

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled & Marrakesh Treaty Implementation Act of 2018

Marrakesh Treaty

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled (“Marrakesh Treaty”) was negotiated and concluded under the auspices of the World Intellectual Property Organization (“WIPO”) to facilitate access to printed works for persons with print disabilities. It is widely agreed that there is a global shortage of print materials in accessible formats such as braille, digital braille, large print, and specialized audio files. The Marrakesh Treaty is designed to help address this “book famine” among the world’s visually impaired individuals. Further, while the United States has significant production of accessible format copies for the American blind community, the ability to share such copies across borders will be particularly valuable for visually-impaired Americans who read and learn in languages other than English and/or who need specialized works, such as scholarly texts for graduate work in American universities. The Marrakesh Treaty aims to address this problem by providing, with appropriate safeguards, that copyright protection should not impede the creation and distribution of such accessible format copies, including the exchange of such copies internationally.

According to the Marrakesh Treaty, parties are required to provide an exception or limitation in their national copyright law for the creation and distribution of accessible format copies for the exclusive use of blind and other print-disabled persons, subject to their existing international obligations. Further, parties are required, subject to various safeguards, to permit the exchange across borders of accessible format copies made under such national law exceptions for the use of blind and other print-disabled persons in other parties to the treaty. The Marrakesh Treaty provides assurances to authors and publishers that the system will not expose their published works to misuse or distribution to anyone other than the intended beneficiaries, and reiterates the requirement that the cross-border sharing of accessible format copies of works will be limited to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.

The United States signed the Marrakesh Treaty on October 2, 2013.

Marrakesh Treaty Implementation Act

The Marrakesh Treaty would require modest adjustments to U.S. copyright law. Note that currently, there is an exception in U.S. copyright law for making accessible format copies for blind or other persons with disabilities (section 121), and the Marrakesh Treaty is based on it.

The Marrakesh Treaty Implementation Act (and proposed legislative history) represents a consensus approach developed by the U.S. Senate Judiciary and Foreign Relations Committees with stakeholders within the publishers, libraries and print disabilities communities, in consultation with the U.S. Patent and Trademark Office and the U.S. Copyright Office as well other interested industry and public interest stakeholders.

The proposed bill would:

- broaden the scope of accessible works currently covered by section 121 to include previously published musical works fixed in the form of text or notation
- refine the definition of eligible persons under section 121

- add a new section 121A to provide that it is not an act of copyright infringement for 1) an authorized entity to export accessible format copies to authorized entities or eligible persons in other countries that are parties to the treaty or 2) an authorized entity or eligible person to import accessible format copies
- require in the new section 121A that an authorized entity engaged in the export or import of accessible format copies, in keeping with its particular situation, will establish and follow its own practices to ensure that the persons the authorized entity serves are eligible persons, limit distribution to eligible persons and authorized entities, discourage reproduction and distribution of unauthorized copies, and maintain due care and records of handling of copies
- provide that the new section 121A does not establish a cause of action or a basis for regulation by any federal agency, and shall not be construed to limit the ability of authorized entities to engage in activities otherwise permitted by the Copyright Act