

SWEDEN: EXTENDED COLLECTIVE LICENSES IN HIGHER EDUCATION

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The need to use copyrighted literature in higher education has increased over the years, due to digital education and digital publishing.

The ECL-provisions in the Swedish Copyright Act, Article 42 c allow higher education institutions to negotiate contracts with representative organizations rather than with each individual author or publisher. The Swedish license for reproduction in teaching in higher education is handled by the CMO Bonus Copyright Access, an umbrella organization representing copyright owners and publishers. There is also a separate license that allows universities to copy material for internal distribution and use.

Universities pay fees according to the number of students (and employees for internal use). The cost is approximately € 21 per student.

Bonus monitors and distributes copyright fees to representatives of copyright owners in Sweden and other countries, where copyright fees are collected through reciprocal agreements. Foreign copyright owners in countries without a bilateral agreement setting out a principle of reciprocity will not be compensated.

I. Bonus Copyright Agreement and E-learning

The license with Bonus Copyright Access is negotiated centrally by The Association of Swedish Higher Education and can only be terminated by the government – not by the Association. The latest Agreement for Higher Education Institutions entered into force in 2014¹. The aim was to harmonize the license with digital education. The license covers digital uses of protected material, such as scanning, downloading and sending by mail.

The use of works under the agreement is subject to the following conditions:

- Teachers and students are allowed to copy and share copyright protected material from Swedish and non-Swedish books, teaching materials, periodicals, digital publications, websites and more.
- Audio and moving images are not covered.
- Copied material may be copied and shared digitally and through analogue means between teachers and students in a teaching group.
- Distance learning in Sweden is covered and material can be shared via the higher education institution's (HEI) closed network.

There are several conditional clauses regarding the quantity of a work that can be used and how to distribute copies:

¹ Bonus Copyright Access, <http://en.bonuscopyright.se/pages/HigherEducationInstitutions>

- The 15/15 rule means that you can only copy up to 15% of a single publication, or 15 pages, whichever is the lower.
- You are not permitted to make reproductions from publisher-produced compulsory course literature. However, there are some exceptions, when the literature includes single works and only a minor section, for slide presentations and for an examination task.

The most important paragraph in the license explains WHEN to use the agreement. “If the HEI has entered into **another agreement** that governs how digitally stored works may be reproduced and used, the terms of such agreement shall prevail”. Such other agreements are mainly database licenses and they provide the users with a more generous access than the ECL.

II. ECL in Practice – Fit for Purpose?

Online and other digital publications have revolutionised education, giving students and teachers new types of resources and ways of using them, including at distance. ECL can be seen as a complement for printed material where there are no digital resources. However, the value is decreasing the more ‘digital’ libraries are becoming. ECL has failed to keep up, meaning that it no longer offers flexibility or legal certainty in Sweden – rather the opposite².

As concerns access to scientific literature, database licences have become increasingly important (at least where open access is not an option), meaning that ECL is becoming less relevant. For students expected to buy or borrow textbooks, ECL is also of little use, given the limiting and confusion conditions it involves.

Copying or distribution of printed material, which is covered by ECL, is constantly decreasing, as teachers see the advantages of using e-resources. ECL does not cover full access to books and journals or allow for the more flexible uses which teachers now prefer as they make the most of changing technologies. Universities specialized in natural and social science education programs are concerned about the high cost. They use mainly digital material and the ECL license offers little value. Since the cost is based on the number of students and not the volume of copies they pay just as much as other universities with programs in humanities where the license is more relevant to their needs.

The ECL-system is binding, and university libraries cannot cancel the ECL ‘subscription’. Moreover, ECL is normally not handled by the library or university units with expertise in e-learning and therefore they are not represented in negotiations with the CMO, meaning that there is little effort to take account of real uses or need to copy.

III. ECL as a Model in Higher Education

Worldwide, ECL has been presented as a means of solving problems with mass-digitalization, foreign works or orphan works. The discussion is mostly about whether authors can exercise their right against the CMO.

² Xalabarder, R. (2011). Copyright issues in E-learning. In *Content Management for E-Learning* (pp. 87-109). Springer, New York, NY.

Unfortunately, the discussion is seldom about the need to reproduce copyrighted material in education and research. Academic needs are different than those in public libraries, museums and archives. The success of the model in other sectors hides the effect it has on higher education. The disadvantages have not been expressed or discussed. The Higher Education-license was introduced in 1973 to regulate copying in schools and in higher education does not provide solutions in modern teaching.

Furthermore, the ECL model relies on the willingness and experience of different parties to engage in collective bargaining. However, it is not a balanced negotiation when universities normally lack legal expertise with practical experience. They are not in a position to be an active part in negotiations.

Universities are only to a limited extent gaining access to learning resources through ECLs. The needs of e-learning forces them to find alternative tools such as open educational resources and open access material. Due to high costs and the lack of representability and possibility to engage in negotiations, ECL in Sweden is an inferior alternative in the academic environment. Digitalization in teaching and research is constantly changing educational needs. A better balance can be achieved by exceptions for educational purposes.