

U.S. Takes Marrakesh Express to Treaty Facilitating Access to Publications by the Blind and Visually Impaired

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October 10, 2018, President Trump signed the Marrakesh Treaty Implementation Act (“MTIA”), which will allow the United States to join the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The net result of the United States joining the Treaty should be the availability of a wide range of new materials in accessible formats to individuals who are blind or who have disabilities.

As described by the World Intellectual Property Office, “[t]he Treaty has a single objective: to increase access to books, magazines and other printed materials for people with print disabilities . . . by making it easier for accessible copies to be created and shared across international borders.” The Marrakesh Treaty was formally adopted globally on June 27, 2013. It entered into force for an initial group of twenty member countries, including Canada and Mexico, on September 30, 2016. By the time the United

States becomes a full member, over forty countries will have joined.

To accede to the Marrakesh Treaty, the United States was required to amend portions of the Copyright Act, which is a task that began on October 2, 2013, when the United States signed onto the Marrakesh Treaty. Section 121 of the Copyright Act already contains certain limitations on exclusive rights of copyright owners to allow certain authorized entities (namely, nonprofits and governmental agencies who have a primary mission to provide services to the blind and disabled) to reproduce and distribute works to blind and disabled persons, but the MTIA redefines and expands certain key terms as follows:

<u>Current Section 121</u>	<u>Amended Section 121</u>
Applies only to published, non-dramatic works	Applies to published literary works as well as musical works fixed in text or notation, but specifically excludes “standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language”
Eligible persons are defined only as “Blind or other persons with disabilities”	Eligible persons are considered one of the following: (1) blind; (2) “has a visual impairment or perceptual or reading disability that cannot be improved”; or (3) “is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading”
Limits distribution to “specialized formats,” which generally means braille, audio, or digital text, or large print	“Specialized format” becomes “Accessible format,” which means an alternate manner or form to permit an eligible person to “have access as feasibly and comfortably as a person without such disability”

The MTIA also adds a new Section 121A to the Copyright Act, the purpose of which is to allow for the import and export of works in accessible formats between the United States and other Marrakesh Treaty members by authorized entities.