# Frequently Asked Questions on the

# Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled

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## Q. How do blind people get books now?

A. Blind people obtain books in myriad ways, most of which are facilitated by copyright exceptions. For example, a blind college student may purchase an inaccessible book and then go to her institution’s office of disability support services to contact the publisher to obtain an accessible version. If an accessible version doesn’t exist, which is likely the case, the Chafee Amendment permits the office to remove the pages from the spine and copy the work for the purpose of converting the scanned document into an accessible PDF for the blind student to use. Some blind people use audio books from the public library or accessible digital versions of books if they are available, which they rarely are. Even when libraries offer accessible digital copies of texts, the overwhelming majority of basic e-reader delivery systems are inaccessible to the blind. Other avenues for the blind to get books include repositories and clearing-house systems like Bookshare. Unfortunately, these avenues still only offer access to five percent of printed works.

## Q. I thought audio books are available for blind people. Why do we need to make and distribute more Braille and electronic copies?

A. Currently, blind Americans only have access to five percent of published works. This huge problem exists despite the limited availability of audio books, and is perpetuated by the lack of other accessible format copies like Braille and accessible digital versions.

First, Braille is synonymous with literacy for blind people. Braille allows the blind to understand how words are spelled, to reread sentences, and to develop critical foundational reading and writing skills that cannot be developed solely by listening. This is especially important for students. Regardless of the proliferation of other accessible format copies, Braille is irreplaceable.

Second, sighted people have access to any book that is available commercially or at the library, but only a select few of those titles are ever converted into audio form. This is because the market incentive to create audio books is limited to the demand from print-disabled people and the select consumers who like to read on the go and/or listen casually to the text rather than study it intently.

Finally, when it comes to nonfiction works, many blind people prefer accessing the text as an accessible electronic book to allow for easy search ability, controllable speed, and other functions that are useful for research and learning. These functions are not particularly usable with audio books, and there are not nearly enough digital books available in accessible formats.

For all of these reasons, we must stimulate the reproduction of works into Braille and accessible digital versions, and increase the availability of titles in large print and audio. Ratification of the treaty by the US and several other nations will achieve this goal.

## Q. I’ve read that proponents of this treaty are largely concerned with a book famine in the developing world. Why should we go to all this trouble if this is not really a problem in the US?

A. The book famine is very much present in the United States. Although we have the necessary copyright exceptions, the lack of worldwide cooperation has resulted in duplicative works and a limited availability of books. This means an American student studying Spanish might not have access to an accessible copy of the Spanish textbook, and blind Americans seeking to read a book published by an international publisher will likely need a duplicative copy made in the United States despite the fact that another nation may have already done a conversion. She may even be denied access altogether. Increasing the number of accessible titles worldwide would benefit everyone, including blind Americans.

## Q. How is this different from the Convention on the Rights of Persons with Disabilities (CRPD)?

A. The CRPD was a human rights treaty that did not call for any modification to our domestic laws. The Marrakesh Treaty is a copyright treaty that will likely need implementing legislation to tweak US law, and it will significantly benefit blind and other print-disabled Americans. The treaty will foster the cross-border exchange of accessible format copies, increasing trade with other countries and allowing blind Americans to get access to exponentially more books than what is currently available in the United States alone. Also, ratification will improve the efficiency of the US publishing system and streamline the international copyright apparatus. While we still believe the CRPD would have benefited American citizens, the Senate was unable to ratify the treaty and that conversation has passed.

## Q. Doesn’t our copyright law already include an exception for making copies for the blind?

A. Yes. United States copyright law includes several provisions that can be used to permit copying and distribution of works. The most widely known and most prescriptive is the Chafee Amendment, which authorizes entities to make copies of books for the blind. While the Chafee Amendment is an acceptable domestic exception, it does not necessarily foster the exchange of accessible format copies with other nations. Sleek and narrow changes are needed to harmonize exceptions across borders and increase the number of accessible-format copies that can be imported and exported.

## Q. Why do we need to sign the treaty if we can just make changes to our own copyright law and be done with it?

A. There are countless titles that are published outside of the United States in both English and foreign languages that blind and other print disabled Americans do not have access to. Because the current international copyright apparatus is disjointed and does not foster trade, authorized entities within the United States are either needlessly duplicating copies of works that have already been converted into accessible formats overseas, or are simply unable to provide access to those works altogether. The United States must ratify the Marrakesh Treaty to expand the scope of works available to blind Americans, reduce duplicative copies, and contribute to the worldwide effort to make books accessible.

## Q. What sleek and narrow changes do we need to make to copyright law?

A. So far, the ratification package and implementing legislation package have not been delivered. The treaty calls for contracting parties to adopt exceptions and limitations to streamline the international copyright apparatus, and US copyright law is largely already aligned with this objective. Therefore, we expect to need to make only a few small changes. For example, the terminology for a beneficiary person may need to be tweaked to facilitate importing of books from foreign authorized entities.

## Q. Do other stakeholders agree on these sleek and narrow changes?

A. So far, everyone is waiting to see what the administration’s ratification package looks like. All stakeholders agree that passing the Marrakesh Treaty will be good for US stakeholders. From our perspective, the United States already has the exceptions and limitations called for in the treaty, generally speaking. Congress should only make sleek and narrow changes that make ratification possible but leave these exceptions wholly intact. Unduly complex changes will upset the status quo that most stakeholders seem content with, and jeopardize ratification of the treaty, which all stakeholders support.

## Q. How prevalent are duplicative works?

A. It is impossible to know for sure because there is not a worldwide catalog of every accessible book. However, the few countries that have copyright exceptions and limitations that permit copying for the blind likely only make the most popular books accessible, and only distribute those accessible titles to domestic citizens. This means that less popular works, especially nonfiction titles, are often not made accessible at all, and the few countries that do make the conversion fail to do so in a timely manner, often leading to tremendous hardship for blind and print-disabled students.

## Q. Does this treaty undermine US sovereignty?

A. No. The World Intellectual Property Organization does not have an enforcement body, and the treaty contains no sanctions for nonconformance. Moreover, there is no committee or reporting scheme.

## Q. How much is this going to cost?

A. The Marrakesh Treaty has not been scored by the Congressional Budget Office, but as far as we know, it will cost nothing. Most of the authorized entities in the United States are private organizations that will not require additional federal funding to participate in cross-border exchange. We are also not aware of any additional request from NLS to work across borders.

In addition, we expect the Marrakesh Treaty to save money in multiple ways. First, it will reduce waste by reducing duplicative copying. Second, it will increase efficiency by expanding the number of titles available to blind and print-disabled people throughout the world, easing the job of authorized entities in the United States. Furthermore, there is an immeasurable loss of productivity when an entire population is denied access to information, is unable to fully participate in society, and is therefore unlikely to reach its full potential.

## Q. Who would be in charge of distributing these copies to blind folks?

A. The Chafee Amendment and other provisions of US copyright law allow “authorized entities,” including nonprofits, NGOs with specific missions, and government agencies, to reproduce works and distribute them to people with covered print disabilities. The Marrakesh Treaty calls for contracting parties to adopt similar exceptions, which will stimulate the creation of more authorized entities, both domestically and overseas, as well as allow authorized entities to better serve their patrons.

## Q. Won’t this just lead to more piracy and deprive authors of the royalties they are entitled to?

A. The Marrakesh Treaty is consistent with other international copyright treaties that protect rights holders, such as the World Copyright Treaty, the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights, and the Berne Convention. And although no international agreement can eliminate piracy, the Marrakesh Treaty makes it clear that the exceptions and limitations contemplated by the treaty are exclusively for the use of beneficiary persons. This exclusivity is modeled after the United States’ exception, the Chafee Amendment, which has produced no demonstrable increase to piracy since its adoption in 1996. The Association of American Publishers, the International Publishers Association, and other groups representing rights holders supported the Marrakesh Treaty during its adoption in Marrakesh.

## Q. How do authorized entities guarantee that they are serving the right persons and not delivering accessible books to those who are not eligible, especially in the international context?

A. The treaty has a targeted definition of those who are beneficiaries. Additionally, to participate in the exceptions and limitations granted by the treaty, authorized entities must pledge to serve those who qualify as beneficiaries exclusively. If authorized entities violate this part of the treaty, rights holders are free to bring infringement enforcement actions against the authorized entities that are violating the terms of the treaty.