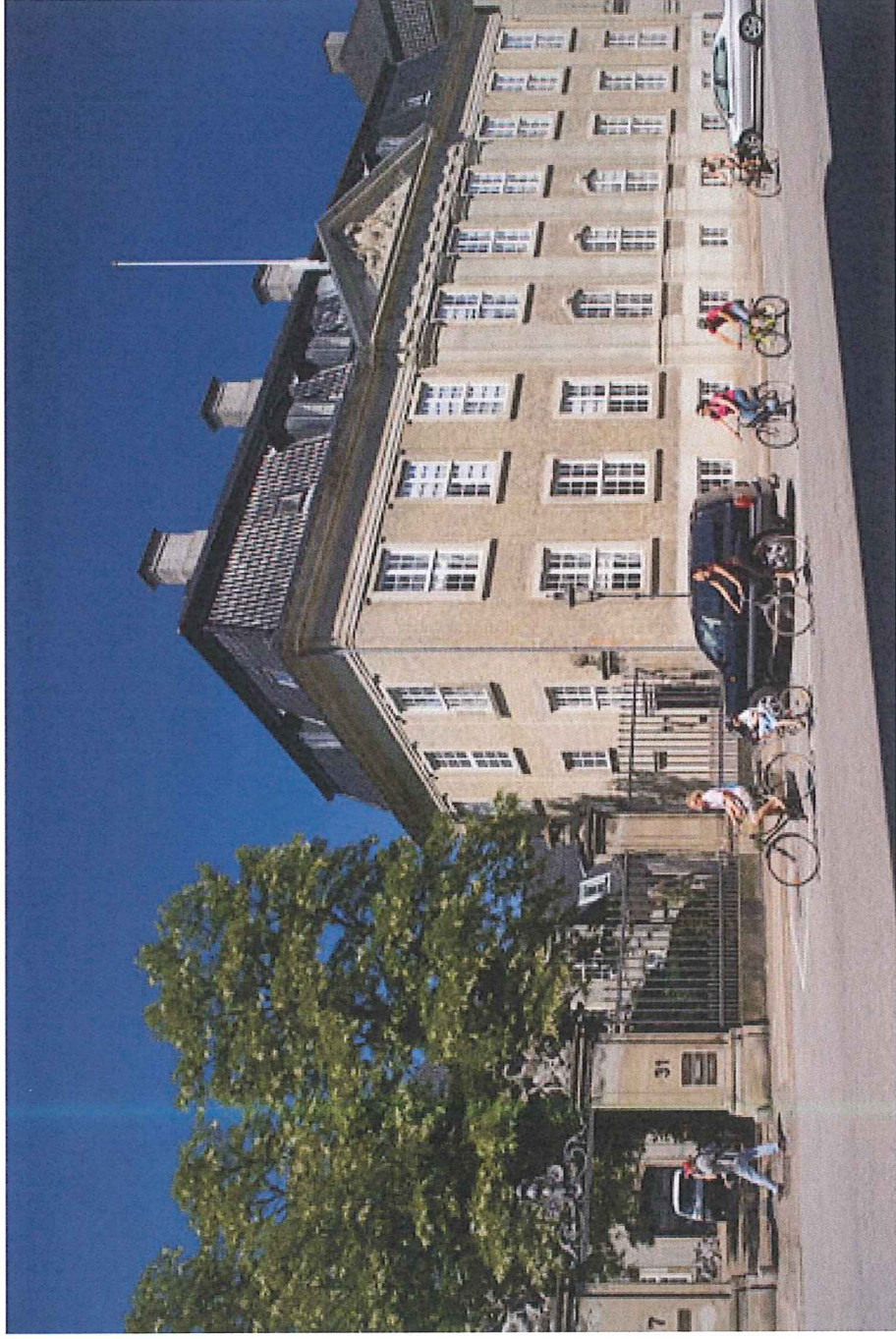


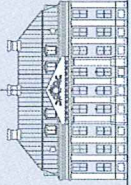


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## Extended Collective Licensing In Denmark Perspectives On The CISAC Case

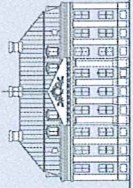
Henrik S. Schütze, Partner, Lassen Ricard



## Collective Licensing – What Is The Issue?

- Copyrights vest in persons or companies
- Individual license agreements must be entered into with each rights holder
- Difficult in practice (sometimes even impossible), in particular in case of mass exploitation of pre-existing copyrighted material





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## The Idea Behind Collective Licensing

- Make rights holders happy !
- Make users happy !
- Propagate copyrighted material for the benefit of right holders and society as a whole
- Ensure that rights clearance is obtained

**Ich bin Mitglied bei der GEMA!**

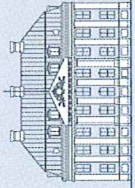
Weil Musik die Menschen in allen Zeiten und Kulturen berührt.

**RTL GROUP**  
the leading European entertainment network

**ANNUAL REPORT 2008**

**Moving stories**  
On 182 pages, the Annual Report 2008 sums up the past year

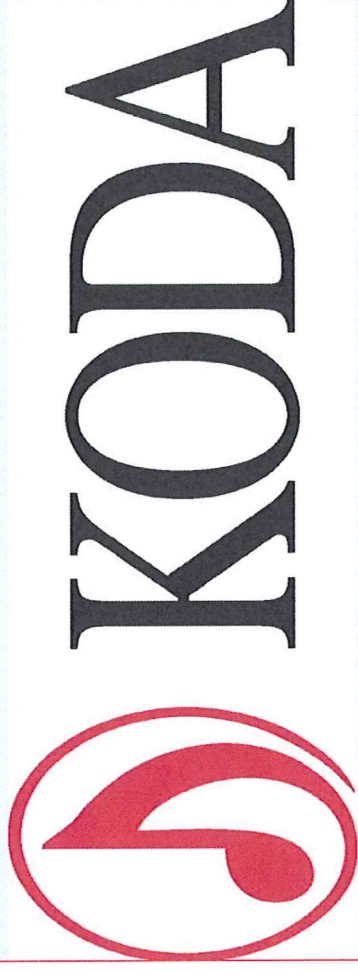
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## The Idea Behind Extended Collective Licensing

- To expand collective licenses to cover a world wide repertoire
- But legal monopolies are created at national level ...



KODA

Kabel-TV



TV  
UDEN  
GRAENSER



## Building Blocks

# User license for the world repertoire

Rights assigned through membership and reciprocal agreements

Extended collective license effect

Small members

Big members

Reciprocal agreements

Unrepresented members



## Two Different Types

### Specific Licenses

- Extended collective licensing authorised within certain specified categories of works, cf. s. 50(1)
- Licenses cover a certain specified exploitation, which is defined in each provision, cf. ss. 13, 14, 16b, 17(4), 23(2), 30, 30a and 35

### General License (as of 1 July 2008)

- Extended collective licensing may be used "by users that within a certain defined area has entered into agreement concerning exploitation of works with an organisation comprising a substantial number of authors of a certain kind of works which are used in Denmark", cf. s. 50(2) [my translation]
- Only applicable if individual licensing is impossible



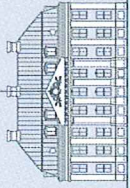
## Main Features Of Extended Collective Licensing

### Specific Licenses

- Societies that wish to enter into agreements with extended collective license effect shall be approved by The Minister for Culture, cf. s. 50(4)
- Only one organisation within each area may be approved, joint organisation comprising several organisations which meet the conditions of subsection (1) or (2) may be approved if necessary to cover different categories of works

### General License (as of 1 July 2008)

- Approval of a certain exploitation and a society representing such rights from case-to-case
- 'Start Over' agreement will be first example

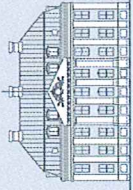


## Main Features Of Extended Collective Licensing

### Joint features

- The user may enter into an agreement with a single collecting society (or a joint society) and obtain a license covering the world wide repertoire for exploitation in Denmark as stipulated by the particular license/agreement, cf. s. 50(3)
- Pursuant to ss. 24a, 30, 30a and 50(2), unrepresented right holders may issue a prohibition to the user concerning a specific work so that the license does not apply for this work
- For represented right holders, the membership agreement and the license agreement with the user apply
- Unrepresented authors shall be treated equally by the society, cf. s. 51



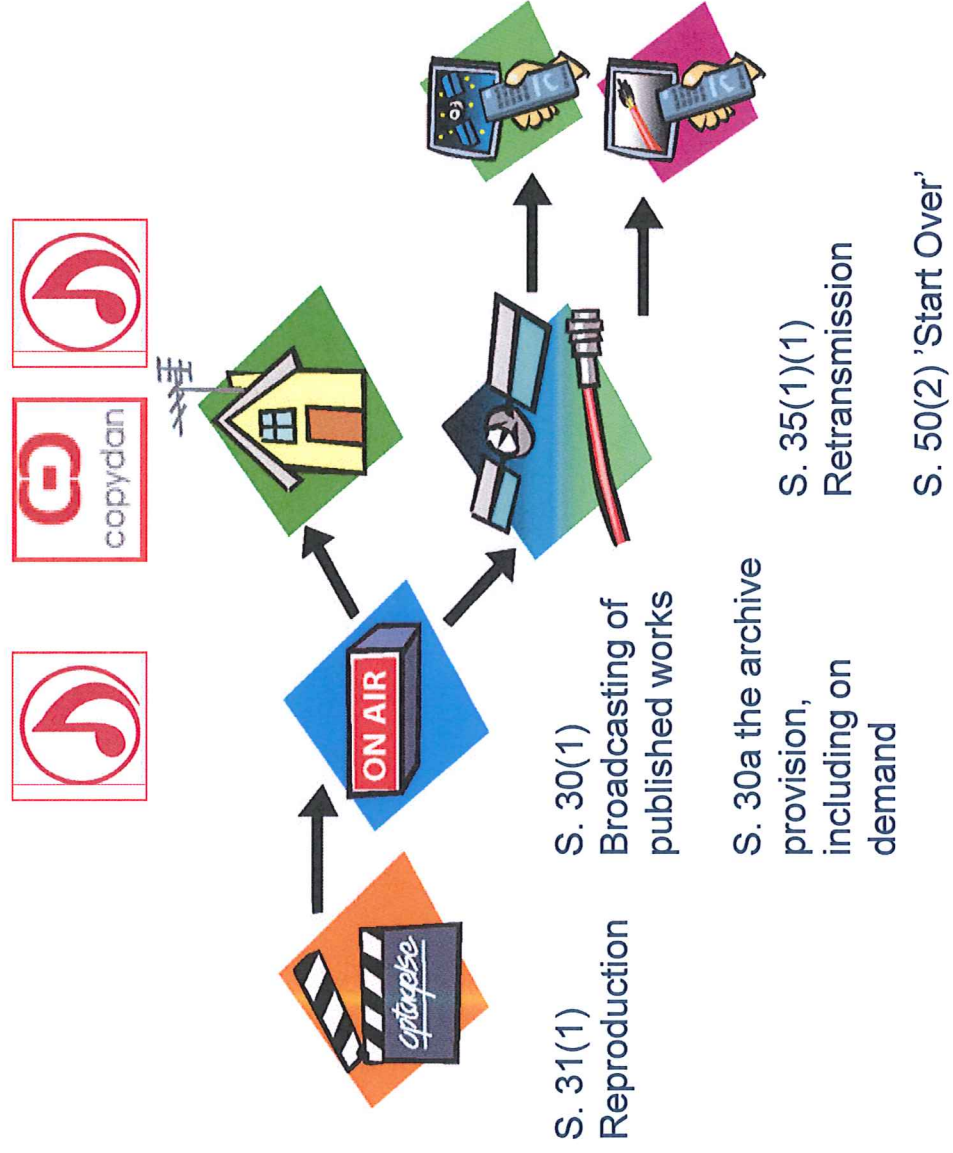


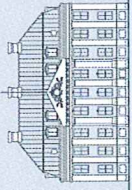
## Overview Of Extended Collective Licenses In DK Law

1. Copying for the purpose of educational activities, cf. s. 13(1)
2. Copying by public or private institutions, organisations and business enterprises for internal use for their activities, cf. s. 14
3. Digital copying by libraries, cf. s. 16b
4. Copying of works broadcast on the radio or television for the use of visually handicapped and hearing-impaired persons – by government and municipal institutions, cf. s. 17(4)
5. Depiction of works of art that has been made public, cf. s. 24a
6. **Broadcasting of published works by public service broadcasters, cf. s. 30(1)**
7. **Repeat broadcasting and making available of public service broadcasters' own productions if broadcast before January 1, 1998, cf. s. 30a**
8. **Simultaneous and unaltered retransmission, cf. s. 35(1)**
9. **The new general authorization pursuant to s. 50(2)**



## Examples





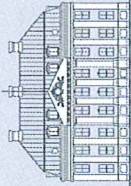
## The CISAC Decision

### Item 104

**”[..] The extended licensing system does not impede, as such, a collecting society located in another EEA country from issuing a license covering the territory of the EEA country where such a system is in place. [..]”**

### Item 105

**”Accordingly it should be concluded that this Decision does not undermine the existence and the functioning of the extended licensing system.”**



## The CISAC Decision

### Item 163

**”[..] It must be recalled that Directive 93/83/EEC does not, and cannot, imply that ONE collecting society would be entitled to deliver the license for satellite exploitation; such a provision could be contrary to the Treaty, notably Article 49 thereof which establishes the principle of the freedom to provide services, and which is one of the legal bases of Directive 93/83/EEC.” [My emphasis]**



## Implications Of The CISAC Decision

# User license for the world repertoire

Rights assigned through membership and reciprocal agreements

Extended collective license effect

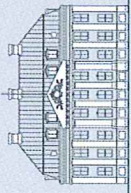
Small members

If big members withdraw?

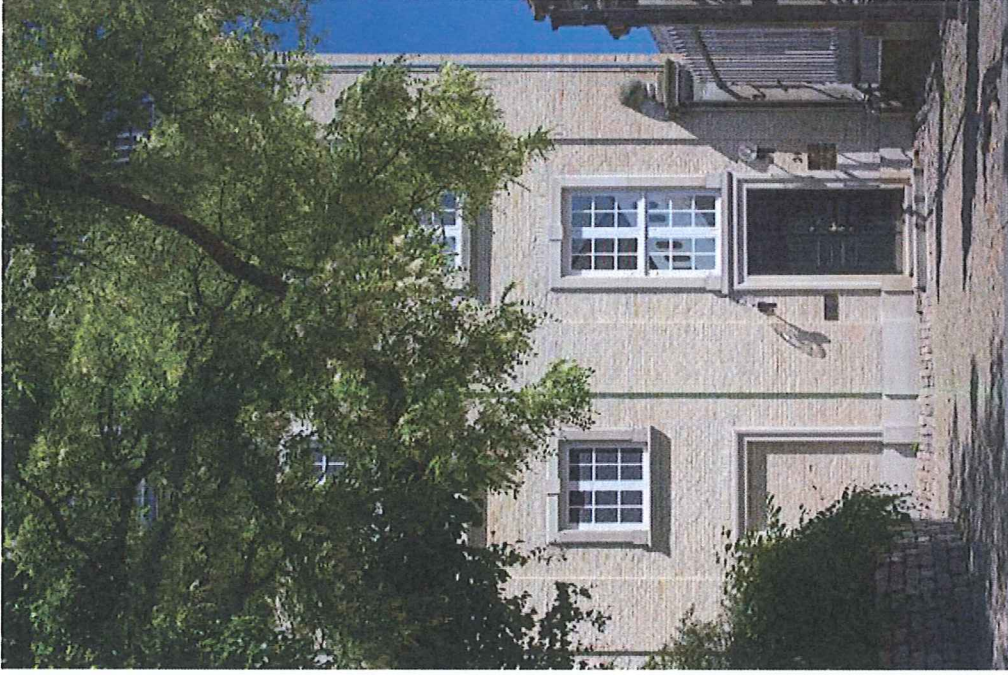
If reciprocal agreements are terminated?

Unrepresented members

- Under licenses with individual prohibition rights, extended collective license effect may be watered down, and ultimately s. 50(4) approvals might be withdrawn
- Is this a consequence of the CISAC decision or other developments?



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