

# STATES OF JERSEY



Jersey

## **DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (AMENDMENT – DISABILITY AND RIGHTS IN PERFORMANCES) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 5th March 2021  
by the Minister for External Relations and Financial Services  
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**STATES GREFFE**



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## REPORT

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### Background

The [Intellectual Property \(Unregistered Rights\) \(Jersey\) Law 2011 \(IPURL\)](#) currently includes exceptions that allow visually impaired people - and people and organisations acting on their behalf - to make accessible versions (e.g. Braille versions) of literary, dramatic, musical or artistic works without infringing copyright. In addition, people who are deaf, hard of hearing, or have a physical or mental disability benefit from an exception that allows designated not-for-profit bodies to subtitle broadcasts without infringing copyright.

The current exceptions, included in Articles 49 to 54 IPURL, allowing accessible copies to be made, only apply to certain types of work (i.e. literary, dramatic, musical or artistic work) and do not include films, broadcast or sound recordings. This means that these exceptions do not permit the making of, for example, an audio description that enables a visually impaired person to access a film. Similarly, Article 102 (and 297 IPURL), permitting the subtitling of certain copyright works (i.e. broadcasts) to make them accessible to deaf and other disabled people does not apply to films, sound recordings and other copyright works.

As such, these exceptions do not benefit all groups of people who are unable to access works due to their disability and, in addition, they do not apply to all types of works. The current limitations on the scope of these exceptions (both in relation to the “works” covered and “beneficiary persons”) mean that some disabled people may (still) be unable to access certain copyright works or recordings of performances, which in turn means that they are unable to participate in our society, culture and economy as easily as other people.

On 18 November 2020, during the debate on the [Intellectual Property \(Unregistered Rights\) \(Marrakesh Treaty\) \(Jersey\) Regulations 2020 \(P.127/2020\)](#), I informed the Assembly that officers would be requested to prepare further amendments to the IPURL to ensure that the disability exceptions set out in that Law cover all types of disability which prevent a person from accessing a copyright work and cover all types of work. The Regulations debated on 18 November 2020 were adopted unanimously by the Assembly.

Further to this commitment, these draft Regulations, if approved by the Assembly, will extend the scope of the disability exceptions in the IPURL. Specifically, the draft Regulations will amend the IPURL so that the law permits accessible copies to be made of any type of copyright work or recording of a performance for the benefit of people with any impairment, if and to the extent that impairment prevents them from accessing the work. In addition, the draft Regulations are also about simplifying the processes and procedures related to the IPURL disability exceptions.

Furthermore, the draft Regulations also concern a small number of changes to the IPURL for the purposes of removing uncertainty regarding Jersey’s compliance with

the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (**Marrakesh Treaty**).

### **IPURL summary of amendments**

The proposed changes – as summarised below – can be made to the IPURL by Regulations under Articles 44, 243, 274, 401 and 409(1).

#### ***Article 49 IPURL - Disabled persons: copies of works for personal use***

1. Article 49 IPURL makes provision for a single accessible copy to be made by, or on behalf of, a visually impaired person. The draft Regulations, if approved, will amend this provision so that it permits a *disabled person*, or someone acting on their behalf, to make an accessible copy for the person’s personal use without infringing copyright. The draft Regulations would also extend the scope of this provision so that it applies to *any type* of work.
2. It is proposed to delete the current provision in Article 49(2) which stipulates that the exception provided by paragraph (1) shall 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. This amendment is proposed to comply with the Marrakesh Treaty, as currently the “carve-out” in Article 49(2) prevents the making of some accessible copies for some categories of works.
3. A number of further proposed amendments will simplify the application of the exception in Article 49 for the benefit of disabled persons and reduce administration requirements (e.g. removing the requirement that that copies made under Article 49 must be accompanied by a statement as to their origin and an acknowledgement).

#### ***Article 50 - Making, communicating, making available or distributing of accessible copies by authorised bodies***

4. Article 50 IPURL makes provision for multiple copies to be made by an “authorised body”. Similar to Article 49 IPURL, the draft Regulations propose to amend Article 50 so that it permits activity with *any type* of work for the benefit of a person with *any type* of disability.
5. For the same reason that applies to Article 49(2) IPURL, the draft Regulations will delete paragraph (2) of Article 50 in relation to accessible copies of musical works.
6. In addition, if the draft Regulations are adopted, Article 102 IPURL will be revoked as what it covers (i.e. subtitling of broadcasts for people who are deaf or hard of hearing, or physically or mentally handicapped in other ways) will be within the scope of Article 50 IPURL, as amended.

7. It is proposed to amend Article 50 IPURL to allow authorised bodies to provide accessible copies to beneficiary persons or authorised bodies located in the territories of other Marrakesh contracting parties. This ensures compliance with the Marrakesh Treaty which requires parties to allow accessible copies to be transferred to beneficiary persons and authorised bodies in territories of other Marrakesh contracting parties.
8. Similar to Article 49, a number of additional changes to Article 50 are proposed to simplify the application of the exception for the benefit of authorised bodies (which are often charities) and, ultimately, disabled persons benefitting from accessible copies made by such bodies.

***Article 51 - Making, communicating, making available, distributing or lending of intermediate copies by authorised bodies***

9. Article 51 IPURL recognises the fact there may be useful intermediate copies during the making of accessible copies and that sharing these between authorised bodies that are able to make accessible copies makes sense. In order to simplify processes and procedures related to the IPURL disability exceptions, a new, simplified provision regarding intermediate copies is proposed, replacing the current provision in Article 51 IPURL.

***Article 52 - Accessible and intermediate copies: records and notification***

10. The draft Regulations also introduce a new provision requiring authorised bodies to keep records and allow their inspection by other authorised bodies and disabled persons as well as a persons holding rights in the work, noting that the records that can be inspected may not include records of the disabled people who have been supplied with accessible copies. The new provision applies to both accessible copies under Article 50 and intermediate copies under (new) Article 51 IPURL.

***Articles 52 and 53 IPURL revoked***

11. The draft Regulation revoke the current provisions in Articles 52 and 53 IPURL. As a result, the IPURL, as amended, will no longer make any provision about overriding the exception in Article 50 by licensing, as is currently in Article 52, and no longer permits Orders to be made restricting what could otherwise be done under Article 50, as is currently in Article 53.

***Articles 54 - definitions and other supplementary provision***

12. Article 54 IPURL makes provision about the interpretation of the earlier provisions 49 to 53. Most importantly, the current definition of a “visually impaired person” is to be replaced by a definition of a “disabled person” which shall include any person who has a physical or mental impairment which prevents the person from enjoying a copyright work to substantially the same degree as a person who does not have that impairment.

### *Performers' rights*

13. In order to extend the IPURL exceptions for disabled persons to cover all types of work, new provisions are needed in Part 6 of the IPURL permitting the making of an accessible copy of a copy of the whole or part of a recording of a performance without infringing the rights of the rightsholder.
14. More specifically, the draft Regulations, if approved, introduce new provisions in Chapter 3 of Part 6 of the IPURL, ensuring that there is no infringement of performers' rights when accessible copies of recordings of performances are made for, and where relevant supplied to, disabled people, with other provision on accessible copies of broadcasts, intermediate copies and records also being provided as in Part 1 of the IPURL regarding copyright.
15. Article 297 of the IPURL which relates to the provision of subtitled copies of broadcast is then no longer needed, as what was covered will be within the scope of the new provisions in Chapter 3 of Part 6 of the IPURL.
16. The new provisions proposed go beyond what is required by the Marrakesh Treaty and fulfil the commitment made by the Minister on 18 November 2020 to undertake additional work to extend the scope of the disability exceptions in the IPURL. Due to the absence of an international convention setting minimum standards for accessible copies of recordings of performances, specific rules for the cross-border exchange of such copies are, at this point in time, not proposed.

### *Consequential amendments*

17. The draft Regulations furthermore make a number of consequential amendments needed as a result of the proposed changes to the disability exceptions in the IPURL.

### **Financial and manpower implications**

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

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## EXPLANATORY NOTE

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These Regulations, if made, will amend the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (the “Law”) to expand the provisions in relation to accessible copies of copyright works and recordings of performances for visually impaired people so that they apply to a wider class of disabled people.

*Regulation 1* states that these Regulations amend the Law.

*Regulation 2* amends Article 42 of the Law, which sets out the meaning of a “infringing copy” of a work, to make the changes necessary to reflect the numbering of the provisions substituted by Regulation 3.

*Regulation 3* substitutes Articles 49 to 54 of the Law with new Articles 49 to 53. It also amends the cross-heading immediately before Article 49 so that it refers to disabled persons. The substituted provisions replace provisions relating to the creation of accessible copies for visually impaired people and remove the existing Articles 52 and 53 which are no longer required.

Substituted Article 49 allows a disabled person (as defined in substituted Article 53) to make a copy of a copyright work for personal use if they have lawful access to a copy of the work and their disability prevents them from enjoying the work to substantially the same degree as a person who does not have their disability. It provides that the copy is not an infringing copy if made by or on behalf of the person and is made for their personal use, but in other circumstances, and if held by another person, it will be an infringing copy.

Substituted Article 50 allows an authorised body (as defined in substituted Article 53) to make and distribute accessible copies to disabled people in Jersey or in a Marrakesh Contracting State (defined in substituted Article 53). The authorised body must comply with certain conditions. It may make the accessible copy available to another authorised body in Jersey or in a Marrakesh Contracting State (including exporting the copy) and if it imports an accessible copy from an authorised body in a Marrakesh Contracting State, that copy is not an infringing copy for the purposes of customs legislation.

Substituted Article 51 allows an authorised body to make intermediate copies when producing an accessible copy and removes provisions that are no longer needed. The body may also share intermediate copies with another authorised body to allow that body to make accessible copies.

Substituted Article 52 requires an authorised body to provide certain information on the payment of a prescribed fee (if any). This information may be requested by any disabled person, another authorised body or a person holding rights in a work and the information to be provided includes a list of works for which it has accessible copies and the details of any authorised bodies in a Marrakesh Contracting State to which it has exported or from which it has imported an accessible copy.

Substituted Article 53 contains definitions and supplementary provisions. In particular it defines “accessible copy”, “authorised body”, “disabled person” and “Marrakesh Contracting State”. It also clarifies that any term of a contract which purports to restrict any of the acts permitted under substituted Articles 49 to 51 is unenforceable.

*Regulations 4 and 5* make consequential amendments to remove Article 102, which is no longer needed, and a reference to the previous version of Article 52.

*Regulations 6 and 7* amend Articles 243 and 244 of the Law which make provision for circumstances where technological measures prevent an act permitted under the Law, such as the making of an accessible copy or recording.

*Regulation 8* amends Article 255 of the Law, which gives out the meaning of “illicit recording”, to include the necessary references to recordings which are made under the substituted Article 297 and new Article 297A and which are transferred otherwise than as permitted by those Articles.

*Regulation 9* substitutes Article 297 of the Law (which related to the provision of sub-titled copies of broadcasts) with new Articles 297 to 297C. The substituted provisions make similar provision in relation to recordings of works as the substituted Articles 49 to 53 make in relation to works.

*Regulation 10* makes a consequential amendment to remove a reference to the previous version of Article 297.

*Regulation 11* sets out the title of the Regulations and provides that they come into force 7 days after they are made.





Jersey

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## **DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (AMENDMENT – DISABILITY AND RIGHTS IN PERFORMANCES) (JERSEY) REGULATIONS 202-**

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

**THE STATES** make these Regulations under Articles 44, 243, 274, 401 and 409(1) of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011<sup>1</sup> –

### **1 Intellectual Property (Unregistered Rights) (Jersey) Law 2011 amended**

These Regulations amend the Intellectual Property (Unregistered Rights) (Jersey) Law 2011<sup>2</sup>.

### **2 Article 42 (meaning of “infringing copy”) amended**

In Article 42(6) for “Articles 49(6) and (9), 50(9) and (10), 51(2),” there is substituted “Articles 49(4) and (5), 50(4),”.

### **3 Articles 49 (making single accessible copy for personal use by visually impaired person) to 54 (Articles 49 to 53: definitions and other supplementary provision) substituted**

For the crossheading before Article 49 and for Articles 49 to 54 there is substituted –

*“Disabled persons*

#### **49 Disabled persons: copies of works for personal use**

- (1) This Article applies if –
  - (a) a disabled person has lawful access to a copy of the whole or part of a work; and
  - (b) that person’s disability prevents the person from enjoying the work to substantially the same degree as a person who does not have that disability.

- (2) The making of an accessible copy of the copy of the work referred to in paragraph (1)(a) does not infringe copyright if –
  - (a) the copy is made by the disabled person or by a person acting on behalf of the disabled person; and
  - (b) the copy is made for the disabled person’s personal use.
- (3) Except where the transfer is authorised by the copyright owner, copyright is infringed by the transfer of an accessible copy of a work made under this Article to any person other than –
  - (a) a person by or for whom an accessible copy of the work may be made under this Article; or
  - (b) a person who intends to transfer the copy to a person falling within sub-paragraph (a).
- (4) An accessible copy of a work made under this Article is to be treated for all purposes as an infringing copy if it is held by a person at a time when the person does not fall within paragraph (3)(a) or (b).
- (5) If an accessible copy made under this Article is subsequently dealt with –
  - (a) it is to be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.
- (6) In paragraph (5), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.

## **50 Making, communicating, making available or distributing of accessible copies by authorised bodies**

- (1) An authorised body may, without infringing copyright, on a non-profit basis for the personal use of disabled persons in Jersey or a Marrakesh Contracting State, make, communicate, make available or distribute accessible copies of a work which has been published or otherwise made available if the body –
  - (a) has lawful access to the whole or part of the work; and
  - (b) complies with paragraph (2).
- (2) An authorised body complies with this paragraph if it –
  - (a) distributes, communicates or makes available accessible copies only to disabled persons or other authorised 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 sub-paragraphs (a), (b) and (c).

- (3) For the purposes of paragraph (1) communicating, making available, or distributing for the personal use of disabled persons includes communicating, making available or distributing to a person acting on behalf of a disabled person.
- (4) If an accessible copy made under this Article is subsequently dealt with –
  - (a) it is to be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.
- (5) In paragraph (4), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.
- (6) An authorised body which has made an accessible copy of a work under this Article may communicate, make available or distribute it to another authorised body established in Jersey or a Marrakesh Contracting State for the purposes of enabling that other body to make accessible copies of the work.

#### **51 Making, communicating, making available, distributing or lending of intermediate copies by authorised bodies**

- (1) An authorised body which is entitled to make an accessible copy of a work under Article 50 may, without infringing copyright, make a copy of the work (“an intermediate copy”) if this is necessary in order to make the accessible copy.
- (2) An authorised body which has made an intermediate copy of a work under this Article may communicate, make available, distribute or lend it on a non-profit basis to another authorised body established in Jersey or a Marrakesh Contracting State for the purposes of enabling that other body to make accessible copies of the work.
- (3) Copyright is infringed by the transfer of an intermediate copy made under this Article to a person other than another authorised body as permitted by paragraph (2), except where the transfer is authorised by the copyright owner.

#### **52 Accessible and intermediate copies: records and notification**

- (1) A person listed in paragraph (3) may, on payment of such fee as may be prescribed, request an authorised body to provide the person with the information in paragraph (4) if the authorised body –
  - (a) makes accessible copies under Article 50; or
  - (b) makes intermediate copies under Article 51.
- (2) On receipt of a request under paragraph (1), an authorised body must provide the information to the person in an accessible way within a reasonable time.
- (3) The persons who may make a request under paragraph (1) are –
  - (a) any disabled person;

- (b) another authorised body;
  - (c) any person holding rights in the work.
- (4) The information that must be provided by the authorised 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 authorised body established in a Marrakesh Contracting State from which it has accessed or imported, or to which it has exported, an accessible copy.

### **53 Articles 49 to 52: definitions and other supplementary provisions**

- (1) This Article supplements Articles 49 to 52 and includes definitions for the purposes of those Articles.
- (2) An “accessible copy” of a copyright work means a version of the work which enables disabled persons to access the work, including accessing it as feasibly and comfortably as a person who is not a disabled person.
- (3) An accessible copy –
  - (a) may include facilities for navigating around the version of the work; but
  - (b) must not include any changes to the work which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.
- (4) “Authorised body” means –
  - (a) an educational establishment; or
  - (b) a body that is not conducted for profit.
- (5) “Disabled person” means a person who has a physical or mental impairment which prevents the person from enjoying a copyright work to substantially the same degree as a person who does not have that impairment, and “disability” is to be construed accordingly.
- (6) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, for example by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.
- (7) “Marrakesh Contracting State” means a country or territory that is party to, or subject to, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled signed in Marrakesh on 27th June 2013.
- (8) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of Articles 42, 49, 50 or 51, would not infringe copyright, that term is unenforceable.
- (9) A copy of a work does not infringe any intellectual property right for the purpose of the Community Provisions (Goods Suspected of Infringing Intellectual Property Rights) (Jersey) Regulations 2014 if it is –
  - (a) made under Article 49, 50 or 51 and is not an infringing copy;

- (b) an accessible copy created in a Marrakesh Contracting State for personal use by a disabled person; or
- (c) an accessible copy or intermediate copy created by an authorised body in a Marrakesh Contracting State.”.

#### **4 Article 102 (provision of sub-titled copies of broadcast) deleted**

Article 102 is deleted.

#### **5 Article 180 (notification of licensing schemes) amended**

In Article 180(1) for “Article 52, 58, 59, 88, 102 or 179,” there is substituted “Article 58, 59, 88 or 179”.

#### **6 Article 243 (remedy where effective technological measures prevent permitted acts) amended**

In Article 243 –

- (a) in paragraph (1) before the definition “permitted act” there is inserted –

“Marrakesh beneficiary” means 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 normally be acceptable for reading;

“Marrakesh work” means a work –

- (a) in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations; and
- (b) in any media, including in audio form, such as audiobooks, and in digital format,

which is protected by copyright, related rights or database rights and which is published or otherwise lawfully made publicly available;”;

- (b) in the definition “permitted acts” sub-paragraph (y) is deleted;
- (c) in paragraph (13) before “This Article” there is inserted “Except where paragraph (13A) applies,”;
- (d) after paragraph (13) there is inserted –

“(13A) This paragraph applies where the application of any effective technological measure to a Marrakesh work prevents the making of an accessible copy of that work under Articles 49, 50, 51, 297, 297A and 297B for the benefit of a Marrakesh beneficiary.”.

## **7 Article 244 (application of Article 243 to database right, publication right and rights in performances) amended**

In Article 244(4) after sub-paragraph (n) there is inserted –

- “(na) Article 297A;
- (nb) Article 297B;”.

## **8 Article 255 (illicit recording) amended**

In Article 255(5) for “or 294(2)” there is substituted “, 294(2), 297(4) and (5) or 297A(4)”.

## **9 Articles 297 (provision of sub-titled copies of broadcast) substituted**

For Article 297 there is substituted –

### **“297 Disabled persons: copies of recordings for personal use**

- (1) This Article applies if –
  - (a) a disabled person has lawful access to a copy of the whole or part of a recording of a performance; and
  - (b) the person’s disability prevents the person from enjoying the recording to substantially the same degree as a person who does not have that disability.
- (2) The making of an accessible copy of the copy of the recording referred to in paragraph (1)(a) does not infringe the relevant rights if –
  - (a) the copy is made by the disabled person or by a person acting on behalf of the disabled person; and
  - (b) the copy is made for the disabled person’s personal use.
- (3) Except where the transfer is authorised by the rights owner, the relevant rights are infringed by the transfer of an accessible copy of a recording made under this Article to any person other than –
  - (a) a person by or for whom an accessible copy of the recording may be made under this Article; or
  - (b) a person who intends to transfer the copy to a person falling within sub-paragraph (a).
- (4) An accessible copy of a recording made under this Article is to be treated for all purposes as an illicit recording if it is held by a person at a time when the person does not fall within paragraph (3)(a) or (b).



- (5) If an accessible copy of a recording made under this Article is subsequently dealt with –
  - (a) it is to be treated as an illicit recording for the purposes of that dealing; and
  - (b) if that dealing infringes any relevant right, it is to be treated as an illicit recording for all subsequent purposes.
- (6) In paragraph (5), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.

### **297A Making, communicating, making available or distributing of accessible copies by authorised bodies**

- (1) An authorised body may without infringing the relevant rights, on a non-profit basis for the personal use of disabled persons in Jersey, make, communicate, make available or distribute accessible copies of a recording of a performance if the body –
  - (a) has lawful access to the whole or part of the recording; and
  - (b) complies with paragraph (2).
- (2) An authorised body complies with this paragraph if it –
  - (a) distributes, communicates, makes available or lends accessible copies only to disabled persons or other authorised 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 sub-paragraphs (a), (b) and (c).
- (3) For the purposes of paragraph (1) communicating, making available or distributing for the personal use of disabled persons includes communicating, making available or distributing to a person acting on behalf of a disabled person.
- (4) If an accessible copy of a recording made under this Article is subsequently dealt with –
  - (a) it is to be treated as an illicit recording for the purposes of that dealing; and
  - (b) if that dealing infringes any relevant right, it is to be treated as an illicit recording for all subsequent purposes.
- (5) In paragraph (4) “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.
- (6) An authorised body which has made an accessible copy of a recording under this Article may communicate, make available or distribute it to another authorised body established in Jersey for the

purposes of enabling that other body to make accessible copies of the recording.

### **297B Making, communicating, making available, distributing or lending of intermediate copies by authorised bodies**

- (1) An authorised body which is entitled to make an accessible copy of a recording of a performance under Article 297A may, without infringing the relevant rights, make a copy of the recording (“an intermediate copy”) if this is necessary in order to make the accessible copy.
- (2) An authorised body which has made an intermediate copy of a recording under this Article may communicate, make available, distribute or lend it on a non-profit basis to another authorised body established in Jersey for the purposes of enabling that other body to make accessible copies of the recording.
- (3) The relevant rights are infringed if an intermediate copy of the recording made under this Article is transferred to a person other than another authorised body as permitted by paragraph (2), except where the transfer is authorised by the rights owner.

### **297C Accessible and intermediate copies: records**

- (1) A person listed in paragraph (3) may, on payment of such fee as may be prescribed, request an authorised body to provide the person with the information in paragraph (4) if the authorised body makes –
  - (a) accessible copies under Article 297A; or
  - (b) intermediate copies under Article 297B.
- (2) On receipt of a request under paragraph (1), an authorised body must provide the information to the person in an accessible way within in a reasonable time.
- (3) The persons who may make a request under paragraph (1) are –
  - (a) any disabled person;
  - (b) another authorised body;
  - (c) any person holding rights in the recording.
- (4) The information that must be provided by the authorised body is –
  - (a) the list of recordings for which it has accessible copies and the available formats; and
  - (b) the name and contact details of any authorised body established in Jersey from which it has accessed or to which it has supplied an accessible copy.

### **297D Articles 297 to 297C: interpretation and general**

- (1) This Article supplements Articles 297 to 297C and includes definitions for the purpose of those Articles.

- (2) An “accessible copy” of a recording of a performance means a version of the recording which enables disabled persons to access that version, including accessing it as feasibly and comfortably as a person who is not a disabled person.
- (3) An accessible copy –
  - (a) may include facilities for navigating around the version of the recording; but
  - (b) must not include any changes to the recording which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.
- (4) “Authorised body” means –
  - (a) an educational establishment; or
  - (b) a body that is not conducted for profit.
- (5) “Disabled person” means a person who has a physical or mental impairment which prevents the person from enjoying a recording of a performance to substantially the same degree as a person who does not have that impairment, and “disability” is to be construed accordingly.
- (6) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, for example by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.
- (7) “Relevant right” means a right conferred by Chapters 1 to 6.
- (8) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of Articles 297, 297A or 297B would not infringe a relevant right, that term is unenforceable.”.

## 10 Article 328 (notification of licensing schemes) amended

In Article 328(1) for “Article 280 or 297” there is substituted “Article 280”.

## 11 Citation and commencement

These Regulations may be cited as the Intellectual Property (Unregistered Rights) (Amendment – Disability and Rights in Performances) (Jersey) Regulations 202- and come into force 7 days after they are made.

## ENDNOTES

### Table of Endnote References

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| <a href="#">1</a> | <i>chapter 05.350</i> |
| <a href="#">2</a> | <i>chapter 05.350</i> |