

“The Cultural heritage has value only when it is used”

The “Nordic model” copyright clearance for public service broadcasters 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.

With the proliferation of broadband internet the technical platform is in place to open up the archives and offer online access to a rich cultural heritage that until recently was stowed away on old tapes in the vaults of public service broadcasters. But clearing the rights is a challenge. Each production in the archives may involve up to a hundred rights holders. Finding and signing contracts with each one is difficult. Doing it for the whole archive is virtually impossible. That is why it is important to have a copyright clearance system that allows and supports one-stop-shops. The Nordic model, the so called 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, Finland, Iceland and Norway and such a license is expected to be introduced in Sweden 2010/2011.

It is worth noting that the model can also open up possibilities for schools, universities, museums and cultural institutions to have easy access to copyright protected material.

The Nordic countries have traditionally a balanced approach to copyright – to the benefit of the right holders, users and to the advantage of the audience. It is seen as a win-win situation by all the parties, especially when content is offered to a large audience. There are differences in the legislation between the five countries, but the basic approach is the same. The extended collective licensing system opens up the possibility to sign contracts with an organisation comprising a substantial number of right holders of a certain type of works, and gives the user right to exploit other works of the same nature although the right holders of those works are not represented by the organisation. Thus it is possible to tackle the complex problem with so called orphan works – a work in copyright where the author cannot be traced.

It is not always possible for just any society to claim 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 decides which society really is representative enough to negotiate also on behalf of non-members.

The extended collective license only gives the user right to exploit the works of the unrepresented authors in the manner and on the terms that follow from the agreement made with the organisation. And regarding the right holders, they have the right to issue a prohibition to the Public Service Broadcasters against the use of their works. The right holders thus have the possibility to opt-out of the agreement. In practice this right is used very seldom.

An extended license 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 a necessary protection against claims by outsiders and against criminal sanctions.

Almost 50 years of experience

The first extended collective licensing legislative provision for broadcasters covering mainly music was introduced in the Nordic countries in 1961. Since then this, well functioning system has been extended to new areas. 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 Copy Dan 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 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 programs are being digitized - provide access to more of DRs archived content.

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