

New rules about fair remuneration in copyright assignments

25 January 2023

Sweden has transposed the EU Directive on Copyright in the Digital Single Market (EU) 2019/790 (the “**DSM Directive**”) into Swedish Law through changes in the Swedish Copyright Act (sw. Upphovsrättslagen SFS 1960:729) that entered into force 1 January 2023.

The transposition resulted in several changes, among those new obligations for online content sharing platforms, two exceptions to copyright (and database right) infringement for text and data mining, reinforced rights of publishers of news or journalistic content and finally new rules for copyright assignments that strengthen the position for authors and performers. This Article highlights the new rules regarding copyright assignments. The new rules are applicable on all types of works protected by copyright except computer programs.

The Swedish Copyright Act has previously lacked general provisions about fair remuneration for authors and performers. A consequence of the transposition of the DSM Directive is that authors and performers will now always be entitled to fair remuneration when copyrights are partially or completely assigned to someone that plans to exploit the copyrights commercially.

The right is forward-looking, entailing that if the remuneration in the future becomes disproportionate in the light of the revenues generated by the exploitation of the work, the author or performer will be entitled to receive additional compensation. Furthermore, this rule will be applicable retroactively on agreements that have been entered into twenty years back in time from the effective date of the new legislations and will not only apply to the initial purchaser/licensee but also to subsequent assignees of the relevant copyright. The remuneration rules are compulsory and can accordingly not be waived in the purchase or license agreement with legal effect.

In addition, the authors or performers are entitled to yearly, relevant and exhaustive information about how the work has been exploited, all the proceeds that the acquirer has received and the remuneration that the

author or performer is entitled to. The information rule is applicable in cases where the agreed remuneration is dependent on the extent of the exploitation of the work.

Another new rule that is introduced is a general right for the authors or performers to terminate agreements about exploitation of copyright protected works in the event that the relevant copyright has not been sufficiently exploited within reasonable time.

The changes driven by the transposition of the DSM Directive have received mixed reactions. The author and performer organisations argued for rules that are even more favourable for the authors and performers while their counterparties have considered the changes too radical, especially as regards the rules on fair remuneration.

One reflection from a practical perspective is that the changes in the Swedish Copyright Act can have far-reaching consequences for companies that acquire and commercialize copyright. This is especially true for companies that have business models that is built on acquiring copyrights for lump sum payments since there is a risk that authors and performers will argue the remuneration as disproportionately low in the event of successful commercialisations. To mitigate this risk, we recommend that such companies should consider to transition into business models that instead utilise royalty based remuneration models for authors and performers.

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