

# Cross-border exchange of AFC: options at the national level

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# Definition of AFC

“(b) "accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. (...)”

Article 2b Marrakesh Treaty

# Definition of AFC

“(b) (...) The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;”

Art. 2 b Marrakesh Treaty

# Definition of Beneficiary person

- “A beneficiary person is a person who:
  - (a) is 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 to substantially the same degree as a person without an impairment or disability; or <sup>31</sup>
  - (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;regardless of any other disabilities”

# Examples of AFC

- Braille
- Audiobooks
- Daysi
- Full-text templates
- Large print

# It allows access



Photo: Mr. Piyush Arora; National Association for the Blind, Delhi).

# The need of cross-border exchange

- Lack of national infrastructure
- Assimetric production of technology
- Low percentage of books in AFC

# Advantages of cross-border exchange

- Immediate Access to Works for beneficiary persons
- Transfer of technology
- Incentive for further cooperation: production of AFC of Works created by national authors
- Networking
- Dissemination of national culture



# Legal cross-border exchange

- “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”
- Art. 5,1 Marrakesh Treaty

# Legal cross-border exchange

- “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”
- Art. 5,1 Marrakesh Treaty

# How to do it?

## Authorized entity to Authorized entity

“Authorized entities shall be permitted, without the authorization of the rightholder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party”

Art. 5,2, a of Marrakesh Treaty

# How to do it?

## Authorized entity to Beneficiary person

“Authorized entities shall be permitted, without the authorization of the rightholder and pursuant to Article 2(c), to distribute or make available accessible format copies to a beneficiary person in another Contracting Party”

Art. 5,2, b Marrakesh Treaty

# With one condition

“(...) provided that prior to the distribution or making available the 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**”

Art. 5,2, Marrakesh Treaty

# Additional appropriate measures for AE

- to confirm that the person being served is a beneficiary person and
- to follow its own practices

**Agreed statement concerning Article 5(2)**

# If the receiving country is not part of Berne Convention

- The AE has to ensure that the AFC are **only reproduced, distributed or made available for the benefit of beneficiary persons** in that jurisdiction.
- In consistency with its own legal system and practices.

# Limited distribution and MA to a jurisdiction

- Default rule.
- Exceptions:
  - Party to the WIPO Copyright Treaty or
  - Applies the Three step test.



# Other limitations and exceptions for cross border exchange of AFC

- It is possible if they comply with the following conditions:

(see next slide)



Yes, but with some conditions depending...

- If the country is part of Berne Convention.
- If the country is part of TRIPS Agreement.
- If the country is part of WCT



If the country is part of Berne Convention.

- Three step test limited to reproduction

# If the country is part of TRIPS Agreement

- Three step test to E & L for exclusive rights

# If the country is part of WCT 1

- Three step test to L & E to the rights granted to authors in WCT

## If the country is part of WCT 2

- Three step test to L & E to rights when applying the Berne Convention.

# Options for implementation

- L & E for beneficiaries of the treaty
- Other L & E
- Combination of both
- Judicial, administrative or regulatory determinations.
- Respect for national legal systems and practices.



# Exhaustion of rights

Nothing in the treaty shall be used  
to address the exhaustion of rights



# Conclusions

- There is flexibility to implement the Marrakesh Treaty
- Consistency with differentiated international obligations of the countries.
- It is necessary to ensure the use of L & E under this Treaty will be limited to beneficiaries.
- Respect for different national legal systems and practices.

## And now?

- It is time to sign, ratify and implement the Treaty.
- Our nationals with visual impairment are waiting for us.



<http://www.firechildren.org/index2.asp?include=beka.htm&catID=5>

**Muchas gracias !!!!!**

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