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Murder Mystery Copyright Infringement in Sweden

The summer months find many Swedes laying out on beaches or cooped up in summer houses with a good crime novel. Call it Scandinavian noir, detective stories, or the Swedish *"deckare"*—we love a good murder mystery and crime fiction is consistently one of the most-read genres of literature, and a big Swedish entertainment export to boot.

This year, summertime sleuths and daydreaming detectives alike will have to make do without noted Swedish crime author Mari Jungstedt's second installment in the Gran Canaria series, which has been found to constitute copyright infringement by the second instance the Patent and Market Court of Appeal, reversing the first instance Patent and Market Court's decision.

This story may not be one of murder or other ghastly deeds, but intellectual property enthusiasts will likely find this tale of copyright contract interpretation and sloppy assignment language a veritable page-turner.

Background

Two authors, a Swede and a Norwegian, had entered into a publishing agreement for a book series comprising two books in what would be known as the Gran Canaria series. The authors separately wrote drafts of different chapters and then provided comments on each other's texts. The collaboration between the authors was close and they were identified as co-authors of the first installment in the series, which was published in 2015 and became a commercial success.

During work on the second book in the series, the collaboration ended. The authors entered into an agreement in order to keep the Gran Canaria series alive and let the Swedish author continue writing books in the series. However, at the time when the authors entered into this "separation agreement", both authors had already written draft texts for the new book, and after the second book was published it became clear that the parties did not agree whether the separation agreement meant that the draft texts that the Norwegian author had already written was allowed to be used in the published sequel, or whether the agreement simply meant that the Swedish author could write a sequel in the Gran Canaria universe, without using any of the Norwegian author's work.

The first instance Patent and Market Court did not find a *prima facie* case of copyright infringement in the Norwegian author's rights in the published sequel, and in addition, found that the separation agreement meant that all rights to the texts the Norwegian author had already authored had been assigned and could be used by the Swedish author. That decision was subsequently appealed to the Patent and Market Court of Appeal.

Decision

The first issue before the court was whether the literary work that the Swedish author had published included works, or parts of works, authored by the Norwegian author in Norwegian and translated into Swedish.

The court carried out a comparison between the Norwegian language draft texts and the published book and found that the latter contained several texts that was almost a direct translation of the Norwegian language text that the claimant had written. In addition, the court stated that it was irrelevant that the claimant's drafts originally were written in Norwegian and then translated into Swedish before publishing.

The court reiterated that also smaller parts of works, in this case paragraphs of texts (authored by the Norwegian author) in a larger literary work (authored by the Swedish author), enjoy protection under copyright law, provided that they contain elements which are the expression of the intellectual creation of the author of the work (C-5/08 Infopaq). The court looked at paragraphs of over 100 words and quite rightly found that it was obvious that literary texts of this type enjoyed copyright protection.

The second issue was whether the use the Swedish author had made of the Norwegian author's copyright-protected texts, that is by including them in the sequel, was allowed under the separation agreement between the parties. On this centrally important point, the agreement was silent and only stated that the Norwegian author's name would be mentioned in the future editions and the claimant

received about 20,000 Euro for signing the agreement. The Swedish author took the view that the Norwegian author, as a result of the agreement, assigned all the rights of the manuscripts that had been authored, while the Norwegian claimed that the agreement only meant that he gave the defendant the right to use the concept of the book series, i.e., characters, etc.

The court found that the agreement was unclear. The court noted that the term *"assign"* did not appear in the agreement and that it was not possible from the amount of compensation paid to the claimant to conclude whether it was a question of compensation for the assignment of a copyright-protected work, or whether it was a compensation for the defendant to be allowed to use the concept of the book series in the future. When assessing the meaning of the agreement, the court also used the well-known Swedish legal methods for contractual interpretation in the field of copyright, in short, that assignments of copyright must be specific and should, when in doubt, be interpreted to the benefit of the assignor.

The court found that the Swedish author had not shown that she had a right to use the copyright-protected texts written by the Norwegian author through the separation agreement or otherwise and thus found for the claimant.

However, as is often the case, the claimant's claim for damages found little favor with the court, who awarded a mere fraction of the sum sought by the claimant. But since copyright infringement was established, the defendant was injuncted from selling any more copies of the book, which will now perhaps one day become a collector's item in the genre.

Comment

The present case emphasizes yet again the importance of being thorough when negotiating and drafting agreements in the area of copyright. In hindsight, it is clear that the Swedish author, who of course did not want all the work already invested in the sequel to a successful first novel to be wasted when the two authors decided to part ways midstream, should have made sure that it was clear from the separation agreement language that she could use all the texts already drafted by the Norwegian author. As it turned out, a costly lesson for all involved.

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