

The Fight Against the “Book Famine”

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Finding a book is a different story for the visually-impaired reader: only 7 percent of published books in developed countries, and less than 1 percent in developing countries, are adapted into print-disabled accessible formats such as Braille, audio and large print. Imagine a book famine in a world so abundant with words and information.



Contrary to popular belief, print disability is not limited to blindness; it includes developmental and learning disabilities such as dyslexia, physical disabilities such as Parkinson’s disease, and other conditions of low vision caused by disease and old age. Making published works accessible to print-disabled persons means more than offering Braille translation, but also offering different formats such as audio and e-books for those who may not be able to hold a book, turn pages, or read and interpret a text.

The limited access to published materials has greatly impeded persons with print disabilities from education, healthcare, employment, cultural and other socio-economic participation: 75 percent of visually-impaired persons of working age are unemployed. This situation is particularly dire in Asia, where an estimated 156 million of visuallyimpaired persons reside, accounting for 59 and 72 percent of the world’s blind and moderate to severely visually-impaired, respectively. Access to published works poses the added challenge of social progress for developing Asia-Pacific countries like Cambodia and Indonesia, where visual impairment makes up a large portion of the disabled population, a highly-disadvantaged group that sees a staggering 80 percent poverty rate worldwide, according to the 2011 World Report on Disability.

When Copyright Gets in the Way

Some jurisdictions do not treat accessible format copies as an exception to copyright protection, meaning the niche and economically-unviable market is subject to the same market forces that facilitate copyright agreements with publishers and authors to distribute

content. What results is highly-limited availability of accessible format works, as beneficiaries are those who cannot afford to pay for the copyright, leaving the matter in the hands of non-governmental organizations and libraries that often lack financial prowess.

Even if permission was granted for creation of accessible format copies within a nation, the lack of an international copyright framework means accessible format copies produced in a country, already scarce in itself, cannot be shared with the print-disabled persons, blind people's organizations or libraries in another country without obtaining cross-border permission. "Since the scope of copyright protection is territorial, the exceptions to create accessible format copies typically do not include imports or exports of the said works between countries; even if the countries have the same copyright regulations, if they do not enter into the same multilateral agreement and/or do not have a bilateral agreement [cross-border exchange would be impossible]," says Risti Wulansari, a partner at K&K Advocates in Jakarta. Not only does this squander the use of rare and valuable resources, but it also results in the duplication of efforts should the other country engage in replicating an accessible copy that's already in existence elsewhere.



What It Does and Doesn't

The Marrakesh Treaty is one of the few international IP-related treaties written with a development goal in mind, formulated to solve the legal obstacles and lack of economic incentive posed by copyright protection, especially in a cross-border scenario.

Drawn up in 2013, the treaty provides the legal basis for "authorized entities" – non-profit or government agencies that make and distribute accessible copies to disabled persons, such as libraries and blind people's organizations – to make accessible to others as well as import and export accessible versions of copyrighted works without the permission of rights holders. The treaty also allows technological protection measures, digital padlocks that publishers put on digital books to limit access that can at times cause problems in accessibility, such as blocking screen-reading text-to-speech software, to be legally circumvented.

There are two optional provisions in the [Marrakesh Treaty](#) that seek to balance the interests of original rights holders. The commercial availability requirement allows, but doesn't require, contracting countries to prohibit the creation of accessible format copies of works that are made commercially available in that particular format. However, as a [World](#)

Intellectual Property Organization (WIPO) guide on the treaty points out, few countries whose national copyright laws include exception and limitation (E&L) for print-disabled use have a commercial availability provision.

There is also little guidance on the actual implementation of the provision, creating confusion in interpretation and discrepancies between countries on areas ranging from what constitutes reasonable grounds for exception, the meaning of “commercial” and the coverage of “availability” to how expansive the when and where of “commercial availability” should be. While many expressed concern that this provision limits the impact of the treaty, some believe it was necessary compromise for individual countries to appease rights holders and ratify the treaty.

The remuneration option of the treaty allows for states to limit the creation, distribution and making available of accessible format copies conditional on the payment of a royalty or license fee to the copyright holder. Again, this provision has been an issue of debate on the grounds that it places financial burden on print-disabled persons that is inconsistent with the treaty’s objective to remedy the discriminatory environment against printdisabled persons.

Furthermore, because the treaty only outlines the goals for facilitating cross-border sharing of accessible formats, it is upon individual countries to amend national copyright laws such that the aforementioned circumvention of copyright protection could be achieved.



“In most countries, except those where treaties have direct effect,

implementation is a two-step process. So even when a country has taken the welcome step of joining the treaty, it can take several more years before it is implemented and can actually be used. Delays can occur because of political events, such as change of government, or because the process becomes bound up in broader copyright law reforms,” says Teresa Hackett, copyright and libraries programme manager at Electronic Information for Libraries (EIFL), a nonprofit that works with libraries to promote access to knowledge in developing countries.

The impact of the treaty, even if ratified, rests largely on the many other socioeconomic factors that drive production of accessible format copies. For one thing, the treaty does not come with any guidance or financial support for the bodies that produce and distribute accessible content. “The Marrakesh Treaty does not impose an obligation to provide

accessible format copies – it simply confers the right to make an accessible format copy. In other words, the treaty grants permission to do things that can't be done without permission,” says Hackett. There are indeed many lessons to be learned from early-movers as well as countries that are striving internally to push the treaty forward.

Snapshots of Action

India

India became the first country to ratify and implement the Marrakesh Treaty on June 24, 2014. As part of the nationwide Accessible India Campaign that aims to widen accessibility on multiple fronts, the Department of Empowerment of Persons with Disabilities has worked to facilitate collaboration with key players such as government ministries, local advocacy leaders like the Daisy Forum of India and the private sector. In 2016, India's first online library of accessible books was launched in collaboration with the National Institute of Visually Handicapped, making available for download over 335,000 books in seven formats and 11 languages.

The Daisy Forum of India is an associate member of the Digital Accessible Information System (DAISY) Forum. DAISY is an increasingly popular audio substitute for print material.



“Interestingly, before ratifying the Marrakesh Treaty, India had incorporated the required provisions in the Copyright (Amendment) Act of 2012. The same can be seen inter alia at Section 52(1)(zb) and Section 31B of the Act. Importantly, the Marrakesh Treaty has restricted ‘work’ to mean literary and artistic work, while the act seems to cover a larger gamut, as there is no such restriction,” says Adheesh Nargolkar, a partner at Khaitan & Co. in Mumbai. He further points out that the aforesaid exemption is extended to for-profit organizations who work for the benefit of persons with disabilities through a compulsory licensing mechanism heard by the Copyright Board.



Latha R. Nair, a partner at K&S Partners in Gurgaon, sees India's efforts to

expand accessibility beginning even further back. The Daisy Forum of India was launched as early as 2007 to bring together non-profits involved in the production and distribution of accessible materials. And before its ratification of the Marrakesh Treaty in 2014, India had seen the launch of the Online Braille Library in January 2012, shortly after the country's amendment to its Copyright Act. "India has been a trailblazer in creating accessibility to visually impaired persons," she says.

Singapore

The first Southeast Asian country to ratify the Marrakesh Treaty, Singapore's Copyright Act was amended in 2014 to meet the obligations under the treaty. Major changes to the act include recognizing the scope and definition of "person with a reading disability," "accessible format" and "accessible format copy," as well as expanding the types of authorized institutions from two to five and broadening the scope of copyright infringement exception to include "artistic works."



The amendment also makes accommodations for DAISY. "Prior to the

amendments, the Copyright Act did not provide for DAISY and permitted conversion of copyrighted materials to only a limited range of formats like Braille, large-print version, photographic version and sound recording," says Wendy Low, a partner at Eldan Law in Singapore.

Most importantly, the amendment facilitates cross-border exchange of accessible format works. "By allowing accessible format copies to be imported from bigger markets, this allows persons with reading disabilities in Singapore to gain access to a larger pool of works, especially since Singapore is not a major creator of literary, dramatic and artistic works," adds Low.

Indonesia

One of the first countries to sign the Marrakesh Treaty, Indonesia has yet to ratify the treaty into a binding contract. In Law No. 28 of 2014 on Copyright that came into effect on October 16, 2014, the Copyright Law saw an additional provision of Article 44 that guarantees wider access for information published in need-based special formats by providing an E&L clause to the right of reproduction, distribution and making available to the publish of such works.

“Article 44 (2) of the Indonesian Copyright Law stipulates that facilitation of access to the work for the blind, persons with vision impairment or limitations in reading, and/or users of Braille, audio books, or other means, is not considered as copyright infringement if the source is mentioned or referred to in full, except in the commercial nature,” explains Wulansari.



However, Daru Lukiantono, a partner at Hadiputranto, Hadinoto & Partners in

Jakarta, notes the limited impact of the amendment, which has yet to be clarified in practice through the issuance of a government regulation.

“The government regulation should regulate important aspects such as categorization of beneficiaries, and details of the supervising mechanism on the authorized government/nongovernment organizations that support or facilitate access to copyrighted works for print-disabled people,” predicts Lukiantono.

Latin America

Paolo Lanteri, a legal officer at WIPO, tells *Asia IP* that “Latin American countries deserve a special mention for their outstanding political commitment from taking a leadership role in early proposals and negotiations through moving ahead on formal adoption and practical implementation of the treaty.”

“As early as 2009, Brazil, Ecuador, and Paraguay submitted the very first proposal for what later became the Marrakesh Treaty. Out of the first 20 ratifications triggering the entry into force of the Treaty, 10 came from the Latin American region,” he points out. On September 30, 2016, the day the treaty entered into force, the first cross-border exchange pursuant to the Marrakesh Treaty took place among Brazil, Chile and Argentina.

Moreover, the Argentinian NGO Tiflolibros has been the leading digital library for the blind community in Latin America, offering over 48,000 accessible books for free to over 7,000 users in 46 countries. To further facilitate the production of accessible educational books in Spanish for primary and secondary school students, Tiflolibros has recently started a collaboration with the WIPO-led public-private alliance Accessible Books Consortium (ABC).

However, public awareness and infrastructure supporting accessible format copies remain major challenges, especially in rural areas across the world. “It is important that the print disabled community, their families, employers and educators are aware of the latest developments in reading technologies. It is also important to sensitize and educate stakeholders and policy makers across various sectors regarding the need to have inclusive publishing techniques to counter the book famine,” says Nair.



Wiku Anindito, a senior associate at Hadiputranto, Hadinoto & Partners in

Jakarta, points out that a general problem in distributing accessible copies is the lack of assistive technologies like computers and electronic Braille devices, as well as infrastructure for the storage of physical and digital files. “If audio books and other works are to be made available in digital format, internet connection is also crucial. While this may not pose an obstacle in major cities, this may become a problem in more rural areas,” he says.

Now What?

While participation in the Marrakesh Treaty depends in part on domestic law and local efforts, the success of the treaty is by nature that of sharing national achievements.

“[ABC] is facilitated by WIPO and includes organizations that represent people with print disabilities such as the World Blind Union, libraries for the blind, standards bodies, and organizations representing authors, publishers and collective management organizations. The ABC Global Book Exchange is one example of an effective mechanism for cross-border exchange, which is needed to make the treaty benefits a reality,” explains Lanteri.

When Canada’s 2016 accession as the 20th member state brought the treaty into force, a symbolic transfer of accessible books in audio format was made from Canada to Australia through ABC. “The ability to share accessible titles means that Vision Australia does not need to reproduce these books themselves, saving an estimated US\$2,000 per book,” says Hackett.

But before a critical mass of countries and languages are gathered, it is precisely the treaty’s connectivity that exposes its limitations. In fact, out of the current 33 contracting parties, only nine are Asian countries; and although China, Cambodia and Indonesia have signed the Marrakesh Treaty, domestic copyright laws do not authorize the import and export of accessible format copies, disabling the countries from leveraging and contributing to the major feature of the treaty.

Low further highlights the marked absence of countries which produce copyrighted works in the Malay language given both Malaysia and Indonesia – the two largest producers of copyrighted works in the Malay language – are not contracting parties. This causes significant hindrance as Malay is commonly used in other ASEAN countries such as Brunei and Singapore.

“Globally, a key step in realizing the objectives of the Marrakesh Treaty is the implementation of the treaty by countries which are major producers of copyrighted materials. For instance, the three most-used languages in the world are Mandarin, Spanish and English and, yet, the United States and United Kingdom, the largest producers of English copyright work as well as accessible format copies in the world, Spain, the major producer of copyrighted materials in the Spanish language, and China, the largest producer of Chinese copyrighted materials, have not ratified the Marrakesh Treaty,” says Low.

With Kyrgyzstan being the first Central Asian country to implement the treaty, a door for increased participation and accessibility for the Russian-speaking regions may be opening up. As the treaty and its human rights goals inch slowly but surely forward, Hackett offers a timeless piece of advice: “Just do it!”

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