Step towards harmonization: Implementation of the EU Copyright Law into Georgian Legislation

A thesis submitted to the Bucerius/WHU Master of Law and Business Program in partial fulfillment of the requirements for the award of the Master of Law and Business ("MLB") Degree

George Meskhi
July 16, 2010

12,920 words (excluding footnotes)
Supervisor 1: Yvonne Draheim
Supervisor 2: Gregor Thüsing
List of Abbreviations

EC – European Community.
EU – European Union.
IP – Intellectual Property.
PCA – Partnership and Cooperation Agreement.
RSFSR – Russian Soviet Federative Socialist Republic.
SSR – Soviet Socialist Republic.
TRIPS – Agreement on Trade-Related Aspects of Intellectual Property Rights.
UCC – Universal Copyright Convention.
WCT – WIPO Copyright Treaty.
WPPT – WIPO Performances and Phonograms Treaty.
WTO – World Trade Organization.
## Table of Contents

List of Abbreviations..................................................................................................................0  
Table of Contents ..........................................................................................................................2  
A. Introduction ...............................................................................................................................4  
B. Harmonization of European Copyright Law ...............................................................................7  
   I. Aspects of Harmonizing European Copyright Law .................................................................7  
   II. European Copyright Legislation .........................................................................................10  
      1. Computer Programs Directive .........................................................................................10  
      2. Rental and Lending Right Directive ..................................................................................11  
      3. Satellite and Cable Directive ...........................................................................................11  
      4. Term Directive ..................................................................................................................12  
      5. Database Directive ............................................................................................................13  
      7. Resale Right Directive ........................................................................................................14  
C. Georgian Copyright Law ..........................................................................................................15  
   I. Overview of the Georgian copyright legislation .................................................................15  
      1. Development of the Georgian Copyright Legislation .....................................................16  
      2. The Law on Copyright and Neighboring Rights ...............................................................17  
   II. The level of harmonization .................................................................................................18  
      1. General aspects of harmonization ....................................................................................18  
         a. The Term of Protection .................................................................................................19  
         b. Protection of Computer programs ...............................................................................20  
         c. Protection of Databases ...............................................................................................21  
      2. The Fourth Amendment ....................................................................................................23  
         a. Copyright in the Information Society ............................................................................23  
         b. Rental and lending right ...............................................................................................24  
         c. Resale Right ..................................................................................................................24  
         d. Satellite and Cable .........................................................................................................24  
         e. Other issues ...................................................................................................................25  
D. Recommendations for the Further Harmonization ....................................................................27  
   I. Extent of Further Harmonization ...........................................................................................27
1. Computer Programs and Databases
   b. Directive 96/9EC

2. Rental, lending and resale rights
   a. Directive 2006/115/EC
   b. Directive 2001/84/EC

3. Satellite and Cable, Term of Protection and Copyright in the Information Society
   a. Directive 93/83/EC
   b. Directive 2006/116/EC

II. How Far Should the Harmonization go
1. Possibilities for the Further Harmonization
2. Limitations to the Further Harmonization

E. Conclusions

Bibliography

Annex
A. Introduction

The issue of harmonizing European Copyright law has already gone beyond the borders of the European Union. Initially the harmonization has been started as an ambitious plan of providing the set of basic Copyright rules which should be common for all of the 27 Member States and removing all of the national law differences having “direct and negative effects on the functioning of the common market”\(^1\). It has been the topic for discussion, to which extent this promise was realized, as the period of two decades gives the enough distance to look back. However sharp the critics towards European Copyright law harmonization might be, one thing is obvious: this law has successfully responded to several significant challenges and created a set of norms, which have become object for not only mandatory harmonization by the European Member States, but also for the certain kind of voluntary harmonization by the countries which are not the members of the European Union.

In order to understand the “semi-voluntary” character of harmonization, we have to mention the Partnership and Cooperation Agreements (PCAs) between the European Community and several Eastern European countries, including Georgia. The aims of these agreements have usually been to encourage the legal cooperation, which also contains the issue of legal harmonization. Therefore, the Partnership and Cooperation Agreement between Georgia and the European Community still remains as the legal base of the harmonization process\(^2\). However, the abovementioned requirement of the agreement is not the only motivator and driving force for harmonizing Georgian Copyright legislation with that of the EU. Moreover, the aspiration of Georgian society towards the European integration plays an important role even in the process legal harmonization.

Georgian Copyright legislation has passed the long and winding road before reaching the level of harmonizing European Copyright law. As the first Democratic Republic of Georgia did not have enough time to deal with the Copyright issues\(^3\), the first official Copyright legislation in Georgia was fully complied with Soviet ruling, according to which the property rights of authors, together with the significant amount of moral rights, were completely ignored. As the Soviet

\(^1\) Recital 4, Directive 91/250/EEC.
\(^2\) Art. 43(2) Partnership and Cooperation Agreement between Georgia and EC, 1 July 1999.
\(^3\) The first Democratic Republic of Georgia actually declared independence in 1918 and was occupied in 1921.
legislation had been ruling over Georgia during the seventy years\footnote{From the occupation in 1921 till the restoring the independence in 1991.}, it made significant effect on the perception of society towards Copyright, and on the reality, in general. Without acknowledging this, we would not understand why the difference between the levels of the Copyright protection in Georgia and in the European Union is so significant. Accordingly, we believe that the existing reality in the national legislation is an important issue to be taken into consideration while implementing the norms of the European Copyright law.

However, after restoring the independence in 1991, Georgian legislation has been involved quite enthusiastically in the process of legal harmonization\footnote{Kereselidze in: Georgian Law Review p. 11.}. When the Georgian law on Copyright and Neighboring Rights was adopted\footnote{Adopted in 1999.}, it was already harmonized with the significant amount of norms in the European Copyright legislation existed by that time\footnote{Mainly Directives 91/250/EEC, 96/9EC and 93/98/EEC.}. Since then, Georgian law has been developed quite dynamically, while the six changes and amendments were made in this law up until now. However, new Directives were added to the European Copyright legislation as well. Generally, Copyright law is considered to be one of the most dynamically developing fields of the law, as it has to respond to the new challenges emerging from time to time.

The process of European Copyright law implementation has its own challenges as well. An abstract desire of harmonizing the European law should not be enough to overcome these challenges. Rather, the legislator has to take into consideration not only the European law which has to be implemented, but the existing reality and the logic of development in the national law as well. Similarly, during the implementation, balance has to be found between the general interests of harmonization and national interests of the existing legislation. In our opinion, this kind of ‘balance-based’ approach would lead to the successful realization of the European Copyright law harmonization into the Georgian legislation. Acknowledging this, sharing the synthetic approach and following the deductive reasoning, we have divided our thesis into three main parts:

In the first part we will discuss the European Copyright law from the harmonization perspective. The first chapter of this part will review the certain aspects of European Law which we consider as being important, in terms of its harmonization. In the second chapter we will discuss the seven Directives of the European Union regulating the Copyright issues. These Directives are set in the chronological order, according to the dates they were adopted (here we imply the adoption of the
Our discussion in the first part will be focused on the issues of harmonizing the abovementioned legislation.

The second part aims to answer the question, on which level is the Georgian Copyright legislation currently harmonized with the European one. Accordingly, this part will be dedicated to the Georgian Copyright law and contain two basic chapters. In the first chapter we will briefly review the development of the Georgian Copyright legislation. As we have already mentioned, the aspects of this development are important, in order to determine the frontiers for the future harmonization. In the second chapter we will define the current level of Georgian Copyright law harmonization with that of the European Union. While determining this extent, we will have to discuss the levels of harmonization made since the adoption of Georgian Law on Copyright and Neighboring Rights up until now. Therefore the issues of discussion will be set according to these levels: we will start from the topics already harmonized by the initial version of Georgian Copyright law and continue with the changes made by the fourth amendment to this law, which has been the most important amendment from the harmonization perspective, as we will see.

The last part will be based on the previous two parts and determine the frontiers for the further implementation of the European Copyright legislation into Georgian law. Particularly, it should answer the question, to which extent this implementation should be recommended. In the first chapter the issues will be set according to their relevance for further harmonization and the extent of their relation to each other. The discussion will have two basic directions: discussing the possibility of further harmonization in the areas where the further implementation should be recommended, and determining the certain limitations according to the areas where the further limitation should not be recommended. The second chapter will summarize the findings previously made and provide some recommendations for the further harmonization.

Although the harmonization process is mainly realized by the legislator, the role of scientific recommendations in this process is also quite important. “Academic experts could and should play an important role as ‘quality controllers’ at the European level as well”\(^9\). Similarly, in Georgian legislation the role of “quality controllers” have to be taken into consideration. As the basic norms of the European Copyright law have already been implemented, the further process of harmonization should be more and more based on the recommendations of the experts. Therefore, our thesis aims to contribute the academic discussion about harmonizing Georgian Copyright law with that of the European Union.

\(^8\) N.B. Translations from the non-English sources were made by the author.

\(^9\) Eechoud, p. 300.
B. Harmonization of European Copyright Law

In this part we will discuss the European Copyright legislation mainly from the perspective of its implementation into the national laws of the states not belonging to the European Union. In the first chapter we will overview the certain aspects of harmonizing the European Copyright law. In the second chapter we will review the seven Directives containing in the European Copyright legislation.

I. Aspects of Harmonizing European Copyright Law

Nearly two decades have passed since the first Directive harmonizing the issues of Copyright protection all over the EC Member States has been adopted\textsuperscript{10}. The process of involvement of the Community in the Copyright issues has started even earlier\textsuperscript{11}. Since then the process of harmonizing European Copyright legislation has gone even beyond the initial scope: from the early “first generation” Directives regulating specific subject matters to the “second generation”, “horizontal” Information Society Directive and even further\textsuperscript{12}. Generally, the European Copyright legislation has covered numerous important issues and regulated the several challenging aspects of Copyright.

Harmonization of the European Copyright legislation was based on some general and principal objectives. At first we have to mention the economic impulses which had the primary importance. “The harmonization of copyright and related rights has traditionally been inspired by two principal objectives: the proper functioning of the internal market and the improvement of the competitiveness of the European economy, also in relation to the EU’s trading partners.”\textsuperscript{13} In order to improve the functioning of the internal market and increase the competitiveness, European Copyright legislation had to remove all of the differences between the laws of the Member States which should “have direct and negative effects on the functioning of the common

\textsuperscript{10} Derclaye, p. 12.

\textsuperscript{11} Green Paper “Copyright and the Challenge of Technology” 1988.

\textsuperscript{12} Eechoud, p. 297.

\textsuperscript{13} Eechoud, p. 11.
market”\textsuperscript{14} or negatively affect the competitiveness of European economy on the international level. Therefore, the initial scope of harmonization was covering the economic-related aspects of Copyright, as the economic reasons have been driving force for the harmonization process.

The economic aspect of harmonization is closely related to the challenges of contemporary technology, as the technological issues are becoming more and more important in nowadays economics. Therefore, “the Commission sees electronic commerce as an emerging market”\textsuperscript{15}. Technological aspects are becoming increasingly important for Copyright as well, as “the advent of digital technology and the establishment of a networked environment, such as the Internet, have had an immense impact on the patterns of production, modification, dissemination and consumption of creative works packaged in digital formats.”\textsuperscript{16} Accordingly, European Copyright legislation aimed to respond to these challenges even in 1988, as the Commission adopted its Green Paper about the challenge of technology. Giving a glance at the European Copyright legislation, we should mention that the majority of the provisions of the Copyright Directives are dealing with the issues of contemporary technology, such as: computer programs, digital databases, satellite and cable, information society (Internet), etc. While acknowledging these challenges, European Copyright legislation has become more and more responsive and flexible to the recent technological developments, which is one of the main positive aspects to be mentioned.

Together with these significant positive aspects, we have to mention that the European Copyright law harmonization has deserved some critics as well. First of all, it has been mentioned that “twenty years of harmonization of the law of copyright and related rights have not produced a balanced, transparent, and consistent legal framework in which the knowledge economy in the European Union can truly prosper. Worse, the harmonization agenda has largely failed to live up to its promise of creating uniform norms of copyright across the European Union.”\textsuperscript{17} Particularly, the legal technique used in the provisions of earlier Directives have also been criticized for using “tentative approach”, the result of which is “a patchwork of measures covering seemingly unrelated (and, in some cases, apparently unimportant) areas of the law.”\textsuperscript{18} The content-related aspects, such as using the “without prejudice” clause to earlier Directives have been criticized as

\textsuperscript{14} Recital 4, Directive 91/250/EEC.
\textsuperscript{15} Kelleher/Murray, p. 84.
\textsuperscript{16} Mazziotto, p. 3.
\textsuperscript{17} Eechoud, p. 305.
\textsuperscript{18} Tritton, p. 487.
well, while it “inevitably leads to inconsistencies”\(^\text{19}\). We consider that these critics need to be taken into account by the national legislators while harmonizing the European Copyright law.

However, when criticizing European legislation, we also have to bear in mind the aspects putting the harmonization process into limitation;\(^\text{20}\) hard procedure of European lawmaking, which brings a lot of challenges to the legislators, and the limited competence of the European Community as well\(^\text{21}\). Despite of all these critics, we have to remember that European Copyright legislation has successfully responded to the economic and technological challenges mentioned above. Moreover, it has also managed to find “that legendary ‘delicate balance’ between the interests of right holders in maximizing protection and the interest of users (i.e., the public at large), in having access to products of creativity and knowledge.”\(^\text{22}\) In our opinion, finding this balance is one of the most important positive aspects of the European Copyright law, which definitely has to be taken into account by the national legislators while implementing this law into their national legislations.

Finally, we have to remark about the expansion of the European Copyright law into the international level. It has been signified, that “acquis has had normative effect not only in the Member States that are obliged to transpose the directives, but also at the regional and international levels.”\(^\text{23}\) Because of the abovementioned successful aspects of inside-European harmonization, it has also been recommended to implement the standards of European Copyright law into the legislations of countries outside the European Community. Moreover, after signing the Partnership and Cooperation Agreements between the European Union and several other states the issue of legal harmonization, in general, and Intellectual Property law, in particular, has become important and, at some extent, obligatory for the European Union non-member states as well.\(^\text{24}\) Therefore, in our thesis we will mainly discuss the certain provisions of the European Copyright legislation from the perspective of its implementation into the legislation of the states which are not the members of the EU.

\(^{19}\) Eechoud, p. 301.
\(^{20}\) Ellins, p. 272.
\(^{21}\) Leistner, p. 71.
\(^{22}\) Eechoud, p. 299.
\(^{23}\) Eechoud p. 298.
\(^{24}\) See p. 18. (N.B. Always refers to the relevant page of the thesis.)
II. European Copyright Legislation

In this chapter we will briefly review the European Copyright legislation and mainly focus on the issues of harmonization. In the European Copyright legislation we imply the seven Directives discussed in this part, namely: Computer Programs Directive, Rental and Lending Right Directive, Satellite and Cable Directive, Term Directive, Database Directive, Information Society Directive and Resale Right Directive.

Among the European Copyright Directives we did not involve the Enforcement Directive\(^\text{25}\), which is the common practice\(^\text{26}\), as it does not exclusively deal with certain issues of Copyright. Rather, “the Directive concerns all intellectual property rights.”\(^\text{27}\) Therefore, discussing the Enforcement Directive would broaden the scope of our thesis from the particular Copyright issues to the general matters of the Intellectual Property rights. Although it would be interesting to review the provisions of this Directive in terms of their implementation, but it should be the issue for another discussion dealing with the implementation of European IP law into the Georgian IP legislation, in general.

1. Computer Programs Directive

This Directive is the first European act intended to harmonize the certain aspects in the European Copyright law which has removed the significant differences existed previously in the laws of the Member States.\(^\text{28}\) This Directive also was the response to the “challenges of technology” while the Copyright issues, including the area of computer programs, were “requiring immediate actions”\(^\text{29}\). These challenging issues contained piracy, audio-visual home copying and several other actions infringing the rights of authors of the computer programs and causing significant economic damages as well. Therefore, taking appropriate measures in order to protect computer programs by Copyright was the issue of concern and the main reason for adopting the Directive.\(^\text{30}\) While observing the whole development of computer programs protection in the European Union since the date of adoption of this Directive (1991) up until now, we have to

\(^{25}\) Directive 2004/48/EC.
\(^{26}\) Tritton, Dreier/Hugenholtz, Walter/Lewinski, etc.
\(^{27}\) Lakits-Josse in: Cottier/Veron Concise International and European IP Law, p. 464.
\(^{28}\) Bently in: Dreier/Hugenholtz Concise Copyright, p. 211.
\(^{29}\) Green Paper “Copyright and the Challenge of Technology”.
\(^{30}\) Art. 1(1) Directive 91/250/EEC.
deduce that the progress made during the last couple of decades is significant. This successful example increases the willingness to implement the Directive in the legislations of those non-Member States of the Union where the level of computer programs protection still remains low.

2. Rental and Lending Right Directive

While being the second Directive in European Copyright legislation, the Rental and Lending Right Directive 92/100/EEC also was “the first harmonization measure of the EC in the field of ‘classical’ copyright, and, in a fundamental way in the area of related rights”\(^{31}\). The Directive harmonizes “the provisions relating to rental and lending rights as well as on certain rights related to copyright” and provides the exclusive rights “to authorize or prohibit the rental and lending of both works subject to copyright and other objects subject to neighboring rights”\(^{32}\). Although it has repealed and replaced the previous Directive 92/100/EEC regulating the same issue, the amount of norms changed by this new Directive was not significant. Generally, the first and second parts of the Directive remained significantly different. The first chapter “confers rental and lending rights upon authors of works (in the Berne Convention sense), as well as upon performers and producers of phonograms and films”, while the second chapter “goes well beyond rental and lending rights to confer a whole range of rights upon performers, phonogram producers and broadcasters.”\(^{33}\)

3. Satellite and Cable Directive

The Satellite and Cable Directive “requires Member States to provide an exclusive right for the author to authorize the communication to the public by satellite of copyright works”\(^{34}\). The text of this Directive is quite similar to the Television without Frontiers Directive\(^ {35}\), as both of them have “the same objective with respect to barriers in the field of broadcasting and advertising law.” However, there is a significant difference, while “the present Directive deals both with

\(^{31}\) Walter/Lewinski, p. 253.
\(^{32}\) Web-page of the European Commission. (http://ec.europa.eu/internal_market/copyright/rental-right/rental-right_en.htm)
\(^{33}\) Tritton, p. 499.
\(^{34}\) Tritton, p. 509.
\(^{35}\) Directive 89/552/EEC.
broadcast television and radio services. This Directive comprises three main parts: the first part is providing several important definitions of the terms used in the act. The second part deals with the broadcasting of programs by satellite and the third part regulates the issues of cable retransmission. However, from the perspective of harmonization for the non-European countries, this Directive includes the Articles which could not be relevant for implementation. Some of these Articles are just referring to another provisions. Some of them are too specifically related to the European issues and therefore would not be recommended for harmonization. We will discuss these articles into details in the third part of the thesis.

4. Term Directive

The adoption of the Term Directive in 1993 was an important step towards harmonizing the European Copyright law, as it harmonizes the term of protection – “an essential element of copyright and neighboring rights which can influence the internal market in the EU if it is not harmonized”. In 2006 it was replaced by the new Directive 2006/116/EC, but the main provisions which are relevant for harmonization were not changed. Unlike to the common international rules of Copyright providing only the minimum level of protection, this Directive also sets the maximum duration of protection. The main essence of the Directive is “to extend the term of protection laid down by Berne Convention (which was 50 years pma) to a uniform standard of 70 years pma.” There are several reasons for choosing the period 70 years, which is above the international standard. Although the 50 years period “was the more common term in Europe”, those countries having the longer term would need lengthy transitional measures; the new term also had to cover two generations in the “increasing average lifespan in EU” and, finally, “lengthening the term of protection would strengthen the position of the author during his lifetime”. Therefore, implementing this term means to agree with the abovementioned arguments.

---

36 Hugenholtz in: Dreier/Hugenholtz Concise Copyright, p. 263.
37 Visser in: Dreier/Hugenholtz Concise Copyright, p. 287.
38 Walter in: Walter/Lewinski, European Copyright Law, p. 507.
39 Post mortem auctoris.
40 Tritton, p. 515.
5. Database Directive

The Database Directive “is the fifth copyright Directive of the EC. At the same time, it is the first Directive that has been negotiated and adopted according to the co-decision procedure under Article 251 of the EC Treaty”\(^42\). Together with the ordinary Copyright protection, the third chapter of this Directive creates “a new exclusive ‘sui generis’ right for database producers, valid for 15 years, to protect their investment of time, money and effort, irrespective of whether the database is in itself innovative ("non-original" databases)"\(^43\). Unlike to the Computer Programs Directive, here the definition of “database” is provided in the first Article of the first chapter, according to which “database’ shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means”. Provisions of the second chapter, guaranteeing the “ordinary” Copyright protection for databases, are similar with the relevant Articles of the Computer Programs Directive and, in case of implementation, these norms from both of the Directives can be unified together. However, the legislation harmonizing with this Directive, first of all, has to share the “two-tier protection regime” which has the main importance in the system of database protection.

6. Information Society Directive

The initial aim of this Directive was to deal “solely with the copyright implications of the internet”\(^44\). However, the scope of application has gone further and now it aims to “adapt legislation on copyright and related rights to reflect technological developments and to transpose into Community law the main international obligations arising from the two treaties on copyright and related rights adopted within the framework of the World Intellectual Property Organization (WIPO) in December 1996”\(^45\). Particularly, this Directive reflects the provisions of two international treaties: WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. This Directive “initiated the ‘second generation’ of European copyright Directives which
harmonizes the Copyright law more horizontally."\(^{46}\) Moreover, "with its far-reaching effects upon matters such as the reproduction right and the range of permissible defences, the Information Society Directive probably ought to be regarded as the true precursor to a Community copyright code."\(^{47}\) The Directive contains two general parts: the first one deals with the certain rights related to the information society and exceptions to these rights; the second part provides the protection for technological measures and rights-management information. Generally, this Directive responds to the contemporary challenges of the information society. Together with guaranteeing the rights of reproduction, distribution and communication to the public, it provides the notions of "technological measures" and "rights-management information", which should be novel for the legislations outside of the European Union. Therefore, the implementation of this Directive should make the legislation more contemporary and flexible to the challenges of the modern developments.

7. Resale Right Directive

From nowadays prospective, the most recent act in the European Copyright legislation is the Resale Right Directive (as we do not count the Enforcement Directive in this legislation\(^{48}\)). It harmonizes the resale rights for the benefit of the author of an original work of art. The resale right is also known as droit de suite – "the right of “following” the work"\(^{49}\). This right is an integral part of Copyright and intends "to ensure that authors of graphic and plastic works of art share in the economic success of their original works of art."\(^{50}\) The first chapter of this Directive determines the scope of application and subject matter of the resale right, which is defined as "an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author"\(^{51}\). The definition of an "original work of art" is contained in this chapter as well. The second chapter includes the particular provisions setting the certain thresholds, rates and calculation basis determined in percents and certain amounts of EUR. Therefore, the countries which implement this Directive and do not belong to Euro-zone have to convert the indicated amounts into the national currencies.

\(^{46}\) Bechtold in: Dreier/Hugenholtz Concise Copyright, p. 343.  
\(^{47}\) Tritton, p. 488.  
\(^{48}\) See p. 10.  
\(^{49}\) Tritton, p. 541.  
\(^{50}\) Vanhees in: Dreier/Hugenholtz Concise Copyright, p. 406.  
\(^{51}\) Art. 1(1) Directive 2001/84/EC.
C. Georgian Copyright Law

This part is dedicated to the Georgian national legislation covering the Copyright issues. In the first chapter we will review the development of Georgian copyright legislation so far. In the second chapter we will examine the actual degree of harmonization, meaning the current level of European Copyright Law implementation into Georgian legislation.

I. Overview of the Georgian copyright legislation

Georgian legislation regulating Copyright and related rights mainly involves the Law on Copyright and Neighboring Rights adopted on 22 June 1999 which will be discussed below into the details concerning harmonization. Besides this act, the Law on Border Measures related to Intellectual Property (23/06/1999) regulates the issues concerning the importation and exportation of the goods infringing the Copyright, rights on appellation of origin and geographical indications of goods or counterfeit goods, and determines special border measures.\footnote{Art. 1, Georgian Law on Border Measures related to Intellectual Property. (available at: \url{http://www.sakpatenti.org.ge/index.php?lang_id=ENG&sec_id=74} in English)}

Georgian Criminal Code (22/07/1999) includes special sanctions for infringing the rights of Copyright owners, related rights and Database creator rights holders.\footnote{Art. 189, The Criminal Code of Georgia. (available at: \url{http://www.traccc.cdn.ge/legislation/zip/criminal_english.zip} in English)} These sanctions vary from fine to imprisonment. Georgian Code of the Administrative Offences also establishes the administrative sanctions for the similar actions of illegal reproduction of copies of art works, phonograms or videograms.\footnote{Art. 157\textsuperscript{1}, The Code of the Administrative Offences of Georgia.} It has to be mentioned, that both of these provisions were established according to the amendment of 23 June 2005.

This was the exhaustive list of Georgian national legislative acts covering the issues of Copyright and related rights. Besides them, the provisions of basic international acts are also implemented into the national legislation. In particular, Georgia has ratified the following international acts concerning Copyright:

\footnote{\textsuperscript{52} Art. 1, Georgian Law on Border Measures related to Intellectual Property. (available at: \url{http://www.sakpatenti.org.ge/index.php?lang_id=ENG&sec_id=74} in English)} \footnote{\textsuperscript{53} Art. 189, The Criminal Code of Georgia. (available at: \url{http://www.traccc.cdn.ge/legislation/zip/criminal_english.zip} in English)} \footnote{\textsuperscript{54} Art. 157\textsuperscript{1}, The Code of the Administrative Offences of Georgia.}

1. Development of the Georgian Copyright Legislation

The actual Copyright legislation of Georgia (as an independent republic) has been in force for slightly more than a decade, as the Law on Copyright and Neighboring Rights was adopted in 1999. The first Democratic Republic of Georgia existed between 1918-1921 years and did not really have enough time to elaborate its own Copyright legislation, as it was occupied by Soviet forces on 25 February 1921- four days after adopting its Constitution (the first Constitution was adopted on 21 February 1921). Therefore, Georgian Copyright legislation had been regulated according to the rules of the general acts of the Soviet Union.

Soviet legislation has rejected the concept of private property even in 1918. Accordingly, the property rights of authors on their compositions were rejected as well. Generally, in Soviet Union the economic rights of the authors where poorly protected and included only the right to claim author’s emolument according to the certain rates fixed by the state. An important amount of moral rights were not guaranteed as well. Similar attitude towards Copyright remained in the Soviet Civil Code of 1964, the fourth part of which was dedicated to the Copyright Law.

Accordingly, Copyright issues in Georgia were regulated by the Civil Code of the Georgian SSR, which was pretty much similar to its Russian original. In this Code the Copyright issues were likely regulated by its fourth part. Similarly to the RSFSR Civil Code, the related rights did not exist and even the Copyright was poorly guaranteed: the economic rights were limited to the fixed royalty rates, the moral rights did not include the author’s consent on the translation and further publication of his composition, the term of protection was determined by the 25 years.

56 Arts. 488-528, Part IV, Civil Code of the Georgian SSR.
after the death of the author. Moreover, the Copyright of the organization was guaranteed as a permanent one and, because the private organizations did not exist in reality, after the expiry of the protection term, the composition could be declared as the State property\textsuperscript{57}.

The legislation discussed above (the fourth part of the Civil Code of Georgian SSR) had been in force till 1997, when the Civil Code of Georgia as an independent state was adopted. Therefore, while examining the aspects of Georgian Copyright legislation development, in general, and the issue of harmonization, in particular, we will have to take into consideration the long period of Soviet ruling, the Copyright legislation of which was quite far from the contemporary international standards, as well as from the modern principles of the European Copyright legislation.

2. The Law on Copyright and Neighboring Rights

As we have mentioned, the first Copyright legislation of the independent Georgia was adopted in 1997, as a part of the Georgian Civil Code adopted in 27 June 1997. Part I of the fourth book in the initial version of the Civil Code was dedicated to the Copyright and related rights, including the articles from 1017 to 1099\textsuperscript{58}. However, the group of specialists recommended to take this part out from the Civil Code and adopt a single legislative act regulating the Copyright issues. Therefore, the actual version of article 1017 of the Civil Code refers to the “Law on Copyright and Associated Rights” and the rest of the articles (1018-1099) are repealed by the amendment of 22 June 1999\textsuperscript{59}.

Thus, the newly adopted Law on Copyright and Neighboring Rights\textsuperscript{60} repeated all of the norms taken out from the Civil Code without any significant changes. However, six changes and amendments were made to this law since its adoption until now. The actual version of the law comprises 12 chapters with 69 articles and is the basic source of Georgian Copyright legislation.

\textsuperscript{57}Dzamukashvili, p. 10-11.
\textsuperscript{58}The initial version of Georgian Civil code, 27 June 1997.
(available at: \url{http://www.parliament.ge/_special/kan/files/329.pdf} in Georgian)
\textsuperscript{59}The repealed version of Georgian Civil Code.
(available at: \url{http://www.irisprojects.umd.edu/georgia/Laws/English/code_civil.pdf} in English)
\textsuperscript{60}Adopted on 22 June 1999.
(Available at: \url{http://www.sakpatenti.org.ge/index.php?lang_id=ENG&sec_id=74} in English)
The first amendment was made two months after the adoption of the law and added special reference to the periodicals and publications in press, or other means of mass media\textsuperscript{61}. The second change underlined the role of National Intellectual Property Center (“Sakpatenti”) in terms of registration, defining the amount of royalty, protecting the transferred copyright and conducting the state policy\textsuperscript{62}. The third amendment added Geology to the field of scientific, literary and artistic works\textsuperscript{63}. The fourth amendment was the very important step towards harmonization of the Georgian Copyright legislation with that of the European Union and therefore we will discuss it separately in the following chapter. The fifth\textsuperscript{64} and the sixth\textsuperscript{65} changes regulated the issue of establishment of the organization administering economic rights on collective basis.

As we can see, Georgian Copyright legislation has been developed quite dynamically during the last decade. The nature of Copyright law development, in general, faces several dynamic challenges, which need to be fulfilled\textsuperscript{66}. On the other hand, recent organizational and institutional developments, creation of new agencies and institutions (such as, organizational developments in the National Intellectual Property Center\textsuperscript{67}) had to be reflected in the Copyright legislation as well. We also have to notice the frequency of legal changes in Georgia during the abovementioned period. All of these circumstances led to the dynamic nature of the development of the Copyright legislation in Georgia.

II. The level of harmonization

1. General aspects of harmonization

The Partnership and Cooperation Agreement between EC and Georgia, which was signed on 26 April 1996 in Luxembourg and entered into force on 1 July 1999, has been the main legal basis for the general process of harmonization of the Georgian legislation with that of the European Union. The main objectives of this agreement included the issues of legal harmonization. Particularly, this agreement named several fields of law which should be harmonized, and the

\textsuperscript{61} Amendment to The Law on Copyright and Neighboring Rights, number: 2388-Is, date: 1999-09-09.
\textsuperscript{62} Change to The Law on Copyright and Neighboring Rights, number: 651-Is, date: 2000-12-05.
\textsuperscript{63} Amendment to The Law on Copyright and Neighboring Rights, number: 1693-Is, date: 2002-10-10.
\textsuperscript{64} Change to The Law on Copyright and Neighboring Rights, number: 5423-IIs, date: 2007-10-26.
\textsuperscript{65} Change to The Law on Copyright and Neighboring Rights, number: 1975-IIs, date: 2009-11-03.
Copyright law was among them. Since this agreement has been signed, several important measures were taken for its implementation. Georgian parliament adopted Resolution, according to which; “all laws and other normative acts adopted by the Georgian Parliament from 1 September 1998 shall be compatible with the standards and rules established by the European Union.” The Governmental Commission was established for the Promotion of Partnership and Co-operation between Georgia and the European Union. Accordingly, several important draft laws were elaborated and priority directions were specified by the the National Programme of Harmonisation elaborated in September 2003. The field of IP law, including Copyright law, was one of the main priority directions.

According to the PCA agreement; by the fifth year after its entry into force, meaning – by the end of 2004, “Georgia shall accede to the multilateral conventions on intellectual, industrial and commercial property rights… to which Member States are parties or which are de facto applied by Member States…” This provision encouraged the subsequent process of European legal standards implementation into Georgian legislation.

Georgian accession in the World Trade Organization on 14 June 2000 supported the implementation of international Intellectual Property standards into Georgian legislation. Particularly, Georgia has implemented the basic international acts regulating Copyright issues, named above. Therefore, during the process of elaborating a new legislation, the issue of compliance with the WTO general principles was reasonably taken into consideration.

Accordingly, when the new law on Copyright and related rights was adopted, it was basically in compliance with the general standards of the European Copyright legislation, as well as the latter complies with main international standards. Below we will discuss the certain provisions of the law on Copyright and related rights which reflect the norms of the European Copyright legislation.

a. The Term of Protection

---

68 Art. 43(2) Partnership and Cooperation Agreement between Georgia and EC, 1 July 1999.
69 Kereselidze in; Georgian Law Review p. 11.
72 Partnership and Cooperation Agreement between Georgia and EC, 1 July 1999, Art. 42.2
73 See p. 16.
The issue of the term of protection was differently regulated by the Soviet legislation: before 1 June 1973 – the date when the Soviet Union joined the UCC - Universal Copyright Convention\textsuperscript{74}, the protection was determined up to 15 years after the death of the author. Since then the term was increased to 25 years till 1 May 1995 – the date when Georgia joined the Berne Convention. After acceding BC the term was increased to 50 years and this term was fixed in the initial version of Georgian Civil Code\textsuperscript{75}.

However, the law on Copyright and neighboring rights increased the term to 70 years post mortem auctoris\textsuperscript{76}, by which it reflected the Term Directive\textsuperscript{77}. The law also implemented the rule of calculation of the term, according to the Article 8 of the same Directive\textsuperscript{78}. Furthermore, it also implemented Article 3 of the Directive, according to which the term of protection for the related rights is determined to 50 years\textsuperscript{79}.

Georgian law has implemented the Directive 93/98/EEC which was the legislation in force by the time of its adoption. Although the Directive 93/98/EEC was repealed and replaced by the new Directive 2006/116/EC, the norms that were harmonized by Georgian law remained the same. Basically, the law implemented the general terms of protection for Copyright and related rights. However, it did not harmonize the other terms, such as the term of protection for critical and scientific publications and photographic works. We will discuss about the necessity of implementing these terms in the third part of our thesis.

b. Protection of Computer programs

The first European Copyright measure – Directive 91/250/EEC is implemented into Georgian law to the reasonable extent. Particularly, the Articles 4, 5 and 6 of the Directive are reflected into the Articles 19, 28 and 29 of the Georgian law.

Article 19 defines the economic rights for computer programs and databases. The first part of this Article repeats Article 4 of the Directive with slightly changed wording, when it gives the author the exclusive rights on the following actions: reproduction and alteration of the program,

\textsuperscript{74} Adopted in Geneva in 1952.
\textsuperscript{75} Art. 1062, the initial version of Georgian Civil code, 27 June 1997.
\textsuperscript{76} Art. 31(1) The Law on Copyright and Neighboring Rights.
\textsuperscript{77} Art.1(1) Directive 93/98/EEC.
\textsuperscript{78} Art. 31(2) The Law on Copyright and Neighboring Rights.
\textsuperscript{79} Art. 57 The Law on Copyright and Neighboring Rights.
including: “translation, adaptation, systematization or other changes”\(^\text{80}\). In the initial version of the law the third paragraph of this part included the distribution of program or its copies, according to the Directive\(^\text{81}\). However, this provision was repealed by the amendment of 03/06/2005.

Article 28 of the law defines the limitations on the rights of program owners. These include; entering changes in the program necessary for functioning, making a copy of the program and using this copy. As we can see, this article does not implement the Directive in its entirety, while the last part of the Directive article is lacking\(^\text{82}\).

Unlike to both of the abovementioned articles where the Databases are also included, Article 29 is entirely dedicated to the Computer program and, particularly, to free use of this program, namely decompilation. This Article repeats the provisions of the Directive\(^\text{83}\) with the slightly changed structure and wording. In particular, the fourth part of the law Article reflects the second part of the Directive Article with its three sub-paragraphs. The only lacking part of the Directive Article is the third one referring to the Berne Convention provisions\(^\text{84}\).

As we have seen thus far, the legislation of the EU concerning computer programs is implemented in Georgian legislation to the reasonable level. However, the realities in terms of computer programs protection are significantly different between Georgia and EU Member States. This may lead to the recommendation of increasing the level of harmonization, which we will discuss in the third part of the thesis.

c. Protection of Databases

The Database Directive (96/6/EC) is widely implemented into Georgian legislation. Particularly, the provisions of this Directive are reflected in the abovementioned Articles\(^\text{85}\) of the Law on Copyright and Neighboring Rights. Besides them, the definition of database and the sui generis rights defined by the third chapter of the Directive are harmonized as well.

---

\(^{80}\) Art. 19(1)(a) The Law on Copyright and Neighboring Rights.

\(^{81}\) Art. 4 (c) Directive 91/250/EEC.

\(^{82}\) Art. 5(3) Directive 91/250/EEC.

\(^{83}\) Art. 6 Directive 91/250/EEC.

\(^{84}\) Art. 6(3) Directive 91/250/EEC.

\(^{85}\) Arts. 19, 30 The Law on Copyright and Neighboring Rights.
While defining the meaning of “database” in the explanation of used terms, the law uses the definition given by the Database Directive. The wording and structures of these two definitions are very similar.

The second part of the Article 19 in the law nearly repeats all of the provisions in Article 5 of the Directive. The most significant difference is that the territory “within the Community” (Directive) is changed by “within the territory of Georgia.” Article 28 of the law unifies the provisions of Article 6 of the Database Directive together with the norms Article 5 of Computer Programs Directive (91/250/EEC) into the special provision of limitations intended to the owners of both – computer program and database. Furthermore, Article 30 of the law uses the analogy of its former Article 29 and authorizes the free use of database, similarly to decompilation of the computer program.

Chapter VII of the law is entirely dedicated to the rights of database producers, defined as sui generis rights in the third chapter of the Database Directive. Particularly, Article 54 of the law defines the legal status of database producer and his rights. While defining the rights and obligations of lawful user, Article 55 of the law is nearly repeating Article 8 of the Directive. Similarly, when the Article 56 sets the limitations to the producer’s sui generis rights, it repeats the structure and content of the Article 9 in the Directive. The fourth amendment of the law has inserted Article 54¹ in chapter VII, defining the special rules for the deposition of database in the National Intellectual Property Center, which we will discuss in the following part.

It has to be mentioned once again, that together with repeating the norms of European Directives in the single Articles, Georgian legislator has used an interesting method of unifying the provisions of Computer Programs Directive and Database Directive into the single Articles – 19 and 28. In Article 19 the first part reflects the provisions of the Computer Programs Directive while the second part repeats the norms of the Database Directive. Although this article has been criticized for “not creating any legally important and new norm to the law,” we still consider that this norm should remain in the law, while it unifies the important provisions of the abovementioned Directives. Similarly, Article 28 also reflects the norms of Computer Programs and Database Directives but, unlikely to the Article 19 where the provisions are

---

86 Art. 4(m) The Law on Copyright and Neighboring Rights.
87 Art. 1(2) Directive 96/6/EC.
88 Art. 5 (c) Directive 96/6/EC.
89 Art. 19(2)(c) The Law on Copyright and Neighboring Rights.
90 Art. 4 Directive 91/250/EEC.
91 Art. 5 Directive 96/6/EC.
92 Dzamukashvili, p. 132.
93 Art. 5 Directive 91/250/EEC.
94 Art. 5 Directive 91/250/EEC.
divided into first and second parts, this article provides more consolidated version of the norms, where the limitations of rights for computer program owner and database owner are unified. In our opinion, this method has to be justified in terms of legal technique.

2. The Fourth Amendment

As we have already mentioned\textsuperscript{95}, the amendment of 2005/06/03 introduced several important changes and added significant norms to the law, in terms of harmonization with the European Copyright legislation. Therefore we have decided to discuss this amendment separately from the five other amendments noted above.

The amendment adds or changes the absolute majority of the existing 69 articles and comprises 54 paragraphs\textsuperscript{96}, from which we will discuss only the norms concerning with the implementation of EU Copyright Directives.

a. Copyright in the Information Society

The first part of the amendment implemented the Directive 2001/29/EC into Georgian law. Particularly, the norm of this Directive, according to which authors have right of communication to the public and making their works available to the public “from a place and at a time individually chosen by them”\textsuperscript{97} was reflected in the norms of the Georgian law concerning author’s rights\textsuperscript{98}, producer of phonogram\textsuperscript{99}, videogram\textsuperscript{100} and broadcasting organization\textsuperscript{101}. These norms provide a new kind of right, to the abovementioned subjects, of allowing or prohibiting “the use of a respective object in such a manner as they deem necessary”\textsuperscript{102}.

This amendment also comprises several terminological changes made according to the Information Society Directive. As this directive defines the meaning of “technological

\textsuperscript{94} Art. 6 Directive 96/6/EC.
\textsuperscript{95} See p. 18.
\textsuperscript{96} Changes and amendments to The Law on Copyright and Neighboring Rights. (available at: \url{http://www.parliament.ge/_special/kan/files/784.pdf} in Georgian)
\textsuperscript{97} Art. 3(1)(2) Directive 2001/29/EC.
\textsuperscript{98} Art. 18(2)(f) The Law on Copyright and Neighboring Rights.
\textsuperscript{99} Art. 47(2)(g) The Law on Copyright and Neighboring Rights.
\textsuperscript{100} Art. 49(2)(f) The Law on Copyright and Neighboring Rights.
\textsuperscript{101} Art. 50(2)(h) The Law on Copyright and Neighboring Rights.
\textsuperscript{102} Explanatory Note of changes and amendments to The Law on Copyright and Neighboring Rights, p. 2. (Available at: \url{http://www.civilin.org/Project/gamnartebiT%20baraTi-49.pdf} in Georgian)
measures” 103, “circumvention of technological measure” 104 and “rights-management information” 105, the same definitions were inserted in the explanation of used terms (Article 4) in the Georgian law.

b. Rental and lending right

The third part of the amendment implemented the Rental and Lending Directive 92/100/EEC. Although this Directive was repealed and replaced by a new Directive 2006/115/EC, the changes did not influence the norms implemented in Georgian legislation. According to the Directive, the transfer of ownership by rental and lending was separated from the right of distribution. Particularly, in the economic rights of author, the rental and lending or otherwise distribution of ownership is separated from the right of distribution 106, unlike to the initial version of the law, where the general right of distribution implied rental and lending rights as well. This change affected not only the part of Copyright but also the part of the related rights 107, where the rights of performer were broadened to the extent of “direct or indirect reproduction of a performance recorded on a phonogram without any conditions precedent” 108.

c. Resale Right

The Resale Right Directive 2001/84/EC defines the rule, according to which the author of an original work of art shall receive a royalty “based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author” 109. This rule was implemented into Georgian law, in Article 20 regulating the rights of the author of fine arts work. Moreover, in the same norm the special rates of the royalty provided for the author by Article 4 of the Directive is repeated. The amounts of Euros provided by the Directive are converted to the appropriate amount of Georgian Lari (the currency of Georgia). However, the percentage rates indicated in the Article 4 of the directive remain the same.

d. Satellite and Cable

103 Art. 6(3) Directive 2001/29/EC.
104 Art. 6(1) Directive 2001/29/EC.
105 Art. 7 Directive 2001/29/EC.
106 Art. 18(2) The Law on Copyright and Neighboring Rights.
107 Art. 47 The Law on Copyright and Neighboring Rights.
109 Art. 1(1) Directive 2001/84/EC.
According to the Satellite and Cable Directive 93/83/EEC; granting or refusing authorization to a cable operator for a cable retransmission “may be exercised only through a collecting society”\textsuperscript{110}. In order to implement this rule, the certain norm has been added to the economic rights of the author, according to which, in case of cable retransmission of the work, the amount of royalty and the rules of calculating and paying it can be determined by the agreement only between the user of this right and the collecting society\textsuperscript{111}. This change affected the part of related rights as well, where the same rule applied to the use of phonograms produced for commercial purposes and the term “cable retransmission” was added to the transmission of phonogram by aerial or cable.\textsuperscript{112}

e. Other issues

The fourth amendment also affected the definition of “database”, where the two types of database were differentiated, according to the Directive 96/6/EC. The first definition of database refers to the work which is “the result of an intellectual-creative activity due to the selection of material and its systemization”, while the second type of database is not a work, but, nonetheless; “with a producer who has made measurable investments in the search for materials, their verification, processing and systemization and whose rights must be protected”\textsuperscript{113}.

The amendment also involves other terminological changes, such as the introducing “communication to the public” (Georgian: “sajaro ga cnoba”) as a new term and substituting “issuance” (“gacnoba”) with “publication” (“gamoqveyneba”) which is more proper term. Together with these terminological changes, the amendment also deals with the issues concerning collecting society and, more importantly, the National Intellectual Property Center “Sakpatenti” the legal status of which is defined in a more comprehensive way.

The development of Georgian Copyright legislation, from the Soviet-style ruling, where the property rights of the authors were totally rejected together with the significant amount of moral rights, to the contemporary legislation of Georgia as an independent country, which is striving to implement the modern international and European standards and to overcome the challenges of recent technological developments, shows the controversial character of the way which Georgian

\textsuperscript{110} Art. 9(1) Directive 93/83/EEC.
\textsuperscript{111} Art. 18(7) The Law on Copyright and Neighboring Rights.
\textsuperscript{112} Art. 52(2)(3) The Law on Copyright and Neighboring Rights.
\textsuperscript{113} Chumburidze in: Georgian Law Review p. 301.
legislation has passed up until now. Nowadays we can deduce that the level of approximation of the Georgian Copyright law with that of the European Union is reasonable. However, the need for the further harmonization is significant as well.
D. Recommendations for the Further Harmonization

Based on the issues we have discussed so far, in this part we will determine the frontiers for the future process of harmonization. In the first chapter we will discuss the certain norms of the European Union Directives and provide the concrete recommendations in terms of their implementation into Georgian Copyright legislation. In the second chapter we will summarize the previous discussion in two basic directions: the areas where further harmonization should be recommended and the fields where the implementation should not be relevant. We will provide some general recommendations, based on the concrete findings in this part.

I. Extent of Further Harmonization

In this chapter we will discuss the certain norms of the European Copyright legislation and their implementation into Georgian Copyright law. The Directives are set according to their relevance for harmonization and the general issues they are regulating.

1. Computer Programs and Databases

We are starting the third part with discussing the issue of harmonizing Computer Programs Directive not only because it was the “first Copyright Directive”\(^{114}\) but, more importantly, because the problem of further harmonization of this directive into Georgian legislation is highly controversial from the nowadays perspective. It has been mentioned, that the adoption of this Directive in 1991 was the response to the “challenge of technology”\(^{115}\), as well as the answer to the need of computer programs protection. Nowadays there is a similar situation in Georgian reality, in terms of the need for protection of the computer programs.

\(^{114}\) Schippan, p. 59.
\(^{115}\) 1988 Green Paper “Copyright and the Challenge of Technology”.

As we have already presented, Georgian legislation has implemented the Computer Programs Directive on a reasonable level. Particularly, it has implemented the most important Articles of this Directive concerning restricted acts (Article 4), exceptions to these acts (Article 5) and decompilation (Article 6). The only provision, which would be important in terms of harmonization, but still remains unimplemented into Georgian legislation, is Article 7 regulating the special measures of protection. The rest of the Articles in this Directive either concerns with the issues already regulated in Georgian law (Articles 1, 2, 3), or refers to the aspects which would not have importance for Georgian legislation (Articles 8, 9, 10, 11). We also have to mention once again, that even the implementation of Article 4 (restricted acts) has been criticized, as it dealt with the issues already regulated in other parts of the law. However, we still consider that the current version of Article 19 should remain in the law, as it implements the important aspect of the Computer Programs Directive.

While discussing the issue of implementing the protection measures, we have to take into consideration the actual situation in Georgia in terms of computer programs protection, which significantly differs from the reality in the European Union Member States. Article 7 “requires Member States to provide appropriate remedies” against a person committing the infringing acts. According to the reality we are facing, we have to deduce that Georgia has not taken such kind of appropriate remedies yet. We are referring to not only the legal remedies, as a legal provision solely can not guarantee computer programs protection, but the situation in general.

According to this reality, implementing Article 7 of the Directive into Georgian law would be an important step towards creating the legal base for protecting computer programs. We propose, that the paragraphs (a), (b) and (c) of Article 7 (1) should be inserted into Article 58 (3) of the Law on Copyright and Neighboring Rights. This would highlight the importance of computer programs protection and add the useful part to the norm of Georgian law.

This initiative should have an important drawback as well. One of the most common arguments against it should be that the general situation in Georgia is not ready to implement such kind of ‘drastic measures’, which we partially agree. We also hold the position that the harmonization of the European legislation should be based on the actual reality in Georgia and the own interests of the country, not only the abstract desire of implementing European law.

117 Dzamukashvili, p. 132.
118 Bently in: Dreier/Hugenholtz Concise Copyright, p. 233.
However, we also believe that the implementation of this norm into the Law on Copyright and Neighboring Rights is complied with the national interests as well, as the protection of computer programs would encourage the further economic relations between Georgia and the European Community. It should also foster the process of European integration, which is one of the main challenges for the Georgian society.

In order to find the ‘delicate balance’\textsuperscript{119}, we propose, that before the imposition of the abovementioned norm by Georgian law, the preparatory period should be declared, which would contain the effective measures of improving the General situation in Georgian market, in terms of computer programs protection.

b. Directive 96/9EC

We have already presented\textsuperscript{120}, that the Directive 96/9EC (Database Directive) is widely implemented into Georgian legislation. From the first chapter of this Directive, which contains the relevant definitions\textsuperscript{121}, the definition of “database” is already implemented into Georgian law (explanation of terms). The rest of the norms in the first chapter would not add anything new and useful to the Georgian legislation. In the first article, the second part (definition) is the only relevant one and therefore implemented. While defining limitations on the scope, Article 2 declares “without prejudice” to the earlier Directives, “a legislative technique that, by leaving the existing acquis intact, inevitably leads to inconsistencies”\textsuperscript{122}. Accordingly, we can deduce that the further implementation of these two Articles should not be recommended.

The second chapter of the Directive “harmonizes copyright protection for databases”\textsuperscript{123}. Articles 5 and 6 of this chapter have already been implemented to the Georgian law, while the Articles 3 and 4 have not. In our opinion, the reflection of the Articles 3 and 4 in the Directive should be useful for the Georgian law, as without them the Copyright protection for database would not be fully defined and the “two-tier protection regime”\textsuperscript{124} fully realized. Moreover, the issues these two articles are dealing with closely relate to each other. Therefore, we propose to insert a new Article 53\textsuperscript{1} in the seventh chapter of Georgian law on Copyright and related rights, where the

\textsuperscript{119} Eechoud, p. 299.
\textsuperscript{120} See p. 21.
\textsuperscript{121} Tritton, p. 523.
\textsuperscript{122} Eechoud, p. 301.
\textsuperscript{123} Hugenholtz in: Dreier/Hugenholtz Concise Copyright, p. 318.
\textsuperscript{124} Hugenholtz in: Dreier/Hugenholtz Concise Copyright, p. 307.
Articles 3 and 4 of the Database Directive will be unified. The new article of the law will comprise five parts – the first two reflecting the two parts of Article 3 of the Directive, and the last three implementing the three parts of the Article 4 of the Directive. By adding this new norm to the Georgian law, the extent of Copyright protection for database will be fully implemented and the “two-tier protection regime” more clearly guaranteed in its entirety.

The third chapter of the Directive guarantees the sui generis right for databases, also known as “database right”\textsuperscript{125}. As we have presented, Articles 7, 8 and 9 are already implemented in Articles 54, 55 and 56 of the seventh chapter in Georgian law. The rest of the third chapter – Articles 10 and 11 are not implemented yet into Georgian legislation. Article 10 defines the term of protection for databases and seems too much specific from the Georgian legal perspective, as in Georgian legislation there is no need for such an advanced level of harmonization in the protection terms. Article 11 deals with the beneficiaries of protection under the sui generis right. In our opinion, while this Article regulates the issues specifically related to the European Community and its Member States\textsuperscript{126}, the implementation of this norm should be less useful for the Georgian legislation, as it is too European-specific. According to the circumstances mentioned above, at this stage we would not recommend the implementation of Articles 10 and 11 of the Directive into Georgian law.

The last chapter of the Directive comprises the common provisions. All of the norms in this chapter, from Article 12 to 17, are dealing with the specific issues related to the transitional provisions and implementation of this Directive. They would not add anything new to the legislation of the non-member state of European Community, such as Georgia. Accordingly, the insertion of these norms into Georgian law would not be recommended.

2. Rental, lending and resale rights

In this part we will overview those norms of the Directives 2006/115/EC and 2001/84/EC which have not been harmonized into Georgian legislation and provide some recommendations for their further implementation.

\textsuperscript{125} Tritton, p. 527.
\textsuperscript{126} Lewinski in: Walter/Lewiski, p. 778-785.
a. Directive 2006/115/EC

Rental and Lending Right Directive (92/100/EEC – before being replaced by the new one) was not so widely implemented into the Georgian legislation, comparing with the previous two Directives. As this Directive has been repealed, from now we will discuss the actual Directive 2006/115/EC covering the same issue. Generally, the first and second parts of this Directive are significantly different, as we have already presented\textsuperscript{127}.

Article 1 of the first chapter defines the object of harmonization and, accordingly, the implementation of this norm would bring nothing new to the Georgian legislation. Article 2 deals with the definitions of “rental”, “lending” and “film”, together with explaining the status of principal director. The definition of “rental” is already included in Georgian law\textsuperscript{128} the content of which is quite similar to the one proposed by Directive. However, the law does not include the definition of “lending”. Therefore we recommend to insert the definition of “lending” provided by the Directive as paragraph “f” into the Article 4. The definition of “film” is not included in Georgian law as well. In this case, we would not recommend the implementation of this definition, as the law does not include the definitions of intellectual works, such as “film”, “song”, “poem”, etc. and leaves the right to define the character of the work in accordance with the circumstances of the case. Therefore, the only part of Article 2 the implementation of which we would recommend is the definition of “lending” (Article 2(2)(b)).

Article 3 is partly implemented into Georgian law already. Particularly, the first part of this Article is reflected in Articles 18, 47, 48 and 49 of the law. The rest of the parts of Article 2 are just referring to the other norms and they would not add anything new to the Georgian law. The same should be said about the Article 4 of the Directive, which is referring to Computer Programs Directive. Similarly, the implementation of Article 6, the content of which does not comply with the general character of the Georgian law at this stage, would not be recommended as well.

However, we would recommend to implement the norms of Article 5 into the Georgian law, as it would add the guarantee for the authors and performers to benefit from their rental rights, especially, when they have “generally weak bargaining positions in relation to producers”\textsuperscript{129} which is often the case not only in European Union Member States, but in Georgia too. Therefore we recommend to insert the third and fourth parts of this Article into the Article 64 of

\textsuperscript{127} See p. 11.
\textsuperscript{128} Art. 4(f) The Law on Copyright and Neighboring Rights.
\textsuperscript{129} Krikke in: Dreier/Hugenholtz Concise Copyright, p. 249.
Georgian law, dealing with activity of the organization administering economic rights on collective basis.

The second chapter of the Directive “covers the harmonization of certain neighboring rights”\textsuperscript{130}. Particularly, Article 7 provides the fixation right for performers and broadcasting organizations and Article 8 adds the certain further exclusive rights. In our opinion, harmonizing of Georgian law with these provisions would make the law more responsive to the challenges of contemporary technological developments. Therefore, we would recommend to implement the provisions dealing with the rights of performers\textsuperscript{131} into Article 47 of Georgian law, and the norms providing these rights to broadcasting organizations\textsuperscript{132} – into Article 50 of the law. Furthermore, the first part of Article 9 dealing with the exclusive rights for performers, phonogram producers, film producers and broadcasting organizations, should be novelty for the Georgian legislation, which would be reasonable to impose. Therefore it should be recommended to implement the four parts of this norm into Articles 47, 48, 49 and 50 of the Georgian law.

Article 10 sets the limitations to the rights discussed above. The implementation of this norm would be necessary, in order to defend the ‘delicate balance’\textsuperscript{133} between the right holders and users. Taking into account the requirements of legal technique, we recommend to add a new third part to Article 28 of Georgian law, dealing with the limitations of rights, where the provisions of Article 10 will be reflected.

The last chapter of the Directive comprises some common and final provisions (Articles 11-16) which are regulating only the specific details concerning the application of this act and, therefore, the implementation of them should not be recommended.

b. Directive 2001/84/EC

The Resale Right Directive 2001/84/EC aims “to give contemporary artists who have already sold their creations the right to claim a portion of the proceeds of any subsequent sales for the

\textsuperscript{130} Lewinski in: Walter/Lewinski, p. 310.
\textsuperscript{131} Arts. 7(1) 8(1) Directive 2006/115/EC.
\textsuperscript{132} Arts. 7(2)(3) 8(2)(3) Directive 2006/115/EC.
\textsuperscript{133} Eechoud, p. 299.
term of the copyright."\textsuperscript{134} The main provisions of this Directive has already been implemented into Article 20 of the Georgian law, which deals with the rights of the authors of fine arts work.

Article 1 defines the subject matter of the resale right. The first and third parts of this Article have already been implemented. In order to introduce the whole extent of this norm and make the harmonization more complete, we would recommend to implement the second and fourth parts of this Article into Georgian law. For the reasons of legal technique we suggest to unify these two parts into one provision, as they are dealing with the same issue, and insert into the text of Article 20 of the law after the second part of it.

As we have already mentioned\textsuperscript{135}, Georgian law does not include the definitions of the intellectual works, such as “original work of art” and leaves it to the circumstances of the certain case, to decide, whether the work belongs to this field or not. Therefore the implementation of Article 2 would not be in compliance with the general character of the Georgian law and is, accordingly, not recommended. The second part of this article has already been implemented.

Article 3 sets the certain threshold which the minimum sales price should not exceed. Georgian legislator has established this kind of threshold for the royalties (25 000 Georgian Lari), but not for the minimum sale price. We would recommend to set the threshold similarly to the Article 3 of the directive, according to the currency rate and some other financial circumstances, and to insert the sentence including this threshold into the third part of Article 20 of the Georgian law.

The rates of the resale right set by Article 4 are already reflected in Georgian legislation in the relevant amount of the national currency. The short notice of Article 5 that the sale prices are net of tax should also be inserted into the Article 20 of the law. The provisions of Article 6 dealing with the royalty receivers and the norm of Article 9 providing the right to obtain information have already been implemented as well.

Article 7 has establishes the rules of receiving royalties for the third-country nationals. These rules are quite specific and closely related to the special rules for the Community Member States. Same can be said about Article 8 dealing with the term of protection of the resale right. As the contemporary reality in Georgia does not show any special need for implementing such kind of European-specific norms, at this stage we can not see any necessity to insert these two Articles into Georgian legislation. The final provisions of the Directive (Articles 10-14) are also not recommended to be implemented.

\textsuperscript{134} Tritton, p. 541.
\textsuperscript{135} See p. 31.
3. Satellite and Cable, Term of Protection and Copyright in the Information Society

a. Directive 93/83/EC

The Satellite and Cable Directive 93/83/EC, which requires to provide “an exclusive right for the author to authorize the communication to the public by satellite of copyright works”\(^{136}\), is partially implemented in Georgian legislation. However, the significant majority of the Directive norms have not been implemented yet.

The first Article of the Directive defines the certain terms, from which the definition of “cable retransmission” is implemented in the explanation of used terms in the Georgian law. We would recommend to implement the definition of “satellite” in the explanation of terms as well. “Collecting society” is also not defined in the explanation of terms, but chapter 10 of the law regulates the issues concerning the collecting society more widely and, therefore, the definition of “collecting society” provided by the Directive would bring nothing new to the Georgian law.

The second part of Article 1 of the Directive regulates the specific aspects of communication to the subjects by satellite, the implementation of which we would not recommend at this stage, as there is no need for such kind of detailed regulation in contemporary legislation and it would overload the law with useless regulations.

Article 2 provides a sentence the character of which is too general to be implemented. The acquisition of broadcasting rights regulated by Article 3 is already covered by chapter 10 of the Georgian law (Articles 63-66) and there is no current need of implementing further details. Article 4 is just referring to the Rental and Lending Rights Directive (92/100/EEC) without defining any certain rule available for implementation. Same can be said about Article 6 referring the norms of the same Directive. Similarly, the sentence of Article 5 just requires to “leave intact” the protection of Copyright and the transitional provisions of Article 7 are too much indicative for being implemented, as well.

The third chapter of the Directive deals with cable retransmission. Article 8 of this chapter is regulating the cable retransmission issues with the rule available for only the Member States of the European Union and is, therefore, not relevant for implementation. The ruling for the exercise of the cable retransmission right defined by Article 9 and the exception rule of Article

\(^{136}\) Art. 2 Directive 93/83/EC.
10 is already implemented in Georgian law. Articles 10 and 11 deal with the system of mediation between only the European Member States and would not be relevant for implementation at this stage. The last chapter comprises the general provisions (Articles 13-15) which are usually not relevant to be implemented.

b. Directive 2006/116/EC

Term Directive 93/98/EEC was implemented even in the initial version of the Law on Copyright and Related Rights in 1999. Although this Directive was replaced and repealed by the new Directive 2006/116/EC, those rules implemented in the Georgian law were not the subject for changes. In this part we will discuss the new version of the Term Directive 2006/116/EC.

Article 1 defines the duration of authors’ rights and is entirely implemented into the Articles 31 and 32 of Georgian law. Article 2 deals with the term of protection for cinematographic and audiovisual works. We would recommend to implement this rule in Article 15 dealing with the Copyright on audiovisual work. However, as Georgian law does not include the similar norm regulating cinematographic works, the part of Article 2 dealing with cinematographic works cannot be implemented. Article 3 regulates the duration of related rights and is fully implemented in the Article 57 of Georgian law. The requirement of Article 4 is also reflected in the Article 33 (6) of the Georgian law.

Article 5, dealing with critical and scientific publications, and Article 6, providing protection of photographs, are not implemented into the Georgian law. In our opinion, the implementation of these two norms will make the harmonization of the entire Directive more complete. Besides that, these norms are providing the regulations which are new for the Georgian legislation. Therefore we recommend to add parts (7) and (8) to the Article 32 of Georgian law, where Articles 5 and 6 of the Directive will be implemented.

Article 7 “prescribes reciprocity towards authors from non-EU countries for works that do not have a Member State as their country of origin.” As we can see, the content of this article is specifically related to the European Union Member States and, therefore, it would not be relevant for implementation at this stage.

137 Arts. 18(7), 52(2)(3) The Law on Copyright and Neighboring Rights.
138 Visser in: Dreier/Hugenholtz Concise Copyright, p. 300.
The provisions of Articles 8 and 9, dealing with the calculation of terms and regulation of moral rights, are already reflected in Georgian law (Article 32 (2)). The final provisions of Articles 10-14 are regulating the specific issues concerning the application of the Directive and are not relevant for harmonization.


The fourth amendment\(^\text{139}\) of the Law on Copyright on Neighboring Rights implemented the significant amount of norms from the Information Society Directive 2001/29/EC. The harmonization of Georgian law with this Directive is necessary in order to make the legislation more responsive to the recent developments, on one hand, and harmonize it with the general standards of the European legislation concerning the issues of information society, on the other.

The first article concerns with the general scope of application and is not relevant for harmonization. The second chapter “harmonizes exploitation rights more generally\(^\text{140}\)” than the previously adopted “first-generation” Directives. Particularly, it harmonizes the rights of reproduction (Article 2), communication and making available to the public (Article 3) and distribution (Article 4). While harmonizing Georgian law with this chapter, the fourth amendment implemented only the first part of Article 3. In our opinion, the implementation of the abovementioned three Articles into Georgian law is highly important, in order to make the harmonization complete. Therefore we would suggest to implement these provisions into Articles 18, 47, 49 and 50 of the Georgian law.

Article 5 is an important part of the second chapter, while it sets the exceptions and limitations to the abovementioned rights. Without implementing this Article, the law will become imbalanced. Therefore we also recommend to insert a new Article 30\(^1\) in the third chapter of Georgian law, where the norms of Article 5 should be implemented. The provisional title for this Article should be “Limitations to the exploitation rights in the information society”.

The third chapter provides protection of technological measures and rights-management information and is an important part of the Directive, the ignorance of which will make the harmonization incomplete. Georgian legislator has implemented only those parts providing definitions of “technological measures”, “circumvention of technological measures” (Article 6

\(^{139}\) See p. 23.

\(^{140}\) Bechtold in: Dreier/Hugenholtz Concise Copyright, p. 357.
(3)) and “rights-management information” (Article 7 (2))\textsuperscript{141}. The rest of the Articles 6 and 7 remains unimplemented. While acknowledging the importance of these two Articles, we propose to add the fourth part to Article 59 of the law (“Protection of Copyright and Neighboring Rights”) where the norms of protection provided by the Directive should be reflected.

The last chapter of the Directive (Articles 8-15) includes the common provisions concerning the application of this Directive and, therefore, the implementation of these Articles would not be relevant.

\textsuperscript{141} Art. 4(s)( s\textsuperscript{1})(t) The Law on Copyright and Neighboring Rights.
II. How Far Should the Harmonization go

In this part we will summarize the results received after discussing the further development of harmonizing Georgian Copyright legislation with that of the European Union. This discussion has two main directions. The first one is the recommendations for further harmonization. The second direction contains the areas of legislation where the harmonization should not be recommended. These two general directions will be discussed in the following two parts.

Before moving to these two basic directions we would like present a table which summarizes the results of our previous discussions. The first row of this table contains seven Directives of the European Union in the field of Copyright with the order according to the abovementioned discussion. The second row represents the Articles of certain Directives the implementation of which would be recommended into the Georgian law. The third row contains those Articles which are not relevant for implementation (the final provisions of Directives are represented in the end, i.e. 8-11). Those Articles and provisions which are not contained in the table are already implemented into Georgian legislation.

<table>
<thead>
<tr>
<th>Directive</th>
<th>Harmonization recommended (Articles)</th>
<th>Harmonization not recommended (Articles)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer Programs Directive 91/250/EEC</td>
<td>Art. 7 (1)</td>
<td>Arts. 1, 2, 3, 8-11</td>
</tr>
<tr>
<td>Database Directive 96/9EC</td>
<td>Arts. 1(2), 3, 4</td>
<td>Arts. 1(1)(3), 2, 10, 11, 12-17</td>
</tr>
<tr>
<td>Satellite and Cable Directive 93/83/EC</td>
<td>Arts. 1(1)</td>
<td>Arts. 1(2)(4)(5), 2, 4, 5, 6, 7, 8, 13-15</td>
</tr>
<tr>
<td>Term Directive 2006/116/EC</td>
<td>Arts. 2, 5, 6</td>
<td>Arts. 7, 10-14</td>
</tr>
<tr>
<td>Information Society Directive 2001/29/EC</td>
<td>Arts. 2, 3, 4, 5, 6, 7</td>
<td>Arts. 1, 8-15</td>
</tr>
</tbody>
</table>
1. Possibilities for the Further Harmonization

<table>
<thead>
<tr>
<th>Directive</th>
<th>Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer Programs Directive 91/250/EEC</td>
<td>Art. 7 (1)</td>
</tr>
<tr>
<td>Database Directive 96/9EC</td>
<td>Arts. 1(2), 3, 4</td>
</tr>
<tr>
<td>Rental and Lending Right Directive 2006/115/EC</td>
<td>Arts. 2(2)(b), 5, 7, 8, 9(1), 10</td>
</tr>
<tr>
<td>Resale Right Directive 2001/84/EC</td>
<td>Arts. 1(2)(4), 3, 5,</td>
</tr>
<tr>
<td>Satellite and Cable Directive 93/83/EC</td>
<td>Arts. 1(1)</td>
</tr>
<tr>
<td>Term Directive 2006/116/EC</td>
<td>Arts. 2, 5, 6</td>
</tr>
<tr>
<td>Information Society Directive 2001/29/EC</td>
<td>Arts. 2, 3, 4, 5, 6, 7</td>
</tr>
</tbody>
</table>

The table represented above shows those Articles and provisions of the European Union Directives the implementation of which we have recommended for Georgian legislation. During these recommendations we have taken into account the similarities and differences between these two legislations and the realities they are regulating, the certain specific characteristics typical for the each of this regulations, together with structural and content-related requirements of legal technique, in general. The reasons for recommending further harmonization in these certain areas are various.

One of the main reasons for recommending the implementation of the certain norm should be its successful application in the European reality during the time since its adoption. It has been mentioned, that the harmonization of Copyright-related issues in the European legislation during the last couple of decades “has undeniably produced a certain acquis communitaire. Although far from complete, this acquis has had normative effect not only in the Member States that are obliged to transpose the directives, but also at the regional and international levels”.142

The effect of European Copyright legislation in regional and international levels is acknowledged by the example of Georgian legislation. We should add that one of the main reasons for this positive effect is the successful application of the certain European act over time.

142 Eechoud, p. 298.
The example of such an act is Computer Programs Directive\textsuperscript{143}, which was adopted in 1991, when the European Union faced several challenges\textsuperscript{144}, and which has proven its suitability by fulfilling these challenges successfully. As Georgia faces some of the similar challenges, the implementation of the norms which have already resolved the similar problematic, would be highly recommended.

The next reason for recommending harmonization would be the general legal developments in Georgia in terms of the European integration after restoring independence in 1991. The overall aspiration of Georgian society towards European integration is reflected in legislation, as the legal harmonization is one of the main parts of the general process of integration\textsuperscript{145}. Accordingly, the goal of complying with the European legal standards includes the particular implementation of European legal provisions in the certain areas, such as Copyright law, in order to reach more advanced level of harmonization.

However, as we have seen, the general desire of harmonizing European legislation is not enough for recommending the implementation of a certain norm. The inner problematic of national legislation, which is in accordance with the recent developments in the areas of Copyright, has to prevail in this sense. The norm of Directive has to respond to these needs of national legislation, in order to be implemented. Here we imply the practical usefulness and importance of the legal norm, which also has to be new for the national Copyright legislation and add something new to this legislation. Only if the norm complies with these “balance rules”, it would be recommended for harmonization.

\textsuperscript{143} Directive 91/250/EEC.
\textsuperscript{144} See p. 9.
\textsuperscript{145} Art. 43, Partnership and Cooperation Agreement between EC and Georgia.
2. Limitations to the Further Harmonization

<table>
<thead>
<tr>
<th>Directive</th>
<th>Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer Programs Directive 91/250/EEC</td>
<td>Arts. 1, 2, 3, 8-11</td>
</tr>
<tr>
<td>Database Directive 96/9EC</td>
<td>Arts. 1(1)(3), 2, 10, 11, 12-17</td>
</tr>
<tr>
<td>Resale Right Directive 2001/84/EC</td>
<td>Arts. 2, 7, 8, 10-14</td>
</tr>
<tr>
<td>Satellite and Cable Directive 93/83/EC</td>
<td>Arts. 1(2)(4)(5), 2, 4, 5, 6, 7, 8, 13-15</td>
</tr>
<tr>
<td>Term Directive 2006/116/EC</td>
<td>Arts. 7, 10-14</td>
</tr>
<tr>
<td>Information Society Directive 2001/29/EC</td>
<td>Arts. 1, 8-15</td>
</tr>
</tbody>
</table>

This table represents the norms of the certain European Copyright Directives the harmonization of which we have not recommended. The reasons restraining the harmonization of these norms are different, as the norms, in itself, vary from each other by their characters.

As the two decades of European Copyright law harmonization has made clear, the Directives contain a certain amount of norms which have to be criticized even from the perspective of Community-insider. “Later directive are usually declared ‘without prejudice’ to earlier directives, a legislative technique that, by leaving the existing acquis intact, inevitably leads to inconsistencies.”\(^{146}\) Moreover, “sometimes, completely different areas of the law are cobbled together to be dealt with in the same directive.”\(^{147}\) Besides these technological deficiencies, the norm of Directive can easily be already outdated, as “in all, the time span between the first proposal of a directive and its final implementation can easily exceed ten years”\(^{148}\). Such kinds of critics have to be taken into account while implementing the Directive.

\(^{146}\) Eechoud, p. 301.
\(^{147}\) Tritton, p. 487.
\(^{148}\) Eechoud, p. 298.
Even if the Directive norm is perfect from the European perspective, in some cases it can be not relevant for Georgian legislation, while the issue this norm is regulating is not relevant in the Georgian reality. It can also be irrelevant for the general character of Georgian Law on Copyright and Neighboring Rights. The example for such kind of content-related irrelevance can be the issue of definitions, when the Directive is providing the definition of an intellectual work, which is not common for the Georgian law, while it does not provide such definitions and leaves it to be determined by the circumstances of the certain cases\textsuperscript{149}. This kind of irrelevant norms should not be the object for harmonization.

Another type of norms the implementation of which we have not recommended is the certain kind of case, when the issue of this norm is already regulated by the Georgian law. It is not necessary, that the regulation provided by national law has to comply with the norms of Directive, while Georgia is not a Member State of the European Union yet.

Although the membership of European Union has been declared to be the “long-term goal of Georgian society” by several kinds of politicians in various contexts, the time of membership activation is not known yet, and it does not seem to be known in the nearest future. Therefore there is no urgent need for harmonizing the “European-specific” norms of the European legislation. In the abovementioned Directives there are some provisions specifically related to the European Union matters. Obviously, European Directives should contain the norms which are specific and applicable only within the territory of the Community, by its Member States. Accordingly, as we have mentioned, there is no current need for such a specific level of harmonization.

Finally, all of the seven Directives contain the final provisions, sometimes located in the single last chapters. These provisions are usually dealing with the specific technical issues related to the application of the certain Directive. Accordingly, the implementation of these norms into Georgian legislation would not be reasonable and are, therefore, not recommended for harmonization.

\textsuperscript{149} See p. 31, 33.
E. Conclusions

Copyright law is considered to be one of the most dynamically developing fields of the law. This dynamic character of development has been mentioned in the European Copyright legislation as well. Although the significant challenges to this legislation have already been successfully overcome, the critics show that it still has the long way to go, before reaching more complete and advanced level of harmonization. Together with the positive evaluations, the actual process of harmonizing European Copyright law has deserved some critics as well. Therefore, while implementing the norms of that law into the national legislation, especially in the countries not belonging to the European Union, the legislators have to take into account both – the positive and negative aspects observed in the European level, in order to guarantee the successful realization of the European Copyright law implementation.

Georgian example has been provided, in order to acknowledge the challenges of European Copyright law implementation into the legislation of the country, which does not belong to the European Union. However, the process of harmonizing Georgian Copyright legislation with that of the European Union has been activated during slightly more than a decade. This period has been characterized by the high level of dynamic developments, reflected in the changes and amendments. The main characteristics of development of the Georgian Copyright law up until now have to be taken into account for the process of future harmonization. As we can conclude from the overview of the harmonization process, the progress which has been made in Georgian Copyright legislation with regard to its approximation to the European one is significant. However, it still needs to be harmonized with the certain more fields of the European Copyright law.

In order to determine the extent of further harmonization, this process has been discussed in two basic directions. First of all, the current level of European Copyright law implementation into Georgian legislation needs to be extended further. European Copyright legislation contains a number of norms and provisions which should be suitable for Georgian legislation and reasonable to be harmonized, but have not been implemented yet. Therefore, determining such kind of useful norms and implementing them into Georgian legislation, in compliance with the general requirements of the legal technique, should be the task for the future legislation process. However, the process of harmonization has its certain limitations as well. The difference
between realities in Georgia and European Union, in terms of Copyright protection still remains significant. On the other hand, the certain aspects of European Copyright legislation have deserved critical evaluations even in the European level. Therefore the implementation of the European Copyright norms into Georgian legislation needs to be dealt with critical approach and spread only to that extent, which should be suitable and reasonable at this stage.

The role of academic recommendations for the harmonization process has been increased, as the basic norms of European Copyright law have already been implemented into Georgian legislation and the further process of harmonization should be realized in more critical manner. Therefore the recommendations of scholars and academic discussions about the further harmonization should play an important role for determining the frontiers of the legislation. Accordingly, the aim of our research has been to bring its contribution in the academic discussion about the further harmonization of Georgian Copyright law with that of the European Union.
Bibliography:

Legal Sources:

8. Explanatory Note of changes and amendments to The Law on Copyright and Neighboring Rights (3 June 2005)
13. Georgian Law on Copyright and Neighbouring Rights (9 September 1999)
14. Green Paper of the European Commission, Copyright and the Challenge of Technology (7 June 1988)
15. The Changes and Amendments to the Georgian Law on Copyright and Neighboring Right.
17. Partnership and Cooperation agreement between Georgia and the European Community (26 April 1995).
Web Sources:

1. Access to European Union Law

2. Web-page of the European Commission
   http://ec.europa.eu/ (last visited: 15 July 2010)

   http://www.parliament.ge/ (last visited: 15 July 2010)

4. Web-page of the National Intellectual Property Center of Georgia
   http://www.sakpatenti.org.ge/ (last visited: 15 July 2010)

5. Georgian legislation in English
Annex
Excerpts from the Georgian Law on Copyright and Neighboring Rights (initial version).

LAW OF GEORGIA ON COPYRIGHT AND NEIGHBORING RIGHTS

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1. PURPOSE OF THE LAW

The purpose of this Law is to protect copyright property and personal non-property rights arising at creation and use of scientific, literary and artistic works (copyright), and some of their neighboring rights related to performers, producers of phonograms, visual records, databases and broadcasting organizations (neighboring rights).

ARTICLE 2. INTERNATIONAL AGREEMENTS

If by the international agreements, to which Georgia is a party, are defined the rules different from this Law, then the provisions of the international agreement shall be applied.

ARTICLE 3. SUBJECT MATTER OF THE LAW

This Law shall apply to:

a) scientific, literary and artistic works, performance, phonogram and visual records, the holder of copyright and/or neighboring right of which is citizen of Georgia, a natural person having permanent residence within the territory of Georgia or a legal entity registered in respect to the rule prescribed by the legislation of Georgia;

b) scientific, literary and artistic works, phonogram and visual record first published in the territory of Georgia. The work, phonogram or visual record shall be deemed as first published in Georgia, if after first publication abroad within 30 days they are published within the territory of Georgia;

c) performance, first performed within the territory of Georgia; performance fixed on a phonogram or visual record, which is protected in respect to the subparagraph "b" of this Article; performance, which is fixed on phonogram or visual record, but is included in the program of a broadcasting organization protected in respect to the subparagraph "d" of this Article;

d) programs of those broadcasting organizations, which are legal entities established in respect to the rule prescribed by the legislation of Georgia broadcast by means of transmitters disposed on the territory of Georgia;

e) architectural works located within the territory of Georgia, artistic works incorporated in an architectural work on the territory of Georgia, in spite of citizenship and permanent residence of their authors;

f) other works of science, literature and art, performance, phonogram, visual record and programs of broadcasting organizations, protected in respect to the international agreements to which Georgia is a party.

ARTICLE 4. EXPLANATION OF TERMS USED IN THE LAW

ARTICLE 18. ECONOMIC RIGHTS OF THE AUTHOR OF WORK
1. The author or other holder of copyright have the exclusive right to the use of the work in any form.
2. The exclusive right to the use of the work means the right to exercise, permit or prohibit the following:
   a) reproduction of work (right on reproduction);
   b) distribution of the original or copies of the work among public by sale or lease or transfer of property or ownership on other way (right on distribution);
   c) importation of copies of the work with the purpose of distribution, including those copies made with the consent of the author or other holder of the right (right on importation);
   d) public display of the work (right on public display). This right does not apply, where the public display is the result of lawful purchase of the work included in the course of trade;
   e) public performance of the work (right on public performance);
   f) public transmission of the work in ether or by cable including primary and/or secondary transmission (right on public transmission);
   g) transmission of the work (right on translation);
   h) remake of the work (right on remake).
3. The author or other holder of the copyright is entitled to receive the royalty for the use of the work in any form (right on royalty),
4. If the copies of the work published lawfully are sold, then their further distribution without author's consent and payment of royalty is permitted.
5. The author or other holder of copyright on musical work expressed in notes, audiovisual work, computer program, database, work fixed on phonogram, or visual record have the exclusive right on distribution of said work originals or copies by leasing, without prejudice on the property right on said original or copies.
6. The exclusive right to the use of architectural, urban planning and landscape architecture projects include the right on realization of the project.
7. The amount of the royalty, rule of its calculation at any use of the copy is defined by copyright, as well as by the contract concluded between the users and the organization administering economic rights of authors on collective basis.
8. The person, who after expiration of copyright term, publishes first the work, which was not published earlier, shall have the property right on the work provided for by the paragraph 2 of this Article.
9. The limitations of economic rights stipulated by paragraph 2 of this Article are defined by the Articles 21-28 of this law, provided that, such limitations do no prevent the normal use of the work and damage unreasonably the legal interests of the author or other holder of copyright.

ARTICLE 19. ECONOMIC RIGHTS ON COMPUTER PROGRAM AND DATABASE

1. An author of computer program along with the rights defined by Article 18 of this Law enjoys the exclusive right to exercise, permit or prohibit the following:
   a) reproduction of computer program by any means and in any form, completely or partially. The authors consent is necessary, if such a reproduction is required for loading, display, operation, transmission or saving of the computer program;
   b) translation, adaptation, systematization or other changes of computer program and further reproduction of obtained results by preserving the rights of the person changing the computer program;
   c) spreading of the original or copies of computer program in the public in any form, including leasing. With the first realization of program copies in Georgia by the author or with his consent the right of control on spreading such copies within the territory of Georgia is exhausted, with the exception of the right - to control further leasing of program original or copies.
2. An author of database along with the right defined by the Article 18 of this Law enjoys the
exclusive right to exercise, permit or prohibit the following:
a) temporary or permanent reproduction of database by any means and in any form, completely
or partially;
b) translation, adaptation, systematization or other changes of database and reproduction, public
transmission, display or performance of database;
c) spreading of the original or copies of database in the public in any form. In Georgia with the
first realization of database copies by the author or with his consent, the right of control on sale
of such copies is exhausted within the territory of Georgia;
d) any transmission, display or performance before public, including direct transmission in
dialogue regime.

ARTICLE 20. RIGHTS OF THE AUTHOR OF FINE ARTS WORK

1. An author of fine arts work has the right to request the owner of the work to give him the
permission on reproduction of his work (right on permission). With this the owner shall not be
requested to deliver the work to the author.
2. After first alienation of fine arts work original in every separate cases of selling in public
(through auction, art saloon, exhibition of fine arts, shop or by other means) the author or his
legatees have the right to receive the royalty from the authors in the amount of 5 per cent of the
sale price. This right can be exercised through the organization administering the authors
economic rights on collective basis. The sellers are obliged to furnish said organization with the
information about selling.
3. The alienation of the right provided for by paragraph 2 of this Article in the author’s life is
inadmissible. It shall be transferred to his legatees in respect to the Law or by testament
following the validity term of the copyright.

ARTICLE 28. LIMITATIONS OF THE COMPUTER PROGRAM AND DATABASE
OWNERS RIGHTS

1. A person, who owns lawfully a copy of a computer program or database, is authorized without
consent of an author or other holder of copyright and without paying him a royalty to do the
following:
a) to enter changes in the computer program or database, necessary for functioning of users of
technical facilities, also carry out any action related to functioning of the computer program or
database, including recording and saving in computer memory (for one computer or one user of
network), correction of apparent mistakes, if there is not provided for otherwise by the copyright
contract;
b) make a reserve copy of computer program or database provided that this copy is intended only
for archive and for substitution of the lost, destroyed or indecent copy of lawful owner.
2. The reserve copy of computer program database shall not be used for the purposes other than
the rules defined by paragraph 1 of this Article and shall be distracted at termination of computer
program or database owner’s rights.

ARTICLE 29. FREE USE OF COMPUTER PROGRAM (DECOMPILATION)

The person, who lawfully owns the copy of computer program is entitled without consent of the
author or other holder of copyright and without paying him the copyright royalty, to conduct
decompile (reproduce and transform the objective coded in initial text) of computer program,
also order decompilation the other persons in the case, when it is necessary to achieve
interoperability among the computer program created by him and other programs, provided that
the following conditions are met:
a) these actions are performed by the person having permission to use the program copy, or on
his behalf another person having the respective permission;
b) the information necessary to achieve interoperability has not been available for him by the
other sources;
c) these actions relate only to the parts of decompiled program necessary for achievement of
interoperability;
d) the information received in result of decompilation shall be applied only for achieving
interoperability among the computer program created independently and other computer
programs. This information shall not be disclosed to other persons or used for creation of a new
computer program, which is substantially similar to the decompiled program, or for any other
action, which infringes copyright.

**ARTICLE 30. FREE USE OF DATABASE**

The lawful user of database original or copy can without consent of the database author or other
holder of copyright, conduct actions defined by the Article 19 of this Law, when it is necessary
to access the database and for its normal use, if the lawful user has the right to use the part of
database, said rights apply only to this part.

**CHAPTER IV. VALIDITY TERM OF COPYRIGHT**

**ARTICLE 31. ARISING OF COPYRIGHT AND DURATION**

1. The copyright arises at the moment of creation of the work and is valid during the author's life
and during 70 years from his death, with the exception of cases provided for by the Article 32 of
this Law.
2. Calculation of the terms defined by this Article and Article 32 of this Law starts from January
1 of the year following the year in which the legal fact, being basis for beginning calculation of
said terms, has taken place.

**ARTICLE 32. VALIDITY TERM OF COPYRIGHT**

1. The copyright on the work, which was published under pseudonym or anonymous, is valid for
70 years from the date of its lawful publication. If the author within this period reveals his
personality, or his personality is doubtless paragraph 1 Article 31 of this Law shall be applied.
2. The copyright on the work created with a co-author is valid during the life of each co-author
and during 70 years from the death of the last author.
3. If the work is published in volumes, parts, editions or episodes, and copyright validity term is
calculated from the date of lawful publication, this term shall be calculated for each such work.
4. The copyright on the work mentioned in Articles 12 and 13 is valid during 70 years from the
date of their lawful publication, and if the work has not been published - from the date of its
creation.
5. The copyright on audiovisual work is valid during 70 years from the death of the last author
(co-authors) mentioned in the paragraph 1 Article 15 of this Law.
6. The economic copyright of the person, who published lawfully the work not published earlier
(paragraph 8 Article 18 of this Law), shall be valid during 25 years from the date of its lawful
publication.

**ARTICLE 33. LIMITLESS COPYRIGHT**
ARTICLE 47. RIGHTS OF PERFORMER

1. A performer on his performance has the following personal and economic rights:
   a) the right on the name;
   b) the right to protect his performance from any distribution, or other infringing, which may damage the honor, dignity or business reputation (right on respect of reputation);
   c) the right to use the performance in any form, including the right to receive royalty for the use of the performance in any form;
2. The exclusive right to the use of the performance means to permit or prohibit the following:
   a) recording of the performance, which was not recorded before;
   b) reproduction of the performance record, with the exception of the cases, when the performance was recorded with the consent of the performer and the reproduction is carried for the same purpose, for which it was recorded;
   c) transmission of the performance by broadcast or cable, or other communication to the public of the performance, with the exception of cases, when there is transmitted the earlier recorded or transmitted performance with the consent of the performer;
   d) transmission of the recorded performance by broadcast or cable, if this performance was not recorded initially for the purpose of gaining profit;
   e) leasing to the publisher the phonogram or visual record, on which the performance is fixed with the participation of the performer.
3. The permission provided for by the paragraph 2 of this Article is granted by the performer, and permission on the performance or performers’ collective - by the head of such a collective, on the basis of the written contract concluded with the user.
4. Conclusion of the contract between the performer and the broadcasting organization on transmission of the performance by broadcast or cable, results in transfer of the right on recording of the performance, on its further transmission and reproduction of the record in the case, if it is directly provided for by the contract. In the case of such use the amount of the royalty payable for the performance is determined by said contract.
5. Conclusion of the contract on creation of audiovisual work between the performer and the audiovisual work producer results in transfer of the rights provided for by the paragraph 2 of this Article, if there is not provided for otherwise by the contract. Transfer of such rights by the performer is limited to the use of the audiovisual work and unless there is not provided for otherwise by the contract, it does not include the right to separate the use of sound and the image fixed in the audiovisual work.
6. Conclusion of the contract on recording of the performance on the phonogram or video gram between the performer and producer of phonogram or visual record results in transfer of the right by the performer on leasing of the phonogram or visual record. Whereas, the performer preserves the right to receive the royalty for leasing the copies of such phonogram or visual record.
7. For the performance created at fulfillment of official duties or by the order of the employer, the performer enjoys the right on the name. The exclusive right to the use of such performance belongs to the person with whom the performer has labor relations, unless provided for otherwise by the contract concluded between them.
8. The exclusive right defined by the paragraph 2 of this Article may be transferred to the other party.

ARTICLE 48. EXCLUSIVE RIGHTS OF PHONOGRAM PRODUCER

1. The producer of the phonogram enjoys the exclusive right to use the phonogram in any form, including the right to receive the royalty for using the phonogram in each form.
2. The exclusive right to the use of phonograms means the right to conduct, permit or prohibit:
   a) reproduction of the phonogram;
   b) first distribution of the phonogram copies;
   c) leasing of phonogram copies;
   d) distribution of the phonogram copies in the public through leasing, or transfer of the property or ownership in any way;
   e) importation of phonogram copies with the purpose of distribution, including those copies produced with the consent of phonogram producer.
3. The exclusive right of phonogram producer provided for by the paragraph 2 of this Article can be transferred to the other party under the contract.

ARTICLE 49. EXCLUSIVE RIGHTS OF VISUAL RECORD PRODUCER

1. The producer of the visual record enjoys the exclusive right to use the visual record in any form, including the right to receive the royalty for using the visual record in each form.
2. The exclusive right to the use of visual record means the right to permit or prohibit:
   a) reproduction of the visual record;
   b) first distribution of the visual record copies;
   c) leasing of visual record copies;
   d) distribution of the visual record copies in the public through leasing, or transfer of the property or ownership in any way;
   e) importation of visual record copies with the purpose of distribution, including those copies produced with the consent of visual record producer.
3. The exclusive right of visual record producer provided for by the paragraph 2 of this Article can be transferred to the other party under the contract.

ARTICLE 50. EXCLUSIVE RIGHTS OF BROADCASTING ORGANIZATION

1. The broadcasting organization enjoys the exclusive right to use its program in any form, including the right to receive the royalty for using the program in each form.
2. The exclusive right to the use of program means the right to permit or prohibit the following:
   a) recording of the program;
   b) reproduction of program record, with the exception of the cases, when the program is recorded with the consent of broadcasting organization and the reproduction is conducted with the same purpose, for which it was fixed;
   c) simultaneous transmission by broadcasting and by cable, respectively by aerial and cable broadcasting organization;
   d) transmission of the program by aerial of cable;
   e) public transmission of the program, where the entry is paid;
   f) distribution of the program record in the public by sale or leasing, or transfer of property or ownership through other ways.

ARTICLE 52. USE OF PHONOGRAMS PRODUCE FOR COMMERCIAL PURPOSES
1. It is permitted, without consent of the producer of phonogram produced for the purpose of gaining profit and the performer of the work fixed in the phonogram, but by paying the royalty to do the following:
   a) conduct public performance of phonogram;
   b) transmit the phonogram by aerial or cable.
2. Collection and distribution of the royalty provided for by the paragraph 1 of this Article is executed by one of those organizations, which govern the rights of the performers and phonogram producers on collective basis.
3. The amount of the royalty and rule of its payment is defined, on the one hand, between the phonogram users, and, on the other hand, one of the organizations administering the economic rights of phonogram producers and performers on collective basis. If the parties fail to reach the agreement the amount of the royalty shall be determined by the State Agency of Copyright and Neighboring Rights. The amount of the royalty shall be determined for each form of phonogram use.
4. Users of the phonogram shall submit to the organizations mentioned in the paragraph 2 of this Article the programs (plans) including the precise information on the amount of phonogram use, as well as other certificates and documents needed for collection and distribution of the royalty.

CHAPTER VII. SPECIAL PROVISIONS ON DATABASE PRODUCER'S RIGHTS

ARTICLE 54. DATABASE PRODUCER

1. The database producer able to prove, that he has carried substantial investments from the qualitative and quantitative point of view for purchase of database contents, verifying or representation, enjoys the exclusive right to prevent the withdrawal of its whole contents or significant part evaluated qualitatively or quantitatively and/or repeated use.
2. For the purposes of this Chapter withdrawal means transfer of the whole contents of database or its significant part permanently or temporarily on the other material carriers by any media or form, and repeated use means communication to the public of the whole contents of database or its significant part by leasing of copies, in dialogue or direct or other form of transmission. After selling of database copies, their further sale without consent of database producer is permitted.
3. Repeated or systematic withdrawal and/or repeated use of database contents insignificant part is inadmissible, if such action prevents its normal use and damages the lawful interests of database producer unreasonably.
4. The rights of database producer provided for by the first paragraph of this Article can be transferred to the other party under the contract.
5. The rights defined in the first paragraph of this Article are valid where the database is protected by copyright or not and its contents is acceptable or not. The protection of database in respect to the rights provisioned in the paragraph 1 of this Article shall not damage the related copyrights.

ARTICLE 55. RIGHTS AND OBLIGATIONS OF DATABASE LAWFUL USER

1. The producer of the disclosed database has nor right to prevent the database lawful user to take the insignificant part of database contents evaluated qualitatively and/or quantitatively and/or repeated use with any purpose. If the lawful user has the right to withdraw the part of database and/or the right on repeated use, this applies only to this part.
2. The action of the lawful user of disclosed database shall not violate the lawful interests of database producer.
3. The lawful user of disclosed database shall not violate the rights of the holder of copyright or neighboring rights in regard to the work or neighboring rights object existing in database.
ARTICLE 56. LIMITATION OF DATABASE PRODUCER'S RIGHTS

The lawful user of database is entitled to do the following without the consent of its producer:

a) withdraw for personal purposes the significant part of non-electronic database contents;
b) withdraw for illustration of study and scientific research material the significant part of database contents, by indicating of the source and in the volume defined by set non-commercial purpose;
c) withdraw and use repeatedly the significant part of database contents for the purposes of public security and administrative or court proceedings.

CHAPTER VIII. VALIDITY TERM OF NEIGHBORING RIGHTS

ARTICLE 57. VALIDITY TERMS OF NEIGHBORING RIGHTS

1. The performer's right defined by Article 47 of this law is valid within 50 years from the first performance. If within this term the record of the performance was lawfully disclosed or displayed publicly, this term continues for 50 years from the first disclosure or display.
2. The right of the performer on the name and on repeat of his reputation is protected without any time-limit. These rights are not transferred by inheritance. The protection of performer's personal rights, after his death is carried out in respect to the rule protecting the personal moral rights of scientific, literary and art works authors.
3. The right of phonogram or visual record producer provided for by the Articles 48–49 of this Law is valid during 50 years from the first disclosure of the phonogram or visual record. If within this term the phonogram or visual record was lawfully disclosed or displayed publicly, this term is continued from the first disclosure or public display during 50 years.
4. The right of broadcasting (cable) organization is valid during 50 years after first transmission of such organization program by broadcasting (cable).
5. The right of database producer defined by the Article 54 of this Law is valid during 15 years from making the database. If within this term the database is disclosed, the 15 years shall be calculated from the disclosure.
6. The change of the database evaluated qualitatively and/or quantitatively defined by the Article 54 of this Law, in particular, any significant change proceeding from annulment or correction enabling to determine from qualitative or quantitative point of view, that a substantial investment was conducted, creates possibility to give its own term to the database changed in result of such investment.
7. Calculation of the term defined by this Article starts from January 1st of the year which follows the year in which the legal act has taken place being the basis for calculation of said term.
8. The right provided for by this Chapter within the remaining time-period of the terms defined by paragraphs 3, 4, 5 and 6 of this Article shall be transferred to the legatees of the performer, phonogram or visual record producer and broadcasting organization, but in the case of legal entity - to his successor.

CHAPTER IX. PROTECTION OF COPYRIGHT AND NEIGHBORING RIGHTS

ARTICLE 58. INFRINGEMENT OF COPYRIGHT AND NEIGHBORING RIGHTS

1. Infringement of copyright and neighboring rights defined by this Law shall result in the civil, criminal and administrative responsibilities. The legal entity for infringement of copyright and neighboring rights shall be liable under the civil law.
2. The natural person or legal entity, who does not meet the requirements of this Law, shall be considered to be the infringer of copyright and neighboring rights.
3. The following shall be deemed to be the infringement of copyright and neighboring rights:
   a) deleting of the electronic information managing the right without the consent of the holder of the right;
   b) publication of the work or neighboring rights object by any means, when the person was aware or had the basis to know, that the electronic information managing the rights was deleted or altered without the consent of the holder of the right.

ARTICLE 59. PROTECTION OF COPYRIGHT AND NEIGHBORING RIGHTS

1. The holders of the exclusive and neighboring right can demand the infringer:
   a) recognition of the right;
   b) restoration of the state existing before the infringement and preventing of the actions infringing the right or creating the danger of its infringement;
   c) reimbursement of the losses, including the neglected profit;
   d) instead of the reimbursement of losses demand the confiscation of the income, obtained by the infringer by infringing of copyright and neighboring rights;
   e) instead of reimbursement of losses and confiscation of income paying the compensation, the amount of which is determined by the court;
   f) taking other measures related to protection of their rights, provided by the legislation of Georgia.

2. The measures defined by subparagraphs "c", "d" and "e" of this Article are applied by choice of the copyright and neighboring rights holder.

3. At determining of the reimbursement of losses the court shall consider the essence of infringement, the moral and economic damage caused to the holder of copyright and neighboring rights, as well as the expected income, which could be received by the author or other holder of copyright and neighboring rights at lawful use of the work or neighboring rights object. At compensation of damages the court expenses, including the representative and lawyer fees, shall be taken into account.

ARTICLE 64. ACTIVITY OF THE ORGANIZATION ADMINISTERING ECONOMIC RIGHTS ON COLLECTIVE BASIS

1. The authorization to administer economic rights on collective basis to organization is granted voluntarily by the holders of copyright and neighboring rights on basis of written contract relating to their membership of this organization, as well as on basis of contract on mutual representation conducted with the similar foreign organizations. Said contract is not a copyright contract and the Article 40 of this law does not apply.

2. Any author, holder of neighboring rights, their legatees, other holders of copyright and neighboring rights have the right to transfer their economic rights for administration to this organization, and the organization is obliged to administer these rights on collective basis, if administration of the given category of rights falls with the activity of the organization defined by the by-laws.

3. In respect to the rights obtained in compliance with this Article, the organization administering economic rights on collective basis grants the licenses to the users for using the work or neighboring rights object in respective form. The conditions of the licenses must be similar for all the users of the specific category. The organization is not entitled to refuse the user on granting the license without reasonable grounds.

4. The organization administering economic rights on collective basis is authorized to demand from the user of the work or neighboring rights object all those documents containing precise certificates on the use of the work or neighboring rights object, necessary for collecting and distribution of royalty.