

**Sub-Regional Meeting for ASEAN Countries on the Marrakesh Treaty and the Production
and Exchange of Accessible Books
by
the World Intellectual Property Organization (WIPO)
Singapore, November 1 to 3, 2017**

Substantive Provisions of the Marrakesh Treaty (Part II)

A presentation by:



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**WIPO Diplomatic Conference on
Treaty to Facilitate Access to
Published Works by
Visually Impaired Persons and
Persons with Print Disabilities**

at Marrakesh, Morocco

June 17 to 28, 2013

Article 2- Definitions

- **works** -Article 2(1) of the Berne Convention -in the form of text, notation and/or related illustrations, - published or otherwise made publicly available in any media- audio books – but not cinematograph films;
- **“accessible format copy”**
- **“authorized entity”** means an entity that is authorized or recognized by the government -non-profit basis / government institution or non-profit organization - its primary activities or institutional obligations.

Article 3 - Beneficiary Persons

Article 4 - National Law Limitations and Exceptions

1. Rights:

- **'Shall' provide**- the right of reproduction, the right of distribution, and the right of making available to the public
- **'May' provide** - right of public performance
- the right of translation(Berne Convention)

2. Who are permitted:

- **Authorized entities** permitted with conditions
- **beneficiary person** or someone acting on his or her behalf including a primary caretaker or caregiver,

3. Basis: pursuant to Articles 10 and 11

4. Commercial availability: **'may confine'**- cannot be obtained commercially under reasonable terms for beneficiary persons in that market – notify with DG,WIPO

5. Remuneration.

Article 5(1) : 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.
 - domestic copyright law of a Contracting Party must allow an authorized entity to export
 - provides Contracting Parties with flexibility on how to implement this obligation
 - ***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.

Article 5: Cross-Border Exchange of Accessible Format Copies

Article 5 (2) authorized entities -to distribute or make available for the exclusive use of beneficiary persons accessible format copies to

- (a) **an authorized entity** in another Contracting Party; and
- (b) a **beneficiary person** in another Contracting Party;

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.

- ***Agreed statement concerning Article 5(2):*** *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.*
- it would be optional for authorized entities to decide whether “to apply further measures,” in addition to those it employs in the domestic context, to confirm the beneficiary status of a person it is serving in another country.
- an authorized entity’s decision not to apply further measures should not constitute reasonable grounds for it to know that the accessible format copies would be used by non-beneficiaries

Cross-Border Exchange - commercial availability

- commercial availability - most controversial clause - excluded
- The main problem to be tackled is availability of technology.
- Technologically advanced developed nations have the capability to convert works into various formats, whereas the developing nations may not have the same capabilities.
- trade off to delete of commercial availability under Article 5 and include limitations or exceptions to right to translation as an agreed statement.
- This is giant step for ensuring access to beneficiaries.
- Treaty text uses the word 'may' and gives an impression that this provision is non-mandatory,
- limit cross border exchange only to books that are not commercially available in the exporting nation?

Article 5 (4): 'Berne Gap' or '3 step-test gap'

- During the special SCCR held from 18 to 20, April, 2013 Japan and the US expressed their apprehension – non Berne/TRIPS members;
- over providing accessible format copies under cross border exchange to beneficiaries or authorised entities of these countries ;
- how to ensure their accountability to implement 3 step test be made applicable when they enjoy under this treaty.
- the issue was addressed in Article 5(4).
- While drafting the text, member states made it sure that inclusion of such Para under this Treaty will not mandate any further amendment to its domestic legislation.

Article 6: Importation of Accessible Format Copies

- **Article 6:** To the extent that the national law permit
- a beneficiary person, someone acting on his or her behalf, or an authorized entity, to make an accessible format copy of a work,
- permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder.
- Similar to Article 5 , Article 6 obligates Contracting Parties to allow authorized entities or beneficiary persons to import accessible format copies from other Contracting Parties.
- If national law permitted authorized entities only, but not beneficiary persons, to make accessible format copies, under Article 6 that Contracting Party would only be required to permit authorized entities to import accessible format copies.
- **Agreed statement concerning Article 6:** the same flexibilities set out in Article 4 when implementing their obligations under Article 6.

Other Articles

- Article 7 - Obligations Concerning Technological Measures – WCT flexibilities - Agreed statement- national practices
- Article 8 - Respect for Privacy
- Article 9 - Cooperation to Facilitate Cross-Border Exchange
- Article 10 - General Principles on Implementation
 - - flexibility to implement- no amendments to national law
 - - extended to related rights
 - other limitations or exceptions, or a combination thereof, within their national legal system and practice
 - 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,

Other Articles

- **Article 11 - General Obligations on Limitations and Exceptions**
 - Berne (Art.9.2); TRIPS (Art.13); and WCT (Art 10.2)
 - **Article 12 - Other Limitations and Exceptions**
- 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;
 - This Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

The Copyright Act, 1957

Section 52(1) (zb) *the adaptation, reproduction, issue of copies or communication to the public of **any work** in **any accessible format**, by-*

- ***any person** to facilitate persons with disability to access to works including **sharing with any person with disability***
- Accessible format for private or personal use, educational purpose or research; or
- **any organisation** working for the benefit of the persons with disabilities **in case the normal format prevents the enjoyment of such works** by such persons:
- copies of the works in such accessible format are made available to the persons with disabilities on a **non-profit basis** but to recover only the cost of production:
- ensure that the copies of works in such accessible format are **used only by persons with disabilities** and takes **reasonable steps** to prevent its entry into ordinary channels of business.
- **Section 52 (2) - Translation**

Compulsory licence for benefit of disabled

- **Any person** working for the benefit of persons with disability on a **profit basis or for business** may apply to the Copyright Board.
- Every compulsory licence issued under this section shall specify –
 - the means and format of publication,
 - the period during which the compulsory licence may be exercised and,
 - in the case of issue of copies, the number of copies that may be issued
 - including the rate or royalty:

THANKS