



TERRALEX®

# CROSS-BORDER COPYRIGHT GUIDE 2018



# Denmark

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## 1. Legislation and regulation

### 1.1 What are the main sources of copyright law?

The main source of copyright legislation in Denmark is the Consolidated Danish Act on Copyright, no. 1144 of 23 October 2014 (DCA). The current version of the DCA is also applied to works created before the DCA came into force. However, if a work would enjoy a longer duration of protection under the rules applicable at the time when the work was created, the former rules apply with respect to the duration of protection.

Although Denmark is not a common law legal system, case law is still used to interpret and set precedents in law. As a result, judicial decisions contribute to the sources of copyright law in Denmark.

As Denmark is a member of the European Union, the interpretation and application of Danish legislation by the judiciary must be read in accordance with European Directives and Regulations which have direct effect. Further, from time to time the Danish courts and other EU national courts refer questions of law to the European Court of Justice, whose decisions are binding on national courts. As a result, Danish copyright law is occasionally added to and updated from both internal and external sources.

## 2. Subsistence of Copyright

### 2.1 What type of works can be protected by copyright?

The categories of work that can be protected by copyright are literary and artistic works (including those expressed in both writing and speech as a fictional or a descriptive representation, musical or dramatic works, cinematographic or photographic work, works of fine art, architecture, and applied art). Furthermore, Danish copyright law protects the so-called neighbouring rights. The provisions of neighbouring rights stipulate that creations by certain performing artists and producing artists enjoy protection similar to actual copyrights, although in some aspects more limited. See below for a description of neighbouring rights.

The categories can be summarised as follows:

#### Literary works

These are any works which are written or spoken (eg novels, short stories, professional articles, poems, letters, speeches, interviews, works expressed in Morse code and shorthand writing).

Maps, drawings and other works of a descriptive nature executed in graphic or three dimensional form are considered literary works. Further, works in the form of computer programs are considered as literary. A radio programme which is not a dramatic work is considered as literary.

### Artistic works

These are graphic works, music, dramatic works, film works, photographs, sculptures or collages etc (irrespective of quality), a work of architecture (be it a building or a model of a building) or a work of applied art.

A graphic work is broad in scope and can be, amongst other things, a painting, drawing, mosaic, diagram, engraving or etching.

A work of applied art must have some aesthetic appeal; for example, stained-glass windows or wrought-iron gates.

A dramatic work includes a work of dance or mime, an opera, ballet, musical, a script for a play, a dance routine that has been choreographed or a screenplay of a book for a film.

Musical works cover any musical composition, including notes etc. There is copyright to the sound recording of musical works but that is a separate and distinct right (see below).

Music is defined as a combination of sounds – it is not the same as mere noise.

A film is a recording from which a moving image may be produced (including TV programmes and movies). The protection of film works includes soundtracks, manuscripts and other works created for the purpose of creating the film.

### Neighbouring rights

Neighbouring rights appear from chapter five in the DCA, and are not works within the meaning of the DCA but enjoy similar protection to the actual works.

The neighbouring rights are:

- protection of performing artists
- sound recordings
- picture recordings
- broadcasts
- photographic pictures
- catalogues
- press releases.

Performing artists are granted protection under the DCA if

the performance in question is a performance of a literary or artistic work, regardless of whether the work is still protected by copyright, and if the performance is of artistic character.

The protection of sound and picture recordings is designed to cover both recordings of sounds and pictures which are not based on underlying literary and artistic works, and recordings of copyrighted works that are literary or artistic, dramatic or musical works.

Broadcasts are the electronic transmission of visual images, sounds or other information which is transmitted for simultaneous reception by members of the public.

The protection of photographic pictures covers all photographic pictures irrespective of whether the image or setting of the picture is also a work within the meaning of the DCA.

The protection of catalogues covers a table, database, or the like, in which a great number of items of information has been compiled, or which is the result of a substantial investment (in time or money).

This protection extends to a reproduction or making insubstantial parts of the contents of catalogues available to the public if that availability is made repeatedly and systematically, so as to equal acts which conflict with normal exploitation of the products or unreasonably prejudice the legitimate interests of the producer.

Press releases supplied under contract from foreign news agencies or from correspondents abroad may not without the consent of the recipient be made available to the public through the press, the radio or in any other similar manner until 12 hours after they have been made public in Denmark.

## 2.2 What is required for works to qualify for copyright protection?

A work within the meaning of the DCA (literary or artistic) may be protected by copyright if it is original. A work is original if the author (see 3.1 for a description of who the author is) has created the work through their own skill, judgement and individual effort and has not imitated other works. Save for works of applied art, it is not requisite that the work is of artistic merit. It is also not necessary for the whole part of a work to be original. In general, the threshold for originality is low in Denmark. Neighbouring rights are protected as such in that the originality requirement does not apply to neighbouring rights. However, a creation may also enjoy copyright protection as a work (literary or artistic) if the creation in question is original.

As a general rule, Denmark provides copyright protection if the author is a national of, or the work was first published in, Denmark or a state which is a signatory to one of the various international copyright conventions which Denmark is a party to.

### 2.3 What rights does copyright grant to the rights holder?

The DCA sets out the rights subsisting in copyright works that are the exclusive rights of the rights holder (before any licences are granted).

They include the rights to:

- reproduce a work
- make it available to the public.

This is regardless of whether it is in the original or in an amended form, in translation, adaptation into another literary or artistic form or into another technique. Any direct or indirect, temporary or permanent reproduction, in whole or in part, by any means and in any form, is considered as reproduction. The recording of the work on devices that can reproduce it is also considered as a reproduction.

The work is made available to the public if: (i) copies of the work are offered for sale, rental or lending, or distribution to the public in some other manner; (ii) copies are exhibited in public; or (iii) the work is performed in public. In any case the rights holders hold the moral rights described in 2.4 below.

### 2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

Yes. In Denmark, the following moral rights are provided for by the DCA:

- paternity right: the right to be named as the author of a copyright work
- integrity right: the right to object to derogatory treatment of the rights holder's copyright work.

Moral rights are applicable to literary and artistic works.

### 2.5 What is the duration of copyright in protected works?

The duration of protection for copyright works varies according to the type of work and the date of creation. In general, for works created on or after 1 July 1995, the duration of copyright protection is as follows:

Category of work
Literary and artistic works
Duration
Copyright expires 70 years from the end of the calendar year in which the author dies.
Where a work has a joint author/co-author, 70 years from the end of the calendar year in which the last known author dies.
Where the author's identity is unknown, copyright expires 70 years from the end of the calendar year in which the work was made or made available to the public. For film works, the copyright lasts for 70 years after the year of death of the last of the following persons to survive:
<ul style="list-style-type: none"> <li>• the principal director</li> <li>• the author of the script</li> <li>• the author of the dialogue</li> <li>• the composer of music specifically created for use in the film work.</li> </ul>
Category of work
Neighbouring rights
Duration
Neighbouring rights expire, as a main rule, 50 years from the end of the calendar year in which the relevant right was established.
However, if a sound recording is published lawfully the right expires 70 years from the end of the calendar year in which it was first published. The protection for catalogues lasts for 15 years after the end of the year in which the product was produced.
Press releases may not be made available to the public through the press, the radio or in any other similar manner until 12 hours after they have been made public in Denmark.

### 2.6 For how long do moral rights subsist in copyright works?

The moral rights lapse at the same time as the expiry of the copyright: 70 years after the death of the author. However, once the copyright has expired for a literary or artistic work, it may not be altered or made available to the public contrary to moral rights described above in 2.4 if cultural interests are thereby violated.



## 3. Ownership

### 3.1 Who is the first owner of a copyright work?

The first owner of copyright is the person creating the work (the author). Copyright to a work cannot originate in a legal person; however, a legal person can be assigned the copyright. Where copyright work is made by an employee in the course of his/her employment, the copyright passes to the employer to the extent necessary for the ordinary business activity of the employer. Where a computer program is created by an employee in the execution of his/her duties or following the instructions given by his/her employer, the copyright in such a computer program passes to the employer. In addition to the rights of the author, chapter five of the DCA stipulates a number of rights that coexist with the author's rights, the so-called neighbouring rights. Below is a list of who owns these rights in relation to various categories:

- **performing artists:** the performer who carries out the performance of a literary or artistic work
- **sound and picture recordings:** the person or legal entity producing the recordings
- **broadcasts:** the broadcasting company (see 2.1 for the content of this right)
- **photographical pictures:** the photographer of the picture
- **catalogues, databases etc:** the person or legal entity who compiled information into a Catalogue, database etc
- **press releases:** the foreign news agency that produced the press release.

### 3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

Copyright in a work can be jointly owned by two or more persons. This can occur where a work is created by more than one person or where an assignment requires participation of more than one person for the whole or a part of a work. To qualify as joint authors, it is necessary that the contributions of each author are not distinct. If they are distinct then two works subsist, each with separate copyrights. Joint owners have their own individual rights with respect to the work that can be assigned independently of the other or others, but the consent of all joint authors is required for licensing or use of the copyright work.

### 3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

Copyright is an unregistered right in Denmark; it arises automatically upon creation of the work. There is no registration system. A copyright notice may be useful to evidence ownership of copyright and the date of authorship. It creates a presumption that the named person is the author, and puts third parties on notice of the rights, but copyright subsists without such notice and the failure to display such notice does not affect copyright in a work.

### 3.4 What steps should you take to validly transfer, assign or license copyright?

There are no formal requirements as to the assignment of copyright. An oral agreement of transfer is just as valid as a written one. A licence of copyright can, in addition to being in writing, be agreed orally or implied. However, best practice will be to have all transfer and licence agreements in writing.

### 3.5 Can moral rights be transferred, assigned or licensed?

No. The moral rights can, however, be waived or assigned in respect of a limited use of the work. Such use must be limited in both nature and extent, eg a limited edition of a book.

## 4. Infringement

Owners of copyright can take legal action if any of their exclusive rights (as set out in 2.3 above) have been infringed.

### 4.1 What acts constitute infringement of copyright?

Infringement occurs where a person performs any reproduction of a work or makes it available to the public, whether in the original or in an amended form, in translation, adaptation into another literary or artistic form, or into another technique, without the consent of the rights holder.

The following acts, amongst others, constitute copyright infringements:

- copying
- issuing copies of the work to the public
- renting or lending the work to the public
- performing, showing or playing a copyright work in public
- communicating the work to the public
- making an adaptation of a copyright work or doing any of the acts listed above in relation to an adaptation.

### 4.2 What acts are permitted with respect to copyright works (ie what exceptions apply)?

There are a number of acts that can be carried out in relation to copyright works despite the fact that they might be protected by copyright. The Information Society Directive (2001/29/EC) contains what has been termed a 'shopping list' of exceptions and limitations, many of which the DCA has implemented into Danish law. These permitted acts are wide in variety but often relate to very specific scenarios. They include (amongst others):

Act
<b>Making of temporary copies</b>
A copy that is transient or incidental which: <ul style="list-style-type: none"><li>• Is an integral and essential part of a technological process</li><li>• Has the sole purpose of enabling a transmission of the work in a network between third parties by an intermediary or</li><li>• Has no independent economic significance (eg ISPs who use caching)</li></ul>

Act
<b>Personal copies for private use</b>
The making of a copy that is made for the individual's personal and private use and not for purposes that are directly or indirectly commercial. However, computer programs are exempted from this permission.
Act
<b>Private study</b>
Copying is always allowed for private study
Act
<b>Criticism or review and reporting current events</b>
Where the copyright work is being used for the purpose of criticism or review, it (or another work or performance) can be criticised or reviewed provided that the copyright work has been made available to the public. As for research, an acknowledgement of any copyright work used in a criticism or review is required. No acknowledgement is required when reporting current events, which is always deemed to be a permitted act under DCA.
Act
<b>Quotation</b>
Including where the use is for criticism and review, quotations are a permitted act provided that they relate to a work that has already been lawfully made available to the public. A reference to the copyright work used is required where a quotation is used.
Act
<b>Parody</b>
Naturally parodies, to some extent, require copying or mixing of another's work. People are allowed to use limited amounts of another's material without the owner's permission. The parody must evoke the existing work whilst being noticeably different from it. It should be noted that parodied work does not excuse defamatory remarks; neither does it preclude the right to object to derogatory treatment of a work cf. 2.4 concerning moral rights.

Act
<b>Computer programs</b> <p>The person who has the right to use a computer program is entitled to produce such copies of the program and to make such alterations of the program that are necessary for that person to use the computer program in accordance with its intended purpose, including correcting errors. The same applies to databases with regard to such actions that are necessary for the person to obtain access to the contents of the database and make normal use of it. Furthermore, it is permissible to make a back-up copy insofar as it is necessary for the proper use of the program.</p>
Act
<b>Reverse engineering</b> <p>Reproduction of the code of a computer program and translation of its form is permitted where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:</p> <ul style="list-style-type: none"> <li>• These acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorised to do so</li> <li>• The information necessary to achieve interoperability has not previously been readily available to the persons referred to above and these acts are confined to the parts of the original program which are necessary to achieve interoperability.</li> </ul>

#### 4.3 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

The CJEU decision in *Nils Svensson v Retriever Sverige* (C-466/12) determined whether linking to or framing links to copyright material without consent is a 'communication to the public' and therefore infringes the rights holder's 'communication to the public' exclusive right. The CJEU emphasised that to be a communication to the public, a link would have to be a communication to a 'new' public, ie a public not in the contemplation of the rights holder when the rights holder published the work. So, when a person uploads material to the internet, the public communicated to is the internet at large.

Therefore, linking to a work freely available on the internet does not communicate that work to a 'new' public. However, where a work is not freely available on

the internet, such as if the work sits behind a paywall, the copyright owner cannot be said to have communicated with the internet as a whole, and so linking to that work in a way that circumvents the paywall would, it appears from recent case law, constitute a communication to the public and infringe the rights of the rights holder.

#### 4.4 Is a licensee of copyright able to bring an infringement action?

Under the DCA, an infringement of copyright is actionable by the copyright owner. When a copyright is licensed, the authority to bring an infringement action depends on the licence agreement between licensee and licensor.

## 5. Remedies

### 5.1 What remedies are available against a copyright infringer?

The DCA provides the following remedies for rights holders:

- interim injunctions (including search orders, freezing orders and pre-action, non-party disclosure)
- delivery up of infringing articles
- seizure of infringing articles
- forfeiture of infringing articles
- an injunction against the infringer
- to elect between either an enquiry as to damages or an account of profits arising from the infringement.

### 5.2 Are there any specific remedies for online copyright infringement?

Where it appears that a website is displaying infringing material, rights holders can seek an injunction from the court ordering the internet service provider (ISP) to block the website. The ISP should be notified of the person using their services to infringe copyright-protected material before the order is sought.

### 5.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

There are a number of criminal acts under the DCA in relation to copyright. The main offences relate to reproduction or making available to the public copies of a copyright work. The sanction for committing a criminal offence in relation to copyright is likely to be a fine; however, in rare cases, a prison sentence might be appropriate.

If an offence is committed by a company and it is proven that an individual officer of the company consented to committing the offence, that officer can also be liable for the criminal act. Each offence requires a level of intention, knowledge or belief on behalf of the potential culprit, and each carries various penalties:

#### Criminal act

Any reproduction of a work or making it available to the public

#### Relevant intention, knowledge or belief

The knowledge or reasonable belief (gross negligence) that the copy or making of the copy available to the public is infringing a person's copyright.

#### Penalty

For an indictable offence: six years in prison

On summary conviction: one year and six months in prison and/or a fine

### 5.4 Is there a time limit for bringing a copyright infringement claim?

There is no time limit to bring a claim for breach of copyright. However, the claim might be statute barred after three years pursuant to the Danish statute of limitations. The time begins, as a starting point, from the date the damage is suffered.

### 5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

In Denmark, the general rule is that the unsuccessful party pays the costs of the successful party. However, this is subject to the very wide discretion of the court, which can order otherwise, either at the hearing (known as summary assessment) or after (known as detailed assessment). As a general rule, the costs ordered by the courts rarely cover the actual costs for the successful party.



## 6. Enforcement

### 6.1 What courts can you bring a copyright infringement action in, and what monetary thresholds, if any, apply?

Copyright claims must be filed before the ordinary Danish City courts. However, matters where rights to applied art or computer programs are of significance must be filed before the Danish Commercial and Maritime Court.

### 6.2 Are there any other ways in which you can enforce copyright?

#### Seizure

A copyright holder may request seizure by the Customs authorities of infringing copies being imported into Denmark, cf. The Danish Act on Customs enforcement of intellectual property rights no. 177 of 21 February 2017 implementing Regulation (EU) No. 608/2013 concerning Customs enforcement of intellectual property rights.

#### Criminal proceedings

Criminal proceedings, although rare, can be brought on the grounds described in 5.3 above, and pursued through the criminal courts.

#### Copyright Licence Tribunal

An alternative method of bringing proceedings is the Copyright Licence Tribunal. This is an independent tribunal appointed by the Ministry of Culture. Its main role is to adjudicate in commercial licensing disputes between collecting societies and users of copyright material in their business. It does not deal with copyright infringement cases or with criminal 'piracy' of copyright works.

### 6.3 What agency bodies are responsible for promoting and/or enforcing copyright? What do they do?

The Danish Ministry of Culture is the official government body responsible for copyright in Denmark.

The Danish Ministry of Culture is responsible for:

- Copyright regulation
- Educating businesses and consumers about copyrights and responsibilities
- Supporting IP enforcement.

Although there are no agency bodies that are responsible for promoting copyright, there are various other bodies promoting copyright in Denmark, including the Joint Council for Copyright ([www.samraadetforophavsret.dk](http://www.samraadetforophavsret.dk)).

The Joint Council for Copyright is a non-profit organisation for the discussion of issues regarding copyright in Denmark. The Joint Council is an informal co-operation of all organisations representing copyright holders in Denmark.

Furthermore, there is *RettighedsAlliancen* (The Rights Holder Alliance) in Denmark, which looks to enforce against online copyright infringements and improve conditions for copyrights online. *RettighedsAlliancen* is a co-operation of the film, music and design industries. There are no agency bodies that actively enforce copyright. The Danish police will target criminal activity (see 5.3) but it is up to the rights holders or the rights management agencies to spot infringing work and take action.

### 6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

To use copyright material without infringing the rights of another, you usually need to gain permission of the rights holder. However, as a result of the practical difficulties and administrative burden for copyright owners in granting licences individually to all those seeking them, copyright holders participate in collection schemes by signing up as members of the collecting societies. Once members, they either transfer rights to the collecting society, which then administers the rights for them, or appoint the society as their agent.

The key collecting societies in each sector are as follows:

Agency
Copydan
Who it represents
Service organisation for five management societies (writers, visual arts, broadcasting, TV and movies for educational purposes, and blank levy remuneration)
Agency
KODA
Who it represents
Society for the rights of composers and songwriters
Agency
Gramex
Who it represents
Administration of the financial rights of performing artists and record companies

## 7. Copyright reform

Agency
NCB
Who it represents:
Administration and licensing services to composers, lyricists, music publishers and author societies. Licenses to users for the recording, manufacture and distribution of music on physical as well as digital media
Agency
Motion Picture Licensing Company
Who represents
Film and TV producers and distributors

### 6.5 Are copyright levies payable? By whom, and in what circumstances?

Copyright levies are to some extent payable in Denmark related to the exception for private copying. Private consumers pay blank levy remuneration when purchasing blank media such as tapes, CDs, DVDs, USB sticks, memory cards etc. The blank levy remuneration serves as compensation to the rights holders for the private copying allowed under the DCA.

### 7.1 What do you consider to be the top recent copyright development?

**New recommendation on the revision of the Danish copyright blank levy scheme suggests blank levies on integrated storage devices such as smartphones, TVs, laptops, etc.**

On 1 September 2017, a recommendation on the revision of the Danish copyright blank levy scheme was published by the Blank Media Committee (the Committee), which was established in March 2017 by the Danish Ministry of Culture.

The mandate of the Committee was to consider a revision of the Danish copyright blank levy scheme in the light of technological developments and changed consumer patterns, and to provide a recommendation to the Danish Ministry of Culture, including which storage media should be covered by a new blank levy scheme, and what amount of compensation the rights holders should receive.

Currently, the Danish copyright blank levy scheme only requires blank media levies as compensation to the rights holders on separate storage media such as tapes, CDs, DVDs, USB sticks and memory cards. However, hardware with integrated storage such as laptops, smartphones, computer hard drives and TVs are not subject to copyright blank levies.

In Denmark, blank media levies theoretically only apply to legal private reproduction, according to the Danish Consolidated Act on Copyright, Article 12, which allows for private reproduction under certain conditions, including reproduction of sound and images.

It is a condition in Art. 5 (2) (b) of the InfoSoc Directive, that limitations to the 'reproduction' right by allowing private reproduction are followed by a fair compensation to the rights holders.

The current blank media scheme is based on the hypothetical consideration that the rights holders lose revenue because of the legal access to private reproduction.

In *C-437/12 Nokia*, the Court of Justice stated that a different treatment of storage types under the blank media solution has to be justified, and that blank media levies should not be paid where it is apparent that the users of a media rarely use it for reproduction and the damage to the rights holder is minimal. However, the Court of Justice did not provide guidelines as to how a revised blank media solution should be structured or financed.

With reference to *C-437/12 Nokia*, the Danish Eastern High Court decided on 12 October 2016 that blank levies applied to memory cards for mobile phones, as – based on the evidence in the case – it could not be determined that the use of memory cards only resulted in minimal damage to the rights holders.

The market and consumer patterns have changed significantly since the introduction of the current blank media scheme in 1993, as the market is now dominated by streaming services.

The Committee recommends a generic categorisation of ‘comprised storage media’ in a new Danish copyright blank levy scheme. In connection with this, a blank media levy of DKK 1.49 is suggested for the category ‘separate storage media’ (CDs, DVDs, Blu-ray and flash storage, including USB and memory cards), and DKK 15.42 is suggested for the other category, ‘integrated storage media’ (eg smartphones, tablets, computers, external hard drives, devices with built-in storage and devices with a recording function).

Any further progress on the revision of the Danish copyright blank levy scheme is now political, and it is expected that a Bill will be introduced based on the recommendations of the Committee.

