

UNESCO
WORLD ANTI PIRACY OBSERVATORY

DENMARK

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I. Legislation

1. Copyright laws

Copyright is protected in Denmark through international Agreements, the Consolidated Act on Copyright 2008 (n°587 of June 2008), as well as other legislation related to enforcement of copyright or affecting copyright protection.

2. Other laws

The Criminal Code (n°1068 of November 6, 2008) – s 299 b is particularly relevant:

“Anyone that in order to obtain oneself or others restitution or otherwise under particular aggravating circumstances is guilty of copyright violations of particularly serious nature, as stated in section 76(2), in the Consolidated Act on Copyright 2008 or the illegal import of particularly serious nature, as stated in section 77(2) in the Consolidated Act on Copyright 2008, is punishable by imprisonment up to 6 years.”

The Danish Administration of Justice Act (n°1068 of November 6, 2008) – chapter 57 and 57a are particularly relevant. Chapter 57 contains injunctions ordering parties to desist from infringements and 57a contains sections regarding securing of evidence/ infringing goods.

3. Latest developments and perspectives

In January 2007 the Danish Minister of Economic and Business Affairs decided to set up an interdepartmental committee to analyze the problem of counterfeiting and piracy. The results of this analysis are comprised in a governmental report.

The report included recommendations on rules and regulations (the increase of the penalty for copyright infringement), recommendations on current and future technical solutions to fight against piracy and to reach awareness among consumers on the consequences of piracy, recommendations in regards to the Danish trade sector to continue working on strengthening the companies' knowledge of intellectual property rights and enforcement of these rights and recommendations in regards to the exiting cooperation among authorities, both national and international

Since the report, the Danish authority has made an amendment to the Consolidated Act on Copyright. From January 1st 2009, the Danish tax-authority “SKAT” has the direct legal authority to pass on information about possible copyright infringements to the rights holders, if SKAT suspected such an infringement. This was not the case earlier on.

4. Summary of legislation

- *Exclusive rights of the authors and of the owners of neighboring rights*

Exclusive Rights of the authors

The person creating a literary or artistic work shall have the copyright. Within the limitations specified in the Copyright Act, copyright implies the exclusive right to control the work by reproducing it and by making it available to the public, whether in the original or in an amended form, in translation, adaption, onto another literary form or into another technique (Consolidated Act on Copyright Sections 1 and 2).

The author of a work enjoys also moral rights which are found under Section 3 of the Act on Copyright.

Exclusive Rights of the owners of neighboring rights

The neighboring rights are found in the Consolidated Act on Copyright chapter 5 particularly Sections 65 to 72.

The scope of protection as well as the terms of protection varies for neighboring rights in relation to section 2 rights.

- *Exceptions and limitations to copyright*

Copyright in a new and independent work created through the free use of another work, shall not be subject to the copyright in the original work (Section 4(2) of the Consolidated Act on Copyright).

All the limitations and exceptions for the copyright are in Chapter 2 (Sections 11 to 52 of the Consolidated Act on Copyright) of the Consolidated Act on Copyright. The Consolidated Act on Copyright has implemented the European directive 2001/29 EF of 22 May 2001 (INFOSOC).

The main exceptions may apply in the following circumstances;

- For the Temporary Reproduction
- For the Reproduction for Private Use – such copies must not be used for any other purpose
- For the Reproduction within Educational Activities and the Production of anthologies for Educational Use
- For the reproduction by business enterprises and the Reproduction by Hospitals
- To Replace or conserve library or archival copies of works
- For visually and Hearing-handicapped Persons
- For Distributions of Copies
- For Exhibitions of Copies
- For Public Performances
- For Quotations and Reporting Current Events
- For broadcastings

Where a work is used in accordance with the provisions of Chapter 2, copies may not be made on the basis of a reproduction of the work which is not been made available to the public by the right holder (Section 11(3) of the Consolidated Act on Copyright).

- *Protection of foreign works*

The provisions of the Act apply for any copyright infringements or anti-piracy issues, which have taken place in Denmark regardless of “the nationality of the work”.

- *Period of copyright protection*

The copyright in a work shall last for 70 years after the year of the author’s death (Sections 63 and 64 of the Consolidated Act on Copyright).

For Performing Artists and Producers of Sound Recordings, Recordings of Moving Pictures, Broadcasters, Photographic Pictures the protection is 50 years from time of creation (Sections 65 to 71 of the Consolidated Act on Copyright).

- *Registration*

There is no registration required in Denmark. The protection begins automatically with the creation of the literary or artistic work.

5. International treaties

Denmark is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#), in force since July 1, 1903.
- [Universal Copyright Convention](#), accession on November 11 1961 to UCC of 1952 and on April 11, 1979 to UCC of 1971.
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#), in force since September 23, 1965.
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS), since January 1, 1995 and ratification on 1996.
- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#), in force since March 24, 1977.
- [WIPO Copyright Treaty](#) (WCT), signature on October 28, 1997 (Denmark is awaiting joined European ratification)
- [WIPO Performances and Phonograms Treaty](#), signature on October 28, 1997 (WPPT) (Denmark is awaiting joined European ratification).
- Cyber Crime Convention, in force since October 1, 2005.

II. Measures and remedies

1. Copyright infringement

There is no clear definition of copyright infringement under the Law on Copyrights and Related Rights. However, definition can be deduced from several provisions which identify illegal acts, in particular Sections 76 to 80 of the Consolidated Act on Copyright.

There are no specific provisions concerning Internet copyright infringement (internet piracy). However the regulation regarding copying covers both analogue as well as digital copying. The regulation regarding publication also covers publication online.

2. Remedies to protect copyright holders

All the legal proceedings, pre-trial remedies, criminal penalties, civil damages and destruction of infringing goods are listed in Chapter 7 of the Consolidated Act on Copyright (Sections 76 to 84a of the Consolidated Act on Copyright).

3. Provisional measures

The Court may order the seizure, confiscation, forfeiture and/ or destruction of all infringing copies and all equipments or devices used in the manufacture of the infringing copies (Chapter 7 of the Consolidated Act on Copyright and Chapters 57 and 57a of the Danish Administration of Justice Act).

Injunctions ordering parties to desist from infringements and seizure of infringing goods are possible after the Danish Administration of Justice Act Chapter 57.

The Danish Administration of Justice Act Chapter 57a contains regulations on remedies to secure evidence in cases of copyright infringement.

4. Penalties for copyright infringement

The penalties for Copyright Infringement are mentioned in Sections 76 to 84a of the Consolidated Act on Copyright.

- *In civil cases*

The Copyright Act states that anyone who with intent or by negligence violates the rights of the copyright holder shall pay to the infringed party reasonable remuneration for the exploitation, as well as damages for any additional damage caused by the violation (Section 83 of the Consolidated Act on Copyright).

When setting the damages consideration shall be given to such matter as the infringed party's loss of profits and the offender's unfair profits.

In cases like this compensation can also be set to the infringed party for non-financial damage (Section 83 of the Consolidated Act on Copyright).

The relevant regulation of the Copyright Act is an implementation of the directive 2004/48/EU.

Section 84 a (1) states that the court may upon request decide that the judgment shall be published in full or in part and section 84 a (2) states that the obligation to publish rests with the offender. Publication shall be arranged at the offender's expense and in as prominent a way as can reasonably be expected. The followings articles follow the directive 2004/48/EU.

- *For criminal offence in copyright cases*

A person or a company may be accountable to a fine if he is found liable for the copyright infringement mentioned in Chapter 7 Sections 76, 77, 78, 79 and 80.

Section 76(2) states that the penalty may be increased to 1 year and 6 months of imprisonment for aggravated circumstances, unless a more severe punishment is provided by section 229b of the penal code.

- *Seizure, confiscation, forfeiture and destruction of all infringing copies*

The Court may order the seizure, confiscation, forfeiture and/ or destruction of all infringing copies and all equipments or devices used in the manufacture of the infringing copies (Chapter 7 of the Consolidated Act on Copyright and Chapters 57 and 57a of the Danish Administration of Justice Act).

5. Requirements for foreign persons

Foreign persons are not required to obtain any special approvals or engage any special agents. But court has the possibility to decide that the person should have a lawyer even if he does not want one.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The public authorities or the police, public prosecutors, the judiciary, and customs officials are the competent authorities responsible for enforcing the copyright law and combating piracy in Denmark.

b) Enforcement bodies entitled to act *ex-officio* in copyright infringement cases

The enforcement bodies are entitled to act *ex-officio* in copyright infringement cases, when certain circumstances occur, such as danger to public health etc.

c) Courts dealing with copyright cases

A civil case regarding action for damages or a criminal case after section 229b will normally begin in City Court. If the case is a matter of principle it can begin in High Court.

All the other cases (seizure, confiscation, forfeiture and/ or the destruction of all infringing copies and all equipments or devices used in the manufacture of the infringing copies and so on) are normally decided by the Court Bailiff.

2. Enforcement at the border

Denmark has ratified the Customs-Regulation (1383/2008 of 7.22.2003). The Danish customs authorities "SKAT" have the authority to detain goods suspected of infringement of intellectual property. This can be *ex officio* or after a request from the copyright holder.

If SKAT detains goods suspected of copyright infringement they are to give notice to the copyright holder and follow the proceedings in the EU Customs- regulations.

IV. Public Awareness

1. Awareness campaigns and actions

A special website was created containing all relevant information including the draft guides prepared by the committee (www.stoppiraterne.dk) for the report on counterfeiting and piracy.

The Danish Government's report on counterfeiting and piracy included recommendations:

- on current and future technical solutions to fight against piracy and to reach awareness among consumers.
- in regards to the Danish trade sector to continue working on strengthening the companies' knowledge of intellectual property rights and enforcement of these rights.
- in regards to the exiting cooperation among authorities, both at a national and international level.

2. Promotion of legal exploitation

The Danish Ministry of Culture carries out ongoing campaigns to inform the public about counterfeiting and piracy on the internet with special focus on illegal downloading.

3. Associations and organizations with awareness-raising purpose

The Committee in charge of analyzing the problem of counterfeiting and piracy found that counterfeit products are often sold at fairs and seasonal market places. The Committee recommended in the report on counterfeiting and piracy that organisers of fairs and seasonal market places become obligated to have a complete list of names, addresses, etc., of the owners of the market stalls. This list is to be disclosed on demand, to help with easy identification of the sellers of counterfeit products.

4. Best practices

A special website was created containing all relevant information including the draft guides prepared by the committee (www.stoppiraterne.dk) for the report on counterfeiting and piracy.

V. Capacity-building

1. Training

2. Establishment of specialized units and intersectoral groups

In January 2007 the Danish Minister of Economic and Business Affairs decided to set up an interdepartmental committee to analyze the problem of counterfeiting and piracy. The results of this analysis are comprised in a governmental report, which was published in March 2008. This work has led to new legislation (in effect from 1.1.2009) as well as increased government focus to combat piracy and counterfeiting.

3. Best practices

VI. Other

1. TPM/DRM

The Consolidated Act on Copyright provides protection for Technological Protection Measures and Data Rights Management under Chapter 6a Sections 75b, 75c, 75d and 75e.

2. Licensing Schemes

3. Optical Discs

4. Hotlines

5. Useful Contacts

Danish Ministry of Culture
Nybrogade 2, 1203 – Copenhagen, Denmark
Tel: +45 33 92 33 70
Email: kum@kum.dk
Homepage: www.kum.dk
Homepage regarding copyright: www.infokiosk.dk

Ministries Network of Piracy
Homepage: www.stoppiraterne.dk

Danish Patent and Trademark Office
Helgeshøj Allé 81, 2630 – Taastrup, Denmark
Tel: +45 4350 8000
Email: pvs@dkpto.dk
Homepage: www.dkpto.dk

SKAT Taskforce Counterfeiting
Skattecenter København (SKAT Copenhagen)
Tel: +45 72 37 68 66
Email: trine.k.dancygier@skat.dk