



Marrakesh Treaty – role of authorized entities

Ministry of Culture and National Heritage

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I. Implementation of Marrakesh Treaty in UE – introduction

- General information: **draft of two legal instruments implementing MT in UE** at the end of legislative procedure (trilogue UE Commission, Council of EU and Parliament ended)/ during Estonian Presidency (2nd half of 2017) **decision on ratification** of MT by UE will be subject of work in Council of UE (before UE Commission vs. some MS struggle: exclusive or shared competences);
- Two legal instruments: **directive** (implementation of MT inside of UE – necessary transposition to national legislations) and **regulation** (implementation of MT – conditions of import/export of accessible formats between **UE members and 3rd countries** parties of MT - directly binding MS and UE citizens);

II. Implementation of Marrakesh Treaty in UE – general remarks

- From UE law perspective directive **introduces mandatory and harmonized exception to certain rights harmonised already by UE previous directives**

Result: i.a AE is entitled to make an **accessible format copy** (as a result of changes/ converting/ adapting of work) **and communicate, make available, distribute or lend** such a copy for beneficiary persons or another AE on a non-profit basis for the purpose of exclusive use by a beneficiary person. (as well as get and use copy provided by AE established in another MS).

Hidden assumption: Only one AE makes and disseminates a copy of concrete work – it should be available in the whole UE to any beneficiary person or another AE (similar assumption as in orphan works directive) – reduction of costs and raising the number of available works.





II. Implementation of Marrakesh Treaty in UE – general remarks

- From UE law perspective regulation allows i.a AE:
 - to distribute, communicate or make available accessible format copies prepared under the exception established in directive implementing MT;
 - obtain such a copies or access to them from i.a. from AE established in one of the 3rd countries parties of MT;
 - both on a non-profit basis.



II. Implementation of Marrakesh Treaty in UE – perspective of AE

- No additional requirements for the application of the exception:
 - a) **no prior verification of the commercial availability** of works in accessible formats;
 - b) exception can not be overridden by contract;
 - c) only **compensation schemes possible but as a facultative provision** – different western and CE perspective:
 - ✓ possible application very limited by list of criteria (i.a non-profit nature of the activities of authorised entities, public interest, possible harm to rightholders);
 - ✓ compensation schemes may be connected only with uses undertaken by authorised entities established in territory of one MS (not when cross – border exchange of formats in order to avoid distortion of single market).



II. Implementation of Marrakesh Treaty in UE – perspective of AE

- Legal limitations of scope of AE lawful activity:
 - **Making and dissemination online and offline copies by AE** within UE is a **right** not an obligation;
 - AE may make an accessible format copy only from the work or other subject matter to which it has **lawful access** (art. 4 lit. 2a i) MT and C 435/12 ACI Adam ECJ judgement);
 - AE shall ensure that each accessible format copy **respects the integrity** of the work or other subject-matter (to some extent protection of moral rights).



III. Obligations of authorized entities in UE legislation

- Definition of AE in UE law (with slight unimportant adjustments) is a copy of art. 2 c) of MT – interesting discussion between MS about possibility to produce and disseminate copies without AE when no cross-border exchange of copies on the basis of national exception for people with disabilities;
- UE directive **allows setting authorisation procedures or recognition requirements** (for example national list of AE, especially in the light of obligation of MS to inform UE Commission about AE established on their territory),

but

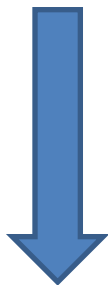
such measures shall not preventing entities covered by the definition from undertaking the permitted uses (**no chilling effect – need to meet criteria from MT/** examples from orphan works – need for clarity if any administrative procedure applied);

III. Obligations of authorized entities in UE legislation

➤ Obligation of AE



**additional in the relations with
BE or AE est. outside of UE**



INSIDE OF UE

similar to listed in
art. 2 lit c tiret ii) – iv) MT

+

AE must inform how it complies with the listed above obligations (no mandatory accreditation or certification standards applied, but **own** and followed practice of AE)

providing for the request of BE, AE and rightholders:

a) the list of works or other subject-matter for which it has accessible copies and formats;

(b) the name and contact details of AE from 3rd country party of MT engaged in the exchange of copies.





IV. How to provide access to books for visually impaired and print disabled persons through authorized entity (IBUK Libra Light)

- 2013 Ministry of Culture launched a **stakeholders dialogue** with Polish Library for Visually Impaired, associations of Blind and Visually Impaired Persons, CMO's of publishers and one of Polish leading publishing - house - owner of IBUK platform (provided **watermarked electronic content** in streaming, with no TPM if consent of publishers);
- 2013 - 2015: 1. **technical workshops** with participation of B&VIP persons about technical possibilities to adopt IBUK platform for their needs (important thing: the possibility of using own devices or devices to which they get accustomed to);

2. **CMO of publishers intensive consultations with its members** to promote the idea of making content available to B&VIP persons and encourage publishers to take part in the project;

IV. How to provide access to books for visually impaired through authorized entity (IBUK Libra Light)

3. **Ministry of Culture raised funds** to fund the emerging platform, launch it and make content available (through Book Institute – cultural institution, under supervision of Ministry, dedicated i.a to promotion of literacy);

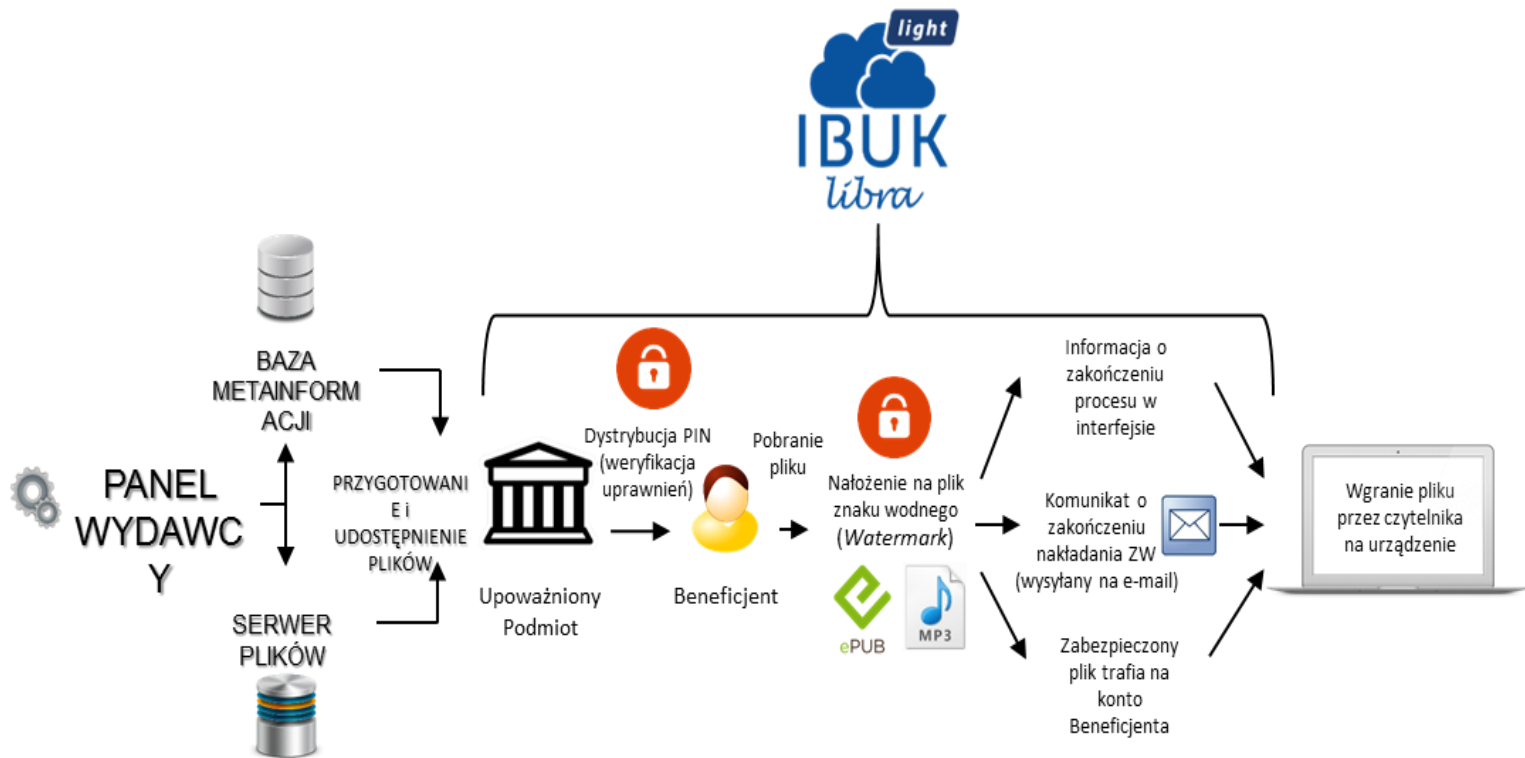
4. Ministry of Culture together with Polish Library for VIP set **the list of AE** – 17 public libraries which collect material for VIP (one in every region of the country);

5. 1 st February 2017 platform was launched under the website: www.libralight.pwn.pl – platform allows access to ePUB book catalogs and mp3 audiobooks, compliant with WCAG (Web Content Accessibility Guidelines), optimized for use with screen reader NVDA.

Hidden assumption: selected solution (technology) which may reach as many B&VIP persons as possible, while guaranteeing the maximum level of file security.



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V. Conclusions

- The UE legal acts implementing MT are example of how you can look for balance between needs of B & VIP persons and the protection of legitimate rightsholders interests (leave certain degree of freedom to national legislators and authors of future codes of conduct of AE);
- IBUK LIBRA LIGHT Project was possible due to stakeholders dialogue and building of mutual trust – crucial not only when you prepare good technical solutions for B&VIP persons, but also when you prepare position during negotiations and implement legal instruments for example MT.



Thank you for your attention

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