

Code of conduct for ISPs in Denmark, covering the enforcement of intellectual property rights

1. Introduction

Danish ISPs (Internet Service Providers) wish to give the country's Internet users the chance to take advantage of the web's many possibilities, including the opportunity to express themselves. It is however unfortunately true that some persons abuse the Internet in order, along with other purposes, to violate intellectual property rights. The web forums that ISPs make available to users are particularly prone to violation of copyright. This takes place, for example, when films, music, computer programs, etc. are reproduced. ISPs cannot normally be made directly accountable for material causing such infringement, although they do have the power to remove it after being requested to do by the copyright owner.

ISPs do not sympathise with Internet users who infringe the rights of others. ISPs must however also take into account customers' legal rights and the relationship of trust that exists between ISPs and their customers. When ISPs are faced with the sometimes conflicting situations that result, it is important that they have a full understanding of what current law requires of ISPs in cases of infringement and, consequently, that they act consistently and correctly in such situations.

2. Purpose

The purpose of this code of conduct is to provide an overview of how ISPs handle various issues relating to their role as mediator in cases of rights infringement, particularly in relation to articles 14-16 of the Danish law governing e-commerce (*e-handelsloven*).

3. Scope

This code deals only with those products where ISPs provide forums and place server (storage) space at users' disposal, or where ISPs provide an Internet connection (thus acting as intermediaries). The code furthermore deals with matters concerning the disclosure of (edited) personal data as a result of a court order, and in relation to payment.

4. Subjects

4.1 Newsgroups

ISP hosts, like various Internet service providers around the world, offer newsgroup facilities. These form part of a worldwide network of news servers known as "Usenet". News articles posted by Internet users are distributed, by means of "push" technology, to the news servers of ISPs. The exchange of articles between ISPs via Usenet is based on so-called "peering agreements". Usenet operates as a global discussion forum, currently containing over 50,000 newsgroups, sorted by main group, language and theme. A distinction is made between pure-text articles and articles that contain items other than text, such as images, audio and video. These latter articles are known as "binaries", and are often saved under group names containing the term "alt.binaries". Millions of postings are made to ISPs' news servers every month.

ISPs will cooperate in removing illegal or harmful material in specific cases, when requested to do so by copyright holders. If ISPs are made aware of illegal or harmful material, normally supported by detailed documentary evidence, the ISP concerned will remove the material as quickly as possible.

ISPs work on the assumption that copyright owners will hold ISPs exempt from liability for any loss or damage, and that copyright owners will cover all the costs of the ISPs concerned with respect to unjustified requests to remove illegal or harmful material.

ISPs also assume that occurrences of illegal or harmful material will be reported in detail, indicating the nature of the material in question, whenever such material is found in the newsgroups concerned. Notifications concerning the presence of non-specified content, or enquiries that do not show exactly where the material is to be found in the newsgroups will not be examined further. ISPs will remove specific content that is found to be illegal or harmful, but not newsgroups in their entirety.

General monitoring of the legality of the material found in newsgroups is contrary both to the public interest and applicable legislation. Article 16 of the Danish law governing e-commerce (*e-handelsloven*) states that ISPs are not responsible for the content of the information stored in newsgroups.

4.2 Other hosting products

Some ISPs provide forums other than newsgroups, where users can express themselves and share materials, etc., while certain providers also offer users a free facility for setting up their own websites, with content stored on the ISP's servers.

The considerations mentioned above with respect to newsgroups also apply to other hosting products. ISPs will remove illegal or harmful material following the same procedures as described above for newsgroups.

4.3 Access facilities

ISPs offer users Internet connectivity in the form of broadband products, dial-up connections, etc. An internet connection does not in itself constitute content; it is merely a communications link to the web. As ISPs merely act as intermediaries between Internet users, it would appear, under the terms of article 14 of the Danish law governing e-commerce (*e-handelsloven*), that ISPs are not responsible for any illegal content that might be distributed via users' Internet connections.

ISPs will help prevent infringements of rights by cutting off users' Internet connections in certain cases. As the blocking of a user's Internet connection stops the transmission of legal and illegal data alike, steps must be taken to ensure that there is sufficient basis for taking such drastic action against the user. A court order is therefore required to cut off a user's Internet connection.

4.4 Supply of (edited) customer information

ISPs are frequently asked to supply information on their users. Information requests often come from copyright holders, based either in Denmark or elsewhere, whenever intellectual property rights are allegedly violated in some manner.

ISPs will cooperate in providing information on customers who have infringed the intellectual property rights of third parties. It is up to the ISP to decide whether the disclosure, without a prior court order to the effect, of information on users constitutes an infringement of the Danish law covering the use of personal data (*persondataloven*) and possibly the law on marketing practices (*markedsføringsloven*). The Danish Data Protection Agency has accordingly maintained that the use, without a previous court order, of IP addresses to obtain the names and physical addresses of Internet users is contrary to the country's personal-data legislation.

Plaintiffs claiming infringement must therefore first apply for a corresponding court order if they wish to obtain user information from an ISP.

4.5 Payment for the supply of information

The Danish law covering the administration of justice (*Retsplejeloven*) stipulates, in article 300, section 3, that ISPs can claim their costs arising from the provision of information under the terms of a court order, to be paid in advance by the party that has requested the data concerned.

The work involved in finding different items of user information, data regarding online behaviour, etc. is subject to variable costs. It may be necessary, in certain cases, for ISP employees to spend several hours seeking out the information requested. ISPs then charge these costs to the party requesting the information.

ISPs may, in accordance with article 300, section 3 of the Danish law covering the administration of justice (*Retsplejeloven*), ask the requesting party to deposit a suitable sum as security for this purpose. If the requesting

party fails to pay, or refuses to make the appropriate security deposit, the ISP may retain the data until the payment or deposit is received.

4.6 Channels of communication

ISPs will endeavour to establish clear channels of communication with copyright-holder organisations and their representatives, and make it easy for the various copyright holders involved to notify ISPs of any illegal activity that might occur in such areas as newsgroups. This can be done, for example, by providing links and email addresses on ISP websites to permit rapid contact with the relevant members of the ISP's staff.