

EIFL Comments on European Commission proposals regarding implementation of the Marrakesh Treaty for persons with print disabilities¹ December 2016

While EIFL broadly welcomes European Commission proposals regarding implementation of the Marrakesh Treaty, EIFL opposes extra record-keeping requirements when sending accessible works outside the EU

- EIFL broadly welcomes European Commission plans to implement the Marrakesh Treaty that will benefit EU citizens with print disabilities, and will boost its implementation in other countries.
- EIFL welcomes the exclusion of barriers to providing accessible format copies, such as compensation schemes and commercial availability checks, and calls on the Commission to ensure this important principle is safeguarded.
- EIFL welcomes the undertaking to monitor the availability of accessible works to persons with other disabilities, such as deaf people, and to produce an assessment report.
- EIFL opposes record-keeping requirements for accessible works sent outside the EU, and urges adherence to record-keeping provisions in the Marrakesh Treaty. If left unchecked, the extra requirements could undermine the effectiveness of cross-border exchange with third countries, and thus the very objective of the Treaty.
- To demonstrate true leadership of which EU citizens and libraries can be proud, implementation must not disadvantage people with print disabilities living in the rest of the world, including in developing countries.
- EIFL calls on the Commission, Parliament and the Council to work together to resolve outstanding issues to expedite implementation of the Treaty, that entered into force globally on 30th September 2016.

EIFL supports the statement by [EBLIDA and IFLA 'Implementing the Marrakesh Treaty in Europe'](#).

¹ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled

The importance of EU implementation

EIFL welcomes efforts by the European Commission to implement the Marrakesh Treaty for persons with print disabilities².

The process paves the way for European citizens with print disabilities to benefit from increased availability of works in accessible formats for education, employment and leisure, and to enable accessible works in Europe to be shared with beneficiaries in other countries that are party to the treaty³.

Implementation of the Marrakesh Treaty by the EU is hugely important for three reasons.

First, people with print disabilities in the EU will gain the right to create accessible reading materials and to obtain accessible works from other EU member states. For example, Polish speakers in Lithuania will have legal access to accessible material produced in Poland⁴.

Second, accessible formats in the EU can be shared with people and authorized entities in third countries (that are party to the treaty). For example, English language material can be provided to beneficiaries in Botswana⁵.

Third, as the top trading partner for 80 countries, EU policy and legislation is influential throughout the world. Since copyright is a component of most EU trade and economic partnership agreements, EU copyright rules apply well beyond its borders. Therefore EU implementation of the Marrakesh Treaty will boost its implementation in other countries.

The Marrakesh proposals were published by the European Commission in September 2016 as part of broader EU reforms to modernize European copyright rules for the Digital Single Market.

EIFL calls on the European Commission, the European Parliament and the Council to work together to resolve outstanding issues to expedite implementation of the Marrakesh Treaty, that entered into force globally on 30th September 2016.

² <https://ec.europa.eu/digital-single-market/en/modernisation-eu-copyright-rules#marrakesh>

³ http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=843

⁴ Case study 'ELVIS is the answer in Lithuania: study of a library service for blind and visually impaired people' <http://www.eifl.net/resources/elvis-answer-lithuania-study-library-service-blind-and-visually-impaired-people>

⁵ There are an est. 65,000 people living in Botswana who are blind or visually impaired.

The European Commission's proposals

The package to implement the Marrakesh Treaty in the EU contains two legislative proposals.

The first proposal is a European Directive that introduces a mandatory copyright exception for the making of accessible format copies, and allows for the circulation of accessible format copies within the internal market i.e. cross-border access between EU member states⁶. EIFL welcomes the proposed Directive.

The second proposal is a Regulation on the cross-border exchange of accessible format copies between EU member states and third countries⁷. EIFL opposes the record-keeping requirements in the Regulation that exceed what is required by the Marrakesh Treaty.

Proposal for a Directive on certain permitted uses of 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

The Directive respects the objective of the Marrakesh Treaty

EIFL welcomes the proposed Directive that respects the objective and spirit of the Marrakesh Treaty, and recognizes the need for legal certainty and ease of administration.

EIFL welcomes the introduction of a mandatory, harmonized exception that beneficiaries and non-profit organizations serving their needs can rely upon to create accessible format copies and to enable access from any member state (Articles 3 and 4).

EIFL welcomes the exclusion of barriers to the application of the exceptions, such as compensation schemes or the prior verification of the commercial availability of accessible format copies, to ensure legal certainty and to avoid administrative burdens on authorized entities and beneficiaries (Recital 11).

EIFL calls on the European Commission, the European Parliament and the Council to ensure that Recital 11 is safeguarded in its current form, and that its principles are re-stated in an article.

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0596>

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0595>

Reason

A compensation scheme would, in effect, be a double-payment that imposes administrative and financial costs on libraries, charities and similar organizations, as well as individuals with print disabilities.

It is important to note that the work has already been purchased or otherwise lawfully acquired, the accessible format copy is made for the sole purpose of providing equal access to the work, and the activity is undertaken on a non-profit basis.

A requirement to check if an accessible work is available on the market before being allowed to use the exception would make the Directive, and the Treaty, unworkable in practice.

It would be difficult, and in many cases impossible, to ascertain with certainty if a work is available in a particular accessible format, especially in cross-border situations. Many libraries do not have the resources to undertake such checks on a case-by-case basis, and the level of risk might be deemed too high for the library to offer the service at all.

It should be remembered that the Treaty, and the Directive, are designed to correct a situation of global market failure⁸. It is also important to note that alternative format production can be expensive e.g. Vision Australia estimates full production costs at approximately USD 2000 per book⁹. Therefore libraries will always make a prudent choice. If an accessible version is available on the commercial market at a reasonable price, a library can always decide to purchase it.

The imposition of commercial availability checks and compensation schemes run contrary to the objective of the Directive, and the Treaty, and would damage its effect¹⁰.

⁸ Whereby only an estimated 7% of published works are made available in accessible formats.

⁹ http://www.accessiblebooksconsortium.org/news/en/2016/news_0010.html

¹⁰ See also European Blind Union position paper

<http://www.euroblind.org/media/position-papers/EBU-position-paper-on-EC-proposals-to-implement-MarrakechTreaty.pdf>

Availability of works for persons with other disabilities

EIFL welcomes proposals regarding persons with disabilities other than those provided for in the Directive, such as deaf people, and works other than literary and artistic works¹¹.

EIFL welcomes the commitment to present a report within two years on the availability of works for persons with other disabilities, and other categories of works, and to assess whether changes to the scope of the Directive may be necessary (Recital 16 and Article 7).

EIFL looks forward to the assessment report and consideration of whether changes to the scope of the Directive may be necessary (Article 7).

Reason

Libraries of all types should be allowed to serve all their users equally regardless of disability. Library collections of all types of works should be accessible.

Equality of access for all underpins EU obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), formally confirmed by the EU in December 2010¹².

These obligations set out inter alia the right of people with disabilities (meaning all persons with disabilities) to live independently and participate fully in all aspects of life (Article 9), to access information (Article 21) and to participate in cultural life on an equal basis (Article 30).

A librarian could be placed in an invidious position if forced to discriminate between information services provided to individual users because of the nature of their disability e.g. between a student who is blind and a student who is deaf. In special libraries that serve both blind and deaf people, this situation would be particularly unacceptable.

¹¹ See Article 2 Definitions of the proposed Directive

¹² <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

Proposal for a Regulation on the cross-border exchange between the Union and third countries of accessible format copies of certain protected for the benefit of persons who are blind, visually impaired or otherwise print disabled

Record-keeping requirements threaten the effective operation of Treaty

EIFL believes that the proposed record-keeping obligations of authorized entities regarding cross-border transfers to third countries in the Regulation could threaten the effective operation of the Marrakesh Treaty.

EIFL urges the European Commission, the European Parliament and the Council, in Article 5 of the proposed Regulation, to adhere to record-keeping provisions set out in the Marrakesh Treaty, and not to impose requirements that exceed Treaty requirements.

Reason

Record-keeping provisions in Article 2(c) of the Marrakesh Treaty were carefully negotiated and agreed upon by WIPO member states, including the EU and its member states, over five years before the Treaty was finally adopted in June 2013.

They are part of a text that balances the needs of the beneficiaries while providing assurances to rightsholders - assurances that every authorized entity, regardless of where in the world they are located, must comply with.

And while the Directive recognizes the need to avoid administrative burdens for authorized entities undertaking EU transactions, the Regulation imposes burdens on authorized entities for transfers outside the EU.

Article 5 of the draft EU Regulation exceeds the Marrakesh Treaty in three ways:

1. It does not indicate that authorized entities, such as libraries, may establish and follow its own practices with regard to record keeping.
2. It requires an authorized entity to publish and update, on its website if appropriate, information on the manner in which it complies with its due diligence obligations set out in Article 5(a) to (c).
3. It requires an authorized entity to provide detailed information to any beneficiary or rightsholder, on request, on the accessible works and formats in its collection, and on authorized entities with which it has exchanged works.

Taken together, these extra requirements could present significant challenges for libraries, especially non-specialized institutions. First, it opens the door for a third party to impose record-keeping procedures. Second, it obliges the authorized entity to publish compliance procedures.

Third, it places libraries at the behest of rightsholders who can, it appears, make unlimited demands for detailed information on works and authorized entities involved in international transfers.

If left unchecked, these extra requirements will deter libraries from participating especially smaller or less well-resourced libraries. The extra requirements could undermine the effectiveness of cross-border exchange with third countries, and thus the very objective of the Treaty.

It should be remembered that only blind people's organizations, libraries and other so-called authorized entities may send accessible format copies to third countries. Libraries throughout the world take their institutional responsibilities seriously. Librarians care about copyright and understand their professional obligations.

Evidence is that 'leakage' of accessible materials is extremely rare. At a recent event organized by WIPO's Accessible Books Consortium (ABC)¹³, experts from Argentina, India and the US reported no notable instances of unauthorized uses in their many years providing library services to blind and visually impaired people. All the panellists appealed for international exchange mechanisms that are easy and unbureaucratic.

To foster the development of a truly global network of authorized entities as envisaged by the treaty, there should be just one standard – the standard set out in the treaty. The EU should not impose new requirements that will result in one rule for the EU and another for the rest of the world. It should not stymie the fledgling global network, or discourage libraries from participating.

Otherwise the EU could end up undermining the effectiveness of international exchange, and thus the very objective of the Treaty.

EU implementation must fully respect objective of the Treaty

To conclude, EIFL looks forward to implementation of the Marrakesh Treaty by the EU that fully respects the objective to help end the global book famine.

To demonstrate true leadership of which EU citizens and libraries can be proud, implementation must not disadvantage people with print disabilities living in the rest of the world, including in developing countries.

¹³ <http://www.ip-watch.org/2016/11/21/turning-promises-marrakesh-treaty-visually-impaired-reality/>



About EIFL

EIFL (Electronic Information for Libraries) was an active participant during negotiations over five years at the World Intellectual Property Organization (WIPO) that led to the adoption of the Marrakesh Treaty. Now EIFL is supporting ratification of the Treaty in partner countries¹⁴.

EIFL is an international not-for-profit organization that works with libraries in more than 60 developing and transition economy countries in Africa, Asia, Europe and Latin America¹⁵ to enable access to knowledge for education, learning, research and sustainable community development.

EIFL partners with national library consortia, groups of libraries that work together to coordinate activities, combine expertise and reduce duplication of effort.

EIFL works with library consortia in the following European countries that represent c. 645 libraries:

- EU Member States: Estonia, Latvia, Lithuania, Poland, Slovenia¹⁶;
- EU candidate countries: Former Yugoslav Republic of Macedonia, Serbia¹⁷;
- Potential candidates: Bosnia and Herzegovina, Kosovo¹⁸.

Libraries in many other countries are impacted by EU copyright law and policy through bilateral trade and economic partnership agreements that may require the alignment of local copyright laws with EU rules and standards.

EIFL's legal name is Stichting eIFL.net. EU Interest Representative Register ID: 13020287260-60

More information www.eifl.net

For comments or questions, please contact Teresa Hackett, EIFL Copyright and Libraries Programme Manager <teresa.hackett@eifl.net>

¹⁴ <http://www.eifl.net/eifl-in-action/right-read>

¹⁵ <http://www.eifl.net/where-we-work>

¹⁶ Consortium of Estonian Libraries Network (ELNET); Culture Information Systems Centre (Latvia); Lithuanian Research Library Consortium (LMBA) Lietuvos mokslinių bibliotekų asociacija; Poznan Foundation of Scientific Libraries (Poland); Consortium of Slovene Electronic Collections (COSEC) Konzorcija Slovenskih knjižnic

¹⁷ Macedonian Electronic Libraries; Serbian Library Consortium for Coordinated Acquisition (KoBSON) Konzorcijum biblioteka Srbije za objedinjenu nabavku

¹⁸ Electronic Information Consortium of Bosnia and Herzegovina (EICBIH); Consortium of Electronic Libraries in Kosova (CELK)