

Copyright

*A brief overview of
the Swedish copyright system*

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Copyright

This booklet contains a short description of the legal provisions that govern the copyright system. The booklet describes what is protected by copyright law, the rights an author has in respect of his or her work and how long they apply. Information is also provided on how to obtain copyright protection, when works may be used freely without permission and what happens when copyright is infringed. In addition, a brief description is given of the international aspects of copyright protection and of rights related to copyright (neighbouring rights). The newly established provisions on protection of technological measures and electronic rights management systems are also described briefly. Finally, the booklet contains a few words about the management of copyright and about general developments in the copyright area.

The account given in this booklet is of necessity a brief overview. For further details, please refer to the law itself and other sources.

All Acts are contained in the Swedish Code of Statutes (SFS). Copies may be ordered from bookshops or purchased directly from Fakta Info Direkt, telephone: +46 8 587 671 00, fax: +46 8 587 671 71.

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1

What is meant by copyright?

Copyright is the branch of law that contains the legal provisions on the rights of writers, composers, artists and other creative persons to determine how their literary or artistic works may be used. The protection of certain *neighbouring rights* also belongs to this branch of the law. These rights refer to the copyright-like protection the law gives to certain contributions which are not works (see below).

The legal provisions are contained in the *Act on Copyright in Literary and Artistic Works – the Copyright Act* – (Swedish Code of Statutes, SFS 1960:729 with a number of subsequent amendments). Two regulations also belong to copyright legislation. One is *the Copyright Regulation* (SFS 1993:1212, later amended) which contains certain details about the implementation of the Act itself, for instance on copying within archives and libraries. The other is *the International Copyright Regulation* (SFS 1994:193, also later amended) which contains provisions on the protection that we in Sweden are obliged to give to foreign works.

Swedish copyright legislation has been amended frequently in recent years, mainly due to various Directives adopted by the European Community, the purpose of which has been to harmonise copyright law in the different member states (see below). Of particular importance is the Directive which deals with copyright and neighbouring rights in the information society (Directive 2001/29/EC). This Directive addresses a number of important issues, including copyright in the context of the Internet. It was implemented in Sweden by amendments to the law which entered into force on 1 July 2005.

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What is protected by copyright?

The Copyright Act deals with the protection of *literary and artistic works*. This includes, for instance, compositions in speech or in writing, computer programs, databases, musical and stage works, films, photographs and other pictorial art, architectural works, applied art and, generally, the products of all intellectual creativity regardless of the way in which they are expressed.

For a product to be considered a work, it must be the result of an author's own personal intellectual creativity. The product must be unique, for instance in the sense that no two persons independently of each other would have expressed the ideas, facts or circumstances, etc. contained in the work in the same way. This is often expressed in terms of the work having to attain a certain level of originality. This means, for instance, that factual news of the day, or simple forms and the like do not have protection. Copyright protection does not extend to the facts or ideas contained in a work, only to the personal way in which the author has expressed the contents.

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What rights does an author have under copyright law?

The Copyright Act grants two types of rights to an author in respect of his or her work. These are called *economic rights* and *moral rights*.

These rights are *exclusive rights*, which means that only the author or his or her successor in title is authorised to carry out any of the acts covered by the rights. There are as mentioned below, however, a number of limitations to the economic rights, which means that in some cases works may be used despite the exclusive rights.

The rights apply to the work both in its original form and in a revised form such as a translation or adaptation. All the rights under copyright law belong at the outset to the author but may then be transferred to others to a certain degree (see below).

Economic rights

Basic economic rights comprise

- the right to authorise or prohibit any form of reproduction (copying) of the work, which means the making of copies in whatever form, including temporary or ephemeral copies in a computer memory, and
- the right to make the work available to the public.

Making a work available to the public may occur in four different ways.

One such way is *transmission to the public*, which means that the work is made available to the public by wire or wireless means from a place other than where the public can access the work. Radio or TV broadcasts are examples of this method of communication. It also includes situations where the work is made available in such a way that different people may access the work from a place and at a time which they determine themselves. This is typically what happens when works are accessed on demand over the Internet.

Another way is *public performance*. This includes situations where a work is made available to the public in the same place as the public are able to access it. This applies regardless of whether it is with the help of technol-

ogy or not. Typical examples are when music is played in a concert hall or discotheque, when a play is performed on stage in a theatre or when a work of art is shown by means of a projector.

A third situation where a work is made available to the public is *public display*. This means that a physical copy of a work is displayed publicly without the help of technology. Such situations are, for example, when a book is shown in a shop window or a painting is shown at an exhibition.

The fourth and final way of making a work available to the public is what is called *distribution to the public*. This includes situations where copies of a work are offered for sale, rental or loan.

There are however significant limitations, especially in respect of the latter two rights, which means that copies of works may be displayed or distributed freely to the public. Irrespective of these limitations, the author always retains his or her right in respect of rental of copies of the work to the public.

Generally speaking, economic rights may be transferred or licensed to others.

Moral rights

Basic moral rights comprise

- the right of the author to be named as such in the context of any use of the work, and
- the right to object to any change in the work or its being made available to the public in a form or in a context that is prejudicial to the literary or artistic reputation or individuality of the author.

Moral rights cannot be transferred but the author can waive them and such a waiver may under certain circumstances be binding upon him or her.

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How is copyright protection obtained?

Copyright protection for a work begins automatically at the same moment the work is created. No registration or other formality is needed for a work to be protected under copyright law. Neither is it possible to register a work on a voluntary basis with an authority such as the Swedish Patent and Registration Office. The copyright symbol (a "C" inside a circle, ©) which often appears in books and on copies of certain other types of works has no legal effect in Sweden but rather serves as a reminder that copyright protection exists for the work.

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How long does copyright protection apply?

As a general rule, protection under copyright law lasts for the lifetime of the author and for 70 years after the year of his or her death. For anonymous works, the 70-year term is counted instead from the year the work was first made available to the public. The work may be used freely once the term of protection has expired.

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When may a work be used freely?

The Copyright Act contains a number of limitations on economic rights, which means that a work may be used in certain specified situations and under certain conditions despite copyright protection. When a work may be used freely in accordance with these provisions, the moral rights of the author must nevertheless be observed.

Examples of free use etc.

- Anyone may make one or a few copies of protected works that have been made available to the public for private use, meaning for personal use. This does not, however, apply to computer programs nor does it apply to the copying of compilations (databases) in digital form. In addition, in certain cases it is not permitted to have someone else do the copying. The master copy that is used must be legal, i.e. it must not be a pirated copy or a copy of a work that has been posted on the Internet without permission. Furthermore, as regards private copying of literary works in written form, textbooks for example, only limited parts of the work (for instance a chapter) or works of limited scope may be copied for private purposes.
- Short quotations may be made from works that have been made public.
- Special provisions apply to copying within educational facilities and in archives and libraries and also to copying for information purposes within public authorities, organisations and enterprises.
- The making of copies for people with disabilities and the distribution of these copies may take place freely for the most part, following authorisation from the Government.
- Special provisions apply to the transmission of works in radio and TV and to their re-transmission in cable networks.
- Special limitations apply to the copying of computer programs (in addition to the prohibition of private copying).
- The distribution right for certain types of works is limited in the sense, for instance, that copies that have been transferred by the author or with

his or her consent within the European Economic Area (the Area comprises the 25 European Union member states and Norway, Iceland and Liechtenstein) may be further transferred freely; the rental right, however, still remains. If on the other hand the copy has been transferred outside the Area, the distribution right still applies, which means, for instance, that so-called parallel import from the United States is not allowed without the consent of the rights holder.

- The right of display is also limited in the sense, for instance, that copies which have been published may be displayed freely, as may also copies of works of art that have been transferred.
- Far-reaching limitations apply to copyright in public documents (mainly documents issued by public authorities or documents that have been filed with such authorities).

Certain remuneration systems

In connection with the provisions on limitations in copyright law, there are also certain types of remuneration systems. The law contains, for instance, provisions on what are generally referred to as *levies on blank media*. This means a levy on blank cassettes or other media on which copies can be made for private purposes. The remuneration differs depending on whether the media are analogue or digital and whether the digital material can be used for recording only once or several times. This remuneration is intended to compensate authors, performing artists and producers of music recordings for the extensive copying of their works, performances and productions that takes place.

Another type of remuneration is the resale right, which is levied when a work of art is resold, for instance by an auction house. In normal cases this remuneration amounts to five per cent of the sale price, excluding VAT, and is intended to compensate painters and other artists who have created the works and who would otherwise miss out on the considerable increase in value that may occur in respect of such works.

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What happens if someone infringes copyright?

The law contains a number of provisions on what happens when someone utilises works or other protected subject matter without the consent of the author in cases where no limitation provisions are applicable.

Penalties in the form of fines or imprisonment; injunctions etc.

Infringements that occur wilfully (i.e. intentionally) or through gross negligence may entail *penalties* in the form of fines or imprisonment for at most two years. The offence is subject to public prosecution, but for a public prosecutor to be able to initiate a criminal action the author or his or her successor in title must have filed a complaint or, alternatively, the prosecutor has to consider that action was called for in the public interest, e.g. to deter pirate copying of copyright-protected material. Especially in cases of piracy of music and films, penalties in the form of imprisonment or heavy fines may be imposed and considerable damages may be awarded. There are certain exceptions from these criminal sanctions, for instance in some cases of copying computer programs for private purposes, which is in fact illegal but not punishable.

An author or other rights holder may request an *injunction* prohibiting an infringer from continuing his or her action on penalty of a fine. Under certain conditions such an injunction may be ordered without hearing the opposite party.

Special provisions apply to the securing of evidence in infringement cases. If it can reasonably be assumed that someone has committed an infringement or some other violation, a court may order that an investigation (*infringement investigation*) be conducted at his or her home to secure evidence. Under certain conditions such an order may also be issued without the suspect having been informed beforehand.

Damages etc.

Infringement of rights under copyright law may also give rise to damages. Firstly, the person who has committed such an infringement has to pay what amounts to reasonable compensation for the exploitation that has taken place. Secondly, if the infringement has taken place through negligence (or intentionally), compensation must also be paid for other damage that may have occurred (e.g. loss of market shares, personal suffering, etc.)

If, however, a person has violated the provision that copying for private purposes may take place only from a legal master copy, he or she need only pay compensation if the act has been carried out intentionally or through gross negligence, but not otherwise.

Furthermore, the court may order that anyone who has made copies in violation of the law must *surrender* them to the rights holder in return for compensation. The same applies, for instance, to type matter, printing blocks, etc. that can only be used for the production of illegal material. Alternatively, the court can decide that the material must be *destroyed* or that other measures must be taken to prevent further wrongful use.



What provisions apply to foreign works?

As a rule, protection under the Swedish Copyright Act applies to works by Swedish authors and also to works that have first been published in Sweden.

Our membership of the European Union and the European Economic Area (EEA) means that nationals of an EEA country must always be treated in the same way as Swedish nationals in the application of copyright law.

Literature, music and art can be distributed and enjoyed anywhere in the world. As early as the 19th century, countries began to conclude international agreements in order to protect each other's works. The most important of these international agreements is the Berne Convention for the Protection of Literary and Artistic Works. Some 150 countries are currently party to the Convention. It is administered by one of the United Nations specialised agencies, the World Intellectual Property Organisation (WIPO) which has its headquarters in Geneva. International intellectual property is also governed by a special agreement, the TRIPS Agreement, within another international organisation, the World Trade Organisation (WTO) which also has its headquarters in Geneva.

Sweden is party to these as well as other agreements in this area. The practical effect of this is that Sweden is obliged to provide protection under the Swedish Copyright Act to works from other countries which are party to these international agreements. Provisions in this respect are contained in the International Copyright Regulation. In return, the other countries that are bound by the agreements provide protection to Swedish works.

As mentioned earlier, special problems arise when copyright law provisions are applied in the information society, for instance as regards the transmission of works and other contributions over the Internet or other national or international information networks. In 1996 two international agreements were concluded within the framework of WIPO, agreements which are intended to solve the most important issues in this context. In turn, these agreements form the basis of the EC Directive on Copyright in the Information Society which was incorporated into Swedish law on 1 July 2005.

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What is meant by neighbouring rights?

Performing artists

Performing artists are actors, singers, musicians and other persons who perform literary or musical works or expressions of folklore. The protection afforded performing artists includes some important exclusive rights. Thus, their performances may not be recorded, neither may copies of such recordings be made or broadcast on radio or TV. A recording that has been made of a performance must not be further distributed to the public without consent. These distribution rights are, however, limited in the same way as the distribution of copyright-protected works. However, artists always retain the rental rights to recordings. In addition, the same basic limitations apply to the rights of performing artists as those in respect of authors.

Certain producers

Those who produce sound recordings or recordings of moving images also have certain protection under the law. This means, for instance, that the recordings must not be copied without consent whether directly or indirectly (for instance through the recording of a radio or TV broadcast) and neither may they be further distributed to the public. The same limitations apply to these distribution rights as to the corresponding right of performing artists; the right of rental remains also in this case.

No consent from the performing artist or the record producer is needed when a sound recording is used for a public performance or a transmission to the public (except in on-demand situations when the transmission occurs in such a way that members of the public may access the work from a place and at a time individually chosen by them). The user must, instead, pay fair remuneration to the performing artists and to the producer.

Radio and TV organisations

The rights afforded radio or TV organisations include a right in respect of the re-broadcasting of their broadcasts, the recording of these broadcasts and the distribution to the public of such recordings. The same limitations apply to

this distribution right as those in respect of the rights of performing artists and producers of sound recordings; the rental rights remain also in this case.

The term of protection

The protection for these three categories of rights holders generally lasts for 50 years.

International protection

With regard to the protection of the holders of neighbouring rights as well, there are a number of international agreements governing international protection. The most important of these is the Rome Convention, which was adopted in 1961, and an agreement that was concluded under the auspices of WIPO in 1996. These rights are also protected under the TRIPS Agreement mentioned above, which is administered by the World Trade Organisation.

Photographers

The Copyright Act provides protection for certain other types of products than those previously mentioned. Thus, a photographer (meaning a person who has taken a photographic picture) has the exclusive right to decide, for instance, on any making of copies of the picture. This right lasts for 50 years from the year in which the picture was taken. In addition, if the picture can be considered an artistic work, protection applies under normal copyright rules and then extends to 70 years from the year of the photographer's death.

Catalogues, databases, etc.

Producers of catalogues or other compilations which contain a large amount of information or which are the result of a significant investment (for instance databases which do not meet the criteria for copyright protection) enjoy protection for 15 years against, for instance, the making of copies of the compilation.

Protection of titles of works etc.

The Copyright Act contains provisions on protection for *titles of works* and also a prohibition of use of works in a way which would violate cultural interests (*protection of classical works*).

In addition, the law contains a provision on protection for 25 years in some cases of publication of old works, mainly works where the term of protection has expired but which have not previously been published and are now being published for the first time.

10 Technological measures for the protection of works and electronic information on the management of copyright

Technological measures

When a work is posted on the Internet anyone will be able to copy it or use it in other ways. In this situation it is difficult for the rights holder to control the use of the work. Encryption or various other measures are frequently used to protect the work against unauthorised use.

With effect from 1 July 2005, new provisions were added to the Copyright Act to prevent circumvention and manipulation of such measures without the authorisation of the author. Thus it is prohibited to circumvent any encryption or other protection measure or process without consent. This does not, however, apply if someone is in legal possession of a copy of a protected work, e.g. a CD or a DVD, and circumvents the technological protection only to be able to watch or listen to the work.

It is also prohibited, for instance, to manufacture, import, sell, lease or possess for commercial purposes devices and products which are promoted, advertised or marketed for the purpose of circumventing a technological measure. The same applies to devices etc. that have only limited scope for commercial use or a limited interest other than to circumvent a technological measure. Furthermore, the prohibition applies to devices etc. that are primarily designed or produced for the purpose of enabling or facilitating such circumvention.

These prohibitions apply in the same way to the provision of services for the same purposes.

In certain cases an encryption or other technological measure could prevent access to a work that someone would like to use, for instance for the making of copies under a limitation provided for in copyright law. If the rights holder does not make available a copy where the protection measure has been removed, it is in certain cases possible to request a court to order

the rights holder to do so, under penalty of a fine. This applies for example if the protected copy is intended to be the master for copying in archives or libraries or for the making of copies for people with disabilities; it also applies in order to enable access to public documents. However, this possibility to take a matter to court does not apply when someone wants to make a copy for private purposes.

Electronic information on the management of rights

The Copyright Act also contains a prohibition against the removal or manipulation of electronic information on the management of rights which is included in or attached to a work, for instance information or codes that aim to provide information about who owns the rights to the work and how to obtain authorisation to use the work. The prohibition also applies to the distribution of works from which such information has been removed.

What happens when prohibitions are violated?

A violation of the prohibitions mentioned above may entail a penalty in cases where the violation has been carried out intentionally, i.e. wilfully and knowingly, or through gross negligence. Thus, the circumvention of a technological measure may under those conditions lead to a penalty in the form of a fine. A public prosecutor may, however, file a criminal action only if such an action is called for in the public interest. Providing facilities or tools for such circumvention (as well as violations of the provisions on the protection of electronic information on the management of rights) may lead not only to fines but also imprisonment for not more than six months. In this case, a public prosecutor may file a criminal action not only if it is necessary in the public interest but also if a complaint has been received from the person who has been damaged by the violation.

All the provisions that have now been included in the Copyright Act are based on the above-mentioned Directive on Copyright in the Information Society, which in turn is based on the international agreements concluded within WIPO in 1996 (see above).

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Management of rights under copyright law etc.

The basic view in copyright law and the law on neighbouring rights is that each and every author, performing artist, etc. has an exclusive right to determine how his or her work or other production may be used. In many cases, however, it is difficult or impossible to obtain the consent of individual rights holders, in particular in cases of mass use of great numbers of works. In order to facilitate the management of rights, the rights holders began to form organisations for the collective management of rights at an early stage. These organisations are empowered by their members to grant authorisation for use of the categories of works or other products that lie within the management scope of the organisation, receive remuneration for such use and distribute remuneration in accordance with agreed distribution rules.

One such organisation that is particularly well known is *STIM (the Swedish Performing Rights Society)*, which manages the public performance rights of musical works on behalf of the composers and lyricists. Another similar organisation is *SAMI (Swedish Artists and Musicians Interest Organisation)*, which acts on behalf of performing actors, musicians and other performing artists and manages the right of remuneration due to them when sound recordings of their performances are played in public. The corresponding right of phonogram producers (the producers of music recordings) is managed by the *Swedish Group of the International Federation of the Phonographic Industry (IFPI)*. Other organisations in this field include: *COPYSWEDE*, which concludes agreements in new media fields such as satellite and cable transmissions and manages the system of levies on blank media; *BUS (Pictorial Art, Copyright Sweden)*, which issues and manages licences for pictorial art; and *ALIS (Management of Literary Rights in Sweden)*, which primarily manages the rights of writers in fields outside the book-writing area as such. *Bonus Presskopia* is an umbrella organisation entrusted with managing the rights of reprographic reproduction, such as photocopying. In addition, there are a number of more trade union-like organisations, such as the Swedish Writers' Union, the Swedish Artists' National Organisation, and several others.

In order to promote cooperation between the different organisations and represent them in dealings with public authorities regarding legislation and cultural policy, the rights holders have established a joint body for cooperation in these areas – KLYS (the Swedish Joint Committee for Artistic and Literary Professionals).

12 Developments in the field of copyright

The development of copyright law is closely linked to general economic and technological development. In recent years new information technology, in particular digital technology, has had a considerable influence on copyright. The legislators in various countries have tried to adapt their laws to the demands of new technology. Thus, in the European Community a number of directives have been adopted to regulate different aspects of the copyright system in the new situation. No less than seven directives have been adopted on the harmonisation of copyright law in the member states. These directives cover: the protection of computer programs; rental, lending and neighbouring rights; the term of protection; satellite and cable transmissions; databases; copyright in the information society; and resale rights (see above).

Another factor that has had considerable impact on national copyright law is international trade policy, which is mainly reflected in the above-mentioned TRIPS Agreement within the World Trade Organisation. One of the important effects of the Agreement is that a violation of the provisions in respect of copyright may, for instance, result in trade sanctions.

Piracy, i.e. unauthorised copying of protected works and productions on a commercial scale, is a significant problem in many countries, mainly because new technology makes it easier and less expensive to copy music, videos, computer programs, books, etc. For this reason, many countries have increased the penalty for such piracy and have provided customs authorities with greater powers to take action against the import of pirated material.