



# Copydan KulturPlus

## Private Copying Forum 2016

Tv2, Helium

# AGENDA

1. Copydan v Nokia C-463/12
2. The Danish remuneration system
3. Problems with the Danish system
4. Questions
5. Contact

# Copydan v Nokia – BACKGROUND

- ❖ Case started in April 2010: does the Danish remuneration system include detachable SD cards for mobile phones?
- ❖ SD cards are “multifunctional media” – and can be used for private copying
- ❖ Nokia refuted its liability to pay private copying levies on SD cards
- ❖ 2012: Danish court requested CJEU for a preliminary ruling on the interpretation of Infosoc Directive

# Copydan v Nokia – BACKGROUND

- ❖ The central issue: is the Danish implementation of article 5(2)(b) of the infococ-directive in conformity with EU law?
- ❖ Nokia said: the levy on SD cards is in violation of EU law because:
  - ❖ Copying on SD cards constitutes minimal harm
  - ❖ There is no levy on the internal memory in mobile phones → this violates the principles of equal treatment

# Copydan v Nokia – JUDGMENT

March 2015: CJEU Ruling:

1. Fair compensation must be paid when at least one of the functions of the media enables the user to use it for private copying purposes
2. There has to be legitimate objective reasons for not subjecting the internal memory in mobile phones to a private copying levy (the principle of equal treatment)
3. The CJEU hinted that a levy should also be implemented on the internal memory of mobile phones

# Copydan v Nokia

- ❖ The case clearly indicated that the Danish remuneration system does not conform with the EU principle of equal treatment
- ❖ The Danish remuneration system only carries levies on detachable media and not on integrated media (non-detachable media)
- ❖ Not conform with the principle of equal treatment

# WHAT HAPPENS NEXT?

- ❖ The case will resume before the Danish Court of Appeals end of August 2016
- ❖ The case mainly concerns the legality of the levy on SD cards
- ❖ Unclear whether the court will deliberate on the absence of a levy on mobile phones' internal memory (non-detachable integrated media)

# AGENDA

1. Copydan v Nokia C-463/12
2. The Danish remuneration system
3. Problems with the Danish system
4. Questions
5. Contact



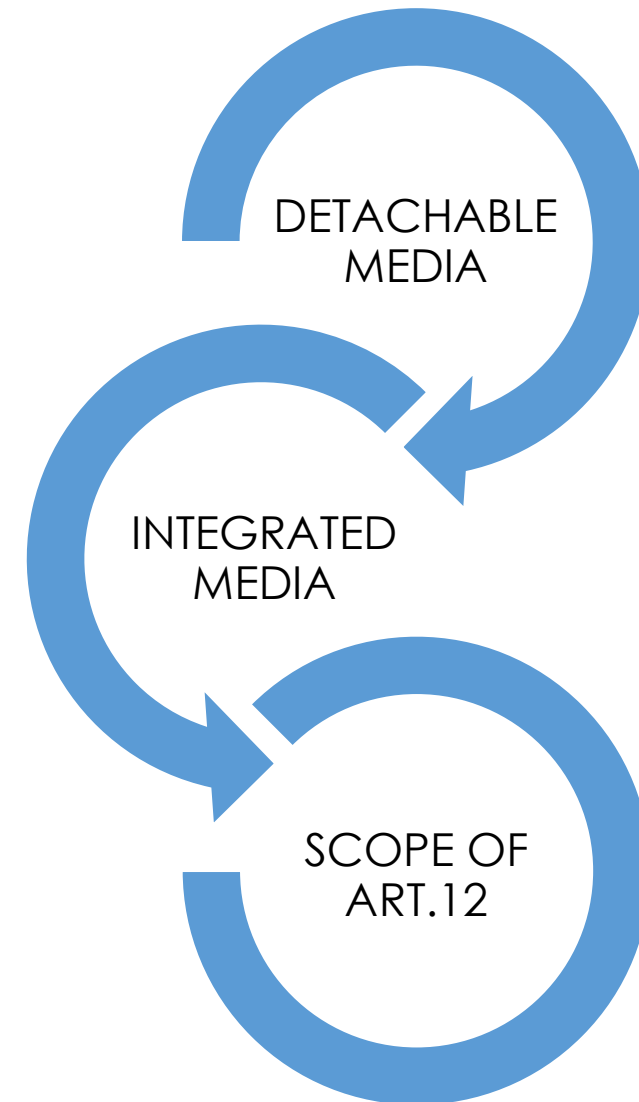
# THE DANISH REMUNERATION SYSTEM

- ❖ Article 12 of the Danish Copyright Act allows reproduction for private use and articles 39-46a relate to the Danish remuneration system
- ❖ The system was introduced in 1992 and Denmark implemented the infosoc-directive in 2002 as well as other EU member states
- ❖ Only levies remuneration on blank detachable media such as CDs, DVDs, USB-sticks and memory cards
- ❖ State funding for DVDs
- ❖ Rights owners have repeatedly since 2003 claimed that the system should also compensate for private copying on integrated media

# AGENDA

1. Copydan v Nokia C-463/12
2. The Danish remuneration system
- 3. Problems with the Danish system**
4. Questions
5. Contact

- Both detachable and integrated media fall under the scope of art. 12
- But NO levies on integrated media even though integrated media can be used for private copying
- Detachable media and integrated media are treated differently without legitimate objective reason
- Period of years where the Danish state has not revised the Danish remuneration system to also include integrated media



# Questions?

# CONTACT

Helle Moalem  
Chief Legal Counsel  
KulturPlus | AVU-medier | Verdens TV | Arkiv |  
E-mail: [hmo@copydan.dk](mailto:hmo@copydan.dk)

