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# Mobile Phones as Photocopying Devices in the Context of Exceptions or Limitations to the Reproduction Right

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# Reprography and Private Copyright Exception in EU Law

## Exclusive right

- Art. 2(a) Directive 2001/29 - **reproduction right**

## Exceptions

- Art. 5(2)(a) - **reprography exception** (only reproductions on paper or any similar medium - C-572/13)
- Art. 5(2)(b) - **private copying exception** (all reproductions for private use, on analog or digital media)

When introducing respective exceptions, MS must provide for fair compensation!

# Implementation of Copyright Exceptions in Slovenian Law

## Exception: Art. 50(2) CRRA (CRRA-B 2004)

- A natural person may 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 this is done **for private use**

## Fair compensation: Art. 37(1) CRRA (1995)

- The author shall be entitled to fair compensation for
  - **audio or video recording** and
  - **photocopying** of his workunder the conditions of private or other personal use referred to in Article 50 of this Act.

## Explanation: Art. 37(5) CRRA (2004):

- **Photocopying = other similar reproduction techniques**
- **devices for audio and video recording = other devices that enable the same effect**

# Collective management of fair compensation rights

**SAZOR GIZ - 2007** license for collective management of rights in case of

- **reproduction** of written works for private and other personal use
- photocopying **beyond the scope** of Art. 50 CRRA

**Društvo KOPRIVA – 2019** license for collective management of

- right to fair compensation for audio and video recording of works

## Questions:

1. KOPRIVA license covers **compensation for audio and video recording** under 2<sup>nd</sup> alternative Art. 37(1) CRRA. Does the 2<sup>nd</sup> alternative cover all uses allowed under under Art. 50(2)(b) CRRA (reproduction on any medium other than paper or similar medium)?
2. Does SAZOR license cover **only compensation for photocopying** (1<sup>st</sup> alternative Art. 37(1) CRRA)?
  - Does the 1<sup>st</sup> alternative cover only uses allowed under Art. 50(2)(a) CRRA (reproduction on paper of similar medium)?
3. **Which CMO collects the fair remuneration for copies of written works made by mobile phone?**

## V Cpg 248/2023 in V Cpg 249/2023

- SAZOR demands from importers of mobile phones payment of €2 for each phone sold between 2016 and 2018:
  - mobile phones are **scanning devices** (a reproduction technique similar to photocopying)
  - According to Government Regulation 2006 on the amounts of compensation for private and other personal reproduction, a fee of €2 is payable for the import of an optical reader (scanner), regardless of its effect.
- Mobile phone importers
  - Mobile phones are digital cameras, **no use of techniques similar to photocopying.**

## V Cpg 248/2023 in V Cpg 249/2023 – court reasoning

- **Reproduction covered by exclusive right** includes any fixation of a copyrighted work on a physical medium, also scanning
- The court examines
  - **the technique, the method of reproduction** – whether the program installed on the mobile phone recognizes the edges of the sheet and adjusts the colours for easier reading of the text (scanning) and what is the quality of the copy
  - the result, the effect – the **quality of the copy**
- The court dismisses the claim:
  - phones sold in 2016-2018 did not have sufficiently good scanning software.
- **SAZOR – amendment to the CRRA** is needed so that importers and manufacturers of mobile devices are also liable to pay compensation for photocopying

# Taking pictures with a mobile phone/using a scanner on a mobile phone

Is making copies of written works with a mobile phone permitted under Article 50(2) CRRA?

- **YES**, at least as reproduction on **any medium other than paper**, but only for private purposes.

Is scanning with a mobile phone photocopying (reprography)?

- **NOT DIRECTLY**, since digital copies, which are directly produces, are not copies on paper or similar medium.
- However, a digital copy from a mobile phone can later be printed on paper (**contribution** to the process of photocopying, but not if the damage caused to authors is minimal, C-463/12)

Must Slovenia provide for fair compensation for scanning/taking pictures of written works by mobile phone?

- **Yes**, this act of copying should be covered by Article 37 CRRA
  - audio and video recording?
  - photocopying?

# Conclusion

- Do importers already pay KOPRIVA for all kind of reproductions made by mobile phones as **compensation for blank media (memory units)**?
- Should additional compensation be paid for scanning as a process that **exceeds the compensation for blank media (memory units)** that importers already pay?

## Solution:

- **Wording of Art. 50(2) CRRA = wording of Art. 37(1) CRRA = wording of licenses issued for collection of the respective remuneration**
- **SIPO should provide for binding explanations regarding the scope of licenses of KOPRIVA and SAZOR**