

[SE] Lack of credit to composers in TV-programmes considered as copyright infringement

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The Swedish public service television broadcaster, SVT, was found guilty of copyright infringement. In four different programmes SVT did not mention the composers of the music that was played in the programmes. One of the programmes, Kulturjournalen, has been subject of a potentially important judgement of the Supreme Court. The programme reported on cultural news and the music in question was played in its entirety in an item on a theatre play. The item was made in view of both the 100 years celebration of the poet behind the music and the economic situation of the National Touring Theatre.

The rules on moral rights in Swedish Copyright legislation include the right for the author to be mentioned when his work is made available to the public. According to the Copyright Act the author has the right to be mentioned appropriately as such in accordance with good practice. The legislative materials underlying the enactment of the Act provide some examples of cases when the principal rule does not have to be obeyed. This is the case, for example, when there is hardly any interest for the author to be mentioned or when technical difficulties pose obstacles to it. The three court instances that dealt with this case all had to consider the definition of what is appropriate and customary ("good practice") in the television sector. The courts came to the conclusion that no uniform customary rule exists. But whereas both the Court of Appeal and the Supreme Court considered an agreement on this between SVT and STIM, the collecting society of composers, to be of importance when assessing the practice of being mentioned as an author on television, the Court which assessed the matter at first instance, did not, and analysed itself to what extent the general exceptions to the main rule could be applied in the television sector. This first court stated in its ruling that there could be exceptions in television due to the character of the programme or due to the time factor, but that these factors should not lead to negligence in respect of authors' rights in the first place. All the three Courts found that, in general, the credit texts of programmes include the names of persons involved in the production who could not claim any specific authorship to the programme. In spite of the rather long credit texts of the programmes concerned, the authors of the music had not been mentioned.

The case is potentially important, despite the fact that the Supreme Court's judgement leaves some questions as to what extent the Court's definitions of appropriateness and good practice are applicable to the whole television sector.

From the judgement it does not become clear whether the Court would think differently about the practice of mentioning the name of the author in cases where a TV channel normally has short credit texts after the programmes (which is often the case in programmes of private commercial television broadcasters). It also remains unclear whether the Agreement between SVT and STIM is of importance to the whole television sector and thus has an impact on other channels too, or whether its relevance is limited to the relationship between the parties to the Agreement. In this respect the judgement of the court that assessed the matter at first instance appears to be more accurate and clear in its definitions when looking at general rules of exceptions to the principal rule of moral rights. As a result the first court also gives some guidelines for the whole television sector and not only for the parties in the conflict in question.

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Decision of the Supreme Court, SVT v. Torgny Björk, DT 112-96.

