

Main Provisions and Benefits of the Marrakesh Treaty (2013)



2016

Background

Each year, of the millions of books published worldwide, only 1–7 percent¹ are made available to the 285 million persons in the world who are blind and visually impaired, 90 percent of whom live in low-income settings in developing countries.² The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“the Marrakesh Treaty”) was adopted by the Member States of the World Intellectual Property Organization (WIPO) on June 27, 2013, to address this problem, commonly referred to as the global book famine.

Conceived in line with the **human rights** principles outlined in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the Marrakesh Treaty is the first copyright treaty to include a clear human rights perspective. The Marrakesh Treaty demonstrates that copyright systems are an important part of the solution to the challenge of improving access to books and other printed works for persons with print disabilities.

1 See World Blind Union (WBU) press release, June 2013.

2 See World Health Organization Factsheet on Visual Impairment and Blindness www.who.int/mediacentre/factsheets/fs282/en/#

Main elements of the treaty

Definitions

The definitions provided in the Marrakesh Treaty are fundamental to understanding its scope and application. These definitions provide clarity on: who will be able to enjoy the limitations and exceptions outlined in the Treaty (the “beneficiaries”), what can be made accessible (the “works”) and into which formats such works can be adapted (“accessible formats”).

A “**beneficiary**” is defined as someone affected by one or more in a range of disabilities that interfere with the effective reading of printed material. This broad definition includes persons who are visually impaired as well those with a physical disability that prevents them from holding and manipulating a book.

The definitions of “**works**” and “**accessible format copy**” are closely related to the concept of beneficiaries in the sense that “works” refers to those materials that the “beneficiary” would not be able to read or access, except in an alternative or accessible format. The definition of “works” within the Treaty is limited to materials in the form of text, notation and/or related illustration, and an agreed statement by the Contracting Parties clarifies that this also includes audiobooks.

The definition of “accessible format copy” is fairly broad and covers any format that permits a person with a visual impairment or other print disability to have access to the content as feasibly and comfortably as a person without such a disability, including digital formats.

The Marrakesh Treaty recognizes that governmental and non-governmental organizations play an important role in providing persons with print disabilities with access to alternative format materials. For that reason the Treaty allows these organizations to perform certain acts, otherwise prohibited under copyright law, in order to assist the “beneficiaries”. In the definition, the Marrakesh Treaty states that “**authorized entities**” need to observe some conditions regarding the use of the work, for example ensuring that only those individuals considered as “beneficiaries” according to the Treaty will enjoy access to accessible format copies. The Marrakesh Treaty does not require an organization to fulfill any formalities or undertake specific procedures to obtain recognition as an “authorized entity”. However, the Treaty does not forbid such measures and thus gives Member States the leeway to create such procedures at the national level.

Obligations

The Marrakesh Treaty requires that Contracting Parties fulfill two main obligations when implementing the Treaty at the national level, although they may do so according to their own legal systems. The first is to provide for a **limitation or an exception to copyright** in order to allow “beneficiaries” and “authorized entities” to undertake any changes needed to make a copy of a work in an accessible format for persons with a print disability. The second is to allow the **exchange across borders** of those accessible copies produced according to the limitations and exceptions provided in the Marrakesh Treaty, or in accordance with the operation of law.

Relationship with other International Treaties

The Marrakesh Treaty has no formal relationship with other treaties and does not affect the obligations Member States have assumed under other international agreements. In fact, the Marrakesh Treaty reinforces the need for Contracting Parties to comply with their **international obligations** regarding the creation of limitations and exceptions at the national level. In international instruments, that obligation usually relates to the so-called **three-step test** that can be found in the Berne Convention, the WIPO Copyright Treaty and the TRIPS Agreement. In general, and depending on the exact wording of the instrument where it appears, the three-step test provides that limitations and exceptions in national legislation should be confined to (i) certain special cases; (ii) that do not conflict with the normal exploitation of the work; and (iii) that do not unreasonably prejudice the legitimate interests of the rightholder.

Benefits of adherence

The Marrakesh Treaty has one shared goal and benefit: To **increase access** to books, magazines and other printed materials for the world's population of persons with print disabilities.

It is anticipated that the Treaty will have concrete positive effects in all countries where it is implemented, including developing and least developed countries, where the greatest numbers of persons with print disabilities live. Anticipated benefits include:

a) Improved awareness of the challenges faced by the print-disabled community and persons with disabilities: The Marrakesh Treaty is an instrument that fosters discussion and raises awareness about the need for policies that benefit persons with disabilities. For example, the implementation of the Marrakesh Treaty could provide access to works for persons with other types of disabilities, or trigger actions to implement additional provisions of the UNCRPD, in favor of the wider community of persons with disabilities.

b) Greater access to education:

There is no doubt that education plays a crucial role in society and that it has an immeasurable impact on an individual's life. Access to educational materials in accessible formats is essential to enable persons with print disabilities to pursue educational opportunities. At the same time, educational institutions are only able to offer their services to individuals with print disabilities if they too have access to accessible format materials. The Marrakesh Treaty will improve the availability of accessible format educational materials so that persons with print disabilities can enjoy equal access to education.

c) Enhanced social integration and cultural participation:

Having equal access to common sources of knowledge and information is crucial not only for learning, but also for social inclusion and cultural participation. By improving access to both educational and leisure materials, the Marrakesh Treaty will facilitate greater inclusiveness and participation by persons with print disabilities in the cultural and social life of their communities.

Leisure materials such as books, newspapers and magazines have a clear entertainment and information function in society, as well as an important role in the expression and dissemination of local culture. It is equally important that persons with print disabilities in the community have access to these materials, which afford them the opportunity to fully participate in cultural developments as consumers or as creators.

d) Poverty alleviation and increased contributions to the national economy:

Individual professional development is highly dependent on educational attainment. By providing access to learning materials in accessible formats, the implementation of the Marrakesh Treaty can be a powerful tool for poverty alleviation, providing persons with print disabilities with opportunities for professional growth, allowing them to contribute to their local economies and become economically self-sufficient.

In addition, by increasing the focus on accessible format works and improving the certainty about the system for their production and distribution under national copyright laws, the Marrakesh Treaty will strengthen local publishing industries and increase investment in copyright industries, which are key drivers for economic growth and development.

Entry into force

The Marrakesh Treaty's date of **entry into force** is September 30, 2016, three months after 20 eligible parties deposited their instruments of ratification or accession with the WIPO Director General.

The first 20 countries to ratify or accede to the Treaty were: India, El Salvador, the United Arab Emirates, Mali, Uruguay, Paraguay, Singapore, Argentina, Mexico, Mongolia, the Republic of Korea, Australia, Brazil, Peru, the Democratic People's Republic of Korea, Israel, Chile, Ecuador, Guatemala and Canada.

The Treaty is open to any Member State of WIPO, the European Union or other intergovernmental organizations authorized by its Assembly of Contracting Parties. There is no requirement to be a member of any other international copyright treaty to join the Treaty.

WIPO and the Marrakesh Treaty

In addition to administering the Marrakesh Treaty, WIPO also has several initiatives in place to further the goals of the Treaty. WIPO provides Member States with relevant information regarding the Marrakesh Treaty, as well as other WIPO copyright treaties. WIPO also provides **legislative advice** to those Member States that request support in updating their copyright systems.

Nevertheless, it is widely accepted that copyright is not the only relevant issue when facilitating access for persons with print disabilities. For that reason, WIPO also collaborates with several organizations through a multi-stakeholder partnership, the **Accessible Books Consortium (ABC)**. ABC's activities include capacity-building initiatives that provide training in accessible book production and distribution, the promotion of inclusive publishing standards and the ABC Book Exchange (TIGAR Service), an international database and book exchange service. For more information about ABC, please access the website: www.accessiblebooksconsortium.org.

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