[DK] Legal Regulation of the Networked Society under Consideration

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Elisabeth Thuesen
Law Department, Copenhagen Business School

Danish legislation on the information and communication media has to be adapted to the development of new technology by which the separate media shall be able to converge into multifunctional entities. In preparation for the arrival of the future information society a Committee established by the former Minister for Culture, Elsebeth Gerner-Nielsen, issued a report on convergence in the networked society (Konvergens i netværkssamfundet) on 7 June 2001. The report - examining the motives, powers and scenarios of future development - evaluates in Chapter 6 the sectoral legislation in force and its suitability for meeting the needs of the future regulation of the networked society. It is against this background that the Committee is considering what legislative initiatives should be taken in order to establish a sufficient legal basis for the future IT structure of the society.

Traditionally, the electronic media have been separated into two distinct sectors: two-way, point-to-point communication, and point-to-multipoint communication in the case of the mass media. As convergence brings these sectors together and makes them interactive, legislation will have to be built up in a non-traditional way. Legal regulation is needed on the one hand concerning the construction and exploitation of the technical infrastructure and on the other hand concerning the content of the activities regarding the promotion of competition between the services, cultural policy and the protection of consumers.

The Lovbekendtgørelse nr. 701 af 15.7.2001 om radioog fjernsynsvirksomhed (Consolidated Act no. 701 of 15 July 2001 on Radio and Television Activities, RTA), deals with a public service regulation imposing obligations on the public broadcasters Danmarks Radio (DR) and TV2 and a general regulation for every kind of broadcaster, in particular concerning broadcast permission. The establishment of convergence between the media requires legislation that regulates technologies other than the actual analogue technology. Public service can no longer be restricted to certain institutions, but has to concern an entire system of public and private broadcasters more or less subject to public service obligations. Article 6a, which is a new article inserted into the RTA in autumn 2000, has made this perspective possible, as it provides for general public service objectives which are not particularly linked to specific technologies, media or institutions. DR and TV2 are still expected to offer public service programmes, but

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other broadcasters now have the possibility of offering such activities on the new fourth and fifth radio channels. Thus, the public service regulation shall provide for programming policy rather than for certain institutions. This requires clarification of the notion of public service. A Public Service Council shall be established where broadcast activities shall be regulated and submitted to debates concerning public service obligations. Against this background, it is intended to create a balance between quality requirements and freedom for the services to plan their programme policy and exercise their right to freedom of information.

By the same amendment of the RTA in 2000, a new art. 6e was introduced. It provides the framework for introducing digital terrestrial radio and television activities. This form of broadcasting shall compete with digital satellite television, digital cable television and analogue terrestrial television. A wide choice of television channels and services is expected. It has still to be decided whether specific channel types may be offered, such as news channels and children's channels, or whether a balanced set of channels selected on the basis of financial support shall be established, such as channels subsidised by fees, sponsors or pay-per-view.

According to the RTA art. 6b, cf. art. 6a section 1, Internet activities have become part of the public service obligations of DR and TV2.

Chapter 2 of the RTA regulates the "must-carry" obligations, i.e., the rules providing for the distribution of radio and television programmes in local area networks. Together with the IT development, a conflict between the different objectives of cultural policy may arise as the "must-carry" obligations provide for a selection of programmes to be broadcast to the consumers which constitutes a bar to the free choice of the consumers. With the future increase of distribution capacity these rules will have to be revised. Similar conflicts are expected to arise concerning the rules based on the EU "Television without Frontiers" Directive on the protection of minors and on the broadcasting of European programmes.

The framework for the liberalisation of the Danish telecommunications sector was set up by a political agreement of 1990. The actual regulation is specified by sector and is subject to asymmetrical competition regulation. It is intended to change the focus from the telecommunications market to a communications market and to open up access for all Danish citizens to the networked society. Convergence has consequences for the delimitation between the telecommunications regulation and the media legislation as the currently distinct and separate services shall be merged on the same platforms and terminals. Overlap, gaps and conflicts between the different sets of rules may arise. An essential problem is that the telecommunications services are only regulated on the technical level. They are not subject to regulations on the content of the

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programmes on the cultural/political level. However, the international dimension presents obstacles to such regulation.

Concerning the regulation on transmission, it is intended to retain sector-specific regulation only in order to secure the obligations of supply and to establish a balance between the regulation of transmission and the regulation of programme content. The regulation shall be technologically-neutral and shall make it possible to cater for every kind of telecommunications service.

The structure of the future legislation on telecommunications shall be based on framework statutes implemented by ministerial orders in order to make the legal system flexible and smooth. In particular, the legislation on the distribution of frequencies has to be considered in order to set up a sufficient framework for the entry of new technologies to the market. On the organisational level it is intended to keep a common or a coordinated authority of control and advice.

In relation to consumer protection, access for all end-consumers to fundamental telecommunications services on reasonable conditions has to be secured. Furthermore, the security of application of telecommunications services has to be improved. Act no. 417 of 31 May 2000 on electronic signatures (lov om elektroniske signaturer) currently applies to this area. Concerning the regulation of the programme content, art. 89 of Act no. 418 of 31 May 2000 on competition and consumer relationships on the telecommunications market (lov om konkurrence- og forbrugerforhold på telemarkedet) provides for the access to establish further rules on the content of information services and other services corresponding to radio and television broadcasts.

The report is expected to be brought before the Folketing (Danish Parliament) in Spring 2002 in order to decide how to initiate a coordinated policy on convergence. A parliamentary debate, scheduled for autumn 2001, was postponed because of the general elections that were held on 20 November. The new Minister for Culture, Brian Mikkelsen, is responsible for convergence policy.

" *Konvergens i netværkssamfundet*", *7 June 2001*

http://www.moga.dk/konvergens/

Report on Convergence in the Networked Society of 7 June 2001

Lovbekendtgørelse nr. 701 af 15.7.2001 om radio- og fjernsynsvirksomhed

Consolidating Act no. 701 of 15 July 2001 on radio and television activities

http://www.kum.dk/kum.asp?lang=1&color=37&file=/dk/37_IND.asp

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