



Council of the
European Union

Brussels, 11 February 2015
(OR. en)

6035/15

Interinstitutional File:
2014/0297 (NLE)

PI 7

NOTE

From: General Secretariat of the Council
To: Delegations

No. prev. doc.: 5110/15 PI 3
No. Cion doc.: 14617/14 PI 117

Subject: The way forward on the implementation of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print-disabled
- Discussion paper from the Commission services

Delegations will find in the Annex a discussion paper from the Commission services as the basis for discussion at the meeting of the Working Party on Intellectual Property on 17 February 2015.

The way forward on the implementation of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print-disabled

Discussion paper from the Commission services

The Commission services could envisage different approaches to implement the Marrakesh Treaty through Union law. This discussion paper presents the preliminary views on the possible ways forward to achieve a legally sound solution in the EU for producing, distributing and making available printed works in accessible format under an exception or limitation, including across borders. The description below constitutes a technical description in response to the request from the Council Working Party on Copyright of 29 January 2015, and is without prejudice to the Commission's ongoing reflection on and preparation of a review of the EU copyright framework and to the decisions that the Commission still needs to take in that respect.

Articles 2-4 and Article 5 of Directive 2001/29/EC on the harmonisation of copyright and related rights in the information society (InfoSoc Directive) provide a regime of rights and exceptions as regards the right holders, namely authors of literary works, whose works fall within the scope of the Marrakesh Treaty. In addition, Articles 6 and 7 address technological protection measures and rights management information of these works. The obligations in the Marrakesh Treaty affect the rights and exceptions laid down in the InfoSoc Directive therefore it is for the Union to consider how this framework needs to be adapted to implement the obligations in the Treaty.

- A) The Marrakesh Treaty requires a mandatory exception for persons who are blind, visually impaired or otherwise print disabled from the rights which are mentioned in the Treaty (right of reproduction, right of communication to the public including making available and the distribution right).

Article 5(3)(b) of the InfoSoc Directive provides for an optional exception for uses, for the benefit of people with a disability from the rights in Articles 2 and 3 (reproduction and communication to the public), which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability. In addition, Member States may also introduce such an exception to Article 4 (distribution right) (Article 5(4)).

Whilst all Member States have implemented Article 5(3)(b) in full or in part, the fact that the exception in the InfoSoc Directive itself is not mandatory but optional would mean that there would be an inconsistency between the Directive and the Marrakesh Treaty. Consequently, the current optional exception would have to be made mandatory as regards Articles 2-4 of the InfoSoc Directive and the beneficiaries who fall within the scope of the obligations under the Marrakesh Treaty (persons who are blind, visually impaired or otherwise print disabled). This would require an amendment to Article 5(3)(b) of the InfoSoc Directive which would make its scope mandatory for the beneficiaries of the Marrakesh Treaty as regards all relevant rights in works of authors that are in the form of text, notation and/or related illustrations, as well as in phonograms and in fixation of performances (for audio books) and would leave uses for other categories of disabled persons as an optional exception. The exception would also affect Article 9 of the Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as regards the distribution right of performers and phonogram producers (for audio books).

Further, Union legislation would need to authorise the Member States to implement, where necessary, the remaining provisions of the Marrakesh Treaty in their national laws (e.g. the detailed rules applicable to authorised entities, cross-border access, the “commercial availability” condition or compensation).

B) An alternative approach is to propose more specific and detailed legislation to implement all the key elements of the Marrakesh Treaty in EU law. This approach would lead to a higher degree of uniformity between the laws of the Member States and consequently, should facilitate the work of authorised entities, in the cross-border exchange of accessible format copies. In this case, EU legislation could consist of two main elements:

- a mandatory exception to the rights of reproduction, distribution and communication to the public including making available in works that are in the form of text, notation and/or related illustrations, as well as in phonograms and in fixation of performances (for audio books), provided that the relevant acts are carried out by authorised entities, for the purposes of reproduction, distribution and making available of accessible format copies, exclusively for the benefit of persons who are blind, visually impaired or otherwise print disabled and are of a non-commercial nature. The uses by the beneficiary persons should be directly related to the disability, be of a non-commercial nature and correspond to the extent required by the specific disability; and
- a mechanism to ensure that the above acts by authorised entities and the uses by beneficiary persons do not constitute an infringement of copyright-related rights in the relevant works/other subject-matter even when the beneficiary person resides or the authorised entity is established in a Member State different from the one in which the first authorised entity is established.

Union legislation would also need to authorise the Member States to implement, where necessary, the remaining provisions of the Marrakesh Treaty in their national laws (e.g. the detailed rules applicable to authorised entities, the “commercial availability” condition or compensation).

- C) A third option would be to implement all substantive provisions of the Marrakesh Treaty in Union law in order to ensure the highest possible level of uniformity of the laws of the Member States.

Finally, one could also consider, as regards all the above options, the added value of implementing similar mechanisms in EU law with respect to works/other protected subject-matter and beneficiary persons beyond the scope of the Marrakesh Treaty.
