



EVA Statement

Submission to EC Consultation on availability of works other than printed works in formats accessible for persons with disabilities

27 April 2021

1. About EVA

European Visual Artists (EVA) represents the interests of visual authors and their collective management organisations (CMO). EVA has 28 member CMOs in 23 European countries which are managing authors' rights for more than 130.000 authors of fine arts, such as painters, sculptors, photographers, illustrators, graphic designers, street artists, designers and architects. Our members manage primary rights, such as reproduction and distribution, broadcasting, communication and making available to the public (online uses), the Artist's resale right and collectively managed rights, such as reprography, private copy, public lending right and cable retransmission. EVA's mission is to improve the visual authors' life and work conditions, as well as their legal and economic situation.

EVA is an official observer of WIPO, associate member of CISAC and IFRRO. We fully endorse the IFRRO statement, in particular in their role of partner to the *Accessible Books Consortium ABC*.

2. In depth analysis of images needed

EVA welcomes the opportunity to submit comments to the European Commission's targeted consultation on the availability of works, other than printed works, in formats accessible for persons with other disabilities aside from visual impairment within the EU Internal Market following Article 9 Directive 17/1564.

EVA believes that there is a lack of information and in-depth analysis on the transformation of images into accessible formats. It is necessary to develop the missing knowledge through scientific studies to evaluate the possible benefits for people with disabilities and the impact

of further exceptions on protected visual works. Such insight is indispensable in order to evaluate how to safeguard the balance between the rights of authors and the benefits of users as is required following Recital 1 of the Directive. The integrity of image works needs to be protected following Article 3(2). Transformation of images is not always necessary when the related text is transformed. The extent to which transformation of images into accessible formats provides added-value to beneficiaries needs to be regarded in a case-by-case manner.

3. About categories and language of image works

It would be useful to categorize the many variations of visual works and the way they are used, such as illustrated children's books, graphic novels, comic strips, art books, exhibition and sales catalogues, schoolbooks, travel guides, cooking books, e-books, audiobooks as well as protected works on covers. In addition, there are stand-alone images in art museum collections, galleries, archives and image libraries. In the aim of developing accessible formats, the character and purpose of an image needs to be taken into consideration. For instance, images illustrating text may have a strictly technical purpose, be explanatory, purely decorative or a combination of several purposes.

Article 9 Directive 17/1564 requires that information is collected by the European Commission about the availability of other accessible formats and other disabilities aside from those targeted by the Directive, which is limited to printed media and beneficiaries suffering from visual impairment such as blindness, print and related cognitive disabilities. The Commission needs to undertake in-depth analysis through studies and research to create a base for evaluation.

Due to the specificities and broad variation of the visual repertoire, we believe that the Commission should first analyse the different roles of the visual repertoire; as stand-alone works and also within different media. Messages in image format can be inclusive to a large number of people, regardless of the language they speak and their disabilities, except in most cases of visual impairment.

4. Accessible formats of images

The publishing industry participates in the ABC work, and the efforts made to support the accessibility of print media also includes images within the e-book standard EPUB3. Difficult questions are raised and partly dealt with, for instance advice not to transform works considered as purely decorative. But that being a difficult decision, advice is given on how

to transform images into text where it is considered as “unavoidable”. There are different technical solutions applied to illustration which benefit visually impaired people:

- Texts in tables or graphs are transformed into audio text or braille.
- Illustrative images are transformed into audio text or braille (not into image description).
- Tactile images, with 3D versions used for single fine art works:

Text is embedded in a transformed graph or table version and can be heard or re-appears when clicking on the image field. Proprietary e-book standards should be subject to similar approaches to accessibility.

5. About Moral Rights

The transformation of visual works into audio text and 3D copies raises issues of moral rights of authors, a matter which needs to be addressed with in-depth analysis. The transformation of visual works from 2D to 3D or vice versa regularly raises the concern of moral rights infringement. Unlike other modifications, transformation for accessibility does not aim at being different from the initial work or be original in its own way but, on the contrary, to remain as close to the original as possible by using other communication skills. Therefore, it has to be considered that the transformation into spoken or written text, including braille and audio versions, tactile images as well as 3D, have the potential to infringe the visual authors moral rights.

There are doubts that the “authorised entities” have the capacity of appropriately transforming images into spoken text, a task which requires a deep understanding of both the image and text languages. Without the expressive permission of the author of an illustration, or other images, such transformations are very likely not to safeguard the integrity of the works and infringe on the authors’ moral rights.

We heard that some parties have taken the standpoint that visual authors should be made liable for delivering accessible formats for their works or else would lose the capacity to claim their moral rights. We disagree with this point of view: image language is different from text language and as such, much more open to the understanding of the great majority of users, including people with disabilities other than visual impairment. Because of the ability and power of images, illustrations are chosen to better explain abstract text. To roll-back to a text message with the same explanatory ability as an image is very difficult at the least, and may in some cases be obsolete. If illustrative and explanatory images cannot be

seen or understood by a person with a disability, it may also be concluded that the purpose of the image - to explain text - cannot be reached.

In any case, the capacity to “translate” an illustration into spoken text is not a skill belonging to the profession of illustrators. Such a task can be fulfilled by the publishers responsible for their publication; and in order to prevent moral right infringements, the visual authors’ permission should be collected.

Ignoring the importance of authors’ moral rights in the frame of accessibility to works risks having very serious repercussions on moral rights protection of visual authors in general. Protection of moral rights is generally quite strict with regards to visual works where for instance reproductions of paintings should not be cropped, even slightly, and should use colours conform to the original or else, they risk being considered non-identical and hence infringing.

EVA believes that the present consultation based on Article 9 Directive 17/1654 comes too early and may raise expectations that are untimely and bare of objective reason. EVA and its members are fully at the European Commission’s disposal to produce such analysis. The Article 10 (3) report, due in 2023 has the potential of coming closer to developing the necessary insight to impact the Marrakech EU legislative texts.

6. Three-step-test

EVA also considers the application of better regulation rules as indispensable for any extension of the exceptions provided in the two EU legislative acts. Also, the 3-step test needs to be taken into account and unnecessary exceptions need to be prevented.

7. Subsidiarity

Furthermore, it should be subject to legislation of member states of the EU to modify legislation if needed, where possible and where the exhaustive list of Article 5 Directive 2001/29 plays a role.

8. Coherence with European Accessibility Act Directive on services and devices

We would also like to urge the Commission to develop a policy that is coherent with the European Accessibility Act as concerns the development and application of standards of e-books that allow accessibility to images. EVA kindly asks to develop common sense solutions and to bear in mind the integrity of the protected image works.

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