



Rialtas na hÉireann
Government of Ireland

Guidance Notes on the European Union (Marrakesh Treaty) Regulations 2018

S.I. No. 412 of 2018

Prepared by the Department of
Business, Enterprise and Innovation
dbei.gov.ie

Purpose of the Regulations

The Minister of State for Training, Skills, Innovation, Research and Development has signed into law statutory instrument number 412 of 2018, which is the European Union (Marrakesh Treaty) Regulations 2018. These Regulations transpose into Irish law EU Directive 2017/1564¹ which facilitates the use of certain copyright protected works, without the authorisation of the rightsholder, for the benefit of persons who are blind, visually impaired or otherwise print disabled. This Regulation came into force on 11th October 2018.

To fully understand the provisions contained in this Regulation, it must be read in conjunction with [EU Directive 2017/1564](#).

It should be noted, that the Marrakesh Treaty imposes certain obligations regarding the exchange of accessible format copies between the Union and third countries that are parties to that Treaty. The measures taken by the Union to fulfil those obligations are contained in [EU Regulation 2017/1563](#)² which should be read in conjunction with this Directive.

Background to the Marrakesh Treaty

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. Copyright and related rights laws make it illegal to reproduce, distribute or make available copies of published books and other print material in formats accessible to persons with print disabilities without first seeking the authorisation of the rightsholder. It is also an infringement of copyright to share those accessible format copies across borders. It was recognised that measures should be taken to increase the availability of books and other printed material in accessible formats and to improve the cross-border exchange of those copies the internal market.

Consequently, 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) in 2013. The aim of the Treaty is to end the book famine and to improve the availability and cross-border exchange of books and other print material in accessible formats around the world.

To enable the implementation of the Marrakesh Treaty into EU law, the European Commission adopted a Directive (EU 2017/1564) and a Regulation (EU 2017/1563). The Directive facilitates the use of certain copyright protected works, without the authorisation of the rightsholder, for the benefit of persons who are blind, visually impaired or otherwise print

¹ **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

² **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

disabled. All EU Member States must transpose the Directive into their national copyright legislation.

The accompanying EU Regulation 2017/1563 provides for the cross-border exchange of accessible format copies between EU Member States and **third countries** that are parties to the Marrakesh Treaty. The Regulation will have direct effect across the EU and does not require transposition into the national legislation of EU Member States.

Together, the EU Directive (as transposed into Irish law by Regulation 412) and the EU Regulation will further improve access to modified works for persons with a visual disability beyond the exceptions to copyright which already exist for all persons with a disability as provided for in Section 104 of the Copyright and Related Rights Act, 2000.

What does the Regulation do?

These Regulations transpose the EU Directive into Irish law. The Regulations allow for the reproduction, communication to the public, distribution, lending and making available to the public of certain copyright protected works in formats designed to be accessible to the blind, visually impaired, or otherwise print-disabled without the permission of the rightsholder.

The Regulation will also facilitate that copies of works made available in accessible formats (for example, braille, large print or audiobook) in one Member State can be accessed throughout the EU without prior permission from rightsholders.

Who are “beneficiary persons” and “Authorised Entities”?

“Beneficiary persons”

The Regulation concerns **“beneficiary persons”**, who include 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 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.

“Authorised entities”

The Regulation is also applicable to **“authorised entities”**, organisations established for the purpose of assisting persons with print disabilities, be they public or private organisations, providing education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis, including a public institution or non-profit organisation that provides the same services to beneficiary persons as one of its primary activities or as part of its public-interest mission.

What copyright protected works do the Regulation relate to?

The Regulation relates to works or other printed material protected by copyright and related rights, including books, e-books, journals, newspapers, magazines and other kinds of writing, notation, sheet music, other printed material in any media, including in audio form such as audio books whether digital or analogue, available online or offline.

What is meant by “accessible format”?

Accessible format means **any** format that gives a beneficiary person access to a work. This can include, for example, Braille, large print, adapted e-books, audio books and radio broadcasts.

What are “beneficiary persons” or “authorised entities” allowed to do?

“Beneficiary persons” or “authorised entities” can make an accessible format copy of a work or other print material for their exclusive use.

An “authorised entity” can make, communicate, make available, distribute or lend an accessible format copy to a “beneficiary person” or another “authorised entity” within the EU and in third countries that are parties to the Marrakesh Treaty. All accessible format copies should only be made of works or other print material to which beneficiary persons or authorised entities have lawful access. Any contractual provision which seeks to prevent or limit the application of the exception in any way is void of legal effect.

All export and import of accessible format copies must be for non-commercial purposes and carried out on a non-profit basis by authorised entities.

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 will reduce the cross-border duplication of accessible format copies of the same work resulting in savings and efficiency gains.

What are the obligations on Authorised Entities?

An “authorised entity” must put in place certain practices 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 or making available 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;
- d. publish 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 subparagraphs (a) to (c).

- e. An authorised entity established in the State shall provide the following information in an accessible way, on request, to beneficiary persons, other authorised entities or rightsholders:
 - i. the list of works or other subject matter for which it has accessible format copies and the available formats; and
 - ii. the name and contact details of the authorised entities with which it has engaged in the exchange of accessible format copies pursuant to the Regulation
- f. respects the rules applicable to the collection and processing of personal data of the beneficiary person in compliance with Data Protection law, specifically the General Data Protection Regulation (GDPR)³ which came into force on 25th May 2018 and the ePrivacy Directive 2002⁴.

“Authorised entities” established in the state, carrying out the acts referred to in Regulation (3) (1)(b), are encouraged to provide their names and contact details to the Department of Business, Enterprise and Innovation (on a voluntary basis). It should be noted that the Department is obliged to forward to the European Commission the contact information pertaining to an authorised entity that has been provided to them.

It is the intention of the European Commission to make the authorised entity contact information available online. This will assist beneficiary persons, other authorised entities and rightsholders in contacting authorised entities to facilitate the exchange of information on the availability of accessible copies. Therefore, while there is no obligation on authorised entities to provide contact information, the Department would encourage authorised entities which intend to make use of these Regulations to provide such information to the Department. This will allow those authorised entities to better connect with other relevant authorised entities within and outside the EU, to facilitate greater access to print materials for beneficiary persons.

It should be noted that under this Regulation, or EU Directive 2017/1564, there is **no obligation** imposed on “authorised entities” to make and disseminate accessible format copies.

Entry into force.

This Regulation came into force on **11th October 2018**.

³ **REGULATION (EU) 2016/679** OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

⁴ **Directive 2002/58/EC** of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

Disclaimer

These Guidance Notes are separate to the Regulations and are intended purely for information purposes in relation to the main aspects of the Regulations. The Department of Business, Enterprise and Innovation does not take responsibility for any errors contained in these notes as all parties must use the Statutory Instrument as the legal basis for implementation of EU Directive 2017/1564. In addition, these Guidance Notes do not constitute legal advice - any party with a legal query should acquire their own legal advice from suitably qualified professionals.

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