

Legal aspect of institutional thesis repositories in the Republic of Croatia

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Universities, colleges, and polytechnic schools in Croatia are obligated by law to publish student theses. At the same time, every student has a legal right to decide autonomously whether or not to allow the publication of thesis as it constitutes his or her intellectual property. Given the significant role of institutional repositories, here we propose several solutions to this legal problem, including changes to legislation, publication agreements (contract) between institutions of higher education and student authors, and inclusion of student author's consent in the terms and conditions of study.

Introduction

Demands for open access to scientific information have led to the establishment of institutional repositories, i.e. collections of digital material owned, controlled, and disseminated by an institution. These institutional repositories meet interests of all parties involved: authors, because the accessibility and visibility of their scientific production is increased; institutions, because the generated knowledge is collected and kept at one site and can be presented to financing bodies and the public; and the public, because scientific information may be accessed and the results of budget investments in research evaluated (Škorić 2007).

In addition to papers authored by scientists, student theses have also become the object of interest for publication in institutional repositories. The term “thesis” encompasses final papers and diploma theses, which are one of the conditions for finishing undergraduate, graduate or specialist studies, as in Article 83, paragraphs 1-3 of the Act on Scientific Activity and Higher Education (Republic of Croatia 2017). The National Thesis Repository (in Croatian, Nacionalni repozitorij završnih radova) has been established at the National and University Library in Zagreb for permanent storage of and public access to all student theses defended in the Republic of Croatia. Thus, the National Thesis Repository encom-

passes all student theses repositories at institutions of higher education – universities, colleges, and polytechnic schools ([National Thesis Repository 2019](#)).

The Croatian Act on Scientific Activity and Higher Education (in Croatian, *Zakon o znanstvenoj djelatnosti i visokom obrazovanju, ZZDVO*) ([Republic of Croatia 2017](#)) requires from the universities and faculties to deposit student theses into an open access online database of a University Library, which is part of the University, and thus make them permanently available to the public, and copy them into the open access online database of the National and University Library, whereas polytechnic schools and colleges must copy student theses into the open access online database of the National and University Library. The term institutions of higher education is used as an umbrella expression for universities, faculties, colleges, and polytechnic schools, as in Article 84, paragraph 11 of the Statute of the University of Split ([University of Split 2019](#)). University constituents are obligated to publish and make permanently available final works and diploma theses in the open access online database of the University Library in Split and copy them in the open access online database of final works of the National and University Library, according to the limitations prescribed by special provisions regulating the protection of copyright, patents and similar. However, the legislators overlooked the legal provision that grants authors the exclusive right to do with their work and related benefits as they please and excludes any other entity from claiming any such right, if not specified otherwise by law. This right specifically applies to the right to communicate the work to the public, as in Article 18, paragraph 1, al. 3. of the Act on Copyright and Related Rights (in Croatian, *Zakon o autorskom pravu i srodnim pravima, ZAPSP*) ([Republic of Croatia 2018a](#)). Article 3, paragraph 1 of the Act on Copyright and Related Rights prescribes that publication of an author's work be performed in the manner to make it accessible to the public, with the copyright owner's consent. i.e., the legislators failed to solve the problem of copyright that belongs to students as authors of intellectual work, i.e. student theses. The legislators did not prescribe a sanction for the violation of this legal provision.

This issue cannot be solved by providing access to institutional employees or academic community only, as it would constitute the act of communication of a work to the public because the Article 3, paragraph 3 of the Act on Copyright and Related Rights ([Republic of Croatia 2018a](#)) defines the public as a larger number of individuals outside the usual circle of persons mutually closely related by blood or other personal relations. It can neither be solved by locking the theses (blocking the access to theses) because it would negate the meaning and purpose of public communication (and meaning of repository) and would not constitute the fulfillment of legal obligation.

Models for resolving the conflicting obligations of institutions of higher education

The easiest, simplest, and legally most acceptable solution would be to limit the autonomy of an author by amending the chapter 6 “Material limitation to copyright” (in Croatian, „Sadržajno ograničavanje autorskih prava“) of the Act on Copyright and Related Rights ([Republic of Croatia 2018a](#)), which would allow the institutions of higher education to ful-

fill their legal obligation to publish theses in a repository, as required by ZZDVO, or to limit students' copyright related to theses by ZZDVO as a special law (*lex specialis*).

An agreement or contract signed between a student and institution of higher education could be another possible solution of this problem. However, if this case, reaching an agreement would depend on the good will of a student. By closing a contract, an author could allow his or her work to be used for a specific purpose, i.e., to be published in a thesis repository (Nemec 2016). In this case, institutions of higher education would sign a copyright contract with an author or the author would, by unilateral legal transaction (e.g., a statement), use his or her copyright in favor of the institution (Gliha 2013). Since a copyright contract must be in writing, a student author would be required to clearly indicate his or her work (either in the contract or in the unilateral statement), the legal person to whom the right of use is transferred, and the manner in which the work may be used, as per article Articles 51 and 52 of the Act on Copyright and Related Rights (Republic of Croatia, 2018a). The Working Group of the DABAR Repository created a template of the Statement on deposition and publication of a qualification work in the DABAR repository (DABAR, 2019). This statement template is in line with the legal requirements of the Act on Copyright and Related Rights (Republic of Croatia 2018a).

The institutions of higher education could also fulfill their obligation to publish student theses by amending their acts of general application (statutes, ordinances), so as to require the student consent to thesis publication as a precondition for studying. Thus, a student's statement of acceptance of this condition would create a precondition for legal publication of student's work. Students would be free to decide whether or not they would accept to study under (pre-determined) particular conditions, as the Act on Copyright and Related Rights does not specifically preclude regulating copyright (differently) by contract (Republic of Croatia 2018a). Article 2 of Law of Obligations (Republic of Croatia 2018b) stipulates that parties in transactions freely define their obligation relations, and cannot define them contrary to the Constitution of the Republic of Croatia, mandatory rules and moral.

Conclusion

The present legal framework, which obligates institutions of higher education to publish student theses, is incomplete and makes a successful realization of the mentioned obligation dependent on further decisions of the legislators or agreements within academic community or on a unilateral specification of a special condition (consent to thesis) as a precondition for studying.

Given the significance and entirely positive effects of making student theses publicly available, legal obstacles to this process should be removed and legal preconditions created to ensure that the purpose of institutional repositories is fulfilled.

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