

To: Ms Zjarrta Osmani
Senior Officer, Copyright Office
Ministry of Culture Youth and Sports
zjarrta.osmani@rks-gov.net

13 October 2022

Re: Public Consultation - Draft Law on Copyrights and Related Rights (2022)

Dear Ms Osmani,

The Association of Electronic Libraries in Kosova (AELK) and our international partner EIFL (Electronic Information for Libraries) appreciate the opportunity to comment on the Draft Law on Copyrights and Related Rights (2022).

Copyright regulates how information is accessed and used, thus libraries have a strong interest in copyright law and its development. In particular, the library community has a distinct role as a stakeholder serving the public interest in copyright debates.

Please find below our written comments on the Draft Law on Copyrights and Related Rights (2022).

We hope that our comments are useful. Please do not hesitate to contact us if there are any questions.



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Teresa Hackett
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Emri i organizatës që jep komente:**Name of organization providing feedback:**

Association of Electronic Libraries in Kosova (AELK) and our international partner EIFL (Electronic Information for Libraries)

Fushat kryesore të veprimit të organizatës:**The main areas of activity of the organization:**

The Association of Electronic Libraries in Kosova (AELK) is a membership organisation comprising the National Library of Kosova, university and college libraries, public libraries and special libraries. We provide access to scholarly e-resources for members. The draft copyright law contains many provisions that directly impact library activities and services in Kosova, for example, the making of preservation and research copies, text and data mining, use of works that are out-of-commerce, and producing information in formats that can be accessed by persons with print disabilities.

EIFL (Electronic Information for Libraries) is an international NGO that works with libraries to enable access to knowledge in developing and transition economy countries in Africa, Asia Pacific, Europe and Latin America. The EIFL Copyright and Libraries programme advocates for a fair copyright system, and supports librarians to become advocates for access to knowledge. More information: www.eifl.net

Informatat e kontaktit të organizatës (adresa, e-mail, telefoni):**Contact information of the organization (address, e-mail, telephone):**

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Data e dërgimit të komenteve:

Date of sending comments: 13 October 2022

	Çështjet kyçe Key Issues	Komente rreth draftit aktual Comments on the current draft
1	Article 57 – Exception for Visually Impaired Persons	<p>Although Article 1(2) declares that the Copyright Law is in full compliance with the EU Marrakesh Directive and Regulation, Article 57 does not comply with the Directive and Regulation, as well as the Marrakesh Treaty itself, in four critical respects as follows.</p> <p>A. Article 57(1) allows beneficiary persons to make accessible format copies for their personal use. Article 57(4) then states that an authorised entity carrying out the acts referred to in paragraph (1) establishes and follows its own practices to ensure that it distributes copies only to beneficiary persons or other authorized entities. Thus, paragraph 4 assumes that authorised entities are permitted to make and distributes accessible format copies, but this permission is not explicitly granted anywhere in Article 57.</p> <p>For example, Article 3(1)(b) of the EU Marrakesh Directive provides that Member States shall provide for an exception to the effect that no authorisation of the rightholder of any copyright or related right in a work or other subject-matter is required pursuant to Articles 5 and 7 of Directive 96/9/EC, Articles 2, 3 and 4 of Directive 2001/29/EC, Article 1(1), Article 8(2) and (3) and Article 9 of Directive 2006/115/EC and Article 4 of Directive 2009/24/EC for any act necessary for: (b) an authorised entity to make an accessible format copy of a work or other subject-matter to which it has lawful access or to communicate, make available, distribute or lend an accessible format copy to a beneficiary person or another authorised entity on a nonprofit basis for the purpose of exclusive use by a beneficiary person.</p> <p>Recommendation: Article 57 should be revised to explicitly allow authorised entities to make accessible format copies and distribute them to beneficiary persons and other authorised entities.</p> <hr/> <p>B. Article 57(1) applies only to a beneficiary person, but Article 3(1)(a) of the Marrakesh Directive applies to “a beneficiary person, or a person acting on their behalf,” such as a family member or a caregiver.</p> <p>Recommendation: Article 57(1) should be broadened to apply to persons acting on behalf of the beneficiary person.</p>

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		<p>C. The Marrakesh Treaty requires signatories to allow the import and export of accessible format copies. Indeed, cross border exchange is a central feature of the Treaty. Thus, Article 4 of the EU Marrakesh Directive permits the cross-border exchange of accessible format copies among Member States of EU, and Article 3 and 4 of the EU Marrakesh Regulation allow the cross-border exchange of accessible format copies with other countries that have joined the Marrakesh Treaty.</p> <p>In contrast, Article 57 of the Kosovo Draft law is silent on the import and export of accessible format copies. In the absence of an exception, an authorised entity may infringe the exclusive economic rights of the author, e.g., the distribution right in Article 23(1.2), by engaging in cross-border activities.</p> <p>Recommendation: Accordingly, Article 57 should be amended to include a provision that explicitly permits an authorised entity to import and export accessible format copies. Because the Republic of Kosovo is not, at this point, a member of the World Intellectual Property Organization (WIPO), Kosovo cannot currently join the Marrakesh Treaty. However, the import/export provision should not be linked to countries that have joined Marrakesh.</p>
		<p>D. Article 119 prohibits the circumvention of technological measures that protect copyrighted works. Paragraph 3 provides that the beneficiaries of certain exceptions may request an arbitration if the technological measures prevent the exercise of their rights and the rightholders have not taken voluntary steps to address this. However, the list of enumerated exceptions in Article 119(3) does not include Article 57. Thus, an authorised entity would have no recourse if a technological measure prevents it from making an accessible format copy. Significantly, the EU Information Society Directive, as amended by the Marrakesh Directive, requires such recourse.</p> <p>Recommendation: Accordingly, Article 57 should be added to the list of exceptions in Article 119(3).</p>

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2	Article 48—Exception for Libraries	<p>Article 48(1.1) permits a library to make a “reprographic reproduction” of a published work for the purpose of replacing copies that have been lost, destroyed or have become unusable. Reprographic reproduction is defined in Article 1(32) as photocopies and excludes reproduction in electronic or other machine-readable form. In contrast, Article 49(1.18) permits a cultural heritage institution to make copies in “any format or medium,” including presumably in a digital format, for purposes of preservation. Permitting a library to make only photocopies for replacement purposes is unnecessarily restrictive, and creates a confusing and artificial distinction between replacement copies and preservation copies.</p> <p>Recommendation: The exception for replacement copies should not be limited to “reprographic reproduction.”</p>
3	Article 45—Three-Step Test	<p>Article 45 states that all the exceptions “may only be applied if they do not conflict with a normal exploitation of works, and if they do not unreasonably prejudice the legitimate interests of authors or other holders of copyright.” Importing this language from the Bern three-step test injects significant uncertainty with respect to the exercise of an exception. For example, even if an authorised entity makes and distributes an accessible format copy in compliance with all the requirements set forth in Article 57, a rightsholder could nevertheless claim that the activity conflicts with the normal exploitation of the work and unreasonably prejudices its legitimate interests. The three-step test is meant to guide legislatures in the enactment of statutes; it is not meant to act as a standard users must meet when applying statutes enacted by legislatures.</p> <p>Recommendation: Article 45 should be deleted.</p>