

Pro-Access project: Guidelines for licenses to provide accessible material in compliance with copyright and related rights.

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ProAccess: EU funded project with the primary goal of improving accessibility of educational content in the eLearning chain for visually impaired.

- The solutions proposed are based on common collaboration
- In order to encourage the promotion of licensing and contractual arrangements in this field, guidelines have been finalised to assist publishers when drafting licenses to provide accessible material.

The Guidelines have been articulated in four sections:

Section I. Overview of the Legal Framework.

Section II. Management of Copyright between Author and Producer.

Section III. Management of Copyright between Producer, Technological Partners and Commercial Intermediaries.

Section IV. Management of Copyright between Producer, Libraries and Final Users.

1. Introduction.

IPR legislation in the EU attributes to the author a series of exclusive rights : (a) economic rights and (b) moral rights.

- Anyone else wishing to perform any action on the work has to preliminarily acquire the permission of the rightholder.
- Each single economic right can be transferred independently of the others, also in favour of different persons
- However, in certain cases exclusive rights are subject to exceptions or limitation allowing certain uses without authorisation.

2. The identification of the exclusive economic rights.

the exclusive right to authorize the reproduction;
the exclusive right to authorize the adaptation;

the exclusive right to authorize the distribution;
the exclusive right to authorize the rental and lending;
the exclusive right to authorize the communication to the public (also by electronic transmission).

3. Exceptions and limitations provided by Directive 2001/29/EC for the benefit of people with a disability.

- Article 5(3)(b) of Directive 2001/29/EC, Member States may provide for exceptions or limitations to the reproduction right and to the right of communication to the public in case of “uses, 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”.
- Article 5(5) of Directive 201/29/EC and 9(2) of the Berne Convention:
 - a) the exception must be limited to “certain special cases”;
 - b) does not conflict with a “normal exploitation” of the work;
 - c) and does not “unreasonably prejudice the legitimate interests of the author”.

1. The objective of the licence agreement.

Regulating the “possible uses” to which the content may be subject in order to acquire an acceptable form and be provided to people with a disability.

In this sense, under “possible uses of the work” it is intended:

- both the possibility of submitting the work to reproductions, adaptations, transformations, translations etc. (“forms of use of the work”)
- and the possibility of using specific modalities for its marketing (“forms of exploitation of the work”).

2. Before drafting the licence.

2.1 Identification of the forms of use of the work.

Need to identify all possible adaptations to the work to transform it into “accessible format”.

2.2. Identification of the forms of commercial exploitation of the work.

Need to identify the commercial channels and modalities that the producer intends to use to make the copies of the work available in accessible format.

2.3. Identification of the rightholders.

Need to identify the persons who hold the rights of interest to the purpose of implementing and making available the work in accessible format.

3. The content of the licence.

3.1. The parties to the contract.

Important that the producer identifies the author correctly.

3.2. The nature of the contract.

- Important to identify the contract type: “copyright transfer agreement”; “exclusive/non exclusive licence agreement” or “permission to use”.
- The producer must acquire from the author at least the “permission to use the work” in the ways foreseen in the agreement, necessary to make and provide the work in an accessible format.

3. The content of the licence.

3.3. The object of the contract: the economic rights on the work.

3.3.1. The reproduction right.

3.3.2. The right of distribution through sale or other forms of transfer of property of the physical copies.

3.3.3. The right to rent and lend.

3.3.4. The right of communication to the public, also on demand through a telematic network.

3.3.5. The right of adaptation.

3. The content of the licence.

3.5. Clause about the granting of rights to third parties.

- Legitimatises the producer to grant to third parties the exercise of all or some of the economic rights on the work

3.6. Clause about the use of the work by third parties.

- To regulate the use which may be granted to third parties

Foreword: the fundamental rules in the contracts between the producer and third parties.

1) DO NOT GRANT TO THIRD PARTIES ECONOMIC RIGHTS WHICH HAVE NOT BEEN ACQUIRED.

2) DO NOT AUTHORISE USES OF THE WORK NOT GRANTED BY THE AUTHOR, NOR USES OF THE WORK FOR PURPOSES DIFFERENT FROM THE ONES GRANTED BY THE AUTHOR.

3) DO NOT MANAGE ECONOMIC RIGHTS OF WHICH ONE HAS NO LONGER THE OWNERSHIP.

4) DO NOT MANAGE ECONOMIC RIGHTS IN TERRITORIAL AREAS FOR WHICH ONE HAS NOT ACQUIRED ANY AUTHORISATION.

2. Management of the relationships between producer and technological partner.

- The contract between the producer and the technological partner has to manage:
 - a) the ownership of the rights on the original work;
 - b) the ownership of the rights on the possible creative contributions done by the technological partner.

- 3. Management of the relationships between producer and commercial intermediary.
 - a) Not subject to special particularities
 - b) In general, the producer should check before the forms and channels of commercial exploitation authorised by the author.

1. Licenses with the libraries.

The license for use of the accessible materials in favor of the libraries is functionally articulated in two parts:

- a) library staff

- b) authorised users - This part is normally constituted by an annex to the contract with the library), in which the producer (or the commercial intermediary) defines the terms of use of the material by the final users.

2. Licenses with the final user.

The final user may make use of the materials only through the exceptions in the law.

However, in consideration of the different normative choices made in the individual Member States, it is suggested to draft licenses for use with the final user:

- a) which define in a uniform way the categories of disabled users and the acts which the user may lawfully perform

- b) specifying that the same conditions of license for use are, besides, reserved to the beneficiaries of the exception transposing Article 5(3)(b) of Directive 2001/29/EC, set by the applicable national law.