IAJ THIRD STUDY COMMISSION QUESTIONNAIRE

ANSWERS (WRITTEN IN BOLD) FROM “DEN DANSKE DOMMERFORENING”, THE DANISH ASSOCIATION OF JUDGES.

November 11 2012- November 15 2012 Washington DC, USA

TOPIC 2012

The infringement of copyright and other intellectual property rights, especially through the use of the internet

Question 1

- Does your country have specific legislation dealing with:

1. 1.1. The violation of copyrights?

Yes, Copyright Act.

1. 1.2. Other intellectual property rights?

Yes, Patent Act, Utility Model Act, Design Act, Trademark Act, Collective Marks Act,

1. 1.3. If so, could you specify to what extent?

See 1.1. and 1.2.

1. 1.4. Do specific rules exist for criminal investigation?

Administration of Justice Act, chapter 57 a, gives measures of providing evidence by violation of intellectual property rights. In serious matters covered by the Danish Penal Code section 299 b it is possible for the police to do interception of communications by observation, data reading and disruption or interference of radio- and telecommunications.

1. 1.5. If not, is any such legislation under consideration?

Question 2

- Does your country have specific legislation dealing with:

2.1. Trademark

Yes, Trademark Act.
2.2. Patent


2.3 If so, do these laws include specific punitive measures?

Yes. Trademarks, Patents and Utility Models: fine and imprisonment for until one year and six months and – in serious matters covered by the Danish Penal Code section 299 b - imprisonment until six years.

Question 3

- Does your country have specific legislation dealing with:

3.1. The protection of copyrights based on the use of internet?

Not specific legislation, but the Copyright Act covers the use of internet due to the unwritten principle: “What is in force offline is also in force online”.

3.2. If so, could you specify and give a concrete example?

Question 4

Does your country have specialized agencies to investigate and identify the violation of copyrights and other intellectual property rights, especially through the use of the internet?

Yes. The Public Prosecutor of Serious Economic Crime is specialized also in investigating this kind of crime.

According to the EU Customs Regulation the Customs Service controls goods imported into EU.

As a matter of strengthened efforts against copyright infringement The Ministry of Culture has initiated The committee on copyright on the Internet (Ministry of Culture, Ministry of Justice (assisted by the Director of Prosecution), Ministry of Economic and Business Affairs, Ministry of Science, Technology and Innovation, The Danish Bar and Law Society, the Council for Protection of Property Rights, The Danish Producers Association and the Danish Publishers Association and some other organisations).

In a newly Press Release the Minister for Culture has announced a series of initiatives aimed at making it easier to use creative content online legally. Among the initiatives is the creation of an “Innovation Forum”, which will contribute to a dialogue and exchanging of experiences between the creative industries and the content suppliers and providers concerning boosting the development and availability of the legal business models for supply of creative content. Furthermore the Ministry of Culture will - in cooperation with the Internet service provider industry, the right holders and the
Consumer Council, launch an awareness campaign, which will strengthen the knowledge of the many existing possibilities to legally access music, movies, e-books etc.

Moreover, a number of public authorities (The Danish Patent- and Trademark Office, Danish Customs Task Force Counterfeiting, Danish Ministry of Culture, Danish National Police, Danish Medicines Agency, Danish Safety Technology Authority, National Consumer Agency, Danish Veterinary and Food Administration and the Ministry of Foreign Affairs) has joined forces in the Permanent Danish Network Against Counterfeiting and Piracy.

Question 5

5.1. To what extent does your country have jurisdiction over issues of, for instance, intellectual property theft?

The acts and the Danish Penal Code section 299 b mentioned about.

5.2 Should the principle of universality apply for specific types of cybercrime relating to the infringement of copyright and other intellectual property rights?

According to Danish Penal Code section 9 a an offense relating to text, audio or visual material, etc., as in activities abroad are generally made available in this country through the internet or a similar system for the dissemination of information shall be deemed committed in the Danish State, if the material has a special relationship to this country.

Whether infringement of intellectual property rights in general is considered a crime against all, which any state is authorized to punish, is a political matter.

However, we are not informed of examples of cases brought upon the courts, where the legislation was insufficient.

5.3. Is there a need to establish rules of international criminal law to regulate these aspects of cybercrime?

See 5.2.

5.4. Should there be an international authority to handle the violation of copyright and other intellectual property rights through the use of the internet?

See 5.2.

Question 6

6.1. Did your country sign and/or ratify international agreements or treaties relating to the violation of copyright and other intellectual property rights through the use of the internet?

In 1995 Denmark ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights
Denmark ratified in 2005 the Convention on Cyber-Crime.


In January 2012 Denmark signed the Anti-Counterfeiting Trade Agreement (ACTA), which The European Parliament has just rejected in July 2012.

6.2 Does your country participate in any other form of international cooperation relating to this subject?

Yes. For instance the Danish Government cooperates with the authorities in Japan, Vietnam and Singapore (China).

Question 7

7.1. Is it your opinion that your country could and/or should be more active in dealing with this issue?

See 5.2.

Question 8

8.1. Is it your opinion that you could and/or should be more active in dealing with this issue as a judge?

As the (defence) lawyers and prosecutors often are well informed in matters of great economic interest, such as intellectual property rights, it is important that judges – when needed – also has the possibility to be educated in these subjects.

8.2. Do you have sufficient means – instruments and qualifications – to address the violation of copyright and other intellectual property rights through the use of the internet?

We are not informed of examples of cases brought upon the courts, where the instruments and qualifications were insufficient.

8.3. Is addressing this issue in Court considered to be a specialisation?

No.

Question 9

Is there any other comment on the subject that you would like to make?

No.