



Implementation of the Marrakesh Treaty for persons with print disabilities Frequently Asked Questions (FAQs)

EIFL 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 on 27th June 2013, and its subsequent entry into force on 30th September 2016.

Now EIFL is supporting ratification of the Marrakesh Treaty and its implementation into national law. We support advocacy projects in EIFL partner countries, and have produced a practical guide to the Marrakesh Treaty to assist librarians and policy-makers, available in multiple languages.

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

Frequently asked questions (FAQs)

Based on experience advocating for the Marrakesh Treaty, EIFL has compiled information on a set of issues that commonly arise concerning the process and substance of ratification and implementation.

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We hope the FAQs are useful to librarians and policy-makers. If there are other issues, please ask!

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1. Signing, ratifying and acceding to the Marrakesh Treaty

It is not necessary to have signed the treaty in order to join the treaty.

The treaty was open for one year for signature by any WIPO member state i.e. until 27th June 2014 (see Article 17 Signature of the Treaty).

During that time 80 countries signed, affirming a political intention to support the treaty.

If a country did not sign, it is no problem (at least according to international law). It is not an impediment to joining the treaty - it just means that the process has a different name.

If a country signed, it is said to ratify the treaty. If a country didn't sign, it is said to accede to the treaty.

For example, India ratified the treaty, because it had signed the treaty.

Canada acceded to the treaty, because it had not signed.

To illustrate, check the list of Contracting Parties for the Marrakesh Treaty on the WIPO website under the column 'Instrument'.

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

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2. Legislation implementing Marrakesh can be advanced on its own

The Marrakesh Treaty is a stand-alone treaty. Legislation implementing Marrakesh can be advanced on its own.

It is not necessary to ratify or implement Marrakesh with any other treaty e.g. the Berne Convention, the WIPO Copyright Treaty (WCT) or the *Beijing Treaty* on Audiovisual Performances.

All WIPO member states, irrespective of membership or otherwise of any other treaty or international agreement, may ratify Marrakesh and participate in cross-border exchange of accessible formats (Article 5(4)).

Marrakesh is not part of a package and as such it shouldn't be tied to any other treaty. In fact, as a human rights treaty, it should stand squarely on its own merits.

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3. Budgetary implications – implementation does not impose costs

Implementation of the Marrakesh Treaty does not impose costs.

The Marrakesh Treaty does not impose an obligation to provide accessible format copies – it simply confers the right to make an accessible copy. In other words, the treaty grants permission to do things that can't be done without permission.

By establishing the international legal framework, it is hoped that the treaty will result in the extension of existing services to blind and visually impaired people, and that new services will be established in countries that currently have none.

But how that happens is a decision for each country, and for each individual institution to decide how and to whom services will be provided.

In fact, the treaty will result in significant cost savings. When a library can get an accessible copy of a work from another country instead of having to produce it themselves, it saves time and money – in many cases public funds.

For example, Vision Australia estimates the full production costs for a book to be approx. USD 2000 per book¹. The WIPO Accessible Book Consortium estimates that the 19 participating libraries in 16 countries saved \$11 million in production costs (for a book read aloud by a person) by downloading 5,500 electronic books into their collections².

It is also important to note that no big infrastructure is necessary for implementation.

First, the treaty allows works to be sent directly to beneficiaries (Article 4(2)(a)).

Second, since the definition of authorized entity (Article 2(c)) covers libraries, library networks such as public or university libraries that exist in every country, are well placed to take a lead role in implementation.

The Marrakesh Treaty provides the starting point to build or expand the infrastructure.

Note that the EU in its proposal for Marrakesh implementation states that there is no impact on the Union budget³.

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¹ http://www.accessiblebooksconsortium.org/news/en/2016/news_0010.html

² http://www.accessiblebooksconsortium.org/news/en/2016/news_0012.html

³ http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=17221

4. Authorized entities – no formalities required

The definition of authorized entity in the treaty is very broad (Article 2(c)). This was deliberate.

Since the objective of the treaty is to end the book famine, as many institutions as possible should be encouraged to avail of the treaty, and to provide services to people with print disabilities.

Thus there are no formalities to becoming an authorized entity – no government approval is required, and there is no authorization process.

An authorized entity does not need to be specified in national law, or anywhere else. The work of an entity in creating accessible formats in essence confers the recognition.

The language of the Marrakesh Treaty on authorized entities is based on the Chafee Amendment in the US Copyright Act, 17 USC 121, which provides that “authorized entity” means a non-profit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities.

This is a very broad definition. Like the Marrakesh Treaty, providing services to blind people doesn't need to be *the* primary mission or activity of the organization, just *one* of its primary activities or institutional obligations. Thus, a special library serving blind people would meet the definition, but so would a general public library or the disabilities services office of a school or university.

It is also worth noting that one can comply with the treaty without relying on authorized entities at all - this is just an example of one way to do it. This flexibility means that if a country decides to rely on authorized entities, it has great latitude with the kinds of entities to use. In the US, for example, there is no list of authorized entities because any school or library that provides services to blind people qualifies.

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5. Record-keeping requirements – one standard

Record-keeping requirements for authorized entities were carefully negotiated and agreed upon by WIPO 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.

Article 2(c) sets out that the authorized entity “establishes and follows its own practices”:

- to ascertain that the recipients are bona fide beneficiary persons;
- to limit the distribution of accessible format copies to beneficiary persons or other authorized entities;
- to discourage the reproduction and distribution of unauthorized copies;
- and to maintain due care, and records of, the handling of accessible copies.

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. That is why it is important to adhere to the treaty’s own record-keeping requirements, and not to introduce new ones.

Libraries throughout the world take their institutional responsibilities seriously. Librarians care about copyright and understand their professional obligations.

But if authorized entities find themselves having to deal with different administrative rules or to maintain multiple record-keeping systems depending on where the material is being sent, transaction costs will increase and staff time will be diverted. Many institutions will simply not have the resources to participate and will decide to opt out.

Evidence is that ‘leakage’ of accessible materials from such authorized entities is extremely rare. At an event organized by WIPO’s Accessible Books Consortium (ABC) in November 2016⁴, 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.

Record-keeping should not become the Achilles heel that weakens the effect of the treaty.

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⁴ <http://www.ip-watch.org/2016/11/21/turning-promises-marrakesh-treaty-visually-impaired-reality/>

6. A commercial availability test and remuneration – not required

Provisions for a commercial availability test and remuneration were optional provisions put into the Treaty for countries that already have them - they were not intended for countries to introduce them into their law.

A commercial availability test is a requirement to check if an accessible work is available on the market before being allowed to use the exception (Article 4(4)).

From a library point of view, 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 library might decide to opt out of providing service because the legal risk is too high.

A remuneration scheme for use of the exception (Article 4(5)) would, in effect, be a double-payment for use of the work – a tax on the right to read. This is because 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.

The introduction of a remuneration scheme would impose administrative and financial costs on libraries, charities and similar organizations, as well as individuals with print disabilities.

The introduction of new barriers runs contrary to the objective of the treaty to end the book famine.

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For more information:

[IFLA statement. Treaty of Marrakesh: \(Mainly\) Good Omens from Europe?](#)

European Blind Union position paper on EC proposals to implement Marrakech Treaty in [doc](#) and [pdf](#) format (November 2016)

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