Ideell rätt i samtiden

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Ideell rätt i HD

Namnangivelse:

NJA 1974 s 94, Rudling

NJA 1993 s 263, Uppsala stadshus

NJA 1993 s 390, Journalistavtalet

NJA 1996 s 354, SVT credit

Ideell rätt i HD

Respekträtten:

NJA 1971 s 226, Svenska fattigdomens betydelse

NJA 1975 s 679, Sveriges flagga

NJA 1979 s 352, Max Walter

NJA 1985 s 807, Nowolin

NJA 2005 s 905, Alfons Åberg

NJA 2008 s 1192, Reklamavbrott

Artikel 6 bis BK

BK artikel 6 bis: ”prejudicial” - ”… ***till men för hans ära eller anseende***” är en relativ term, alltså inte av samma natur som de ekonomiska rättigheterna. Nationella, kulturella och historiska traditioner av särskild betydelse

Namnangivelse/right to claim authorship, 6 bis (1) BK

– som en absolut rätt i BK,
men enligt

3 § 1 st URL utövas den i enlighet med god sed, alltså relativiserad

Closer analog to privacy rights?

- **Right of "repentance" (droit de repentir)**

No basis in Berne Conv. but some civil law countries recognize the right.

Corresponds to concepts of **privacy**, to the extent that the right empowers individuals to **control access to personal information** (here the author's intellectual creation), not only initially, but on a continuing basis

Is a work of authorship "personal data"?

Art. 2 definition: "(a) 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject')."

Is any work of authorship bearing the author's name "personal data"? Or should we understand "information" in its ordinary meaning, which should exclude most works of authorship?

Svensson C-466/12
EUDs dom 2014.02.13

20) ”… under de förhållanden som är aktuella … ska tillhandahållande av klickbara länkar till skyddade verk anses utgöra ’ tillgängliggörande’ .”

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24) ”… överföring … med **samma teknik** (som den ursprungliga) … ska vara riktad till en **ny publik**, … den publik som verkens upphovsmän inte beaktade när de lämnade sitt tillstånd till den ursprungliga överföringen …”

ALAI

OPINION

Proposed to THE EXECUTIVE COMMITTEE and adopted at its meeting, 17 SEPTEMBER 2014* on the criterion "New Public", developed by the Court of Justice of the European Union (CJEU), put in the context of making available and communication to the public

www.alai.org

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ALAI: the application of the "new public" criterion in the *Svensson* decision is contrary to

- Articles 11(1)(ii), 11*bis*(1), 11*ter*(1)(ii), 14(1) and 14*bis*(1) of the Berne Convention
- Article 8 of the WCT
- Articles 2, 10, 14 and 15 of the WPPT
- Article 3 of the EU Information Society Directive
- Previous CJEU decisions and interpretation rules of Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

- The *Svensson* decision is also based on an misinterpretation of the old (1978) Guide to the Berne Convention.

Does digital make a difference?

Svensson **might condemn links to unauthorized sites, but source site might be authorized by copyright owner.**

If no relevant making available/ communication to the public (following Svensson) – no Moral Rights at hand!

Legal obligation to respect "do not link" "do not crawl" instructions?

Negative inference from CJEU's 2014 decision in *Svensson*?

What if the author's licensee does not object to third-party linking, but the author does? In the absence of an economic right, should she have an independent moral right to enforce her preferences as to how her work is accessed?

Moral dimension to subsequent disclosures?

Control over how a work is accessed, e.g., exclusively through an authorized website, can certainly have a moral dimension, particularly if author finds the site, linking to author's site, having a problematic content.

Today, technological custom (robots.txt) may honor a copyright owner's decision to prohibit linking-to or crawling a source website.