

**Articles 15 & 17 of the Directive on
Copyright in the Digital Single Market**
Questionnaire – Annex to the Comparative
National Implementation Report

DENMARK

Last Updated: 16 August 2022

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This comparative report is based on 25 national questionnaires prepared by national legal experts.

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The full study is available for download at: <https://informationlabs.org/copyright>

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PART I: Article 15 CDSMD

Note: The questions below concern the national implementation of Article 15 CDSMD in your country. They refer to this as the “local national implementation” or LNI. It is recommended that you read all the questions before beginning to compose answers. In all responses, please cite the relevant provisions of national law in your country.

Background information

1. **Did your national jurisdiction provide protection (whether via copyright or a relevant targeted related right) for press publications prior to the adoption of the CDSMD? If so, please briefly describe this, indicating any differences from the protection provided by Article 15 CDSMD.**

No (compare e.g., Danish Ministry of Culture, remarks to the proposal implementing parts of the DSM Directive, “Bemærkninger til lovforslaget”, p.34).

2. **Has Article 15 CDSMD been transposed into national law in your country? If so, please cite the legal act with which and the date on which this was done. Please also briefly indicate whether you consider that the transposition takes a textual (“*ad litteram*”) or intentionalist approach (e.g., one that is adaptive to national circumstances).**

Yes. The Danish Minister of culture proposed “Lov om ændring af lov om ophavsret” (L 205) on 26 March 2021. The law was approved by the Danish Parliament Folketinget on 3 June 2021 and promulgated as law as of 4 June 2021.

Article 15 CDSM Directive was implemented as “new” §69a in the Danish Copyright Act (ophavsretsloven) and takes a textual approach (“direktivnær implementering”) based on the Ministry of Culture’s argumentation that Art. 15 CDSM Directive introduces a new right.

If available, please provide a link to the legal provision in the official language(s) of your jurisdiction. If you are aware of a good (official or unofficial) English language translation, please include that as well.

https://www.ft.dk/ripdf/samling/20201/lovforslag/1205/20201_1205_som_vedtaget.pdf

Note: if there is no national implementation of Article 15 CDSMD, please proceed to Part II of the questionnaire.

AC 1: Subject matter

- 3. What is the subject matter (object) of protection by the LNI and how is this defined? Please focus on any differences (including additions) from the concept of “press publications” as defined by Art. 2(4) CDSMD.**

The Danish implementation does not include a definition of “press publications”.

- 4. Does the LNI protect against uses of individual words or very short extracts? If these are excluded from protection, how are they defined? Please note whether a qualitative or quantitative approach is taken and whether such short extracts may include non-literary content. Please note whether there are specific provisions on headlines.**

No, §69a (2) nr.3 Danish Copyright Act refers to “Enkelte ord eller meget korte uddrag af en presse publikation” meaning “very few words or very short extracts of a press publication”. The law does not further specify this but the Ministry of Culture’s comments on the proposal (p. 56) note that the Danish Supreme Court in U.2013.1782 held that text extracts consisting of 11 words can be copyright-protected, which – in the opinion of the Ministry of Culture – means that extracts in the vein of §69a (2) nr.3 Danish Copyright Act need to be shorter than that. There are no specific provisions on headlines.

- 5. Does the LNI extend to mere facts reported in its subject matter? If these are excluded from protection, how are they defined?**

Not specified.

- 6. Does the LNI extend to public domain content incorporated in its subject matter? If these are excluded from protection, how are they defined?**

Not specified.

- 7. Does the LNI include any other threshold conditions for protection?**

No.

AC 2: Right-holders

- 8. Who are the beneficiaries of the protection for press publications in the LNI? Please indicate any exclusions, (e.g., territorial). Please indicate if the LNI employs lists of press publications or beneficiaries that would be covered.**

Press publishers (“Udgivere af pressepublikationer”) are mentioned in the title of §69a Danish Copyright Act but not further specified in the provision. Exclusions are not specified.

AC 3: Restricted acts

- 9. Against what kind of acts does the LNI protect? Please provide any relevant definitions.**

The Danish implementation protects against the unauthorized online reproduction or making available to the public in such a way that the public can access them at an individually chosen place and time, of press publications by providers of information society services.

10. Does the LNI cover hyperlinking to the protected subject matter? If not, how is hyperlinking defined?

§69a(2) nr. 2 Danish Copyright Act excludes hyperlinks from the scope of protection. Importantly, the Ministry of Culture holds in its explanatory memorandum to the Proposal as well as in the Parliamentary debate¹ that hyperlink in this context only refers to “clickable” hyperlinks and maintains a distinction of linking (i.e. “clickable” and “non-clickable” such as framing or embedding), which – according to the national reporter – may not be in line with the CJEU’s jurisprudence.

AC 4: Targeted users

11. Does the LNI target use by a specific kind of user (provider)? Please provide any relevant definitions. Specifically, please indicate whether private or non-commercial uses by individual users are covered. Please also indicate whether online platforms (OCSSPs) are covered.

Yes, the provision is targeting the broad category of “udbydere af informationssamfundstjenester” (providers of information society services), which also covers OCCPs (as well as traditional hosting platforms that are not OCSSPs or those that are exempted according to the definition provided in the CDSM Directive).

Use by individuals who are private or non-commercial is permitted (“Individuelle brugeres anvendelse, som er privat eller ikke foretages i kommercielt øjemed”), see § 69a (2) lit. a Danish Copyright Act.

12. Does the LNI allow for the rights it provides to be invoked against:

- a) **right owners whose content is incorporated in the protected subject matter?**
- b) **holders of licenses to exercise rights in content that is incorporated in the protected subject matter?**

- a) No.
- b) No (§ 69a (3)).

Please describe the applicable rules.

Yes, § 69a (2) Danish Copyright Act states that press publishers’ rights do not affect rights granted to authors and other right holders in respect of the works and other subject matter included in a press publication. They cannot be invoked against authors and other rights holders and cannot deprive them of their right to exploit their works and other protected subject matter independently of the press publication in which they are included.

AC 5: Exceptions and limitations

13. Does the LNI recognise exceptions or limitations to the protection it provides? If so, please indicate what these are.

Yes, §11a Danish Copyright Act (temporary reproduction), § 12(1), (2) nr. 5, (3), (4), (5) nr. 1 Danish Copyright Act (reproduction for private use); § 13 (reproduction within educational activities), § 14 (Reproduction by Business Enterprises, etc.), §15 (Reproduction by Hospitals, etc.), §16 (Archives, Libraries and Museums), § 17-17e (Visually- and Hearing-handicapped Persons), §18(1) and (2) (Production of Anthologies for Educational Use, etc.), § 19 (1) and (2) (Distribution of Copies), § 21 (Public Performances), § 22 (Quotations), §25 and § 25a (Reporting of Current Events etc.), as well as §§ 27, 28, 29 a, 31 og 49-52.

The relevant provisions of the Danish Copyright Act (from 2014) are available in an unofficial translation by the Danish Ministry of Culture here:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwisz_CgycD3AhXtsYsKHY5oDCAQFnoECCYQAQ&url=https%3A%2F%2Fs3-eu-west-1.amazonaws.com%2Fpfigshare-u-files%2F5401478%2F3644DJOPS.pdf&usg=AOvVaw2043eZerGS948zeG6pELPX

¹ <https://www.ft.dk/samling/20201/lovforslag/L205/spm/12/index.htm>

AC 6: Licensing

14. Does the LNI include provisions on the licensing (incl. systems of extended collective licensing) of uses of press publications? If so, please briefly describe any relevant details. For example, these could involve the following:

- **criteria for determining the height of compensation;**
- **the process for negotiating compensation;**
- **transparency duties (incl. data sharing obligations);**
- **duties to engage in negotiations;**
- **oversight by a government authority;**
- **(mandatory) collective rights management.**

Yes, extended collective licensing (aftalelicens) as specified in the new § 29a of the Danish Copyright Act is available if the conditions for extended collective licensing in §50 Danish Copyright Act are satisfied. On the Danish situation in general see Schovsbo and Riis (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1535230). Several Danish press publishers have created a new collective management organisation.

AC 7: Revenue sharing

15. Does the LNI require that any revenue it provides be shared with authors of works incorporated in its subject matter? If so, does it provide details on e.g., the size of the share or modes of collection and distribution or transparency obligations on press publishers? Please describe the applicable rules.

According to § 69a (4) Danish Copyright Act, right-holders of works that form part of the press publication have the right to an appropriate (“passende”) share of the revenue that the press publisher received.

AC 8: Term of protection

16. What is the term of the protection afforded to press publications by the LNI?

Two years from the end of the year where the original publication took place (§ 69a (1) Danish Copyright Act).

AC 9: Waiver

17. Can right-holders waive their rights under the LNI? Can authorisation be given for free?

The Danish implementation does not contain specific points on this.

AC 10: Entry into effect

18. From what date did the protection provided by the LNI come into effect in your jurisdiction?

7 June 2021. § 69 a Danish Copyright Act does not apply to press publications published for the first time before 6 June 2019 irrespective of their use after the entry into force of the act.

Additional information

19. Can you think of any noteworthy divergence in the LNI from the standards set out in Article 15 of the CDSMD that you have not already addressed above? If so, please elaborate.

No, but note that the Explanatory Memorandum by the Danish Ministry of Culture accompanying the proposal for the implementation, which has been referred to above, might be used/referenced by practitioners, scholars as well as courts when determining the scope of § 69a Danish Copyright Act.

PART II: Article 17 CDSMD

Note: The questions below concern the national implementation of Article 17 CDSMD in your country. They refer to this as the “local national implementation” or LNI. It is recommended that you read all the questions before beginning to compose answers. In all responses, please cite the relevant provisions of national law in your country.

Background information

- 1. Has Article 17 CDSMD been transposed into national law in your country? If so, please cite the legal act with which and the date on which this was done. Please also briefly indicate whether you consider that the transposition takes a textual (“*ad litteram*”) or intentionalist approach (e.g., one that is adaptive to national circumstances).**

Yes, together with the implementation of Article 15 of the CDSM Directive. The Danish Minister of Culture proposed “Lov om ændring af lov om ophavsret” (L 205) on 26 March 2021. The law was approved by the Danish Parliament Folketinget on 3 June 2021 and promulgated as law on 4 June 2021.

Article 17 CDSM Directive was implemented as “new” §52c in the Danish Copyright Act (*ophavsretsloven*) and takes a textual approach (“*direktivnær implementering*”).

If available, please provide a link to the legal provision in the official language(s) of your jurisdiction. If you are aware of a good (official or unofficial) English language translation, please include that as well.

https://www.ft.dk/ripdf/samling/20201/lovforslag/1205/20201_1205_som_vedtaget.pdf

Note: if there is no national implementation of Article 17 CDSMD you can end the questionnaire at this point.

AC 1: Subject matter

- 2. What is the subject matter (object) of protection by the LNI?**

cf. § 52c(2) Danish Copyright Act, “works and other productions protected after §§ 65-71” (“værker og frembringelser beskyttet efter §§ 65-71”).

AC 2: Right-holders

- 3. Who are the beneficiaries of the protection provided by LNI? Please note whether there are any deviations from the directive.**

Copyright holders in the vein of the Danish Copyright Act and holders of related rights (§§ 65-71 Danish Copyright Act), including performing artists (§ 65), producers of sound recordings (§ 66), producers of recordings of moving images (§ 67), broadcasters (§ 69), producers of photographic pictures (§ 70) and producers of catalogues, etc. (§ 71). The implementation deviates from the directive in that it directly refers to related rights in §§65-71 Danish Copyright Act instead of merely mentioning related rights without direct reference, but this can be explained by the fact that the Danish Copyright law protects certain related rights that are not protected under EU law.

AC 3: Exclusive rights

- 4. Against what kind of act does the LNI protect right-holders? Is a legal qualification given to those acts (e.g., “communication to the public”)?**

§52c (1) Danish Copyright Act stipulates that OCCSPs perform a communication to the public or making available to the public (“*overføring til almenheden eller tilrådighedsstillelse til almenheden af værker*”) and the Danish Ministry of Culture’s explanatory remarks to the proposal for the implementation in the Danish Copyright Act notes that the new provision comprises both linear (e.g., live streaming) and non-linear activities. Furthermore, the Ministry’s explanatory remarks also noted that, whereas the notions are those in the Danish Copyright Act’s § 2(4) nr 1, their scope might not necessarily be the same, since the provision is a special rule (with reference to recital 64 of the Directive).

AC 4: Targeted providers

- 5. Does the LNI target a specific kind of service provider? Please provide any relevant definitions, including any exclusions (“carve-outs”). Please focus on any differences from the concept of “online content sharing providers” (OCSSPs) as defined by Article 2(6) CDSMD and any elements taken from the recitals (e.g., facilitating piracy, definitions of “large amounts”).**

Yes, an almost identical definition of online content-sharing service provider (OCSSP, art. 2(6) CDSM Directive) is included in §52c(1) of the Danish Copyright Act. The Danish Copyright Act, however, does not expressly exclude any specific types of service providers.²

- 6. Were the targeted service providers considered to infringe the relevant exclusive rights in your country prior to the adoption of the LNI? Please indicate whether any liability was primary or secondary.**

This has not been tested in public court decisions, probably due to enforcement difficulties. The Danish Copyright Act – prior to implementation of article 17 CDSM Directive – did not contain a rule on secondary or contributory liability, but it is established jurisprudence (see Udsen, *IT-RET*, (3rd edition, 2016), pp. 254).

AC 5: Scope of protection

- 7. In your national jurisdiction prior to the transposition of the CDSMD did the service providers targeted by the LNI benefit from the protection of an immunity (e.g., the national implementation of the hosting safe harbour provided by Article 14 of the ECD (Directive 2000/31/EC))? If so, does this provision continue to apply?**

Yes, Article 14 ECD was implemented in Denmark in §16 of E-Commerce Law (*e-handelsloven*). The provision remains unaltered and §52c Danish Copyright Act does not make any reference to the immunity. As a sidenote, it is worth mentioning that Article 15 ECD was not directly implemented in the Danish *e-handelsloven* in 2002.

- 8. Does the LNI provide an immunity for targeted service providers against the protection it introduces? If so, please describe the conditions for this immunity. To the extent that such conditions relate to obligations to take action against infringing content, please distinguish between obligations to take action against current infringing content and obligations to take action against future infringing content.**

Article 17 CDSM Directive is implemented almost verbatim in § 52c Danish Copyright Act and does not contain any further specifications. In the explanatory remarks, the provision is described as a “conditional exemption from liability”.

² The Explanatory Memorandum to the proposal by the Danish Ministry of Culture elaborates on Art. 2(6), 2nd part and recital 62 of the CDSM Directive.

- 9. Does the LNI identify a standard of care to which targeted service provider should adhere in relation to the conditions of the immunity? For example, the Directive makes reference to “best efforts” and to “high industry standards of professional diligence”. Please also discuss whether you consider any such terms used in the LNI to represent accurate translations of the corresponding terms in the EU provision, preferably taking into account both the English language and the national language versions.**

Article 17 CDSM Directive is implemented almost verbatim in § 52c Danish Copyright Act and does not contain any further specifications. The Danish language version of the Directive referred to “best efforts” (as opposed to, e.g., Italian “all efforts”).

- 10. Are the conditions for the immunity in the LNI subject to the principle of proportionality? If so, please describe any specified implications.**

Art. 17(5) CDSM Directive is implemented in § 52c (5) Danish Copyright Act, which makes reference to the services’ type, audience, size, type of works and availability of suitable and effective measures.

- 11. Do the conditions of the immunity differ depending on the characteristics of the specific service provider (e.g., size or age)? If so, please describe those differences, providing any relevant definitions.**

Follows the Directive, i.e., *inter alia* less than three years and annual revenue below 10 Mio EUR (§ 52c (8) Danish Copyright Act).

AC 6: Right-holder cooperation

- 12. Does the LNI depend the conditions of the immunity on right-holder cooperation? If so, please describe what cooperation is expected of right-holders.**

Follows the Directive, i.e. in the context of article 17(4) lit. b DSM Directive (§ 52c(4) nr. 2 Danish Copyright Act), right-holders need to provide relevant and necessary information. In the context of article 17(4) lit. c CDSM Directive, the Danish implementation requires a “sufficiently substantiated notice” (“tilstrækkelig begrundet meddelelse”) in line with the directive’s text.

- 13. Does the LNI allow right-holders to “ earmark” content the unauthorised online availability of which could cause them significant economic harm? If so, please provide any definitions and conditions that govern such earmarking and describe any special regime set in place for earmarked content.**

Not specified.

AC 7: General monitoring

- 14. Does the LNI permit the conditions of the immunity to result in general monitoring? If not, please explain how “general monitoring” is defined.**

Not specified and Article 17(8) CDSM Directive not directly mentioned (see also comment above under point 7).

- 15. Does the LNI recommend or dissuade from using any specific kind of technology in order to adhere to the conditions for immunity? If so, please describe.**

No, but Explanatory Memorandum accompanying the proposal for implementation by the Danish Ministry of Culture comments that best efforts implies that services should perform necessary IT-developments, which are not disproportional, to live up to the requirement.

AC 8: Exceptions and limitations

16. Prior to the adoption of the LNI, did national law provide for an exception or limitation to copyright for uses for the purpose of a) quotation, criticism and review; and b) caricature, parody or pastiche? If not, has it now introduced such exceptions or limitations? Please describe the conditions under which such exceptions or limitations apply.

Quotation: § 22 Danish Copyright Act. A person may quote from a work which has been made public in accordance with proper usage and to the extent required for the purpose.

Parody, caricature, or pastiche: there is no statutory exception provided in the Danish Copyright Act to that effect. It was assumed and accepted in case law that a non-statutory rule on parody, etc., exist; a judgment by the *Østre Landsret (havfruesagen*, 9 February 2022, BS-47536/2020-OLR), however, found that in the context of parody such rule does in fact not exist. The judgement led to much attention and it has been appealed to the Danish Supreme Court.

17. Do other exceptions or limitations apply to the protection provided by the LNI? If so, please describe.

Danish law follows the Directive without specific references to existing exceptions or limitations and there is no further information available yet on their potential relevance or application in the context of OCSSPs.

The general available exceptions and limitations in Denmark are contained in Chapter 2 on Limitations on Copyright and Management of Rights in the event of Extended Collective License of the Danish Copyright Act and include provisions on Temporary reproduction (§11a), Reproduction for Private Use (§ 12), Reproduction within Educational Activities (§13), Reproduction by Business Enterprises, etc. (§ 14), Reproduction by Hospitals, etc. (§ 15), Archives, Libraries and Museums (§16), Visually- and Hearing-handicapped Persons (§ 17), Production of Anthologies for Educational Use, etc. (§18), Distribution of Copies (§ 19), Exhibition of Copies (§ 20), Public Performances (§ 21), Quotations (§ 22), Use of Works of Fine Art, etc. (§§ 23-24), Reporting of Current Events etc. (§ 25), Public Proceedings, Public Access, etc. (§§ 26-28), Alteration of Buildings and Articles for Everyday Use (§ 29), Special Provisions on Radio and Television (§§ 30-35), Special Provisions on Computer Programs, etc. (§§ 36-37), etc.

AC 9: Licensing

18. Does the LNI include provisions on the licensing (incl. systems of extended collective licensing) of relevant uses? If so, please briefly describe any relevant details. For example, these could involve the following:

- **criteria for determining the height of compensation;**
- **the process for negotiating compensation;**
- **transparency duties (incl. data sharing obligations);**
- **duties to engage in negotiations;**
- **oversight by a government authority;**
- **(mandatory) collective rights management.**

Not in the context of Article 17 CDSM Directive (but see extended collective licensing, § 50(2)).

19. Under the LNI, do licenses obtained by a platform cover the platform's users and/or the other way around? If so, please explain.

Danish law follows the Directive, i.e., licenses obtained by a platform cover the platform's users provided that use is not commercial or does not create significant earnings (§52c (3) Danish Copyright Act). Furthermore, the provision stipulates that users should not achieve a better legal status than right-holders have given to the OCCSP. Licenses obtained by an OCSSP's users are not addressed in the provision.

AC 10: Legitimate uses: *ex ante* safeguards

20. Does the LNI include a concept of “legitimate uses”? If so, how are these defined? How are legitimate uses treated?

Not specified in the Danish Copyright Act.

21. Does the LNI include a concept of “manifestly infringing uploads”? If so, how is this defined? How are “manifestly infringing” and “non-manifestly infringing” uploads treated?

Not specified in the Danish Copyright Act.

22. Does the LNI include other *ex ante* mechanisms for the avoidance of action against legitimate content? If so, please describe these citing the relevant provisions of national law.

Not specified in the Danish Copyright Act.

AC 11: Legitimate uses: *ex post* safeguards

23. Does the LNI provide for effective and expeditious complaint and redress mechanisms in the event of disputes? If so, please describe these. If applicable, please include information on time limits, decision-makers, procedural steps and whether any review is performed by humans.

The Danish implementation follows the CDSM Directive, §52c (6) Danish Copyright Act, however, “effective and expeditious” of Article 17 CDSM Directive is in § 52c (6) Danish Copyright Act transposed as just “effective”. “Expeditious” is thus omitted. “Undue delay” and “human review” are transposed verbatim from the Directive without any specification of how to construe “human review”, neither in the Act or in the preparatory works. See also below.

24. Does the LNI foresee for any other ways of settling disputes over content posted on their platforms (e.g., out-of-court mechanisms or recourse to the courts, incl. collective redress)? If so, please list these.

Disputes between right-holders, OCCSPs and their users can be brought by any of these parties before the Danish Complaints Board for Copyright Licensing (*Ophavsretslicensnævnet*), see § 52c (6) Danish Copyright Act in fine.

AC 12: Sanctions

25. Does the LNI foresee sanctions in cases of abuses of the procedures it introduces by right-holders, users and/or platforms? If so, please describe these.

Not specified in the provision.

AC 13: Information obligations

26. Does the LNI impose information obligations on platforms? If so, please describe these.

Yes. According to §52c (7) Danish Copyright Act, OCSSPs shall upon request from right-holders provide sufficiently precise information on the practice of the service with regard to the liability exemption mechanism (i.e. Article 17(4) CDSM Directive). Furthermore, if OCSSPs and right-holders have entered into licensing agreements, the service must provide information on the use of their protected works. According to §52c (9) Danish Copyright Act, OCSSPs also need to inform users about exceptions and limitations.

AC 14: Waiver

27. Can right-holders waive the rights provided by LNI? Can authorisation be given for free?

Not specified in the Danish Copyright Act.

AC 15: Entry into effect

28. From what date did the protection provided by the LNI come into effect in your jurisdiction?

7 June 2021.

Additional information

29. Does the LNI explicitly address the relationship between the protection it provides as against OCSSPs and fundamental or human rights (whether of OCSSPs or third parties)?

No.

30. Can you think of any noteworthy divergence in the LNI from the standards set out in Article 17 of the CDSMD that you have not already addressed above? If so, please elaborate.

See above under section concerning Article 15 CDSM Directive. The implementation does not contain Article 17(8) CDSM Directive (general monitoring), which is noteworthy since the implementation of the e-Commerce Directive does not contain Article 15 ECD either.