



DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



PETITIONS

Study on
The Marrakesh Treaty

Methodology

➤ **Empirical:**

- Questionnaires

➤ **Doctrinal:**

- Primary sources & case-law

➤ **Theoretical:**

- Academic opinions & policy documents.

Contents

- I Historical background
- II The Empowerment Right of Science & Culture
- III WIPO Negotiations
- IV The Marrakesh Treaty
- V Concluding Remarks
- VI Recommendations

Background

- The need for a mandatory exception to copyright that may allow for the international distribution of accessible format copies is identified as far back at 1980.
- UN CRPD 2006: The right to read and the international obligation to take steps to remove discriminatory barriers created by intellectual property (IP) rights.
- Intersection between IP rights/disability rights:
International trade agreements (TRIPS Agreement)
- Development Agenda at WIPO is adopted.
- UN bodies began to pay increased attention to IP and human rights.

The Empowerment Right to Science and Culture

- Key to the basic human right of science and culture is 'access': This is a right of access.
- Access dimension requires accommodation of disability: full participation on an equal basis with others.
- Scientific knowledge, information and advances must be made available to all, without discrimination of any kind, including disability.
- Calling for an international minimum core of exceptions to copyright as a way to restore balance.

WIPO negotiations

- Proposal by the WBU/Latin American Countries for an international treaty on exceptions to copyright;
- Sustained opposition: Alternative proposals calling for a mere declaration or recommendation, not a treaty.
- After four years of intense negotiations, the Marrakesh Treaty is successfully adopted.
- Stakeholders Platforms: TIGAR and ETIN as a practical way to implement the Marrakesh objectives.

The Marrakesh Treaty

- Central purpose: Mandatory exception to national copyright laws.
- Heart of the Treaty: Cross-border sharing of accessible format publications.
- Four Core Obligations.
- Signature
- Ratification: So far 26 countries. In force as of September 2016.
- EU ratification still pending. Two major reasons: Timing and legal basis/competence.
- Request to the Court of Justice of the EU to give an interpretation. AG Opinion in favour of Union's exclusive competence.
- Real procedural issues, or lack of political will?

Concluding remarks

- Adjusting the EU Copyright framework is not a condition for Marrakesh ratification
- Commission's Proposals for a Directive and a Regulation to implement Marrakesh obligations.
- Both proposals adopt the most generous provisions of Marrakesh Treaty. They use the 'exceptions-plus' option
- Proposed Regulation creates additional obligations for authorised intermediaries, but not applicable to intra-EU exchanges.
- Marrakesh Treaty as a triumph for the social model of disability.

Recommendations: EP / PETI

- Press for swift ratification without delay and without reforms to the copyright framework,
- Work with other disability groups and WIPO to assess barriers to disabled people with impairments not covered by Marrakesh Treaty.
- Explore the possibility of going further than the mandatory floor.
- Consider assessing the impact that excluding exceptions to copyright materials may have upon the right to cultural materials of VIPs.
- Support and engage actively with private sector initiatives that complement the Marrakesh aims of ending global book famine.
- Support, together with the Commission and the MSs, ABC and WIPO to expand their online catalogue of accessible books.

Recommendations: Commission

- Press ahead with swift ratification, particularly in the light of the AG Opinion
- After ratification, provide Member States with more detailed guidance on implementation to avoid unnecessary problems with book exchanges within the EU
- Consider selecting copyright rules and Art.30 CRPD as a focus of a meeting with the Disability High Level Group as part of the Commission's monitoring and policing duties
- Support the establishment of a redress/complaints mechanism

Recommendations: Member States

- Support and work constructively with the Commission on the current proposals for a Marrakesh Directive and Regulation, bearing in mind the Treaty's historic character and distinct blend.
- Establish a mechanism to ensure the objectives of the Treaty are actually achieved in practice: Art.33 CRPD monitoring bodies and national IP offices.
- Authorise these monitoring bodies to enforce the national measures adopted.
- Work close with local organisations representing VIPs to produce an action plan.
- Build links and share information about good practice.
- Support the European Accessibility Act.

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