



The Scope of Copyright Protection in Light of the Right of Persons with Disabilities to Access Protected Works

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Abstract

The subject addresses the balance between the protection of authors' rights and ensuring the right of persons with disabilities to access protected works. Although authors enjoy legal rights over their works, such protection is subject to certain exceptions justified by considerations of public interest, including enabling persons with disabilities to access works in accessible formats, such as Braille, audio recordings, and accessible digital books. This exception aims to ensure equality in access to knowledge, culture, and education, while at the same time safeguarding the legitimate interests of authors and preventing undue prejudice to the normal exploitation of the work. Accordingly, the legal framework seeks to strike a balance between authors' rights and the right of persons with disabilities to access knowledge.

Keywords: Authors' Rights; Persons with Disabilities; Protected Works; Intellectual Property; Access; Exceptions.

Introduction

Copyright laws provide authors with adequate protection for the rights arising from their intellectual, literary, and artistic creations throughout the world. This protection is established through a set of legal rules and mechanisms designed to safeguard their works and enable them to benefit from the fruits of their creativity, while limiting different forms of infringement or unauthorized exploitation. However, although such protection is essential for safeguarding authors' rights and encouraging creativity, it has also constituted an obstacle for persons with special needs, particularly blind persons, persons with visual impairments, and others whose disabilities prevent them from reading printed materials in the ordinary manner. The application of copyright rules to published works has consequently limited the possibility of reproducing them or converting them into accessible formats suited to the needs of these groups. This has resulted in a significant shortage of opportunities to access books and published works, thereby restricting the



ability of these members of society to benefit from the knowledge, culture, and information available to other members of the public.

In this context, the World Blind Union reported that, before 2013, no more than 7% of published books were made available to blind persons, persons with visual impairments, and persons with other print disabilities in developed countries, whereas the proportion was less than 1% in developing countries. This reflects the scale of the gap between available intellectual production and the ability of this group to access and benefit from it.

To address this situation and reduce the difficulties faced by persons with disabilities in accessing published works, the international community sought to establish a balance between the protection of copyright, on the one hand, and the right of persons with disabilities to access knowledge and culture, on the other. In this context, the member states of the World Intellectual Property Organization (WIPO) adopted the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The Treaty was adopted in response to the need to remove legal barriers that prevented the production of works in accessible formats and their availability to beneficiary persons.

The adoption of the Treaty represented an important step toward enhancing the ability of this group to benefit from protected works by permitting certain acts that would ordinarily fall within the exclusive rights of the author, where those acts are intended to enable persons with disabilities to access and use works in accordance with the prescribed legal conditions and safeguards.

Accordingly, the Marrakesh Treaty constitutes an important legal basis for limiting certain forms of copyright enforcement in the interests of persons with disabilities. It does so by establishing exceptions and limitations designed to achieve a balance between protecting the legitimate interests of rights holders and ensuring access to works for groups whose disabilities prevent them from benefiting from works in their original form. Within this framework, the accessible-format exception is one of the principal mechanisms allowing works to be converted into formats that blind persons and persons with print disabilities can use, thereby contributing to their right to access knowledge, culture, and education.

This raises the following research question: How can the principle of exclusive copyright protection be reconciled with the requirements of access to protected works for persons with disabilities in light of the exceptions to copyright?

To answer this question, the study first examines the legal basis for limiting copyright in favor of persons with disabilities and the framework established by the Marrakesh Treaty in this field. This is addressed in the first section. The study then examines the accessible-format exception, including its concept, conditions, and scope of application in copyright law, in the second section.



Part One: The Legal Framework for the Right of Persons with Disabilities to Access Protected Works

The absence, in many WIPO member states, of legislation limiting copyright in order to enable persons with special needs to access published works more easily was one of the reasons that prompted WIPO to adopt the Marrakesh Treaty.

Section One: The Marrakesh Treaty to Facilitate Access to Published Works for Persons with Special Needs

One hundred and eighty-six WIPO member states participated in the process leading to an international treaty intended to serve persons with special needs, following discussions among member states over the course of a full year before agreement was reached to conclude the Treaty at the diplomatic conference of the international copyright organization held in Marrakesh, Morocco, in July 2013.

The Treaty was concluded in response to statistics presented by the World Health Organization concerning the number of persons with visual impairments and the continuing increase in the phenomenon. According to the cited figures, more than 285 million people worldwide had visual impairments, including 39 million who were completely blind.

The Treaty took into account obstacles affecting the full development of persons with visual impairments and sought to promote their freedom in various fields, including freedom of expression and education (Khatab, 2024, p. 347).

The Marrakesh Treaty was signed on 27 June 2013 and entered into force on 30 September 2016, following the deposit of the instruments of ratification or accession by 20 parties with the Director General of WIPO. India was the first country to ratify the Treaty, on 24 July 2014. By 15 October 2018, 80 countries had signed it and 117 had ratified it, including 28 European Union member states; it entered into force throughout the European Union on 1 January 2019. By 20 February 2023, the Treaty had 92 contracting parties out of 118 countries that had ratified or acceded to it. Examples cited include Canada, Jordan, and Japan (WIPO, 2013). Tunisia ratified the Treaty pursuant to Presidential Order No. 78 of 2016 (Presidential Order No. 78, 2016). Algeria, however, had not acceded to the Treaty at the time of writing, nor had Egypt.

The Marrakesh Treaty is regarded as the first treaty in the field of copyright specifically addressing the protection and access needs of persons with special needs. It establishes a legal regime based on a clear human-rights perspective, particularly with respect to persons with disabilities.

The Treaty reflects the principles embodied in Article 1 of the Convention on the Rights of Persons with Disabilities, which calls for the protection of the rights of all persons with disabilities and their full and equal enjoyment of human rights and fundamental freedoms, together with respect for their inherent dignity. Article 9 of that Convention establishes the principle of enabling



persons with disabilities to live independently and participate in all areas of life by requiring States Parties to ensure accessibility to the physical environment, transportation, information and communications, and other facilities and services open to the public in both urban and rural areas (Ait Qassi, 2021, p. 56).

Empowerment may be understood as the power acquired by persons with special needs to deal with different situations (Ibrahim et al., 2022, p. 34). Burke, Lee, and Rios classify empowerment into three levels:

- Empowerment as a personal characteristic: helping persons with special needs make changes in their lives and take decisions on the basis of their own abilities.
- Empowerment as a social characteristic: supporting social skills and external social orientations.
- Empowerment as political power: collective action in the public sphere, including action by small groups seeking to influence political decisions (Burke et al., 2019, p. 969).

In practice, persons with special needs should be empowered in several fields, including psychological, economic, educational, and social empowerment. Psychological empowerment gives this group greater freedom and responsibility for their activities, thereby releasing their talents and latent abilities and encouraging creativity and self-confidence. Economic empowerment improves the capacities of persons with special needs so that they can obtain sufficient income for a dignified life. Educational empowerment provides students with disabilities with opportunities for reading and writing in order to increase their knowledge and develop their intellectual capacities. Social empowerment helps persons with disabilities understand their rights, the rights of their families, and their rights as members of society (Ibrahim et al., 2022, p. 34).

The purpose of empowerment is therefore to remove barriers preventing persons with disabilities from enjoying their rights and to provide an environment conducive to their education, including accessible reading formats, sign-language interpretation, assistance, and support in all fields.

The Marrakesh Treaty consists of a preamble and 21 articles and aims to reduce the shortage of books—sometimes described as a 'book famine'—because of the severe scarcity of published books in formats accessible to persons with disabilities, such as Braille or large-print editions. It also seeks to increase access to education by supporting sign-language learning and the education of blind or deaf children through specialized teachers proficient in sign language or Braille. The right to education is legally protected throughout life and across educational and training pathways, and persons with disabilities must not be denied that right. States are required to enable them to obtain compulsory and free education and to monitor the development of their education (Mohamed, 2021, p. 26).



The Treaty also seeks to integrate persons with disabilities into social life and cultural participation and to promote their cognitive integration through sensory-motor and sporting activities inside and outside school, accessible guidance materials for persons with hearing impairments, assistive devices for sensory and physical disabilities, and suitable environments for all forms of disability. In this way, persons with disabilities are given opportunities to participate fully in cultural development, both as consumers and as creators (Mahmoud, 2008, p. 198).

Several foreign legal systems have also addressed this exception. French legislation adopted the limitation in the Law of 1 August 2006, whose Article L.122-5(7) permits literary works to be reproduced in Braille. This made it lawful for institutions open to the public, such as libraries and document-preservation centers, to reproduce and distribute works in formats enabling persons with disabilities to consult them personally. The law also allowed such institutions to obtain digital copies of works within two years following the legal deposit of printed works.

German legislation of 10 September 2003 likewise permitted the use of protected works for persons with disabilities for non-commercial purposes, while allowing authors to receive remuneration for such uses. The European Directive of May 2001 also included this limitation, allowing member states to authorize the use of protected works by persons with disabilities without specifying a particular type of disability or making the limitation subject to particular conditions (Ammar, 2011, pp. 108–111).

Section Two: Mandatory Measures Arising from the Marrakesh Treaty

The Marrakesh Treaty requires States Parties to fulfil two principal obligations when implementing it at the national level.

First: The obligation to make accessible-format copies available to persons with special needs

Under Article 4(1)(a), States Parties that have ratified the Treaty are required to provide in their national copyright legislation for limitations on copyright by permitting the reproduction, distribution, and making available to the public of accessible-format copies for the benefit of persons with disabilities. Article 4(1)(b), by contrast, permits states to authorize public performance where necessary to facilitate access.

The mandatory character of Article 4(1)(a) follows from the term 'shall' used at the beginning of the provision. National legislation must therefore provide for the three rights of reproduction, distribution, and making available to the public. Public performance, however, is optional. This demonstrates the particular importance of the reproduction right in making works accessible to persons with special needs (WIPO, 2013).

There is a distinction between accessible-format reproduction and reproduction for personal use. Accessible-format reproduction targets a specific group—persons with visual and other print disabilities—whereas personal-use reproduction is directed toward the public generally. Personal-



use reproduction ordinarily serves the individual who makes the copy, for example for research or study, while accessible-format reproduction serves persons with special needs and recognizes their right to participate freely in cultural life. Personal-use copying may involve remuneration payable to the author, whereas accessible-format copying is generally free because of its humanitarian and social purpose. Nevertheless, Article 4(5) of the Marrakesh Treaty permits States Parties to determine in their domestic legislation whether a fee may be imposed. Both forms of copying are nevertheless directed toward non-commercial use and do not authorize exploitation of the work (Ait Qassi, 2021, p. 58).

Second: The obligation to facilitate cross-border exchange of accessible-format copies

Article 5 of the Treaty addresses this obligation through five paragraphs. The first requires a contracting party to provide in its national copyright law for the exchange of accessible-format copies by allowing an authorized entity in one member state to distribute or make accessible-format copies available in another member state, provided that the activity is exclusively for the benefit of an eligible beneficiary.

The second paragraph allows contracting states to authorize an entity in one member state, without permission from the rights holder, to distribute an accessible-format copy to or make it available to another authorized entity in another member state for the exclusive use of beneficiary persons with disabilities. It may also permit an authorized entity to distribute or make an accessible-format copy available for the benefit of a person who is not the original beneficiary in another contracting state, provided that the originating authorized entity did not know before distribution that the copy would be used by persons outside the beneficiary group.

Article 5(4) further provides that when an authorized entity in a member state supplies accessible-format copies to a party that is not bound by the Berne Convention, it must ensure that the recipient reproduces and distributes the works exclusively for eligible beneficiaries within that party's jurisdiction. Domestic law may also provide that distribution and making available to the public must be limited to special cases that do not conflict with the normal exploitation of the work (WIPO, 2013).

To comply with this obligation, the Treaty calls for international cooperation in facilitating cross-border exchange through four principal mechanisms: encouraging voluntary information sharing to enable authorized entities to identify one another and facilitate exports and imports; requiring contracting parties to assist their authorized entities in carrying out export and import functions and combating the book famine; inviting the WIPO International Bureau to share available information concerning implementation of the Treaty; and requiring national legislation to recognize the importance of international cooperation in facilitating access to accessible-format copies and the humanitarian purpose of such exchanges (WIPO, 2013).



Part Two: Application of the Accessible-Format Exception for Persons with Special Needs

The Marrakesh Treaty requires its members to establish an accessible-format exception in their domestic legislation for the benefit of persons with disabilities. It explains the implementation of this exception through two principal dimensions: its scope of application and the conditions governing its use.

Section One: Scope of the Accessible-Format Exception for Persons with Disabilities

The Marrakesh Treaty defines the scope of this limitation by identifying the persons who benefit from the exception, the works subject to accessible-format reproduction, and the means through which the exception may be implemented.

First: Persons eligible for accessible-format reproduction

Before the Marrakesh Treaty resolved the question of eligible beneficiaries, debate arose concerning which disabilities should permit access to accessible-format copies. One view limited the exception to sensory disabilities involving hearing, sight, or speech and to cognitive impairments, whether affecting children or adults. Another view extended the exception to persons with physical or mobility disabilities.

Accordingly, legal scholarship developed two approaches. The first limits the benefit to persons with hearing and visual impairments, excluding persons with mobility disabilities on the grounds that some mobility difficulties can be overcome through the use of partially functioning limbs. The second includes all forms of disability, including mobility impairments, because many individuals cannot even hold books, read them, or turn their pages (Kanaan, 2009, pp. 246–247).

On this basis, the study considers that the exception should cover all types of disability and should also extend to actors dealing with persons with disabilities, such as libraries and specialized publishers. Following adoption of the Marrakesh Treaty, Article 3 expressly identified categories of eligible beneficiaries (Ammar, 2011, p. 109).

The Convention on the Rights of Persons with Disabilities defines persons with disabilities as those who have long-term physical, mental, intellectual, or sensory impairments that, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others (Ahmed & Shaheen, 2021, p. 308). Algerian legislation defines this group in Article 2 of Law No. 02-09 concerning the protection and promotion of persons with disabilities, considering a person with a disability to be any individual, regardless of sex or age, who has one or more congenital or acquired disabilities that prevent them from performing several daily activities as a result of impairment of mental or physical functions (Law No. 02-09, 2002, Art. 2).

The categories identified by the Marrakesh Treaty include blind persons, who have completely lost their visual capacity and rely on other senses for learning, partially sighted persons who experience serious visual difficulties, particularly in distance vision, and persons unable to



perceive or read. A third category consists of persons unable to move because of neurological or muscular disorders that prevent them from holding or using books or moving their eyes, among other forms of disability (Al-Otaibi, 2014, pp. 17–23). The wording indicates that the exception may encompass all forms of disability, including intellectual disabilities arising from functional impairments of the brain, such as reduced concentration or learning difficulties, and hearing disabilities involving severe hearing loss (Louni, 2022, p. 1122).

Second: Works covered by accessible-format reproduction

The Marrakesh Treaty applies to literary, artistic, and scientific works, provided that they are expressed through text, notation, or related graphic representations that enable persons with disabilities to benefit from them. This applies whether the works are published or otherwise made available to the public and regardless of whether they are embodied in traditional or electronic media. Printed books, online books, newspapers, magazines, illustrated stories, audio and electronic books, web pages, and similar works therefore fall within its scope, provided that an accessible format facilitates their use by persons with disabilities (Ait Qassi, 2021, p. 59).

Under Article 4(1), the exceptions may be limited to accessible-format works that are not commercially available, at the option of the member state. Thus, a member state may decide whether to include works that are commercially available. If the exception is restricted to works unavailable commercially, works that can be obtained commercially remain within the ordinary scope of copyright protection even if an accessible version has been prepared for persons with visual disabilities. Domestic legislators must therefore respect the Treaty and enact rules consistent with its principles (Obeidat, 2015, p. 258).

The Treaty recognizes several methods of making works accessible, and these methods vary according to the type of disability. Braille is a principal method for persons with visual impairments. It is a tactile writing system consisting of six-dot cells representing letters and symbols; it is used by blind persons for reading, writing, and communication through touch (Munib et al., 2023, p. 418).

Braille is also regarded as an appropriate educational approach for improving vocabulary acquisition among beginning blind students through graduated instruction, repetition, and direct practice with Braille texts (Abd Al-Saad, 2025, p. 44).

The system was invented by Louis Braille, who was born in France in 1809. He lost his sight completely at the age of three following an accident involving a knife while playing. His father initially represented letters for him by driving nails into a wooden board. Braille later attended school, became a music teacher specializing in piano, and before reaching the age of 20 developed the raised-letter system that became known by his name and was subsequently adopted worldwide for educating blind persons (Hamaia & Bekhit, 2022, p. 1204).



Braille has made educational books available in accessible form in many libraries. Technological development has also produced talking books on cassette or CD, large-print materials, reading devices, and closed-circuit television systems.

For persons with language or communication disabilities, accessible media may include films accompanied by written explanations, photographs, transparencies, and sign-language services provided by interpreters for deaf persons. Persons with physical or mobility disabilities may use accessible copies through various methods, provided that libraries create an appropriate environment—for example, shelves should be accessible and wheelchair users should be able to move between them (Hassan, 2016, p. 244). Libraries should provide knowledge resources for these groups, support specialized curricula, and encourage research activities that develop their reading and learning abilities (Salah, 2021, p. 11).

France experimented with this approach in 2010 by establishing an electronic platform for transferring digital works and supplying them to libraries serving persons with disabilities in formats adapted for learning. According to library statistics for 2017–2018, approximately 300 libraries had been able to interact with the platform (Khatab, 2024, p. 349).

Technological development has further expanded accessible reproduction. Braille systems have been incorporated into various devices, including computerized Braille devices capable of converting web pages into Braille for reading and writing, adjustable magnifying lenses for persons with low vision, Braille printers, translation software, screen readers, and other assistive technologies (Hassan, 2016, pp. 246–247).

Section Two: Conditions for Applying the Accessible-Format Exception for Persons with Special Needs

Legal recognition of the right of persons with visual or physical disabilities to consult works made available in accessible formats is accompanied by safeguards. These safeguards are necessary to ensure that the exception operates as a limitation on copyright without becoming an unjustified infringement.

First: Safeguards concerning accessible-format works

The law requires works to be capable of conversion. In order to benefit persons with disabilities, a published work must be converted from its ordinary readable form into a form suited to persons with visual, mobility, or intellectual disabilities through the special formats discussed above.

These conversions are the basis for enabling beneficiaries to use the work because they make its content perceptible to persons who could not otherwise access it. The modifications must therefore remain consistent with the author's moral rights and must not alter the original content or meaning.



The accessible-format work should also bear a notice indicating that the adapted version is intended exclusively for persons with special needs and that copyright in the work remains protected, whether the accessible version is digital or audio. The notice should identify the source of the copy, the name of the rights holder, the title, edition, and publisher. It should also include a legal warning that the work may not be distributed or reproduced by any means, because such conduct would constitute copyright infringement and could give rise to legal liability. The purpose of permitting the reproduction is personal, non-commercial use by persons with disabilities (Obeidat, 2015, p. 253).

Second: Safeguards concerning qualified entities authorized to make works available

Authorized entities play an important role in distributing accessible-format copies, facilitating their exchange between member states, and ensuring that they reach beneficiaries. Article 2(c) of the Marrakesh Treaty identifies entities qualified to prepare accessible-format copies for international access. These include accredited or recognized non-profit entities that provide educational and training services to assist persons with special needs in overcoming barriers in daily life, such as rehabilitation centers and talking libraries.

It also includes governmental non-profit entities that have not been established specifically for this purpose but are prepared to provide similar services to persons with disabilities as part of their activities, as well as for-profit entities that use public funds to provide free services to persons with disabilities (Ait Tefati & Berri, 2022, p. 184).

The law requires an authorized entity to have lawful access to the work. Member states must therefore include domestic provisions permitting an authorized entity in one member state to transfer a work to another authorized entity and make it available in an accessible format without permission from the rights holder, including by obtaining a pre-existing accessible copy for another authorized entity (Hawas, 2022, p. 21). The Treaty gives examples such as non-commercial lending and electronic transfer by wired or wireless means (WIPO, 2013).

To achieve these objectives, the authorized entity must comply with several conditions:

- It must obtain the work to be converted lawfully; otherwise, the act would constitute an infringement of copyright.
- The converted work must contain the means and features necessary to make it usable in the designated accessible format.
- The activities of the entity must be based on humanitarian, non-profit considerations, and accessible-format copies should be supplied free of charge, at a symbolic price, or at cost, depending on the entity's capabilities (Obeidat, 2015, p. 255).
- The entity must respect the principle of non-interference with the author's rights when converting the work into Braille or another accessible format so that the original character of the work is not distorted.



- Under Article 11 of the Marrakesh Treaty, the entity must make accessible-format copies consistently with the three-step test in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works (WIPO, 2013).

Third: Safeguards concerning beneficiaries

Use of the accessible-format work must be restricted to persons with disabilities. This is an essential condition because the exception exists specifically for this group. The Marrakesh Treaty therefore requires member states to ensure that the beneficiary is actually a person within the eligible category; otherwise, the authorized entity may incur legal liability (Ait Qassi, 2021, p. 63).

Conclusion

Copyright protection cannot be established at the expense of the right of persons with disabilities to access protected works. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled seeks to establish this balance through mechanisms and exceptions that facilitate access to works in accessible formats, thereby reconciling intellectual-property protection with the right to culture and knowledge.

The study reached the following principal findings:

- Enabling persons with disabilities to access protected works embodies the principle of equality and their right to benefit from culture, education, and knowledge.
- The Marrakesh Treaty has strengthened protection of this right by facilitating the preparation of works in accessible formats.
- Reconciling copyright with the rights of persons with disabilities requires clear exceptions allowing access to works without unjustifiably affecting the author's moral and economic rights.
- The effectiveness of this protection remains dependent on the practical application of legal provisions and the availability of technical and institutional means that enable persons with disabilities to access works effectively.

Recommendations:

- Provide protected works in accessible formats, including audio and digital formats, according to the needs of persons with disabilities.
- Support libraries and educational and cultural institutions so that they can provide accessible works to this group.
- Establish clear mechanisms governing the use of exceptions for persons with disabilities while preserving authors' rights.
- Strengthen cooperation between bodies responsible for copyright protection and institutions concerned with persons with disabilities to ensure the effective implementation of these rights.

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