



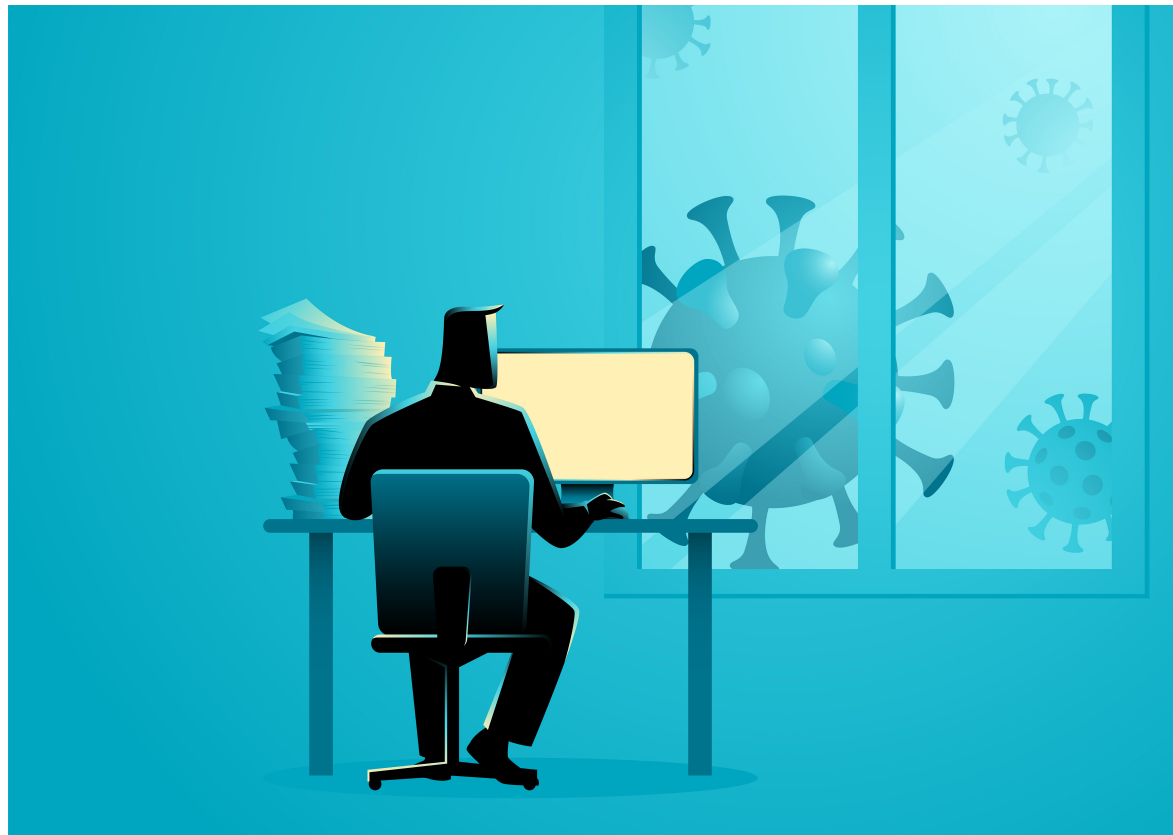
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# Academic Teachers and Copyright in Scandinavia

ULRIKA WENNERSTEN, LL.M., JUR. DR., SENIOR LECTURER  
SCHOOL OF ECONOMICS AND MANAGEMENT, LUND UNIVERSITY



# COVID-19



Picture: rudall30, Depositphoto.com



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# E-learning – Horton's theory E-learning by Design\*

## – Absorb, Do, Connect\*

Planning

Building trust

Energy

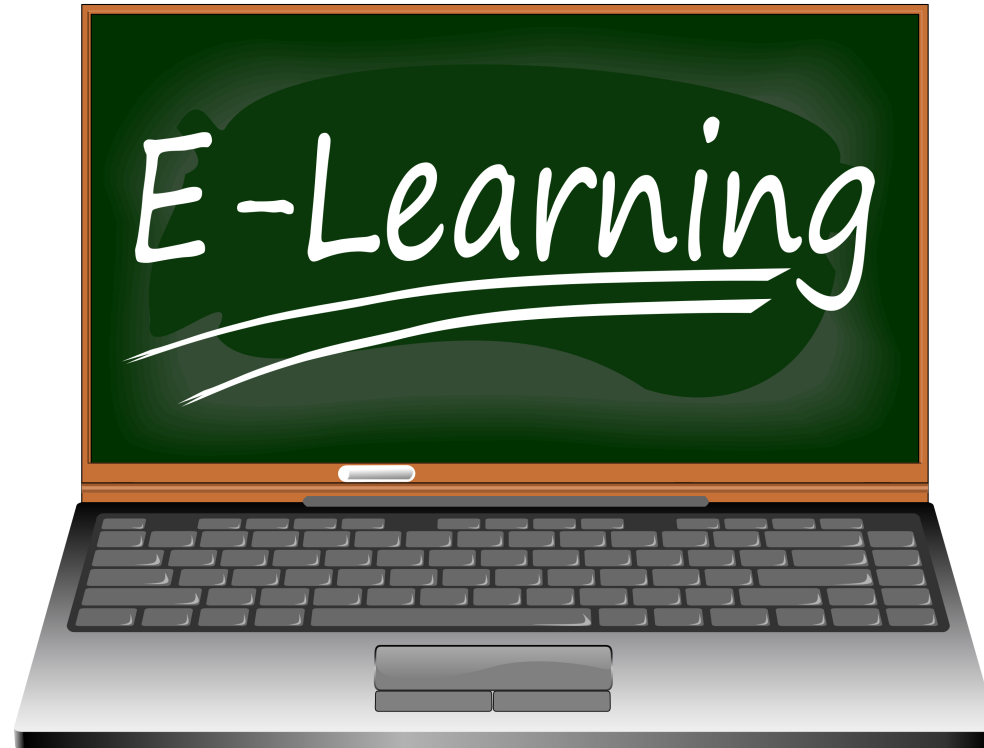
Accessible

### Asynchronous

Eg.  
Recorded lectures  
Books  
Films

Quiz

Polls



Depositphoto.com

### Synchronous

- Use of different platforms for different activities
- Casesolving activities
- Draft a summons application and reply
- Team teaching
- Interviewing a colleague
- Breakout rooms
- Liberating Structures\*

\*<http://www.liberatingstructures.com>

\* Horton, William, E-learning by Design, 2 ed, Pfeiffer, 2012

# Ownership

## **General rule: Copyright for Authors\***

- Berne Convention, article 3.1: "The protection of this Convention shall apply to authors [...]"
- Infosoc directive 2001/29 article 2-4 provides authors with exclusive rights
- 3 exceptions: article 4(1) Database Directive, article 3 Software Directive and article 2(1) Term directive

## **Scandinavian Countries**

"Anyone who has created a literary or artistic work [...]"

- Sweden - Act on Copyright in Literary and Artistic works (1960:729), Chapter 1, § 1
- Norway – Act on Copyright (åndverkloven) LOV-2018-06-15-40, Chapter 1, § 2
- Denmark – The Consolidates Act on Copyright, LBK nr 1144 af 23/10/2014, Chapter 1, § 1

\*Pila & Torremans, European Intellectual Property Law, 2 ed,  
Oxford University Press, p. 272f



# Employment

## **The Exception: Copyright for Employers\***

- Ownership of copyright in employee created works vary in the MS
- Scandinavian Countries – Contract or Collective Agreement
- Sweden – without a contract this principle:

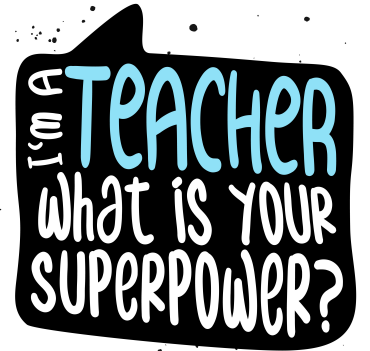
" Within its fields of activity and for regular activities in that field, the employer may use the employee's works due to duties in the employment or specific commitment towards the employer. The employer's right refers to utilization for the purposes that can be foreseen when the work is created. If the work must be changed in order for the purpose it was created for; the change is permitted."\*\*  
(my own translation)

\*Pila & Torremans, European Intellectual Property Law, 2 ed, Oxford University Press, p. 273f

\*\* SOU 2010:24 Avtalad upphovsrätt, s. 160 ff jfr AD 2002 nr 87 and AD 2019 nr 53 see also Bernitz, et al, Immaterialrätt och otillbörlig konkurrens, 14 uppl, 2017 s. 120.

# The principle: The Teachers' Exemption

- •Researcher/ teachers own the result of his or her research/teaching.
- •Based on Jus non scriptum
- •Reason: The Academic Freedom\*
- But is this really an exemption or the general rule?
- But materials created in normal teaching duties, like timetables, syllabus, course information, and examining students, can be used.\*\*



Depositphoto: Azindianlany

\*Wolk, Lärarundantaget i omvandling (The teacher exception in transition), NIR 5/2003 p. 416; Olsson, Copyright p. 86, Sandgren, Rätten till undervisningen och forskningen, XXVI SULF:s Skriftserie, 2003, see. s. 39 f; jfr Strömholm, Vem äger forskningen? Uppsala 2002, see. s. 43 ff.

\*\* SULF – Copyright Q & A <https://sulf.se/en/work-salary-and-benefits/copyright/>, Magnusson and Wolk, Juridiken kring E-lärande, p. 33 f see also Pila, Who owns the intellectual property rights in academic work?, E.I.P.R. 2010, 32(12), 609-613.

# Academic Freedom

- ❖ **Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education**
- ❖ **Magna Charta Universitatum from 1988**
- ❖ **UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel from 1997**
- ❖ **Charter of Fundamental Rights of the European Union, Article 13**  
” The arts and scientific research shall be free of constraint. Academic freedom shall be respected.”
- ❖ **European Parliament recommendation of 29 November 2018 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on Defence of academic freedom in the EU’s external action (2018/2117(INI))**

# Academic Freedom

## **Chapter 1 Section 6 The Swedish Higher Education Act (1992:1434)**

”The following general principles shall apply to research:

- research issues may be freely selected,
  - research methodologies may be freely developed, and
  - research results may be freely published.”
- 
- But teaching and research are intertwined! – See, for example, Lund University Strategic Plan 2017-2026

# To conclude - some thoughts

- Universities create intellectual property policies where they claim extended use of teachers learning material or even ownership.
- In my view, this will increase with E-learning. COVID-19 has forced the teachers to online teaching. Can university teachers work intended for online teaching be seen as specially appointed tasks or following the employer's specific instructions?
- Copyright comes with not only rights but also duties and responsibilities. Are universities willing to, e.g., take action for infringement?



Thank you for your attention!  
[ulrika.wennersten@har.lu.se](mailto:ulrika.wennersten@har.lu.se)

Pictures: Depositphoto.com



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