European Parliament: Approval for proposed Directive and Regulation bringing EU law in line with the Marrakesh Treaty

IRIS 2017-9:1/4

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On 6 July 2017, the European Parliament (EP) voted in favour of a proposed Directive and Regulation (see IRIS 2016-9/4) implementing the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which the EU signed in April 2014. In an effort to promote availability and the cross-border exchange of works in accessible-formats, the Marrakesh Treaty sets forth two obligations: (i) a requirement for exceptions or limitations to copyright and related rights for the making and dissemination of accessible-format copies, and (ii) the establishment of their cross-border circulation between the countries party to the Treaty. The EP's legislative resolutions on the proposed Directive on copyright exceptions and the proposed Regulation on cross-border exchange received 609 and 610 votes of approval, respectively. The Council of the EU ratified the Directive and Regulation on 17 July 2017.

The number of beneficiary persons in Europe is estimated to total 30 million, and the share of published books in accessible-formats is said to range from 7% to 20% within the EU. A "beneficiary person", under Article 2 (2) of the Directive, is a person who is blind, or who has a visual impairment, or a perceptual or reading disability, or a person who is otherwise unable, because of 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.

The Directive stipulates an obligatory exception to copyright and related rights under Article 3. Member States are obliged to allow beneficiary persons themselves, persons acting on their behalf, and authorised entities to make accessible-format copies of works to which they have lawful access, without having to secure authorisation from the rightholder in question. Article 2 (4) of the Directive defines an "authorised entity" to include entities authorised or recognised by a Member State to provide education, instructional training, "adaptive" reading or access to information to beneficiary persons on a non-profit basis. Additionally, authorised entities may communicate, make available, distribute or lend accessible-format copies. These exceptions are limited for the exclusive use of beneficiary persons, must respect the integrity of the original work, and must not conflict with the normal exploitation of the work or other

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subject matter, or unreasonably prejudice the legitimate interests of the rightholder in question. In its Recital 14, the new Directive provides that Member States should not be allowed to impose additional requirements for the application of the exception, and that optional compensation schemes for authorised entities should be “limited”. Some of those limits are expressed in Recital 14 - for example, that no payment should be required from beneficiary persons themselves, barriers to cross-border dissemination should be avoided, and where the harm to a rightholder is minimal, no obligation for payment of compensation should arise. The optional establishment of compensation schemes is regulated by Article 3 (6) of the Directive. The option for Member States to have such compensation schemes was the subject of considerable debate during the drafting process of the Directive.

The rules for cross-border exchange are laid out in the corresponding Regulation in Articles 3 and 4 - which should be read in conjunction with the Directive - expanding free circulation to third countries that are party to the Marrakesh Treaty, and establishing detailed obligations for entities authorised under Article 5.

In order to bring the new Directive into line with existing EU law, Article 5 (3) (b) of Directive 2001/29/EC has been amended to acknowledge the obligations arising from the new Directive.

National laws have to be adapted within one year of the entry into force of the Directive, while the Regulation will be binding in its entirety and directly applicable in all Member States.

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

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1563

Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 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

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L1564

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