Treaties

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (2013)

with the agreed statements of the
Diplomatic Conference that adopted the Treaty

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

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Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled[*]

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[*]This Treaty was adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, on June 27, 2013.

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Preamble

The Contracting Parties,

Recalling the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities,

Mindful of the challenges that are prejudicial to the complete development of persons with visual impairments or with other print disabilities, which limit their freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education, and the opportunity to conduct research,

Emphasizing the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits,

Aware of the barriers of persons with visual impairments or with other print disabilities to access published works in achieving equal opportunities in society, and the need to both expand the number of works in accessible formats and to improve the circulation of such works,

Taking into account that the majority of persons with visual impairments or with other print disabilities live in developing and least-developed countries,

Recognizing that, despite the differences in national copyright laws, the positive impact of new information and communication technologies on the lives of persons with visual impairments or with other print disabilities may be reinforced by an enhanced legal framework at the international level,

Recognizing that many Member States have established limitations and exceptions in their national copyright laws for persons with visual impairments or with other print disabilities, yet there is a continuing shortage of available works in accessible format copies for such persons, and that considerable resources are required for their effort of making works accessible to these persons, and that the lack of possibilities of cross-border exchange of accessible format copies has necessitated duplication of these efforts,

Recognizing both the importance of rightholders' role in making their works accessible to persons with visual impairments or with other print disabilities and the importance of appropriate limitations and exceptions to make works accessible to these persons, particularly when the market is unable to provide such access,

Recognizing the need to maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairments or with other print disabilities,

Reaffirming the obligations of Contracting Parties under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international instruments,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the importance of the international copyright system and desiring to harmonize limitations and exceptions with a view to facilitating access to and use of works by persons with visual impairments or with other print disabilities,

Have agreed as follows:

Article 1
Relation to Other Conventions and Treaties

Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties.

Article 2
Definitions

For the purposes of this Treaty:

(a) "works" means literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media[1];

(b) "accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;

(c) "authorized entity" means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-

[1] ***Agreed statement concerning Article 2(a):*** *For the purposes of this Treaty, it is understood that this definition includes such works in audio form, such as audiobooks.*

profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations[2].

An authorized entity establishes and follows its own practices:

(i) to establish that the persons it serves are beneficiary persons;

(ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;

(iii) to discourage the reproduction, distribution and making available of unauthorized copies; and

(iv) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article 8.

Article 3
Beneficiary Persons

A beneficiary person is a person who:

(a) is blind;

(b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or[3]

[2] ***Agreed statement concerning Article 2(c):*** *For the purposes of this Treaty, it is understood that "entities recognized by the government" may include entities receiving financial support from the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.*

[3] ***Agreed statement concerning Article 3(b):*** *Nothing in this language implies that "cannot be improved" requires the use of all possible medical diagnostic procedures and treatments.*

(c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;

regardless of any other disabilities.

Article 4
National Law Limitations and Exceptions Regarding Accessible Format Copies

1. (a) Contracting Parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format.

(b) Contracting Parties may also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons.

2. A Contracting Party may fulfill Article 4(1) for all rights identified therein by providing a limitation or exception in its national copyright law such that:

(a) Authorized entities shall be permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:

(i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;

(ii) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;

(iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and

(iv) the activity is undertaken on a non-profit basis;

and

(b) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, may make an accessible format copy of a work for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.

3. A Contracting Party may fulfill Article 4(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 10 and 11[4].

4. A Contracting Party may confine limitations or exceptions under this Article to works which, in the particular accessible format, cannot be obtained commercially under reasonable terms for beneficiary persons in that market. Any Contracting Party availing itself of this possibility shall so declare in a notification deposited with the Director General of WIPO at the time of ratification of, acceptance of or accession to this Treaty or at any time thereafter[5].

[4] ***Agreed statement concerning Article 4(3):*** *It is understood that this paragraph neither reduces nor extends the scope of applicability of limitations and exceptions permitted under the Berne Convention, as regards the right of translation, with respect to persons with visual impairments or with other print disabilities.*

[5] ***Agreed statement concerning Article 4(4):*** *It is understood that a commercial availability requirement does not prejudge whether or not a limitation or exception under this Article is consistent with the three-step test.*

5. It shall be a matter for national law to determine whether limitations or exceptions under this Article are subject to remuneration.

Article 5
Cross-Border Exchange of Accessible Format Copies

1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party[6].

2. A Contracting Party may fulfill Article 5(1) by providing a limitation or exception in its national copyright law such that:

(a) authorized entities shall be permitted, without the authorization of the rightholder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party; and

(b) authorized entities shall be permitted, without the authorization of the rightholder and pursuant to Article 2(c), to distribute or make available accessible format copies to a beneficiary person in another Contracting Party;

provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons[7].

[6] ***Agreed statement concerning Article 5(1):*** *It is further understood that nothing in this Treaty reduces or extends the scope of exclusive rights under any other treaty.*

[7] ***Agreed statement concerning Article 5(2):*** *It is understood that, to distribute or make available accessible format copies directly to a beneficiary person in another Contracting Party, it may be appropriate for an authorized entity to apply further measures to confirm that the person it is serving is a beneficiary person and to follow its own practices as described in Article 2(c).*

3. A Contracting Party may fulfill Article 5(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 5(4), 10 and 11.

4. (a) When an authorized entity in a Contracting Party receives accessible format copies pursuant to Article 5(1) and that Contracting Party does not have obligations under Article 9 of the Berne Convention, it will ensure, consistent with its own legal system and practices, that the accessible format copies are only reproduced, distributed or made available for the benefit of beneficiary persons in that Contracting Party's jurisdiction.

(b) The distribution and making available of accessible format copies by an authorized entity pursuant to Article 5(1) shall be limited to that jurisdiction unless the Contracting Party is a Party to the WIPO Copyright Treaty or otherwise limits limitations and exceptions implementing this Treaty to the right of distribution and the right of making available to the public to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder[8,9].

(c) Nothing in this Article affects the determination of what constitutes an act of distribution or an act of making available to the public.

5. Nothing in this Treaty shall be used to address the issue of exhaustion of rights.

[8] ***Agreed statement concerning Article 5(4)(b):*** *It is understood that nothing in this Treaty requires or implies that a Contracting Party adopt or apply the three-step test beyond its obligations under this instrument or under other international treaties.*

[9] ***Agreed statement concerning Article 5(4)(b):*** *It is understood that nothing in this Treaty creates any obligations for a Contracting Party to ratify or accede to the WCT or to comply with any of its provisions and nothing in this Treaty prejudices any rights, limitations and exceptions contained in the WCT.*

Article 6
Importation of Accessible Format Copies

To the extent that the national law of a Contracting Party would permit a beneficiary person, someone acting on his or her behalf, or an authorized entity, to make an accessible format copy of a work, the national law of that Contracting Party shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder[10].

Article 7
Obligations Concerning Technological Measures

Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty[11].

Article 8
Respect for Privacy

In the implementation of the limitations and exceptions provided for in this Treaty, Contracting Parties shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

[10] ***Agreed statement concerning Article 6:*** *It is understood that the Contracting Parties have the same flexibilities set out in Article 4 when implementing their obligations under Article 6.*

[11] ***Agreed statement concerning Article 7:*** *It is understood that authorized entities, in various circumstances, choose to apply technological measures in the making, distribution and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law.*

Article 9
Cooperation to Facilitate Cross-Border Exchange

1. Contracting Parties shall endeavor to foster the cross-border exchange of accessible format copies by encouraging the voluntary sharing of information to assist authorized entities in identifying one another. The International Bureau of WIPO shall establish an information access point for this purpose.

2. Contracting Parties undertake to assist their authorized entities engaged in activities under Article 5 to make information available regarding their practices pursuant to Article 2(c), both through the sharing of information among authorized entities, and through making available information on their policies and practices, including related to cross-border exchange of accessible format copies, to interested parties and members of the public as appropriate.

3. The International Bureau of WIPO is invited to share information, where available, about the functioning of this Treaty.

4. Contracting Parties recognize the importance of international cooperation and its promotion, in support of national efforts for realization of the purpose and objectives of this Treaty[12].

Article 10
General Principles on Implementation

1. Contracting Parties undertake to adopt the measures necessary to ensure the application of this Treaty.

[12] ***Agreed statement concerning Article 9:*** *It is understood that Article 9 does not imply mandatory registration for authorized entities nor does it constitute a precondition for authorized entities to engage in activities recognized under this Treaty; but it provides for a possibility for sharing information to facilitate the cross-border exchange of accessible format copies.*

2. Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Treaty within their own legal system and practice[13].

3. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, other international treaties, and Article 11.

Article 11
General Obligations on Limitations and Exceptions

In adopting measures necessary to ensure the application of this Treaty, a Contracting Party may exercise the rights and shall comply with the obligations that that Contracting Party has under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, including their interpretative agreements so that:

(a) in accordance with Article 9(2) of the Berne Convention, a Contracting Party may permit the reproduction of works in certain special cases provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author;

(b) in accordance with Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, a Contracting Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and

[13] ***Agreed statement concerning Article 10(2):*** *It is understood that when a work qualifies as a work under Article 2(a), including such works in audio form, the limitations and exceptions provided for by this Treaty apply* mutatis mutandis *to related rights as necessary to make the accessible format copy, to distribute it and to make it available to beneficiary persons.*

do not unreasonably prejudice the legitimate interests of the rightholder;

(c) in accordance with Article 10(1) of the WIPO Copyright Treaty, a Contracting Party may provide for limitations of or exceptions to the rights granted to authors under the WCT in certain special cases, that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;

(d) in accordance with Article 10(2) of the WIPO Copyright Treaty, a Contracting Party shall confine, when applying the Berne Convention, any limitations of or exceptions to rights to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

Article 12
Other Limitations and Exceptions

1. Contracting Parties recognize that a Contracting Party may implement in its national law other copyright limitations and exceptions for the benefit of beneficiary persons than are provided by this Treaty having regard to that Contracting Party's economic situation, and its social and cultural needs, in conformity with that Contracting Party's international rights and obligations, and in the case of a least-developed country taking into account its special needs and its particular international rights and obligations and flexibilities thereof.

2. This Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

Article 13
Assembly

1. (a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

2. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 15 in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

4. The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.

5. The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 14
International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning this Treaty.

Article 15
Eligibility for Becoming Party to the Treaty

1. Any Member State of WIPO may become party to this Treaty.

2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

3. The European Union, having made the declaration referred to in the preceding paragraph at the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 16
Rights and Obligations Under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 17
Signature of the Treaty

This Treaty shall be open for signature at the Diplomatic Conference in Marrakesh, and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

Article 18
Entry into Force of the Treaty

This Treaty shall enter into force three months after 20 eligible parties referred to in Article 15 have deposited their instruments of ratification or accession.

Article 19
Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

(a) the 20 eligible parties referred to in Article 18, from the date on which this Treaty has entered into force;

(b) each other eligible party referred to in Article 15, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

Article 20
Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 21
Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

2. An official text in any language other than those referred to in Article 21(1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 22
Depositary

The Director General of WIPO is the depositary of this Treaty.

Done in Marrakesh on the 27th day of June, 2013.

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