

Nordic PSB

Representation of Nordic Public Service Broadcasters



Brussels on the 5th of January 2010

Creative Content in a European Digital Single Market: Challenges for the Future A Reflection Document of DG INFSO and DG MARKT

The seven Public Service Broadcasters (DR, NRK, RUV, SVT, SR, UR and YLE) in the five Nordic countries welcome the opportunity to present their joint comments on the reflection document of DG INFSO and DG MARKT on **“Creative Content in a European Digital Single Market: Challenges for the Future”**.

Traditionally, the Nordic countries have a balanced approach to copyright – to the benefit of the right-holders, the users and to the advantage of the audience. It is a win-win situation for all the parties. Thus, the seven Nordic Public Service Broadcasters are very pleased with the Commissions suggestion that **extended collective licensing** or the **“Nordic model”** *“could be considered as a general rule in order to create broad coverage and thus a high degree of legal certainty...”*

The Nordic Public Service Broadcasters support:

- The EU making extended collective licensing a general rule in order to create broad coverage and thus a high degree of legal certainty

Almost 50 years of experience

The first extended collective licensing legislative provision for broadcasters covering music and literature was introduced in the Nordic countries in 1961. This well-functioning system has since been extended to new areas. There are differences in the legislation between the five countries, but the basic approach is the same.

The extended collective licensing system makes it possible **to sign a contract about the use of copyright protected material with an organisation comprising a substantial number of holders of rights to a certain type of works. The organisation grants the user a licence to exploit works of the same nature regardless if the right-holders of the works in question are represented by that organisation.** This makes it possible for the users to exploit copyright protected material even in areas where the rights situation is very complex – for instance in archives, orphan works and out-of-print works.

The extended collective licence is therefore a very attractive and pragmatic way to ensure easy access to copyright protected material – not only for broadcasters, but also schools, universities, museums and other cultural institutions.

The society in question has to meet the criteria concerning representativity, set in national legislation. Thus, it is **not possible for just any society** to claim that it represents a specific group and will negotiate on the behalf of the rest within a specific group of right-holders. In Denmark, for example, the Ministry of Culture and in Finland the Ministry of Education decide which society really is representative enough to negotiate also on behalf of non-members.

For the exercise of an extended collective licence, there is no need to search for or contact the individual right-holders in advance – whether they are known or authors of orphan works, members of the representative organisation or non-members. An obligation to conduct a diligent search to confirm the eventual “orphan” status of a work as a condition for the exercise of an extended collective licence would therefore be a mechanism that would do away with the benefits and the intended functioning of the extended collective licence as a tool for simplifying the clearing of rights to works with a substantial number of right-holders (such as TV and radio programmes). According to the extended collective licence, all right-holders are treated equally as they are all entitled to remuneration. Any right-holder is entitled to withdraw an individual work from the exercise of the extended legal licence. The question of identifying and reaching the individual right-holders is not relevant until remuneration is to be distributed to the right-holders. Such an obligation must therefore not hinder the exercise of the extended collective licence, but may well serve as a tool after the use, in order to ensure that the remuneration is split between the actual authors etc.

The extended collective licence **gives the user the right to exploit the works of the unrepresented authors only in the manner and on the terms that follow from the agreement** made with the organisation. As mentioned above, right-holders have the right to prohibit the user, e.g. Public Service Broadcasters from using their works; hence **the right-holders have the possibility to opt out of the agreement. In practice this right is used very seldom.**

An extended collective licence thus interferes as little as possible with the freedom to contract, and aims at maximizing the effective administering of rights. The extension effect provides the user with a necessary protection against claims by outsiders and against criminal sanctions.

Unique archives

Public service broadcasters in Europe have a rich archive **of 2.2 million television programmes and 10.5 million radio programmes from the early days of broadcasting to the present.** Due to the mission they have been given by the society, they have unique material in their archives - part of the overall European Cultural Heritage. The archives are growing day by day, too.

With the proliferation of broadband Internet, the technical platform is in place for opening up the archives and offering online access to a rich cultural heritage that, until recently, was stowed away on old tapes in the vaults of public service broadcasters. However, **clearing the rights is a challenge.** Each production in the archives may involve up to a hundred right-holders. Finding right-holders and

signing contracts with each one is difficult. Doing it for the whole archive is virtually impossible. For this reason it is important to have a copyright clearance system that allows and **supports a one-stop-shop-mechanism**. “The Nordic model”, the extended collective licensing system does this, and it has helped the Nordic Public Service Broadcasters to gradually open up the archives to a broader public. Extended collective licenses for archives have been introduced in Denmark, Island and Norway, and such a license is expected to be introduced in Sweden 2010/2011.

In 2002 a special extended collective license for archives was introduced in the Danish copyright act in connection with the implementation of the 2001 Copyright Directive. This paved the way for an agreement between the collecting society Copydan and the Danish public service broadcaster DR comprising all right holders; members, non-members, foreigners and orphan works. It covers DR’s own productions: productions produced and/or wholly or partly – financed by DR. It gives the public service broadcaster the right to use archive productions, in whole or in part, for on demand streaming and to use clips from archive productions in new productions. The agreement provides the basis for the internet service *dr.dk/bonanza* where DR offers online access to a wide range of television and radio programmes from the archives: Radio and TV news, historical clips, popular TV series etc. The service has been very popular with the users and will – step by step as programmes are being digitised - provide access to more of DR’s archived content.

Support from the governments

In a statement on the 26th of November 2009 the Nordic Ministers of Culture and the Director Generals of the Nordic Public Service Broadcasters gave their support to the system. They stated:

- “In its reflection paper **“Creative Content in a European Digital Single Market”** the European Commission underlines that copyright is the basis for creativity and one of the cornerstones of Europe's cultural heritage, and of a culturally diverse and economically vibrant creative content sector. At the same time it is noted that the growing importance of the Internet and of digital technology is opening up new possibilities for consumers to access creative content. We support this basis for reflection and the Commission’s intention to further investigate how this vibrant content sector can be upheld and strengthened and how, at the same time, the European cultural heritage can be made available to the broader public.”
- **“There are functioning systems, in particular the Nordic extended collective licensing model that was established in a traditional (linear) broadcasting context. This model could be adapted to the new media landscape where non-linear services play an important role.** In the Nordic countries steps have already been taken to open up the archives through online services, not only to the benefit of the listeners and viewers – but to the society as a whole. In some of our countries extended collective licences have proven to be the key to success also in connection with licensing rights to the archives. Our experience shows that this model can provide a way forward that satisfies right-holders, users and society at large. We are pleased to note that the Commission recognizes this possibility in its strategic consultation paper.”

In addition, the Nordic Public Service Broadcasters support the admission of the European Broadcasting Union to the consultation.

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