



The WIPO Marrakesh Treaty: Overcoming the Book Famine

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Marrakesh Treaty Goals

- Help end the Book Famine
- Increase the reach of works in accessible formats to developing countries
- Further the goals of the CRPD and the SDGs

The Book Famine



The infographic features a central blue circle with white text, surrounded by a light blue ring. A small blue circle is positioned on the right side of the ring, connected to the central circle by a line. To the right of the ring are three rectangular boxes, each containing a statistic. The central circle contains the text: **285 million
Blind and
Persons with
Visual
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**285 million
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Only 57 national
laws with
exceptions in 2013

Best case <10 % of
printed materials
in accessible
formats

90% of VIPs in
developing
countries

Core Marrakesh Treaty Objectives

- Limitations and exceptions treaty with a humanitarian purpose
- Two overarching requirements:
 - Requires parties to adopt national law limitations and exceptions to facilitate access to formats of works accessible to persons who are blind, visually impaired, or print disabled
 - Provides for the cross-border transfer of accessible-format works in order to increase efficiency and avoid duplication of effort

Increasing Marrakesh Treaty Membership

- 57 contracting parties covering 84 countries (EU is a member and its 28 member states are bound by the Treaty obligations as a result)
- Projected to have at least 100 members by the end of 2020
- Fastest growing WIPO treaty in modern era
- Dedicated, strong ongoing support from beneficiaries



Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities

Marrakesh, June 17 to 28, 2013



Key Provisions – Preamble

The **Preamble** has twelve paragraphs and includes references to:

- The human rights basis for the MVT – references to the Universal Declaration of Human Rights and the Convention on the Rights of Persons with Disabilities (CRPD)
- Development considerations – references to the vast majority of VIPs living in developing countries and to the WIPO Development Agenda

Key Provisions – Art. 2(a)

Article 2 (a) – Definitions - Works

- “works” is based on the concept of literary and artistic works as defined in the Berne Convention for the Protection of Literary and Artistic Works, limited to text and/or illustration forms. There is an agreed statement making it clear that **e-books are included**.
- Article 2 (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 media”

Key Provisions – Art. 2(b)

Article 2 (b) – Definitions – accessible format copy

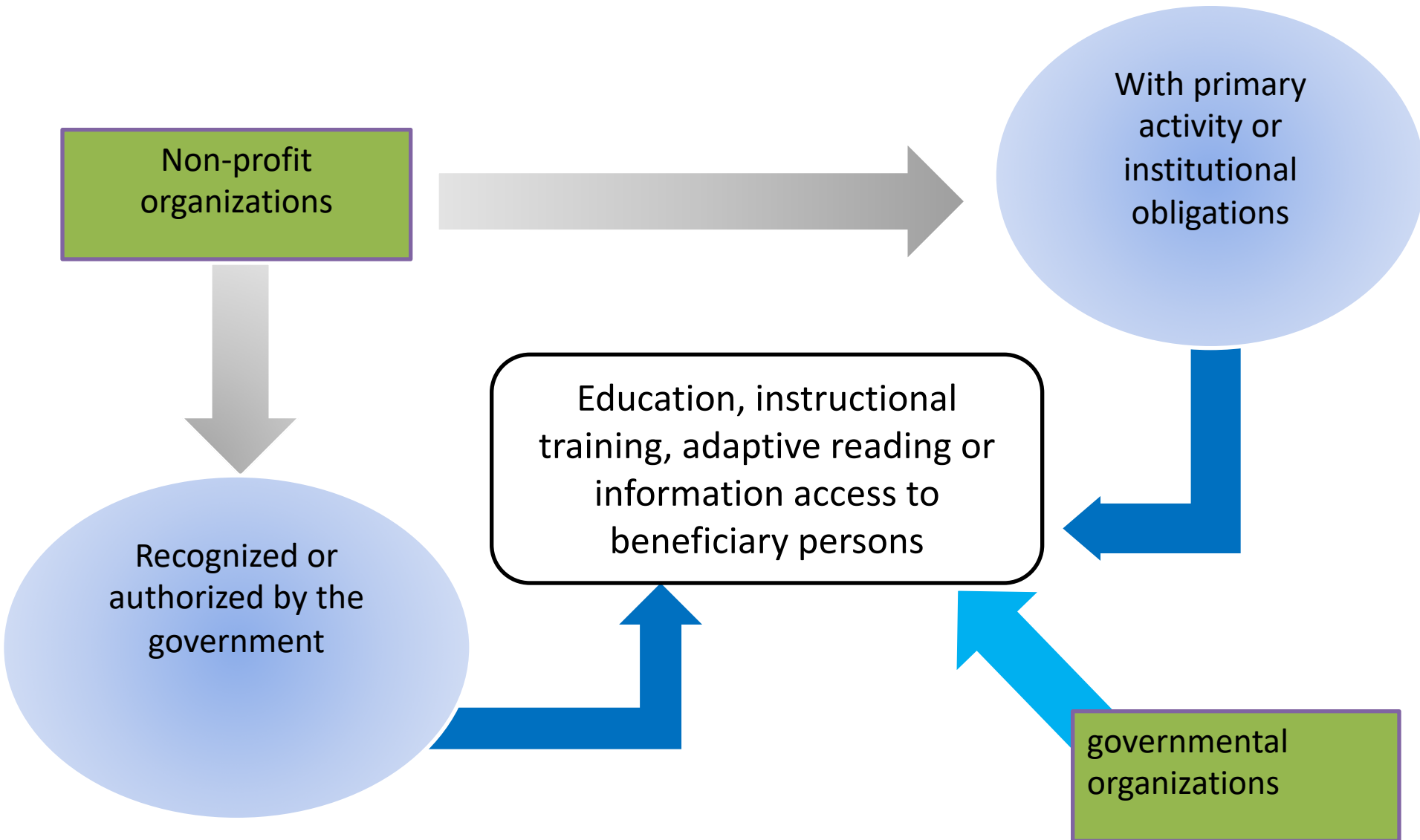
- “accessible format copy” is defined with reference to the **functional activities** that can be carried out by beneficiaries and refers to “permit[ting] the person to have access as feasibly and comfortably as a person without visual impairment or other print disability”. Copies made according to this definition may only be used by beneficiaries.
- Article 2 (b): “...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** .”

Key Provisions – Art. 2(c)

Article 2 (c) – Definitions – authorized entity

- “authorized entity” is a broad definition that encompasses many non-profit and government entities, whether they are specifically authorized by the government or “recognized” by the government (including through receiving funds) as entities that provide many functions including education and information access.
- Authorized entities must establish and follow their own practices in several areas, including **establishing “that the persons it serves are beneficiary persons”**, providing services only to those persons, **discouraging unauthorized uses of copies**, and **maintaining “due care” in handling copies of works**.

The Authorized Entities (Article 2(c))



Key Provisions – Art. 3

Article 3 – Definitions – Beneficiary persons

- “Beneficiary Persons” – This definition was given its own article in order to emphasize its importance.
- Beneficiaries are those persons who:
 - are blind
 - cannot read a printed book due to physical disability
 - have “a visual impairment or perceptual or reading disability which cannot be improved to give visual function substantially equivalent” to persons without these conditions

Key Provisions – Art. 4

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

- Article 4(1) requires Contracting Parties to provide in their national law an exception 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. ”
- Contracting Parties have significant flexibility in how they meet this obligation. Article 4(2) sets forth one way a Contracting Party can comply with Article 4(1), but Article 4(3) provides that Contracting Parties “may fulfill Article 4(1) by providing other limitations or exceptions in [their] national copyright law[s]....”

Key Provisions – Art. 5

Article 5 - Cross-Border Exchange of Accessible Format Copies

- Article 5(1) provides that a Contracting Party must permit an authorized entity to distribute an accessible format copy made under an exception to a beneficiary person or an authorized entity in another Contracting Party.
- In other words, the **domestic copyright law** of a Contracting Party must allow an authorized entity to export an accessible format copy to a beneficiary person or an authorized entity in another Contracting Party.

Key Provisions – Art. 7

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 Treaty.**”
- “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.”

Key Provisions – Art. 11

Article 11 - General Obligations on Limitations and Exceptions

- Article 11 provides that in adopting measures necessary to ensure the application of the Treaty, a Contracting Party **may** exercise its rights and **must** comply with its obligations under the Berne Convention, TRIPS, and the WIPO Copyright Treaty (WCT).
- This part of the article provides more detail regarding the requirements of Article 1, which provides that “[n]othing 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.”

Key Provision – Art. 11 (cont.)

- Article 11 continues by listing four versions of Three-Step Test (TST) from different international copyright agreements, reciting the formulations in the Berne Convention, TRIPS, and Articles 10(1) and 10(2) of the WCT.
- Three elements of the TST: applies to (1) certain special cases that (2) do not conflict with a normal exploitation of the work and (3) do not unreasonably prejudice the legitimate interests of the author or rightsholder.

National Law Enables Transfer Across Borders

- National law limitations and exceptions have to enable cross-border transfer including import and export
- Ratification without national law with cross-border provisions may not be enough
- National laws determine whether cross-border transfer is possible
- Stakeholders want certainty

Cross Border Transfer Analysis

- Topics to consider:
 - Treaty membership
 - Existence and text of national law
 - Interaction of national laws – do they speak to each other?
 - Any special considerations (e.g. other treaty memberships; commercial availability; remuneration)
- Hybrid model for foreseeable future– some countries have joined and some have not

Hybrid Model

- Authorization by Rightsholder not required if the two countries exchanging books have copyright legislation that is consistent with Treaty
- Authorization by Rightsholder is still required if only one country has implemented the provisions of the Treaty

Applying the Three-Step Test

- The TST tries to avoid interference with the marketplace
- Book famine was characterized as a marketplace failure
- Advice for **non-Berne members or the few countries that do not have TRIPS IP obligations AND are not members of the WCT**: include the TST language directly in your limitation or exception

WIPO Marrakesh Activities

- Marrakesh Secretariat activities:
 - Regional MVT programs for copyright officials
 - Regional workshops on implementation with stakeholder organizations
 - Legislative assistance to Member States
 - Information access point on MVT
 - Practical Implementation Projects: ABC

Thank you!



www.wipo.int/copyright

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