

## **IT REGULATION - SOFTWARE**

Software licenses and other IP licenses are subject to general Danish contract law. Software itself is protected by the regulation on intellectual property rights. Thus, the intellectual property rights to software are protected by the Danish Copyright Act (in Danish "Ophavsretsloven"). Under Danish law, software in itself is not patentable, but it is possible to get a patent on an invention, where software is a part of the invention, provided that software is not the main part of the invention.

Databases are protected by the Danish copyright act, but the special rules regarding software do not apply to databases.

A distinction is made between the transfer of a license - i.e. a limited right to use the particular programme where the licensee only receives limited rights and the software may only be used in accordance with the license terms supplemented by the Danish Copyright Act - and the transfer of the copyright itself to the software.

### **To what extent does the freedom of contract apply in relation to IP contracts?**

In accordance with the general principle of freedom of contract, there are no formal or special requirements to software licenses, and the license agreements may generally be negotiated freely between the parties (as with any other given contract). Under the Danish Copyright Act, copyrights may be transferred in whole or in part, which is not the case in some other European jurisdictions.

### **Does Danish law allow for reverse engineering?**

Under the Danish Copyright Act, a licensee is granted a limited right of reverse engineering, allowing the licensee to create interoperability between the licensed software and the licensee's existing software and IT system. This provision is mandatory and accordingly, license agreements which specifically prohibit reverse engineering may be set aside by a Danish court. License agreements generally contain provisions limiting the right to reverse engineering as to only allow such reverse engineering as required by mandatory legislative provisions.

### **Does Danish law allow for reverse analysis?**

Pursuant to the Danish Copyright Act, a person who is entitled to use a programme is granted a right to reverse analysis, allowing the person to observe, study and test the software in order to determine the ideas and principles which underlie any element of the program.

Amaliegade 3-5  
DK-1256 København K

Tel: +45 7070 1505  
Fax: +45 7070 1506  
Mail: [info@mwblaw.dk](mailto:info@mwblaw.dk)  
Web: [www.mwblaw.dk](http://www.mwblaw.dk)

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**What should you be aware of when considering outsourcing?**

It is important to obtain written permission from all relevant rights holders - i.e. licensors – and that the licensees ensure that their license agreements with suppliers explicitly allow outsourcing.

Businesses within the financial sector are subject to special regulation influencing the terms and conditions for outsourcing.

**Personal Data – when is a data processing agreement required?**

Under the Danish Act on Processing of Personal Data implementing the EU Directive 95/46/EC on Processing of Personal Data, it is a requirement that a data processing agreement is entered into regarding the processing of personal data between the data controller and a data processor when personal data is processed electronically by the data processor on behalf of the data controller. It is of relevance to agreements regarding outsourcing, hosting, backup of various data etc. which may include personal data.

The data processor shall act in accordance with instructions of the data controller and must observe applicable data protection legislation. The data processor shall take all necessary technical and organisational security measures, including any additional measures required to ensure that the personal data is not accidentally or unlawfully destroyed, lost or impaired or brought to the knowledge of unauthorized third parties, abused or otherwise processed contrary to the Danish Act on Processing of Personal Data.

We have experience with the preparation of and advice on data processing instructions, data processing agreements and submission of data processing notices and permissions from the Danish Data Protection Agency (in Danish "Datatilsynet").

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