

Swedish report at the Nordic Copyright seminar in Copenhagen 2017

Actions in the field of copyright from the Swedish government

The Swedish Agency for patents and trademarks (**Patent- och Registreringsverket, PRV**) has recently **been assigned new missions** from the government in the field of copyrights. The Agency did not deal with copyrights at all before. The new missions consist of information on copyrights to the public, with the main purpose to promote legal online services of copyright protected material and to reduce illegal use of such material. The Agency is also planning to produce an education package to schools in Sweden on copyright, inspired by the Finnish Kopiraittila skola, initiated by Kopiosto in Finland.

This Agency (PRV) has also the mandate to **monitor the new legislation on collective rights management** in Sweden, which is one of the results of the CRM-directive from the EU. The new act (called *Lagen om kollektiv förvaltning av upphovsrätt*) entered into force in Sweden on the 1st of January 2017.

The Swedish government has recently appointed **an inquiry to consider if there is a need for harder penalties for serious copyright and trademark crimes**. The inquiry will consider if the limitations in the public prosecution rules need to be changed and if the possibilities to confiscate domain names should be easier. The inquiry has until the 15th of February 2018, to present its conclusions.

In collaboration with the Swedish organization Rättighetsalliansen, the Agency PRV will arrange a **two-day conference in the end of November in Stockholm**, which will focus on Intellectual property enforcement and piracy, where the president of KLYS will be one of the key note speakers on the artists perspective of copyrights.

Another governmental initiative that is worth mentioning in this context is the ongoing Swedish **investigation on the condition of artists**. The main focus of the survey is within the cultural policy field, but the conditions in terms of authors' and performers' rights, especially in the digital environment, is an important part of the investigation. The investigation shall present its result on the 28th of February 2018.

Recent and current Swedish court cases

In this context there are a few Swedish court cases that are relevant and important. One of them is the case against the Swedish telecom company Bredbandsbolaget **for allowing internet traffic to illegal services, like Swefilmer and the Pirate bay**. The court also tried if Bredbands-bolaget has **the obligation to block the traffic to these sites**.

In February this year the Court of appeal announced its decision where it found that Bredbandsbolaget must take actions to stop Swefilmer and the Pirate bay, to reach Swedish internet users. The court announced **a blocking injunction, ordering Bredbandsbolaget to block these websites**. The decision clarifies the legal obligation of internet service providers to cooperate with courts and rights holders to put an end to illegal services who illegally distribute film, TV and music on the Internet.

The decision is in line with the legal situation in the rest of the Nordic countries and other European countries. The next step is to make other Swedish internet service providers to follow the court's decision. Unfortunately, the decision has had little effect so far according Rättighetsalliansen.

In **the Swedish Wikimedia case** there was a ruling from July this year where the Swedish Patent and Market Court, found in favour of the Swedish CMO Bildupphovsrätt on all points, pertaining to its case regarding copyright infringement of members' rights, that is visual artists rights.

In its ruling, the court established that Wikimedia Sweden's online publication of an image database of public artworks is **forbidden without permission first being granted**. The ruling also clarifies important points regarding the legal aspects of online linking. The court states that it's forbidden to link to images of published artworks without the artist's consent, even though the works are freely available without restriction of access on other websites with the artist's consent.

Concerning **private copying levies** the Swedish CMO Copyswede is still involved in legal proceedings. These have since last year moved ahead on the judicial ladder. The SonyMobile case will be reviewed by the Supreme Court, starting in November, and the Telia case is ongoing in the District court, after the legal interpretation issue has been settled by the Supreme Court the preceding year.

The negotiations with the electronics industry, resumed in 2016, have so far not yielded any results, and some of the key issues that have been discussed might instead be resolved within the framework of the pending trials. The Swedish government is still stalling a review of the relevant legislation, in anticipation of EU initiatives and the outcome of the ongoing legal proceedings.

Current EU reforms and Swedish actions

Concerning the EU KLYS and other Swedish artist organizations have put a lot of effort this last year in monitoring and lobbying in relation to the current EU copyright reforms, such as the DSM Directive. In June KLYS handed in a position paper to the Swedish government and to the Nordic MEPs on the DSM directive, where we focused on a few key points such as:

- opposing the introduction of **new mandatory exceptions and limitations** in authors' and performers' rights in the way the Directive proposes
- expressing the need for a strong and clear **protection of extended collective licensing agreements** in the Directive
- underlining the need to clarify and strengthen **article 13 to guarantee the transfer of value of copyrights** from information society service providers to rights holders, such as authors and performing artists

- being in principle in favour of **the transparency triangle in article 14-16, even though it needs elaboration**
- claiming that the transparency triangle needs to be supplemented by **an unwaivable right of remuneration**

As several of you probably already know the Swedish, Danish and British governments have proposed a **new article** in the DSM directive which is aimed at **protecting and promoting collective licensing solutions, such as extended collective licensing agreements**. This proposal is being negotiated as we speak within the Council, currently chaired by Estonia. KLYS and COPYSWEDE has a close dialogue with the Swedish government in this matter, and in the **latest consolidated text** from the Estonian presidency published on the 30th of October **a provision on the ECL is added to the DSM-directive**.

KLYS is currently analyzing the proposed provisions, which consists of **a new article 9 a and new recitals**. Sweden would like the article to cover not only CMOs but also organizations which, according to the Swedish CRM legislation, are obliged to adapt only to some of the provisions in the CRM legislation, in order to be able to conclude extended collective licensing agreements. It is also unclear if the new article 9a 2. covers the so called *general* extended collective licensing, introduced in the Swedish copyright act a few years ago.

In the latest Estonian proposal, the **amendment in article 12** from August is somewhat adjusted stating that Member States may provide that **a publisher are entitled to claim a share of public lending right remuneration**. This provision is though still, in KLYS view, contrary to basic principles of authors rights and limits contractual freedom in a negative way for authors. KLYS and many other Swedish artist organisations have therefore quite recently signed **the European petition on article 12** that the Finnish CMO Sanasto has issued. The petition is an appeal to fully remove article 12 from the DSM Directive.

Parallell to the process within the EU Council there are plenty of activities in the EU Parliament on the DSM Directive. The **legal committee of the Parliament will soon vote on the DSM Directive and the rapporteur Comodinis report**. The vote has been postponed several times and will not take place in late November, as previously scheduled. This gives us more time to react and KLYS is currently coordinating a new action towards the Nordic MEPs, where we will repeat our positions and elaborate our views, taking into account the recent developments and amendments in the Directive.

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On behalf of the Swedish Authors' and Performers' Organisations