[SE] An Expansion of the Extended Collective Licences Suggested for the Swedish Copyright Law

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A fact-finding copyright Committee, appointed by the Swedish Government, recently introduced a report on the Swedish Copyright Act. The main tasks of the Committee have been to review the provisions on the transfer of copyright and to look over certain issues concerning extended collective licences and related matters.

Two years ago, the Swedish government entrusted this expert Committee with conducting a review of the provisions of the Swedish Copyright Act. On 8 April 2010, the Committee published an interim report (SOU 2010:24) proposing that the Copyright Act provide for clearer and more modern provisions with respect to transfer of copyright. In addition, the Committee proposed enlarged and simplified rules governing extended collective licences.

In the interim report, this Committee proposes the implementation of a number of general provisions applicable to all different types of copyright contracts. For instance:

- It has been proposed that a provision on the interpretation of copyright contracts be incorporated into the Copyright Act. The current special provisions concerning publishing contracts will be replaced with new general contractual rules on the interpretation of agreements. Furthermore, the Committee suggests that a special provision inserted in Section 36 of the Swedish Contracts Act, which enables modification of unreasonable contractual terms relating to non-material rights, be referred to in the Copyright Act.

- With respect to rights acquired on an exclusive basis, the Committee proposes an obligation to use such rights within a reasonable timeframe or at least within five years. However, the proposed provision is optional; hence, the parties will likely be able to agree on another timeframe pursuant to the provision.

- The Committee suggests clarifying the current presumptive rule concerning film contracts. Under the Committee’s proposal, an author contributing a work to a film cannot object to copies being made of the film or to the film being made available to the public, provided with subtitles or being translated into another language.

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- The Committee has introduced a presumption, stating that an author is entitled to reasonable remuneration for transfers by assignment or licence of right to exploit the work, to someone who intends to use this right in the framework of commercial activities.

One particular issue that has been the subject of a great deal of discussion among various interested parties concerns the question of rights in the event of employment relationships. The Committee proposes a codification of the so-called 'rule of thumb' developed in case-law and doctrine. Thus, if the Committee's proposal is accepted in the legislation process, the amended Copyright Act will provide for a rule stating that employers may use works created by the employee as a result of employment duties toward the employer.

As far as the extended collective licences are concerned, the Committee proposes:

- Broadening the extended collective licence concerning radio and television broadcasts. Under the proposal, the extended collective licence provision will cover all communications to the public instead of only broadcasts. In addition, the Committee suggests that the provision cover such making of copies as is necessary to enable the communication to take place. In practice, this new provision is likely to facilitate, in particular, the use of music in television programmes on the Internet.

- Incorporation of a supplementary rule to the general provision on extended collective licences enabling parties to enter into agreements in areas other than those specified in the Copyright Act. This supplementary extended collective licence may, for instance, be used for Internet services for which the clearance is otherwise complicated due to the existence of many owners.

- It is also being clarified that only one organisation in each field is competent to enter into extended collective licence agreements.

- The current extended collective licence clauses concerning the making of copies at places of work, is being expanded to include digital copying as well.

- Finally, the broadening of the contractual licence provisions for libraries and archives for the purpose of facilitating these institutions in making the works contained in their collections available on their own premises has also been suggested.

Avtalad upphovsrätt SOU 2010:24

http://www.sweden.gov.se/sb/d/12634/a/143363

"Contractual Copyright" Swedish Government Official Reports 2010:24

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