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Marrakesh Treaty Consultation
Copyright Section, Intellectual Property Unit
Department of Business, Enterprise and Innovation (DBEI)
23 Kildare Street, Dublin 2, Ireland
By email: copyright@dbei.gov.ie

18 January 2018

Re: Public consultation 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 Directive (EU) 2017/1564 implementing the Marrakesh Treaty

Dear Madam/Sir,

Electronic Information for Libraries (EIFL) works with libraries to enable access to knowledge in developing and transition economy countries in Europe, Africa, Asia Pacific, and Latin America.

EIFL supported negotiations over five years at WIPO, and participated in the Diplomatic Conference that led to the adoption of the Marrakesh Treaty in 2013.

To complete the work at WIPO, and to fulfil the promise of the universal right to read for persons with print disabilities, EIFL is supporting ratification of the treaty and its implementation into national law. To this end, EIFL has prepared a guide to the Marrakesh Treaty that is available in seven languages¹.

EIFL welcomes this opportunity to respond to the Department of Business, Enterprise and Innovation's public consultation on transposition of the Marrakesh Treaty Directive 2017/1564 into the Irish Copyright and Related Rights Act (CRRA).

The Irish transposition of Directive 2017/1564 could serve not only as a model for its transposition by other EU member states, EU candidate countries and potential candidates, but

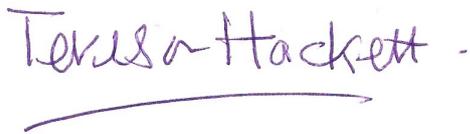
¹ <http://www.eifl.net/resources/marrakesh-treaty-eifl-guide-libraries-english>

also for the implementation of the Marrakesh Treaty in the domestic law of other countries outside of the EU.

We hope that our comments are useful.

Please do not hesitate to contact me if you have any questions.

Yours faithfully



Teresa Hackett
EIFL Copyright and Libraries Programme Manager

Questions

General

1. Name (and contact details if you wish)

Teresa Hackett, Copyright and Libraries Programme Manager

Electronic Information for Libraries (EIFL)

Email: teresa.hackett@eifl.net

URL: www.eifl.net

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.**

EIFL is a not-for-profit organization that works with libraries to enable access to knowledge in over 60 developing and transition economy countries in Europe, Africa, Asia Pacific, and Latin America².

EIFL's Copyright and Libraries programme advocates for a fair copyright system, and supports librarians to become advocates for access to knowledge.

EIFL is registered in the Netherlands and headquartered in Lithuania.

3. If you are providing a submission on behalf of an organisation, who does your organisation represent?

EIFL partners with library consortia, groups of libraries that share common goals and can speak with one voice to policymakers and funders. Library consortia can also share resources and activities across their member libraries, thereby reaching millions of users efficiently.

EIFL partner consortia include university, research and public libraries, as well as national libraries and other institutions.

In Europe, EIFL partners with consortia in the following countries that represent c. 645 libraries:

EU Member States: Estonia, Latvia, Lithuania, Poland, Slovenia;

EU candidate countries: Former Yugoslav Republic of Macedonia, Serbia;

Potential candidates: Bosnia and Herzegovina, Kosovo.

² <http://www.eifl.net/where-we-work>

In addition, EIFL works in the following EU neighbourhood countries where alignment of local copyright laws with EU rules and standards may also be required:

Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, Palestine, Ukraine.

EIFL's activities help people access and use information for education, learning, research, and community development. Many of the libraries that EIFL supports provide services to people with print disabilities.

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?

We anticipate that many libraries in EIFL's network will make use of the exceptions provided under the Marrakesh Treaty, including dissemination within the EU (by libraries located in the EU), and importation of works from authorised entities in the EU (by libraries in third countries that are party to the Marrakesh Treaty).

Libraries in Ireland will be able to obtain foreign language material from other EU member states to serve EU nationals living in Ireland, and libraries in other member states can legally provide material to Europeans living in Ireland.

For example, the Lithuanian Library for the Blind (LAB) is the only producer of talking books in Lithuania, producing about 200 titles annually. In 2010, a Virtual Library for the Blind (known as ELVIS), co-funded by the European Regional Development Fund, was established to provide materials in DAISY and other digital formats to end-users. Lithuanians with a visual disability living in other European countries would like to enjoy reading material in their own language, and access to books via the online ELVIS service has been requested by Lithuanians living in Ireland, among other EU countries.

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?

The definition of "authorised entity" in Directive 2017/1564, and the Marrakesh Treaty, does not require any form of government approval. Nor does it require an organization to fulfil any formalities or undertake specific procedures to obtain recognition as an "authorised entity". The second sentence of Article 2(4) of the Directive makes this clear.

However, the definition of “designated body” in section 104(3) of the CRRA does require such government approval. We believe that designation by the Minister introduces an unnecessary hurdle that will act as an impediment to the delivery of services to people with disabilities.

In addition, a for-profit entity recognized by the government as providing services to print-disabled individuals is also eligible, so long as it provides these services on a non-profit basis.

6. Are there any issues which we need to consider in relation to our proposed approach to defining ‘authorised entities’?

The definition of authorised entity should be as broad and inclusive as possible to facilitate the provision of accessible format copies to people with print disabilities, in keeping with the spirit and intent of Directive 2017/1564 and the Marrakesh Treaty.

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 3(2) of the Directive refers to integrity, not security. Indeed, the word “security” does not appear anywhere in the Directive. Article 5(1) provides that an authorised entity must establish and follow its own practices to ensure that it distributes accessible format copies only to beneficiary persons or other authorised entities. Likewise, the authorised entity must establish and follow its own practices to ensure that it takes appropriate steps to discourage unauthorised reproduction and distribution of accessible format copies. The transposition should not in any way limit the flexibility the Directive (and the Treaty before it) provides to authorised entities concerning their operations.

With respect to integrity, if a copyright owner believes that an authorised entity is not maintaining the integrity of a work, it can raise the issue with the authorised entity, or, if necessary, the judicial system. A court would be equipped to determine whether the authorised entity made changes beyond those necessary to make the work accessible, in which case the authorised entity would lose the protection of the exception.

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?**

Authorised entities are crucial to achieving the objectives of the Directive, and thus the Treaty, in overcoming the considerable barriers that print-disabled people face in making and sharing accessible format copies. The Directive, and the Treaty, empower such authorised entities to create and share accessible copies. National implementation should not place unnecessary barriers on authorised entities in fulfilling their responsibilities.

Entities that provide services to people with disabilities should be given the flexibility to establish their *own* practices appropriate to their particular circumstances. There are a wide range of entities, such as libraries of all types, providing such services to different populations with different needs. Practices appropriate for one entity may not be appropriate for another.

The government should in the first instance trust these entities to employ their professional judgment and expertise to establish practices that balance the interests of the copyright owners, the beneficiary persons, and the authorised entities.

Evidence is that ‘leakage’ of accessible materials from such authorised entities is extremely rare. At an event organized by WIPO’s Accessible Books Consortium (ABC) in November 2016³, experts from Argentina, India and the US reported no notable instances of unauthorised uses in their many years providing library services to blind and visually impaired people. All the panellists appealed for national implementations that will enable easy and unbureaucratic cross-border exchange of accessible format materials.

Article 5(2)

9. With regards to the creation of accessible formatted copies of works: what records does your organisation currently maintain?

EIFL does not maintain such records because it does not provide services directly to beneficiary persons.

³ www.ip-watch.org/2016/11/21/turning-promises-marrakesh-treaty-visually-impaired-reality/

10. What procedures do you have to enable persons with a disability, other authorised entities and rightholders to access these records?

EIFL does not maintain such records because it does not provide services directly to beneficiary persons.

11. Do you have any comments on the requirements as outlined in Article 5(2)?

Authorised entities must have the flexibility to determine how best to meet these obligations.

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?

As discussed above in response to question 5, we believe that government approval of designated bodies is not keeping with the inclusive spirit and letter of the Directive and the Treaty. Accordingly, government oversight of ‘designated bodies’ should be removed.

However if the government decides to retain the step of assigning the status of ‘designated body’ to a library or other organization, it should be a mere formality that can be achieved through a simple administrative procedure.

13. Do you have any economic, financial or other data to assist in the transposition of this Directive?

We do not have any such data.

14. Do you have any other issues you wish to raise related to this transposition?

On 3 December 2017, the Minister of State for Disability Issues, Finian McGrath TD, announced his intention to submit draft legislation to Government on the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD). Transposition of Directive 2017/1564 will help to implement several important articles of the CRPD by removing the copyright barriers to accessible information and culture. Of particular relevance in this context are the right of people with disabilities to live independently and participate fully in all aspects of life (Article 9), the right to access information (Article 21) and the right to participate in cultural life, recreation, leisure and sport on an equal basis (Article 30).

EIFL welcomes the government's intention not to transpose the optional provision re compensation schemes. The inclusion of a remuneration option in the treaty was designed to ensure that the few countries that already have such compensation schemes are not required to change their existing laws. Since Ireland does not currently have a compensation scheme, it would not be logical to introduce one, and it would impede the creation and exchange of accessible format works⁴.

The transposition should be done in the clearest and broadest manner possible to ensure that the objectives of the Treaty—the end of the book famine—are met. As mentioned in Question 8, the risk of authorised entities or beneficiary persons misusing a copyright exception in a manner the causes harm to copyright owners is negligible. Thus, the exception should not impose unnecessary administrative hurdles in the way of providing desperately needed services to a deserving population.

Vilnius, 18 January 2018

⁴ For further discussion on this issue, see World Blind Union Guide to the Marrakesh Treaty, p.49