VERŻJONI ELETTRONIKA

L.N. 382 of 2018

European Union Act
(CAP. 460)

Permitted Use 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 Order, 2018

IN EXERCISE of the powers conferred by article 4(2) of the European Union Act, the Prime Minister, has made the following Order:-

Citation and scope.

1. (1) The title of this Order is the Permitted Use 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 Order, 2018.

(2) This Order aims to establish rules on the use of certain works and other subject matter without the authorisation of the right-holder, for the benefit of persons who are blind, visually impaired or otherwise print-disabled.

(3) This Order transposes 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.

Interpretation.

2. In this Order, unless the context otherwise requires:

"accessible format copy" means a copy of a work or other subject matter in an alternative manner or form that gives a beneficiary person access to the work or other subject matter, including allowing such person to have access as feasibly and comfortably as a person without the impairments or disablilities referred to in relation to a beneficiary person as defined below;

"authorised entity" means an entity that is authorised or recognised by Government of Malta to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes any public institution or non-profit organisation that provides the

VERŻJONI ELETTRONIKA

same services to beneficiary persons as one of its primary activities, institutional obligations or as part of its public interest missions;

"beneficiary person" means, regardless of any other disabilities, 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 be normally acceptable for reading;

"the Minister" means the Minister responsible for copyright and related rights;

"work or other subject matter" 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 or related rights and which is published or otherwise lawfully made publicly available.

Permitted use.

3. (1) An authorised entity, a beneficiary person, or a person acting on behalf of a beneficiary person shall require no authorisation of the right-holder of any copyright or related right in a work or other subject matter pursuant to Articles 5 and 7 of Directive 96/9/EC, Articles 2, 3 and 4 of Directive 2001/29/EC, Articles 1(1), 8(2) and (3) and 9 of Directive 2006/115/EC and Article 4 of Directive 2009/24/EC as transposed by articles 7, 13, 15, 17, 19 and 25 of the Copyright Act. Cap. 415.

(2) The exception in sub-article (1) shall only apply where it is necessary for:

(a) a beneficiary person or a person acting on their behalf, to make an accessible format copy of a work or other

VERŻJONI ELETTRONIKA

subject matter to which the beneficiary has lawful access for the exclusive use of the beneficiary person; and

(b) an authorised entity to make an accessible format copy of a work or other subject matter to which it has lawful access, or to communicate, make available, distribute or lend an accessible format copy to a beneficiary person or another authorised entity on a non-profit basis for the purpose of exclusive use by a beneficiary person:

Provided that any accessible format copy of a work shall respect the integrity of the work or other subject matter with due consideration given to the changes required to make the work or other subject matter accessible in the alternative format.

(3) Sub-article (1) shall only apply in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the right-holder.

Cap. 415.

(4) Article 42(2)(a) of the Copyright Act shall apply to the exception provided for in sub-article (1).

(5) Any contractual provision running counter to what is prescribed in sub-article (2) shall be null and void.

Accessible format copies in the internal market.

4. (1) An authorised entity may carry out the acts referred to in article 3(1)(b) for a beneficiary person or another authorised entity established in any Member State.

(2) Authorised entities shall ensure that:

(a) beneficiary persons and authorised entities established in any Member State; and

(b) beneficiary persons or other authorised entities established in Malta,

may obtain or may have access to an accessible format copy from an authorised entity established in Malta or any other Member State.

Obligations of authorised entities.

5. (1) In carrying out the acts listed in article 4 an authorised entity shall establish and follow its own procedures to ensure that it:

(a) distributes, communicates and makes available accessible format copies only to beneficiary persons or other

VERŻJONI ELETTRONIKA

authorised entities;

(b) takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available to the public of accessible format copies;

(c) demonstrates due care in and maintains records of, its handling of works or other subject matter and of accessible format copies thereof; 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 laid down in paragraphs (a) to (c).

(2) In carrying out the acts in article 4, an authorised entity shall provide the following information in an accessible way, on request, to the beneficiary persons, other authorised entities or right-holders:

(a) the list of works or other subject matter for which it has accessible format copies and the available formats; and

(b) the name and contact details of the authorised entities with which it has engaged in the exchange of accessible format copies pursuant to article 4.

Transparency and exchange of information.

6. (1) The office responsible for intellectual property rights in Malta shall encourage authorised entities established in Malta, carrying out acts referred to in article 4 and Articles 3 and 4 of Regulation (EU) 2017/1563, to communicate to the office, on a voluntary basis, their names and contact details.

(2) The office shall provide the information received pursuant to sub-article 6(1) to the European Commission

Compensation.

7. (1) The Minister may provide for the establishment of a compensation scheme following a request from the Minister responsible for the National Book Council, if it results that local copyright holders are suffering any harm as a result of accessible format copies being made:

Provided that such compensation scheme would apply only in respect of uses by authorised entities established in Malta.

(2) When determining whether to establish such a scheme and the level of compensation, due account is be taken of the non-profit nature of the activities of authorised entities, of the public interest objectives pursued by this Order, of the interests of beneficiaries of the

VERŻJONI ELETTRONIKA

exception, of the possible harm to right-holders and of the need to ensure cross-border dissemination of accessible format copies.

(3) Account is also taken of the particular circumstances of each case, resulting from the making of a particular accessible format copy.

(4) In any case where the harm to a right-holder is minimal, no obligation for payment of compensation shall arise.

Protection of personal data. Cap. 586. S.L. 586.01.

8. The processing of personal data shall be carried out in compliance with the Data Protection Act and Processing of Personal Data (Electronic Communications Sector) Regulations.

Copyright Act. Cap. 415.

9. The restriction applied to article 9(1)(i) of the Copyright Act shall not prejudice the application of this Order.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — *Printed at the Government Printing Press on FSC certified paper*

Prezz/*Price*
€045