# [FI] National measures for the transposition of the DSM Directive in force early April

**IRIS 2023-5:1/28**

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The Finnish Parliament approved amendments to the Finnish Copyright Act (404/1961, CA) late February 2023, based on the DSM Directive (EU) 2019/790. The amendments entered into force on 3 April 2023.

The process was a lengthy one, including a round of critical statements from various stakeholders regarding the draft Government proposal and a renewed preparation subject to complaints about partiality. The Constitutional Law Committee was also consulted during the legislative process and a supplementary Government proposal was drafted. The process exceeded the transposition deadline which also attracted the attention of the European Commission.

The original Government proposal was amended based on constitutional remarks regarding, in particular, the provisions on text and data mining (DSMD Article 3) as well as provisions on filtering practices by content sharing platforms (DSMD Article 17). Thereby, the national provisions on text and data mining for scientific purposes (CA § 13 b.2) came to enable use of copies for further research. Moreover, the provisions concerning lawful use of copyrighted content on platforms (CA § 55 f) came to include a prohibition on general monitoring based on freedom of expression, while the Constitutional Law Committee emphasized that the provisions are applied between private parties in the first place. Both solutions took the letter of the national law closer to the that of the DSM Directive. (PeVL 58/2022 vp and PeVL 85/2022 vp)

The so called “parody exemption” was also added to the Finnish Copyright Act in connection with the amendments, covering not only Article 17 DSMD but also more general use for parody, pastiche, and caricature (§ 23 a). This type of explicit exemption has not been included in the Finnish Copyright Act, based on the voluntary list of exceptions and limitations in the InfoSoc Directive (29/2001/EC). Following the Education and Culture Committee’s proposal, the requirement of “good practice” was removed from the final provision (SiVM 22/2022 vp).

Chapter 3 of the Finnish Copyright Act includes provisions on the transfer of copyright, some of which were also amended due the requirements of the DSM Directive. These amendments include, for example, listing the provisions which

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are mandatory (CA § 27). Regarding the principle of appropriate and proportionate remuneration, as set out in Article 18 of the DSM Directive, the starting point is fair remuneration. The directive also includes provisions on contract adjustment mechanisms (Article 20). A new provision (§ 28 a) on appropriate and proportionate remuneration was added to the Copyright Act, while the Government proposal emphasizes freedom of contract and negotiation as well as keeping the door open for different types of remuneration. The adjustment rules in Section 29 of the Copyright Act (see IRIS 2015-7:14) were in principle seen to fulfill the requirements of Article 20 DSM Directive: according to Section 29.1 CA, a term in a contract on transfer of copyright, concluded by the original author, may be adjusted or set aside if it is unreasonable or the application thereof would result in an unreasonable outcome. Factors to be considered came to include the author's contribution to the overall creative work as well as the commercial value and use of the work alongside the entire content of the contract, positions of the parties, underlying and subsequent circumstances (§ 29.2 CA). (HE 43/2022 vp)

The Finnish Copyright Act will later be revised based on national needs.

***The European Commission decides to refer 11 Member States to the Court of Justice of the European Union for failing to fully transpose EU copyright rules into national law. Press release 15.2.2023, Brussels.***

https://ec.europa.eu/commission/presscorner/detail/en/ip_23_704

***Act on Amending the Copyright Act (263/2023)***

***Government proposal on amending the Copyright Act and Electronic Communications Services Act***

***Government proposal supplementing the Government proposal on amending the Copyright Act and Electronic Communications Services Act***

***Statement of the Constitutional Law Committee on the Government proposal supplementing the Government proposal on amending the Copyright Act and Electronic Communications Services Act***

***Statement of the Constitutional Law Committee on the Government proposal on amending the Copyright Act and Electronic Communications Services Act***

***Report of the Education and Culture Committee on Government proposal on amending the Copyright Act and Electronic Communications Services***

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***Act as well as the Government proposal supplementing the Government proposal on amending the Copyright Act and Electronic Communications Services Act***

***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***

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=FI

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