Stockholm 9 November 2026

Comments to: Targeted consultation on a potential initiative for a better copyright environment for European creativity and innovation

1. Core messages

The Confederation of Swedish Enterprise appreciates the initiative taken by the Commission in making this targeted consultation. Copyright is of uttermost important to our members, and it is well put that copyright is linked to creativity and innovation.

Copyright is no longer solely a cultural policy issue. In a digital and knowledge-based economy, copyright is also a central issue for competitiveness, innovation, scaling, and the functioning of the Single Market.

As an intellectual property right, copyright has a totally different position for business than most other rights. Not all businesses apply for patent protection; it is not a tool for all types of business. Not all businesses apply for trade mark protection, simply because they do not need trade marks as a tool to communicate with the market. And yet again, not all businesses work with design in such a way that applying for design protection would make any sense.

However, it is safe to argue that there is no business in Europe today that does not have to consider copyright protection and this for many various reasons. If a company is using some kind of digital tool for their accounting, they are likely to have a copyright licensing agreement on the software. Many businesses, no matter how small, use social media. In their posts they may incorporate copyright protected texts and photographs. Even the most technical or service-oriented companies do have to consider copyright, whether it is drawings made by a technical consultant in relation to a technical solution or paying to play music for the customers.

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These perspectives are often lost in the discussions on copyright. It is more often discussed as an issue of protection for creative industries and the use done by digital tech giants.

The problem for European competitiveness is not primarily the existence or level of copyright protection as such, but the fragmentation, legal uncertainty and divergent implementation across Member States.

2. Initial notes on Confederation of Swedish Enterprise

The Confederation of Swedish Enterprise is Sweden's largest business federation. The Confederation of Swedish Enterprise has about 60 000 member companies from all types of industries. Some of the members are basing their entire business model on handling of copyright, like for example companies working with film or music production. Other members are mainly users of copyright protected works, where the rights are held by others. To this category belong for example hotels and restaurants paying to play music in their locations. Many other members are a mix of the two, both rightsholders and users.

The consequence of this is that the Confederation of Swedish Enterprise has a very broad business perspective when approaching copyright issues. From our perspective, a well-functioning Single Market should be the aim of all policy discussions regarding copyright.

3. Copyright challenges in Europe today

Complexities

Rules on intellectual property may be perceived as complex and difficult to handle by the laymen. For most people, the complexities of for example patent law is something that does not affect their daily life. It has merely an indirect effect for most people or even businesses, since it has an effect on innovation and growth.

It is different with copyright protection. Every company has to consider copyright issues, regarding for example what to post on social media or whether it can reuse old marketing materials.

As a consequence, the rules on copyright protection will affect the competitiveness for business in Europe. The lack of a Single Market in this specific field will influence how companies can grow and develop their business models.

Perspectives on copyright

When copyright is up for discussion, there are two main perspectives. One perspective considers the situation for creators, such as artists, composers or writers. The other considers the behaviour and need of the so-called tech giants. However, these are not the only two perspectives needed.

Traditionally, the industrial rights have been analysed through the lens of needs for businesses whereas copyright normally has been analysed through other lenses. Considering the importance of copyright for not the least the digital economy, it is crucial to analyse copyright also regarding its effects on European competitiveness.

Another perspective on copyright is that is mainly linked to compensation. However, another side of copyright is the fact that the rightsholder has the possibility to make decisions on how the work is being used. For many rightsholders, this may be just as important as a possible remuneration.

In relation to that, there is sometimes said that the way to handle challenges due to AI-development is that companies training AI should pay for their use of works. That may seem like an easy solution. However, it neglects the right to control and most suggestions on that kind of licensing models do not answer the question on how the remuneration will find the way to the rightsholder.

Contributions by different actors

Copyright is often viewed as that the entire effort is done by the creator of a work and that anyone else is making benefit of the effort done by that creator. In reality, that is not always the case.

The initiative can be taken by a company desiring to put a new product on the market or in collaboration between different actors. An initiative can also be taken due to that there is a public procurement having a tender out that requires creation of new copyright protected works.

It also often viewed that the artistic and economic risks when it comes to creation of protected works lie with the creator of the work. For some kind of works, this may be true. However, a lot of protected works would not have been created at all if a business would not have taken the artistic and economic risks. One example of this may be complex works, where many different creators are involved.

The user perspective

In line with this, it is also important to also consider the situation of the users. To a large extent, their situation has not been up for debate at all. One example is how the compensations are handled by Copyright Management Organizations (Collecting Societies).

Following the case stating that Member States cannot apply the criterion of material reciprocity the demand for higher compensations have been made.[1] For many users, the level of the compensations they had to pay was not linked to the works being used, or even the origin of the rightsholders. The basis was instead for example number of hotel rooms or square meters of a restaurant.

Lack of a Single Market

Intellectual property rights have been in the focus for harmonisation within Europe since the Treaty of Rome. In the field of copyright, there have been a significant number of legal initiatives. To date, there are some fifteen directions and also a few regulations handling issues on copyright.

Evidently, these legal initiatives tackle copyright ether regarding specific issues or from specific perspectives. Directives on specific issues are for example the directive on duration and the directive on orphan works. Among examples on directives from specific perspectives are the INFOSOC-directive and the DSM-directive.

Alongside with these strives for harmonisation there are also decisions coming from the European Court of Justice that sometimes cover issues not directly under the EU legislation and thus creating harmonisation outside the directives and regulations.[2]

As a consequence, the unitary part of the copyright protection is difficult to navigate in. The directives have also been implemented in different ways, leading almost to less harmonisation than before some directives. This includes the relation between what is in a directive and what is not.[3]

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[1] Judgment from ECJ, C-227/23.
[2] See for example C-5/08, C-310/17 and C-638/17.
[3] See for example the rules regarding parody. In the Swedish Copyright Act there is a specific rule for platforms (in 52 p §). Apart from that parody outside of platforms seem to be treated in another way. Alongside of that, cases from ECJ have to be taken into consideration, like C-201/13 and C-590/23.

Hindering of commercialising digital innovation

One example, truly relevant to digital innovation, is the handling of the employers right to computer programs in Article 2.3 in the computer program directive.[4] When this was implemented in Finland, there was an addition of a professor's privilege. It was argued that this is inline with the professor's privilege in Finnish law regarding patentable inventions. In Sweden, there is also a professor's privilege for patentable inventions. However, when the computer program directive was implemented no professor's privilege was added regarding computer programs. This has led to a situation where different universities handle the researchers' rights to computer programs in different ways. Thus, creating obstacles and uncertainties to commercialise digital innovation from universities.

Difficulties to scale across borders

Since EU-law does not cover all of what is (and potentially can be) handled within copyright, there are still large parts of copyright legislation up to national legislation. This goes for example to Panoramafreiheit and copyright protection for standards.

It could be argued that these kinds of uncertainties can be found everywhere in legislation. The situation regarding copyright is however more complex than necessary. It also has serious effects on European competitiveness.

In 1991, Ronald Coase received the Nobel Prize for his research. One crucial part of the reasoning behind him being awarded was his research regarding the effects of transaction costs.

For anyone operating in the EU, copyright creates transaction costs. These costs are linked to need for legal investigations before entering one more European market and to elaborate different templates.

Compliance costs

To give one example on the need for legal investigations, Panoramafreiheit varies between Member States. In Germany, a photographer must stand in a public place to be able to claim that the photograph can be for example published online.[5] In Austria, that is not a prerequisite.[6] Therefore, what in Austria is allowed to be published online is prohibited under German Law.

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[4] Directive 2009/24/EC on the legal protection of computer programs.
[5] § 59 German Urheberrechtsgesetzes.
[6] § 54 Abs. 1 Z. 5 Austrian Urheberrechtsgesetzes.

Varieties in implementation of the rules in Article 18-20 in the DSM-directive has had as a consequence that companies operating in for example Sweden, Finland and Denmark cannot necessarily use the same templates for their agreements.

These transaction costs come down to legal costs due to legal uncertainties. For anyone desiring to follow the rules, these costs may slow down growth of the company. In total, these transaction costs for growth within the EU has a direct impact on European competitiveness.

Compare this to the situation in other parts of the world. In countries where these legal challenges do not exist, it is enough to do one legal investigation and one set of templates to access markets of many millions. European players cannot do that on their home market.

This also has a direct impact on the possibilities to commercialise research results. Copyright is a crucial part of any business, yet the complexity of copyright protection makes it difficult for especially startups and spinoffs to do everything right.[7] Good innovations are being lost in this legal complexity.

4. Possibilities of development

Need of a more uniform protection

It is necessary to develop a more uniform copyright protection within the EU. When doing so, all current directives should not be reopened. The basis should rather be the already negotiated and balanced rules as a foundation for further harmonisation.

What needs to be harmonised are the diverging implementation in the Member States and the areas of copyright protection that are not yet harmonised. As described above, there are a great number of issues where what is allowed, not allowed or uncertain in Member States is even difficult to describe. In fact, these are just a few examples. The question that should be asked is who actually is benefitting from these differences. Businesses do not, creators do not, society does not. It is difficult to identify clear policy benefits from many of these remaining divergences.

When developing a unitary copyright protection, it is important to add a business policy perspective. The construction of the copyright protection

[7] Swedish Labour Court case 2019 nr. 53.

does influence the possibility for European actors to compete, within Europe and beyond.

Need to protect investments

It is also important to fully acknowledge that copyright protection today also function as a tool to protect investments.

Businesses do often take the initiative and the risks regarding copyright protected works. To give one example; today, there are tools for each and every one to publish works online. This goes for musicians, writers, filmmakers and so on. Seen from this perspective, producers and publishers should have lost their role. What we can see is that these intermediaries still do play a crucial role in many ways.

SME/scaling

Large multinational companies may have the resources to manage legal fragmentation across Member States. SMEs, startups and university spin-offs often do not. Consequently, legal complexity in copyright disproportionately affects smaller innovators and reduces Europe’s capacity to scale innovative companies across the Single Market.

Legal fragmentation in copyright should also be recognised as a scale-up barrier. Just as regulatory fragmentation affects cross-border operations in other sectors, diverging copyright rules increase costs and complexity for innovative companies seeking to expand across the Single Market.

Core values to acknowledge

In moving forward there are some core values that should be reflected in any proposals:

- The aim for harmonisation should always be a priority, in order to achieve a Single Market also in relation to copyright protected works.
- Aim to reduce compliance costs.
- Facilitate for SMEs and startups, also to make it easier for them to grow across the EU.
- Commercialization of research linked to copyright protected works must be facilitated.
- The need for a business perspective.
- Strive for technology neutral rules.
- Strive for a large extent of freedom of contract.

5. The role of contracts and agreements

Role of contracts and agreements

According to the Berne Convention, copyright protection does not require registration. IP strategies on copyright therefore are not based on the actual protection. IP strategies regarding copyright concern the contracts and agreements regarding the existing rights. This part is necessary to understand when discussing copyright from a business perspective.

Freedom of contract is a fundamental part of the market economy. This goes for contracts and agreements regarding copyright as well. However, the special character of copyright protection does put some strain on contracts and agreements.

Awareness on the consequences of different clauses

For many making agreements on copyright, there is a lack of understanding for the effects of different clauses. As one example, there have been studies made on intellectual property in public procurement. In these studies, it is more common with clauses not fulfilling the requirements for copyright agreements than clauses that do fulfil the requirements.[8]

Responsibility for informing on copyright protection, including raising awareness on copyright issues, are often divided by different actors. It is important that this is handled in a clear way in Member States, but also at EU-level. The Copyright Knowledge Centre, run by the EUIPO, is a good start but even more can be done.

The national intellectual property offices do to a large extent focus on the registered rights that they are administering. This is understandable, but most unfortunate. There should be a requirement to provide information on copyright protection and information regarding the effect different kinds of clauses regarding copyright protected works may have.

In order for this to be useful, standardised clauses could be elaborated. They should of course be voluntary to use, and there should also be alternative clauses depending on the situation that the parties desire to create.

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[8] Hausel Heldahl, Wainikka, Immaterialrätt i offentlig upphandling, Norstedts Juridik 2022. EU Commission, Intellectual Property in Public Procurement, 2026.

Links to IP backed finance

At EU-level the Commission and EUIPO are working on issues on IP backed finance.[9] The Confederation of Swedish Enterprise welcomes this initiative, it is especially welcome in relation to startups and scaleups. To a large extent, the Confederation of Swedish Enterprise also welcomes the proposal for a European Innovation Act including the parts on IP backed finance.

When it comes to an unregistered right that arises as a right held by a physical person, contracts and agreements are always necessary for anyone else who desires to use a protected work. As a consequence, handling of contracts and agreements regarding copyright is an essential part for many companies. This has to be reflected when discussing IP backed finance in relation to copyright protected works.

There is a divergence in the rules on contracts and agreements between the Member States, to a large extent due to variations in the implementation of EU-rules. Since this affects the opportunities for European businesses this is something that has to be addressed in any work on development of copyright in Europe.

6. An opportunity to act

Considering the importance of copyright in modern society, a more coherent and harmonised copyright framework should be seen as part of the broader effort to deepen the Single Market and improve conditions for innovative companies to scale across Europe. This is crucial in order to create a competitive Europe, a Europe that can stand strong in not only technical innovation but also regarding creative works and digital innovation.

Since there are so many directives already negotiated and so many cases from the European Court of Justice, a lot of work has already been done. There is a golden opportunity at hand in just taking this further.

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[9] https://www.euipo.europa.eu/en/publications/IP-backed-finance-in-Europe-state-of-play-and-future-perspectives