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# Copyright prohibitions in interests of spiritual cultivation

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### Introduction

The basic rule under Swedish law is that copyright protection lasts for the life of the author plus an additional 70 years. However, as an exception to this rule, section 51 of the Copyright Act provides additional protection after this period has lapsed for works of great cultural importance. The construction of the rule, which was introduced in the 1960s, is that when such works are publicly reproduced in a way that violates the interests of spiritual cultivation, the courts can grant a prohibition, putting a stop to the use in question.

The provision was recently tried by the Patent and Market Court (PMC) for the first time.<sup>(1)</sup> Although the judgment was not appealed and there is therefore no legally binding precedent, there now exists some court guidance on how the provision is to be interpreted.

### Facts

The Swedish Academy, best known for choosing the Nobel Prize laureates in literature, is also one of three bodies with a right to litigate cases in the interests of spiritual cultivation.

In the present case, the Nordic Resistance Movement quoted several works by famous Swedish authors on their webpage. The quotes had not been altered but were displayed in their original form next to articles that constituted hate speech. According to the academy, the display of the quotes next to hate-speech articles was a way of asserting that the authors – and the works – expressed the same message as the articles. Since this was both alien and deeply offensive to the works, and in stark contrast of fundamental democratic and societal values, the academy requested that the display be prohibited.

The Nordic Resistance Movement opposed the claim and asserted that:

- the quotes had been displayed in good practice;
- the quotes were correct; and
- the provision in section 51 of the Copyright Act addresses only distortions of famous works.

### Decision

Since the provision in section 51 of the Copyright Act had not previously been examined by the courts, the PMC begun its assessment by reviewing the preparatory works. While the preparatory works were from a different era – the late 1950s – they provided some guidance on how the provision should be understood. According to the preparatory works, the purpose of the provision is to protect the non-material values of more meaningful literary and artistic works. This, according to the preparatory works, was mainly achieved by hindering classical masterpieces from being reproduced in a distorted way. It was also stated that the provision is aimed at "violations", meaning that only cases of serious offence were covered.

After reviewing the preparatory works, the PMC moved on to the present case and the main question of whether the interests of spiritual cultivation can be violated when a work has not been altered. The PMC noted that all comments in the preparatory works related to adaptations, changes or distortions of the work. Based on this, the PMC stated that the provision did not seem intended for situations in which a work is displayed in an unaltered state, even if the context from a general cultural point of view appears offensive. Finally, the PMC noted that a broader interpretation of the provision could potentially have complex implications on freedom of speech. The assessments of such implications should, according to the PMC, generally be left to the legislature. The case was therefore dismissed.

### Comment

The Swedish Academy decided to not appeal the judgment. Based on the PMC's narrow interpretation of the provision's scope, it is unlikely that there will be any new cases anytime soon. The most important takeaway from the case, with the reservation that it is not a legally binding precedent, is that the provision in section 51 of the Copyright Act cannot be used with respect to the use of unaltered works. It is only once alterations are made to a work that the provision is of relevance.

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### Endnotes

(1) PMT 17286-19.