



# The Marrakesh Treaty's Impact on the Accessibility and Reproduction of Published Works

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## Abstract

Many countries have restrictive copyright laws that prevent the reproduction of published works in accessible formats. In addition, these countries limit any fair use provisions to people with blindness, which excludes a variety of other print disabilities. In 2013, delegates from the World Intellectual Property Organization agreed to the Marrakesh Treaty, which has now been ratified by 79 countries. The Marrakesh Treaty focuses on expanding fair use exceptions in copyright law for reproducing works in accessible formats. Countries that ratify the Marrakesh Treaty agree to expand qualified individuals to include people with different kinds of reading disabilities. Countries that have ratified the treaty can also import or export accessible books. However, the treaty does not pressure countries to create inclusive policies for people with disabilities. Publishers are not affected by the Marrakesh Treaty and are allowed to continue producing their books in inaccessible formats. This paper explores the benefits and pitfalls of the Marrakesh Treaty and how the problem of inaccessible published works might be solved in the future.

**Keywords** Marrakesh Treaty · Copyright law · Accessibility · Fair use

## Introduction

In the United States, it is legal for academic institutions to convert copyrighted books to braille and other text-to-speech formats. This is because of the Chafee Amendment, which permits the reproduction of copyrighted reading materials for students with print disabilities (National Library Services, 2019). The Chafee Amendment includes the term reading disability, which allows the copyright exemption to be used for students with dyslexia and other reading disabilities (National Library Services, 2019).

In many other countries, the copyright laws are written very stringently with the only exception being people with blindness (Li, 2014; Li & Selvadurai, 2019). This is creating what the United Kingdom Royal Institute coined a “global book famine” (Ayoubi, 2015, p. 256). These laws can prevent students with a variety of reading disabilities from accessing the

course materials that they need to succeed academically (Fitzpatrick, 2014).

There are 193 countries that are members of the World Intellectual Property Organization (WIPO), which is an organization that focuses on intellectual property ownership. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“The Marrakesh Treaty” hereafter) was passed by the WIPO in 2013 after 51 countries signed on to it (WIPO, 2013). The treaty became effective in 2016 after 20 countries ratified it (WIPO, 2016). The goal of the Marrakesh Treaty is to ease the copyright restrictions of the member countries to provide access to published works for people with visual impairments and reading disabilities (Lewis, 2013). However, the Marrakesh Treaty will not completely solve the problem of inaccessible reading materials. Publishers need to be regulated and/or incentivized to make published works natively accessible for this issue to be better addressed.

In the following sections, the representative copyright laws of several countries will be profiled and discussed, followed by further exploration and more in-depth discussion of the Marrakesh Treaty, including its shortfalls. This will help to illuminate the role that large publishing corporations are playing in the global shortage of accessible published works.

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## International Copyright Landscape

This section examines how copyright law in various countries can prevent or help people with disabilities to acquire accessible books.

### Examples of Copyright Laws Impeding Accessibility

China only allows published literary works to be converted into an accessible format for someone who is blind (Li & Selvadurai, 2019). Greece and Cameroon have copyright exemptions similar to those of China where an exemption is made for people with blindness (Li, 2014). An issue with using the term blind in these copyright exemptions is that people with various levels of visual impairments can be excluded from these protections (Li, 2014). This problem is compounded when considering all of the people with a variety of reading disabilities who are not protected under the fair use exemption (Li, 2014; Li & Selvadurai, 2019).

In addition, China's fair use terms list physical braille as the only permissible format, which is a format that not all blind people can read (Li & Selvadurai, 2019). Volunteers who help people with print disabilities access literature by recording audiobooks risk prosecution in China (Li & Selvadurai, 2019). Fortunately, Chinese copyright laws do provide exemptions for government entities providing accessible formats to people with visual impairments (Li & Selvadurai, 2019). This has led to government-owned libraries beginning to offer audiobooks and physical braille books to people with visual impairments (Tong, 2019; Disability Insider, 2020). On the other hand, some countries including Albania, Cambodia, Egypt, Gambia, and Zambia do not have any fair use exceptions for people with blindness (Li, 2014). This makes reproducing copyrighted material for people with print disabilities illegal without receiving permission from the publisher. However, there are countries working to expand fair use exemptions to cover people and students with reading disabilities, which could serve as models for moving toward broader inclusion.

### Examples of Efforts Striving toward Inclusion

Countries including the United Kingdom, Singapore, Australia, New Zealand, and those in the European Union are beginning to broaden their definition of a qualified individual eligible for fair use exemptions (Li, 2014; Australian Inclusive Publishing Initiative, 2019). These countries are adopting definitions that extend beyond sight-related disabilities and consider the whole person. For example, the European Union considers anyone with a disability qualified for a copyright exemption under the law (Li, 2014). This

allows educational institutions in the European Union to help students with a wide array of learning disabilities obtain accessible books.

### Marrakesh Treaty

The context, creation, benefits, remaining challenges, and prospects of the Marrakesh Treaty will be discussed in the following sections.

## The Context and Creation

In the WIPO's 2006 study, it was found that two-thirds of the countries had national laws that prevented the reproduction of copyrighted materials into an accessible format for profit (Ayoubi, 2015; WIPO, 2006). In general, countries had been unwilling or unable to change their legislation to support access to accessible books (Lewis, 2013). Finally, the international delegates of the WIPO gathered in Marrakesh, Morocco, and signed on to support the Marrakesh Treaty in 2013 (Band, 2013). The Marrakesh Treaty became effective in 2016 and now a total of 79 countries have ratified it (WIPO, 2021). The Marrakesh Treaty is a more expansive version of the United States' Chafee Amendment (Band, 2013). The Marrakesh Treaty requires a ratifying country to expand its definition of a qualifying individual to include people with various visual impairments and reading disabilities (Ayoubi, 2015; Band, 2013). This ensures that a broad range of people with disabilities are eligible to obtain accessible published works. In addition, the Marrakesh Treaty permits the importing and exporting of physical and digital accessible works between ratifying countries (Ayoubi, 2015; Band, 2013; Fitzpatrick, 2014).

## The Benefits

The Marrakesh Treaty has been beneficial in expanding what qualifies as a reading disability and allowing a wide variety of accessible formats. For example, in a country like Mongolia, it was illegal to reproduce a work in almost any accessible format or to import an accessible work from another country for a person with a reading disability (WIPO, 2006). Now that Mongolia has entered into the Marrakesh Treaty, the organizations in the country can legally reproduce or import accessible copyrighted reading materials (Electronic Information for Libraries, 2015; WIPO, 2021). The Marrakesh Treaty encourages libraries, educational and government institutions to provide published works in accessible formats (Ncube et al., 2020). A similar development has also occurred in other ratifying countries, such as Brazil, Panama, and the Dominican Republic (WIPO, 2006; WIPO, 2021).

## Other Relevant Initiatives

Benetech's Bookshare is a large non-profit organization that provides accessible books (Turner, 2019). Students with reading disabilities in the 79 countries that have entered the Marrakesh Treaty can now use the Bookshare platform to access books in accessible formats (Brauner, 2019; Turner, 2019; WIPO, 2021). Benetech can reduce restrictions on its library so that more books are available to students regardless of what country they reside in (Brauner, 2019; Turner, 2019). However, a lot of books are not available through Bookshare, and it is not a marketplace. While it is a big step forward in terms of providing accessible books, the quality varies due to its nature of volunteer operation.

Another relevant initiative, the Accessible Books Consortium (operated by the WIPO), has made similar changes and now has made available over 500,000 of their published works (Accessible Books Consortium, n.d.). However, there are no plans for physical braille books to be imported or exported by these organizations at this time (Accessible Books Consortium, n.d.; NLS, 2020; Turner, 2019). The National Library Service is providing authorized governmental agencies and nonprofits with access to their collection including digital braille music files (NLS, n.d.). The Marrakesh Treaty is leading organizations to provide accessible books in digital formats like electronic braille, EPUB, and DAISY (ABC, n.d.).

## The Remaining Challenges and Prospects

The Marrakesh Treaty is an acknowledgment by the WIPO that the publishers are not creating a favorable platform for people with reading disabilities and is an initial effort to address such issues. People with reading disabilities are a small enough minority that WIPO delegates are comfortable with encouraging educational and nonprofit organizations to serve their needs (Ayoubi, 2015). However, many schools in developing countries still have issues with reliable Internet and educational technologies, which are needed to access resources like Bookshare (Akpan & Akpan, 2017). This means that in developing countries it will probably continue to be difficult to provide accessible books.

The Marrakesh Treaty legalizes the reproduction of published works for people with disabilities. However, it does not mandate that publishers offer accessible versions of their works. This omission undermines the effectiveness of the treaty. It was estimated that roughly 5% of published books are accessible and that number is even lower in developing countries (Fitzpatrick, 2014). The educational and governmental institutions in these developing countries will most likely be unable to make up for this shortfall.

The WIPO represents the interests of the publishing corporations, which is why their solution relies upon external organizations to remediate inaccessible publications. The WIPO does not pressure publishers to make their books accessible. For instance, many publishers still rely on educational, governmental or non-profit organizations to remediate their published works rather than creating/selling an accessible version. A viable alternative to the Marrakesh Treaty is for the publishers to dedicate resources to providing published works in a variety of accessible formats, which would open up a digital marketplace for people with disabilities (Martinengo, 2018). This probably will not occur until a new coalition or concerted efforts are formed to require and/or incentivize publishing companies to take accessibility seriously. However, some progress is being made in the United States because of recent accessibility lawsuits directed against educational institutions (National Federation of the Blind, 2019). Educational institutions are beginning to screen the products and services offered by publishers for inaccessible content before purchasing. In addition, the European Union's European Accessibility Act will take effect in 2025 and require publishers to include accessibility features in all books sold throughout Europe (Nordic Inclusive Publishing Initiative, 2020). Hopefully, these initiatives will lead to publishers offering accessible products internationally, and the remediations permitted under the Marrakesh Treaty will become less needed.

## Conclusion

The Marrakesh Treaty is an example of nations coming together to try to solve a complex problem (Ayoubi, 2015; WIPO, 2021). The Marrakesh Treaty was successful in helping countries change their copyright laws to support people with a variety of reading disabilities (Fitzpatrick, 2014). Member countries that have appropriate infrastructure such as reliable Internet and educational technologies are able to share published works in accessible formats between each other. However, more countries need to join the Treaty so their citizens can benefit under the framework and agreement. In addition, the Marrakesh Treaty falls short because it does not require publishers to dedicate resources to ensure the accessibility of their publications. Current and future members of the Marrakesh Treaty should consider incentives and legislation to encourage publishers to offer accessible versions of their published works. This would provide people with reading disabilities access to a digital marketplace to purchase accessible works and help reduce their reliance on external organizations to receive remediated materials.

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**Conflict of Interest** The Authors Declare that they Have no Conflict of Interest

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