[DK] Possible extended collective licence for text and data mining

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In the spring of this year Denmark was in a hurry to implement the DSM Directive, as fines had been imposed for each day of late implementation (which should have taken place in June 2021). Thus, on 10 March 2023, a proposal for a draft bill was sent out for consultation, with a deadline for comments set to 11 April; on 3 May a revised proposal for a draft bill amending the Danish Copyright Act to implement the Directive was introduced to the parliament, with entry into force on 1 July 2023. In a revised bill of 30 May, this date was, however, amended so that the bill would enter into force as soon as possible, namely when the bill was made public in the Danish Gazette. The bill was passed by parliament on 1 June.

In a press release of 1 June on the new copyright provisions, the Ministry of Culture explained that the new rules were aimed, *inter alia*, at strengthening the position of rightholders when negotiating agreements, achieving greater transparency and a more balanced contract situation between rightholders and the acquirers of rights, and securing the Danish extended collective licensing model.

Thus the Ministry was aware of the importance of agreements on the exploitation of rights, but the new rules on text and data mining in sections 11b and 11c of the Danish Copyright Act are close to the wording of Articles 3 and 4 ofthe DSM Directive (where section 11c implements Article 3 and section 11b implements Article 4); and there is no provision in the Danish rules regarding extended collective licensing in connection with text and data mining.

Rightholder organisations had lobbied for such licensing especially in May this year, among other things via a request in a letter of 15 May for an audience with the Ministry of Culture, a concrete proposal on extended collective licensing for reproductions and extractions in connection with text and data mining outside the Copyright Act sections 11b and 11c, and via a legal opinion of 28 May 2023 from professor Elenora Rosati on the interplay between DSM Article 3 and press publishers' rights in Article 15.

As DSM Article 4 and the Danish Copyright Act 11b recognise the possibility for copyright holders to avoid the limitation to copyright, an extended collective licence for text and data mining could include situations where copyright holders

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have expressly reserved the use for text and data mining in “an appropriate manner” as required in Article 4 and section 11b.

Previously, in connection with the hearing in March, rightholder organisations had merely commented that the use of works via artificial intelligence (AI) is undergoing a breath-taking development, and that the text and data mining provisions are therefore important. In this regard the Ministry of Culture merely noted in its comments on the hearing of 14 March that DSM Articles 3 and 4 do not include any references to artificial intelligence.

The pressure for fast implementation of the DSM Directive on the one hand, and rightholders’ wish for the enactment of an extended collective licence in the field of text and data mining on the other, probably explain the Ministry’s letter of 28 May this year to the parliamentary Cultural Affairs Committee. This letter stated that the plan right after implementation is to look, *inter alia*, at the proposal for an extended collective licence in the field of text and data mining, so that a draft bill may be sent out for consultation in the late autumn of 2023. After this a bill can probably be introduced to the parliament in February 2024, and new provisions could enter into force by 1 June 2024.

It will be interesting to see if Denmark enacts provisions on extended collective licensing in the field of text and data mining outside DSM Articles 3 and 4, including in situations where an express reservation on the use of text and data mining has been made by a rightholder, thereby paving the way for agreements between rightholders and users. There is much to suggest this.

The details – and not least the ultimate effect of such an extended collective licence – remain to be seen.

Kommenteret høringsnotat Høring over forslag til lov om ændring af lov om ophavsret (gennemfø-relse af dele af direktiv om ophavsret og beslægtede rettigheder på det di-gitale indre marked)

https://prodstoragehoeringspo.blob.core.windows.net/91107ff3-5449-4172-a920-28b51f88be85/Kommenteret%20h%C3%B8ringsnotat%20DSM-gennemf%C3%B8rsel.pdf

Danish Ministry of Culture’s commented hearing note on the bill to amend the Copyright Act

Henvendelse af 15/5-23 fra Danske Medier om, at techgiganters dominerende adfærd kan begrænses i ny copyrightlov

https://www.ft.dk/samling/20222/lovforslag/L125/henvendelser.htm

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Letter requesting an audience with the Ministry of Culture and proposal (wording) on extended collective licence – see Bilag 3 and 5

Brev fra Kulturministeriet til Folketingets Kulturudvalg med indikationer på kommende ændringer i ophavsretsloven

https://www.ft.dk/samling/20222/lovforslag/L125/bilag/8/2712861.pdf

Letter from the Ministry of Culture to the parliamentary Cultural Affairs Committee with indications on forthcoming amendments to the Copyright Act

Letter by professor Eleanora Rosati on the interplay between Articles 3 and 15 CDSMD

https://www.ft.dk/samling/20222/lovforslag/L125/bilag/11/2716090.pdf

Forslag til Lov om ændring af lov om ophavsret

https://www.ft.dk/ripdf/samling/20222/lovforslag/l125/20222_l125_efter_2behandling.pdf

Bill amending the Danish Copyright Act to implement the Directive, with entry into force upon publication in the Danish Gazette

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