

Pyramide Norden



MEMBER GROUPE DE LA PYRAMIDE E.E.I.G. GROUP OF EUROPE ORGANIZATIONS FOR PHOTOGRAPHER AND OTHER VISUAL CREATORS

December 9,2012

Dr Vince Cable

Secretary of State for Business, Innovation and Skills

House of Commons

London

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United Kingdom

Dear Dr Cable,

Photographer associations in the United States and Europe have lodged complaints about the suggested legislation on extended collective licenses in the UK. Against this background, the Nordic professional photographer associations in co-operation would like to clear some misunderstandings and point out the necessary action to be taken for a solution to the problem of orphan works.

There is no doubt that orphan works is a major issue in relation to photographic pictures. This is related to the fact that the photographer's name is rarely stated in connection with publication of a photograph. In countries where there is legislation obliging a publisher to mention the author's name, the penalty for not doing so is too low to have any preventive effect. This also applies to legislation about the protection of electronic information, which is not stringent enough to prevent the user from removing information about the author. In addition to different forms of licensing of existing orphan works, a solution to the problem of orphan works must include strong preventive measures.

Technological advances and the availability of technology will lead to an increasing number of orphan works, especially in the field of photography. By obliging the publisher to mention the author's name in conjunction with publishing and through strong legal protection of the electronic information attached by the author to the image file, as well as effective preventive sanctions in the case of violations, it will be possible to deal with the growing problems relating to orphan works. Global publishing also makes it necessary to investigate the author's possibilities to take legal action in foreign countries.

The Nordic countries have a well-functioning system of extended collective licenses. It is only the organizations representing authors and other rights holders who are able to conclude an agreement that is given extended effect. These apply to specific and clearly defined areas, such as making copies for educational applications etc. These extended collective licenses for copying for teaching purposes make it possible to meet the needs of teachers and students for copied material, while at the same time ensuring that authors and other rights holders receive compensation for the use of their works. Licensing would also make it possible to introduce regulations on the extent of copying; for example, how much of a book that may be copied. In such license system could the disposal be limited from existing and possible commercial market. This is one of the main principles of extended collective licenses. However, legislation about extended collective licenses is only one possibility. Rights holders together could decide if they wish to join an extended collective licensing scheme or if their needs can be met by an individual licensing system. Extended collective licenses only exist in areas where there are strong user interests which are impossible to handle by individual licenses. The alternative to extended collective licenses is never commercial practice, but rather compulsory licenses or fair-use doctrines, like in the US.



An extended collective license in the EU is a form of management of rights (Point 18 of the Preamble of the Copyright Directive). It is not an exception or limitation of exclusive rights. Extended collective licenses are not in conflict with the Berne Convention or the three-step test.

The Nordic countries have well-functioning extended collective licenses in different areas. Authors, including photographers, and users are positive to the solutions offered by extended collective licensing. In the Nordic countries, authors' associations manage the right to sign licenses with extended application. Through this arrangement, the authors' associations exert a major influence on the final shape of the licenses. A basic principle is that all right holders, members as well as non-members of the associations, including foreign right holders, should be treated equally. As a consequence, photographers in the US, for example, receive compensation for copies taken of their works in Swedish schools. On the basis of a mutual agreement, this compensation is transferred to the professional photographers associations in the US.

Already in 2008, visual artists, illustrators and photographers in Sweden presented, through their organisation Visual Arts Copyright Society in Sweden, a proposal about how to solve the problems with orphan works. The need to take preventive action emphasises the fact that the protection of orphan works deals with both economic and moral rights and that licensing could be handled by an extended collective licensing system. The organisation that manage licenses should represent the interests of the authors in the field of licensing. The managing organisation should be responsible for and work with identification. It should also take action to prevent the creation of new orphan works. The identification and the prevention should be financed by statute-barred proceeds from orphan works licensing. The Nordic professional photographer associations have endorsed this proposal.

Pyramide Norden, a co-operation society between professional photographer associations in the Nordic countries, advocates the application of extended collective licenses as the only feasible model for handling orphan works. Especially in the archives, libraries and museums sector, where there is a need to digitise and make available a large number of works, which often include imbedded works. At the same time we emphasise the importance of licenses being managed, like in the Nordic countries, by organisations that represent authors in the field of licensing and represent their interests only, and that the authors have a direct influence on the activities of such organisations.

For and on behalf of the member associations of Pyramide Norden

Paul Vestergren /Chairman