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Draft act

amending

the Copyright Act

(Introduction of performance and presentation protection and protection against digitally generated imitations, etc.)¹

Section 1

The following amendments are made to the Copyright Act, cf. legislative decree no. 1093 of 20 August 2023, as amended by Act No. 676 of 11 June 2024:

1. In the title of the act, the following is added after ‘copyright’: ‘etc.’.
2. Everywhere in the act, the following is added after ‘performers’: ‘or artists’, after ‘performer’: ‘or artist’, after ‘a performer’s’: ‘or an artist’ and after ‘performers’: ‘or artists’.
3. In *Section 47(2)*, the following is added after ‘Section 55c’: ‘Section 65a(3), Section 67a(3),’.
4. In *Section 47*, a new paragraph is added after the third paragraph:
paragraph 4. The Minister of Culture may establish regulations on digital communication with the council, including on the use of specific IT systems, special digital formats and forms and the national eID solution or similar solution in force at any given time.
5. In *Section 65(1)*, the following is added after ‘work’: ‘or an artist’s artistic presentation’, and after ‘the performer’s’: ‘or the artist’s’.
6. In *Section 65(2)*, the following is added after ‘performance’: ‘or presentation’.
7. In *Section 65(3)*, the following is added after ‘a performance’: ‘or presentation,’.

¹ The act contains provisions which, in draft form, have been notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council, laying down a procedure for the provision of information in the field of technical regulations and of rules on information society services (codification).

8. In *Section 65(4)*, the following is added after ‘a performance’: ‘or presentation,’.

9. After *Section 65* the following is added before the heading for *Section 66*:

‘**Section 65a.** Realistic digitally generated imitations of a performer's performance or an artist's artistic presentation may not be made available to the public without the consent of the performer or artist.

(2) The protection provided for in the first paragraph lasts until 50 years have elapsed after the year of death of the performer or artist.

(3) The provisions of *Section 2(3)* and (4), *Sections 3, 11, 13, 13a, 16a, 16c-16f* and *17-17b*, *Section 17c(2)*, (3) and (4), *Sections 17d-17e*, *Section 18(1)* and (2), *Section 19(1)* and (2) and *Sections 21-23, 24b, 25, 25a, 27, 28, 30a, 33, 34, 35*, *Section 47(1)* and (2), *Sections 49, 50-57, 58a, 61* and *62* apply mutatis mutandis to realistic digital imitations of performers’ performances or of artists’ artistic presentations.’

10. In *Section 68(1)*, the following is added after ‘*Section 65(2-4)*’: ‘*Section 65a(1-2)*’.

11. After *Section 73*, the following is added before the heading for *Section 74*:

‘Protection against realistic digitally generated imitations of personal characteristics

Section 73a. Realistic digitally generated imitations of a physical person's personal physical characteristics may not be made available to the general public without the consent of the person being imitated.

(2) The first paragraph does not apply to imitations that are mainly expressions

of a caricature, satire, parody, pastiche, criticism of power, social criticism, etc.

unless the imitation constitutes misinformation that may specifically seriously jeopardise the rights or essential interests of others.

(3) The protection referred to in the first paragraph lasts until 50 years after year of death of the person being imitated.

(4) Realistic digitally generated imitations may be made available without consent in accordance with the provisions of *Section 23(2)* and *Section 25*.’

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12. In *Section 76(1)*, *no. 3*, ‘Sections 72-75’ is amended to: ‘Sections 72, 73, 74 and 75,’.

13. In *Section 77(1)*, ‘Sections 65 to 71’ is amended to: ‘Sections 65 and 66-71,’.

14. In *Section 83(1)*, the following is added after ‘or negligently infringes’: ‘Section 65a or’.

15. In *Section 84(1)*, the following is added after ‘Sections 65-71’: ‘and Section 73a,’.

16. In *Section 84(1)*, the following is added as a new number after no. 3:
‘4) is removed from the medium on which it is made available; or’
No. 4 is now no. 5.

17. In *Section 86*, a new paragraph is added after the first paragraph:
‘(2). The provision in Section 65a applies to imitations of persons who are nationals of or resident in a country within the European Economic Area.’
Paragraphs 2-9 are now paragraphs 3-10.

18. In *Section 86(9)*, *second sentence*, which is now (10), *second sentence*, the words ‘notwithstanding the provision in the second paragraph’ are amended to: ‘Notwithstanding the provision in the third paragraph’.

19. In *Section 86(9)*, *point 3*, which is now (10), *point 3*, the words ‘the first to fourth paragraphs’ are amended to: ‘the first paragraph and the third to fifth paragraphs.’

20. After *Section 86*, the following is added before the heading for *Section 87*:

‘Special provision on protection against realistic digitally generated imitations of personal characteristics

Section 86a. The provision in Section 73a applies to imitations of all natural persons, including foreign nationals.’

Section 2

(1) The act enters into force on 1 July 2026.

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(2) Section 1, no. 9-15 and 17-20, applies to agreements concluded after the entry into force of this act.

Section 3.

(1) This act does not apply to the Faroe Islands or Greenland.

(2) Section 1 may be put into effect in whole or in part for Greenland by royal decree or as circumstances in Greenland warrant.

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Comments on the draft act

General comments

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1. Introduction and background

Possibilities to create realistic content using, for example, artificial intelligence, including through the manipulation of existing video, audio and image content, have become numerous. There are easy-to-use tools available online, including downloadable applications for smartphones that can quickly create high-quality manipulated content. With the new possibilities, it will soon be impossible to distinguish between genuine and manipulated material. Since images and videos quickly become embedded in people's subconscious, digitally manipulated versions of an image or video can create fundamental doubts about – and perhaps even a completely false perception of – genuine representations of reality.

If manipulated audio, video or image content contains false statements or if an imitated person appears in a context that is far removed from the situations with which the person is normally associated, the imitations could at worst become a real democratic problem – not least in view of the potential for a rapid spread of the content online.

In addition to posing a real democratic problem, performers are also likely to be severely affected, as the technology makes it easy for most people to copy and use an artist's personal characteristics, including voice and appearance, in manipulated reproductions of performances.

The government (Social Democrats, Liberal Party, Moderates) and Denmark Democrats, Socialist People's Party, Conservative People's Party, Red-Green Alliance, Danish Social Liberal Party and the Alternative therefore agreed on 26 June 2025 to provide protection against the sharing of digital imitations by amending the Copyright Act and introducing the following two protections:

1. General protection against realistic digitally generated imitations of personal characteristics

This protects the general public against the sharing of realistic digitally generated imitations of other people's personal characteristics (such as appearance, voice, etc.) without consent.

2. Protection against imitation of performers

This protects performers and artists against the sharing of realistic digitally generated imitations of their artistic performances or presentations without consent.

Both protections ensure a clear legal basis that can be used by anyone to remove realistic digital imitations from the various storage media we all use, including social media. The rules are therefore intended primarily to activate the regulation on Regulation 2022/2065 on a single market for digital services concerning the obligation of storage media to take steps to remove illegal content.

The legislative proposal reflects the political agreement of 26 June 2025 to create a safeguard against the sharing of digital imitations.

The main objective of the legislative proposal is to provide a clear safeguard against the abuse of the personal characteristics of others and to ensure that technological developments, in particular the possibility to use artificial intelligence to create realistic representations of persons and their performances, etc., do not end up at the expense of integrity, credibility, trust and transparency. The legislative proposal therefore proposes to add two new protections to the Copyright Act, one of which contains two elements: performance protection and imitation protection for performances and presentations, while the other protects the personal, physical characteristics of natural persons. The protections are being introduced on the basis of the political agreement aimed at creating a clear legal framework for the making available of realistic digitally generated imitations of other people's personal characteristics and the performances and presentations of performers and artists.

The legislative proposal proposes the addition of a new provision, Section 65a, to the Copyright Act, according to which realistic digital reproductions of a performer's public performance or an artist's artistic performance or presentation may not be made available to the general public without the consent of the performer or artist. The proposal also entails an amendment to Section 63 of the Copyright Act, in which a new sixth paragraph is

added, granting protection under the proposed section 65a for a period of up to 50 years from the year of the performer's death.

The legislative proposal also contains a proposal to add a new provision, Section 73a, to the Copyright Act, according to which realistic digital imitations of a natural person's personal physical characteristics may not, as a general rule, be made available to the public without the consent of the person imitated. It is proposed that the provision not cover realistic digitally generated imitation of a person's personal, physical characteristics that are mainly expressions of a caricature, satire, parody, pastiche, criticism of power, social criticism, etc. However, a realistic digitally generated imitation that is mainly an expression of a caricature, satire, parody, pastiche, criticism of power, social criticism, etc. may, depending on the circumstances, be covered by the proposed provision if it constitutes misinformation that can specifically lead to a serious risk to the rights or essential interests of others, such as life, health, private life, reputation or property.

Danish law already contains a number of rules that regulate the making available of manipulated videos, sound and images containing the personal characteristics of others, including in the Marketing Act, General Data Protection Regulation, Artificial Intelligence Act and Criminal Code.

As a result of the political agreement, the legislative proposal also contains a proposal on the protection of artists' performances or presentations, by which artists' artistic performances and presentations receive the same protection as performers' performances of literary and artistic work. The protection of artists' artistic performances and presentations is intended to protect performances that are not literary or artistic work, thereby allowing performances of work that cannot be said to have so-called 'work status' to also be protected under Section 65 of the Copyright Act. By granting protection to artists' artistic performances and presentations on equal footing with performers' performances, a parallel is drawn between artists who do not perform literary or artistic work and performers who do.

The legislative proposal also contains an administrative amendment that proposes adding a legal basis to establish rules on digital communication in connection with the proceedings before the Copyright Licensing Board.

2. Main points of the draft act

2.1. Protection against realistic digitally generated imitations of personal characteristics

2.1.1. Legislation currently in force

Copyright Act

In Danish law, the right to a person's own image essentially serves a different purpose than the protection against imitation under Section 2 of the Copyright Act. See also Section 2.2.1. of the draft act on the applicable law with regard to imitation protection.

Under Section 70 of the Copyright Act, the person who produces a photographic image (the photographer) has the exclusive right to use the image by producing copies of it and making it available to the public. However, the creator may not make available a commissioned portrait photograph without the consent of the person who commissioned it, cf. Section 60 of the act. Under Section 76 of the act, infringement of Section 2 or 70 is punishable by a fine or, in certain cases involving particularly aggravating circumstances, by imprisonment of up to one year and six months, unless a higher penalty is warranted under Section 299 b of the Criminal Code concerning, among other things, copyright infringements of a particularly serious nature.

In addition, Section 76(2) of the Copyright Act contains a reference to Section 299b of the Criminal Code, according to which copyright infringements of a particularly serious nature may be punished by imprisonment of up to six years for copyright infringements that result in unjustified gain for oneself or others.

Criminal Code

Under Section 264 d(1) of the Criminal Code, anyone who unjustifiably discloses communications or images relating to another person's private affairs or, in general, images of that person in circumstances where it is clearly reasonable to expect that they should be withheld from the general public, is liable to a fine or imprisonment of up to six months. The provision also applies when the communication or image relates to a deceased person.

The penalty may be increased to a term of imprisonment of up to three years if, taking into account the nature and extent of the data or disclosure or the number of persons concerned, there are particularly aggravating circumstances within the meaning of the second paragraph.

According to Section 264e(1) of the Criminal Code, identity theft is punishable by a fine or imprisonment of up to six months for anyone who, without justification, 1) uses information about another person, including their personal identification number, name and image, to improperly impersonate that person or 2) discloses material, including sexual material, in which information about another person, including their personal identification number, name and image, has been used to improperly manipulate that person's appearance.

Under Section 264e(2) of the Criminal Code, any person who unjustifiably produces sexual material as referred to in the first paragraph, no. 2, will be punished in the same way.

According to the comments on Section 264 e(1), no. 2, cf. Official Report of the Plenary Proceedings in the Danish Parliament 2021-22, supplement A, Draft Act No. L 103 as presented, page 11, the requirement that the perpetrator must have ‘unlawfully’ disclosed material in which information about another person, including their personal identification number, name and images, has been used, implies that the disclosure will not be punishable if the person to whom the information relates has given their consent.

In addition, it follows from those observations that the requirement that the manipulation of another person’s appearance must be ‘inappropriate’ means that, even outside the context of consent, there may be cases in which it is not a criminal offence to disclose material in which another person’s data have been used to manipulate that person’s appearance. Depending on the circumstances, this may include cases in which the information is used in purely private contexts, in connection with parodies and satire or in other cultural or artistic contexts. In this respect, it is assumed that there is broader access to use images of well-known persons, etc. in parodies, art installations, etc. These are non-exhaustive examples and in each individual case, a specific assessment will have to be made as to whether the manipulation of another person’s appearance is inappropriate, taking into account, among other things, freedom of expression.

It also follows from the above that, depending on the circumstances, the provision may cover cases where deepfakes are used, i.e. manipulation of audio and video using artificial intelligence, to make a person appear in videos, etc. doing or saying something that they have not actually done or said. This may be the case, for example, when the aggrieved party’s face is edited into a video with sound, making it appear as if the person is saying something that he or she did not say.

Under Section 267(1) of the Criminal Code, anyone who makes or disseminates a statement or other communication or takes an action that is liable to offend anyone’s honour will be punished for defamation by a fine or imprisonment for up to one year, subject to Sections 268 and 269.

However, this provision does not apply if the defamation relates to a deceased person and is committed more than 20 years after that person’s death, unless the relationship is covered by Section 268 of the act, cf. (2).

Under Section 268 of the Criminal Code, the penalty for violating Section 267 may be increased to imprisonment of up to two years if 1) a serious accusation is untrue or 2) an accusation is made or disseminated through the content of a mass medium and the accusation is likely to cause significant harm to the aggrieved party.

It should be noted that infringements of both Section 264 e of the Criminal Code on identity theft and Section 267 of the Criminal Code on defamation are subject to private prosecution, but that public prosecution may in certain cases take place when requested by the aggrieved party, cf. Section 275 of the Criminal Code.

In the event of a conviction for infringement of, inter alia, Sections 264e and 267 of the Criminal Code, the courts may at the same time order the deletion of data, including statements, messages, images, etc., if possible, cf. Section 271(1) of the Criminal Code. The obligation lies with the person convicted of the infringement. If the latter does not have access to the data, the obligation may, however, be imposed on the person who has such access, cf. the second paragraph of the provision.

Depending on the circumstances, identity theft may also be punishable as an infringement of Section 279 of the Criminal Code on fraud if the theft is committed with the intention of obtaining unjustified financial gain.

Regulation on artificial intelligence

Article 50 of the Artificial Intelligence Regulation, which takes effect on 2 August 2026, introduces a transparency obligation for providers and operators of certain artificial intelligence systems. It follows from Article 50(2) that providers of artificial intelligence systems that generate synthetic audio, image, video or text content must ensure that the output of the artificial intelligence system is labelled in a machine-readable format and can be traced as artificially generated or manipulated. In addition, it follows from Article 50(4) that the operators of an artificial intelligence system that generates or manipulates images, sound or video content that constitutes a deepfake must indicate that the content has been generated artificially or manipulated. Compliance with that transparency obligation should not be interpreted as meaning that the use of the artificial intelligence system or its output impedes the freedom of expression or the right to freedom of the arts and science guaranteed by the Charter, especially when the content is part of a manifestly creative, satirical, artistic, fictional or similar work or programme. Deepfakes are defined in the regulation as ‘AI-generated or manipulated image, audio or video content that is substantially similar to actual persons, objects, places, devices or events and that would falsely appear to be genuine or truthful’.

Furthermore, it follows from Article 5(1), points (a) to (h) of the regulation that certain forms of artificial intelligence practices are prohibited.

In specific cases, this also includes artificial intelligence systems used to generate deepfakes when these deepfakes are used as part of one or more of the prohibited forms of artificial intelligence practices. This may be the case, for example, if deepfakes are used for manipulation, cf. Article 5(1), point (a), of the Artificial Intelligence Regulation. In such cases, deepfakes will in certain circumstances be covered by the prohibited forms of artificial intelligence practices that are regulated and enforced under the Artificial Intelligence Regulation.

Marketing law

It follows from Section 3(1) of the Marketing Practices Act that business professionals must conform to good marketing practice, taking into account the interest of consumers, business professionals and the general public. In certain cases, the provision provides protection against the commercial use of personal images. This may, for example, be in connection with the unauthorised use of an image in breach of the Marketing Practices Act's rules on good marketing practice. It would therefore be contrary to good marketing practice to use an image of a person in marketing without the prior consent of the person depicted. The rules in the Marketing Practices Act do not apply in cases in which there is no commercial intent.

It follows from Section 24(1) of the Marketing Practices Act that actions contrary to the act may be prohibited by court order. Furthermore, it follows from Section 32(2) that the Consumer Ombudsman may issue an injunction if an action is contrary to the act and cannot be changed through negotiation.

Under Section 37(1) of the Marketing Practices Act, failure to comply with a prohibition or injunction imposed by a court or an injunction issued by the Consumer Ombudsman is punishable by a fine or imprisonment of up to four months.

Data protection legislation

The General Data Protection Regulation and the Data Protection Act apply, among other things, to the processing of personal data that is carried out wholly or partly by means of automatic (electronic) data processing, such as on a computer and online.

It follows, inter alia, from Articles 5 and 6 of the GDPR that personal data must be processed lawfully and that processing is lawful only if it is carried out with the consent of the person to whom the data relates (the data subject) or if it is necessary for the protection of at least one of the legiti-

mate interests specified in Article 6(1), points (b) to (f) of that regulation. An imitation of a person's voice or appearance may constitute personal data under data protection rules if it is in practice possible to identify him or her from the data concerned or in combination with other data.

The data protection rules do not apply if this would conflict with the freedom of expression and information (see Article 10 of the ECHR or Article 11 of the EU Charter).

Depending on the circumstances, infringement of data protection rules may be punishable by a fine or imprisonment for up to six months pursuant to Section 41 of the Data Protection Act.

Advertising regulations

Section 10 of the Advertising Order stipulates that radio and television advertisements may not depict or refer to persons, whether in their private or public capacity, unless prior consent has been obtained.

Nor may advertising without prior consent depict or refer to anything belonging to a person in a way that can evoke the impression of a personal endorsement.

According to Section 39 of the Advertising Order, any infringement thereof may be punishable by a fine.

Unwritten law

In Danish law, there are also two general principles of law concerning the use of personal images. On the one hand, it follows that the commercial use of a person's image may not take place without the person's consent, cf., for example, judgment U 1965.126 H (Buster Larsen) pronounced by the Supreme Court on 25 January 1965 in case II 175/1963, published in the Danish Weekly Law Gazette, and, on the other hand, that both publicly known persons and private persons may, depending on the circumstances, be entitled to compensation for moral damages if publication of a picture of the person constitutes an unlawful infringement, cf., for example, judgment U 2010.2448 H (Andrea Elisabeth Rudolph) pronounced by the Supreme Court on 10 June 2010 in case 431/2008, published in the Danish Weekly Law Gazette.

2.1.2. Considerations by the Ministry of Culture and the proposed scheme

The increased possibilities of generating counterfeit imitations, including by means of, for example, artificial intelligence and easily applicable and

easily accessible digital tools, therefore increase the need for clear protection of natural persons from being subject to realistic imitations. This applies in particular to public figures, of whom, for example, realistic videos can be used to make them appear to be communicating about something that is contrary to what they stand for and which may therefore damage the imitated person's reputation, personal integrity, self-esteem, etc. Trust is a fundamental element of democracy, including both trust in each other and trust that the information received from and about a person is correct. If such digital tools are misused in political contexts, e.g. to make prominent politicians or civil servants appear to communicate something they have not said, this can undermine democracy and democratic discourse, which is fundamentally based on the aforementioned trust and on a consistent factual basis among an informed population.

In addition, the dissemination of realistic digitally generated imitations used to spread political messages could harm the public's ability to assess whether or not a statement is genuine and therefore, in the long term, create a fundamental doubt as to whether or not the information is correct.

The speed of technological development and facilitated access to sharing also increases the need to protect citizens from their personal physical characteristics being used to make them communicate messages without their consent, thereby causing harm to the image and reputation, personal integrity, self-esteem, etc. of the person imitated.

Against this background, it is proposed to introduce a new provision in Section 73a of the Copyright Act, according to which realistic digitally generated imitations of a person's personal physical characteristics may not be made available to the general public without the consent of the person imitated. Protection is proposed to last up to 50 years after the year of death of the imitated person.

Given that the protection is closely related to protection against realistic digital imitations of performers' performances and artists' artistic performances and presentations, as described in Section 2.2.2 below, and given that the Copyright Act also regulates a large amount of the material on which digital imitations are based – either as work or creations – it is appropriate that this imitation protection be included in the Copyright Act.

The proposed provision in Section 73a differs from the proposed protection of performances of performers and artistic performances and presenta-

tions of artists in Section 65a in that the protection of performers in the proposed Section 65a is the protection of the imitation of an artistic performance and artistic presentation, and therefore protection of the product constituted by a performance or presentation for a performer. On the other hand, the proposed protection in Section 73a is intended to protect against the making available of realistic digitally generated imitations of an individual's personal characteristics without consent. It is therefore not a prerequisite for protection under the proposed Section 73a that the person imitated enjoys protection as a performer under the proposed Section 65a. The proposed Section 73a will therefore cover all natural persons.

The proposed provision also differs from Section 264e of the Criminal Code in that it does not impose any requirement of impropriety, without prejudice to the second paragraph of the proposed provision on caricature, satire, parody, etc. In addition, the proposed provision does not impose any requirement of intent, under which the provision therefore also applies to unintentional and negligent disclosure without consent. Furthermore, the proposed provision is not punishable by law, which also distinguishes it from Section 264 e of the Criminal Code.

Compensation for infringements of the proposed provision could take place through the civil law system, where liability could be imposed for any losses and compensation. By comparison, Section 264e of the Criminal Code is subject to private prosecution, cf. Section 275(1), and conditional public prosecution, cf. Section 275(2), no. 1. Pursuant to Section 989 of the Administration of Justice Act, criminal cases brought by private individuals are dealt with in accordance with the rules of civil procedure, without prejudice to Section 990. In the case of private prosecution, it will therefore be the aggrieved party that pursues matters under Section 264 e of the Criminal Code.

The proposed provision differs from marketing law rules on the right to a person's own image in that it also applies to non-commercial dissemination of digitally generated imitations.

It should also be noted that the proposed provision does not replace the unwritten legal principles relating to personality rights. The provision is merely a statutory supplement to these legal principles.

The provision proposes that realistic digitally generated imitations may not be made available without consent. The proposed protection will therefore

be limited to realistic digitally generated imitations. Realistic is understood as meaning that the imitation closely resembles reality in its expression. The 'realistic' criterion lies in the fact that the imitation must be such as to create a likelihood of confusion with the actual representation of the person imitated. For example, the provision would not cover the making available of a digitally generated imitation of a natural person's personal characteristics if the imitation is depicted as a fantasy being, since such imitation is not considered capable of giving rise to a likelihood of confusion in principle. However, the likelihood of confusion will depend on how obvious the deviation from reality is, including whether it is only a matter of subtle, unrealistic features, such as discreet fangs or elven ears, or whether it is an imitation in which the personal characteristics of the person being imitated are incorporated into a representation of an alien or whether the otherwise realistic imitation has neon green skin and pink eyes. Furthermore, the provision will not cover the making available of a digitally generated imitation of a natural person's personal characteristics if the imitation is incorporated into a context that explicitly appears as a recognisable fantasy world. Personal physical characteristics refer to the characteristics that distinguish and are unique to each individual. This may be the person's appearance, voice, movements, etc., which together constitute parts of the individual's identity and which mean that a person is recognisable to a degree that is likely to create a likelihood of confusion with the person being imitated. The individual elements of personal characteristics are proposed to be protected if an imitation containing the individual elements would in itself be likely to create a likelihood of confusion with the person concerned. This may be the case, for example, with reproductions of certain characteristic voices. The concept of personal physical characteristics must be understood within the framework of the notion of realistic. If the representation of personal characteristics is not likely to cause confusion and is therefore not realistic, the representation will not be covered by the proposed provision. For example, publishing a realistic digitally generated portrait drawing or painting of a natural person's personal characteristics would not be covered by the provision, as it is assumed that such a portrait cannot be confused with reality due to its appearance.

A realistic digitally generated imitation of personal characteristics that clearly states that it is a digitally generated imitation will likewise not immediately entail such a likelihood of confusion that it is covered by the protection in the proposed provision.

The proposed protection will only protect against digitally generated imitations made available to the general public, cf. Section 2(3) and (4) of the Copyright Act. Finally, the protection applies in cases in which consent for the publication has not been obtained. In other words, the protection requires consent to be obtained before a realistic digitally generated imitation can legally be made available to the public. The consent will have to comply with the requirements set out in the special explanatory notes to Section 1, no. 11 of the draft act. The consent and right to subsequent use of the imitation may be transferred by agreement.

The making available of realistic digitally generated imitations of personal characteristics is covered by the protection provided for in Article 10 of the European Convention on Human Rights (ECHR) on freedom of expression. Imitations that are mainly expressions of a caricature, satire, parody, pastiche, criticism of power or society, etc. enjoy broader protection than material that is published solely for commercial interests, for example.

Since the protection concerns the unauthorised use of realistic digitally generated imitations of personal characteristics, the protection will, in principle, cover parodies and satire, etc. in digitally generated realistic imitations without consent if these involve a likelihood of confusion.

The proposed provision in the second paragraph is therefore intended to ensure that the proposed provision in the first paragraph does not, in principle, cover publication, which is mainly the expression of a caricature, satire, parody, pastiche, criticism of power, etc., as these enjoy greater protection under Denmark's international obligations, in particular under Article 10 of the ECHR, and in which more serious grounds must therefore be assumed for intervention than for reproductions that do not contain such elements. . It is therefore also assumed that the proposed provision must be interpreted and applied accordingly. In this respect, see the third paragraph on the relationship to the European Convention on Human Rights.

However, the proposed exemption in the second paragraph contains the modification that if a realistic digitally generated imitation of a natural person's personal physical characteristics constitutes misinformation that could specifically pose a serious threat to the interests which, according to Article 10(2) of the ECHR, second paragraph, may justify an interference with freedom of expression under Article 10 of the ECHR, including the rights or substantial interests of others, then the realistic digitally generated

imitation will continue to be covered by the prohibition on making it available to the general public in the first paragraph.

Depending on the circumstances, caricatures, etc., including their content and the context in which they occur, will therefore be covered by the proposed Section 73a(1) if they pose a concrete risk to the rights or essential interests of others, such as life, health, privacy, reputation or property, as a result of the likelihood of confusion of the realistic digital imitation.

A concrete balancing of the interests of, on the one hand, the freedom of expression of the publishing party and, on the other hand, the interests of the rights or essential interests of the person whose personal characteristics form part of a realistic digital imitation is envisaged.

In assessing this, consideration must be given to, among other things, the interests of the person who has made the imitation available to the public for the sake of freedom of expression, weighed against the need to protect the person imitated and the need to protect the rights or substantial interests of others. The assessment will be based on, among other things, an assessment of the specific likelihood of confusion caused by the realistic digitally generated imitation, including how clear it is that the digital imitation constitutes a caricature, etc. Imitations that are clearly a caricature, satire, parody, pastiche, criticism of power, social criticism, etc. or which are clearly marked as imitations, must be assumed to not pose a risk to the imitator, rights or significant interests of others that necessitates intervention against them and will therefore not be covered by the proposed imitation protection. It may be relevant in this respect whether the content appears to be something that could, with a certain degree of probability, have its origin in reality or whether, on the contrary, it is quite obvious that it is an artificial representation that could not have taken place in reality. Whether or not it is covered by the proposed provision will depend on a discretionary assessment which may, *inter alia*, take into account the graphic quality of the imitation, as well as the words, acts, objects, locations, persons and other contexts that appear in the imitation. In the assessment, consideration must also be given to whether the imitation, by reason of its content, appearance, including risk of confusion with reality or other characteristics, etc., gives rise to a risk of harm to the life, health, privacy, reputation or property of others. See also Section 1, no. 11, of the draft act and its comments and to Section 3 on the relationship with the European Convention on Human Rights.

The provision also refers to the general provisions of the Copyright Act concerning the making available of imitations already made available in connection with news reporting.

The general rules on choice of law and jurisdiction will apply in relation to the proposed provision.

The proposed protection is intended to supplement the protection provided for in data protection regulations, the Criminal Code, including Section 264e of the Criminal Code on identity theft, and the Marketing Act, etc., cf. above.

Personal characteristics are closely linked to a person's personality. For this reason, it is proposed that this area not be covered by an agreement licence. In some cases, digital imitations may be made with the voice and appearance of deceased persons, which can be offensive to the survivors of the deceased and may be used to create democratically challenging misinformation. Against this background, it is proposed that the duration of protection should be 50 years after the year of death of the imitated person.

2.2. Protecting performers and artists from realistic digitally generated imitations

2.2.1. Legislation currently in force

The Copyright Act contains imitation protection that is available to originators. Protection against imitation is consistent with the exclusive rights of originators in Section 2 of the act, which includes the exclusive right to reproduce and make available to the public, which also implies the use of work in a modified form. The assessment as to whether a creation is an infringement of a work is made based on a concrete similarity assessment.

Section 65 of the Copyright Act grants protection to performers. According to Section 65(1), a performer's performance of a literary or artistic work may not, without the artist's consent, be 1) recorded on tape, film or any other device capable of reproducing it or 2) made available to the public.

Protection of performers is regulated by the Rental Directive and Articles 2 and 3(2) of the InfoSoc Directive, which protect performers against the copying and publishing of recordings. Articles 4, 8 and 9 of the Satellite and Cable Directive regulate rights relating to the retransmission of radio and television broadcasts and Article 3 of the Term of Protection Directive (2006/116/EC) regulates the duration of protection. No international

treaties, regulations or directives in the field of copyright regulate impersonation protection of performers.

As a result of the reference provision in Section 65(6), performers largely enjoy the same protection as originators and the protection is subject to similar rules on exceptions.

However, performers do not enjoy the same protection against imitation as originators.

The 1995 explanatory memorandum states in relation to the reading of audiobooks and audio newspapers that 'the Ministry believes that the question must be decided according to the same principles that apply to other types of readings. The type of reading that involves an artistic interpretation of the text is protected in all circumstances. Protecting the effort behind an apparently neutral reading of a literary work should not be excluded if there is an ongoing assessment of the text's possibilities and artistic devices.' See the Official Report of the Plenary Proceedings in the Danish Parliament 1994-95, Appendix A, L 119 as submitted, page 1392.

In the comments to amendment point 32 of Act No. 1051 of 17 December 2002 amending the Copyright Act, in which technical amendments were made to Section 65(2), it is reiterated that performers do not have any imitative protection, cf. the Official Report of the Plenary Proceedings in the Danish Parliament 2002-03, Appendix A, L 19 as submitted, page 256.

Chapter 2 of the Copyright Act contains limitations on the exclusive right and exceptions to this. These are justified by practical, cultural and social considerations. The exceptions therefore strike a balance between the exclusive rights of the originator and society's need to be able to use a work or other creation.

Section 83 of the Copyright Act contains the provisions of the act on compensation and damages for infringements under the Copyright Act.

The freedom of expression guaranteed by Article 77 of the Constitution and Article 10 of the European Convention on Human Rights may, in exceptional cases, lead to a limitation of copyright. It is therefore possible to refer to a work, create parodies, quote, etc.

According to Section 24b of the Copyright Act, it is permitted to use work for parodies, caricatures or pastiches. The provision also applies to certain other rights, cf. Chapter 5 of the act on other rights, including for a performer's performance of a literary or artistic work. The exception in Sec-

tion 24b does not mean that any form of use will be lawful, as the use of work pursuant to Section 24b will be subject to the three-step assessment in Article 5(5) of the InfoSoc Directive. It follows that a specific assessment must be made as to whether the parody, caricature or pastiche causes unreasonable damage to the legitimate interests of the copyright holder. The fact that a specific balancing of interests must be carried out in each individual case reflects that the right to use work for the purposes of a parody, caricature and pastiche is not unlimited, as the legitimate interests of the originator may, in specific cases, outweigh the user's freedom of expression. The general comments to Act No. 676 of 11 June 2024 provide examples of cases in which the legitimate interests of the originator may outweigh the right to parody, etc. This might be, for example, if the work is used in a pornographic context or if the parody links the originator of the parodied work to racially discriminatory messages. However, whether or not the use in question is lawful will always depend on a specific assessment, which will ultimately be up to the courts to decide, cf. Official Report of the Plenary Proceedings in the Danish Parliament 2023-24, supplement A, L 145 as submitted, page 11.

Other regulations

Marketing and data protection rules, advertising regulations and general legal principles, etc., as described above in Section 2.1.1. on applicable law, are also relevant here. For more information, see Section 2.1.1.

2.2.2. Considerations by the Ministry of Culture and the proposed scheme

As a result of the rapid development of artificial intelligence, there is currently a need for clear rules on the protection of digitally generated imitations of personal characteristics. The increased protection need is especially relevant due to the fact that it is now possible to create realistic content by means of, for example, artificial intelligence, as well as manipulating existing video, audio and image content. There are easy-to-use tools available online and in the form of apps, etc. that can quickly create high-quality manipulated content, allowing performers' performances and artists' performances and presentations to be reproduced 1:1 in digital imitations. The possibilities are numerous and infringements significantly more intrusive. Performers and artists are expected to be especially affected by this development, as it has become easy to copy and use the performances of artists or performers in manipulated reproductions.

Against this background, it is proposed to introduce protection for performers and artists against realistic digitally generated imitations in Section 65a of the Copyright Act. See Section 2.3 below on performance protection.

The introduction of imitation protection implies a principal assimilation of the protection of performers and artists with the protection of originators whose work may not be copied in original or modified form. Performances by performers and artist's performances and presentations therefore receive the same protection as *the recording* of a performer's performance.

However, the proposed provision will not entail a general prohibition on imitation, as private imitations that are not made available to the general public will still be permitted.

The proposed provision is not intended to restrict the possibility of publication, inter alia, legitimate cover recordings. Unlike a small number of cover artists, who do not have a significant impact on musicians' earning potential, original artists are increasingly finding that social media and music streaming services contain more and more music tracks that feature digital 1:1 imitations of musicians' vocals. These musical tracks are not only in direct competition with musicians' own original music, but may also appear offensive – and in some cases discrediting – to artists who have not consented to the use of their personal characteristics.

Against this background, it is proposed that imitations of a performer's performance of a literary or artistic work or of an artist's performance or presentation, as defined in the proposed Section 65a, should not, as a general rule, be made available to the public, as defined in Section 2(3) and (4).

Protection of a performer's performance of a literary or artistic work or an artist's performance or presentation will include indirect protection of the performer or artist's voice, appearance and other physical personal characteristics. See also Section 1(9) of the draft act and the comments on it.

The scope of the proposed provision would be mainly limited in three ways. Firstly, only realistic digitally generated imitations of performances or presentations will be covered by the provision. Realistic is understood to mean that the imitation closely resembles reality in its expression. The realistic criterion lies in the fact that the imitation must be capable of giving rise to a likelihood of confusion with an actual reproduction of, for example, a musician's performance or an actor's public performance. Secondly, only digitally generated imitations will be covered by the provision. Non-digitally generated imitations, such as live concerts with natural persons who have formed a look- and/or sound-alike band, would therefore not be covered by the provision. Finally, only digital imitations that are made available to the public, cf. Section 2(3) and (4) of the Copyright Act, will be covered by the provision. The production of imitations will therefore not be protected under the provision, as it is considered that the harm-

ful effect of publication, and not just production, warrants the need for protection.

The protection is proposed to last for up to 50 years after the death of the performer or artist. The term of protection will therefore differ from that specified in Section 65(2)-(4), as protection is calculated from the year of death of the performer or artist, rather than from the date of the performance, release or publication. It is proposed that protection should last for 50 years after the death of the performer or artist, as it is considered particularly offensive for an artist's personal characteristics to be used for digitally generated imitations of their artistic performances or presentations without the artist's consent. It is also considered that the expiry of the protection could be more easily determined in that regard, given that there would not necessarily be an imitation of one specific performance or presentation that could be dated. Rather, there will be a number of performances or presentations made over a longer period of time that are used to create the realistic digitally generated imitation.

It should be noted that a number of provisions in Chapters 1-3 of the Copyright Act apply to the imitation protection of performers and artists. See also Section 1(9) of the draft act and the comments on it.

The proposal also envisages that Section 24b of the Copyright Act applies in relation to the proposed provision. This means that it will be permitted to use digitally generated imitations of performer's performances or artists' artistic presentations or performances without the consent of the performer or artist if this is done for parody, caricature and pastiche purposes, cf. Section 24b. The scope of protection as regards parodies will therefore correspond to the existing protection of performers.

Infringements of the proposed provision will entitle the imitated artist or performer to receive remuneration and compensation for the damage caused by the infringement in accordance with the rules in Section 83 of the Copyright Act. The proposal does not make any changes to who is entitled to prosecute infringers and existing practices in this area also have effect after the proposal has entered into force. See also Section 1, no. 14 of the draft act and the related comments on the proposed amendment to Section 83.

The proposed provision will be covered by Section 84 of the Copyright Act on destruction, etc., under which the court, cf. first paragraph, may decide that copies that violate the right to work or other creations protected under Sections 65-71 must 1) be withdrawn from the market, (2) definitively removed from the market, (3) destroyed or (4) handed over to the injured party. The first paragraph applies *mutatis mutandis* to materials, im-

plements, etc. that have primarily been used for the illicit manufacture or use of copies of a work or production. The measures referred to in the first paragraph will be carried out without compensation of any kind to the infringer and without prejudice to possible compensation to the injured party. The measures will be implemented at the expense of the infringer, unless there are special reasons to the contrary. When ruling on measures pursuant to the first paragraph, the court will take into account that there must be proportionality between the extent of the infringement and the remedies ordered, as well as the interests of third parties.

Infringements will not be subject to the criminal provisions of the Copyright Act.

See also Section 1(17) of the draft act and the comments on it about the proposed Section 86(2).

2.3. Performance protection

2.1.1. Legislation currently in force

According to Section 65(1) of the Copyright Act, cf. Consolidation Act No. 1093 of 20 August 2023 ('Copyright Act'), a performer's performance of a literary or artistic work may not be recorded on tape, film or other devices capable of reproducing it or made available to the public without the artist's consent.

This entails both the requirement that what is performed is a literary or artistic work, cf. Section 1 of the Copyright Act, and the requirement that the performance is carried out by a performer. The requirement that the performer must perform a work means that all performances or presentations that are not literary or artistic works are not covered by the provision. The protection of the performance is therefore subject to the condition that the performance meets the requirements of originality, etc. in order to obtain copyright protection. In addition, the performance must, by its nature, be artistic, which means that a purely mechanical reading or the like falls outside the scope of the provision. It is therefore not comprehensive performance protection.

The background to this can be found in, among other things, the parliamentary report of 27 April 1961 on the draft act on copyright in literary and artistic works, submitted as Draft Act No. 94 of 30 November 1960 on copyright in literary and artistic work, which states that a general inclusion of artists under the protection was omitted because of difficulties in defining the concept of 'artist'. According to the explanatory notes to the Act on

Copyright in Literary and Artistic Works presented on 15 January 1960, cf. Official Report of the Plenary Proceedings in the Danish Parliament 1959-60, Appendix A, L 146 as submitted, column 2762, on the then applicable Section 45 on the protection of performers, it is stated that performers must be regarded as anyone who interprets or personifies a literary or artistic work, including musicians, singers, conductors, actors and readers. It also states that the provision cannot normally be invoked by artists, acrobats, magicians, impersonators, etc.

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 26 October 1961 held in Rome ('Rome Convention') provides a set of minimum requirements for the protection of performers. Denmark ratified the Rome Convention in 1964. Article 3(a) of the convention defines performers as actors, singers, musicians, dancers and other persons who stage, produce, sing, recite, lecture, act or otherwise perform literary or artistic work. Article 9 of the convention allows Contracting States to extend the protection of the convention in their legislation to artists who do not perform literary or artistic work.

Performers also enjoy protection under the WIPO Treaty of 20 December 1996 on Performances and Phonograms. Denmark signed the treaty on 20 December 1996. It defines performers in Article 2(a) as actors, singers, musicians, dancers and other persons who act, sing, recite, participate in, interpret or otherwise perform a literary or artistic work or folklore.

The rights of performers to their audiovisual performances are also protected by the WIPO Performances Treaty, which was adopted in Beijing on 24 June 2012 ('Beijing Treaty'). Denmark signed the treaty on 26 June 2012. It defines performers in Article 2(a) in the same way as in Article 2(a) of the WIPO Performances and Phonograms Treaty.

2.1.2. Considerations by the Ministry of Culture and the proposed scheme

As a result of the political agreement of 26 June 2025, imitation protection applies to public performances *and* presentations because, in line with technological developments, performances are considered to have a greater need for protection than in the past, cf. below. In order to provide full protection for performances, it is therefore proposed to include the protection of artists' performances and presentations in the provisions of the Copyright Act that grant performers their rights.

It is the assessment of the Ministry of Culture that it is neither appropriate nor possible to redefine the concept of performer. Whereas the definition of performer in Article 3(a) of the Rome Convention is repeated and extended to include folklore in Article 2(a) of the WIPO Performances and Phonograms Treaty, the definition of performer in the Rome Convention, WIPO Performances and Phonograms Treaty and Beijing Treaty is considered to be inextricably linked to the performance of a literary or artistic work or folklore.

The protection of performers is therefore proposed to be supplemented by the protection of the artistic performances or presentations of artists in accordance with Article 9 of the Rome Convention, which provides for the possibility of extending protection to artists. As stated above, it is considered that technological developments, including, most recently, the development of artificial intelligence systems, generate a new need for protection of artists' performances and presentations, for example when performing a song or play generated by artificial intelligence, because the work is not necessarily performed in the copyright sense, thereby eliminating protection as a performer.

Against this background, the Ministry of Culture believes that, in the future, Section 65 should not only provide for the protection of performers' performances of work, but that the provision should also provide for the protection of performances that are not performances of work. This ensures that artists have full protection when it comes to performances and presentations and therefore, for example, artists are also given the right to their own presentation/artistic performances, regardless of whether or not they are associated with a work.

The Ministry of Culture notes that there may be definition challenges when assessing what is considered an artistic performance or presentation and what is not. This will depend on a specific assessment, which may include whether the performance is carefully planned and thought out and/or rehearsed (choreographed) and whether the performance can be said to have an aesthetic or other artistic character. The criteria are not exhaustive.

The proposed addition of 'artistic' before performance or presentation is intended to clarify that performances that, for example, are purely random in nature, including athletic performances that are solely the result of technically based choices made in the performance situation and which do not

have an artistic or aesthetic character, are not covered by the protection. Artistic performances and presentations do not include sporting or athletic performances that can be said to be solely an expression of technical skill, endurance or tactics. Sports performance with an audience-oriented element of competition are also considered to not be covered by the protection.

Since there is no agreement in the literature or decisions in the field, it is unclear whether non-human-made creations, including computer-generated creations, can be considered work. It is therefore equally unclear whether a performance of this will be eligible for protection under the current Section 65.

Artists will be understood to be actors, singers, musicians, dancers and other persons who stage, perform, sing, recite, lecture, act or otherwise carry out artistic performances. The group of persons will be closely related to the group of persons covered by the concept of performer. Performers are defined as persons who perform literary or artistic work, while artists are defined as persons who perform artistic performances or presentations. Artistic performances and presentations differ from performances of literary and artistic work in that there is no requirement for the work to be performed. Performances and presentations other than work, cf. Section 1 of the Copyright Act, will also enjoy protection under the proposed provision.

3. Relationship to the European Convention on Human Rights

According to Article 10(1) of the European Convention on Human Rights (ECHR), everyone has the right to freedom of expression. Article 10 expressly covers both expression in the form of information about factual circumstances and expression of personal opinions.

However, the right to freedom of expression is not absolute. Restrictions on freedom of expression may be imposed if prescribed by law and necessary in a democratic society in the interest of national security, territorial integrity or public safety, to prevent disorder or crime, to protect health or morality, to protect the reputation or rights of others, to prevent the disclosure of confidential information or to ensure the authority and impartiality of the judiciary, cf. Article 10(2).

It is considered that the disclosure to the public of realistic imitations of the personal physical characteristics of a natural person in digital form

may constitute an expression covered by Article 10 ECHR. The proposed prohibition must therefore be justified by a legitimate interest and be necessary in a democratic society within the meaning of Article 10(2) ECHR.

The European Court of Human Rights (Court) does not appear to have issued any judgments that directly address the regulation of realistic digitally generated imitations of the physical characteristics of a natural person.

However, in several cases, the Court of Justice generally considered the framework for the encroachment on freedom of expression, which has an artistic element. The protection afforded by Article 10(1) of the ECHR extends, *inter alia*, to the freedom of artistic expression, in particular as regards the right to receive and communicate information and ideas that make it possible to take part in a public exchange of cultural, political and social information and ideas of all kinds: cf., *inter alia*, the judgment of the Court of Justice of 24 May 1988 in *Müller and Others v. Switzerland*, no. 27, and the judgment of the Court of Justice of 8 July 1999 in *Karatas v. Turkey*, no. 49. In this respect, the right to freedom of expression also extends to information and ideas that insult, provoke or disturb the government or any part of the population, cf. judgment of the Court of Justice of 24 May 1988 in *Müller and Others v. Switzerland*, paragraph 33.

Furthermore, Article 10(1) of the ECHR protects not only the content of the ideas and information expressed, but also the form in which they are communicated, cf., *inter alia*, the judgment of the Court of Justice of 24 February 1997 in the case of *De Haes and Gijssels v. Belgium*, paragraph 48.

Furthermore, in connection with encroachments on the artistic freedom of expression that occurs in consideration of the rights of others, including because the artwork uses caricature, satire or other means to express criticism of the actions or attitudes of others, it is important to consider who is the subject of the criticism, as certain persons, due to their office or position, must tolerate a greater degree of criticism, cf., *inter alia*, the judgment of the Court of Justice of 25 January 2007 in the case of *Vereinigung Bildender Künstler v. Austria*, paragraphs 32-39.

Furthermore, it is clear from the case law of the Court of Justice in cases of defamation and statements on matters of general interest that certain persons must tolerate a greater degree of criticism. This applies in particular to heads of state and politicians. In this regard, civil servants enjoy greater

protection than politicians, but less than private individuals. A number of other persons may be regarded as public figures, which means that they must tolerate critical comments about their person and actions to a greater extent than private individuals, cf. Jon Fridrik Kjølbro, the European Convention on Human Rights for Practitioners, 5th edition (2020), p. 1134.

In assessing whether the proposed prohibition serves a worthy purpose and is necessary in a democratic society, it has been emphasised that the general objective of the prohibition is to ensure that the physical characteristics of natural persons are not misused in realistic digitally generated imitations, including that these are not misused to produce imitations that may seriously harm the essential interests of the individual or society or that may create a concrete danger to life or property. The proposed ban therefore takes into account the need to prevent disorder or crime and to protect the good name and reputation or rights of others.

In the government's view, the proposed ban therefore serves objective purposes that justify an encroachment on freedom of expression.

It is also the government's view that the proposed general prohibition does not go beyond what is necessary to safeguard those interests, since the ban only covers virtual digital imitations with a likelihood of confusion.

The government has also emphasised that the proposed scheme provides for significant exceptions to the proposed ban on publication to the general public if the publication of the realistic digitally generated imitation can mainly be said to be an expression of a caricature, satire, parody, pastiche, criticism of power, social criticism, etc. This takes into account the need to avoid unnecessary encroachment on freedom of expression, including artistic freedom of expression.

The government has also emphasised that, with the emergence of the possibility to produce realistic digitally generated imitations, which contain the physical characteristics of natural persons, there has been a marked shift in what it is possible for individual or few persons to produce in a short period of time, as they can now produce high-quality imitations that are easily confused with reality and which, if the content is suitable for that purpose, are therefore likely to cause actual danger to individuals or to important public interests. It has been included in the government's considerations that this is a very new form of expression in which the Danish pub-

lic as a whole has very limited experience, by which the potential for damage is proportionally large.

Against this background, the government considers that the proposed scheme can be implemented within the framework of Article 10 of the ECHR.

4. Economic impact and implementation impact on the public sector

The draft act is not considered to have any significant economic or implementation implications for the public sector.

The Ministry of Culture considers that the addition of a legal basis to lay down rules on digital communication with the Copyright Licensing Board, as proposed in Section 47(4), complies, to the extent possible, with the principles of digitisation-ready legislation.

According to principle 1, legislation should be simple and clear, so that it is easy to understand for the citizens and businesses to whom the draft act relates. The Ministry of Culture considers that the draft act is in accordance with this principle.

According to principle 2, legislation must support digital communication with citizens and businesses. The Ministry of Culture considers that the draft act is in line with this principle, as it will introduce a legal basis for digital communication with the Copyright Licensing Board, including the use of certain IT systems, special digital formats and forms and the eID solution in force at the time.

According to principle 3, legislation should partially or fully support the digital administration of legislation (automated case processing) and take into account legal certainty for citizens and businesses. The Ministry of Culture considers that the draft law complies with the principle, as case handling is not subject to general automation. It only introduces a legal basis for establishing rules on digital communication with the Copyright Licensing Board.

According to principle 4, the Danish Ministry of Industry, Business and Financial Affairs should consider whether, instead of introducing new reporting requirements, data may be retrieved from existing public registers as the basis for the administration of the legislation. In principle, concepts and data should be reused across authorities as much as possible. The prin-

ciple is not considered relevant to this draft act, as it does not introduce any reporting requirements.

According to principle 5, a high degree of digitisation requires that data security be given high priority by the authorities.

The secretariat of the Copyright Licensing Board is operated by the Agency for Culture and Palaces and the agency will therefore be the controller of any personal data that may come in when communicating with complainants and respondents before the board. The processing of the data will be carried out in accordance with the requirements laid down in data protection legislation. The Ministry of Culture therefore considers that the draft act complies with principle 5.

According to principle 6, public authorities should, to the extent possible and appropriate, use existing public infrastructure in order to ensure the greatest possible reuse and consistency. The Ministry of Culture considers the draft act to be in line with this principle, as its legal basis does not concern communication via a specific public infrastructure and the Agency for Culture and Palaces will therefore be able to use the systems already used in connection with the service of other boards under the agency.

According to principle 7, the possibility of subsequent verification, as well as the prevention of fraud and errors, should be taken into account when drafting legislation. The proposed provision provides for the possibility to establish rules on the use of the eID solution in force at any time if this is deemed necessary. The Ministry of Culture therefore considers that the draft act complies with principle 7.

5. Economic and administrative impact on trade and industry, etc.

The draft act has limited economic and administrative impact on business.

6. Administrative impact on citizens

The draft act does not have any administrative impact on citizens.

7. Climate impact

The draft act has no climate impact.

8. Impact on the environment and nature

The draft act has no impact on the environment and nature.

9. Relationship to EU law

The draft law does not contain provisions implementing obligations under EU law.

However, the draft act contains provisions relating to Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market, specifically Article 17, which has been implemented in Section 52c of the Copyright Act.

The proposal for Section 65a entails the introduction of a special national rule and the proposed third paragraph of the provision states, among other things, that Section 52c of the Copyright Act applies *mutatis mutandis* to Section 65a. Section 52c implements Article 17 of Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and the proposal therefore goes further than the requirements of Directive 2019/790 of 17 April 2019.

The draft act may constitute regulation of digital services. This draft act will therefore be notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on information society services (codification).

10. Consulted government authorities and organisations, etc.

The draft act was submitted for consultation to the following authorities and organisations, etc. in the period from 7 July 2025 to 21 August 2025 (45 days):

The Danish Data Protection Agency, Danish Data Ethics Board, Danish Digitalisation Agency, Faroe Islands Home Rule Government, Greenland National Government, Media Council for Children and Youth, Copyright Licensing Board and National Audit Office.

The Danish Bar and Law Society, Allente, ANGI Nordic, the Danish Visual Artists' Association, the Danish Association of Educational Media, Copydan AVU Media, Copydan KulturPlus, Tekst & Node, Copydan Verdens TV, Create Denmark, Creative Commons Denmark, Danish Artists' Union, Danish Business, Danish Cinematographers' Union, Danish Writers' Union, Danish Photographic Society, Danish Industry, Danish IT, Danish Entrepreneurs' Association, Danish Journalists' Union, Danish Band Leaders' Association, Danish Composers' Association, Danish Artists' Council, Danish Musicians' Union, Danish Actors' Union, Danish

Soloists' Union, Danish Performing Arts, Danish Lawyers, Danish Advertisers and Marketers, Danish Image Authors, Danish Visual Artists' Union, Danish Playwrights' Association, Danish Film Directors, Danish Publishers, Danish Jazz, Beat and Folk Music Authors, Danish Media Distributors, Danish Media, Danish Popular Authors, Danish Advertising Agencies Trade Association, Danish Fiction Writers, Danish Cartoonists, Danish Independent Record Companies (DUP), Danish Universities, Danish Booksellers Association, Design Denmark, the Danish Academy, DILEM, Discovery Networks Denmark, DK 4, DPCMO, DR, Egmont Int., Facebook, Film and TV Workers' Association, Filmex, the Consumer Council, United Danish Antenna Installations, the Association of Labour Movement Media Companies, the Association of Danish Interactive Media, the Association of Danish Cultural Magazines, the Association of Danish Stage Directors, the Association of Danish Video Distributors, the Association of Film Distributors in Denmark, Authors' Management Company, FTVS - Joint Council for TV Broadcasting in Denmark, Joint Council for Performing Artists, Gold FM, Google Denmark A/S, GRAKOM, Gramex, HBO MAX, IFPI Denmark, Instagram, Institute for Human Rights, IT Industry Association, IT Political Association, Justitia, Local Government Denmark, KODA, Kreakom, National Association for the Preservation of Photographs and Films, LinkedIn, MPLC Denmark A/S Music Publishers, Music Producers' Management Organisation (MPO), Netflix, Nordic Copyright Bureau, Nordic Copyright Protection, Nordisk Film, Nuuday, New Media, OpenDenmark, Copyright Forum, Organisation of Danish Museums, Performex, Producer Rights Denmark, Producers' Association, Radio4, Revy Denmark, RUC, Association of Danish Set Designers, Association of Local Radio and TV Stations, Association of Media Researchers in Denmark, Association of Media in Local Communities (SAML), Copyright Council, Soloists' Association of 1921, Danish Voices – Association of Speakers and Narrators, Spotify, STOFA A/S, Teleindustrien (TI), Telenor, TikTok, TV 2/Bornholm, TV 2/DANMARK A/S, TV 2/Fyn, TV 2/Kosmopol, TV 2/Midtvest, TV 2/Nord, TV 2/Syd, TV 2/Øst, TV 2/Østjylland, UBOD, UBVA Secretariat, Viaplay, VISDA and WAOO.

11. Summary table		
	Positive impact/lower costs (If yes, please specify extent/if no, enter 'None')	Negative impact/additional costs (If yes, please specify extent/if no, enter 'None')

DRAFT

Economic impact on the government, municipalities and regions	None	None
Implementation impact on the government, municipalities and regions	None	None
Financial impact on trade and industry, etc.	None	Limited
Administrative impact on trade and industry, etc.	None	None
Administrative impact on citizens	None	None
Climate impact	None	None
Impact on the environment and nature	None	None
Relationship to EU law	The draft law does not contain provisions implementing obligations under EU law. The draft law contains provisions relating to EU regulation, including, inter alia, Section 52c of the Copyright Act, which implements Article 17 of Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market.	
Conflicts with the five principles for the im-	Yes	No

plementation of professional EU regulation (which, where relevant, also applies to the implementation of non-professional EU regulation) (mark as X)	X
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Explanatory notes on the individual provisions of the draft Act

Re Section 1

Re no. 1

The Copyright Act has had its current title since Act No. 395 of 14 June 1995.

It is proposed that the *title* be changed to the ‘Copyright etc. Act’, as this draft law envisages the introduction of new rights that are not to be designated as copyright and one of that fall within the scope of personal rights. Since the current Copyright Act also already contains rules concerning rights other than copyright, including the rights found in Chapters 5 and 6, it is considered appropriate that this be reflected in the title of the act.

The amendments are of a purely legislative nature and are intended to illustrate that the scope of the law is broader than pure copyright protection.

Re no. 2

A number of provisions in the act regulate and apply the term ‘performers’.

It is proposed to insert the following after ‘performers’ throughout the act: ‘or artists’, and after ‘performer’: ‘or artist’, ‘performers’: ‘or artists’.

With the proposal, a number of the provisions of the act will be extended from merely regulating performers to also regulating the artistic performance or presentation of artists.

The proposal should be viewed in conjunction with Article 1(5) of the draft act to amend Section 65, so that the resulting protection of performers is extended to include the artistic performance or presentation of artists.

The amendments to the provisions and headings of the provisions will mean that artists who perform artistic performances will be treated as equivalent to performers, so that performances or presentations that cannot be considered to have the status of work will also be protected under the Copyright Act.

See also Section 2.3 of the draft act and the explanatory notes to Section 1, no. 5 to 8, of the draft act.

Re no. 3

The Copyright Licensing Board is governed by Section 47 of the Copyright Act. The board makes final administrative decisions in cases referred to the board in accordance with the rules laid down in the Copyright Act, including in relation to remuneration payments to collecting societies and matters of access to material, to which effective technical measures apply. The board's responsibilities are set out in the current Section 47(2).

According to Section 47(2) of the Copyright Act, the Copyright Licensing Board may make a decision pursuant to Section 11c(3), Section 13, Section 13a(5), Section 14, Section 16b, Section 17d(3), Section 18(1), Section 24a, Section 29a(3), Section 30, Section 35(7), Section 48(1) and (2), Section 51(2), Section 52a(8), Section 52b(4), Section 52c(6), Section 55b, Section 68, Section 75a(3) and Section 75d. The board is therefore authorised to decide on disputes covered by these provisions. The board's decisions cannot be appealed to any other administrative authority.

It follows from the proposed Section 65a(3) that the provision in Section 47(1) and (2) applies *mutatis mutandis* to realistic digital imitations of performer's performances or the artistic performances or presentations of artists.

It follows from Section 67a(3) that disputes concerning the obligation to provide information under this provision may be brought by any of the parties before the Copyright Licensing Board, cf. Section 47(2).

It is proposed that in *Section 47(2)*, the words 'Section 65a(3), Section 67a(3)' *are added after* 'Section 55c'.

The reference to the proposed Section 65a(3) will mean that the Copyright Licensing Board will be able to deal with disputes concerning contractual licensing in relation to the proposed provision.

The reference to Section 67a(3) will be of a purely legislative nature in order for Section 47(2) to be consistent with what follows from Section 67a(3). By introducing Section 67a to the Copyright Act by Act No. 145 of 20 March 2024, the Ministry of Culture had unintentionally failed to amend Section 47(2), so that it also stated that the Copyright Licensing Board could make a decision pursuant to Section 67a(3).

The amendment will mean that it now also follows from Section 47(2), which specifies the provisions on which the Copyright Licensing Board

may make decisions, that the board will be able to decide on disputes under Section 67a(3).

Re no. 4

The current rules in the Copyright Act do not contain rules on digital communication or authority to establish rules in this regard.

It is proposed that a new *fourth paragraph* be added to Section 47, under which the Minister for Culture may establish regulations on digital communication with the board, including on the use of certain IT systems, special digital formats and forms and the currently applicable national eID solution or the like.

The proposed provision will authorise the minister to establish rules on digital communication with the Copyright Licensing Board, including on the use of specific IT systems, special digital formats and forms and the national eID solution or similar solution in force at any given time.

Re no. 5

It follows from Section 65(1) that a performer's performance of a literary or artistic work may not, without the person's consent, 1) be recorded on tape, film or any other device capable of reproducing it or 2) be made available to the general public.

Article 9 of the Rome Convention provides for the possibility for Contracting States to extend in their legislation the protection conferred by the convention on performers to artists who do not perform literary or artistic work.

It is proposed that in *Section 65(1)*, 'or an artist's artistic performance or presentation,' is added after 'work' and after 'the performer's': 'or the artist's'.

The proposed amendment will expand the first paragraph to also include protection of artists' artistic performances and presentations. Consequently, artists will be granted the same rights as performers when their artistic performances are recorded on tape, film or other device capable of reproducing it or made available to the public. See also Section 2.3. of the general comments on the draft act for further details on the definition of the term artistic performance or presentation.

The proposed amendment would mean that the consent of the artist would be required if their performance or presentation is to be recorded or made available to the public.

Re no. 6

It follows from Section 65(2) that a performance that is recorded as specified in the first paragraph, no. 1, of the provision may not, without the consent of the performer, be reproduced or made available to the public until 50 years have elapsed after the end of the year in which the performance took place.

It is proposed that in *Section 65(2)*, ‘or presentation’ is added after ‘performance’.

The proposed amendment will expand the second paragraph to include the protection of artists’ artistic performances and presentations. This gives artists the same rights as performers in relation to the fact that recordings covered by the first paragraph, no. 1, may not, without the artist's consent, be copied or made available to the public before 50 years have elapsed after the end of the year when their artistic performance took place.

See also Section 2.3 of the draft act.

Re no. 7

It follows from Section 65(3) of the Copyright Act that if a recording of a performance, cf. the first paragraph, no. 1, which is not an audio recording, is published or made public within the period stated in the second paragraph, the protection will last until 50 years have elapsed after the end of the year in which the first publication or public disclosure took place, depending on which is earliest.

It is proposed that in *Section 65(3)*, ‘or presentation’ is added after ‘a performance’.

The proposed amendment will expand the provision to also include protection of artists' artistic performances and presentations. Consequently, a recording other than a sound recording of an artist’s artistic performance, if the recording has been published or made available within 50 years, will be protected until 50 years have elapsed after the end of the year in which the first publication or public disclosure took place, whichever is earlier.

This is a consequential amendment resulting from the proposed repeal of Section 65(1) (Section 1, no. 5, of the draft act).

See also Section 2.3 of the draft act and the explanatory notes to Section 1, no. 5, of the draft act.

Re no. 8

It follows from Section 65(4) of the Copyright Act that if a sound recording of a performance is published or made public within the period mentioned in the second paragraph, i.e. within 50 years of the end of the year in which the performance took place, the protection will nevertheless last until 70 years have elapsed after the end of the year in which the first publication or public disclosure took place, depending on which is earliest.

It is proposed that the words ‘or presentation,’ *be added to Section 65(4).*

The amendment will expand the scope of the provision to cover the protection of artists' artistic presentations. Consequently, the protection of a sound recording of an artist's artistic performance, cf. Section 65(1), no. 1, if it is published or made public within the period referred to in Section 65(2), will last until 70 years have elapsed after the end of the year in which the first publication or making public took place, whichever is earliest.

This is a consequential amendment resulting from the proposed amendment of Section 65(1) (Section 1, no. 5, of the draft act).

See also Section 2.3 of the draft act and to Section 1, no. 5, of the draft act and the comments on it.

Re no. 9

The Copyright Act currently provides for imitation protection of work, cf. Section 2(1) of the act. On the other hand, there is no imitation protection for performing artists. The Copyright Act does not contain any protection for the performance of artists or imitations of them.

It is proposed to add a new provision such as Section 65a of the Copyright Act, according to which realistic digitally generated imitations of a performer's performance or artist's artistic performance or presentation may not be made available to the public without the performer's or artist's consent. The proposed amendment will result in the protection of the physical

characteristics of the performer or artist, including voice, on the grounds that the performance of a performer and an artist is inextricably linked to their voice and appearance. For example, a digitally generated imitation of an author's book reading would be covered by the provision.

However, the voice of the performing artist, etc. will only be protected under the proposed Section 65a to the extent that it is a digitally generated realistic imitation of either a performing artist performing a literary or artistic work or an artist's performance. Digitally generated imitations of, for example, a television interview with the performing artist as a private individual, which cannot be said to constitute a performance of a literary or artistic work, will therefore not be protected by the proposed provision. The same applies to digitally generated imitations of artists as private individuals. Such an imitation may, depending on the circumstances, instead be covered by the proposed Section 73a on the protection of personal characteristics (Section 1, no. 11, of the draft act) if the other conditions for this are met. A digitally generated imitation of the performance of a performer or an artist's performance will only be covered if it is realistic. Realistic is understood to mean that the imitation closely resembles reality in its expression. The realistic criterion lies in the fact that the imitation must be capable of giving rise to a likelihood of confusion with an actual reproduction of, for example, a musician's performance or an actor's public performance.

The term 'digitally generated' should be understood broadly as anything generated using technological means. The wording will therefore cover both imitations generated using sophisticated technological means, such as artificial intelligence, and imitations generated using less sophisticated technological editing tools. The decisive factor is whether the digitally generated imitation is considered to be realistic.

A condition for a realistic digitally generated imitation to be protected under the proposed provision will be that it is an imitation of a performance of a literary or artistic work or artistic presentation. See also Section 2.3 of the draft act.

Consent under the proposed provision will have to be obtained according to the same practice as applies under Section 65. There is therefore no change to the current practice regarding when consent is deemed to have been given in the area of copyright.

Under the proposed *second paragraph*, the protection provided for in the first paragraph lasts until 50 years after the year of death of the performer or artist.

The term of protection will therefore differ from that specified in section 65(2)-(4), as protection is calculated from the year of death of the performing artist or performer, rather than from the date of performance, release or publication. See also Section 2.2.2. of the general explanatory notes to the draft act.

The proposed *third paragraph* states that the provisions of Section 2(3) and (4), Sections 3, 11, 13, 13a, 16a, 16c-16f and 17-17b, Section 17c(2), (3) and (4), Sections 17d-17e, Section 18(1) and (2), Section 19(1) and (2) and Sections 21-23, 24b, 25, 25a, 27, 28, 30a, 33, 34, 35, Section 47(1) and (2), Sections 49, 50-57, 58a, 61 and 62 apply *mutatis mutandis* to realistic digital imitations of performances by performing artists or to artistic presentations of artists.

The proposed provision will make a number of provisions in Chapters 1-3 of the Copyright Act applicable to the imitation protection of performing artists and artists. Performing artists and artists who are imitated through the use of digital tools will therefore be able to obtain protection equal to the one an author would have in the event of a corresponding exploitation or infringement of their work, cf. the reference to Section 2(3) and (4) and Section 3 of the Copyright Act. However, this does not apply to reproduction protection, as the proposed rule is only intended to apply to realistic digitally generated imitations that are made available to the general public. See also Section 2.2.2. of the general explanatory notes to the draft act and to the comments on the first paragraph above.

In addition, the references in the proposed Section 65a(3) to the provisions of Chapter 2 will result in restrictions on the performer's or artist's exclusive right to make digitally generated imitations available to the public without consent and that disputes regarding contractual licensing in relation to the proposed Section 65a will fall within the competence of the Copyright License Board. The reference in the proposed Section 65a(3) to the provisions of Chapter 3 of the Copyright Act will mean that the transfer of the exclusive right to make realistic digitally generated imitations available will be regulated by the respective provisions to which reference is made. This would mean that the common provisions on contract licensing, the rules on licensing and the rules on the reporting obligations of

users to the collective management organisation apply *mutatis mutandis* to the proposed provision. In addition, the rules on the transfer of copyright to others, the rules on changes to the work and on the further transfer of copyright and the rules on the holder's right to annual settlement when the remuneration is established as royalties and the rules on the right of access to the copyright by the holder will apply *mutatis mutandis*. Furthermore, this will mean that the rules on agreements concerning the recording of films and the rules on inheritance and creditor enforcement will also apply *mutatis mutandis*.

Section 52c on the responsibility of online sharing services for copyright infringements on their platform will apply *mutatis mutandis* to the proposed provision.

It is considered appropriate to include the proposed provision in the rules on contractual licences, as it is expected that mass exploitation will give rise to the same problems as those that apply to, *inter alia*, Section 65, which the proposed rule partly reflects, namely that individual clearance will be disproportionately difficult. The rights that will follow from the proposed provision will therefore be able to be managed collectively.

Re no. 10

Section 68 is a limitation of the exclusive rights of performing artists under Section 65(2)-(4) to sound recordings of their performances and the rights of phonogram producers under Section 66(1).

It follows from Section 68(1) that, notwithstanding the provisions of Section 65(2)-(4) and Section 66(1), published sound recordings may be used for radio and television broadcasts and other public performances. The provision in the first sentence does not apply to public performance in the form of the making available of published sound recordings in such a way that members of the public may access them from a place and at a time individually chosen by them, cf. Section 2(4), no. 1, second dash.

It is proposed that in *Section 68(1)*, after ‘Section 65(2)-(4),’ to add ‘Section 65a ((1)-(2))’.

The amendment will mean that the proposed Section 65a will be covered by the scope of Section 68, according to which the exclusive right in the proposed Section 65a is restricted with regard to published sound record-

ings of imitations of realistic digitally generated imitations of an artist's artistic performance.

Re no. 11

In the current Copyright Act, there are no rules on the protection of personal physical characteristics of natural persons.

Under Section 264e of the Criminal Code, identity theft is punishable by a fine or imprisonment of up to six months for anyone who wrongfully 1) uses information about another person, including their personal identification number, name and image, to inappropriately impersonate that person or 2) discloses material in which information about another person, including their personal identification number, name and image, has been used to inappropriately manipulate that person's appearance, which will be punishable by a fine or imprisonment.

The Criminal Code also contains provisions protecting against defamation, cf. Sections 267 and 268 of the Criminal Code.

In certain cases, Section 3(1) of the Marketing Practices Act provides protection against the commercial use of personal images without consent.

Danish law also contains general principles of law on the use of personal images. It follows, firstly, that the commercial use of a person's image may not take place without that person's consent and, secondly, that both publicly known persons and private persons may, depending on the circumstances, be entitled to compensation for non-material damage if the publication of a picture of that person constitutes an unlawful infringement.

See also Section 2.1.1. of the draft act.

It is proposed to add a new provision such as *Section 73a(1) of the Copyright Act*, according to which virtually digitally generated imitations of a natural person's personal physical characteristics may not be made available to the public without the imitated person's consent.

The proposed provision therefore covers imitations of a natural person's personal physical characteristics, which do not fall within the scope of the proposed Section 65a (Section 1, no. 9, of the draft act), which concerns only imitations of a performer's performance or artist's artistic presentation.

Realistic means that the imitation must create a likelihood of confusion with the imitated person. To the extent that the imitation is clearly marked as artificially generated or manipulated, the likelihood of confusion is assumed to be lower.

If it is assessed that the digitally generated imitation of a natural person's personal physical characteristics is likely to cause confusion, making it available to the general public will not be permitted unless consent has been given by the person imitated, without prejudice to the proposed second paragraph.

Digitally generated is to be understood broadly and includes everything generated using technological means. The concept covers both imitations generated using sophisticated assistive technologies, such as artificial intelligence, and imitations generated using less sophisticated technological editing tools.

Personal physical characteristics refer to the traits and characteristics that distinguish a person and are unique to that individual. This may be their appearance, voice, movements, etc., which together constitute personal identity, which means that a person is recognised. The individual elements of personal characteristics are proposed to be protected if an imitation containing the individual elements would in itself be likely to create a likelihood of confusion with the person concerned. It is assumed that this is an imitation of a natural person. The proposed provision therefore does not protect imitations of the business characteristics of legal persons, such as a company name, trademark, etc.

Making digitally generated imitations available to the public, as defined in Section 2(3) and (4) of the Copyright Act, would only be an infringement of the proposed provision. Herein lies the contradiction that there is nothing to prevent realistic digitally generated imitations being made available within the private sphere, such as during a private party.

As personal characteristics are closely linked to a person's personality, it is proposed that this area not be covered by an agreement licence.

Consent will be assumed in the case of a voluntary, specific, informed and unambiguous declaration of intent, by which the person whose personal, physical characteristics are imitated agrees by means of a statement or

clear affirmative action that a digitally generated imitation with its distinctive sign may be made available to the public.

Consent may be withdrawn/revoked at any time. There will be no special formal requirements for a withdrawal of consent. If consent is revoked, the revocation will not affect the legality of the consent-based communication that took place prior to the revocation. The revocation of consent will therefore only pertain to future publication of realistic digitally generated imitations of the personal physical characteristics of the imitated person.

Consent given in connection with the conclusion of a contract may be withdrawn, but the withdrawal is subject to the general rules of contract law. Revocation in itself will not cause the contract to become null and void or to be terminated.

It is the person who makes the realistic digitally generated imitation available to the general public who must prove that consent has been obtained from the person being imitated.

It is proposed in the *second paragraph* of the draft act that the first paragraph does not cover realistic digitally generated imitations of a physical person's personal, physical characteristics, which are mainly expressions of caricatures, satire, parodies, pastiche, criticism of power or social criticism, etc., unless the imitation constitutes misinformation that could specifically pose a serious threat to the rights or significant interests of others.

Realistic digitally generated imitations of personal characteristics that are mainly expressions of caricatures, satire, parodies, pastiche, criticism of power or social criticism, etc. will, with the proposed provision as the starting point, not be covered by the first paragraph of the provision.

A caricature, satire, parody, pastiche, criticism of power or social criticism, etc. are understood to mean that the imitation is a clear expression of humour, entertainment or ridicule, for example through the use of irony, sarcasm, obvious exaggeration or understatement, comparisons, intertextuality or ambiguity as a means of achieving a comic effect.

The proposed provision in the second paragraph therefore aims to ensure that the proposed provision in the first paragraph does not, as a starting point, cover publications that are primarily expressions of a caricature, satire, parody, pastiche, criticism of power, etc., as these enjoy broader

protection under Denmark's international obligations, especially including Article 10 of the ECHR, and where it must therefore be assumed that there must be more compelling reasons for intervention than in the case of reproductions that do not contain such elements. It is therefore also assumed that the proposed provision must be interpreted and applied accordingly. In this respect, see the third paragraph on the relationship to the European Convention on Human Rights.

Imitations containing elements of caricature, etc. may, depending on the circumstances, including their content and the context in which they are presented, be covered by the proposed first paragraph if the main element of the imitation is not an expression of a caricature, satire, parody, pastiche, criticism of power, social criticism, etc. It will depend on a specific assessment of the imitation whether it is an imitation that is essentially the expression of a caricature, etc. This will be the case in particular where, because of its proximity to reality, whether or not it contains an element of caricature, etc., the imitation is likely to entail a risk of misinformation that may give rise to a specific serious threat to the rights or essential interests of others, such as life, health, private life, reputation or property. In such cases, the requirement that it is clear that it is a caricature, etc. will determine whether the imitation is covered by the proposed second paragraph.

It will also have to be taken into account who is targeted by the imitation and who is the subject of any criticism, since, according to the case law of the Court of Justice, certain persons, because of their duties or position, must tolerate a greater degree of criticism, for example public figures such as politicians, prominent officials and, where appropriate, also prominent business leaders, as well as others who may be said to be public figures.

It will be included in the assessment of whether an imitation falls within the scope of the proposed Section 73a(2) whether it is clear that it is a caricature, etc. If it is clearly a caricature, etc., it must be assumed, as a clear starting point, that the imitation will not be suitable to constitute a general danger of infringement of the individual that goes beyond what the person concerned can tolerate or otherwise of misinformation that may cause a specific serious danger to the rights or essential interests of others, such as life, health, private life, reputation or property.

The assessment may include, among other things, the graphic quality of the imitation, as well as the words, actions, objects, locations, persons and other contexts that appear in the imitation. In the case of videos that have

both images and audio, emphasis should be placed on the fact that it must be clear from both the images and audio track that it is a caricature, etc. It should be noted that videos, for example on social media, are often viewed without sound or that the audio side of a video is heard without the image being seen.

The assessment will also have to take into account whether due to its content, including the statements of the imitation, its appearance, including the likelihood of confusion with reality, or any other of its characteristics, the imitation is likely to give rise to a general likelihood of misinformation, which is likely to give rise to a specific serious danger to the rights or essential interests of others, such as life, health, private life, reputation or property. Misinformation means untrue, misleading or erroneous information that could lead to a potential danger or harm to the life, reputation, health or property of others. An example is a caricature, etc. containing a realistic digitally generated imitation of the chief of police encouraging vigilante justice. In addition, there might also be misinformation that could pose a concrete serious threat to other rights or essential interests, such as to life, health, private life or reputation, if a parody or similar digitally generated imitation of a profiled politician, high-ranking official or otherwise publicly known person is made available, e.g. accusing a specific person or group of persons of a crime or encouraging vigilantism against a specific person or group of persons, and where it is not clear that it is a parody.

For example, it might constitute misinformation that poses a risk of serious damage to another person's property if, without consent, an image is made available that shows a realistic digitally generated imitation of a publicly known person encouraging people to make specific significant financial transactions. In relation to reputational damage, these would have to be caricatures, etc. that could create a risk of particularly significant damage, including, for example, the risk of the imitating person losing his or her job or income or the risk of significantly affecting the imitated person's public image, such by accusing or linking him or her to unlawful or generally morally condemned acts.

The risk and clarity assessment will determine when a realistic digitally generated imitation will be covered by the proposed provision in Section 73(2). The clearer it is that the work is a caricature, satire, parody, pastiche, criticism of power or social criticism, etc., the more likely that the imitation falls within the scope of the proposed second paragraph, even

if what the realistic digitally generated imitation conveys could in itself be said to be misinformation.

Whether or not it can be considered misinformation will not depend on whether the person who published the realistic digital imitation of a natural person's personal physical characteristics was aware that the imitation constituted misinformation that could actually seriously jeopardise the rights or essential interests of others when he or she made the imitation available.

It is proposed in the *third paragraph* that the protection in the first paragraph last until 50 years have elapsed after the year of death of the imitated person.

A protection period of 50 years after the death of the person imitated is proposed, as it is considered that this takes into account the fact that it may be deemed offensive to the imitated person's surviving relatives if, soon after the imitated person's death, a realistic digitally generated imitation of the deceased is made available without the consent of the person concerned. On the other hand, it is considered that the term of protection should not be perpetual, as this would be too intrusive in relation to the right to expression through the use of digitally generated imitations. Finally, it is considered that the proposed protection of 50 years is sufficient to prevent a digitally generated imitation from causing significant damage to the historical narrative in the society in which it is made available. See also Section 2.1.2 and Section 3 of the general comments to the draft act.

It is also proposed in *Section 4* of the draft act to allow the publication of already available imitations as part of news reporting, provided that this is done in accordance with good practice and to the extent necessary for the purpose of informing the public about current events.

The provision in the fourth paragraph is intended to allow the inclusion of imitations in news reporting, provided that this is necessary to inform the public about current events. The provision refers to Sections 23(2) and 25 of the act, according to which work may in certain cases be reproduced as part of coverage of or reporting on current events.

The fourth paragraph of that provision clarifies that the right to reproduce imitations will only apply to the making available of imitations when the reproduction is a natural and necessary part of news coverage. Access will therefore only apply when the use is justified for informational purposes

and not when the imitation is used to illustrate the information, for entertainment or other purposes that are not necessary for news relevance.

Re no. 12

Under Section 76(1), no. 3 of the Copyright Act, anyone who intentionally or grossly negligently infringes Section 11(2), Section 52c(2), (4), (6), (7) or (9), Section 60 or Sections 72 to 75 is liable to a fine.

In *Section 76 (1), no. 3*, it is proposed to amend ‘Sections 72-75’ to ‘Sections 72, 73, 74 and 75,’.

By changing the reference to Sections 72-75 to Sections 72, 73, 74 and 75, the proposed Section 73a is then not covered by Section 76 of the Copyright Act and that intentional or grossly negligent infringements of Section 73a will therefore not be punishable by a fine.

Re no. 13

It follows from Section 77(1) of the Copyright Act that when copies of work or creations protected under Sections 65-71 have been manufactured outside Denmark under such circumstances that a similar representation in Denmark would infringe the act, anyone who intentionally or through gross negligence introduces such copies in order to make them available to the public will be punishable by a fine.

In *Section 77(1)*, it is proposed to amend ‘Sections 65-71’ to ‘Sections 65 and 66-71,’.

By amending the reference to Sections 65-71 to Sections 65 and 66-71, the proposed Section 65a is then not covered by Section 77(1) of the Copyright Act. Anyone who intentionally or through gross negligence imports copies of material covered by Section 65a that have been produced outside Denmark under such circumstances that similar production in Denmark would violate the law cannot therefore be punished with a fine.

Re no. 14

It follows from Section 83(1) of the Copyright Act that any person who, intentionally or negligently, infringes one of the provisions referred to in Sections 76 and 77 must pay 1) reasonable remuneration to the injured party for the exploitation and 2) compensation to the injured party for the additional damage caused by the infringement. According to the second

paragraph, in determining damages under the first paragraph, no. 2, profits lost by the injured party and any unfair profits, etc. made by the infringer must be taken into account. It follows from the third paragraph that in cases covered by the first paragraph, compensation may also be established for the injured party for non-material damage.

It is proposed that in *Section 83(1)*, the words ‘Section 65a or’ are added after ‘or negligently infringes’.

The proposed amendment will result in the person who intentionally or negligently infringes Section 65a must pay fair remuneration to the injured party for the exploitation and also compensation to the injured party for the further damage that the infringement has caused. In addition, compensation may be awarded to the person imitated for non-material damage.

Re no. 15

It follows from Section 84(1) that the court may decide that copies that infringe the right to work or other creations protected under Sections 65-71 must 1) be withdrawn from the market, 2) permanently removed from the market, 3) destroyed or 4) handed over to the injured party. The second paragraph specifies that the right to destroy, etc. under the first paragraph does not only apply to the copy itself, but also to materials, tools, etc. that have primarily been used for the illegal production or use of copies. In the third paragraph, it is specified that the measures referred to in the first paragraph are carried out at the expense of the infringer, unless there are special reasons to the contrary. According to the fourth paragraph, the court must carry out a proportionality assessment when deciding whether to implement a measure of destruction or similar pursuant to the first paragraph.

It is proposed that in *Section 84(1)*, the words ‘and Section 73a’ are added after ‘Sections 65-71’.

The proposed amendment is intended to expand the scope of the provision to include the infringements in Section 73a.

The proposed amendment will mean that copies that infringe the proposed Section 73a may be withdrawn from the market, etc. by court decision. In addition, Section 84(2)-(4) may also apply to copies that infringe Section 73a.

Re no. 16

It follows from Section 84(1) that the court may decide that copies that infringe the right to work or other creations protected under Sections 65-71 must 1) be withdrawn from the market, 2) permanently removed from the market, 3) destroyed or 4) handed over to the injured party. The second paragraph specifies that the right to destroy, etc. under the first paragraph not only applies to the copy itself, but also to materials, tools, etc. that have primarily been used for the illegal production or use of copies. In the third paragraph, it is specified that the measures referred to in the first paragraph are carried out at the expense of the infringer, unless there are special reasons to the contrary. According to the fourth paragraph, the court must carry out a proportionality assessment when deciding whether to implement a measure of destruction or similar pursuant to the first paragraph.

It is proposed that a new *no. 4* be added to Section 84(1). Under the proposed provision, the court may decide that copies that infringe the right to work or other creations protected under Sections 65-71 and 73a are removed from the medium on which they are made available.

The proposed amendment aims to update the provision to adapt it to a digital reality. Media refers digital and analogue devices and platforms on which data can be stored and/or displayed. Digital platforms are understood, for example, to be social media platforms, online content-sharing services and file and document-sharing platforms, etc.

Re no. 17

The scope of the act with regard to the protection of other rights is set out in Section 86(1)-(7) of the Copyright Act. Section 86(1) stipulates the scope of application of Section 65 of the Copyright Act. It states that Section 65 applies to 1) performances that have taken place in a country within the European Economic Area and 2) performances reproduced on sound recordings protected under the second paragraph. It follows from Section 86(2) that Section 66 of the Copyright Act on producers of sound recordings applies to 1) sound recordings made in a country within the European Economic Area, 2) sound recordings made by persons who are nationals of, or residents of, a country within the European Economic Area and (3) sound recordings made by companies headquartered in a country within the European Economic Area.

The scope of application of the provisions referred to in Section 86(1)-(7) is also regulated in Order No. 218 of 9 March 2010, most recently amended by Order No. 1001 of 23 June 2023 on the application of the Copyright Act in relation to other countries (Foreign Ordinance). The ordinance expands the protection under the Copyright Act to work and other creations, etc. that are not covered by the immediate protection under Sections 85 or 86 of the act.

The protection is extended as a result of Denmark joining the Berne Convention of 24 July 1971 for the protection of literary and artistic works (Berne Convention) revised in Paris, the World Convention of 24 July 1971 on copyright revised in Paris, the International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement of 15 April 1994 establishing the World Trade Organisation (WTO) containing the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the WIPO Treaty of 20 December 1996 on Copyright (WCT) adopted in Geneva and the WIPO Treaty of 20 December 1996 on Performances and Phonograms (WPPT) adopted in Geneva. The rights of performers are regulated by the Rome Convention and the WPPT and therefore apply *mutatis mutandis* in relation to countries that have joined these conventions pursuant to Sections 12 and 16 of the Foreign Ordinance.

It is proposed to add a new *Section 86(2)*. According to the proposed provision, the proposed Section 65a will apply to imitations of persons who are citizens of or resident in a country within the European Economic Area.

The proposed amendment aims to define the scope of application of the proposed Section 65a. The scope of application will be similar to that of Section 65, the difference being that it is the nationality of the person being imitated and not the location of the performance that determines the scope of application. It is assessed that even though what is protected by the proposed Section 65a is the performance or presentation by the performing artist or performer, it would be inappropriate to make the scope of application of Section 65a conditional on where the performance or presentation took place, as the imitation is not necessarily the result of one specific performance or presentation.

Re no. 18

It follows from Section 86(9), second sentence, that, notwithstanding the provision in the second paragraph, Section 66(1) on reproduction applies to all sound recordings.

It is proposed to amend *Section 86(9), second sentence*, to become the tenth paragraph, so that ‘notwithstanding the provision in the second paragraph’ is replaced by ‘notwithstanding the provision in the third paragraph’.

The proposed amendment is purely technical in nature, as Section 1, no. 17, of the draft act proposes to add a new second paragraph to Section 86. The ninth paragraph would then become the tenth paragraph.

Re no. 19

It follows from Section 86(9), third sentence, that, notwithstanding the provisions of the first to fourth paragraphs, the provisions of Section 65(2)–(4), Section 66(1), Section 67(1) and Section 69(2) on the distribution of copies to the public apply to all performances, sound recordings, visual recordings and radio and television broadcasts.

It is proposed to amend *the third sentence of Section 86(9)* to become the tenth paragraph, so that ‘the first to fourth paragraphs’ would become ‘the first paragraph and the third to fifth paragraphs’.

The proposed amendment is purely technical in nature, as Section 1, no. 17, of the draft act proposes to add a new second paragraph to Section 86. The ninth paragraph would then become the tenth paragraph.

Re no. 20

The scope of the Copyright Act follows from Section 85 as regards copyright and Section 86 as regards other rights.

It is proposed to add a new provision such as *Section 86a* of the Copyright Act, according to which the proposed Section 73a would apply to imitations of all natural persons, including foreign nationals.

Since the proposed Section 73a is intended to neither designate as a copyright right nor as a right resulting from Chapter 5 on other rights, it is considered that a new separate provision should be inserted on the scope of Section 73a. It is also considered that the scope of application should be

broad and apply to imitations of all natural persons, regardless of whether they are citizens of Denmark or a country in the EU or EEA territory.

Re Section 2

It is proposed that the act enter into force on 1 July 2026.

The proposed provision in the *second paragraph* is a transitional provision on the application of the proposed new provisions in Sections 65a and 73a.

In order to prevent the proposed Sections 65a and 73a from interfering with agreements that have already been concluded, it is proposed that the provision not apply to agreements concluded before the entry into force of the act.

On the other hand, agreements concluded or extended after the entry into force of the act will have to be assessed in light of the proposed new provisions in Sections 65a and 73a.

Re Section 3

It is proposed in the *first paragraph* that a territorial provision be introduced, which means that the act does not apply to the Faroe Islands and Greenland.

However, the *second paragraph* stipulates that Section 1 may be brought into force in Greenland in whole or in part by royal decree, subject to the amendments warranted by the circumstances on Greenland. The Copyright Act does not apply to the Faroe Islands, as the Faroe Islands have adopted the copyright guidelines.