



2016/0278(COD)

17.3.2017

OPINION

of the Committee on Culture and Education

for the Committee on Legal Affairs

on the 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))

Rapporteur: Helga Trüpel

PA_Legam

SHORT JUSTIFICATION

The Marrakesh Treaty obliges the parties to establish a set of mandatory limitations and exceptions to copyright and related rights for the benefit of the blind, visually impaired, and otherwise print disabled persons and allows for the cross-border exchange of special format copies of books, including audio books, and other print material among the countries that are parties to the Treaty.

The rapporteur of the Committee on Culture and education (CULT) welcomes the proposed Directive because it means the end of “the book famine” for blind and visually-impaired people in the EU and around the world. Only five percent of the published books are available for visually impaired people at the moment demonstrating that no real market for those works is existing. The Marrakesh treaty is an important step forward for gaining access to cultural and educational information just like any other citizen.

The provided exceptions or limitations to copyright and related rights only apply for a strong limited group of users and only for non-commercial purposes.

Additionally it should be noted that the books shared by blind and visually impaired persons are in special formats, such as, Braille or Daisy and rarely compete with works for sighted persons. In the rapporteur’s opinion there is no evidence that “authorised entities” which produce the accessible formats would hurt the rights-holders nor the publishers through piracy.

The treaty will not undermine mainstream publishing and it will not prevent rights holders from increasing the number of mainstream accessible titles they offer. It does not foster commercial competition with the publishing industry. It should also be remembered that the Treaty exists because this market had failed blind and partially sighted people.

Therefore, all necessary measures need to be taken so as to ensure the rapid and appropriate implementation of the Treaty and the rapporteur calls for a swift ratification of the Marrakesh treaty by the European Union.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The Charter of Fundamental Rights of the European Union enshrines the right to information (Article 11) and

the right to education (Article 14).

Amendment 2

Proposal for a directive

Recital 3

Text proposed by the Commission

(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.

Amendment

(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 that its use by people whose vision is impaired seriously and in the long term would have a clear social interest and would be essentially conducted on a non-profit regime, measures*** need to be taken to ***improve accessibility to*** the works in accessible formats and to improve their circulation in the internal market, ***as well as to increase availability where necessary and where the conditions set forth in this Directive are met and to collect data regarding such access, including the publication of information on the authorised entities established in the territory.***

Amendment 3

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Persons who are blind, visually impaired or otherwise print disabled have the right of access to information and the right to participate in cultural, economic and social life on an equal basis with others.

Justification

The addition proposed results from the UNCRPD and Art. 26 Charter of Fundamental Rights

of the EU that enshrines the rights and freedoms of people with disabilities.

Amendment 4

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) This Directive is designed for the benefit 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, preventing them from reading printed works to substantially the same degree as persons without such disability, or are unable to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading due to a physical **disability**. The objective of the measures introduced by this Directive is to improve the availability of books, journals, newspapers, magazines and other writings, 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 to substantially the same degree as to persons **without an impairment or disability**. Accessible formats include Braille, large print, **adapted** e-books, audio books and radio broadcasts.

Amendment

(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, preventing them from reading printed works to substantially the same degree as persons without such disability, or are unable to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading due to a physical **impairment**. The objective of the measures introduced by this Directive is to improve the availability of books, journals, newspapers, magazines and other writings, 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 to substantially the same degree as to persons **who are not blind, visually impaired or otherwise print disabled, without compromising the quality of the content**. Accessible formats include Braille, large print, e-books, audio books and radio broadcasts, **but are not limited to them**.

Justification

This recital aims to guarantee the quality of the adapted works to ensure that the cultural experience gained from accessing literary or artistic works is the same for all, and to maintain the precision of the definition for 'persons who are not blind, visually impaired or otherwise print disabled'. It also offers the distinction between 'disability' and 'impairment'; according to the Preamble (e) of the United Nations Convention of the Rights of Persons with

Disabilities, disability results from 'the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'. In other words, it is these barriers that are disabling for people, not their impairments or different functional abilities. As such, 'impairment' is more appropriate here.

Amendment 5

Proposal for a directive Recital 6

Text proposed by the Commission

(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 Directive 2001/29/EC, Directive 2006/115/EC, and Directive 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.

Amendment

(6) This Directive therefore **provides** 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 Directive 2001/29/EC, Directive 2006/115/EC, and Directive 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 **adapted** audiobooks, it is necessary that these exceptions also apply to related rights. ***The exercise of the exceptions provided for by the present Directive is without prejudice to other exceptions for persons with disabilities provided for by the Member States, such as private use.***

Amendment 6

Proposal for a directive Recital 8

Text proposed by the Commission

(8) The mandatory exception should also 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

Amendment

(8) ***It is also necessary for*** the mandatory exception ***to*** limit the right of reproduction so as to allow for any act that is necessary in order to make changes to or

work or other subject-matter in such a way as to produce an accessible format copy. This includes providing the necessary means to navigate information in an accessible format copy.

convert or adapt a work or other subject-matter in such a way as to produce an accessible format copy. This includes providing the necessary means to navigate information in an accessible format copy, ***and also the acts that are necessary to adapt existing publications that are already accessible for certain categories of beneficiary persons to the needs of other beneficiary persons who require alternative formats to properly access the work. Lending of the work to beneficiary persons should be granted.***

Justification

This amendment aims to improve clarity on what are “necessary acts” authorised by the exception set in Art. 3. A file format may be accessible by some categories of disabled persons (e.g. visually impaired people) but not by others (e.g. dyslexics). In this case, though there is no need to transform a file for a beneficiary person who is blind or visually impaired, a transformation is needed to make the work accessible for a dyslexic. The possibility of lending should also be granted.

Amendment 7

Proposal for a directive

Recital 9

Text proposed by the Commission

(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.

Amendment

(9) The exception ***will*** allow authorised entities to make and disseminate online and offline within the Union accessible format copies of ***current*** works, ***archived material*** or other subject-matter covered by this Directive.

Justification

This recital outlines that archived works can also be made into accessible formats.

Amendment 8

Proposal for a directive

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) To improve the availability of text-based works, the rightholders' role in making their works accessible to persons with visual impairments or with other print disabilities is just as important as the exceptions provided for by this Directive when the market is unable to provide such access.

Justification

The new recital refers to a recital of the Marrakech Treaty. It recalls the equal importance of both appropriate limitations and exceptions, and the rightholders' role in making works accessible to persons with visual impairments, in order to end "the book famine" of millions of blind and partially sighted persons.

Amendment 9

**Proposal for a directive
Recital 9 b (new)**

Text proposed by the Commission

Amendment

(9b) In order to foster exchange between Member States, a single publicly accessible online database should be established and managed by the European Intellectual Property Office (EUIPO) containing information on authorised entities and bibliographic data about works available in accessible format copies produced and made available by authorised entities. This database should also include information about born accessible publications, i.e. publications produced by publishers in accessible format, and should be interoperable with the ABC TIGAR (Trusted Intermediary Global Accessible Resources) database, hosted by WIPO.

Justification

The new recital calls on the European Commission to facilitate the exchange of information through creating a single database of the accessible format copies, including the accessible books directly produced by publishers in accessible formats. This new initiative should build on and remain interoperable with the existing worldwide database developed by the Accessible Book Consortium, hosted by WIPO.

Amendment 10

Proposal for a directive

Recital 10

Text proposed by the Commission

(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.

Amendment

(10) It ***will*** 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 ***will*** therefore ensure that accessible format copies made in one Member State may be circulated ***to*** and accessed ***by beneficiary persons and authorised entities*** 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.

Amendment 11

Proposal for a directive

Recital 11

Text proposed by the Commission

(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

Amendment

(11) In view of the specific nature of the exception, its targeted scope and the need for legal certainty for its beneficiaries, Member States ***will*** not be ***permitted*** 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.

of accessible format copies.

Amendment 12

Proposal for a directive

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) In identifying authorised entities, Member States should take into consideration the expertise of such entities in providing non-profit, high quality and effective accessible formats of work and other subject matter, and the principles of trusted intermediary laid down in the Memorandum of Understanding on access to works for dyslexic or visually impaired readers, promoted by the European Commission and signed in 2010 by the representatives of rightholders and of persons who are print disabled.

Justification

The proposal intends to build on the European policy of last decade, which is based on the recognition of the valuable knowledge and experience which only specialised organisations serving beneficiary persons can contribute and on the promotion of cooperation between stakeholders in the field.

Amendment 13

Proposal for a directive

Recital 14

Text proposed by the Commission

Amendment

(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.

(14) ***In Article 26 of*** 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.

Amendment 14

Proposal for a directive

Recital 16

Text proposed by the Commission

(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.

Amendment

(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 *impairments*. The Commission will review the situation closely. Changes to the scope of this Directive may be considered, if necessary.

Amendment 15

Proposal for a directive

Recital 18

Text proposed by the Commission

(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.

Amendment

(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. *It is necessary that* this Directive *be* interpreted and applied in accordance with those rights and principles.

Amendment 16

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) The Marrakesh Treaty imposes certain obligations regarding the exchange of accessible format copies between the Union and third countries that are parties to

Amendment

(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.

the Treaty. The measures taken by the Union to fulfil those obligations are contained in Regulation [...] which ***needs to be consulted*** in conjunction with this Directive.

Amendment 17

Proposal for a directive Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Member States should transpose this Directive within six months, in order to swiftly implement the rights of persons with disabilities, recognised by the Charter of Fundamental Rights of the European Union and the UNCRPD

Justification

The amendment aims to take into account the provisions of Article 4 Par. 3 and Art. 10 of the Marrakesh Treaty on the implementation of the Treaty itself.

Amendment 18

Proposal for a directive Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) ‘work and other subject-matter’ means a work in the form of ***a book, journal, newspaper, magazine or other writing***, including sheet music, ***and related illustrations, in any media, 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;

(1) ‘work and other subject-matter’ means a ***literary, academic or artistic*** work in the form of ***text, notation and/or related illustrations***, including sheet music, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available ***in books, e-books, journals, newspapers, magazines or other writing, and in any media form, including in audio form, such as audiobooks and radio broadcasts.***

Justification

The definition of ‘work and other subject-matter’ is developed to be more specific and

detailed.

Amendment 19

Proposal for a directive

Article 2 – paragraph 1 – point 2 – introductory part

Text proposed by the Commission

(2) ‘beneficiary person’ means:

Amendment

(2) ‘beneficiary person’ means,
regardless of any other disabilities, any of the following:

Justification

This addition aligns the definition of 'beneficiary person' with the Marrakesh Treaty. It should refer to all parts a, b, c and d of Article 2 (2) and should therefore be inserted after (d).

Amendment 20

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point c

Text proposed by the Commission

(c) a person who has a perceptual or reading ***disability***, including dyslexia, and is, as a result, unable to read printed works to substantially the same degree as a person ***without an impairment or disability***; or

Amendment

(c) a person who has a perceptual or reading ***impairment***, including dyslexia, and is, as a result, unable to read printed works to substantially the same degree as a person ***who is not blind, visually impaired or otherwise print disabled***; or

Justification

This recital offers the distinction between 'disability' and 'impairment'. According to the UN Convention of the Rights of Persons with Disabilities, disability results from 'the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others', Preamble (e). In other words, it is these barriers that are disabling for people, not their impairments or different functional abilities. As such, 'impairment' is more appropriate here.

Amendment 21

Proposal for a directive

Article 2 – paragraph 1 – point 2 – point d

Text proposed by the Commission

Amendment

(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.

(d) a person who is otherwise unable, due to a physical **impairment**, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading.

Amendment 22

Proposal for a directive

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

Amendment

(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;

(3) ‘accessible format copy’ means a copy of a work or other subject-matter, ***presented on a non-profit basis*** 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;

Justification

It is important to underline the non-commercial aspect of the copies, which further clarifies the definition of the authorised entities and their action on a non-profit basis.

Amendment 23

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(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 ***public-interest missions***.

(4) ‘authorised entity’ means an ***entity that is authorised or recognised by the Member State in which it is established to provide*** education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. ***It also includes a government institution or non-profit organisation that provides the same services to beneficiary persons as***

one of its **primary** activities or **institutional obligations**.

Justification

The amendment is aimed to complete the definition of "authorized entity" proposed by the Commission, taking into account the definition of the Marrakesh Treaty which specifies by whom these entities are to be legitimately authorized or recognised.

Amendment 24

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission

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.

Amendment

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 **for the different needs of beneficiary persons**.

Amendment 25

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

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.

Amendment

Within [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.

Justification

Seen that there is no impact assessment done by the Commission on the social and economical impact that this regulation may lead to, the rapporteur advises that an evaluation should be done within maximum of 5 years after the regulation comes into force.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	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
References	COM(2016)0596 – C8-0381/2016 – 2016/0278(COD)
Committee responsible Date announced in plenary	JURI 6.10.2016
Opinion by Date announced in plenary	CULT 6.10.2016
Rapporteur Date appointed	Helga Trüpel 6.12.2016
Date adopted	28.2.2017
Result of final vote	+: 28 –: 0 0: 1
Members present for the final vote	Isabella Adinolfi, Dominique Bilde, Andrea Bocskor, Nikolaos Chountis, Silvia Costa, Mircea Diaconu, Jill Evans, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Andrew Lewer, Svetoslav Hristov Malinov, Curzio Maltese, Stefano Maullu, Luigi Morgano, Momchil Nekov, John Procter, Michaela Šojdrová, Helga Trüpel, Sabine Verheyen, Bogdan Brunon Wenta, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Lybacka
Substitutes present for the final vote	Morten Løkkegaard, Emma McClarkin, Algirdas Saudargas, Remo Sernagiotto
Substitutes under Rule 200(2) present for the final vote	Clare Moody

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

28	+
PPE	Andrea Bocskor, Marc Joulaud, Svetoslav Hristov Malinov, Algirdas Saudargas, Sabine Verheyen, Bogdan Andrzej Zdrojewski, Milan Zver, Michaela Šojdrová
S&D	Silvia Costa, Giorgos Grammatikakis, Petra Kammerevert, Clare Moody, Luigi Morgano, Momchil Nekov, Krystyna Lybacka
ECR	Andrew Lewer, Emma McClarkin, John Procter, Remo Sernagiotto
ALDE	Mircea Diaconu, María Teresa Giménez Barbat, Morten Løkkegaard
GUE/NGL	Nikolaos Chountis, Curzio Maltese
Vers/ALE	Jill Evans, Helga Trüpel
EFDD	Isabella Adinolfi
ENF	Dominique Bilde

0	-

1	0
PPE	Stefano Maullu

Key to symbols:

+ : in favour

- : against

0 : abstention