

## 9<sup>th</sup> CSPCWG MEETING

Seoul, Republic of Korea, 13-16 November 2012

### Consideration of a legal case in Denmark

<b>Submitted by:</b>	Denmark
<b>Executive Summary:</b>	In a recent legal case in Denmark, questions were raised as to the extent of copyright restrictions when chart corrections are reprinted by licensees.
<b>Related Documents:</b>	S-4 A-403, B630 <u>or</u> Bilateral Agreements
<b>Related Projects:</b>	None

#### Introduction / Background

On April 27, 2012, the Danish High Court delivered a judgment in a copyright case between the Danish HO (KMS) and the German publisher NV (Nautische Veröffentlichung Verlagsgesellschaft mbH). A series of attempted negotiations between KMS and the commercial nautical chart maker NV ended in a case that was brought to the Danish High Court in the spring of 2012. In the case, KMS claimed that NV had copied and used the contents of Danish nautical charts for commercial purposes without permission from KMS and without paying royalties. This paper reviews the nature and findings of the court case.

#### Analysis / Discussion

In December 1996, KMS became aware that the contents of NV's nautical charts resembled those of the official Danish charts, but there was no royalty agreement between KMS and NV. From 1997 until 2010, KMS attempted several times to negotiate a contract with NV, but none of the negotiations resulted in success. As a result, KMS decided to bring the case to the Danish legal system.

The choice to bring this case to the Danish court followed similar cases against NV that the Swedish and German HOs had brought to their respective legal systems. In Sweden, the national HO was unable to prove that NV had infringed upon its copyright law in the production of NV's charts over Swedish waters. In Germany, the German HO chose to enter a settlement with NV.

The copyright coverage covering the official Danish nautical charts dates back to the early 1800s, where a bill forbade the copying of Danish charts without prior agreement with the HO. The more general copyright law in Denmark also protects nautical charts as the result of an intellectual process. Both the bill and the copyright law were invoked in KMS' legal proceedings against NV.

For the case, KMS produced extensive evidence showing that, while NV's charts are not exact copies of the official Danish charts, they could not have been produced without source material being drawn from the official Danish charts. The depth contours in NV's charts have significant resemblance to those in the official Danish charts, though NV appears to have further generalised the curves. Soundings within the 10-meter contour in the NV charts are placed in similar locations to those in the official Danish charts, and are generally reduced by 10 – 20 cm (for example, 3.5 m is replaced by 3.4 m).

During the proceedings, NV was unable to present its original source material and claimed that their source material is discarded once it is worked into the charts. NV also claimed during the case to have used official German charts as source material, and that this was permitted by the German HO. KMS submitted a letter from the German HO to the court that clarified that no such

permission had been granted.

The judgment in this case was publicised on April 27, 2012. The court found:

- That the NV charts are copies of the official Danish charts, though adjustments have been made to the depth contours and soundings;
- That all NV's charts covering Danish waters are to be delivered to KMS for destruction; and
- That NV may no longer sell charts covering Danish waters on the Danish market.

NV has appealed the High Court's judgment, and the case is expected to be brought before the Danish Supreme Court in late 2013.

## Conclusions

As a result of the above case, the Danish HO has produced a new copyright note that will accompany all editions of its weekly Chart Corrections. The text reinforces that Danish copyright law follows the publication of blocks of Danish charts, wherever they are published. The text is as follows:

*All nautical charts, harbour charts and nautical publications published by the National Survey and Cadastre are protected by copyright. The National Survey and Cadastre's copyright includes any and all corrections to these charts and publications, including the contents of this publication.*

*The distribution of any partial or complete copy of the above-named charts, publications and corrections, whether by copying or by release of their contents in original or revised form, is prohibited.*

*The corrections in this publication are permitted for use by individual mariners or navigators in updating or correcting their legal copies of nautical charts, harbour charts and nautical publications published by the National Survey and Cadastre.*

*Any other use of the contents of this publication requires entry into a written contract with the National Survey and Cadastre. Requests for such contract entry can be sent to [soe@kms.dk](mailto:soe@kms.dk).*

## Recommendations

The CSPCWG is encouraged to discuss the above-described legal case relative to any similar MS experiences in the area.

The MS are invited to consider whether they may be interested in drafting and approving a standard text that could be included in all MS' Notices to Mariners when one's blocks are printed in another's NtM. For example: *Blocks covering foreign waters and territories may not be used for commercial purposes without the explicit permission from the Hydrographic Office of the originating country.*

## Justification and Impacts

The sharing of knowledge between the MS in the CSPCWG would provide a framework for MS facing similar challenges at present or in the future.

The adoption of a shared text could ensure that all MS can underpin the maintenance of their copyright protection.