



LUNDS
UNIVERSITET

Vice-Chancellor

DECISION

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Reg. no STYR 2015/542

General recommendations on Lund University's right to use copyrighted material

Background

Lund University strives to conduct education and research of the highest quality, in intertwined environments. Infrastructure and support activities help us achieve these objectives. It is natural for all parts of the University to produce material that will require further development and that will be used by many, on more than one occasion. Whenever such material is covered by copyright, it is important to clarify how the material may be used at Lund University.

Furthermore, through its participation in the EU research programme Horizon 2020, Lund University is also required to account for how intellectual property rights are handled in collaboration projects and contract research¹. The account is to include the University's use of copyrighted material.

Against this background, and through the present general recommendations, the University aims to clarify its interpretation of Section 1 of the Swedish Act on Copyright in Literary and Artistic Works (1960:729), and the rules that apply with regard to the University's right to use copyrighted material produced by its employees within the context of their employment. The recommendations do not involve a change to the University's current application of the copyright act.

Rights and matters not described in these general recommendations

According to Swedish legislation², a person who has created a literary or artistic work (product, result, creation) that meets the threshold of originality shall have copyright for that work. 'Originality' means that the work is unique, i.e. the result of intellectual creativity so individually characterised that two people, independent from each other, could not have achieved the same results. 'Work' refers to

¹ Section 23a of the General Model Grant Agreement, Horizon 2020 and the EU Commission's Code of Practice

² Section 1 of the Act on Copyright in Literary and Artistic Works (1960:729)

articles, talks, research projects, books, maps, blueprints, computer programs, databases, plays, musical compositions, film, visual art, applied art, etc.

Works which do not meet the threshold of originality are not covered by copyright. Documents which are part of public authority decisions, statements or consultation responses, etc. are also not covered by copyright. When such works or documents are produced within the scope of the University's activities, the University has a right to them.

A copyright consists of moral and financial rights. The moral rights are the rights of the creator to be named and respected when the work is used by others. The moral rights are not affected by the present general recommendations. Financial rights are the rights of the creator to control the use of the work, by producing copies of the work or by making it available to the public, regardless of any remuneration they may or may not receive.

A copyright can be assigned to several people collectively, or for various aspects of the work depending on the efforts that gave rise to the work, e.g. in the case of co-authorship. Mutual agreements between multiple creators with regard to the exercise of the joint copyright are not addressed in these general recommendations.

Regardless of the creator's individual right, others may have the right to use a copyright-protected work in various ways, e.g. through photocopying, citation, dissemination, etc. These infringements on individual copyright are not described in the present document.

To clarify: if the work was produced within the context of employment, the physical material on which the copyright-protected work is based belongs to the employer.

Application of the copyright act at Lund University

Even when a copyright-protected work is created as a result of the employee fulfilling their work duties or special commitments, the employee is considered to be the creator of the work. However, the employer usually has the right to use the work in various ways. The right to use the work is contingent on employment, and ensues from the employment contract (even if it is not specifically stated in the contract).

The employer's right to use entails use of the work – without remunerations paid to the employee in addition to their salary – for the purposes and needs that fall within the regular activities of the organisation, which could be predicted when the work was produced. In such contexts, the employer has the right to make changes to the work, in relation to the purposes and needs of the organisation. Any additional changes and revisions must be agreed between the employer and the employee. Even after the employee's period of employment has ended, the employer maintains its right to use the work for as long as the need remains.

If the University and the employee are to reach an agreement concerning right to use that differs from that described in these general recommendations, this must be stated explicitly, preferably in a written agreement.

The recommendations concerning the application of copyright are to be used as a point of reference for all employees at Lund University.

Teaching staff³ at higher education institutions are considered to have a stronger right to their work compared to other employees, and this affects the application of the employer's right to use in research and teaching as described below.

If the right to a work, produced in research or teaching, is subject to an agreement with an external party, the provisions of the agreement shall apply. This may be the case, for example, in externally funded research, contract research and teaching.

Right to use works produced in research at Lund University

The University does not claim the right to use works created by teaching staff independently, within the scope of their research duties and that require a qualified effort, such as research publications in the form of articles, books and book chapters, presentations for research contexts, or other literary or artistic works, unless the parties have agreed otherwise.

However, the University has the right (in the manner described in *the Application of the copyright act at Lund University* section above) to use the works produced by teaching staff in the context of a specially appointed task or on special instructions from the employer, or works produced by teaching staff for use specifically within the University. This includes production such as websites, computer programs, databases, various types of compilations or IT support. This is particularly applicable in cases concerning production within a pre-existing context, and which has involved major investments by the employer.

The recommendations for teaching staff apply to all Lund University employees whose position involves research duties.

Right to use works produced in teaching at Lund University

The University has the right (in the manner described in the *Application of the copyright act at Lund University* section above) to use works which the teaching staff are expected to produce in the context of their teaching, such as assignments, reading instructions, exam questions and answers, as well as teaching material that the University needs in order to provide continuous and efficient teaching. The University's right of use does not include the teaching staff's personal notes, lecture material or presentations, unless these materials are made available to others, for the purpose of teaching, by giving a presentation at a lecture, or by using a learning platform or other digital tool.

Similarly, the University has the right to use works produced or used by teaching staff within the scope of a specially appointed task or following the employer's specific instructions. For instance, this could be material intended for online teaching or other types of compilations. This is particularly applicable to material that is part of a pre-existing context, and that has involved major investments by the employer.

³ In the present general recommendations, teaching staff are the employees at Lund University who are referred to as "academic staff" in the LU Appointment Rules.

The University's right of use does not prevent teaching staff from using the produced teaching materials themselves, to produce textbooks, learning tools and articles. However, if the teaching staff enters into an agreement with an external party with regard to publication and dissemination, they must ensure the University's right of use. Lund University's regulations on secondary employment are to be taken into account whenever applicable.

Teaching staff also have administrative work duties, including the development of study plans and other forms of study administration, which are rarely protected by copyright. Therefore, the University has a right to the produced works. If the works reach the copyright threshold of originality, the recommendations described in the *Application of the copyright act at Lund University* section above shall apply.

The recommendations for teaching staff apply to all Lund University employees whose positions involve teaching duties within the University's first-, second- and third-cycle education.

Special recommendations regarding computer programs at Lund University

When it comes to computer programs, the copyright act explicitly states that the copyright for a computer program created by an employee as a part of their work duties or following the employer's instructions is transferred to the employer unless otherwise agreed⁴. Lund University renounces this right in the following manner:

At Lund University, the right to use computer programs created within the scope of the employees' research duties is handled as described in the *Right to use works produced in research at Lund University* section above.

Similarly, the right to use computer programs created within the scope of the employees' teaching duties is handled according to the manner described in the *Right to use works produced in teaching at Lund University* section above.

In all other respects, the rules of the copyright act shall apply.

Decision

Through the present recommendations, the University hereby decides to clarify its interpretation of Section 1 of the Swedish Act on Copyright in Literary and Artistic Works (1960:729), and the rules that apply with regard to the University's right to use copyrighted material produced by its employees in their work. The recommendations do not involve a change in the rules that apply in accordance with the copyright act, nor to the University's current manner of application of the act.

The decision on this matter was taken by the undersigned vice-chancellor, in the presence of university director Susanne Kristensson, following a briefing by a representative of the Lund University Student Unions (LUS) and a presentation by general counsel and acting head of division Annette Nilsson. Legal counsel Kristine Widlund also participated in the processing of the matter.

⁴ Section 40a of the Act on Copyright in Literary and Artistic Works (1960:729)

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