

Agreement/Licence¹ for cross-border legal transmission and supply of accessible works made for Persons with a print disability

BETWEEN:

(1) The Rightholder ...

(hereinafter called the "Rightholder")

and

(2) The Organisation:

Name of organisation:

Address:

City:

Postal Code:

(hereinafter called the " Organisation")

WHEREAS:

The Rightholder holds the necessary rights in respect of the Works that fall under this Agreement/Licence.

The Organisation is a body that produces and distributes multiple copies of copyright material in a format accessible to persons who could not otherwise read or access such copyright material by reason of a visual impairment or other disability where no such accessible format is commercially available.

The Rightholder and Organisation have a licensing or collective agreement scheme in place that allows for the legal production and distribution of accessible Works in their home country under national copyright law. Therefore the wording of following document might vary to comply with and reflect the existing national situation.

The Agreement/Licence aims to grant the Organisation the permission to supply legally made copies to other TIs or to Persons with a print disability based in other EU Member States, EEA countries and Switzerland upon and subject to the conditions set out below.

¹ Alternative terms (Agreement/Licence) are used in order to reflect different national contexts.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

In this Agreement/Licence the following words and expressions shall have the following meanings:

"Accessible Copy": A copy of part or the whole of any Work in any alternative format that is made accessible to a Person with a print disability whether in digital and/or audio format, large or small print or embossed copy (whether produced in Moon or Braille or otherwise) or in other formats.

"Recognition": An Organisation may be recognised as a TI if it agrees and complies with the conditions set out in Article 5 of the Memorandum of Understanding attached to this Agreement/Licence.

"Agreement/Licence": Agreement/Licence for the cross-border transmission and supply of accessible Works.

"European Trusted Intermediary Network - ETIN": The ETIN is a Brussels-based representing all stakeholders and is composed of representatives of authors, publishers, organisations representing persons with a print disability and collective rights management organisations. The ETIN is responsible for recognition of Trusted Intermediaries and also serve as a contact point and advisory and consultation centre. The ETIN aims to have pan-European coverage.

"Intermediate Copy": A copy of a Work or part of a Work within Licensed Material necessarily made by the Organisation in the course of production of a Licensed Copy.

"Licensed Copies": Accessible Copies of Licensed Material made pursuant to, and in accordance with, the terms and conditions of this Agreement/Licence.

"Licensed Material": Works that are included in the Rightholder's repertoire.

"Memorandum of Understanding (MoU)": Refers to the EU Stakeholders Dialogue Memorandum of Understanding (MoU) on access to works by people with print disabilities signed on 14 September 2010. A copy thereof is attached in annex to this Agreement/Licence.

"Person with a print disability": Any person who is blind; or who has an impairment of visual function which cannot be improved by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light; or who is unable through physical disability, to hold or manipulate a Work; or who is unable, through physical disability, to focus or move his eyes to the extent that would

normally be acceptable for reading; or who is dyslexic and whose disability results in an inability to read commercially available standard editions of Works and who can be helped to read by reformatting the content.

“Trusted Intermediary (TI)”: A body that has signed an Agreement/Licence authorizing cross-border transmission and supply under the conditions of the Memorandum of Understanding on access to works by people with print disabilities and that has been recognised by the ETIN.

" Repertoire": Original published editions of books, journals and other periodicals in which copyright subsists for which the Rightholder owns the necessary right for their reproduction in an accessible format and their communication to the public/making available. An annex to this Agreement/Licence should specify the Works that fall under this Agreement/Licence and which should be restricted to Works first published in the country where the TI is established.

"Work": An original literary or artistic work within Licensed Material.

All references to the singular in this Agreement/Licence may include the plural and vice versa as the context so requires and references to any gender shall include both genders.

2. GRANT OF LICENCE FOR THE CROSS-BORDER TRANSMISSION AND SUPPLY OF ACCESSIBLE WORKS

2.1 The Rightholder hereby grants to the Organisation the non-exclusive right on the terms and conditions herein contained to:

Transmit Licensed/Intermediate Copies legally made by the Organisation itself to other TI (recipients) members of the ETIN.

Supply Licensed Copies legally made by the Organisation itself to Persons with a print disability based in one of the Member States of the European Union, the European Economic Area or Switzerland.

2.2 The recipient TI will be authorised to further supply Licensed Copies to Persons with a print disability based in one of the Member States of the European Union, the European Economic Area or Switzerland. It will not be authorised to transmit the copy to any other TI.

2.3 The recipient TI will have the obligation to verify the print disability of the end-user in accordance with Article 6.d. of the MoU and will be bound by the

definition of Person with a print disability as defined in Article 1 of this Agreement/Licence.

3. TERM AND AGREEMENT/LICENCE FEE

3.1 The Agreement/Licence is granted to the Organisation for a period of one year from the Commencement Date. It can be extended only if the ETIN is maintained and the Organisation is recognised as a TI.

3.2 No agreement/licence fee shall be payable for the period of this Agreement/Licence but the Rightholder reserves the right to charge an agreement/licence fee on any extension of the Agreement/Licence pursuant to Article 3.1.

It is agreed that the conditions of the Agreement/Licence might be changed in line with the development of operational processes within ETIN.

4. CONDITIONS FOR THE CROSS-BORDER TRANSMISSION AND SUPPLY OF LICENSED COPIES

4.1 The Organisation may only make and supply a Licensed Copy of a Work if and to the extent that such Work is not commercially available in a similar accessible format in the country of original publication.

4.2 Each Licenced Copy for cross-border transmission and supply of accessible Works shall contain:

4.2.1 A statement that it is a copy of the original Work legally made

4.2.2 The title, as well as the name of the author and publisher, of the original Work and the published edition from which it is copied.

4.2.3 A statement that each copy of the Work is for only personal use and that the end-user may not transfer it to third parties.

4.3 The Organisation may only charge for the supply to the end-user of a Licensed Copy an amount which does not exceed the cost of supplying it.

4.4 Any Licensed Copy for cross-border transmission and supply of accessible Works produced in a digital format may include facilities for navigating around the Licensed Copy and any such other facilities or changes (such as enlargement, reduction or colour selection of the text or illustrations) as are necessary to enable the Person

with a print disability for whom the Licensed Copy is intended to access the Licensed Copy provided that it does not require the text itself to be re-written in other terms.

4.5 The Organisation may only start transmitting accessible copies to other TIs or supplying them to Persons with a print disability based in other EU Member States, European Economic Area countries and Switzerland upon its recognition by the ETIN.

5. OBLIGATIONS AND WARRANTY OF ORGANISATION

5.1 The Organisation shall ensure:

5.1.1 that it supplies Licensed Copies legally made by the Organisation itself or a copy received from the Organisation who made the first copy only to Persons with a print disability;

5.1.2 that it supplies or transmits Intermediate Copies legally made by the Organisation itself only to other TIs recognised by the ETIN and who hold an appropriate Agreement/Licence; and

5.1.3 that it does not supply a Licensed Copy when the Work is commercially available in a similar format in the country of original publication.

5.2 The Organisation warrants that it has been recognized by the ETIN.

6. RECORDS & NOTIFICATION

6.1 The Organisation shall keep records of:

6.1.1 all Intermediate Copies transmitted and of the TIs to whom they are transmitted, and provide the Rightholder with a copy of such records on request;

6.1.2 all licensed copies transmitted/supplied across borders; and

6.1.3 all persons with a Print disability to whom a Licensed Copy has been supplied across borders.

6.2 The Rightholder may share details of the records kept pursuant to Article 6.1 with the copyright owners of the Works and the ETIN.

6.3 All Licensed Copies and Intermediate Copies made must be recorded and these records submitted annually to the Rightholder on a specified date in each year.

Each report should provide details per event as listed below:

title, ISBN, author, publisher, edition, format, number created and date created;

a recommended reporting format may be required, if not, reporting may be made in an excel format.

7. TERMINATION AND BREACH

7.1 If the Organisation ceases to be a TI or if it commits any material breach of any of the provisions of the Agreement/Licence and remains in breach fourteen (14) days after receiving notice to remedy such breach (where the breach is remediable) then the Rightholder, without prejudice to any of its other rights, may by notice either terminate the Agreement/Licence or suspend the Agreement/Licence until he shall be satisfied that such breaches will not recur.

7.2 Either party may terminate the Agreement/Licence by notice in writing to the other if and when one of the parties loses control over part or all of its assets, is placed into liquidation or administration, is dissolved or has presented a bankruptcy petition.

7.3 Upon termination of the Agreement/Licence for whatever reason the Organisation shall upon written request from the Rightholder immediately.

7.3.1 delete from the hard drives of all of its central and local servers any and all Licensed Copies in digital form, which may be stored there; and

7.3.2 destroy all other Licensed Copies, Intermediate Copies and copies transmitted to other TIs; and upon written request from the Rightholder the Licensee/Organisation shall certify that it has done so.

8. GENERAL

8.1 All notices given under this Agreement/Licence shall be in writing and be sent by registered mail, in the case of the Organisation to the address shown on the front page of this Agreement/Licence and shall be deemed to have been served on the tenth working day (which shall exclude weekends and public holidays) following the date of posting.

8.2 The Agreement/Licence may only be varied if such variance is acknowledged in writing by the Rightholder and the Organisation. An annex to this document should specify the licensing or collective agreements that regulate on a national level the production and distribution for accessible Works made for Persons with a print disability.

8.3 The Agreement/Licence is personal to the Organisation and may not be assigned or otherwise disposed of in whole or in part.

8.4 The Agreement/Licence shall be governed by the law the parties agree upon and the parties agree to submit to the exclusive jurisdiction of the agreed Member States courts as regards any claim or matter arising in relation to the Agreement/Licence.

8.5 The parties do not intend that any term of the Agreement/Licence shall be enforceable by any person who is not a party to the Agreement/Licence.

AS WITNESS the hands for and on behalf of the parties hereto the day and year first above written

On behalf of The Rightholder:

Signed:

Name in block capitals:

Title:

On behalf of the Organisation

Signed:

Name in block capitals:

.....

Title:

Annex 1

Existing licensing scheme or copyright agreement between Rightholders and the Organisation for the production and distribution at a national level

Country:

Rightholders Organisations:

Producing Organisations:

Summary

Annex 2

EU Stakeholders Dialogue Memorandum of Understanding (MOU) on access to works by people with print disabilities

Dan Pescod (on behalf of the European Blind Union) and Alicia Wise (on behalf of the Federation of European Publishers)

1. About this MOU

The undersigned

- Recognise the need for people with print disabilities to read, and the need to increase the number of accessible publications.
- Are mindful that disabled people's right to read is enshrined in the UN Convention on the Rights of Persons With Disabilities
- Appreciate the need to find pragmatic solutions, and endorse a system of mutual recognition of Trusted Intermediaries in the EU.
- Emphasise that publishers' efforts to produce accessible works in the normal course of publishing processes must be supported.
- Consider that Trusted Intermediaries should be enabled to provide access to works across borders.
- Commit to develop a network of Trusted Intermediaries in EU Member States.
- Commit to stimulate the creation of an online European accessible e-books service.

Have agreed on the following:

1. That our shared goal is to increase the access to works for people with print disabilities and, in the meanwhile, ensure that works converted into Braille or another accessible format, are available in other EU Member States through a network of Trusted Intermediaries.

2. Consent to the cross border transfer in the EU of accessible copies created under copyright exceptions or under licenses, through the network of Trusted Intermediaries and under appropriate conditions.

3. Recommend specific licenses allowing the cross border transfer in the EU of licensed accessible copies, through the network of Trusted Intermediaries.

The rest of this MOU sets out in detail our agreement about how all of this is to be achieved.

2. Definition of person with a print disability (i.e. the end-user)

For accessible copies of works lawfully made under a copyright exception, embodied in a physical medium such as a book or CD, that are to be supplied across borders, the terms of the copyright exception (or other relevant legislation) in the Member State where the accessible copy was first made apply. For the avoidance of doubt, the definition of the persons benefitting from the exception should be the one used in the copyright exception of the Member State where the accessible copy is first made.

For accessible copies of works to be supplied under licence, the following 3-part definition will apply to the extent that it is incorporated either verbatim or by reference in such licence:

Any person

who is blind; or

who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light; or

who is unable, through physical disability, to hold or manipulate a work; or

who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading; or

who is dyslexic.

- and –

whose disability results in an inability to read commercially available standard editions of works.

and -

who can be helped to read by reformatting the content (but, for avoidance of doubt, requires only a change to the graphic presentation of the original text and does not require the text itself to be re-written in simpler terms to facilitate comprehension).

This definition will be reviewed annually and may be extended with the consent of all interested parties to cover other beneficiaries with a view to including them as additional categories of persons with print disabilities.

3. Definition of rightsholder

Rightsholders are the creators and/or publishers of published works who own and/or control the copyright subsisting in such works. Reproduction Rights Organisations (RROs) and other rights management organisations may be authorized by the

rightsholders to represent rightsholders in dealings with Trusted Intermediaries in order to assist by facilitating the clearance of the necessary rights to other Trusted Intermediaries and persons with print disabilities registered with a Trusted Intermediary.

4. Definition of accessible content

Accessible content is the term used to describe works whose format is usable by a print disabled person. This term can be used to:

describe works that are originally published in accessible formats

describe copies of works whose format is modified after publication in order to enable a print disabled person to read the work

describe works or copies of works that can be adjusted by the user to facilitate accessibility – for example by providing a reader with the tools to increase font size, style or colour.

It is acknowledged that to make some visual content accessible it will be necessary to add information to the accessible version of the work (i.e. a description of the visual content).

5. Definition of Trusted Intermediary

A Trusted Intermediary (TI) is generally any entity that facilitates interactions between two parties who both trust the third party.

The objective of a TI in the context of this MoU is the controlled distribution of accessible copies of works, when these are not commercially available, to persons with a print disability. The rights holders will give their permission provided that the TI can certify that the recipient of an accessible work falls within the definition of person with a print disability above.

These TIs must have the trust of representatives of both persons with a print disability and rights holders and be formally and specifically accredited by the signatories.

The characteristics of an accredited TI are the following:

They operate on a not-for-profit basis unless otherwise agreed;

They keep a register of the people they serve under this MoU; and require qualifying service recipients to adhere to appropriate end-user agreements

They have as part of their mission the provision of accessible content to print disabled people. They might also be providers of specialised services relating to training, education, or adaptive reading or information access needs of persons with a print disability;

They maintain policies and procedures to establish the bona fide nature of the persons with a print disability that they serve, as well as ensuring full and complete compliance with copyright law.

They enter into a licence with rightsholder representatives concerning the cross-border distribution of accessible works legally created as envisaged under 6d of this MoU.

They agree to the dispute settlement procedures to address concerns of rightsholders regarding the proper distribution or transfer of accessible works as envisaged under 8.

If the accredited Trusted Intermediary is a network of organisations, then all organisations which are members of this network must adhere to all of the above mentioned characteristics.

6. Aim

The MOU should foster a pragmatic approach, recommending a system of mutual recognition of Trusted Intermediaries in the EU. The MOU provides a practical solution to improving accessibility for the print disabled that is in line with the Berne 3-step test, and does nothing to undermine publishers' own activities to increase the accessibility of publications.

Specifically, the Stakeholder Dialogue aims to do the following

Support publishers' efforts to produce accessible content in the normal course of their publishing processes.

Identify a rightsholder representative body in each Member State to act as the point of liaison between the Trusted Intermediary (or Intermediaries) and the rightsholder community.

Develop a network of Trusted Intermediaries in EU Member States and/or regions.

Enable these Trusted Intermediaries to create and provide accessible works across borders.

Stimulate the creation of an online European accessible e-books service.

6a) Support publishers' efforts to produce accessible content in the normal course of their publishing processes

It is important to support publishers' efforts to make publications readily accessible from the outset. Our shared objective is to have the vast majority of works accessible, and for that accessibility needs to become mainstream.

Signatories to this MOU will encourage training and support for rightsholders and TIs in Europe to implement WIPO's Enabling Technologies Framework and the outputs of WIPO's Trusted Intermediaries Pilot Project. Rights holders and user groups in Europe will also build on work that has been done in this field already, for example the EUAIN platform and the PROACCESS project.

Publishers are committed to a market where people with a print disability can access the same work at the same time and same price as other readers. However it is neither easy nor cost-free for publishers to transform their processes and formats to

achieve this goal. Support and recognition for this investment to improve document accessibility would be helpful, and could take the form of specific calls for projects.

A particular barrier is that electronic works and other digital publications attract VAT while print works do not. It would be helpful if in Europe electronic works and other digital publications attracted reduced VAT to facilitate purchase by people with print disabilities.

6b) Identify a rightsholder representative body in each Member State to act as the point of liaison between the Trusted Intermediary (or Intermediaries) and the rightsholder community

Organisations that provide support to people with print disabilities would find it helpful to liaise with a single point of contact to the rightsholder community in each country. Rightsholders may appoint any organisation to provide this single point of contact, for example an RRO or other rights management organisation or a trade body. The representative body would assist in facilitating the clearance of the necessary rights for TIs and persons with print disabilities registered with a TI. TIs wish that information on the single point of contact be widely available to the network of TIs.

Signatories will work together to identify a rightsholder representative for each Member State, as well as model agreements to appoint representatives and best practices and model agreements to be followed by them.

6c) Develop a network of Trusted Intermediaries in EU member states and/or regions

Signatories will develop specific Guidelines for Trusted Intermediaries to include:

- a description of a system of accreditation and removal of accredited status of TIs with a set of procedures
- rules on transparency
- a description of the role of the TI
- guidelines for data collection and content security

Signatories will also identify the group that will provide accreditation and removal of accredited status – which should include a balance of representatives of the main stakeholders (publishers, publishing trade associations, collecting societies, authors associations, national organisations supporting persons with a print disability, the European Blind Union, European Disability Forum).

A list of the different scenarios which could be carried out by TIs should be drawn up as a parallel exercise.

To be clear, there could be more than one TI per Member State subject to specific accreditation.

6d) Enable these Trusted Intermediaries to create and provide accessible works across borders

If commercially available in an appropriate accessible format, it is accepted by all signatories that the work should be purchased through commercial channels by persons with print disabilities.

It is accepted by all signatories that a commercially available abridged accessible version of a work cannot be considered a fully accessible version of that work.

Responsibility for ensuring the legality of the creation and transfer of accessible formats of works under EU single market rules rests with the supplying organisation.

A TI may supply accessible formats of works that were made legally.

In line with current transcription practices the producer of an accessible version of a work will not re-write its content in simpler terms to facilitate comprehension, or eliminate parts of the work, or translate the work into a language different from the original source of the work used to produce accessible content. To do so would undermine the integrity of the work and the creator's other moral rights. For the avoidance of doubt, the transcriber may make small changes to the work purely to ensure its accessibility. For example, exclusion of images if, for example, they either can not be captioned or can not be affordably captioned.

The purposes for which the copies will be used must be strictly non-commercial.

It is the responsibility of the TI which delivers the accessible copy to the end-user to ensure that works go to individuals certified as persons with a print disability. TIs are responsible for ensuring that there is an appropriate end-user agreement in place to ensure that the copy is to be used by that individual user only. In case an end-user is in breach of his or her obligations, the TI would be required to act diligently to secure compliance. Creation, distribution and use of the accessible copies of the work must comply with the terms of the licence in the country where the first accessible copy of the work is produced.

6e) Stimulate the creation of an online European accessible e-books service

To aid the discovery of accessible works, the signatories agree to support the establishment of an online European catalogue of works available in accessible formats. This service shall include a database of commercially available accessible publications, public domain works, and works created under a national copyright exception or licence.

It is intended in the first instance that this is a catalogue, but it could evolve to be a distributed service to facilitate the discovery *and* delivery of accessible ebooks to authorised users. The Signatories acknowledge that this is a major undertaking, and will work in good faith together to secure funding and other resources to move forward to realise this objective.

This objective is shared with the WIPO Stakeholders Platform projects, and the signatories will work together to avoid duplication of effort by building on existing work.

7. Measures of Success

The following are seen by this MOU as measures of success:

Identify rightsholders representative bodies in a majority of Member States

Evidence of a flow of accessible works between TIs in Europe

An online database of accessible works investigated and costed plan developed

8. Safeguarding Measures and Settlement of Disputes

The signatories agree it is important to safeguard trust between rightsholders and Trusted Intermediaries and will agree appropriate dispute resolution mechanisms.

9. Implementation

The signatories agree to work together to finalise an activity plan, trusted intermediary guidelines, model licenses, and other tools as needed to support the implementation of this MOU.

10. Signatures

Signed by representatives of rightsholders and print disabled people/Trusted Intermediaries:

Federation of European Publishers European Blind Union

European Writers Council European Dyslexia Association

International Federation of Reproduction Rights Organisations

International Association of Scientific, Technical and Medical Publishers