

# MARRAKESH TREATY GUIDELINES

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FOR NEW ZEALAND LIBRARY &  
INFORMATION SERVICES

Prepared 2021 by LIANZA Standing Committee on Copyright,  
LIANZA Accessibility Special Interest Group and Blind Low Vision NZ



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## 1. INTRODUCTION

New Zealand is a signatory to the Marrakesh Treaty (the Treaty), which came into law on 4 January 2020. The Treaty requires contracting parties to introduce a standard set of limitations and exceptions to copyright rules to permit the reproduction, distribution and making available of published works in formats designed to be accessible to vision impaired people. It also sets the conditions for the exchange of these works across borders by the organisations that serve those beneficiaries.

These limitations and exceptions advance human rights by ensuring copyright law does not set up unreasonable barriers to access by people with disabilities to cultural materials.

The Treaty's preamble restates: "the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, as set out in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities".

These guidelines are designed to help people working in library and information services understand how to practice under the requirements of the Marrakesh Treaty as set out in the Copyright Act 1994. The guidelines cover record keeping in line with the Privacy Act 2020, notifying a copyright owner, supplying a copy, obligations when charging for a copy, and importing and exporting accessible format works.

## 2. THE MARRAKESH TREATY EXPLAINED

### 2.1 What is the Marrakesh Treaty?

**The Marrakesh Treaty** is an international treaty which aims to help people who are blind, visually impaired or otherwise print-disabled, have access to books and other literary works in accessible formats. Over 60 countries have ratified the Treaty which allows the international sharing of accessible format works between these countries. This will allow access to more written works in formats such as Braille, large print or audio and help visually impaired people's 'access to reading material'.

An estimated 90% of all written works published worldwide are not available in formats accessible to people with a print disability. This barrier affects an estimated 168,000 New Zealanders. The Treaty's provisions are designed to address problems such as long waits for authorisation or accessible format copies from a copyright owner, unreasonable restrictions imposed on accessible formats, and barriers to cross-border exchange of available accessible works that often result in duplication of production efforts. **The Copyright (Marrakesh Treaty Implementation) Amendment Act 2019** amends section 69 of **the New Zealand Copyright Act 1994 (Copyright Act)** and adds new sections 69A-69D.

### 2.2 What are the changes?

The changes enable an individual with a print disability, or someone acting on behalf of an individual with a print disability, to make an accessible format copy for use by someone with a print disability. It also enables them to import an accessible format copy and provide accessible format copies to Authorised Entities. The amendments also enable 'Authorised Entities' to make accessible format copies subject to certain conditions.

### 2.3 What is an 'authorised entity'?

An authorised entity includes:

- (a) An educational establishment.
- (b) An educational resource supplier.
- (c) A prescribed library within the meaning given in section 50(1) of the Copyright Act.
- (d) A charitable entity that has a purpose consistent with making accessible format copies available to persons who have a print disability.

## 2.4 How does this affect people working in library and information services?

Changes to the Copyright Act means that 'Prescribed Libraries' are now able to:

- make and provide an accessible format copy
- import and provide an accessible format copy from an authorised entity in another Marrakesh Treaty country
- reproduce and provide accessible format copies made or imported into New Zealand under the Marrakesh Treaty provisions of Copyright Act
- export an accessible format copy to an authorised entity or person who has a print disability in another Marrakesh Treaty country.

In addition, there is also the potential that an individual with a print disability or someone acting on their behalf can use library resources (photocopier, computers, scanners etc.) to independently produce their own accessible copies in accordance with section 69B of the Copyright Act as a customer of the library and information service. Staff may assist such customers to use these resources.

## 2.5 What are the conditions?

Before any library and information service creates, imports, reproduces or exports an accessible format copy it must first register with MBIE (see 3.1 below).

They must also:

- notify the copyright owner that it intends to make an accessible format copy before making or importing an accessible format copy
- respect the integrity of the original work as far as possible
- only provide the accessible format copy to a person with a print disability or someone acting on their behalf or another authorised entity
- keep records and permit the copyright owner to inspect these.

## 2.6 What types of works are covered?

Published literary, dramatic, musical, or artistic works, are a part of the works that are covered. This includes books, periodicals, newspapers, sheet music, computer programs, photographs and plans.

## 2.7 What are print disabilities?

Under the Marrakesh Treaty as incorporated into the Copyright Act, a person with a print disability has an impairment that prevents them from enjoying a printed copyright work to the same degree as a person who does not have that impairment. This doesn't include people who need glasses to read, but does include people with conditions such as low vision, dyslexia and anyone who has difficulty in holding or manipulating books or who is unable to focus or move their eyes.

## 2.8 What are accessible formats?

An accessible format is any format that allows a print-disabled person to access the work.

Some examples of accessible formats include, but are not limited to, Braille, large print and audio books. Books that contain images or diagrams may need to be described to make them accessible to those who are blind or have low vision. For some who are print-disabled it may work to scan copyright works, such as books and journals, and run it through optical character recognition (OCR) software.

## 2.9 What is the process involved with scanning a work?

Once the work has been scanned and run through the software the text may need remediation. What this involves will depend on the specific needs of the client involved. Usually, this involves at least

correcting OCR (optical character recognition) errors, adding navigation information (chapter and heading levels, page numbers, etc.), and adding alt-text for image descriptions. Once these are done, there may be further format changes needed, such as conversion to Braille or MP3 audio. This makes the work accessible to anyone who is blind or has low vision. OCR copies allow a PDF to be converted from text to voice or manipulated by changing font size or background colour.

### 3. A PRACTICAL GUIDE TO MEETING THE CONDITIONS

#### 3.1 Notify MBIE

Before any service creates, imports, reproduces or exports an accessible format copy it must first register with Ministry of Business, Innovation and Employment (MBIE) at: [MarrakeshTreaty@mbie.govt.nz](mailto:MarrakeshTreaty@mbie.govt.nz)

You must provide: the full name of your organisation and contact details for a person who MBIE can contact if they have any questions. Your contact details will not be published.

#### 3.2 Drafting guidelines

It is highly recommended that libraries as authorised entities, establish guidelines for making, obtaining, and supplying accessible format copies of works under the Marrakesh Treaty. This ensures that all the conditions are met, offers a level of protection against copyright infringement, and ensures Privacy Act obligations are complied with.

A policy should include:

- a process for identifying and recording client requirements
- locating and obtaining an accessible format copy
- notifying a copyright owner
- supplying a copy
- charging a fee
- record keeping procedures
- Privacy Act 2020 requirements
- importing and export processes
- copyright owner requests to inspect records
- storing an accessible format copy
- discoverability of accessible format copies in catalogue metadata.

#### 3.3 Process for identifying and recording client requirements

It is not the authorised entity's role or responsibility to determine the level of disability and difficulty the person with a print disability is experiencing. For most organisations a personal declaration will suffice. However, some organisations working full-time with persons with a print disability may require confirmation by an acceptable professional.

#### 3.4 Privacy Act 2020 requirements

There is a responsibility to ensure your library has a safe, secure system for recording decisions made under the Marrakesh Treaty and managing the access to information provided by clients. You should only collect the necessary details from individual clients to assist them with their request (for example: the client's name and preferred formats) and the reason or evidence for them seeking accessibility items as defined in the Copyright Act. Once you collect this information you should treat it as sensitive personal information under the legal obligations of the Privacy Act 2020.

Other Privacy Act requirements will also be needed. Your organisation will already have a system to address these such as:

- obtaining personal information directly from clients
- informing clients on why their information is being collected
- secure storage of personal information
- giving people access to their personal information on request
- providing advice that their personal information will be held for the period that they are being supplied with accessible format copies under the Copyright Act, and the six years to comply with obligations under the Public Records Act 2005.

An accessible version of a **self-declaration form** that includes a privacy statement has been provided for use – see Appendix 2

### 3.5 Locating an accessible format copy

- Check to see if the content in the format you need already exists

It is recommended that you check if the content in the format you need is readily available from another source. It may be available commercially in the format you need or from a disability organisation such as **Blind Low Vision NZ**. You can also check with other organisations that are registered for the Marrakesh Treaty.

**The World Intellectual Property Organisation (WIPO) maintains a list of countries which have implemented the Marrakesh Treaty (refer to the “In Force” column).** Another option is to consider joining the **Accessible Books Consortium and use their Global Book Service.**

- Obtaining digital files from the creator or publisher

Another option is to approach the publisher or creator directly and ask for a master digital copy of the file which can be used to create a copy in the format you need. They may require you to provide further information about the supply and use of the content. You must be sure to use this only in accordance with the provisions for accessible format copies in the Copyright Act.

### 3.6 Notifying a copyright owner

Once you have located the content in the format you require you must take reasonable steps to notify the copyright owner of your intention to make an accessible format copy – before you make or import a copy. It is recommended that you keep a record of any emails or letters made to copyright owners in case of a claim of infringement.

- For commercially published works, the copyright owner would usually be the publisher, not the author. For other works, such as an artistic work, the copyright may rest with the creator.
- You only need to notify a copyright owner when making or importing an accessible copy, not when exporting.
- Contact Te Rau Tākapu **Publishers Association of NZ**, Te Puni Kaituhi o Aotearoa New Zealand **Society of Authors** and **Copyright Licensing NZ** for help in locating copyright owners.

### 3.7 Supplying a copy

Once you have identified and/or created an accessible version of material, you can supply it by any means to:

- a person who has a print disability
- a person acting on behalf of someone who has a print disability
- other authorised entities from another Marrakesh Treaty country.

Librarians should be aware that there is significant concern by authors and publishers that these electronic files may find their way on to the internet and have an impact on the ability of authors to sell their books. You should make sure that you remind the print-disabled person concerned, that any further copying, posting on social media, and sharing of these works with others will be a breach

of copyright. To ensure that the copy is only available to the person who has requested it, and they are aware of their copyright requirements, you should provide the copy through a secure delivery mechanism and with a copyright warning notice - see appendix 3.

### 3.8 Charging a fee for supply

You can charge a fee for providing an accessible format copy to a person. The fee must not be higher than the sum of the cost to your organisation of making, providing, reproducing, importing or exporting the copy (as applicable) and a reasonable contribution to the general expenses of your organisation.

### 3.9 Record keeping procedures

You must keep a record of what you have made, provided, reproduced, imported, and exported. See the comments above at 3.4 about the management of personal information under the Privacy Act 2020.

Information that you need to keep a record of:

- client name and details
- content and format required
- signed copy of a self-declaration form
- notification to copyright owner (not a requirement but recommended)
- title of book
- author name
- publisher
- year of publication
- copyright owner
- how the item was created or obtained (entity made/imported/exported/etc.)
- what format the content was converted to.

### 3.10 Importing and exporting requirements

#### 1. *Importing accessible copies*

You may import into New Zealand, a copy of an accessible work from an authorised entity in another Marrakesh Treaty country provided you:

- notify the copyright owner
- are importing the copy to provide it only to a person who has a print disability, someone acting on their behalf or other authorised entities
- respect the integrity of the original work.

#### 2. *Exporting accessible copies*

You may export an accessible format copy from New Zealand provided you:

- are exporting the copy to an authorised entity, or a person who has a print disability, in another Marrakesh Treaty country
- respect the integrity of the original work.

You **do not** need to notify the copyright owner, as the organisation requesting the work will do this. You **do** need to keep a record of works exported.

### 3.11 Copyright owner request to inspect records

A copyright owner may wish to know how their work has been used and under the Copyright Act 1994 they are able to seek this information. It is important that you ensure you are aware of your obligations under section 22 of the Privacy Act 2020 requirements when sharing this information.



When sharing records, you must ensure that you **do not** disclose the name or personal information of the client who has requested the accessible format copy.

### 3.12 Storing an accessible version

You do not have to destroy the accessible format copy once you have supplied it to a client. You may keep a 'master copy' in case it is needed in the future and provide it only to other qualifying clients or authorised entities upon request.

### 3.13 Discoverability of accessible format copies in catalogue metadata

An optional but highly recommended step is to provide a descriptive record in your library catalogue of the accessible format copies that you have stored so that it is discoverable by other authorised entities or print disabled persons.

## 4. MARRAKESH TREATY CONDITIONS CHECKLIST

Checklist	Complete
<b>1. Identify and record client requirements</b> <ul style="list-style-type: none"> <li>Signed self-declaration form</li> <li>Disclosure of how information will be collected and stored</li> </ul>	
<b>2. Check for available copies</b> <ul style="list-style-type: none"> <li>Check in your own collection</li> <li>Check in the collection of another organisation</li> <li>Check commercially</li> <li>Check if you can request it from the publisher</li> </ul>	
<b>3. Notify the copyright owner</b> <ul style="list-style-type: none"> <li>Email the copyright owner (if possible)</li> </ul>	
<b>4. Obtain or create the accessible format copy</b>	
<b>5. Supply the copy</b> <ul style="list-style-type: none"> <li>Supply a copy to the client via a secure delivery mechanism</li> <li>Include a written copyright warning notice</li> </ul>	
<b>6. Keep good records</b> <ul style="list-style-type: none"> <li>Make sure you keep a record of the copies you have made, supplied, imported and exported.</li> </ul>	
<b>7. Store the accessible format copy</b> <ul style="list-style-type: none"> <li>Store a copy of the work in a secure place for future</li> <li>Record the metadata of the AFC in catalogue for discoverability</li> </ul>	

## 5. FURTHER RESOURCES

<b>Accessible Books Consortium (ABC)</b>	<p>The Blind Foundation is a member in New Zealand</p> <p>List of libraries offering accessible format copies:  <a href="https://www.accessiblebooksconsortium.org/sources/en/">https://www.accessiblebooksconsortium.org/sources/en/</a></p>
<b>Bookshare</b>	<p>US \$50p.a. subscription costs</p> <p><a href="https://www.bookshare.org/cms/">https://www.bookshare.org/cms/</a></p>
<b>Hathi Trust</b>	<p>Request books through affiliated universities and libraries</p> <p><a href="https://www.hathitrust.org/accessibility">https://www.hathitrust.org/accessibility</a></p>
<b>TifloLibros</b>	<p>Services in specific language groups such as for Spanish-language texts</p> <p><a href="http://www.tiflolibros.com.ar/">http://www.tiflolibros.com.ar/</a></p>
<b>Internet Archive</b>	<p><a href="https://archive.org/details/librivoxaudio">https://archive.org/details/librivoxaudio</a></p>
<b>Accessible Content ePortal</b>	<p>Academic content for Canadian post-secondary institutions</p> <p><a href="https://ocul.on.ca/node/2192">https://ocul.on.ca/node/2192</a></p>

## APPENDIX 2. SELF-DECLARATION FORM

### Marrakesh Treaty request self-declaration form

The Copyright Act 1994 defines print disability as: *print disability, in relation to a person* —

- (a) means an impairment that prevents the person from enjoying a printed copyright work to the same degree as a person who does not have that impairment; but  
 (b) excludes an impairment of visual function that can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light

I certify that I am a person with a print disability based on the definition in the Copyright Act 1994

I understand that material provided to me is for my personal use only. I will not copy, share or redistribute any material provided.

First Name: .....

Last Name: .....

Library card number: .....

Signature: .....

Date: .....

Format Preference: .....

### Privacy disclosure statement

We collect personal information from you, including the following information about you:

- Name
- Print disability
- Contact information

We collect your personal information in order to:

- Provide you with accessible format copies of copyright protected works under section 69A of the Copyright Act 1994
- Your personal information will be kept in strict confidence and only disclosed to staff of the library who provide and deliver the accessible format copies you have requested to your nominated email address.
- Providing some information is optional. If you choose not to enter a declaration that you are print disabled, we'll be unable to provide you with an accessible format copy under the Copyright Act 1994.
- You have the right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. If you'd like to ask for a copy of your information, or to have it corrected, please contact us at [email contact for your library] [Library name]

### **APPENDIX 3. COPYRIGHT WARNING**

This accessible format copy of a work is protected by copyright and has been copied for your personal use or the use of a print disabled person you are acting on behalf of, under section 69A of the Copyright Act 1994. Under section 69B(2)(a) you are entitled to make an accessible format copy that respects the integrity of the original work, as far as is reasonably possible and taking into account changes needed to make the work accessible in the alternative format

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