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From:	General Secretariat of the Council
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Subject:	Proposal for a Council Decision on the conclusion, 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 - Commission's response to the Council's request under Art. 241 TFEU

Delegations will find in the Annex, for information, the Commission's response to the Council's request under Article 241 TFEU calling on the Commission to present a legislative proposal in the Union law of implementing the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled.

ANNEX**The Commission's response to the Council's request under Article 241 TFEU to present a legislative proposal to implement in Union law the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled**

The Commission welcomes the Council's commitment to the rapid entry into force of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled (hereafter "the Marrakesh Treaty").

The Commission put forward its proposal for a Council Decision to conclude the Marrakesh Treaty on behalf of the Union on 21 October 2014. This proposal is however still pending in the Council.

Furthermore, the Commission agrees with the Council's assessment that the amendment of Union law is necessary in order to comply with the Marrakesh Treaty. The Commission has already expressed its views to this effect on several occasions, including at the meetings of Coreper of 25 March and of 22 April 2015. Any amendment to Union law will however not eliminate the need for the Council to find a solution at a political level for the conclusion of the Marrakesh Treaty by the Union. Therefore, on 14 July 2015 the Commission adopted a decision to seek the opinion of the Court of Justice of the European Union on the nature of the competence in the Marrakesh Treaty.

As explained also in the discussion paper presented to the Copyright Council Working Party of 17 February 2015, the Commission could envisage several approaches to implement the Marrakesh Treaty in Union law.

The obligations in the Marrakesh Treaty affect the rights and exceptions laid down in Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society. Articles 2-4 and Article 5 of Directive 2001/29/EC provide a regime of rights and exceptions as regards right holders, namely authors of literary works, whose works fall within the scope of the Marrakesh Treaty. Therefore it is for the Union to consider how this framework needs to be adapted to implement the obligations in the Treaty.

Option 1: 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, distribution and the right of communication to the public, including the right of making available to the public).

Article 5(3)(b) of Directive 2001/29/EC 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 Directive 2001/29/EC 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 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).

Option 2: 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.

Option 3: 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.

To conclude, the Commission will present draft legislation in order to bring Union law in line with the Marrakesh Treaty in the framework of the modernisation of the EU copyright rules which forms part of the Commission's Work Programme for 2015.