



## 4.14. HR – Croatia<sup>89</sup>

### 4.14.1. Key findings

Notions	Existence of definitions/rules
Independent production	Yes
Independent producer	Yes
Legal provisions concerning the transfer or cession of authors'/performers' rights to the producer (e.g. legal presumption, etc.) (Relationship author-producer)	Yes <sup>90</sup>
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	Yes

- A legal entity, duly registered for the production of audiovisual works, shall be deemed independent when it has operational and financial independence from broadcasters.
- Legal entities having their headquarters in the Republic of Croatia or in another member state shall be deemed independent when they have no ownership stake from TV broadcasters/providers and do not contribute more than 90% of their total revenue to a single broadcaster/provider within a three-year period.
- Independent producers of audiovisual works have primary and secondary rights to these works. Primary and secondary rights may be transferred by contract to the broadcaster financing the production (or co-production) of an audiovisual work.

<sup>89</sup> The summary on Croatia incorporates feedback received from Sanja Pančić, advisor to the Director for International Cooperation and Public Relations, at the Agency for Electronic Media (AEM) during the checking round with the national regulatory authorities.

<sup>90</sup> According to Article 92 (1) of the Croatian Copyright and Related Rights Act No. 111/2021:

*A contract on audiovisual production between the audiovisual producer and the principal and other co-authors of an audiovisual work shall regulate the rights and obligations of contracting parties in creating an audiovisual work, the content of the right of exploitation that the principal co-author and other co-authors undertake to establish for the audiovisual producer under that contract, the duration and area for which the rights of exploitation are established, the remuneration that the audiovisual producer undertakes to pay to the principal and other co-authors for the creation of the audiovisual work under the contract and for establishing the right of exploitation of that work and other terms of the contract.*

Moreover, according to Article 93 (1) of the above Act:

*Unless otherwise provided by the contract on audiovisual production between the audiovisual producer and the authors of contributions, it shall be considered that the audiovisual producer acquires all the economic rights of the authors of contributions to the extent necessary to fulfil the purpose of the contract.*

See the Copyright and Related Rights Act No. 111/2021 available at:

<https://www.wipo.int/wipolex/en/text/584899>.



- Croatian legislation includes rules on the retention of IP rights by independent producers in their relationship with audiovisual media service providers.
- Primary rights refer to the exclusive rights granted to a broadcaster financing the production or the co-production of an audiovisual work to transmit this work to the public in the territory of the Croatian Republic by all available means for a limited period of time.
- Secondary rights refer to the exclusive rights granted to a broadcaster financing the production or the co-production of an audiovisual work to transmit this work to the public in markets outside the Croatian Republic.
- In the case of co-production, the independent producers should contribute at least 5% of their resources to the total production costs.
- Legal entities having their headquarters in a third country (outside the EU), shall be deemed independent when, apart from the abovementioned conditions, the majority of their audiovisual production in the last three years consists of European works.

#### 4.14.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
<p>Article 49 of the Electronic Media Act 1942/2021 (<i>Zakon o elektroničkim medijima</i>, NN - 111/21, 114/22)<sup>91</sup></p> <p>Article 2. (1) and (2) of the Ordinance on criteria and methods of increasing the scope of the European audiovisual works share by independent producers 78/2022 (<i>Pravilnik o kriterijima i načinu povećanja opsega udjela europskih audiovizualnih djela neovisnih proizvođača</i> NN 78/2022)<sup>92</sup></p>	<p>An independent producer of audiovisual works is considered to be a legal entity, having its headquarters in the Republic of Croatia or in another member state, which is registered for the production of such works and meets the following criteria:</p> <p>a) (s)he has no ownership stake from TV broadcasters or audiovisual media service providers,  b) (s)he operates independently of the above media entities,  c) i(s)he t does not contribute more than 90% of its total revenue to a TV broadcaster or an audiovisual media service provider within a three-year period,  d) (s)he has secondary rights to the produced audiovisual works, and  e) in the case of co-production of an audiovisual work, it invests at least 5% of the financial resources in order to cover the total costs.</p> <p>The legal entity that has its headquarters in a third country (outside the EU), is considered as an independent producer when (a) the majority of its audiovisual production in the last three years consists of European works, (b) it does not have an ownership stake from television broadcasters and/or audiovisual media service providers and (c) it operates independently of the above media entities.</p>

<sup>91</sup> [https://narodne-novine.nn.hr/clanci/sluzbeni/2021\\_10\\_111\\_1942.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html)

<sup>92</sup> [https://narodne-novine.nn.hr/clanci/sluzbeni/2022\\_07\\_78\\_1142.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2022_07_78_1142.html)



### 4.14.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
<p>Article 2 (4) and (5) of the Ordinance on criteria and methods of increasing the scope of the European audiovisual works share by independent producers (<i>Pravilnik o kriterijima i načinu povećanja opsega udjela europskih audiovizualnih djela neovisnih proizvođača NN 78/2022</i>)</p>	<p>According to Article 2 (4) of the Ordinance on criteria and methods of increasing the scope of the European audiovisual works share by independent producers, a provider financing the production or co-production of an audiovisual work, acquires by contract the primary rights to broadcast or communicate the work to the public by all means, including via its own platforms, in the territory of the Republic of Croatia for a limited period of time.</p> <p>According to Article 2 (5) of the Ordinance, a provider financing the production or co-production of an audiovisual work may also acquire secondary rights, meaning exclusive rights to use the work in markets outside the Republic of Croatia.</p>
<p><i>Example</i> Co-regulatory agreement between Croatian Radiotelevision (HRT), the Croatian Association of Independent Producers and the Agency for Electronic Media on the procedure and rules of procurement of works by independent producers (<i>Koregulacijski sporazum o postupku i pravilima nabave djela neovisnih proizvođača</i>)<sup>93</sup></p>	<p>According to a co-regulatory agreement, Croatian Radiotelevision (HRT) and independent producers can agree that by financing the production of an audiovisual work and paying a licence fee (which amounts to at least 7% of the total production costs), HRT acquires time-limited primary rights of seven years to the work in question. During this period HRT may exclusively exploit the audiovisual work without additional charges from the producer or any other third party.</p> <p>In a period of six months from the expiration of the primary licence package, HRT has the right of first refusal to purchase an extended primary licence package for a duration of three years, the price of which is fixed at 1% of the total production cost for non-exclusive rights, or 2% of the total production cost for exclusive rights.</p> <p>In the event that the license expires or HRT does not express an interest in the extended primary licence package within the abovementioned period, the ownership of the transmitted primary rights returns to the independent producer. When the independent producer recovers the primary rights to the audiovisual work, HRT is allowed to receive a share of the compensation received for distribution in the domestic market according to the scale applied for secondary rights.</p> <p>Both the independent producer and HRT may by contract acquire a percentage of the secondary rights to the audiovisual work financed by HRT according to their percentage of the financing of the work in question.</p>

<sup>93</sup>[https://arhiv-www.hrt.hr/fileadmin/video/Koregulacijski\\_sporazum\\_o\\_postupku\\_i\\_pravilima\\_nabave\\_djela\\_neovisnih\\_proizvodaca-06\\_11\\_2017.pdf](https://arhiv-www.hrt.hr/fileadmin/video/Koregulacijski_sporazum_o_postupku_i_pravilima_nabave_djela_neovisnih_proizvodaca-06_11_2017.pdf)