

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4530 of 20 December, 2018

LEGAL NOTICE NO.286 OF 2018.

GENERAL INTERPRETATION AND GENERAL CLAUSES ACT

INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) ACT 2005 (AMENDMENT) REGULATIONS, 2018

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar Directive (EU) 2017/1564 of the European Parliament and of the Council of the 13th September 2017 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 and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, the Government has made the following Regulations-

Title and commencement.

1. These Regulations may be cited as the Intellectual Property (Copyright and Related Rights) Act 2005 (Amendment) Regulations 2018 and come into force upon publication.

Amendment of Act.

2. The Intellectual Property (Copyright and Related Rights) Act 2005 is amended in accordance with the provisions of this Regulation.

Amendment of Section 39A.

3.(1) Section 39A (making a single accessible copy for personal use) is amended as follows.

(2) For subsection (1) substitute-

"(1) If a visually impaired person or a person acting on their behalf has access to a copy ("the master copy") of the whole or part of work or other subject matter which is not accessible to him because of the impairment, it is not an infringement of

copyright of the work or subject matter for an accessible copy of the master copy to be made for his personal use."

- (3) For subsection (2) substitute- .

"(2) Subsection (1) does not apply if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it."

- (4) Omit subsections (3) and (5).

Amendment to Section 39B.

4.(1) Section 39B (multiple copies for visually impaired persons) is amended as follows.

- (2) For subsection (1) substitute-

"(1) If—

(a) an approved body has lawful access to the whole or part of a work or other subject matter which has been published or otherwise made available, and

(b) the body complies with subsection (1A),

the body may, without infringing copyright, make, communicate, make available, distribute or lend accessible copies of the work on a non-profit basis for the personal use of visually impaired persons or persons acting on their behalf in Gibraltar or another Member State of the European Union.

(1A) An authorised body complies with this subsection if it—

(a) distributes, communicates, makes available or lends accessible copies only to visually impaired persons or other approved bodies,

(b) takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available to the public of accessible copies,

(c) demonstrates due care in, and maintains records of, its handling of works and accessible copies, and

(d) publishes and updates, on its website if appropriate, or through other online or offline channels, information on how it complies with the obligations in paragraphs (a), (b) and (c)."

(3) For subsection (2) substitute-

"(2) Subsection (1) does not apply if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it."

(4) Omit subsections (3) to (8).

(5) In subsection (9) for the words "or supply" substitute ", communicate, make available, distribute or lend"

(6) After subsection (9) include-

"(9A) An authorised body which has made an accessible copy of a work under this section may communicate, make available, distribute or lend it to another authorised body established in Gibraltar or another Member State of the European Union which is entitled to make accessible copies of the work under this section for the purposes of enabling that other body to make accessible copies of the work."

(7) In subsection (12) omit the word "educational" and after the word "body" insert the following: "which provides education, instructional training, adaptive reading or information access to visually impaired persons".

(8) Omit subsection (13).

Amendment of Section 39C.

5.(1) Section 39C (intermediate copies and records) is amended as follows.

(2) In subsection (3) for "lend or transfer" substitute "communicate, make available, distribute or lend".

- (3) In subsection (4) for "loan or transfer" substitute "communication, making available, distribution or lending"
- (4) Omit subsection (5).
- (5) For subsections (6) - (9) substitute-
- "(6) A person listed in subsection (8) may request an approved body:
- (a) making accessible copies under section 39B, or
- (b) making intermediate copies under this section,
- to provide the person with the information in subsection (4).
- (7) On receipt of a request under subsection (6), an approved body must provide the information to the person in an accessible way within a reasonable time.
- (8) The persons who may make a request under subsection (6) are-
- (a) visually impaired persons;
- (b) other approved bodies;
- (c) rightholders.
- (9) the information that must be provided by the approved body is-
- (a) the list of works for which it has accessible copies and the available formats, and
- (b) the name and contact details of any approved bodies established in another Member State of the European Union from which, or to which, it has imported, exported or accessed an accessible copy."

Amendment of Section 39F.

- 6.(1) Section 39F (intermediate copies and records) is amended as follows.

- (2) For subsection (3) substitute-
- "(3) "accessible format copy" means a copy of a work or other subject matter in an alternative manner or form that gives a visually impaired person access to the work or other subject matter, including allowing such person to have access as feasibly and comfortably as a person without any visual impairments;"
- (3) Omit subsection (7).
- (4) For subsection (9) substitute-
- "(9) "Visually impaired person" means, regardless of any other disabilities, a person who:
- (a) is blind;
- (b) has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment;
- (c) has a perceptual or reading disability and is, as a result, unable to read printed works to substantially the same degree as a person without such disability; or
- (d) is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading."
- (5) After subsection (9) insert a new subsection (9A)-
- "(9A) "work or other subject matter" means a work in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks and in digital format, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available."
- (6) After subsection (11) insert a new subsection (12)-

"(12) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of section 39A, 39B or 39C, would not infringe copyright, that term is unenforceable."

Amendment of Section 132.

7.(1) In section 132(5) (infringing copies may be treated as prohibited goods) for the words "Article 5(1)" to the end, substitute " Article 3 of Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights".

Amendment to Section 274.

8.(1) Section 274 (remedy where effective technological measures prevent permitted acts) is amended as follows.

(2) In subsection (1), at the appropriate places, insert-

""Marrakesh beneficiary" means, regardless of any other disabilities, a person who:

(a) is blind;

(b) has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment;

(c) has a perceptual or reading disability and is, as a result, unable to read printed works to substantially the same degree as a person without such disability; or

(d) is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading.

"Marrakesh Work" means a work in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks and in digital format, which is

protected by copyright or related rights and which is published or otherwise lawfully made publicly available"

(3) In subsection (9) before "this section does not apply" insert "Subject to subsection (9A),".

(4) After subsection (9) insert-

"(9A) But this section does apply where the application of any effective technological measure to a Marrakesh work prevents the making of an accessible copy of that work under sections 39A, 39B or 39C for the benefit of a Marrakesh beneficiary"

Amendment to Section 189.

9. In section 189(1) (interpretation), at the appropriate place, insert-

""Marrakesh beneficiary" has the meaning given by section 274(1)"

Exceptions to database right: Marrakesh beneficiaries.

10. After section 197(2), insert-

" Exceptions to database right: Marrakesh beneficiaries

197A. Database right in a database is not infringed by the making of an accessible copy of a work under sections 39A, 39B or 39C for the benefit of a Marrakesh beneficiary"

Dated 20th December, 2018.

A J ISOLA,
Minister with responsibility for commerce.

EXPLANATORY MEMORANDUM

These Regulations transpose into the law of Gibraltar Directive (EU) 2017/1564 of the European Parliament and of the Council of the 13th September 2017 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 and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.