



Marrakesh Treaty – regional and national initiatives (implementation)

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I.1. Implementation of Marrakesh Treaty in UE – introduction

- General information: **two legal instruments implementing MT in UE entered into force in October 2017/ 15.02. 2018** UE Council took **decision to ratify MT** on the behalf of UE (before UE Commission vs. some MS struggle: exclusive or shared competences);
- Two legal instruments: **directive (implementation of MT inside of UE – necessary transposition to national legislations – deadline 10.10.2018)** and **regulation (implementation of MT – conditions of import/export of accessible formats beetwen UE members and 3rd countries parties of MT - directly binding MS and UE citizens)**;

I.2. Implementation of Marrakesh Treaty in UE - essence

- From UE law perspective directive **introduces mandatory and harmonized exception to certain rights harmonised already by UE previous directives**

Result: B and AE are entitled to make an **accessible format copy** (as a result of changes/ converting/ adapting of work) **and communicate, make available, distribute or lend** such a copy for beneficiary persons or another AE on a non-profit basis for the purpose of exclusive use by such a person. (as well as get and use copy provided by AE established in another MS).

Hidden assumption: Only one AE makes and disseminates a copy of concrete work – it should be available in the whole UE to any beneficiary person or another AE (similar assumption as in orphan works directive) – reduction of costs/ raising the number of available works.





I. 2. Implementation of Marrakesh Treaty in UE - essence

- From UE law perspective regulation allows :
 - to distribute, communicate or make available accessible format copies prepared under the exception established in directive implementing MT;
 - obtain such a copies or access to them from i.a. AE established in one of the 3rd countries parties of MT;
 - both on a non-profit basis.



I. 3. Implementation of Marrakesh Treaty in UE - alternatives

- No additional requirements for the application of the exception:
 - a) **no prior verification of the commercial availability** of works in accessible formats;
 - b) exception can not be overridden by contract;
 - c) only **compensation schemes possible but as a facultative provision** – different western and CE perspective:
 - ✓ possible application very limited by list of criteria (i.a non-profit nature of the activities of authorised entities, public interest, possible harm to rightholders);
 - ✓ compensation schemes may be connected only with uses undertaken by authorised entities established in territory of one MS (not when cross – border exchange of formats in order to avoid distortion of single market).

I.3 Implementation of Marrakesh Treaty in UE - alternatives

➤ Legal limitations of scope of AE lawful activity:

- **Making and dissemination online and offline copies by AE** within UE is a **right** not an obligation;
- AE may make an accessible format copy only from the work or other subject matter to which it has **lawful access** (art. 4 lit. 2a i) MT and C 435/12 ACI Adam ECJ judgement);
- AE shall ensure that each accessible format copy **respects the integrity** of the work or other subject-matter (to some extent protection of moral rights).





I.4. Implementation of Marrakesh Treaty in UE – position of AE

- Definition of AE in UE law (with slight unimportant adjustments) is a copy of art. 2 c) of MT – interesting discussion between MS about possibility to produce and disseminate copies without AE when no cross-border exchange of copies on the basis of national exception for people with disabilities;
- UE directive **allows setting authorisation procedures or recognition requirements** (for example national list of AE, especially in the light of obligation of MS to inform UE Commission about AE established on their territory),

but

such measures shall not preventing entities covered by the definition from undertaking the permitted uses (**no chilling effect – need to meet criteria from MT**/ examples from orphan works – need for clarity if any administrative procedure applied);



I.4. Implementation of Marrakesh Treaty in UE – position of AE

➤ Obligation of AE

1. listed in art. 2 lit c tiret ii) – iv) MT

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AE must inform how it complies with the listed above obligations (no mandatory accreditation or certification standards applied, but **own** and followed practice of AE)

2. When AE exports formats to entities from outside of territory of the UE Member State of its establishment should **provide for the request** of BE, AE and rightholders:

a) the list of works or other subject-matter for which it has accessible copies and formats;

(b) the name and contact details of AE from other Member State or 3rd country party of MT engaged in similar exchange to copies or formats.



II. Implementation of Marrakesh Treaty – national experience (Poland)

- 2013 Polish Ministry of Culture launched a **stakeholders dialogue** with Polish Library for Visually Impaired, associations of Blind and Visually Impaired Persons, CMO's of publishers and one of Polish leading publishing - house - owner of IBUK platform (provided **watermarked electronic content** in streaming, with no TPM, if consent of publishers);
- 2013 - 2015: 1. **technical workshops** with participation of B&VIP persons about technical possibilities to adopt IBUK platform for their needs (important thing: the possibility of using own devices or devices to which they get accustomed to);

2. **CMO of publishers intensive consultations with its members** to promote the idea of making content available to B&VIP persons and encourage publishers to take part in the project;

II. Implementation of Marrakesh Treaty – national experience (Poland)

3. **Ministry of Culture raised funds** to fund the emerging platform, launch it and make content available (through Book Institute – cultural institution, under supervision of Ministry, dedicated i.a to promotion of literacy);

4. Ministry of Culture together with Polish Library for VIP set **the list of AE** – 17 public libraries which collect material for VIP (one in every region of the country);

5. 1st February 2017 platform was launched under the website: www.libralight.pwn.pl – platform allows access to ePUB book catalogs and mp3 audiobooks, compliant with accessibility guidelines (IBUK Libra Light).

Hidden assumption: selected solution (technology) which may reach as many B&VIP persons as possible, while guaranteeing the maximum level of file security.





II. Implementation of Marrakesh Treaty – national experience (Poland)

- IBUK Libra Light – how it works ?

PUBLISHERS PANEL (server with metadata/files with works in accessible formats)

preparation and sharing of the file with

AUTHORIZED ENTITY

distribution of the PIN code for personal account of B&VIP (after verification)

B&VIP

downloading of the file combined with the process of watermarking/ exchange of information with AE that the process has finished – in the end file is on the account of B&VIP ready to be used on their own device





III. Conclusions

- The UE legal acts implementing MT are example of how you can look for balance between needs of B & VIP persons and the protection of legitimate rightsholders interests (leave certain degree of freedom to national legislators and authors of future codes of conduct of AE but determines the scope of it);
- National initiatives - even from the phase before the formal implementation - show how important is stakeholders dialogue and building of mutual trust. Crucial not only when you prepare good technical solutions for B&VIP persons, but also when you prepare position during negotiations and implement legal instruments for example MT (for more interesting examples from developing countries: UNDP&World Blind Union Report on Marrakesh Treaty);



Thank you for your attention

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