



19.5.2017

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

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
(COM(2016)0596 – C8-0381/2016 – 2016/0278(COD))

The interinstitutional negotiations on the aforementioned proposal for a directive have led to a compromise. In accordance with Rule 73(5) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on Legal Affairs for consideration.

**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**

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 Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Union legal acts 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.

¹ 18 OJ C , , p. .

- (2) Directives 96/9/EC¹, 2001/29/EC², 2006/115/EC³ and 2009/24/EC of the European Parliament and of the Council⁴ harmonise the rights of rightholders. Those Directives, together with Directive 2012/28/EU of the European Parliament and of the Council⁵, 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. Taking into consideration the rights of blind, visually impaired or otherwise print-disabled persons as recognised in the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of Persons with Disabilities ('UNCRPD'), measures should be taken to increase the availability of those works in accessible formats and to improve their circulation in the internal market.
- (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 2014⁶. Its aim is to improve the availability and cross-border exchange 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 and harmonised exception for uses, works and beneficiary persons covered by the Treaty.

¹ OJ L 77, 27.3.1996, p. 20-28.

² OJ L 167, 22.6.2001, p. 10-19.

³ OJ L 376, 27.12.2006, p. 28-35.

⁴ OJ L 111, 5.5.2009, p. 16-22.

⁵ OJ...

⁶ 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).

- (4a) In accordance with the Opinion A-3/15 of the European Court of Justice, "(...) the exception or limitation provided for by the Marrakesh Treaty will have to be implemented within the field harmonised by Directive 2001/29."¹
- (4b) 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. 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.
- (5) This Directive concerns persons who are blind, who have a visual impairment which cannot be improved so as to give them visual function substantially equivalent to that of a person who has no such impairment, or who have a perceptual or reading disability, including dyslexia or any learning disability preventing them from reading printed works to substantially the same degree as persons without such disability, or are unable, due to a physical disability, 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 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 therefore at improving the availability of books, including e-books, journals, newspapers, magazines and other writings, notations including sheet music, and other print material, including in audio form, whether digital or analogue, online or offline, in formats that make those works and other subject-matter accessible to those persons to substantially the same degree as to persons without an impairment or disability. Accessible formats include, for example, Braille, large print, adapted e-books, audio books and radio broadcasts.

¹ point 112 of the Opinion A-3/15

- (7) 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 beneficiary persons to access this work or other subject-matter. This includes providing the necessary means to navigate information in an accessible format copy. It also includes changes that might be required when the format of a work or other subject-matter is already accessible to certain beneficiary persons but might not be so for other beneficiary persons, due to different disabilities or impairments, or their different degrees.
- (8) 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 primary or one of their primary activities, institutional obligations 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. Member states should ensure that any contractual provision which seeks to prevent or limit the application of the exception in any way is void of legal effect.
- (9) The exception provided for in this Directive 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. This Directive should not establish an obligation on authorised entities to make and disseminate copies.

- (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 duplication of 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 by authorised entities in any Member State may be circulated and accessed by beneficiary persons and authorised entities throughout the EU. In order to foster such cross-border exchange, and to facilitate the authorised entities' mutual identification and cooperation, the voluntary sharing of information regarding the names and contact details of authorised entities established in the Union, including web sites if available, should be encouraged. Member States should therefore provide the information received from authorised entities to the Commission. This should not imply an obligation for Member States to check the completeness and accuracy of such information or its compliance with their national law implementing this Directive. Such information should be made available online by the Commission in a central point of information at Union level. This would also assist authorised entities, as well as beneficiary persons and rightholders in contacting authorised entities to receive further information, in line with the provisions set out in this Directive and Regulation (...).

The afore-mentioned central point of information should be complementary to the information access point to be established by the International Bureau of the World Intellectual Property Organisation (WIPO), as provided for in the Marrakesh Treaty, aiming to facilitate the identification of, and cooperation among, authorised entities at the international level.

- (10a) In order to improve the availability of accessible format copies and to prevent the unauthorised dissemination of works and other subject-matter, authorised entities which engage in the distribution, communication to the public or making available of accessible format copies should comply with certain obligations.

- (10c) Authorisation or recognition requirements that Member States may apply to authorised entities, such as those related to 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 on the application of the exception, such as the prior verification of the commercial availability of accessible format copies, other than those laid down in this Directive.

Member States should only be allowed to provide for compensation schemes regarding the permitted uses of works and other protected subject-matter by authorised entities. In order to avoid burdens for beneficiary persons, prevent barriers to the cross-border dissemination of accessible format copies and excessive requirements on authorised entities, it is important that the possibility for Member States to provide for such compensation schemes is limited.

Compensation schemes should therefore not require payments by beneficiary persons. They should only apply to uses by authorised entities established in the territory of the Member State providing for such a scheme and they should not require payments by authorised entities established in other Member States or third countries that are parties to the Marrakesh Treaty. Member States should ensure that there should not be more burdensome requirements for the cross-border exchange of accessible format copies under such compensation schemes, including as regards the form and possible level of compensation. When determining the level of compensation, due account should be taken of the non-profit nature of the activities of the authorised entities, of the public interest objectives pursued by the Directive, the interests of its beneficiaries, the possible harm to rightholders and the need to ensure cross-border dissemination of accessible format copies. Account should also be taken of the particular circumstances of each case, resulting from the making of a particular accessible format copy. Where the harm to a rightholder would be minimal, no obligation for payment of compensation may arise.

- (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 ('the Charter') and must be in compliance with Directives 95/46/EC¹ and 2002/58/EC² of the European Parliament and of the Council, 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 UNCRPD to which the EU is a party, guarantees people with disabilities the right of access to information and education 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 the Union prohibits all forms of discrimination, including on grounds of disability, and 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.

¹ 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). That Directive will be repealed and replaced, with effect from 25 May 2018, by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard 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).

² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

- (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 across the internal market. Accordingly, this Directive is an essential first step in improving access to works for people with disabilities.
- (16) The Commission should 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 could be considered, if necessary, on the basis of a report presented by the Commission.
- (17) Member States should be allowed to 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, notably as regards works and other subject-matter and disabilities other than those covered by this Directive, pursuant to point (b) of Article 5(3) of Directive 2001/29/EC. This Directive does not prevent Member States from providing for exceptions or limitations to 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 and the United Nations Convention on the Rights of Persons with Disabilities. 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) Since the objective of this Directive — namely 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 sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may 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 that 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 documents¹, 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 which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, by providing rules on 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.

¹ 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 media, including in audio forms such as audiobooks and in digital format, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available;
- (2) ‘beneficiary person’ means, regardless of any other disabilities:
 - (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;
 - (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 any of the impairments or disabilities referred to in paragraph 2;

- (4) ‘authorised entity’ means an entity that is authorised or recognised by the Member States to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a public institution or non-profit organisation that provides the same services to beneficiary persons as one of its primary activities, or institutional obligations as part of their public-interest missions.

Article 3 **Permitted uses**

1. Member States shall provide for an exception to the effect 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 the beneficiary person has 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 to a beneficiary person or authorised entity on a non-profit basis 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, Article 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 of this Article.
- 3a. Member States shall ensure that the exceptions provided for in paragraph 1 cannot be overridden by contract.
- 3b. Member States may provide that uses permitted under this Directive, if undertaken by authorised entities established in their territory, may be subject to compensation schemes within the limits provided in this Directive.

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 provide that an authorised entity established in their territory carrying out the acts referred to in Article 4 establishes and follows its own practices to ensure that:
 - (a) it distributes, communicates and makes available accessible format copies only to beneficiary persons or other authorised entities;
 - (b) it takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available of accessible format copies;
 - (c) it demonstrates due care in, and maintains records of, its handling of works and other subject-matter and of their accessible format copies; and
 - (d) it publishes and updates, on its website if appropriate, or through other online or offline channels, information on how it complies with the obligations laid down in points (a) to (c) of this paragraph,in full respect of rules applicable to the processing of personal data of beneficiary persons referred to in Article 5.
2. Member States shall provide that an authorised entity established in their territory carrying out the acts referred to in Article 4 shall provide the following information in an accessible way, on request, to any beneficiary person, authorised entity 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 4b
Transparency and exchange of information

1. Member States shall encourage authorised entities established in their territory carrying out the acts referred to in Article 4 of this Directive and Articles 3 and 4 of the Regulation [...] to communicate to them on a voluntary basis their names and contact details;
2. Member States shall provide the information they have received pursuant to paragraph 1 to the Commission. The Commission shall make such information publicly available in a central point of information online and keep it up to date.

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/EC¹ and with Directive 2002/58/EC².

¹ 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). That Directive will be repealed and replaced, with effect from 25 May 2018, by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard 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).

² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p.37).

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 take into account developments concerning relevant technology and shall contain an assessment on whether broadening the scope of this Directive should be considered to improve access to other types of works and other subject matter and for persons with other disabilities than those covered by this Directive.

Article 8

Review

- (1) By [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. Such evaluation shall include an assessment of the impact of compensation schemes provided for by Member States pursuant to Article 3(3b) on the availability of accessible format copies for beneficiary persons and on their cross-border exchange. The Commission's report shall take into account the views of relevant civil society actors, non-governmental organisations, including organisations of and by persons with disabilities and those representing older persons.
- (2) 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.
- (3) A Member State that has valid reasons to consider that the implementation of this Directive has had a significant negative impact on the commercial offer of works and other subject matter in accessible format for beneficiary persons may bring the matter to the attention of the Commission with all relevant evidence. The Commission shall take this evidence into account when drawing up the report referred to in paragraph 1.

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 the date of entry into force of this Directive]. 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