

STATES OF JERSEY



Jersey

DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (MARRAKESH TREATY) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 6th October 2020
by the Minister for External Relations**

STATES GREFFE

REPORT

The Draft Intellectual Property (Unregistered Rights) (Marrakesh Treaty) (Jersey) Regulations 202- if approved by the Assembly, will ensure the compliance of Jersey law with the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (**MT**) by 1st January 2021. The MT is administered by the World Intellectual Property Organization.

Modern intellectual property laws make Jersey an attractive place for businesses. The [Intellectual Property \(Unregistered Rights\) \(Jersey\) Law 2011 \(IPURL\)](#) ensures that there is good protection for works such as books, films, CDs and video games. The IPURL also deals more fairly with use of works by, for example, libraries or schools. In addition, the IPURL contains provisions enabling visually impaired persons to access copyright works. Improving access to copyright works for visually impaired people is a priority for the Government of Jersey.

The MT came into force on 30th September 2016 and aims to improve visually impaired and print disabled people's access to copyright works around the world by requiring its members to provide exceptions to copyright allowing the making of accessible format copies and transfer of such copies across borders. The United Kingdom (**UK**) signed the MT in June 2013, but its participation has been on the basis of ratification by the European Union (**EU**). In light of the UK's withdrawal from the EU, the UK is now taking the necessary steps to ratify the MT as a separate participating state.

The Government has confirmed that changes, where necessary, will be sought to the IPURL to ensure compliance with the MT enabling the Island to join this Treaty by extension of the UK's membership. Jersey already largely complies with the MT obligations through the Articles 49 to 54 IPURL, which were modelled on corresponding provisions in the UK Copyright, Designs and Patents Act 1988 (**CDPA**). However, as a result of subsequent changes to the CDPA,¹ a small number of amendments are also required to align the IPURL exceptions for visually impaired persons with the MT obligations.

Financial and manpower implications

There would be no additional resource implications as a result of the adoption of these draft Regulations.

¹In particular, The Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018.

EXPLANATORY NOTE

These Regulations, if passed, would amend the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (the “Law”) to align it with obligations under the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (the “Treaty”).

Regulation 1 provides that the Law is amended by these Regulations.

Regulation 2 amends Article 49 of the Law, which makes provision for a single accessible copy to be made by a visually impaired person. The amendments better align paragraphs (1) and (7) with the Treaty by referring to lawful access to a copy of a work, rather than lawful possession and lawful use. The amendments also make it clear that a copy may be made on behalf of the visually impaired person and that the provision applies to works that are published or otherwise accessible to the public. They also remove paragraph (3) so that there is no longer a restriction on producing a copy if there are commercially available copies in a form accessible to the visually impaired person.

Regulation 3 amends Article 50, which makes provision for multiple copies to be made by an approved body (as defined in Article 54 of the Law). The amendments make similar changes to paragraph (1) of Article 50 as are made to paragraph (1) of Article 49. There is an additional amendment to refer to the making, communicating, making available and distribution of copies rather than just making and supplying. Paragraphs (3) and (4) Article 50, which placed similar restrictions in relation to commercially available copies as Article 49(3), are deleted. A new paragraph (12) is inserted to comply with the Treaty by allowing an approved body to communicate, make available or distribute a copy it has made to another approved body to allow it to make accessible copies.

Regulation 4 amends Article 51, which relates to intermediate copies made during the production of an accessible copy, so that paragraph (3) refers to communicating, making available, distributing and lending intermediate copies.

Regulation 5 amends the definitions of “accessible copy” and “visually impaired person” in Article 54. The definition of “accessible copy” is amended to reflect the definition in the Treaty, which refers to a copy that allows a visually impaired person to access a copy as feasibly and comfortably as a person who is not visually impaired. This is broader than the previous definition which referred to improved access.

The definition of “visually impaired person” is amended to better reflect the Treaty which refers to a person having an impairment that prevents a person from enjoying a work to substantially the same degree as a person without that impairment. It also clarifies that this applies to an impairment that cannot be improved and that the reference to improvement with the use of corrective lenses is an example only.

Regulation 6 provides for the name by which the Regulations may be known and that they will come into force 7 days after they are made.



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DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (MARRAKESH TREATY) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Article 401 of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011¹ –

1 Amendment of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011

The Intellectual Property (Unregistered Rights) (Jersey) Law 2011² is amended in accordance with these Regulations.

2 Article 49 (making single accessible copy for personal use by visually impaired person) amended

In Article 49 –

- (a) for paragraph (1) there is substituted –
“(1) If a visually impaired person has lawful access to a copy (the “master copy”) of the whole or part of a literary, dramatic, musical or artistic work, whether published or otherwise made available, that is not accessible to the person because of the impairment, it is not an infringement of copyright in the work for an accessible copy of the master copy to be made by the person, or on the person’s behalf, for the person’s personal use.”;
- (b) paragraph (3) is deleted;
- (c) in paragraph (7)(b) for “lawful possession” there is substituted “lawful access”.

3 Article 50 (multiple copies for visually impaired persons) amended

In Article 50 –

- (a) for paragraph (1) there is substituted –
“(1) If an approved body has lawful access to a copy (the “master copy”) of the whole or part of a literary, dramatic, musical or artistic work,

whether published or otherwise made available, it is not an infringement of copyright in the work for the body to make, communicate, make available or distribute accessible copies for the personal use of visually impaired persons to whom the master copy is not available because of their impairment.”;

(b) paragraphs (3) and (4) are deleted;

(c) after paragraph (11) there is inserted –

“(12) An approved body which has made an accessible copy of a work under this Article may communicate, make available or distribute it to another approved body which is entitled to make accessible copies of the work under this Article for the purposes of enabling that other body to make accessible copies of the work.”.

4 Article 51 (Intermediate copies and records created during production of accessible copy)

In Article 51(3) for “lend or transfer” there is substituted “communicate, make available, distribute or lend”.

5 Article 54 (Articles 49 to 53: definitions and other supplementary provision) amended

In Article 54 –

(a) in paragraph (3) for “provides for a visually impaired person’s improved access to the work” there is substituted “enables a visually impaired person to access the work, including accessing it as feasibly and comfortably as a person who is not visually impaired”;

(b) for paragraph (6)(b) there is substituted –

“(b) who has an impairment of visual function which cannot be improved (for example, by the use of corrective lenses) and which prevents the person from enjoying a copyright work to substantially the same degree as a person who does not have that impairment;”.

6 Citation and commencement

These Regulations may be cited as the Intellectual Property (Unregistered Rights) (Marrakesh Treaty) (Jersey) Regulations 202- and come into force 7 days after they are made.

ENDNOTES

Table of Endnote References

1	<i>chapter 05.350</i>
2	<i>chapter 05.350</i>