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The impact of German copyright law on  
copyright law in the Nordic countries yesterday,  
today and tomorrow

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# The impact of German copyright law on copyright law in the Nordic countries – yesterday, today and tomorrow

- **Historical and international context**
- **Establishment and early development** of copyright law in the Nordic countries: 1880 – 1950
- **Era of close Nordic cooperation:** 1960 – 1990
- Era of **EU harmonisation:** 1990 – present
- **The future?**

# Historical and international context

- No explicit recognition of “copyright” in **Roman Law**
- **Royal privileges** developed in the 16<sup>th</sup> and 17<sup>th</sup> centuries
- 18<sup>th</sup> century: Introduction of copyright law in **Great Britain** (1710) and later in **France** (1791)
- 1837: Introduction of copyright law in **Prussia**
  
- Major copyright systems: **continental** (*droit d'auteur*), **anglo saxon** “*copyright*”

# Main differences between continental and anglo saxon traditions of copyright

- **Justification of copyright protection and the notion of the work:**
  - The work is an expression of the spirit of the author
  - The protection of the work represents a protection for the labor (investment) underlying the creation of the work
- **Initial author/rightholder**
- **Contractual relationship** between author and producer (exploiter)
- Scope and possibility to waive **moral rights**
- Protection of **neighbouring/related** rights

# International Copyright Treaties

- **Berne Convention** for the Protection of Literary and Artistic Works (1886)
- **(Universal Copyright Convention)** (1952))
- **Rome Convention** for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)
- **WIPO Copyright Treaties** (WCT and WPPT) (1996)
- **Beijing Treaty on Audiovisual Performances** (2012)
- **Agreement on Trade Related Aspects of Intellectual Property Rights** (TRIPS) (1994)

# Developments of the Berne Convention

- 1886 Berne Convention
- 1896 Paris Act
- 1908 Berlin Act
- 1914 Berne Additional Protocol
- 1928 Rome Act
- 1948 Brussels Act
- 1967 Stockholm Act
- 1971 Paris revisions to Berne Convention
- 1979 Amended version of Berne Convention

# International norms on copyright protection in the international conventions

- **Works** and neighbouring rights
- **Economic rights:** Reproduction and communication to the public etc.
- **Moral rights:** Right of attribution and right of integrity
  
- **Exceptions and limitations**
  
- **Term of protection**
- **Enforcement**
  
- But **great flexibility** has been given **to national lawmakers!**

# Nordic cooperation

- **Nordic countries:**
  - First copyright legislations **established in the 19th century**
  - Relatively **small countries**
  - To a large extent **common traditions, values, languages, cultures** etc.
  - Possibility to share competencies in **legislative work**, as well as **case law** and **legal scholarship**
  - Long tradition of **Nordic cooperation in the area of private law** in general



# German influence on the development of copyright law in the Nordic countries

- **Establishment and early development** of copyright law in the Nordic countries: 1880 – 1950
- **Era of close Nordic cooperation:** 1960 – 1990
- **Era of EU harmonisation:** 1990 – present
- **The future?**

# Establishment and early development: 1880 – 1950

- Prof. Josef **Kohler** (1849 – 1919)
- Hegel
- Kant
- Fichte
  
- **Frequent visits** by Nordic scholars to universities in Germany
- Prof. Gösta **Eberstein**
  
- Since the 1930s – **Nordic Intellectual Property Law Review**  
(Nordiskt Immateriellt Rättsskydd, NIR)

# Establishment and early development: 1880 – 1950

- **German influence** on the establishment and early development of copyright law in the Nordic countries:
  - **The rationale for copyright protection**
  - Notion of the **”work”**
  - Scope of **exclusive rights**
  - Range of **exceptions and limitations**
  - The **contractual relationship** between the author and the publisher
  
- **Legislation, case law, legal scholarship**

# Close Nordic cooperation: 1950 – 1990

- **New and very similar copyright Acts in the Nordic countries in the beginning of the 1960s**, based on cooperation between national committees
- **Auktorrättskommitténs betänkande “Upphovsmannarätt” (SOU) 1956:25.**

# Close Nordic cooperation: 1950 – 1990

- 1970s and 80s – Common Nordic legislative committees (coordinated by the Nordic Council of Ministers):
  - **Repography**
  - **Satellite broadcasting**
  - **Cable retransmission**
  - Development of the "Nordic" **Extended Collective Licensing Model**
  - Era of **Scandinavian realism**
  - **German influence on Nordic discussion on the notion of "the work"**
    - Verkshöhe, Leistungshöhe – "Verkshöjd"

# Close Nordic cooperation: 1950 – 1990

- **Similar legislation** and to a great extent also **similar preparatory works**
- **Court decisions** from one country could be considered as **”authoritative” or at least as ”inspiration”** when deciding similar cases in other countries

# Close Nordic cooperation: 1950 – 1990

- **Legal scholarship:**
  - Possible to describe and systematise a **Nordic copyright** (to a great extent)
  - **Strong influence by German legal traditions and scholars**

# EU harmonisation: 1990 – present

- **TRIPs Agreement (1994)**
- **WIPO Copyright Treaties (1996)**
- **EU harmonization**
  
- **The level of copyright protection within the EU is higher/stronger than required by the international conventions**
  
- Copyright has become an instrument in **trade**
  - **Common rules within the EU** to take down trade barriers
  - EU seeks to **increase the level of copyright protection in countries outside the EU**



# EU Directives on copyright

- **Computer Programs Directive** (1991/250)
- **Rental and Lending Directive** (1992/100)
- **Satellite and Broadcasting Directive** (1993/83)
- **Terms of Protection Directive** ((1993/98) 2006/116)
- **Database Directive** (1996/9)
- **InfoSoc Directive** (2001/29)
- **Resale Rights Directive** (Droit de suite) (2001/84)
- **Extension of term of protection Directive** (2011/77)
- **Orphan works Directive** (2012/28)
- Directive on **collective rights management** (2014/26)
- Directive 2017/1564 on uses for the benefit of persons who are **print-disabled**
- Directive 2019/789 on online **transmissions and retransmissions**
- Directive 2019/790 on **Copyright in the Digital Single Market**
  
- **Enforcement directive** (2004/48)

# EU harmonization of copyright

- Although harmonized to a great extent, **some differences remain between the Member States.**
  - **Scope:** Areas not influenced by EU harmonization
  - **Level of harmonization:** Areas where EU directives leave flexibility to the Member States

# EU harmonisation: 1990 – present

- **EU is in the driver's seat** – less room for national or regional/Nordic initiatives
  - **Germany** and other EU Member States have strong influence during the negotiations on EU legislation
- Also **less time/resources for common Nordic initiatives**
- **No joint Nordic committees since the end of the 1980s**
  - Cooperation during **EU negotiations**
  - Cooperation during **implementation** of EU directives

# EU harmonisation: 1990 – present

- Less similarity in national legislation due to **different implementations of the EU Directives**
  - Less room for possibility for national courts to be "inspired" by court cases from other Nordic countries and Germany
- **Preliminary rulings** from the CJEU
  - **Cases originating** from Member States
  - Possibility for Member States to submit **written interventions**
- **Duty of consistent interpretation**
  - **Interpretations and methodology** developed by the CJEU:
    - Autonomous interpretation
    - **Textual, contextual and purpose**

# EU harmonisation: 1990 – present

- Examples of **preliminary rulings** (interpretations) provided by the CJEU
  - Notion of a **work**
  - Broad interpretation of the **exclusive rights**
  - The "balancing" function of **exceptions and limitations**
- **The influence of German copyright traditions is strong in the case law of the CJEU**, although the CJEU holds that it provides EU-autonomous interpretations

# EU harmonisation: 1990 – present

- **Legal scholarship:**

- Less room for the argument that there is a "Nordic copyright unity"
- Exchange between researchers – establishment of a **Nordic IPR Network, where also leading German IPR scholars participate**



## The XVII Nordic Copyright Symposium

5–6 September 2019  
Wisby Strand, Visby, Sweden

Photo: Tommy Söderlund

# Is there a Nordic copyright?

On the impact of EU law and the scope for national specificity

- **Perspectives on the interface between EU and national law.**
- **What does EU law require? Is the situation similar in the EEA countries?**  
How have the different Nordic countries faced these demands?
- **Are there any parts of copyright which are not affected by EU law?**
- **The Directive on Copyright in the Digital Single Market in Nordic law.**

# The future?

- The recently adopted **EU Directive (790/2019) on Copyright in the Digital Single Market**
  - Includes elements of both German and Nordic origin (among others)
- After **Brexit**
  - Possibility for the **EU to develop copyright more based on German and other continental European copyright traditions**
- **The core aspects** of Nordic copyright law has its origins in German copyright traditions, while the current and possible future influence will be more **indirect**



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