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#### NOTE

From:	Presidency
To:	Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society - Presidency compromise proposal

Delegations will find in the Annex a 2nd version of Presidency compromise proposal, for discussion at the meeting of the Working Party on Intellectual Property (Copyright) on 13 December 2016.

Changes in relation to the previous version are highlighted.

Presidency compromise  
proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on certain permitted uses of works and other subject-matter protected by copyright and  
related rights for the benefit of persons who are blind, visually impaired or otherwise print  
disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of  
copyright and related rights in the information society**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Union Directives in the area of copyright and related rights provide legal certainty and a high level of protection for rightholders. This harmonised legal framework contributes to the proper functioning of the internal market and stimulates innovation, creation, investment and the production of new content, including in the digital environment. It also aims to promote access to knowledge and culture by protecting works and other subject-matter and by permitting exceptions or limitations that are in the public interest. A fair balance of rights and interests between rightholders and users should be safeguarded.

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<sup>1</sup> OJ C , , p. .

- (2) Directive 96/9/EC of the European Parliament and of the Council<sup>2</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>3</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>4</sup> and Directive 2009/24/EC of the European Parliament and of the Council<sup>5</sup> harmonise the rights of rightholders. Those Directives provide for an ~~exhaustive~~ list of exceptions and limitations to those rights, which allow for the use of content without the authorisation of the rightholders under certain conditions in order to achieve certain policy objectives.
- (3) Persons who are blind, visually impaired or otherwise print disabled continue to face many barriers in accessing books and other print material which are protected by copyright and related rights. Measures need to be taken to increase the availability of those works in accessible formats and to improve their circulation in the internal market.

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<sup>2</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20-28).

<sup>3</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10-19).

<sup>4</sup> Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28-35).

<sup>5</sup> Directive 2009/24/EC of the European Parliament and the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16-22).

- (4) The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled ('the Marrakesh Treaty') was signed on behalf of the Union on 30 April 2014<sup>6</sup>. Its aim is to improve the availability of works and other protected subject-matter in accessible formats for persons who are blind, visually impaired or otherwise print disabled. The Marrakesh Treaty requires contracting parties to provide exceptions or limitations to the rights of holders of copyright and related rights for the making and dissemination of copies in accessible formats of certain works and other subject-matter, and for the cross-border exchange of those copies. The conclusion of the Marrakesh Treaty by the Union requires the adaptation of Union law by establishing a mandatory exception for uses, works and beneficiary persons covered by the Treaty. This Directive implements the obligations that the Union has to meet under the Marrakesh Treaty in a harmonised manner, with a view to ensuring that those measures are applied consistently throughout the internal market.
- (5) This Directive is designed for the benefit of persons who are blind, have a visual impairment which cannot be improved so as to give those persons visual function substantially equivalent to that of a person who has no such impairment or have a perceptual or reading disability, ~~including dyslexia~~, or are unable, due to a physical disability, ~~including tetraplegia or paraplegia~~, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, in so far ~~and who~~, as a result of such impairments or disabilities, those persons cannot read printed works to substantially the same degree as persons without such impairments or disabilities. This Directive aims at improving the availability of books, journals, newspapers, magazines and other writings, notations including sheet music, and other print material, including in audio form, whether digital or analogue, in formats that make those works and other subject-matter accessible to those persons. Accessible formats include for example Braille, large print, adapted e-books, audiobooks and radio broadcasts.

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<sup>6</sup> Council Decision 2014/221/EU of 14 April 2014 on the signing, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled. (OJ L115, 17.4.2014, p. 1).

- (6) This Directive should therefore provide for mandatory exceptions to the rights that are harmonised by Union law and are relevant for the uses and works covered by the Marrakesh Treaty. These include in particular the rights of reproduction, communication to the public, making available, distribution and lending, as provided for in Directives 2001/29/EC, 2006/115/EC and 2009/24/EC, as well as the corresponding rights in Directive 96/9/EC. As the scope of exceptions and limitations required by the Marrakesh Treaty also includes works in audio form, like audiobooks, it is necessary that these exceptions also apply to related rights.
- (7)(ex 8) The mandatory exception should limit the right of reproduction so as to allow for any act that is necessary in order to make changes to or convert or adapt a work or other subject-matter in such a way as to produce **an accessible format** copy that makes it possible for those persons to **access this work or other subject-matter.** ~~read that work or other subject-matter because of an alternative manner or form.~~ This includes providing the necessary means to navigate information in an accessible format copy.
- (8)(ex 7) Uses laid down in this Directive include the making of accessible format copies by either the beneficiary persons or authorised entities serving their needs — whether public or private organisations, in particular libraries, educational establishments and other non-profit organisations that serve persons with a print disability as their main or one of their main activities or as part of their public interest missions. Those uses should also include making accessible format copies, for the exclusive use of the beneficiary persons, by a natural person who does so on behalf of a beneficiary person or who assists the beneficiary person in doing so. **Accessible format copies should only be made of works or other subject-matter to which beneficiary persons or authorised entities have lawful access.**
- (9) The exception should allow authorised entities to make and disseminate online and offline within the Union accessible format copies of works or other subject-matter covered by this Directive.

(10) It should be possible for accessible format copies made in one Member State to be available in all Member States, in order to ensure their greater availability across the internal market. This would reduce the demand for redundant work in producing accessible format copies of the same work or other subject matter across the Union, thus generating savings and efficiency gains. This Directive should therefore ensure that accessible format copies made in one Member State may be circulated and accessed in all Member States. An authorised entity should thus be able to disseminate those copies, offline or online, to beneficiary persons and authorised entities in any Member State. Moreover, authorised entities and beneficiary persons should be allowed to obtain or have access to those copies from any authorised entity in any Member State. In order to foster such cross-border exchange, Member States should support the voluntary sharing of information among authorised entities with the aim to help their mutual identification and cooperation. This Directive does not establish an obligation on authorised entities to **make and** disseminate copies.

**(10a) In order to improve the availability of accessible format copies and to prevent the illegal dissemination of works and other subject-matter, this directive introduces certain obligations to which authorised entities should comply with when engaging in the uses permitted under this Directive.**

(10**ba**) Uses permitted under this Directive should be directly related to the disability or impairment and of a non-commercial nature and be undertaken to the extent required by the specific needs as they relate to the disabilities and impairments covered by this Directive.

(10**cb**) Authorisation or recognition requirements that ~~may exist in~~ **Member States may apply to authorised entities**, such as those **related to** ~~that Member States may apply to authorised entities for~~ the provision of services of a general nature to beneficiary persons, should not have the effect of preventing entities that comply with the definition of authorised entity under this Directive from undertaking the uses allowed under this Directive.

- (11) In view of the specific nature of the exception, its targeted scope and the need for legal certainty for its beneficiaries, Member States should not be allowed to impose additional requirements for the application of the exception, such as compensation schemes or the prior verification of the commercial availability of accessible format copies.
- (12) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council<sup>7</sup>, which govern the processing of personal data, as may be carried out by authorised entities within the framework of this Directive and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States.
- (13) The United Nations Convention on the Rights of Persons with Disabilities ('the UNCRPD'), to which the EU is a party, guarantees people with disabilities the right of access to information and the right to participate in cultural, economic and social life on an equal basis with others. The UNCRPD requires parties to the Convention to take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
- (14) Under the Charter of Fundamental Rights of the European Union, the Union recognises and respects the right of people with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

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<sup>7</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31-50). This Directive is repealed with effect from 25 May 2018 and shall be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regards to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1-88).

- (15) With the adoption of this Directive, the Union aims to ensure that beneficiary persons have access to books and other print material in accessible formats. Accordingly, this Directive is an essential first step in improving access to works for people with disabilities.
- (16) The Commission will monitor the effect of this Directive. As part of this, it will assess the situation regarding the availability in accessible formats of works and other subject-matter other than those covered by this Directive, as well as the availability of works and other subject-matter in accessible formats for persons with other disabilities. The Commission will review the situation closely. Changes to the scope of this Directive may be considered, if necessary.
- (17) Pursuant to Directive 2001/29/EC, Member States may continue to provide for an exception or limitation for the benefit of persons with a disability in cases which are not covered by this Directive. Member States may therefore, within the scope of Article 5(3)(b) of that Directive, continue to provide for exceptions or limitations for beneficiary persons concerning works or other subject-matter which are not covered by this Directive. This Directive does not prevent Member States from providing for exceptions or limitations to ~~non-harmonised rights~~ **that are not harmonised in the copyright framework of the Union.**
- (18) This Directive therefore respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. This Directive should be interpreted and applied in accordance with those rights and principles.
- (19) The Marrakesh Treaty imposes certain obligations regarding the exchange of accessible format copies between the Union and third countries that are parties to the Treaty. The measures taken by the Union to fulfil those obligations are contained in Regulation [...] which should be read in conjunction with this Directive.



- (20) The objective of this Directive — implementing the Union's obligations under the Marrakesh Treaty in order to improve access to works and other subject-matter protected by copyright and related rights for persons who are blind, visually impaired or otherwise print disabled in the Union — cannot be achieved by the Member States acting independently, as it requires the adaptation of Union law. Furthermore, by reason of its scale and effects, the objective can only be achieved through action at Union level. The Union may therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in the same Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (21) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>8</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### *Subject matter and scope*

This Directive lays down rules on the use of certain works and other subject-matter without the authorisation of the rightholder, for the benefit of persons who are blind, visually impaired or otherwise print disabled.

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<sup>8</sup> OJ C 369, 17.12.2011, p. 14.

## *Article 2*

### *Definitions*

For the purposes of this Directive the following definitions shall apply:

- (1) ‘work or other subject-matter’ means a work in the form of a book, journal, newspaper, magazine or other writing, notation including sheet music, and related illustrations, in any medium, including in audio forms such as audiobooks, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available;
- (2) ‘beneficiary person’ means:
  - (a) a person who is blind;
  - (b) a person who has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and is, as a result, unable to read printed works to substantially the same degree as a person without such impairment;
  - (c) a person who has a perceptual or reading disability, and is, as a result, unable to read printed works to substantially the same degree as a person without such disability; or
  - (d) a person who is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading.
- (3) ‘accessible format copy’ means a copy of a work or other subject-matter in an alternative manner or form that gives a beneficiary person access to the work or other subject-matter, including allowing for the person to have access as feasibly and comfortably as a person without a visual impairment or any of the disabilities referred to in paragraph 2;
- (4) ‘authorised entity’ means an organisation providing education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis, as its main activity or as one of its main activities or as part of their public-interest missions.

### Article 3

#### Permitted uses

1. Member States shall provide that any act necessary for:
  - (a) a beneficiary person, or a person acting on their behalf, to make an accessible format copy of a work or other subject-matter, to which **such beneficiary person** ~~they have~~ lawful access, for the exclusive use of the beneficiary person; and
  - (b) an authorised entity to make an accessible format copy of a work or other subject-matter, to which it has lawful access, and to communicate, make available, distribute or lend an accessible format copy **on a non-profit basis** to a beneficiary person or authorised entity for the purpose of exclusive use by a beneficiary person;does not require the authorisation of the rightholder of any copyright or related right in the work or **other** subject-matter pursuant to Articles 2, 3 and 4 of Directive 2001/29/EC, Articles 5 and 7 of Directive 96/9/EC, Article 1(1), Article 8(2) and (3) and Article 9 of Directive 2006/115/EC and Article 4 of Directive 2009/24/EC [...].
2. Member States shall ensure that the accessible format copy respects the integrity of the work or other subject-matter, having due consideration for the changes required to make the work accessible in the alternative format.
- 2a. The exception provided for in paragraph 1 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.
3. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exception provided for in paragraph 1.

## Article 4

### *Accessible format copies in the internal market*

Member States shall ensure that an authorised entity established in their territory may carry out the acts referred to in Article 3(1)(b) for a beneficiary person or an authorised entity established in any Member State. Member States shall also ensure that a beneficiary person or authorised entity established in their territory may obtain or may have access to an accessible format copy from an authorised entity established in any Member State.

## Article 4a

### *Obligations of authorised entities*

- 1.** Member States shall ensure that an authorised entity established in ~~that~~ Member State carrying out the acts referred to in Articles 3 and 4:
  - (a) distributes, communicates and makes available accessible format copies only to beneficiary persons or other authorised entities;
  - (b) takes appropriate steps to discourage the unlawful reproduction, distribution, communication to the public and making available of accessible format copies;
  - (c) demonstrates due care in, and maintains records of, its handling of works and other subject-matter and of their accessible format copies; and
  - (d) publishes and updates, on its website if appropriate, information on the manner in which it complies with the obligations laid down in points (a) to (c).
- 2.** Member States shall ensure that an authorised entity established in that Member State carrying out the acts referred to in Article 4 shall provide the following information, on request, to any beneficiary person or right holder:
  - (a) the list of works and other subject-matter of which it has accessible format copies and the available formats; and
  - (b) the name and details of the authorised entities with which it has engaged in the exchange of accessible format copies pursuant to Article 4.

## *Article 5*

### *Protection of personal data*

The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directive 95/46/EC.

## *Article 6*

### *Amendment to Directive 2001/29/EC*

In Article 5(3) of Directive 2001/29/EC, point (b) is replaced by the following:

‘(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability, without prejudice to the obligations of Member States under Directive [...];’

## *Article 7*

### *Report*

By [two years after the date of transposition], the Commission shall present a report to the European Parliament, the Council and the European Economic and Social Committee on the availability, in accessible formats, of works and other subject-matter other than those defined in Article 2(1) for beneficiary persons, and of works and other subject-matter for persons with disabilities other than those referred to in Article 2(2), in the internal market. The report shall contain an assessment on whether an amendment of the scope of this Directive should be considered.

## *Article 8*

### *Review*

No sooner than [five years after the date of transposition], the Commission shall carry out an evaluation of this Directive and present the main findings to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by proposals for the amendment of this Directive.

Member States shall provide the Commission with the necessary information for the preparation of the evaluation report and the preparation of the report referred to in Article 7.

## *Article 9*

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.  
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## *Article 10*

### *Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

## *Article 11*

### *Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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