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The present, past and future role of Extended Collective Licenses in the European cultural heritage sector

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Extended collective licenses raise new potential for the dissemination of cultural heritage institution's collections, and their use for innovative purposes. Successful examples from the Nordic countries can serve as inspiration. The system is now established in EU law, which harmonises its conditions throughout Europe. The success of extended collective licenses has however relied on several factors, legislative will, public funds, representative collective management organisations, a culture that supports the collectivization of rights management and relationships between stakeholders. The system is also limited by the principle of territoriality of copyright law, which limits their potential for cultural heritage institutions. To build the conditions for successful extended collective license systems might take time. Cross-border access might require legislative intervention or work on ad-hoc solutions. Cultural heritage institutions have a role to play in how these systems develop.

extended collective licenses, cultural heritage institutions, cross-border access, EU copyright law

1. Introduction[1]

European cultural heritage institutions (CHIs) might with good reason look to extended collective licenses (ECLs) for the dissemination of their collection and to ensure its availability for new and innovative uses.

The Nordic countries have long leveraged ECLs to address mass use cases where individual licensing is impractical or impossible. The system extends the scope of voluntary licenses specifically mandated by members of representative collective management organisations (CMOs) to non-members (outsiders).

ECLs have in recent years played a central role in the dissemination of digitised CHI collections in the Nordic countries, demonstrating their potential for the sector. The new ECL-provisions in the CDSM Directive (2019/790/EU), and their connection to organisations regulated by the CRM Directive (2014/26/EU), have also brought about a new level playing field for ECLs in Europe that raises new possibilities.

Questions remain about how well the system "travels"; there has been long-held scepticism about this in Nordic academia (Riis, Schovsbo, 2010, p. 493–494). The success of the ECL-system relies on legal bases, public budgets, representative CMOs, a culture that supports the collectivization of rights management and relationships between stakeholders. The limitation of ECLs to the territory of individual states and the lack of cross-border access threaten to confine CHI collections within national "silos" (Rydén, 2017, p. 631). This issue is now addressed for ECLs at EU-level for out-of-commerce (OOC-) works, but not other uses.

In this brief article I seek to examine the potential afforded to European CHIs by the updated Nordic-inspired, European ECL-system. I will also explore the prospects for CHIs beyond the scope of the current system that would necessitate further reform.

2. The past and present of the Nordic ECL-system

2.1 Background

In the ECL solution, representative CMOs enter voluntary agreements that are extended by statute to outsiders – right holders not represented by the representative CMO – under national copyright laws (Rognstad, 2012, p. 621). The organisation gains

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representativity for the relevant category of right holders through non-exclusive mandates. It must also have been granted direct voluntary mandates from a large number of the right holders concerned to authorise the specific uses covered by the voluntary agreements (Stokkmo, 2017, p. 594). The right to opt-out – to reserve your rights to prevent use, or to license the same use individually – has variably been considered another characteristic of the system.

ECLs were first introduced for broadcast in the 1960s, afterwards for photocopying in educational settings, and then in other public and private institutions. The aim was to ensure that existing mass use situations, where individual licensing was considered impractical or impossible, were lawful and remunerated. The extension of voluntary agreements was chosen over compulsory licenses to safeguard the autonomy of right holders to freely negotiate the use of their works (Rognstad, 2004, p. 152; Riis, Rognstad, Schovsbo, 2016, section 4.1). The system was inspired by aspects of the culture of the Nordic countries, which are small, homogenous societies built on a high level of trust and transparency with a pragmatic approach to problem solving, and in particular by the role of collective agreements between organisations representing employers and employees in solving the issues of Nordic labour laws (Riis, Schovsbo, 2010, p. 493–494).[2]

The voluntary nature of the ECL-system has led it to be viewed as a more sympathetic alternative to other prominent rights clearance models (Rognstad, 2019, p. 367). Presumption of representation and compulsory license systems extend the mandate of representative CMOs to outsiders, and allow CMOs to enter agreements voluntarily. The former allows for opt-outs, while the latter does not. The voluntary nature that separates ECLs from these alternative models is the requirement of a direct voluntary mandate from a large number of the right holders concerned that authorise the specific uses covered by the voluntary agreements (Stokkmo, 2017, p. 595–597).

It is important to note at this early stage that the Nordic countries do not share a completely uniform ECL-model. The national systems have differed on demands for representativity, distribution of remuneration and opt-outs among other areas (Rognstad, 2012, p. 621).

2.2 The nature of ECLs and relationship with international and EU law

ECLs are legal provisions that extend the effect of certain collective agreements to outsiders.[3] The agreement, the effects of which are extended to outsiders by the ECL, consists of ordinary collective rights management, where exclusive rights are exercised.

The extended effect of the ECL-provisions has been considered by some authors to function as a limitation to copyright, a legally authorised use in return for remuneration.[4] Other authors hold the view that the extended effect of the ECL-provisions does not constitute a limitation, but is rather a form of rights management (Schovsbo, Rosenmeier, Petersen, 2024, p. 204). Some authors have perceived the ECLs as limitations only in the absence of opt-outs, as the rights covered by its extended effect can still be managed by the CMO (Riis, Schovsbo, 2010, p. 484–485).

If the extended effect of ECL-provisions functions as a limitation, the three-step test, as established in international treaties, will apply. Such limitations shall only apply in certain special cases, which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightsholder (Berne Convention, 1971, article 9(2); TRIPS Agreement, article 14). To pass the test, aspects like the concept of representativity, freely negotiated agreements, the principle of equal treatment, access to individual remuneration, and the possibility of opt-outs have variably been highlighted as essential safeguards (Rognstad, 2004, p. 157; Axhamm, Guibault, 2011, p. 514).[5] Note that those who do not view ECLs as limitations also highlight that their non-voluntary aspects have been deemed by legislators to necessitate the same kind of safeguards (Schovsbo, Rosenmeier, Petersen, 2024, p. 204).

In EU law, the InfoSoc Directive (2001/29/EC) clarifies that ECLs should be seen as a form of rights management, and they should not be covered by the closed list of exceptions in Article 5 of the Directive (InfoSoc Directive, recital 18; Riis, Rognstad, Schovsbo, 2016, section 5.1).

There has historically been one extant EU ECL-provision in the 1993 Satellite and Cable Council Directive (93/83/EEC) Article 3(2) for simultaneous broadcast by satellite with provision for opt-outs. The Commission has previously considered further ECL-provisions in the context of orphan works and multi-territorial online licenses, without any action taken (see Kivistö, 2017).

The 2019 CDSM Directive introduces a specific obligatory ECL-provision for OOC-works in Articles 8–11, and a general voluntary legal basis for ECLs in other areas in Article 12, subject to harmonized safeguards.[6] Furthermore, only organisations subject to the 2014 CRM Directive shall be able to grant ECLs. This means that the CRM Directive's provisions on the workings of CMOs – in relation to members, other CMOs, users and the public – also apply in ECL situations.

2.3 A Nordic perspective on the central aspects of the ECL-system in the CDSM Directive

2.3.1 Specificity

According to Article 12 of the CDSM Directive, ECL-mechanisms must only be established within "well-defined areas of use", where the nature of the use or the type of protected material makes obtaining individual licenses onerous and impractical to such a degree that the use would be unlikely to occur without such a measure (CDSM Directive, article 12(2)). The Directive allows for specific and general ECL-provisions. General provisions can also be considered specific, within well-defined areas of use, as they tie the extended effect to specific agreements in each individual case (CDSM Directive, recital 47; Riis, et al., 2020, p. 11).

This adheres to the ECL-systems of the Nordic countries. Individual licensing has always been the starting point, with ECLs reserved for special cases where individual licensing is impractical or impossible (see e.g. *Endringer i åndsverkloven* [Prop. 69 L, 2014–2015], p. 60). An agreement between a CMO and users will stipulate the use within a specific legal basis or a general legal basis as introduced in Denmark, Norway and Sweden (Rognstad, 2019, p. 370–371). In the implementation of the CDSM Directive both specific and general provisions have been maintained, as they have been considered in line with the Directive's demand for specificity (*Forslag til lov om ændring af lov om ophavsret* [Lovforslag nr. L 125 (2022–23)], p. 28; *Høringsnotat – forslag til endringer i åndsverkloven m.m.* [Norwegian consultation paper on the CDSM and SatCab II directives], 2023, p. 91; *Upphovsrätten på den digitala inre marknaden* [Prop. 2021/22:278], p. 77).

2.3.2 Representativity

According to the CDSM Directive Article 8(1) and 12(3)a, only organisations subject to the national rules that implement the CRM Directive can enter ECLs. These organisations must be sufficiently representative for the right holders and rights cleared under the license in the relevant Member State. They must also have the ability to manage these rights effectively in the relevant creative sector (CDSM Directive, recital 48).

Representative CMOs have been considered central to the legitimacy of the Nordic ECL-systems (Axhamn, Guibault, 2011, p. 513). It can be presumed that the terms that a representative group of the same category of right holders would voluntarily agree to will often be acceptable to outsiders too.

In the Nordic tradition, representativity has variably been tied to terms like *substantial number* in Denmark and Norway, or to the term *majority* in Finland and Sweden. Despite the wording, neither approach has been seen to demand an *actual* majority. Both approaches also consider the suitability of the organisation, such as its administrative stability, ability to distribute remuneration, and to enter reciprocal agreements with other CMOs (Prop. 69 L, 2014–2015, p. 28–29; Riis, Rognstad, Schovsbo, 2016, p. 4.4.; *Svenska Tonsättares Internationella Musikbyrå (STIM) v. Tele Danmark A/S* [NJA 2000 s. 445]). This combined flexible approach to satisfying quantitative representativity and qualitative suitability to manage the rights should be considered compliant with the Directive (similarly Riis, et al., 2020, p. 7–8).

Representativity in the Nordic context was originally considered among national right holders. This was changed to right holders whose works are used in the country to respect the prohibition on discrimination on basis of nationality in EU and EEA law (Lund, 2017. p. 556–557). Representation agreements with parallel foreign CMOs are central to CMOs representativity for foreign right holders. The suitability of the CMO is also seen as particularly important to ensure representativity and, as such, legitimacy in relation to foreign right holders (Rognstad, 2012, p. 628; Riis, Rognstad, Schovsbo, 2016, point 4.4; Lund, 2017, p. 556–557).

Denmark, Finland, and Norway also operate with an authorisation system for CMOs that can grant ECLs (*Bekendtgørelse af lov om ophavsret* [Danish Copyright Act (DCA)], 2023, para. 50; *Tekijänoikeuslaki* [Finnish Copyright Act (FCA)], 1961, para. 26; *Lov om opphavsrett til åndsverk mv.* [Norwegian Copyright Act (NCA)], 2018, para. 63). This system allows the regulator to con-

trol for representativity and suitability to manage rights in relation to right holders. If the ability of the organisation to fulfil these criteria lapse, the authorisation can be withdrawn (Rognstad, 2019, p. 370; Schovsbo, Rosenmeier, Petersen, 2024, p. 206).

Denmark, Finland and Norway have all tied or proposed to tie representative CMOs to those covered by the CRM Directive in their CDSM-implementations (Lovforslag nr. L 125 (2022–23), p. 28; *Regeringens proposition till riksdagen med förslag till lagar om ändring av upphovsrättslagen och lagen om tjänster inom elektronisk kommunikation* [RP 43/2022 rd], p. 153; Norwegian consultation paper, 2023, p. 90; see the opposite for Sweden, Prop. 2021/22:278, p. 77–78). In both Denmark and Finland minor updates were made to the concept of representativity, without substantial changes (Lovforslag nr. L 125 (2022–23), p. 28; RP 43/2022 rd, p. 22).

2.3.3 Equal treatment

The CDSM Directive Article 12(3)b demands equal treatment for all right holders in relation to the terms of the license, hereunder access to information on licenses and remuneration from any use made (CDSM Directive, recital 48).

In the Nordic systems, outsiders are ensured equal treatment both in relation to terms and remuneration from licenses (Salmela, 2023, p. 199). There has not been any general demand for individual remuneration. The agreement, an organisation or – in some cases with the agreement of the parties – a tribunal set the general terms for distribution, and these also apply to outsiders. Outsiders shall, however, be able to demand individual remuneration where they can substantiate that their works have been used (DCA, para. 51; FCA, para. 26; NCA, para. 42a; Lund, 2017, p. 555). This of course requires awareness of the use, which has been seen as a potentially issue, in particular for foreign outsiders (Riis, Schovsbo, 2010, p. 482).

It has been normal to distribute funds for collective purposes also, such as stipends, a practice which has had widespread acceptance throughout Europe (Axhamn, 2017, p. 568; Lund, 2017, p. 554–555). Some authors still highlight this as a contrast of the more collectivist Nordic countries with more individualistic foreign systems (Gervais, 2003, p. 19).

The CRM Directive has been implemented in the Nordic countries. It regulates in detail the management of distributable and non-distributable revenue, and its potential use for social, cultural and educational activities for the benefit of right holders (article 8(4), 12(3)c, recital 48). The CDSM Directive extends this through equal treatment to outsiders (Riis, et al., 2020, p. 12–13).

2.3.4 Opt-outs

The CDSM Directive Article 8(4) and 12(3)c demands opt-outs for outsiders, who shall be able to exclude their rights from licensing mechanisms easily, effectively, and at any time. Use should be terminated within a reasonable period, with access to remuneration for any actual use of the protected material maintained (CDSM Directive, recital 48).

Opt-out mechanisms have not always been seen as a precondition in the legal bases for ECLs in the Nordic systems. In Sweden, opt-outs have been mandated in all cases except simultaneous unadulterated retransmission of broadcasts. In Denmark, Finland and Norway however, opt-outs have been limited to certain specific provisions and the general ECL-provisions. This issue has been left to be determined by the CMO within the specific agreement (Lund, 2017, p. 556; SCA, para. 42f).

Arguments against opt-outs have pointed to access to individual remuneration addressing the same concerns (Rognstad, 2012, p. 628). The effect of individual opt-outs on the clearance of complex works with many right holders has been considered capable to undermine the effectiveness of ECLs. The ability to enter individual licenses that will override an existing ECL agreement has also been seen to limit the importance of opt-outs (Lund, 2017, p. 560–561; Rognstad, 2019, p. 369).

In Denmark opt-outs were added in response to the directive, as has been proposed in Norway (Lovforslag nr. L 125 (2022–23), p. 28; Norwegian consultation paper, 2023, p. 92). As a consequence, all the Nordic systems will soon follow the opt-out approach.

2.3.5 Cross-border access

The territorial scope of ECLs has been raised as a prominent issue. In line with the principle of territoriality, national copyright law provisions on ECLs are tied to the territory of the relevant nation state (Axhamn, Gibault, 2012, p. 61). This is both a long-held position in the Nordic theory, and a consequence of the choice of law rules in the EU/EEA (Rognstad, 2019, p. 550; Riis,

et al., 2020, p. 15–16). The consequence is that the extended effect given to ECL agreements will not cover copyright relevant acts that are considered to take place under other national copyright laws (Schønning, 2017, p. 613; Salmela, 2023, p. 181–183).

The territorial segmentation of ECLs creates a *cross-border conundrum* for CHIs that is seen to seriously affect the pan-European dissemination of their collections (Axhamn, Guibault, 2011, p. 515). Cross-border access concerns have led the separate ECL-systems to be labelled as "silos", with the sharing of materials limited to each jurisdiction. One fear is that access for research will be asymmetrical, and the quality of research thus less reliable (Rydén, 2017, p. 631). The segmentation also fits poorly with the potential of modern information technology to share materials more broadly (Salmela, 2023, p. 185).

Two solutions have been proposed. One is through legal intervention, a provision that allows sharing material throughout the EEA by entering an ECL agreement with the CMO in the Member State where the CHI is based. The other is through reciprocal mandates by CMOs to allow the conclusion of multi-territorial licenses (Axhamn, Guibault, 2011, p. 516). Legal theory favours two models for legal intervention. One is the extension of ECL agreements to other Member States, leaving the matter to the license. The other, based on the country-of-use principle, uses a legal fiction to determine that the use only takes place in the State where the licensee, such as a CHI, is established (Parson, Rydén, 2024, p. 100; Salmela, 2023, p. 206–208).

The CDSM Directive introduces the first approach for cross-border ECLs for OOC-works. ECL agreements may allow the use of OOC-works or other subject matter by CHIs in any Member State leaving the scope to the specific agreement (CDSM Directive, article 9(1)). The EU legislator has therefore made legislative updates on cross-border provisions for ECLs albeit in a narrow area.[7]

On the other hand, there is no such approach for the general ECL-provision in Article 12. Such licenses shall only concern use on the territory of the individual Member State (CDSM Directive, recital 43). The Directive requires the Commission to make a proposal on cross-border effect, if found appropriate in its report on the state of the ECL-provision. This was considered premature (European Commission, 2021, p. 19).

3. The past: Taking inspiration from the Nordic countries

3.1 ECL-provisions and agreements

All Nordic countries have provisions on ECLs that CHIs can leverage for copyright-relevant acts beyond existing exceptions and limitations.

Norway, Sweden and Finland have provisions for the reproduction and making available to the public of the collections of libraries, archives and museums (FCA, para. 16d; NCA, para. 50; *Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk* [Swedish Copyright Act (SCA)], para. 42d). The aim is to allow CHI collections to be shared in new ways made possible by modern information technology (Rognstad, 2019, p. 379). There are some minor differences, though, in that the Norwegian provision concerns published works, and artwork and photographs made available to the public, while the Swedish version encompasses all works made available to the public. Denmark has no equivalent provision, only a more limited provision for individual access on demand to articles from newspapers, journals and joint works, and shorter paragraphs of books and other literary works (DCA, para. 16b).

Two prominent ECL agreements have been entered pursuant to these provisions that allow for the online dissemination of CHI collections.

The Bokhylla-agreement was entered between the National library of Norway (NLN) and Kopinor (CMO for rights in printed works) in 2009. It allows for the reproduction and making available to the public of printed works, including translated works, up to and including the year 2000. The works may be sources from the library collections and displayed on the institution's own webpages. A partner agreement was made for journals in 2018 (Parson, Rydén, 2024, p. 63–35). In 2024, the agreement was updated to include works up to and including the year 2005 and moved from a rate-per-page model to a lump sum model (Bræin, 2025). While not demanded by the relevant ECL-provision itself, the agreement provides for opt-outs.

In 2014, the Finnish National Gallery and Ministry of Education and Culture entered into an ECL agreement with Kuvasto and Kopiosto (CMOs for visual artists and photographers). The agreement allows for the reproduction and making available to the public of the visual art and photographs by Finnish artists and photographers held in the collections of the National Gallery. The works are freely available online, accessible worldwide. There is provision for opt-outs, but reportedly these are

rarely exercised. Rights were cleared for the works' remaining term of protection through a lump-sum payment. A new lump sum is paid yearly for new works added to the collections. There are ongoing efforts to extend the agreement to other Finnish museums (Parson, Rydén, 2024, p. 62–63; Salmela, 2023, p. 186).

There are also ECL-provisions in the Nordic countries for the reproduction and making available to the public of audio-visual content in broadcasters' archives (DCA, para. 30a; FCA, para. 25g). The provisions only concern programs broadcast prior to specific dates. In 2018, Norway replaced its equivalent provision with a general ECL for use of audio-visual content that allows for ECL agreements where individual licensing is not available (NCA, para. 57).

In 2025, the National Library of Denmark (NLD) entered into an ECL agreement with Copydan Arkiv under this provision that allows for the sharing of radio and TV broadcast from Danish Radio (DR), collected in the so-called "DR archive". The recordings can be made openly available on the webpages of the NLD. The agreement was based on the Danish media agreement for 2023–2026 (Kulturministeriet, 2023).

Uses beyond these provisions can be covered by the general ECL-provisions in Denmark, Norway and Sweden, where the agreement fulfils the demands for specificity, and individual licensing is impractical or impossible (DCA, para. 50; NCA, para. 63; SCA, para 42k).

3.2 Cross-border pilots

To address the cross-border issues with ECLs the National Library of Sweden (NLS) has launched pilot programs to share parts of its collection in Finland and Malawi. The approach leverages overlapping legal bases and joint licenses with CMOs in two or more jurisdictions (Parson, Rydén, 2024, p. 48).

The pilot agreement for Finland aims to give access to broadcasts from the Swedish national broadcaster SVT in the collection of the NLS at a Finnish academic institution (Åbo Akademi). Access is to be granted by streaming through a remote access network to 40 researchers at the academic institution. ECL agreements were concluded with Copyswede (Sweden) and Kopiosto (Finland). The pilot relies on the representativity of both CMOs and an agreement of mutual representation between them for making available of audio-visual works for scientific research. Producers' and broadcasters' rights were reportedly licensed separately (Parson, Rydén, 2024, p. 58–60; Salmela, 2023, p. 205).

The pilot agreement for Malawi aims to give access to books published between 1940 and 1959 from the collections of the NLS. Access is to be granted through a remote access solution to researchers affiliated to one or two universities in Malawi. Agreements have been entered into with CMOs on the basis of ECL-provisions in each jurisdiction that allow for the use of such work for research purposes. There are demands for opt-outs and a mechanism for right holders to opt-out as part of the pilot is under development (Parson, Rydén, 2024, p. 60–61; Salmela, 2023, p. 205).

The scope of these pilots is limited, but the experience shows that agreements can be reached between very different jurisdictions.[8] The benefit they offer and whether they can be expanded to other territories still remains to be seen.

4. The future: A fully fledged ECL-system for the EEA?

4.1 The potential in legislation

At the EU-level, the OOC and the general ECL-provision in the CDSM Directive have been transposed into national law, except for the EFTA parties to the EEA. The rules of the CRM Directive are well-established in the Member and Contracting States.

The legislative updates notably address some prominent concerns with the exportability of the ECL-system. Issues with competition law, and the relationship between representative CMOs and right holders have been considered likely to require legislative intervention on issues not similarly addressed in the Nordic countries (Riis, Schovsbo, 2010, p. 23–24). The CDSM Directive and the CRM Directive address most of these concerns by harmonizing the conditions for ECLs and the work of CMOs in relation to members, other CMOs, users and the public (see similarly Salmela, 2023, p. 209). The CRM Directive is considered to ensure a baseline of good governance, transparency, as well as well-functioning CMOs (Salmela, 2023, p. 195).

However, further legislative intervention does not seem to be realistic in the near future. The Commission has released its report on Article 12 CDSM as demanded by Article 12(6), which provides an assessment of ECL-systems in the Member States.

The Commission's focus in the report is on monitoring the compliance of national systems, with a focus on the safeguards. This places any further intervention at some future date (European Commission, 2021, p. 19).

4.2 Dissemination and innovative uses beyond OOC? It might take time 4.2

In this new harmonized European ECL-system, there is a potential for CHIs to find new ways to disseminate their collections for new and innovative uses. The examples from the Nordic countries referenced above can serve as inspiration for the use of ECLs to allow access to collections more broadly. Calls for and nascent work on innovative uses such as the use of CHI collection to train and share national Large Language Models (LLMs) can also serve as inspiration (Brygfjeld, 2025; Parson, Rydén, 2024, p. 102–105). The success of the ECL-system in the Nordic countries has, however, also clearly relied on several specific aspects, such as legislative will, public funds, a culture that supports the collectivization of rights management and relationships between users, CMOs and right holders (Riis, Schovsbo, 2010, p. 23–25).

Public interest use cases for CHI collections should be highlighted to legislators to support the availability of the necessary funds, and the existence of appropriate legal provisions that allow for ECLs.

Access to funds might be a concern in some jurisdictions. For instance, the Commission considered the fees paid under the Norwegian Bokhylla-agreement excessive in the context of orphan works (European Commission, 2011, p. 27–28; Kivistö, 2017, p. 636). This demonstrates a potential scepticism to the financial cost of ECLs. While business models must be considered carefully (Parson, Rydén, 2024, p. 100–102), it should be recalled that ECLs ensure remuneration for uses that otherwise were not likely to happen (Salmela, 2023, p. 108).

Some jurisdictions as mentioned show that innovative use cases can potentially be addressed by ECLs, but that the success of such solutions rely on more than legislative will. For example a recent Spanish proposal for an ECL-provisions for the use of material to train general purpose AI models was withdrawn because of negative feedback from right holders in the public hearing (*Proyecto de Real Decreto por el que se regula la concesión de licencias colectivas ampliadas para la explotación masiva de obras y prestaciones protegidas por derechos de propiedad intelectual para el desarrollo de modelos de inteligencia artificial de uso general*, 2024; Nobre, 2024). This was in part because of controversy about the legality of historic model training (Fernández, 2025). This contrasts with Norway, where an ECL agreement has been concluded for the use of Norwegian newspapers in the collections of the NLN to train and share national LLMs (Brygfjeld, 2025).

ECLs can only be entered into with CMOs and right holders that want to reach an agreement for the type of use in question. Riis and Schovsbo previously spoke to the need for an ECL-system to be accompanied by "organizations and a culture of basing rights administration on a combination of private agreements and public rules" (2012, p. 23–24). This means that relationships might have to be built over time to allow solutions like those reached in the Nordic countries.

Resources might therefore have to be put into relationships and culture, if ECLs are to become an effective means for new and innovative uses of CHI collections throughout Europe. CHIs should be prepared to do a pedagogical job both in relation to legislators and right holders to build the conditions for a successful ECL-system.

4.3 On territoriality there is little movement at EU-level

There does not seem to be any current plans to further develop cross-border ECL licenses under Article 12 CDSM. The Commission report, as mentioned, considers the issue premature. It highlights potential issues with applying safeguards in cross-border contexts, including representativity of CMOs, and the identification and payment of outsiders. These safeguards are considered an integral part of the ECL-system, and the report highlights the need for their proper implementation (European Commission, 2021, p. 19).

The view of several authors quoted in this paper is that the cross-border delimitation of ECLs distinctly limit the potential for dissemination of CHI collections and their use for innovative purposes.[9] There has been considerable recent theoretical work on cross-border access that address both legal models and safeguards (Parson, Rydén, 2024, p 94–105; Salmela, 2023). This can support the development of ad hoc solutions and efforts towards legislative updates.

There might also be specific use cases that make either legislative intervention or the development of ad-hoc solutions particularly pressing. One issue is cross-border language areas, especially in the cases of minority languages. Europe is a region

where language areas might go beyond the borders of its constitutive states, but access to cultural heritage is clearly a benefit to all language users. Minority language areas are often under pressure by dominant state languages. This situation has been exacerbated by the rise of digital technology and the internet, which strengthens the push for language users to move to dominant national languages and even to English. The access to services, information, and also community, drives users to hegemonic languages whether at global level or in bilingual situations (Ojeda Caba, 2024, p. 140). Broad access to language resources for minority languages is therefore an important issue.

The use of CHI collections to train LLMs in national languages has been raised as an essential part of national infrastructure (Parson, Rydén, 2024, p. 102). There are also distinct concerns for LLMs in minority languages. Short literary traditions imply that the amount of available training data is normally limited for minority languages and the standardisation of the languages can be ongoing. The variable quality of accessible language data, especially from online sources, demands professionals to carefully wash, curate and annotate corpora and evaluate finished models. This demonstrates a difficult balancing act. Language technology might actively harm standardisation and the state of a minority languages, but it also has the potential to improve minority languages and give them visibility and recognition (Wiechetek et. al, 2024). Broad access to the quality language data that exist for minority languages and the ability to use it across jurisdictions is therefore important.

The protection of minority languages, therefore, speaks for the ability to extend clearance of CHI collections across language communities regardless of borders. Stakeholders must question whether ad-hoc solutions through reciprocal mandates for CMOs are available and sufficient, or if there should be a push for legislative intervention for cross-border ECLs at the EU-level to allow for these and other pertinent cross-border public interest use cases. These and other public interest use cases, which speak to cross-border access in mass-use situations that involve CHI collections, should be further developed.

5 Conclusion

There seems to be a lot of potential in the new updated European ECL-system. Surprisingly to some perhaps a lot of groundwork has already been done. Examples from the Nordic countries show that ECLs can be leveraged to allow for mass and innovative use cases of CHI collections. There is the potential to leverage examples of well-functioning agreements to address solutions in other European countries also.

There remains work to be done, and it is not assured that the system will work everywhere. Without legal provisions, public budgets, representative CMOs and relationships between the stakeholders that allow for agreements to be entered, ECLs might have limited effect in practice.

The work at the EU level seems to be in the monitoring phase, the onus is now on CHIs to inform and engage with legislators, CMOs, and right holders to ensure the current system's potential is fully realized. Cross-border use cases can be attempted to be addressed with ad-hoc solutions through joint licenses. This work can hopefully also highlight any limitations in the current system, and emphasise the need for legislative updates, such as extending cross border ECLs beyond OOC-works. Use cases that have a strong public interest angle, for instance cross-border language areas for minority languages, can perhaps highlight both the potential and limitations of the current ECL systems. This can help to demonstrate the most pressing needs for intervention both at the national and at the EU-level.

Notes

[1] Thank you to Guro Bøe Linnet, Ole-Andreas Rognstad, the anonymous peer reviewers and the editorial staff of CeLISR for comments on the manuscript. It goes without saying that all errors and omissions are my own.

[2] For a historical perspective see Karnell (1981).

[3] The term was originally applied to the license agreement, but now signifies the legally mandated extended effect, see Rognstad (2004), p. 152.

[4] As opposed to an exception, which allows free use without remuneration. See Axhamn, Guibault (2011) p. 513; similarly Rognstad (2012), p. 622–623.

[5] See the discussion of the steps for ECLs in Salmela (2023), p. 189–191.

[6] As well as systems based on presumption of representation, see Recitals 33 and 46.

[7] The recognition of orphan work status (Directive 2012/28/EU, article 4), the exceptions for teaching (CDSM Directive, article 5(3)), and types of OOC-works or other subject matter with no representative CMO (CDSM Directive, article 9(2)) have also been given cross-border effects.

[8] Malawi was chosen in part as a common law jurisdiction, see Parson and Rydén (2024), p. 60–61.9

[9] See section 2.3.5 Cross-border access , above.See section 2.3.5 Cross-border access, above.

Sources/Literature

Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994 [TRIPS Agreement]. Available at: https://www.wipo.int/wipolex/en/text/305907 (Accessed: 25 November 2025)

Axhamn, J. (2017) *The Consistency of the Nordic Extended Collective Licencing Model with International Copyright Conventions and EU Copyright Norms*. Nordiskt Immateriellt Rättsskydd, 2017(6), 563–579. Available at: https://www.nir.nu/journals/viewsection/14072 (Accessed: 25 November 2025)

Axhamn, J., Guibault, L. (2011) *Solving Europeana's mass-digitization issuesthrough Extended Collective Licensing?* Nordiskt Immateriellt Rättsskydd, 2011(6), 509–516. Available at: https://www.nir.nu/journals/viewsection/8892 (Accessed: 25 November 2025)

Axhamn, J., Guibault, L. (2012) *Cross-Border Extended Collective Licensing: A Solution to Online Dissemination of Europe's Cultural Heritage* (SSRN Scholarly Paper No. 2001347). Social Science Research Network. Available at: https://papers.ssrn.com/abstract=2001347 (Accessed: 25 November 2025)

Bekendtgørelse af lov om ophavsret (LBK nr. 1093 af 20/08/2023) [DCA]. Available at: https://www.retsinformation.dk/eli/lta/2023/1093 (Accessed: 25 November 2025)

Berne Convention for the Protection of Literary and Artistic Works, July 24, 1971. Available at: https://www.wipo.int/wipolex/en/text/283698 (Accessed: 25 November 2025)

Bræin, N. (2025) *Ny Bokhylla-avtale gir deg digital tilgang til 400 000 bøker.* Nasjonalbiblioteket. Available at: https://www.nb.no/pressemeldinger/ny-bokhylla-avtale-gir-deg-digital-tilgang-til-400-000-boker/ (Accessed: 25 November 2025)

Brygfjeld, S. A. (2025) *Nasjonalbiblioteket inngår historisk avtale med landets aviser om innhold til kunstig intelligens*. Nasjonalbiblioteket. Available at: https://www.nb.no/pressemeldinger/nasjonalbiblioteket-inngar-historisk-avtale-med-landets-aviser-om-innhold-til-kunstig-intelligens/ (Accessed: 25 November 2025)

Council Directive 93/83/EEC of 27 September 1993 on the Coordination of Certain Rules Concerning Copyright and Rights Related to Copyright Applicable to Satellite Broadcasting and Cable Retransmission [Satellite and Cable Directive]. Available at: http://data.europa.eu/eli/dir/1993/83/2019-06-06 (Accessed: 25 November 2025)

Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [CDSM Directive]. Available at: https://eur-lex.europa.eu/eli/dir/2019/790 (Accessed: 25 November 2025)

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society [InfoSoc Directive]. Available at: http://data.europa.eu/eli/dir/2001/29/2019-06-06 (Accessed: 25 November 2025)

Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on Certain Permitted Uses of Orphan Works. Available at: http://data.europa.eu/eli/dir/2012/28/oj (Accessed: 25 November 2025)

Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market [CRM Directive]. Available at: https://eur-lex.europa.eu/eli/dir/2014/26 (Accessed: 25 November 2025)

Endringer i åndsverkloven (gjennomføring av EUs hitteverkdirektiv og innføring av generell avtalelisens mv.) [Prop. 69 L, 2014–2015]. Stortinget; Kulturdepartementet. Available at: https://www.regjeringen.no/no/dokumenter/prop.-69-l-2014-2015/id2401119/ (Accessed: 25 November 2025)

European Commission (2011) *Commission Staff Working Paper Summary of the Impact Assessment on the Cross-Border Online Access to Orphan Works*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011SC0616 (Accessed: 25 November 2025)

European Commission. (2021) *Commission Staff Working Document: Report on the Use of Collective Licensing Mechanisms with an Extended Effect Under Article 12(6) of Directive 2019/790/EU on Copyright and Related Rights in the Digital Single Market*. https://data.consilium.europa.eu/doc/document/ST-14480-2021-INIT/en/pdf (Accessed: 25 November 2025)

Fernández, M. S-N. (2025) *Licencias colectivas y defensa cultural ante el Real Decreto*. SafeCreative. Available at: https://www.safecreative.org/tips/es/licencias-colectivas-y-defensa-cultural-ante-el-real-decreto/ (Accessed: 25 November 2025)

Forslag til lov om ændring af lov om ophavsret [Lovforslag nr. L 125 (2022–23)]. Folketinget; Kulturministeriet. Available at: https://www.ft.dk/samling/20222/lovforslag/L125/som_fremsat.htm (Accessed: 25 November 2025)

Gervais, D. J. (2003) *Application of an Extended Collective Licensing Regime in Canada: Principles and Issues Related to Implementation* (SSRN Scholarly Paper No. 1920391). Social Science Research Network. https://doi.org/10.2139/ssrn.1920391 (Accessed: 25 November 2025)

Høringsnotat – Forslag til endringer i åndsverkloven mv. – gjennomføring av digitalmarkedsdirektivet (EU) 2019/790 og nett- og videresendingsdirektivet (EU) 2019/789 [Norwegian consultation paper on the CDSM and SatCab II directives]. (2023) Kultur- og likestillingsdepartementet. Available at: https://www.regjeringen.no/no/dokumenter/horing-om-endringer-i-andsverkloven-digitalmarkedsdirektivet-m.v/id3013710/ (Accessed: 25 November 2025)

Karnell, G. (1981) *Avtalslicenskonstruktionen, principiella och praktiska frågor*. Nordiskt Immateriellt Rättsskydd, 1981(4), p. 253–265. Available at: https://www.nir.nu/journals/viewsection/1228 (Accessed: 25 November 2025)

Kivistö, M. (2017) *Extended Collective Licenses that have Failed: Two Case Studies*. Nordiskt Immateriellt Rättsskydd, 2017(6), p. 635–640. Available at: https://www.nir.nu/journals/viewsection/14079 (Accessed: 25 November 2025)

Kulturministeriet (2023) *Bredt forlig skal skabe tryghed og fremtidssikre mediebranchen*. Available at: https://kum.dk/aktuelt/nyheder/bredt-forlig-skal-skabe-tryghed-og-fremtidssikre-mediebranchen (Accessed: 25 November 2025)

Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk [SCA]. Available at: https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1960729-om-upphovsratt-till-litterara-och_sfs-1960-729/ (Accessed: 25 November 2025)

Lov om opphavsrett til åndsverk mv. (åndsverkloven) [NCA] (2018). Available at: https://lovdata.no/dokument/NL/lov/2018-06-15-40 (Accessed: 25 November 2025)

Lund, A. M. (2017) *The Nordic Extended Collective Licence – Particular Aspects*. Nordiskt Immateriellt Rättsskydd, 2017(6), p. 552–562. Available at: https://www.nir.nu/journals/viewsection/14071 (Accessed: 25 November 2025)

Nobre, T. (2024) *A first look at the Spanish proposal to introduce ECL for AI training*. Kluwer Copyright Blog. Available at: https://legalblogs.wolterskluwer.com/copyright-blog/a-first-look-at-the-spanish-proposal-to-introduce-ecl-for-ai-training/ (Accessed: 25 November 2025)

Odeja Caba, J. (2024) Drets lingüístics i mitjans de comunicació a l'era de la digitalització. In: Fuster, V. T. (ed.) *El dret a la llengua*. Saldonar, Barcelona. p. 137–148. ISBN 978-84-19571-47-2. Available at: https://www.saldonar.com/documents/llibres/maq_el-dret-a-la-llengua_web.pdf (Accessed: 25 November 2025)

Parson, K., Rydén, J. (2024) *A16 Clearing rights, developing best practice guidelines for IPR clearance and instructional material*. EODOPEN. Available at: https://eodopen.eu/download/D16bcd-report-on-developing-best-practice-guidelines-for-ipr-clearance-and-instructional-material.pdf (Accessed: 25 November 2025)

Proyecto de Real Decreto por el que se regula la concesión de licencias colectivas ampliadas para la explotación masiva de obras y prestaciones protegidas por derechos de propiedad intelectual para el desarrollo de modelos de inteligencia artificial de uso general (2024) Available at: https://www.cultura.gob.es/servicios-a-la-ciudadania/informacion-publica/audiencia-informacion-publica/cerrados/2024/concesion-licencias-colectivas.html (Accessed: 25 November 2025)

Regeringens proposition till riksdagen med förslag till lagar om ändring av upphovsrättslagen och lagen om tjänster inom elektronisk kommunikation [RP 43/2022 rd]. Riksdagen; Undervisnings- och kulturministeriet. Available at: https://www.finlex.fi/sv/regeringspropositioner/2022/43 (Accessed: 25 November 2025)

Riis, T., et al. (2020) *Comment of the European Copyright Society on the Implementation of the Extended Collective Licensing Rules (Arts. 8 and 12) of the Directive (EU) 2019/790 on Copyright in the Digital Single Market* (SSRN Scholarly Paper No. 3631082). Social Science Research Network. Available at: https://doi.org/10.2139/ssrn.3631082 (Accessed: 25 November 2025)

Riis, T., Rognstad, O.-A., Schovsbo, J. (2016) Collective agreements for the clearance of copyrights – the case of collective management and extended collective licences. In: *User Generated Law*. p. 55–76. Edward Elgar Publishing. ISBN 978-1-78347-956-6. Available at: http://dx.doi.org/10.4337/9781783479566.00008 (Accessed: 25 November 2025)

Riis, T., Schovsbo, J. (2010) *Extended Collective Licenses and the Nordic Experience: It's a Hybrid but is it a Volvo or a Lemon*. Columbia Journal of Law and the Arts, 33(4), p. 471–498. Available at: https://heinonline.org/HOL/P?h=hein.journals/cjla33&i=479 (Accessed: 25 November 2025)

Rognstad, O.-A. (2004) *Avtalelisenser*. Nordiskt Immateriellt Rättsskydd, 2004(2), p. 151–159. Available at: https://www.nir.nu/journals/viewsection/1626 (Accessed: 25 November 2025)

Rognstad, O.-A. (2012) *Avtalelisens som nordisk løsningsmodell – Noen refleksjoner, særlig knyttet til avtalelisensens legitimitet i utlandet*. Nordiskt Immateriellt Rättsskydd, 2012(6), p. 620–632. Available at: https://www.nir.nu/journals/viewsection/9159 (Accessed: 25 November 2025)

Rognstad, O.-A. (2019). Opphavsrett (2. utgave). Universitetsforlaget, Oslo. Available at: https://www.universitetsforlaget.no/opphavsrett (Accessed: 25 November 2025)

Rydén, J. (2017) *Extended Collective Licensing and Aspects of Territoriality. Is a Global Library a Vision or Utopia?* Nordiskt Immateriellt Rättsskydd, 2017(6), 629–634. Available at: https://www.nir.nu/journals/viewsection/14078 (Accessed: 25 November 2025)

Salmela, K. (2023) *Extended collective licence in cross-border digital use*. Nordiskt Immateriellt Rättsskydd, 2023(2), 178–210. Available at: https://www.nir.nu/journals/viewsection/19952 (Accessed: 25 November 2025)

Schovsbo, J., Rosenmeier, M., Petersen, C. S. (2024) *Immaterialret* (7. utgave). Djøf Forlag, København. Available at: https://www.jurabibliotek.dk/display/book/9788757459333/9788757459333.xml (Accessed: 25 November 2025)

Schønning, P. (2017) *Problemstillingen vedrørende grænseoverskridende aftalelicens*. Nordiskt Immateriellt Rättsskydd, 2017(6), 613–614. Available at: https://www.nir.nu/journals/viewsection/14076 (Accessed: 25 November 2025)

Stokkmo, O. (2017) *The Extended Collective Licensing Agreement, or the Extension of Voluntary Licensing Agreements around the World*. Nordiskt Immateriellt Rättsskydd, 2017(6), p. 593–603. Available at: https://www.nir.nu/journals/viewsection/14073 (Accessed: 25 November 2025)

Svenska Tonsättares Internationella Musikbyrå (STIM) v. Tele Danmark A/S [NJA 2000 s. 445]. Högsta domstolen. Available at: https://lagen.nu/dom/nja/2000s445 (Accessed: 25 November 2025)

Tekijänoikeuslaki (404/1961) [FCA]. Available at: https://www.finlex.fi/eli?uri=http://data.finlex.fi/eli/sd/1961/404/ajantasa/2025-06-27/fin

Upphovsrätten på den digitala inre marknaden [Prop. 2021/22:278]. Riksdagen; Justitiedepartementet. Available at: https://www.riksdagen.se/sv/dokument-och-lagar/dokument/proposition/upphovsratten-pa-den-digitala-inre-marknaden_h903278/ (Accessed: 25 November 2025)

Wiechetek, L. et al. (2024) The Ethical Question – Use of Indigenous Corpora for Large Language Models. In: Calzolari, N. et al. (eds.) *Proceedings of the 2024 Joint International Conference on Computational Linguistics, Language Resources and Evaluation (LREC-COLING 2024).* p. 15922–15931. ELRA and ICCL, Torino. https://aclanthology.org/2024.lrec-main.1383/ (Accessed: 25 November 2025)