Getting Started

Implementing the Marrakesh Treaty for persons with print disabilities

A practical guide for librarians – Canadian Version

IFLA

World Blind Union

eifl
KNOWLEDGE WITHOUT BOUNDARIES

CARL ABRC
CANADIAN ASSOCIATION OF RESEARCH LIBRARIES
ASSOCIATION DES BIBLIOTHÈQUES DE RECHERCHE DU CANADA

UNIVERSITY OF TORONTO
SCARBOROUGH

Getting Started

Implementing the Marrakesh Treaty for persons with print disabilities

A practical guide for librarians

Authored by
Jessica Coates
Christiane Felsmann
Teresa Hackett
Karen Keninger
Francisco Martinez Calvo
Victoria Owen
Anthea Taylor
Katya Pereyaslavska
Flora van den Berg

Edited by
Victoria Owen

Canadian version adapted by:

Mélanie Dumas
Victoria Owen
Mark Swartz
Christina Winter

Getting Started: Implementing the Marrakesh Treaty for persons with print disabilities: A practical guide for librarians

2

Foreword

The *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled* presents an unprecedented opportunity for access to printed works for blind and other print-handicapped persons. Libraries play a key role in facilitating access, and this guide was conceived to enable staff in libraries of all types to take the final, practical steps to deliver materials into the hands of print-disabled readers.

As the former director of library services at Canada's CNIB Library for the Blind and past chair of the International Federation of Library Associations and Institutes (IFLA)'s Copyright and other Legal Matters (CLM) Advisory Committee, I am especially pleased to see that the Marrakesh Treaty enables improved access to printed works and that the beneficiaries include blind and low-vision readers.

The information in this guide is organized as an FAQ (Frequently Asked Questions), answering questions and providing links for further information. It is meant to be a starting point, a template, available for customization in each Marrakesh Treaty country. It is our hope that, once the guide is customized to each country's law, it will be posted on the IFLA website.

This guide was made possible through generous funding from the World Blind Union, the University of Toronto, IFLA and the Canadian Association of Research Libraries (CARL). I am enormously grateful to the funders, my co-authors and other contributors to this guide; together we are working to end the book famine[1] for print-disabled persons worldwide.

Victoria Owen
Chief Librarian
University of Toronto Scarborough
Toronto, Canada
March 2018

---

[1] "There is a global book famine. It is a huge problem. Without books, journals and magazines, people are cut off from life." From The Marrakesh Treaty – Helping to end the global book famine. WIPO 2016

Contents

Praise for *Getting Started*

"When I read a book, two things are essential: choose the right book and read it well. And that is what the Marrakesh Treaty helps me with, to enlarge the number of books I have access to, and to find them all over the world, and in particular, in the best place ever, a library. With this guide, libraries will contribute to make the Marrakesh Treaty dream come true for millions of blind, visually impaired or otherwise print-disabled people."

Bárbara Martín
Second Vice President, European Blind Union (EBU)
Manager of the Technical Office of European Affairs of ONCE

"The Marrakesh Treaty is a crucially important international treaty for persons with print disabilities who have for long struggled with access to books and knowledge. When the Treaty is implemented, the whole library field together can ensure that people with print disabilities will have equal opportunities to read, learn and enjoy literature. This guide offers practical advice for public, academic, special and school librarians on how to achieve that goal worldwide as well as in their own countries."

Kirsi Ylänne
Chair, IFLA Section, Libraries Serving Persons with Print Disabilities
Accessibility Specialist, Celia Library, Finland

"For far too long we, as visually impaired and print-disabled people, have been denied access to reading and learning, which are fundamental to our full and equal participation in education, employment and our communities. The Marrakesh Treaty brings with it the promise to remove the barriers that have hindered our access to books in formats that we can read, and to share what is available with our visually impaired brothers and sisters in developing countries who up until now have been unable to access even the few books that are available. Indeed, we believe that the Marrakesh Treaty is the most significant development in the lives of blind and visually impaired people since the invention of Braille, nearly 200 years ago."

Penny Hartin
Chief Executive Officer
World Blind Union

Getting Started: Implementing the Marrakesh Treaty for persons with print disabilities:
A practical guide for librarians

6

Preface

When member states of the World Intellectual Property Organization (WIPO) adopted the Marrakesh Treaty for persons with print disabilities in 2013, they committed to removing legal barriers to accessing books and other reading material for people who are blind, are partially sighted or have other print disabilities, such as dyslexia. They opened the way to dealing with a key cause of the book famine[2] – the fact that less than 7% of published books[3] are made available globally in accessible formats, such as Braille, audio and large print, and digital DAISY formats.

In September 2016, when the Marrakesh Treaty entered into force, this commitment became a reality for those countries that joined the WIPO-administered treaty. It created an obligation to introduce the changes required by the Treaty into national law.

Since then many countries have been busy bringing their copyright laws into line with the Marrakesh Treaty, either because they are party to the Treaty or because they intend to join the Treaty in the near future. The key changes to the law should ensure that an accessible format copy may be made and supplied to a print-disabled person or an institution, such as a library, within a country or across a national border.

Libraries are central to the success of this ground-breaking Treaty, and librarians have a key role in its implementation. The economic and social benefits will be enormous and will transform information services to print-disabled users.

This is a practical guide for librarians on how to start using the Marrakesh Treaty, and how to make full use of their new rights. It is aimed at libraries of all types and sizes, from specialist libraries already providing services to people with disabilities, to libraries eager to begin such services.

It is mainly aimed at countries that have joined the Marrakesh Treaty, and where national implementation is completed or advanced, so that libraries are ready to offer improved services to print-disabled patrons. When as many libraries as possible take full advantage of the Treaty, they are playing their part in finally ending the book famine.

Teresa Hackett
Copyright and Libraries Programme Manager
EIFL – Electronic Information for Libraries

---

[2] "There is a global book famine. It is a huge problem. Without books, journals and magazines, people are cut off from life." From The Marrakesh Treaty – Helping to end the global book famine. WIPO 2016
[3] From The Marrakesh Treaty – Helping to end the global book famine. WIPO 2016

Important Notes before Starting

- This guide sets out to explain the basic concepts that every country joining the Marrakesh Treaty has to apply. In most countries, however, national law requires an amendment.

- As governments incorporate the Marrakesh Treaty into national law, national implementations may vary slightly. (To promote seamless access globally, IFLA opposes the introduction of unnecessary restrictions.)

- For this reason, this guide should be regarded as an explanation of the general rights that should be available in all countries in which the Marrakesh Treaty has been implemented, rather than as a guide to domestic law.

- To verify how the Treaty is implemented in your country, check with a local copyright librarian or other specialist. If you are unsure or need further advice, contact your national intellectual property or copyright office: http://www.wipo.int/directory/en/urls.jsp.

- If your library is already providing services to people with a broader range of disabilities (e.g., deafness) under national law, joining the Marrakesh Treaty does not affect these services.[4]

- While this guide focuses on uses by libraries, a broad range of institutions, as well as individual beneficiaries, come within the scope of the Marrakesh Treaty and can use its provisions.

- This is an international guide, not a guide to domestic law. Reuse and adaptation to your domestic environment is encouraged.

- Translations into other languages are welcome.

- The guide may be updated from time to time.[5]

---

[4] IFLA opposes any new restrictions on other disabilities.
[5] https://www.ifla.org/copyright

Acronyms

- Acronyms used in the guide:
    - WIPO – World Intellectual Property Organization
    - IFLA – International Federation of Library Associations
    - WBU – World Blind Union
    - DAISY – Digital Accessible Information System

Disclaimer

The information in this document does not constitute legal advice. IFLA assumes no responsibility for information contained in this document and disclaims all liability in respect of such information. If in doubt, seek local legal advice.

The Marrakesh Treaty: The Basics

1. What is the Marrakesh Treaty?

The Marrakesh Treaty (http://www.wipo.int/wipolex/en/details.jsp?id=13169) (accessible format version http://www.wipo.int/wipolex/en/details.jsp?id=14613) is an international treaty adopted in 2013 by member states of the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations. The full title is *The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled*.

It is the first copyright treaty with human rights principles at its core, with specific references to the Universal Declaration of Human Rights and the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

2. What does the Marrakesh Treaty do?

For the first time, it creates an international legal framework that allows the making and distribution of accessible format copies for people with print disabilities, and the sharing of accessible books across national borders. Under the Marrakesh Treaty, people with print disabilities include those who are blind, those who have a visual impairment or a perceptual or reading disability and those who are unable to focus the eyes or to hold or manipulate a book.

3. Why was the Marrakesh Treaty adopted?

The Marrakesh Treaty was adopted to remove copyright barriers that prevented access to print works for print-disabled people. Only about 7% of published works are made available globally in accessible formats, and in the developing world, where 90% of blind and visually impaired people live, the figure is less than 1%.[6] This problem is partly due to obstacles created by copyright law – obstacles that the Treaty seeks to remove.

4. Were libraries involved in developing the Marrakesh Treaty?

Yes.[7] The draft treaty was first proposed to WIPO member states by the World Blind Union (WBU). IFLA and other library partners strongly supported negotiations over more than five years at WIPO, and participated in the Diplomatic Conference in Marrakesh that led to the Treaty's adoption. Individual governments sought advice and commentary from their national blindness and low vision organizations and library associations.

---

[6] From The Marrakesh Treaty – Helping to end the global book famine. WIPO 2016
[7] World Blind Union (WBU) drafted the first version of the Treaty, which was modified during negotiations. WIPO Member States Brazil, Ecuador and Paraguay proposed the treaty at WIPO.

Now librarians are working hard to ensure that the benefits of the Treaty are maximized, and that libraries play their full role in helping to end the book famine for people with print disabilities.

5. What countries have joined the Marrakesh Treaty?

For an up-to-date list of countries that have joined the Marrakesh Treaty, check the WIPO website at http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=843. If your country has ratified the Treaty, the column "in force" will have a date.

6. Who benefits from the Treaty?

Any person with a print disability can benefit from the Treaty.

A print disability can be caused by a visual disability, such as blindness or low vision; a developmental or learning disability, such as dyslexia and autism; or a physical disability, such as Parkinson's disease and paralysis.

The disability does not have to be permanent.[8] Individuals who experience temporary blindness, for example, can benefit for as long as the condition persists.

People with other disabilities, such as deafness, are not covered by the Marrakesh Treaty (although they might be covered under national copyright law). A person who is deaf-blind would qualify under the Treaty.

Libraries and the Marrakesh Treaty

7. How does the Marrakesh Treaty support library services?

Once implemented into national law, the Marrakesh Treaty transforms library services for people with print disabilities:

a. By removing legal barriers to making and sharing accessible format works, it immediately increases the amount of reading material available to print-disabled readers.

b. It saves time, money and effort because libraries can pool their resources within a country, within a region or further afield. Libraries can coordinate the production of works, which results in less duplication where the same book might otherwise be converted multiple times in different countries.

---

[8] WBU Guide, p. 32.

8. Is my library eligible to provide services under the Marrakesh Treaty?

In Canada, any non-profit library or organization[9] that provides services on a not-for-profit basis is entitled to make use of the Treaty when serving patrons with a print disability[10].

9. Is my library obliged to provide services under the Marrakesh Treaty?

The Marrakesh Treaty does not impose an obligation to provide accessible format copies – it simply confers the right to produce, supply, import and export an accessible copy. In other words, the Treaty grants permission to do things that can't be done without permission.

10. What can libraries do under the Marrakesh Treaty?

A library can supply the accessible copy directly to the print-disabled person or to someone acting on their behalf, such as a caregiver.

The library can also supply the accessible copy to, or receive it from, another library or institution in the country or in another country that has joined the Marrakesh Treaty.[11]

A library can produce an accessible format copy of a work, and store and catalogue the work.

11. What works are covered by the Marrakesh Treaty?

Text-based works and notations, such as books, e-books, audiobooks, websites, newspapers, journals and musical scores, are included, as well as related illustrations and images.
{a paragraph was removed here}
Audio-visual works such as films are not covered, although textual works embedded in audio-visual works, such as an educational multimedia DVD, are included.

12. What is an accessible format?

An accessible format is any format that allows a print-disabled person to read the work as comfortably as a person without a disability. Typical examples of accessible formats include Braille, large print and books in audio form; it also includes digital formats such as audio-only DAISY (Digital Accessible Information System) books, full-

---

[9] In the Marrakesh Treaty, entities that provide education, training, adaptive reading or information access are referred to as Authorized Entities.
[10] Copyright Act, R.S.C. 1985, s.32(1)
[11] Additionally, a library can receive accessible format copies from any country regardless of whether the other country has joined Marrakesh or not. In some countries, national law may also allow accessible copies to be sent to countries that have not joined the Treaty, thus expanding the availability of accessible works to print-disabled individuals and libraries wherever they are located. Check your domestic law to see if this might apply. Marrakesh Treaty, article 6; WBU Guide, p. 56.

text DAISY books (highlighted text synchronized with text-to-speech or human narration audio), EPUB3 (e-book format with embedded accessibility features) and LKF (commonly used in Russian-speaking countries).

In addition, documents in common formats such as Word or PDF can also easily be made accessible.

13. How do libraries share accessible works?

There is no one-size-fits-all procedure on how to exchange accessible works between libraries. Exchange workflows will depend on the format of the work and how the person prefers to receive it, the frequency of the requests and the existing infrastructure to deliver such services.

For example, library systems for inter-library document supply might be used, or another secure digital exchange platform.

Exchange mechanisms should be simple and straightforward. For example, online platforms and cloud storage systems can be used to share links to resources between libraries. Current (2019) examples include Box (box.com); Apple's iCloud (icloud.com);Microsoft's One Drive (onedrive.live.com); Google drive (google.com/drive); Dropbox (dropbox.com).

For examples of accessible book services, see question 15.

14. Does my library need to keep records?

Libraries and authorized entities making use of the exception will be required to submit reports of their activities, according to the regulations[12]. At present (2019) there are no regulations regarding reports.

The Treaty is clear, however, that any record-keeping practices are to be established by the libraries, not a government agency. In any event, it is good practice to keep records (as libraries commonly do for other types of transactions), for example, to show that eligible persons and institutions are being served, if and when such information is requested by the competent authorities.

According to the Treaty, libraries establish and follow their own practices regarding matters such as recipients that are eligible to benefit, how to limit the distribution to eligible libraries and persons, how to discourage the distribution of unauthorized copies and how to maintain care in the handling of accessible copies.

The scope of the records on these matters should not differ significantly from those you keep for your other services.

---

[12] Copyright Act, 32.01(6)

The library must also endeavour to respect the privacy of the print-disabled person on an equal basis to others.

It is recommended that best practice guidelines for the provision of accessible services be drawn up in consultation with other providers, and in accordance with national law.

Guidelines should include best practices for establishing the eligibility of beneficiaries, procedures for due care in the production and distribution of accessible formats, and preventing unauthorized uses.

Accessible Book Services

15. What accessible book services already exist, and is my library eligible to participate?

There are services available to Canadian Libraries, such as the following:

National Network for Equitable Library Service: The Canadian Accessible Library System (https://nnels.ca/library).

Canadian Association of Educational Resource Centres for Alternate Format Materials (https://caercanada.ca/).

Alternative Education Resources for Ontario (AERO) (https://pdsbnet.ca/en/schools/w-ross-macdonald/programs-and-services/services/library/alternative-education-resources-for-ontario-aero/).

Centre for Accessible Post-secondary Education Resources BC (CAPER-BC) (https://caperbc.ca/about-us/).

Centre for Equitable Library Service (https://celalibrary.ca/about-us).

Accessible Content ePortal, academic content for Canadian post-secondary institutions (https://ocul.on.ca/node/2192).

International sources include:

The Accessible Books Consortium Global Book Service facilitates an exchange service for accessible-format materials (http://www.accessiblebooksconsortium.org/portal/en/index.html).

Bookshare (https://www.bookshare.org/cms/).

Getting Started: Implementing the Marrakesh Treaty for persons with print disabilities: A practical guide for librarians

14

Services in specific language groups such as TifloLibros for Spanish-language texts (http://www.tiflolibros.com.ar/).

Hathi Trust (https://www.hathitrust.org/accessibility).

Internet Archive (https://archive.org/details/librivoxaudio).

Note: This list is not exhaustive. These organizations may provide services for specific provinces or jurisdictions and/or specific types of libraries. Contact each organization to determine how to become involved.

16. How can I find out about other libraries with accessible collections?

In Canada, there are 3 national library services for people with disabilities.

The Service québécois du livre adapté (SQLA) provides an important collection of accessible books and materials in French. Eligible users must live in Quebec and have a visual, physical or learning disability that prevents them from reading print. The SQLA collection is also available to francophones living outside Quebec through CELA.

The Centre for Equitable Library Service, CELA, https://celalibrary.ca/ will work directly with your public library to provide accessible books and materials. Eligible users must live in Canada and have a visual, physical or learning disability that prevent them from reading print.

The National Network for Equitable Library Service (NNELS) (https://nnels.ca/) is a repository of content owned and sustained by Canadian public libraries. It works with international partners, libraries, readers, and publishers (particularly Canadian ones) to make copies of books in accessible formats available to readers in Canada who have print disabilities.

Resources to assist with identifying and contacting libraries with services for people with print disabilities include IFLA's Libraries Serving Persons with Print Disabilities section (https://www.ifla.org/lpd), Library Services to People with Special Needs section (https://www.ifla.org/lsn) and IFLA section on national libraries for help locating national libraries (https://www.ifla.org/national-libraries).

Sources of accessible books for people with sight loss and print disabilities are compiled by WIPO. The list includes libraries and commercial providers around the world (http://www.accessiblebooksconsortium.org/sources/en/).

Other good sources of information are library associations, library consortia, universities (some of which offer disability support services) and organizations for people with disabilities, including the World Blind Union (www.worldblindunion.org), the International Dyslexia Association (https://dyslexiaida.org/) and their members.

17. How can libraries make their accessible format works discoverable for other libraries?

The creation of a world accessible library was a key ambition of the proponents of the Marrakesh Treaty. Thus, making accessible works discoverable to other libraries around the world is crucial.

The most effective way to achieve this is to make each library's catalog open for searching, and include specific metadata in the catalogue record, such as format type, version/code, file size, etc., in accordance with international cataloguing standards.

It is also recommended that libraries participate in any information or catalogue sharing schemes that operate in their local jurisdiction. If none exist, it may be useful to consider starting one.

In Canada, the legislation[13] sets out the requirements for sharing accessible copies of works with both Marrakesh Treaty Countries and Non-Marrakesh Treaty Countries. For Marrakesh Treaty countries, the burden is on the copyright owner to prove that a commercially available copy existed that could have been used instead of making the copy; for non-treaty countries, the copyright owner is not required to demonstrate this.

18. Can my library charge to provide an accessible book service?

To take advantage of the Marrakesh Treaty, the library must provide the accessible book service on a not-for-profit basis. Cost recovery is permitted in Canada.to cover production and/or distribution costs, when necessary.

19. Do libraries have to pay royalties?

The Marrakesh Treaty does allow countries to decide if copyright holders should be remunerated for the making of a copy. The possibility of the payment of a royalty through regulation[14] exists, however there is no regulation in Canada requiring the payment of a royalty and therefore no royalty is due.

20. Canada has a "commercial availability" check. How does that work?

Canada has a "commercial availability" provision. This means that if there is a book, or other subject matter, available for purchase, in bookstores or online, in a format specifically designed to meet the needs of the person with a perceptual disability, your library cannot make that same book, in the exact format that is for sale, under the exception.

---

[13] *Copyright Act* s. 32.01 (1) to (4)
[14] *Copyright Act* s.32.01(4)

To check on commercial availability, your library will conduct a search to determine if the work, or other subject matter, is available for purchase in the exact format that you plan to produce.

If the work you are planning produce is commercially available in another country, in in a format specifically designed to meet the needs of the person with a perceptual disability, within a reasonable time, for a reasonable price, and may be located in that country with reasonable effort, your library may not be authorized to produce the work. If your library is planning to produce a work in a specific format, and the work is available in a different format, your library may proceed with the production of the work.

Working with Accessible Formats

21. There's a digital lock on the non-accessible work. Can I remove it?

Under the Marrakesh Treaty, countries are required to ensure that digital locks do not prevent those with print disabilities from using or accessing a book. Canada permits the circumvention or breaking of a digital lock to enable a person with a perceptual disability or a non-profit library to benefit from the exception.

In Canada, a digital lock or other copy control system that interferes with the making of the accessible format copy, can be legally removed.

22. The e-resource licence doesn't allow the library to copy or distribute a work. What can I do?

The Treaty is silent on the relationship between licences and copyright exceptions, so whether you can go ahead and make an accessible copy depends either on general terms in the licence or on your copyright law.

First, check if the e-resource licence contains a general clause stating that nothing in the licence limits the licensee's rights under national or international law (or something similar). If it does, then you can rely on your national exceptions regardless of any usage restrictions in the licence.

If the license terms do not have that general clause, the licence takes precedence over the law and you must abide by the terms of the licence.

While Canada is silent on this issues, the good news is that a number of countries have protected their exceptions from such override by licence terms, thus allowing copies to be made in accordance with copyright law. Notably, the European Union implementation of the Marrakesh Treaty does just that; EU member states must ensure that the exception allowing the making of accessible format copies cannot be overridden by a licence. Libraries may work within international networks to

acquire accessible works from jurisdictions where licences do not override the exception.

Further reading

Creating Accessible Formats

23. Where do I find information on creating accessible format documents?

Bookshare has created a helpful guide to creating accessible formats at https://benetech.org/about/resources/.

DAISY Consortium has authoring and production tools at http://www.daisy.org/tools/production.

Other Marrakesh Guides

24. Are there other guides to the Marrakesh Treaty?

Yes, EIFL created an advocacy guide for libraries: http://www.eifl.net/resources/marrakesh-treaty-eifl-guide-libraries-english

The World Blind Union created a guide to the legal framework of the Marrakesh Treaty: http://www.worldblindunion.org/English/our-work/our-priorities/Pages/WBU-Guide-to-the-Marrakesh-Treaty.aspx

(e-version format) WBU guide

The United Nations Development Programme produced a guide titled *Our Right to Knowledge* with versions in accessible formats of electronic Braille, DAISY, audio (MP3): http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/our-right-to-knowledge--legal-reviews-for-the-ratification-of-th.html

Acknowledgements

Thank you to all who contributed to this *Getting Started* guide:

Ingvild Aanensen
Diego Anthoons
Jonathan Band
Saskia Boets
Vincent Bonnet
Donna Bourne-Tyson
Chris Corrigan
Melanie Dumas
Jim Fruchterman
Sarah Guay
Susan Haigh
Penny Hartin
Nina Kassis Adamo
Hiroshi Kawamura
Dick Kawooya
Lina Kouzi
Koen Krikhaar
Kari Kummeneje
Patricia LaCivita

Jelena Lešaja
Mike L. Marlia
Ariadna Matas
Bárbara Martin Muñoz
Denise Nicholson
Kristina Passad
Geert Ruebens
Winston Tabb
Brad Turner
Pentti Vattulainen
Lisa Wadors
Nancy Weiss
Stephen Wyber
Zhang Xuechan
Ma Yan
Kirsi Ylänne
Yasmine Youssef
Sha Yunke

Getting Started: Implementing the Marrakesh Treaty for persons with print disabilities:
A practical guide for librarians

19