

Access to Copyrighted Works by Print Impaired Persons Publishers Association (PA) Briefing

This briefing paper describes the current legal situation in the UK as regards print impaired persons and provides an overview of existing UK legislation, notably the Copyright and Rights in Performances (Disability) Regulations 2014. It also sets out expected changes following the ratification of the WIPO Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Impaired, otherwise known as the “Marrakesh Treaty” of 2013, and addresses what these changes mean for publishers. It offers suggestions for good practice but does not constitute legal advice and should be read together with existing PA [guidelines](#). It will be regularly updated to reflect changes.

A. The UK Copyright and Rights in Performances (Disability) [Regulations](#) 2014

I. Legislation

The Copyright and Rights in Performances (Disability) Regulations came into force in June 2014 and extend the 2002 Regulations, which provide an exception to copyright for all print disabled persons, i.e. persons who have a physical or mental impairment which prevents them from enjoying a copyright work to the same degree as a person who does not have that impairment. Specifically, the exception allows:

- (1) A disabled person to make copies of works for personal use (Section 31 A CDPA)
- (2) Authorised bodies to make and supply accessible copies both to print impaired persons and other national authorised bodies (Section 31 B CDPA).

Beneficiaries of the exception include print impaired persons who are

- blind and visually impaired people;
- people with dyslexia;
- those with other disabilities limiting the ability to read or access published works to the same extent as people without these disabilities.

The exception does not apply to works which are accessible and commercially available on reasonable terms by or with the authority of the copyright owner.

Authorised bodies under the UK Disability Regulations are either an educational establishment, or a body that is not conducted for profit, if, and only to the extent that, they are acting on behalf of print impaired persons as defined above.

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The exception for authorised bodies covers the making of “intermediate copies” i.e. any copy of the work necessarily created as part of the process of making the accessible copy. Such intermediate copies might also be supplied to other authorised bodies for them to produce accessible format copies.

Authorised bodies must ensure that accessible copies include:

- a statement that they are made under the Regulations
- a sufficient acknowledgment of authorship (unless impossible for practical or other reasons)
- preservation of any Technical Protection Measures, or replacement with equivalent TPMs, so far as reasonably practicable (unless the copyright owner agrees otherwise).

The Disability Regulations 2014 also extend the scope of the 2002 Regulations to broadcasts and sound recordings, and apply regardless of any contract or licensing term to the contrary.

II. Impact

There seem to be limited changes required by UK publishers who are already providing accessible format copies of books (where accessibility is added after publication or after first release) or born accessible publications (where accessibility is built in from conception) for print impaired persons either as part of their commercial offer or in response to direct permissions requests.

Under current UK law the exception does not apply if accessible format copies of books are commercially available ‘on reasonable terms’; whilst this is practical and creates an incentive for publishers to provide accessible format copies of books, it might need to be changed in view of European Commission proposals currently under discussion.

We suggest that publishers review their workflows to ensure their commercial products are accessible wherever possible, for example by using the accessibility features provided by EPUB3.

Equally, we stress the importance of using ONIX for Books accessibility metadata (code list 196) to facilitate the discovery of accessible format copies or born accessible publications. It is important to work with other parts of the supply chain to ensure accessibility features and metadata are not lost in the course of distribution..

Publishers are encouraged to ensure they streamline the way they deal with requests for accessible copies by individuals who have print disabilities or by the authorised bodies who support them.

Publishers will also need to review and potentially update their licensing terms and conditions to reflect the 2014 legislation.

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B. The “[Marrakesh Treaty](#)”

The “Marrakesh Treaty” is the first international Copyright Treaty focussing on exceptions. It received the required 20 ratifications on 30th June 2016 and consequentially entered into force on 30th September 2016 for the WIPO Member States who had already [ratified](#) the Treaty.

I. Legislation

The Marrakesh Treaty requires ratifying countries to do two things:

- (i) Provide a copyright exception or limitation in national law to allow print disabled people or organizations supporting them to undertake any changes needed to make a copy of a publication in a format accessible to the person with a print disability (Limitation/ Exception for the benefit of persons with print disabilities)
- (ii) Permit the international exchange of these accessible copies for the benefit of people with print disabilities in other countries. (Limitation/ Exception for “authorized entities” to export and import “accessible format copies)

II. Impact

(i) **Limitation/ Exception for the benefit of persons with print disabilities**

Various WIPO member states such as the UK already provide exceptions for the benefit of persons with print disabilities, specifically the Copyright and Rights in Performances (Disability) [Regulations](#) set out above. This was in place before the WIPO Marrakesh Treaty came into force. Other countries will be introducing legislative changes to introduce such exceptions for the first time, and the International Publishers Association and national Trade Associations may be actively engaged in discussions about such legislation.

(ii) **Limitation/ Exception for “authorized entities” to export/ import “accessible format copies”**

Under the Marrakesh Treaty “Authorized entities” are permitted to make an accessible format copy of a work, obtained from another “authorized entity” and supply those copies to beneficiary persons if:

- a. They have lawful access to that work or a copy of that work;

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- b. The accessible format copy does not introduce changes other than those needed to make the work accessible to the beneficiary person;
- c. The accessible format copies are supplied exclusively to be used by beneficiary persons; and
- d. The activity is undertaken on a non-profit basis.

It remains to be seen how the various WIPO Member States including the UK deal with cross border exchange of accessible format copies in their national legislation.

As part of the international publishing community the PA has been stressing the importance of cooperation between publishers and authorised entities to achieve the ultimate objective of the Marrakesh Treaty to make books accessible to blind, visually impaired, and otherwise print disabled persons.

Practical initiatives to make books accessible to blind, visually impaired, and otherwise print disabled persons have all been based on cooperation and trust. By way of example, under the European Commission 2010 Memorandum of Understanding on access to works for dyslexic or visually impaired readers, specialist organisations receive books in a format which enables the production of accessible versions directly from publishers. This removes the need for such organisations or “authorised entities” to convert the books e.g. by scanning, thus dramatically reducing the cost of conversion and enabling the provision of accessible versions more rapidly and often of better quality.

An international network of trusted intermediaries ensures an effective system of providing accessible copies across borders in a timely and cost efficient manner, avoiding duplication of resources spent in the production of accessible copies.

From a publisher’s perspective it is essential to be able to rely on trusted intermediaries in order to be able to provide specialist organisations with the original file of a work, thereby enabling production of accessible format copies of the highest quality and at the lowest possible cost. A practical example is the Accessible Books Consortium which operates under three main pillars: [Capacity building](#), [Inclusive publishing](#) and Global Books (formerly known as [TIGAR - Trusted Intermediary Global Accessible Resources](#)). ABC Global Books is a service hosted at WIPO that makes it easier for participating institutions to search internationally for books in accessible formats, and to exchange them across national borders. It currently contains titles in accessible formats in some 55 languages.

The Federation of European Publishers of which the UK PA is a member is requesting that this international network of trusted intermediaries remains the basis of cross border exchange of accessible format copies.

The International Publishers Association has also published a [Guide to the Marrakesh Treaty](#).

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Annex – Summary of publishers’ considerations

1. Produce born accessible publications and accessible format copies where practicable
2. Consider accessibility features provided by EPUB3
3. Provide information on accessible format copies of books or born accessible publications for print impaired persons by using [ONIX](#) accessibility metadata (code list 196)
4. Work with other parts of the supply chain to ensure that the accessibility features are not lost in the course of distribution
5. Review internal workflows handling requests for permission to produce accessible format copies by, or on behalf of, a print impaired person and making such copies available. This should include clear internal structures on who deals with such requests, and guidelines on how to deal with these, including ensuring prompt responses.
6. Provide clear external communication including rules on the actual use of material and security measures applied. This should also include potential charges for the provision of files for producing accessible format copies (the sum charged seems to be limited to the cost of making and supplying the copy).
7. Review licensing terms and conditions to reflect the 2014 legislation
8. For more information on using assistive technologies, please see the [JISC website](#)
9. Take advantage of centralised services like [RNIB Bookshare](#), [AccessText Network](#) (US based), [Bookshare](#) (US) and the [ABC Global Books service \(formerly known as TIGAR\)](#).
10. Promote the global network of authorised entities as the practical basis of cross border exchange of accessible format copies.

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