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2013/0444 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

People who are blind, visually impaired or otherwise print disabled must have equal access to books and printed material in order to fully and effectively participate in society. The World Health Organisation estimates that 285 million people worldwide are visually impaired: 39 million are blind and 246 million have low vision.[1] The World Blind Union reports that in Europe only 5% of published books are available in an accessible format for visually impaired persons, while in developing countries – where approximately 90% of visually impaired people live – this rate is as low as 1%.[2]

Accessible format copies of books are now usually produced and distributed at national level, by specialised entities, for example libraries for the blind, either under licences or under limitations or exceptions to copyright. However, the lack of an international legal framework allowing for the cross-border exchange of accessible formats produced under a limitation or exception leads to a duplication of effort in the making of such copies, even across countries sharing the same language. This constitutes a problem because of the costs of producing accessible format copies and the limited resources available to the entities serving the blind.

Since January 2011 the European Union has been bound by the United Nations Convention on the Rights of Persons with Disabilities which enshrines the right of access to information (Article 21) and the right of persons with disabilities to participate in cultural life on an equal basis with others (Article 30). The Convention has become an integral part of the EU legal order. 25 Member States are parties to the Convention and three countries are finalising the ratification.

In 2009 negotiations started in the World Intellectual Property Organisation (WIPO) on a possible international treaty introducing limitations and exceptions to copyright for the benefit of persons who are blind, visually impaired or otherwise print disabled, with the objective of facilitating the cross-border exchange of accessible format copies.

On 26 November 2012 the Council adopted a Decision authorising the Commission to participate in these negotiations, on behalf of the European Union.[3] The negotiations in WIPO were successfully concluded at the Diplomatic Conference held in Marrakesh from 17 to 28 June 2013, leading to the adoption of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled (hereinafter 'the Treaty') on 27 June 2013.

The Treaty establishes a set of international rules which ensure that there are limitations or exceptions to copyright at national level for the benefit of persons who are blind, visually impaired, or otherwise print disabled and enable the cross-border exchange of accessible format copies of published works that have been made under an exception or limitation to copyright in any of the Contracting Parties to the Treaty.

With this proposal for a Council Decision, the Commission seeks authorisation from the Council to sign the Treaty, on behalf of the European Union, subject to its conclusion at a later date.

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1 Fact sheet No. 282, June 2012; http://www.who.int

2 http://www.worldblindunion.org

3 Council Decision on the participation of the European Union in negotiations for an international agreement within the World Intellectual Property Organisation on improved access to books for print impaired persons; 16259/12 EU RESTRICTED

2. LEGAL ELEMENTS OF THE PROPOSAL

The beneficiaries of the Treaty are persons who are blind, have a visual impairment or a perceptual or reading disability, or are otherwise unable, through physical disability, to hold or manipulate a book or focus or move eyes to the extent that would be normally acceptable for reading.

The Treaty obliges every Contracting Party to provide, in their national copyright laws, for a limitation or exception to the right of reproduction, the right of distribution and the right of making available to the public in order to facilitate the availability of works in accessible format copies for such beneficiaries.[4] Contracting Parties may decide to limit such limitations or exceptions to cases where the accessible format copies are not commercially available under reasonable terms for the beneficiaries in their territory. In the EU, Article 5(3)(b) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society[5] already provides for an optional exception or limitation to these rights as regards uses, for the benefit of people with any disability, which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability. Unlike the Treaty, Article 5(3)(b) of Directive 2001/29/EC is not limited to any particular disability. In addition, Member States are free to choose whether they implement this limitation or exception. However, it is now settled case law that any discretion which Member States enjoy when they make use of any of the exceptions or limitations under Article 5 of Directive 2001/29/EC must be exercised within the limits imposed by EU law.[6]

The Treaty defines 'works' as literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter 'the Berne Convention'), in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media. It also specifies that the definition covers audiobooks.

An 'accessible format copy' is a copy in an alternative manner and form compared to the format in which the work has been published and that it gives beneficiaries access to the work as comfortably as sighted persons could access it. The accessible format copy must be used exclusively by beneficiaries and it must respect the integrity of the original work.

Accessible format copies made under a limitation or exception to copyright may be exported by 'authorised entities' defined as government institutions or other organisations that provide education, instructional training, adaptive reading or information access to blind, visually impaired, or otherwise print disabled persons on a non-profit basis. These entities must ensure that they only distribute accessible formats to beneficiaries, that they discourage the reproduction, distribution and making available of unauthorised copies and that they maintain due care in, and records of, their handling of the copies.

Contracting Parties may only allow the exportation of accessible format copies, if they ensure that their limitations or exceptions to the rights of reproduction, distribution and making available to the public are subject to the 'three-step test' requirement either via being a party to the WIPO Copyright Treaty (WCT) or by ensuring otherwise that the relevant limitations or exceptions are limited to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

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4 Contracting Parties may also provide for a limitation or exception to the right of public performance and, according to the attached agreed statement, to the right of translation to the extent allowed by the Berne Convention.

5 OJ L 167, 22.6.2001, pp. 10–19.

6 See e.g. case C-145/ Eva Maria Painer, paragraph104.

The Treaty clarifies that to the extent a Contracting Party permits a beneficiary person or an authorised entity to make an accessible format copy of a work, it should also permit the importation of such copies.

Contracting Parties are obliged to take appropriate measures, if necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent the beneficiaries from enjoying the limitations and exceptions provided for in the Treaty. An equivalent obligation is already established in the EU under Article 6(4) of Directive 2001/29/EC.

The Treaty also requires Contracting Parties to protect the privacy of beneficiary persons and to cooperate in order to facilitate the cross-border exchange of accessible format copies. WIPO will establish an information access point to assist authorised entities in identifying one another. Moreover, the Treaty encourages authorised entities to provide information on their policies and practices to interested parties and to members of the public.

The Treaty confirms that Contracting Parties are free to determine the appropriate method of implementing the Treaty within their own legal system and practice. However, they must comply with existing international obligations under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WCT. The Treaty recognises the possibility of the Contracting Parties to maintain or implement other limitations and exceptions, outside the scope of the Treaty, for the benefit of beneficiary persons and persons with other disabilities.

Articles 13 to 22 contain administrative and procedural provisions that are very similar to those in the Beijing Treaty on Audiovisual Performances adopted on 24 June 2012. The Treaty will enter into force once twenty Contracting Parties have ratified it.

The European Union may become party to the Treaty having made the declaration during the Marrakesh Diplomatic Conference, that it is competent in respect of, and has its own legislation binding on all its Member States on matters covered by this Treaty and that it has been duly authorised, in accordance with its internal procedures, to become party to the Treaty. The European Union also signed the final act of the Diplomatic Conference on 28 June 2013. The Treaty is open for signature by any eligible party for one year after its adoption.

The Commission is satisfied with the results of the negotiations and requests the Council to authorise the signature, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled.

Considering the subject matter of the Treaty, the decision of the Council should be based on Articles 114 and 207, as well as on Article 218(5) of the Treaty on the Functioning of the European Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Since 22 January 2011 the European Union has been bound by the United Nations Convention on the Rights of Persons with Disabilities; its provisions have become an integral part of the European Union legal order.[7]

(2) On 26 November 2012 the Council authorised the Commission to negotiate, on behalf of the European Union, an international agreement within the World Intellectual Property Organisation on improved access to books for print impaired persons.

(3) The negotiations were successfully concluded at the Diplomatic Conference held in Marrakesh from 17 to 28 June 2013 and the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled (hereinafter referred to as 'the Treaty') was adopted on 27 June 2013.

(4) The Treaty establishes a set of international rules which ensure that there are limitations or exceptions to copyright at national level for the benefit of persons who are blind, visually impaired, or otherwise print disabled and enable the cross-border exchange of accessible format copies of published works that have been made under limitations and exceptions to copyright.

(5) The Treaty shall be open for signature by any eligible party for one year after its adoption. It should be signed on behalf of the European Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled on behalf of the Union is hereby approved, subject to the conclusion of the said Treaty at a later date.

[7] Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities. OJ L 23, 27.1.2010, pp. 35-61.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Treaty, subject to its conclusion, for the person(s) indicated by the European Commission.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President