Opportunities and limits in the use of audiovisual content / materials / from the point of view of copyright - legal norms and regulations in the Federal Republic of Germany, Switzerland, the Czech Republic and Bulgaria

1. Introduction

In this review, we will show you the possibilities and limits for the use of audio-visual content or materials (hereinafter referred to as "content or video content")from the point of view of copyright, based on legal regimes in the Federal Republic of Germany in Switzerland , The Czech Republic and Bulgaria. In this sense, the survey is targeted according to the opportunities for use that may be relevant with respect to the cloud-based cloud-based (saved in a "cloud") **nanoo.tv video platform.**This platform, among other things, enables cloud-based provision of video content for educational and educational purposes and for recording, processing and archiving of these content.

Last but not least, our statements should also take into account the opportunities for use in the areas of school and social activities as well as the conditions under which the use of YouTube videos may be legally permissible.

2. Copyright legal framework in the Federal Republic of Germany

From the copyright point of view, audiovisual content under German law is mainly protected as a **film productions** or as a so-called **moving pictures** (compare: § 2, par. 1, p. 6, §88 et seq., 95 Law on Copyright (CPA)).

Under Art. 95 of the cPA, moving pictures means sequences of paintings that do not reach the creative height required for a film work (official justification: Official Journal of the Bundestag IV / 270, p. 97 et seq.), for example live live performances, live concerts and comparable events. As moving pictures was also categorized a short excerpt from a film about

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nature (Federal High Court in Civil Cases 9, 262, 268 – *The Wild Song*). The same classification could also apply to video recordings in the private sphere (compare: Schulze in Dreyer / Schulze, Commentary on the CPA, 5. edition, Munich 2015, §95, line 10 et seq.).

Also be parts of a work may be subject to protection. For example, copyright protection was established for several film slots lasting about one minute (Appeal Court, mag. MMP 2003, 110, 112 – *Paul and Paula*, compare also: VOS Munich, mag. ZUM 2008 / mag. ZUM – Copyright and Media Magazine/, 520, 522).

According to the German copyright law of the author/holder of the right / of a work, besides the personal copyright, there are also wide-ranging property rights of use.

Firstly, he has the exclusive right to use and realize economically in physical /resp. - material/ form his work, in particular - to reproduce and distribute it (§ 15, paragraph 1, §16, §17 of the CPA). Secondly, the author has the right to recreate, perform, reproduce the work in a non-physical form. The right to public display, reproduction, performance, reproduction covers the same as the right to make the work universally accessible to the public, the right to broadcast and the right to reproduce by pictures and sound media (§15, paragraph 2, §19a, §20, §21 of the APA).

In the aspect of the right to public display, recreation, performance, reproduction, it is important that these types of performances are considered to be public when they are intended for many members of the society or the public. In this sense, the public or the public space includes anyone who is not related to personal attitude or connection with the person who uses the work or with other persons for whom the work is made fit or accessible for perception – § 15, para. 3 of the CPA.

Given the above, let us mention that the answer to the regular main question of copyright, whether a particular group, resp. - a certain range of recipients should be qualified as a public space in the above-described sense, often associated with difficulties.

For example: of ten-day vocational training seminars, as the experience of life shows, a personal relationship must not arise between the participants (Federal Supreme Court, mag.

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CLPIIL / Copyright and Legal Protection of Industrial Intellectual Law / 1983, 562, 563 - *Mythical and financial schools:*FSC, Judgment of 26.06.1986, Of. No. Az. I ZR 5/84, line 9 et seq. - quoted by Juris).

Unlikely, there are no public ones, for example, the typical ways of reproducing works in the classroom within the classroom community (RC Munich I, Judgment of 30.03.2004, Of. No Az 21 O 4799/04; compare also: Dreier in Dreier / Schulze, Commentary on the CPA, 5. edition, Munich 2015, §15, line 45). In a decision of the Federal Ministry of Justice of 2005, which can no longer be used by the source of the original, that assessment has been supplemented in that sense that "school events of the whole school or of larger parts of […] are generally public events." Whether a view is public or non-public, this must be solved only by taking into account the circumstances of each case (FSS Institute for Film and Painting Science and Education. Source http://fwu.de/rechtliche-aspekte-bei-der-nutzung-von-medien-im-schulunter-richt/zum-begriff-offentliche-vorfuhrung/ прегледано на 30.03.2018).

Usage actions that are important in connection with the **nanoo.tv video portal** mainly concern the right to reproduce, the right of access to the public and the right to process works of others.

According to the official definition in § 19a of the CPA, the right to make available to the public is the right to make the work, by wireless or wire transmission, accessible to the public in such a way that members of the public have access to it from place and time of their choice. Therefore, here it is the law that is important for copyright content to be made available for use, for example, through classic websites or streaming bids (Streaming).

As regards the question of the admissibility of the processing of a work of others, it is here under German law that processing as such is, as a rule, permissible. However, publications or use of treatments or other transformations may only be made with the consent of the author of the original work (§23 CPA also compare: §3, §14, §39, §62 of the CPA)

The abovementioned fact that the author or in the benefit of the author there are voluminous rights of use leads to the fact that potential users and persons using some work should in principle have the consent or the granting of the respective rights of use if they want to use the

work for private purposes.

Another rule only applies when the stipulations stipulated by the law provide for exceptions and the use of protected works in certain contexts and under certain conditions is permitted and without consent (the so-called "Defining the boundaries").

According to §47, para. 1 of CPA (Broadcasts on school radio systems) schools and teacher training institutions may, by means of transfer on visual and sound media, create reproduction of individual extracts from works to be broadcast in the course of a broadcasting of the school radio system. However, these visual and sound media may only be used in the class, lesson, and at the latest after the end of each school year following the school radio system broadcast, these records must be deleted unless paid to the author /or the rightholder/ appropriate remuneration – §47, para. 2 CPA.

School broadcasts are considered to be only broadcasts "produced by the broadcasting radio station for school lessons/classes in schools" and, in the event of doubt, being identified as such (Lutz in Vandtke/Bullinger, Commentary on the Copyright Act, 4th edition, Munich, 2014, §47, line 5).

As stated in §52 of CPA (Public Reproduction), public display /reproduction of an already published work is allowed when the reproduction is not for the commercial purpose of the organizer of the event, the participants are allowed without paying and in case of display, reading, presentation or staging/performance of the work none of the artists (compare: §73 of the CPA) does not receive special remuneration (Paragraph 1, indent 1). For events and happenings of the Youth Assistance Office, the Social Services, the Patronage and Elderly Care Services and for Charities, and the Patronage Service for Prisoners, the obligation to pay an acceptable remuneration may be waived (compare: §52, para. 1, ind. 3, para. 3 of the CPA).

In the sense of the so-called authorized private copy – under §53, para. (1) of the CPA, separate reproductions of a work carried out by a natural person for his personal use on any media may also be allowed where and to the extent that such reproductions serve neither directly nor indirectly for commercial purposes, and to the extent that and if reproduction does

not use a patently unlawfully created or publicly accessible source work (para 1, ind. 1).

However, pursuant to §53, para. 2, ind. 1 of CPA, in the case of authorized multiplication for other personal use, it may be assumed that reproductions of individual parts of a work may be made or that they be assigned, for example, for inclusion in a personal record. Then the limitation of para. 1 does not apply to individuals (compare: Dreier in Dreier / Schulze, Commentary on the CPA, 5. edition, Munich 2015, §53, line 18). However, other prerequisites, including those under para. 2, ind. 2 should be observed.

In addition, the created under §53, para. 1 to 5 of the CPA reproduced copies should in principle neither be distributed nor used for public reproduction purposes (§53 (6) (1) of the CPA). Therefore, there is a relatively large prohibition on use.

With this regard, let us mention a Supreme Court decision of 2009. In the grounds of the judgement, the court stated that the use of an online video recorder provided by a third party for private purposes, taking into account the admissibility of a private copy, pursuant to§53, para. (1) of the CPA is considered, in certain circumstances, to be admissible (FSC, Judgement of 22.04.2009, Of. No. Az. I ZR 175/07, line 12 et seq., quoted according to Juris; compare in addition: FSC, Decision of 11.04.2013, No. Az. I ZR 152/11).

In the context of §53 of the CPA, let us also pay attention **to the prohibition on circumvention of technical protection measures** – §95 of the CPA.

In accordance with the entrered into force on 01.03.2018, §60 of CPA (Lessons and Training) for the purposes of visualization in school hours/lessons and training in schools and other training and educational establishments may be reproduced, distributed, to be publicly available to the public and publicly reproduced in another way, up to 15% of an already published work – for example, for teachers and participants in the event or occupation concerned when and in so far as it is for non-commercial purposes (para 1, item 1). Universal public accessibility, for example, should always be with appropriate access restrictions so as to provide a limit on the specific circle of participants.

The principal obligation to indicate a source is laid down in German law in essence in §13,

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§63 of the CPA. For example, in the field of use, which can be classified as public reproduction and which is based on existing restrictive provisions, §63, para. 2 of the CPA provides that the source should be clearly and comprehensibly stated where and to the extent that morality and norms of conduct in society are required (but also compare: §63, para. 1 and 2, ind. 2 of the CPA in the new version).

3) Swiss copyright law framework

Photographic, film and other visual and audiovisual works are protected under Swiss copyright law as well, when these are spiritual works of literature and art which have an individual character (Article 2 (1) and (2) (g) of the Copyright Act (CPA)).

Pursuant to Article 10, para. 1 of the CPA author / holder of rights / has the exclusive right to determine whether, when and how to use the work. This, in particular, includes the right to produce copies of the work, such as audiovisual media and data carriers, to perform / read / provide / present the work, make a statement thereon, perform / interpret, access to it elsewhere or to make it accessible in a way that allows people to access it from a place and at a time of their choice – 10, para. 2, (a) and (c) of the CPA.

In addition, the author / copyright holder has the exclusive right to determine whether, when and how the work may be altered and whether, when and how the work may serve to create a second-hand work (Article 3 of the CPA) or to be included in a collection – Art. 11, para. 1 of the CPA. According to Art. 16 of the Copyright Act copyright may be transferred and inherited (Article 16 (1) of the CPA).

In the system of existing restrictive provisions, according to Art. 19 of the CPA exists the possibility of **using for personal purposes:**already published works can be used for personal purposes (Article 19 (1), ind. 1 of the CPA). For use for personal purposes, any use of the work by a teacher for the purposes of the classroom lesson as well as the reproduction of copies of a work in enterprises, government / public administration, institutes and other

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similar establishments and institutions, shall be considered for the purposes of internal information and documentation (Article 19, paragraph 1, ind. 2, letters (b) and (c) of the CPA). Pursuant to paragraph 2, it is also permissible in principle for the necessary multiplication to be assigned to third parties.

However, in the aspect of the above-mentioned forms of personal use, reproduction of almost the whole or part of a work **is not allowed** if it is sold commercially, as it is not allowed to record performances, readings, staging or display /demonstrations/ – recording on audio, audio-visual or electronic data carriers – Art. 19, para. 3, ind. 1, letters (a) and (d) of the CPA (compare: in addition Art. 19, para. 3, ind. 2, para. 4 of the CPA).

It is also not allowed to circumvent technical protection measures - Art. 39 of the CPA.

The provision of Art. 20 of the CPA provides for and regulates remuneration for personal use, with the right to claim remuneration only by licensed and authorized copyright management companies (Article 20 (4) of the CPA).

Other restrictive provisions also concern the dissemination of broadcasts pursuant to Art. 22 of the CPA, the use of archive works of radio and television stations - according to art. Art. 22 from the CPA, opportunities for use by people with disabilities /disabled people/ – Art. 24 of CPA.

In the field of legal restrictions and beyond, there is, in principle, the possibility of certain use of copyright-protected content based on the specified royalty rates of the respective copyright management company (compare: Art. 44, 46 of the CPA). According to Art. 44 of the CPA, these companies are obliged to the copyright holders to protect the rights that fall within their sphere of activity. For this purpose, the companies draw up tariffs for the fees they require and for the formation of the tariffs they negotiate with the users' alliances and present the tariffs to the so-called "Arbitration Commission" (Article 55 of the CPA) for approval and authorization – Art. 46 of the CPA. According to Art. 47, para. 1 of the CPA, with the

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participation of several copyright management companies, there is also an opportunity to compile the so-called general tariffs (compare: as regards the procedure – Art. 9 et seq. of the Copyright Ordinance /CPO/). Participating companies have made extensive use of this opportunity – for example, for the use of copyrighted works in schools (compare, for example, the Common Tariff /CT/ 7: Use in schools (2017-2021), there, for example, point 1 "Subject", point 7.4. “Overall radio broadcasts and television broadcasts” and point 13 'General provisions on remuneration in this tariff').

Provisions on the obligation to indicate the source are in Art. 9, 25, para. 2, 28, para. 2 of the CPA.

4) Copyright legal framework in the Czech Republic

The Czech Copyright Act (Copyright Act and Related Rights Act (CPARRA)) governs, in particular, the copyright on the author’s work by applying the legal provisions of the European Community, respectively - the European Union (Article 1 (a) of the Copyright Act).

Copyright (compare: Art. 9 of the CPA) also covers parts of the work when they fulfil the requirements of the term “work” - Art. 2, para. 3 of the CPA. In principle, copyright covers the non-material right of the author and the exclusive property rights of use - Art. 10 of the CPARRA.

The property rights of use and in Czech copyright also include the reproduction / reproduction right and the right to public presentation / performance / display in the sense of public access - Art. 12, para. 4 (a) and (f) of the CPARRA.The right of public presentation, on its part, contains the right to create public access in a non-physical form, in a direct broadcast or on the basis of an appropriate record – wireless or wire. This includes at the same time public access - from a place and at a time, at the user's choice, in particular through a computer network or similar, comparable network (Article 18 (1) and (2) of the Act).

The established copyright and copyright limitations set out in the Czech Copyright Act

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concern *inter alia* the free use of works (Article 30, 30a of the Copyright Act), the use of works for the purposes of the preparation of reports and reportages on current events (Article 34 (c) of the CPA) and the use for learning purposes (Article 25 (2) to 4 of the CPA).

Free use of personal purposes may apply to any private use by a natural person if it is not for commercial purposes - that is, if the person does not derive any economic benefit from it (Article 30, paragraph 1, 30a of the CPA), under certain relatively narrow conditions, however, it may also apply to internal use within a company or enterprise, or a legal entity (Article 30, paragraph 3, 30a of the CPA). In this regard, let us mention the **Prohibition on circumvention of technical measures** to protect existing legal positions – Art. 43, para. 1 of the CPA.

According to Art. 25 of the CPA author is entitled to a claim for royalty; this also applies to use actions based on permissible use for private purposes.

Restriction provisions - i.e.. the defined limits - for use for educational purposes of copyrighted works, refer, on the one hand, to school performances and productions (Article 35 (2) of the CPA) and, on the other hand, to schools or close to schools or related teaching establishments and educational institutions where and to the extent that their use is for educational and training purposes or for the fulfilment of internal requirements in relation to a work which, for example, was created by a pupil in the course of his/her school duties; there should be no direct or indirect economic benefit (Article 35 (3) of the CPA).

It is also acceptable when a library, archive institution, museum, school, university or other educational or educational establishment without pursuing economic purposes reproduces works for archival purposes or makes available works that are part of an internal collection and can be used on the relevant territory through a dedicated terminal; but explicitly excludes public access within the meaning of Art. 18, para. 2 of the Copyright Act (Article 37 (1) (a) and (c) of the CPA).

Other limit provisions/eligibility of use concern the use of protected works by disabled persons (Article 38 of the CPA) or non-profit-making health and social care facilities, in

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particular hospitals and prisons detention and enforcement of penalties when these establishments reproduce sent works and then reproduce them internally (Article 38-e of the CPA).

In Art. 46 et seq. of the CPA prescribe legally detailed provisions for possible license contracts and agreements. In one of these, it is stated that the licensee does not, in principle, have the power to make changes to the work subject to the license, unless the parties have so agreed - Art. 51 of the CPA.

Schools, educational or educational establishments are given the right to conclude licensing agreements for the use of educational works (Article 35 (3) of the CPA) under the normal conditions - Art. 60, para. 1, ind. 1 of the CPA. The legitimate interests of the parties must be taken into account (Article 60 (1), ind. 2 and 3, para. 2 of the CPA).

Art. 62 – Art. 64 of the Copyright Act contain special provisions for audiovisual works. They also concern the copyright status and the assignment of permissions and rights of use to the producers of the work in question.

5) Copyright Legal Framework in Bulgaria

By its very nature, Bulgarian copyright protects works of literature, art and science, which are the result of creative work. This includes films and other audiovisual works, including parts of such works – Art. 3, para. 1, item 4, para. 3 of the Copyright and Related Rights Act (here on the basis of its new 2011 version).

Apart from non-material rights, the author also has exclusive property rights of use (Article 15, 18 of the Law on the Protection of Competition). Here are also the right to reproduction / reproduction and the right to public display / performance / display in the sense of public access - from place to time, at the choice of members of the public space, i.e., of society.Article 18, para. 1 and 2, items 1 and 10 of the Copyright Act (compare: in addition - definitions of the concepts in §2 in the Annex to the Act). The property rights include explicitly the right to make changes and processing of the respective work – Art. 18, para. 2, item 8 of the Copyright Act (CPARRA)

The provision of Art. 21 of the CPARRA contains detailed prescriptions for the transmission or broadcasting of copyright-related content through electronic communications networks.

The free use of copyrighted works (”free use”) is detailed in Art. 23 to 26 in the CPARRA (Determination of the limits - in the text of the CPARRA - "Admissibility of the free use"). As a starting point, the most important thing is that the free use of works is permissible only on condition that it does not interfere with the normal / normal use of the work and does not harm the legitimate interests of the copyright holder - Art. 23 of the CPARRA.

In Art. 24 of the CPARRA, a number of authorized by the law opportunities for use are defined, which are not subject to a claim for remuneration. One of them is the use of parts of published works or of a small number of works in other works in volume required for scientific research (paragraph 1, item 3).The scope of the permitted use also includes public performance and public performance of works already published in educational or other educational establishments if cash receipts are not received and royalties are not paid to participants (para 1, item 8).

The same applies to the reproduction and reproduction of works already published from publicly available libraries, educational or other educational establishments, museums and archives, for educational purposes or for the purpose of preserving the work if it is not for commercial purposes (paragraph 1, 9).

In the field of authorized use for which compensation is payable, only reproduction and reproduction of works by private individuals - for private use for non-commercial purposes - should be mentioned. 25, para. 1 of the CPARRA.

Article 35 et seq. up to Article 40 (3) of the CPARRA include provisions on contracts and usage agreements and on the tasks and activities of management companies, including the exercise of rights and claims for copyright royalties (compare: Art. 40f of the CPARRA).

Finally, let us mention the special provisions on the relative rights of film producers (Article 90-a to Article 90-c of the CPARRA) and the radio and television organizations (Articles 91 to 93 of the CPARRA).

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6. Admissibility of YouTube video usage

Given the use of YouTube videos, for example, for educational purposes, and depending on the format of use (individual PC/tablet launch, collective viewing at school time, recording / saving / archiving, media playback or creation the ability to run through the Intranet, etc.), the different legal systems arise as to how the specific use should be assessed in an copyright aspect:whether, for example, it is an independent form of public performance (compare: in German law, e.g.. § 22 of the Copyright Act - Right of reproduction and broadcasting of programs and publicly available events) and whether the use in question could be permitted under the current restrictive regulations and regimes.

In addition, YouTube Terms of Use (”Terms of Service”) must be considered. According to them, the user, uploading on the site, grants to any user on YouTube pages a large license - a worldwide non-exclusive and royalty-free license to access the materials and content in question and to use, reproduce, distribute, produce derivative works, display of and perform of such materials / content / in the volume and scope allowed by the functionality of the YouTube services themselves and according to the provisions (see item 8.1).

How should we understand and interpret these and other important provisions of the terms of use in their particularity - this requires more detailed consideration, depending on the individual issues.

In addition, let me draw attention to the European Court of Justice on so-called Framing (compare: e.g. European Court of Justice, Judgement of 21.10.2014, No. Az. C-348/13) and the legal risk that certain materials / contents / in the relevant portals were, in some circumstances, provided not by the rights owners but by unauthorized third parties.

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