

MARRAKESH TREATY TO FACILITATE ACCESS TO
PUBLISHED WORKS FOR PERSONS WHO ARE
BLIND, VISUALLY IMPAIRED, OR OTHERWISE PRINT
DISABLED

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE MARRAKESH TREATY TO FACILITATE ACCESS TO PUBLISHED
WORKS FOR PERSONS WHO ARE BLIND, VISUALLY IMPAIRED,
OR OTHERWISE PRINT DISABLED, DONE AT MARRAKESH ON
JUNE 27, 2013 (MARRAKESH TREATY)



FEBRUARY 10, 2016.—Treaty was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PUBLISHING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 10, 2016.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh on June 27, 2013 (Marrakesh Treaty). I also transmit, for the information of the Senate, a report of the Secretary of State with respect to the Marrakesh Treaty that includes a summary of its provisions.

This copyright treaty, concluded under the auspices of the World Intellectual Property Organization (WIPO), advances the national interest of the United States in promoting the protection and enjoyment of creative works. The Marrakesh Treaty lays a foundation, in a manner consistent with existing international copyright standards, for further opening up a world of knowledge for persons with print disabilities by improving their access to published works.

The United States played a leadership role in the negotiation of the treaty, and its provisions are broadly consistent with the approach and structure of existing U.S. law. Narrow changes in U.S. law will be needed for the United States to implement certain provisions of the treaty. Proposed legislation is being submitted to both houses of the Congress in conjunction with this transmittal.

I recommend that the Senate give early and favorable consideration to the Marrakesh Treaty, and give its advice and consent to its ratification.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, January 22, 2016.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh June 27, 2013 (Marrakesh Treaty). The United States played a leadership role in the development of the Treaty, which was negotiated under the auspices of the World Intellectual Property Organization (WIPO). Joining the Marrakesh Treaty will promote the development of appropriate international rules in the realm of intellectual property and make a positive tangible difference in the lives of ordinary Americans and other individuals who are visually impaired or have other print disabilities.

A brief summary of the treaty follows below. A detailed overview of the treaty, with an article-by-article summary, is enclosed.

The purpose of the Marrakesh Treaty is to reduce the global shortage of print materials in special accessible formats for the many millions of Americans and others throughout the world who are blind, visually impaired or have other print disabilities, such as physical limitations that prevent holding a book. At present, according to WIPO, only a small percentage of the more than one million books published worldwide every year are available in Braille, large print, or accessible digital files, resulting in diminished access to information, culture and education for persons with print disabilities. The Marrakesh Treaty addresses this gap by providing, with appropriate safeguards, that copyright restrictions should not impede the creation and distribution of such special format copies, and by fostering the exchange of such copies internationally.

Initiatives to combat what has been widely called the “book famine” affecting individuals with print disabilities began to draw widespread international interest and support at WIPO in the mid-2000s, spurred in particular by stakeholder organizations and a group of Latin American countries. In connection with the ongoing discussions, the U.S. Patent and Trademark Office and the U.S. Copyright Office organized public forums and expert meetings on the subject, leading the United States to develop and introduce its own proposal at WIPO in 2010. Additional proposals were offered by a group of African countries and the European Union (EU). Working closely with Brazil, Nigeria, the EU, and others, the United States helped lead the negotiations to reconcile the differences in the various proposals and ensure that the resulting

treaty on exceptions and limitations for the blind and visually impaired would be consistent with the existing international copyright framework. The Treaty was adopted at a diplomatic conference in Marrakesh, Morocco, June 27, 2013.

The Marrakesh Treaty includes two core elements designed to promote access to published works for persons with print disabilities. First, it requires every Treaty party to provide an exception or limitation in its national copyright law to copyright holders' exclusive rights of reproduction, distribution, and making available published works to the public, in order to facilitate the availability of books and other printed materials in accessible formats. Second, the Treaty requires that parties allow "authorized entities" (for example, libraries, or organizations devoted to assisting the visually impaired) to distribute such "accessible format copies" to other authorized entities and to "beneficiary persons" (individuals who meet defined criteria for visual or other reading-related impairments) in other countries that are party to the Treaty.

These provisions to promote access for individuals with print disabilities are paired with safeguards to assure the interests of those holding copyright in the disseminated works. The Treaty keeps the scope of the required exception or limitation within the parameters set by existing international copyright agreements; specifies areas regarding the handling and distribution of accessible format copies in which authorized entities in Treaty parties establish and follow their own practices; limits distribution of accessible format copies to within a party's territory in certain circumstances; and emphasizes that such copies are for the exclusive use of beneficiary persons.

The provisions of the Marrakesh Treaty are generally compatible with existing U.S. law. Narrow statutory changes for the United States to implement the Marrakesh Treaty are described in the separate proposed legislation that the Administration is submitting to the Senate and to the House of Representatives in conjunction with this Treaty. The Marrakesh Treaty is non-self-executing.

Since the enactment in 1996 of the Chafee Amendment to the U.S. Copyright Act, 17 U.S.C. § 121, print-disabled individuals' access to printed materials in the United States has flourished. Incorporating this framework into the Marrakesh Treaty helps foster cross-border exchange that can further address the global "book famine," without compromising standards for intellectual property protection. If the United States joins the Treaty, implementation by the United States and other parties should result in more English and foreign-language works becoming available to individuals with print disabilities in the United States, and more U.S.-origin works becoming available to such persons in other countries.

In view of the foregoing, I recommend that the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

JOHN F. KERRY.

Enclosures: As stated.

Article-by-Article Summary of Provisions:
Marrakesh Treaty to Facilitate Access to Published Works for Persons Who
Are Blind, Visually Impaired, or Otherwise Print Disabled

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled (Marrakesh Treaty) aims to reduce the global shortage of print materials in special accessible formats for individuals who are blind, are visually impaired, or have other print disabilities, such as physical limitations that prevent holding a book. If the United States joins the Treaty, implementation by the United States and other parties should result in more English and foreign-language works becoming available to individuals with print disabilities in the United States, and more U.S-origin works becoming available to such persons in other countries.

The Marrakesh Treaty includes two core elements designed to promote access to published works for persons with print disabilities. (The term “print disability/ies,” used in the Treaty and in other contexts, is broader than “visual impairments” alone but is likewise tied to reading function.) First, it requires every Treaty party to provide an exception or limitation in its national copyright law to copyright holders’ exclusive rights of reproduction, distribution, and making available published works to the public in order to facilitate the availability of books and other printed materials in accessible formats to “beneficiary persons” (individuals who meet defined criteria for visual or other reading-related impairments) (Article 4). Second, the Treaty requires that parties allow “authorized entities” (for example, libraries or organizations devoted to assisting the visually impaired) to distribute such “accessible format copies” to other authorized entities and to beneficiary persons in other countries that are party to the Treaty (Article 5).

These provisions to promote access for individuals with print disabilities are paired with safeguards throughout to assure the interests of those holding copyright in the disseminated works. The Treaty keeps the scope of the required exception or limitation within the parameters set by existing international copyright agreements; specifies areas regarding the handling and distribution of accessible format copies in which authorized entities in Treaty parties establish and follow their own practices; limits distribution of accessible format copies to within a party’s territory in certain circumstances; and emphasizes that accessible format copies are for the exclusive use of beneficiary persons.

All provisions of the Treaty are summarized below. In conjunction with the adoption of the Treaty, as is common practice in the context of WIPO treaties, the negotiating parties adopted a number of understandings related to specific provisions in the Treaty, referred to as “Agreed Statements.” These statements represent the negotiators’ understanding of the language of the Treaty and can aid in the interpretation of certain articles. The United States delegation joined in the adoption of the Agreed Statements.

For the most part, existing U.S. law would enable the United States to implement the obligations of the Marrakesh Treaty. Many elements of the treaty are modeled on the “Chafee Amendment” to the Copyright Act, enacted in 1996 and codified at 17 U.S.C. § 121.¹ Limited statutory changes for implementation are described in the separate proposed legislation that the Administration is submitting to both houses of Congress in conjunction with this Treaty. The Marrakesh Treaty is non-self-executing.

Preamble

In the Preamble, the parties express, among other things, their recognition of the principles of non-discrimination and equal opportunity; the challenges that individuals with print disabilities face in accessing published copyrighted works; the importance of such access to participation in cultural life; the incentive function of copyright as well as the importance of appropriate limitations and exceptions thereto; particular considerations related to countries’ national development; the need to expand the production and distribution of works in formats accessible to individuals with print disabilities; and the benefit of situating efforts to improve access for individuals with print disabilities within the existing international legal framework for the protection of copyright.

Article 1: Relation to Other Conventions and Treaties

Article 1 provides that nothing in the Marrakesh Treaty affects the rights and obligations that parties have under any other treaties.

Article 2: Definitions

Article 2 defines three key terms central to the operation of the Treaty:

- The definition of “works” encompasses the subset of “literary and artistic works” as defined under the Berne Convention for the Protection of Literary

and Artistic Works (the Berne Convention) that are “in the form of text, notation and/or related illustrations.” Works are covered regardless of whether they are published or otherwise made publicly available in any media, i.e., whether they are distributed in traditional material form or made available by digital communication. An Agreed Statement sets out the understanding that, for purposes of the Marrakesh Treaty, the definition includes such works in audio form, such as audiobooks.

- “Accessible format copy” is defined as 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 – for instance, a Braille version of a book, or a specialized audio version – “must respect the integrity of the original work” and “is used exclusively by beneficiary persons.”
- An “authorized entity,” an organization that may create and distribute accessible format copies pursuant to the Treaty, is defined as being “authorized or recognized by the government” to provide education, instructional training, adaptive reading, or information access to beneficiary persons on a non-profit basis. The definition encompasses a government institution or non-profit organization that provides such services to beneficiary persons as “one of its primary activities or institutional obligations.” An Agreed Statement sets out the understanding that government financial support for the purposes of providing such services to beneficiary persons can enable an organization to qualify as an authorized entity.

Article 2 also specifies areas regarding the handling and distribution of accessible format copies in which an authorized entity in a Treaty party “establishes and follows its own practices.” For the purposes of the Treaty, establishing and following these practices is self-judging by the authorized entities in each Treaty party.

Article 3: Beneficiary Persons

Article 3 defines another key term in the Treaty. A “beneficiary person” is defined as a person who (a) is blind; (b) has a visual impairment, or a perceptual or reading disability “which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability,” leaving

the person unable to read printed works to substantially the same degree as a person without an impairment or disability; or (c) is “otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.” Therefore, an individual for whom ordinary corrective lenses gave visual function on par with someone having no impairment would not qualify as a beneficiary person. However, an Agreed Statement expresses the shared understanding that nothing in the language of Article 3(2), including the term “cannot be improved,” implies that “all possible medical diagnostic procedures and treatments” are required to be used in an effort to improve visual function for someone to qualify as a “beneficiary person.” Under Article 3, a “beneficiary person” is covered by the Treaty’s provisions, “regardless of any other disabilities.”

Article 4: National Law Limitations and Exceptions Regarding Accessible Format Copies

Article 4(1)(a) obliges parties to provide for a limitation or exception in their national copyright laws to the right of reproduction, distribution, and making available to the public to “facilitate the availability of works in accessible format copies for beneficiary persons.” Article 4(1)(b) provides that a party may, but is not obligated to, also provide for such a limitation or exception to the right of public performance.

Article 4(2) sets out an example of an exception or limitation that a party may provide to fulfill Article 4(1). As long as authorized entities have lawful access to a work and are acting on a non-profit basis, and the conversion to an accessible format copy does not introduce changes that go beyond what is necessary to make the work accessible to a beneficiary person, a party may permit them, without the authorization of the copyright holder, to make or to obtain from another authorized entity an accessible format copy of a work, and then to supply that copy by any means (e.g., a typical library book loan or electronically) to a beneficiary person for his or her exclusive use. A party may further provide that a beneficiary person, or a primary caregiver or other person acting on his or her behalf, may also make accessible format copies for the personal use of the beneficiary person.

Article 4(3) provides that, as an alternative to the Article 4(2) mechanism, a party may comply with Article 4(1) by providing other limitations or exceptions in its national copyright laws that are consistent with the “General Principles on Implementation” under Article 10 (discussed more fully below) and with any existing rights and obligations it has under three other international copyright

agreements. Those agreements are: (1) the Berne Convention; (2) the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement); and (3) the WIPO Copyright Treaty. The United States is a party to all three. Each of these agreements provides that parties to such agreements may permit exceptions to the copyright protections that such agreements mandate so long as such exceptions are limited to: (i) certain special cases (ii) that do not conflict with a normal exploitation of the work, and (iii) do not unreasonably prejudice the legitimate interest of the author/rightsholder. This is known as the “three-step test” for limitations and exceptions.

Articles 4(4) and 4(5) permit, but do not require, parties to confine limitations or exceptions to works that, in the particular accessible format, “cannot be obtained commercially under reasonable terms for beneficiary persons in that market,” and to make the relevant limitations or exceptions subject to remuneration.

Article 5: Cross-Border Exchange of Accessible Format Copies

Article 5(1) obliges parties to provide in their national law that lawfully made accessible format copies may be transferred across national borders by an authorized entity to a beneficiary person or another authorized entity in another Contracting Party. Article 5(2) sets out an example of an exception or limitation that a party may provide to fulfill Article 5(1). It indicates that a party may adopt a limitation or exception that permits an authorized entity to distribute or make available such copies to another authorized entity or directly to a beneficiary person in another Contracting Party, as long as the originating authorized entity does not know or have reasonable grounds to know in advance that an accessible format copy would be used for other than beneficiary persons. An Agreed Statement expresses the shared understanding that, in circumstances of cross-border exchange, “it may be appropriate for an authorized entity to apply further measures” to confirm that it is serving a beneficiary person and following its own practices as described in Article 2. Article 5(3) permits parties alternatively to provide “other limitations or exceptions” to discharge their obligations under Article 5(1), consistent with the requirements of Articles 5(4), 10, and 11, discussed more fully below.

In recognition that not every country that joins the Marrakesh Treaty will necessarily have existing obligations to observe the “three-step test” for copyright exceptions and limitations, Article 5(4) sets out restrictions on the further cross-border transfer of accessible format copies in certain circumstances. For a Marrakesh Treaty party that does not have “three-step-test” obligations under

Article 9 of the Berne Convention, the party must ensure that, when an authorized entity in its territory receives an accessible format copy from a foreign counterpart, any further reproduction, distribution, and making available to the public of that copy is confined to its jurisdiction. For a party that is not a party to the WIPO Copyright Treaty, the party must likewise limit distribution and making available to the public of accessible format copies to its jurisdiction, unless the party's limitations and exceptions implementing the Marrakesh Treaty are consistent with the conditions of the three-step test. Additionally, Article 5(5) states that the Treaty does not address the issue of exhaustion of rights.

Article 6: Importation of Accessible Format Copies

Article 6 obliges parties to permit beneficiary persons, those acting on their behalf, and authorized entities to import accessible format copies from other parties, for the benefit of beneficiary persons and without the authorization of the rightholder, to the extent that the making of such copies by such persons or entities is permitted under their own national laws.

Article 7: Obligations Concerning Technological Measures

Article 7 requires parties to take "appropriate measures, as necessary, to ensure" that legal protection against the circumvention of technological protection measures provided for in their national copyright laws "does not prevent beneficiary persons from enjoying the limitations and exceptions provided for" in the Treaty. An Agreed Statement expresses the shared understanding that an authorized entity may choose to apply technological measures (such as a measure that limits distribution to beneficiary persons) in creating, distributing, or making available to the public accessible format copies, and nothing in the Treaty affects those practices when they are consistent with national law.

Article 8: Respect for Privacy

Article 8 requires parties, in the course of implementing the limitations and exceptions provided for by the Treaty, to endeavor to protect the privacy of beneficiary persons "on an equal basis with others."

Article 9: Cooperation to Facilitate Cross-Border Exchange

Article 9 contains provisions aimed at facilitating the cross-border exchange of accessible format copies. The article requires parties to endeavor to foster such

exchange by encouraging voluntary information-sharing to help authorized entities identify one another. Parties are required further to assist their authorized entities engaged in such exchange in sharing information about their safeguards and handling practices with other authorized entities, and about their policies and practices – including those related to cross-border exchange – with interested parties and members of the public as appropriate. An Agreed Statement makes clear that the provisions of the article do not imply mandatory registration of authorized entities nor amount to a precondition for authorized entities to engage in activities recognized by the Treaty.

Article 10: General Principles on Implementation

Article 10 sets forth general principles for the implementation of the Treaty. The parties agree to adopt the measures necessary to ensure the application of the Treaty while retaining discretion to determine “the appropriate method of implementing the provisions of this Treaty within their own legal system[s] and practice[s].” Additionally, it is specified that parties may fulfill their rights and obligations under the Treaty through limitations or exceptions “specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof,” within their national legal systems and practices. Such limitations and exceptions may include “judicial, administrative, or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs,” consistent with other international obligations of the parties.

Article 11: General Obligations on Limitations and Exceptions

Article 11 provides that, in adopting measures to implement the Marrakesh Treaty, parties must comply with obligations they have under three existing international agreements, including with the “three-step test” set forth in those agreements restricting copyright limitations and exceptions to (i) certain special cases that (ii) do not conflict with a normal exploitation of the work and (iii) do not unreasonably prejudice the interests of the author/rightholder. Specifically, Article 9(2) of the Berne Convention applies the three-step test to the right of reproduction, and Article 10 of the WIPO Copyright Treaty and Article 13 of the TRIPS Agreement extend the application of the three-step test to all other exclusive rights of copyright provided for by those agreements. The United States is a party to all three agreements.

Article 12: Other Limitations and Exceptions

Article 12 recognizes that parties may implement in their national laws copyright limitations and exceptions for the benefit of beneficiary persons other than those provided for in the Treaty. Parties, including least-developed countries, may implement such exceptions having regard to their economic situation and social and cultural needs, in conformity with their international rights and obligations. The article further states that the Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

Articles 13-22: Administrative & Institutional Provisions

Article 13 requires the parties to have an Assembly responsible for addressing matters concerning the maintenance, development, application, and operation of the Treaty. The Assembly shall endeavor to act by consensus and shall establish its own rules of procedure. Any WIPO Member State and the European Union (EU) is permitted to become a party to the Treaty; the Assembly may decide also to admit any intergovernmental organization that, like the EU, provides the specified declaration of competence (Article 15). Any intergovernmental organization that is a party to the Treaty is permitted to participate in a vote in place of its Member States that are parties – with a number of votes equal to the number of its Member States that are parties to the Treaty. However, no such organization shall participate in a vote if any one of its Member States exercises its right to vote (Article 13(3)(b)). Each contracting party bears all the obligations under the Treaty (Article 16). The International Bureau of WIPO is to perform administrative tasks concerning the Treaty (Article 14), and the WIPO Director General is the depositary of the Treaty (Article 22). Twenty eligible parties must ratify or accede to the Treaty to bring it into force (Article 18). Other provisions specify procedures for denunciation, languages, signature, and effective date of becoming a party (Articles 19–21). These articles closely resemble the comparable administrative and institutional provisions in other recent treaties concluded within and administered by WIPO.

**Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind,
Visually Impaired, or Otherwise Print Disabled**

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This Treaty was adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities on June 27, 2013.

Preamble

The Contracting Parties,

Recalling the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities,

Mindful of the challenges that are prejudicial to the complete development of persons with visual impairments or with other print disabilities, which limit their freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education, and the opportunity to conduct research,

Emphasizing the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits,

Aware of the barriers of persons with visual impairments or with other print disabilities to access published works in achieving equal opportunities in society, and the need to both expand the number of works in accessible formats and to improve the circulation of such works,

Taking into account that the majority of persons with visual impairments or with other print disabilities live in developing and least-developed countries,

Recognizing that, despite the differences in national copyright laws, the positive impact of new information and communication technologies on the lives of persons with visual impairments or with other print disabilities may be reinforced by an enhanced legal framework at the international level,

Recognizing that many Member States have established limitations and exceptions in their national copyright laws for persons with visual impairments or with other print disabilities, yet there is a continuing shortage of available works in accessible format copies for such persons, and that considerable resources are required for their effort of making works accessible to these persons, and that the lack of possibilities of cross-border exchange of accessible format copies has necessitated duplication of these efforts,

Recognizing both the importance of rightholders' role in making their works accessible to persons with visual impairments or with other print disabilities and the importance of appropriate limitations and exceptions to make works accessible to these persons, particularly when the market is unable to provide such access,

Recognizing the need to maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairments or with other print disabilities,

Reaffirming the obligations of Contracting Parties under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international instruments,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the importance of the international copyright system and desiring to harmonize limitations and exceptions with a view to facilitating access to and use of works by persons with visual impairments or with other print disabilities,

Have agreed as follows:

Article 1 **Relation to Other Conventions and Treaties**

Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties.

Article 2 **Definitions**

For the purposes of this Treaty:

- (a) "works" means literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media¹;
- (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;
- (c) "authorized 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 obligations².

An authorized entity establishes and follows its own practices:

- (i) to establish that the persons it serves are beneficiary persons;

¹ Agreed statement concerning Article 2(a): For the purposes of this Treaty, it is understood that this definition includes such works in audio form, such as audiobooks.

² Agreed statement concerning Article 2(c): For the purposes of this Treaty, it is understood that "entities recognized by the government" may include entities receiving financial support from the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.

- (ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;
- (iii) to discourage the reproduction, distribution and making available of unauthorized copies; and
- (iv) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article 8.

Article 3

Beneficiary Persons

A beneficiary person is a person who:

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or³
- (c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;

regardless of any other disabilities.

Article 4

National Law Limitations and Exceptions Regarding Accessible Format Copies

1. (a) Contracting Parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format.

(b) Contracting Parties may also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons.

2. A Contracting Party may fulfill Article 4(1) for all rights identified therein by providing a limitation or exception in its national copyright law such that:

- (a) Authorized entities shall be permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:

³ Agreed statement concerning Article 3(b): Nothing in this language implies that "cannot be improved" requires the use of all possible medical diagnostic procedures and treatments.

- (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;

and

- (b) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, may make an accessible format copy of a work for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.

3. A Contracting Party may fulfill Article 4(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 10 and 11⁴.

4. A Contracting Party may confine limitations or exceptions under this Article to works which, in the particular accessible format, cannot be obtained commercially under reasonable terms for beneficiary persons in that market. Any Contracting Party availing itself of this possibility shall so declare in a notification deposited with the Director General of WIPO at the time of ratification of, acceptance of or accession to this Treaty or at any time thereafter⁵.

5. It shall be a matter for national law to determine whether limitations or exceptions under this Article are subject to remuneration.

Article 5

Cross-Border Exchange of Accessible Format Copies

1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party⁶.

2. A Contracting Party may fulfill Article 5(1) by providing a limitation or exception in its national copyright law such that:

⁴ Agreed statement concerning Article 4(3): It is understood that this paragraph neither reduces nor extends the scope of applicability of limitations and exceptions permitted under the Berne Convention, as regards the right of translation, with respect to persons with visual impairments or with other print disabilities.

⁵ Agreed statement concerning Article 4(4): It is understood that a commercial availability requirement does not prejudice whether or not a limitation or exception under this Article is consistent with the three-step test.

⁶ Agreed statement concerning Article 5(1): It is further understood that nothing in this Treaty reduces or extends the scope of exclusive rights under any other treaty.

- (a) authorized entities shall be permitted, without the authorization of the rightholder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party; and
- (b) authorized entities shall be permitted, without the authorization of the rightholder and pursuant to Article 2(c), to distribute or make available accessible format copies to a beneficiary person in another Contracting Party;

provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons⁷.

3. A Contracting Party may fulfill Article 5(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 5(4), 10 and 11.

4. (a) When an authorized entity in a Contracting Party receives accessible format copies pursuant to Article 5(1) and that Contracting Party does not have obligations under Article 9 of the Berne Convention, it will ensure, consistent with its own legal system and practices, that the accessible format copies are only reproduced, distributed or made available for the benefit of beneficiary persons in that Contracting Party's jurisdiction.

(b) The distribution and making available of accessible format copies by an authorized entity pursuant to Article 5(1) shall be limited to that jurisdiction unless the Contracting Party is a Party to the WIPO Copyright Treaty or otherwise limits limitations and exceptions implementing this Treaty to the right of distribution and the right of making available to the public to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder^{8,9}.

(c) Nothing in this Article affects the determination of what constitutes an act of distribution or an act of making available to the public.

5. Nothing in this Treaty shall be used to address the issue of exhaustion of rights.

Article 6 **Importation of Accessible Format Copies**

To the extent that the national law of a Contracting Party would permit a beneficiary person, someone acting on his or her behalf, or an authorized entity, to make an accessible format copy of a work, the national law of that Contracting Party shall also permit them to import an

⁷ Agreed statement concerning Article 5(2): It is understood that, to distribute or make available accessible format copies directly to a beneficiary person in another Contracting Party, it may be appropriate for an authorized entity to apply further measures to confirm that the person it is serving is a beneficiary person and to follow its own practices as described in Article 2(c).

⁸ Agreed statement concerning Article 5(4)(b): It is understood that nothing in this Treaty requires or implies that a Contracting Party adopt or apply the three-step test beyond its obligations under this instrument or under other international treaties.

⁹ Agreed statement concerning Article 5(4)(b): It is understood that nothing in this Treaty creates any obligations for a Contracting Party to ratify or accede to the WCT or to comply with any of its provisions and nothing in this Treaty prejudices any rights, limitations and exceptions contained in the WCT.

accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder¹⁰.

Article 7 **Obligations Concerning Technological Measures**

Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty¹¹.

Article 8 **Respect for Privacy**

In the implementation of the limitations and exceptions provided for in this Treaty, Contracting Parties shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

Article 9 **Cooperation to Facilitate Cross-Border Exchange**

1. Contracting Parties shall endeavor to foster the cross-border exchange of accessible format copies by encouraging the voluntary sharing of information to assist authorized entities in identifying one another. The International Bureau of WIPO shall establish an information access point for this purpose.
2. Contracting Parties undertake to assist their authorized entities engaged in activities under Article 5 to make information available regarding their practices pursuant to Article 2(c), both through the sharing of information among authorized entities, and through making available information on their policies and practices, including related to cross-border exchange of accessible format copies, to interested parties and members of the public as appropriate.
3. The International Bureau of WIPO is invited to share information, where available, about the functioning of this Treaty.
4. Contracting Parties recognize the importance of international cooperation and its promotion, in support of national efforts for realization of the purpose and objectives of this Treaty¹².

¹⁰ Agreed statement concerning Article 6: It is understood that the Contracting Parties have the same flexibilities set out in Article 4 when implementing their obligations under Article 6.

¹¹ Agreed statement concerning Article 7: It is understood that authorized entities, in various circumstances, choose to apply technological measures in the making, distribution and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law.

¹² Agreed statement concerning Article 9: It is understood that Article 9 does not imply mandatory registration for authorized entities nor does it constitute a precondition for authorized entities to engage in activities recognized under this Treaty; but it provides for a possibility for sharing information to facilitate the cross-border exchange of accessible format copies.

Article 10
General Principles on Implementation

1. Contracting Parties undertake to adopt the measures necessary to ensure the application of this Treaty.
2. Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Treaty within their own legal system and practice¹³.
3. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, other international treaties, and Article 11.

Article 11
General Obligations on Limitations and Exceptions

In adopting measures necessary to ensure the application of this Treaty, a Contracting Party may exercise the rights and shall comply with the obligations that that Contracting Party has under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, including their interpretative agreements so that:

- (a) in accordance with Article 9(2) of the Berne Convention, a Contracting Party may permit the reproduction of works in certain special cases provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author;
- (b) in accordance with Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, a Contracting Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder;
- (c) in accordance with Article 10(1) of the WIPO Copyright Treaty, a Contracting Party may provide for limitations of or exceptions to the rights granted to authors under the WCT in certain special cases, that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;
- (d) in accordance with Article 10(2) of the WIPO Copyright Treaty, a Contracting Party shall confine, when applying the Berne Convention, any limitations of or exceptions to rights to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

¹³ Agreed statement concerning Article 10(2): It is understood that when a work qualifies as a work under Article 2(a), including such works in audio form, the limitations and exceptions provided for by this Treaty apply *mutatis mutandis* to related rights as necessary to make the accessible format copy, to distribute it and to make it available to beneficiary persons.

Article 12
Other Limitations and Exceptions

1. Contracting Parties recognize that a Contracting Party may implement in its national law other copyright limitations and exceptions for the benefit of beneficiary persons than are provided by this Treaty having regard to that Contracting Party's economic situation, and its social and cultural needs, in conformity with that Contracting Party's international rights and obligations, and in the case of a least-developed country taking into account its special needs and its particular international rights and obligations and flexibilities thereof.
2. This Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

Article 13
Assembly

1. (a) The Contracting Parties shall have an Assembly.
(b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.
(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
2. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
(b) The Assembly shall perform the function allocated to it under Article 15 in respect of the admission of certain intergovernmental organizations to become party to this Treaty.
(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.
(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
4. The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.
5. The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 14
International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning this Treaty.

Article 15
Eligibility for Becoming Party to the Treaty

1. Any Member State of WIPO may become party to this Treaty.
2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
3. The European Union, having made the declaration referred to in the preceding paragraph at the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 16
Rights and Obligations Under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 17
Signature of the Treaty

This Treaty shall be open for signature at the Diplomatic Conference in Marrakesh, and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

Article 18
Entry into Force of the Treaty

This Treaty shall enter into force three months after 20 eligible parties referred to in Article 15 have deposited their instruments of ratification or accession.

Article 19
Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (a) the 20 eligible parties referred to in Article 18, from the date on which this Treaty has entered into force;
- (b) each other eligible party referred to in Article 15, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

Article 20
Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 21
Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
2. An official text in any language other than those referred to in Article 21(1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 22
Depositary

The Director General of WIPO is the depositary of this Treaty.

Done in Marrakesh on the 27th day of June, 2013.

[End of document]

I hereby certify that the foregoing is a true copy of the original text, in English, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted on June 27, 2013.



Francis Gurry
Director General
World Intellectual Property Organization

January 4, 2016

