
Target consultation on the availability of works other than printed works in formats accessible for persons with disabilities within the internal market ("Marrakesh" directive)

Period of consultation: 11 February 2021 – 30 April 2021

I. STATE OF ART

The Commission is carrying out this exercise as part of the preparation for a report foreseen by Article 9 of the 'Marrakesh' Directive (EU)2017/1564.

In Europe, many countries request films producers to provide closed captioning and audio-description as a condition to access funding for production, which means that the vast majority of films produced are also available in both versions, at least in the local language of the production.

The works are made accessible with the help of an external intermediary. When it comes to non-local content, it is up to the rightsholder (distributor or the broadcaster) to provide for these versions, and in some countries, it is mandatory for the broadcasters (ex: Italy). Generally, the work is done in collaboration (technical and financial) with an association or foundation representing hearing or sight-impaired people, who have the expertise to provide qualitative versions.

When it comes to other languages, it is then generally linked to the collaboration between rightsholders and local associations that will provide technical and financial support to provide these versions. It may also be linked to the access of subsidies, as it is the case in Spain, where the support for distribution of non-national titles implies the delivery of both versions, the additional costs being supported by the subsidies.

II. Specific issues to make accessible audio-visual works.

Costs & Time

Each version produced for a film brings new costs and the need for a specific expertise. In the case of films, especially audio-description is costly since, as for dubbing, actors need to be hired on top of the necessary adaptation to translate the film for the sight-impaired.

Besides, when it comes to non-national films, it is generally up to the distributor who has the rights for the film to provide these versions that can be then exploited in theatres, on DVD, TV or VoD. Here, and since revenues are extremely limited for these specific versions, dedicated support for the additional costs plays an important role. Such support can come from the state (as in Spain), or through collaboration with associations or foundations for the sight or hearing-impaired persons (as in Poland).

Time and expertise are also paramount, especially when it comes to audio-description: the actor who will "explain" the film needs to be trained, and it is a very specific profile. It can for example

be performed by a member of the association or foundation collaborating with the rightsholder. On the average, it takes 5 to 10 days to subtitle a film and 10 to 15 days to audio describe it¹.

Circulation to other Member States

Born accessible audio described or subtitled versions are usually made in the original language of the Member States. The same applies to sign language when in use (each language has its own signed language). Besides, there are challenges related to the multi-platform environment and variety of standards and expectations applying across Europe.

For “classic” subtitling, if a version in the needed language is already accessible, it can be used. For example, a Belgian distributor could use the closed captioning made by a French distributor or producer if available. But this is of course limited to countries sharing a same language, and with 27 countries and 24 languages, the trend in Europe is to create a new local version, in the local language.

III. Position

The directive 2017/1564² gives the right to an entity (or an individual) to make, communicate, make available, distribute, or lend an accessible format copy of a work, without the rightsholder authorization, on a non-profit basis for the purpose of exclusive use by a beneficiary person or another authorised entity established in any Member States. However, regarding audio-visual works:

- Rightsholder authorizations are no obstacle to develop locally accessible contents as long as rightsholders usually allow the creation of accessible versions that give the works a broader visibility.
- Audio-visual rightsholders must provide a local version of content (subtitles and/or dubbing in the local language(s)). Therefore, enacting an obligation to share the accessible formats between the member states would be useless. Besides, an obligation to share the accessible version of the works would entail a risk of circumvention of the territorial exclusivity granted to the local rightsholder and would thus jeopardize the financing of the works.
- In contrast to printed accessible works, audio-visual accessible works are unremovable from non-accessible works. Indeed, the subtitling version cannot be given without the original content that is subtitled. Same apply for audio-described or signed works. Today’s technologies make it easier to remove the close captions or audio-description and give access to the original version. Therefore, extending the scope of the Marrakesh directive to our field of activity would potentially ease illegal downloading.
- Besides, unlike books translated into Braille that are readable only for the disabled, a subtitled, audio-described or signed audio-visual work can be watched by a non-beneficiary without much trouble. Especially closed captions do not prevent to watch the original content in good condition, being quite similar to basic subtitling. Then, almost everyone could have access to a work without the rightsholder authorization on a non-profit basis. Extending the circulation possibility of audio-visual work without the rightsholder authorization would therefore be a major risk of violation of intellectual property rights, unproportionate to the objective pursued.

¹ Cinéma et Accessibilité, Rapport du ministère de la Culture et de la Communication, Septembre 2018, <https://www.culture.gouv.fr/Sites-thematiques/Developpement-culturel/Culture-et-handicap/Guides-pratiques/Cinema-et-accessibilite-2018>, p.44.

² Directive 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, 2017/1564, 13/09/2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1564&qid=1619683843906>.

Moreover, the audio-visual works accessibility shall further improve in the next years in accordance with the Audio-visual Media Services Directive that states an obligation for Member States to ensure that media service providers are made continuously and progressively more accessible to persons with disabilities³.

Accessible contents include “sign language, subtitling for the deaf and hard of hearing, spoken subtitles and audio description”⁴. This obligation is further underlined in the directive on the accessibility requirements for products and services of 2019⁵. These two texts came out recently and are not fully implemented as the transposal is ongoing. Therefore, an assessment impact of these dispositions should be done before considering adding audio-visual works to the Directive 2017/1564.

Instead of restricting copyright, it would be more relevant for the accessibility of audio-visual works to develop schemes that provide financial support to create the needed versions, and access to structures such as associations and foundations who have the know-how to provide qualitative material.

³ Directive amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services in view of changing market realities, 2018/1808, 14/11/2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L1808&qid=1619683289799>, Article 7.

⁴ Ibid Recital 23.

⁵ Directive on the accessibility requirements for products and services, 2019/882, 17/04/2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0882>, Annex I, Section IV.