[DK] Partial transposition of the DSM Directive

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On 3 June 2021 Denmark passed a bill in parliament, whereby the DSM directive Article 15 on press publications and Article 17 on online content-sharing service providers plus the SatCabII directive are implemented in the Danish Copyright Act. The key concept of the new legislation is rights clearance.

Going further than the SatCabII directive, the new legislation also introduces a possibility of clearing rights via extended collective licensing when TV distributors and other third parties redistribute independent streaming services, i.e. non-broadcaster streaming services, such as Netflix, HBO Nordic, Disney + and the like. Extended collective licence implies that according to the law, a user – who has made an agreement on a particular exploitation of a certain type of works with an organisation (a collecting society, i.e. collective management organisation) comprising a substantial number of right holders of this type of works – obtains the right to use works of the same type owned by non-members of the organisation, in the same manner and on the terms that follow from the agreement with the organisation. The organisation must be approved by the Ministry of Culture for extended collective licence regarding the area in question. Provisions on extended collective licensing already exists for redistribution of streaming services from broadcasters.

The bill was introduced after a short public hearing process and it was put forward in parliament on 26 March 2021. During the treatment in the parliament committee for culture many questions were posed to the Minister for Culture and a hearing with the various stakeholders was held.

The law will enter into force at short notice on 7 June 2021, i.e. just in time to meet the same deadline of the two directives. According to the preparatory works, implementation of the remaining DSM directive will take place in a coming bill.

The purpose of the two directives is to harmonise the EU Member States' legislation with the specific aim of modernising copyright in light of the digital development, especially technologies that give access to copyrighted material such as films and music via the internet.

Similarly, according to the new legislation itself the purpose is to modernise copyright, taking into account the development of digital technologies and

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particularly the access to copyrighted material via the internet.

The preparatory works stress that user-driven tech giants, such as for example YouTube, are among the most important sources of access to content online, which is why they are the means to secure broader access to cultural and creative works and to provide opportunities for new business models for the cultural and creative sector. However, there is a need for a fair and well-functioning marketplace when big platforms negotiate rights. Therefore the motive behind the implementation of Articles 15 and 17 is to create a better functioning market place for copyright and thus ensure that the rightsholders' position vis-à-vis the tech giants is strengthened so that fair terms, including payment, to rightsholders when the tech giants use their content online are obtained by the new legislation.

Articles 15 and 17 concern services that will often act internationally, and according to the preparatory works a high level of harmonising is consequently required, and it is therefore the assessment of the Ministry of Culture that the implementation must be very close to the wording of the directive.

The SatCabII directive implies an update of the rules on broadcasters' primary activity that has moved from satellite to include online services plus an update on distributors' retransmission that has moved from traditional cable to include other platforms, including online.

But as mentioned, the new Danish legislation goes further than the SatCabII directive. The preparatory works note that TV distributors have started offering streaming services, including non-broadcaster originated services, to their customers as part of a TV package. This calls for expansion of the existing licensing scheme on redistribution of broadcaster linear TV channels and streaming services.

Finally, the purpose of the new legislation is to establish that enterprises carrying out an independent business offering content from several TV channels and/or streaming services - i.e. so that there are two independent economies - must clear rights (that are not cleared already) with a collective organisation, irrespective of the technique employed.

The Ministry of Culture stresses in its press release of 3 June 2021 that the new rules regard the liability of online services, not the liability of private persons.

Forslag til Lov om ændring af lov om ophavsret (Implementering af dele af direktiv om ophavsret og beslægtede rettigheder på det digitale indre marked og direktiv om regler for udøvelse af ophavsretten og beslægtede rettigheder, der gælder for visse af tv- og radioselskabernes onlinetransmissioner og retransmissioner af tv- og radioprogrammer

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m.v.). Vedtaget af Folketinget ved 3. behandling den 3. juni 2021

https://www.ft.dk/samling/20201/lovforslag/L205/som_vedtaget.htm

Act amending the Copyright Act (Implementation of parts of the Directive on copyright and related rights in the digital single market and the Directive on rules on the exercise of copyright and related rights applicable to certain online broadcasts by television and radio broadcasters and retransmissions of television and radio programmes, etc.)

Kulturministeriet, "Ny virkelighed for tech-giganten", 03.06.2021

https://kum.dk/aktuelt/nyheder/ny-virkelighed-for-tech-giganter

Press release of the Ministry of Culture, 3 June 2021

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