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Proposal

for

Act amending the Copyright Act

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

Section

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

1. Throughout the Act, after "performing artists" insert: " or performers", after " performing artist" insert: " or performer", after "a performing artist's" insert:

"or an artist's" and after "performing artists": "or artists".

2. In *section 47(2)*, after "section 55 c," insert: "section 67 a(3)."

3. In *section 47*, the following new paragraph is inserted after subsection (3):

"Paragraph 4. The Minister of Culture may lay down rules on digital communication with the 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."

4. In *section 65(1)*, the following is inserted after "work": "or an artist's artistic performance," and after "artist": "or performers."

5. In *section 65(2)*, after "performance," insert: "or performance."

6. In *section 65(3)*, after "a performance," insert: "or performance."

7. In *section 65(4)*, after "a performance," insert: "or performance."

8. After *section 65*, insert before the heading before *section 66*:

¹ The Act contains provisions which, as drafts, 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).

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"§ 65 a. Realistic digitally generated imitations of the artistic performance of a performing artist or performer may not be made available to the public without the consent of the performing artist or performer.

Paragraph 2. The protection in paragraph 1 shall last until 50 years have elapsed after the death of the performing artist or performer.

Paragraph 3. The provisions of section 2, paragraphs 3 and 4, sections 3, 11, 13, 13 a, 16 a, 16 c-16 f and 17-17 b, section 17 c, subsections 2, 3 and 4, sections 17 d-17 e, section 18, subsections 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 digital realistic imitations of performers' performances or artists' artistic performances.

9. In *section 68(1)*, after "section 65(2)-(4)," insert: "section 65a(1)-(2)."

10. After *section 73*, the following is inserted before the heading before *section 74*:

"Protection against realistic digitally generated imitations of personal characteristics"

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

Paragraph 2. Paragraph 1 does not apply to imitations that are primarily expressions of caricature, satire, parody, pastiche, criticism of power, social criticism, etc., unless the imitation constitutes misinformation that could specifically pose a serious threat to the rights or significant interests of others.

Paragraph 3. The protection in paragraph 1 shall last until 50 years have elapsed after the year of death of the person imitated.

11. In *section 76(1)(3)*, "sections 72-75" is changed to: "sections 72, 73, 74, and 75."

12. In *section 77(1)*, "sections 65-71" is changed to: "sections 65 and 66-71".

13. In *section 83(1)*, after "or negligently violates" insert: "section 65a or".

14. In *section 84(1)*, after "sections 65-71," insert: "and section 73a."

15. In *section 84(1)*, after no. 3, insert as a new number:

"4) removed from the media on which it is made available or"

No. 4 then becomes No. 5.

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16. In *section 86*, the following new paragraph shall be inserted after subsection (1):

"Paragraph 2. The provision in section 65a applies to imitations of persons who are citizens of or reside in a country within the European Economic Area."

Paragraphs 2-9 shall thereafter become paragraphs 3-10.

17. In *section 86(9)*, *second sentence*, which becomes section 10, second sentence, "Notwithstanding the provision in subsection (2)" is changed to: "Notwithstanding the provision in subsection (3)".

18. In *section 86(9)*, *third sentence*, which becomes section 10, third sentence, "subsections (1)-(4)" is changed to: "subsections (1) and (3)-(5)".

1 and subsections 3-5."

19. After *section 86*, *the following* is inserted before the heading before *section 87*:

"Special provision on protection against digitally generated imitations of personal characteristics

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

Section

The Act shall enter into force on March 31,
2026.

Section

(1) The Act does not apply to the Faroe Islands and Greenland.

Paragraph 2. Section 1 may, by royal decree, be brought into force in whole or in part for Greenland with the amendments required by Greenlandic circumstances.

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Comments on the bill General comments

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1. Introduction and background

There are now many ways to create realistic content using artificial intelligence, including by manipulating existing video, audio, and image content. There are easy-to-use tools available online, including applications that can be downloaded to your phone, which can quickly create high-quality manipulated content. With these new possibilities, it will soon be impossible to distinguish between real and manipulated material. Since images and videos are instantly embedded in people's subconscious, digitally manipulated versions of an image or video can create fundamental doubt about—and perhaps even a completely false perception of—what are 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 that person is normally associated, the imitations can, in the worst case, become a real democratic problem—not least in light of the possibilities for rapid dissemination of the content on the internet.

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

The government (the Social Democrats, the Liberals, and the Moderates) and the Danish Democrats, the Socialist People's Party, the Conservative People's Party, the Unity List, the Danish Social Liberal Party, and the Alternative have therefore entered into an agreement on June 26, 2025, to create a safeguard 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

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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. Imitation protection for performing artists

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

Both protections are intended to provide a clear legal basis that can be used by anyone to have realistic digital imitations removed from the various storage media we all use, including social media. The rules are therefore primarily intended to activate the regulation on digital media service providers' rules regarding storage media's obligation to take steps to remove illegal content.

The bill implements the political agreement of June 26, 2025, to create a safeguard against the sharing of digital imitations.

The main purpose of the bill is to create a clear safeguard against the misuse of other people's personal characteristics and to ensure that technological developments, including in particular the possibility of using artificial intelligence to create realistic representations of persons and their performances, etc., does not come at the expense of integrity, credibility, trust, and transparency. The bill therefore proposes to insert two new protections into the Copyright Act, one of which contains two elements, namely performance protection and imitation protection of performances and achievements, while the other is protection of the personal, physical characteristics of natural persons. The protections are being added on the basis of the political agreement with the aim of creating a clear legal framework for the publication of realistic digitally generated imitations of other people's personal characteristics and the performances and performances of performing artists.

The bill introduces a new provision, Section 65a, into the Copyright Act, according to which realistic digital imitations of a performing artist's public performance or an artist's artistic performance may not be made available to the general public without the consent of the performing artist or artist. The proposal also involves an amendment to Section 63 of the Copyright Act, in which a new paragraph 6 is inserted, giving the protection under the proposed Section 65a a duration of up to 50 years from the year of the performing artist's death.

The bill 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 starting point, be made available to the public without the consent of the person imitated. It is proposed that the protection last until 50 years have elapsed after the year of death of the person imitated. It is proposed that the provision does not cover realistic digitally generated imitations of a person's personal physical characteristics that are primarily expressions of caricature, satire, parody, pastiche, criticism of power, social criticism, etc. However, a realistic digitally generated imitation that is primarily an expression of caricature, satire, parody, pastiche, criticism of power, social criticism, etc., may, however, be covered by the proposed provision if it constitutes misinformation that could specifically pose a serious threat to the rights or vital interests of others, such as life, health, privacy, reputation, or property.

Danish law already contains a number of rules regulating the disclosure of manipulated videos, audio, and images containing other people's personal characteristics, including in the Marketing Practices Act, the Data Protection Regulation, and the Criminal Code.

As a result of the political agreement, the bill also contains a proposal to protect artists' performances, whereby artists' artistic performances will receive the same protection as performers' performances of literary and artistic works. The protection of artists' artistic performances is intended to protect performances that are not of literary and artistic works, thereby allowing performances of works that cannot be said to have so-called "work height" to also be protected under Section 65 of the Copyright Act. By granting protection to artists' artistic performances on an equal footing with the performances of performing artists, artists who do not perform literary or artistic works are placed on an equal footing with performing artists who do.

The bill also contains an administrative change, as it is proposed that a provision be inserted to lay down rules on digital communication in connection with the processing of cases by the Copyright Licensing Board.

2. Main points of the bill

2.1. Protection against realistic digitally generated imitations of personal characteristics

2.1.1. Current law

Copyright Act

The right to one's own image in Danish law is based on a different consideration than the protection against imitation under section 2 of the Copyright Act.

Reference is made

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section 2.2.1 of the bill on current law regarding imitation protection.

Under section 70 of the Copyright Act, the person who produces a photographic image (the photographer) has the exclusive right to dispose of the image by producing copies of it and making it available to the public. However, the author cannot dispose of a commissioned portrait photo without the consent of the person who commissioned it, cf. section

Section 76 of the Act, violation of Section 2 or Section 70 is punishable by a fine or, in certain cases under particularly aggravating circumstances, by imprisonment for up to 1 year and 6 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 for up to six years for copyright infringements that result in unjust enrichment for oneself or others.

The Criminal Code

Under Section 264 d, (1), anyone who unjustifiably discloses messages or images concerning another person's private circumstances or, in general, images of the person concerned in circumstances that clearly require protection from wider publicity shall be punished by a fine or imprisonment for up to six months. The provision also applies where the message or image concerns a deceased person.

The penalty may be increased to imprisonment for up to three years if, taking into account the nature and scope of the information or disclosure or the number of persons affected, there are particularly aggravating circumstances, cf. subsection (2).

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

Under section 264 e (2) of the Criminal Code, anyone who unjustifiably produces sexual material as mentioned in subsection (1), no. 2, shall be punished in the same way.

According to the comments on section 264 e, subsection 1, no. 2, cf. Folketingstidende 2021-22, supplement A, bill no. L 103 as proposed, page 11, the requirement that the perpetrator must have "unlawfully" disclosed material in which information about another person, including their social security number, name

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and images, that the disclosure will not be punishable if the person to whom the information relates has given their consent.

It also follows from the above comments that the requirement that the manipulation of another person's appearance must be "inappropriate" implies that – even outside situations where consent has been given – there may be cases where it is not punishable to disclose material in which another person's information has been used to manipulate that person's appearance. Depending on the circumstances, this may, for example, be cases where the information is used in purely private contexts, in connection with parodies and satire, or in other cultural or artistic contexts. In this connection, 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 comments that, depending on the circumstances, the provision may cover cases where deepfakes are used, i.e. manipulation of audio and video using artificial intelligence so that a person appears in videos, etc., doing or saying something that they have not done or said in reality. This could be the case, for example, where the victim's face is cut into a video with audio, making it appear as if the victim is saying something they did not say.

Under section 267(1) of the Criminal Code, anyone who makes or disseminates a statement or other communication or performs an act that is likely to defame someone is punishable for defamation by a fine or imprisonment for up to one year, cf. however, sections 268 and 269.

However, this provision does not apply if the defamation concerns a deceased person and is committed more than 20 years after the death, unless the matter is covered by section 268 of the Act, cf. subsection (2).

Under section 268 of the Criminal Code, the penalty for violation of section 267 may be increased to imprisonment for 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 violations 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 if the aggrieved party so requests, cf. section 275 of the Criminal Code.

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When convicting someone for violating sections 264 e and 267 of the Criminal Code, among others, the courts may also order the deletion of information, including statements, messages, images, etc., if possible, cf. section 271(1) of the Criminal Code. The obligation rests with the person convicted of the offense. However, if that person does not have access to the information, the obligation may be imposed on the person who does have such access, cf. subsection (2) of the provision.

Depending on the circumstances, identity theft may also be punished as a violation of section 279 of the Criminal Code on fraud if the theft is committed with a view to obtaining unjustified financial gain.

The Regulation on Artificial Intelligence

Article 50 of the Regulation on Artificial Intelligence introduces a transparency obligation for providers and operators of certain artificial intelligence systems. It follows from Article 50(2) that providers of AI systems that generate synthetic audio, image, video, or text content must ensure that the output of the AI system is labeled in a machine-readable format and can be traced as artificially generated or manipulated. In addition, Article 50(4) stipulates that operators of an AI system that generates or manipulates image, audio, or video content constituting a deepfake must disclose that the content has been artificially generated or manipulated. Compliance with this transparency obligation should not be interpreted as meaning that the use of the AI system or its output hinders freedom of expression or the right to freedom of art and science guaranteed by the Charter, in particular when the content is part of an obviously creative, satirical, artistic, fictional, or similar work or program. Deepfakes are defined in the regulation as "AI-generated or manipulated image, audio, or video content that substantially resembles actual persons, objects, places, entities, or events and that would be mistaken for being real or truthful."

Marketing law

It follows from Section 3(1) of the Marketing Practices Act that traders must exercise good marketing practices, taking into account consumers, traders, and general public interests. In certain cases, the provision provides protection against the commercial use of images of persons. This may, for example, be in connection with the unauthorized use of an image in violation of the rules of the Marketing Practices Act on good marketing practices. 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 of the Marketing Practices Act do not apply in cases where there is no commercial intent.

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

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

Data protection legislation

The 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 the internet.

It follows from Articles 5 and 6 of the Data Protection Regulation, among other things, that personal data must be processed lawfully and that processing is only lawful if it is done with the consent of the person the data subject, or if it is necessary for the purposes of at least one of the legitimate interests specified in Article 6(1)(b)-(f) of the Regulation. An imitation of a person's voice or appearance may constitute personal data under data protection rules if it is possible in practice to identify the person from that information or in combination with other information.

Data protection rules do not apply if this would be contrary to freedom of expression and information, cf. Article 10 of the ECHR or Article 11 of the EU Charter.

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

The Advertising Order

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

Advertisements may also not, without prior permission, depict or refer to anything belonging to a person in a manner that is likely to give the impression of a personal recommendation.

Under Section 39 of the Advertising Order, any violation of this provision is punishable by a fine.

Unwritten law

In Danish law, there are also two general legal principles regarding the use of personal images. It follows from these that commercial use of a person's image may not take place without that person's permission, cf. e.g. judgment U 1965.126 H (Buster Larsen) handed down by the Supreme Court on January 25, 1965, in case II 175/1963, published in Ugeskrift for Retsvæsen, and that public figures may, depending on the circumstances, be entitled to compensation for tort if the publication of an image of them constitutes an unlawful violation, cf. e.g. judgment U 2010.2448 H (Andrea Elisabeth Rudolph) handed down by the Supreme Court on June 10, 2010, in case 431/2008, published in Ugeskrift for Retsvæsen.

2.1.2. The Ministry of Culture's considerations and the proposed scheme

With the increased opportunities to generate counterfeit imitations, including through the use of artificial intelligence and the easily accessible and easy-to-use digital tools available for this purpose, there is a growing need for clear protection of natural persons against being made the subject of realistic imitations. This applies in particular to public figures, where, for example, realistic videos of the person can be used to make them appear to be sending messages that are contrary to what they stand for, and which may therefore damage the reputation and renown of the person being imitated, personal integrity, self-esteem, or similar. Trust is a fundamental element of democracy, including both trust in each other and trust that the information one receives 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 be the senders of messages that they have not sent, it can undermine democracy and democratic discourse, which is based on the aforementioned trust and on a uniform factual basis among an informed population.

The dissemination of realistic digitally generated imitations used to spread political messages could also damage the population's ability to assess whether a statement is genuine or not, and thus, in the long term, create fundamental doubt as to whether the information received is correct or not.

The speed of technological development and easier access to sharing also increase the need to protect citizens from their personal physical characteristics being used to make them the sender of messages without their consent, which could damage the imitated person's reputation and renown, personal integrity, self-esteem, or similar.

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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 being imitated. It is proposed that the protection should last until 50 years have elapsed after the year of death of the person imitated.

Given that this protection is similar to the protection against realistic digital imitations of performers' performances and artists' performances 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 works 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 performers' performances and artists' performances in section 65a in that the protection of performers in the proposed Section 65a is imitation protection of an artistic performance and artistic achievement and thus protection of the product that a performance or achievement constitutes for a performer. The proposed protection in Section 73a, on the other hand, is intended to protect against the unauthorized disclosure of realistic digitally generated imitations of a person's personal characteristics. It is therefore not a prerequisite for protection under the proposed Section 73a that the person imitated is protected as a performing artist under the proposed Section 65a. The proposed Section 73a will thus cover all natural persons.

The proposed provision also differs from section 264 e of the Criminal Code in that it does not require impropriety, cf. however, below regarding Article 10 of the ECHR, which means, among other things, that there may be cases that fall outside the scope of the Criminal Code if a situation occurs in connection with parody and satire or in another cultural or artistic context. The proposed provision also does not require intent, meaning that the provision also applies to accidental 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.

Redress for violations of the proposed provision may be sought through the civil law system, where liability for damages and compensation may be imposed. By way of comparison, redress may be sought

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redress for a violation of section 264 e of the Criminal Code through both the criminal and civil justice systems, as the provision is subject to private prosecution, but public prosecution may take place at the request of the aggrieved party. In public criminal cases, the case is handled by the police and the prosecution, while in private criminal cases and civil cases, the parties themselves handle the process, including preparing the necessary documents. Private criminal cases are dealt with according to the rules of civil procedure. This means that it is the aggrieved party or their lawyer who must initiate and conduct the criminal proceedings. In cases of violations of the proposed provision and in cases of violations of Section 264 e of the Criminal Code, it is therefore the victim/aggrieved party or the entitled party who is responsible for prosecuting the matter.

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

It should also be noted that the proposed provision does not replace the unwritten legal principles on 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 thus be limited to digitally generated realistic imitations. The criterion of realism means that the likeness must be capable of causing confusion with an actual representation of the person being imitated. For example, making available a digitally generated imitation of a physical person's personal characteristics, where the imitated person is portrayed as a fictional character, would not be covered by the protection, as such an imitation is not considered, as a starting point, to be capable of creating a risk of confusion. However, the risk 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 elf ears, or whether, on the contrary, it is an imitation where the personal characteristics of the person being imitated are inserted into a representation of an alien, or if the otherwise realistic imitation has neon green skin and pink eyes. Furthermore, making a digitally generated imitation of a natural person's personal characteristics available will not be covered by the provision if the imitation is inserted in a context that explicitly appears to be a recognizable fantasy world. Personal physical characteristics are understood to mean the characteristics that distinguish and are unique to the individual. These may be appearance, voice, movements, etc., which together constitute

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parts of the individual's identity and which make a person recognizable to a degree that is likely to create a risk of confusion with the imitated person. The individual parts of the personal characteristics are proposed to be protected provided that an imitation containing the individual parts in itself is likely to create a risk of confusion with the person in question. This may be the case, for example, when it comes to reproductions of certain characteristic voices. The concept of personal physical characteristics must be understood within the framework of the concept of realism. If the reproduction of the personal characteristics is not likely to create a risk of confusion and is therefore not realistic, the reproduction will not be covered by the proposed provision. For example, making available a lifelike 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 explicitly declares itself to be a digitally generated imitation will also not entail such a risk of confusion that it is covered by the protection in the proposed provision.

The proposed protection will only protect against digitally generated imitations being made available to the general public, cf. section 2(3) and (4) of the Copyright Act. Finally, the protection applies in cases where consent for the imitation to be made available has not been obtained. In other words, the protection includes a requirement that consent must be obtained before a digitally generated realistic imitation can be legally made available to the public. The consent must meet the requirements set out in the special remarks to section 1(10) of the bill. The consent and the right to subsequent use of the imitation may be transferred by agreement.

Since the protection concerns the making available of realistic digitally generated imitations of personal characteristics without consent, the protection will thus in principle cover parodies and satirical etc. digitally generated realistic imitations without consent if these involve a risk of confusion.

The publication of realistic digitally generated imitations of personal characteristics is covered by the protection in Article 10 of the European Convention on Human Rights (ECHR) on freedom of expression. This applies in particular to imitations that are primarily expressions of caricature, satire, parody, pastiche, criticism of power or society, etc., which means that they

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enjoy greater protection in relation to publication, etc., than material published solely for commercial interests, for example.

The proposed provision in paragraph 2 thus aims to ensure that the proposed provision in paragraph 1 only covers publication which, in accordance with Denmark's international obligations, including in particular Article 10 of the ECHR, may be subject to intervention. It is therefore also assumed that the proposed provision must be interpreted and applied accordingly. In this connection, reference is made to section 3 on the relationship to the European Convention on Human Rights.

Caricatures, etc. will thus, depending on the circumstances, including their content and the context in which they appear, be covered by the proposed section 73a(1) if they pose a specific threat to the rights or vital interests of others, such as life, health, privacy, reputation, or property, as a result of the risk of confusion due to the realistic digital imitation.

In assessing this, consideration must be given, among other things, to the freedom of expression of the person who has made the imitation available to the general public, weighed against the need to protect the person imitated and the need to protect the rights or vital interests of others. The assessment will depend, among other things, on an assessment of the specific risk of confusion caused by the digitally generated realistic imitation, including how clear it is that the digital imitation constitutes caricature, etc. Imitations that are clearly caricature, satire, parody, pastiche, criticism of power or society, etc., or which are explicitly marked as imitations, must be assumed not to pose a risk to the imitator, to the rights or significant interests of others that necessitates intervention against them, and will therefore not be covered by the protection. In this connection, consideration may be given to 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. This is a discretionary assessment, which may include the graphic quality of the imitation, as well as the words, actions, objects, locations, persons, and contexts that appear in the imitation. In the assessment, consideration must also be given to whether the imitation, due to its content, appearance, including the risk of confusion with reality, or other characteristics, etc., poses a risk of harm to the life, health, privacy, reputation, or property of others. Reference is also made to section 1(10) of the bill and the comments thereto, and to section 3 on the relationship to the European Convention on Human Rights.

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 by the Marketing Practices Act, data protection rules, and the Criminal Code, including section 264 e of the Criminal Code on identity theft.

Personal characteristics are closely linked to a person's identity. For this reason, it is proposed that this area cannot be covered by contractual license agreements. In some cases, digital imitations may be made using the voice and appearance of deceased persons, which may be offensive to the deceased's surviving relatives and may be used to create democratically challenging misinformation. Against this background, it is proposed that the protection should last for 50 years after the death of the person being imitated.

2.2. Protection of performers and artists against realistic digitally generated imitations

2.2.1. Current law

The Copyright Act contains imitation protection, which is granted to copyright holders. Imitation protection follows the exclusive rights of copyright holders 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 the work in a modified form. The assessment of whether a production infringes a work is made on the basis of a specific similarity assessment.

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

The protection of performers is regulated in Articles 2 and 3(2) of the Rental Directive and the Infosoc Directive, which protect performers against the copying and making available of recordings. Articles 4, 8, and 9 of the Satellite and Cable Directive regulate rights in the retransmission of radio and television broadcasts, and Article 3 of the Term of Protection Directive (2006/116/EC) regulates the duration of protection. Neither international treaties, regulations nor directives in the field of copyright regulate the protection of performers against imitation.

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

However, performers do not enjoy imitation protection in the same way as authors.

In the 1995 legislative history, it is stated in relation to the reading of audiobooks and audio newspapers that "the Ministry finds that the issue must be decided according to the same principles that apply to other readings. The type of reading where there is an artistic interpretation of the text will be protected in all circumstances. However, it should not be ruled out to protect the effort behind an apparently neutral reading of a literary work if there is an ongoing assessment of the text's possibilities and artistic devices," cf. Folketingstidende 1994-95, supplement A, L 119 as proposed, page 1392.

The comments on amendment 32 in Act No. 1051 of December 17, 2002, amending the Copyright Act, which made technical changes to Section 65(2), reiterate that performing artists have no protection against imitation, cf. Folketingstidende 2002-03, supplement A, L 19 as proposed, page 256.

Chapter 2 of the Copyright Act contains restrictions on exclusive rights and exceptions thereto. These are justified on practical, cultural, and social grounds. The exceptions thus strike a balance between the exclusive rights of the author and the needs of society 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 in Section 77 of the Constitution and Article 10 of the European Convention on Human Rights may, in special cases, lead to a restriction of copyright. It is therefore possible to refer to a work, make parodies, quote, etc.

It follows from Section 24b of the Copyright Act that it is permissible to use works for the purpose of parody, caricature, or pastiche. The provision also applies to certain other rights, cf. Chapter 5 of the Act on other rights, including the performance of a literary or artistic work by performing artists. The exception in Section 24b does not mean that any form of use will be lawful, as the use of works pursuant to Section 24b will be subject to the three-step test 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 harm to the legitimate interests of the rightholder. The fact that a specific balancing of interests must be carried out in each individual case reflects that the right to use works for the purposes of parody, caricature, and pastiche is not unlimited, as the legitimate interests of the copyright holder may, in specific cases, outweigh the user's freedom of expression. The general comments on Act No. 676 of June 11, 2024 provide examples of cases where the legitimate interests of the copyright holder may outweigh the right to parody, etc. This may be the case, for example, when the work is used in a pornographic context, or when the parody associates the author of the parodied work with racially discriminatory messages. However, it will always depend on a specific assessment whether the use in question is lawful, which will ultimately be up to the courts to assess, cf. Folketingstidende 2023-24, supplement A, L 145 as proposed, page 11.

Other regulations

The marketing and data protection rules, the Advertising Order, and the general legal principles described above in section 2.1.1. on applicable law are also relevant here. For further information, see section 2.1.1.

2.2.2. The Ministry of Culture's considerations and the proposed scheme As a result of the rapid development of artificial intelligence, there is now a need for clear rules on the protection of digitally generated imitations of personal characteristics. The need for extended protection has thus become particularly relevant due to the fact that it is now possible to create realistic content using, for example, artificial intelligence, as well as to manipulate 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. Personal characteristics can thus be reproduced one-to-one in digital imitations. The possibilities are many and the infringements significantly more serious. Performing artists and performers are expected to be particularly affected by this development, as it has become easy to copy and use artists' or performers' personal characteristics, including voice and appearance, in manipulated reproductions of their performances.

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 fundamental equalization of the protection of performers and artists with the protection of authors, whose works may not be copied in their original or modified form. The

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performance of the performer and artist will thus receive the same protection as *the recording* of the performer's performance.

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

The proposed provision is not intended to restrict the possibility of making available, among other things, 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 music tracks are not only in direct competition with the musicians' own original music, but may also be 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 performing artist's performance of a literary or artistic work or of an artist's performance, as defined in the proposed Section 65a, should not, as a starting point, be made available to the general public, as defined in Section 2(3) and (4).

The protection of a performing artist's performance of a literary or artistic work or an artist's performance will include protection of the artist's or performer's voice, appearance, and other physical, personal characteristics. Reference is also made to section 1(8) of the bill and the comments thereto.

The scope of the proposed provision will be limited in two main ways. Firstly, only digitally generated imitations of performances or performances that are realistic and thus likely to cause confusion with, for example, a musician's voice or an actor's appearance, etc., will be covered by the provision. To the extent that the imitation is clearly marked as artificially generated or manipulated, the likelihood of confusion will probably be lower. Non-digitally generated imitations, such as live concerts with physical persons who have formed look-alike and/or sound-alike bands, will thus not be covered by the provision. Firstly, only digital imitations made available to the general public, cf. section 2(3) and (4) of the Copyright Act, will be covered by the provision. The production of imitations will thus not be protected under the provision, as it is assessed that it is the making available, and not the mere production, whose harmful effect requires protection.

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It is proposed that the protection last for up to 50 years after the death of the performing artist or artist. The term of protection will thus differ from that found in section 65(2)-(4), as the protection is calculated from the year of death of the performing artist or performer, and not from the time of performance, the time of publication, or the time of disclosure. It is proposed that the 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 performances without the artist's consent. It is also considered that the expiry of the protection will be easier to determine in this way, given that it will not necessarily be a case of an imitation of a specific performance or presentation that can be dated. Rather, it will be a series of performances or presentations made over a longer period of time that are used to construct 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 protection of performers and artists against imitation. Reference is also made to section 1(8) of the bill and the comments thereto.

The bill also proposes that section 24b of the Copyright Act apply in relation to the proposed provision. This will mean that it will be permissible to use digitally generated imitations of performers' performances or artists' artistic performances without the consent of the performer or artist when this is done for the purpose of parody, caricature, and pastiche, cf. Section 24b. The scope of protection with regard to parodies will thus correspond to the existing protection of performers.

Violations of the proposed provision will entitle the imitated artist or performer to receive remuneration and compensation for the damage caused by the violation in accordance with the rules in Section 83 of the Copyright Act.

The proposal does not entail any changes with regard to who is entitled to prosecute infringements, and existing practice in this area will also apply after the proposal has entered into force. Reference is also made to section 1(13) of the bill and the comments thereto on the proposed amendment to section 83.

The proposed provision will be covered by section 84 of the Copyright Act on destruction, etc., according to which the court, cf. subsection (1), may order that copies that infringe the rights to works or productions protected under sections 65-71 must 1) be withdrawn from trade, 2) be permanently removed from the market, 3) be destroyed, or 4) be handed over to the injured party. Paragraph 1 applies *mutatis mutandis* to materials, tools, etc., which have primarily been used for the unlawful manufacture or use of copies of the work or production. Measures pursuant to paragraph 1 shall be implemented without any

compensation to the infringer and shall not affect any possible compensation to the aggrieved party. The measures shall be implemented at the infringer's expense, unless there are special reasons to the contrary. In a judgment on measures pursuant to subsection (1), the court shall 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 penal provisions of the Copyright Act.

Reference is also made to section 1(16) of the bill and the comments thereto on the proposed section 86(2).

2.3. Performance protection

2.1.1. Current law

According to section 65(1) of the Copyright Act, cf. Consolidated Act No. 1093 of August 20, 2023 (hereinafter referred to as the "Copyright Act"), a performing artist's performance of a literary or artistic work may not, without the artist's consent, be recorded on tape, film, or other device capable of reproducing it, or made available to the general public.

This entails, firstly, a requirement that what is performed is a literary or artistic work, cf. section 1 of the Copyright Act, and, secondly, a requirement that the performance is carried out by a performing artist. The requirement that the performing artist 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 thus conditional upon the performance meeting the requirements for originality, etc., in order to obtain copyright protection. In addition, the performance must be artistic in nature, which means that a purely mechanical reading or similar falls outside the scope of the provision. This is therefore not a case of broad performance protection.

The background for this can be found, among other places, in the report of April 27, 1961, on the bill on copyright in literary and artistic works, which was submitted to Bill No. 94 of November 30, 1960, on copyright in literary and artistic works, which states that a general inclusion of artists under the protection was rejected due to difficulties in defining the concept of "artist." According to the comments in the Act on Copyright in Literary and Artistic Works presented on January 15, 1960, cf. *Folketingstidende* 1959-60, Supplement A, L 146 as presented, column 2762, to the then current Section 45 on the protection of performing artists, it appears that performing artists must be regarded as anyone who interprets or brings to life a literary

literary or artistic work, including musicians, singers, conductors, actors, and reciters. It further states that the provision cannot normally be invoked by artists, acrobats, magicians, impersonators, etc.

The International Convention of October 26, 1961, on the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations, drawn up in Rome (the Rome Convention), sets out a number 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 perform, sing, recite, declaim, play, or otherwise perform literary or artistic works on stage. 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 works.

Performing artists also enjoy protection under the WIPO Performances and Phonograms Treaty of December 20, 1996. Denmark acceded to the treaty on December 20, 1996. Article 2(a) of the treaty defines performers as actors, singers, musicians, dancers, and other persons who play, sing, recite, narrate, perform, interpret, or otherwise perform a literary or artistic work or folklore.

In addition, the rights of performers to their audiovisual performances are protected by the WIPO Performances and Phonograms Treaty, which was adopted in Beijing on June 24, 2012 (the Beijing Treaty). Denmark acceded to the treaty on June 26, 2012. Here, performers are defined in Article 2(a) in the same way as in Article 2(a) of the WIPO Performances and Phonograms Treaty.

2.1.2. The Ministry of Culture's considerations and the proposed scheme

As a result of the political agreement of June 26, 2025, imitation protection must apply to public performances *and* performances, as it is assessed that, in line with technological developments, performances have a greater need for protection than before, see below. In order to provide full protection for performances, it is therefore proposed to include protection for artists' performances in the provisions of the Copyright Act that grant rights to performing artists.

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

It is therefore proposed that the protection of performers be supplemented by protection of artists' artistic performances in accordance with Article 9 of the Rome Convention, which allows for the extension of protection to artists. As stated above, it is assessed that technological developments, including most recently the development of artificial intelligence systems, give rise to a new need for protection of artists' performances, e.g. when a song or play generated by artificial intelligence is performed, as this does not necessarily constitute the performance of a work in the copyright sense, in which case the protection as a performing artist disappears.

Against this background, the Ministry of Culture assesses that Section 65 should in future not only provide protection for performers' performances of works, but that the provision should also provide protection for performances that are not performances of works. This will ensure that artists are fully protected in their performances and thus give artists, for example, the right to their own performance/artistic performance, regardless of whether it is linked to a work or not.

The Ministry of Culture notes that there may be difficulties in assessing what is considered artistic performance 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) performances, whether the performance can be said to have an aesthetic or otherwise artistic character, and whether this is something that is given decisive weight in competitive situations or in assessments of the performance in general. The criteria are not exhaustive.

The proposed addition of "artistic" before performance is intended to clarify that performances that are, for example, purely random in nature, including sporting performances that are solely an expression of technically based choices and omissions in the performance situation and which do not have an artistic or aesthetic character, are not covered by the protection. Artistic performances thus do not include purely sporting or athletic performances that can be said to be solely an expression of

technical ingenuity, endurance, or tactics, and where aesthetics and artistic expression do not play a role in the assessment or performance of the performance.

As there is no consensus in the literature or in court rulings in this area, it is unclear whether non-human creations, including computer-generated creations, can be considered works. It is therefore similarly unclear whether a performance of such creations could be protected under the current Section 65.

Artists should be understood as actors, singers, musicians, dancers, and other persons who perform, sing, recite, declaim, play, or otherwise perform artistic performances on stage. The group of persons will be close to the group of persons covered by the concept of performing artists. Performing artists are understood to be persons who perform literary or artistic works, while artists are understood to be persons who perform artistic performances. Artistic performances will differ from performances of literary and artistic works in that there is no requirement for the performance of a work. Performances of works other than those referred to in section 1 of the Copyright Act will also enjoy protection under the proposed provision.

3. Relationship to the European Convention on Human Rights

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

However, the right to freedom of expression is not absolute. Restrictions may be imposed on freedom of expression if they are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, or for the prevention of the disclosure of information received in confidence, or for the prevention of disorder or crime. It should be noted that the publication for the general public of realistic digitally generated imitations of the personal physical characteristics of a natural person could constitute a violation of the right to freedom of expression.

It should be noted that the publication to the general public of realistic digitally generated imitations of a natural person's personal physical characteristics may constitute an expression covered by Article 10(1) of the ECHR. The proposed ban must therefore be justified by a legitimate interest and be necessary in a democratic society, cf. Article 10(2) of the ECHR.

The European Court of Human Rights (ECHR) does not appear to have handed down any judgments directly addressing the regulation of realistic digitally generated imitations of a natural person's physical characteristics.

In this connection, it should be noted that in several cases, the European Court of Human Rights has addressed the general framework for interference with expressions that have an artistic element. The protection afforded by Article 10(1) of the ECHR includes, *inter alia*, the freedom to engage in artistic expression, in particular the right to receive and impart information and ideas, which enables participation in a public exchange of cultural, political, and social information and ideas of all kinds, see, *inter alia*, the judgment of the European Court of Human Rights of 24 May 1988 in the case of *Müller and Others v. Switzerland*, para. 27, and the judgment of the European Court of Human Rights of 8 July 1999 in the case of *Karatas v. Turkey*, para. 49.

In this connection, 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, see, *inter alia*, the judgment of 24 February 1997 in the case of *De Haes and Gijssels v. Belgium*, para. 48.

Finally, in connection with interference with artistic freedom of expression for the sake of the rights of others, including because the work of art 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, see, *inter alia*, the judgment of the European Court of Human Rights of January 25, 2007, in the case of *Vereinigung Bildender Künstler v. Austria*, paras. 32-39.

In assessing whether the proposed ban serves a legitimate purpose and is necessary in a democratic society, emphasis has been placed on the fact that the overall purpose of the ban is to ensure that the physical characteristics of natural persons are not misused in realistic digitally generated likenesses, including that they are not misused to produce imitations that could seriously harm the essential interests of individuals or society, or that could pose a concrete danger to life or property. The proposed ban thus takes into account the need to prevent disorder or crime and to protect the good name and reputation or rights of others.

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In the government's view, the proposed ban thus serves legitimate purposes that justify an interference with freedom of expression.

Furthermore, it is the government's opinion that the proposed general prohibition does not go beyond what is necessary to take these considerations into account, as the prohibition only covers realistic digital imitations where there is a risk of confusion and which are not primarily expressions of caricature, etc.

The Ministry has also emphasized 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 be said to be primarily an expression of caricature, satire, parody, pastiche, criticism of power, social criticism, etc. This takes into account the need to avoid unnecessary interference with freedom of expression, including artistic freedom of expression.

The Ministry has also emphasized that with the advent of the possibility of producing realistic digitally generated imitations that contain the physical characteristics of natural persons, there has been a significant shift in what it is possible for individuals or small groups of people to produce, as they can now create imitations that could be confused with reality. This shift opens up the possibility for individuals or small groups to easily and quickly produce imitations that could pose a real danger to individuals or society.

Against this background, it is assessed that the proposed scheme can be implemented within the framework of Article 10 of the ECHR.

4. Economic consequences and implementation consequences for the public sector

The bill is not considered to have any significant economic or implementation consequences for the public sector.

The Ministry of Culture assesses that the insertion of a provision to lay down rules on digital communication with the Copyright Licensing Board as proposed in section 47(4) complies as far as possible with the principles of digitization-ready legislation.

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

According to principle 2, legislation must support digital communication with citizens and businesses. The Ministry of Culture assesses that the bill is in accordance with this principle, as the bill will provide a legal basis for digital communication with the Copyright Licensing Board, including the use of specific IT systems, special digital forms and templates, and the eID solution in force at any given time.

According to principle 3, legislation should support the administration of legislation being carried out wholly or partly digitally, taking into account the legal rights of citizens and businesses. The Ministry of Culture assesses that the bill complies with this principle, as case processing is not subject to general automation. Only a legal basis is introduced for laying down rules on digital communication with the Copyright Licensing Board.

According to principle 4, the relevant ministry should consider whether, instead of introducing new reporting requirements, data from existing public registers can be used as a basis for the administration of the legislation. According to the principle, concepts and data should be reused across authorities as far as possible. The principle is not considered relevant to this bill, as it does not introduce any reporting requirements.

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

The Copyright Licensing Board secretariat is operated by the Agency for Culture and Palaces, and the agency will therefore be the data controller for any personal data that may be received in communication with complainants and respondents before the board. The information will be processed in accordance with the requirements set out in data protection legislation. The Ministry of Culture therefore considers that the bill complies with principle 5.

According to principle 6, public authorities should, to the extent possible and appropriate, use existing public infrastructure to ensure maximum reuse and consistency across the board. The Ministry of Culture assesses that the bill is in accordance with this principle, as it does not concern communication via a specific public infrastructure, and the Agency for Culture and Palaces

and Culture Agency will therefore be able to use the systems already in use in connection with the operation of other committees under the agency.

According to principle 7, when drafting legislation, consideration should be given to the possibility of subsequent control and fraud prevention. The proposed provision provides the legal basis for laying down rules on the use of the eID solution in force at any given time, if this is deemed necessary. The Ministry of Culture therefore considers that the bill complies with principle 7.

5. Economic and administrative consequences for businesses, etc. The bill has no economic or administrative consequences for businesses.

6. Administrative consequences for citizens

The bill has no administrative consequences for citizens.

7. Climate implications

The bill has no climate implications.

8. Environmental and nature-related consequences

The bill has no environmental or nature-related consequences.

9. Relationship to EU law

The bill does not contain provisions implementing EU legal obligations.

However, the bill 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 is implemented in Section 52 c of the Copyright Act.

The proposal for section 65a involves the introduction of a special national rule, and the proposed subsection 3 of the provision states, among other things, that section 52c of the Copyright Act shall apply *mutatis mutandis* to section 65a. Section 52 c 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 thus goes beyond the requirements of Directive 2019/790 of 17 April 2019.

The bill may constitute regulation of digital services. The bill 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

regard to technical regulations and regulations for information society services (codification).

10. Authorities and organizations consulted, etc.

A draft bill was sent for consultation to the following authorities and organizations, etc. during the period from July 7, 2025, to August 21, 2025 (45 days):

The Danish Data Protection Agency, the Danish Agency for Digitization, the DSA Supervisory Authority, the Home Rule Government of the Faroe Islands, the Government of Greenland, the Media Council for Children and Young People, the Copyright Licensing Board, and the National Audit Office.

The Danish Bar and Law Society, Allente, ANGI Nordic, the Association of Visual Artists, the Trade Association for Teaching Materials, Copydan AVU-medier, Copydan KulturPlus, Tekst & Node, Copydan Verdens TV, Create Denmark, Creative Commons Denmark, the Danish Artists' Union, the Danish Chamber of Commerce, the Danish Film Photographers' Union, the Danish Writers' Union, the Danish Photographic Society, the Confederation of Danish Industry, Dansk IT, the Danish Entrepreneurs' Association, the Danish Union of Journalists, the 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 Visual Artists, Danish Visual Artists' Union, Danish Playwrights' Union, Danish Film Directors, Danish Publishers, Danish Jazz, Beat, and Folk Music Authors, Danish Media Distributors, Danish Media, Danish Popular Authors, Danish Advertising Agencies Association, Danish Fiction Writers, Danish Cartoonists, Danish Independent Record Companies (DUP), Danish Universities, Danish Booksellers Association, Design Denmark, Danish Academy, DILEM, Discovery Networks Denmark, DK 4, DPCMO, DR, Egmont Int., Facebook, Film and TV Workers' Association, Filmex, Consumer Council, United Danish Antenna Systems, Association of Labour Movement Media Companies, Association of Danish Interactive Media, Association of Danish Cultural Magazines, Association of Danish Stage Directors, Association of Danish Video Distributors, Association of Film Distributors in Denmark, The Authors' Management Company, FTVS - Joint Council for TV Broadcasting Cooperatives 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, Nordic

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Film, Nuuday, New Media, OpenDenmark, Copyright Forum, Danish Museums Organisation, Performex, Producer Rights Denmark, Producers' Association, Radio4, Revy Danmark, 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, Solistforeningen af 1921, Danish Voices – Speaker- og Indlæserforeningen, Spotify, STOF 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 Sekretariat, Viaplay, VISDA, and WAOO.

11. Summary table		
	Positive consequences/reduced expenditure (if yes, specify extent/if no, specify "None")	Negative consequences/additional expenditure (if yes, specify extent/if no, indicate "None")
Economic consequences for the state, municipalities and regions	None	None
Implementation consequences for the state, municipalities, and regions	None	None
Economic consequences for business etc.	None	None
Administrative consequences for businesses etc.	None	None
Administrative consequences for citizens	None	None
Climate implications	None	None

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Environmental and natural consequences	None	None
Relationship to EU law	<p>The bill does not contain provisions implementing EU legal obligations.</p> <p>The bill contains provisions relating to EU regulation, including Section 52 c 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.</p>	
<p>Contrary to the five principles for implementing business-oriented EU regulation (which, to the extent relevant, also apply to the implementation of non-business-oriented EU regulation) (check X)</p>	Yes	<p>No</p> <p style="text-align: center;">X</p>

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Comments on the individual provisions of the bill Re:

Section 1

Re no. 1

A number of the current provisions of the Act regulate and apply the term "performing artists."

It is proposed that throughout the Act, after "performing artists," the following be inserted: "or artists," and after "performing artist": "or artist," "performing artists": "or artists."

With this proposal, a number of provisions of the Act will be expanded from regulating only performing artists to also regulating the artistic performances of artists.

The proposal should be seen in conjunction with section 1(4) of the bill to amend section 65 so that the resulting protection of performing artists is extended to also include the artistic performances of entertainers.

The amendments to the provisions and the headings of the provisions will mean that artists who perform artistic performances will be treated on an equal footing with performing artists, so that performances of creations that cannot be considered to have the status of a work can also be protected under the Copyright Act. Reference is also made to section 2.3 of the bill and the comments on section 1, nos. 4-7 of the bill.

Re no. 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 17 d(3), section 18(1), section 24a, section 29a(3), section 30, section 35(7), section 48(1) and 2, § 51, subsection 2, § 52 a, subsection 8, § 52 b, subsection 4, § 52 c, subsection 6, § 55 b, § 68, § 75 a, subsection 3, and § 75 d. The Board is thus competent to decide on disputes covered by these provisions. The Board's decisions cannot be brought before any other administrative authority.

It follows from section 67a(3) that disputes concerning the duty to provide information under this provision may be brought before the Copyright Licensing Board by either party, cf. section 47(2).

It is proposed that in *section 47(2)*, after "section 55c," the words "section 67a(3)" be inserted.

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The proposed amendment is purely technical in nature and is intended to bring section 47(2) into line with section 67a(3). When Section 67a was introduced into the Copyright Act by Act No. 145 of March 20, 2024, the Ministry of Culture had mistakenly failed to amend Section 47(2) (2) to make it clear that the Copyright Licensing Board could make decisions under section 67a(3).

The amendment will mean that it now also follows from section 47(2), which specifies the provisions under which the Copyright Licensing Board may make decisions, that the Board will be able to decide on disputes under section 67a(3).

Re no. 3

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

It is proposed that a new *subsection 4* be added to section 47, according to which the Minister of Culture may lay down rules on digital communication with the Board, including on the use of specific IT systems, special digital formats and forms, and the national eID solution or similar in force at any given time.

The proposed provision will provide the Minister with the authority to lay down 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 in force at any given time, etc.

Re no. 4

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

Article 9 of the Rome Convention allows contracting states to extend the protection afforded by the Convention to performers who do not perform literary or artistic works in their legislation.

It is proposed that in *section 65(1)*, after "work," the words "or an artist's artistic performance" be inserted.

The proposed amendment will extend paragraph 1 to also include protection of artists' artistic performances. This will give artists the same rights as performers when their artistic

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performances are recorded on tape, film, or other media that can reproduce them, or made available to the general public. Reference is also made to section 2.3. of the general comments to the bill for further details on the definition of the term artistic performance.

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

Re no. 5

It follows from section 65(2) that a performance recorded as specified in subsection (1)(1) of the provision may not be reproduced or made available to the public without the consent of the performing artist 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)*, after "performance," the words "or artistic performance" be inserted.

The proposed amendment will extend paragraph 2 to also include protection of artists' artistic performances. This gives artists the same rights as performers in relation to recordings covered by subsection (1)(i), which may not be reproduced or made available to the public without the artist's consent until 50 years have elapsed after the end of the year in which their artistic performance took place.

Reference is also made to section 2.3 of the bill. Re

no. 6

It follows from section 65(3) of the Copyright Act that if a recording of a performance, cf. subsection (1), no. 1, which is not an audio recording, is published or made public within the period mentioned in subsection (2), the protection lasts until 50 years have elapsed after the end of the year in which the first publication or public disclosure took place, depending on which date is the first.

It is proposed that in *section 65(3)*, the words "or performance" be inserted after "a performance."

The proposed amendment will extend the provision to also include protection of artists' artistic performances. This means that a recording, other than a sound recording, of an artist's artistic performance, if the recording has been published or made public within 50 years, will be protected until 50 years have elapsed after the end of the year in which the first

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publication or disclosure took place, whichever is earlier.

This is a consequential amendment resulting from the proposed amendment to section 65(1) (section 1(4) of the bill).

Reference is also made to section 2.3 of the bill and the comments on section 1(4) of the bill.

Re no. 7

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 subsection (2), i.e. within 50 years after the end of the year in which the performance took place, the protection shall nevertheless last until 70 years have elapsed after the end of the year in which the first publication or disclosure took place, depending on which date is the earliest.

It is proposed that "or performance" be inserted in *section 65(4)*.

The amendment will extend the provision to also include protection of artists' artistic performances. This will extend the protection of a sound recording of an artist's artistic performance, cf. section 65(1)(i), if it is published or made public within the period mentioned in section 65(2), last until 70 years have elapsed after the end of the year in which the first publication or making public took place, whichever is the earlier.

This is a consequential amendment resulting from the proposed amendment to section 65(1) (section 1(4) of the bill).

Reference is also made to section 2.3 of the bill and to section 1(4) of the bill and the comments thereto.

Re no. 8

The Copyright Act currently provides protection against imitation of works, see section 2(1) of the Act. However, there is no protection against imitation for performing artists. The Copyright Act does not provide protection for artists' performances or imitations thereof.

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It is proposed that a new provision be inserted as section 65a of the Copyright Act, according to which realistic digitally generated imitations of a performing artist's artistic performance may not be made available to the public without the consent of the performing artist. The proposed amendment will protect the physical characteristics of performing artists, including their voices, on the grounds that a performing artist's performance and an artist's performance are inextricably linked to their voices and appearance. For example, a digitally generated imitation of an author's book reading would be covered by the provision.

However, the performing artist's voice, 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 TV interview with the performing artist as a private individual, which cannot be said to constitute a performance of a literary or artistic work, will thus not be protected by the proposed provision. The same applies to digitally generated imitations of artists as private individuals. Depending on the circumstances, such an imitation may instead be covered by the proposed Section 73a on the protection of personal characteristics (Section 1(10) of the bill) if the other conditions for this are met.

A digitally generated imitation of a performing artist's performance or an artist's performance will be realistic if it is likely to cause confusion with the performance of a literary or artistic work by the performing artist or an artistic performance by an artist.

The term "digitally generated" should be understood broadly as anything generated using technological aids. The wording will therefore cover both imitations generated using sophisticated technological aids, 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. Reference is also made to section 1(8) of the bill and the comments thereto.

For a realistic, digitally generated imitation to be protected under the proposed provision, it must be an imitation of a performance of a literary or artistic work or artistic achievements. Reference is also made to section 2.3 of the bill.

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Consent under the proposed provision will have to be obtained in accordance with the same practice as applies under section 65. Thus, there will be no change to the current practice regarding when consent is deemed to have been given in the field of copyright.

Under the proposed *subsection (2)*, the protection in subsection (1) will last until 50 years have passed since the death of the performing artist or performer.

The term of protection will thus differ from section 65(2)-(4), as protection is calculated from the year of death of the performer or artist, and not from the time of performance, release, or publication. Reference is also made to section 2.2.2. of the general comments on the bill.

The proposed *subsection 3* states that the provisions of section 2(3) and (4), sections 3, 11, 13, 13 a, 16 a, 16 c-16 f and 17-17 b, section 17 c, subsections 2, 3 and 4, sections 17 d-17 e, section 18(1) and (2), section 19(1) and (2), and sections 21-23, 24b, 25, 25a, 27, 28, 30a, 33, 34, 35, §§ 49, 50-57, 58 a, 61 and 62 apply *mutatis mutandis* to digital realistic imitations of performers' performances or artists' artistic performances.

The proposed provision will mean that a number of provisions in chapters 1-3 of the Copyright Act will apply to the protection of imitations of performing artists and performers. Performing artists and performers who are imitated using digital tools will thus be able to obtain protection similar to that which 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 the protection of reproduction, as the proposed rule is only intended to apply to realistic digitally generated imitations that are made available to the general public. Reference is also made to section 2.2.2. of the general comments on the bill, as well as to the comments on subsection 1 above.

In addition, the references in the proposed section 65a(3) to the provisions of Chapter 2 will result in restrictions on the exclusive right of performers or artists to make digitally generated imitations available to the public without consent. 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 referred to. This will mean that the common provisions for

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contractual licenses, the rules on licensing, and the rules on users' reporting obligations to the collective management organization will apply *mutatis mutandis* to the proposed provision. In addition, the rules on the transfer of copyright to others, the rules on modifications to the work and the transfer of copyright, and the rules on the author's right to annual settlement when the remuneration is set as royalties and the author's right of control in this regard will apply *mutatis mutandis*. Furthermore, this will mean that the rules on agreements on the recording of films and the rules on inheritance and creditor enforcement will also apply *mutatis mutandis*.

Section 52 c on the liability 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 rules on contractual licenses in the proposed provision, as it is expected that the same problems may arise in connection with mass exploitation as apply to, among other things, 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 have to be managed collectively.

Re no. 9

Section 68 is a restriction on the exclusive rights of performers 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 broadcasting and for other public performances. The provision in the first sentence does not apply to public performance in the form of making published sound recordings available in such a way that the general public has access to them at an individually chosen place and time, cf. section 2(4)(i), second indent.

It is proposed that in *section 68(1)*, after "section 65(2)-(4)," the words "section 65a(1)-(2)" be inserted.

The amendment will mean that the proposed section 65a will be covered by the scope of application of section 68, according to which the exclusive right in the proposed section 65a is restricted with regard to published sound recordings of imitations of imitations of imitations of section 68, according to which the exclusive right in the proposed section 65a is restricted with regard to published sound recordings of imitations of realistic digitally generated imitations of an artist's artistic performance.

No. 10

The current Copyright Act does not contain any rules on the protection of the personal physical characteristics of natural persons.

Under section 264 e of the Criminal Code, identity theft is punishable by a fine or imprisonment for up to six months for anyone who, without justification 1) uses information about another person, including their social security number, name, and image, to improperly pretend to be that person, or 2) discloses material in which information about another person, including their social security number, name, and image, has been used to improperly manipulate that person's appearance, shall be punished by a fine or imprisonment.

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

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

Danish law also contains general legal principles on the use of personal images. It follows from this that commercial use of a person's image may not take place without the person's consent and that, depending on the circumstances, public figures may be entitled to compensation for tort if publication of an image of them constitutes an unlawful violation.

Reference is also made to section 2.1.1 of the bill.

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

The proposed provision thus covers imitations of a natural person's personal physical characteristics that are not covered by the scope of the proposed section 65a (section 1(8) of the bill), which only concerns imitations of a performing artist's performance or an artist's artistic performance.

Realistic means that the imitation must be capable of causing a risk of confusion with the person being imitated. To the extent that the imitation is clearly marked as artificially generated or manipulated, there will, as a clear starting point, be no risk of confusion.

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If it is assessed that the digitally generated imitation of a physical person's personal, physical characteristics is likely to cause a risk of confusion, making it available to the general public will not be permitted unless consent has been given by the person being imitated, cf. however, the proposed paragraph 2.

Digitally generated should be understood broadly and will include everything generated using technological aids. The concept covers both imitations generated using sophisticated technological aids, such as artificial intelligence, and imitations generated using less sophisticated technological editing tools.

Personal physical characteristics are understood to mean the qualities and characteristics that distinguish a person and are unique to that individual. These may include appearance, voice, movements, etc., which together constitute the personal identity that makes a person recognizable. The individual elements of personal characteristics are proposed to be protected provided that an imitation containing the individual elements in itself would be likely to create a risk of confusion with the person in question. It is assumed that the imitation is of a natural person. The proposed provision does not therefore protect imitations of the business characteristics of legal persons, such as company names, trademarks, etc.

It will only be a violation of the proposed provision to make digitally generated imitations available to the general public, as defined in section 2(3) and (4) of the Copyright Act. Conversely, this means that there is nothing to prevent realistic digitally generated imitations from being made available in the private sphere, for example at a private party.

Since personal characteristics are closely linked to a person's identity, it is proposed that this area cannot be covered by an agreement license.

Consent will be deemed to have been given when there is a voluntary, specific, informed, and unambiguous declaration of intent, whereby the person whose personal, physical characteristics are being imitated consents, by declaration or clear confirmation, to a digitally generated imitation with their characteristics being made available to the general public.

There will be no special requirements for revoking consent. If the person imitated revokes their consent to realistic digitally generated imitations of a physical person's physical personal characteristics

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may be made available to the public, the revocation will mean that, from the time of revocation, the imitations may not be made available to the public. However, the revocation will not affect the availability to the public that has already been made. For example, the revocation will not affect realistic digitally generated imitations that have been made available, e.g. by being shared on social media before consent was withdrawn, but withdrawal of consent will mean that further making available, e.g. re-sharing or forwarding the imitation on social media, will constitute a violation of the proposed provision.

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.

Paragraph 2 proposes that paragraph 1 does not cover realistic digitally generated imitations of a person's personal physical characteristics that are primarily expressions of caricature, satire, parody, pastiche, criticism of power or society, etc., unless the imitation constitutes misinformation that could seriously jeopardize the rights or vital interests of others.

Realistic digitally generated imitations of personal characteristics that are primarily expressions of caricature, satire, parody, pastiche, criticism of power or society, etc., will, as a starting point, not be covered by paragraph 1 of the proposed provision.

Caricature, satire, parody, pastiche, criticism of power or society, etc. is understood to mean that the imitation is a clear expression of humor, 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 comical effect.

The proposed provision in paragraph 2 aims to ensure that the proposed provision in paragraph 1 only covers publication that, in accordance with Denmark's international obligations, including in particular Article 10 of the ECHR, may be subject to interference. It is thus also assumed that the proposed provision must be interpreted and applied accordingly.

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 paragraph 1 if the main element

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in the imitation is not an expression of caricature, etc. It will depend on a specific assessment of the imitation whether it is an imitation that is primarily an expression of caricature, etc. This will particularly be the case where, due to its realism, the imitation, regardless of whether it contains an element of caricature, etc., must be assumed to entail a risk of misinformation that may cause a specific serious danger to the rights or significant interests of others, such as life, health, privacy, reputation, or property. In such cases, the requirement that it be clearly stated that the imitation is a caricature, etc., will be decisive in determining whether the imitation is covered by the proposed paragraph 3.

The assessment must also take into account who the imitation is directed at and who is the subject of any criticism, as certain persons, due to their office or position, must tolerate a greater degree of criticism according to the practice of the European Court of Human Rights. This applies, for example, to public figures such as politicians, prominent civil servants, and, depending on the circumstances, prominent business leaders.

The assessment of whether an imitation is covered by the proposed Section 73a(2) will include 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 likely to constitute a general risk of violation of the individual that goes beyond what the individual in question must tolerate, or otherwise for misinformation that could pose a specific serious threat to the rights or significant interests of others, such as life, health, privacy, 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 contexts in general that appear in the imitation. In the case of videos that have both image and sound, emphasis must be placed on the fact that it must be clear from both the image and the sound that it is a caricature, etc. It should be noted that videos, including those on social media, are often viewed without sound, or that the sound of a video can be heard without the image being seen.

In the assessment, emphasis must also be placed on whether the imitation, due to its content, appearance, including the risk of confusion with reality, or other characteristics, could lead to a general risk of misinformation that could result in a specific serious risk to the rights or significant interests of others, such as life, health, privacy, reputation, or property. Misinformation is understood to mean false, misleading, or

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incorrect information that could pose a potential risk to or cause harm to the life, reputation, health, or property of others.

An example of this is caricatures, etc., containing a realistic digitally generated imitation of the Chief of Police, encouraging vigilante justice, which is made available. Misinformation may also include information that could pose a serious threat to other rights or significant interests such as life, health, privacy, or reputation if a realistic, digitally generated parody of a prominent politician, senior civil servant, or other public figure who, for example, accuses a specific person or group of people of a crime or encourages vigilante justice against a specific person or group of people, and where it is not clear that it is a parody.

For example, it could constitute misinformation that poses a risk of serious damage to the property of others if, without consent, a video is made available showing a realistic digitally generated imitation of a public figure encouraging people to make specific significant financial transactions. With regard to damage to reputation, this would have to involve caricatures, etc., that could create a risk of very significant damage, including, for example, the risk of the person being imitated losing their job or income, or the risk of significant damage to the public reputation of the person being imitated, e.g. by accusing the person in question of or linking them to illegal or generally morally reprehensible acts.

The risk and clarity assessment will be decisive in determining 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 society, etc., the more likely it is that the imitation will fall within the scope of the proposed paragraph 2, even if what the realistic digitally generated imitation conveys could, in isolation, be said to be misinformation.

It is also proposed in *paragraph 3* that the protection in paragraph 1 shall 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 being imitated is proposed, as it is considered that this takes into account the fact that it may be considered

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offensive to the imitated person's surviving relatives if, in close temporal connection with the imitated person's death, a digitally generated, realistic 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 express oneself through the use of digitally generated imitations. Finally, it is considered that the proposed protection period of 50 years is sufficient to prevent a digitally generated imitation from causing significant damage to the perception of history in the society in which it is made available. Reference is also made to section 2.1.2 and section 3 of the general comments on the bill.

Re no. 11

Section 76(1)(3) of the Copyright Act states that anyone who intentionally or through gross negligence violates section 11(2), section 52c(2), (4), 6, 7, or 9, section 60, or sections 72-75.

It is proposed in *section 76(1)(3)* to change "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 will not be covered by section 76 of the Copyright Act, and intentional or grossly negligent violations of section 73a will therefore not be punishable by a fine.

Re no. 12

Section 77(1) of the Copyright Act states that when copies of works or productions protected under sections 65-71 are produced outside Denmark in circumstances where a similar production in Denmark would be contrary to the law, a fine shall be imposed on anyone who intentionally or through gross negligence imports such copies with a view to making them available to the general public.

It is proposed in *section 77(1)* to change "sections 65-71" to "sections 65 and 66-71".

By changing the reference to §§ 65-71 to §§ 65 and 66-71, the proposed § 65 will not be covered by § 77(1) of the Copyright Act. Anyone who intentionally or through gross negligence imports copies of material covered by section 65a, which has been produced outside Denmark in circumstances where a similar production in Denmark would be contrary to the law, will therefore not be punishable by a fine.

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Re no. 13

It follows from section 83(1) of the Copyright Act (1) that anyone who intentionally or negligently violates one of the provisions mentioned in Sections 76 and 77 must pay 1) reasonable compensation to the injured party for the exploitation and 2) compensation to the injured party for the additional damage caused by the violation. According to subsection (2), when determining compensation under subsection (1)(2), consideration must be given to, among other things, the injured party's lost profits and the infringer's unjustified profits. Paragraph 3 states that in cases covered by paragraph 1, compensation may also be awarded to the injured party for non-economic damage.

It is proposed that in *section 83(1)*, after "or negligently infringes," the following be inserted "section 65a or."

The proposed amendment will mean that anyone who intentionally or negligently infringes section 65a must pay reasonable compensation to the injured party for the exploitation and compensation to the injured party for the additional damage caused by the infringement. In addition, compensation may be awarded to the imitated party for non-economic damage.

Re no. 14

It follows from section 84(1) that the court may order that copies that infringe the right to works or productions protected under sections 65-71 must 1) be recalled from the market, 2) be permanently removed from the market, 3) destroyed, or 4) handed over to the aggrieved party. Paragraph 2 specifies that the right to destroy, etc., pursuant to paragraph 1, covers not only the copy itself, but also materials, tools, etc., that have primarily been used for the illegal production or use of copies. Paragraph 3 specifies that the measures under paragraph 1 shall be carried out at the expense of the infringer, unless there are special reasons to the contrary. Under subsection (4), the court must apply a proportionality test when deciding whether to order destruction or similar measures under subsection (1).

It is proposed that in *section 84(1)*, after "sections 65-71," the words "and section 73a" be inserted.

The purpose of the proposed amendment is to extend the scope of the provision to also include infringements of section 73a.

The proposed amendment will mean that copies that infringe the proposed section 73a may be recalled from sale, etc. by court order. In addition

section 84(2)-(4) will also apply to copies that infringe section 73a.

Re no. 15

It follows from section 84(1) that the court may decide by judgment that copies that infringe the right to works or productions protected under sections 65-71 must 1) be recalled from sale, 2) be permanently removed from sale, 3) destroyed, or 4) handed over to the aggrieved party. Paragraph 2 specifies that the right to destroy, etc., under paragraph 1 covers not only the copy itself, but also materials, tools, etc., that have primarily been used for the illegal production or use of copies. Paragraph 3 specifies that the measures under paragraph 1 shall be carried out at the expense of the infringer, unless there are special reasons to the contrary. Under subsection (4), the court must apply a proportionality test when deciding whether to order destruction or similar measures under subsection (1).

It is proposed that a new *paragraph 4* be inserted in section 84(1). Under the proposed provision, the court may order that copies that infringe the rights to works or productions protected under sections 65-71 and section 73a be removed from the media on which they are made available.

The purpose of the proposed amendment is to update the provision to adapt it to the digital reality. Media refers to digital and analog devices on which data can be stored and/or displayed. The online platform will thus also be covered by this provision.

Re no. 16

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) defines the scope of section 65 of the Copyright Act. It follows that section 65 applies to 1) performances that have taken place in a country within the European Economic Area, 2) performances reproduced on sound recordings that are protected under the provision in subsection (2). It follows from section 86(2) that section 66 of the Copyright Act, concerning producers of sound recordings, applies to 1) sound recordings made in a country within the European Economic Area, 2) sound recordings produced by persons who are nationals of or resident in a country within the European Economic Area, and 3) sound recordings produced by companies with their head office in a country within the European Economic Area.

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The scope of application of the provisions referred to in section 86(1)-(7) is also regulated in Executive Order No. 218 of March 9, 2010, as last amended by Executive Order No. 1001 of June 23, 2023, on the application of the Copyright Act in relation to other countries (the Foreign Countries Executive Order). The Executive Order extends the protection under the Copyright Act to works and other creations, etc., which are not covered by the immediate protection under sections 85 or 86 of the Act.

The protection is extended as a result of Denmark's accession to the Berne Convention for the Protection of Literary and Artistic Works, revised in Paris on July 24, 1971 (the Berne Convention), the Paris Revised Universal Copyright Convention of July 24, 1971, the International Convention of October 26, 1961 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), the Agreement of 15 April 1994 establishing the World Trade Organization (WTO) containing the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the WIPO Copyright Treaty of December 20, 1996, adopted in Geneva (WCT), and the WIPO Performances and Phonograms Treaty of December 20, 1996, adopted in Geneva (WPPT). The rights of performers are regulated in the Rome Convention and the WPPT, and therefore apply *mutatis mutandis* in relation to countries that have acceded to these conventions pursuant to sections 12 and 16 of the Foreign Affairs Order.

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

The purpose of the proposed amendment is to define the scope of application of the proposed section 65a. The scope of application will be similar to that of section 65, with the difference that it is the nationality of the person being impersonated, and not the place of 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 act delivered 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 act took place, as the imitation is not necessarily the result of one specific performance or act.

No. 17

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It follows from section 86(9), second sentence, that, notwithstanding the provision in subsection (2), section 66(1) on imitation applies to all sound recordings.

It is proposed to amend *section 86(9), second sentence*, which becomes section 10, so that "notwithstanding the provision in subsection (2)" is changed to "notwithstanding the provision in subsection (3)".

The proposed amendment is purely technical in nature, as section 1(16) of the bill proposes to insert a new subsection 2 in section 86. Subsection 9 will then become subsection 10.

Re no. 18

It follows from section 86(9), third sentence, that regardless of the provisions of subsections (1)-(4), the provisions of section 65(2)-(4), section 66(1), section 67(1), and section 69(2) on the distribution of copies to the general public for all performances, sound recordings, image recordings, and radio and television broadcasts.

It is proposed that *section 86(9), third sentence*, which becomes paragraph 10, be amended so that "paragraphs 1-4" becomes "paragraphs 1 and 3-5."

The proposed amendment is purely technical in nature, as section 1, no. 16 of the bill proposes to insert a new subsection 2 in section 86. Subsection 9 will then become subsection 10.

Re no. 19

The scope of the Copyright Act is set out in section 85 with regard to copyright and section 86 with regard to other rights.

It is proposed that a new provision be inserted as *section 86a* of the Copyright Act, according to which the proposed section 73a will apply to imitations of all natural persons, including foreign nationals.

As the proposed section 73a cannot be classified as either a copyright or a right under Chapter 5 on other rights, it is considered that a new separate provision should be inserted on the scope of application 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 area.

Regarding section 2

It is proposed that the Act enter into force on March 31, 2026.

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Regarding section 3

It is proposed in *subsection (1)* that a territorial provision be introduced, meaning that the Act does not apply to the Faroe Islands and Greenland.

However, *paragraph 2* stipulates that section 1 may, by royal decree, be brought into force in whole or in part for Greenland with the amendments required by Greenlandic circumstances. The Copyright Act does not apply to the Faroe Islands, as the Faroe Islands have taken over the area of copyright.