

Inter-Regional Meeting for Portuguese-
Speaking Countries on the Implementation
of the Marrakesh Treaty

**Topic 4: Cross-Border Exchange of
Accessible Format Copies
A publisher's perspective**

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Overview – 1

- IPA's view of the Marrakesh Treaty
- Key characteristics of Marrakesh Treaty relating to cross-border provisions
- A systemic approach required
- Devils in the details

Overview – 2

Key concept:

Harmonisation

Principle

Systems approach

Numerous interlinked **stakeholders**

One simple, practical **purpose**:

to get published materials into the hands of print-impaired persons world-wide.

1.
OVERVIEW OF IPA POSITION
ON
PUBLISHED MATERIALS
FOR
VISUALLY IMPAIRED PERSONS

IPA Position

- Supports full, simultaneous access to works for all users on equal terms, i.e. at no higher price and at the same time, and delivered in a sustainable way
- Welcomes cooperation between print impaired persons, rights holders, collective licensing organisations, libraries and other institutions

2.

KEY CHARACTERISTICS OF THE
MARRAKESH TREATY WITH
REGARD TO CROSS-BORDER (CB)
EXPORTS AND IMPORTS

“Marrakesh” & CB ~ 1

Stumbling blocks:

- Costly duplication
- The rights of:
 - Reproduction
 - Distribution
 - Making available to the public

A “patchwork” of national copyright laws and the international copyright regime

“Marrakesh” & CB ~ 2

Articles 5, 6 and 9:

The exchange of accessible published works made under national copyright exceptions across borders

“Marrakesh” & CB ~ 3

Marrakesh Treaty:

- Unique ~ users
- Cross-border provisions a vital part
- Increases access to foreign-language works

“Marrakesh” & CB ~ 4

- Precondition: Three-step test
 - limited to certain special cases
 - no conflict with the normal exploitation of the work and
 - not unreasonably prejudice the legitimate interests of the rights holder

“Marrakesh” & publishers – 4

Personal view

- Principle of balance maintained
 - access can be ensured for a specifically defined group of users
 - the rights of rights holders can be secured

3.

A SYSTEMIC APPROACH
REQUIRED

Systemic approach ~ 1

- Authors
- Publishers
- Ebook reading solution providers
- Ebook distributors and retailers
- Authorised entities & other VIP organisations
- Readers with print impairment

Systemic approach ~ 2

- Metadata (Information)
- Examples of publishers' particular roles:
 - As curators, editors, developers of authors, etc.
 - Build accessibility into the core of their publishing to improve the experience for all readers

Systemic approach ~ 2

- A binding factor: Metadata (Information)
- Publishers as curators, editors, developers of authors, etc.

Systemic approach – 3: Charter for Accessible Publishing

Signatories commit to:

1. stating our accessibility **policy** on our web-site, including adherence to this Charter;
2. nominating a **senior manager** who will be responsible for accessibility;
3. raising **awareness** among, and provide technical **training** for, relevant **staff**;
4. designating and publicising a **point of contact** in our organization to assist persons with print disabilities to access our publications;

Systemic approach – 4:

Charter for Accessible Publishing

5. **testing** our digital **publications** for accessibility, incorporating appropriate feature descriptions and metadata;
6. **monitoring** our progress in this area;
7. promoting the adoption of accessibility standards throughout our **supply chain**; and
8. supporting national and international **collaboration** with organisations representing persons with print disabilities so as to increase the availability of publications in accessible formats.

4.

THE DEVILS IN THE DETAILS

THE DEVILS IN THE DETAILS ~ 1

1. What happens to other, existing treaties and what are the implications for cross-border provisions?

2. Dr. Mihály J. Ficsor:

"It should stressed that ... all the ... limitations and exceptions mentioned or referred to by the Treaty ... may ... only be applied if they correspond to the three-step test."

Is this correct?

Are the exceptions and limitations provided for in the Treaty not ipso facto contrary to the three-step test?

THE DEVILS IN THE DETAILS ~ 2

3. What is the situation of countries that do not apply the three-step test of the Berne Convention?
4. Do contracting parties need to have acceded to the WIPO Copyright Treaty?
5. May a contracting party implement the obligatory provisions of the Treaty selectively if its constitution, the legal system and the legal practice conflicts with it?

THE DEVILS IN THE DETAILS ~ 3

6. How will information be shared among AEs?
- How will individual beneficiaries become aware of titles available elsewhere?
 - How will the conversion of new titles be coordinated among AEs?
 - What role will WIPO and Contracting Parties themselves play in coordinating all the efforts to share information?

THE DEVILS IN THE DETAILS ~ 4

7. Do AEs have to register anywhere?

8. Will imported copies have to comply with the receiving Contracting Party's own laws?

9. Is special provision being made for developing and least-developed countries?

THE DEVILS IN THE DETAILS ~ 5

10. If a contracting party has implemented the "commercially available" clause, and a work is therefore prohibited from being reproduced under an exception or limitation in that country, what are the implications for the making available of that work in another country?

Suppose the other country has not implemented the "commercially available" clause?

But suppose the publisher makes the title available in the second country on reasonable terms? Does the three-step test apply?

THE DEVILS IN THE DETAILS ~ 6

11. What is the position for an AE if it has no guarantee that a work it supplies to another AE or a beneficiary will be used by persons other than beneficiary persons?

12. What about third-party copyright material included in the work?

13. In Article 5, what is the meaning of the term "pursuant to the operation of law"?