[DK] Amendments to the Copyright Act enacted

IRIS 2024-7:1/17

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The Danish Copyright Act has been amended several times over the past three years:

In 2021, it was amended to implement the SatCabII Directive and Articles 15 and 17 of the DSM Directive on press publications and online content-sharing service providers, respectively. In 2023 it was amended to implement the rest of the DSM Directive, including the text and data mining provisions and measures to improve licensing practises and achieve a well-functioning marketplace for copyright.

On 4 June 2024, the Danish Parliament enacted more amendments to the Danish Copyright Act. The main purpose was to modernise the Act to better reflect the technological development. In addition, there are various other changes.

The enactment followed a proposal that was sent for hearing with the deadline for comments in January 2024, some adjustments to the text, a bill presented in Parliament in March and further parliamentary treatment in April and May.

The amendments include a codification of the parody, caricature and pastiche exception with reference to the InfoSoc Directive article 5(3)(k) in the wake of the May 2023 Danish Supreme Court judgment in the so-called Little Mermaid case that upheld the unwritten parody principle that Denmark has relied on until now. The Danish Copyright Act only included in the law a special provision on parody in connection with online content-sharing service providers in line with the DSM Directive Article 17, but no general parody exception.

Under the new provision, the right to claim authorship of the work and the right to object to any derogatory action concerning the work, i.e. the moral rights, are expressly not applicable to a parody – and, besides, not harmonised at EU level - but according to the explanatory notes, the three-step test of the InfoSoc Directive article 5(5) must be complied for a parody to be legal.

In the answers to the hearing, it was widely criticised that the new parody exception includes the condition that there must be legal access to the work used for parody, as the EU Deckmyn judgment does not mention such a condition. However, in the explanatory notes, the Danish Ministry of Culture upheld the legal access condition, noting that it was aware of the Deckmyn judgment and did not find anything in EU law that would hinder the said condition. The Ministry of

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Culture stressed that the new general parody exception is intended to reflect EU law.

The amendments enacted in relation to text, data mining, and AI training mean that rightsholders' consent may be necessary, as pointed out in the explanatory notes. It is indicated that the existing extended collective licence could be used in connection with agreements following copyright holders' reservation of rights in connection with text and data mining. A prerequisite for this licence would be the Ministry of Culture's prior approval, as for other agreements under the general extended collective licence. Using extended collective licence agreements would secure fair remuneration to rights holders and easy access to rights clearance for users.

Further, the enacted amendments introduce a mediation possibility if the parties face difficulties agreeing on an extended collective licence agreement. Thus the amendments intend to promote agreements in this respect. The Ministry of Culture notes in the explanatory notes that for example in the field of AI and text and data mining, there are often large international players. Experience has shown that there may be a need to formalise discussions in negotiations with large tech companies, and mediation can contribute to that.

The amendments further include the introduction of new specific extended collective licence provisions regarding television stations' and online service providers' on-demand offers. In conclusion, the amendments lead to a strengthening of the Danish extended collective license system. Also, the competence of the Copyright License Tribunal is expanded.

Furthermore, the amendments include various adjustments throughout the Copyright Act to bring it in line with EU copyright law, for example, an adjustment of the public performance provision to cover also retransmission of TV taking place in a restaurant and internet streaming of music or films, etc., and it is no longer sufficient to determine based on unique indicators that there is public performance in commercial situations; now this is subject to a concrete evaluation in each case.

Finally, gender-specific wording throughout the Act is replaced by neutral wording.

The amendments to the Copyright Act entered into force on 1 July 2024.

Høring over forslag til lov om ændring af lov om ophavsret, med høringsfrist 12. januar 2024

https://hoeringsportalen.dk/Hearing/Details/68225

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Hearing on proposal for amendments to the Danish Copyright Act, with deadline for comments 12 January 2024

20. marts 2024 forslag til lov om ændring af lov om ophavsret, hvor lovbemærkninger fremgår

https://www.ft.dk/samling/20231/lovforslag/L145/som_fremsat.htm

20 March 2024 Parliament bill to amend the Danish Copyright Act, where the explanatory notes are included

Deckmyn judgment (c-201/13) of 3 September 2014

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013CJ0201

4. juni 2024 lovforslag som vedtaget af Folketinget

https://www.ft.dk/samling/20231/lovforslag/L145/som_vedtaget.htm

4 June 2024 Act on amendments to the Danish Copyright Act, as enacted

Dansk Højesterets dom af 17. maj 2023 i "Den Lille Havfrue"-sag

https://domstol.dk/media/teena5gf/24506-2022-dom-til-hjemmesiden.pdf

"The Little Mermaid" Danish Supreme Court judgment of 17 May 2023

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