

# Marrakesh Treaty Questionnaire – Trinidad and Tobago

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**1. Please indicate the relevant provisions in your national legislation providing for or regulating the limitations and exceptions to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled.**

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<p><b>Section 3(c) of Act No. 14 of 2020</b> provides, “Section 3 of the Act is amended in the definition of “infringing copies”, by inserting after the words “sound recording” wherever it appears, the words “, audiovisual fixation” and by inserting after the words “12,”, the words “12A,;”</p>	<p>The term “infringing copies” is now defined as “<i>infringing copies</i>” means</p> <p>(a) an article, the making of which constitutes an infringement of the copyright work, performance, sound recording, <b>audio-visual fixation</b> or broadcast;</p> <p>(b) an article, which if it had been imported or is proposed to be imported into Trinidad and Tobago and its making in Trinidad and Tobago would have constituted an infringement of the copyright in the work in question or infringement of neighbouring rights in the performance, sound recording, <b>audio-visual fixation</b> or broadcast or a breach of a licence agreement relating to that work, performance, sound recording, <b>audio-visual fixation</b> or broadcast; and</p> <p>(c) any other copy falling to be treated as an infringing copy, it not having been made in accordance with the provisions of sections 9, 10, 11,12,<b>12A</b>,13, and 14;”</p>	<p><u>Article 4(2)(a) of the Marrakesh Treaty</u> provides that, “A Contracting Party may fulfil Article 4(1) for all rights identified therein by providing a limitation or exception in its national copyright law such that:</p> <p>(a) Authorized entities shall be permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:</p> <p>(i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;</p> <p>(ii) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;</p>

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		<p>(iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and</p> <p>(iv) the activity is undertaken on a non-profit basis;”</p>
<p><b>Section 3(e) of Act No. 14 of 2020</b> provides, “circumventing technological protection measures” means avoiding, bypassing, removing, deactivating or impairing technological protection measures, including descrambling a scrambled work or decrypting an encrypted work;</p>	<p>Technological protection measures (“TPMs”) are technical means of protection technology or device, that are used by copyright owners to prevent or restrict certain acts which are not authorized by the owner or permitted by law. These measures control unauthorized copying, transmission and use of the works. TPMs include encryption, password protection, digital padlocks for digital books (used by publishers to prevent a digital book from being passed or accessed illegally).</p> <p>Circumventing refers to manipulating the TPM so as to limit or eliminate the function it was designed to perform. This includes avoiding, bypassing, removing, deactivating or impairing a TPM without the permission of the copyright holder.</p>	<p><u>Article 7 of the Marrakesh Treaty</u> provides that, “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.”</p>
<p><b>Section 3(e) of Act No. 14 of 2020</b> provides, ““technological protection measures” means any technology, device or component that, in the normal course of operations, is designed to prevent or restrict acts, in respect of works or objects of neighbouring rights,</p>	<p>Technological protection measures (“TPMs”) are technical means of protection technology or device, that are used by copyright owners to prevent or restrict certain acts which are not authorized by the owner or permitted by law. These measures control unauthorized copying, transmission and use of the works. TPMs include encryption, password protection, digital</p>	<p><u>Article 7 of the Marrakesh Treaty</u> provides that “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.”</p>

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<i>which are not authorised by the owner of the rights or permitted by law;”</i>	padlocks for digital books (used by publishers to prevent a digital book from being passed or accessed illegally).	
<p><b>Section 3(e) of Act No. 14 of 2020</b> provides, “<i>“technological protection measures circumvention device” means a device or means that— (a) is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of technological protection measures; and (b) has only a limited commercially significant purpose or use other than to circumvent technological protection measures;”</i>”.</p>	<p>A technological protection measures circumvention device is a device that is designed, produced or adapted for the purpose of enabling or facilitating the circumvention of TPMs for example, software, firmware or microchips.</p>	<p><u>Article 7 of the Marrakesh Treaty</u> provides that “<i>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.</i>”</p>
<p><b>Section 5 of Act No. 14 of 2020</b> (“Authorized entity”) provides, “<i>12A. (1) For the purposes of this Act, the Minister may, by Order, designate an entity which provides education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis as one of its primary activities or institutional obligations, as an authorised entity.</i>”</p>	<p>Section 12A(1) states that the Minister may designate an authorised entity.</p> <ul style="list-style-type: none"> <li>▪ NALIS has been identified as an authorised entity.</li> </ul>	<p>section 12A(2) is in keeping with <u>Article 4(2)(a) of the Marrakesh Treaty</u>:</p> <p><i>A Contracting Party may fulfil Article 4(1) for all rights identified therein by providing a limitation or exception in its national copyright law such that:</i></p> <p><i>(a) Authorized entities shall be permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to</i></p>

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<p>(2) Notwithstanding section 8, an authorised entity, upon satisfying the conditions in subsection (3), may— (a) undertake the changes in the work that are necessary, including adapting and transforming the work, to create an accessible format copy;</p> <p>(b) reproduce, distribute, communicate to the public by any means, or lend, an accessible format copy or supply the accessible format copy to another authorised entity or to a beneficiary person;</p> <p>(c) export an accessible format copy to an authorised entity or beneficiary person located in a country which is a party to the Marrakesh Treaty; and</p> <p>(d) obtain, or import, from another authorised entity, an accessible format copy, without the need to seek authorisation from the author or other owner of copyright and without infringing any copyright in such works.</p>		<p>achieve those objectives, when all of the following conditions are met:</p> <p>(i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;</p> <p>(ii) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;</p> <p>(iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and</p> <p>(iv) the activity is undertaken on a non-profit basis; and</p> <p>section 12A(2)(b) is in keeping with: <u>Article 5 Marrakesh Treaty</u> which provides, “1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party.</p> <p>2. A Contracting Party may fulfill Article 5(1) by providing a limitation or exception in its national copyright law such that:</p> <p>(a) authorized entities shall be permitted, without the authorization of the rightholder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party; and</p> <p>(b) authorized entities shall be permitted, without the authorization of the rightholder and pursuant to Article 2(c),</p>

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<p><i>(3)The following conditions shall be satisfied to enable an authorised entity to facilitate the availability of works in accessible format copies:</i></p> <p><i>(a) the authorised entity shall have lawful access to the work or copy of the work used to create an accessible format copy;</i></p> <p><i>(b) an accessible format copy shall respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary person;</i></p> <p><i>(c) the work being converted to an accessible format copy may include any means needed to navigate information in the accessible format, but shall not introduce changes other than those necessary to make the work accessible to the beneficiary person;</i></p> <p><i>(d) the activity shall be undertaken on a non-profit basis and if an authorised entity</i></p>		<p><i>to distribute or make available accessible format copies to a beneficiary person in another Contracting Party; provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons.”</i></p> <p><u>Article 6 of the Marrakesh Treaty</u> provides, “<i>To the extent that the national law of a Contracting Party would permit a beneficiary person, someone acting on his or her behalf, or an authorized entity, to make an accessible format copy of a work, the national law of that Contracting Party shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder.”</i></p> <p>section 12A(3) is in keeping with <u>Article 4(2)(a) of the Marrakesh Treaty</u>.</p> <p>section 12(A)(4) is in keeping with <u>Article 2(d) of the Marrakesh Treaty</u> which provides, “<i>An authorized entity establishes and follows its own practices:</i></p> <p><i>(i) to establish that the persons it serves are beneficiary persons;</i></p> <p><i>(ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;</i></p> <p><i>(iii) to discourage the reproduction, distribution, making available of unauthorized copies; and</i></p>

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<p><i>charges for supplying an accessible format copy, the sum charged shall not exceed the cost of making and supplying the copy and a reasonable contribution to the general expenses of the authorised entity, with no element of profit;</i></p> <p><i>(e) the source of the work reproduced and the name of the author shall be indicated as far as practicable on all accessible format copies; and</i></p> <p><i>(f) accessible format copies shall be supplied exclusively to be used by beneficiary persons or other authorised entities.</i></p> <p><i>(4) An authorised entity shall establish procedures to ensure that the accessible format copies are used only by beneficiary persons and to avoid unauthorised reproduction, distribution and communication to the public and public lending of the works or accessible format copies.</i></p> <p><i>(5) For purpose of carrying out any activity permitted by the</i></p>		<p><i>(iv) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article 8.”</i></p> <p>section 12(A)(5) is in keeping with <u>Article 7 of the Marrakesh Treaty</u> which provides, “<i>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.</i>”</p>

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<p><i>exception provided in this section, circumventing technological protection measures or using a technological protection measures circumvention device shall not be treated as the commission of an offence or infringement of any copyright in the work.”</i></p>		
<p><b>Section 9 of Act No. 14 of 2020</b> provides, “Section 34A of the Act is amended—</p> <p>(a) in subsection (1), by deleting paragraphs (a) and (b) and substituting the following paragraphs: “ (a) circumventing technological protection measures; and (b) the manufacture or importation for sale or rental of any technological protection measures circumvention device;”; and</p> <p>(b) in subsection (3)(a), by deleting all the words after “combined with” and substituting the following words “technological protection measures, or a technological protection measures circumvention device</p>	<p>section 34A(1) of the Copyright Act will now state: “(1) The following acts shall constitute infringements of copyright and neighbouring rights: (a) circumventing technological protection measures; and (b) the manufacture or importation for sale or rental of any technological protection measures circumvention device.”</p> <p>section 34A(3) of the Copyright Act will now state, “(3) The owner of copyright in a work shall also be entitled to damages for infringement provided for by sections 31(1) and 38(1)(d), where-</p> <p>(a) authorised copies of the work have been made and offered for sale or rental in an electronic form combined with technological protection measures, or a technological protection measures circumvention device which is made or imported for sale or rental; or</p>	<p><u>Article 7 of the Marrakesh Treaty</u> provides, “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.”</p>

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<p><i>which is made or imported for sale or rental; or”.”</i></p>	<p><i>(b) the work is authorised for inclusion in an encrypted programme, broadcast or otherwise communicated to the public, including by satellite, and a device or means enabling or assisting the reception of the programme by those who are not entitled to receive the programme is made or imported for sale or rental.”</i></p> <p>This amendment provides the copyright owner with a civil remedy, damages, for infringement where copies of a work have been made or offered for sale or rental in an electronic form which has technological protection measures or a technology protection measures circumvention device.</p> <p>The amendment only changes the existing language in section 34(A)(3) of the Copyright Act to bring it in conformity with the Marrakesh and Beijing Treaties which have adopted the terms “circumvention” and “technological protection measures.”</p>	
<p><b>Section 10 of Act No. 14 of 2020</b> provides, “<i>The Act is amended by inserting after section 34B, the following section: 34C. Notwithstanding the provisions of section 34A, the circumvention of technological protection measures</i></p>	<p>This section permits circumvention of technical protection measures in certain circumstances, that is, where the act of circumvention is permitted by a limitation or exception in the Act.</p>	<p><u>Article 7 of the Marrakesh Treaty</u> provides, “<i>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.</i>”</p>



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<i>shall not be prohibited when undertaking acts permitted by a limitation or an exception contained in this Act.”.</i>		

**2. Does your national legislation permit the cross-border exchange (i.e. exportation) of “accessible format copies”, as defined in Article 2 b)<sub>1</sub> MVT? If yes, under which conditions?**

**Section 5 of Act No. 14 of 2020** (“Authorized entity”) provides, “*12A.(2) Notwithstanding section 8, an authorised entity, upon satisfying the conditions in subsection (3), may— (c) export an accessible format copy to an authorised entity or beneficiary person located in a country which is a party to the Marrakesh Treaty; and (d) obtain, or import, from another authorised entity, an accessible format copy,*”

**Explanation:**

**Sections 12A(2)(c) and (d)** also address cross-border exchange of accessible copies, that is, the import and export of accessible format copies. An authorised entity is permitted to export an accessible format copy to an authorised entity or beneficiary person located in a country which is party to the Marrakesh Treaty and the authorised entity is permitted to obtain, or import, from another authorised entity, an accessible format copy.

**3. Does your national legislation allow the importation of “accessible format copies”, as defined in Article 2 b)<sub>2</sub> MVT? If yes, under which conditions?**

**Section 3(e) of Act No. 14 of 2020** provides, “*Section 3 of the Act is amended— by inserting in the appropriate alphabetical sequence, the following definitions: “accessible format copy” 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 and use the work as feasibly and comfortably as a person without visual impairment or other print disability;*”

**Section 5 of Act No. 14 of 2020** (“Authorized entity”) inserts in the Act, a new section 12(A) (supra) which would provide an exception to copyright law by allowing authorised entities to exercise stipulated privileges and to carry out specified activities without the need to seek authorisation from the right-holder provided certain conditions are met and under specified circumstances. **Section 12A(2)** specifically permits an authorised entity to:

- (a) *undertake the changes in the work that are necessary, including adapting and transforming the work, to create an accessible format copy;*
- (b) *reproduce, distribute, communicate to the public by any means, or lend, an accessible format copy in order to create another accessible format copy or supply the accessible format copy to another authorised entity or to a beneficiary person;*
- (c) *export an accessible format copy to an authorised entity or beneficiary person located in a country which is a party to the Marrakesh Treaty; and*
- (d) *obtain, or import, from another authorised entity, an accessible format copy, without the need to seek authorisation from the author or other owner of copyright and without infringing any copyright in such works.*

**4. Does your national legislation provide a definition of “authorized entity”, as defined in Article 2 c)<sub>3</sub> MVT? If yes, please provide the reference.**

**Section 3(e) of Act No. 14 of 2020** provides, ““*authorised entity*” means the National Library and Information System Authority, established under section 3 of the National Library and Information System Act or an entity designated by the Minister under section 12A;”

**5. Please provide a list with contact details of entities that can operate as authorized entities in your territory, and any further information that you can provide, such as number of accessible titles in the catalogue of the authorized entity and the languages covered.**

Authorized entity: the National Library and Information System Authority

Phone: (868) 623-9673

Contact: [nalis@nalis.gov.tt](mailto:nalis@nalis.gov.tt)

A Memorandum of Understanding is being finalized between the National Library and Information System Authority and WIPO’s Accessible Books Consortium for access to works in accessible formats.