



The voice of blind and partially sighted people in Europe

Bárbara Martín – 2nd Vicepresident EBU – WBU Marrakesh Treaty Guide

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To talk about the Marrakesh Treaty Guide, I would like to give you some initial ideas that are important to bear in mind:

- **This treaty was meant to be different and original:** For beneficiaries not rightholders.
- **Right to read** = human right
- **CRPD** = international framework in many different fields:
 - **Art 9:** Accessibility
 - **Art 21:** Freedom of expression, opinion and access to info
 - **Art 24:** Education
 - **Art 30:** Participation in cultural life, recreation, leisure, culture and sport
- **Book famine** = not access to education, culture and employment
= Isolation and/or discrimination of 285 million citizens around the world according to WHO, and let me highlight: this is something that in the 21st century should not be happening at all.

ABOUT WBU MARRAKECH TREATY GUIDE

The greatest thing of the guide is that even if it's written by specialists, including lawyers, its made in a way everybody can understand very well, and even though it has 3 different chapters, all of them can be read independently without missing a point. It is published in several languages available at the WBU website for download.

1.- Guiding principles for the Marrakesh Treaty

1^o- CONTEXTUALIZATION OF CRPD AND MARRAKESH TREATY

The CRPD is the first convention of Human Rights of the 21st century, inspiring other treaties developed by the different agencies of the UN, as is the case of WIPO and the Marrakech Treaty.

The CRPD requires States Parties to take all appropriate measures to provide persons with **disabilities with the same information and at the same time as persons without disabilities and in the form of communication they choose.**



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The CDPD mentions in several articles access to information, but it is the **art 21** the one that summarizes the needs of people with disabilities to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

The Marrakesh Treaty provides the ratifying countries with the necessary mechanisms to allow exceptions and limitations to the rights of production, distribution and availability of information in accessible formats, nationally and internationally. It is an instrument at the service of the CRPD.

A priori, one might think that the MT is a copyright treaty and, as such, be considered a trade treaty. However, **the greatness of this treaty is that it is clearly a human rights treaty**, and as you know one of its objectives is to guarantee, from the legal framework of copyright, access to reading.

The Preamble of the Treaty takes as a starting point **the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society**, as proclaimed in the Universal Declaration of Human Rights and in The CRPD. It also recalled the importance of the Development Agenda recommendations adopted in 2007 by the General Assembly of WIPO.

The MT thus helps to fulfill the promise made by contracting states in **Article 30(3) of the CRPD**: *“to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.”*

Section 1.1. Introduction to the international human rights and intellectual property regimes, with an emphasis on copyright.

A – Human rights regime

The core of international human rights law is contained in three legal instruments— **the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights**— collectively known as **the International Bill of Rights**. Many of these rights are also incorporated in national constitutions, legislation, administrative regulations, and judicial decisions.

B – Intellectual property regime

At the end of the nineteenth century - 1886 The Berne Convention was adopted to deal with the protection of works and the rights of their authors. It provides creators such as authors, musicians, poets, painters etc. with the means to control how their works are used, by whom, and on what terms. It is based on three basic principles and contains a series of provisions



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determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them. The international rules protecting copyright have expanded significantly over the last century

1967 - Creation of the World Intellectual Property Organisation, WIPO - "to encourage creative activity, to promote the protection of intellectual property throughout the world", now is one of the 17 specialized agencies of the United Nations

1994 - adoption of the Agreement on Trade-Related Aspects of Intellectual Property (**TRIPS Agreement**) signed by all members of World Trade Organisation, introduces intellectual property law into the international trading system for the first time and remains as the most comprehensive international agreement on intellectual property to date.

C. Conflict or Coexistence between the Regimes?

Initially, some actors in the UN human rights system identified a direct conflict between the two regimes. These actors viewed expansive IP protections as making it more difficult for states to comply with human rights treaties.

To resolve these conflicts, human rights experts urged states to recognize the primacy of human rights over IP laws and treaties on the ground that human rights are more fundamental

However, the conflicts approach neglected the ways in which individual innovation and creativity—goals pursued by the IP system—are also essential to the fulfillment of human rights. This coexistence approach sees the two regimes as congruent rather than in conflict. Nonetheless, there are important divergences in the orientation of the two regimes.

As compared to IP laws and treaties, **human rights instruments** emphasize societal goals over private economic interests. In addition, at the international level, the stronger **enforcement mechanisms of IP treaties** have led states to emphasize IP protection without sufficiently considering its impact on human rights.

Partly as a result of these pressures, many states have not taken full advantage of the flexibilities recognized in international IP law to ensure adequate access to copyrighted works. For example, prior to the adoption of the Marrakesh Treaty, only 57 countries had enacted an exception to copyright permitting persons with print disabilities to create accessible format copies. The limited number of states adopting such an exception has been an important factor contributing to the well known book famine.

D. Using copyright tools for human right purposes

The Marrakesh Treaty uses the specific policy tool of exceptions and limitations to copyright to expand the global availability of accessible format copies of books and cultural materials. Such exceptions and limitations are found in all national laws.



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International human rights instruments also recognize the societal benefits of exceptions and limitations. Most notably, the CRPD requires ratifying states to revise IP laws and adopt other policies to facilitate access to cultural materials. **ART 30.**

The CRPD Committee has repeatedly called on states to ratify and implement the Marrakesh Treaty. Ratification and implementation of the Marrakesh Treaty is thus a concrete way for states to realize the obligations, set forth in the CRPD and in other human rights instruments, to remove barriers to the accessibility of cultural materials.

Section 1.2 the interpretation of the Treaty under long-standing principles of public international law

A - Emphasize Object and Purpose

The Vienna Convention on the Law of Treaties (VCLT) codifies customary international law rules governing the interpretation of treaties.

- **Common uses of terms, dictionary definitions, the grammar and syntax of the provision, as well as the use of the same or similar language elsewhere in the treaty.** must be understood in light of the context of the treaty as a whole.
- If it is not possible to identify a reasonable interpretation from the ordinary meaning, it would be appropriate **to refer to the drafting history** but with a supplementary role in treaty interpretation, the records of negotiations are often incomplete or may not reflect the political compromises that were made to adopt the agreement.
- Consulting the preamble is often one of the best ways to identify a treaty's aims because these introductory clauses typically indicate why governments negotiated the agreement.
- Effective interpretation is a general principle to bear in mind in any case.

In the treaty there are many provisions that are open to interpretation

- Apart from the articles themselves, MT has 13 agreed statements with expressions like:
 - **“it is understood”,**
 - **“may include”,**
 - **“neither reduces nor extends”,**
 - **“it may be appropriate”.**
- Nearly every art is also, to some extent, open to interpretation, for good or bad:
 - **“substantially equivalent”**
 - **“to the extent that would be normally acceptable for reading”**
 - **“follow its own practices”**



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- None of the definitions is precise and closed, because they cannot and shouldn't be, and none of the procedures will be clearly defined until transposed into national law (and even so). At this point, here we all learn from our colleagues' countries which have ratified the MT

Rather than think that this is something bad, we think it is not, more over, it was absolutely necessary to be like this if the treaty wanted to see the light. And here is when I want to mention that **compensation schemes clause included in the Directive**. EP did not want it but Member States pushed very hard to have it, so being so opposite one to another, there was no other way to solve this out but with the optional criteria, as it happened during the negotiation of the treaty.

The MT's overarching object and purpose is to promote the human rights of individuals with print disabilities by expanding their access to copyrighted works consistently with existing rules of intern IP law.

Several features of the Treaty support this conclusion:

As its title proclaims, the Treaty seeks **“to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled”**.

- The Preamble explicitly references the UDHR and the CRPD and reiterates the parties' desire **“to harmonize limitations and exceptions [to copyright] with a view to facilitating access to and use of works by persons with visual impairments or other print disabilities”**.
- The MT expressly identifies **print-disabled individuals as “beneficiary persons,”** underscoring the centrality of their human rights to achieving the Treaty's aims.
- Unlike other IP treaties, the MT **does not expand the rules of copyright protection**; rather, it requires ratifying states to adopt mandatory exceptions to copyright and identifies those exceptions as presumptively compatible with existing international IP rules.
- Although the MT uses the doctrines and policies of copyright law to achieve this goal, the Treaty's fundamental aim is to enhance the human rights of these individuals. When deciding how to give effect to the MT, therefore, states should interpret the MT in ways that advance this object and purpose.

B- Adapt the Marrakesh Treaty to Changing Conditions

The Marrakesh Treaty should be interpreted and implemented in light of contemporary circumstances and in ways that respond to changes in law, policy, and technology. This is implied by the text of the Treaty, which defines “accessible format copy” by reference to whether a copy is accessible rather than by reference to any particular technology. As a result, **states**



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should not restrict exceptions and limitations to existing formats or particular technologies.

Thus, although states may provide examples of accessible format copies (e.g., large print, digital text, e-books, among others) in implementing legislation, they should expressly indicate that these examples are illustrative rather than exhaustive.

C- Promote Consistency with the CRPD

One of the MT's objectives, as set forth in the Preamble, is to realize the "principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society" protected in the CRPD and the UDHR.

85% of UN member states have ratified the CRPD, most MT ratifying countries will have already joined the CRPD. As a result, the interpretations of the CRPD Committee can help guide states in making choices that fulfill the MT's object and purpose

To ensure consistency with the CRPD and other human rights treaties, states that ratify the Marrakesh Treaty **should consult with print-disabled individuals, and with organizations that advocate for and provide services to those individuals, at all stages of the implementation process.** These stages include preparing and reviewing implementing legislation, identifying appropriate monitoring institutions, evaluating whether the Treaty's access and sharing provisions are actually being utilized, and preparing reports to international human rights bodies. To facilitate broad participation in these activities, governments should make all relevant documents and proceedings available in accessible formats. States should also consult with print-disabled individuals both when designing legislation to incorporate the MT in domestic laws and policies, and when monitoring how those laws and policies operate in practice.

The obligation to consult regarding MT monitoring processes could include, for example, involving authorized entities and disability rights organizations in the design of empirical studies to determine whether MT-required exceptions and limitations in copyright laws are in fact expanding the availability and cross-border exchange of accessible format copies. Such groups are also crucial partners for raising awareness about the rights provided by the MT—awareness that encourages policy-relevant feedback regarding the effective implementation of the Treaty.



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2º.- The legal and policy choices in the Marrakesh Treaty

Definitions, exceptions and limitations, cross borders exchange, Technological measures. There is no time to see it here in detail so **I have homework for you**: Read this chapter carefully.

3º.- Putting the Marrakesh Treaty into practice in National Law

1º.- Create legal remedies

Incorporating the MT into national law is a necessary, but not a sufficient step to ensure the rights of print-disabled persons to make and share accessible format copies.

National laws should also permit beneficiaries, authorized entities, and national human rights institutions to intervene in existing lawsuits

States have to guarantee legislation clearly drafted and communicate unambiguously the rights of beneficiaries and authorized entities to create and share accessible format copies. Such legislation should also avoid creating additional burdens—such as record-keeping standards, commercial availability requirements—that may deter print-disabled persons and authorized entities from exercising their rights.

2º.- Empower National Institutions

The CRPD obligates states to create “focal” points within the government to protect the rights of disabled individuals. Some countries have established new agencies or offices. Or have distributed these functions across several agencies or ministries. Focal points engage in a variety of tasks:

- suggesting revisions to national laws and policies,
- raising awareness,
- encouraging participation of individuals with disabilities in policymaking,
- collecting and analyzing data.

The focal point, for example, should have adequate resources and permanent appointments and be established at the highest levels of government.

3º. Undertake enforcement activities

A- Monitor rights

Monitoring requires an ongoing process of identifying barriers to access that should begin as soon as a state ratifies the MT and continue at periodic intervals after the Treaty is incorporated into domestic law.



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Monitoring processes should follow a national plan of action and be undertaken in consultation with beneficiaries and authorized entities.

The domestic agencies and institutions responsible for monitoring should report regularly to the government, and the reports should be publicly available, including in accessible formats.

B- Enforce legal remedies

The institution or institutions responsible for enforcing remedies might also encourage mediation with copyright owners. Consensus is possible, as it has been proven before.

C- Create a National Plan of Action

States should consider integrating the Marrakesh Treaty's objectives into the national plans of action that they develop to implement their obligations under the CRPD and other human rights treaties. A national action plan is typically a comprehensive document that contains both objectives and measurable outcomes set by the government in consultation with key stakeholders. Efforts to implement the MT might be incorporated into existing national action plans to realize the rights of individuals with disabilities. The plans might, for example, increase awareness of Marrakesh Treaty rights, define objectives for expanding access to print materials in accessible formats, and collect data regarding such access. Australia's national plan of action, for example, calls for "[i]ncreased participation of people with disability, their families and carers in the social, cultural, religious, recreational and sporting life of the community". Austria's national action plan emphasizes the importance of raising greater awareness of the issue of accessibility and tasks all government ministries with increased public relations work.

D- Engage in Training

Training is critical for ensuring the effectiveness of a state's efforts to implement the Marrakesh Treaty. To achieve this goal, individuals with print disabilities, authorized entities, copyright owners, technology and software developers, and the public at large must understand that print-disabled individuals and authorized entities can make and share accessible format copies without permission of the copyright owner.

4^o- Engage in National Reporting

Marrakesh Treaty Contracting Parties should be prepared to provide information about the access and sharing rights of print-disabled individuals in periodic reports to the United Nations bodies that monitor state compliance with human rights. Three types of institutions engage in this kind of monitoring—the UN treaty bodies (including, in particular, the CRPD Committee), the UN Human Rights Council, and the UN special procedures.



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4^o-Conclusions

- This Guide offers a comprehensive framework for government officials, policymakers, and disability rights organizations to interpret the Treaty and implement it in national law. The Guide's central premise is that the Marrakesh Treaty uses the institutions and doctrines of intellectual property law to achieve human rights objectives.
- **The treaty needs to be seen as the minimum requirement in terms of accessibility to printed materials.** That is why the Treaty itself, in article 12, states that the limitations it contains are not exclusive, and can be complemented with other exceptions and limitations that contracting parties may want to add for the benefit of persons with a print disability. It is also mentioned in arts. 4(3), 5(3), and 10(3).
- **Marrakech is not the only solution, so other (and better) solutions may come in the future, so we have to keep on being open minded.**
- **Marrakech is not “the” solution, but part of it. It won't solve the book famine just by itself.** Thanks to the Marrakesh treaty, the need to address the problem of access to reading, especially regarding education and information, has been placed on the agenda of States, especially in developing countries. That is why it is so important to work on its implementation, to guarantee it is accompanied by public policies and resources. It is indeed a tool that articulates and joins the efforts of the different actors related to the production and distribution of works in accessible formats, such as braille, audio, or macro-type, and with that achieve the true educational, labor and social inclusion of blind or visually impaired people.
- **States need to build from Marrakech up to provide full accessibility to all printed materials**, and thus prevent the social exclusion of persons with a print disability. We cannot think that the treaty is only a way of transfer of books and other materials in accessible format from the rich countries to the less developed countries, but we have to see it as a tool that facilitates the arrival of materials, in accordance with local needs and local realities, using the scarce resources and the most appropriate ways to attend to the needs of each country, and seeking not only vertical cooperation, but also horizontal cooperation through networks and exchanges of materials, learning and experiences.
- **This Guide does not purport to answer all questions likely to arise as states implement and apply the Marrakesh Treaty in their national legal systems. States retain considerable discretion to choose how best to give effect to the Treaty.**

I hope that this short presentation of the guide will help you to find answers and make its purpose become a reality, which is the effective implementation of the Marrakesh Treaty here in Russia and everywhere else.

Thank you very much for your attention, I remain at your disposal after Vadim's presentation for any questions or doubts you may have.