Question Q216B

National Group:	Sweden
Title:	**Exceptions to Copyright protection and the permitted Uses of Copyright works in the hi-tech and digital sectors**
Contributors:	Mats FOGEMAN, Gunnar KARNELL, Ia MODIN, Hans NICANDER, Per-Jonas NORDELL, Pia JANNÈ NYBERG, Annika SVANBERG, Stefan WIDMARK, Sanna WOLK, Johan ÖBERG
Reporter within Working Committee:	Sanna WOLK
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Questions

I. Analysis of current law and case law

The Groups are invited to answer the following questions about specific exceptions or permitted uses existing in their national laws:

1. What exceptions or permitted uses apply to a service provider in relation to user-generated content (UGC)? Are there any limitations on those exceptions/uses, for example when the service provider is put on notice of unlawful content uploaded by internet users? Would they also apply to UGC sites which likely attract infringement? Which types of service provider may benefit from such exceptions: What content does your jurisdiction define as UGC? Would exceptions for UGC, for example, apply to UGC sites such as YouTube or social networking sites such as FaceBook?

What exceptions or permitted uses apply to a service provider in relation to user-generated content (UGC)? Are there any limitations on those exceptions/uses, for example when the service provider is put on notice of unlawful content uploaded by internet users?
There is no general rule on liability for service providers or other intermediaries with respect to user-generated content (UGC) in the Swedish Act (1960:729) on Copyright in Literary and Artistic Works (Copyright Act) or otherwise under Swedish law. Nor is there a general duty to take actions or actively seek circumstances that may indicate suspected infringements or other illegal activity for a service provider. According to the preparatory works to changes made in the Copyright Act in the course of implementing the Directive 2001/29/EC on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society (InfoSoc Directive), the pure operation and provision of services of an intermediary, or the supply of hardware or wire capacity for transmission, is, as a main rule, not deemed to be sufficient for liability (see Government Bill No. 2004/05:110).

According to Secs. 16-18 of the Swedish Electronic Commerce Act (2002:562) (Swedish E-Commerce Act), implementing the Directive 2000/31/EC on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market (E-Commerce Directive), intermediaries acting as a "mere conduit" or where works are copied in the course of cashing or hosting, are excepted from liability for infringement. However, according to Sec. 18 of the Swedish E-Commerce Act, concerning hosting service providers, the aforementioned exceptions from liability apply only provided that the service provider is not aware of the existence of the illegal material or the illegal material is removed expeditiously once the service provider becomes aware of the existence of the material.

Secs. 4-5 of the Copyright Act refer to such situations that can be considered to constitute a permitted use of UGC under certain circumstances. Thus, according to Sec. 4, a person who has made a *translation* or *adaptation* of a work or *converted* it to another form, shall have copyright in the work in the new form, (subject, however, to the copyright in the original work). Further, if a person, "*in free connection"* with another work, is creating a new and independent work, his/her work shall not be subject to the right in the original work. According to Sec. 5, a person who, by *combining* works or parts of works, creates a *composite work* shall have copyright therein, but his/her right shall be without prejudice to the rights in the individual works. In this connection, it shall also be mentioned that *satirical* works are usually deemed to be new and independent works and therefore non-infringing, (see inter alia the Supreme Court case NJA 2005 s. 905).

There are certain limitations on the exceptions and permitted uses set out above. Firstly, there are limitations set out in and following the application of the Swedish E-Commerce Act, as referred to above. Furthermore, there exists in Sweden, a special Act (1998:112) on Responsibility for Electronic Bulletin Boards (BBS Act), according to which a service provider operating/hosting a website where the content is provided by the users, is required to monitor the service in such a way as can reasonably be required considering the scope of the service and its general theme. According to the preparatory works to the BBS Act (Government Bill No. 1997/98:15), the service provider does not have to constantly and actively control each and every message that is uploaded on the service. However, it is stated that there should be a certain continuous and regular control, entailing that the service should not, as a main rule, be left unattended for a longer period than a week. The service provider has also a duty to remove or otherwise prevent the spread of certain illegal messages, e.g. if the content *obviously* infringes copyright. It shall be noted that according to the preparatory works to the Swedish E-Commerce Act (Government Bill No. 2001/02:150) the monitoring duty in BBS Act is deemed not to be in conflict with the prohibition of general monitoring requirements in Art. 15(1) of the E-Commerce Directive, since preamble 48 of the Directive states that the prohibition does not affect the possibility for member states of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities.

Also, beside the BBS Act, there are general limitations on the exceptions for service providers. According to case law and preparatory works to changes made in the Copyright Act in the course of implementing the InfoSoc Directive (Government Bill No. 2004/05:110), the pure operation and provision of services of an intermediary is, as set out above, generally not deemed to be sufficient for liability. The Swedish Supreme Court has in a case, regarding (perpetrator) liability for a "system operator" conducting a BBS, stated that something more, i.e. "*an active acting*", is required by the intermediary (NJA 1996 s. 79). From some Court of Appeal cases (Svea Hovrätt 1998-09-29, Case No. B 318/987 and Göta Hovrätt 1998-04-29, Case No. B 1924/95) it can be concluded that a hosting service provider has a certain duty to be active and inspect the content more frequently if the service contains a large amount of content or if the scope and objective of the service can be deemed to facilitate the existence

of illegal material or if the service provider otherwise has a reason to believe that illegal material is uploaded.

According to the Copyright Act, anyone who commits an act implying a (direct) infringement of copyright may be subject to sanctions provided for in the Act. As is expressly set out in the Copyright Act and according to general legal principles, also a person who is *contributing* to an infringing act is subject to the sanctions under the Act. As a main overall rule, a person is deemed to contribute to an act of infringement, if he or she is supporting the act by advice or other assistance in an objective sense. As to service providers and UGC, and in case of an infringement, the services provider would typically be held liable for contributory (instead of direct) infringement. In the preparatory works referred to above, (Government Bill No. 2004/05:110), it is stated that a service (hosting) provider may be liable for contributory infringement, (at least in an objective sense), if he/she is getting "*concrete indications*" that the server space is used in a way that implies infringement.

In the well noted Pirate Bay-case in Svea Court of Appeal, (Svea Hovrätt 2010-11-26, Case No. B 4041/09) three persons operating a website were convicted of contributory infringement since it was deemed that the website's search functions, the uploading and storage possibilities of torrentfiles and the tracker that mediates user interaction, made the communication of the illegal material to the public easier and faster and therefore facilitated the users infringement of copyright. As to the claims for damages in the case, it shall be noted that the Court rejected the defendants' claim for exception from liability under the E-Commerce Act, stating that the claims for damages in the case were based on the defendant's *provision of the functions of the website*, while the invoked exception in the E-Commerce Act concerns the content in stored information. The judgment has been appealed to the Supreme Court. In the Black Internet-case, (Svea Hovrätt 2010-05-04 and 2010-05-05, Case No. Ö 7131-09 and Ö 8773-09), regarding an injunction to prohibit an internet service provider, under a penalty of a fine, to continue to contribute to an act constituting copyright infringement, the Svea Court of Appeal held that the service provider Black Internet, by providing access to the internet, could be deemed to be an accomplice to the infringements carried out by the users of the website The Pirate Bay, and accordingly granted the injunction. An injunction was also granted by the Svea Court of Appeal on similar grounds in the Portlane-case (Svea Hovrätt 2010-05-04, Case No. Ö 10146-09), where the internet service provider Portlane was providing internet access to certain trackers used for illegal file-sharing.

Would the exceptions also apply to UGC sites which are likely to attract infringement?
There is no general rule making a distinction between services/websites that are likely to attract infringement and other services/websites. However, based on existing case law it could reasonably be assumed and concluded that the more illegal material that appears from time to time, or has appeared over the time, on a website, the more far-reaching duty on the service provider to be active in terms of monitoring and removal of infringing content.

What content does your jurisdiction define as UGC?
All types of content such as movies, videos, images, music, lyrics and messages can be included in the definition of user-generated content. The BBS Act is referring to "messages" which is defined as "text, images, sound or other information".

Which types of service provider may benefit from such exceptions; Would exceptions for UGC, for example, apply to UGC sites such as YouTube or social networking sites such as Facebook?
According to the preparatory works to the Swedish E-Commerce Act (Government Bill No. 2001/02:150), the exceptions in this Act are applicable to a large number of different types of services and service providers (e.g. bulletin board systems, web hotels, chat forums, web portals etc.). Further, all services mediating electronic messages between users (user interaction) are subject to the BBS Act. Thus, also according to the BBS Act, a large number

of different types of services and service providers are subject to the monitoring duties etc. set out in this Act, e.g. news groups, user-generated archives for files, portals, chat forums, web hotels. Expressly excluded from application of the BBS Act are ISPs, e-mail mediators, mediation of messages within an authority or corporation, services protected by the Freedom of the Press Act or the Freedom of Speech Act and messages intended solely for a specific recipient. It can be reasonably assumed and concluded that also websites such as YouTube and Facebook would be covered by the exceptions and subject to the limitations set out above. Since a site like YouTube typically consists of more illegal material (uploaded at the discretion of the user), than a social networking site like Facebook, mainly consisting of messages and images originating from the users, it can be assumed that a site like YouTube will have to be more active in terms of monitoring and removal of content.

2. What exceptions or permitted uses apply in relation to temporary acts of infringement? Do transient/temporary copies of electronic works, held for example in a cache or in a computer's working memory (RAM) amount to infringing copies?

Art. 5(1) of the InfoSoc Directive is almost literally implemented through Sec. 11 a in the Swedish Copyright Act. The provision shall be seen and interpreted in light of Paragraph 33 of the Preamble to the Directive. Hence, the requirement in Sec. 11(1) a, that the copies must not have any independent economic importance, follows from the Preamble. The limitations in Sec. 11(3) a follows from the implementation of the Directive 96/9/EC on the legal protection of databases and Directive on the legal protection of computer programs.

Here it is of great importance to mention the interpretation of the provision made in the Swedish Government Bill No. 2004/05:110 pp. 95-96 to the implementation of the InfoSoc Directive. The Government stated that a use should be considered lawful where it was authorised by the right holder or not restricted by law. This should cover the situation where an individual had the right holder’s consent to use the work. An example of a use not restricted by law could be when it was allowed due to a limitation e.g. according to the provision on private use in Sec. 12 (cf. below). Another example could be if the use was not at all relevant due to copyright protection. A purpose behind the provision in Art. 5(1) was held to ensure that *browsing* and *caching* could be performed. The wording that a use should be lawful when it was not restricted by law explicated the known situation that there to a relatively great extent existed unauthorised content on the Internet. Relevant uses included reproduction and making available to the public. Hence, the mere *listening* to or *looking* at works by an individual on the computer were not relevant uses of the work. This was the case even if the work or the copies were put on the Internet without the right holders’ consent. From our point of view, the interpretation by the Swedish Government of the meaning of Art. 5(1) and Recital 33 of the Preamble can be challenged, because it seems to go beyond the verbatim expression of the Directive, namely that a presumption for a lawful access to copyright protected content according to the InfoSoc Directive should be that not only the work as such, but also the specific copy, is made available to the public with the consent of the right holder.

According to the Government, the provision in Art. 5(1), however, did not aim at the situation where someone *downloaded* copyright protected content from the Internet. Sec. 11 a of the Swedish Copyright Act should therefore, in this context, be seen in relation to Sec. 12 (cf. below).

3. Is there a private copying exception? If so, what is its scope? Should copyright levies apply for private use? If so what uses should be subject to the levy?

The Swedish private copying exception has been adjusted in line with the InfoSoc Directive.

The adjustments have resulted in a “narrower” exception compared to the situation prior to implementation of said directive. Sec. 12 of the Swedish Copyright Act provides a right to make, for private purposes only, one or a few copies of works that have been made public. The amount of allowed copies is dependent on type of work and the context of the situation in which the exception is claimed. The exact scope of the exception is still to be decided by the courts. As an example, the preparatory works (Swedish Government Bill no 2004/05:110) does not completely exclude the possibility of the private copying exception being applicable in relation to personal copies made at the workplace as long as the copies are made for personal use (*i.e.* distribution to work colleagues is not allowed).

The exception is balanced by limitations in relation to certain types of works (e.g. private copies of literary works in written form may only concern limited parts or such works of limited scope and the exception does not apply in relation to computer programs or digital copies of compilations in digital form). The act of copying computer programs as well as the making of digital copies of compilations in digital form may, however, under certain conditions be excluded from criminal liability if the use of such copies is personal (Sec. 53 of the Swedish Copyright Act).

The exception further includes the right to engage a third party to make the copy subject, however, to certain limitations (e.g. third party copying of musical or cinematographic works is not allowed).

As a general prerequisite, the private copying exception is not applicable if the “master copy” is unlawful (such as e.g. a work that has been made available on the Internet without the rights holder’s approval). There is, however, a limitation in relation to the duty to pay reasonable compensation for copyright infringement under Sec. 54 of the Swedish Copyright Act, stating that the duty to compensate for the use of the work does not apply to anyone who, in connection with the making of copies for private purposes, violates only Sec. 12, fourth paragraph (regarding the lawfulness of the “master copy”), unless the infringement is carried out willfully or with gross negligence.

Should copyright levies apply for private use? If so what uses should be subject to the levy?
Copyright levies have been in effect in Swedish law for most of the time since 1982. We have therefore focused our response to account for how the current levy is designed.

Swedish law contains rules stipulating a copyright levy to compensate right holders for the private use allowed by the law. Equipment and media especially suited to be used in private copying are subject to the levy. Both analogue and digital devices are included. Thus products such as recordable CDs, DVD players with recording facilities and MP3 players are subject to the levy, while products such as dictaphone cassettes, floppy discs and prerecorded audiocassettes are not. Products to be used by professionals in their professional activities are exempt by the levy, as are products to be used to aid the functionally disabled and products manufactured in Sweden intended for export.

Importers and manufacturers of the products are obliged to pay the levy which is collected on a collective basis by Copyswede, a Swedish collecting society. The society represents the right holders and is as such competent to negotiate agreements with importers and manufacturers pertaining to copyright levies. For products by which analogue recordings can be made, the payable compensation is 2.5 Swedish öre per possible recording minute. For products by which digital recordings can be made repeatedly, the compensation is 0.4 Swedish öre per megabyte storage capacity. For other products by which digital recordings can be made, the compensation is 0.25 Swedish öre per megabyte storage capacity. The Swedish Copyright Act allows for a reduction of the levy if right holders are compensated in another way or if the circumstances are such that the ordinary level of the levy would be unreasonable. A reduction of the levy is also possible for products which are, although

especially suited to be used in private copying, also to a large extent used for other purposes not associated with private copying

4. Under what conditions do the hyperlinking or location tool services provided by search engines infringe copyright? Are there any exceptions or permitted uses relevant to this activity?

There are no explicit exemptions in the Swedish Copyright Act on hyperlinks, location tools and search engines. However, there could be copyright in book titles, headlines etc. (could qualify for copyright protection as literary works) and the use of such a title or headline in a link could be an infringement. Further on, accessing copyrighted works such as articles, music files, TV-programs etc via links could also be copyright infringement.

There are a few Swedish cases on hyperlinking. The first case on hyperlinks and copyright infringement is a Supreme Court decision form year 2000 (NJA 2000 p. 292) concerning so called deep linking. In this case, a 17-year-old website owner had linked to a large number of Mp3 files placed on different servers around the world without the consent of the right holders. Visitors on the website who clicked on the links became directly transferred to the relevant file. The file could then be downloaded to the users' computers.

It should be noted that due to certain procedural restrictions, the trial in the Supreme Court was limited to the question whether the website owner, by providing the links on his website, could be held directly responsible or responsible for contributory infringement, for making copyright protected works available to the public without the right holders consent.

The Supreme Court found that hyperlinking to a website containing Mp3 music files available for illegal downloading constituted public performance (today communication to the public). However, the Court found that the website owner had neither made copies of the musical works nor – independently or jointly with another – in any other way disposed of the copies of the musical works which had been achieved by downloading Mp3 files placed on a website to which the defendant linked. Under the Swedish Copyright Act, public performance of a sound recording is exempted from the exclusive right otherwise entitled performing artists and producers of recordings of sounds (neighboring rights). Thus, the website owner could not be held responsible for copyright infringement for linking to the Mp3 files.

Another more resent court decision, however from a lower court, has dealt with the question on linking to streamed web TV (Hudiksvall District Court, 2010-11-10, Case No. B 1230-09). The background was that an entertainment company provided access to pay per view live WebTV streaming broadcasts. In order to gain access to the transmissions each viewer had enter into an agreement with the company and pay a SEK 98 fee. After finalizing the agreement and payment of the fee, the company provided the viewer with a link to the streaming server, which the viewer could use to gain access. An individual, that was the owner of a web site dedicated to the ice hockey team SSK, provided on two occasions, links containing the address to the streaming server where live broadcasts of two matches with SSK were transmitted. The visitors could click on the links in order to be immediately transferred to the server and consequently view the matches without entering an agreement with the company or paying the fee, because the companies streams were open on the Internet to anyone who found them and not provided with any measures of technological protection. The company itself however only disclosed the link to the streaming server to those viewers who accepted the agreement and paid the fee. Furthermore, the link to the stream provided by the company was identical for all viewers and in addition, the link was identical for previous broadcasts.

The company filed a complaint to the public prosecutor who decided to file criminal charges against the individual on infringement of the company's copyright to the ice hockey matches as copyright protected works and the related rights to the production of the ice hockey matches.

The District court concluded that the Swedish Copyright Act provides protection to a work of art. Based on the low threshold in Swedish case law for protection as a work of art and the *inter alia* camerawork, producer's work and commentators, the court first found that the content of the broadcasted ice hockey matches were literary and artistic works of which the company was the rights holder. The court also found that the person that provided links on his web page by which, a visitor by clicking on them, would immediately be transferred to the streaming server containing the live WebTV broadcasts and which became available and could be viewed on the visitor's own computer. The District court referred to the Swedish Supreme Court judgement NJA 2000 s. 292, where the Supreme Court established that accessing unlawful uploaded music via links would be copyright infringement (see above). The District court concluded first that the facts in the two cases were similar. Therefore, the providing of links to the streaming server containing the live WebTV broadcasts was considered an infringement of the company's copyright and prohibited by the Swedish Copyright Act. The court sentenced the individual to pay fines and damages to the company. The decision has, however, been appealed.

In an other recent case (Stockholm District Court, 2010-06-11, joined cases No T 7263-07, T 7265-07, T 7540-07 and T 7550-07) the court ruled different and acquitted the defendant. In this case the news search and storage provider Retriever provided links to articles in different Swedish newspapers to their different subscribers, depending on each subscriber's choice of interest. Several authors of articles filed lawsuits against Retriever for infringements in their copyright either by providing the articles themselves alternatively by providing links to the articles.

The District Court first found that Retriever was not the provider of the articles and went on to determine if the links could constitute infringement. The court established that the provision of the articles on the Internet with the author's consent meant that the rights holders gave an implied license to anyone to provide links to the articles. The court also discussed if the provision of links to the articles could be seen as making the articles available to the public at all and found that that the only one who actually makes the articles available is the provider of the articles, no one else. The court also discussed the difference between reference links and deep links and found that Retriever's links were to be regarded as reference links. Finally the court tried if the Supreme Court judgement NJA 2000 s. 292 was applicable. Since the District Court found that Retriever's links were reference links and the Supreme Court judgement was about deep links (according to the District Court interpretation), the NJA 2000 s. 292 was not applicable. Retriever was therefore acquitted.

The latter case has many similarities with the judgement from the German Supreme Court ("BGH") case no I ZR 259/00, Paperboy, where the defendant provided links to articles on the Internet, where the BGH established that links themselves can not be seen as a making the articles available to the public. Links to lawfully provided files on the Internet should be seen as help to find something already available on the Internet, available for anyone to access. If the rights holder wishes to restrict access, this can be done by the means of technological measures.

It should again be noted that in both referred recent Swedish cases, the articles/WebTV was provided on the Internet by the rights holder or with the rights holder's consent, open for anyone to. Both cases are appealed to the Appeal Court and judgements are expected during 2011.

5. Are there any other exceptions or permitted uses which you consider particularly relevant to the digital environment (not previously studied in Q216 A)?

Works of fine art, under Sec. 23, may be reproduced in connection with a text in a critical presentation. However, this is not allowed in a digital form. Nevertheless, according to Sec. 24 works of fine art may be reproduced, also in digital form, if they are permanently located outdoors on, or at, a public place.

II. Proposals for harmonization

The Groups are invited to put forward proposals for the adoption of harmonised rules. More specifically, the Groups are invited to answer the following questions without regard to their national laws:

6. In your opinion, are the exceptions to copyright protection for (i) user-generated content, (ii) transient/temporary copies, (iii) private copying (taking into account any copyright levies) and (iv) hyperlinking in your country/region suitable to hold the balance between the interest of the public at large and of copyright owners in the hi-tech and digital sectors?

Balance: The generally, as yet internationally, predominant tendency by courts of law to give protection generously for what has been called “small coins”, i.e. to consider relevant for protection elements of creativity in products of all kinds of individual creativeness, has brought in, under the umbrella of copyright protectability, the joint work-results for various productions by lots of contributors, not least employees of various competences, who do not fall into the traditional categories of authors, artists or composers. The sheer difficulty to identify the creative human sources/personalities creates a difficulty to evaluate what interests there are to draw into considerations about balancing of interests. Clearly, if the courts would generally turn against the hitherto prevalent trend, to draw into protection as literary or artistic works almost whatever, by asking, instead, for proof about the creative results of identified persons in matter under scrutiny, this would make it more clear what interests there really are to evaluate under a balancing aspect regarding on the one hand the general public and copyright owners on the other.

The Swedish Copyright Act has continuously been updated since its inception in the early 1960s and it is currently under a more general revision which, however, is not primarily intended to amend the provisions about exceptions in the high tech and digital sectors. Rather, by widening the scope of contracting, based, where appropriate, on extended collective licensing, copyright provisions are intended to further public access under orderly contractual formats, taking into account by due representativeness the interests of all kinds of copyright owners.

7. Are these exceptions and permitted uses appropriate to the technology, understandable and realistic? Do they contribute to a situation where copyright is enforceable in practice?

Enforceability: Public understanding of the provisions in the Copyright Act is presently severely affected by the complexity of the text of the Copyright Act and its terminology (e.g. cross references abound). The express aim of the current revision process is to bring the form of the whole text up to date. Under prevailing EU-dependent legislative conditions, the

content of the Act and its rules on enforcement are up to date and in many respects more generous to users than demanded by international obligations. Generally, the detailed provisions on exceptions and limitations in the Copyright Act are considered to serve both the public and copyright owners better than typical fair use provisions, mostly of unsecure applicability. That technical and market developments run ahead of legislation is a fact internationally. However, a few cases before the Swedish courts, like the widely known “Pirate Bay”-case, is illustrative of how up to date enforcement rules do not efficiently meet demands for balancing of interests in the digital era. Also, members of the general public will not have a strong enough interest or the financial means to bring complaints to court or to stand up against freedom limiting measures by copyright owners under non-litigation circumstances.

A desirable amendment regarding downloads, providing some order to the clearly unbalanced situation concerning the limitation for private use relative illicit uses, would be that it would suffice, like in some other countries, for right holders to bring proof of the use of a specific computer and not about the identity of the individual downloader.

8. What, if any, additional exceptions would you wish to see relevant to these areas?

Relevant additional exceptions, desirability: None, but what might contribute to the economic balancing of affected parties through strengthening of the impetus to collective bargaining and standard contracts for orderly market conditions around clearly limited freedom areas.

9. Given the international nature of the hi-tech and digital fields, do you consider that an exhaustive list of exceptions and permitted uses should be prescribed by international treaties in the interests of international harmonisation of copyright? Might you go further and say that there should be a prescribed list? If so, what would you include?

Prescribed list of exceptions by means of international treaties: Present days’ experiences tell about the impracticability of more than small step by step changes on the international level. We should stay with reality in which there is minimal understanding for such a thing as a prescribed list for harmonization. The Infosoc Directive has set a bad example in that respect.

Fair use rules, as applied while taking into account the application by courts internationally of the so called "three step test", may be considered for works that have been made public because a prescribed list of exceptions in copyright laws are too restrictive. Fair use could be a flexible and extensible solution in the digital environment as technology and practice changes, taking in account consumers, competing and other interests.

In addition, their should be copyright levy to compensate right holders for the use allowed by fair use rules.

Summary

In the Swedish Copyright Act there are very few provisions relating specifically to the hi-tech and digital sectors. There is no general rule on liability for service providers or other intermediaries with respect to user-generated content (UGC) in the Copyright Act or otherwise under Swedish law. Nor are there any explicit exemptions in the Swedish Copyright Act on hyperlinks, location tools and search engines. The Swedish Copyright Act provides, however, a right to make, for private purposes only, one or a few copies of works that have been made public. As a general prerequisite, the private copying exception is not

applicable if the “master copy” is unlawful (such as e.g. a work that has been made available on the Internet without the rights holder’s approval). In addition, there is a limitation in the Copyright Act for temporary made copies, if the making of the copies is an integral and essential part of a technological process and do not have any independent economic importance. Hence, the mere listening to or looking at works (streaming) by an individual on the computer were not relevant uses of the work.

A prescribed list of exceptions can not take into account the digital changes, and in the opinion of the Swedish Group fair use rules may instead be considered. Fair use could be a flexible and extensible solution in the digital environment as technology and practice changes.

Zusammenfassung

Das schwedische Urheberrechtsgesetz enthält nur wenige Bestimmungen, die sich spezifisch auf den Hi-Tech-Bereich und den digitalen Bereich beziehen. Es gibt keine allgemeine Regel im schwedischen Urheberrechtsgesetz oder sonst nach schwedischem Recht über die Haftung der Dienstanbieter oder anderer Übermittler in Beziehung zu Informationen order Inhalt, die von Internetanwendern abstammen oder erzeugt werden [eng. user-generated content]. Noch gibt es irgendwelche ausdrücklichen Ausnahmen betreffend Hyperlinke, Adresswerkzeuge oder Suchmaschinen im schwedischen Gesetz. Das schwedische Urheberrechtsgesetz reguliert trotzdem das Recht über die Vervielfältigung eines Werkes, das schon öffentlich zugänglichgemacht worden ist, zu privatem Gebrauch und nur durch Herstellung von einem einzigen order wenigen Abbildungen. Als eine Grundvoraussetzung gilt, dass die Ausnahme betreffend die Abbildung zum privaten Gebrauch entfällt, wenn die Originalkopien rechtswidrig hergestellt worden ist (z.B. ein Werk, das im Internet ohne die Erlaubnis des Urhebers oder des Rechtsinhabers zugänglich gemacht worden ist). Außerdem gibt es eine Beschränkung im schwedischen Urheberrechtsgesetz in Bezug auf vorübergehende Vervielfältigungshandlungen oder Kopier, die flüchtig, die einen integralen oder wesentlichen Teil eines technischen Verfahrens darstellen und die keine eigenständige wirtschaftliche Bedeutung haben. Deshalb ist ein einfaches Anschauen oder Lauthören eines Werkes (Abspielen order Widergabe von digital gespeicherten Daten) von einem Einzelnen durch einen Computer als keine relevante Nutzung des Werkes zu betrachten.

Die vorgeschriebene Auflistung von Ausnahmen beachtet deshalb nicht die digitalen Veränderungen und die Meinung der schwedischen Gruppe ist, dass die Einführung von Regeln über eine rechtmäßige Nutzung stattdessen überlegt werden sollte. Rechtmäßige Nutzung könnte eine mehr flexibel und streckbar Lösung für das digitale Milieu darbieten, als die Technologien och Praxis ändern.

Résumé

Dans la loi suédoise sur le droit d'auteur, il y a très peu de dispositions se référant spécifiquement aux secteurs de haute-technologie et numériques. Il n'y a pas de règle générale sur la responsabilité des prestataires de service ou d'autres intermédiaires en matière du contenu généré par les utilisateurs (UGC) de la loi sur le droit d'auteur ou en vertu de la loi suédoise. Il n'existe pas non plus d’exemptions explicites dans la loi suédoise sur le droit d'auteur sur les hyperliens, les outils de repérage et les moteurs de recherche. La loi suédoise sur le droit d'auteur prévoit, toutefois, le droit de faire, à des fins privées seulement, une ou quelques copies d'œuvres qui ont été rendues publiques. Comme condition préalable générale, l'exception de copie privée ne s'applique pas si la «copie originale» est illégale (comme par exemple une oeuvre qui a été mise à disposition sur Internet sans l'autorisation du titulaire des droits). De plus, il y a une limitation dans la loi sur le droit d'auteur pour les copies temporaires faites, si la réalisation des copies est une partie intégrante et essentielle d'un procédé technologique et n'a pas d'importance économique

indépendante. Ainsi, la simple écoute ou regard des œuvres (« streaming ») par un particulier sur l'ordinateur n'étaient pas des utilisations appropriées de l'œuvre.

Une liste officielle de ces exceptions ne peut pas prendre en compte les changements numériques, et selon l'opinion du Groupe Suédois, des règles d'utilisation équitable pourraient, à la place, être prises en considération. L'utilisation équitable pourrait être une solution flexible et extensible dans l'environnement numérique en tant que changements technologiques et pratiques.

Extract from the Swedish Act 1960:729 on Copyright in Literary and Artistic Works

Sec. 4 Derivative works
A person who has made a translation or an adaptation of a work or converted it into another literary or artistic form, shall have copyright in the work in the new form, but his right to exploit it shall be subject to the copyright in the original work.

If a person, in free connection with another work, has created a new and independent work, his copyright shall not be subject to the right in the original work.

Sec. 5 Composite works
A person who, by combining works or parts of works, creates a composite literary or artistic work shall have copyright therein, but his right shall be without prejudice to the rights in the individual works.

Sec. 11 a Making of Temporary Copies
Temporary forms of copies of works may be made, if the making of the copies is an integral and essential part of a technological process and if the copies are transient or have only a secondary importance in that process. The copies must not have any independent economic importance.

The making of copies under the first Paragraph is permissible only if the sole purpose of that making is to enable
1. a transmission in a network between third parties by an intermediary, or
2. a lawful use, that is a use that occurs with the consent of the author or his successor in title or another use that is not un-permissible under this Act.

The provisions under the first and second Paragraphs do not confer a right to make copies of literary works in the form of computer programs or compilations.

Sec. 12 Making of Copies for Private Purposes
Anybody is entitled to make, for private purposes, one or a few copies of works that have been made public. As regards literary works in written form the making of copies may, however, concern only limited parts of works, or such works of limited scope. The copies must not be used for purposes other than private use.

The provisions in the first Paragraph do not confer a right to
1. construct works of architecture
2. make copies of computer programs, or
3. make copies in digital form of compilations in digital form.

Furthermore, the provisions in the first Paragraph do not confer a right to engage, for private purposes, another person to
1. make copies of musical works or cinematographic works
2. make utilitarian articles or sculptures, or
3. copy another person's work of fine art by means of artistic reproduction.

This Section does not confer a right to make copies of a work when the copy that constitutes the real master copy has been prepared or has been made available to the public in violation of Section 2.

Sec 23 Reproduction of Works of Fine Arts
Works of fine art which have been made public may be reproduced
1. in connection with the text in a scientific presentation which has not been prepared for commercial purposes,

2. in connection with the text in a critical presentation, except if it is in digital form,
3. in a newspaper and a periodical in connection with a report on a current news event, except if the work has been created for reproduction in such a publication.

The provisions in the first Paragraph apply only if the use of the reproduction is carried out in conformity with proper usage and to the extent called for by the information purpose.

Sec. 24 Reproduction of Works of Fine Arts and Buildings in pictorial form
Works of fine art may be reproduced in pictorial form
1. if they are permanently located outdoors on, or at, a public place
2. if the purpose is to advertise an exhibition or a sale of the works of fine art but only to the extent necessary for the promotion of the exhibition or the sale or
3. if they form part of a collection, in catalogues, however not in digital form.

Buildings may be freely reproduced in pictorial form.