



Ivane Javakhishvili Tbilisi State University
Faculty of Law

Journal of Law

№2, 2018



სანივერსიტეტის
განმომცემლობა

UDC(უბკ) 34(051.2)

ბ-216

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ISSN 2233-3746

Spread of the Audiovisual Works in the Social Network and its Legal Consequences

This article discusses the typical cases of spreading audiovisual works and their legal consequences. The frameworks of spreading audiovisual works are an interesting topic in a contemporary reality. The issue concerning the certain cases of spreading the audiovisual works in the social network (uploading, sharing a link, expressing position with sharing) is mostly interesting. In this regard, the article discusses the legal backgrounds concerning the freedom and restriction of spreading the audiovisual works in the social network.

Key words: *Audiovisual Works, Social Network, Media, Group, Spread, Copyright, Copyright Law.*

1. Introduction

Audiovisual works are spread and used quite often in the contemporary period. The development of social network has increased the amount of the users who shares such works. The users are sharing certain video files and other works for several reasons. The aims of sharing differ from each other, according to the certain cases.

As the audiovisual works are widely spread, the danger of infringing copyright is also increasing. The legal solution of the problems existing in the social network is considered as one of the biggest challenges of the contemporary lawyers. Technological changes should be followed by the legal amendments, which do not always coincide with each other. Accordingly, the development of the court practice is important in this regard, while the practice is able to overcome this challenge more quickly and efficiently.

Together with preventing the infringement of copyright it is also important to maintain the balance between the interests of the copyright holders, on one side, and the users, on the other, which is also another important challenge of contemporary copyright law. In this regard, it is one of the aims of the development of legislation and court practice to reach this balance between the different interests.

Within the framework of this research, the examples are taken from the activities mostly performed in the social network, particularly – *Facebook*, also considering their legal consequences. We discuss the issue of freedom of the actions performed in this social network and the necessity of the higher level of the legal protection (considering the increased activities of the users).

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2. Audiovisual Work as the Object Protected by the Law

Considering audiovisual works among the list of the objects protected by copyright, which initially considered only the “classical” sorts of scientific, literary and artistic works, is the result of the technological progress. The development of internet and social network in the recent decades, which also follows the technological development, creates modern platform of spreading the audiovisual works. Accordingly, legal protection of the audiovisual works spread in the social network is characterized by a number of specificities, derived from its notion.

2.1. Notion of the Audiovisual Work

The unified definition of audiovisual work has not been created yet, neither on the international (i.e. Berne Convention for the Protection of Literary and Artistic Works, 09/09/1886 (hereafter – Berne Convention)) nor on the regional (i.e. EC directives) level. Accordingly, overview of the copyright legislations of certain countries is necessary in order to identify the main elements of the notion of audiovisual works.

2.1.1. Legal Regulation of the Audiovisual Works in the International Legal Acts

The unified definition of audiovisual work is not provided in the international legal acts.¹ Berne Convention refers to “cinematographic works to which are assimilated works expressed by a process analogous to cinematography”,² but not to the audiovisual works. Accordingly, Berne Convention does not refer to the audiovisual works into more details, nor does it specify the “process analogous to cinematography”, while such specification would have been useless because of the increased tempo of developing technologies and cinema industry, so the wider and more ‘flexible’ definition has been selected on purpose.³ The definition of audiovisual works is not provided in the EC directives regulating the certain issues related to copyright.⁴

2.1.2. Definition of the Audiovisual Work According to the Copyright Laws of the Certain Countries

As the unified definition of the audiovisual work does not exist, this term is defined in various manners in the national copyright legislations. For example, German Copyright Act uses the term

¹ Such as: Berne Convention for the Protection of Literary and Artistic Works, 09/09/1886; World Intellectual Property Organization (WIPO) Copyright Treaty, 06/03/2002; Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 15/04/1994.

² Article 2(1), Berne Convention for the Protection of Literary and Artistic Works, 09/09/1886.

³ *Stamatoudi I.*, Audiovisual works, in: *Copyright and Multimedia Products: A Comparative Analysis*, *Stamatoudi I.* (ed.), Cambridge, 2001, 106.

⁴ I.e. Rental and Lending Rights Directive defines “film” as the audiovisual work (Article 2.1.(c)), but the definition of “audiovisual work” is provided neither in this, nor in other EU directives; see Art. 2.1.(c), Directive 2006/115/EC of the European Parliament and of the Council, 12/12/2006.

“moving pictures” instead of “audiovisual work”⁵. Code of the Intellectual Property of France defines the audiovisual work in the following manner: “the works containing the sequence of moving pictures, with or without voice”⁶. More detailed definition is provided in the US Copyright Act, according to which the audiovisual works “are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied”⁷. Accordingly, the definitions provided in the French and US copyright legislations can be considered as the examples of the brief and detailed definitions.

2.1.3. Definition of the Audiovisual Work According to Georgian Legislation

Audiovisual work is defined in the following manner according to the Georgian law on Copyright and Neighboring Rights: “a work consisting of a series of images whether or not accompanied by sound that imparts the impression of motion and can be seen and/or heard.”⁸ As we can see, Georgian legislation reflects the established standard according to which the element of “motioned sequential pictures” is necessary, but the existence of voice is not. According to the law, “Audiovisual work includes cinematographic and other works expressed by means analogous to cinematography (tele-, video films, film strips, etc.)”⁹. Similarly to the copyright legislation of the United States, the material form of expression of the work is not decisive in the Georgian copyright legislation as well.

2.2. Specificities of the Audiovisual Work and its Legal Regulation

Although the definitions provided in the copyright legislations of the various countries are not homogeneous, there are certain basic elements which unify the definitions mentioned above. These definitions cause the specific character of the audiovisual work and, accordingly, specificity of its legal regulation.

2.2.1. Basic Elements of the Notion of Audiovisual Work

Because of the non-existence of the unified notion defining audiovisual work, copyright legislations of the numerous countries define this term in various manners – some of them use alternative names,¹⁰ some do not define them at all¹¹. Some of the definitions are broad and detailed,

⁵ § 95, Gesetz über Urheberrecht und verwandte Schutzrechte, 09/09/1965.

⁶ Article L112-2,6°, Code de la Propriété Intellectuelle, № 92-597, 01/07/1992.

⁷ § 101, US Copyright Act, № 94-553, 19/10/1976.

⁸ Article 4, part “b”, Law of Georgia on Copyright and Related Rights, 22/06/1999.

⁹ Ibid.

¹⁰ I.e. “moving pictures” in § 95, Gesetz über Urheberrecht und verwandte Schutzrechte, 09/09/1965.

others are brief and laconic¹². In spite of all the differences, there is an element common for every definition and this is “moving sequential pictures”. The term ‘audiovisual’ semantically implies the existence of picture and voice as well. However, according to the definitions discussed above, picture is an essential element of the audiovisual work, while the voice is not, the existence of which is not necessary. The term “picture” should be used in its broader sense in this regard: it refers to the pictures of not only the ‘real’ things, but also all of the other pictures which can be projected and viewed by means of screen and projector.¹³ The pictures have to be more than one at the same time,¹⁴ they have to be motioned and sequential. ‘Sequential’ character in this regard refers not to the random gathering of the pictures but also the logically connected unity, within the context of which the pictures are perceived as the parts of the unified scenario.¹⁵

2.2.2. Legal Regulation of the Audiovisual Work

The specific character of the audiovisual work, which differentiates it from the other types of literary and artistic works, is the reason of the specificity of its legal regulation. The common principle of the copyright law – requirement of originality – refers also to the audiovisual work: the work has to be the result of the intellectual-creative activity.¹⁶ The Copyright, Designs and Patents Act 1988 of the UK directly states that the film, or its part, which is a copy of another film, is not subjected to the copyright protection.¹⁷

An essential element causing the specific character of the audiovisual work is the issue of its authorship. As a rule, several persons are participating in the creation of the audiovisual work.¹⁸ The common law and continental European rules have to be differentiated in terms of regulating authorship in this regard: according to the Copyright, Designs and Patents Act 1988 of the UK, producer is considered as an author of the film;¹⁹ in continental Europe, however, the rights of the producer of the film are rather restricted²⁰. Georgian legislation mostly shares the continental European regime,²¹ it

¹¹ *Stamatoudi I.*, *Audiovisual Works*, in: *Copyright and Multimedia Products: A Comparative Analysis*, *Stamatoudi I.* (ed.), Cambridge, 2001, 104.

¹² Georgian legislation is intermediate in this regard: the definition provided by the Georgian law consists of the basic elements of the audiovisual work and name the forms of their expression at the same time, see: Article 4, part “b”, Law of Georgia on Copyright and Related Rights, 22/06/1999.

¹³ *Stamatoudi I.*, *Audiovisual Works*, in: *Copyright and Multimedia Products: A Comparative Analysis*, *Stamatoudi I.* (ed.), Cambridge, 2001, 111.

¹⁴ In the illustrated definitions the word “picture” is always in plural.

¹⁵ *Stamatoudi I.*, *Audiovisual Works*, in: *Copyright and Multimedia Products: A Comparative Analysis*, *Stamatoudi I.* (ed.), Cambridge, 2001, 113.

¹⁶ Article 5, part 1, Law of Georgia on Copyright and Related Rights, 22/06/1999.

¹⁷ Section 5B(4), Copyright, Designs and Patents Act, 15/11/1988.

¹⁸ *Stamatoudi I.*, *Audiovisual Works*, in: *Copyright and Multimedia Products: A Comparative Analysis*, *Stamatoudi I.* (ed.), Cambridge, 2001, 120.

¹⁹ Sec. 9(2)(ab), Copyright, Designs and Patents Act, 15/11/1988.

²⁰ *Stamatoudi I.*, *Audiovisual Works*, in: *Copyright and Multimedia Products: A Comparative Analysis*, *Stamatoudi I.* (ed.), Cambridge, 2001, 120.

²¹ However, according to the decision made by the shareholders’ meeting of Joint Stock Company “Georgian Film” and the general partners 2 years before the adoption of the Law of Georgia on Copyright and Related

regulates the issue of authorship of the audiovisual work and considers the producer, as well as author of the plot, author of the dialogues and author of musical works, with or without texts, created especially for this audiovisual work, as the authors (co-authors).²² Generally, the multitude of authors and, accordingly, the special rule of regulating copyright is the specificity which differentiates audiovisual work from the other sorts of copyrighted works.

2. 3. Audiovisual Media Service and its Regulation According to the EU Law

The issue of spreading the audiovisual work in the media has initially been connected to the technological development and, due to the increasing character of the latter, the necessity of legal regulation of this issue has been created. With this purpose the Audiovisual Media Services Directive has been adopted by the EU in 2007.²³ It has to be mentioned that the initial purpose if the European Commission had been full liberalization of the spread of such product, but such approach was strongly opposed by the member states and, finally, more balanced and compromise version has been adopted.²⁴ The directive defines the definition of “audiovisual media service”²⁵ and regulates it into details. In this case ‘media’ refers to the traditional TV broadcast as well as to the internet media, which was a novelty by that time. The increasing development of the latter after the year 2010 brought new challenge for the European Commission and made the amendment of the directive inevitable. Nowadays the negotiations between the European Parliament, Council and Commission concerning the new text of the directive are officially completed, which will make the legislation more flexible and guarantee its responsiveness to the modern challenges.²⁶ Generally, the history of adopting and amending the Audiovisual Media Services Directive by the European Union²⁷ highlights once again the dynamic character of the audiovisual work and its spread in the social media.

3. Freedom of the Spread of Audiovisual Works in the Social Network

Audiovisual works can be spread in the form of video clip as well as in spontaneous created form.²⁸ The first case refers to the certain video clip and to music, which can be taken from another

Rights (minutes of shareholders’ meeting № 4, 10/11/1997), the rights of ownership of the films produced before the year 1990 have been granted to the producers of the films, which is in compliance with the “common law” model.

²² Article 15, part 1, Law of Georgia on Copyright and Related Rights, 22/06/1999.

²³ Directive 2007/65/EC of the European Parliament and of the Council, 11/12/07.

²⁴ *Bushati E.*, “Product Placement”: The Harmonization of the New Albanian Media Law with the European Audio-Visual Media Services Directive, *Academicus*, 2011, Issue 4, 62.

²⁵ Art. 1.1.(a), Directive 2010/13/EU of the European Parliament and of the Council, 10/03/2010.

²⁶ European Commission – Press Release, Audiovisual Media Services: Breakthrough in EU Negotiations for Modern and Fairer Rules, Brussels, 2018, <http://europa.eu/rapid/press-release_IP-18-3567_en.htm>, [26.03.2019].

²⁷ The directive has been adopted in 2007 and amended in 2010 at first, nowadays its second amendment has been prepared.

²⁸ *Vormbrock U.*, *Gesamtes Medienrecht, Hamburger Kommentar*, 3 Aufl., *Paschke M., Berlitz W., Meyer B.* (hrsg.), Baden-Baden, 2016, Rn. 55. Abschnitt, Teil 6, Kapitel 1, 23.

web site (such as *YouTube*), or spread by a certain person. Copyright protection also covers the work created spontaneously (such as on *Instagram*). Such possibility is provided by the technical characteristics of the social network. Although such works belong to the area of copyright protection, its protection is still connected to certain difficulties.²⁹ In terms of copyright protection it should be equaled to the work uploaded by the certain person.

3.1. Spread of the Work in a Form of Posting a Link on the Timeline

The most frequent form of spreading audiovisual works by the user of the social network on his/her own timeline is sharing a link. However, in practical terms it is more common case when a person shares *YouTube* link on his/her own timeline. It is a matter of discussion, whether such case might be referred as an infringement. However, it can be safely said that the right is protected only in the case when the author of the work expresses his/her consent.³⁰

3.2. Spread of the Work by Means of Uploading

In terms of protecting copyright, upload in the social network has the same content as sharing.³¹ In such cases a consent from the entitled person is an essential precondition. Unlikely to spread of the link, in this case the uploader has to refer to the appropriate initial source, if such notification is necessary.

3.3. Position Expressed by Means of Posting

It occurs quite often that, together with spreading the work, personal comments/opinions are also posted together with the work. It can be expressed in positive as well as negative opinion, when the user announces his/her position to the definite or indefinite circle of the persons. In this regard it is important to differentiate the results caused by the spread from each other: the issues of infringing copyright, personal rights and, accordingly, imposition of responsibility.

3.3.1. Approval Expressed by Posting

Approval, positive comment, consent, or any other action which can be perceived as ‘positive spread’, is directed to the certain circle of the natural persons. It is possible that a person does not spread certain work for this reason, but it is not important in terms of legal consequences. For example, a *Facebook* user is spreading an opus of a famous musician (*Michael Jackson, Freddie Mercury, John Coltrane*, etc.) and indicates in the comment that this opus encourages people and creates good mood.

²⁹ Vormbrock U., *Gesamtes Medienrecht*, Hamburger Kommentar, 3 Aufl., Paschke M., Berlitz W., Meyer B. (hrsg.), Baden-Baden, 2016, Rn. 55. Abschnitt, Teil 6, Kapitel 1, 23.

³⁰ Even if the source is protected, it is also possible in certain cases to create a problem.

³¹ Katko P., Kaiser D., *Immaterialgutrechte* (kapitel 4), in: *Praxishandbuch Rechtsfragen Social Media*, Splittgerber A. (hrsg.), Berlin, 2014, 193.

The aim can be ‘positive’ and, moreover, author of the work (or material copyright holder) might like the post, but it does not mean that the copyright is protected in the case of expressing certain emotion concerning the copyrighted work.

3.3.2. Negative Opinion Certified by Posting

Another occasion is the case when a person expresses his/her opinion by means of so-called ‘negative posting’. Likely to the case discussed above, this person posts a comment together with spreading a musical opus, but in this comment it is stated that the work is very weak, there is no professionalism expressed in it, etc. Such comments usually refer to the beginners in music industry (whose names are not known to the public), or to the opuses which have negative reputation in the audience. In such cases it is also possible to infringe the immaterial rights of person, together with copyright.

3.3.3. Difference between Copyright and other Immaterial Personal Rights

Negative or positive opinion of the user about the opus spread by him/her does not play a decisive role in terms of copyright. With regard to comments, it is possible to claim for defamation or degrading reputation,³² but even if such claim is satisfied by the court, it does not have any influence on the copyright protection.

In this case the following circumstance is important: if, together with the infringement of copyright (spread of the work without consent), the personal immaterial right of a person such as business reputation is also violated (opinion concerning the posted work is infringing), would then the author be able to raise both of the claims at the court?

Legislative regulation gives a possibility to have positive response to this question. More precisely, the issue concerns not with two different responsibilities for one single action, but to infringing two different rights with one action,³³ since both of these rights are recognized and guaranteed by the Constitution (Articles 23 and 17 of the Constitution of Georgia, 2018 version of the year 2018 before the presidential election), their protection should also be guaranteed by the law. Accordingly, such action can be considered as absolutely admissible.

3.3.4. Admissibility of the Different Position

As long as the internet is not considered as a personal space, it is possible that such kind of publicly stated position refer to the persons having different opinions. In this regard, the argument of the opponents should be based on the demarcation of the personal space. Imposition of certain additional

³² In this case it is important to find out, whether the case concerns with the freedom of expression, or other action, which is proportional to the infringement of the right.

³³ In certain cases it is possible to have an infringement of one more right. Namely, it refers to the identification of a person in the work. In this regard, audiovisual works are regulated by the same rule which regulates the appearance of a person in the photo (considering public space and all other preconditions), *Schirnbacher M.*, *Online-Marketing- und Social-Media-Recht*, 2. Aufl., Frechen, 2017, 203.

precondition is possible in this regard: is the user committing such action for friends, for public, or for personal use? Difference between the opinions can occur in this regard. Moreover, after spreading the information on the own timeline, the person should not have a logical expectation that his/her friend would hesitate to re-share this work and carefully check the area of initial spread. Accordingly, this issue can become an object of dispute, the resolution of which should be based on the existence of certain content and circumstances.

3.4. Interim Summary

Infringement of right (derived from the non-existence of license) in the case of sharing a link is possible in the same ways.³⁴ In this regard it is implied that a person makes a work publicly accessible.³⁵ Especially, when the spread (sharing) of the link is not connected to the commercial aims, the person needs to be careful in this regard.

In order to make it more clear, an allegorical example can be provided: a person detects certain item in the street (either luxurious or not, price is not important). The item does not contain the information about the aim of locating it in the street (there is no *invitatio ad offerendum*, or any similar content). If the person likes it and decides to consume it without asking anyone – in such case the infringement of the right can easily be identified. Moreover, because of the absolute nature of the property right, its creation requires certain preconditions (Article 190 Georgian Civil Code - Acquiring the ownership of ownerless movable things, Article 191 – Finding). Simultaneously we can discuss the possibility existing in the web space: there is a work in the internet; while ‘wandering’ in the web space, certain person finds this work, likes it and wishes to use it without asking. Also in this case, when there is no precondition accompanied to the work, there is no text concerning *invitatio ad offerendum*, etc. then such work is not aimed at wide consumption by the public.

One difference can be mentioned between these two cases: aim of personal use. If the use of the item found in the street is not allowed, the law allows such usage in case of the work. However, the essence of personal use is the matter of another discussion and we will discuss it below.

4. Possibility of Infringement of the Right – Sharing Modern Tendency

4.1. Sharing in certain Group and Aim of the User

Upload of the work in the certain group is possible to be considered as a personal use.³⁶ This is the difference between sharing to friends (on the so-called “timeline”) publicly, where the sharing of information equals to publication.³⁷ In such case the type of the group is important, as well as the aim of sharing and the possible outcomes, which should be considered clearly by the user.

³⁴ EuGH, Urteil vom 08.09.2016 – C-160/15.

³⁵ AG Leipzig, Urteil vom 21.12.2011 – 200 Ls 390 Js 184-11.

³⁶ *Katko P., Kaiser D.*, Immaterialgutrechte (kapitel 4), in: *Praxishandbuch Rechtsfragen Social Media*, *Splitzgerber A.* (hrgeb.), Berlin, 2014, 189.

³⁷ *Ibid.*

4.1.1. Type of the Group

If we consider *Facebook* groups, sharing the work in the closed group can be considered as sharing for private use. Closed groups, as well as secret groups are used for communication.³⁸ Open group is a different case and sharing an information there is equaled to the public sharing, where the stated position does not contain any secret information, or a statement directed to the certain group of people.³⁹

4.1.2. Inadmissibility of Discussing the Issue in Formal Approach

Closed (secret) groups can be considered within the framework of the exceptional case. It can depend on the type of the group or the number of members of this certain group.⁴⁰ For example, when 400 users are registered as the members of the closed group and the uploader has a communication only with few from these 400 users, then there would not be any essential difference from the public sharing.

4.2. Specificity of the Commercial Aim

Any action, such as sharing a link, uploading it or posting it publicly, or in a closed group, should be subjected to legal qualification. It should be found out, whether this action has private or commercial aims.⁴¹ In case of commercial use the law defines more restrictions, which can also be imposed for the broadcaster.⁴² In certain cases it is possible to infringe the rights aimed at advertising (inappropriate advertisement, etc).

4.3. Challenge of Identifying the Violator

The biggest challenge created by the social networks is the identification of the violator. Namely, definition of the person who stands behind this action. In this regard it is possible to perform certain procedural actions such as guaranteeing the evidences, etc. Besides that, identification of the addressee can last during unexpectedly long time.

5. Analyze of the Result

Correlation between the private use, on one hand, public sharing and commercial aims, on the other, is reflected as follows: in the first case the right is not infringed,⁴³ while in other cases the raise

³⁸ LG Oldenburg, Urteil vom 11.01.2006 – 5S740/05.

³⁹ *Jorbenadze S., Bakhtadze U., Macharadze Z.*, Media Law, Tbilisi, 2014, 90 (in Georgian).

⁴⁰ *Bauer J. -H., Günther J.*, Kündigung wegen beleidigender Äußerungen auf Facebook, Vertrauliche Kommunikation unter Freunden?, NZA, Heft 2, 2013, 70.

⁴¹ *Schirnbacher M.*, Online-Marketing- und Social-Media-Recht, 2. Aufl., Frechen, 2017, 204-205.

⁴² Regarding this issue an appropriate regulation is defined by Georgian Copyright Association, which covers *inter alia* the spread of audiovisual works by media.

⁴³ Even if the work is downloaded, *Katko P., Kaiser D.*, Immaterialgutrechte (kapitel 4), in: Praxishandbuch Rechtsfragen Social Media, *Splitgerber A.* (hrsgb.), Berlin, 2014, 191.

of the claim is justified. While sharing the link, existence of the right on the spread work is below the frameworks of the “legal trust”. It means that even if the person does not know about the existence of such right, he/she would be able to find out about such right by means of internet (the final result would be that this person “should have known” about such circumstance⁴⁴).

6. Conclusions

International legislation does not define a unified notion of the audiovisual work, which gives possibility to certain countries to impose such definitions of audiovisual works in their national legislations. Accordingly, such definitions are not homogeneous, but each of them consists of the basic elements which are essential for the notion of the audiovisual work. These elements cause the specific character of this type of work, which, in itself, lead to the specific character of the legal regulation of audiovisual work. Posting audiovisual work in a social network has mostly specific character. In spite of the certain functional abilities of the social network, the consent of the copyright holder is necessary for the absolute protection of copyright.

It is true that the use of social network is conditioned by the ‘personal reason’. However, while spreading the audiovisual work, it is directed to such a wide spectrum (indefinite group of people) that it is possible for the public use to be replaced by the private use. Granting such qualification is a result of examining each case.

While spreading the audiovisual work with public aim, it is possible to infringe the right, if the uploader did not have the initial consent from the copyright holder. The issue is more disputable when the work has not been spread for the commercial use.⁴⁵ For example, when the audiovisual work is shared on the web page, published in the social network on the timeline of certain person, then this person makes such work publicly accessible. It means that the uploader should have initial consent from the copyright holder for such sharing.

Bibliography:

1. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 15/04/1994.
2. Code de la propriété intellectuelle, № 92-597, 01/07/1992.
3. Convention of Berne of Literary and Artistic Works, 09/09/1886.
4. Law of Georgia on Copyright and Related Rights, 22/06/1999.
5. World Intellectual Property Organization (WIPO) Copyright Treaty, 06/03/2002.
6. Copyright, Designs and Patents Act, 15/11/1988.
7. Directive 2006/115/EC of the European Parliament and of the Council, 12/12/2006.
8. Directive 2007/65/EC of the European Parliament and of the Council, 11/12/07.

⁴⁴ *Grünberger M.*, Zugangsregeln bei Verlinkungen auf rechtswidrig zugänglich gemachte Werke, ZUM, Heft 11, 2016, 914.

⁴⁵ While spreading the work with commercial aim the issue of infringing copyright is raised (when the uploader does not have such right).

9. Directive 2010/13/EU of the European Parliament and of the Council, 10/03/2010.
10. Gesetz über Urheberrecht und verwandte Schutzrechte, 09/09/1965.
11. US Copyright Act, № 94-553, 19/10/1976.
12. The minutes of shareholders' meeting of Joint Stock Company "Georgian Film" and General Partners, № 4, 10/11/1997.
13. *Bushati E.*, "Product Placement": The Harmonization of the New Albanian Media Law with the European Audio-Visual Media Services Directive, *Academicus*, Issue 4, 2011, 62.
14. *Bauer J. -H., Günther J.*, Kündigung wegen beleidigender Äußerungen auf Facebook, Vertrauliche Kommunikation unter Freunden?, *NZA*, Heft 2, 2013, 70.
15. *Grünberger M.*, Zugangsregeln bei Verlinkungen auf rechtswidrig zugänglich gemachte Werke, *ZUM*, Heft 11, 2016, 914.
16. *Jorbenadze S., Bakhtadze U., Matcharadze Z.*, *Media Law*, Tbilisi, 2014, 90 (in Georgian).
17. *Schirnbacher M.*, *Online-Marketing- und Social-Media-Recht*, 2 Aufl., Frechen, 2017, 203, 204, 205.
18. *Stamatoudi I.*, Audiovisual Works, in: *Copyright and Multimedia Products: A Comparative Analysis*, *Stamatoudi I. A.* (ed.), Cambridge, 2001, 104, 106, 111, 113, 120.
19. *Katko P., Kaiser D.*, Immaterialgutrechte (kapitel 4), in: *Praxishandbuch Rechtsfragen Social Media*, *Splittgerber A.* (hrbg.), Berlin, 2014, 189, 191, 193.
20. *Vormbrock U.*, *Gesamtes Medienrecht*, *Hamburger Kommentar*, 3 Aufl., *Paschke M., Berlitz W., Meyer B.* (hrbg.), Baden-Baden, 2016, Rn. 55. Abschnitt, Teil 6, Kapitel 1, 23.
21. AG Leipzig, Urteil vom 21.12.2011 – 200 Ls 390 Js 184-11.
22. EuGH, Urteil vom 08.09.2016 – C-160/15.
23. LG Oldenburg, Urteil vom 11.01.2006 – 5S740/05.
24. <http://europa.eu/rapid/press-release_IP-18-3567_en.htm>.