

since text and data mining does not consist only of a single technique, but can be undertaken in several different ways.<sup>110</sup>

Questions arise as to whether, and to what extent, existing subscriptions (notably to scientific publications) or licence agreements allow for text and data mining. Researchers consider that if a researcher or research institution, or another user, have lawfully acquired access to digital content, including databases, the authorisation to read this content should include the authorisation to mine it.

It has also been argued that it is difficult, onerous and time-consuming to negotiate such agreements with the right holders,<sup>111</sup> and that text and data mining is therefore often undertaken without an explicit permission to do so lawfully. Concerns have also been raised as to the importance of ensuring the establishment of safe and efficient infrastructure for text and data mining, including a secure access to databases used for mining and to control their usage. As an outcome of Licences for Europe, representatives of STM publishers have put forward practical initiatives to facilitate licencing of subscription based content.

Further details are presented in Annex I.

#### 3.2.1.5. Persons with a disability

Digital technology greatly facilitates accessible publishing and today in some Member States 80-90 % of the top titles (books) are simultaneously published in an accessible format for persons with print disabilities.<sup>112</sup> However, it is estimated that at present only 7%<sup>113</sup> to 20%<sup>114</sup> of all titles are available in such formats.<sup>115</sup> In some Member States there are agreements between rights holders and organisations serving the visually impaired for the production, distribution and making available of accessible formats (mainly books), *inter alia* for purposes of education.<sup>116</sup> Such agreements however are not in place in all Member States and only provide access to a fraction of all the works and other subject matter available to persons without disabilities.

The exception for persons with a disability as provided for by Article 5(3)(b) of the InfoSoc Directive<sup>117</sup> is generic and provides little guidance for its implementation. While a number of Member States use the full scope of the exception,<sup>118</sup> others impose limitations as regards the

<sup>110</sup> However, the CJEU's recent judgment in *Innoweb* would seem to imply that a licence is required so far as the Database Directive is concerned in the context of comparison websites (see Case C-202/12 *Innoweb vs Wegener*).

<sup>111</sup> The ISC 2012 report "*Value and Benefits of Text Mining to UK Further and Higher Education*" highlights the significant time cost for an individual researcher wishing to mine numerous publications which relates to identifying the right holders and seeking permissions to mine.

<sup>112</sup> In the UK 84% of the top 1000 titles in 2012 (source: RNIB), in France close to 90% (source: Exception "handicap" au droit d'auteur et développement de l'offre de publications accessibles à l'ère numérique. Catherine Meyer-Lereculeur, Mai 2013).

<sup>113</sup> [http://www.rnib.org.uk/professionals/publishing/Pages/publishing\\_industry.aspx](http://www.rnib.org.uk/professionals/publishing/Pages/publishing_industry.aspx)

<sup>114</sup> Source : Exception "handicap" au droit d'auteur et développement de l'offre de publications accessibles à l'ère numérique. Catherine Meyer-Lereculeur, Mai 2013

<sup>115</sup> These figures represent availability in some but not all accessible formats. Accessible formats include Braille, large print, e-books and audiobooks with special navigation, audio description and closed captioning for films, etc. It is important to distinguish between accessibility from the outset (when a book is created or a film edited in a format that makes it already accessible) from the "assistive solutions" which usually involved the retrofitting of some accessibility features in existing materials. The first one being significantly cheaper than the second one.

<sup>116</sup> E.g. the LIA project: <http://www.progettolia.it/en>

<sup>117</sup> The exception may be implemented for any use, for the benefit of people with a disability, that is directly related to the disability and of a non-commercial nature, to the extent required by the specific disability.

<sup>118</sup> e.g. Spain, Hungary, Belgium, Poland.

beneficiaries, possible uses and formats, provide for strict administrative conditions, or restrict the application of the exception to cases where the works are not commercially available in the special format. Some Member States lay down a requirement for compensation to rights holders<sup>119</sup> while others do not. The complexity of the application of the exception in some countries increases the transaction costs of libraries and other organisations which intend to make works accessible to visually and hearing impaired persons, and thus reduces the number of potentially available accessible formats. The recently agreed treaty in WIPO on access to published works for persons with a print disability will address some of these issues including the mandatory nature of the exception.

Further details are presented in Annex J.

### 3.2.2. *Lack of cross-border effect of exceptions*

As mentioned in 3.1 above, there are few mechanisms to enable the cross-border effect of optional exceptions to exclusive rights. This means that content which is made available in one territory under an optional exception cannot be legally accessed in another Member State under the terms of that exception where the Member State has not introduced the exception. For example, differences in national laws as to the exception for private copying may create confusion for consumers in the internal market as regards what is legal and what is not when accessing content across-border. In a similar vein, compensation paid to right holders for some categories of exploitation of their protected content (such as private copying) in the territory of one Member State often has no impact on the payment obligations in another Member State.

#### 3.2.2.1. Persons with a disability

With respect to persons with a disability, the lack of cross-border effect of the exception makes it impossible for beneficiaries from other Member States to access books, educational material or journals in accessible format made under the copyright exception of another Member State.<sup>120</sup> The cost of producing a master version of a Braille file is close to €1,500 and €3,000 in the case of the master version of a DAISY file<sup>121</sup> recorded from scratch. The cost of an audio-description track for a film can be as high as € 2500.<sup>122</sup> If such files made under an exception cannot cross borders, these costs are duplicated for libraries or blind organisations in countries sharing the same language. In the case of educational material, the lack of cross-border effect is also likely to deprive visually impaired persons of cross-border educational opportunities.<sup>123</sup>

#### 3.2.2.2. Education

The use of copyrighted works for the purpose of illustration for teaching is covered by an exception in the InfoSoc Directive and the Database Directive, allowing educational

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<sup>119</sup> e.g. Denmark, Germany (except for the production of individual copies), Finland and Sweden (if the beneficiary permanently keeps a copy).

<sup>120</sup> In the EU, the existing licence-based cross-border exchange mechanism is carried out in accordance with a Memorandum of Understanding between publishers and blind organisations signed in 2010. The European Trusted Intermediaries Network (ETIN) provides a framework for the cooperation but it has had limited effect so far.

<sup>121</sup> <http://www.daisy.org/>

<sup>122</sup> Examples provided by European blind organisations.

<sup>123</sup> The pertinence of the problems related to lack of sufficient harmonisation and lack of cross-border effect is clearly indicated by the recent adoption of the Marrakesh Treaty to improve access to published works for persons who are blind, visually impaired or otherwise print disabled (June 2013); <http://www.wipo.org>

establishments and teachers to use extracts of e.g. novels, songs or films in the classroom or to complement teaching. Member States' implementation of the generic exception at EU level varies considerably in terms of the materials that may be used, the type of educational uses allowed, or whether licensed solutions are preferred over the use of an exception.<sup>124</sup> In particular, the application to e-learning appears to be limited in certain Member States, where the exception covers only face-to-face teaching, or is submitted to strict conditions in the online environment. This becomes also a barrier when exploring blending ways of teaching and learning, complementing face-to-face with distance. Furthermore, even in face-to-face learning, if new technologies are exploited as teaching tools, these may imply access to educational materials online (even if the students are face-to-face with the teacher).

The diversity of the conditions foreseen in national legislations, combined with the lack of cross-border effect of the exception, creates legal uncertainty for educational establishments and practitioners willing to offer cross-border training or e-learning programmes. Teachers who use protected materials for the purpose of illustration under the terms of an exception in one Member State may run the risk of infringing copyright in another Member State when they make material available to cross-border students via online learning services and repositories or distance learning courses. Furthermore, the insufficient transparency on the rights and obligations associated with each resource might become a barrier for the promotion of sharing practices involving teachers and other individuals from different countries.

This problem is likely to grow with increasing demand for cross-border education and online training solutions. Over the next 10 years, the e-learning market is projected by some to grow fifteen-fold, accounting for 30% of the whole education market.<sup>125</sup> Legal uncertainty on the status of educational materials, notably made available cross-border, is likely to undermine the ease with which online educational resources can be put together and disseminated.

Further details are presented in Annex II.

### 3.2.2.3. Private copying

The difficulties associated with the exceptions and limitations in the cross-border environment are also apparent in relation to the purely national nature of private copying and reprography levy schemes which are used to provide fair compensation to rights holders. Member States' approaches diverge as regards the choice of products which are subject to levies. The levels of tariffs applicable across the EU also differ substantially e.g. in 2010 a blank DVD was subject to a levy of € 1.00 in France, € 0.48 in Denmark, € 0.0139 in Germany. In the same year, a mobile phone with an internal memory of 32 GB was subject to a levy of € 36.00 in Germany (provided it was equipped with a touch screen), € 18.00 in Hungary, € 10.00 in France, € 4.34 in Lithuania, and € 0.9 in Italy.<sup>126</sup>

Typically, levies are claimed upon either the production or importation of a product, irrespective of whether they have been paid on the territory of another Member State or whether the product will subsequently be sold to another Member State. Consequently double payments occur in the majority of such cases. In a similar vein, as the result of case-law of the

<sup>124</sup> In some Member States the exception is accompanied by a remuneration system (e.g. BE, FR, DE) whereas in other Member States (e.g. DK, FI, SE, UK, ES for online use) different types of licensing systems are in place to cover the use of copyrighted works in the educational context. In certain Member States the legislation does not explicitly refer to remuneration or compensation mechanisms (e.g. LU, EL, IT except for anthologies, PT, LT, RO, SK).

<sup>125</sup> Industry research - IBIS Capital and Edxus Group, <http://edxusgroup.com/digitalisation-of-education-will-result-in-fifteen-fold-growth-for-e-learning-market-over-the-next-decade/>

<sup>126</sup> International Survey on Private Copying Law and Practice 2011- de Thuiskopie/WIPO 2012

#### 8.14. ANNEX J - EXCEPTION FOR PERSONS WITH A DISABILITY

Article 5(3)(b) of the InfoSoc Directive enables Member States to provide for an exception to the rights of reproduction, distribution and communication to the public/making available for “uses provided for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability”.

This exception is implemented in the laws of all Member States but its implementation varies considerably. There are significant differences as regards the scope of the exception both as to the beneficiaries and the works covered. Some countries (e.g. LT, MT or SE) limit the accessible formats that can be made under the exception; others (e.g. AT, DK or NL) prescribe remuneration for the rights holders<sup>345</sup> or only allow for the application of the exception where a work is not commercially available (e.g. UK, DE).

For example, in **France** the exception is applicable to persons with motorial, mental, sensorial, psychological, cognitive or physical disabilities above a certain limit set by administrative provisions. In the **UK** the provisions is applicable to only visually impaired and people who are unable, through 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 – recordings of performances are excluded – provided that the work used is not available in the desired form. In **Lithuania** the reproduction of lawfully published works is restricted to non-commercial educational, teaching and scientific research purposes. And in **Sweden** only libraries or organisations with special permission from the government are allowed to produce talking books freely, to communicate copies through a network directly to disabled people, and to make copies of radio or TV broadcasts and films for people who are deaf or hearing-impaired.<sup>346</sup>

The diversity of the conditions prescribed by national laws when implementing the exception creates a complex legal framework within the EU. While there are indications that the legislation implementing the exception in some countries is complex to apply even domestically,<sup>347</sup> the differences usually raise major concerns in the cross-border context. The lack of the cross-border effect of the exception makes it impossible to access special format copies made under an exception in another Member State.

In order to address this problem on a global scale, the Marrakesh Treaty was adopted in the World Intellectual Property Organisation (WIPO) in June 2013.<sup>348</sup> This Treaty facilitates the access to published works for persons who are blind, visually impaired, or otherwise print disabled. The Treaty creates a mandatory exception to copyright that allows organisations for the blind to produce, distribute and make available accessible format copies to visually impaired persons without the authorisation of the right holder, not only domestically but also across borders.<sup>349</sup> On the one hand, the scope of the Treaty is more limited than the scope of the “disabilities” exception in the InfoSoc Directive, on the other hand, unlike the Directive, it ensures the cross-border effect of the national exception. The Treaty enters into force once 20 Contracting Parties have ratified it.

<sup>345</sup> This possibility is explicitly recognised by recital 36 of Directive 2001/29/EC.

<sup>346</sup> See more examples in the problem definition and in Table A15.

<sup>347</sup> See for example : Exception “handicap” au droit d’auteur et développement de l’offre de publications accessibles à l’ère numérique. Catherine Meyer-Lereculeur, Mai 2013.

<sup>348</sup> [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=245323](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=245323)

<sup>349</sup> It is to note that the Marrakesh Treaty does not only aim at facilitating the making and digital transmission of accessible format copies but also the distribution of physical copies, including across borders.

*Draft to be finalised in light of responses to the public consultation*

Finally, Article 7 of the Audiovisual Media Services Directive<sup>350</sup> obliges Member States to encourage media service providers gradually to make their services to people with a visual or hearing disability (e.g. by sign language, subtitling, audio-description or easily understandable menu navigation). In most Member States the public service broadcaster has the legal obligation to provide subtitles with their television programmes.<sup>351</sup> The actual implementation of this provision however seems rather varied in the EU.<sup>352</sup>

Market developments

In practice, people with visual impairment and other print disabilities (e.g. dyslexia) are the most concerned by the exception in Directive 2001/29/EC. Therefore this section mainly focuses on the developments of the accessibility of books and other print material as well as of audio-visual content for visually impaired and otherwise print-disabled persons. The European Blind Union estimates that there are 30 million blind and partially sighted persons in geographical Europe and an average of one in 30 Europeans experience sight loss.<sup>353</sup> Accessible formats include Braille, large print, e-books, audiobooks with special navigation, etc.

Books and other print material in accessible formats are either produced by the publishers themselves or they are made, under licences or an exception, by specialised entities (libraries, blind organisations, etc.). For example, the EPUB format (currently EPUB3) is commonly used for e-book publishing. EPUB3 includes a wealth of features that can be used to enhance accessibility for visually impaired persons.<sup>354</sup> These features can be incorporated at the time of production or later, for example by the specialised entities.

As an illustration, in 2012 in the UK 84 % of the top 1000 titles were published in accessible format. This is a sharp increase compared to the figures in the previous years (73 % in 2011, 45 % in 2010 and 0 % in 2009)<sup>355</sup>. Still, when examining the overall market, only 7 % of books are also available in accessible format.<sup>356</sup> In France it is estimated that 8 to 20% of books are available in at least one accessible format.<sup>357</sup>

When books are not published in an accessible format (Braille, for instance), such formats are produced by libraries or blind organisations. There are agreements between the publishing industry and blind organisations in a number of Member States.

For example, In Italy there is an agreement between the Italian Publishers Association (AIE) and the Italian Union of the Blind and Visually Impaired (UIPI) *inter alia* with a view to providing all visually impaired students with the necessary school books in an accessible format.<sup>358</sup>

<sup>350</sup> Directive 2010/13/EU of the European Parliament and the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

<sup>351</sup> See details per Member State in Table A16.

<sup>352</sup> State of subtitling access in EU (EFHOH) – 2011 report  
[http://media.wix.com/ugd/c2e099\\_098aaba4b05ee8f7fed8b0add0b8c332.pdf](http://media.wix.com/ugd/c2e099_098aaba4b05ee8f7fed8b0add0b8c332.pdf)  
<http://www.euroblind.org/resources/information/nr/215>

<sup>353</sup> EPUB is one of the most widely supported open, free e-book format. It was developed by the International Digital Publishing Forum. It is a reflowable, platform-independent electronic book. In EPUB3 the features of the DAISY format were incorporated into the EPUB format (2011). <http://www.daisy.org>

<sup>354</sup> [http://www.rnib.org.uk/aboutus/Research/reports/reading/Pages/accessible\\_titles\\_2012.aspx](http://www.rnib.org.uk/aboutus/Research/reports/reading/Pages/accessible_titles_2012.aspx)

<sup>355</sup> [http://www.rnib.org.uk/professionals/publishing/Pages/publishing\\_industry.aspx](http://www.rnib.org.uk/professionals/publishing/Pages/publishing_industry.aspx)

<sup>356</sup> Source: study "exception « handicap »" (2013)

<sup>357</sup> LIA project: <http://www.progettolia.it/en>

In the **Netherlands**, a collective agreement between the Dutch Publishers Association and Dedicon which ensures accessibility of works for people with a disability via a library or 'Loket aangepast-lezen'.<sup>359</sup>

No matter whether the accessible formats are produced under a licence or under an exception, the actual production costs of an accessible format are significant (and they are dependent on the actual format).

The cost of producing a Braille page is between EUR 1.40 and EUR 8.29, depending on the level of complexity and the genre. For instance, making a 1000-page long novel accessible in Braille would require 17 Braille volumes that cost around EUR 8,400. The production costs of the Braille version of a 400-page science text book is close to EUR 8,000 and the 150-long language text-book costs close to EUR 2,400. The production costs of a fully accessible DAISY format (audio-book with navigation tools)<sup>360</sup> are around EUR 3.400 for a 1000-page long novel and EUR 390 for a 150-page long language text-book. The cost of an audio-description track of a 90-120-minute long film is around EUR 2,500.<sup>361</sup>

Because of the prohibitive costs of production, in the last few years the market has started to develop licence-based models of cross-border exchange of accessible files, in particular to avoid the duplication of production costs between countries sharing the same language. Today the cross-border exchange of accessible formats is limited to a couple of hundreds of copies per year.

For example, in the **Netherlands**, 200-300 titles are imported and 50-100 titles are exported annually. As to educational titles, 50-100 are imported and 5-10 are exported in a year. As to the **UK**, in 2012/2013, 476 titles in Braille and 9 titles in DAISY-format were sold abroad.

Currently two multi-lateral projects are run by publishers and blind organisations/libraries which aim at facilitating the making and cross-border exchange of accessible format copies: the TIGAR project (Trusted Intermediary Global Accessible Resources)<sup>362</sup> in WIPO and the ETIN project (The European Trusted Intermediaries Network)<sup>363</sup> in the EU.<sup>364</sup> Both projects aim to improve the accessibility and amount of copyright-protected accessible materials available for people with print disabilities across borders through trusted intermediaries (TIs – blind organisations) and to establish long-term sustainable solution(s) for the cross-border exchange of accessible works.

ETIN was established in 2010 and aims to have pan-European coverage with initial focus on member countries from the EU, the EEA and Switzerland. TIGAR aims to have global coverage including developing countries. They also have different mechanisms for their operation: ETIN proposes de-centralised facilities managed by participating TIs for the exchange of files. TIs can exchange accessible versions of books among themselves, and can also supply accessible versions directly to visually impaired persons in other ETIN Member States.

<sup>359</sup> <http://www.nuv.nl/downloadcentrum/regelingen-modellen-en-checklists/regelingen-bibliotheken/regeling-toegankelijke-lectuur-leesgehandicapten.158422.lvnx>

<sup>360</sup> <http://www.daisy.org>

<sup>361</sup> Examples provided by some European blind organisations.

<sup>362</sup> <http://www.visionip.org/tigar/en/>

<sup>363</sup> [http://ec.europa.eu/internal\\_market/copyright/initiatives/access/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/initiatives/access/index_en.htm)

<sup>364</sup> There are also some examples of bilateral cooperation between some Member States, e.g. between the Netherlands and Belgium.

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TIGAR aims to have a specific ICT infrastructure managed by WIPO. It includes a centralised transitory file transfer facility (for transparency and for the ease of reporting), mechanisms to facilitate the provision of files from publishers, 'search and discovery' tools for accessible books available via TIs or commercially or in development, and other supporting services. At present, only a few Member States take part in the ETIN project<sup>365</sup> and no cross-border exchange is taking place yet due to the lack of licences and other agreements on national level. The TIGAR project seems to have developing countries as its main focus.

As regards audiovisual content, the situation is very uneven in the Member States both as regards the availability of audio-descriptions for visually-impaired persons and as regards subtitles for hearing-impaired persons. In the EU, the UK and Germany take the lead in the number of hours that are available with audio-description on TV, in cinemas and also on DVDs. In some other countries (e.g. in France) there is a steady increase in the number of cinema screenings with audio-description but in the vast majority of Member States there are only a few releases with audio-description each year.<sup>366</sup>

For example, in the UK more than 1,000 films have been released with these 'access' features since 2002. In most UK cinemas - including all digitally equipped sites - now have facilities for subtitles, and more than 300 have audio description facilities. In 2012 more than a hundred English language films were available with subtitles & audio-description. The top 20 UK releases, 41 of the top 50, and 71 out of the top 100 were available. The 100 most popular films of 2010 took around 90% of the box office revenue. The remaining 400+ films, most of which were not subtitled & described, accounted for just 10% of revenue. The majority of films that were not subtitled & described had a very limited release and were not screened in many multiplex cinemas (approx. three quarters of UK cinemas).<sup>367</sup>

<sup>365</sup> TIs from the Netherlands, the Flemish part of Belgium, France, Denmark and Germany.  
<sup>366</sup> Information provided by some European blind organisations.  
<sup>367</sup> <http://www.yourlocalcinema.com/available.html>

*Draft to be finalised in light of responses to the public consultation*

**Table A15 - Implementation of Article 5(3)(b) of the InfoSoc Directive – Exception for persons with a disability**

MS	Scope	Remuneration	Application to works, other subject matter/Other details
AT	Person with disabilities	yes	published work by reproduction non-commercial
BE	Person with disabilities	no	reproduction and communication to the public non-commercial
BG	Person with disabilities	no	reproduction of works non-commercial
CZ	Person with disabilities	no	people with disability makes a reproduction or has a reproduction made of a published work to the extent required by the specific disability; a reproduction so made may also be distributed and communicated by the same person people with vision disability provides the verbal expression of the visual component and adds it to the audio component of an audiovisual recording of an audiovisual work; the audio component of the audiovisual recording of an audiovisual work may also be reproduced, distributed and communicated by the same person non-commercial
CY	Person with disabilities	no	limitation concerns 'uses' in general and consequently both acts of reproduction and communication to the public non-commercial
DK	Visually- and hearing-impaired person	yes	published works, non-commercial use only no sound recordings of literary works or use that consists solely of sound recordings of musical works
DE	Person with disabilities (access to the work, because of a disability, is not possible or is made considerably more difficult by the already available means of sensual perception)	yes	reproduction and distribution of a work, non-commercial, if necessary to facilitate access
EE	Person with disabilities	no	reproduction, distribution and communication to the public of a lawfully published work. works created especially for disabled persons may not be reproduced, distributed and made available without the authorisation of the author non-commercial
EL	Person with visual or hearing impairment	no	reproduction of the work Minister for Culture may lay down the conditions of application of the regulation and its application to other categories of persons with disabilities
ES	Person with		reproduction, distribution and communication to the public



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	disabilities		
FI	Person with disabilities	yes	copies of a published literary work, a published musical work or a published work of fine art may be made by means other than recording sound or moving images
FR	Motorial, mental, sensorial, psychological, cognitive or physical persons (recognised by a specialised commission or recognised by a medical certificate)	no	the reproduction or representation has to be carried out by a legal entity or publicly open establishments such as libraries, archives, documentation centres or multimedia cultural centres
HR	Person with disability	yes	use of copyright works non-commercial
HU	Persons with disabilities	no	non-commercial
IE	Person with a physical or mental disability	no	copy of a work and a recording
IT	Persons with disability	no	reproduction, and communication to the public, for personal use, non-commercial
LT	People with visual or hearing impairment	no	reproduction for non-commercial educational, teaching and scientific research purposes of lawfully published works non-commercial
LV	People with visual or hearing impairment	no	organisations for the visually impaired and hearing impaired, as well as libraries which provide services to visually impaired and hearing impaired, shall be permitted to reproduce and distribute works non-commercial
LU	Persons with visual or hearing impairment	no	reproduction of a work
MT	Person with disabilities	no	the reproduction, translation, distribution or communication to the public of a work non-commercial
NL	Person with disabilities	yes	reproduction and communication to public of works non-commercial
PL	Person with disabilities	no	published works non-commercial and to the extent resulting from the nature of disability
PT	Person with disabilities	yes	the reproduction, public communication and making available to the public of a work
RO	Person with disabilities	no	the reproduction, distribution, broadcasting or communication to the public

*Draft to be finalised in light of responses to the public consultation*

SE	Person disabilities	with	yes	Anyone is entitled to make copies of literary and musical works, other than recording of sounds but only libraries or organizations with special permission from the government are allowed to produce talking books freely, to communicate copies through a network directly to disabled people, and to make copies of radio or TV broadcasts and films for people who are deaf or hearing-impaired.
SK	Person disabilities	with	no	reproduction of a released work public distribution by lending or to communication to the public
SI	Person disabilities	with	yes	reproduce or distribute works, provided that the work used is not available in the desired form no economic advantage
UK	Visually impaired person		no	literary, dramatic, musical or artistic work or a published edition

PROVISIONAL

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**Table A16 - Accessibility requirements (transposition of Article 7 of AV Media Services Directive (2010/13/EU))**

MS	General provision	Practical implementation
AT		<p>PSB: accessibility requirement for current affairs programmes on PSB, including online services (subtitles with all spoken-language TV broadcasts and audio description).</p> <p>Commercial AVMS providers – all av media services gradually made accessible to people with visual or hearing disabilities.</p> <p>Financial incentives for film productions</p>
BE Fr Com  Fl Com	<p>Advisory Committee drafts and amends the regulations regarding inter alia accessibility of programmes for people with impaired hearing.</p>	<p>PSB: Special obligation to provide access to programmes for people with impaired hearing (subtitles, sign language).</p> <p>PSB: 80% of programmes subtitled.</p> <p>PSB and commercial broadcasters: full subtitling of news programmes</p> <p>State aid for subtitling evening news: regional television broadcasters and commercial</p>
BG		<p>PSB: programme with sign language once a day and special programmes for people with impaired hearing.</p> <p>Commercial broadcasters: accessibility requirement in licensing obligations. News programmes with sign language.</p>
CZ		<p>PSB :at least 70% of programming have close or open captioning and incorporate sign language or simultaneous interpretation into it at least 2% of broadcast programmes.</p> <p>At least 10% of programmes should be made accessible to people with visual disability.</p> <p>Commercial broadcasters: At least 15 % of broadcast programmes accessible to people with impaired hearing (closed or open captioning) and at least 2% to people with impaired vision for national channels.</p> <p>On-demand providers required where practicable to ensure that programmes have open or closed captioning or interpretation into sign language and a sound track intended for people with visual disability (</p>
CY		<p>Av providers: gradual accessibility to people with visual or hearing disabilities.</p> <p>Linear services : news bulletin of at least 5 minutes appropriate for deaf people between 18h-22h</p> <p>AV providers: increase the percentage of programmes accessible to people with hearing/visual disability by at least 5% in addition to news bulletins.</p>
DK		<p>PSB : public service obligation concerning service provision for people with disabilities</p>
DE	<p>Financially sound people with disabilities expected to pay a reduced contribution to make it easier to finance barrier-free television.</p> <p>German broadcasters should as far as possible</p>	<p>PSB and commercial broadcasters: Statutory subtitling and insertion of sign language</p> <p>Internet contributions: in large part barrier-free due to insertion sign language and subtitling.</p>

*Draft to be finalised in light of responses to the public consultation*

	provide for more barrier-free services.	
EE		Audiovisual media service providers : have to make their services available to people with hearing or visual disability gradually (by using subtitles, sign language, separate audio channels, teletext and other ancillary services). Reporting obligation in every two years. PSB: daily news are available with sign language interpretation
EL		PSB: subtitling and accessibility obligations depending on the nature of the programmes (informational, non-informational).
ES		Linear services : Free to air state and regional programmes : subtitling obligation for 75% of programmes and interpretation in sign language and audio-description for at least two hours per week PSB: 50%, 70% and 90% of subtitling in years 2011-2013 Commercial broadcasters: subtitling reaching respectively 45%, 65% and 75 % in years 2011 -2013
FI	S. 19 a of the Act on Television and radio Operations (744/1998), supplemented by the government decree.	Linear services: PSB and programmes in the public interest, broadcast under national programme licence. Dubbing or subtitles-to-speech-service required for foreign language programmes and subtitling required for the programmes in Finnish and Swedish language. Gradually increasing quotas, that are higher for PSB (reaching 100% in 2016). All broadcasters: general requirement in broadcasting licences concerning subtitling of foreign language programmes.
FR	Articles 28, 33-1 et 53 of the Law of 30 September 1986.	Linear services: PSB and main commercial channels: subtitling of all their programmes and proportion of programmes accessible for visually impaired people. Other channels: less stringent rules. Non linear services: recommendation for accessibility of programmes for people with hearing and vision disability.
HR		
HU	The Media Act obliges media service providers to gradually make their programmes accessible to those with hearing disability.	Linear services : PSB and important commercial channels: gradual accessibility of public service announcements, news and political information programmes as well as cinematographic works (subtitles or sign language). For cinematographic works and programmes produced for people with hearing disability a daily quota of at least 4 h of subtitling or providing sign language is set in a progressive way, to reach full subtitling in 2015.
IE	Section 43(1)(c) of the 2009 Act provides for the development of rules requiring Irish television broadcasters to provide access to people with sensory disabilities. This requirement is also reflected in Section 53 of the Disability Act, 2005.	Linear services: About 70% of broadcasting services required to provide some degree of accessibility. On-demand services: the voluntary Code of Conduct for On-demand av Providers – commitment to gradually make such services accessible.
IT	Art. 5(6) of the Audiovisual media services code adopted by	All av providers have to adopt appropriate measures to facilitate the reception of programmes by people with disabilities. At least one edition of the news broadcast on the three terrestrial PSB channels (Tg1 on Rail,

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	legislative decree n. 44/2010 Art. 4(1)f of Agcom deliberation no. 353/11/CONS on authorisations for dtb broadcasting PSB contract of service (2010-2012) signed 6 April 2011	Tg2 on Rai2, Tg3 on Rai3) has to be subtitled and one additional edition of the news has to be translated into sign language..
LT	General obligation to ensure that public information is also accessible to people with disabilities	Linear Services PSB: Programmes for people with visual and hearing disabilities in a proportion to be set by the Board. State aid funding: for cultural and educational projects aimed at adapting information of cultural and educational nature to people with visual and hearing disability.
LV	The Electronic Mass Media Law (Art.24.5) requires electronic media service providers to draw up codes of conduct indicating the measures which promote the accessibility of services to persons with visual and hearing disability.	Audiovisual media services: must be accessible to people with impaired vision and hearing. PSB: daily news with sign language interpretation.
LU	Convention on public service requires all the parties to introduce all the possible measures to provide for the accessibility of their services to people with disabilities.	Broadcasting services : TV news in the national language must be subtitled.
MT	Broadcasting Act encourages media service providers to make their services accessible to people with a visual and hearing disability.	Linear services : PSB: increase of the accessibility in particular for news broadcasts and current affairs programmes
NL		Linear Services: PSB: subtitling of 95% of programme parts which are in Dutch and measures for visually impaired people. National commercial broadcasters: subtitling of 50% of the programmes and measures for visually impaired people
PL		Linear services : accessibility requirement for people with hearing and visual disability through, audio description, subtitles and sign language (at least 10 % of quarterly transmission time)
PT		Linear and non linear services : .According to article 44, paragraph 3, the multiannual plan drawn up by the Media Regulator (ERC) contains the set of obligations relating to accessibility requirements to be followed by linear and on-demand av services.
RO	Media Law encourages audiovisual media service providers to ensure accessibility of their	Linear services: Subtitling with additional tools for news programmes. Subtitling of 17,3 % of PSB programmes .

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	services to people with visual and hearing disability.	
SE		<p>PSB channels, linear: target : end of the licence period (1 January 2010 – 31 December 2013) subtitling of all programs. Hearing ability shall be prioritized by taken into account that background sound may deteriorate the ability to for people with hearing disabilities to take part of the content.</p> <p>Commercial channels, linear (TV4 largest broadcaster targeting the whole nation ): All broadcasts, except live broadcasts, shall further make the sound and picture accessible in accordance with the following:</p> <ol style="list-style-type: none"> <li>1. 1 July 2011 – 30 June 2012: Sound (25 % of the broadcasting time), Picture (experimental works)</li> <li>2. 1 July 2012–30 June 2013: Sound (50 %), Picture(experimental works)</li> <li>3. 1 July 2013 – 30 June 2014: Sound (70 %), Picture ( 1%)</li> <li>4. 1 July 2014 – 30 June 2014: Sound (80 %), Picture (2%)</li> <li>5. 1 July 2015 – 30 June 2016 : Sound (90 %); Picture (3%)</li> </ol> <p>65 Commercial channels (others than TV4): general obligation to promote accessibility</p>
SK		<p>Linear services:</p> <ul style="list-style-type: none"> <li>- PSB broadcasting a television programme not digitally: 25% of all broadcast programmes accompanied by closed or open captions and 1% translated into sign language</li> <li>- PSB broadcasting digitally a television programme: 50% of all broadcast programmes accompanied by closed or open captions and 3% translated into sign language and 20% of all broadcasts programme with voice comment for people with visual disability.</li> <li>- Commercial broadcasters broadcasting digitally a television programme: 10% of all broadcast programmes accompanied by closed or open captions and/or translated into sign language and 3% of all broadcast programmes accompanied by voice commentaries for the blind.</li> </ul> <p>AVMS providers must indicate clearly all programmes accessible to people with hearing and visual disability.</p>
SI	Public broadcasting should ensure broadcasts intended for visually impaired and deaf people.	State aid financing: in the field of production and broadcasting and audiovisual media intended for deaf and hard of hearing.
UK	Section 303-305 of the communications Act 2003 – commitment to extend access to broadcasting services for people with hearing and visual disability and to ensure consistently high standard of these services	<p>Linear services : Ofcom currently requires 72 channels with an audience share of 0, 05% or more to:</p> <ul style="list-style-type: none"> <li>- subtitle 80% of their programmes within 10 years</li> <li>- audio describe 10% of their programmes (10y)</li> <li>- sign 5% of their programmes (10y)</li> </ul> <p>Broadcasters with an audience below 1%: 30 minutes of sign-presented programming a month, or make alternative arrangements acceptable to Ofcom. Most have chosen to contribute funding to the British Sign Language Television Trust, which funds sign interpreted programmes on the Community Channel. BBC additionally provides for signing and audio description On –demand services:</p> <p>ATVOD: advice to on-demand service providers of best practice and encourage those that serve a significant audience to provide facilities for</p>

		people with hearing and vision disability. BBC and Channel 4 already provide for subtitling for many of its on-demand programmes
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PROVISIONAL