

EU opens copyright's eyes to the blindness world

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Karolina Sztobryn (University of Lodz)

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This October one year will have passed since the legal acts transposing the provisions of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled became applicable in EU Member States. Regulation 2017/1563 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 and Directive 2017/1564 on certain permitted uses 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 and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society concern the problem of accessibility to copyright-protected works for people who suffer problems with reading printed materials, such as books and newspapers.



Regulation 2017/1563, which is directly applicable in EU Member States, provides and defines the rules relating to export and import for non-commercial purposes of copies in accessible formats for the benefit of beneficiaries between the EU and third States that are parties to the Marrakesh Treaty. In many aspects this Regulation refers to the provisions implementing Directive 2017/1564, however this has not yet been implemented by all the Member States. Directive 2017/1564 seeks to improve the availability of copies of works in accessible formats (e.g. in Braille alphabet or audiobooks) and to ensure the circulation of such copies on the internal market. Therefore, the national rules implementing Directive 2017/1564 regulate the access to works for beneficiaries in both domestic and cross-border relations. Copies of books and other materials available in an accessible format in any Member State or in a State Party to the Marrakesh Treaty may freely circulate, which makes works more accessible to people with print disabilities. Although the use of works already available on the market in accessible formats is financially attractive, because the adaptation of works into accessible formats requires considerable investment, and limits the waiting time for obtaining works, in practice the benefit may be relatively small, due to the wide range of different languages used in the EU and Marrakesh Treaty States.

The provisions of Regulation 2017/1563 and Directive 2017/1564 are formulated following the Marrakesh Treaty content, however they contain certain modifications comparing to the original. Mainly, the EU acts extend the circle of beneficiaries identified in the Marrakesh Treaty to also include those who are not affected by visual disabilities or other physical disabilities, but have impairments in perception or reading ability, including dyslexia or other limitations of learning ability (for example autism or mental disability), which make it impossible to read printed works to substantially the same degree as a person without such a limitation.

Limitations and Exceptions

The implementation of the objectives set out in Regulation 2017/1563 and Directive 2017/1564 was possible through increasing the existing scope of limitations and exceptions in order to:

- make an accessible format copy of work or other subject matter. This right was transferred not only to beneficiaries who may encounter problems in making such a copy on their own, but also to persons acting on their behalf and authorised entities.
- communicate, make available, distribute or lend an accessible format copy to a beneficiary person or another authorised entity on a non-profit basis for the purpose of exclusive use by a beneficiary person. This privilege was exclusively given to the authorised entity.

Activities carried out within the permitted use must not conflict with normal exploitation or unreasonably prejudice the legitimate interests of the rightholder. Moreover, a copy of a work in an accessible format must not impair the integrity of the work or other subject-matter, while taking due account of the changes necessary to make the work or other subject-matter available in other formats. Such changes will be necessary for example when describing images included in a work in Braille alphabet or converting written text into spoken text. It is also prohibited under EU law to contractually exclude the effectiveness of such authorised use and, in addition, Member States may not impose additional requirements for the application of the exception itself, such as a requirement for prior verification of the availability on the market of works in accessible formats.

The introduction of such restrictions to the permissible activities of beneficiaries, persons acting on their behalf and authorised entities relates to the three-step test set out in the Berne Convention, which has, however, been clarified in the EU acts discussed. Therefore, the rules on the application of the exceptions for the benefit of persons with print disabilities are sufficiently specific to ensure greater predictability and clarity in their interpretation.

The provisions of Regulation 2017/1563 and Directive 2017/1564 try to balance the rights of the author, which should undisputedly remain the cornerstone of copyright protection, with the interests of the special group of users of works. Therefore, this approach does not involve an essential limitation of authors' rights, but instead focuses on the rights of certain social groups, which require a different type of protection.

Social policy behind copyright

The discussed legal acts are an attempt to improve the current situation and establish the need to move towards the implementation of the principle of non-discrimination into the copyright system. Of course, copyright law does not explicitly exclude or discriminate against people with disabilities, however, the traditional continental perception of author's rights sometimes loses sight of other participants in the system. By introducing limitations designed for a specific group of users, we can see an attempt to also recognise the strong social and public policy behind copyright law. The acts give hope that the mainstream market for copyright works will not just favour visually able people over disabled communities, but will also address the needs of niche markets for accessible-format works.