



An Roinn Gnó, Fiontar agus Nuálaíochta
Department of Business, Enterprise and Innovation

Consultation on the transposition of Directive (EU) 2017/1564 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 (Marrakesh Treaty)

11 December 2017

Consultation on the transposition of Directive 2017/1564 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

(Marrakesh Treaty)

Page

A. Overview	3
1. Background of the Directive	3
2. Main Aim of the Directive	4
3. Overview of the Directive	5
B. Information on Consultation Process	8
1. Submissions	8
2. Confidentiality of Submissions	8
3. Relevant provisions of Freedom of Information Act 1997 (as amended)	9
C. Questions for consideration	10-11

A. Overview

1. Background

In 2013, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (Marrakesh Treaty) was adopted by the members of the World Intellectual Property Organisation (WIPO). The stated aim of this Treaty is to improve the availability and cross-border exchange of books and other print material in accessible formats around the world. The Treaty requires contracting parties to provide exceptions or limitations to rightholders 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. Following its ratification by twenty signatory countries, the Treaty entered into force in September 2016.

On 14 September 2016, as part of its Digital Single Market (DSM) strategy, the European Commission presented a legislative package for the modernisation of the EU copyright rules, including two texts relating to the implementation of the Marrakesh Treaty. To enable the implementation of the Marrakesh Treaty into EU law, the Commission:

- proposed a Directive to facilitate the use of certain copyright protected content, without the authorisation of the rightholder, for the benefit of persons who are blind, visually impaired or otherwise print disabled. The Directive implements into EU law the obligations agreed in the Marrakesh Treaty by providing a mandatory exception to copyright for the purposes of the Treaty and states the specific permitted uses by beneficiary persons and authorised entities; and,
- also proposed a Regulation that lays down rules on the cross-border exchange of accessible format copies of certain works and other subject-matter between the European Union and third countries that are parties to the Marrakesh Treaty, for the benefit of people who are blind, visually impaired or otherwise print-disabled.

The Directive establishes a mandatory and harmonised exception to copyright protection for the beneficiaries (i.e. blind, visually impaired, or otherwise print-disabled persons) and authorised entities (e.g. organisations established with the purpose of assisting persons with a print disability, libraries, educational establishments). As a direct result of these exceptions it will be possible for copies of works made available in accessible formats (e.g. Braille, large print or audiobook) in one Member State to be disseminated and accessed throughout the EU without prior permission from rightholders.

The separate Regulation outlines the conditions for the cross-border exchange of accessible format copies between the EU and third countries that are party to the Marrakesh Treaty.

Following negotiations between Member States and the EU Institutions, in July 2017 the EU Parliament and EU Council adopted both the “Directive on certain permitted uses of work 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”, **Directive 2017/1564/EU**, and the “Regulation of the European

Parliament and of the Council 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”, **Regulation 2017/1563/EU**.

All EU Member States, including Ireland, are now obliged to transpose the Directive by 11th October 2018.

2. Main Aim of the Directive

It has been widely acknowledged and accepted that 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 such persons, as recognised in the Charter of Fundamental Rights of the European Union and the United Nations on the Rights of Persons with Disabilities, it was recognised that measures should be taken to increase the availability of works in accessible formats and to improve their circulation in the internal market. Accessible formats include, for example, braille, large print, adapted e-books, audio books and radio broadcasts.

The main objective of this Directive is to improve the availability, and cross-border exchange within the EU, of works and other protected subject-matter in accessible formats and to facilitate access to these works for persons who are blind, visually impaired or otherwise print disabled. The accompanying Regulation will facilitate cross-border exchange of such works and other protected subject-matter between EU Member States and other countries outside the EU which have also ratified the Marrakesh Treaty.

As required, by the Marrakesh Treaty, the Directive provides for mandatory exceptions to the rights that are harmonised by Union law and are relevant for the uses and works covered by the Treaty. These include the rights of reproduction, communication to the public, making available, distribution and lending as provided for in Directives [2001/29/EC](#)¹, [2006/115/EC](#)², and include the corresponding rights covered in Directive [96/9/EC](#)³. It should be noted that these exceptions also apply to related rights.

The Directive allows authorised entities to make and disseminate within the Union accessible format of copies of works or other subject-matter covered by the Directive. This provision will reduce the demand for duplication of work in producing accessible format copies of the same work or other subject-matter across the Union, resulting in savings and efficiency gains. However, this Directive does not establish an obligation on authorised entities to make and disseminate copies.

¹ Directive 2001/29/EC of The European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society.

² Directive 2006/115/EC of the European Parliament and of the Council on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

³ Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases.

As the Department responsible for copyright policy and legislation, the Department of Business, Enterprise and Innovation must transpose the Directive by 11th October 2018. This consultation exercise is being undertaken with 3 main objectives in mind:

1. To inform relevant stakeholders of the requirements of the Directive in advance of transposition;
2. To gather the views of stakeholders on certain aspects of the Directive that remain to be transposed into Irish law.
3. To gather the views of stakeholders with regards to the criteria that should be attached to 'designated bodies'.

3. Overview of the Directive:

Article 1 outlines the subject matter and scope of the Directive, which is to harmonise the Union law applicable to copyright and related rights in the framework of the internal market for the benefit of persons who are blind, visually impaired or otherwise print disabled. This is further expanded upon within the Recitals. Under this article, it is stated that the permitted uses introduced by the mandatory exception do not require authorisation from the rightholder.

Article 2 provides a list of important definitions regarding the terms: 'work and other subject-matter'; 'beneficiary person'; 'accessible format copy' and 'authorised entity'. Recital 7 expands on the term 'beneficiary person' and provides further information on the persons that this Directive concerns. In Irish legislation, the aforementioned terms are not referred to, the terms 'persons with a disability' and 'designated body' are utilised instead. It should be noted that these terms are intended to carry out the same functions as those listed under the terms 'beneficiary person' and 'authorised entity' as defined in the Directive.

Ireland currently defines 'designated body' in Section 104(3) of the Copyright and Related Rights Act, 2000 (as amended) (CRRA) providing the following:

“...”designated body” means a body designated for the purposes of this section by order of the Minister who shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.”

It is the intention of the Minister to invite organisations to contact the Department requesting that they be assigned the status of 'designated body'. A separate Expression of Interest exercise regarding this matter, with additional information, will follow in due course.

As per Recital 10 the exception provided should allow authorised entities to make and disseminate online and offline copies within the EU, however it should be noted that this Directive does not impose an obligation on authorised entities to make and disseminate copies.

Article 3 outlines the permitted uses by 'beneficiary persons' and 'authorised entities'. The permitted uses cover the right of the beneficiary, or a person acting on their behalf, to make an accessible format copy of a work or other subject matter (as defined in Art.2) for their exclusive use; and, the right of the authorised entity to make, communicate, make available, distribute or lend an accessible copy to a beneficiary person or another authorised entity. Art.3(4) provides that the exceptions to Technological Protection Measures (TPMs) under Art. 6(4) of Directive 2001/29/EC will apply to the mandatory exceptions for 'beneficiary persons' and 'authorised entities'.

Article 3(6) - Optional Provision re Compensation Schemes

The Directive has included an optional provision whereby Member States can opt to:

“provide that uses permitted under the Directive, if undertaken by authorised entities established in their territory, may be subject to compensation schemes within the limits provided in this Directive.”

Ireland does not currently have any compensation schemes in place in relation to this area. It is the view of the Department that it would not be beneficial to introduce compensation schemes, as doing so could place an undue burden on authorised entities. Therefore, Ireland does not intend to transpose this section. However, we would welcome any comments that respondents may have on this.

Article 4 permits the cross-border exchange of modified copies of works to ensure their greater availability across the internal market; this permission will also reduce the demand for duplication of work in producing accessible format copies of the same work. The article establishes the obligation to allow an authorised entity to carry out the permitted uses across Member States and to ensure that a beneficiary person or an authorised entity may have access to an accessible copy from an authorised entity established in any Member State.

Article 5(1) imposes several obligations on authorised entities carrying out any of the permitted acts in Articles 3 and 4 to ensure that the access to works is not misused. These obligations state that any work modified is done expressly with the intention of distributing, communicating or making available of said work only to beneficiary persons or other authorised entities. The article also stipulates that the authorised entity must take appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available of accessible format copies.

Article 5(2) creates obligations on the authorised entity, established in a Member State, to provide specific information. Upon request the authorised entity must provide information to any beneficiary person, other authorised entity or rightholder regarding the works for which it has accessible format copies and the available formats, and to maintain records of the authorised entities it has engaged with in the exchange of copies as pursuant to Article 4.

Article 6 obliges Member States to encourage authorised entities to provide their contact information to them (on a voluntary basis). Member States are then required to forward any information received to the Commission. It is the intention of the Commission to maintain and update this information and to make it available online.

Article 7 relates to the protection of data protection and requires no further transposition due to the data protection legislation currently in force.

Article 8 concerns a technical amendment to Article 5(3)(b) of Directive 2001/29/EC of The European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society.

Article 9 informs that the Commission have undertaken to submit a report to the European Parliament, the Council and the European Economic and Social Committee by 11th October 2020. This report will reference 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 will take into account relevant technological developments and contain an assessment on whether broadening the scope of the Directive should be considered in order to improve access to other types of works or subject-matter and for persons with other disabilities than those covered by this Directive.

Article 10 refers to the review clause, where it states that the Commission has undertaken to carry out an evaluation of the Directive and, where appropriate, include proposals for the amendment of this Directive.

Article 11 - Deadline for Transposition of the Directive: 11th October 2018

Member States are instructed to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11th October 2018. The provisions adopted must reference the Directive and the text must be communicated to the Commission.

B. Information on Consultation Process

1. Submissions:

Irish legislation already contains provisions for persons with a disability – section 104 of the Copyright and Related Rights Act, 2000 (as amended). The Department is currently in the process of amending the legislation which will expand these provisions; however, further legislation is required to fully transpose this Directive.

The Department invites submissions on the transposition of this Directive into Irish law in general, and in particular on the issues raised in questions 1-14 outlined below. While not every respondent may have views on every question, we would ask that every respondent include the information under questions 1-4 to assist us in our consideration of the responses and to help ensure our transposition is as practical and useful as possible to all stakeholders in Ireland.

We would appreciate any specific views on how to facilitate best practise and cooperation for all stakeholders in the future. We would also particularly welcome any factual information on how the current systems operate in Ireland. Such additional information may be included as annexes to submissions where this is more practical.

Respondents are requested to make their submissions in writing and, where possible, by email. Submissions to this consultation should be sent to copyright@dbei.gov.ie or posted to:

Marrakesh Treaty Consultation
Copyright Section
Intellectual Property Unit
Department of Business, Enterprise and Innovation
23 Kildare Street
Dublin 2
D02 TD30

The closing date for submissions is **24th January 2018**. Any questions regarding the consultation can be emailed to copyright@dbei.gov.ie or contact Gráinne O'Carroll (01 631 2333).

2. Confidentiality of Submissions:

Contributors are requested to note that it is the Department's policy to treat all submissions received as being in the public domain unless confidentiality is specifically requested. Respondents are, therefore, requested to clearly identify material they consider to be confidential and to place same in a separate annex to their response, labelled "confidential". Where responses are submitted by email, and those emails include automatically generated notices stating that the content of same should be treated as confidential, contributors should clarify in the body of their emails as to whether their comments are to be treated as confidential.

3. Relevant provisions of Freedom of Information Act 1997 (as amended):

Respondents' attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Acts. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with any potentially affected respondent regarding information identified as sensitive before deciding on any Freedom of Information request.

C. Questions:**General**

1. Name (and contact details if you wish)
2. Are you:
 - A person with a disability;
 - a rightholder;
 - an organisation supporting persons with a disability;
 - an organisation representing the rights of rightholders (including authors and publishers); or
 - other – please describe.
3. If you are providing a submission on behalf of an organisation, who does your organisation represent?
4. Do you envisage availing/making use of the exceptions to copyright allowing the provision of modified copies of works under the Directive ratifying the Marrakesh Treaty in the EU?

Article 2(4)

5. What are your views on the current definition of ‘authorised entity’ and whether ‘designated bodies’ as already defined in the CRRA will need to be clarified?
6. Are there any issues which we need to consider in relation to our proposed approach to defining ‘authorised entities’?

Article 3(2)

7. How would an authorised entity show that they maintain the integrity and security of works when creating accessible format copies?

Article 5(1)

8. How do respondents feel that this article should work in Ireland? Please consider the following in your reply:
 - What practices are currently in place?
 - Are there best practice procedures in place in other authorised entities?

Article 5(2)

9. With regards to the creation of accessible formatted copies of works: what records does your organisation currently maintain?
10. What procedures do you have to enable persons with a disability, other authorised entities and rightholders to access these records?
11. Do you have any comments on the requirements as outlined in Article 5(2)?

Other

12. Do you have any views regarding the criteria that organisations/bodies should be obliged to comply with to receive classification as a 'designated body' as provided for in Section 104 of the CRRA?
13. Do you have any economic, financial or other data to assist in the transposition of this Directive?
14. Do you have any other issues you wish to raise related to this transposition?