UNIVERSITY OF TURKU
Faculty of Law

General Principles of International Copyright Law and the Utilization of Copyrighted Works within User-Generated Video Content on YouTube

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Master's thesis

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Abstract

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Social media platforms' role in society has been growing in the last two decades due to technological development. Introduction of these user participatory platforms has brought up new legal problems. The content uploaded on these platforms is consisting of user-generated and user-found content. Among other areas of law, intellectual property rights have been affected by this development. Considering the nature of user-generated content posted and uploaded on various platforms, copyright law matters have often been in the center of the emerging issues. The new challenges are deriving from the international environment of social media platforms, the nature of international copyright law, and the inadequacy of existing legal regulation to correspond to the new circumstances.

The intention of this study is two-fold. The primary aim is to assess whether the general principles of international copyright law are adequate to correspond to the issues deriving from utilization of copyrighted works within user-generated content. Thus, the legal issues are focusing on exceptions and limitations to author's exclusive rights and the required balance between the legitimate rights and interests of the author and those of the wider public. The user-generated content is limited to uploaded video material taking advantage of copyrighted audio and audio-visual works. Therefore, the study is naturally focusing on user-generated content uploaded on YouTube. The assessment is conducted by applying the general principles to the emerging issues. The application is supported by an analysis of official sources which are providing material on the application of the international legal sources on which the general principles are based.

As there are no generally accepted and established general principles in the field of international copyright law, the secondary aim of this study is to provide a basis for these principles. The identification is conducted by comparing international copyright law instruments and identifying extensive pattern of same terms between various instruments. Support is also drawn from human rights implications. The five identified principles are principle of national treatment, principle of automatic protection, principle of author's core economic and moral rights, principle of three-step test and limited exceptions, and principle of favored treatment of developing countries. The key finding of this research is that general principles of international copyright law are inadequate to correspond to the issues deriving from utilization of copyrighted works within user-generated content. This is mainly due to the narrow interpretation of exceptions and limitations to the exclusive rights. In addition, the required balancing between rights and interests of different parties is unduly favoring the authors. The discussed issues could be solved by various measures. These measures include drafting new international instruments, amending existing conventions, shift in interpretation of relevant international copyright standards, and other arrangements between countries, bodies controlling copyrights, and companies providing social media platforms.

Key words: Copyright, user-generated content, international law, general principles

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Abstract

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Sosiaalisen median merkitys on kahden viimeisen vuosikymmenen aikana ollut jatkuvassa kasvussa teknologisen kehityksen seurauksena. Tämä kehitys on tuonut mukanaan uusia oikeudellisia haasteita. Sosiaalisen median alustoille ladattava sisältö koostuu käyttäjiensä luomasta ja löytämästä sisällöstä. Kehityksen vaikutukset ovat kohdistuneet muiden oikeudenalojen tapaan immateriaalioikeuksiin. Käyttäjien luoman sisällön luonteesta johtuen tekijänoikeudet ovat usein olleet esiin nousseiden ongelmien keskiössä. Uudet haasteet juontavat juurensa sosiaalisen median alustojen kansainvälisestä käyttöympäristöstä, kansainvälisen tekijänoikeuslain luonteesta sekä voimassa olevan sääntelyn riittämättömyydestä vastata uusiin muuttuneisiin olosuhteisiin.

Tämän tutkimuksen tarkoitus on kaksijakoinen. Tutkimuksen ensisijaisena tarkoituksena on arvioida kansainvälisen tekijänoikeuden yleisten periaatteiden riittävyyttä vastata haasteisiin, jotka juontuvat käyttäjien luomasta sisällöstä, joissa hyödynnetään tekijänoikeuksin suojattuja teoksia. Näin ollen oikeudelliset haasteet liittyvät läheisesti tekijänoikeuden rajoituksiin sekä edellytettyyn tasapainoiluun tekijänoikeudellisen työn tekijän ja suuremman yleisön oikeuksien ja etujen välillä. Tarkastelun alainen käyttäjien luoma sisältö on rajattu videosisältöön, jossa hyödynnetään äänitteitä tai audiovisuaalisia töitä. Tämän vuoksi työn ala rajautuu luonnollisesti käyttäjien luomaan sisältöön, joka on ladattu YouTube -nimiselle sosiaalisen median alustalle. Yleisten periaatteiden riittävyys arvioidaan tutkimalla niiden soveltuvuutta olemassa oleviin haasteisiin. Soveltuvuuden arviointiin saadaan tukea analysoimalla viranomaislähteitä, jotka tarjoavat tulkintaohjeistusta kansainvälisen oikeuden lähteistä, jotka toimivat kansainvälisen tekijänoikeuden yleisten periaatteiden perustana.

Koska kansainvälisen tekijänoikeuslain alalla ei ole yleisesti hyväksyttyjä tai vakiintuneita yleisiä periaatteita, tutkimuksen toissijaisena tarkoituksena on tunnistaa ja luoda perusta näille periaatteille. Tunnistus suoritetaan vertaillen keskenään kansainvälisiä tekijänoikeuslähteitä keskenään ja tunnistaen tämä vertailun avulla toistuvasti käytettyjä normeja ja standardeja. Tukea tunnistamiseen saadaan myös muista kansainvälisen oikeuden lähteistä, kuten ihmisoikeuksista. Tunnistetut periaatteet ovat kansallisen kohtelun periaate, automaattisen suojan periaate, tekijän taloudellisten ja moraalisten ydinoikeuksien periaate, kolmen kohdan testin ja muiden rajattujen poikkeusten periaate sekä kehitysmaiden positiivisen erityiskohtelun periaate. Tutkimuksen keskeisin löydös on, että kansainvälisen tekijänoikeuden yleiset periaatteet eivät kykene vastaamaan haasteisiin, jotka johtuvat tekijänoikeuksilla suojattujen teosten käytöstä käyttäjien luomassa sisällössä. Tämä johtuu pääasiallisesti poikkeussäännösten kapea-alaisesta tulkintakäytännöstä. Lisäksi tasapainotellessa tekijän ja laajemman yleisön odotettujen oikeuksien ja etujen välillä, käytännössä suositaan kohtuuttomasti tekijää. Tutkimuksessa esiin tuotuihin haasteisiin voitaisiin vastata eri tavoin. Näihin keinoihin kuuluvat muun muassa kansainvälisten sopimusten laatiminen, aiempien kansainvälisten tekijänoikeussopimusten muuttaminen, muutos kansainvälisen tekijänoikeusnormien tulkintakäytännössä sekä muut järjestelyt valtioiden, tekijänoikeuksia valvovien viranomaistahojen sekä sosiaalisen median alustoja ylläpitävien yhtiöiden välillä.

Avainsanat: Tekijänoikeus, käyttäjien luoma sisältö, kansainvälinen oikeus, yleiset periaatteet

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1 Introduction

Social media platforms have become a central part of the internet. Their role in people's everyday life has been growing through time. These digital platforms offer their users a new possibility to create their own content in many formats in addition to keeping up with their friends, public figures, companies, and others. Today, it might be considered even a default value that more or less every individual uses at least some of the various social media platforms. Users of these platforms consist not only of individual private users but also of companies that are utilizing the platforms for marketing and raising awareness of their businesses through other means. Arguably, the possibility to utilize personalized targeting offers a useful tool for businesses to reach their respective audience. Therefore, ad revenues often generate a significant portion of income for the platform providing companies and for the users generating the content, especially for the so-called social media influencers. Nowadays there are rather voluminous economic incentives at play regarding social media and its users.

The basic characteristic for separating social media platforms from other digital platforms lies in the user-generated content (UGC) and user-found content (UFC) of which these social media platforms' content mainly consists. The difference between the two types of user-affected content is that user-generated content is created and uploaded on the website by the users. User-found content means sharing and distributing data and material that has been found on the internet and its platforms, generated by other users.[1] The typical characteristic of these digital platforms is that the same actors who consume the provided content usually function as the content creators simultaneously. Social media platforms have been labeled as "web 2.0"[2] which in itself highlights the difference from the more "traditional" digital platforms. Examples of these user participatory platforms are Facebook, Instagram, Twitter, and YouTube. These platforms offer their users to generate different kinds of content but also, have some similar characteristics depending on the platform. The content generated is typically, but is not limited to, status updates, photographs, and videos. Of course, while the "web 2.0" platforms have opened many possibilities, they do not come without generating new legal, and other, challenges. The new legal problems we face are diverse and manifold. These problems are created, for example, by the characteristics of the (user-generated) content uploaded and the international context in which the digital platforms and their users mainly operate. In recent times, privacy on the internet has been an overriding point of

[1] Gutierrez Alm 2014, pp. 106–107.
[2] Kim 2007, p. 1.

discussion regarding leading social media companies in the legal field since they are collecting a lot of data on each user.[3] This has led to governmental institutions taking action on the matter: a prime example of this is the European Union's General Data Protection Regulation, enforced in 2018.

Even though data protection and privacy have led the discussion in recent years it does not make other legal issues regarding social media and UGC any less important. One important and still rather vague issue has to deal with UGC and copyrights. This field can be approached from various viewpoints. There are issues regarding copyrightability of user-generated content[4], using previously copyrighted material on user-generated content and fair use of such material[5], liability regarding copyright infringements, and ownership of copyrighted user-generated content[6]. The list is not exhaustive. Many of the above-mentioned issues derive from the typical vagueness of copyright legislation and the international context in which these problems occur. Social media also makes it possible and rather easy for everyone to post content on different platforms quickly, whether in compliance with (copyright) law or not. This has made copyright infringements easier and quicker to commit than probably ever in history. The supervision of the content is typically retroactive. In addition, the international features of participatory media give rise to many questions by which no clear answers for specific matters cannot be given. Should national legislation be the main source of law in these matters, and if so, which country is competent to act on a specific case? What is the role of international copyright treaties? These questions are to be considered carefully because, as we will later discuss, copyright law has distinctive features from one country to another.

This research's focus is on UGC and international copyright law. The exact interest is in the utilization of previously copyrighted works within UGC. There are various questions and problems regarding the subject matter in need of some answers. Can the utilization of previously copyrighted material be in compliance with copyright law?[7] Are international copyright law and general principles of copyright law adequate to give answers to new issues stemming from UGC? Should international legislation be the source of law and applied regarding those issues?

The primary intention of this research is to find out whether international law and general principles of international copyright law are applicable and adequate to give answers to copyright issues

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[3] Claypoole 2014, pp. 1–4.
[4] White 2013, pp. 697–701.
[5] Newby 1999, pp. 1633–1664.
[6] Gutierrez Alm 2014, pp. 111–115.
[7] Ie. this would necessitate in the current legislative state that the usage of copyrighted material falls within the explicit exceptions made to the copyright holder's exclusive right or within the principle of fair use or other open-ended exceptions.

deriving from UGC that is taking advantage of copyrighted works. Of course, given the broadness of copyright law and UGC as a whole, I have been forced to make some reasonable limitations and exceptions. Otherwise, the work would become way too extensive. In this chapter, I shall bring out relevant doctrines, methods, research questions, and other preliminary aspects worth discussing. The aim of this is to bring forward justifications for different decisions made regarding the research and make the research and the thesis transparent for appropriate evaluation. In addition, the aim is to clarify the specific context and theme of the research. Next, I will discuss about the precise context of the subject matter and relevant legal doctrines. After that, the focus is on the theoretical framework and methods of the work. Finally, I shall bring forward the research questions and the structure of the thesis.

1.1 Scope of the Research

As discussed above, this thesis has to deal with UGC which takes advantage of copyrighted works created and owned by a third party. Due to the nature of UGC, some limitations have to be made in the first place. UGC consists, for example, of audio and video material, photographs, status updates, and other material, like comments and reactions. All various type of content is not possible nor appropriate to evaluate in the extent of this thesis. Therefore, I have limited the extent of UGC to cover video material. This type of UGC is most commonly uploaded on the social media platform YouTube which is why the focus is thus naturally limited to it. This also makes possible a more in-depth examination of the platform-specific issues. While it would be interesting to include more platforms, it is not the purpose of this work. Of course, due to the similarities between different platforms, some observations are applicable to other platform contexts as long as those have to deal with video material.

What was stated about the characteristics of UGC above, applies to the copyrighted material that is being utilized, as well. The material protected by copyrights varies greatly from paintings, poems, stories, and maps to musical pieces and audio-visual works, such as TV series and movies. The focus of this work is on the last two mentioned, audio and audio-visual works. At first sight, this may seem like too broad of a limitation. However, due to the characteristics and scenarios of utilization within UGC uploaded on YouTube, these outputs are treated similarly in most cases. This makes the examination of both types of copyrighted material suitable and functional. In addition, much of the content uploaded to YouTube deals specifically with audio and audio-visual works if previously copyrighted works are to be utilized. Of course, still, these works may be

utilized in many different ways, but it is part of the evaluation to pay attention to practices of utilization and whether various practices do result in different outcomes.

It is appropriate to bring forward in this context that the subjects acting in this field mainly consist of private actors. In this research, no difference is drawn between whether the subject is an individual, company, or other entity since it ought not to affect the issues and specific outcomes. These subjects are, in most cases, private on both sides of an alleged infringement, as copyright holders and content creators on YouTube. Of course, regarding international law, there is the question of whether international legislation may function horizontally between individuals, which needs to be addressed. Briefly, in my opinion, the answer is yes. Even though that may not be evident directly, international legislation functions at least indirectly and can be indirectly enforced between individuals for the respective matter. Copyright matters almost always include private parties and states rarely have any part in disputes or other matters. This would imply, taking the contents of the treaties into consideration, that the treaties are drafted with individuals and their rights in mind. Why then would it be reasonable to leave the general principles, as part of the international legal system, ignored in cross-border copyright matters between individuals and other private actors? This problem and inspection of how to enforce the relevant principles in disputes between private parties are beyond the scope of this thesis and therefore are not contemplated more in-depth. This is however an important premise to take into account.

1.2 Legislation and Doctrines

The legal aspect of the thesis has to deal with the standards of international copyright law that can be considered as general principles. There, in fact, are no generally accepted and established general principles of international copyright law existing. Therefore, identifying what can be considered as these principles in the first place creates a remarkable part of the research. How these principles shall be identified will be discussed more in the next chapter regarding the theoretical framework and methods. In this chapter, I shall provide the legal instruments, doctrines, and the framework in which the research lies.

1.2.1 Legal Framework

Copyright law is still traditionally regarded as domestic.[8] This is the current state regardless of a few international instruments which have tried to harmonize copyright legislation globally.[9] Because copyright legislation varies between countries, the problems faced in an international digital context have become more difficult to provide answers to. Since the focus of this work is on the utilization of previously copyrighted works within UGC, the interest lies especially in the limitations and exceptions to the copyright holder's exclusive rights and balance between rights and legitimate interests of the copyright holder and those of the wider public. These aspects, amongst other viewpoints of copyright, vary between countries as well. This in itself highlights the importance of harmonization of copyright legislation and the need for international regulation. The matter is made even more important considering the large economic, and other, incentives and rights at play on social media platforms.

Because the focus of this thesis is on international law, national law aspects are included minimally. However, due to the above-mentioned nature of copyright law, some attention must be paid to national legislations in order to provide background for copyright law in general. I have limited the national inspection to some countries that are members of the European Union (EU), the United States of America (US), and Canada. This limitation has been decided since most international treaties are drafted by these western countries. In addition, these western countries are the country of origin for many social media platforms discussed and conventional countries of use for these digital platforms. Also, the differences between civil and common law countries' legislations and legal copyright doctrines, in general, are possible to be brought up within this limitation. Also, this limitation is undeniably due to the writer's bias. I do recognize, as a European citizen, that it affects my limitation and where my primary interest lies. Canada is included for its rather new legislative piece regarding UGC which has no counterpart elsewhere[10] and is therefore worth pointing out, providing possible example for future initials in the field.

As mentioned, the main interest of this thesis lies in the international instruments regarding copyright law. Therefore, the focus falls on the three international treaties which can be regarded as the primary international treaties regarding copyrights. These include *the Berne Convention for the Protection of Literary and Artistic Works, WIPO Copyright Treaty (WCT),* and *the Agreement on*

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[8] Barbosa 2007, p. 44.
[9] These instruments include international treaties and conventions, bilateral treaties and other regional arrangements between countries.
[10] Blom 2014, p. 205.

Trade Related Aspects of Intellectual Property (TRIPS). The latter two have been drafted in light of the Berne Convention.[11] What makes these three the main international copyright treaties[12], is the role they have achieved in international legislation and relations. This is due, amongst other things, to the number of countries that are members of these treaties. For example, in the present day, there are 166 members to the Berne Convention, which arguably can be regarded as the most important international copyright instrument. In addition to these treaties, *the WIPO Performances and Phonograms Treaty* (WPPT) is a noteworthy tool as it is dealing with regulations specifically applicable to this research.

Unfortunately, when it comes to (international) case law there, in fact, is not a lot to work with. There can be found various reasons for this, but one obvious reason lies in the rather inefficient enforcement provisions of the Berne Convention. Disputes over the interpretation of the Berne Convention have never been brought before the International Court of justice (ICJ).[13] Still, for example, through World Trade Organization (WTO) the European Community has addressed and asked the US to explain how the US law of fair use complies with the articles of the Berne Convention and TRIPS Agreement.[14] In addition, there is one Report of the Panel provided by WTO which is of great help when addressing and evaluating the international standards for exceptions and limitations to copyright holder's exclusive rights.

1.2.2 Legal Doctrines

Most legal doctrines relevant to the research are deriving from the international treaties brought up and their articles. When it comes to the utilization of copyrighted works, the widely known doctrine of fair use is a key factor. Fair use -type regulation is included in many domestic legislations and in some shape or form. The most familiar of fair use doctrines or standards is the one deriving from the US legislation which gives one a rather extensive utilization right of copyrighted material. There are, however, enormous differences between countries regarding the limitations to the copyright holder's exclusive rights. In most civil law countries, there is no general fair use doctrine deriving from the legislation but there are usually more detailed lists of exceptions and limitations to copyrights and often they are reflecting usages that would fall within the fair use doctrine in the US and other common law countries. Nevertheless, the exceptions and limitations to copyrights are

[11] Goldstein – Hugenholtz 2010, pp. 46 and 74.
[12] In addition to their contents as all three are regulating copyright matters.
[13] Newby 1999, pp. 1645–1646.
[14] WTO IP/Q/USA/1, p. 4.

usually narrower in civil law countries and thus not every use falling under fair use doctrine is allowed there.

Fair use can also be viewed from the standpoint of relevant international treaties. For example, the Berne Convention includes the minimum standards for the protection of literary and artistic works and limitations and exceptions to those standards. All three previously mentioned primary international copyright treaties provide regulation traditionally called a "three-step test". This rather vague doctrine included in the treaties can arguably be seen as an international standard for the fair use of copyrighted material. Therefore, the three-step test is regarded as an important legal doctrine in this work. In this thesis, the term "fair use" is not limited to mean the conventional US legal doctrine, but it is used as a general term when discussing the utilization[15] of copyrighted works within UGC. In addition to paying attention to the exceptions and limitations of copyrights, there of course needs to be attention targeted towards the specific rights granted to the copyright holder that are protected rather firmly.

Some other doctrines require examination in the field of the thesis. One of those has to deal with the principle of territoriality. So-called "national treatment" and territoriality hold an important place in the international copyright regime. Because UGC is generated and uploaded on and downloaded from digital internet services the competent state to govern the matter is rather hard to establish. This holds true for many functions as global internet and connectivity have grown through the years. This is naturally one specific problem that the various international copyright treaties try to tackle through harmonization. In addition, there are certain human rights implications and aspects to consider which provide support for the analysis. Of course, copyright in itself is not regarded traditionally as a fundamental basic or human right although it may be argued to be the opposite.[16]

Within general principles of copyright law, the characteristics of copyrighted work are universal to some extent. These include, for example, the originality and some set duration for the protection.[17] Although some of these characteristics are not wholly legal, they are typically always part of the copyright legislation and since in need of attention. These characteristics must be considered when addressing the content which is taking advantage of copyrighted works.

All in all, finding and establishing, what can be considered as the general principles of international copyright law, is a central part of the research. In total, five of those principles were identified. Part

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[15] Explicitly *rightful* and *lawful* utilization of copyrighted works.
[16] *See e.g.:* Universal Declaration on Human Rights Article 27.
[17] Goldstein – Hugenholtz 2010, pp. 4–5.

of the sources of international law are customs and general principles of law. A legal construct may become a general principle or custom in various ways, for example, via an extensive pattern of treaties in the same terms.[18] This is the most important rule for identifying and establishing the general principles for this research. This is due to its natural application which is suited for the methods used and available sources. Of course, other international legal rules of recognition must also be considered when identifying and establishing the general principles. Considering the nature of general principles, the extensive pattern of treaties in the same terms -rule functions well, as something to be considered a general principle it must be at least accepted by the international community in general. An extensive pattern of treaties in the same terms is a great indicator of that. In addition, general principles of law function primarily as a gap-filling tool.[19] This is why general principles of international copyright law are well suited to tackle the issues faced regarding UGC on digital platforms and the use of copyrighted works, as the premise of this research is that the conventions' texts are inadequate to provide answers to the emerging issues presented.

1.3 Theoretical Approach and Methodology

When deciding on the theoretical approach and methods for my research, I have tried to find the best approach and methods suited to achieve the goal of the thesis. It has been argued that legal scholars may not simply choose any methodology and apply it as is. Rather there is no simple application of an approach to a specific question and methodology and the practice of research are bound up together.[20] This is a view I agree with and impose in this work. The main preliminary question guiding me when considering different approaches and methods has been "how do I find out whether the general principles of international copyright are adequate to correspond to the legal issues stemming from UGC on social media platforms?". Before that, the question of what can be considered as the general principles of international copyright law must be addressed. How do I have to analyze the relevant sources to find out the answers? Of course, the theoretical approach combined with chosen methods is adjusted to serve the purpose of this research. The topic can be approached from numerous, if not countless theoretical approaches and methods and their combinations, which may function even more appropriately than the ones I ended up with.

[18] Crawford – Brownlie 2012, p. 24.
[19] Andenas et al. 2019, p. 14.
[20] Cryer et al. 2011, p. 9.

1.3.1 Theoretical Approach

As mentioned above, the main source of international law of interest in my thesis is the Berne Convention and other international copyright treaties and their standards and provisions, and eventually, general principles. In order to find out about the principles' applicability and adequacy to correspond to legal copyright issues stemming from the UGC on digital platforms, some in-depth analysis will be needed. Of course, it is rather obvious that legal dogmatics are included in a master's thesis in law. Legal dogmatics focuses on the law in force. Legal dogmatics are inevitable as the applicability of relevant legislation needs to be solved. In addition, the relevant provisions of the Berne Convention and other treaties, in this context, need to be found in order to evaluate them. In lack of case law for this thesis' subject matter, the research focuses mainly only on the textual legislation and application of general principles, which are, therefore, the primary subject of the research. In addition, de lege ferenda -analysis is included to the required extent when considering various possible solutions and alternatives to the current issues.

Even though legal dogmatics are included in this thesis to the extent, that the focus is on current law in force, more precisely my theoretical approach towards the matter is consisting of legal hermeneutics and interpretivism. Law, according to positivist scholarship, is the positive written law drafted by legislators. In my opinion, the law is furthermost created via various interpretations made and required in real life. This applies on multiple levels. When a subject acting under the law is contemplating the applicability of the law to a specific case or lawfulness of a specific act, one is making interpretations of the legislation to the specific case at hand. This is obviously needed since law ought to be general, not drafted for specific occasions. For example, the legislation is interpreted, and through interpretation evolved, also in judicial bodies as the law is given new meanings in every specific case to the required extent. This view is why legal hermeneutics and interpretivism characterize my theoretical approach well. The critical approach and methodology applied in my thesis, discussed later, also makes the application of legal positivism impossible in practice within my thesis. Obviously, the establishment of general principles requires rather heavy interpretation as well.

Regardless of what has been brought up in this chapter, some more specific evaluation and explanation of the chosen theoretical approach and methodologies are required. When considering the methods and theoretical approaches to the thesis there are two further points that I found to require reflection. The first is how to analyze the data relevant to the thesis in order to find some answers. The second has to deal with the premises of the writer him-/herself. It is important to

notice, that every time we are writing about something, whether it was legal or not, we have at least some attitudes or biases towards the subject matter whether we acknowledge those or not. In my opinion, the reflection of those attitudes is important and through that, the most appropriate and suitable method and theoretical approach can be found. This has already been applied on a general level above. Of course, there are other things to consider as well, but that does not diminish the effect of those attitudes and biases. The whole context needs to be contemplated.

As I have familiarized myself with the theme and the subject matter of the thesis, I have found that I am taking a rather critical stand towards the subject matter and relevant legislation and its adequacy. This reflects my attitudes towards modern tech-related legal matters as a whole. Therefore, the premise for this research has to be the inadequacy of the international copyright law and even its principles regarding the issues at hand. Through this contemplating and evaluation, it is rather clear that a critical approach and related methods are the ones chosen. Critical approach and critical international legal studies can be seen as focusing on the contradictions, hypocrisies, and failings of (international) law.[21] However, there is no simple explanation for critical approach or methodology. Critical approach can be described as it is engaging in critique which highlights the difference from other approaches.[22] My approach to the research cannot be described as harshly critical, but rather my approach is taking a rather critical stand towards the subject matter and relevant legislation and its adequacy. Critical approach and methodology are nevertheless the best concepts to describe my theoretical approaches and attitudes toward the research in addition to legal hermeneutics and interpretivism.

1.3.2 Chosen Methods and Methodology

Critical methodology includes various methods. In my view, critical method or methodology can be seen as an umbrella term for different subcategories. All of these critical methods have still something in common which is the critical attitude towards the legislation and its application to the subject matter at hand. For me and for this thesis the main source, when contemplating the methodology and methods, has been Jorge L. Esquirol's piece called *Making the Critical Moves: A Top Ten in Progressive Legal Scholarship*. In that specific work, Esquirol brings up various critical "moves". Of these "moves", few are of relevance regarding this thesis, and these will be discussed

[21] Slaughter – Ratner 1999, p. 294.
[22] Cryer et al. 2011, p. 59.

next. After discussing the "moves" some other methods are worth bringing up and mentioning regarding the thesis.

Esquirol discusses in his paper about "moves" which regard gaps, conflicts, and ambiguities as well as dark sides, blind spots, and unintended negative consequences.[23] These "moves" are, in my opinion, and at least in the field of my thesis, inseparable. Therefore, both views are included in the thesis.

First, we shall focus on the starting point that Esquirol calls gaps, conflicts, and ambiguities. These are rather classic and self-explanatory within legal scholarship. According to Esquirol, this method shows how logical deduction from abstract concepts to legal outcomes is indeterminate.[24] In my work, the gaps-move is especially in the focus. I already discussed my premise for the research and therefore, it is natural to focus on these. The intention is to address the existing current gaps in international copyright law which are causing issues in the field and which the later identified general principles try to tackle. Of course, despite the premise that the identified general principles are inadequate to provide solutions, it might be, that the principles are adequate to tackle effectively the UGC and copyright-related issues deriving from the gaps in legislation. However, this is the methodological focus through which I am approaching the subject matter.

Secondly, the focus is on the move called dark sides, blind spots, and unintended negative consequences. According to Esquirol, these demonstrate that a legal right or a legal mechanism can be part of the problem.[25] For example, it can be argued that copyright legislation holds artists to a higher degree which may be part of the existing issues in the modern digital era. In my view, the dark sides, blind spots, and unintended negative consequences are tied to the gaps and ambiguities. More specifically, the dark sides, for example, are often caused by the existing gaps and ambiguities in the legislation. I, therefore, see that the methods discussed firstly are the cause for the latter. Specifically, regarding this research, the existing gaps in copyright legislation give rise to blind spots and unintended consequences of legislation. Therefore, it is almost impossible to just focus on either one since the research and its intentions would be left rather vague.

In addition to the methods discussed above, the comparative method must be given consideration. Here, the comparison is not intended to function between different national legislations. However, comparing and discussing the national differences in copyrights is inevitable to provide background

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[23] Esquirol 2021, pp. 1108–1112.
[24] *Ibid*.
[25] *Ibid.*

and understanding of international copyright. Still, my intention is to leave the appliance of this method with regard to domestical law to as slim as possible since the purpose of this thesis is not to be comparative research between national legislations. Above all, the comparative method has a substantial role in identifying what can be considered as the general principles of international copyright law. This is due to the fact that to identify general principles through the extensive pattern -rule, which I have found most suited for this research's purposes, requires examination of and comparison between the main international treaties regarding copyrights. Therefore, to find what I am looking for in the research, a somewhat detailed analysis of the relevant legislation is required. This means focusing on the relevant provisions and standards and bringing them forward regarding their applicability. That is why, when discussing about the methodology of the thesis, it has some inductive characteristics as well. This derives from the factual methodological selection and need. I am analyzing in detail the relevant pieces of legislation and then bringing them up to a broader level.

1.3.3 Research Questions

This thesis is practically divided into two parts. The first part of the thesis has to deal with the general principles of international copyright law. The most important task in this part is to identify what can be considered as those principles. In addition, I shall provide background on the role of general principles in international legal framework and briefly introduce the basic instruments of international copyright law and the characteristics of copyright law in national contexts. These are inevitable aspects that aid understanding the analysis of the thesis. In the second and primary part of the thesis, the focus is on the UGC utilizing previously copyrighted material. In that part, the issues shall be brought forward and the application of the general principles, identified in the first section, is taking place in order to find out whether they are adequate to tackle the existing issues. Lastly, the possible future sights, solutions, alternatives, and proposals are to be introduced.

Due to this division, there is one main research question included and a few sub-questions supporting the work. The first question is "what can be considered as the general principles of international copyright law?". The second, and primary, research question is "are the general principles of international copyright law adequate to correspond to the issues stemming from the utilization of previously copyrighted works within UGC uploaded on YouTube?". In addition to providing answers to these questions, I shall try to provide alternatives and solutions to the existing issues in case the answer to the latter question is "no". I have previously set out the limitations regarding the research and the research questions must be read in light of those decisions.

2 General Principles of International Copyright Law

2.1 General Principles in International Legal Framework

General principles are one of the three main sources of international law alongside international treaties and international customary law. According to the Statute of the International Court of Justice article 38, paragraph 1 (c) the Court shall apply, among other sources of law, the general principles of law recognized by civilized nations. This highlights the importance of general principles in the international legal context. The ICJ decides disputes that are submitted to it. For example, the terms of the Berne Convention are enforceable via ICJ although this possibility has never been practiced.[26] However, the general principles of international law ought to be enforceable regarding international copyright, as well as other, legal matters.

The application of general principles regarding the functioning of the ICJ is especially reasonable in order to provide judgments to matters that do not get support from the treaties' text or customary law.[27] As the world is getting more interdependent, there probably will be more reliance on international law and new issues will raise which neither treaties nor customary law is ready to meet.[28] In addition to interdependence, rapid technical development has arguably similar effects. Of course, there are certain problems regarding general principles and their application which may raise some negative attitudes towards the matter. They have been regarded, especially from the positivist viewpoint, as fluid and uncertain.[29] These arguments are grounded since there is no clear answer or template for what is deemed as a "general principle of law recognized by civilized nations". Therefore, the identification of general principles should be transparent. Despite the critique, it is noteworthy that courts are acting under duty to adjudicate. In challenging new circumstances drawing support from general principles may be inevitable as judgments and decisions shall be reasoned. There are various ways in which the ICJ has asserted general principles. These include, but are not limited to, convergence of municipal laws, recognition by states, and practice of states.[30] None of these nor other ways of assertion are, however, in isolation adequate to explain the creation of general principles.

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[26] Newby 1999, pp. 1645–1646.
[27] Bernardini 2016, p. 186. Also, the general principles of international law are often called "gap-fillers", which highlights this function.
[28] Bassiouni 1990, p. 769.
[29] Andenas et al. 2019, pp. 35 and 386.
[30] *Ibid.*, pp. 36–43.

The inspection of treaties with similar terms is one way of identifying the possible general principles of international law. This would imply that the extensive pattern of treaties with the same terms is establishing general principles.[31] This is a justified approach since a state acceding to and ratifying a treaty implies its willingness to be bound by its conditions. When there are multiple treaties with similar terms, their conditions can be regarded as laying down general principles of international law. In this case, attention must be paid also to the intentions of those treaties. The extensive pattern of treaties with the same goals may imply existence of general principles as well. This way of identification is, in the writer's opinion, a rather objective way of identifying general principles, and the principles are deriving from written treaties, which makes their identification more transparent. Also, due to the lack of case law within the international copyright framework, the reliance on treaties is reasonable. It is important to note that recognition by civilized nations does not mean recognition of every civilized nation when identifying general principles.[32] Therefore, the above-mentioned approach is suited. Of course, the more nations adhere to a treaty or treaties with the same terms and goals, the more grounded is the identification of international general principles based on the treaties. This approach is based on identification via international legal means which emphasizes its usability regarding the subject matter of this thesis. As mentioned, general principles of international law can be identified utilizing national means but due to copyrights characteristics, discussed later, those means are not as well suited here. Still, some support for the identification can be drawn from national copyright laws.

Since the importance and status of general principles in the international legal context are considerable and made clear above, the approach towards the issue at hand from the general principles of international copyright law is well-founded. This is, at least, the view of the writer. It is also notable that approaching the issue from this viewpoint makes it possible to make observations of the whole international copyright system and its goals rather than focusing on many bilateral and multilateral treaties separately. Also, the main task of general principles is to fill the existing gaps in legislation, which is why it is the best approach when addressing issues deriving from the inadequacy of treaty provisions.

[31] Crawford – Brownlie 2012, p. 24.
[32] Bassiouni 1990, p. 789.

2.2 International Copyright Law

2.2.1 Background and National Characteristics of Copyright Law

Copyrights are one form of intellectual property rights. Copyrights can be regarded as universal rights as copyright creates exclusive rights in literary and artistic works that are "original".[33] The term "literary and artistic works" should be interpreted extensively and it includes, in general, all different works regarded as original. Due to technological development, these works consist of many various works created through different means and this has later been addressed in various supplementing treaties. Since the works protected by copyright are so diverse it is more appropriate to focus on the originality of the work when defining copyrightable works generally. Deriving from this requirement, work needs to be original and somewhat unique to achieve copyrightability. Unfortunately, there are no general qualifications for the degree of originality or uniqueness that must be crossed. However, the assessment ought to be done case by case. Commonly, the work must have some level of distinctiveness. Ideas are not, however, universally protected by copyrights.[34] This highlights the importance of *expression.* The idea must be somehow expressed in order to be protected by copyright. The rights are usually granted to the author of copyrighted work unless some other arrangements are done before or after the work is created.[35] One important aspect of copyright is that it can be regarded as an automatic right. Unlike other forms of intellectual property, no application or other actions are typically needed in order for the work to be protected and to achieve exclusive rights. Of course, there are exceptions to this main rule.

What rights is a copyright holder then enjoying through the protection? Copyright provides rather extensive protection for the created work. These rights are commonly divided into economic and moral rights. The former includes, for example, reproduction right, distribution right, right to communication of the work to the public, and various other rights that have only expanded through the technological development.[36] The moral rights secure the bond between an author and the created work, and these rights include, for example, the right to claim authority of the work and the right of integrity. The moral and economic rights are often in part overlapping.[37]

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[33] Goldstein – Hugenholtz 2010, p. 4.
[34] Cass – Hylton 2013, pp. 100–104.
[35] Copyrights are transferable, for example, the copyright holder might transfer the economic rights deriving from copyright. Arrangements made before the copyrighted work is created include, for example, a work created in employment relationship and the created work is related to the employment. This is, however, dependent on relevant applicable legislation and other possible contractual arrangements.
[36] Goldstein – Hugenholtz 2010, p. 298.
[37] *Ibid.,* p. 348.

As stated earlier, copyright law is still largely relying on national legislations. It is argued that the principle of territoriality dictates that there is no international copyright.[38] This remains true despite the numerous bilateral and multilateral treaties and conventions existing in the field. Deriving from this, the extent of the exclusive rights under copyright and its exceptions and limitations varies from state to state. The current legislative state of copyright is causing problems in the modern worldwide digital environment especially, as the lines of territoriality have blurred.

The utilization of copyrighted works in a digital environment has to deal with fair use and other, more specific, exceptions and limitations to the copyright holder's exclusive rights. The US fair use doctrine may be the most presented and therefore the most important legislative piece to take note of in this context. This may be due to the seemingly US-centric YouTube environment. This doctrine establishes a more extensive exception to the exclusive rights under copyright than exceptions existing in other states.[39] This extensive exception mirrors the special place of free speech in the US legislative system.[40] Basically, the US fair use -doctrine allows the utilization of a copyrighted work if the utilization will result in greater public benefit than denying it.[41] Assessment is, of course, done case-by-case. The US Copyright Act includes some factors assisting courts in whether the use is fair. Of these factors, the transformative use doctrine may be the most remarkable here. The doctrine implies some sort of value addition to the use and thus highlights the distinctiveness requirement discussed earlier.[42] Value addition is an important tool providing a basis for evaluation when considering fair use within UGC.

In Europe and in EU member states the exceptions and limitations to copyright are commonly narrower. Even according to the EU's Copyright Directive (2001/29/EC) limitations to copyright must be interpreted narrowly.[43] In many European states, the legislation includes specific limitations to exclusive copyrights which all fall under the US fair use doctrine. On the opposite, every use falling under the US fair use doctrine is not compatible with the copyright laws of European countries. These limitations in European countries are typically related to educational purposes, scientific research, and reproduction for other than economic purposes. Because the limitations are narrower, the stance toward the utilization of copyrighted works within UGC in European civil law jurisdictions has been seemingly more negative. However, this should not be the

[38] Barbosa 2007, p. 44.
[39] Newby 1999, p. 1636.
[40] Goldstein – Hugenholtz 2010, p. 5.
[41] Newby 1999, p. 1637.
[42] Bunker 2019, pp. 2–3.
[43] Westkamp 2008, p. 33.

case as will be discussed later in chapter 3. In addition, despite the seemingly narrower approach to the exceptions and limitations of exclusive rights, both national courts and the Court of Justice of the European Union have started gradually applying a so-called "fair balancing" of all competing rights and interests at stake.[44] These are steps in the right direction.

Even though copyright law is relying on national laws there have been multiple international conventions drafted regarding copyrights. These conventions are often described as instruments aiming at harmonization of copyright through different imposed minimum standards. It is argued that harmonization implies the same law in all domestical jurisdictions, whereas minimum standards recognize that there are different methods of implementing copyright law so that every member reaches those standards.[45] However, in my opinion, it is correct to use the term (imperfect) harmonization since one of the goals of these conventions is to bring domestical copyright legislations closer to each other.

2.2.2 Berne Convention for the Protection of Literary and Artistic Works

Berne Convention, often regarded as the main international copyright instrument, consists of almost 200 member states which constitute a union[46] and is thus the largest international copyright convention. Berne Convention's roots lie in the 19th century[47] and it has been revised several times after its creation. Albeit the revisions the Convention was last revised with Paris Act in 1971. Considering the technological advancements since, the last revision has been a long time ago. However, it is important to note that despite being the primary copyright convention it does not function in a vacuum. There are several other conventions and other treaties about neighbouring rights supporting the international copyright regime. Due to the Berne Convention's status, its articles form the starting point for this, and many other, discussions and analyses.

The Berne Convention is based on three principles, and it lays down several provisions determining the minimum protection.[48] The basic principles are national treatment, automatic protection, and independence of protection. The first implies that works originating in one of the member states must be given the same protection in each of the other contracting states as the latter grants to the works of its own nationals. The second requires that protection must not be conditional upon

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[44] Izyumenko 2016, p. 117.
[45] Frankel 2015, p. 46.
[46] White 2013, p. 687. *See also:* Berne Convention Article 1.
[47] Goldstein – Hugenholtz 2010, pp. 10, 33–35.
[48] Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886).

compliance with any formality.[49] The third principle presupposes that protection is independent of the existence of protection in the country of origin. The last principle, however, is not unrestricted. The provisions determining the minimum standard of protection include provisions regarding both economic and moral rights. Despite the economic rights granted to the author of protected work, the Convention lays down certain limitations and exceptions on them. These limitations are commonly referred to as "free uses".[50] Article 9(2) of the Berne Convention includes maybe the most important exception of all in this context, called the "three-step test". This regulation is included to other copyright conventions in a little modified form as well. The Berne Convention's three-step test allows countries of the union to permit reproduction of protected works 1) in certain special cases, 2) provided that such reproduction does not conflict with normal exploitation of the work and 3) does not unreasonably prejudice the legitimate interests of the author. This means that all three factors must be considered when assessing whether the reproduction of copyrighted work is permitted or not. Most other exceptions, such as those for limited educational and press purposes, are left to national legislations[51], but they are commonly required to be compatible with "fair practice"[52].

2.2.3 WIPO Copyright Treaty

The WIPO Copyright Treaty (WCT) is an agreement under the Berne Convention. The WCT deals with the protection of works and the rights of their authors in the digital environment[53] which makes it particularly relevant to this research. The WCT's main goal, in addition to protecting the copyright holder's rights, was to maintain a balance between the legitimate interests of the copyright owner and the legitimate interests of the user.[54] This same balance lies at the center of this research and is thus particularly important. WCT was drafted in 1996 and consists of 120 members that have to comply with the provisions of the Berne Convention whether they are otherwise bound by it or not. Considering the age of the last revision of the Berne Convention, WCT was a welcome addition to the international copyright regime.

The key additions to the Berne Convention have to deal with the subject matter, rights granted to authors, and to some extent with the limitations and exceptions. The WCT mentions specifically

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[49] *See:* Berne Convention Article 5.
[50] Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886).
[51] Goldstein – Hugenholtz 2010, p. 41.
[52] *See:* Berne Convention Article 10.
[53] Summary of the WIPO Copyright Treaty (WCT) (1996).
[54] Khan – Farooq 2017, p. 1.

computer programs, whatever the mode or form of their expression, and compilations of data or other material in any form as protected by copyrights.[55] The new economic rights granted, in addition to Berne Convention's rights, to the author of protected work include the right of distribution, the right of rental, and the right of communication to the public.[56] When it comes to the exceptions and limitations, the Berne Convention's three-step test's application was expanded to all rights.[57] Regarding this research, this is a remarkable expansion of exceptions and limitations reflected also in other copyright treaties.

2.2.4 The TRIPS Agreement and Other International Copyright Treaties

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is the last international treaty at the center of this research and was introduced in 1994. TRIPS regulates trade-related aspects of copyrights among other forms of intellectual property rights. International copyright and trade are naturally closely linked.[58] As was brought up, the economic rights granted by copyright are generally transferable and the TRIPS is requiring protection only for those economic rights. In recent years we have seen various artists selling these rights to various companies. This, in fact, seems to be a growing trend, especially among music trade and older artists. The TRIPS is, like the WCT, drafted in the light of the Berne Convention. Thus, the TRIPS is requiring compliance with the basic standards of the Berne Convention.[59]

One of the main goals of including copyright regulation under the TRIPS Agreement was to enhance the enforcement of copyrights. This weak enforcement was seen as a barrier to international trade of copyright and other intellectual property rights.[60] Through the drafting of the TRIPS and the introduction of WTO's Dispute Settlement Body (DSB) copyrights were included in the WTO treaty regime with an enforcement body.[61] The enhanced enforcement can be regarded as the primary achievement and modification to the pre-existing international copyright regime. However, considering the indicated lack of case law in the scope of this thesis, it may be reasonable to question the real effects of enforcement achieved through the TRIPS. Regarding the substance, basic rights granted, and principles, of the TRIPS Agreement, it does not include remarkable changes to the 1971 Paris Act of the Berne Convention. However, the TRIPS is extending the

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[55] WIPO Copyright Treaty Articles 4–5.
[56] WIPO Copyright Treaty Articles 6–8.
[57] Summary of the WIPO Copyright Treaty (WCT) (1996).
[58] Goldstein – Hugenholtz 2010, p. 71.
[59] Overview: the TRIPS Agreement.
[60] Helfer 1998, p. 377.
[61] *Ibid.*

protection to related and neighbouring rights and, as mentioned, excluding the moral rights granted under copyright. The TRIPS Agreement Article 13 included a similar three-step test of the Berne Convention which was later included in the WCT. Therefore, the difference to the Berne Convention's respective rule is that it is not limited to reproduction only.

In addition to these three "primary" treaties, there are several other treaties regarding copyright-related rights. Bilateral copyright treaties and other regional arrangements are out of the scope of this work. Neighbouring rights treaties are mainly created due to the technological development through time regarding subject matters that were thus left unprotected by the Berne Convention. These include, for example, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations[62], Geneva Phonograms Convention, the WIPO Performances and Phonograms Treaty and the Brussels Satellite Convention. Neighbouring rights are closely connected to each other, and it is dependent on the national legislative approach whether these are seen automatically as part of copyright.[63] These treaties, although not at the center of the focus, are supplementing tools in the analysis of general principles of international copyright law and can be drawn support from. Special attention must be paid to the WIPO Performances and Phonograms Treaty (WPPT) which is applicable to the subject matter. WPPT deals with the rights of performers and producers of phonograms, particularly in the digital environment. It includes much the same rights included in the three primary treaties and a similar three-step test expanding to all rights rather than just the right to reproduction.

2.3 Identifying the General Principles of International Copyright Law

In the general outlook of the relevant copyright instruments above, there can be certain similarities already noticed. In this chapter, I shall present the legal rules that can be considered as constituting the general principles of international copyright law and the grounds that support those identified principles. There are five identified principles in total: *principle of national treatment, principle of automatic protection, principle of author's core economic and moral rights, principle of three-step test and limited exceptions*, and *principle of favored treatment of developing countries*. This analysis is not meant to be absolute or exhaustive. General principles can be identified through numerous other methods and instruments and some of the principles established here could be argued not to be read into the general principles' framework. Rather, this is meant to be one view of possible general principles in international copyright law and justifications for using them. Lastly, I

[62] Commonly referred as the Rome Convention.
[63] Goldstein – Hugenholtz 2010, p. 54.

want to emphasize here, that the identified principles are found and established based on my findings when comparing the previously presented copyright treaties and identifying the similarities between them.

Deriving from the status of the Berne Convention as being the leading international copyright instrument, its basic principles, which are reflected in the subsequent treaties and conventions, create a natural starting point for the analysis. In the previous chapter, it was stated that there are three basic principles of the Berne Convention: national treatment, automatic protection, and independence of protection. Each of these principles could be seen as part of the general principles of international copyright law backed by their position in international copyright and the number of countries adhering to the Berne Convention.

National treatment's importance in international copyrights may already be rather self-explanatory. It makes an appearance in all major multilateral copyright treaties.[64] I have already brought up that international copyright is still highly reliant on national legislations, and it may be argued that there even is no such thing as international copyright. National treatment is included in Article 5 of the Berne Convention. According to the article, authors shall enjoy, in respect of protected works, in other countries than the country of origin, the rights which their respective laws do now or in the future grant to their nationals, as well as the rights specially granted in the Berne Convention. This highlights the domestic legislation's position. The independence of protection can be read tightly into this principle. According to the principle of independence of protection, the protection in other states is independent of the existence of protection in the country of origin. There is one remarkable exception to this principle. That is, if a contracting state provides longer-term protection than the minimum standards of the Berne Convention prescribes and the work is not protected in the country of origin any longer, the protection may be denied once the protection in the origin country ceases.[65] In my opinion, this is an exception to the principle of national treatment as well. Hereinafter, the independence of protection is not separated from the principle of national treatment, and it is seen as a part of it, and therefore it does not constitute a general principle of its own.

In a broader sense, the principle of national treatment may be regarded as a function of the international law's general principle of territoriality. Basically, in my opinion, it is reflecting territoriality but in the context of copyright law. According to the principle of territoriality, a state's jurisdiction ends at its borders, and its competence does not exceed beyond those borders. Applying

[64] Brauneis 2014, p. 248.
[65] Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886).

the principle of national treatment leads to the fact that respective authorities apply their own law, alongside international instruments, to copyright issues raised within their territory. This comes with certain issues regarding the subject of this research but there are, of course, some benefits to that. For example, the processing of related issues is easier, more efficient, and faster when the authorities are applying laws familiar to them. This may create the legislative state clearer but unfortunately, it may be argued that this is not the case anymore due to the often-mentioned interdependence and technological development. However, I do not find it appropriate to establish the principle of territoriality as a specific general principle of international copyrights, even though that may be argued to the opposite. Of course, it would be rather naïve to exclude and leave it aside completely when discussing international copyright law.

The principle of automatic protection denies the protection to be prescribed by any formalities. These formalities are, for example, notices, registrations, deposit of copies, payment of registration or other fees, or domestic manufacture.[66] As mentioned earlier, this is a principle of copyright that reflects the basic characteristics of copyrights and protected works. However, formalities may create the copyright law more navigable and efficient.[67] There are once again exceptions to this principle. The rule applies only to foreign works. The country of origin of the work can impose formalities as a condition for protection.[68] This is deriving from Article 5(3) of the Berne Convention according to which protection in the country of origin is governed by domestic law. The Berne Convention allows in Article 2(2) that the countries to the convention may prescribe that works in general or any specified categories shall not be protected unless they have been fixed in some material form. In addition, I do not find any problems with voluntary formality measures since they may bring some benefits to the authors and to the public in general. Despite all that has been stated, in the context of international copyright law, the principle of automatic protection is a strong starting point.

Rights granted to the author of a copyrighted work are a central part of the copyright framework. They are those rights that constitute copyright. Copyright is in a sense an umbrella term for many various exclusive rights. An integral aspect of those rights is also the division between economic and moral rights which are also supported by the text of the Berne Convention.[69] In my view, it would be inappropriate to leave the core rights of the said categories out when considering the

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[66] Goldstein – Hugenholtz 2010, p. 220.
[67] Pallante 2013, pp. 1418–1423.
[68] Goldstein – Hugenholtz 2010, p. 220.
[69] According to the Article 6bis of Berne Convention, author has certain rights, such as right to claim authorship, independently of the author's economic right or transfer of the said rights.

general principles and basic standards of copyright law overall. When approaching these from the conventions' and treaties' texts there can be seen that certain rights are commonly recurring. Thus, the core economic rights considered are author's right to reproduction, right to public performance, and right to communication to the public. In the context of this research, the latter two rights may be better condensed as the right of making available, included in the WPPT.[70] One could make the argument that the right to translations of the works should be included also but, in my opinion, it is limiting the format in which the work is created or published too far and is thus left outside of the general principles. Of the three primary copyright treaties, only the Berne Convention mentions the protection of the author's moral rights. However, moral rights are backed by the Universal Declaration on Human Rights (UDHR) and they are included also in the WPPT. In my opinion, due to the typical characteristics of copyrighted works, moral rights granted are so integrated into them that it is not rational to leave them outside. The core rights read into the moral rights framework are author's right to claim authority and the right to the work's integrity. The latter means, for example, the right to object to any distortions, mutilations, other modifications, or other derogatory actions to the protected work that would be prejudicial to its reputation.[71] This, however, can be regarded as a too narrow or cautious interpretation of the core moral rights. Still, I consider this limitation appropriate.

In addition to deriving the core economic and moral rights from the statutes of international copyright instruments, it was already mentioned that those are supported by international human rights as well. The UDHR article 27 states that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." This clearly indicates that copyright regarding artistic works, such as musical productions, is included. Also, the material, including economic, interests resulting from such works are protected. It is important to note, that as the exclusive rights granted to authors are supported by human rights, the possible exceptions and limitations, discussed next, are also drawing support from them. Approaching the matter from this standpoint, we are dealing principally with right to expression and right to information.[72]

The most important identified general principle of this research has to do with exceptions and limitations to the exclusive rights of the copyright holder. This principle includes the three-step test and some other central and general exceptions that can be regarded as universal. However, I do not

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[70] *See:* WIPO Performances and Phonograms Treaty Articles 10 and 14.
[71] *See:* Berne Convention Article 6bis and WIPO Performances and Phonograms Treaty Article 5.
[72] Izyumenko 2016, p. 118.

find it appropriate to separate them as principles of their own for the sake of clarity and their objectives. I have already explained what constitutes the three-step test. The test has a central role in international intellectual property agendas.[73] Still, it needs addressing which form of three-step test can be regarded to be included in this principle: the Berne Convention's rule allowing the reproduction of copyrighted works, or the three-step test included in the WIPO's copyright treaties and TRIPS Agreement which extends the limitation to all exclusive rights. I would argue that the latter is the one in force and therefore a central piece of international copyright. This is implied by the fact that WCT and TRIPS Agreement were drafted after, but in the light of, the Berne Convention and the modified three-step test was included in both, as well as WPPT. When considering that copyrights always require a balance between the rights of the author and the larger public interest[74], it is reasonable to extend the three-step test to all granted rights, especially in the modern digital framework where issues are more diverse.

What, then, are the other central exceptions and limitations included in this principle? This is a question open to various interpretations. However, I have found two principal exceptions that are reflected in most domestical legislations and international treaties. These are the exceptions regarding the use of copyrighted works for educational purposes and informative or news purposes. These both serve a similar and important function in society and are thus included. In case the exclusive rights granted via copyright would cover these aspects, it would be a rather harsh limitation to the expected rights of the wider public. The right to education is one central human right[75] backing these exceptions, and the international community as a whole is even trying to enforce it in countries where it is not executed properly.

Through what was stated last, we can make a natural leap to the last general principle which has little to serve the purposes of this research though. This principle deals with the more favored treatment of developing countries. In all international copyright treaties, there are certain exceptions that apply to developing countries only. These provisions include, for example, that developing countries do not need to provide protection for all rights[76], financial assistance in order to participate in international copyright delegations[77], delay of application of agreements, and other financial and/or technical cooperation in favor of the developing countries[78]. These exceptions are

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[73] Wright 2009, p. 604.
[74] *See e.g.:* WIPO Copyright Treaty Preamble.
[75] *See:* Universal Declaration on Human Rights Article 26.
[76] Berne Convention Appendix Article 1.
[77] WIPO Copyright Treaty Article 15.
[78] TRIPS Agreement Articles 65 and 67.

made in favor of these countries in order to secure the fulfillment of basic human rights, such as the right to education. These reservations occasionally mean an exception to the copyright holder's rights. Even though this principle really does not serve the intentions of this research, I think it is important to note as a considered principle of international copyright law. The public interest seems to have more weight when balancing the different interests taking part in copyright matters regarding developing countries.

The above analysis of the general principles of copyright law is not exhaustive or absolutely correct. More analysis regarding the matter needs to be conducted through different methods and instruments and different conclusions can be absolutely made. I have attempted to bring forward a rather cautious analysis of the primary principles that can at least be considered as general principles in the international copyright framework. Now that the general principles have been identified it is time to turn to the appliance of these principles within the issues emerging from the utilization of copyrighted works in UGC uploaded on YouTube.

3 User-Generated Content on YouTube and General Principles

3.1 What is User-Generated Content?

Before discussing the issues that are emerging from the use of copyrighted works, we must pay attention to user-generated content and its basic characteristics. This will provide understanding on the emerging issues. I have already limited the scope of this thesis to UGC in video format and uploaded on the YouTube environment. In the present times, I would assume that every reader of this research has stumbled upon YouTube content in some of its various forms. YouTube has grown to become one of the biggest social media platforms. There may be several reasons behind that growth, but one reason lies in the ease of use of the platform and the fact that it is free to use.[79] There is no point to analyse or classify all types of UGC uploaded on YouTube: basically, the imagination is the limit, as long as the result of the work is in video format. The volume of uploaded content is enormous. In the first half of 2021, over 500 hours of video material is being uploaded on the platform every minute.[80]

What, then, separates the UGC uploaded on YouTube or other social media platforms from the so-called traditional video content created? There are a few differentiating factors. When thinking about non-user-generated video formatted creations, one considers movies, TV shows, and news broadcasts for example. Those are produced and broadcasted or published afterwards in some format.[81] There usually is no interaction between the audience and the producers of the work. In addition, producing and publishing a movie, for example, is costly and those are often published and released to circulation by producing companies. Thus, everybody does not have the access to produce and publish the creations with conventional means. Of course, one can create a privately published movie but may face difficulties in finding a platform for the publication or otherwise draw the needed attention to the work in order to publish it in the mainstream. YouTube has introduced a way of getting rid of those existing barriers. It does not set any quality preconditions[82] for the video: the video can be a two-second video filmed with your phone or a full-length highly

[79] Breen 2007, pp. 155–156.
[80] YouTube Copyright Transparency Report H1 2021, p. 1.
[81] Noteworthy that, for example, news are often broadcasted live, not published afterwards.
[82] There are, of course, some restrictions for the uploaded content set out in the YouTube Community Guidelines. These concern, for example, content including sexual content, vulgar language, firearms, harassment, hate speech, and misinformation. There are different possible actions taken towards the violations of these guidelines. The video may be age-restricted or removed from the platform completely.

produced show or movie. Videos can be also published on the platform rapidly with a computer or other technological devices, such as smartphones.

One of the basic reasons behind the separation from conventional material is that YouTube offers rich features for social interaction.[83] YouTube is first and foremost considered a remarkable social media among various leading digital platforms. People may react and comment on uploaded content and subscribe to other users. The term "user-generated content" already implies the basic environment of the content uploaded as the same people are the users and creators of most of the content. Of course, there are certain exceptions to that, but it is nevertheless the vast majority of the UGC. All these aspects mentioned here highlight the difference from the more traditional ways of publishing video material but also makes it evident why copyright infringements are easier and quicker to commit than ever. Because it is possible to upload UGC with ease by anyone, there are a lot of users who probably do not consider the possible copyright issues or maybe are not even aware of those at all. This is why I think raising awareness on the issue is important and via that awareness, many of the problematic situations could be avoided. There is even a separate part for copyrights in YouTube's Terms of Service to which a user has to agree with before using the platform. Unfortunately, I believe it is quite a small proportion of the users that read a single word of the terms in reality before accepting them.

3.2 The Use of Copyrighted Works within User-Generated Content

Due to the practical limitlessness of content uploaded and published on YouTube, previously copyrighted works may be utilized in various ways in those uploads. Before going any further, I want to make a clear division between two practices in which copyrighted works are being used within UGC. It is unfortunate fact that when a wide audience is given the possibility of uploading basically any type of video, people will consciously misuse and abuse that possibility. This becomes evident as private persons may take whole films, episodes of TV series, or produced music videos or music in audio form only, and upload those on the platform as their own. One reason why these actions may be taking place when the uploaders are trying to get unfair economic benefit. It is apparent that uploading a world-famous movie, for example, tends to get a lot of views on the platform. The fact that the revenue generated via the uploaded content depends, among other factors, on the number of views the video gets, makes clear the false incentives behind the upload. Nowadays, YouTube is utilizing artificial intelligence and algorithms for the automatic removal of

[83] Susarla et al. 2012, p. 23.

this type of content[84] which has diminished the effects of this type of unfair use. This type of content ought to be removed from the platform if it is uploaded without appropriate consent given by the real owner of the work. It is clear that these actions are in clear violation of copyright law and YouTube's Terms of Service.

The second practice in which copyrighted works are being used within UGC is where the focus of this work is. This means the utilization of previously copyrighted works with some value addition which constitutes use in a fair manner. This addition may be of a different degree which highlights the requirement for case specific interpretation. The utilization regarding copyrighted audio or video works may be used for different purposes, for example, for educational, informative, valuational, or pure entertainment purposes and the works may be modified. These purposes are contemplated more in-depth when discussing the legal assessment since some are relevant to one legal circumstance and others to another. Once again, only the imagination is the limit when considering the practices and ways in which the copyrighted works can be utilized. Therefore, it is hard to establish clear conditions for the content which is being discussed here. I am, however, focusing on utilization that in conventional context should fall under the exceptions and limitations to the author's exclusive rights, such as fair use. The assessment always requires interpretation done case by case.

As may be perceived from the previous two sentences, the premise and starting point for analysis of this research is that the same legal rules and standards applied to conventional contexts or applicable standards in general, are not applicable to UGC regarding the use of copyrighted works. In addition, the legitimate rights of the wider public are often neglected. I will first provide the real-life state of using copyrights within UGC and afterwards provide legal reasons behind that ongoing situation. I would like to remind here, that the analysis is largely based on the views and experience of the writer speaking from inside the current state of UGC and copyrighted works. However, objectivity is the goal and analysis will be supported by other sources as well.

The ongoing main issue regarding the utilization of copyrighted works present at the moment has to deal with the rights of the users that are creating and uploading UGC which takes advantage of copyrighted works. The reality of using copyrighted works is that it is being denied completely at large. A good example of this is that I have stumbled upon cases where the performer is playing a two to three-chord progression with his instrument and the video may be removed completely due

[84] YouTube Copyright Transparency Report H1 2021, pp. 1–3.

to a claimed copyright infringement. Also, if copyrighted music is played for even a couple of seconds, the video may be removed or other sanctions may follow, such as warnings. Warnings may affect the commercialisation of the video and future videos.[85] Demonetisation is an often-used term in this context which means that the revenue created through the publication of a video is being denied for the uploader and is instead credited to, for example, the copyright holder of utilized work either wholly or partly. In addition to this, the content creators often face a hard time when trying to appeal these actions as they are often facing big corporations on the opposing side, whether YouTube or other companies supervising the use of copyrighted works. YouTube's copyright infringement procedures are based on the desire of copyright holders and possibilities to make counterclaims are limited.[86] YouTube has stated that rightsholders are the only ones in a position to know what is and is not authorized use of their works.[87] This statement must be approached critically. This means that the copyright holder may dictate, for example, how long of a use is authorized in a video[88]: whether it was 5 minutes or 5 seconds. This all leads, at the moment, to the undue override of the uploaders' legitimate rights and other interests. The problem is apparent when the video should in normal circumstances use copyrighted works in accordance with copyright law and its doctrines, such as fair use. What makes things even more complicated is the previously mentioned fact that YouTube is relying continuously more on artificial intelligence-based machines and algorithms making these decisions.[89] This itself creates its own legal challenges to legal security that are beyond the subject matter of this thesis. In addition to causing unfair economic and other harm to the creator of said UGC, in a modern digital context, the actions taken may result in harm to the copyright holder. This aspect will be discussed more later.

There can be various reasons found behind the current state of events, legal and other. In the first chapter, it was brought up that regarding UGC on YouTube there are challenges in identifying who is liable for copyright infringements. YouTube, and Alphabet Inc. to be excise, has itself faced legal actions where it has been deemed liable for infringement that has taken place on its platform. Therefore, YouTube has taken measures to limit copyright infringements taking place on the platform. In addition to other reasons, these measures taken are also intended to effectively avoid the company's liability if an infringement occurs. It is not a new phenomenon that platform providers are often taking measures in fear of their own liability. This, in my opinion, is the main

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[85] YouTube's Community Guidelines.
[86] McSkimming 2012, pp. 1773–1776.
[87] *Ibid.*
[88] *Ibid.*
[89] YouTube Copyright Transparency Report H1 2021, p. 4. According to the report 99 % of actions taken against copyright infringements were based on the automatic Content ID -system.

reason behind the current state of things. The platform is taking the needed measures in order to avoid liability and that is, unfortunately, done at the expense of the UGC-creators and their rights. However, it is important to note that the goal of the measures is not to harm the content creators or override their legitimate interests. The liability issue and overall control on what is being uploaded are challenging since YouTube is only a platform where anyone can upload basically anything. There is no real connection between the uploader and the platform. Once again, when comparing to corporations acting in the film and music industry, the people are for the most part tightly working under the company's name and therefore under some control, and establishing liabilities is not as difficult as in the digital social media context.

Next, we shall turn to the possible legal reasons that are affecting the situation and, in part, making the current practices of YouTube possible. Firstly, the international treaties and most of the domestic laws were drafted a long time ago. Therefore, those often fail to consider UGC, and other possible means made possible through technological development. One does not look further than the names of the existing copyright and related treaties: we have, for example, the Brussels Satellite Convention and International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Television and radio broadcasts are appearing in the names and those have specifically been considered when drafting the treaties. National copyright laws often bear the same problems but there are certain exceptions. For example, Canada has enacted a law that allows the use of copyrighted works within UGC.[90] However, this applies only to "non-commercial" UGC which may cause some other issues, so the legislation is not complete, at least, not in my opinion. Is UGC non-commercial if it is uploaded on YouTube, but the advertisements have been taken off and possible revenue rejected? YouTube has even reserved the right of commercialising the UGC uploaded in its Terms of Service so the non-commercialisation seems not to be dependent on the uploaders will. Nevertheless, this piece of Canadian copyright legislation sends an important signal to other countries and is one step in the right direction.

Secondly, even though the legislation and rules are aged, there should be, in my opinion, no reason to limit their applicability to new circumstances. The negative stance towards expanding the interpretation is another reason behind the gaps or inadequacy of already existing copyright law. Adopting new, mainly broader interpretations and adapting to new challenges is something that can be responded to with existing legislative tools to some extent. This is a matter discussed more later.

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[90] Blom 2014, pp. 205–207.

The third legal reason I want to bring forward behind the current events is the international copyright legislation's territoriality and reliance on domestical laws. YouTube, like other social media platforms, operates in an international digital context where the user's physical location and borders of countries play no part. Of course, in practice, there can be for example so-called "geo-blocks" for certain videos, but the basic starting point is the independence of the user's location. This will also be discussed more in-depth later as the national treatment was identified as one of the general principles of international copyright law.

The legal reasons making the current state possible are not limited to those mentioned above. In addition, I would argue, that copyright legislation, whether national or international, tends to put copyright holders on a higher degree in comparison to wider audience. The basic starting point and principle of copyrights integrated deeply into the copyright regime is the required balance between legitimate rights and interests of authors and those of the wider audience. As pointed out, this is even mentioned in some international treaties.[91] However, this balance is not taking place as it should, due to the wording of the legislation and narrow interpretation of the regulation in relation to the interests of other actors than the copyright holder. I would thus argue that the defects in legislation are in themselves contributing to the existing issues.

Now that the UGC characteristics, the current state of use of copyrighted works, issues existing with that use, and reasons for the issues are provided, we may turn to the general principles identified earlier. In the next chapter, we shall assess the existing issues from the standpoint of the general principles and research their applicability and adequacy regarding those issues. It is also important to assess how these principles are to be applied and interpreted when used. The identified principle of more favored treatment of developing countries is left out as it does not directly affect the issues at hand for this analysis.

3.3 Application of General Principles to the User-Generated Content Issues

3.3.1 Principle of National Treatment

Considering what has been stated in this thesis thus far, it is no surprise that the principle of national treatment offers little help to the existing issues addressed. However, its firm place in the international copyright framework cannot be neglected. As I have brought up, I see national treatment functioning as a principle of territoriality in the field of copyrights. But as courts have

[91] *See:* WIPO Copyright Treaty Preamble.

relaxed on territoriality principle in some fields of law, this has not extended to copyrights.[92] When considering national treatment as a general principle which function is to be a gap-filler in ambiguous cases, it is highly pointing toward national legislation. This means, that the case at hand ought to be resolved according to the law of the state which is competent to act on the matter. As has been pointed out, there are various multi- and bilateral copyright treaties between different states. If the principle of national treatment is to be applied, it would imply that in an ambiguous disputable matter the national legislation has ultimately the superiority when compared to other copyright instruments if those are inadequate in providing answers.

Complying with the aforementioned is possible and, in fact, it reflects the current state of copyright affairs to some extent. Copyright law is still dependent on national legislation for many parts. However, there are certain challenges with the application of this principle. First, deciding the competent state in each case comes with challenges. When talking about copyright infringement inflicted by UGC uploaded on YouTube, which state should be competent if all three parties are located in different countries? Is it the country where the company providing the platform, in this case Alphabet Inc., is located, the country of residence of the copyright holder, or of the uploader of the video? The possible competent states are not even limited to those three. One could also make the argument, that the competent state is the state where, for example, the servers of the platform are located or where the video was uploaded or downloaded. When we add to the mix the different national laws, the outcome of a specific case could be very different from one state to another. When dealing with UGC, the Canadian non-commercial user-right has no counterpart anywhere else.[93] This illustrates well that the outcome of the dispute would be very different from many other states.

In addition to the technical challenges posed, one could make the argument that the principle of national treatment is against the spirit of the Web 2.0 digital environment in which the users operate. This is a view I agree with cautiously. Of course, on social media platforms, the users are acting in a borderless environment, and often the actions and their consequences are to be seen as unified among users. I would imagine that applying the same rules to all YouTube's users would be desired by the platform as well and make the functioning on the platform more efficient. That is achieved at some level by the Terms of Service, but YouTube must always consider the laws of the respective states when drafting them which is why they are not the same for every user. However, I

[92] Goldstein – Hugenholtz 2010, p. 95.
[93] Blom 2014, p. 213.

do see this goal as utopian for the most part. So long as states exist with their own laws, including copyright law, complete harmony will not be possible and perhaps even should not be desirable.

In conclusion, it is the view of the writer that the application of national treatment easily leads to creating a complicated situation. When contemplating UGC disputes, it would in practice provide a clear rule that national law governs, period. Still, it creates a load of other questions that must be answered before a case could be solved. It could possibly cause unreasonable rights infringements or harm to a private person if one should answer to a lawsuit on the other side of the world and one's rights are thus neglected. On the other hand, it would not be appropriate that a private copyright holder should do the same in order to protect his/her legitimate interests and rights. YouTube's integral copyright infringement system is existing for these, but it is not judicially binding. In the worst scenario, copyright infringement incident must be brought before justice if no other resolution is to be achieved. The principle of national treatment and overall territoriality and reliance on national legislations is one of the primary reasons why some solutions, alternatives, and overall updates to the existing system must be taken into consideration when UGC is in question. These will be discussed in the fourth chapter.

3.3.2 Principle of Automatic Protection

The principle of automatic protection implies, that in absence of other regulation, works are to be protected automatically without any fixation requirements. However, this is not an unconditional principle, and automatic protection is granted if states have not prescribed any formality requirements. These requirements can be set out in general or for specified works.[94] Automatic protection focuses on the copyrightability of works which is why it does not offer much help regarding the issues at hand. Few notions on the matter are however appropriate to make.

When dealing with UGC which is in video format, the fixation usually does not cause problems. Of course, the videos are uploaded on the platform but before the upload, those are already fixed and exist somewhere else, for example on the hard drive of a computer or on a smartphone. That is why the only noteworthy point to make regarding the issue and principle at hand is, that UGC on YouTube which is not in violation of copyright law ought to be protected automatically if nothing else has been prescribed. The possible fixation requirements face challenges when those are to be applied to other types of UGC, namely blog posts and status updates that do not exist anywhere

[94] *See:* Berne Convention Article 2(2)

else.[95] That is why I think that the principle would be useful in that context when other sources do not provide a clear answer whether the respective piece of UGC is protected by copyright. If ambiguous situations are faced, the principle should rule that this type of content enjoys copyright protection automatically. However, there are also different ways to resolve these existing problems.[96]

3.3.3 Core Rights of the Author

In the previous chapter, I have laid down the core economic and moral rights granted to the author of a copyrighted work. Of these rights, right to the public performance, right to communication to the public, right of making available, right to claim authority, and right to the work's integrity are of importance. The first three are considered as the core economic rights of the author which are transferable. The last two are moral rights that typically remain in the author's ownership, regardless of a possible transfer of economic rights. This principle must always be assessed and balanced together with the next principle that deals with exceptions and limitations to these exclusive rights. I shall however here point out what this principle and its interpretation would mean if it was to prevail and applied by itself to a specific case.

First, we shall start with the economic rights. Because these rights are transferable and, for example, music is often produced under various production companies, it is often those companies that supervise the rights. This applies especially to popular music or video works that are often the interest of UGC due to their significance and popularity. When UGC is uploaded on YouTube it may be seen as communication to the public and making the material available. One could argue that it also includes publicly performing the material. That is why it is not important to further categorize what is the specific right governing. The term "making available" is appropriate to use, as the other two can be seen included according to the wording. The availability requirement also implies that some form of publication is needed in order to exercise these rights. The legal problems with modern technologies lie in the requirement of publicity.[97] Therefore, uploading UGC utilizing copyrighted work and making the video private is excluded here. As a general rule, it may be stated that private non-commercial use is always allowed. The same must apply to UGC. But when discussing the issue at hand, published UGC, it is clear in my opinion that the material is made

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[95] White 2013, p. 689.
[96] *Ibid.,* p. 707. The problem can be resolved by requiring a deposit of permanent copy of the UGC to intellectual property offices, for example.
[97] Goldstein – Hugenholtz 2010, p. 328.

publicly available as YouTube is free to use for the users[98] and most people nowadays own means by which to get access to the content. In addition, international treaties and national laws are often filled with different means of making available. I do not find it appropriate to rely on the specific means as usually "any" means are included. When contemplating the spirit of copyright and exclusive rights granted, it should not be a matter of means when the rights are applicable and to be protected. Thus, these rights are to be exercised in the UGC context as well.

Approaching the issue from the economic exclusive rights, it would deny every commercial use of copyrighted work without given consent from the copyright holder. Alternatively, it entails, that possible revenue made through the utilization ought to be credited to the author principally in full. Approaching the subject from this standpoint would not make difference in how or how much the copyrighted content is to be utilized. As brought up previously, this is an equal view to the current practices on YouTube. As pointed out, this approach would not have any effect on private non-commercial use.

The matter of moral rights is however two-fold. I do find that the right to claim authority is unconditional but the right to the work's integrity is not. Moral rights are distinct to copyrights and highlight the personal connection between the author and the work.[99] The same kind of connection cannot be identified with regard to many other intellectual property rights, such as patents. That is why authorship is important in relation to copyrighted works. That is also why claiming it is an integral part of the copyrights. However, regarding UGC, it does not mean that if a copyrighted work is being used within it to some extent, the copyright holder ought to claim authorship of the whole video.[100] This, unfortunately, is basically the current state of events as videos are removed or revenues are directed wholly or partly to the author of the copyrighted work, even if the work is used in a small proportion that does not constitute an integral part of the video even in part. I would argue that this right regarding UGC means, that author must be credited to the extent the material is used unfairly. When utilizing copyrighted works, it is appropriate to point out the author transparently, even if the use would be in compliance with copyright law. This is deriving from the personal connection mentioned previously and is affecting the fairness of the usage.

However, I do find that the right to work's integrity is flexible. Often, the protection of economic rights can be achieved via the publication of the work. Without publication, it is hard to gain

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[98] There are certain premium-subscription options but those are not required in order to use the platform how it is intended to be used.
[99] Rajan 2011, p. 7.
[100] UGC often constitutes a copyrighted original work in itself with the same rights granted to the creator.

economic benefit which is to be protected. The publication comes with certain expenses. Through it, the work is exposed to modifications and other uses that cannot be denied in every scenario without infringing the rights of the wider audience. This line of reasoning is also present in copyright law literature and some national legislation and case law.[101] This, in my opinion, extends to appropriate modifications and uses which leave out insulting, harmful, and offensive utilization of the work. This, once again, is deriving from the personal connection set out. We have seen examples where, for example, certain artists have denied the use of their music in Donald Trump's campaigns although not without opposition.[102] This may be justified through the personal aspect if the author experiences the use as insulting or offensive to the work's or author's integrity.

All in all, approaching the ambiguous utilization cases from the principle of author's rights dictates that every use should be in compliance with author's consent. As stated, the principle is not unprescribed and must be balanced with the following principle. It is the basic priority of copyright law: balancing between the legitimate rights and interests of the author and those of the wider public. Therefore, approaching or assessing the issue from only the standpoint of either of these is not appropriate or desired.

Finally, it must be noted that the rigid and dominant interpretation may cause harm for the authors themselves in the modern digital context. As has been brought up, the interpretation is often done from the standpoint of copyright holders, and they are dictating the rules of the YouTube environment. As we will discuss next, the interpretation of exceptions and limitations is narrow, allowing little utilization of protected works. This interpretation is often used and derived from the spirit of (international) copyright law. Therefore, the legal instruments themselves cause the too narrow exercise of rights of the wider public. As mentioned, the fact that all use of copyrighted works is currently being denied within UGC causes arguably harm also to the authors themselves. UGC reaches wide audiences, especially younger people and while they are utilizing copyrighted works, they are raising awareness of different authors and their works. This leads to more people finding out about the works, which subsequently leads to more people consuming the works of the author. This all leads to economic, and other, benefits for the author. This applies especially to aged works and authors lacking popular recognition. I would argue that awareness of those would not be achieved in the same target audience without UGC. This is a view I strongly agree with and that is

[101] Menis 2011, pp. 52–53. For example, in German legislation it is evident that considering economical rights, there is a strong notion of public interest. Exercise of economical rights is required to be conducted in a way as to promote social good.
[102] O'Neil 2018.

being neglected as the exclusive rights are being exercised in this context. This is something that authors or other entities exercising the rights should be paying more attention to, even in borderline cases where the use of work may not be falling under the exceptions and limitations of the author's exclusive rights. Fortunately, for example, some video game companies have noticed this advantage and are not interfering with the use of their copyrighted video games within UGC although the companies would have the right to deny the use regarding content that is not crossing the required value-addition degree in order for the use to be in compliance with fair practice.

3.3.4 Three-Step Test and Other Exceptions

It is no surprise that the primary focus of this work is on the principle of three-step test and other limited exceptions and limitations regarded as general. The issue we are dealing with is closely connected to the exclusive rights of the author and allowed exceptions and limitations to those rights. In this chapter, I shall point out first the application of the three-step test and afterwards the application of exceptions regarding educational and informative purposes which I have identified included in this general principle. I argue that the existing challenges posed by the inapplicability of these mechanisms may be resolved through a change in interpretation. Therefore, these legal rules are not inadequate per se, but some shift must take place from the current adoption and application of these rules. Here, of course, the treatment of these rules as general principles allows wider interpretation.

I have already specified which form of the three-step test is to be regarded as general and used here. The three-step test allows countries to make exceptions and limitations to copyright holder's exclusive rights 1) in *certain special cases* 2) that *do not conflict with normal exploitation of the work* and 3) *do not unreasonably prejudice the legitimate interests of the author*. Thus, there are three preconditions to this rule that must be fulfilled so that the utilization of copyrighted work is in compliance with law and does not infringe the rights and interests of the author. The test is also linked to countries' permission to draft exceptions and limitations. Thus, it must be specifically inspected is it possible to make exceptions or limitations regarding the issue at hand. However, the analysis also naturally evaluates the exceptions compatibility themselves. Are these three conditions then fulfilled regarding UGC and copyrighted works?

Firstly, we must determine whether utilization within UGC can be regarded as a certain special case. WTO has addressed three-step test in its report regarding US section 110(5) of Copyright

Act.[103] This report offers help on how the test is being interpreted in the current legislative framework. The WTO Panel stated in its report that exceptions based on certain special cases "should be narrow in quantative as well as qualitative sense".[104] This would imply that UGC uploaded on YouTube cannot be included in the three-step test-based exception. The volume of uploads on YouTube has been pointed out earlier. This interpretation is the main reason why three-step test is inapplicable regarding UGC and highlights the realism of favored treatment of copyright holder's rights that is integrated through the international copyright system. When considering whether UGC constitutes a certain special case in general, attention quickly turns to the fact that the UGC we are dealing with here consists of many different and varying types of videos. However, I would still argue, that the other two steps are there for a reason. Those are denying unjustified utilization of copyrighted works that should not be allowed. In my opinion, UGC could constitute a certain special case but that would require a rather large shift in interpretation which is why I do not see it probable. Still, it arguably would be a rational and more efficient way to adjust to current development in the field than completely new legislative pieces for example.

If UGC could constitute a certain special case according to the three-step test, would it fulfill the other two preconditions? The two others are setting conditions for the exploitation itself and would, in my opinion, set an acceptable international standard that is comparable to the fair use -doctrine to some extent. The second precondition prescribes that the utilization of copyrighted work should be in accordance with "normal exploitation". The term can be assessed in different ways, for example, it can be tied to what an author may reasonably expect regarding the exploitation of protected work[105] and the actual or potential economic harm that is deriving from the exploitation must be taken into consideration[106]. In addition, the exploitation should be assessed separately for each exclusive right[107] but assessment right by right is not appropriate here. I would argue that utilization within UGC would be acceptable when considering both aforementioned factors. In the previous chapter I already pointed out the potential economic benefit for the author as copyrighted works are presented in YouTube videos. The traditional view that all use of copyrighted work is automatically causing harm to the author should be forgotten to its full extent. Of course, if a video is taking unjust advantage of protected work, the revenue should be credited to the author of the original work. Otherwise, the revenue ought to be credited to the creator of the video because the video is

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[103] *See:* Goldstein – Hugenholtz 2010, p. 365. The Section 110(5) of US Copyright Act contains a so-called "business exemption" which allows broadcast music to be publicly played in bars, restaurants, and stores under certain conditions.
[104] WTO WT/DS160/R, p. 33.
[105] *Ibid.*, p. 47.
[106] Wright 2009, p. 614.
[107] WTO WT/DS160/R, p. 45.

taking no unfair advantage of the material which is ensured by the third condition. Could then the author expect his work to be utilized in YouTube UGC? It may be argued that authors of music, TV shows, and movies should not be surprised anymore by the utilization of their works within YouTube videos. Especially regarding popular works, videos are made for review and other purposes, and some modifications are made to the works which should be in accordance with copyright law as long as they are not causing harm to the original work or author and would fulfil the transformative requirement. Utilization within UGC can be seen as free marketing reaching wide audiences for the published copyrighted work as well.

The third precondition prescribes that the exploitation does not unreasonably prejudice the legitimate interests of the author. The last two conditions are thus dealing with the same aspects of exploitation. The third step, however, covers moral rights as well[108] whereas in the previous step attention was paid more to the economical side. The wording of the third step acknowledges that the exclusive rights are not absolute and therefore attention must be paid to the unreasonableness of the prejudice.[109] Despite what was stated above, the WTO Panel concluded that the unreasonableness shall be determined via economic value of exclusive rights and the value can be estimated through exercising, for example by licensing, those rights.[110] It has been brought up that when utilizing copyrighted works within UGC we are dealing with right to public performance or more extensively, right to making available. The economic value of those rights via licensing can be regarded as one of the highest. However, in my mind, it is not reasonable to compare utilization to complete licensing of such rights. Stating that the utilization of a work is equal to full licensing of rights even sounds rather excessive. Further, the Panel stated that the unreasonableness is tied to the actual or potential economic loss.[111] This aspect has been analysed extensively above. In conclusion, the measurement of "unreasonable prejudice" is left open for future interpretations.[112] The utilization of copyrighted material in UGC could thus be in compliance with this third step when the legitimate rights of the wider audience are considered.

There are two more limitation mechanisms to be assessed included in this principle: exceptions and limitations linked to educational and informative purposes. The starting point for both these exceptions and their applicability is that the exploitation complies with fair practice. Considering the narrow interpretation of exceptions and limitations taken in the limited material available it

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[108] Wright 2009, pp. 610 and 612.
[109] WTO WT/DS160/R, p. 57.
[110] *Ibid.,* p. 58–59.
[111] *Ibid.*
[112] Wright 2009, p. 612.

becomes rather clear that these exceptions are not applicable to UGC. In addition, once again due to the aging of existing copyright law, national law education and media exceptions are drafted with traditional means in mind and the exceptions are facing challenges even with online education.[113] In addition, legislations may be tied to, for example, "educational institutions" or other conventional stages of education.[114] To add to all of this, the exceptions are often acceptable based on the non-commercial use that education situations commonly highlight. This of course creates problems as UGC is typically generating revenue for the creator unless specific measures have been taken against it, no matter its nature. Still, one could make the argument that UGC should not be excluded from the educational exceptions and limitations. It is true that YouTube is a platform where, among other content, educational material is included, and people often watch videos that have educational value to them. It is typical that examples of copyrighted works need to be presented in education. There are even channels that produce only videos for educational purposes but are facing the same harsh consequences when using copyrighted works as other users using them against fair practice.

Considering the above, the same applies to UGC for informative purposes. Laws are not drafted with YouTube's possible news content in mind. In addition, the exception can be seen as more limited than the one regarding educational purposes and it is linked to architecture or events taking place that are worth reporting on. I would argue, however, that this exception may be easiest to apply to UGC when content similar to news broadcasts are to be uploaded. However, the type of utilization we are focusing here is not covered by these at large.

To conclude, the three-step test and limitations regarding educational and informative purposes do not offer solutions to our issue at hand. At first sight, the three-step test may seem like a functional tool serving as some form of international fair use doctrine. The main reason behind the inapplicability to UGC lies in the narrow interpretation of these rules. Even when adopting these exceptions as general principles, the previous interpretations of the statutes providing background for this principle must be considered. The established interpretation of the exceptions is narrow and clearly reinforces the position of copyright holder as the owner of strong exclusive rights. Since the interpretation has been so rigid, it would not be even rational to diverge from the existing legislative state to the extent required if the use of copyrighted works within UGC was to be covered. However, the shift in interpretation would be, in my opinion, desirable, to the furthest possible extent without conflicting too far with the earlier state of law.

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[113] Goldstein – Hugenholtz 2010, p. 385.
[114] *Ibid.*, pp. 383–384.

3.4 The Future of User-Generated Content and Copyright

From the analysis above, we have seen that the current international copyright regime with its general principles does not offer much help regarding the utilization of copyrighted works within UGC. This is due, for example, to the lack of legislation regarding modern technologies but first and foremost to the narrow and rigid interpretation of aged tools at play. While I do understand the background for the narrow interpretation and arguments behind them, I think, that the interpretation and arguments are causing issues in the modern digital context. Of course, creative and original works must be protected, and the author is entitled to both moral and economic exclusive rights and benefits deriving from the work. However, copyright always requires balancing between author's and wider public's legitimate interests and rights. This hold true especially when works are made publicly available to achieve protected economic interests and rights. In the current state, I would argue, that the balancing is not taking place or at least the scale used is defective, leaning unduly towards the author's rights and interests. There are handful of reasons behind this phenomenon in the UGC context which we have gone through above. The legal framework is offering the possibility for this, copyrights are more and more controlled and supervised by big corporations that have great abilities to pressure policymakers and other relevant authorities, and parties are trying to avoid being held liable themselves, to give a few examples.

So, what should be done regarding UGC and the utilization of copyrighted works? What's next? Lastly, here I will provide some recommendations and alternatives for policymakers, legislators, and other parties to the discussed matter. I would argue that it is easy to point out existing problems and failures of current mechanisms and leave the analysis without proper suggestions on how to improve or enhance the situation. It is typical for (international) legal scholars to state that something should be done.[115] It often is the feeling when familiarizing oneself with some specific issues of law and society but usually, it is difficult to identify what that "something" is specifically. However, these presented recommendations are not to be taken as absolute solutions for the issues. Rather, they are providing outlines for possible actions and initial suggestions of the writer on the issue. I do not go in-depth with the technical execution of these measures as they are outside of the focus of this paper and could constitute research of their own. It is important to note that as this thesis focuses mainly on European countries, US, and Canada, solutions are easier to find, and some specific means can be taken into consideration.

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[115] Orford 1999, p. 11.

3.4.1 Recommendations Based on International Legal Instruments

There are a couple of different means through which solutions can be approached from. Firstly, we shall focus on measures based on international official sources, such as international conventions. The primary route, usually thought of first, for clarifying the international legislative state is to draft a new international treaty or other instrument. Here, the new treaty should be drafted in light of previous copyright treaties presented in this paper and the treaty should regulate on UGC explicitly to some extent. Through addition of a new instrument to the international copyright regime, UGC could be included as a special circumstance in the copyright law framework which is to be treated differently taking into consideration the technology-specific requirements and new circumstances. Via drafting a new treaty considering UGC, other unanswered copyright issues regarding UGC could be taken into consideration and thus clear the legislative state through the phenomenon. With regards to the issue dealt with in this paper, the new instrument could allow wider use of copyrighted works within UGC or at least ensure that the legitimate rights and interests of the content creators must be taken into serious consideration before taking action, which has potentially severe consequences, against them. UGC could also be determined as a "special case" under the three-step test. However, I do not find this measure appropriate or probable. I do not think there is any interest among countries to draft completely new legal instruments regarding UGC and copyrights. It arguably is too heavy a measure considering what is at stake. Drafting a completely new international treaty also takes a long time. In addition, there are already several different treaties in the international copyright framework. Adding a new treaty into that regime would make things even more complicated than they currently are. Taking all of this into consideration, the measure of drafting a new treaty regarding UGC and copyrights is not an appropriate nor functional measure to tackle the existing issues.

Related to the measure above, amending some existing copyright treaty would be a more appropriate and probable measure in tackling the issues. In my opinion, the functional treaties in this matter would be the WCT or WPPT. This is because their focus is already on the digital environment. However, amending the Berne Convention would be tempting since it is the primary international copyright instrument and has been amended last in the mid-1970s.[116] There would then be the possibility to update the treaty thoroughly in addition to the new UGC regulations. Still, the WCT or WPPT is more suitable here. There are two main routes through which to approach the regulation affecting the issues at hand. The first route is what I call *allowing regulation* and the

[116] Goldstein – Hugenholtz 2010, p. 37.

second is *restrictive regulation*. The first means that the amended provisions would approach the issue from the standpoint of UGC and its creators by allowing certain types of uses of copyrighted works within them. The regulation could be more specific by which it would allow only certain types of uses or, for example, allow the use for a certain time-limit per video which would vary depending on the length of the whole video. On the other hand, and this is the view I stand by, the regulation could be more open-ended and include a three-step test -type rule(s) that prescribe proportionality and other standards for the use. Of course, this type of regulation is left with more interpretations but still, I would consider it more appropriate as it would cover unforeseen cases and law, nevertheless, ought to be general. Due to the fast technological development, the use of open-ended regulation is more suitable in technological copyright matters.[117] The practices would be established when applying the rules in practice and finally, through dispute-settlement. However, even that I find the use of open-ended regulation appropriate, there has been already strong opposition to the current fair use -doctrine in force in the US.[118] These standpoints are arguably well-founded but out of the necessity of current circumstances the use of more specific limitation rules is not functional and would, in my opinion, create the legislative state even more confusing as so many different specific limitations should be included separately. This would also expose law to more blind spots and gaps, and thus, to more inappropriate circumvention which is against the intentions and aims of copyright legislation.[119]

The restrictive regulation should achieve the same goals, but the issue and regulation are approached from the standpoint of the copyright holders. Thus, it would mean that the regulation consists of restrictions, exceptions, or limitations to granted exclusive rights regarding uses within UGC thus restricting the exercise of exclusive rights. Of course, both of these approaches include practically the same effects. However, the significant difference would lie in the wording of the amendments. Still, I find that the threshold for amending WCT or WPPT remains somewhat high as well.

The final recommendation in relation to international treaties deals with the shift of interpretation of pre-existing regulation. I have already pointed out that, for example, the three-step test and exceptions linked to education could provide a useful tool for tackling the issues as such. The inapplicability lies in the established interpretation of said tools. This would be the most appropriate and probable measure to tackle the issues. There is, however, one important thing to take notice of:

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[117] Depoorter 2021, p. 8.
[118] Liu 2008, p. 571.
[119] Depoorter 2021, p. 10.

how to conduct the required shift without jeopardizing the legal security of the international copyright system and the legitimate expectations of all parties involved. I would argue that the shift in interpretation is nothing unheard of in different legislations due to the change in circumstances. Law ought to be general and regulation is all the time given new meanings through application in courts and other administrative bodies. The applicable field of many legal rules has been forced to extend to its realistic borders due to the technological development before, in order to avoid blind spots left uncovered and the need for new regulation. In addition, the existing official sources applying the rules at hand are not courts or other comparable authorities whose decisions are tightly legally binding. They are part of the "soft law" sources and thus, the interpretation could be established to diverge from the existing state. This would require in practice that the questions regarding the issues at hand are to be brought before ICJ or other comparable body giving decisions that shall be followed by the international community. Of course, there is still the issue that, for example, the three-step test only allows countries to draft laws that are in compliance with it. That means that uses that would now fall into the regulation, would not be allowed according to the national legislation for the most part if countries are not amending their legislations. Effective change in interpretation would then have to include that the three-step test is applicable in itself to specific cases. That may already be a huge reach. However, these shifts in interpretation would be already huge steps in the right direction.

3.4.2 Recommendations Based on Other Measures

Since the primary focus lies in the European countries, the US, and Canada some other means of tackling the issues can be included in this paper. Although the measures are not completely international in nature[120], I find them appropriate to bring up in this context. These recommendations are based on contractual possibilities between countries as well as private companies providing the platforms on which UGC may be uploaded. However, there is no reason why these measures would be unattainable by other countries as well, especially later on. In my opinion, these measures would be more practical, easier to implement, and overall, more probable to take place.

First, we shall focus on, mainly bilateral, arrangements between the said countries. These can be seen included in the former subchapter as well, especially if the treaties or other arrangements would become multilateral. Some examples could be drawn from the data privacy framework where

[120] These measures are to be held as dealing with bi- or multilateral affairs between countries or arrangements made by private actors.

the EU and the US have drafted the 'Privacy Shield' instrument in order to ensure the transfer of personal information according to the GDPR between the countries.[121] This affects the big tech companies as well since those are the main actors transferring the data between the two continents. I would not consider these types of actions between the countries unachievable regarding UGC and copyrighted works. One example would be to agree on applying the US fair use doctrine or other regulation on UGC uploaded on these platforms owned by big tech companies located in the US. In that sense, it would be establishing a kind of a rule of conflict of laws or choice of laws. As these privacy instruments' aim is to ensure compliance with EU data regulation, the potential treaties discussed here would ensure the treatment of UGC in compliance with US standards. I am tying this measure in the US standards as I do think the fair use -doctrine is the most efficient in responding to the issues at hand, although far from perfect still.

In YouTube's Terms of Service currently in force, it states that the law of the country of residence of the user is to be applied if the user is located in Switzerland or in the EU. This is no surprise considering the position of individual's rights and protection in the EU legal framework. However, I have already pointed out why territoriality is not the desired standard here. This could be tackled, in my opinion, with contractual actions between the EU and the big tech companies as well. Nevertheless, I do not know how interested the EU, or other possible countries for that matter, would be in this possibility. However, via these measures, the applicable law could be tied to one certain country which would make the current state of things clearer and appropriate to the nature of UGC and digital platforms in general. EU could thus affect the law of choice which would ensure the rights of its individuals. This contract could include more countries so that the applicability would be even more international in nature. However, the effects of this method would for the most part imitate the former measure presented and thus I find this measure rather far-fetched and more improbable of taking place.

The next measure in this regard would be that the applicable legislation and competent state to act in YouTube's Terms of Service would be tied to, for example, US legislation or legislation of some major European country. I would argue that using some "major" country is appropriate as the awareness of those legislations is generally highest and finding information about the law is the easiest. However, once again due to the customer protection legislation in Europe and different national laws in general, I do think, that this type of provision would not be acceptable, or

[121] Tracol 2016, p. 776. Although this arrangement is not valid at this point of time, there are plans of drafting a similar instrument called Trans-Atlantic Data Privacy Framework which should achieve the same goals.

acceptability would be hard to achieve. The difficulty of making a decision on applicable legislation and competent state within Terms of Service lies in the rights of different actors. I do not find it appropriate nor proportional that user of a social media platform or the copyright holder should exercise their rights in the opposite side of the world or be bound by foreign laws. For the sake of legal security, there should be the possibility to take legal action or possible counteractions in the state of the individual. Of course, in an international context, it is impossible to ensure those rights of both sides to a dispute. Therefore, these types of provisions would neglect the legitimate rights of at least one party, depending on which law is to be applied and what is the competent state to act on a specific matter. If these provisions were to be used, it must be made specifically clear to the consumer-users as they begin using the platform and a clear consent should be prescribed. It may be argued that if those conditions are to be met, the provisions could be acceptable. Still, enforcing this measure would take a large amount of work for the platform providers and compliance with different national laws.

It should be noted that the platform provider, in this case Alphabet Inc. and YouTube, could divide their platform into regional parts. This would mean that, for example, UGC uploaded in the EU can only be accessed from the EU and the same would apply to other countries or regions as well. This would make the legal issues clearer for the users as to what type of use is considered lawful. However, these measures are against the basic idea and nature of modern social media platforms on such a deep level that I do not find them suitable. Still, it might not be unthinkable as we have seen that in recent times Meta has threatened it might be forced to withdraw its Instagram and Facebook operations from EU territory due to its data protection legislation.[122]

The final, and most feasible, recommendation deals with contracts between companies providing social media platforms and actors supervising and controlling copyrights, such as national copyright agencies. This, once again, is not a completely new idea. In Finland, the national copyright official Teosto controlling music copyrights has made an agreement with the social media platform Instagram which allows the use of copyrighted music in non-commercial content included in "stories" which are short videos that disappear after 24 hours from the publication.[123] The copyright organizations of Nordic Countries have even entered into contracts with YouTube but these contracts mainly deal with ensuring the rights of the authors.[124] To make agreements with competent actors within all countries would require huge efforts from YouTube but it might be

[122] Hamilton 2022.
[123] Voinko käyttää musiikkia Instagramin postauksissa tai stooreissa?
[124] Musiikin käytöstä YouTubessa pohjoismainen sopimus.

something that should be strived for in the long run. To really make the rules the same for every user requires that different authorities or other organizations controlling copyrights would agree to the same terms. Also, it would require that the agreement covers the right to use copyrighted works, not only right of the author to deny the use. I would advise focusing on the primary markets, such as Europe and US, in the first place and spreading the practices from thereon. Through these measures, the issue could be gradually tackled, and rules of utilization would be made clear and acceptable for all. As I have brought forward earlier, ultimately, the use of copyrighted works within UGC in a fair manner is usually mutually beneficial for all parties involved.

To conclude all the possibilities discussed here, I find that amending international copyright conventions, making a shift in the interpretation of international copyright regulation, and contracts between platform providers and supervising and controlling bodies are the most efficient, most functional, and most probable measures taking place. In my opinion, it is about time to draft substantive international copyright law besides just minimum standards. This would clarify the vague legislative state and correspond to the technological development and international context of UGC platforms and other technical developments as well. However, step by step the issue could be resolved via contractual means between platform providers and copyright administering bodies without the requirement of new legal instruments or laws.

4 Conclusion

The primary objective of this paper was to evaluate whether the general principles of international copyright law are adequate to correspond to issues emerging from utilizing copyrighted works within UGC uploaded on YouTube. There are also other sub-objectives that were discussed. These deal with identifying what can be considered as the general principles of international copyright law, presenting the existing issues in utilizing copyrighted works within UGC, and providing recommendations and solutions to those existing issues.

The identification of general principles was based on the comparison between different relevant international copyright treaties. Afterwards, the existing issues were presented and the existing gaps in the international copyright law regime, which are causing these consequences, were analyzed. I have also brought up, how the legal copyright framework itself is playing a part in creating issues in the field. These focused on the attention paid to the higher degree to which the legal instruments tend to put the authors of copyrighted works. This observation can be made through reading the texts of international treaties but first and foremost understanding the interpretation taking place in real situations. The general principles of international copyright law were then applied to the issues in order to find out whether those would provide answers to the field. I have conducted a thorough analysis and brought forward relevant arguments behind the application. Lastly, I have brought up several recommendations and routes which could provide tools for dealing with the issues in the future and evaluation of those measures. Now that all of the above have been discussed and analyzed it is time to sum up the key findings of this research. It is clear from this research that more research and discussion should be had regarding UGC and copyright law. This is just a scratch of the surface of one minor issue in the field. However, I do find that UGC and copyrights are important issues affecting many people, and their significance is not in any way going to diminish in the future. Considering the significance in modern digital society it is almost surprising how so many, legal and other, aspects of the phenomenon are still left vague.

The current issue in using copyrighted works within UGC is that it is not being allowed to any extent, leading to undue override of legitimate interests and rights of people creating UGC and the wider public in general. There are various reasons behind the fact that the required balancing, which lies deep in the copyright's basic idea, between legitimate rights and interests of the authors and of the wider public is unduly favoring the authors in practice. Some factors are linked to legislative instruments and their interpretation which put authors to a higher degree, others are linked to platform providers trying to avoid their own liability at all costs. What is failed to take notice of is,

that in modern society where everything is online, the use of copyrighted works within UGC in a fair manner is mutually beneficial for both parties to a possible dispute: the author of the copyrighted work that was used and to the actors uploading UGC on YouTube. It could be added that it is beneficial for YouTube itself and the wider public. There are countless possible synergy gains for multiple parties.

The first objective of this paper was to identify what can be regarded as the general principles of international copyright law in chapter 2. The general principles could provide a useful tool in the copyright law framework as some aspects are left vague within it. Through comparing the texts of relevant international copyright treaties, five of those principles were identified. Those have to deal with national treatment, automatic protection, author's core economic and moral rights, three-step test and other limited exceptions, and more favored treatment of developing countries. This division and identification are in no way absolute or correct but rather a cautious evaluation of what can be considered as the basic principles and standards of international copyrights. These are the basic standards that are highlighted and repeated through the (international) copyright regulation system. National treatment, automatic protection, and more favored treatment of developing countries are deriving from the international instruments at the center of attention. Especially the principle of national treatment is a supporting pillar for the whole international copyright framework. Author's core rights and three-step test and other limited exceptions are, also, deriving from the international instruments but are supported generally by national legislations as well.

It is evident that some of the principles mentioned above do not apply to the issues at hand to begin with. Some others, such as automatic protection, do not provide remarkable assistance within the framework we were dealing with. Naturally, the focus of this paper was on the three-step test and other limited exceptions, mainly linked to educational and informative (media) purposes. Utilizing copyrighted works generally requires the applicability of some exception or limitation to the extensive list of exclusive rights granted to the author. In addition, the author's core economic and moral rights had their part in the discussion. These are unsurprising as we are particularly dealing with the balance between legitimate rights and interests of authors and people uploading UGC on YouTube. Thus, we are dealing with the basic feature and starting point of copyright law whether it was national or international. Despite the ostensible adequacy of these tools focusing on the exceptions and limitations to correspond to these issues, we found out, that these principles are inadequate to correspond to the existing issues when they are applied and evaluated in compliance with the interpretation of the regulation that are shaping the principles. The existing narrow

interpretation is something that cannot be departed from without appropriate justifications provided by courts or comparable legislative bodies.

There are different means and measures through which the issues could be addressed and potentially tackled, at least partly. These measures were based on international copyright treaties and other means. The directly international legislative measure that is functional and could be done realistically is the amendment of international treaties, especially the focus should be pointed towards WCT and WPPT. Still, in the current state, I do not find this as too probable and thus taking place. However, this and other presented alternatives should be taken into consideration by policymakers and other relevant bodies. The other possible measures deal with the actions of platform providers, in this case YouTube. Regional arrangements could be taking place and Terms of Service could provide help, but it is important to note that if the Terms of Service would be an absolutely efficient tool in resolving the existing issues, those actions would have already been made. The most functional and easiest measure to execute is contract arrangements between the platform providers and bodies administering copyrights. This, however, would require enormous efforts from YouTube but would gradually clarify the utilization of copyrighted material on their platform. This is something that has taken place before and is thus observed as manageable.

In conclusion, it must be noted from all of this that the current international copyright regime is inadequate to correspond to the issues presented here in this thesis. This applies to written conventions as well as the principles of international copyright that can be considered as general starting points. Once again, this thesis presented just one, rather limited, issue existing in the field. Fortunately, there are multiple various measures to tackle the issues. These measures can be carried out by few different actors within the field. Therefore, the required change is not only dependent on policymakers and legislators. Nevertheless, it is appropriate for them to consider the issues and possible solutions, some of which were presented and evaluated here. It was pointed out earlier that recently, even in Europe, courts have started to implement the fair balancing of interests of different actors more. Hopefully this progress towards more fair balancing will continue in the future.

It is apparent, that as technology keeps developing, these issues are not disappearing. At the same time, technological development may provide completely new tools to deal with the issues and provide efficient balancing of interests at play. However, that is something we cannot solely rely on. On the other hand, development may, and most probably will, also create new legal and other issues in the field. That is why discussion and research must be continued and active search for possible, efficient, functional, and durable solutions shall be conducted in the future.