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in the Implementation of
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ROLE OF AUTHORIZED ENTITIES(AE):

Marrakesh Treaty on Access to Published works to Visually impaired or otherwise Print Disable Persons, 2013

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Marrakesh Treaty

- First International Copyright Treaty devoted exclusively to creating international minimum standards for copyright exceptions.
- Contracting Parties to adopt copyright exceptions under certain conditions:
 - 1) the making of accessible format copies;
 - 2) the domestic distribution of accessible format copies;
 - 3) the export of accessible format copies; and
 - 4) the import of accessible format copies.

Marrakesh Treaty

- Treaty does not dictate how goals are to be achieved;
- It provides Contracting Parties with **great flexibility** concerning the implementation of their obligations.
- **Article 10(3)** provides, “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....”
- **Authorized Entities**

Article 3 - Beneficiary Person

- a) 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;” or
- 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.”

Beneficiary Person-2

- scope of beneficiary person is significantly broader than blind people or even people with visual impairments.
- **agreed statement concerning Article 3(b)**
 - explains the phrase “visual impairment or disability ... which cannot be improved”
 - in Article 3(b) does not require “the use of all possible medical diagnostic procedures and treatments.”
 - **Example:** any disabling visual impairment that cannot be improved by the use of corrective lenses should be understood to qualify.

Origin of Authorized Entity

- **Judith Sullivan's** WIPO Study on Copyright Limitations and Exceptions for Visually impaired and print disabled persons – 15 SCCR – **Trusted Intermediary** (licensing schemes as alternatives to exceptions).
- **WIPO Stakeholders' Platform** - Trusted Intermediary
- **TIGAR** (Trusted Intermediary Global Accessible Resources) Project launched - Nov 2010.
- 4 proposals at WIPO SCCR - Trusted Intermediaries – many Member States opposed the term 'Trusted Intermediary'.
- **22 SCCR** –Unified text – replaced term 'Trusted Intermediaries' with 'Authorized Entities'.

“Authorized Entity”

- “**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**.
- **Article 2(c)** - term authorized entity “also includes a government institution or a non-profit organization that provides the same services to beneficiary persons as one of its **primary activities or institutional obligations**,” even if the organization is not specifically authorized or recognized by the government to do so.
- no specific process or approval mechanism to qualify as an “Authorised Entity”

Agreed Statement- Authorized Entity

- **agreed statement** on the request of **India and African group** members to clarify that the word **'primary'** should not restrict the educational institutes and libraries from being authorised entities under this treaty.
- “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”.
- specifically authorized or "recognized" by the government
- This will facilitate **all educational institutes and libraries** to be qualified a authorised entity to supply accessible format copies to beneficiaries.
- Even a **specialized agency** providing services to the blind with an institutional program to promote accessibility would constitute authorized entities.

Authorized Entity: Establishes and follows its own practices

- Article 2(c) then specifies that an authorized entity “establishes and follows its own practices” to establish that the people it is serving are beneficiary persons;
- to limit its distribution of accessible format copies to beneficiary persons or authorized entities;
- to discourage the reproduction and distribution of unauthorized copies; and
- to maintain due care in, and records of, its handling of copies of works.

Establish and follow its own practices-2

- a *normative statement*: an authorized entity should establish and follow its own types of practices.
- Or it could function as a *permissive limitation*
- a Contracting Party may elect to provide the Treaty's exceptions only to authorized entities that established and follow practices

National exceptions: Role of Authorized Entity

- an authorized entity would be permitted to make an accessible format copy, or obtain an accessible format copy from another authorized entity,
- supply the copy to a beneficiary person by any means, including by non-commercial lending or electronic communication.
- the right of reproduction, the right of distribution, and the right of making available to the public to facilitate the availability of works in accessible format copies for beneficiary persons
- member states have option to provide limitation or exception under this treaty to the right of public performance.
- Right to Translation as per the Berne provisions.

National exceptions: Role of Authorized Entity-2

- authorised entities may make an accessible format copy of a work where it has **lawful access to that work or a copy of that work**.
- in the particular accessible format, **cannot be obtained commercially** under reasonable terms for beneficiary persons in that market.
- 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”.

National exceptions: Role of Authorized Entity-2

- **Four conditions** would apply to this activity by an authorized entity:
- (i) the authorized entity that is the source of the copy had **lawful access to the work**;
- (ii) the work is converted to an accessible format copy, which includes **any means needed to navigate information in the copy**, but does not introduce changes other than those needed to make the work accessible;
- (iii) the accessible format copy is supplied **exclusively to be used by beneficiary persons**; and
- (iv) the activity is undertaken on a **non-profit basis**.

Cross-Border Exchange of Accessible Format Copies: Role of Authorized Entities

- one of the primary aims of the treaty
- Authorized entities can export accessible format copies made under a copyright exception to other authorized entities
- or directly to beneficiary person in other Contracting States
- Without the authorization of the Right Holder.
- precondition is that they comply with the ‘three-step test’.
- authorised entities of countries which are not members of either the Berne Convention or TRIPS or the WCT- follow its own legal system and practices to distribute / make available as per 3 step test

Role of Authorized Entities

- **Article-6:Importation of Accessible Format Copies:** National law should allow such importation for beneficiary persons;
- without the authorization of the right holder and
- allows international exhaustion
- **Article 7- Obligations Concerning Technological Measures**
- flexibilities existing in the WCT are applicable;
- avoids mention of voluntary measures (BTAP model)
- **Agreed statement to Article 7** allows authorized entities to make use of technological measures and nothing should disturb such practices if they are in accordance with national laws.
- facilitates sharing of accessible formats by one beneficiary to another

Libraries as Authorized Entities

- a library must establish and follow its own practices to ensure that the persons it serves are beneficiary persons
- Libraries have to limit the distribution of accessible format copies to beneficiaries.
- Libraries have to discourage the use of unauthorized copies, and
- Libraries have to maintain due care in handling copies of works and in keeping records, while respecting the privacy of the library users

Libraries as Authorized Entities

- Libraries are enabled to make accessible format copies
- They will be crucial in ensuring the smooth operation of cross-border exchanges of accessible works
- Libraries have a long history of working productively and cooperatively across borders with formal processes such as **document delivery and inter-library loan** handled proficiently and with due regard for the legal framework.
- Libraries hold the most **comprehensive collections of works**, often the only repositories of **out of commerce or non-published works**.

THANKS