

Summary of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT) (2013)

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT) is the latest addition to the body of international copyright treaties administered by WIPO. It has a clear humanitarian and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired and otherwise print disabled (VIPs).

It requires Contracting Parties to introduce a standard set of limitations and exceptions to copyright rules in order to permit reproduction, distribution and making available of published works in formats designed to be accessible to VIPs, and to permit exchange of these works across borders by organizations that serve those beneficiaries.

The Treaty clarifies that beneficiary persons are those affected by a range of disabilities that interfere with the effective reading of printed material. The broad definition includes persons who are blind, visually impaired, or print disabled or persons with a physical disability that prevents them from holding and manipulating a book.

Works "in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media", including audio books, fall within the scope of the MVT regime.

Another important element is the role played by authorized entities, which are the organizations in charge of performing the cross-border exchange. The rather broad definition of the term encompasses many non-profit and government entities. They are either specifically authorized or "recognized" by the government as entities that provide many functions including education and information access to beneficiary persons. Authorized entities have the duty to establish and follow their own practices in several areas, including establishing that the persons they serve are beneficiary persons, providing services only to those persons, discouraging unauthorized uses of copies, and maintaining "due care" in handling copies of works.

The MVT has a clear structure and provides for specific rules regarding both domestic and cross-border limitations and exceptions.

First, it requires Contracting Parties to have a limitation or exception to domestic copyright law for VIPs. The rights subject to such limitation or exception are the right of reproduction, the right of distribution, and the right of making available to the public. Authorized entities may, on a non-profit basis, make accessible format copies, which can be distributed by non-commercial lending or by electronic communication; the conditions for this activity include having lawful access to the work, introducing only those changes

needed to make the work accessible, and supplying the copies only for use by beneficiary persons. VIPs may also make a personal use copy where they have lawful access to an accessible format copy of a work. At the domestic level countries can confine limitations or exceptions to those works that cannot be "obtained commercially under reasonable terms for beneficiary persons in that market." Use of this possibility requires notification to the WIPO Director General.

Second, the MVT requires Contracting Parties to allow the import and export of accessible format copies under certain conditions. Regarding importation, when an accessible format copy can be made pursuant to national law, a copy may also be imported without right holder authorization. With reference to exportation, accessible format copies made under a limitation or exception or other law can be distributed or made available by an authorized entity to a beneficiary person or authorized entity in another Contracting Party. This specific limitation or exception requires the exclusive use of the works by beneficiary persons, and the MVT also clarifies that, prior to such distribution or making available, the authorized entity must not know or have reasonable grounds to know that the accessible format copy would be used by others.

The MVT leaves Contracting Parties the freedom to implement its provisions taking into account their own legal systems and practices, including determinations on "fair practices, dealings or uses", provided they comply with their three-step test obligations under other treaties. The three-step test is a basic principle used to determine whether or not an exception or limitation is permissible under the international norms on copyright and related rights. It includes three elements; any exception or limitation: (1) shall cover only certain special cases; (2) shall not conflict with the normal exploitation of the work; and (3) shall not unreasonably prejudice the legitimate interests of the right holder

There is no requirement to be a member of any other international copyright treaty to join the MVT; membership is open to Member States of WIPO and to the European Union. However, Contracting Parties that receive accessible format copies and do not have obligations to comply with the three-step test under Article 9 of the Berne Convention must ensure that accessible format copies are not redistributed outside their jurisdictions. Also cross-border transfer by authorized entities is not permitted unless the Contracting Party in which the copy is made is a party to the WIPO Copyright Treaty or otherwise applies the three-step test to limitations and exceptions implementing the MVT.

The MVT requires WIPO to establish an "information access point" to allow voluntary sharing of information facilitating the identification of authorized entities. WIPO is also invited to share information about the functioning of the Treaty. In addition, Contracting Parties undertake to assist their authorized entities engaged in cross-border transfer arrangements.

The Treaty establishes an Assembly of the Contracting Parties whose main task is to address matters concerning the maintenance and development of the Treaty. It also entrusts to the Secretariat of WIPO the administrative tasks concerning the Treaty.

The Treaty text was adopted on June 27, 2013 in Marrakesh. It achieved the deposit of 20 instruments of ratification or accession by eligible parties needed for entry into force on June 30, 2016. The Treaty date of entry into force is three months later, on September 30, 2016.