existing right of communication to the publc had been created. Furthermore, the right to remuneration is limited to certain categories of works, namely musical and audiovisual works.

4.3.2. The Allegations Regarding the Incompatility of New Legislation with the EU Law

On January 31 and February 1, 2023, five constitutional challenges were filed against the Belgium's copyright law of June 19, 2022. Among them, Spotify, Sony Music, Universal Music, Warner Music and Streamz (a local streaming service) challenged the conformity of the new remuneration right with EU law. Regarding Article 62 of the Law of June 19 (Belgian Parliament 2022), the applicants allege that the »new« right to remuneration infringes the Article 17 DSM Directive (European Parliament and Council 2019a), which is a maximum harmonization directive. They also claim that that Article 18 DSM Directive (European Parliament and Council 2019a) applies only to contractual relationships and therefore cannot serve as a basis for the contested provision. The applicants believe the respective provision is not compatible with the exclusive rights of authors and performers protected by InfoSoc Directive (European Parliament and Council 2001), since it infringes the principle of freedom of contract.

Regarding Article 54 of the Law of June 19 (Belgian Parliament 2022), the applicants claim that inalienable right to remuneration complicates current licensing practices and creates a regime specific to Belgium that differs from the regimes in place in other Member States, so that this provision constitutes an unjustified restriction on the freedom to provide services, protected by Article 56 TFEU (EU 2007). Applicants claim that the contested legislation constitutes an unjustified restriction on the principle of freedom of contract, exceeds the scope provided for in Article 18 DSM Directive

 doi:10.20944/preprints202603.0396.v1

(European Parliament and Council 2019a), infringes the right of guaranteed by Article 3(2)(a) InfoSoc Directive (European Parliament and Council 2001) and creates discrimination between entrepreneurs offering services in the EU. Applicants emphasize that Article 18 DSM Directive (European Parliament and Council 2019a) precludes national legislation resulting in double payment or additional remuneration for the author or performer, and that the right to remuneration guaranteed by the contested provisions constitutes a disproportionate restriction on contractual freedom and creates unjustified equal treatment between international streaming platforms and local streaming platforms, even though these two categories are in fundamentally different situations in terms of their turnover and bargaining power (Belgian Constitutional Court 2024).

The European Commissioner for the Internal Market considered that the system provided for Belgian legislation is not compatible with Articles 17 and 18 DSM Directive (European Parliament and Council 2019a). The Article 17 allegely fully harmonizes the relationship between online content-sharing service providers and the rightholders of content uploaded by users of the services and therefore does not allow Member States to introduce additional copyright rules in the harmonized area. The European Commissioner emphasized that the Member States, with regard to Article 18, are free to use different mechanisms to implement the principle of appropriate and proportionate remuneration, but this freedom is limited by the need for Member States to act in accordance with Union law (Belgian Constitutional Court 2024).

4.3.3. The Questions Referred by the Belgian Constitutional Court to the CJEU

In its questions for a preliminary ruling, the Belgian Constitutional Court highlighted several aspects of the possible incompatibility of Belgian law with EU law. One of the questions was whether Article 17 DSM Directive (European Parliament and Council 2019a), read in conjunction with Article 3 InfoSoc Directive (European Parliament and Council 2001), precludes national legislation introducing a mandatory, inalienable, and non-transferable right to remuneration for authors and performers, where they have assigned their right to authorize or prohibit communication to the public by an online content-sharing service provider, and providing that this right to remuneration can only be exercised through a mandatory collective rights management mechanism, in particular where the right to make available to the public has already been licensed to the aforementioned provider? The Belgian Constitutional Court (2024) also referred a question to tje CJEU whether such national legislation is precluded by Article 18 DSM Directive (European Parliament and Council 2019a)? Regarding Article 56 TFEU (EU 2007), it could be problematic that Belgian legislation did not specify a transition period during which users and producers could adapt to the new rules and new payment obligations. The respective national legislation could also unproportionally interfere with fundamental right of freetom to conduct a busines under Article 16 of the Charter of fundamental rights (EU 2012), read in conjunction with Articles 20 (equality before the law) and 21 (non-discrimination) of that Charter.

4.4. Possible Outcomes of the Streamz Case and Its Influence on Slovenian Copyright Law

4.4.1. Principal Conformity of Remuneration Rights with the EU Law

The Advocate General has not yet published his final opinion in the Streamz case. However, we do not expect the CJEU to rule that the residual right to compensation as such is contrary to EU law. Although it interferes with the principle of contractual freedom, this principle is not absolute and may be limited to ensure a fair balance between the rights and interests at stake. According to the research by European Commission (2024) the creators of protected works often do not receive a proportionate share of the revenue generated from their use on streaming platforms. In the audiovisual sector, the bargaining position of authors is particularly weak, as evidenced by contracts with film producers, which often include the outright purchase of rights with a one-off payment or low fees (Legrand 2022). The respective rights to remuneration can improve the bargaining power of creators, which can contribute to the further development of cultural creation in the EU. Given the

 doi:10.20944/preprints202603.0396.v1

general tone of the text of the Article 18(2) DSM Directive (European Parliament and Council 2019a), the Member States enjoy a wide margin of discretion to use different mechanisms to provide appropriate and proportionate remuneration for creator, also by imposing the obligation of proportional remuneration directly to users.

4.4.2. The Prohibition of Retroactive Effect of Regulations

The implementation of the residual right to compensation in national law must be in accordance with EU law. We believe that the approach of the Belgian legislator, which emphasised that the respective right does not mean that the new independent category of communication to the public right had been created (Belgian House of Representatives 2022), is correct. The Slovenian legislator took another approach.In the explanatory memorandum to Article 31 CRRA-I (National Assembly 2022), it has taken the position that the legislation establishes new rights that do not have retroactive effect and cannot interfere with contracts for the transfer of copyright or related rights that were concluded before the entry into force of this legislation. This should also follow from the change in the wording of the law, which now states that the author "has" a remuneration right upon transfer, instead of the previous wording that the author "retains" a remuneration right upon transfer (Government of the Republic of Slovenia 2022). Such an approach does not consider the nature of exclusive right to communication to the public, protected by Art. 3 InfoSoc Directive (European Parliament and Council, 2001). A user who has already obtained a license to communicate audiovisual work from a film producer (as a derivative rights holder) has a contractually based entitlement not to have to pay again for the same rights of the same category of authors. The introduction of new residual rights to remuneration, when applied on existing contracts between creators, film producers and users, can therefore only have two effects: either the user will have to pay extra for a right for which they have already paid the whole contractually agreed amount (double payment), or the film producer will have to transfer part of the payment they have received or periodically receive on the basis of a contract with the user (or through a CMO) to the co-authors of the audiovisual work and the performers. In such a case, the provisions on residual remuneration rights can result in double payment by the user to creator or double payment by the film producer to the creator. Therefore we belive that the divison into a payment for exclusive rights, on the one hand, and a payment for the non-transferable remuneration right to creators on the other should only apply to new contracts, concluded between the respective stakeholders after the introduction of respective right in national law.

Article 18(2) DSM Directive (European Parliament and Council 2019a) emphasizes the discretionary right of Member States to freely apply different mechanisms fo ensure appropriate remuneration to creators. On the other hand, Member States must take into account the principle of contractual freedom and a fair balance between rights and interests. Article 26(2) expressly stipulates that this directive "shall apply without prejudice to any acts concluded and rights acquired before June 7, 2021." This provision of the DSM Directive (European Parliament and Council 2019a) thus reflects the prohibition of retroactive effect of legal regulation as a cornerstone of the EU legal order. In EU law, the prohibition of retroactive application of regulations is enshrined in the principles of protection of legitimate expectations and legal certainty, which are an integral part of the EU legal order (Kryvoi and Matos 2021). These principles require the legal provisions to be clear, predictable, and, as a rule, to apply only to future situations, as individuals and businesses must be able to know their rights and obligations with certainty.

Legislators in Austria (Justizausschuss 2005), Germany (Bundesregierung 1998) and Switzerland (Eidgenössisches Institut für Geistiges Eigentum 2017) acknowledged that the new residual remuneration rights can interfere with the prohibition of retroactivity. In these legal systems, special legal provisions have been included to asure that the remuneration rights do not apply if the licence agreement was concluded before the law, which conferred those rights on the creators, came into force. In this way, the legislator enabled the parties involved to adapt to the legal changes and at the same time prevented interference with existing contracts and the complex issues associated with their

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adaptation (Bundesregierung 1998). In the transitional period, the remuneration is calculated separately for each year based on the proportion of "new" works, i.e., works recorded after the amendment came into force (Urheberrechtssenat 2007).

4.4.3. Mandatory Collective Management

DSM Directive (European Parliament and Council 2019a) does not specify that when ensuring appropriate remuneration to the creators, collective management mechanisms would be excluded. We can assume from existing CJEU jurisprudence (2024) that mandatory collective management of the residual right to remuneration may be permissible where the CMO meets the strict requirements of transparency and supervision under the CRM Directive (European Parliament and Council 2014). But this does not mean that also the legal trusteeship can be regarded as a proportional solution. Mandatory collective management of residual remuneration rights means only, that the claim to remuneration must be enforced by a collective organization, which acts based on the author's authorization. Thus, the respective remuneration rights are not transferred on a CMO by law itself, but only upon the creator's authorisation. Such a solution was accepted in Austrian (Justizausschuss 2005) and German (Bundesregierung 1998). Under Swiss law (Eidgenössisches Institut für Geistiges Eigentum 2017), authors of audiovisual works that were not produced in Switzerland are only entitled to remuneration if the country where the work was created also provides for such a right. Such legislative approaches observe the fact that not all EU Member States have recognized equal compensation rights, and similar concepts are not unknown in the USA and other third countres from where the a great proportion of cultural goods is imported. As a consequence, legal trusteeship of residual remuneration rights leads to a greater accumulation of funds by the CMO, whereas the collected funds cannot be distributed to beneficiaries because their contact details are not available.

5. Collective Management of Private Copying Levy and the Gaps in Slovenian Legislation

5.1. EU Law

Article 2(a) InfoSoc Directive (European Parliament and Council 2001) imposes on Member States the obligation to ensure that authors enjoy the exclusive right to reproduce their works 'in any form, in any manner, in whole or in part'. Article 5(2)(a) and (b) further for two cases in which the Member States may restrict the exclusive reproduction right: (a) in respect of reproductions on paper or any similar medium, effected by the use of any photographic technique or by some other process having similar effects, except for sheet music, provided that the rightsholders receive fair compensation (the reprography exception); (b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightsholders receive fair compensation (exception for private copying). Remuneration for copyright exceptions in the EU is usually collected and distributed through collective rights management. In this way, CMOs facilitate supplementary income for authors and performers (Geiger 2010). Article 5(2)(a) and (b) Infosoc Directive (European Parliament and Council 2001) is interpreted by the CJEU as having a direct effect (Rosati 2025).

The CJEU (2015) reiterated that the exception for reprography (Article 5(2)(a) InfoSoc Directive; European Parliament and Council, 2001) and the exception for private copying (Article 5(2)(b) InfoSoc Directive; European Parliament and Council, 2001) partially overlap. The first exception covers any reproduction on paper or similar media, including reproduction for private purposes. The second exception covers any reproduction for private use, including reproduction on paper or a similar medium. Reproduction for commercial purposes is allowed only within the first exception (exception for reprography). This restriction must be considered when determining fair compensation, which must differ depending on whether the use is for private or commercial purposes (CJEU 2015).The exception for reprography (Article 5(2)(a) InfoSoc Directive; European Parliament and Council 2001) is not based on the technique used, but on the result to be achieved

 doi:10.20944/preprints202603.0396.v1

(European Commission 1998). It applies only to reproductions on paper or another medium with similar characteristics, i.e. comparable and equivalent to paper, but only to analogue media, not to digital media (CJEU 2013).

From EU law, following premises arise:

1. National law of the Member States must specify precisely which acts of reproduction are permitted without prior authorisation of the rightsholder and to which persons.
2. All exceptions or limitations to copyright and related rights must have a basis in the EU law.
3. In specific cases, according to EU law, the national legislator must provide a remuneration system for exception or limitation to copyright and related rights.
4. Fair compensation must include compensatiof to the rightsholders for the harm they have suffered due to the unrestricted use of the works.
5. The legislator must establish an effective system for collecting fair compensation.

5.2. Implementation of the Private Copying Exception in EU Member States

The EU lacks a uniform system of private copying levy, with Kretschmer (2011) pointing to the fact that levies for the same devices sold in different EU countries vary substantially. The CJEU, through its case law, contributes significantly to the harmonisation of the compensation system, particularly in its application to new technologies such as copying in the cloud (CJEU 2022) and, in the future, probably also streaming services (Senftleben and Izyumenko 2024).

The Czech Supreme Court recently dealt with the question whether a private copying levy should be paid for smart mobile phones. It took the view that following the interpretation of the national legislation in conformity with EU law, the fact that a mobile phone is used primarily for making calls and not for private copying is not decisive for the existence of the author's right to fair compensation. Decisive is the very capability of such a product to enable its users to make private reproductions of works (Telec, Tůma, 2025).

5.3. Implementation of Private Copying Exception in Slovenian Law

Article 50(2) CRRA (National Assembly 1995) grants natural persons the right to freely reproduce a work: 1. on paper or a similar medium using photocopying or other photographic techniques with similar effects, 2. on any other medium, provided that they do so for private use, that the copies are not distributed or made available to the public, and that they do not intend to obtain any direct or indirect economic benefit. This provision was adopted in 2004 to align Slovenian law's existing exceptions and limitations of copyright with the Infosoc Directive (European Parliament and Council 2001). Article 50 CRRA (National Assembly 1995) distinguishes between natural persons (paragraph 2) and public institutions (paragraph 3), and within these categories further according to the medium (Government of the Republic of Slovenia 2004).

The copyright holder cannot prohibit reproduction to an extent granted in Article 50 CRRA (National Assembly 1995). In exchange for damages to the rightsholder caused by private copying, Article 37 provides the rightsholder the right to fair compensation for 1) audio or visual recording and 2) photocopying of protected works. Article 37(2) and (3) further stipulates that the remuneration for sound and visual recording shall be paid: 1. upon the first sale or import of new sound and visual recording devices, and 2. upon the first sale or import of new blank sound or image carriers, whereas the remuneration for photocopying shall be paid: 1. on the first sale or import of new photocopying equipment, and 2. on photocopies made for sale, monthly according to their estimated number.

We believe that these legal provisions are too archaic. The same wording was used when the CRRA (National Assembly 1995) was adopted, that is in the time when the reproduction of protected works in the analogue world was predominant. Terms such as »audio and visual recording« are more reminiscent of the era of (video) cassettes than of the modern technological environment, where digital copying is the predominant method, and copies are often stored in the cloud rather than on a physical medium. The legislator sought to bridge the existing gap with the explanation that photocopying is equivalent to other similar reproduction techniques, and devices for audio and

 doi:10.20944/preprints202603.0396.v1

visual recording are equivalent to other devices that enable the same effect. The inconsistency with EU law is already apparent here, as the European Commission's proposal (1998) emphasises that even it's the reproduction's effect that matters, not the technique used. Secondly, reproductions in the digital world allow more than just visual and audio recording. Thirdly, it is not clear from the wording of CRRA (National Assembly 1995) if digital photos fall under »photocopies« or under »audiovisual recording« since, on the one hand, they are like photocopies in terms of motionlessness, and, on the other hand, they are created in digital form and not on paper.

Regulation on compensation amounts for private and other personal reproduction (Government of the Republic of Slovenia, 2006) lists examples of devices capable of creating »photocopies« or »sound and visual recordings«. Among the photocopying devices, its Article 4(1) lists only one device, capable of transforming the physical item into a digital copy: the optical reader (scanner).

5.4. Collective Management of the Right to Fair Compensation for Private and Personal Use in Slovenia

In Slovenia, since 2007, the levy for photocopying (reprography) is collected and distributed by the CMO SAZOR GIZ. Upon authorisation issued by SIPO (2007), SAZOR GIZ collectively manages the rights of authors and publishers of works in literature, science, journalism and their translations in the case of reproductions on paper of similar media for private and professional uses (mechanical photocopying or reprography). Upon authorisation of SIPO (2019), the CMO Kopriva Association collectively manages the right to fair compensation for audio or visual recording carried out under the conditions of private or other personal use, to which authors, performers, phonogram producers, and film producers are entitled. The license covers only the collection of fair compensation and its distribution to CMOs authorised to further distribute compensation among the entitled rightsholders. In order to settle relations with users, the Kopriva Association has concluded a Joint Agreement with the Slovenian Chamber of Commerce (2020). The Agreement defines a mobile phone as »any product which, according to the manufacturer's declaration, is a mobile phone and allows the consumption (use, playback, display, etc.) of audio and/or visual content and has an integrated memory unit.« The amount of fair compensation for private reproduction depends on the wholesale price and ranges from €3.20 to €12.20 per device.

According to Article 9(3) CMCRRA (National Assembly 2016), collective management of fair compensation for private and other personal use of works and their photocopying beyond the scope of Article 50 CRRA (National Assembly 1995) is mandatory. Mandatory collective management of private copying levy is permissible under EU law, because it is conceived as payment for an exception to an exclusive right, which has a basis in EU law.

5.5. Recent Jurisprudence of Slovenian Courts Regarding Levies for Reprography

Recent case law clearly shows how unclear legislation and unclear scope of CMOs licences cause damage to rights holders. In the cases V Cpg 248/2023 (Higher Court of Ljubljana 2024a) and V Cpg 249/2023 (Higher Court of Ljubljana 2024b), SAZOR GIZ demanded payment for photocopying from 12 manufacturers and importers of mobile phones. It argued that mobile phones also enable reprography and that according to the law, photocopying is equivalent to any other photographic technique with similar effects, including document scanning with a mobile phone. The defendants argued that mobile phones do not enable reprography.

The court of first instance appointed a computer expert as a court expert and instructed him to examine whether specific mobile phones that entered the Slovenian market in 2016-2018 enable the "scanning" of documents or another reproduction technique similar to photocopying. The claim was dismissed due to court's finding that only few mobile phone models that came onto the market in the respective period had software that enabled automatic edge detection and document alignment, whereas none of the models enabled automatic colour adjustment, shadow removal, background correction, or sharpening and text quality enhancement. Since the classic scanners are supposed to enable higher-quality text reproduction with finer details, the effect of the two techniques was not similar. The court ruled that these mobile phones were either not used to reproduce copyright-

 doi:10.20944/preprints202603.0396.v1

protected works or that the extent of such use was negligible due to the low quality of copies. The dismissal of the SAZOR legal claims amounted to its obligation to pay for the entire legal costs of the proceedings, which gravely affected its relatively modest revenues.

5.6. Findings

In 2006, from the perspective of the Regulation (Government of the Republic of Slovenia 2006), it was not problematic if a specific device performed several functions, such as audio and video recording or photocopying. Article 6(2) of the Regulation stipulated that if the devices and media listed met the conditions for classification in different tariff categories, the levy amount would be calculated based on the highest tariff. Nowadays, devices' differentiation and its precise classification are more important since there are two CMOs which collect levies for private reproduction under different legal provisions.

Article 50(2)(1) and (2) CRRA (National Assembly 1995) specifies precisely which acts of reproduction are permitted to natural persons and for private purposes without the prior authorisation of a rightsholder. The law distinguishes between reproduction on paper or a similar medium using photocopying or other photographic techniques with similar effects (reprography) and reproduction on any other medium; the latter category also covers digital media. When applying consistent interpretation of the CRRA with the notion of reprography exception in the Article 5(2)(a) InfoSoc Directive, the exception in Article 50(2)(1) CRRA can be interpreted as comprising only analogue copies and excluding digital ones (CJEU 2013).

Article 50(2) CRRA (National Assembly 1995) in both categories (1. copying on paper or a similar medium - reprography and 2. copying on any other medium), by its wording, only allows copying for private, non-commercial purposes. Therefore, Article 5(2)(b) InfoSoc Directive fully covers both categories. The first category of exception mentioned in Article 50(2) CRRA is further covered by Article 5(2)(a) InfoSoc Directive, as it relates to copying on paper or a similar medium. Still, it is narrower than the latter because it does not cover photocopying for professional purposes. The right to photocopying for professional purposes is construed as an exclusive right in Slovenian law, but since it is collectively managed, the final effect for the rightsholders is the same as if it were construed as a mere right to compensation.

Since for private copying in any case, except for insignificant uses, the legislator must provide for fair remuneration schemes, it is regrettable that the wording of Article 37(1) CRRA (National Assembly 1995) differs from its Article 50. We believe that Article 37 CRRA should state explicitly that fair compensation is due for 1) mechanical photocopying (reprography) and 2) reproduction on other mediums, including digital copies. Supplementing the law with additional explanations beyond the literal meaning of the existing legal text (such as Article 37(4) CRRA) confuses and – when the collection of remuneration is divided between two collective organisations – may lead to numerous legal disputes. We believe the system shall be designed in such a way that certain types of uses are not excluded from the remuneration system and that at the same time there is no double charging of users. Only such a system is effective and compliant with EU law requirements.

6. Discussion

Mandatory collective management under Slovenian law goes beyond the mere obligation of rightholders to exercise their rights through a collective management organisation, while still requiring their authorisation for the organisation to act on their behalf. The Slovenian system further provides for a statutory transfer of exclusive rights to a collective organisation, which may occur even against the will of the rightholder. The adoption of the CRRA-I (National Assembly 2022) drew the attention of the European Commission, as the legislation extended mandatory collective management to the communication to the public of audiovisual works, including communication via the internet. Considering the CJEU judgment in Soulier (2016), we concur the opinion of von Ungern Sternberger (2020) that mandatory collective management of exclusive rights is permissible only in situations in which EU law itself provides for a limitation or exception to the exclusive right concerned or

 doi:10.20944/preprints202603.0396.v1

prescribes mandatory collective management, such as in the case of cable retransmission (European Parliament and Council 2001) and the retransmission of television and radio programmes (European Parliament and Council 2019b). Outside such expressly harmonised contexts, however, Member States may not impose mandatory collective management of exclusive rights. Since Slovenian law appears to exceed the limits set by EU law, we consider it likely that the European Commission, in the proceedings against Slovenia, will find an infringement of Art. 3 InfoSoc Directive (European Parliament and Council 2001), which confers on the authors exclusive right of communication of their works to the public, and the CRM Directive (European Parliament and Council 2014). A system based on contractual collective management could also incentivise CMOs to operate more efficiently. If rightholders were free to choose their CMO, organisations would face pressure to reduce administrative costs and improve their distribution practices. This, in turn, could limit the accumulation of unallocated revenues and reduce the extent to which funds remain unduly retained at the level of the CMO. The introduction of rebuttable judicial presumptions that the existing CMO manages the rights in works exploited by users could ensure a sufficient degree of legal certainty and predictability for users. In our view, safeguarding predictability in the use of copyrighted content does not require a legal mandate (legal trusteeship), which constitutes a disproportionate interference with rightholders' exclusive rights.

CRRA-I (National Assembly, 2022) also introduced several new remuneration rights, among which the non-waivable and non-transferable "residual" remuneration rights for the communication of audiovisual works to the public are particularly significant. These rights allow authors of audiovisual works to retain a claim to remuneration despite the transfer of exclusive rights to the film producer, thereby ensuring their fair participation in revenues from the secondary exploitation of such works. Comparative law recognises similar mechanisms (Despringe 2025). However, the introduction of such statutory remuneration rights constitutes an interference with contractual freedom in the field of audiovisual production and may affect legal certainty. Comparative approaches in Austria, Germany and Switzerland ensure that the enforcement of residual remuneration rights does not interfere with pre-existing contractual arrangements between authors and producers. For this reason, Article 31 CRRA-I should be amended to clarify that the newly introduced remuneration rights apply only to film production contracts concluded after its entry into force. Such a solution would ensure compliance with Article 26 DSM Directive (European Parliament and Council 2019a). Furthermore, the legal trusteeship should be avoided in the case of residual remuneration sights. Not all EU Member States provide for equivalent remuneration rights, and even less the third countries which account for a significant share of the audiovisual and musical works consumed by EU citizens, such as the USA. In such circumstances, statutory trusteeship of residual remuneration rights may result in a growing accumulation of funds at the level of the CMO, as collected amounts often cannot be distributed where the beneficiaries cannot be identified or contacted. The CJEU, in the Streamz case, can clarify in detail the strict conditions under which it is permissible to introduce a residual remuneration right subject to mandatory collective management. From this perspective, the Streamz case will be of considerable importance for the Slovenian copyright landscape.

The challenges within the Slovenian copyright legislative framework do not stem solely from recent statutory amendments, but also from earlier, suboptimal implementations of EU law. In this context, the rapid technical development and digitalisation have exposed the outdated nature of the current legislative framework. The widespread use of mobile phones has significantly changed the way written works are reproduced. Copies may be made either through dedicated scanning applications or simply by photographing the work with the device's built-in camera. While it is plausible that the reproduction of literary and scientific works via mobile phones has become routine, only empirical data could confirm the real scope of this practice. Under Article 50(2) CRRA (national Assembly 1995), such reproductions fall within the private copying exception. Yet uncertainty arises at the level of remuneration: it is not entirely clear whether these acts should be treated as "photocopying" or as "audio and visual recording" within the meaning of Article 37(1). This

 doi:10.20944/preprints202603.0396.v1

distinction is crucial, as it determines the competent CMO. Given that the Kopriva Association, based on the Joint Agreement (Slovenian Chamber of Commerce 2020), collects compensation for storage capacities in mobile devices, mobile phone copying appears to be at least partially covered. The more nuanced question, however, is whether the increasing use of scanning technologies has expanded the volume of reproductions to a degree that the existing remuneration collected through Kopriva and ZAMP no longer corresponds to the actual harm suffered by rightholders. Greater legislative coherence between Articles 37 and 50 ZASP, together with appropriately aligned collective management mandates, would enhance legal clarity in this regard.

The thorough analysis of the pressing issues regarding the collective management of exclusive and remuneration rights reveals complex intertwining of the EU and national law. The article offers overview of Slovenia's system of copyright protection, draws attention to its possible incompatibilities with EU law, and provides possible legislative solutions. The paper results show how the Member States can design an effective system for copyright protection, which respects the EU law.

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Abbreviations

The following abbreviations are used in this manuscript:

InfoSoc	Information Society
CRM	Collective Rights Management
CRRA-I	Act Amending the Copyright and Related Rights Act
CRRA	Copyright and Related Rights Act
EU	European Union
DSM	Digital Single Market
CJEU	Court of Justice of the European Union
WIPO	World Intellectual Property Organization
CMCRRA	Collective Management of Copyright and Related Rights Act
IPF	Institute for the Collective Management of Performers' and Phonogram Producers' Rights
SAZAS	Society of Composers, Authors and Publishers for Copyright Protection in Slovenia
AIPA	Collecting Society of Authors, Performers and Producers of Audiovisual Works of Slovenia
TFEU	Treaty on Functioning of the European Union
ZAMP	Association of Authors and Holders of Small and Other Copyrights of Slovenia
USA	United States of America
SAZOR GIZ	Slovenian Copyright and Publishing Organization for Reproduction Rights
SIPO	Slovenian Intellectual Property Office

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