

INFORMATION CREATIVITY AS A RIGHT IN THE NEW SOCIETY

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Abstract. Formation of e-governance has resulted in the leading role of information in the digital society. Thus, the main feature of the information society is the participation of all members of the society in the interchange of information. Therefore, information creativity has become a subject of discussion as a modern form of freedom of artistic creativity. Of course, this is not about simple information, but rather the creation of knowledge, which is the most superior form of information. Such information creativity makes necessary to regulate intellectual property issues and restrictions on information creativity. In the article were analyzed these issues and were put forward suggestions and recommendations.

Keywords: information, information creativity, information society, freedom of artistic creativity, data, digital information, limitations.

1.1. INTRODUCTION

According to paragraph 1 of the Declaration of Principles, adopted at the World Summit on the Information Society in Geneva in 2003, information society is a community where anyone can create, access, use and share information and knowledge. It will give separate people and nations the opportunity to demonstrate their potential and improve their standard of living in accordance with the goals and principles of the UN, as well as following the Universal Declaration of Human Rights.

The information society has the functions of informing, that is, delivery of necessary information to all users, maintaining and disseminating knowledge, as well as instruction on use of information technologies tools and information resources for their own interests and benefits and the use of knowledge for progressive development of society. To sum up, the information society is a society where the majority of society members participate in the search, acquisition, production, storage, processing, transmission and dissemination of information using modern information technologies.

As a result of the aforementioned conditions, information and knowledge have become an important element of the digital age.

1.2. FREEDOM OF CREATIVITY OR RIGHT TO CULTURE: COMPARATIVE APPROACH

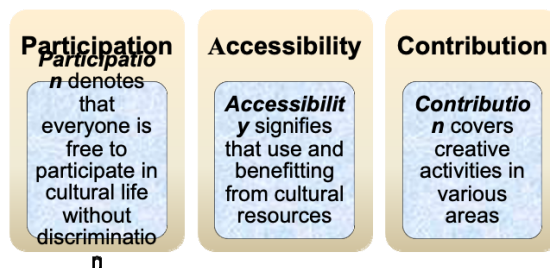
The constitutional declaration of freedom of artistic creativity is based on international norms on human rights and freedoms, which envisage three civil rights - cultural rights, freedom of artistic creativity and intellectual property rights. The proclamation of the listed rights and freedoms within

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the international context under the same article is due to the fact that these rights are interrelated. It is noteworthy to mention that the right to freedom of creativity and intellectual property right within the context of the international norms, is reflected in the article that covers right to culture. At the same time, the concept “the right to culture” includes not only the participation of the individual in cultural life and their use of cultural resources, but also his involvement in scientific progress and scientific creative activity. Thus, the right to science is analyzed in many literatures along with right to culture (Andersen Nawrot, 2014). The question then arises: Is it justified to combine the artistic freedom, the right to participate in cultural life and the right to intellectual property under the same title – the right to culture? What specific characteristics differentiate the rights mentioned above? We first need to define the concept of some common terms in order to answer these questions (“culture”, “cultural life”, “creativity”, etc.). Therefore, UNESCO Declaration on Cultural Diversity (2001) claims that culture is a combination of the inherent moral, material, intellectual and emotional characteristics of a society or social group in and covers ways of living, coexistence and spiritual values system, traditions and beliefs along with literary and artistic one (Universal Declaration on Cultural Diversity, 2001).

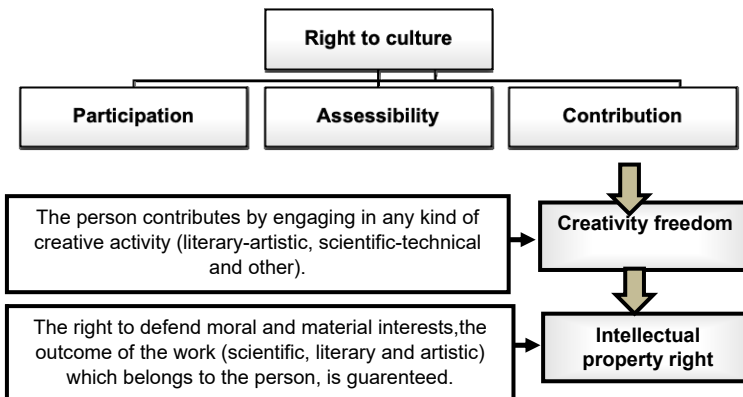
According to the UN Committee on Economic, Social and Cultural Rights, various interpretations of “culture” were provided different approaches. However, it was always regarded as a broad term. The Committee considers culture as a comprehensive concept encompassing all manifestations of humankind and emphasizes characterizing the definition of “**cultural life**” as a cultural history, dynamic and evolving process (International Covenant on Economic, Social and Cultural Rights, Art art. 15, para. 1 (a)). Although the “Law of the Republic of Azerbaijan on Culture” does not provide the definition of cultural life, the term “**cultural space**” as defined in Article 1.0.6 has the same meaning.

Creativity is a human activity aimed at creating material and moral wealth. **Freedom of creativity** means that everyone has a right to be engaged in any creative activity applicable to his/her world outlook, ethical and aesthetic ideals, interests and abilities. According to Article 51 of the Constitution of the Republic of Azerbaijan, the state guarantees free realization of literary, artistic, scientific and technical and other forms of creativity. The question arises: If freedom of creativity is a right derived from cultural rights, should all forms of creativity be considered as cultural participation? – The content of the abovementioned declarations shows that scientific activity and other forms of creativity are also a form of participation in cultural life. The UN Committee on Economic, Social and Cultural Rights also identifies three key components of “participation in cultural life” in definition No. 21 (see Figure).



It can be concluded on the basis of the aforementioned that all types of creative activity can be considered from an international legal aspect as a form of cultural participation. However, right to culture from the aspect of national legislation denotes that everyone has the right to participate in cultural life, to use cultural institutions and cultural resources, it does not embrace the right to engage in creative activity (Article 40 of the Constitution). Consequently, the contribution component provided by the Committee's interpretation and international norms is set out in the Constitution in a separate article (Article 51) in the form of creative freedom. Therefore, scientific activity, which is a process of scientific research and creativity that covers the acquisition, application and promotion of scientific knowledge, means a form of realization of creative freedom, but not of the right to culture. In fact, the person who exercises the right to creative freedom indirectly participates in cultural life. The right to participate in cultural life and freedom of creativity are reflected in separate articles in the Law of the Republic of Azerbaijan "On Culture", which regulates literary and artistic forms of creativity.

Thus, engagement of a person participating in various forms of cultural life, in creative activity depends on his/her own will. If his/her desire is realized, freedom of creativity can be considered be realized and thereafter issues over intellectual property rights emerge. The abovementioned can be summarized by the following scheme:



1. 3. INFORMATION AS AN ESSENTIAL ELEMENT OF CREATIVE FREEDOM

The transformation of information into a central element in public life as a result of the formation of a global information society resulted in a emerging a new approach to a range of rights and freedoms. Thus, knowledge and information are considered a global public product in the modern world. It also confirms the importance of information and knowledge as a key element of creative activity. At the same time, the freedom of anyone to seek legally, receive, transmit, prepare and disseminate information that he/she needs is proclaimed internationally and locally. The preparation, i.e. production of information is a creative process in itself. Freedom of creativity and information are interrelated in this regard. It is no coincidence that freedom of creativity is not defined in the European

Convention for the Protection of Human Rights and Fundamental Freedoms (1950), but the European Court of Human Rights gives interpretations on freedom of creativity in many cases concerning the application of Article 8 (the right of respect to privacy and family life), Article 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression) of the Convention. The Law of the Republic of Azerbaijan “On Culture” also implies provisions for freedom of information in the field of culture, including the right to prepare and disseminate information in the field of culture (Article 17).

It would be appropriate to clarify the notions of “information” and “knowledge” and to give information about their characteristic features before analyzing interrelationship of freedom of creativity and the information,

The concept of “**information**” assumes special importance as a key factor of development in many scientific areas. Daniel Bell², one of the founders of the postindustrial society concept, identifies under the notion “**information**” the apriori resource that is sought, processed and protected in the economy and society (Bell, 1973, p. 21).

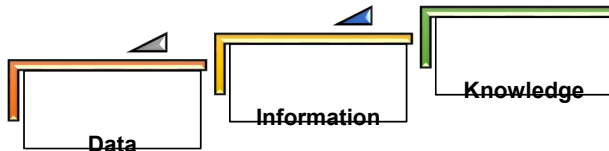
Norbert Viner (1894–1964) the founder of information theory defines the information as the information obtained in the process of adapting us and our feelings to the surrounding environment in the 50s of the 20th century (Viner, 1958, p. 31). The point is that N. Viner commented on the psychological and philosophical aspects of information. According to him, the acquired information is linked to the human brain and nervous system, and after their collection and comparison, the information is added to a person’s information resources and affects his/her subsequent actions. Therefore, there are four elements of information communication with objective reality: external environment (objective reality), consciousness (person’s brain and nervous system), image (noting and marking of content), and purpose (integration, adaptation). N. Viner viewed image as the main element among the listed elements. He notes as a result of the researches, that, information is neither matter nor energy. Information is simply the information.

American economist Fritz Machlup (1902–1983) wrote (Machlup, 1966) that information should be regarded as an industrial product and its production considered as one of the types of industry. He first introduced the term “knowledge economy” in the US economy in 1962, trying to determine the economic value of the areas, including education, law, publishing, mass media and computer science relating them to information industry concept. Machlup assessed information as knowledge. Such question arises: Is it expedient to interpret knowledge and information as the same concept? – Knowledge is processed information about the methods on processing of data that is suitable for decision-making and used or unused for decision-making or problem solving. In other words, knowledge is information that has been used repeatedly and validated. Knowledge can be formal and informal. Formal knowledge exists in the form of documents regulating decision

² Daniel Bell in his book “The Future Postindustrial Society” elaborated that the concept of postindustrial society emphasizes the impact of the development of knowledge and technology on the progress of the society. D. Bell considers that machine technology is being replaced by artificial intelligence in the postindustrial society and the main political perplexity in this society is the type and characteristic of governmental support to the science: there is now no place for the muscles and power, here one should consider the significance of information.

making; decision-making methods and techniques; standards and regulations. Informal knowledge might first of all be the knowledge and skills of advanced professionals, their intuitions, teamwork skills and habits. Informal knowledge is a non-specific category. But they play great role in decision-making. Thus, the proper management of any enterprise is directly dependent on the extent of its manager's use of informal knowledge and maximim benefitting of professionals' habits and abilities. Data, information and knowledge interact closely with each other in the implementation of economic processes. The data³ is usually transformed into information via the application of knowledge at each stage and later on into new knowledge. However, information that was considered as knowledge at an earlier stage might be regarded at some stage of the process as data and vice versa. In other words, information, data and knowledge exist in a circle and are the elements of the same ring; they are interconnected, depending on the factors such as conditions, requirements, problem-statement and ways of solution, and so on.

Thus, the interaction of information, knowledge and data can be explained as following:



Recently, from 90s of 20th century, the increasing attention to the difference between the notions of “knowledge” and “information” already replaced “the information society” with the expression of “**knowledge societies**”. This idea was first sounded in 2005 UNESCO report (UNESCO World Report, p. 17–23, 27–43). Thus, the report states that the epoch of transition from the information society to knowledge societies has already approached. According to the report, knowledge societies are the societies the source of which consists of individual diversity and individual skills. Information society is based on technology achievements. Knowledge societies cover a broader social, ethical, and political context. It is no coincidence that these societies are mentioned as a whole. Main purpose of this presentation is to emphasize absence of single model reflecting cultural and language diversity in the world.

The establishment of any society involves various forms of knowledge and culture, and modern scientific and technical development influences these forms. The issue of formation of single society within the logic of narrow technological determinism and fatalism of revolution in the field of information technology and communications cannot be considered acceptable. Thus, the use of the opportunities of Internet and multimedia tools should not force to deviate from such important tools

³ **Data** – is the registered information on accidents and occurrences. Namely, data is the information registered via technical equipment or as a result of long-term observation. Data can be structuralized or non-structuralized. If data consists of eternal values ordered according to specific indicators, then the data is structuralized. If data is provided in non-ordered way, i.e. it is taken from pictures and graphics, articles and TV shows, then it is non-structuralized data. Information is the data provided in the processed form and in a form that enables the receiver to take a decision or conduct an analytical research.

as press, radio, television and, basically, school. Most people in the world need books, textbooks and literate educators. Therefore, the knowledge societies created by different groups on the basis of different language and cultural qualities will lead to the recognition of this diversity in other knowledge societies, as well as perceive their own knowledge and skills in that knowledge societies. There is no social indifference in knowledge societies and knowledge is accessible to everyone because of its social nature. That is why UNESCO's report emphasizes that knowledge societies will eliminate digital (electronic) inequality.⁴

Thus information is considered a tool of knowledge in knowledge societies, but information is not regarded as knowledge in itself. It can be recognized as knowledge after proper "processing" of the information, and people are involved in such processing. UNESCO considers that the creation of knowledge societies will pave the way for the humanization of the globalization process (UNESCO World Report, 2005, p. 27–43).

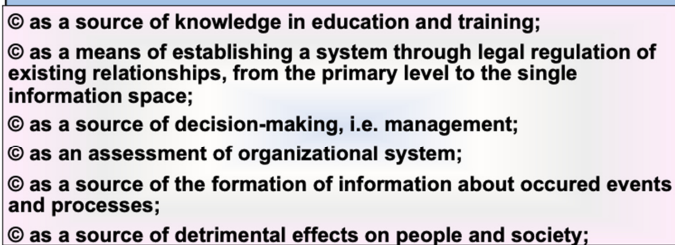
Various approaches to information continue to exist today. In general, legal nature of information differs from characteristics in other fields of science and representatives of different fields have come to common stand about its characterization at several levels to determine the content of the concept. O. A. Gorodov distinguishes three levels in his electronic textbook: syntactic, semantic and pragmatic levels (Gorodov, 2012). According to sources, the division of these levels was put forward by Paul Beynon Davies (1957). What is interesting is that, unlike O. A. Gorodov, P. B. Davies distinguishes four levels and speaks about empirical level. Another group of authors distinguish semantic, linguistic, pragmatic and technical aspects⁵. In our opinion, it is more rational to identify empirical and technical levels along with semantic, pragmatic and syntactic levels. Because the definition of conditions of information and communication technologies application (ICT) in the information process and the interpretation of the experience is important in making suggestions and recommendations. Information issues may not be related to ICT in some cases. However, accessibility level of non-electronized data is low under the conditions of the digital society. The interpretation of information at the technical level is absolute from this perspective.

The concept of "information" has a wider meaning in the modern legal sense. It is no coincidence that, Article 3 of the Law of the Republic of Azerbaijan "On Access to Information" dated September 30, 2005 defines "information" as facts, opinions, knowledge, news and other type of information, created or obtained as a result of any activity, regardless of its creation history, presentation form and classification. It means that, information can be created as a result of the activities of different entities and can be found in any subject. In short, information is universal. In any case, can information created become an object of creative freedom? – No. Although creativity is an activity that did not exist before and which results in the formation of a new object (material and spiritual), not every

4 Information inequality – the access to the information among different segments of population and countries of the world based on various aspects; including the difference that emerges during application of ICT. Internet as a main source of access to information is the essential attribute of global information society and its main boosting force. From this perspective, the limitation to the access to internet is the main indicator of information inequality.

5 S. G. Tchubukova, V. D. Elkin (2007, p. 41–42).

newly-created information should be considered a product of information creativity. Thus, information may act as a megacategory as the following:

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- © as a source of knowledge in education and training;
 - © as a means of establishing a system through legal regulation of existing relationships, from the primary level to the single information space;
 - © as a source of decision-making, i.e. management;
 - © as an assessment of organizational system;
 - © as a source of the formation of information about occurred events and processes;
 - © as a source of detrimental effects on people and society;
 - © as an object of intellectual property;
 - © as a commodity in the process of creation, storage, use, transmission and dissemination of information.

As it can be seen from the above, the scope of the information covers different areas in many cases. For example, it is impossible to create different types of information with limited access and to register their systems in a creative product. But what conditions are required for newly created information to act as an object of creative freedom? – In our opinion, there dominate **basically idealism, objective existence and requirements of innovation.**

Idealism is a sign that has been widely debated in legal literature. There are two approaches to idealism in philosophy:

According to the first approach, everything created by human consciousness is ideal.

The second approach considers everything that belongs to human, not matter, ideal. If we apply both cases to information, then idealism is linked to creation by human. In fact, most researchers (I. L. Bachilo, V. N. Lopatin and others) recognize that this sign is transient and its materialization after recording information. According to them, information appears as a concept, either as a result of the actions of legal entities, or after the information is recorded on the material carrier (Bachilo et al., 2001, p. 143–146).

It would be appropriate to clarify the aforementioned discrepancies: In case information is not expressed and not noted in any form, it is impossible to determine its existence. It is natural and unequivocal case. However, the transfer of information to any material bearer does not mean that it depends on that bearer. Responding to the following question is sufficient to solve the problem: Does the transmission of any information separate the information from the bearer through the Internet? – In this case, primary source and content of the information do not change by essence, which again confirms its idealism. A free and dependent division of information provided by Leon Brillouin (1889–1969) in the 50s of the XX century is considered as one of the important steps taken to solve this problem (Gorodov, 2012). Thus, independent information refers to information associated with the perceptual process and free circulating among the material bearers. For example, to broadcast any news on the radio or broadcast live talk of any person.

Dependent information, on the contrary, is characterized by dependence on the bearer of the information. However, the content of the information is not changed upon its transmit to another bearer, regardless of information's depending on the bearer. For example, the publication of any electronic information on paper form does not alter its content. It again confirms that, in terms of content, information differs for independence in any case.

Thus, the sign of the "dual unit of information and material bearer" should not be accepted unambiguously. Idealism of information means that it is created by the creator-person. From a legal point of view, a person is considered an "author" and the information product created by him is called a "work". Copyright applies to both published and undisclosed, objective, scientific, literary and artistic works that are the result of creative activity, regardless of their purpose, value and content, as well as form and method of expression. There the **sign of the creative product to exist objectively** comes into being. Copyright protection does not apply in itself to ideas, processes, methods of operation or mathematical concepts, but to expression forms. Forms of expression include written (handwriting, typewriting, note writing, etc.), oral (mass speech, public performance, etc.), audio or video recording (mechanical, magnetic, digital, optical, etc.), drawing (picture, sketches, pictures, plans, cartoons, cinema, television, video, or photographic staff etc.), dimensional-phase (sculpture, model, model, layout, building, etc.) and other forms.

As for the novelty requirement, it should be noted that the object of creative activity should reflect new information on the content of information expressed in any objective form. For this reason highlights of the day, news information about various events and facts are not recognized as creative products.

1.4. LIMITATIONS FOR CONFORMING INFORMATION CREATIVITY AND LEGAL INTERESTS

It is important to note that while freedom of creativity is of particular importance to creative people, abuses of this freedom are inevitable. Therefore, there are some restrictions on creative freedom, both internationally and nationally.

The UN Committee on Economic, Social and Cultural Rights believes that restrictions on the right to participate in cultural life should serve a legitimate purpose and be necessary to promote common welfare in a democratic society. In fact, this condition is exactly the same as the restriction on freedom of expression. Freedom of thought results in the emergence of a particular product of creativity in many cases. In this regard, the limitations and other provisions of Article 10 of the European Convention in the practice of the European Court of Human Rights also apply to the problems of freedom of creativity. Article 10 of the European Convention establishes three-part tests to assess the restrictions on freedom of expression as follows:

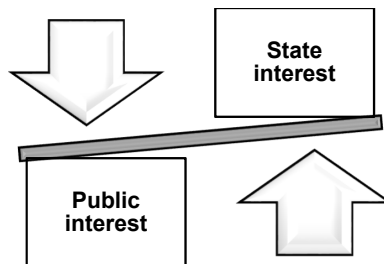
1. Restrictions should be provided by law. This condition is always governed by national legislation. Article 3 of the Constitution law of the Republic of Azerbaijan dated December 24, 2002 "On the regulation of the implementation of human rights and freedoms in the Republic of Azerbaijan"

states that restrictions imposed on human rights and freedoms must be aimed at the lawful purpose established by the Constitution and constitutional law of the Republic of Azerbaijan and should be proportional to the purpose.

However, the European Court interprets the concept of “law” in a broader context. In the case of *Sanoma Vitgevers BV v. Netherlands* (2010), in relation to the words “lawful” and “legally specified” in Article 8 to Article 11 of the Convention, the Court stated that it did not always use the term “law” in its official form; Meaning “substantive”. This includes both “written law” and “unwritten law”. The law should be understood both as “the law of law” and the “right” of judges. In the case of *Di Stefano Italy* (2012), the Grand Chamber’s decision stated that one of the requirements arising from the expression “prescribed by law” is certainty. Therefore, the norm cannot be considered as a “law” unless it is sufficiently developed to regulate the behavior of citizens (Mendel, 2007, p. 35). A few years before this case, the European Court of Justice in *Hungary* (1999) linked the definition of “statutory” and the principle of certainty directly to local legislation: can be. There is a more detailed local legislature that meets the legal requirements to interpret these provisions. In directing this, the Court found that in most cases (for example, in the case of *Gaweda Poland* (2002)) it was important to comply with the precise requirements set out in the law (Council of Europe Publishing, 2007, p. 8–9).

2. Restrictions should be directed to the protection of one of the legitimate interests (as provided in Article 10.2 of the Convention). Article 10.2 of the European Convention includes the following: public security and territorial integrity of the state, public order, prevention of riots and crimes, protection of health or morality, protection of the privacy or rights of others, prevention of elucidation of confidential information, ensuring reputation of justice judgement and impartiality.

An analogous norm is provided in Article 3 of the Constitutional Law of the Republic of Azerbaijan “On the regulation of the implementation of human rights and freedoms in the Republic of Azerbaijan”, where these legitimate interests are derived from the mutual harmony of state and public interests. Because the directions reflecting public interests are not legally enforced by government bodies, it is impossible to talk about their protection. In the meanwhile if the state does not act in public interest in its activities, the principle of democracy will be directly violated. According to German scientist Jürgen Habermas, who assures human rights and freedoms protection as one of the most important principles of a democratic society: “If you declare yourself a democratic society, you must guarantee human rights and freedoms. Otherwise, calling your society democratic country will be nothing but self-delusion” (Habermas, 1996).



The protection of legitimate interests applies not only to scientific works, but also to literary and artistic works. For example, Otto-Preminger Institut considers against Austria (1994) and European Court in trial work also considers the creation and dissemination of works of art or stage as a significant contributing factor in the exchange of information and ideas: "In his creative work, the artist expresses not only his personal vision, but also of his inner social outlook to the world. Art helps not only to form, but also to express public opinion from this point of view".

The "protection of morality", important among legitimate interests was put to the forefront by the European Court in many cases. For example, Muller and others in the case of against Switzerland (1988), Muller presented three major paintings of his own, depicting acts of sodomy, zoophilia, masturbation and homosexuality. The exhibition was open to the public widely and free of charge, with no age restriction for visitors. The Swiss courts fined the Muller and the exhibitors, the paintings were confiscated and submitted to the Museum of Art for storage. But they were given back to their owners in 1988. In response to the claim against Muller and exhibitors that they violated Article 10 of the Convention, application of penalty and confiscation, the Court stated that these paintings clearly portrayed sexual relations between human and animal roughly. They were open to the public. Because the organizers did not impose any entry fee or age restriction on visitors. The paintings presented at the exhibition were truly unrestricted to the audience in order to attract a wider audience. Therefore, the local courts' arguments of "enhancing their sexuality in the possible worst form" were not groundless. Those images could have offended people's perceptions of normal sexual life rudely.

Mainly the protection of morality and other legitimate interests suggests that hatred speech is condemned and banned all over the world, as well as in domestic law. According to the concept by Recommendations 97 (20) of Committee of Ministers of the Council of Europe "Hatred speech refers to intolerance expressed in racial hatred, xenophobia, anti-semitism or aggressive nationalism and ethnocentrism; discrimination and hostility in respect of minorities, migrants and immigrants, all forms of expression that spread, incite, promote, or justify other forms of intolerance-based hatred" (Committee of Ministers of Council of Europe, 30 October 1997).

National legislation of the Republic of Azerbaijan, guided by international legal norms also contradicts hatred speech. Thus, Article 47 of the Constitution prohibits propaganda and promotion based on race, nation, religion, social and any other criteria causing hostility and enmity. Non-consideration of offence and slander as critique is imperatively defined under Article 57. of the Constitution which implies law. At the same time, specific field norms reflect inadmissibility of hatred speech. For example, Article 10 of the law of the Republic of Azerbaijan "On Mass Media" considers abuse of mass media freedom and not allowed acts like dissemination of the secrets guarded by the legislation of the Republic of Azerbaijan, forcibly transforming existing constitutional state system, conspiracy against integrity of the state; promotion of war, violence and brutality, national, racial, social justice or intolerance; gossips on abusing citizens' honour and dignity under the name of a reputable source; fake or misleading articles, publishing pornographic materials, slander or other illegal actions, the use of mass media tools.

3. From democratic society aspect restrictions should be of absolute character. It is always necessary to check importance of restrictions “in a democratic community”. For example, the Court while considering the case on prohibition of the publication, distribution or sale of the Euskadian War book in France, published in many European countries ruled in its decision against Ekin France (2001), that there was no proportionality and interference with freedom of expression of the applicant is not considered urgent in the democratic society.

CONCLUSION

Information creativity, as a form of freedom of artistic creativity, implies a person’s involvement in various spheres of public life. As an information is a central element of the digital society, most economic indicators also change depending on the information flow. All this makes information dominating the information market as an economic product. Under these conditions, information products resulting from freedom of information are at the forefront of the independent intellectual property rights. The norms on freedom of information in all international documents also support information creativity. However, this does not exclude legal restrictions. Contrary to the limitations imposed by public and state interests, the freedom of information creativity in the legal form opens up large opportunities.

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