

WIPO's Global Copyright Policy Priorities: The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

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Introduction

In the twenty-first century with its global race for economic success and prosperity it is the interests of the developing countries, the weak and disabled that need particular support. The *World Intellectual Property Organization* (WIPO) has ever since its establishment in 1967 played a crucial role in governing global intellectual (IP) protection with particular emphasis on such interests. In line with this crucial role, 2013 marks a special year with the conclusion of the *Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled* (*Marrakesh Treaty*).¹ The *Marrakesh Treaty* constitutes a landmark in global copyright policy as it increases access to information for millions of visually impaired people around the world, and in particular in developing countries. In addition to the conclusion of the *Marrakesh Treaty* WIPO policies have placed particular emphasis on developing policies, innovation policies, and on environmental policies. In the light of these priorities, the following paper provides, first, an overview of WIPO priorities and developments in 2013. Second, it analyses in more detail the *Marrakesh Treaty* as key WIPO development of 2013. It will provide a background to the Treaty, an overview of the Treaty efforts, an analysis of the objections to the treaty, an account of the treaty obligations, its implementation, and finally, a brief evaluation of the Treaty.

¹ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled, 52 ILM 1312 (2013).

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Overview of WIPO Priorities and Developments in 2013

In 2013, WIPO policies can be clustered into the following areas: first, copyright policies with, inter alia, the conclusion of the *Marrakesh Treaty*; second, trademarks with developments of the Madrid System, patents with advances in WIPO's patent responsibilities, third, innovation and developing policies, fourth, environmental policies, and fifth, anti-piracy policies. The following section introduces and discusses the achievement of these policy priorities in more detail.

Copyrights: Marrakesh Treaty and Beijing Treaty

In the realm of copyright law, the key development is marked by the conclusion of the *Marrakesh Treaty* which will further be discussed in the second part of this contribution.² Another milestone of 2013 in the realm of global copyright policies was the ratification of the *Beijing Treaty on Audiovisual Performances* (Beijing Treaty) in July 2013.³ The Treaty reinforces the rights of performers in audiovisual works, such as TV series or films. Once 30 countries will have ratified the treaty, it will enter into force. China's early ratification of the Beijing Treaty demonstrates its more and more active role in shaping and supporting WIPO's IP policies. Most noticeable, the ratification happened simultaneously with the inauguration of the new WIPO China Office which demonstrates a further shift towards and emphasis on Asian IP policies on the part of WIPO.⁴ The office was set up to provide technical and legal assistance in all areas of intellectual property law to public authorities and institutions. It will also promote the use of WIPO's services in the framework of the Madrid System, the Patent Cooperation Treaty (PCT) and the Hague System.

Trademarks: The Madrid System

In the realm of trademarks laws, the international trademark system has further developed towards internationalisation. In essence, the Madrid System for the International Registration of Marks allows for a cost effective, user friendly and streamlined mechanism for protecting and managing trademarks internationally. In numbers, the Madrid system has noted the highest number of international trademark applications in 2012 with 44,018 applications. In 2014, two further important

² See Analysis of Key WIPO Developments: The Marrakesh Treaty below.

³ WIPO News, PR/2014/763, WIPO Director General Welcomes Ratification by China of Beijing Treaty on Audiovisual Performances, Inaugurates WIPO China Office, 9 July 2013.

⁴ See http://www.wipo.int/directory/en/contact.jsp?country_id=38.

countries have joined the international trademark system. On the one hand, India joined the international trademark system on 8 July 2013.⁵ India is the 14th of the G/20 economies to join the Madrid Protocol thereby reinforcing the importance of the global registration system. On the other hand, Tunisia joined the international trademark system on 16 October 2013 by depositing its instrument of accession to the Madrid Protocol for the international Registration of Marks.⁶ In consequence, the Madrid System now has 92 members. It, thus, demonstrates an unprecedented expansion which not only features India and Tunisia but also Colombia, Mexico, New Zealand, Philippines and Rwanda.

Patents: WIPO's PATENTSCOPE

In the area of patent law, key developments are noticeable in the area of search systems and, thus, increasing transparency in the global patent search. WIPO's policy developments are happening against the background of record numbers of patent filings worldwide. In 2012, global patent filings have seen the fastest growth in 18 years with 2.35 million applications having been filed.⁷ The main drivers of this development are both registrations at the State Intellectual Property Office of the People's Republic of China (SIPO) and at the United States Patent and Trademark Office (USPTO).⁸ Against this backdrop, WIPO plays a key role in providing technical resources for access to information about new technologies that are disclosed in the framework of international patent applications. Notably, it is the PATENTSCOPE system that provides access to PCT international applications in full text format as well as to 30 national and regional patent collections.⁹ By April 2013 PATENTSCOPE had reached 28 million searchable patent documents thereby providing a "historical record of humanity's technology" says WIPO Director General Francis Gurry.¹⁰ By September 2013, this number had increased to 32 million with China's national patent collection having been added to WIPO PATENTSCOPE.¹¹ Most noticeable, PATENTSCOPE provides both English-language and Chinese biographic data of Chinese patents and patent applications

⁵ WIPO News, PR/2013/734, India Joins the International Trademark System, 8 April 2013.

⁶ WIPO News, PR/2013/747, Tunisia Joins the International Trademark System, 21 October 2013.

⁷ WIPO News, PR/2013/752, Global Patent Filings See Fastest Growth in 18 Years, 9 December 2013.

⁸ WIPO News, PR/2014/755, US and China Drive International Patent Filing Growth in Record-Setting Year, 13 March 2014.

⁹ Available at: <http://patentscope.wipo.int/search/en/search>.

¹⁰ WIPO News, PR/2013/735, WIPO's PATENTSCOPE tops 28 Million Searchable Patent Documents, 12 April 2013.

¹¹ WIPO News, PR/2013/744, China Patent Collection Added to WIPO PATENTSCOPE; Search System Surpasses 32 Million Records, 20 September 2013.

from 1996 onwards. These advances in the provision of access to patent information are well in line with WIPO's transparency and information access policies.

Innovation and Developing Policies

As regards innovation and developing policies, WIPO has continuously aimed at closing the knowledge gap in developing countries and at improving the health care situation in developing countries. Thus, the WIPO Assemblies of 2013 were held with the intention of strengthening the linkages between developed world creators and the worldwide online marketplace.¹² Particular emphasis has thereby been placed on opening the global digital marketplace to developed world creators.¹³ Further emphasis was placed on bridging the IP knowledge gap in developing countries by cooperating with the US-based international nonprofit organisation, *Public Interest Intellectual Property Advisors (PIIPA)*.¹⁴ Yet another emphasis was placed on furthering medical and pharmaceutical innovation to meet market requirements both in the developed and developing world.¹⁵ Solving pressing public-health needs worldwide has become one of the key priorities of WIPO. WIPO has, thus, partnered with the World Trade Organization (WTO) and the World Health Organization (WHO) to undertake collaborative work to promote access to medical technologies and innovation.

Environmental Policies: WIPO GREEN

A policy area that is more and more important in global IP policy is a distinct focus on the inclusion of environmental policies in IP policies. One of the emanations of these policies is the launch of the WIPO GREEN database which constitutes a new online marketplace for environmentally sustainable solutions for climate change.¹⁶ Essentially, the database was launched on 28 November 2013 to promote "innovation and diffusion of green technologies."¹⁷ It provides a search mechanism for green technology and intellectual property assets in the form of inventions,

¹² WIPO News, PR/2013/746, WIPO Assemblies, 3 October 2013.

¹³ WIPO News, PR/2013/745, Director General Opens WIPO Assemblies with Call to Help Developing-World Creators, 23 September 2013.

¹⁴ Davis (2013).

¹⁵ WIPO News, MA/2013/61, WIPO, WTO and WHO Director-General Launch High-Level Discussion on Future for Medical and Pharmaceutical Innovation, 25 June 2013.

¹⁶ WIPO News, PR/2013/749, WIPO GREEN: New Online Marketplace Seeks Environmentally Sustainable Solutions for Climate Change, 28 November 2013.

¹⁷ Available at: <https://webaccess.wipo.int/green/>.

technologies and patents. It, thus, matches owners of technologies with companies and individuals that seek to license or commercialise a distinct green technology. The database has already gained around 1,000 uploads during a pilot and testing phase and has 35 partners globally.¹⁸ Partners are, *inter alia*, the Asian Development Bank, the Brazilian Institute of Industrial Property, the International Chamber of Commerce (ICC), Siemens (Germany) and the United Nations Global Compact (UNGC). With the launch of WIPO GREEN, WIPO puts renewed emphasis on its policy objective to support the diffusion of green technologies and to provide better access to these for developing countries.

Anti-Piracy Policies: The Global Congress on Combating Counterfeiting and Piracy

A policy area of continued relevance is the global fight against counterfeiting and piracy in relation to which WIPO shows continued involvement. WIPO is well involved in finding innovative responses to the combat of trade in counterfeit and pirated goods. One of the major events of 2013 with WIPO involvement was the 3-day *Seventh Global Congress on Combating Counterfeiting and Piracy* in Istanbul.¹⁹ Essentially, over 850 delegates of more than 100 countries discussed global initiatives to stop trade in counterfeit and pirated goods. In the framework of this congress, WIPO joined forces with the World Customs Organization (WCO), INTERPOL, the International Chamber of Commerce (ICC), the Business Action to Stop Counterfeiting and Piracy (BASCAP), and the International Trademark Association (INTA). Even though WIPO recognises the continued issue of counterfeiting and piracy because of socio-economic variables, such as poverty, it puts particular emphasis on fostering respect for intellectual property to—says WIPO Director Francis Gurry—“safeguard the creative and innovative fabric of our societies.”²⁰ In consequence, the Congress—as powerful public-private partnership—has once again constituted an important milestone in formulating global policies and strategies against counterfeiting and piracy.

¹⁸ WIPO News, PR/2013/749, WIPO GREEN: New Online Marketplace Seeks Environmentally Sustainable Solutions for Climate Change, 28 November 2013.

¹⁹ WIPO News, PR/2013/736, Seventh Global Congress on Combating Counterfeiting and Piracy Opens in Istanbul, 24 April 2013.

²⁰ WIPO News, PR/2013/736, Seventh Global Congress on Combating Counterfeiting and Piracy Opens in Istanbul, 24 April 2013.

Analysis of Key WIPO Developments: The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

Out of all WIPO priorities and developments in 2013, it is the conclusion of the *Marrakesh Treaty* that warrants closer analysis. In brief, the *Marrakesh Treaty* was signed by 51 countries on 28 June 2013 in the framework of the WIPO diplomatic conference in Marrakesh from 17–28 June 2013.²¹ It constitutes a legally binding international copyright treaty that facilitates access to books and other published works of persons who are blind or have a print disability. In essence, the treaty acknowledges that outdated copyright laws act as a barrier to print disabled people's access to information and, thus, allows in a very broad way almost any published work to be transcribed into an accessible format and distributed under its terms.²² Furthermore, it allows for the exchange of accessible published works cross borders from one authorised entity to another or to an individual. It will enter into force 3 months after ratification by 20 countries.

Treaty Background

The so-called “book famine” describes the situation, in which only a small fraction of books published is available in accessible format which blind and other print disabled people can read. It constitutes the background to the Treaty conclusion insofar as there are 285 million affected people worldwide with print disabilities.²³ Out of these 285 million people, it is about 90 % of them that live in least developed countries which are, thus, disproportionately burdened with the cost of medical care and other services. At the same time, it has been shown that before the Treaty conclusion there were only some 1–7 % of the world's published books ever made it into accessible format.²⁴ Moreover, new technologies have substantially changed the landscape for accessible books. In particular, the non-profits such as the digital Accessible Information System (DAISY) Consortium and Benetech have created more versatile electronic platforms for VIP (visually impaired people) access²⁵ requiring the legal framework to account for such technological advances.

²¹ As of March 2014, 60 countries had signed the Treaty.

²² The African Union of the Blind, Fact Sheet on the Marrakesh Treaty, available at: <http://www.afub-uafa.org/news/fact-sheet-marrakech-treaty-blind>.

²³ Scheinwald (2012), p. 453 (463).

²⁴ World Blind Union (2014).

²⁵ Lewis (2013), p. 1311 (1315).

The book famine, however, was only one motif for the Treaty conclusion. Regulatory diversity—a patchwork of national copyright laws—further motivated the push for the Treaty. The mechanism for allowing access to copyright books is the provision of exemptions to copyright.²⁶ These exemptions are expected to be in line with the Berne Convention and the so-called three-step-test for exemption from illegality an otherwise rights-infringing reproduction of a person's work. Moreover, the *Rome Convention*,²⁷ a 1980 treaty that protects performers, producers of phonograms and broadcasting organisations offers limited opportunities for exempted use of copyrighted material to benefit visually impaired persons. On a national level, however, there were only 57 countries in 2006 that had specific provision in their national copyright laws that would permit activity to assist visually impaired people unable to access the written word.²⁸ Overall, however, little consistency was noticeable in national laws and the disadvantages of regulatory diversity striking.²⁹ Moreover, it was widely recognised that the balance in international copyright law was struck not in favour of users but in favour of producers of intellectual property.³⁰ In consequence, the need for harmonised international copyright policies for better access to information for the visually impaired was evident.

Treaty Efforts

The core treaty effort that led towards the *Marrakesh Treaty* aimed at helping to end the book famine faced by blind people or the visually impaired or otherwise print disabled. As such, the Treaty fits in well with existing initiatives to benefit the disabled, such as the *UN Convention on the Rights of Persons with Disabilities* (UN CRPD) of 2006.³¹ At the same time, however, it is striking that it is a rather old initiative that took its time to come to fruition. In 1982, WIPO and the *UNESCO Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright* issued a report containing “model exceptions for national copyright laws.”³² This early report was followed by a series of negotiations on the issue from 2000 onwards. In 2006, the WIPO Standing Committee on Copyrights and Related Rights issued a “*Study on the Copyright Limitations and Exceptions for the Visually Impaired*.”³³ Said study constitutes an

²⁶ Hely (2010), p. 1369 (1391).

²⁷ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 12 October 1961, 496 U.N.T.S., I-7247, p. 43.

²⁸ WIPO Standing Committee on Copyright and Related Rights, 15th Session, 11–13 September 2006, Study on Copyright Limitations and Exceptions for the Visually Impaired, SCCR/15/17.

²⁹ Lewis (2013), p. 1309 (1309–1320).

³⁰ Scheinwald (2012), p. 451 (473).

³¹ Sloan (2014).

³² de Beer (2013), p. 884 (887).

³³ WIPO Standing Committee on Copyright and Related Rights, 15th Session, 11–13 September 2006, Study on Copyright Limitations and Exceptions for the Visually Impaired, SCCR/15/17.

in-depth analysis of provisions in international treaties relevant to copyright exceptions for visually impaired people as well as case studies of national provisions. It recommends collaboration between all stakeholders to ensure facilitated access and further debate about an international treaty.

Credit for the renewed focus on the issue into global IP policy-making goes to Chile which re-introduced the topic of copyright exceptions for accessible format copies in 2007. In addition, the Treaty also constitutes the product of a number of initiatives that have lobbied for the adoption of the Treaty both at the national and the international level. Supporters of the treaty have, *inter alia*, been the African Union of the Blind,³⁴ the World Blind Union (WBU) and Knowledge Ecology International (KEI). Following the push of the topic by non-governmental organisations, a draft instrument was presented in 2008. Subsequently, it became the subject of extensive comments by publisher organisations in opposition to the Treaty. In response to this opposition developing countries expressed a high degree of support for a binding treaty while the United States (US) argued for an alternative proposal which suggested for non-binding soft recommendations.³⁵ Moreover, the European Union (EU) suggested the retention of the right to withhold their permission for the transnational sharing of accessible works by publishers.³⁶ Eventually, however, the final text of the Treaty was presented that incorporated the earlier proposals to some degree.³⁷ Upon adoption of the treaty, its historic nature has immediately been hailed by its stakeholders.³⁸

Treaty Objections

Even though Scheinwald's question "Who Could Possibly be Against a Treaty for the Blind?"³⁹ describes well the instant reaction to treaty efforts benefiting the blind, there have nevertheless been objections to the treaty in its earlier and current format. To begin with, there was the overarching discussion right from the beginning whether or not there was a need to provide for a binding treaty at all. Thus, for instance, non-State parties such as the *International Publishers Association* argued that a treaty stating copyright exemptions would be the "crudest and the bluntest tool in a large toolbox and were nineteenth century solutions to twenty-first century problems."⁴⁰ A number of arguments were provided against a WIPO

³⁴ Available at: <http://www.afub-uafa.org/>.

³⁵ For a detailed discussion of the various treaty proposals see Kongolo (2012), p. 812 (812–833).

³⁶ de Beer (2013), p. 884 (887).

³⁷ Hely (2010), p. 1369 (1382).

³⁸ WIPO News (2013); WIPO Magazine (2013), p. 5 (7).

³⁹ Scheinwald (2012), p. 451 (458).

⁴⁰ Scheinwald (2012), p. 469 (480).

copyright-exemption treaty for visually impaired persons. Thus, it was argued that there was an irreconcilable conflict between IP right-holders, on the one hand, and the visually impaired on the other hand. After all, intellectual property protection is seen as part of human rights protection and a WIPO treaty for the blind was seen to infringe the rights of copyright holders to benefit from their work.⁴¹ Moreover, it was argued that there was no rationale for limiting the treaty language to the visually impaired rather than to allow broad exceptions for all those that cannot afford access to copyrighted works altogether.⁴² Finally, it was argued that an increase of copyright exemptions would further drive global piracy and loss of profits. Rather than being outright against a global copyright treaty, it was a number of countries that expressed their more subtle concerns about the suggested protection mechanisms.⁴³

Such concerns translated into initially four different draft instrument proposals before the respective WIPO committee—that is a treaty drafted by the *World Blind Union* (WBU) and one by the African Group, a consensus instrument suggested by the United States (US) and a joint recommendation suggested by the European Union (EU) delegation.⁴⁴ The US, in fact, did express its support for the timely consideration of a copyright-exemption, but it was eventually not among the Treaty's 55 first signatories.⁴⁵ Nevertheless and despite these critical evaluations, it was eventually the insight that no national copyright protection scheme and no international coalition had been able to solve the issue of access for the visually impaired—thereby warranting an individual treaty for the benefit of the disabled.

Treaty Obligations

Having evolved out of a long policy discourse around policy exceptions for the visually impaired, the *Marrakesh Treaty* follows a new paradigm for global copyright protection. The limited-exceptions paradigm is somewhat replaced by a social disability model that sets mandatory ceilings to copyrights.⁴⁶ In implementing this paradigm shift, the *Marrakesh Treaty* is divided into a Preamble followed by 18 Articles.

Article 2 is devoted to providing the relevant definitions to the Treaty. Thus, Article 2(a) sets out works covered and does not allow for the contents of a work to be changed. These are “literary and artistic works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available

⁴¹ Hely (2010), p. 1369 (1381).

⁴² Scheinwald (2012), p. 497 (501).

⁴³ Hely (2010), p. 1369 (1391).

⁴⁴ Kongolo (2012), p. 812 (812–833).

⁴⁵ Saez (2013).

⁴⁶ Harpur and Suzor (2013), p. 745 (766).

in any media.” Article 2(b) rather broadly defines the term “accessible format copy” in a way that allows access to a book as “feasibly and comfortably as a person without visual impairment or other print disabilities.” Article 2(c) defines the term “authorized entity” as “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.” Article 2(c) goes on to define the tasks of authorised entities. Consequently, it supports the operation of initiatives such as WIPO-facilitated *Trusted Intermediary Global Accessible Resources* (TIGAR) and the EU-facilitated ETIN initiatives. They remain their relevance for the creation of networks of authorised entities for the cross-border exchange of accessible format copies of works.

Article 3 defines “beneficiary persons” as a person who “is blind, has a visual impairment or a perceptual or reading disability [. . .], or 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.” This definition is rather crucial as it defines which persons can benefit from the obligations in the treaty.

In Article 4, the Treaty sets out the obligations for its member States. This is a rather notable provision as the Treaty thereby constitutes one of the rare international instruments that make exceptions mandatory thereby introducing a ceiling on the strength of copyright laws. Article 4 requires exceptions to domestic copyright law for visually impaired and print disabled people thereby allowing authorised entities to make accessible copies of works without having to ask permission from rightholders. Article 4 reads: “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 [...]” In contrast, they “may” provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons. The Treaty leaves it to the member States to decide whether to make the exception or limitation subject to remuneration.

Rather crucially, Articles 5 and 6 deal with the question of cross-border exchange of accessible format books. They allow for import and export of accessible versions of books and other copyrighted works—without copyright holder permission. In this context, it is noticeable that only so-called “authorized entities,” such as blind people’s organisations, can send accessible books under the treaty terms. However, as far as the import or reception of books is concerned, the treaty allows the receipt either by the authorised entities or directly by the visually impaired or print disabled individuals. In concrete terms, Article 6 sets out that “the national law [. . .] shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder.”

Article 7 deals with technological protection measures (TPMs) by making it legal to circumvent TPMs so that a person with a print disability can get access to books. Article 8 deals with respect for privacy and Article 9 with cooperation to facilitate cross-border exchange. Thus, the Treaty requires WIPO to establish information-sharing procedures in the form of a voluntary register of institutions assisting people with print disabilities for the enhancement of collaboration

between its member States. Article 10 deals with general principles on implementation, Article 11 with general obligations on limitations and exceptions, Article 12 with other limitations and exceptions, and Articles 13–18 with administrative matters.

Treaty Implementation

Following the adoption of the Marrakesh Treaty, governments are now under the obligation to speedily sign and ratify the treaty. At the time of writing, eight States had so far ratified the Treaty.⁴⁷ Moreover, contracting parties are required to amend their national copyright laws to bring their exceptions and limitations in line with international copyright law. A number of countries will certainly need support and guidance by WIPO as they seek clarity on how to implement the Treaty.⁴⁸ In addition to incorporating the *Marrakesh Treaty* into national laws, governments are now under pressure to in fact implement the Treaty in conjunction with blind people's and disability organisations and other relevant stakeholders.⁴⁹ In particular, States should budget the requisite financial resources to support authorised entities and statutory organisations in their implementation of the Treaty. Blind people's organisations and other bodies will also need support in capacity building to ensure that they are able to take advantage of the opportunities that the *Marrakesh Treaty* creates to share books. One of the tasks, for instance, will be to exchange the many thousands of copies of works in accessible formats currently held in special libraries in different countries across borders. One of the greatest tasks, however, will be to reach the beneficiary persons in developing countries who are not yet within the reach of charities and their services. If implementation is successful, it has the potential to make a difference to the lives of millions of blind and print disabled people.⁵⁰ One of the right steps into this direction is the establishment of the *Accessible Books Consortium* (ABC) by WIPO in late June 2013.⁵¹ Essentially, ABC was created to support implementation of the Marrakesh Treaty on a practical level. It focuses, in particular, on the provision of technical skills, on the promotion of inclusive publishing and on building an international database of accessible books. ABC is also responsible for the TIGAR book exchange, a database of the titles of over 238,000 accessible format books in 55 languages from libraries all around the globe.⁵²

⁴⁷ See [http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=ALL&start_year= ANY &end_year=ANY&search_what=N&treaty_id=843](http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=ALL&start_year=ANY&end_year=ANY&search_what=N&treaty_id=843).

⁴⁸ Bammel (2013), p. 7.

⁴⁹ Sloan (2014).

⁵⁰ Pescod (2013), p. 5 (6).

⁵¹ Harris (2013).

⁵² Harris (2013).

Treaty Evaluation

In general, public and private responses to the Treaty conclusion have been very positive. Thus, it is recognised that the Treaty sets a historic precedent and will have a huge impact on accessibility for people with print disabilities. Its significance lies in the fact that it constitutes the first multilateral instrument that establishes harmonised standards for exceptions and limitations in copyright law rather than for the protection of IP rights as such.⁵³ The Treaty has, thus, been regarded as a “resounding victory for supporters of disability rights.”⁵⁴

In particular, public interest groups are very content with the Treaty as such. Nevertheless, there is still some light criticism of its respective format. Thus, it has been pointed out that the Treaty allows for options loopholes that might reduce its effectiveness.⁵⁵ For instance, provisions allow, under certain circumstances, that governments exclude books from the treaty that are already “commercially available” in accessible formats. In particular in countries that use the three-step test for assessing the exceptions and limitations in copyright law, it was feared that a broad interpretation would allow for a broad interpretation of commercial availability.

On a policy level, however, the most noticeable change is the first-time introduction of ceilings in international copyright law. The introduction of mandatory exceptions to copyrights can be interpreted as the first successful initiative to limit intellectual property rights in international law through the introduction of mandatory ceilings rather than minimum standards. This paradigm shift in international copyright law is rather noteworthy in that it comes at a time in which bilateralism rather than successful multilateral initiatives is the norm.

Conclusion

In conclusion, 2013 has been a year yet again marked by an important milestone in WIPO policies. Most laudable is the *Marrakesh Treaty* with its potential to remedy the global book famine. By creating a mandatory exception and limitation regime in international copyright law, it has created an unprecedented ceiling in copyright law that limits the rights-based approach to intellectual property law. Moreover, by creating an international import/export regime for the exchange of accessible books across borders it has created a global precedent in transnational IP policies.⁵⁶ These WIPO policies and achievements come at a time in which significant opposition to ever stronger IP policies is noticeable. This is evident in the failure of the *Anti-Counterfeiting Trade Agreement* (ACTA) as well as in the watering down of IP

⁵³ de Beer (2013), p. 884 (887).

⁵⁴ Harpur and Suzor (2013), p. 745 (767).

⁵⁵ See evaluation of the Africa Union of the Blind, available at: <http://www.afub-uafa.org/>.

⁵⁶ Trimble (2014).

language in *Trans-Pacific Partnership Agreements*. WIPO's greatest achievement is, thus, not the reduction of the book famine worldwide but the establishment of a new framework for global copyright protection. It breaks the dominance of both bilateralism and of international content industries in global copyright debates by introducing a multilateral positive obligation on member states to "take all appropriate measures to ensure that persons with disabilities [can enjoy] access to cultural materials in accessible formats."⁵⁷ In conclusion, the Treaty is to be applauded as carefully, yet successfully addressing very specific humanitarian purposes within unique circumstances.

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⁵⁷ Cf. Convention on the Rights of Persons with Disabilities, Article 30(1)(a).