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This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

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## EDITORIAL

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Welcome to the twelfth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Three general chapters. These chapters provide readers with an overview of key issues affecting telecoms, media and internet laws and regulations, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 31 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Arnold & Porter for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

*The International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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# Denmark

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## 1 Overview

### 1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

#### (a) Telecoms, including internet

The telecoms market is extremely competitive with 137 telecoms providers in the market, employing a total of 13,000 persons. The annual turnover is 5.1 billion EUR, equivalent to 1.9% of the GDP.

The annual investment in telecoms infrastructure is estimated at 800 million EUR.

Price remains a driving factor in the market, but in most aspects prices remain fairly stable compared to previous drastic price reductions. Recently, additional parameters such as download speeds, free roaming outside the EU, and bundled services (including access to online magazines and cinema tickets) have been used in order to attract customers. The annual churn rate of mobile subscribers is around 12%.

The Danish government has set a goal to enable 100 Mbit/s downstream and 30 Mbit/s upstream for the population by 2020. The current penetration of high-speed access is:

- 100 Mbit/s downstream – 84%.
- At least 10 Mbit/s – 95%.

The 2.4 million fixed net broadband subscribers were distributed as follows (the remaining 6% is not accounted for in the statistics, but may be through the electricity network):

- Broadband via fibre – 19%.
- Broadband via the cable-TV network – 29%.
- Copper-based broadband accounted for – 46%.

The total number of mobile subscribers was 8.5 million by the end of 2015. This number is most probably higher today.

The latest report on the Danish telecoms market was published by the Danish Energy Agency in June 2016, and as it is based on numbers from the second half of 2015, some of the figures above may have changed.

The major telecoms providers are TDC A/S (the former incumbent), Telenor A/S and Telia Denmark, *filial af Telia Nettjänster Norden AB, Sverige*.

#### (b) Audio-visual media distribution

The most important broadcasting companies are the state-owned DR (Danish BroadCasting Corporation) and TV2. The private broadcasters are dominated by Nordic Entertainment Group (part

of Modern Times Group (MTG)) and Discovery Networks Northern Europe Ltd.

The TDC-owned YouSee is the major distributor of television. Among the other bigger players are Stofa and Waoo, whose parent companies merged in October 2018; the market expects a merger of their services in the coming years. The merger may be seen as an attempt to increase market share in a market currently under pressure due to changed media consumption, including “cable shaving”, which is moving consumers from broadcasters to online on-demand services.

### 1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

#### (a) Telecoms, including internet:

- the Consolidated Act on Electronic Communications and Networks and Services, Act No. 128 dated 7 February 2014 (the “Telecoms Act”) – an English version of the main act from 2011 may be found here: [https://ens.dk/sites/ens.dk/files/Tele/act\\_on\\_electronic\\_communications\\_networks\\_and\\_services.pdf](https://ens.dk/sites/ens.dk/files/Tele/act_on_electronic_communications_networks_and_services.pdf);
- the Executive Order on the Provision of Communications Networks and Services, Executive Order No. 715 dated 23 June 2011 (the “Provision Order”);
- the Act on Radio Frequencies, Act No. 1100 dated 10 August 2016 (the “Frequency Act”);
- the Act on Cable Laying Access and Expropriation, etc. for Telecommunications Purposes, Act No. 662 dated 10 July 2003 (the “Cable Laying Act”);
- the Act on the Establishment and Joint Utilization of Masts for Radio Communications Purposes, Act No. 681 dated 23 June 2004 (the “Mast Act”);
- the Executive Order No. 482 dated 20 May 2016, regarding Universal Service Obligations (the “USO Order”);
- the Executive Order No. 988 dated 28 September 2006, regarding retention of data (the “Retention Order”), which has since been amended by the Executive Order of Amendment No. 660 dated 19 June 2014;
- the Act on the Center for Cyber Security, Act No. 713 dated 25 June 2014 (the “Cyber Security Act”); and
- the Network and Information Security Act, Act No. 1567 dated 15 December 2015 (the “Network and Information Security Act”).

The internet sector is subject to telecoms regulation. However, telecoms regulation does not cover content. Content is regulated in:

- the Danish E-Commerce Act, Act No. 227 dated 22 April 2002 (the “E-Commerce Act”); and

- the Danish Consumer Agreements Act, Act No. 1457 dated 17 December 2013 (the “Consumer Agreements Act”).

Matters relating to the administration of domain names are regulated by Act No. 164 dated 26 February 2014 (the “Internet Domain Act”).

(b) Audio-visual media distribution

The most important Danish regulations governing media, including radio and TV broadcasting, are:

- the Consolidated Act on Radio and Television Broadcasting, Act No. 444 dated 8 May 2018 (the “Radio and TV Act”); and
- the Act on Copyright, Act No. 1144 dated 23 October 2014 (the “Copyright Act”).

The rules on advertising in the Danish Radio and TV Act are supplemented by the general rules in the Danish Marketing Practices Act, Act No. 426 dated 3 May 2017 (the “Marketing Practices Act”), as well as special sector rules on, e.g., the advertising of healthcare and alcohol products on television.

**1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.**

(a) Telecoms, including internet

The Danish Energy Agency (“DEA”) (<https://ens.dk/en/our-responsibilities/telecom/telecom-regulation>) and the Danish Business Authority (“DBA”) (<https://danishbusinessauthority.dk/telecom>) are the regulatory supervisory authorities for the telecoms and internet sector.

Other relevant authorities are:

- the Danish Competition and Consumer Agency – merger control and establishment of significant market position;
- the Data Protection Agency – data protection;
- the Centre of Cyber Security under the Ministry of Defence – supervision of network and information security in the telecoms sector; and
- the Danish Consumer Ombudsman – supervision of some requirements included in the Provision Order, including subscription terms.

The Danish Internet Forum (“DIFO”) has overall responsibility and management of the top-level domain “.dk”.

The Telecom Industry Association – Denmark (in Danish: *Teleindustrien* “TI”) is the industry association for the majority of companies in the telecoms sector. TI promotes the sector, including the use of sector agreements instead of legislation. So far, TI has developed a number of sector agreements including: on joint digging of infrastructure, thereby reducing network construction costs; on procedures on net neutrality; and on requests for DNS blocking.

(b) Audio-visual media distribution

The Ministry of Culture and the Radio and Television Board (in Danish: *Radio- og tv-nævnet*) are the relevant regulators.

The Radio and Television Board consists of 10 members appointed by the Ministry of Culture.

**1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?**

The sectors are fully liberalised and open to foreign investment.

The sectors are under merger control regulation, as in any other industry.

## 2 Telecoms

### General

**2.1 Is your jurisdiction a member of the World Trade Organisation? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?**

Denmark has been a member of the WTO since 1995. As part of the EU, Denmark committed to the fourth protocol of GATS regarding basic telecommunications services in 1998, including the telecoms reference paper.

**2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?**

The regulation is based on the EU legal framework.

The Telecoms Act is the core of the framework in respect of providers of communication networks and services.

The Provision Order specifies the obligations of the telecom providers in respect of their end-users.

The Frequency Act regulates the administration of frequency licences.

The Mast Act and the Cable Laying Act regulate the planning of network infrastructure.

**2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government?**

The DEA and the DBA are the main regulatory authorities of the telecom sector.

The DEA is the primary authority responsible for the regulation of international roaming, spectrum, the Danish numbering plan, planning of infrastructure, service obligations of telecom providers, etc. The DEA is currently organised under the Ministry of Industry, Business and Financial Affairs.

The DBA is the telecommunications regulator. It regulates the competition on the telecommunications market (SMP – Significant Market Position). The DBA also has the responsibility for regulating certain issues concerning the internet. The DBA and the Danish Competition and Consumer Agency cooperate to establish the relevant telecoms markets, including the classification of telecom providers holding SMP status. The Danish Competition and Consumer Agency are currently organised under the Danish Ministry of Energy, Utilities and Climate.

All of the authorities are organised under the public administration, and in principle they are subordinate to the relevant ministers appointed by the government.

**2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?**

Decisions may be appealed to the Telecommunications Board of Appeal (in Danish: *Teleklagenævnet*).

Decisions by the Board of Appeal may be appealed to the regular courts.

## Licences and Authorisations

### 2.5 What types of general and individual authorisations are used in your jurisdiction?

Operators can start the provision of electronic communications services without a previous notification to the DEA, DBA or any other Danish authority.

The undertaking shall only be registered at the Danish National Police in order to provide a contact person in respect of requests for wire-tapping or provision of communication information from a specific subscriber, as part of a criminal investigation.

### 2.6 Please summarise the main requirements of your jurisdiction's general authorisation.

As described in question 2.5, no authorisation is required.

### 2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

As described in question 2.5, no authorisation or licence is required. Consequently, there are no restrictions on the change of control of providers of communication networks or services.

## Public and Private Works

### 2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The DEA may initiate expropriation of land for the purpose of laying cables for public telecoms networks. Network operators shall provide access to their passive infrastructure, such as ducts and manholes, to other operators intending to roll out high-speed broadband networks. Such access shall be provided on fair and reasonable terms. This is further specified in the Cable Laying Act. The Mast Act regulates access to existing or new masts, antenna positions and buildings. The DEA may initiate expropriation in order to ensure establishment of masts and antenna systems and access to such facilities.

## Access and Interconnection

### 2.9 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

Providers of public electronic communications networks or services have an obligation to negotiate agreements with each other on interconnection, for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of such services throughout the EU and EEA.

Telecoms providers with SMP status shall accommodate all reasonable requests for establishing or modifying interconnection agreements from other telecoms providers.

The DBA may decide that certain obligations, including in justified cases the obligation to interconnect individual networks, shall be

imposed on telecoms providers controlling access to one or more end-users.

The DBA may decide on interconnection or access disputes. Such decisions may be appealed, as described in question 2.4.

### 2.10 Which operators are required to publish their standard interconnection contracts and/or prices?

Operators with SMP status on a relevant market may be required to publicise their standard interconnection contracts and be subject to price control.

Currently, the following requirements for standard offers and price controls exist on these four markets:

- Market 1: wholesale call termination on individual fixed telecoms networks. Thirty-eight operators, including TDC, have SMP status. TDC is required to publicise its standard interconnection agreement and is subject to price control. All of the remaining 37 operators are also subject to price control.
- Market 2: wholesale voice call termination on individual mobile telecoms networks. Hi3G (3), Lycamobile, Mundio Mobile, TDC, Telenor and Telia have SMP status and are subject to price control.
- Market 3a: wholesale local access provided at a fixed location. TDC is required to publicise its standard interconnection agreement and is subject to price control.
- Market 3b: wholesale local access provided at a fixed location for mass-market products. TDC is required to publicise its standard interconnection agreement and is subject to price control.

On 29 June 2018, the DBA decided that the specific obligations imposed on TDC in respect of Market 1 and 2 shall be terminated, with effect from 29 June 2019. TDC will remain subject to price control also after 29 June 2019, as will the other operators with SMP status.

### 2.11 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

In general, charges for interconnection and/or network access are subject to negotiations between the parties.

Telecoms providers with SMP status may be subject to price control regulation, and consequently are under an obligation to provide services at cost-related prices, as described in question 2.10 in respect of the individual markets.

### 2.12 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

No, not under the current market decisions, as further described in question 2.10.

### 2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?

As described in question 2.8, network operators are required to provide other operators intending to roll out high-speed broadband

networks access to their physical infrastructure. Such access shall be provided on fair and reasonable terms. This is further specified in the Cable Laying Act.

There are no government-subsidised incentives or regulatory holidays.

## Price and Consumer Regulation

### 2.14 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

As described in question 2.10 above, operators with SMP status are subject to price control in certain markets.

### 2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?

The provision of electronic communications services to consumers is subject to specific rules, described in detail in the Provision Order. All providers of services to end-users must comply with a number of specified conditions (Part 2, Provision Order). The main conditions include an obligation for the provider to:

- Ensure that all users connected to the service can make calls free of charge to the public emergency service (112) and make calls to a universal service provider's text telephone service and emergency call number.
- Provide access to a directory enquiry service.
- Ensure that a contract is made as a basis for any customer relationship, and that the contract contains at least the information listed in Annex 1 or 2 of the Provision Order, including:
  - fault repair services;
  - traffic prioritisation, if this operates, and its impact on the end-user's use of the service;
  - options regarding personal data in number databases and which data are included in them;
  - restrictions on the use of terminal equipment delivered;
  - conditions for renewal of the contract; and
  - the procedure for settling disputes.
- Handle complaints from end-users complying with the process and deadline of three months (extended to six months in some cases) for resolving such complaints.
- Provide end-users of voice telephony the following services and facilities free of charge:
  - stopping call forwarding from a third party;
  - barring; and
  - barring of access to information and content services.
- Provide end-users access to their current billing data.
- Provide end-user billing control, if usage-dependent charging is used in providing the service.
- Provide end-user tariffed-grouped billing or itemised billing if usage-dependent charging is used in providing the service.
- Provide facilities to eliminate presentation of calling line identification.

## Numbering

### 2.16 How are telephone numbers and network identifying codes allocated and by whom?

The DEA manages the Danish numbering plan comprising numbers, series of numbers and addresses to be used in the provision of telecoms networks or services.

In general, numbers, series of numbers and addresses will be assigned to the telecoms provider who requests assignment of the numbering resources.

### 2.17 Are there any special rules which govern the use of telephone numbers?

The Telecoms Act regulates the use of telephone numbers.

### 2.18 Are there any obligations requiring number portability?

Yes, the telecoms provider shall ensure effortless and swift number portability, free of charge for the end-user.

In addition to this, the telecoms providers have agreed on a fixed compensation to be paid to end-users in case of delayed portability.

## 3 Radio Spectrum

### 3.1 What authority regulates spectrum use?

The DEA regulates spectrum use.

### 3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?

The use of radio spectrum requires a licence from the DEA.

Licences are issued successively as applications are received. In case of scarcity of spectrum, the DEA may hold a public tender or an auction over such frequencies.

Auctions have been the preferred model so far, but in some instances prices have been too high for the highest bidder to present a viable business case – this has resulted in delayed roll-out.

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Under specific circumstances, certain uses of spectrum may be permitted licence-exempt.

The conditions for such use are regulated in a specific executive order on the use of radio frequencies without a licence.

### 3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

An annual licence fee shall be paid to the DEA. The fee consists of a fixed spectrum charge and a usage charge.

### 3.5 What happens to spectrum licences if there is a change of control of the licensee?

The spectrum licence is not affected by a change of control of the licensee.

### 3.6 Are spectrum licences able to be assigned, traded or sub-licensed and, if so, on what conditions?

Spectrum licences may be assigned, traded and sub-licensed in whole or in part. The parties shall inform the DEA of any such transfer, etc. of the licence, and the identity of the new licensee immediately after the transfer has taken place.

## 4 Cyber-security, Interception, Encryption and Data Retention

### 4.1 Describe the legal framework for cybersecurity.

Telecoms providers have an obligation to retain telecommunications data as further specified in the Telecoms Act, the Provision Order, the Retention Order and the Network and Information Security Act, as supplemented with a number of Executive Orders.

The Center for Cyber Security Act allows for the Center for Cyber Security to intercept data from companies or governmental authorities, which have been linked up to their security service, without obtaining a warrant, if such interception is crucial in respect of upholding information security.

### 4.2 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Telecoms providers have an obligation to retain telecommunications data as further specified in the Telecoms Act, the Provision Order and the Retention Order.

This joint regulation describes the telecoms providers' obligation to make telecommunications data available to the police, as well as how to maintain required security levels.

In respect of criminal proceedings and investigations, the police may obtain a court order to intercept or obtain retained historic telecommunications data, as set out in the Administration of Justice Act.

### 4.3 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

According to the Telecoms Act, a telecoms provider to end-users shall ensure that the telecoms network and services are set up in such a way that the Danish Police can obtain access to historic telecommunications traffic and intercept current data. The provisions of the Telecoms Act in this regard are technology neutral, and do not as such set out whether they cover any of the abovementioned types of communication.

The more specific regulation on data retention is set out in the Retention Order, which is further explained in Guidelines No. 74 of 28 September 2006 (the "Retention Order Guidelines").

The requirements under the Retention Order apply to telecoms providers and to end-users. Consequently, the Retention Order applies both to providers of internet services, as well as providers of mobile or landline services, and for network, as well as content providers, as long as the provision of electronic communication services is for end-users, as opposed to sale on a retail basis to other providers.

### 4.4 How does the state intercept communications for a particular individual?

Only the Danish Police may obtain access to historic telecommunications data or wiretapping. The Danish Police may only obtain access through a telecoms provider prior to a specific court order approved by the relevant Danish court.

### 4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

There are no specific rules requiring encryption. However, telecoms providers are required under the GDPR to ensure an adequate level of protection of personal data by "appropriate technical and organisational security measures to protect personal data". Consequently, if encryption is customary for the type of data processing, i.e. electronic communication, encryption would be required.

The data retention regulation does include rules on encryption. In relation to a court order for data, interception/wiretapping or retained historic telecommunications data, the telecoms provider shall ensure that only the relevant data are available to the police. It is, however, the police's own responsibility to remove encryption from the provided data. Nevertheless, if the telecoms provider has systems which use encrypted data as an integrated part of such systems, the telecoms provider shall ensure that data provided to the police is accessible to the police in a non-encrypted form.

### 4.6 What data are telecoms or internet infrastructure operators obliged to retain and for how long?

The telecommunications traffic data to be retained under the Retention Order consists of data on caller/user identity, and the time and beginning of a communication. Furthermore, location data, provided the data are generated or processed in the telecoms provider's network, must be retained. The requirements under the Retention Order do not entail a requirement to register the content of the exchanged information.

The retained data shall only be retained for one year, unless there are other legal reasons for retaining the data longer, including under personal data protection regulations.

## 5 Distribution of Audio-Visual Media

### 5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

The most important regulations governing media, including radio and TV broadcasting, are set out in the Radio and TV Act and the Copyright Act.

**5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.**

The Radio and TV Act governs the transmission of audio-visual media over traditional platforms, and visual media over the internet or other electronic communications networks. The regulation for these types of media is, therefore, the same, irrespective of the distribution platform. The same regulation applies to on-demand audio-visual media, even though content regulation for on-demand visual media differs in one aspect compared to the traditional broadcasting platforms. On-demand media may, in some cases, broadcast content that may result in a serious degree of damage to the physical, mental or moral development of minors, if the broadcast content is sufficiently marked, while traditional audio-visual broadcasters may generally never distribute such content.

It should be emphasised that the transmission of pure audio media over non-traditional radio networks, whether as linear or on-demand content, is not governed by the Radio and TV Act. Therefore, the specific rules regarding content and advertisement are not applicable to pure audio media that is not broadcasted over traditional distribution platforms, and such services are only governed by the general rules contained in, amongst others, the Marketing Practices Act and the e-Commerce Act.

**5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.**

**(1) The Statutory Licence to Provide Programme Services:**

The Radio and TV Act provides the public service undertakings DR and TV2 with a statutory licence to provide programme services. The statutory licence only applies to public service activities. Programme services which fall outside of public service activities require a separate licence or registration.

**(2) Licence/Registration:**

In general, the provision of programme services for enterprises other than DR and TV2 requires either a licence or registration with the Radio and Television Board (the "RTB"). A licence is only required if the programme services require access to scarce spectrum resources; otherwise registration is sufficient. Licences are issued by the RTB subject to a tender.

A licence is not required for programme services provided via satellite or cable network where no frequency scarcity exists. Accordingly, enterprises that provide programme services via these platforms only have to register with the RTB.

Provision of programme services on the digital platform (digital terrestrial network) require a licence from the RTB. However, the licence to administer the broadcasting possibilities on the digital platform has, subject to a previous tender, been awarded to a single enterprise, which acts as a distributor (the so-called "Gatekeeper"). The Gatekeeper is an intermediary between the providers of programme services and the end-users. The individual programme service providers hereafter enter into commercial agreements with the Gatekeeper to provide digital programme services.

In cases where a licence is required from the RTB, a licence must similarly be obtained from the DEA under the Frequency Act. However, with regard to frequencies specially reserved for broadcasting purposes, the DEA may

issue a frequency licence on the mere fact that a broadcasting licence has been issued under the Radio and TV Act.

**(3) Key Obligations:**

Some licences contain requirements in relation to: minimum hours of news and magazine programmes per year, excluding advertisements; the provision of news from Denmark and abroad; that the news broadcasts shall be carried out by an independent news desk; and that a certain percentage of the productions must be Scandinavian, etc. Additionally, licence holders must pay an annual concession fee and an annual variable fee depending on their turnover. Such conditions vary depending on the type of broadcasting.

**5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?**

As a main rule, no prior approval is required from the RTB in connection with a transfer of the licence or a change of control over the licensee, unless otherwise provided specifically in the licence.

Some licences contain terms with a prohibition on assignability or change of control, which could trigger a filing or approval obligation. The Radio and TV Act does not contain a description of the substantive test which will be applied by the RTB in relation to an assignment of the licence or a change of control of the licensee. The decision made by the RTB will thus be discretionary and based on an overall assessment of several elements. This being said, the decision shall be compliant to general administrative law principles and based on objective and fair arguments, such as changes in financial circumstances.

Any changes in matters stated by the licensee in the application for a licence or a registration shall be notified to the RTB. This also includes information of assignment and ownership changes, provided that the RTB has been informed about the ownership in connection with the application/registration.

## 6 Internet Infrastructure

**6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?**

The "Pirate Bay" decision of the Supreme Court in 2010 concluded that telecom providers, including ISPs, may be required to DNS block websites containing or providing access to copyright-infringing content. If a telecom provider does not DNS block such content, the provider may be liable for the infringement on the website.

The Danish Gambling Authority may order telecom providers to DNS block gambling providers who offer gambling activities on the Danish gambling market without a licence from the Danish Gambling Authority.

The Telecom Industry Association – Denmark has decided that telecom providers will only respond to a court order for DNS blocking. Consequently, right holders will need to initiate legal proceedings with the Danish courts in case of any request for DNS blocking of allegedly infringing content. This has resulted in an increasing number of cases regarding DNS blocking between right holders and telecom providers, as the owners of the website usually do not show up in court or accept service of court documents.

**6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?**

There are no such obligations, unless a court order concludes that a content provider is infringing the rights of a right holder.

The burden of proof lies with the right holder in respect of proving alleged information.

**6.3 Are there any 'net neutrality' requirements? Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks?**

The EU Regulation 2015/2120 on open internet access is directly applicable in Denmark.

The Telecoms Act includes a section on net neutrality, authorising the DEA to regulate matters related to net neutrality in case the telecoms sector cannot agree on industry standards.

The Telecom Industry Association has established a net neutrality forum, which has agreed on the following four principles – all deemed to be in compliance with the EU regulation:

1. The end-user has the right to internet access with a predefined capacity and quality.
2. The end-user has the right to access legal content and use applications and services of his choice, provided such services do not affect net integrity.
3. The end-user shall have access to transparency, meaning that the end-user shall be able to obtain information on relevant traffic control mechanisms used by an internet service provider.
4. Internet providers shall not discriminate against certain providers of services, content or applications.

**6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?**

There are no such obligations unless a court order concludes that certain sites or content is infringing the rights of a right holder, or is in violation of Danish law in other ways.

Consumer VPN services are not regulated under Danish law. However, if a consumer VPN service is used to circumvent legal geo-blocking of licensed content, such circumvention may be a violation of the consumer's user agreement with the content provider; for example, Netflix.



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Hans is a technology lawyer specialised in telecommunications and IT. He is a partner and the head of the IP and Technology Team.

Hans has advised the telecommunications sector since the liberalisation of the Danish market in 1997, and has covered almost all aspects of telecommunications, including network construction, regulatory issues, fibre agreements, agreements related to provision of services, establishment of MVNOs and MVNEs, marketing and end-user agreements, and litigation regarding damages to land and subsea cables. He also advises on IoT issues from regulatory and contractual perspectives.

Hans is accredited as a certified IT attorney under the certification arrangement launched in 2010 by the Association of Danish IT Attorneys.

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Mazanti-Andersen Korsø Jensen is not only the oldest law firm in Denmark, but it is also one of the country's leading full-service firms with an IP and Technology team that has developed its scope and expertise substantially over the last few years.

The IP and Technology team covers a wide range of practice areas of relevance to the TMT industry, among all aspects of telecommunications, and it has extensive experience within the sector.

Several members of the team have backgrounds in transactions and M&A, and this combination of telecoms expertise and M&A is unique compared to other firms, where the expertise is rooted in separate departments. This combination is also highly valued by telecoms clients, as we are able to include telecoms advice as an embedded service in transactions.

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