



DR.SC.-10 REPORT ON DISSERTATION EVALUATION ¹		
GENERAL INFORMATION AND PERSONAL CONTACT INFORMATION OF THE DOCTORAL CANDIDATE		
First and last name, and title of the doctoral candidate:	Antonija Ivančan, mag. lur.	
Provider of the study programme:	University of Zagreb Faculty of Law	
Name of the study programme:	Postgraduate doctoral study of European law	
Scientist ID of the doctoral candidate:	70DEP2017	
Dissertation title in:	<i>language of the dissertation:</i>	English
	<i>Croatian:</i>	Europsko autorsko pravo izvan okvira unutarnjeg tržišta - kritička analiza ograničenja i iznimki u svrhu obrazovanja
	<i>English:</i>	EU Copyright Law Beyond the Internal Market - Critical Analysis of the Limitations and Exceptions for the Education Purposes
Area/field/branch (if the doctoral study is performed in a branch):	Social sciences / Law / European Public Law	
MENTOR(S)		
	First and last name, title:	Institution, country:
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Second mentor:	Prof. Raquel Xalabarder Plantada, Phd	Universitat Oberta de Catalunya, Barcelona (Spain)
The committee appointed for dissertation evaluation	First and last name, title:	Institution, country:
	1. Prof. Iris Goldner Lang, PhD	University of Zagreb Faculty of Law, Republic of Croatia
	2. Assoc. prof. Melita Carević, PhD	University of Zagreb Faculty of Law, Republic of Croatia
	3. Prof. Raquel Xalabarder Plantada, Phd	Universitat Oberta de Catalunya, Barcelona (Spain)
	4. Assoc. prof. Romana Matanovac Vučković, PhD	University of Zagreb Faculty of Law, Republic of Croatia
	5. prof. Guido Westkamp, PhD	Queen Mary University of London
DISSERTATION EVALUATION (evaluation must specify original scholarly/scientific contribution and new finding)		

¹ Please send the filled -out form DR.SC.-10, in electronic and written format, and signed, to the appropriate Registrar's Office



Dissertation topic

In her dissertation doctoral candidate Antonija Ivančan deals with regulation of copyright legal matters within the EU internal market law, with special focus on the non-economic objectives within the provisions on limitations and exceptions to the copyright or related rights. She showed that non-economic objectives, such as promotion of learning and dissemination of culture, enjoy status secondary to that of economic objective of ensuring appropriate reward for the rightholders.

The structure, research question and methodology

The doctoral dissertation has 307 pages. The text of the dissertation is preceded by a note on the dissertation supervisors, summary of the dissertation with a list of keywords, extended summary and keywords in Croatian, and the table of contents. Following the text are bibliography and list of sources, and the doctoral candidate's resume.

The dissertation consists of two parts: I. Creativity, Creative Process and Copyright and II. EU Copyright Law. Those parts are further divided in six chapters: I. Introduction, II. Creativity, the Author and Copyright Law, III. The Social Dialogue, IV. EU Copyright Law, V. Limitations and Exceptions to Copyright and Related Rights for Education Purpose and VI. Conclusion.

The general question that this dissertation explores is how and to what extent the European Union safeguards the social dialogue and circulation of knowledge and ideas in the educational environment when regulating the internal market regarding copyright and related rights.

In the hypothesis the doctoral candidate presupposes that due to the fact that copyright law developed within the framework of internal market law, the economic objectives of copyright legal regulation have advantage over numerous non-economic objectives. In that sense the doctoral candidate expected to determine that ensuring social dialogue and circulation of knowledge and ideas are not EU's primary concern when regulating copyright matters.

To answer the research question the dissertation provides an analysis of EU internal market legal frameworks in which the position of non-economic objectives and concerns was evaluated in order to finally determine the position of ensuring social dialogue. However, prior to the legal analysis, the dissertation approached the notion of the social dialogue first. The dissertation identified the notion of social dialogue as gaining unprotected ideas through experience of creative works. Namely, its starting position was primarily viewing creative works as media through which ideas and information is transmitted rather than mere goods on the market.

In the second chapter the dissertation approached the notion of social dialogue from the creator's perspective. It viewed it as one of the essential prerequisites of ensuring creativity. Namely, through the analysis of the creative process in which the creator plays a central figure, the dissertation made use of the existing findings from social sciences, which marked the importance of creator's previous experience and sociocultural influence on his/her creativity. It highlighted the cumulative nature of creativity both in art and science and showed the importance of knowledge of previous authors together with the social influences by providing a historical overview of the literary author. Such findings were contrasted with the legal notions of author and originality of the work in order to point out the lack of recognition of such cumulative nature embedded in the copyright protected works.

In the third chapter the doctoral candidate approached the notion of social dialogue from the perspective of users. It viewed the notion beyond the function of incentivising creativity, yet as a contributor to social and individual progress. Namely, she pointed out that creative works are inevitably media of information and that in the educational environment such media are necessary to rightfully perform functions entrusted to the educational systems.

Following those findings, the fourth chapter contains an analysis of EU Copyright Law. Due to the specific development of EU legal



norms on copyright and related rights legal matters, the doctoral candidate decided to analyse the legal frameworks in two chronological phases. The choice of analysis has been made in such manner since those phases correspond to two market integration techniques (positive and negative market integration) within which copyright legal matters developed on the EU level. Namely, the term EU Copyright Law has been understood as an internal market legislation regulating copyright or related rights' legal matters together with the Court of Justice of the EU jurisprudence on the matter. Moreover, those two phases also correspond to two intertwined, but differing constitutional legal frameworks which require separate analysis in order to rightfully assess the methodological placement of the non-legal notion of social dialogue within the educational environment.

The dissertation provided a critical analysis of both phases before analysing the placement of the non-economic objectives, including the social dialogue. Namely, it pointed out that within the negative market integration the CJEU rarely followed the usual internal market structure which encompassed the analysis of whether a national measure falls within the scope of the fundamental market freedom and if it does, whether it proportionately pursues the legitimate aim. Instead it developed new principles which now form foundational principles of EU copyright law. One of such principles that the dissertation heavily criticises is the specific subject matter of the copyright and related rights protection. Namely, the doctoral candidate emphasises that by offering circular definition without taking into account the policy reasons, the non-economic sphere of creative works, such as ensuring access for the social dialogue and the circulation of knowledge and ideas, is left with very little place for consideration. The purpose of protection is limited only to commercial exploitation through grant of licenses and within such framework, the doctoral candidate argues that there is no answer if a socially desirable activity would be upheld even if it embarked on the possibility of commercial exploitation.

In the second phase, the analysis shifted to the positive integration and enactment of legislative acts on the basis of Article 114 of the Treaty of the Functioning of the EU. Such legislative acts represent piecemeal approach to regulating copyright legal matters. For that reason, the doctoral candidate analysed the frameworks by identifying six different levels/parts of the internal market as regulated by the directives and regulations. Those six levels of internal market represent differing internal markets (as legal and political concepts determined by slightly differing legal and policy choices regarding the specific type of the work). Such approach was taken as it was more suitable to analyse the position and consideration of the social dialogue within it because different norms were enacted, and different policy choices were taken when enacting legislation.

Moreover, in order to approach the problem of methodological placement of ensuring social dialogue within such internal markets, the analysis of the position of non-economic objectives such as dissemination of culture and promotion of knowledge was assessed and juxtaposed to the economic objectives which are primarily concerned with the control of the use of the creative work. The research encompassed all of the legislation acts relevant for specific internal market and all of the judgments of the CJEU involving interpretation of legal provisions contained in such acts. For the purpose of better understanding the position and the intention of the legislator, explanatory memoranda were also taken into account. The acts were analysed in two-fold way. Firstly, by classifying the objectives as economic and non-economic. Namely, economic were considered objectives that have economic efficiency as their primary concern. Economic efficiency is considered as notion in which production of goods and services maximises the total surplus of benefits over costs. Non-economic objectives, on the other hand, do not pursue the economic efficiency as their main concern regardless of whether they produce certain economic effect. Secondly, the position of such objectives and the tools aimed for their achievement was analysed and critically evaluated in order to see their correlation.

After conducting such analysis, the doctoral candidate points out that again the economic objectives prevail and that the possibility of ensuring non-economic objective, including social dialogue within the educational environment, depends on the economic impact such objective might have. Namely, if the economic impact is greater, there will be higher need to stricter interpretation of provision ensuring such objective (predominately provision on limitations and exceptions) which also might result at the regulation on the EU






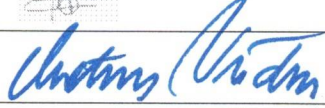

Izvorni znanstveni doprinos

Doktorska disertacija Antonije Ivančan originalan je doprinos hrvatskoj i europskoj pravnoj znanosti. Pruža kritičku analizu prava unutarnjeg tržišta EU-a pri osiguravanju neekonomskih ciljeva pri reguliranju korištenja djela zaštićenih autorskim pravom iz područja umjetnosti i znanosti. Kao prvo, disertacija donosi nalaze iz društvenih znanosti koji daju temeljit pregled društvenih odnosa na koje takva regulacija utječe i ističe potrebu preispitivanja legitimnosti postojeće pravne regulacije. Drugo, pruža temeljitu i nijansiranu procjenu autorskog prava EU-a analizirajući ga prvenstveno kao zakonodavstvo unutarnjeg tržišta postavljeno unutar određenih pravnih i političkih okvira u kojima su i zakonodavac i Sud EU izvršili određene odabire. Disertacija se suzdržava od promatranja iz nacionalne perspektive i isključivo je usredotočena na izbore i regulativu donesenu na razini EU. Naposlijetku, pruža izuzetno važne uvide glede postizanja neekonomskih ciljeva kada su autorsko pravo i srodna prava regulirana unutar unutarnjeg tržišta jer potiče raspravu o niskoj prepoznatljivosti autorskog prava kao alata kulturne politike i posljedicama koje iz toga proizlaze. U tom smislu, disertacija otvara vrata za kritičku procjenu postojeće regulative o granicama i ciljevima unutarnjeg tržišta, njezine povezanosti s ciljevima Ugovora i Povelje o temeljnim pravima.

Disertacija također daje važan doprinos pravnoj zajednici autorskog prava i EU-a. Disertacija će biti od interesa i za kreatore politika i za pravne praktičare kada se bave pitanjima sukoba autorskog prava i drugih interesa, uključujući obrazovanje.

Mišljenje i prijedlog:

Uzimajući u obzir prethodna razmatranja, članovi Povjerenstva za ocjenu doktorskog rada naslovljenog „Europsko autorsko pravo izvan okvira unutarnjeg tržišta - kritička analiza ograničenja i iznimki u svrhu obrazovanja“ (u originalu: EU Copyright Law Beyond the Internal Market - Critical Analysis of the Limitations and Exceptions for the Education Purposes“), predanog od strane doktorske kandidatkinje Antonije Ivančan, predlažu Vijeću Pravnog fakulteta Sveučilišta u Zagrebu: da ovaj doktorski rad prihvati kao uspješno izrađen doktorski rad s izvornim znanstvenim doprinosom, koji omogućuje kandidatkinji nastavak postupka za stjecanje akademskog stupnja doktora znanosti (dr. sc.); te da u skladu s time imenuje povjerenstvo za završnu javnu obranu doktorskog rada.

	Titula, ime i prezime, ustanova, država:	Potpis:
Izabrano povjerenstvo za ocjenu doktorskog rada	1. (predsjednik Povjerenstva) prof. dr.sc. Iris Goldner Lang	
	2. izv. prof. dr. sc. Melita Carević	
	3. prof. dr. sc. Raquel Xalabarder Plantada	
	4. izv. prof. dr. sc. Romana Matanovac Vučković	
	5. prof. dr. sc. Guido Westkamp	
Sjednica nadležnog tijela i točka dnevnog reda u okviru koje je imenovano Povjerenstvo:	Vijeće PFZ od 25. siječnja 2023. točka 29.	
Napomena (po potrebi):		



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on the agenda:	
Comment (as needed):	
Zagreb, 25 May 2023	Official stamp here