



The voice of blind and partially sighted people in Europe

EBU POSITION PAPER ON THE EUROPEAN COMMISSION PROPOSALS REGARDING THE IMPLEMENTATION OF THE MARRAKECH TREATY

On 14 September 2016, the European Commission published a series of copyright proposals as part of the Digital Single Market Strategy. Of particular relevance and a source of satisfaction for EBU were [the Regulation on cross-border exchange of accessible format copies](#), and [Directive on permitted uses of work for visually impaired people](#). Both documents are quite respectful of the content and spirit of the Marrakech Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Partially Sighted or Otherwise Print Disabled that entered into force on 30th September this year for the 25 countries who ratified it, but not the EU.

EBU appreciates the efforts with these two proposals of the European Commission to guarantee the implementation of the Marrakech Treaty more than 3 years after it was signed by the EU. We do hope that the European Parliament and Council agree on them as soon as possible in order to have both proposals approved.

EBU requests that the European Parliament respects the European Commission proposal and does not introduce new barriers into the EU legislation that would radically limit the efficiency of the Marrakech Treaty to provide access to culture for blind and partially sighted people. Changes admitting the “commercial availability” and “remuneration” clauses would have a very negative impact in EU Member States.

Concretely, **EBU rejects any proposal to suppress or modify “Recital 11” of the proposed EU Directive for the implementation of the Marrakech Treaty** because it would not respect the right to access to culture of blind and partially sighted persons, and would seriously weaken the proposal of the European Commission now under consideration by the European Parliament and the EU Council of Ministers.

We demand that the key elements of European Commission’s proposed directive and regulation be respected in their present



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form in order to ensure full legal compliance with the objectives of the Marrakech Treaty and thus end “the book famine” of millions of blind and partially sighted persons around the world.

- **About remuneration**

Although the option of requiring remuneration is available to states, it should be avoided as in the European Commission proposal.

A widely adopted remuneration requirement by EU member states would impede the creation and exchange of accessible format works because it would introduce unnecessary complexity and administrative burdens that could deter beneficiaries and authorized entities from exercising their Marrakech Treaty rights. Moreover, it would create a financial burden that could make works effectively unavailable for many print disabled individuals.

A broad remuneration requirement would also create a risk of discrimination between print disabled and non-print disabled individuals who are able to be lent books from public libraries. This would not only be inconsistent with the objectives of the Marrakech Treaty, but could also conflict legally with a state’s obligation to avoid discrimination on the basis of disability as mandated by the Convention on the Rights of Persons with Disabilities ratified by the EU.

Although there may be Intellectual Property Laws that mention the remuneration in certain cases to compensate for a possible economic loss by the authors in the exploitation of their works, they normally don’t seem to be associated with the different exceptions for blind or partially sighted persons and, more widely now, for people with disabilities. **Pretending that access to works in accessible formats violates "normal [economic] exploitation of a work" is illogical and contradicts the letter and the spirit of the Marrakech Treaty.**

It should also be noted the books shared by blind and partially sighted persons are in special formats, such as Braille or Daisy (to



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permit quick reading, note taking and study) and rarely compete with works for sighted persons. These books are not “free” as these accessible formats need to be produced by blind organisations and/or libraries at significant cost and effort. **There is absolutely no evidence that these “authorized entities” for lending the works hurt the rights-holders nor the publishers through “piracy”.**

- **About commercial availability**

Even though publishers very rarely sell accessible books to blind people, they still believe that the outcome of the treaty will be in "competition" with books they may be selling in an accessible format. The practical effect of this requirement to "check the commercial availability" of an accessible book would be that organisations for blind persons will simply not use the treaty to send books to people that need them in other countries if there were any doubt at all about the work in question being available commercially in the particular formats requested. **This could kill off the global impact of the Treaty in ending “the book famine”.**

Including commercial availability clauses in the proposals would mean:

- Creating the bureaucracy of checking something that would be difficult if not impossible to verify fully.
- Creating the “chilling effect” that comes from organisations for blind persons fearing that they might be sued — even if they DID check commercial availability — were they to fail to “spot” a commercially available accessible book in the country to which they want to send a book using the Treaty.

In more detail, here are some of the more practical issues that such “commercial availability” clauses might bring.

- It is hard to check book availability in your own country (ISBN is not always updated, the same with Legal Deposit, etc.).
- It is nearly impossible to check availability in other countries (what, where and how to check?).



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- The fact that it appears on an ISBN search does not imply that it is available – it may have been published, but it may not be available any more. **Publication does not guarantee availability.**
- **The limited time availability of some works.** If ever commercially available, they will probably be distributed in small numbers.
- How can an “authorised entity” exporting to a large number of countries check, on a book by book basis, which countries are entitled to receive it and which are not? Now multiply this for the many different accessible formats in which a work can be made available. How can anybody check that a book is available in the EPUB format in Argentina, but not in Braille, and then in Braille in Uruguay, but not on DAISY, though it is also available as an EPUB book, just like in Mexico?
- **Availability is not a permanent state.** How can we check when a book has stopped being available in a given country? That would force us to check for each book served every time we send it over.
- These clauses would render all digital libraries of accessible works unusable in practice.
- If it is available for download or purchase from anywhere in the world, does it mean it is available worldwide?

One of the main reasons that WIPO member states agreed on the Marrakech Treaty was to ensure that books made accessible under national copyright exceptions in one country could be sent legally and with the minimum bureaucracy to another, without the need for prior authorisation from copyright holders, and without infringing copyright law. **The Treaty will not undermine mainstream publishing.** Even without the application of any “commercial availability” requirements, the Treaty will not prevent rights holders from increasing the number of mainstream accessible titles they offer. It does not foster commercial competition with the publishing industry. It should also be remembered that **the Treaty exists because this market had very largely failed blind and partially sighted people.**



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Commercial availability must not be included in the directive and regulation proposals because:

1. It is discriminatory against blind persons: Sighted persons can get most books for free from public libraries, but visually impaired persons would not be able to. An accessible book market can exist alongside the authorized and controlled sharing of books promoted by the Marrakech Treaty.

2. It would place a huge bureaucratic burden on libraries, organizations of and for the blind and the civil society, which would be responsible for assuring that a given accessible book exists somewhere in the market. This would create legal uncertainty that would inhibit and chill the possibilities of delivering a massive amount of books to blind and partially sighted persons. This fear of illegality and the administrative tasks attached to it would effectively prevent the easy cross-border sharing of accessible books.

3. It is false that commercial availability would create an incentive for the industry to produce accessible formats of new books. The very reason that the Marrakech Treaty exists is precisely because of a great market failure, in which the publishing industry has been historically unable to provide works in accessible formats with the level of variety and the speed required.

About EBU

The European Blind Union (EBU) is a non-governmental, non-profit making European organisation founded in 1984. It is one of the six regional bodies of the World Blind Union, and it promotes the interests of blind people and people with low vision in Europe. It currently operates within a network of 44 national members including organisations from 28 European Union member states, candidate nations and other major countries in geographical Europe.

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We are happy for our contribution to be made public

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