

**The European Union  
(Copyright) (Marrakesh Treaty)  
(Brexit) (Bailiwick of Guernsey)  
Regulations, 2020**

<i>Made</i>	<i>29<sup>th</sup> September, 2020</i>
<i>Coming into operation</i>	<i>29<sup>th</sup> September, 2020</i>
<i>Laid before the States</i>	<i>, 2020</i>

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by section 5(1) and 11 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018<sup>a</sup> and upon receipt of the certificate required under section 5(3), hereby makes the following Regulations:-

**Amendment of the Copyright Ordinance.**

1. As a consequence of the withdrawal of the United Kingdom from the EU and in order to implement the Marrakesh Treaty, the Copyright (Bailiwick of Guernsey) Ordinance, 2005<sup>b</sup> is amended as follows.

**Infringement by issue of copies to the public**

2. (1) Section 21 (infringement by issue of copies to the public) is amended as follows.

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<sup>a</sup> Order in Council No. I of 2019, as amended.

<sup>b</sup> Ordinance No. XIX of 2005; as amended.

(2) For subsection (2), substitute -

"(2) References in this Ordinance to the issue to the public of copies of a work are to the act of putting into circulation in the Bailiwick copies not previously put into circulation in the Bailiwick or the EEA by or with the consent of the copyright owner."

(3) In subsection (3) -

(a) in paragraph (a) omit ", or",

(b) omit paragraph (b), and

(c) omit the words after paragraph (b).

### Disability

3. For sections 38 to 41 substitute the following -

#### *"Disability*

#### Disabled persons: copies of works for personal use

38. (1) This section applies if -

(a) a disabled person has lawful access to a copy of the whole or part of a work, and

(b) the person's disability prevents the person from enjoying the work substantially to the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the work referred to in subsection (1)(a) does not infringe copyright if -

(a) the copy is made by the disabled person and or by a person acting on behalf of the disabled person, and

(b) the copy is made for the disabled person's personal use.

(3) Copyright is infringed by the transfer of an accessible copy of a work made under this section to any person other than -

(a) a person by or for whom an accessible copy of the work may be made under this section, or

(b) a person who intends to transfer the copy to a person falling within paragraph (a),

except where the transfer is authorised by the copyright owner.

(4) An accessible copy of a work made under this section is to be treated for all purposes as an infringing copy if it is held by a person at a time when the person does not fall within subsection (4)(a) or (b).

(5) If an accessible copy made under this section is subsequently dealt with -

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(6) In this section "dealt with" means sold or let for hire or offered or exposed for sale or hire.

**Making, communicating, making available, distributing or lending of accessible copies by authorised bodies**

39. (1) If -

- (a) an authorised body has lawful access to the whole or part of a work which has been published or otherwise made available, and
- (b) the body complies with subsection (2),

the body may, without infringing copyright, make, communicate, make available, distribute or lend accessible copies of the work on a non-profit basis for the personal use of disabled persons in the Bailiwick or a Marrakesh Contracting State.

(2) An authorised body complies with this subsection if it -

- (a) distributes, communicates, makes available or lends accessible copies only to disabled persons or other authorised bodies,
- (b) takes appropriate steps to discourage the unauthorised reproduction, distribution,

communication to the public or making available to the public of accessible copies,

- (c) demonstrates due care in, and maintains records of, its handling of works and accessible copies, and
- (d) publishes and updates, on its website if appropriate, or through other online or offline channels, information on how it complies with the obligations in paragraphs (a), (b) and (c).

(3) For the purposes of subsection (1), to communicate, make available, distribute or lend "for the personal use of disabled persons" includes to communicate, make available, distribute or lend to a person acting on behalf of a disabled person.

(4) An authorised body which has made an accessible copy of a work under this section may communicate, make available, distribute or lend it to another authorised body established in the Bailiwick or a Marrakesh Contracting State which is entitled to make accessible copies of the work under this section for the purposes of enabling that other body to make accessible copies of the work.

(5) If an accessible copy made under this section is subsequently dealt with -

- (a) it is to be treated as an infringing copy for the purposes of that dealing, and
- (b) if that dealing infringes copyright, it is to be

treated as an infringing copy for all subsequent purposes.

(6) In this section "dealt with" means sold or let for hire or offered or exposed for sale or hire.

**Making, communicating, making available, distributing or lending of intermediate copies by authorised bodies**

40. (1) An authorised body which is entitled to make an accessible copy of a work under section 39 may, without infringing copyright, make a copy of the work ("an intermediate copy") if this is necessary in order to make the accessible copy.

(2) An authorised body which has made an intermediate copy of a work under this section may communicate, make available, distribute or lend it on a non-profit basis to another authorised body which is entitled to make accessible copies of the work under section 39 for the purposes of enabling that other body to make accessible copies of the work.

(3) Copyright is infringed by the transfer of an intermediate copy made under this section to a person other than another authorised body as permitted by subsection (2), except where the transfer is authorised by the copyright owner.

**Accessible and intermediate copies: records and notification**

41. (1) Person listed in subsection (3) may request an authorised body -

(a) making accessible copies under section 39, or

(b) making intermediate copies under section 40,

to provide the person with the information in subsection (4).

(2) On receipt of a request under subsection (1), an authorised body must provide the information to the person in an accessible way within a reasonable time.

(3) The persons who may make a request under subsection (1) are -

(a) a disabled person,

(b) another authorised body,

(c) rightholders.

(4) The information that must be provided by the authorised body is—

(a) the list of works for which it has accessible copies and the available formats, and

(b) the name and contact details of any authorised body established in a Marrakesh Contracting State from which, or to which, it has imported, exported or accessed an accessible copy."

**Disability: interpretation**

4. For section 43 substitute the following -

**"Sections 38 to 42: interpretation and general**

43. (1) In sections 38 to 42 –

"**an accessible copy**" of a copyright work means a version of the work which enables disabled persons to access the work, including accessing it as feasibly and comfortably as a person who is not a disabled person,

"**authorised body**" means –

- (a) an educational establishment, or
- (b) a body that is not conducted for profit,

"**Marrakesh Contracting State**" means a country or territory party to or subject to the Marrakesh Treaty,

"**the Marrakesh Treaty**" means the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled of 27 June 2013,

"**disabled person**" means a person who has a physical or mental impairment which prevents the person from enjoying a copyright work substantially to the same degree as a person who does not have that impairment, and "disability" is to be construed accordingly, but a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, for example by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light

(2) An accessible copy -



- (a) may include facilities for navigating around the version of the work, but
- (b) must not include any changes to the work which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.

(3) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of section 38, 39 or 40, would not infringe copyright, that term is unenforceable.

(4) Where an authorised body imports an accessible copy from an authorised body in a Marrakesh Contracting State, any such accessible copy shall not be an infringing good pursuant to Table 1 of Schedule 8 to the Import (Control) (Guernsey) Order, 2010."

**Remedy where effective technological measures prevent permitted acts**

5. (1) Section 202 (remedy where effective technological measure prevent permitted acts) is amended as follows.

(2) For subsection (1), substitute the following –

"(1) In this section –

"Marrakesh beneficiary" means a person who -

- (a) is blind,

- (b) has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment,
- (c) has a perceptual or reading disability and is, as a result, unable to read printed works to substantially the same degree as a person without such disability, or
- (d) is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would normally be acceptable for reading,

**"Marrakesh work"** means a work in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks and in digital format, which is protected by copyright, related rights or database rights and which is published or otherwise lawfully made publicly available,

"permitted act" means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of any provision of this Ordinance,

"voluntary measure or agreement" means -

- (a) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program, or
- (b) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party,

the effect of which is to enable a person to carry out a permitted act."

- (3) For subsection (2), substitute the following -

"(2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Committee."

- (4) For subsection (9), substitute the following -

"(9) This section -

- (a) does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them,
- (b) but notwithstanding (a) applies where the application of any effective technological measure to a Marrakesh work prevents the making of an accessible copy of that work under sections 38, 38 or 40, for the benefit of a Marrakesh beneficiary.

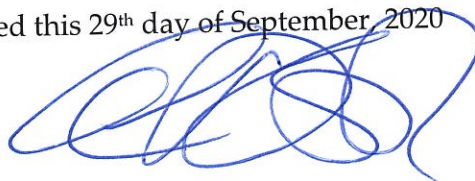
**Interpretation.**

6. Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation and commencement.**

7. These Regulations may be cited as the European Union (Copyright) (Marrakesh Treaty) (Brexit) (Bailiwick of Guernsey) Regulations, 2020 and shall come into force on the day on which they are made.

Dated this 29<sup>th</sup> day of September, 2020



DEPUTY G. A. St PIER

President of the Policy & Resources Committee

For and on behalf of the Committee

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Copyright (Bailiwick of Guernsey) Ordinance, 2005 in order to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled of 27 June 2013 as a consequence of the UK withdrawal from the EU.

These Regulations come into force on the day on 29<sup>th</sup> September 2020.

