

Social Media Law and new trends in European Law

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Social Media Law and new trends in European Law

I. Social Media

(1) Content is King

(2) Social Media Guidelines

II. New European jurisdiction



“Social Media has impacted the Sports Industry and that impact will continue to evolve in the years to come.”

Social Media Law and new trends in European Law

I. Social Media

(1) Content is King

1. copyright law
2. general right of privacy
3. trademark law
4. check terms of service

1. copyright law

No

historical
and real
events

scientific
methods

works in the
public domain
(i.e. Folk
songs)

ideas,
concepts

1. copyright law

Yes

music
(i.e.
source
music)

literature

art

architecture

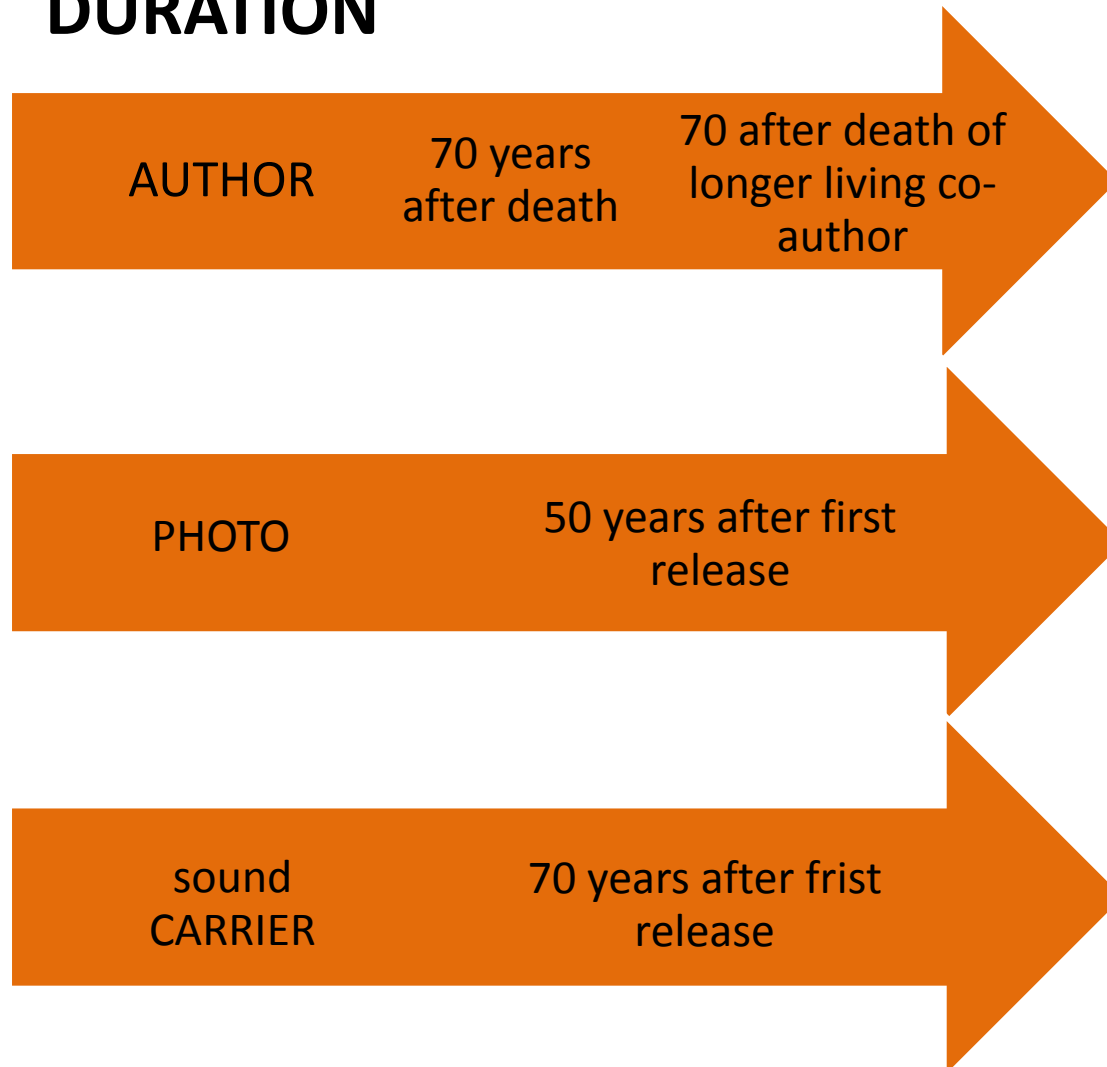
films and
photos

logo

software

1. copyright law

DURATION



1. copyright law

License Agreement – important steps

- Who is the rights holder?
- negotiation of license agreement
- basic content:
 - license period, licensed rights, territory
 - license fee, guarantee of rights

1. copyright law

urban legend:

3 seconds are always free!

There is no unwritten law like this!

As a general rule, parts of a work are also protected by
copyright.

1. copyright law

Basic rule in Germany: **Panoramafreiheit**

- You are allowed to post copyrighted buildings and arts which are installed permanently in public locations
 - from an **external** sight
 - from a point of view **accessible to the public**
 - in its original version (no adaptation)

2. general right of privacy

Basic rule: § 22 KUG Portrait Rights

Question: Can you **identify** the person?

- Attention: persons are not only identifiable by their face
- typical/ obvious characteristics are enough
- No publishing of photos of real persons without **prior consent**.

2. general right of privacy

urban legend: If there are more than 10 persons shown on the photo or image, each of them waives his/her personal rights.

- **NO!** As soon as you can identify one single person you have to ask for his/her consent.

2. general right of privacy

use without consent:

Exception §23 KUG

person is only accessory with respect
to the content of the picture

or

**increased interest of
art**

or

Celebrities in relation to their
official job for press releases
(no commercial purposes)

2. general right of privacy

urban legend:

I can always post photos of celebrities in my account.

No!

**If your use is not covered by § 23 KUG you will
need the consent of the celebrity.**

2. general right of privacy

Differences:

- true factual claim (+)
- false factual claim (-)
- value judgments (+)
- abusive criticism (-)

2. general right of privacy

infringement of personal rights: risk of a written warning

- **cease-and-desist declaration**
 - Post has to be deleted immediately!
- **claim for damages**

2. general right of privacy

Practical tip:

- Always get a **written consent** of the person if possible!

3. trademark law

- The focus isn't on the trademark

+

- attention: scene looks like an advertisement for the trademark

-

3. trademark law

trademark infringement: immediate risks

- cease-and-desist declaration
 - Post has to be deleted immediately!
- **claim of damages**

3. trademark law

Practical tip: Cooperation with trademark owner!

- legally 'bulletproof'
- advertising effect
- different types of advertisement
 - product placement
 - banner advertisement

4. check terms of service

Terms of Use in Social Media often include
comprehensive granting of rights!

4. check terms of service

Rights that are granted to YouTube:

- usage
 - reproduction
 - distribution
 - preparation of derivative works
 - exhibition
 - performance
 - Sublicense
- **worldwide, non-exclusive, royalty-free license**

4. check terms of service

- A non-exclusive,
- transferable,
- sub-licensable,
- royalty-free,
- worldwide license
- “to use any IP content that you post on or in connection with Facebook (IP License)“

4. check terms of service

termination:

- “IP License ends when you delete your IP content or your account ...”

exceptions:

- “ ... unless your content has been shared with others, and they have not deleted it.” (e.g. private messages)
- “ ... removed content may persist in backup copies for a reasonable period of time (but will not be available to others).” (Num. 2.2 of Facebook’s Terms of Service)

➤ **Purpose and duration of storage remain unclear**

4. check terms of service

practical tip:

- analysis of the respective terms of service
 - examination of the individual setting options
(e.g. Privacy settings on Facebook)
 - corporate policies for engagement in social networks
- **Social Media Guidelines!**

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(2) Social Media Guidelines

“**Online-Knigge**” = rules for employees in the social web

The aim is to:

- prevent liability of the companies and employees
- raise awareness of employees
- possibly prevent liability for
interference

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II. New European jurisdiction

(1) embedded content

(2) “Right to be forgotten”

(1) embedded content

Is the embedding of external content (e.g. YouTube videos or pictures) a copyright infringement?

(1) embedded content

European Court of Justice (ECJ):

- generally third-party content may be linked by framing
- but it is probably necessary, that the foreign content, which is included, was brought online **with the author's consent**

problems:

- Legal risk! If the content was uploaded without the author's permission, framing infringes copyright
- Therefore, a "carefree" framing is not possible!

(1) embedded content

Open questions in terms of framing:

What about **YouTube videos**?

- probably yes, but only if the video has been uploaded legally

Has the **author to be named**?

- with consistent application of the ECJ Judgment: NO

What about **people shown**?

- Personal right! So, when people are shown, no framing is possible without the people's consent

(1) embedded content

Practical tip: best take the official widgets for embedding!

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(1) embedded content

(2) “Right to be forgotten”

(2) “Right to be forgotten”

European Court of Justice (ECJ): (Case C-131/12)

- Google collects and uses personal data
- affected users have a **direct deletion claim** against Google, if not contrary to public interests
- deletion claim relates to the **cancellation of the link** from the search results list
- Google has no influence on the content of the linked page

(2) “Right to be forgotten”

consequences:

- high demand regarding deletion claim
- Google provides **deletion form** for standardized processing
- first search results have been deleted

Thank you for your attention.

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