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Version: 01 Jan 2021

Regulation (EU) 2017/1563 of the European Parliament and of the Council

of 13 September 2017

on the cross-border exchange between the Union and third countries of accessible format copies of certain 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

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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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) 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. It requires contracting parties to provide for exceptions or limitations to copyright and related rights for the making and dissemination of copies, in accessible formats, of certain works and other protected subject matter, and for the cross-border exchange of those copies.

(2) The beneficiaries of the Marrakesh Treaty are persons who are blind, persons 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, persons who have a perceptual or reading disability, including dyslexia or any other learning disability preventing them from reading printed works to substantially the same degree as persons without such disability, and persons who 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, insofar as, as a result of such impairments or disabilities, those persons are unable to read printed works to substantially the same degree as persons without such impairments or disabilities.

(3) Persons who are blind, visually impaired or otherwise print-disabled continue to face many barriers to accessing books and other printed material which are protected by copyright and related rights. The need to increase the number of works and other protected subject matter in accessible formats available to such persons, and to significantly improve the circulation and dissemination of such works and other protected subject matter has been recognised at international level.

(4) According to Opinion 3/15 of the Court of Justice of the European Union, the exceptions or limitations to copyright and related rights for the making and dissemination of copies, in accessible formats, of certain works and other subject matter, provided for by the Marrakesh Treaty, have to be implemented within the field harmonised by Directive 2001/29/EC of the European Parliament and of the Council. The same is true of the export and import arrangements prescribed by that treaty, inasmuch as they are ultimately intended to permit the communication to the public or the distribution, in the territory of a party, of accessible format copies published in the territory of another party, without the consent of the rightholders being obtained.

(5) Directive (EU) 2017/1564 of the European Parliament and of the Council aims to implement the obligations that the Union has to meet under the Marrakesh Treaty in a harmonised manner in order to improve the availability of accessible format copies for beneficiary persons in all of the Member States of the Union and the circulation of such copies within the internal market, and requires Member States to introduce a mandatory exception to certain rights that are harmonised by Union law. This Regulation aims to implement the obligations under the Marrakesh Treaty with respect to the export and import arrangements for accessible format copies for non-commercial purposes for the benefit of beneficiary persons between the Union and third countries that are parties to the Marrakesh Treaty, and to lay down the conditions for such export and import in a uniform manner within the field harmonised by Directives 2001/29/EC and (EU) 2017/1564 in order to ensure that those measures are applied consistently throughout the internal market and do not jeopardise the harmonisation of exclusive rights and exceptions contained within those Directives.

(6) This Regulation should ensure that accessible format copies of books, including e-books, journals, newspapers, magazines and other kinds of writing, notation, including sheet music, and other printed material, including in audio form, whether digital or analogue, which have been made in any Member State in accordance with the national provisions adopted pursuant to Directive (EU) 2017/1564 can be distributed, communicated, or made available, to a beneficiary person or authorised entity, as referred to in the Marrakesh Treaty, in third countries that are parties to the Marrakesh Treaty. Accessible formats include, for example, Braille, large print, adapted e-books, audio books and radio broadcasts. Taking into account the 'non-commercial objective of the Marrakesh Treaty', the distribution, communication to the public or making available to the public of accessible format copies to persons who are blind, visually impaired or otherwise print-disabled or to authorised entities in the third country should only be carried out on a non-profit basis by authorised entities established in a Member State.

(7) This Regulation should also allow for the importation of, and access to, accessible format copies made in accordance with the implementation of the Marrakesh Treaty, from a third country, by beneficiary persons in the Union and authorised entities established in a Member State, for non-commercial

purposes for the benefit of persons who are blind, visually impaired or otherwise print-disabled. It should be possible for those accessible format copies to circulate in the internal market under the same conditions as accessible format copies made in the Union in accordance with Directive (EU) 2017/1564.

(8) In order to improve the availability of accessible format copies and to prevent the unauthorised dissemination of works or other subject matter, authorised entities which engage in the distribution, communication to the public or making available to the public of accessible format copies should comply with certain obligations. Initiatives by Member States to promote the objectives of the Marrakesh Treaty and the exchange of accessible format copies with third countries that are parties to that treaty, and to support authorised entities to exchange and make information available, should be encouraged. Such initiatives could include the development of guidelines or best practices on the making and dissemination of accessible format copies in consultation with representatives of authorised entities, beneficiary persons and rightholders.

(9) It is essential that any processing of personal data under this Regulation 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 it is imperative that any such processing also be in compliance with Directives 95/46/EC and 2002/58/EC 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 Regulation and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States.

(10) The United Nations Convention on the Rights of Persons with Disabilities (the 'UNCRPD'), to which the Union is a party, guarantees persons 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.

(11) Under the Charter, all forms of discrimination, including on grounds of disability, are prohibited and the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community is recognised and respected by the Union.

(12) Since the objective of this Regulation, namely to implement in a uniform manner the obligations under the Marrakesh Treaty with respect to the export and import between the Union and third countries that are parties to the Marrakesh Treaty of accessible format copies of certain works and other subject matter for non-commercial purposes for the benefit of beneficiary persons, and to lay down the conditions for such export and import, 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(13) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter and the UNCRPD. This Regulation should be interpreted and applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

Article 1

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Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

(1) ‘work or other subject matter’ means a work in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations, in any media, including in audio form 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 person who:

(a) is blind;

(b) 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 who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment;

(c) 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) 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 such person to have access as feasibly and comfortably as a person without any of the impairments or disabilities referred to in point 2;

(4) “authorised entity” means an entity that falls within the definition of approved body in section 39F(5) of the Intellectual Property (Copyright and Related Rights) Act 2005.

Article 3

Export of accessible format copies to third countries

An authorised entity established in a Gibraltar may distribute, communicate or make available to beneficiary persons or to an authorised entity established in a third country that is a party to the Marrakesh Treaty an accessible format copy of a work or other subject matter made in accordance with the Intellectual Property (Copyright and Related Rights) Act 2005 (Amendment) Regulations 2018.

Article 4

Import of accessible format copies from third countries

A beneficiary person or an authorised entity established in a Gibraltar may import or otherwise obtain or access and thereafter use, in accordance with the Intellectual Property (Copyright and Related Rights) Act 2005 (Amendment) Regulations 2018, an accessible format copy of a work or other subject matter that has been distributed, communicated or made available to beneficiary persons or to authorised entities, by an authorised entity in a third country that is a party to the Marrakesh Treaty.

Article 5

Obligations of authorised entities

1. An authorised entity established in a Gibraltar carrying out the acts referred to in Articles 3 and 4 shall establish and follow its own practices to ensure that it:

(a) distributes, communicates and makes available accessible format copies only to beneficiary persons or other authorised entities;

(b) takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public and making available to the public of accessible format copies;

(c) demonstrates due care in, and maintains records of, its handling of works or other subject matter and of accessible format copies thereof; and

(d) 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).

An authorised entity established in a Gibraltar shall establish and follow the practices referred to in the first subparagraph in full respect of the rules applicable to the processing of personal data of beneficiary persons referred to in Article 6.

2. An authorised entity established in a Gibraltar carrying out the acts referred to in Articles 3 and 4 shall provide the following information in an accessible way, on request, to beneficiary persons, other authorised entities or rightholders:

(a) the list of works or other subject matter for which it has accessible format copies and the available formats; and

(b) the name and contact details of the authorised entities with which it has engaged in the exchange of accessible format copies pursuant to Articles 3 and 4.

Article 6

Protection of personal data

The processing of personal data carried out within the framework of this Regulation shall be carried out in compliance with Regulation (EU) 2016/679 and the Communications (Personal Data and Privacy) Regulations 2006.

Article 7

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Article 8

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