

Kluwer Copyright Blog

Denmark: Infopaq-case finally decided after eight years

Maria Fredenslund (RettighedsAlliancen) · Friday, May 17th, 2013



In a [recent judgment](#), following the preliminary Infopaq-rulings of the European Court of Justice, the Danish Supreme Court ruled that extracts of newspaper articles comprising no more than 11 words can be works protected by copyright. The use of extracts that are the results of a process of data capture undertaken by the media analysis company Infopaq International A/S (now Infomedia) constitutes copyright infringement, unless prior consent from right holders has been obtained.

The judgement of the Danish Supreme Court is the outcome of an eight-year dispute between [Infopaq](#) and [Danske Dagblades Forening](#) (Danish Daily Newspapers Association). The core of the dispute concerned Infopaq's right to scan and print extracts of newspapers with the purpose of providing abstracts of newsfeed to their customers.

Infopaq scanned articles from newspapers in order to perform electronic searches and to print short text extracts of 11 words – one search word plus five words prior and five words post without asking permission from right holders. The process of data capture was divided into four parts; the creation of so called TIFF files, the transformation into text files, the data storage and the printing of text files. The purpose of this process was to ease searches and to be able to find relevant articles quickly.

The Supreme Court asked the European Court of Justice twice ([Infopaq I](#) and [Infopaq II](#)) for a prejudicial decision on a number of questions which can be narrowed down to the following two matters:

– *Are acts of reproductions of 11 words of articles reproductions that can be protected by the exclusive copyrights of the right holders as set out in article 2 of the [EU Copyright Directive](#) ('Infosoc Directive')*?

– *Is Infopac's process of data capture an act of temporary and transient reproduction as set out in article 5 of the [Infosoc Directive](#) and as such exempted from the exclusive rights of the right holders according to article 2?*

The ECJ answered in its ruling that the data capture process, where 11 words are stored on a computer memory and abstracts are printed, can constitute partial reproductions that are protected

by exclusive copyrights as set out in Article 2 of the Infosoc Directive, provided that the 11 words in themselves are works that are products of the authors' own intellectual creations.

The ECJ considers that the printing of the text files is an act that is not covered by an exemptions in article 5 and thus requires consent from relevant right holders. However, the other three parts of the data capture process are acts that do fulfil the requirements of article 5(1), even though the acts involve human intervention: they are transient and an integral and essential part of a technological process with the sole purpose to enable a lawful use, and have no independent economic significance.

Based on these prejudicial answers the Supreme Court handed down its final ruling in favour of Danske Dagblades Forening, arguing that the process of data capture occasionally involves abstracts of texts that are protected by copyright. Since the printing of 11 words does not fulfil the requirement of transience, the data capture process is not an action covered by the exemption in Article 5(1) of the Infosoc Directive.

With this dispute Infopaq wanted to challenge the competing company Infomedia, which is owned by concerns of Danish newspapers. In 2005 Infopaq moved its manufacturing activities to Sweden and later assigned all Danish activities to Infomedia. It is noteworthy that in a similar dispute in Sweden, Stockholm District Court in 2008, was decided in favour of Infopaq.

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A full summary of this case will be added to the Kluwer IP Cases Database (www.KluwerIPCases.com).

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