

## **The Marrakesh Treaty: Beneficiaries' Perspective**

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Greetings:

I wish to begin by thanking the Government of Jamaica and the Ministry of Industry, Investment and Commerce through the Jamaica Intellectual Property Office (JIPO) and the World Intellectual Property Organization (WIPO) for inviting me to speak and offer the perspective of the World Blind Union (WBU) and the National Federation of the Blind (NFB) of the United States on the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, and Otherwise Print Disabled. I bring you the greetings and best wishes of WBU's President, Arnt Holt from Norway, WBU's Immediate Past President and Chairperson of our Right to Read Campaign, Maryanne Diamond from Australia, the President of the NFB, Mark Riccobono, and the Immediate Past President of the NFB, Dr. Marc Maurer. It is truly an honor and privilege to share these remarks with you and participate in this most important conference. Ratification of the Marrakesh Treaty is of paramount importance and will lead to invaluable benefits for the blind and visually impaired community.

There has been a debate for millennia regarding the essence of human nature. According to John Lock, the great British philosopher and scholar, we are born a tabula rasa, a blank slate. Lock believed that it is the experiences we encounter from birth forward that form the essential part of who we are. Although Lock had his own spin on it, his ideas were not entirely his own. This concept originates as far back as Aristotle who talked about the unscribed tablet. This Aristotelian notion sharply contrasted with the previously held Platonic notions of the human mind as an entity that pre-existed somewhere in the heavens, before being sent down to join a body here on Earth. A derivation of Plato's perspective is that our genetic makeup predisposes us to a certain pattern of life experience. According to Plato and others, the tabula isn't so rasa. We are talking about the classic argument of nature verses nurture. As with most things in life, the truth probably lies somewhere in between these competing theories.

Regardless of where one's views fall on this topic, I do not believe anyone would argue with the concept that our ability to access information plays the single, largest role in developing the persons we become. The greater access we have to the vast array of information available, the greater our opportunity becomes to live full, enriching lives. Of course, most of our collective knowledge is stored and kept by reducing it to the printed word. Whether that printed word is displayed through hard copy text or through computer files does not really matter. Access to the printed word is absolutely critical. For the blind, access to the printed word through published works has been a monumental battle. The sighted have no barrier to reading published works imposed on them by any physical characteristic. For the blind, our lack of vision necessitates a different strategy. We must access the printed word in alternative formats or what the Marrakesh Treaty calls accessible format copies.

Personally, I have been involved in the battle for access since the young age of ten. Prior to losing my vision to a childhood virus, I absolutely loved reading. One of my greatest joys as a young child was going to my elementary school's library and perusing the thousands of books available there. To this day, my memories of the library at Royal Oaks Elementary School located in Woodbury, Minnesota, USA, are vivid and ones I recall with great fondness.

When I lost my vision, I thought that the treasure trove of information available to me had been stolen, lost to me permanently. After a while, I realized that all was not lost. By learning Braille, I recovered the ability to read for myself and once again go to sleep at night with a book in my hands. These books came to me through our Library of Congress's National Library Service for the Blind and Physically Handicapped. In addition to the Braille texts, I had access to books in an audio form. At first, these books came to me on vinyl records, later replaced by cassette tapes.

Although my ability to read Braille and audio books allowed me to gain some independence back, it was not a complete solution. Even though I grew up in a wealthy nation with substantial resources, I had access to a tiny percentage of what my sighted peers took for granted. Our best estimates in the United States suggest that we have something less than five percent of published works available in alternative formats. In most countries, the percentage of accessible works is lower, or often much lower. That is why we have called this worldwide crisis the Book Famine for the blind. Moreover, international law has not allowed the cross border sharing of accessible texts. This has led to the duplication of effort and waste of resources by organizations that often have little in way of resources at their disposal.

Even when I could get my hands on accessible books, it often occurred long after my sighted friends had read the same information. I was always trying to catch up and struggling to keep pace. Many times, my Braille or audio school books came to me months after my sighted colleagues had plowed through the information.

Despite the barriers I faced, I regard myself as a fortunate and successful person. I am an attorney who runs and operates his own law firm. I have argued before courts all over the United States and had the privilege of engaging in international projects like the Marrakesh Treaty. We own our home In Denver, Colorado and I have a beautiful wife and two terrific children. I

attribute my success largely to my family. My mom and dad pushed the local school system hard to insure that I learned the alternative techniques of blindness like Braille and independent cane travel and to provide books in alternative formats.

The National Federation of the Blind's positive philosophy on blindness has also been absolutely critical in helping me achieve success. Our official and heart felt message is: "The National Federation of the Blind knows that blindness is not the characteristic that defines you or your future. Every day we raise the expectations of blind people, because low expectations create obstacles between blind people and our dreams. You can live the life you want; blindness is not what holds you back."

I am also fortunate because I managed to gain access to a wide array of information, but it has always been a struggle. For the vast majority of blind and visually impaired individuals, they tragically do not even have the access to enough information to place them on a path to success. That is why the WBU initiated the worldwide Right to Read Campaign. The adoption of the Marrakesh Treaty is an historic and landmark victory in this campaign. It will change the lives of the blind all over the world.

Some in the United States have said to me that America does not really need the Marrakesh Treaty because we already have a well-established system for the reproduction of published works into accessible formats. Although it is true we have a good system, as I mentioned before, we have access to a tiny percentage of what our sighted population can gain instantaneously. Because of Marrakesh, we in the U.S. will have access to not only what all the other English speaking countries are producing in accessible formats throughout the world, we will also be able to put our hands on hundreds of thousands and more books in foreign languages. This capacity would have been very helpful to me while attending college at St. John's University in Minnesota. Originally, I had planned on a double major in Government and Spanish. Ultimately, I dropped that Spanish major precisely because I could not get access to Spanish novels and other materials.

The road to Marrakesh was long and, at times, arduous. I suppose that the first reason for such a difficult journey is that any process involving the United Nations brings with it frustrating procedures and related eccentricities of the UN. For example, matters are rarely decided on up and down votes but rather through consensus. I recall one meeting in Geneva where it took almost two whole business days to adopt the agenda for the meeting just because a handful of nations were resisting the order of items in the agenda. I also fondly remember how the United States introduced a proposal entitled "a non-paper" which was handed out in hard copy and contained eleven pages of print.

The road has also been tough because this treaty represents the first time ever that an international instrument addressed exceptions and limitations to copyright law exclusively. Previously, any international agreement only granted exceptions and limitations as part of a much broader scheme to protect the intellectual property rights of creators and other rightsholders. As a result, you can imagine that rightsholders of all kinds and sizes expressed

great concern and fear about adopting a binding international instrument that did not set out to enlarge their rights but arguably contract them. These rightsholders were not so much afraid of market erosion from the blind because we represent such a tiny percentage of the world's population; but rather, they feared that this was the proverbial camel's nose getting in under the tent. Well, my friends, on the desert planes of Marrakesh, we were able to accommodate that camel's nose and it did not tip over the tent.

Originally, the world's largest corporations and associations either expressly opposed the treaty or offered alternative language to it that would have made the treaty unusable and ineffective. These entities included, but were not limited to, Exxon Mobile, GE, Adobe, IBM, Association of American Publishers, International Publishers Association, the Motion Picture Association of America, and many, many others. Additionally, very influential blocks of nations like the European Union and United States were effectively blocking our efforts. How in the world could a group of blind people fight such large corporations and strong nations? It is because of the hope and belief the WBU and NFB possess in the capacity of the blind to change the world. The blind of the world were not willing to allow any amount of money or power to hold us back.

Although efforts have been made on and off for nearly thirty years to help end the book famine for the blind, this particular treaty effort began in earnest during 2008 when the Federation met with the World Blind Union and Knowledge Ecology International in Washington DC. NFB's Secretary, Mr. James Gashel along with many others wrote the first draft of the proposed treaty text. My involvement began in 2009 when Dr. Maurer, President of the NFB at the time, asked me to appear at a hearing before the Register of Copyright at the Library of Congress where the U.S. government wanted to collect the opinions of U.S. blindness organizations about this treaty proposal. At first, the United States government and the European Union attempted to convince us that we really didn't want nor need a binding, international treaty. We should first pursue a soft law, joint recommendation and then, someday way off in the future, seek a binding, international accord. They tried to tell us that our problems would be solved more quickly that way and that treaties were difficult, if not impossible, to achieve. I don't believe that these governments meant to insult us, but when you think about it, there message was incredibly insulting and demeaning. The message is that the blind can wait. Your problems are second class problems and deserve second class treatment. We in the NFB and WBU were not willing to wait and we will never be willing to wait for first class treatment. In the U.S., the NFB adopted a Resolution in 2010 calling upon the U.S. government to work hard towards the adoption of a binding international norm, a treaty. Our work and our perseverance ultimately led to the United States changing its position and its support for the convening of a diplomatic conference to conclude a treaty.

To bring this Treaty into reality, it required a great deal of leadership from WBU and its member organizations. Leadership requires creativity and the ability to think out of the box. As we headed towards Marrakesh, rightsholders were doing their best to protect their own turf. In the U.S., for example, highly paid lawyers and lobbyists were bombarding the Obama Administration with letters and phone calls urging either outright U.S. opposition to the treaty or the introduction of language into the text that would greatly limit its effectiveness. We knew we

had to find ways to push back. That is why we called upon our members to sign petitions and contact various legislators. That is why we ran messages on our giant 12 by 40 foot NFB electronic billboard calling upon Exxon and GE to stop blocking books for the blind, a billboard seen by tens of thousands of drivers each day as they head up and down Interstate 95, a major freeway running along the east Coast of the United States. That is why we joined with BookShare, a leading authorized entity in the U.S., and worked with Stevie Wonder and his management team to get Stevie involved in the Marrakesh negotiations. Stevie is recognized as an ambassador of peace by the United Nations and originally appeared before WIPO's General Assembly in 2010 to call for adoption of this treaty. That is why we issued a joint statement with the Motion Picture Association of America calling upon international negotiators to get back to basics and get a meaningful treaty adopted. We came under sharp attack by civil society organizations and some blind individuals when we did this. These entities and individuals thought that we had betrayed trust and that a blindness organization should not work with an intellectual property rights holder at any time.

As we started our travels to Marrakesh, thirty-seven distinct issues remained unresolved, without consensus, in the treaty text. To give you some perspective, at a diplomatic conference in Beijing, China in 2012 to conclude work on a treaty for audio visual performers, there was only one unresolved matter as the negotiators started that conference.

As the Diplomatic Conference began, new, unresolved issues emerged and it appeared that we were headed backward and that the conference would fail. At one plenary session of the Conference, Mustapha Khalfi, Minister of Communications for the Kingdom of Morocco who had been elected as President of the Conference, delivered an impassioned speech urging the negotiators to get busy making decisions and to stop dreaming up new issues and controversies. He threatened to close all the airports and means of transportation out of Morocco until a strong treaty emerged. Stevie Wonder chimed in with a video message stating that he would only come and perform for the conference if a strong, meaningful treaty were adopted. Of course, the WBU and Federation added our voices to this chorus and urged the negotiators not to let the blind of the world down.

Late in the evening on Tuesday, June 25<sup>th</sup>, 2013, we heard the words that we had all been hoping and waiting so long to hear. One of the negotiators from Brazil stepped out of the closed room where a small group of key negotiators had been deliberating and said "you have a treaty." The hallway erupted in cheers and joy surged in our hearts. I was left speechless. Words could not express the scope of what we had accomplished. The Marrakesh treaty represents the first time that a binding international accord exclusively addresses the issues faced by the blind. Although my body was there in Marrakesh, my heart was home with all my blind colleagues throughout the world.

Credit for this historic accomplishment belongs many places: with the WBU and all its member organizations; with all the governmental delegations who found a way to work together; and with all the rightsholders who ultimately found a way to advance our rights while protecting their interest.

On Monday the 24<sup>th</sup> of June, 2013, the WBU held a press conference in front of the Palais des Congres in Marrakesh where Dr. Frederic Schroeder, First Vice President of the WBU, spoke about the urgent need to end the book famine and to end it then. In front of Dr. Schroeder and the other speakers stood a pile of 200 books, 198 of which were wrapped in chains and secured with a padlock, the two unchained books representing, of course, the one percent of published works to which we actually have access.

The adoption of the Marrakesh treaty represents the unlocking of the padlock. However, the chains are still there. Our freedom is still imprisoned. We must celebrate this great victory but we must not rest. The book famine still exists and our hearts and minds are starved from the information we need. Information is truly power. We must now work even harder to get all the nations of the world to ratify Marrakesh.

The Marrakesh Treaty has sent the clear signal that access to information is indeed a fundamental human right. The Treaty process has also confirmed that the blind, governments, and rightsholders can work together effectively. We must now use the spirit of Marrakesh to lead us to implementation of the Treaty's goals. By doing so, I am confident that we will eradicate the Book Famine which will allow the blind and otherwise print disabled to achieve their rightful place in the world community.

After all, we, the blind and otherwise disabled, have the right to live in the world. Speaking about this right, Dr. tenBroek, founder of the NFB, stated many years ago: "That right is as deep as human nature; as pervasive as the need for social existence; as ubiquitous as the human race; as invincible as the human spirit. As their souls are their own, so their destiny must be their own."

I thank you for the opportunity to bring you our perspective. We look forward to working with all of you to bring the world's treasure of information to all including the blind, visually impaired, and otherwise print disabled. At the time of this writing, there have been eleven ratifications. As you know, twenty are required to bring the Treaty into force. This Caribbean region can be the one to make Marrakesh reality. Let's go and get it done!