

HOW CAN AFRICAN COUNTRIES BENEFIT FROM THE MARRAKESH TREATY

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Background

- ◆ **Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled**
- ◆ **Adopted in June 2013 after the successful diplomatic conference in Marrakesh**
- ◆ **50 countries signed the treaty in Marrakesh**
- ◆ **So far 5 countries have ratified the treaty and one accession.**
- ◆ **Requires at least 20 countries to ratify the treaty for it to come into force**

Background

- ◆ Only 125 countries that are Member of the Berne Convention have exceptions and limitations
- ◆ However, less than sixty of these have specific exceptions and limitations for the visually impaired
- ◆ Most African Countries do not have these exceptions and the few that do like Nigeria limit this to braille. They do not have provisions in relation to other accessible formats such as large prints, audio books and electronic formats

Background

- ◆ Of the 19 ARIPO member states, only Rwanda has exceptions and limitations to allow access by persons with visual impairment.
- ◆ This is due to the fact that in most African Countries, the exceptions and limitations have not evolved with time and are still based on early copyright laws
- ◆ The exceptions and limitations are generally narrowly construed

Objective of the Treaty

- ◆ The main objective of this Treaty is to help end the “book famine”.
- ◆ The treaty makes it possible for persons who are visually impaired to access books within the copyright framework
- ◆ Provides for Exceptions and Limitations to copyright that facilitate access to printed works in real time
- ◆ It is the first treaty in IP that is premised on the exceptions and limitations of copyright law and thus has a human rights perspective

Objective of the Treaty

- ◆ Over 285 million people are living with visual impairment and over 90% of them live in developing countries
- ◆ The sad thing is that less than one percent of these people have access to books
- ◆ The visually impaired people in Africa have to do with the few books that have been translated into braille.
- ◆ This does not cover the institutions of higher learning where they have to rely on readers to help them through their studies

Book Famine

- ◆ For most countries in Africa, the accessible format would mainly be braille and in limited cases, large print and audio books.
- ◆ Most of the visually impaired people had to rely on the charity organisations to translate the books into braille.
- ◆ The cost was quite high and thus disadvantaged the visually impaired as most could not get access to educational material
- ◆ Lack of commercially available accessible formats is a major problem

Book Famine

- ◆ Although the socio-economic situation affects the ability to access the books, even where the persons have the means, the books are not accessible
- ◆ There have been several initiatives to address this problem. For instance, the Kenya National Library Services have a braille corner in their libraries
- ◆ These are only accessible to people who can visit the libraries. The KNLS currently has about 60 branches countrywide and several mobile libraries

Book Famine

- ◆ In many cases, the entities that would like to translate the books into accessible format have to seek authorisation from the rights holders before they can do so
- ◆ In some cases this may be difficult or takes a long time before the authority is obtained
- ◆ The publishers do not release the books in accessible format creating a gap in the market

Book Famine

- ◆ Although the internet and digital networks offer solutions to providing the accessible formats, there are several issues that have to be addressed
 - (a) how access to the accessible format without facilitating access for those who are not visually impaired
 - (b) Availability of digital technology that will provide for accessible formats
 - (c) Digital Copies re available online but the rights holders have employed technological protection measures to limit access

Book Famine

- (d) Several countries have provisions that make it illegal to circumvent the TPMs further limiting access to works that would otherwise have been accessible to the VIPs in the non digital environment.
- (e) Most of the books in accessible format come from other countries but the current copyright regime does not allow cross boarder exchange
- (f) The VIPs have to wait for a while before the books can be made available in accessible format

Status in Africa

♦ During the negotiations that led to the successful diplomatic conference in Marrakesh, the Deputy Minister from South Africa made it very clear that it was not an issue of charity but ensuring that;

(a) those with visual impairment have access to the relevant material especially educational material

(b) that the material be converted into accessible format

(c) the accessible format should not be more expensive than the normal texts

How the Treaty will help alleviate the book famine

- ◆ The Treaty is based on Human Rights and takes into account the United Nations Human Rights Declaration on the Rights of Disabled Persons.
- ◆ Rights of the persons with disability to access education among others is a rights recognised and there is need to ensure that the enabling legal and institutional structure is put in place
- ◆ Under the treaty, the authorised entities will have the opportunity to make accessible format copies

Authorised Entities

- ◆ The authorised entities will not have to seek authority from the rights holders to convert copyright works into accessible format
- ◆ They will thus be able to reproduce, import and make available works in accessible format in real time
- ◆ Cross border exchange, will also help reduce costs as it allows the authorised entities to collaborate and facilitate the cross border exchange

Who is an authorised entity?

- ♦ **Article 2(c): Authorised 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. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.

Authorised Entities

◆ These include

(a) Libraries,

(b) Charity Organisations,

(c) Not for profit Organisations

(d) Schools

(e) Government Institutions/agencies

Role of the Authorised Entity

- ◆ Converting published works into accessible format copies;
- ◆ Reproduce and make available accessible format copies to beneficiary persons by any means;
- ◆ Obtaining from other authorised accessible format copies;
- ◆ Distributing accessible format copies to beneficiary persons in other contracting parties.

Provided that;

- ♦ (i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
- ♦ (ii) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
- (iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and
- ♦ (iv) the activity is undertaken on a non-profit basis;

Accessible format Copy

- ♦ **Article 2(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.
- ♦ 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.

Using the Treaty

- ◆ Those in the publishing industry will also be encouraged to make accessible format copies or collaborate with authorised entities to make the same available
- ◆ The treaty provides safeguards to ensure that the works are converted into the accessible format copies for the exclusive use by the visually impaired persons
- ◆ It is possible to make use of the developments in digital technology without infringing the rights of the owner of the copyright

Next Step for developing Countries

- ◆ Need to critically re-examine our laws
- ◆ Ensure that the laws are amended or enacted to include the exceptions and limitations provided for under the Marrakesh Treaty
- ◆ Ratification of the Treaty as 20 ratifications are required to make the treaty come into force (so far we
- ◆ This will facilitate the accessibility of the works in accessible formats from other countries who are member states

Next Step....

- ♦ Access to education is a fundamental right that is enshrined in many constitutions. The domestication of the treaty will enable the VIPs have access to books in real time and enable them to participate in the community more effectively
- ♦ Will increase access to knowledge among the VIPs
- ♦ Will also encourage the conversion of works into accessible formats within the country

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