

The Treaty of Marrakesh explained

This short document is written to explain the contents of The Treaty of Marrakesh (formal name: “The Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities”). It covers the meaning and use of the main treaty contents.

This is deliberately a layman’s explanation of the Treaty- not an in-depth legal analysis. The Treaty looks complex to non-experts, but in fact WBU is happy, by and large, with what it allows us to do.

What’s the goal of the Treaty?

The goal of the Treaty is to help to end the book famine faced by people who are blind, visually impaired or otherwise print disabled. Currently only some 1-7per cent of the world’s published books ever make it into accessible formats. This is partly due to access barriers in copyright law- something the treaty helps to remove. It does that in two main ways.

Firstly, by requiring countries which ratify the Treaty to have an **exception to domestic copyright law** for visually impaired and print disabled people. This means that countries which ratify the treaty must ensure their laws allow blind people and their organisations to make accessible format books without the need to ask permission first from the holder of copyright (e.g. author or publisher).

Secondly, by allowing for **import and export** of accessible versions of books and other copyrighted works, again without copyright holder permission. This will help to avoid the duplication of transcription efforts in different countries, and also allow those with larger collections of accessible books to share these collections with visually impaired people in countries with fewer resources.

Only so-called “authorised entities”, such as blind people’s organisations, can send accessible books under the treaty’s terms. However, the Treaty allows accessible books to be imported /

received either by other “authorised entities” or directly by visually impaired / print disabled individuals.

Here is an outline of what the most relevant articles in the Treaty mean:

Article 2(a). **Works Covered.** Refers to the type of publications which can be transcribed / distributed under the terms of the Treaty.

These are:

“literary and artistic works ... in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media;”.

The definition therefore covers books; periodicals and other similar textual works, as well as sheet music. It doesn't cover films. The Treaty does not allow for the contents of a Work to be changed (e.g. to “easy read”) rather just for the Work's contents to be transcribed into an accessible format.

Article 2(b). Defines the term “**accessible format copy**”

This is a broad definition which does not limit the format or the technique you use to make a book accessible. It allows whichever format will provide access to the work “as feasibly and comfortably as a person without visual impairment or other print disability”.

Article 2(c). **Defines the term “Authorized Entity”.** The role of the Authorized Entity is critical in the Treaty, and it's a straightforward definition. It's a non-profit or government agency that makes accessible copies of Works, and limits distribution of those copies to people with bona fide disabilities, which it calls “Beneficiary Persons.” It also covers for-profit entities that provide services to beneficiary persons using public funds and on a non-profit basis.

There is no specific process or approval mechanism to qualify as an “Authorised Entity”. Meeting the (broad) criteria in Article 2c is sufficient.

Article 3. **Defines Beneficiary Persons.** It's a broad definition that includes just about any disability that interferes with the effective reading of printed material. It includes people who are blind, visually impaired, reading disabled (example: dyslexia) or have a physical disability that gets in the way of effectively holding a book, turning pages or focusing on the page.

Article 4. **Requires** countries which ratify the Treaty to enact a **domestic copyright exception.** This will allow Authorized Entities to make accessible copies of Works without having to ask permission from the rightsholders. This is satisfied by having a law like the "Chafee Amendment" in the U.S, or one of the exceptions to copyright law for print disabled people the EU Member States have enacted under the terms of the EU Copyright Directive.

Articles 5 and 6. The treaty permits the **cross-border exchange** of accessible format books, both between authorized entities and directly from one authorized entity to individuals in other countries.

Article 7. **Technological Protection Measures ("TPMs").** These are the sort of "digital padlock" that publishers (and sometimes blind people's organisations themselves) put on a digital book, to stop it being passed on or accessed illegally. Unfortunately this padlock can also inadvertently block legitimate access by print disabled people, for instance those using screen-reading text-to-speech software. Article 7 therefore says it should be legal to circumvent (i.e. break) TPMs so that a person with a print disability can get access to books. (And only for that purpose)

Article 8. **Requires privacy to be respected** when using the treaty.

Other Noteworthy Provisions in the Treaty:

Respect for copyright holders' interests

Article 2 of the Treaty makes it clear that accessible books sent under its provisions should be solely for the use of "beneficiary persons". It asks also that "authorised entities" take "due care" when handling these books, and that they discourage the reproduction and distribution of unauthorised copies. These are reasonable requirements.

Commercial availability of accessible format books

One of our big concerns going into the Treaty negotiation was that the Treaty might require that you could only send or receive books in accessible formats where they were not deemed to already be available commercially in that format. Meeting such an obligation would have been impossible in practice and rendered the Treaty very difficult or impossible to use. This concept survived in the Treaty in a much weaker form, which allows countries to choose to have a commerciality requirement in their national copyright law, which some countries like Singapore and Australia already do have. Such countries have to let WIPO know formally that their domestic law requires a commerciality test, and also whether they intend it to affect imports of accessible materials into that country from elsewhere. There is no “commercial availability” requirement for exporters of accessible books.

The “Three Step Test”

This is a concept well-known to international copyright law experts, but few others. It caused a lot of concern among advocates concerned that it might be a Trojan horse for more extensive commercial availability requirements. It appears all over the treaty, but we don't think it is likely to get in the way of helping blind people except in rare situations.

The Treaty across the world

With a concerted effort for widespread ratification and implementation, the Treaty will have a huge impact on accessibility for people with print disabilities. It should both promote the domestic production of accessible materials in each country, as well as provide access to books produced elsewhere. This will be important for books in languages that cross national boundaries, languages like English, Spanish, French, Portuguese, Russian, Chinese, Bangla/Bengali, Indonesian, Swahili and so on. It will also be especially important for countries that haven't traditionally had robust services for people with disabilities: these less wealthy countries should benefit greatly from access to the extensive collections developed in wealthier and larger countries.

Conclusion

In plain language, this is a Treaty that should start to remedy the book famine. It provides a crucial legal framework for adoption of national copyright exceptions in countries that lack them. It creates an international import/export regime for the exchange of accessible books across borders. It is necessary for ending the book famine, but it is not sufficient. Countries need to sign, ratify and implement its provisions. Non-profit organizations, libraries, educational institutions and government need to take advantage of these provisions to actually deliver the accessible books people with disabilities need for education, employment and full social inclusion. The World Blind Union will work with our colleagues and supporters all over the world to implement the Treaty and fully end the book famine for people with print disabilities.