

Making broadcasting archives available

The Danish experience

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Topics

- The Danish system of extended collective licenses
- The special provision on broadcasters archives
- The agreements concerning use of the archives

The Danish system of extended collective licenses

- Broadcasting of published works (30)
- Broadcasters' archives (30a)
- Educational use (13 and 18)
- Internal use in business enterprises etc. (14)
- Public libraries (16b)
- Visually- and hearing-handicapped persons (17)
- Reproduction of works of art (24a)
- Simultaneous retransmission (35)
- General provision (50)
- Mandatory collective license concerning public performance of phonograms (68)

The Danish system of extended collective licenses – sec. 30

- The first and most important extended collective license for DR is sec. 30 of the Danish Copyright Act which gives DR the right to broadcast published works (except dramatic and cinematographic works)
- First implemented in 1961 in the Danish Copyright Act
- Sec. 30 has been used in relation to music, literature and works of art

The Danish system of extended collective licenses – sec. 30

- Agreement with a representative organisation, i.e. comprising a substantial number of authors of a certain type of works which are used in Denmark
- The representative organisation has to be approved by the Ministry for culture
- Covers both members, non-members, foreigners and orphan works

The Danish system of extended collective licenses – sec. 30

- The broadcaster must report to the organisation on its use of the works
- The author may issue a prohibition to the broadcaster against the broadcast of the work
- In spite of the very large number of works used by DR since 1961 DR has experienced a very limited number of prohibitions
- Has been to the benefit of both right holders and users

The archive provision

- In the 1990's use of the broadcasters archives on demand became a possibility
- On demand was a new right not covered by the old agreements with the right holders and not covered by sec. 30
- Some of the right holders were dead, unknown or untraceable

The archive provision

- Until then DR had only had the extended collective license in sec. 30 which was limited to published works (pre-existing works)
- For non-published works, e.g. performances and commissioned works, there is a direct connection between the broadcaster and the right holder and it is thus possible to obtain the rights on an individual basis. No need for an extended collective license

The archive provision

- In relation to on demand the non-published works and performances in the archive productions were pre-existing
- A possibility to use the instrument of the extended collective licenses to the archives

The archive provision

- The Nordic Council of Ministers published a report in 1997 where they recommended that the Nordic countries implemented a specific extended collective license concerning the broadcasters' archives
- A provision on collective license concerning the broadcasters' archives was implemented into the Danish copyright law in 2002 in connection with the implementation of the Infosoc directive

The archive provision

- Works which have been made public and are a part of DR, TV 2/DANMARK A/S and the regional TV 2 companies' **own productions** can, by the mentioned broadcasters, be **repeated and made available** in such a way that members of the public may access them from a place and at a time individually chosen by them, cf. the second division of section 2 (4)(i), provided that the requirements regarding **extended collective license** according to section 50 have been met. The provision of the first sentence shall apply correspondingly to the making of copies, which are necessary for the reproduction. The provisions of the first and second sentences shall apply exclusively to works which are a part of productions **broadcast before January 1, 2007**.
- (2) The author may **issue a prohibition** to the broadcaster against the reproduction of the work pursuant to subsection (1).

The archive provision

- In 2007 a working group under the Danish Ministry for Culture published a report concerning the copyright issues in relation to the making available of the cultural heritage in the different national archives
- The report recommended that the time limit in § 30 a which originally was January 1st 1997 was changed to January 1st 2007
- There was a general wish to show that copyright could be used to find solutions also in the digital world

The agreements

- 2007: agreement concerning on demand use and use of clips in new productions
- 2008: agreement concerning reruns of archive productions on DR's two new specialised tv-channels (Children and Culture/History)

The agreements – all right holders

- The right holders are represented by a joint organisation comprising several organisations (CopyDan Arkiv) which was approved by the Ministry for Culture
 - The organisation covers all types of works, both members, non-members, foreigners and orphan works
 - The agreements respects earlier agreements in which the price concerning on demand use and/or reruns on specialized channels has been decided
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The agreements - productions

- **DRs own productions:** productions produced and/or – wholly or partly – financed by DR. Not movies and licensed programmes
- **Archive productions:** broadcast before January 1, 2007
- **Hold back:**
 - 6 years for all programmes
 - 10 years for dramatic productions and literature (only on demand use)

The agreement – types of use

The first agreement:

- Use of archive productions - in whole or in part – for on demand streaming
- Use of clips from archive productions in new productions – only parts of works

The second agreement:

- Reruns of archive productions – in whole or in part – on DRs two new specialized channels