[DK] Transposition of the DSM Directive soon to be completed and with emphasis on extended collective licensing

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In February 2023 the European Commission referred Denmark, together with a handful of other member states, to the Court of Justice of the European Union for failing to transpose the Directive on Copyright in the Digital Single Market (the DSM Directive) – Denmark had only implemented part of the Directive in time, namely Articles 15 and 17.

Denmark was therefore under pressure to act quickly and, on 10 March 2023, a proposal for a draft bill was issued for consultation, with a deadline of 11 April 2023 for comments on the proposal. On 3 May 2023, a revised proposal for a draft bill amending the Danish Copyright Act in order to implement the DSM Directive in full was introduced to the parliament.

The proposal is expected to be passed in June and, according to the amending bill, the updated Copyright Act will enter into force on 1 July 2023.

The Danish implementation is close to the wording of the DSM Directive. In short, it is proposed that the specific DSM provisions be transposed as follows in the Danish Copyright Act:

The articles on text and data mining (DSM Articles 3 and 4) are implemented via new provisions (Danish Copyright Act sections 11 b and 11 c). The Danish Ministry of Culture notes in the explanatory notes to the draft bill that the placing of the text and data mining exceptions in Chapter 2 of the Danish Copyright Act (about limitations to copyright, etc.) implies that the general rule about lawful access also applies to these copyright exceptions.

Regarding digital teaching activities (DSM Article 5), the Danish implementation (Danish Copyright Act sections 13 and 13 a) implies an extension of the existing extended collective licence for this area. The Danish Ministry of Culture notes that the extended collective licence scheme in Denmark also functions very well within the teaching area and is, therefore, a well-suited, simple and non-bureaucratic way to secure a balance between rights holders' right to remuneration for use of their works by others and users' interest in access to works not being unnecessarily impaired.

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Regarding the preservation of cultural heritage (DSM Article 6) and out-of-commerce works (DSM Articles 8-11), the Danish implementation (Danish Copyright Act sections 16(2) and 16 c-16 f) similarly implies an extension of the existing extended collective licences for these areas, as well as an extension of existing exceptions for out-of-commerce works ; however this does not apply to works from cultural institutions in other member states (Danish Copyright Act sections. 88 a and 88 b).

Regarding collective licensing with extended effect (DSM Article 12), the Danish Ministry of Culture notes that in essence, Article 12 is in harmony with existing Danish rules on extended collective licensing, so only a few corrections are needed. Thus, some of the existing extended collective licences have been slightly amended (Danish Copyright Act sections 14, 16 b, 17 and 50). The ministry notes that DSM Article12 is an important provision for Danish copyright and the Danish extended collective licence model since it recognises the licence at EU level as an effective and useful way to manage copyright. The ministry stresses that extended collective licensing cannot be characterised as an exception to copyright but it is a way to manage copyrights.

The articles on the negotiation mechanism (DSM Article 13) and visual art in the public domain (DSM Article 14) are implemented via new provisions (Danish Copyright Act sections 58 b and 70(4)).

Regarding fair compensation (DSM Article 16), according to the Danish Ministry of Culture, no legislative changes are needed in the Danish Copyright Act.

Regarding the principle of appropriate and proportionate remuneration (DSM Article 18), the transparency obligation (DSM Article 19), the contract adjustment mechanism (DSM Article 20) and the right of revocation (DSM Article 22), new provisions close to the DSM wording have been inserted into the Danish Copyright Act (sections 55, 55 a-55 d and revised 54). With regard to appropriate remuneration and what should be taken into consideration when assessing the value of rights (DSM recital 73), the Ministry of Culture notes that in many areas, market practices in Denmark involve the collective rights management based on rightsholders to a large extent retaining rights, or at least the right to remuneration; this is often referred to as “the Danish model”.

Regarding the alternative dispute resolution procedure (DSM Article 21), the Danish Copyright Licence Tribunal is granted the competence (Danish Copyright Act revised section 47(2)).

Høring over forslag til lov om ændring af lov om ophavsret (gennemførelse af DSM-direktivet)

https://hoeringsportalen.dk/Hearing/Details/67272

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Consultation on the draft Act amending the Copyright Act (transposition of the DSM Directive)

Forslag til Lov om ændring af lov om ophavsret

https://www.ft.dk/ripdf/samling/20222/lovforslag/l125/20222_l125_som_fremsat.pdf

Proposal for a draft bill amending the Danish Copyright Act

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