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

DIRECTIVE (EU) 2017/1564 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 September 2017

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Union legal acts in the area of copyright and related rights provide legal certainty and a high level of protection for rightholders, and constitute a harmonised legal framework. That framework contributes to the proper functioning of the internal market and stimulates innovation, creation, investment and the production of new content, including in the digital environment. It also aims to promote access to knowledge and culture by protecting works and other subject matter and by permitting exceptions or limitations that are in the public interest. A fair balance of rights and interests between rightholders and users should be safeguarded.

(2) Directives 96/9/EC[(3)], 2001/29/EC[(4)], 2006/115/EC[(5)] and 2009/24/EC[(6)] of the European Parliament and of the Council harmonise the rights of rightholders in the area of copyright and related rights. Those Directives, together with Directive 2012/28/EU of the European Parliament and of the Council[(7)], provide for an exhaustive list of exceptions and limitations to those rights, which allow the use of content without the rightholders' authorisation under certain conditions in order to achieve certain policy objectives.

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(3) Persons who are blind, visually impaired or otherwise print-disabled continue to face many barriers to accessing books and other printed material which are protected by copyright and related rights. Taking into consideration the rights of blind, visually impaired or otherwise print-disabled persons as recognised in the Charter of Fundamental Rights of the European Union (the 'Charter') and the United Nations Convention on the Rights of Persons with Disabilities (the 'UNCRPD'), measures should be taken to increase the availability of books and other printed material in accessible formats, and to improve their circulation in the internal market.

(4) The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the 'Marrakesh Treaty') was signed on behalf of the Union on 30 April 2014[(8)]. Its aim is to improve the availability and cross-border exchange of certain works and other protected subject matter in accessible formats for persons who are blind, visually impaired or otherwise print-disabled. The Marrakesh Treaty requires contracting parties to provide for exceptions or limitations to copyright and related rights for the making and dissemination of copies, in accessible formats, of certain works and other protected subject matter, and for the cross-border exchange of those copies. The conclusion of the Marrakesh Treaty by the Union requires the adaptation of Union law by establishing a mandatory and harmonised exception for uses, works and beneficiary persons covered by that treaty.

(5) According to Opinion 3/15 of the Court of Justice of the European Union[(9)], the exceptions or limitations to copyright and related rights for the making and dissemination of copies, in accessible formats, of certain works and other subject matter, provided for by the Marrakesh Treaty, have to be implemented within the field harmonised by Directive 2001/29/EC.

(6) This Directive implements the obligations that the Union has to meet under the Marrakesh Treaty in a harmonised manner, with a view to ensuring that the corresponding measures are applied consistently throughout the internal market. This Directive should therefore provide for a mandatory exception to the rights that are harmonised by Union law and are relevant for the uses and works covered by the Marrakesh Treaty. Such rights include, in particular, the rights of reproduction, communication to the public, making available to the public, distribution and lending, as provided for in Directives 2001/29/EC, 2006/115/EC and 2009/24/EC, as well as the corresponding rights provided for in Directive 96/9/EC. As the scope of the exceptions or limitations required by the Marrakesh Treaty also includes works in audio form, like audiobooks, the mandatory exception provided for under this Directive should also apply to related rights.

(7) This Directive concerns 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 to substantially the same degree as persons without such disability, 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. This Directive therefore aims to improve the availability of books, including e-books, journals, newspapers, magazines and other kinds of writing, notation, including sheet music, and other printed material, including in audio form, whether digital or analogue, online or offline, in formats that make those works and other subject matter accessible to those persons to substantially the same degree as to persons without such impairment or disability. Accessible formats include, for example, Braille, large print, adapted e-books, audio books and radio broadcasts.

(8) The mandatory exception provided for in this Directive should limit the right of reproduction so as to allow for any act that is necessary in order to make changes to or convert or adapt a work or other subject matter in such a way as to produce an accessible format copy that makes it possible for beneficiary persons to access that work or other subject matter. This includes providing the necessary means to navigate information in an accessible format copy. It also includes changes that might be required in cases in which the format of a work or of other subject matter is already accessible to certain beneficiary persons while it might not be accessible to other beneficiary persons, due to different impairments or disabilities, or the different degree of such impairments or disabilities.

(9) The permitted uses laid down in this Directive should include the making of accessible format copies by either beneficiary persons or authorised entities serving their needs, whether those authorised entities be public or private organisations, in particular libraries, educational establishments and other non-profit organisations, that serve persons with a print disability as one of their primary activities, institutional obligations or as part of their public interest missions. The uses laid down in this Directive should also include the making of accessible format copies, for the exclusive use of beneficiary persons, by a natural person who does so on behalf of a beneficiary person or who assists the beneficiary person making such copies. Accessible format copies should only be made of works or other subject matter to which beneficiary persons or authorised entities have lawful access. Member States should ensure that any contractual provision which seeks to prevent or limit the application of the exception in any way is void of legal effect.

(10) The exception provided for in this Directive should allow authorised entities to make and disseminate, online and offline within the Union, accessible format copies of works or other subject matter covered by this Directive. This Directive should not impose an obligation on authorised entities to make and disseminate such copies.

(11) 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 would reduce the demand for duplication of work in producing accessible format copies of one and the same work or other subject matter across the Union, thus generating savings and efficiency gains. This Directive should therefore ensure that accessible format copies made by authorised entities in any Member State can be circulated and accessed by beneficiary persons and authorised entities throughout

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the Union. In order to foster such cross-border exchange and to facilitate authorised entities' mutual identification and cooperation, the voluntary sharing of information regarding the names and contact details of authorised entities established in the Union, including websites if available, should be encouraged. Member States should therefore provide the information received from authorised entities to the Commission. This should not imply an obligation for Member States to check the completeness and accuracy of such information or its compliance with their national law transposing this Directive. Such information should be made available online by the Commission on a central information access point at Union level. This would also assist authorised entities, as well as beneficiary persons and rightholders in contacting authorised entities to receive further information, in line with the provisions set out in this Directive and in Regulation (EU) 2017/1563 of the European Parliament and of the Council[(10)]. The aforementioned central information access point should be complementary to the information access point to be established by the International Bureau of the World Intellectual Property Organisation (WIPO), as provided for in the Marrakesh Treaty, aiming to facilitate the identification of, and cooperation among, authorised entities at international level.

(12) In order to improve the availability of accessible format copies and to prevent the unauthorised dissemination of works or other subject matter, authorised entities which engage in the distribution, communication to the public or making available to the public of accessible format copies should comply with certain obligations.

(13) Authorisation or recognition requirements that Member States may apply to authorised entities, such as those relating to the provision of services of a general nature to beneficiary persons, should not have the effect of preventing entities that are covered by the definition of authorised entity under this Directive from undertaking the uses allowed under this Directive.

(14) In view of the specific nature of the exception provided for under this Directive, its specific scope and the need for legal certainty for its beneficiaries, Member States should not be allowed to impose additional requirements for the application of the exception, such as the prior verification of the commercial availability of works in accessible formats, other than those laid down in this Directive. Member States should only be allowed to provide for compensation schemes regarding the permitted uses of works or other subject matter by authorised entities. In order to avoid burdens for beneficiary persons, prevent barriers to the cross-border dissemination of accessible format copies and excessive requirements on authorised entities, it is important that the possibility for Member States to provide for such compensation schemes be limited. Consequently, compensation schemes should not require payments by beneficiary persons. They should only apply to uses by authorised entities established in the territory of the Member State providing for such a scheme, and they should not require payments by authorised entities established in other Member States or third countries that are parties to the Marrakesh Treaty. Member States should ensure that there are not more burdensome requirements for the cross-border exchange of accessible format copies under such compensation schemes than for non-cross border situations, including with regard to the form and possible level of compensation. When determining the level of

compensation, due account should be taken of the non-profit nature of the activities of authorised entities, of the public interest objectives pursued by this Directive, of the interests of beneficiaries of the exception, of the possible harm to rightholders and of the need to ensure cross-border dissemination of accessible format copies. Account should also be taken of the particular circumstances of each case, resulting from the making of a particular accessible format copy. Where the harm to a rightholder is minimal, no obligation for payment of compensation should arise.

(15) It is essential that any processing of personal data under this Directive respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter, and it is imperative that any such processing also be in compliance with Directives 95/46/EC[(11)] and 2002/58/EC[(12)] of the European Parliament and of the Council, which govern the processing of personal data, as may be carried out by authorised entities within the framework of this Directive and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States.

(16) The UNCRPD, to which the Union is a party, guarantees persons with disabilities the right of access to information and education and the right to participate in cultural, economic and social life, on an equal basis with others. The UNCRPD requires parties to the Convention to take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

(17) Under the Charter, all forms of discrimination, including on grounds of disability, are prohibited and the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community is recognised and respected by the Union.

(18) With the adoption of this Directive, the Union aims to ensure that beneficiary persons have access to books and other printed material in accessible formats across the internal market. Accordingly, this Directive is an essential first step in improving access to works for persons with disabilities.

(19) The Commission should assess the situation regarding the availability in accessible formats of works and other subject matter other than those covered by this Directive, as well as the availability of works and other subject matter in accessible formats for persons with other disabilities. It is important that the Commission review the situation in that regard closely. Changes to the scope of this Directive could be considered, if necessary, on the basis of a report presented by the Commission.

(20) Member States should be allowed to continue to provide for an exception or limitation for the benefit of persons with a disability in cases which are not covered by this Directive, in particular as regards works and other subject matter and disabilities other than those covered by this Directive, pursuant to point (b) of Article 5(3) of Directive 2001/29/EC. This Directive does not prevent Member States from providing for exceptions or limitations to rights that are not harmonised in the copyright framework of the Union.