

The Marrakesh Treaty

A Rightsholder Perspective



IPA international
publishers
association

José Borghino

**Secretary General
International Publishers Association**

What is the International Publishers Association?



- World's largest federation of national, regional, specialist PAs
- HQ in Geneva, Switzerland
- Founded in 1896
- Membership: 76 organisations from 65 countries on five continents
- Through its members, IPA represents thousands of individual publishers, who service markets with more than 5.6 billion people

IPA's principal objective: to represent & defend the interests of the publishing industry

Objectives of the Marrakesh Treaty?

What are the main objectives of the Marrakesh Treaty?

- Ending the **'book famine'**
- Creating a domestic law **copyright limitation/exception**
- Allowing for the **import/export of accessible versions of books without copyright holders' permission**
- **Avoiding the duplication** of transcription efforts in different countries
- Allowing countries with large collections of accessible books to **share these collections** with Visually Impaired Persons (VIPs) and Persons with Print Disabilities (PWPDs) in countries with fewer resources

What are the obligations imposed by the Marrakesh Treaty?

(1) ART. 4

A national **exception or limitation in copyright law** to make Accessible Format Copies (AFCs) of **published works** and to supply them for the benefit of VIPs/PWPDs **and only to them**;

(2) ART. 5

A clause allowing Authorised Entities (AE) to export AFCs **across borders** to another AE or to a beneficiary person;

(3) ART. 6

An exception that mirrors Article 5, allowing the **import of AFCs across borders** to Authorized Entities (AEs) or to VIPs/PWPDs. This exception also requires that the use of the works be exclusively for beneficiary persons (VIPs/PWPDs);

(4) ART. 7

An obligation to ensure that **Technical Protection Measures (TPMs) do not prevent** print disabled persons from having access to works.

The Berne Convention's Three-Step Test is a basic principle used to determine whether an exception or limitation is permissible under the international system of norms on copyright and related rights.

The Test states that exceptions are permissible if:

- (1) they are confined to certain special cases;
- (2) they do not conflict with the *normal exploitation of the work*; and
- (3) they do not unreasonably prejudice the legitimate interests of the rightsholder.

One objective of the Treaty is to promote equal access.

This is already achieved where works are available on equal terms to persons with print disabilities.

ART. 4 Commercial Availability vs Normal Exploitation

- Allows countries to choose to have a commercial availability requirement in their national copyright law, which some countries like Singapore and Australia already have;
- Countries choosing such an option should let WIPO know formally that their domestic law includes a commercial availability 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;

ART. 4 Commercial Availability vs Normal Exploitation

- Preserves the ability to provide for **remuneration** to rightsholders in conjunction with the enactment of any copyright limitation;
- Commercial availability of a work is a clear indicator that a use would conflict with ‘normal exploitation’, i.e. step 2 of the Three-Step Test;
- The definition of ‘Accessible Format Copy’ in Article 2 requires an ‘alternative’ format. Therefore, **if a format is already commercially available, converting a work into that same format would not make it an ‘alternative’**. One could argue that this applies only to formats that require a substantial investment.

What the IPA recommends

1. Proactive Participation by Publishers and Publishers Associations in ensuring balanced domestic application of the Treaty
2. Promote Accessible Publishing
3. Partnerships
4. Capacity Building

Proactive Participation

- The 3-Step Test should be strictly applied to facilitate cross-border sharing of accessible works;
- Ensure exceptions and limitations are drafted in such a way that they may be easily amended and/or revised in the future;
- Collective Management Organizations such as RROs should be seriously considered to facilitate access to VIPs under a standard licensing scheme.

Proactive Participation (continued)

- Organizations serving people with general disabilities other than visual disabilities will ask their national governments to modify their laws in line with the Marrakesh Treaty. Unfortunately, this window may be incorrectly used and result in the inclusion of broader exceptions which should not form part of the Marrakesh Treaty.

Promoting Accessible Publishing

- Publishers should monitor implementation of the Marrakesh Treaty to ensure that it does not apply to AEs that had prior knowledge of a work being **already commercially available** in the importing country. This is to avoid duplication where publishers offer born accessible publications or AFCs;
- Therefore, promote platforms such as EPUB3 in countries where they are not yet popular to ensure future works are born accessible.

Partnering With Stakeholders

- Get ahead of the game. Work with trusted national or international organisations and enter into collaborative agreements based on standard licences. Work with them, not against them. Own the market.
- Evaluate next steps by **asking**: How many VIPs are there in this country? How are they being attended to? What works should be prioritized? What technologies are currently available that make works accessible?

Capacity Building

- Most VIPs in the world will not directly benefit from this Treaty;
- Especially in countries where there are few or no accessible works in that country's language; or where there are no organizations that directly benefit VIPs; and where there is no capacity to create accessible works;
- It is important to work with organizations such as Accessible Books Consortium (ABC), which have the potential to address many of the long term challenges that come with the MT application.

What is the Accessible Book Consortium (ABC)?

- A new multi-stakeholder entity working on practical ways to make more accessible books available;
- An alliance comprising WIPO, organizations serving VIPs (World Blind Union, DAISY Consortium, International Federation of Library Associations) and organizations representing authors and publishers (International Federation of Reproduction Rights Organizations, the International Authors' Forum, and IPA).

ABC supports the goal of born accessible publishing and encourages the adoption of an industry-wide accessibility standard

www.accessiblebooksconsortium.org/portal/en

IPA considers the ABC to be a project of high importance in which the ABC can become part of the solution to accessibility on a global level without the burden of creating extra costs or risks for the publishing industry.

We really believe that publishing in accessible formats is not optional and not just a moral decision. It is a good business decision overall.

Youngsuk 'YS' Chi
IPA's past President
Chairman of Elsevier
Director of Corporate Affairs, Reed Elsevier

Same Book, Same Time, Same Price



End Goal: Same Book, Same Time, Same Price

The IPA believes that we should strive for equal access around the world for **all readers**, regardless of any disabilities. This can be achieved if all stakeholders work together. Jointly, we can develop and promote the necessary technologies and tools, and build the capacity to implement them worldwide.

IPA Guide to the Marrakesh Treaty

https://www.internationalpublishers.org/images/Accessibility/IPA_Guide_to_the_Marrakesh_Treaty.pdf

Thank you!

www.internationalpublishers.org