Front Matter

Disability Rights Objectives and Copyright Obstacles: Analysing the Efficacy of the Marrakesh Treaty as a Copyright Solution to the Global Book Famine

Kieran James Mitchell

Submitted in accordance with the requirements for the

Degree of Doctor of Philosophy

April 2024

School of Law, University of Leeds

Centre for Disability Studies & Centre for Business Law and Practice

© 2024 The University of Leeds and Kieran James Mitchell

Declarations

I confirm that the work submitted is my own and that appropriate credit has been given where reference has been made to the work of others.

This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement.

The right of Kieran James Mitchell to be identified as Author of this work has been asserted by Kieran James Mitchell in accordance with the Copyright, Designs and Patents Act 1988.

Acknowledgements

I wish to first of all offer my sincere gratitude to my supervisors, Dr Cesar Ramirez-Montes, and Professor Anna Lawson, for their unfailing support and invaluable contributions to my research. To Dr Cesar, who has been a constant source of encouragement throughout my project, and especially during the various personal challenges I faced along the way, I owe my sincerest gratitude in words I cannot express. His kind understanding, patience, and genuine pastoral care will always be remembered and appreciated. I am also humbled to have had the privilege of being supervised by Professor Anna Lawson whom I hold in highest esteem for her academic excellence and continuingly profound contribution to her field. Anna was my Academic Tutor at the very beginning of my academic journey when I commenced my undergraduate studies. It has been a sincere pleasure to have known and benefitted from her expertise and most gracious support all these years, especially at this full circle moment at the completion of my doctoral degree. I also wish to acknowledge the contributions of Professor Graham Dutfield and Dr Oliver Lewis who were influential in the early stages of my research project.

I must offer my thanks to the amazing PGR community in the School of Law who have made the research experience a joyful, homely, and much less solitary one. I have certainly found friends and colleagues for life. Being voted by them as the PGR's PGR of the Year two years in a row will always be one of my proudest achievements. To my family, I owe both gratitude for their encouragement, and also apologies for all the birthday events and babysitting requests missed while I was engaged in research. I am forever grateful for their understanding.

I make special mention here of my Pastor and Spiritual Father, Pastor Dr Kemi Ilori who, having completed two PhDs, has been exceptionally supportive and a source of wisdom and guidance. Above all, my Christian faith has been an anchor throughout everything, and I ultimately owe all my gratitude to God.

Abstract

Being able to access the written word and participate fully in cultural life and the education system are fundamental aspects of human development and flourishing. For persons who are blind, visually impaired, or otherwise print disabled, the enjoyment of these facets has been severely constrained. A key challenge in this respect is the 'global book famine,' referring to the reality faced by the world's population of 285 million blind and visually impaired persons who, according to 2016 estimates, were able to access only 1-7% of books in a format accessible to them. Although Article 30 (3) of the Convention on the Rights of Persons with Disabilities (2008) obliges State Parties to take all appropriate steps to ensure that intellectual property laws do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, the international copyright law regime and national policies on copyright protection have continued to present obstacles to access. This led to the subsequent adoption of the Marrakesh Treaty (2016) which aims to facilitate access to published works by creating mandatory exceptions and limitations to the exclusive rights of authors.

The efficacy of the Marrakesh Treaty in achieving this objective is critically analysed within this thesis. Reconciliatory perspectives are offered on the sensitive relationship between the spheres of copyright and disability rights legal theory, with particular consideration of the role of the international copyright law regime in creating and aggravating the global book famine. A critical exposition of the formulation of the Marrakesh Treaty's provisions is undertaken, along with a comprehensive global mapping of the Treaty's implementation thus far. Overall, a roadmap of original policy and legislative proposals targeted at strengthening the efficacy of the Marrakesh Treaty in facilitating access to published works is contributed to knowledge.

Thesis Contents

Front Matter 1

Declarations 2

Acknowledgements 3

Abstract 4

Thesis Contents 5

Abbreviations 10

Chapter 1: The Global Book Famine, the Marrakesh Treaty, and the Research Fundamentals – An Introduction to the Thesis 11

1.1 Setting Out the Thesis Context – The Origin, Impact, and Resolution of the Global Book Famine 15

1.1.1 The Impact of the Global Book Famine – Exploring the Rights of Persons with Disabilities & Copyright Obstacles to their Realisation 17

1.1.2 The Resolution of the Global Book Famine - Rationalising the Necessity of the Marrakesh Treaty 23

1.2 Covering the Thesis Fundamentals – Research Questions, Methodology, Scope & Originality 29

1.2.1 Research Question(s) 29

1.2.2 Research Methodology 30

1.2.3 Research Scope 36

1.2.4 Research Originality 38

1.3 Outlining the Substantive Content – Thesis Structure & Chapter Synopsis 41

Chapter 2 – Examining the Role of International Copyright Law in the Global Book Famine 41

Chapter 3 – Exploring the Disability Rights Regime & its Relationship with International Copyright Law 42

Chapter 4 – A Critical Textual Analysis of the Marrakesh Treaty 43

Chapter 5 – Global Perspectives on the Implementation of the Marrakesh Treaty 43

Chapter 6 - Thesis Findings, Recommendations, and Conclusions 44

1.4 Concluding Remarks 44

Chapter 2: Philosophical Theories, Authorial Exclusivity, and the Confinement of Limitations & Exceptions – Examining the Role of International Copyright Law in the Global Book Famine 45

2.1 Introduction 45

2.2 Philosophical Theories: (Re)Interpreting Copyright Justifications in a Spirit of Complementarity with Disability Rights 47

2.2.1 Author-Centric Philosophies 48

2.2.1.1 Lockean Labour Theory 49
2.2.1.2 Desert/Reward Theory 55
2.2.1.3 Personality Theory 58
2.2.1.4 Human Rights Theory 61
2.2.2 Socio-Centric Philosophies 65
2.2.2.1 Utilitarian, Economic & Incentive Theory 66
2.2.2.2 Distributive Justice Theory 69
2.2.3 Author-Centric and Socio-Centric Philosophies in Action – Comparing the Philippines and the Dominican Republic 71
2.2.4 Dualistic & Pluralistic Philosophies – New Approaches to Justifying Copyright Protection 74
2.3 Authorial Exclusivity: Exclusive Rights, Moral Rights, & Minimum Standards – Considering the Impact of the Expansion and Reinforcement of International Copyright Law 76
2.3.1 Expanding Author's Rights One Revision at a Time - A Review of Exclusive Rights Under the Berne Convention 77
2.3.2 Strengthening the Enforcement of Copyright – Exploring the Effect of the TRIPS Agreement 82
2.3.3 Extending the Reach of Copyright Law to the Digital Realm – Analysing the WIPO Copyright Treaty 84
2.4 The Confinement of Limitations & Exceptions: Examining the Three-Step Test and the Scope for Disability-Based Exceptions 86
2.4.1 Criterion No.1 - 'Certain Special Cases' 89
2.4.2 Criterion No.2 - 'Does not conflict with a normal exploitation of the work' 94
2.4.3 Criterion No.3 - 'Does not unreasonably prejudice the legitimate interests of the author' 96
2.4.4 Overall Interpretation, Remaining Issues, and Potential Solutions 97
2.5 Concluding Remarks 101
Chapter 3: Disability Models, Substantive Rights, and Legal Obligations – Exploring the Disability Rights Regime & its Relationship with International Copyright Law 102
3.1 Introduction 102
3.2 Conceptualising Disability Appropriately - Disability Rights Theories & Models 104
3.2.1 Individual Model: Medical, Charity, Tragedy & More 105
3.2.2 Social Model: Distinguishing Between Impairment & Social Barriers 107
3.2.3 Human Rights Model: Empowering Persons with Disabilities as Rights Holders 109
3.3 Introducing the Convention on the Rights of Persons with Disabilities – Cross-Cutting Principles, Substantive Rights, and Legal Obligations 111
3.3.1 Cross-Cutting Principles & Substantive Rights 112
3.3.1.1 Equality, Non-Discrimination & Reasonable Accommodation 112

3.3.1.2 Accessibility & Universal Design 116

3.3.1.3 Autonomy, Independence & Participation 117

3.3.2 The Rights to Education & Participation in Cultural Life – Exploring their Obligations, Realisation & Interaction with International Copyright Law..... 118

3.3.2.1 Article 30 CRPD – Connecting the Right to Participation in Cultural Life & the Intellectual Property Obligation 119

3.3.2.2 Article 24 CRPD – Connecting the Right to Education & International Copyright Law..... 123

3.3.3 Enforcing CRPD Rights – Progressive Realisation & National Action..... 127

3.4 Two Rights, Three Approaches - Theorising the Relationship between Copyright & Disability Rights 128

3.4.1 Conflict Approach – A Legal Tug of War..... 130

3.4.2 Co-Existence Approach – Prospects for a Harmonious Relationship..... 132

3.4.3 Integrationist Approach – An Alternative Relationship Model..... 135

3.5 Concluding Remarks.....136

Chapter 4: Template Provisions, Internal Flexibilities, and Implementational Choices – A Critical Textual Analysis of the Marrakesh Treaty 137

4.1 Introduction.....137

4.2 Behind the Marrakesh Treaty – Interpreting the Treaty's Normative Framework, Guiding Principles & Objectives.....141

4.2.1 Theorising the Marrakesh Treaty – Copyright Philosophy & Disability Models... 143

4.2.2 Modelling the Marrakesh Treaty - The Four Substantive Rights & Cross-Cutting Principles 145

a) Non-Discrimination & Equal Opportunity..... 145

b) Accessibility..... 146

c) Full and Effective Participation and Inclusion in Society..... 147

4.2.3 Directing the Marrakesh Treaty - Understanding the Treaty's Objectives as a Copyright Tool to Achieve Disability Rights Ends 148

4.3 Beneath the Marrakesh Treaty – A Critical Exposition of the Treaty's Substantive Provisions, Monitoring, and Enforcement.....151

4.3.1 From Restrictive Tolerability to Expansive Inclusivity - A Critical Evaluation of the Scope of the Marrakesh Treaty's Definitions 151

a) "Works"..... 152

b) "Accessible Format Copy" 154

c) "Authorised Entity" 155

d) "Beneficiary Persons" 156

4.3.2 The Exceptions & Limitations Template..... 158

4.3.2.1 Mandatory Provisions 159

4.3.2.2 Optional Provisions..... 161

(a) Changes to Works & Public Performance 162
(b) Limitations & Exceptions Template 163
(c) Commercial Availability Clause 166
(d) Remuneration 168
(e) Overall Flexibility 168
4.3.3 The International Dynamics of Cross-Border Exchange 169
4.3.4 Implementation, Monitoring & Enforcement 173
(a) Treaty Implementation: When? 173
(b) Treaty Implementation: Who? 174
(c) Treaty Implementation: Measurement? 179
(d) Treaty Enforcement: Justiciability? 180
4.4 Concluding Remarks 183
Chapter 5: International Obligations, National Approaches, and Remaining Gaps – Global Perspectives on the Implementation of the Marrakesh Treaty 184
5.1 Introduction 184
5.2 Understanding Contracting Parties – A Preliminary Overview of the Marrakesh Treaty's Demographic 186
5.2.1 Membership & National Development Status 186
5.2.2 Membership & International Law Obligations 187
5.2.2.1 International Human Rights & Disability Rights Law Obligations 188
5.2.2.2 International Copyright Law Obligations 190
5.3 Success, Stagnation, and All Things In Between – Tracking National Approaches to Implementing the Marrakesh Treaty So Far 192
5.3.1 Implementing Countries – Tracking Exemplary, Partial, and Minimal National Implementations of the Treaty 195
5.3.1.1 Exemplary Approaches to Treaty Implementation 196
5.3.1.2 Partial Approaches to Treaty Implementation 200
5.3.1.3 Minimal Approaches to Treaty Implementation 217
5.3.1.4 Implementing Parties Trend Analysis 230
5.4 Countries Yet to Implement – Analysing National Provisions, Policies, and Priorities 235
5.4.1 No Implementation - 1 to 5 Years Since Ratification/Accession 236
5.4.2 No Implementation - 5+ Years Since Ratification/Accession 261
5.4.3 Non-Implementing Parties Trend Analysis 281
5.5 Concluding Remarks 289
Chapter 6: Thesis Findings, Recommendations & Conclusion – Bringing It All Together 290
6.1 Research Findings 290

6.1.1 The Impact & Resolution of the Book Famine 290
6.1.2 The Role of Copyright Law in the Global Book Famine 290
6.1.3 The Relationship between Disability Rights & Copyright Law 291
6.1.4 The Current Formulation of the Marrakesh Treaty 291
6.1.5 The Implementation of the Marrakesh Treaty So Far 292
6.2 Original Recommendations 293
6.2.1 New Approaches to Justifying Copyright Protection 293
6.2.2 Human Rights Approaches to Limitations and Exceptions 293
6.2.3 Revisions to the Marrakesh Treaty's Provisions 294
6.2.4 Guiding & Improving the Treaty's Implementation 295
6.2.5 Alternative & Collaborative Approaches to Monitoring & Enforcement 296
6.2.6 Expanding the Treaty's Membership 296
6.2.7 Holistic Approach to Viewing the Marrakesh Treaty as one Tool in a Toolbox of State Measures 297
6.3 Overall Thesis Conclusion 297
Annex – Envisaging the Marrakesh Treaty 2.0 298
Bibliography 300
Primary Sources 300
- International Laws 300
- National Legislation 301
- Case Law 311

Secondary Sources 312
- Books & Book Chapters 312
- Journal Articles 319
- Reports & Publications 337
- Treaty Body Reports 344
- Websites & Blogs 349

Abbreviations

CRPD – Convention on the Rights of Persons with Disabilities

UDHR – Universal Declaration of Human Rights

ICESCR – International Covenant on Economic, Social, and Cultural Rights

CRPD Committee – Committee on the Rights of Persons with Disabilities

ICESCR Committee – Committee on Economic, Social, and Cultural Rights

WIPO – World Intellectual Property Organisation

WTO – World Trade Organisation

MT – The Marrakesh Treaty or, in full, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled

TRIPS - The Agreement on Trade-Related Aspects of Intellectual Property Rights

Chapter 1: The Global Book Famine, the Marrakesh Treaty, and the Research Fundamentals – An Introduction to the Thesis

Access to the written word is an integral aspect of human development, flourishing, and self-actualisation.[1] Indeed, the fulfilment of many fundamental human rights is dependent on it.[2] Be it textbooks, learning materials, or educational resources, the written word is essential to the right to education and thereby the full development of the human personality.[3] In a wider cultural sense, literary and artistic works are a means of expressing and imparting cultural identity and therefore essential to the right to participation in cultural life.[4] The written word is integral to the right to freedom of expression which includes the freedom to seek, receive, and impart information and ideas.[5] On a day-to-day basis, this includes accessing public information and services,[6] and the communication of information in the course of employment, connecting to the right to work.[7] It goes without saying, then, that when access to the written word is restricted, the consequences for the rights of the individual can be substantially detrimental. Regrettably, this is the daily reality of persons who are blind, visually impaired, or otherwise print disabled who are faced with a world full of predominantly inaccessible information.[8] Although visual impairment has been defined by the World Health Organisation in medical terms as the existence of an eye condition which affects one or more of the visual system's functions, [9] it must be emphasised that persons with visual impairments face disability not as a result of impairment but as a result of the socially imposed obstacles around them.[10] These obstacles make engaging with the surrounding world an arduous terrain to navigate.

---

[1] Lea Sheaver, "The Right to Read" (2015) Columbia Journal of Transnational Law Vol 54:1, 1-58
[2] *Ibid*
[3] Article 13, International Covenant on Economic, Social and Cultural Rights ("ICESCR") [1976]
[4] *Ibid*, Article 15
[5] Article 19, Universal Declaration of Human Rights [1948]
[6] Article 25, International Covenant on Civil and Political Rights [1976]
[7] Article 7, ICESCR [1976]
[8] Krista Cox, "The Right to Read for Blind or Disabled Persons" (2012) Landslide Vol 4:5, 32-36
[9] World Health Organisation, *Blindness and Visual* Impairment (13 October 2022) available here: <https://www.who.int/news-room/fact-sheets/detail/blindness-and-visual-impairment>
[10] Justin Haegele and Samuel Hodge, "Disability Discourse: Overview and Critiques of the Medical and Social Models" (2016) Quest Vol 68:2 193, 197

This is not a challenge that pertains to only a select or trivial population size. Recent figures show that at least 2.2 billion people around the world have a visual impairment, in various forms and degrees.[11] Furthermore, as one of the leading factors in the development of a visual impairment is age,[12] even those who do not currently experience visual impairment may do so with age or may be closely connected to a family member who does. Thus, ensuring that persons with visual impairment have full and effective access to the written word, and indeed all aspects of cultural life and society, is in the best interests of all.

Despite the global prevalence of visual impairment, the fundamental human rights of individuals who are blind or visually impaired have regrettably been placed in jeopardy by inaccessible socio-legal structures.[13] Indeed, the road to the fulfilment of the rights of persons with disabilities in general has been a long, arduous journey, described by some disability rights activists as an uphill battle.[14] A landmark point in this journey was the adoption of the Convention on the Rights of Persons with Disabilities ("CRPD") in 2006, propelled by the disability rights advocacy movement in the early 21st Century.[15] The CRPD was drafted to fill a long-standing lacuna in international human rights law by making specific provision on, amongst other key rights, the right to participate in cultural life and the right to education for persons with disabilities.[16] The Convention was the first international legally-binding human rights Treaty to provide solely for the rights of persons with disabilities and it represents a global tipping point by facilitating their participation in law and policy on the protection of their rights.[17] It is significant for the shift in legislative approach, cross-cutting principles, and substantive rights it promotes

[11] World Health Organisation (n9) *xi*
[12] *Ibid*
[13] Natalie Martiniello et al, "Employment and Visual Impairment: Issues in Adulthood" in John Ravenscroft, *The Routledge Handbook of Visual Impairment* (Routledge, 2019) 424
[14] Maya Sabatello and Marianne Schulze, *Human Rights and Disability Advocacy* (University of Pennsylvania Press, 2014) xi
[15] Laurence Helfer, "Intellectual Property and Human Rights: Mapping an Evolving and Contested Relationship" in Rochelle Dreyfus and Justine Pila, *The Oxford Handbook of Intellectual Property* (OUP, 2018) 123
[16] Articles 30 and 24, Convention on the Rights of Persons with Disabilities [2008]
[17] Paul Harpur and Michael Stein, "The Convention on the Rights of Persons With Disabilities as a Global Tipping Point for the Participation of Persons With Disabilities" in William Thompson, *Oxford Research Encyclopaedias: Politics* (OUP, 2017) 1-22

including, non-discrimination, reasonable accommodation, and accessibility.[18] Yet, there remains a plethora of challenges and obstacles to overcome in the pursuit of ensuring that persons with disabilities experience the fullest enjoyment of their human rights.[19]

The challenge of focal consideration here is the 'global book famine' which refers to the fact that, as recently as 2016, it was estimated that only between 1-7% of books are available in formats that are accessible to the blind and visually impaired.[20] This significantly limits their ability to participate in everyday cultural life (i.e., reading magazines, enjoying popular literature etc.), restricts their ability to access education (inaccessible textbooks, reading materials etc.) and, particularly in lower income countries, has had a severe knock-on impact on unemployment with average rates between 70% to 80% unemployed.[21] The extent to which copyright has constituted one of the causative factors of the global book famine is considered in detail within this thesis. Suffice to say preliminarily that the protection granted by copyright law ascribes to authors of works exclusive rights which determine what activities may or may not be carried out in respect of a work, by whom, and under what circumstances.[22] In the present context, access to books and other forms of literary works has been primarily under the author or publisher's control.[23] This has been noted to have generally posed three main obstacles to accessing works: first, the making of a copy of a work in an accessible format, such as Braille, could infringe the reproduction right; second, the distribution of the

---

[18] Articles 2 and 3, Convention on the Rights of Persons with Disabilities [2008]. See also Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018) 85

[19] Raymond Lang et al, "Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations" (2011) European Journal of Disability Research Vol 5:3, 206-220

[20] WIPO, "The Marrakesh Treaty – Helping to End the Global Book Famine" [2016] available here <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_overview.pdf> accessed 03/12/2022

[21] European Blind Union, 'About Blindness and Partial Sight: Facts and Figures' <https://www.euroblind.org/about-blindness-and-partial-sight/facts-and-figures>: Kazuyuki Uji, 'Time to End the Global Book Famine' (UNDP, 23 July 2018) <https://www.undp.org/asia-pacific/blog/time-end-global-%E2%80%98book-famine%E2%80%99>: World Services for the Blind, 'Employment Barriers for the Blind and Visually Impaired' <https://www.wsblind.org/blog/2021/6/16/employment-barriers-for-the-blind-and-visually-impaired>

[22] Jane Ginsbug, "Copyright" in Rochelle Dreyfuss and Justine Pila, *The Oxford Handbook of Intellectual Property Law* (Oxford University Press, 2017) 487

[23] Nicolas Suzor, "Access, Progress, and Fairness: Rethinking Exclusivity in Copyright" (2013) Vanderbilt Journal of Entertainment and Technology Law Vol 15:2 297, 338

accessible copy could infringe the distribution or making available to the public right, and; third, the cross-border exchange of the accessible copy could infringe the importation or exportation right.[24] These activities may only be carried out where permitted under an exception or limitation to the author's exclusive rights. However, it is already widely noted that a significant number of countries have featured exceptions and limitations to copyright in their national laws for the benefit of persons with disabilities.[25] Yet, despite these, the global book famine has persisted.

To tackle the global book famine, at least from a copyright law perspective, a new international Treaty convened by the World Intellectual Property Office (WIPO) was adopted with legal effect from 30 September 2016, namely, the "Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled" ("Marrakesh Treaty").[26] The central objective of the Marrakesh Treaty is to harmonise limitations and exceptions to copyright with a view to facilitating access to works for its beneficiary persons who are noted in the Treaty's title: those who are blind, visually impaired, or otherwise print disabled.[27] It is envisaged that doing so will alleviate the severity of the global book famine and pave the way towards its resolution.[28] Thus, the efficacy of the Marrakesh Treaty in facilitating this shift in national copyright policy on a global scale amongst its Contracting Parties is the primary question under consideration. Once this reformative process has taken place at a legislative level, greater work can be done at institutional and local levels to continue making progress on addressing the global book famine accordingly.

The discussion surrounding the Marrakesh Treaty and access to the written word begins here in Chapter 1 by exploring the global book famine in greater detail, particularly the impact that it has had on the realisation of the rights of persons with

---

[24] Justus Dreyling and Teresa Hackett, "Success for People with Print Disabilities: The Marrakesh Treaty" in Jessica Coates et al, *Navigating Copyright for Libraries: Purpose and Scope* (De Gruyter Saur, 2022) 248-249
[25] Para 7, Preamble, Marrakesh Treaty; SCCR/9/7 Sam Ricketson, "WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment" [2003]
[26] The Marrakesh Treaty [2016]
[27] Para 12, Preamble, Marrakesh Treaty [2016]
[28] *Ibid*

visual impairment. This is followed by a background to the adoption of the Marrakesh Treaty and the role that it is intended to play in facilitating access to the written word. While it was not the only solution considered, it was found to be the most appropriate and achievable next step available.[29] An investigation as to its efficacy should therefore be contextualised against the inadequacy of the alternative solutions ruled out. Finally, this chapter also covers the thesis fundamentals by providing an overview of the research, including research background and context, question and sub-questions, methodology, scope, and originality.

1.1 Setting Out the Thesis Context – The Origin, Impact, and Resolution of the Global Book Famine

In an age in which cultural and creative industries are booming, the term ‘book famine’ may appear to be a mistaken juxtaposition, not in the least as famine is more commonly understood as referring to an extreme lack of food entailing life-threatening consequences.[30] Using the word famine in reference to books is itself perspective-challenging and is noted as having been intended to provide a shock factor to draw attention to a pressing literary need.[31] Furthermore, referring to a book famine in the context of a bountiful supply of published books and similar materials seems contradictory. Indeed, a study by Google Books in 2010 estimated the global number of published books to be just short of 130 million.[32] More recently, figures from a survey of the publishing industry released by WIPO and the International Publishers Association in 2023 revealed a total of 1,232,307 books published between 41 countries just in 2020/21 alone.[33] Although a precise total

---

[29] See discussion from page 22

[30] Integrated Food Security Phase Classification, “Understanding the IPC Scales” (2022) 4, available here: <https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/communication_tools/brochures/IPC_Brochure_Understanding_the_IPC_Scales.pdf>

[31] Elizabeth le Roux, “The Myth of the ‘Book Famine’ in African Publishing” (2021) Review of African Political Economy 48:168, 258; Sergus Stepniak, “Book Famine in Russia” (1891) Free Russia Vol 2:10, 8

[32] Estimated 129,864,880: Leyonid Taycher, “Books of the World, Stand Up and be Counted! All 129,864,880 of You” (2010) available here: <http://booksearch.blogspot.com/2010/08/books-of-world-stand-up-and-be-counted.html> accessed 08.09.2023

[33] WIPO, “The Global Publishing Industry in 2021” (2023) 10, available here: <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-1064-2023-en-the-global-publishing-industry-report-2021.pdf>

figure cannot be ascertained, these figures put the estimate at 150 million plus in books alone, not to mention various other forms of literary works.[34] With these figures in mind, there may not appear to be a book famine. However, the usage of the term has always been in specific contexts - book shortages within Russia, Chicago, and Australia historically,[35] and more commonly the scarcity of books across the African continent.[36]

More recently and pertinently, the term ‘book famine’ has been used to describe the reality of those who are blind, visually impaired or print disabled who are disabled from accessing works on an equal basis with sighted persons due to the format in which the works are published,[37] and the fact that the ability to reproduce them in accessible formats has been curtailed, including by copyright laws.[38] Indeed, for most of human development, access to the written word has been denied to visually impaired persons due to the expense creating works in accessible formats entails, and the narrow extent to which doing so is permissible.[39] The marginalisation of persons with visual impairment through the medical and individual models of disability discussed in Chapter 3 has also been influential in this respect.[40] Of the estimated 150 million books, a 2016 study indicated that only 7% were available in accessible formats in developed countries, and 1% in developing countries.[41] Moreover, not only have accessible books been limited in number, they have also not been available centrally or internationally but scattered sporadically across countries with varying economic capacities.[42] In this respect, low-income countries have experienced a double book famine i.e., both a

[34] As per Article 2 of the Berne Convention [1979], other literary works in addition to books include “pamphlets and other writings”
[35] Elizabeth le Roux (n31) 260
[36] See for example: Carol Priestley, “The Book Famine: A Selective Directory for Book and Journal Assistance to Universities in Africa” (1990) Journal of the International African Institute Vol 60:1
[37] Lida Ayoubi, “The Marrakesh Treaty: Fixing International Copyright Law for the Benefit of the Visually Impaired Persons” (2015) New Zealand Journal of Public and International Law Vol 13:2 255, 256
[38] *Ibid*
[39] Paul Harpur and Nicolas Suzor, “The Paradigm Shift in Realising the Right to Read: How eBook Libraries are Enabling in the University Sector” (2014) Disability & Society Vol 29:10,1659
[40] Discussion from page 103
[41] WIPO (n20)
[42] Para 4, The Marrakesh Treaty [2016]

scarcity of books in general, and an even more severe shortage of accessible format books.[43]

The global book famine is not a theoretical construct but rather an everyday reality with deeply personal consequences for those who are blind or visually impaired.[44] The gravity of the impact of the book famine could not be sufficiently captured even if the full word count of this thesis were to be employed in its explanation. Its consequences are felt in a variety of cultural, economic, social, legal, and personal contexts.[45] It touches on a diverse range of fundamental rights and has varying effects depending on the extent of an individual's level of visual impairment, technological and Braille skills, and the nature of the socially imposed barriers in each of these contexts.[46] That said, the right to participate in cultural life[47] and the right to education[48] are identified as the two most directly affected rights by the global book famine, closely followed by the right to work and employment.[49] Thus, the following section analyses the impact of the book famine on these rights in more detail.

1.1.1 The Impact of the Global Book Famine – Exploring the Rights of Persons with Disabilities & Copyright Obstacles to their Realisation

The global book famine is noted to have severely and detrimentally affected access to education.[50] Indeed, this can be most evidently seen in the gap in attainment between sighted individuals and those with a visual impairment. To begin with, a higher percentage of children with disabilities have never attended school at all compared to data on children without a disability.[51] A range of research

---

[43] Kaya Koklu, "The Marrakesh Treaty – Time to End the Book Famine for Visually Impaired Persons Worldwide" (2014) Institute for Innovation and Competition 45:737–739
[44] Brian Watermeyer, "Freedom to Read: A Personal Account of the 'Book Famine'" (2014) African Journal of Disability Vol 3:1, 1-6
[45] World Blind Union, "The Marrakesh Treaty to Facilitate Access to Published Works for Persons with Print Disabilities for Inclusive, Equitable and Sustainable Development" (December 2017) 2, available here: <https://worldblindunion.org/wp-content/uploads/2020/10/undp-rbap-2017-issue-brief-asia-pacific-marrakesh-treaty.pdf>
[46] *Ibid*
[47] Article 30, CRPD [2008]
[48] *Ibid*, Article 24
[49] *Ibid*, Article 27
[50] Fredric Schroeder, "Ending the Book Famine Literacy for the Blind without Borders" (2013) <https://nfb.org/sites/default/files/images/nfb/publications/fr/fr32/4/fr320410.htm>
[51] UNICEF, "The State of the World's Children 2023" (April 2023) Table 16, 195-198, available here: <https://www.unicef.org/media/108161/file/SOWC-2023-full-report-English.pdf>

further identifies a clear gap in educational attainment between sighted persons and persons with visual impairments and disabled/non-disabled more generally. For instance, in the UK, a recent study of schools in England by the Royal National Institute of Blind People (RNIB) revealed a 32% gap in attainment at Foundation Stage, a 33% gap at Key Stage 1, a 28% gap at Key Stage 2, and a 21% gap at Key Stage 4 between sighted and visually impaired pupils.[52] Similar gaps in attainment were present in Northern Ireland, Scotland, and Wales.[53] Moreover, this trend continues at a higher education level. A UK Parliamentary research briefing discovered that 17.8% of school pupils with a disability went on to higher education, compared to 47.3% of pupils without.[54] Furthermore, it found that students with disabilities in higher education have somewhat worse outcomes than non-disabled students in that they are more likely to drop-out of courses, those that finish their degree tend to have lower degree results, and employment outcomes are typically worse for disabled students.[55] Specifically comparing first degree outcomes between blind or visually impaired students and sighted students, 43.5% of visually impaired students went on to full time employment compared to 55.8% of sighted students, with 12.5% of visually impaired students unemployed contrasted with a 7.7% unemployment rate of sighted students.[56] This is not just a UK phenomenon. Similar gaps in educational attainment and employment rates

---

[52] RNIB, “Educational Attainment: Summary of Official Data on Children and Young People with a Vision Impairment in England” (July 2022) 2, available here: <https://www.rnib.org.uk/professionals/health-social-care-education-professionals/knowledge-and-research-hub/reports-and-insight/educational-attainment/>

[53] Jenny Chanfreau and Andreas Cebulla, “Educational Attainment of Blind and Partially Sighted Pupils” (RNIB, November 2009) 68, available here: <https://www.rnib.org.uk/professionals/health-social-care-education-professionals/knowledge-and-research-hub/reports-and-insight/educational-attainment/>

[54] Sue Hubble and Paul Bolton, “Support for Disabled Students in Higher Education in England” (February 2021) 7, available here: <https://commonslibrary.parliament.uk/research-briefings/cbp-8716/>

[55] *Ibid*, 3

[56] AGCAS Disability Task Group, “What Happens Next? 2022: A Report on the Outcomes of 2019 Disabled Graduates” (2022) 45-46, available here: <https://www.agcas.org.uk/write/MediaUploads/Resources/Research%20and%20knowledge/WHN_2022.pdf>

have been discovered in Australia,[57] the US,[58] Brazil,[59] a range of African countries,[60] and more.[61] These statistics show that persons who are blind or visually impaired are at a significant disadvantage in the education system and either have no access to education at all, or an impaired level of access at a depreciated quality. Furthermore, this detrimentally impacts their employment prospects, thus impacting on the realisation of the right to work and employment in Article 27 CRPD,[62] and their standard of living more generally.[63]

The question then arises as to what extent the levels of non-attendance and gap in educational attainment outlined above can be attributed to the effects of the global book famine, and particularly to the barriers posed by the international copyright law regime. The main way in which copyright law has constituted a barrier is due to its stymieing effect on the production and availability of accessible books.[64] It is true to say that exceptions to copyright for the purposes of education have existed both nationally and internationally even prior to the adoption of the Marrakesh Treaty.[65] Regarding international law, the Berne Convention for the Protection of Literary and Artistic Works [1979] ("Berne Convention") contains an education-related exception in Article 10 (2) which permits the illustrative use of works for teaching purposes.[66] However, this exception is limited in three main ways. Firstly,

---

[57] Paul Harpur and Brooke Szucs, "Using the new Disability Human Rights Paradigm to Create Higher Education Leadership Opportunities" (2023) International Journal of Discrimination and the Law Vol 23:1-2, 144

[58] Michele McDonnall and Andrew Tatch, "Educational Attainment and Employment for Individuals with Visual Impairments" [2021] Journal of Visual Impairment & Blindness Vol 115:2, 152-159

[59] Carolina Toldeo et al, "Early Detection of Visual Impairment and Its Relation to Academic Performance" [2010] Journal of the Brazilian Medical Association Vol 56:4, 415-419

[60] UNESCO Global Education Monitoring Report, "Education of Children with Visual Impairments in Sub-Saharan Africa: Challenges and Opportunities" [2020] ED/GEMR/MRT/2020/P1/24

[61] E.g., Elena Schmidt et al, "Inclusive Education for Children with Visual Impairments in Sub-Saharan Africa: Realising the Promise of the Convention on the Rights of Persons with Disabilities" (2022) International Journal of Educational Development 91; Tobias Buchner et al, "Same Progress for All? Inclusive Education, the United Nations Convention on the Rights of Persons with Disabilities and Students with Intellectual Disability in European Countries" (2021) Journal of Policy and Practice in Intellectual Disabilities Vol 18:1, 7-22

[62] Article 27, Convention on the Rights of Persons with Disabilities [2008]

[63] *Ibid*, Article 28

[64] Paul Harpur and Michael Stein, "The Relevance of the CRPD and the Marrakesh Treaty to the Global South's Book Famine" in Michael Stein et al, *Accessible Technology and the Developing World* (OUP, 2021) 194

[65] Jingyi Li, "Copyright Exemptions to Facilitate Access to Published Works for the Print Disabled – The Gap Between National Laws and the Standards Required by the Marrakesh Treaty" (2014) Institute for Innovation and Competition Vol 45, 740–767

[66] Article 10 (2) Berne Convention for the Protection of Literary and Artistic Works [1979]

it is not a mandatory exception – rather, it is a matter for States to decide whether to provide for an exception in accordance with the provision.[67] Secondly, it entails several limiting conditions, including that the work may only be utilised to the extent as is justified by the purpose of the use, in a way that is compatible with fair practice, and with mention of the source and name of the author.[68] Thirdly, as with the quotation exception in Article 10(1),[69] the complete reproduction of the work in an accessible format is not permitted - it only allows for utilisation by way of illustration.[70] The insufficiency of only permitting small excerpts, quotations, or illustrations in the context of educational purposes has been pointed out in the literature.[71] It has been further argued that policymakers and right holders should allow works to be reproduced in their entirety for non-commercial educational uses, ensuring that such exceptions do not have maximum requirements of the amount that may be taken.[72] Advocating this for all educational purposes may perhaps be a step too far. In the context of the needs of visually impaired persons, however, it is necessary for the whole work to be reproduced in an accessible format e.g., scanning and digitising the work.[73] Finally, the 'utilisation' under the Article 10(2) exception is carried out by the teacher and not the learner, since it is for teaching purposes and not educational purposes more generally.[74]

Thus, although an educational exception is included in the Berne Convention which may offer some scope for educational accessibility to an extent, the provision is directed primarily towards only excerpts from works being utilised for teaching purposes with the use of an entire work being technically possible but a rare exception, and it was not in any case designed for the purposes of fulfilling disability access rights.[75] It is not enough that an exception for educational

---

[67] *Ibid*
[68] Article 10 (2-3), Berne Convention [1979]
[69] *Ibid*, Article 10 (1)
[70] *Ibid*, Article 10 (2)
[71] Nicole Thomas, "An Education: The Three-Step Test for Development" (2012) European Intellectual Property Review Vol 34:4 245, 258-259
[72] *Ibid*
[73] Paul Harpur et al, "Digital Copyright and Disability Discrimination: From Braille Books to Bookshare" (2008) Media and Arts Law Review Vol 13:1, 6
[74] Article 10(2), Berne Convention [1979]
[75] As Ricketson notes, Article 10(2) does not extend to the use of whole works under a compulsory license: See Sam Ricketson, *The Berne Convention for the Protection of Literary and Artistic*

purposes exists in some shape or form, if such an exception does not provide meaningful access to works protected by copyright in a way that is accessible for visually impaired persons. It is not surprising, then, that there has been a widespread lack of accessible textbooks and learning materials, as noted by the Committee on the Rights of Persons with Disabilities ("CRPD Committee"), which called on States to urgently ratify and implement the Marrakesh Treaty in the hopes that doing so may resolve this situation.[76] Indeed, several initiatives have been established since the adoption of the Marrakesh Treaty to assist with the development of accessible educational materials. These include: the Accessible Books Consortium,[77] the RNIB Bookshare program,[78] and projects led by UNICEF[79] and the European Union,[80] among others. Additionally, there is already some evidence that the Marrakesh Treaty may facilitate initiatives in educational institutions to develop and provide accessible repositories to students who are beneficiary persons.[81]

In addition to the educational context, copyright law has constituted a barrier to the right to cultural life in the sense that exceptions and limitations permitting the reproduction of cultural materials in accessible formats are confined by the "three-step test."[82] The full operation and impact of this test in limiting the reproduction of

---

Works: 1886-1986 (First Published 1987, Kluwer) 496-497; Sam Ricketson and Jane Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond Volume I* (2nd Edn, OUP, 2006) 792

[76] Committee on the Rights of Persons with Disabilities, "General Comment on Article 24 - the Right to Inclusive Education" (25 November 2016) CRPD/C/GC/4, page 7

[77] WIPO, "Accessible Books Consortium" <https://www.accessiblebooksconsortium.org/> accessed 07.10.2023

[78] RNIB, "Bookshare" <https://www.rnibbookshare.org/cms/> accessed 07.10.2023

[79] UNICEF, "Accessible Digital Textbooks: Creating Digital Tools to Enable Universal Design for Learning and Inclusive Education" (2022) <https://www.unicef.org/paraguay/media/8371/file/Accessible%20Digital%20Textbooks.pdf>

[80] Eleni Koustriava et al, "InSIDE: Including Students with Impairments in Distance Education: Development of Educational Materials" (September 2019) available here: <https://www.ummto.dz/wp-content/uploads/2023/05/InSIDE-Newsletter-1.pdf>

[81] Virginia Rodes and Regina Motz, "A Concrete Action Towards Inclusive Education: An Implementation of Marrakesh Treaty" in Alvaro Rocha et al, *Trends and Innovations in Information Systems and Technologies* (Springer, 2020) 418-425; Laetitia Cassells and Caitlin Weber, "A Report on the Current Access to Academic Information at the University of Pretoria for Visually Impaired Students: Challenges and Opportunities" (2018) Perspectives: Policy and Practice in Higher Education Vol 22:3, 82-91

[82] Article 9(2), Berne Convention [1979]

works in accessible formats is examined in detail in Chapter 2.[83] Briefly, this test subjects all exceptions to the exclusive right of reproduction to three criteria - the exception may only apply in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.[84] While there have been a range of different exceptions and limitations for persons with disabilities in national laws, the general approach has been to either rely on the discretion of a copyright owner to make their work commercially available in an accessible format, or to obtain a licence granting permission for the work to be made accessible.[85] This approach has failed persons with disabilities as authors and publishers have been known to dismiss the market as not being economically worthwhile due to the high production costs of creating works in accessible formats and, in any case, this cost was commonly passed on to the visually impaired consumer.[86] Seeking the permission of the copyright owner has typically been a time-consuming and arduous process, and while fair dealing exceptions may provide some access, this has only been to a limited extent.[87] In response, national strategies facilitating the accessibility of cultural materials, including public funding and subsidies, have been prompted by the adoption of the Marrakesh Treaty.[88]

With this backdrop in mind, it should be noted that copyright law is in no way being considered as the sole barrier to the fulfilment of the rights of visually impaired persons. Indeed, other barriers also need to be addressed including support services, teacher training, and the wider social attitude.[89] However, addressing the

---

[83] See Section 2.4 The Confinement of Limitations & Exceptions: Examining the Three-Step Test and the Scope for Disability-Based Exceptions

[84] Article 9(2), Berne Convention [1979]

[85] Paul Harpur et al, *Discrimination, Copyright and Equality: Opening the E-book for the Print Disabled* (Cambridge University Press, 2017) 99

[86] Shae Fitzpatrick, “Setting Its Sights on the Marrakesh Treaty: The U.S. Role in Alleviating the Book Famine for Persons with Print Disabilities” (2014) Boston College International & Comparative Law Review Vol 37:1 139, 143

[87] Paul Harpur et al, *Discrimination, Copyright and Equality* (n85) 105, 151

[88] Neža Šubic and Delia Ferri, “National Disability Strategies as Rights-based Cultural Policy Tools” (2023) International Journal of Cultural Policy Vol 29:4 467, 475

[89] Gauthier De Beco, “Transition to Inclusive Education Systems According to the Convention on the Rights of Persons with Disabilities” (2016) Nordic Journal of Human Rights Vol 34:1, 51-53. See also Bronagh Byrne, “How Inclusive is the Right to Inclusive Education? An Assessment of the UN Convention on the Rights of Persons with Disabilities’ Concluding Observations” (2022) International Journal of Inclusive Education Vol 26:3 301, 308-309

issues from a copyright perspective may go a long way in improving the accessibility, adaptability, availability, and acceptability of education for visually impaired persons,[90] and ultimately their participation in cultural life and wider society.

1.1.2 The Resolution of the Global Book Famine - Rationalising the Necessity of the Marrakesh Treaty

The possibility of addressing the impact of copyright law on the global book famine via an international legal instrument has been a four-decade agenda.[91] Indeed, a Working Group was established in 1982 to consider the possibility of using both the exceptions already provided in international copyright law, and the formulation of a sample model legislation, to improve access by persons with disabilities to the works protected by copyright.[92] However, the Working Group were emphatic in expressing the opinion that perceiving copyright as an obstacle to the rights of persons with disabilities was the wrong approach to take, that only unnecessary obstacles needed to be removed, and that the 'burden' of solving the book famine was a social one not to be carried only by copyright authors and owners.[93] There were also concerns that the principle of exclusivity may be put at risk, and that unauthorised uses may increase.[94] Thus, from the outset, the approach to resolving the global book famine from a copyright perspective prioritised authorial rights, showing reluctance and stringency towards the interests of persons with disabilities.

The Working Group only proposed two heavily caveated clauses on exceptions, and not a new international legal instrument.[95] Nevertheless, these proposals led to further discussions and investigations on the topic of copyright and access by

---

[90] Committee on the Rights of Persons with Disabilities, General Comment No. 4 (n76) 8-11
[91] Caterina Sgana, "Disability, Right to Culture and Copyright: Which Regulatory Option?" (2015) International Review of Law Computers & Technology Vol 29:2, 96
[92] Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright (1982) <https://www.wipo.int/edocs/pubdocs/en/copyright/120/wipo_pub_120_1982_12.pdf>
[93] *Ibid*, 354
[94] *Ibid*, 355
[95] *Ibid*, Annex I, 356

persons with visual impairment by a joint committee three years later.[96] The first consideration was the definition of the beneficiaries that an exception may apply to.[97] Regrettably, a medical model approach was adopted in taking the position that it is the 'physical handicap' which impairs or prevents access to a copyright work, and not the published format of the copyright work itself.[98] Secondly, a range of possible uses of works and their legality under the obligations imposed by the Berne Convention were discussed, though the reproduction right and exceptions under the three-step test were not considered despite being the most pertinent.[99] Lastly, five options were analysed for resolving the issue of access. These were special provisions in national law, the voluntary exercise of rights, introducing exhaustion, adopting bilateral agreements between countries, and a new international agreement.[100]

The first option for countries to determine in their own national law what provision to adopt in terms of disability rights exceptions would have entailed too much national discretion.[101] In the absence of an international agreement, it would be a national decision as to whether it was possible to enact a special provision in national law under their international copyright law obligations, whether such a provision should be enacted, and how, all of which would vary from country to country.[102] Given that many WIPO countries had no exception at all, and some of those that did were restrictive, giving discretion to national law makers would not resolve the book famine.[103] The second and third options of relying on individual negotiations and voluntary licencing permissions between copyright owners and visually impaired persons is similarly problematic. Licences are curtailed by monetary, territorial, and quantitative restrictions, and obtaining one is a costly and

---

[96] Report on behalf of the Intergovernmental Copyright Committee (of the Universal Copyright Convention) and the International Union for the Protection of Literary and Artistic Work Executive Committee: Wanda Noel, "Copyright Problems Raised by the Access by Handicapped Persons to Protected Works" (1985) IGC (1971)/VI/11, available here: <https://unesdoc.unesco.org/ark:/48223/pf0000065169>
[97] *Ibid*, Annex II, page 4
[98] *Ibid*, Annex II, page 5
[99] *Ibid*, Part 2. For discussion on the medical model, see page 103
[100] *Ibid*, Annex II, page 18
[101] *Ibid*, page 20
[102] *Ibid*
[103] WIPO, "Study on Copyright Limitations and Exceptions for the Visually Impaired" (2007) SCCR/15/7, <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf>

frustrating process which may in any case end in the copyright owner's refusal - the market failure in this respect is noted.[104] Fourthly, applying the doctrine of exhaustion would have only provided a partial solution. Under this doctrine, copyright holders are unable to control the pricing and distribution of their works after the point of first sale.[105] While this might have improved the circulation of accessible format copies of works, it would not enable their production in the first place and may disincentivise copyright owners to a considerable extent. Finally, the bilateral agreements option would lead to unnecessary multiplication of efforts and create 'hotspots' of accessibility instead of increasing it globally.[106] Thus, of these five solutions, the Committee concluded that the option to adopt a new international agreement was the most effective in that it would simultaneously address problems of both the production and distribution of accessible works.[107] It was also felt that mandatory minimum exceptions and limitations to international copyright law were required to facilitate uses by disabled persons in education, libraries and archives,[108] and to multilaterally rebalance the international copyright regime overall.[109]

Despite the fact that adopting a new international legal agreement was identified as the most effective way to remove copyright obstacles to access by visually impaired persons, this agenda received little to no attention for almost two decades until it resurfaced on WIPO's radar following requests by the World Blind Union and a group of Global South countries.[110] A robust study was carried out in 2006 by the WIPO Standing Committee on Copyright and Related Rights which provided a comprehensive overview of the extent to which national and international laws

---

[104] Paul Harpur et al, *Discrimination, Copyright and Equality* (n85) 103
[105] Guy Rub, "Rebalancing Copyright Exhaustion" (2015) Emory Law Journal Vol 64:3 741, 744
[106] Wanda Noel (n96), 25-26
[107] *Ibid*
[108] Gwen Hinze, "Making Knowledge Accessible Across Borders: The Case for Mandatory Minimum International Copyright Exceptions and Limitations for Education, Capacity Building and Development" (2008) Electronic Frontier Foundation 5 <https://files.eric.ed.gov/fulltext/ED509860.pdf>
[109] Ruth Okediji and Bernt Hugenholtz, "Conceiving an International Instrument on Limitations and Exceptions to Copyright" (2012) Open Society Institute Research Paper, 46
[110] Erika Lambert, "Bread for the Blind: Ending the International Book Famine Through Negotiation of an International Instrument on Access to Copyright Works for Persons with Blindness or Visual Impairment" (2011) Dalhousie Journal of Legal Studies Vol 20:2, 10

provided for exceptions for the benefit of visually impaired persons.[111] Several key findings resulted from this study. Firstly, it was noted that there was no obligation in any of the international laws on copyright or intellectual property to take the rights of visually impaired persons into account when drawing up copyright laws.[112] Secondly, to the extent that an exception may be possible in some shape or form under those laws, the international legal framework was far too complex for national legislators to have any clarity as to how to deliver exceptions that would be compliant with their obligations.[113] To solve both of these points, the enshrinement of mandatory exceptions at an international law level was suggested as a possible solution which would more effectively secure an appropriate balance between the interests of authors and visually impaired persons.[114] Various proposals were then submitted by the US,[115] the EU,[116] the African Group,[117] and the joint proposals of the World Blind Union and Brazil, Ecuador, and Paraguay.[118] The African Group proposals leaned more strongly in favour of beneficiaries, adopting wider definitions of beneficiaries and leaning more on the side of 'public interest',[119] while the EU and US proposals took a noticeably more restrictive and pro-rightsholder stance in their proposals, introducing the commercial availability proviso which was subsequently adopted in the Treaty as an optional measure.[120] Throughout these

---

[111] WIPO, "Study on Copyright Limitations and Exceptions for the Visually Impaired" (n103)
[112] *Ibid*, 100
[113] *Ibid*, 134
[114] *Ibid*
[115] WIPO Standing Committee on Copyright and Related Rights, "Draft Consensus Instrument: Proposal by the Delegation of the United States of America" [2010] SCCR/20/10 available here: <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_20/sccr_20_10.pdf>
[116] WIPO Standing Committee on Copyright and Related Rights, "Draft Joint Recommendation Concerning the Improved Access to Works Protected by Copyright for Persons with a Print Disability" [2010] SCCR/20/12 available here: <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_20/sccr_20_12.pdf>
[117] WIPO, "Proposal by Morocco on Behalf of the African Group Entitled "The African Proposal for the Establishment of a Development Agenda for WIPO"" [2005] available here: <www.wipo.int/edocs/mdocs/mdocs/en/iim_3/iim_3_2.doc>
[118] WIPO Standing Committee on Copyright and Related Rights, "Proposal by Brazil, Ecuador and Paraguay, relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU)" (2009) SCCR/18/5. For further proposals, see: https://www.keionline.org/r2r/marrakesh/draft-texts
[119] WIPO SCCR 22nd Session, 'Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives', SSCR/22/12, 3 June 2011 <http://www.wipo.int/edocs/mdocs/copyright/en/sccr_22/sccr_22_12.pdf> [accessed 14 September 2019]
[120] Cesar Ramirez-Montes, 'The Marrakesh Treaty: Study for the PETI Committee' [2016] European Parliament Policy Department for Citizens' Rights and Constitutional Affairs 26

various diplomatic negotiations, the concept of an international legal instrument providing for mandatory exceptions to copyright became less of a possibility and more of a reality as draft provisions gradually concretised.

During this process, one of the sticking points pertained to the type of international instrument that should be adopted. Specifically, whether it should be a hard law binding Treaty or a form of soft law.[121] There was also pushback over concerns that the Treaty's draft provisions were too broad such that there would be no viable incentive for copyright owners to invest in the production of accessible works.[122] Despite these areas of contention, the negotiations culminated in a hard law binding Treaty adopted in 2013 as the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The Treaty is recognised as being a compromise between two otherwise incompatible positions.[123]

One factor to bear in mind is, as with all international treaties, it is within the discretion of each sovereign State to freely choose whether to become a signatory to the Treaty and, thus, voluntarily bind themselves to the obligations of the Treaty, or not.[124] Given that it is possible to be a Party to the main infrastructural international copyright laws without being a signatory to the Marrakesh Treaty, there is no real binding pressure on States as far as intellectual property law is concerned to sign, ratify, and implement the Treaty. The pressure to do so comes from the international human rights law sphere, in particular, the obligation contained within Article 30 (3) of the CRPD to take all appropriate steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.[125] Even then, this obligation may be fulfilled in national law without necessarily ratifying the Treaty. In that sense, and in terms of copyright law, the Treaty may be

---

[121] Margot Kaminski and Shlomit Yanisky-Ravid, "The Marrakesh Treaty for Visually Impaired Persons: Why a Treaty Was Preferable to Soft Law" (2014) University of Pittsburgh Law Review Vol 75:3, 255

[122] Patrick Hely, "A Model Copyright Exemption to Serve the Visually Impaired: An Alternative to the Treaty Proposals before WIPO" (2010) Vanderbilt Journal of Transnational Law Vol 43:5 1369, 1400

[123] Caterina Sgana, (n91) 15

[124] Jan Klabbers, *International Law* (4th Edn, Cambridge University Press, 2024) 22

[125] Article 30(3), Convention on the Rights of Persons with Disabilities [2008]

considered supplemental, as opposed to mandatory. Had an exception or limitation been grafted into a pre-existing, fundamental piece of copyright law such as the Berne Convention, for example, which already has 181 members,[126] States would have been afforded much less room for manoeuvre. Of course, as challenging as it was to negotiate the Marrakesh Treaty,[127] negotiating such an amendment would likely have proved even more arduous than a separate piece of international law, but the essential point is that the Treaty remains supplemental to the international infrastructure of copyright law, and this is reflected in the fact that 99 WIPO members are yet to become signatories to the Treaty.[128]

Nevertheless, it is hoped that the Treaty may stimulate three important improvements: quantitative, qualitative, and normative. Firstly, by mandating that countries which previously did not have an exception in their national law now provide for one,[129] the Treaty aims to facilitate an increase in both the number of exceptions and accessible works available at the national level i.e., quantitative improvement. Secondly, by providing an exemplary template which Contracting Parties are encouraged to emulate,[130] the Treaty seeks to bring the exceptions that were already provided in line with the spirit of the Treaty and its requirements, thereby qualitatively improving the catalogue of national exceptions and providing a wider and more meaningful level of access to works. Thirdly, and finally, by improving provisions on exceptions both quantitatively and qualitatively, the Treaty aims to enhance the normative framework on copyright and disability rights, stimulating a new era in which the rights of the blind and visually impaired are a prominent mandatory consideration and not a discretionary afterthought.[131] The extent to which the Treaty is in fact able to achieve these improvements is an

[126] WIPO-Administered Treaties, “Contracting Parties: Berne Convention” <https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15>
[127] Justus Dreyling and Teresa Hackett (n24) 250-254
[128] WIPO-Administered Treaties, “Contracting Parties: Marrakesh VIP Treaty” <https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=843>
[129] Article 4(1), Marrakesh Treaty [2016]
[130] *Ibid*, Article 4(2)
[131] Lida Ayoubi, “Human Rights Principles in the WIPO Marrakesh Treaty: Driving Change in Copyright Law from Within” (2019) Queen Mary Journal of Intellectual Property Vol 9:3 282, 300

essential consideration in this thesis, especially in light of the fact that it represents a heavily compromised position.[132]

1.2 Covering the Thesis Fundamentals – Research Questions, Methodology, Scope & Originality

In light of the above context, this section sets out the main research question to be answered, including the research sub-questions answered in each chapter, the methodology that is adopted in doing so, the scope and limitations of the thesis, and the original contribution made to the literature in this area.

1.2.1 Research Question(s)

The overarching research question under consideration is as follows:

How effective is the Marrakesh Treaty as a copyright solution to the global book famine?

To answer this central question, the following sub-questions are critically analysed:

1) In what ways has the global book famine impacted on the realisation of the rights of persons who are blind, visually impaired, or otherwise print disabled?
2) To what extent have the justification, protection, and expansion of international copyright law been contributing factors to the global book famine?
3) What is the relationship between the substantive rights and legal obligations of disability rights law and international copyright law?
4) How does the Marrakesh Treaty's framework on limitations and exceptions to copyright seek to facilitate access to published works by beneficiary persons?
5) To what extent has the implementation of the Marrakesh Treaty among its Contracting Parties made progress in re-shaping national legal policy on copyright and disability rights?
6) What further steps should be taken in order to improve the Marrakesh Treaty's efficacy?

---

[132] Cesar Ramirez-Montes (n120) 24-26

1.2.2 Research Methodology

The thesis employs two overarching research methodologies, namely, doctrinal and comparative methodology. In addition, as the research question is positioned at an intersection between two prominent areas of law, a combination of discipline-specific approaches is utilised in answering the research sub questions.

Research Sub-Question	Methodology	Relevant Chapter(s)
1	• Doctrinal • Secondary Data	1
2	• Doctrinal (desk based, black-letter law research)[133]	2
3	• Doctrinal	3
4	• Doctrinal	4
5	• Comparative • Doctrinal • Original Document Analysis	5
6	• Doctrinal conclusions based on the research carried out in answering the previous sub-questions	4, 5, & 6

1) Doctrinal Methodology

Employing the use of doctrinal methodology is a well-established, conventional approach in the sphere of legal research.[134] A key characteristic of doctrinal research is that arguments are derived from authoritative sources, such as primary sources of law, existing rules, principles, precedents, and scholarly publications.[135] The doctrinal method is typically a two-part process involving both locating the

[133] Nigel Duncan and Terry Hutchinson, "Defining and Describing What We Do: Doctrinal Legal Research" [2012] Deakin Law Review Vol 17:1, 101; Paul Chynoweth, "Chapter 3: Legal Research" in Andrew Knight and Les Ruddock, *Advanced Research Methods in the Built Environment* (First Published 2008, Blackwell)
[134] Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law" (2015) Erasmus Law Review Vol. 8:3 130, 131
[135] Dawn Watkins and Mandy Burton, *Research Methods in Law* (2nd Edn, Routledge, 2018) 14

sources of the law and then interpreting and analysing the text.[136] It features rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials.[137] It involves the analysis of various legal rules, principles, norms, interpretive guidelines, and values which explain, make coherent or justify a segment of the law as part of a larger system of law.[138] In the context of this thesis, the respective areas are copyright law as a segment of intellectual property law, and disability rights law as a segment of international human rights law. The objective of using a doctrinal methodology is commonly to describe a body of law and how it applies.[139] In its purest form, this would be the end goal. However, in most instances, it is used as a foundational methodology whereby the researcher uses doctrinal research to identify the pertinent law (legislation, rules, and principles) before, for example, embarking on empirical work on the policy or context behind the implementation of the law, or the subsequent effects of the law on the community.[140]

Classic doctrinal methodology is primarily adopted in Chapters 2, 3, and 4 which analyse authoritative sources of international laws and related scholarly publications. Then, in Chapter 5, the methodology employed moves beyond classic doctrinal to an original qualitative document analysis. The purpose of this methodology is to elicit meaning, gain understanding, and develop empirical knowledge from the examination and interpretation of selected documents.[141] It involves locating, selecting, evaluating, and synthesising data contained in the documents.[142] The relevant documents under consideration in the application of

---

[136] Nigel Duncan (n133) 110
[137] CALD, ‘Statement on the Nature of Legal Research’ (October 2005) 3, available here: <http://www.cald.asn.au/docs/cald%20statement%20on%20the%20nature%20of%20legal%20research%20-%202005.pdf>
[138] Nigel Duncan (n133) 101
[139] Jan Smits “What Is Legal Doctrine? On The Aims and Methods of Legal-Dogmatic Research” Maastricht European Private Law Institute Working Paper No. 2015/06, 5
[140] *Ibid*, 12
[141] Glenn Bowen, "Document Analysis as a Qualitative Research Method" (2009) Qualitative Research Journal Vol 9:2, 27-40
[142] *Ibid*, 28

this methodology in Chapter 5 include reports by Treaty bodies,[143] questionnaires,[144] doctrinal sources of national legislation,[145] constitutional documents,[146] and compilations published by non-profit organisations.[147] All of these sources are synthesised to provide original qualitative analysis on the national copyright laws and policies of all 94 of the Marrakesh Treaty's Contracting Parties. This is carried out with a deeper layer of qualitative evaluation, considering not merely what the law is, but going further to examine the multi-factorial reasons why it has been formulated in that way. As the Marrakesh Treaty is a WIPO Treaty and all of its Contracting Parties are members of WIPO, the main legal database used for collecting and analysing national copyright laws is the WIPO Lex Database which contains the constitutions and intellectual property related laws of all WIPO members.[148]

2) Comparative Methodology

The primary purpose of comparative methodology in legal research is to understand the differences in legal culture, policy, and practice between the chosen comparators which may lead positively to national reform on the basis of lessons learnt from other jurisdictions or, depending on the objective, harmonisation of laws.[149] While its purpose has traditionally been to make a practical contribution to the local national system, in other areas the comparative study of law has had a more international dimension which is adopted in this thesis.[150] Comparative methodology is considered imperative in the context of this research which analyses the effectiveness of the Marrakesh Treaty as it is a multilateral, international treaty intended to harmonise copyright limitations and exceptions.[151]

---

[143] Concluding Observations of the CRPD Committee, accessible here: <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5>
[144] WIPO, "Questionnaire on Cross-border Accessibility" accessible here: <https://www.wipo.int/marrakesh_treaty/en/>
[145] WIPO, "Member Profile – Laws, Treaties, and Judgements" <https://www.wipo.int/wipolex/en/members>
[146] *Ibid*
[147] Association of Research Libraries, "National Implementations of the Marrakesh Treaty" <https://www.arl.org/national-implementations-marrakesh/>
[148] WIPO (n145)
[149] Uwe Kischel and Andrew Hammel, *Comparative Law* (Oxford University Press, 2019) 47-51
[150] *Ibid*
[151] Para 12, Preamble, Marrakesh Treaty [2016]

Comparative methodology in this context gives a deeper insight into the level of international harmonisation the Marrakesh Treaty is fostering and how both commonalities and divergencies in implementation impact on the resultant effectiveness of the Treaty in achieving its disability rights objectives. These insights could not be offered by focusing solely on one jurisdiction. Where the Treaty has been more effective in a particular jurisdiction compared to another, this could lead to legal reform to improve the Treaty's effectiveness within that country. This is also fundamental to the operation of the Marrakesh Treaty which features an international importation and exportation of accessible works mechanism.[152] Thus, comparative analysis of the national copyright laws of all 94 Contracting Parties to the Marrakesh Treaty, including their stance on disability rights and copyright exceptions and limitations, is undertaken in Chapter 5. The application of this methodology produces international trend analysis illustrating patterns in the way the Marrakesh Treaty has been implemented.

3) Question-Specific Approaches

In addition, two sub-question level approaches within the overall doctrinal and comparative research methodologies are adopted. These are the international and human rights approaches. This section explores what is meant by these terms, and the chapters and sub-questions to which they relate.

i. International Approach

Analysing the text of key international laws is essential to the scope of this thesis, the most central of these instruments being the Marrakesh Treaty,[153] the Convention on the Rights of Persons with Disabilities,[154] and the Berne Convention.[155] The Marrakesh Treaty contains a "no-conflict" provision in its Article 1 which states that nothing in the Treaty shall derogate from any obligations that Contracting Parties have to each other under any other Treaties, nor shall it prejudice any rights that a Contracting Party has under any other Treaties.[156] This

[152] *Ibid*, Articles 5-6
[153] The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled [2016]
[154] Convention on the Rights of Persons with Disabilities [2008]
[155] The Berne Convention for the Protection of Literary and Artistic Works [1979]
[156] Article 1, Marrakesh Treaty [2016]

is consistent with the general presumption that, when creating new international law obligations, States do not aim to violate their pre-existing Treaty obligations.[157] Furthermore, the rules contained in the Vienna Convention apply to the way these international laws are interpreted.[158] In particular, Article 31 (1) of the Vienna Convention states that Treaties shall be "interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of its object and purpose."[159] This international approach relates to the interpretation of international Treaties in Chapters 2, 3, and 4.

ii. Human Rights Approach

There have been a number of categorisations of the way in which research relating to persons with disabilities is carried out.[160] As this thesis is not purely disability rights research, it does not firmly meet the description of either of those categories but, rather, reflects certain elements of them. These categories are participatory, emancipatory, inclusive, and human rights-based research approaches. Participatory research, as the name suggests, describes an approach in which persons with disabilities participate in some or all of the research stages i.e., in identifying the research problem and carrying it out collaboratively.[161] The research problem which this thesis addresses in terms of responding to the global book famine is indeed one identified and advocated on by persons with disabilities, particularly the World Blind Union and supporting NGOs.[162] It was originally envisaged that there would be more direct participation by way of carrying out empirical research in the latter chapters of the thesis. However, as is noted in the research scope section, this was inevitably unfeasible. Thus, the research is participatory only as to the identification of the research problem.

---

[157] Sir Robert Jennings and Sir Arthur Watts, *Oppenheim's International Law* (9th Edn, Longman, 1992) 1275
[158] Vienna Convention on the Law of Treaties [1969]
[159] *Ibid*, Article 31(1)
[160] Theresia Degener et al, "Introducing a Human Rights-based Disability Research Methodology" (2020) Human Rights Law Review Vol 20:3, 412–432
[161] *Ibid*, 420
[162] World Blind Union, "Marrakesh Treaty Ratification and Implementation Campaign" <https://worldblindunion.org/programs/marrakesh-treaty/>

Emancipatory research, on the other hand, goes further than participation by requiring control and ownership as a means of empowerment.[163] Classic emancipatory research is formulated around the social model of disability and is explicitly concerned with equity and social justice.[164] It focuses on deconstructing the social barriers that are understood to be the actual cause of disability, and actively works towards identifying and breaking down those barriers.[165] In this sense, this thesis is emancipatory in that it focuses on tackling barriers imposed by the copyright law regime and is concerned with social justice outcomes. However, as a non-disabled researcher holds the control and ownership of the thesis, it does not go to the extent of being purely emancipatory research.

Inclusive research denotes a blend of both participatory and emancipatory research, bringing together elements of control, participation, and accessibility.[166] One particularly relevant element to note is that it furthers the interests of persons with disabilities and requires the commitment of non-disabled researchers to these interests.[167] This thesis emulates inclusive research in this sense. The final, and most closely applicable approach adopts what is referred to as the “human rights model” of disability.[168] A human rights-based disability research approach is therefore one which pursues, and is consistent with, the rights and principles embodied in the CRPD, and which uses these to address the socially created obstacles persons with disabilities face.[169] Furthermore, it describes a category of research which responds to a rights concern.[170]

To summarise, this thesis is participatory as to the identification of the research problem, emancipatory in that it focuses on tackling barriers imposed by the copyright law regime and is concerned with social justice outcomes, inclusive as to

---

[163] Theresia Degener (n160) 417
[164] *Ibid*
[165] *Ibid*, 418
[166] *Ibid*, 421
[167] Gerard Quinn and Theresia Degener, *Human Rights and Disability: The Current Use and Future Potential of Human Rights Instruments in the Context of Disability* (United Nations, 2002) 13, 14
[168] *Ibid*
[169] Theresia Degener (n160), 426
[170] *Ibid*

furthering the interests of persons with disabilities, and human rights based with regard to being centred upon the rights and principles contained in the CRPD.

1.2.3 Research Scope

The following considerations come within the scope of the research question and sub-questions:

a) Interdisciplinary Approach

Just as in the Marrakesh Treaty, this research project brings together two prominent areas of law: international disability rights law and international copyright law. Accordingly, it is informed by fundamental theories, concepts, and legal principles from both spheres and therefore presents a holistic view of a contemporary global issue which spans two areas of law. Discussions on the intersection between copyright and disability rights, the global book famine, or the Marrakesh Treaty itself are typically presented from one side of expertise or the other i.e., either from a disability rights perspective,[171] or a copyright perspective.[172] As the author writes from expertise in both areas of law and offers analysis in equal depth on each, this thesis contributes to the more niche vein of blended literature on the Marrakesh Treaty.[173]

b) An Exposé on The Marrakesh Treaty

The Marrakesh Treaty is analysed intricately and comprehensively provision by provision. A study has been undertaken to a similar extent by the World Blind

[171] For example: Molly Land, “The Marrakesh Treaty as Bottom-Up Lawmaking: Supporting Local Human Rights Action on IP Policies” (2018) UC Irvine Law Review Vol 8:3 513; Delia Ferri, “The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled in the European Union: Reflecting on Its Implementation and Gauging Its Impact from a Disability Perspective” (2024) International Review of Intellectual Property and Competition Law Vol 55:7, 89-109; Rui Guo, “The Human Rights Attributes of the Marrakesh Treaty and Its Practical Significance” (2022) Journal of Human Rights Vol 21:5 983

[172] For example: Simonetta Vezzoso, “The Marrakesh Spirit – A Ghost in Three Steps?” (2014) Max Planck Institute for Innovation and Competition 796; Lida Ayoubi, “The Marrakesh Treaty: Fixing International Copyright Law for the Benefit of the Visually Impaired Persons” (n37); Obsa Alemu, "The System of Copyright Limitations under the Marrakesh Treaty (2013) in Light of the TRIPS Standards: The Strengths and Weaknesses" (2021) Journal of Law, Policy, and Globalisation Vol 114, 7-17; Graeme Dinwoodie, “Universalism in International Copyright Law as Seen through the Lens of Marrakesh” in Henning Grosse Ruse-Khan et al, *Intellectual Property Ordering Beyond Borders* (Cambridge University Press, 2022) 235

[173] For example: Paul Harpur, *Discrimination, Copyright, and Equality: Opening the E-Book for the Print-Disabled* (Cambridge University Press, 2017); Ana Ramalho et al, *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts* (Routledge, 2020)

Union,[174] as is referred to severally throughout the subsequent chapters and particularly in Chapter 4.[175] However, additional layers of analysis are contributed, including original recommendations on how the Treaty may be textually improved and highlighting matters relating to its monitoring and enforcement.

c) Comprehensive International Analysis of the Marrakesh Treaty's Implementation

The implementation of the Marrakesh Treaty is analysed from an international perspective. The majority of the literature on the aspect of the Treaty's implementation has offered a single jurisdiction case-study approach.[176] A handful of scholarship has gone further to provide a comparative perspective: for example, Australia and India,[177] and the UK and the European Union.[178] Fewer have offered regional perspectives: across six European countries,[179] the six Arab Gulf States,[180] or at most a wider but not complete range of countries.[181] Globally speaking, there have been three compilations on the implementation of the Marrakesh Treaty.[182] All of these studies are helpful reference points and have been incorporated to an extent. However, they are insufficient in themselves to be able to provide a

---

[174] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals* (Oxford University Press, 2017)
[175] See page 136
[176] For example: Liwah Keller, "Improving the Right to Read in Canada: The Marrakesh Treaty, Commercial Availability and Beyond" (2023) Canadian Bar Review Vol 101:1 148; Saudin Mwakaje, "Accession by Tanzania to the Marrakesh Treaty on Access to Publications for Visually Impaired Persons: Policy and Legal Implications" (2021) The African Review Vol 48:1, 215–238
[177] K Ishwarya, "Implementation of the Marrakesh Treaty, 2014 in India and Australia – A Comparative Study" (2020) Supremo Amicus Vol 15, 121
[178] Charles Oppenheim, "The Marrakesh Copyright Treaty for those with Visual Disabilities and its Implications in the European Union and in the United Kingdom" (2017) The Journal of National and International Library and Information Issues Vol 27:1, 4–9
[179] Delia Ferri and Giulia Rossello, "The Role of the Marrakesh Treaty in Supporting Access to Printed Material for People Who Are Blind or Visually Impaired: A Critical Discussion of the Results of an Empirical Study Conducted in Six European Countries" (2023) Disabilities Vol 3:2, 147–164
[180] Rami Olwan, "The Ratification and Implementation of the Marrakesh Treaty for Visually Impaired Persons in the Arab Gulf States" (2017) Journal of World Intellectual Property Vol 20:5-6, 178–205
[181] Jingyi Li, "Copyright Exemptions to Facilitate Access to Published Works for the Print Disabled" (n65); Laurence Helfer et al, "Copyright Exceptions Across Borders: Implementing the Marrakesh Treaty" (2020) E.I.P.R. Vol 42:6, 332-340
[182] Association of Research Libraries <https://www.arl.org/national-implementations-marrakesh/>; IFLA, "Marrakesh Treaty Implementation: February 2023 Update" (2023) available here: <https://repository.ifla.org/bitstream/123456789/2496/2/Marrakesh%20Monitoring%20Report%20Update%20February%202023.docx>; WIPO Standing Committee on Copyright and Related Rights, "Revised Scoping Study on Access to Copyright Protected Works by Persons with Disabilities" (2019) SCCR/38/3 <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_38/sccr_38_3.pdf>

comprehensive evaluation of how the Treaty has been implemented amongst all of its Contracting Parties. Either the range of countries they discuss is limited, the data is now outdated due to legislative changes post-publication, or the analysis is either not substantive at all or does not cover a sufficient breadth of factors.

The scope of the thesis is limited in the following ways:

- Copyright & Disability Rights Focus

The Article 30 (3) CRPD obligation referred to severally in this thesis relates to intellectual property barriers in their totality. The focus of this research is only on the copyright law aspect of these barriers. The extent to which patent, design, trademark, and other associated intellectual property laws may also constitute unreasonable or discriminatory barriers to disability rights is beyond the scope of the research question. Similarly, though the rights of persons with disabilities have a wider human rights context, the focus is on disability rights law primarily and not the wider scope of international human rights except where relevant.

- Legislative Implementation

It was originally envisaged that the thesis would be culminated with an element of empirical research into the “on the ground” impact of the Marrakesh Treaty in two carefully selected jurisdictions to provide an additional layer of participatory research to the thesis, and practical perspectives on the implementation of the Marrakesh Treaty. As the research progressed, it was later discovered that incorporating this additional layer would not feasibly fit within the time or word limits applicable, combined with the health risks and restrictions imposed by the Covid-19 pandemic during the completion of this thesis. Nevertheless, the doctrinal analysis on the legislative implementation of the Treaty conducted herein provides the foundation on which future empirical studies on its practical implementation may be based.

1.2.4 Research Originality

The overall research question as to how effective the Marrakesh Treaty is as a copyright solution to the global book famine has not been asked or answered in the current literature. In terms of the wider topic, there is a wealth of literature on the

relationship between intellectual property and human rights which is too broad to recount all here.[183] However, the relationship between copyright and disability rights is not as widely explored.[184] Similarly, while there have been a handful of smaller-scale commentaries on certain aspects of the Treaty's provisions, in addition to the study by the World Blind Union noted above providing textual analysis of the Treaty,[185] these do not go into as much depth and detail as in Chapter 4.

The original contributions to the current literature made in this thesis are numerous and are outlined in more detail in the original recommendations section of Chapter 6. To present them briefly here, this section provides a succinct summary of the originality of the thesis:

- New Approaches to Justifying Copyright Protection

New connections are made, and perspectives offered, on how the classic justifications and theoretical underpinnings of copyright protection relate to disability rights. Doctrinal evidence is provided illustrating how these justifications are influential in shaping copyright protection and the extent to which limitations and exceptions are provided for. To meaningfully bring about a paradigm shift in the policy on copyright and disability rights, it is essential to theorise the core conceptual underpinnings of these rights appropriately, so that any changes to national law stimulated by the Marrakesh Treaty are not merely surface level only. The analysis on this aspect provides a theoretical understanding from which a form of copyright protection that is inclusive of disability rights can be modelled.

---

[183] See for example: Laurence Helfer, "Toward a Human Rights Framework for Intellectual Property" (2007) UC Davis Law Review Vol 40:3 971; Samuel Murumba, "Foxes and Hedgehogs at the Intersection of Human Rights and Intellectual Property" (2012) Monash University Law Review Vol 38:1 119

[184] Blake Reid, "Copyright and Disability" (2021) California Law Review Vol 109 2173; Paul Harpur and Nicolas Suzor, "Copyright Protections and Disability Rights: Turning the Page to a New International Paradigm" (2013) University of New South Wales Law Journal Vol 36:3, 745

[185] Jingyi Li and Niloufer Selvadurai, "Reconciling the Enforcement of Copyright with the Upholding of Human Rights: A Consideration of the Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired and Print Disabled" (2014) E.I.P.R. Vol 36:10, 653-664; Martin Senftleben, "A Copyright Limitations Treaty Based on the Marrakesh Model: Nightmare or Dream Come True?" (2017) SSRN Electronic Journal; Caroline Ncube et al, "Beyond the Marrakesh VIP Treaty: Typology of Copyright Access-enabling Provisions for Persons with Disabilities" (2020) Journal of World Intellectual Property Vol 23:3-4, 149–165

- Copyright Theory Perspectives on the Marrakesh Treaty

The literature analysing the text of the Marrakesh Treaty has predominantly done so from the perspective of the human rights principles and theories that influence its formulation and implementation.[186] However, this is only one side of the coin. The Treaty also embodies copyright justifications and principles which similarly influence its formulation and implementation. An original, balanced perspective is offered which discusses the Treaty's text and implementation holistically.

- Revisions to the Marrakesh Treaty's Text

Original proposals are made on how the wording of certain provisions within the Treaty may be textually improved based on both textual and implementation analyses. These revisions are discussed in Chapter 4, summarised in Chapter 6, and the full draft wording is set out in the Annex – Envisaging the Marrakesh Treaty 2.0.

- Comprehensive Global Perspectives on the Implementation of the Marrakesh Treaty

The research carried out in Chapter 5 goes beyond a description or compilation of the laws that have been adopted to implement the Treaty to provide robust doctrinal analysis on the extent to which these implementations align with the Treaty's framework, and to highlight remaining gaps and areas of concern. This level of substantive analysis on all of the Treaty's Contracting Parties has not yet been carried out in the literature.

- Policy Analysis of Countries Yet to Implement the Treaty

Though some comment has been given on the Marrakesh Treaty's implementation to an extent, as mentioned under the previous heading,[187] what has been overlooked is an analysis of the countries that have not implemented, and why. In order to improve the effectiveness of the Treaty, it is imperative that progress is

[186] Lida Ayoubi, "Human Rights Principles in the WIPO Marrakesh Treaty" (n131); Chen Li, "Interpretation of the Marrakesh Treaty Based on the Human Rights Model of Disability" (2022) Journal of Human Rights Vol 21:4, 645
[187] See *1.2.3 Research Scope*

made in these countries even more than refining the accuracy of implementation in those that have. Original analysis is therefore provided on the national copyright laws, policies on copyright protection and model of disability, constitutional approaches, and actions required in all of these non-implementing countries to bring their copyright laws in line with the Marrakesh Treaty.

- Guiding & Improving the Treaty's Implementation

Drawing on areas of concern found in the investigation into the national laws of all of the Treaty's Contracting Parties in Chapter 5, guidance and recommendations are provided on improving the Treaty's implementation moving forward. This could serve as a useful guide to international bodies in this area including the Committee on the Rights of Persons with Disabilities and the Marrakesh Treaty's Assembly, for example.

- Alternative & Collaborative Approaches to Monitoring & Enforcement

Based on the textual and global implementation analysis of the Marrakesh Treaty, recommendations are made for more effective approaches to monitoring the Treaty's implementation and moving towards its enforcement.

1.3 Outlining the Substantive Content – Thesis Structure & Chapter Synopsis

As a helpful reference guide to the structure and content covered in this thesis, this section provides a brief overview of each chapter's title, the areas of discussion it covers, and the research question it answers.

Chapter 2 – Examining the Role of International Copyright Law in the Global Book Famine

The purpose of this chapter is to consider the ways in which copyright law has played a role in restricting access by persons who are blind, visually impaired, or otherwise print disabled to the written word and thereby worsening the severity of the global book famine. In answer to research sub-question two, it considers this role from three perspectives: the justifications of copyright protection, the expansion of the exclusive rights of authors, and the confinement of limitations and exceptions to copyright primarily through the device of the three-step test. It has been noted that there is a divergence in national copyright justification: some on a

utilitarian basis, some on the basis of personality theory, and others on distributive justice grounds.[188] This chapter explores these justifications and the extent to which they are complementary or contrary to disability rights.

Chapter 3 – Exploring the Disability Rights Regime & its Relationship with International Copyright Law

Notably underpinning the background to the Marrakesh Treaty and the Article 30 (3) obligation is the quest to find an appropriate balance between the exclusive rights of copyright holders and the human rights of persons with disabilities.[189] This is becoming an increasingly prominent debate in doctrinal discussion in the EU, for example, where the European Court of Justice has recently engaged in a consideration of the balance between human rights and intellectual property rights.[190] Since the Treaty is uniquely situated between the two regimes, it is important to explore the relationship between the two spheres of law to understand how their respective rights and obligations impact on each other. This relationship has been defined in a multiplicity of manners, from considering intellectual property as a species of human right to viewing them as distinct rights in conflict with each other.[191] In answer to research sub-question three, this chapter begins by examining the various models of disability which are influential in shaping legislative policy on the rights of persons with disabilities. It then explores the relationship between the cross-cutting principles, substantive rights, and legal obligations of disability rights law and international copyright law. Finally, it discusses the three main theoretical frameworks used to theorise this relationship, namely, the conflict approach, the co-existence approach, and the integrationist approach.

---

[188] Margot Kaminski and Shlomit Yanisky-Ravid (n121) 255

[189] Para 9, Preamble, The Marrakesh Treaty [2016]

[190] Christophe Geiger and Elena Izyumenko, "The Constitutionalisation of Intellectual Property Law in the EU and the Funke Medien, Pelham and Spiegel Online decisions of the CJEU: Progress, but still some way to go!" [2020] IIC Vol 51:3 282; Case C-469/17 Funke Medien NRW v Germany [2019] 7 WLUK 466; Case C-476/17 Pelham GmbH v Hutter [2019] 7 WLUK 462; Case C-516/17 Spiegel Online GmbH v Beck [2019] 7 WLUK 458

[191] Jingyi Li and Niloufer Selvadurai, "Reconciling the Enforcement of Copyright with the Upholding of Human Rights" (n185) 2-4

Chapter 4 – A Critical Textual Analysis of the Marrakesh Treaty

In answer to sub-question four, this chapter of the thesis provides a critical textual analysis of the formulation of the Marrakesh Treaty's provisions. After all, no matter how well-implemented the Marrakesh Treaty is, it cannot go further than the extent of its provisions. Thus, to answer the central question of this thesis regarding how effective the Treaty is, and before considering its implementation, it is important to first unpack its provisions. This includes the disability rights, principles, and objectives it is based on; the scope of the definitions it adopts in relation to applicable works, formats, beneficiaries, and authorised entities; the flexibilities the Treaty encapsulates in the differentiation between its mandatory, optional, and supplementary features; and the details concerning how, when, and who it is to be implemented and enforced by.

Chapter 5 – Global Perspectives on the Implementation of the Marrakesh Treaty

This chapter provides a global overview of how the Treaty has been ratified and implemented to provide a holistic analysis of the Treaty's progress so far, in answer to sub-question five. The Treaty is in essence a global solution to a global problem and, thus, a consideration of its effectiveness also necessitates a global perspective. At the time of writing, there are currently 94 Contracting Parties to the Marrakesh Treaty who have signed and ratified the Treaty.[192] Contracting Parties are analysed based on whether their approach to implementing the Treaty is exemplary, partial, or minimal. Additionally, Contracting Parties that are yet to implement and the policy factors surrounding this inaction are also explored. This level of international analysis of ratification and implementation has not yet been carried out in the current literature. There have been some helpful studies on how the Marrakesh Treaty has been implemented within specific national or regional contexts at the most,[193] but not a global implementation analysis. This chapter is therefore an original contribution to the literature and provides useful insights into the international progress of the Treaty. In particular, commonalities and disparities

[192] WIPO Administered Treaties, Contracting Parties, available here: <https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=843>

[193] See for example: Allan Rocha de Souza, "Fundamental Rights, Development and Cultural Inclusion: The Marrakesh Treaty in Brazil" (2016) W.I.P.O.J. Vol 8:1, 75-86; Liwah Keller (n176) 148

between national approaches and the factors influencing this are critically analysed.

Chapter 6 - Thesis Findings, Recommendations, and Conclusions

In answer to research sub-question six, this final chapter draws on the doctrinal, comparative, and philosophical legal analysis of the preceding chapters and provides conclusions on moving forward in improving the efficacy of the Marrakesh Treaty. These include guidance on improving its implementation, proposals for the re-wording of certain provisions, and alternative approaches to its monitoring and enforcement, among others.

1.4 Concluding Remarks

Although issues surrounding the global book famine are discussed from a legal theory and policy perspective, it is important to note from the outset that this is not simply an abstract, theoretical debate. Rather, it is a deeply personal issue that has a real-life impact on the emotional, psychological, and social well-being of the blind and visually impaired.[194] Watermeyer provides a candidly personal illustrative account of how the lack of accessible resources negatively impacted him in these ways, and the difficulties he faced in attempting to access education at the same level as his peers who were not limited by the effects of the book famine.[195] Waiting months for an accessible book to arrive, having to make the most of a scarce selection of poor quality books, and dealing with acute feelings of imposter syndrome were his every day experience.[196] In his words, the book famine left him "feeling useless, like a pretender."[197] With this in mind, it is hoped that this thesis will contribute to another step forward in improving the experience of the millions of blind and visually impaired people around the world who continue to face the impact of the global book famine.

---

[194] Brian Watermeyer (n44)
[195] *Ibid*
[196] *Ibid,* 3
[197] *Ibid*, 4

Chapter 2: Philosophical Theories, Authorial Exclusivity, and the Confinement of Limitations & Exceptions – Examining the Role of International Copyright Law in the Global Book Famine

2.1 Introduction

The tension that now exists between copyright and the rights of persons with disabilities is a relatively contemporary issue considering that the first major piece of international law on the subject of intellectual property rights dates back to 1883.[1] As Helfer notes, the two regimes are the product of a gradual accretion of international and domestic laws and institutions.[2] Not only did they emerge individually, but they also evolved uniquely.[3] Intellectual property law emerged long before the international human rights regime, which might suggest a prioritisation of exclusive authorial rights above human rights interests - perhaps one of the reasons why the global book famine has persisted for so long.[4] Indeed, as was alluded to in the introductory chapter, copyright law has played a significant role in restricting access to the written word by persons who are blind, visually impaired, or otherwise print disabled.[5] In answer to research sub-question two, this chapter considers the extent to which the justification, protection, and expansion of international copyright law have been contributing factors to the global book famine. It is argued here that international copyright law has played a causative role in the origin and continuation of the global book famine in three ways. Firstly, through its grounding on philosophical constructs which have been applied to conceive an individualistic form of copyright policy that excludes disability rights interests. Secondly, by the consistent expansion and reinforcement of the exclusive rights granted to authors. Thirdly, and finally, by constraining the national discretion of States to provide for exceptions and limitations to author's exclusive rights.

---

[1] The Paris Convention for the Protection of Industrial Property [1883]
[2] Laurence Helfer, "Intellectual Property and Human Rights: Mapping an Evolving and Contested Relationship" in Rochelle Dreyfus and Justine Pila, *The Oxford Handbook of Intellectual Property* (OUP, 2018) 118
[3] *Ibid*
[4] Joseph Lelliott and Paul Harpur, *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts* (1st Edn, Routledge, 2020) 84
[5] See page 17

The discussion here is approached in three stages. Firstly, in Section 2.2, the justificatory theories in favour of copyright protection are analysed in turn, together with evaluation as to the extent to which they either support or conflict with disability rights. As Harpur notes, the harm caused by the existence of copyright protection makes a consideration of the justification for creating exclusive rights in the first place all the more important.[6] Although there is often a tendency to categorise intellectual property law as built on Western ideals,[7] it is not a given that all States support copyright protection at the same level, for the same reasons, or to the same extent. Thus, as the Marrakesh Treaty's Contracting Parties represent a broad and diverse demographic of countries,[8] it is important to establish a comprehensive understanding of the various approaches to justifying copyright protection. Going beyond the surface layer of black-letter law and analysing the underpinning philosophies and theories that gave rise to that law can be all the more revelatory. Illustrative examples are provided evidencing the influence philosophical constructs may have on the policy approach to copyright protection, with emphasis on how they may affect provision on limitations and exceptions. These philosophical justifications have informed the legal frameworks on which traditional copyright laws are built and consequently influenced their shape and execution.[9]

Moving on, in Section 2.3, a brief overview of the expansion of copyright exclusive rights is provided. This highlights how these expansions increasingly narrowed the scope of access to the written word for visually impaired persons. Finally, in Section 2.4, an interpretive analysis of the three-step test - the primary device used to confine exceptions and limitations to copyright[10] - is undertaken. This focuses, in particular, on the scope for national provision on disability exceptions under the

---

[6] Paul Harpur et al, *Discrimination, Copyright and Equality: Opening the E-book for the Print Disabled* (Cambridge University Press, 2017) 66

[7] Ruth Okediji, "Does Intellectual Property Need Human Rights?" (2018) New York University Journal of International Law and Politics (JILP) Vol 50:1, 3

[8] See Section *5.2.1 Membership & National Development Status*

[9] Justin Koo, "A Justificatory Pluralist Toolbox: Constructing a Modern Approach to Justifying Copyright Law" (2020) E.I.P.R Vol 42:8, 469-483: Sganga argued that none of the current legislative models for copyright law are influenced by a single theory, instead they demonstrate an interplay of the various theories: see Caterina Sganga*, Propertising European Copyright: History, Challenges and Opportunities* (Edward Elgar, 2018) 19

[10] Article 9(2) Berne Convention [1979]; Article 13 TRIPS Agreement [1995]

test. It is already widely noted that a significant number of countries had exceptions and limitations to copyright for the benefit of persons with disabilities before the adoption of the Marrakesh Treaty, despite which, the global book famine has persisted.[11] The extent to which national copyright laws provide for exceptions and limitations for persons with disabilities is analysed in Chapter 5.[12]

2.2 Philosophical Theories: (Re)Interpreting Copyright Justifications in a Spirit of Complementarity with Disability Rights

Philosophical justifications of copyright have been taxonomised in various ways. The most common taxonomy is the deontological and teleological "consequentialist" divide.[13] Deontological theories support copyright based on its intrinsic moral nature,[14] such as in the natural rights, personality theory, and human rights theories discussed in subsection 2.2.1. Consequentialist teleological justifications propose moral arguments based on the social value that copyright may bring about, such as encouraging learning, economic development, or generally causing societal happiness.[15] The classic form of consequentialist justification is utilitarian theory and its derivatives, considered in subsection 2.2.2.[16] A second taxonomy categorises between *ex ante* and *ex post* theories.[17] Ex ante theories support copyright protection for reasons that arise prior to the creation of the work, such as the need to incentivise the creation of new works, whereas ex post justifications are concerned with post-creation matters including the improvement, maintenance, and commercialisation of the work which copyright protection makes possible.[18] Finally, a third taxonomy differentiates between individualistic justifications that are based on the relationship between an author

---

[11] Para 7, Preamble, Marrakesh Treaty [2016]; Sam Ricketson, "WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment" [2003] SCCR/9/7
[12] See page 182
[13] Mary Gani-Ikilama, "Copyright Theory and a Justificatory Framework for Creative Autonomy in Cultural Industries" (2016) Queen Mary Journal of Intellectual Property Vol 6:2 154, 160-161
[14] *Ibid*
[15] Graham Dutfield and Uma Suthersanen*, Global Intellectual Property Law* (Second Edition, Edward Elgar, 2020) 27
[16] Estelle Derclaye and Tim Taylor, "Happy IP: Replacing the Law and Economics Justification for Intellectual Property Rights with A Well-Being Approach" (2015) E.I.P.R. Vol 37:4, 198
[17] Mark Lemley, "Ex Ante versus Ex Post Justifications for Intellectual Property" (2004) The University of Chicago Law Review Vol 71:1, 129-149
[18] *Ibid*

and their work, and collectivistic justifications which emphasise the relationship between the work and society.[19]

The theories discussed in this section have been categorised as most appropriately for the context of the discussion. That is, as either being author-centric in that they focus on copyright as the individualistic right of the author first and foremost, or socio-centric in that they emphasise the social role, function, and purpose of copyright. This categorisation is important since, as is explored in the comparison between the copyright law of the Philippines and the Dominican Republic in subsection 2.2.3, author-centric philosophical approaches tend to lead to restrictive stances on disability exceptions and indeed exceptions in general, whereas socio-centric philosophies are typically more inclusive of the wider public interest.[20] It should be preliminarily noted, however, that the use of the term justification is not intended to suggest that the theories discussed in this section provide an irrefutable substantiation of copyright protection. On the contrary, as is highlighted, the theories discussed here are not watertight and could therefore be more accurately described as “arguments for” protection. However, as they are referred to as justifications in the literature, they are referred to as justifications for ease of reference.

2.2.1 Author-Centric Philosophies

The rationale as to why copyright should be subject to legal protection at all and, to a more contentious degree, the precise extent of that protection, have been the subject of scholarly and philosophical debate for many years.[21] Engaging as this discussion may be, the objective here is not to become entangled in the rich web of criticisms and counter-positions regarding the validity and flaws of the vast range of justificatory theories established in support of copyright protection.[22] Rather, of

---

[19] Christian Stallberg, “Towards a New Paradigm in Justifying Copyright: A Universalistic-Transcendental Approach” (2008) Fordham Intellectual Property Media & Entertainment Law Journal Vol 18:2 333, 344-345

[20] See page 70

[21] Justine Pila, “Pluralism, Principles and Proportionality in Intellectual Property” (2014) Oxford Journal of Legal Studies Vol 34:1, 181-200

[22] For literature on this topic, see: Samuel Trosow, “The Illusive Search for Justificatory Theories: Copyright, Commodification and Capital” (2003) Canadian Journal of Law & Jurisprudence Vol:16 217; Lee Edwards and Giles Moss, “Evaluating Justifications of Copyright: An Exercise in Public Engagement” (2020) Information, Communication & Society Vol 23:7, 927-946

more pertinent concern is the extent to which these philosophical schools of thought support the construction of a form of copyright protection that is prejudicial to the rights of persons with disabilities. This section turns first to the four most prominent author-centric philosophical justifications for copyright protection. These are: Lockean labour theory, desert (or reward) theory, personality theory, and human rights theory.

2.2.1.1 Lockean Labour Theory

When considering the justifications for copyright protection, the focus is first and foremost on the classic foundation of exclusive authorial rights based on Lockean theory.[23] Although Lockean theory comes within the realms of *jus naturalis*, or natural rights theory, it is more commonly referred to as labour theory in the literature and so it will be referred to as such here.[24] An alternative understanding of Lockean theory, less contentious than the traditional argument, focuses not just on the labour itself but on the value that the labour produces.[25] As this is closely linked to the sentiments of reward theory discussed separately, the focus here remains on classic labour theory. Moreover, while Locke does indeed refer to value added by labour - noting how invention and arts improve the conveniences of life,[26] and in another portion referring to ownership of land based on it being improved and cultivated by the labourer[27] - Lockean theory is not dependent on value as a precondition. A proprietary right would exist regardless of whether or not any value arose out of the labour.

It is important to first clarify that Locke's labour theory arises out of the state of nature, that is, the state preceding the establishment of society or a legal system.[28] The position as to property rights subsequently changes once the "Commonwealth" (i.e., the social, legal, political etc. system) is constructed.[29] These are two

---

[23] Peter Laslett, *Locke: Two Treatises of Government* (First Published 1960, Cambridge University Press, 1988)
[24] Robert Merges, *Justifying Intellectual Property* (Harvard University Press, 2011) 41
[25] Adam Mosoff, "Saving Locke from Marx: The Labour Theory of Value in Intellectual Property Theory" (2012) Social Philosophy & Policy Vol 29:2 283-317
[26] Peter Laslett (n23) 164-165
[27] *Ibid*, 294
[28] Justin Bruner, "Locke, Nozick and the State of Nature" (2020) Philosophical Studies Vol 177:3 705, 707
[29] Barry Hindess, "Locke's State of Nature" (2007) History of the Human Sciences Vol 20:3 1, 14

fundamentally different circumstances and, thus, it is important to differentiate the aspects of Lockean theory which pertain only to the state of nature, and those which are intended to apply thereafter. This is an overlooked yet fundamental distinction which has important implications for the application of the property right which Locke envisages.[30] These intricacies are highlighted during the discussion.

a) The Beginning of a Property Right – Locke's Three Tenets

Lockean labour theory has three tenets - property in person, property in labour, and property in the product that is mixed with the labour.[31] The starting position for Locke is the fact that, although the world and all materiality therein belongs to all people in common, the only subject one can assuredly say for certain is their property is their own person.[32] As a logical extension to this starting position, the second tenet of Lockean theory proposes that, since everyone has a natural right to their person, the labour of their body and the work of their hands are also their property since they emanate intrinsically from them.[33] Despite criticism from those who focus on the physical aspect of labour,[34] this is in fact the most applicable aspect to intellectual property. The phrase "work of his hands" should be understood within the Biblical context which Locke was writing from.[35] It is used in the first instance as an act of divine creation in that the whole of creation is the work of God's hands - His handiwork.[36] From a human perspective, God designed mankind with the potential to create when He made them in His image.[37] The phrase, 'work of his hands', therefore pertains to the use of a person's talents and skills in the act of creation. Apart from this, Locke also refers to "invention and arts" as what the labourer employs in improving the conveniences of life.[38] Moreover, the improvement in the arts and science is considered part of God's blessing and

---

[30] Joseph Gerber, "Locking out Locke: A New Natural Copyright Law" (2017) Fordham Intellectual Property Media & Entertainment Law Journal Vol 27:3 613, 619
[31] Peter Laslett (n23) 286
[32] *Ibid*
[33] *Ibid*
[34] Kenneth Einar Himma, "Toward a Lockean Moral Justification of Legal Protection of Intellectual Property" (2012) San Diego Law Review Vol 49:4 1105, 1132-1134
[35] Victor Nuovo, *John Locke: The Philosopher as Christian Virtuoso* (1st Edn, OUP, 2017)
[36] The Christian Bible, Book of Isaiah, 48:13 NKJV
[37] *Ibid*, Book of Genesis 1:27 NKJV
[38] Peter Laslett (n23) 299

intention for mankind.[39] Thus, once understood in the fullness of its meaning, it is clear that Lockean theory may be applied to copyright protection, and more so one that is beneficial to all.

The third and final tenet of Lockean theory is perhaps the most controversial of the three. Recalling that, at this point, the focus is still on the position as in the state of nature, Locke then posits that, when something material has been removed out of the state it was originally made in by nature and labour is 'mixed' with the object, it then becomes the labourer's property as their labour is now joined to it.[40] Take, for example, a tree. In its original state made by nature, it is simply a tree without any specific application of human utility. However, once the tree is cut down and carved into wood for a fence by the use of skill and labour, it would no longer be possible to separate the labour from the wood. To deny the labourer a proprietary interest in it and to allow another person to keep it in their possession, would be to enable them to benefit from the utility that the wooden fence now provides as a result of the labour expended on it, without that party expending any skill or labour in creating that utility.[41] Meanwhile, the labourer is deprived of the fruit of the 'work of his hands.'[42] As Locke puts it, no other man has cause for complaint and "ought not to meddle with what was already improved by another's labour" for doing so is considered as "unjustly seeking to enjoy the benefit of another's pains which they have no right to."[43] These sentiments reflect "reaping without sowing" and reward theory arguments.[44] Locke further notes that no person other than the labourer can have a right to what they have joined their labour to,[45] and that this right "excludes the common right of other men," thereby giving rise to the concept of exclusivity in property ownership.[46] Applying this line of reasoning to the written word, a book

---

[39] *Ibid*, 164
[40] *Ibid,* 288
[41] *Ibid*
[42] *Ibid*
[43] *Ibid,* 291
[44] Patricia Laughlan, "Pirates, Parasites, Reapers, Sowers, Fruits, Foxes…The Metaphors of Intellectual Property" (2006) Sydney Law Review Vol 28:2 211, 220
[45] Peter Laslett (n23) 288
[46] Jade Kouletakis, "Decolonising Copyright: Reconsidering Copyright Exclusivity and the Role of the Public Interest in International Intellectual Property Frameworks" (2022) GRUR International Vol 71:1 24-33

would be considered as the product of the author's intellectual labour and, as such, their exclusive property.[47]

b) <u>The Scope of a Property Right – Understanding Lockean Context & Provisos</u>

The three tenets of Lockean theory purport to rationalise how a property right may arise. The next question that follows pertains to what kind of property right Lockean theory supports, and whether that construction is prejudicial to the rights of persons with disabilities. The emphasis of Locke's three tenets on the individual person, their personal labour, and the exclusivity of their proprietary entitlements is seemingly what makes the theory susceptible to the construction of an individualistic form of copyright protection whereby an author's natural entitlement to their intellectual labour translates to an exclusive private right over their works.[48] In addition, the terminology of 'natural right' has been interpreted as if to ascribe a superior status to property rights.[49] However, the argument here is that, although Lockean theory has unfortunately been misapplied to formulate an overly individualistic and exclusive form of copyright policy,[50] it is not intrinsically in conflict with disability rights and does not in fact support such an author-centric construction of copyright. The support for this position is threefold.

Firstly, Locke's right to property being a 'natural right' is indicative of the source of the right and not of any special character i.e., it is an original right that arises from the law of nature, as distinct from property rights granted later by positive law. In other words, it precedes, not supersedes, positive law.[51] Secondly, the ownership of a proprietary title by virtue of labour is a mechanism that specifically applies to the state of nature, and not beyond.[52] Locke is careful to clarify that labour gave rise to a property right in *the beginning*, that is, before positive law was established

---

[47] Alina Ng, "Literary Property and Copyright" (2012) Northwestern Journal of Technology and Intellectual Property Vol 10:7 531
[48] Bryan Cwik, "Labor as the Basis for Intellectual Property Rights" (2014) Ethical Theory and Moral Practice Vol 17:4 681, 689
[49] Julia Osei-Tutu, "Humanising Intellectual Property: Moving Beyond the Natural Rights Property Focus" (2017) Vanderbilt Journal of Entertainment and Technology Law Vol 20:1 207, 210
[50] Jade Kouletakis (n46) 25
[51] Glynn Lunney Jr, "A Natural Right to Copy" (2019) Boston University Law Review Vol 99:6 2491, 2499
[52] Peter Laslett (n23) 299

to regulate ownership.[53] Again, later, he reiterates that labour could *at first* begin a title of property.[54] In fact, it is an essential survival mechanism of property ownership that arises from the conditions of the state of nature such that, without it, it would not be possible to as much as pick an apple from a tree without the common consent of all people.[55] However, this position fundamentally changes with the establishment of the "Commonwealth" wherein individual rights are forfeited to create a Commonwealth which acts for the common good.[56] In Locke's words, the labourer is now "in a new state wherein he is to enjoy many conveniences from the labour, assistance, and society of others in the same community."[57] To enjoy this, he is to also part with as much of his natural liberty in providing for himself as the good, prosperity, and safety of the society shall require.[58]

Thus, although in the state of nature there existed an exclusive natural right to property through labour, this is superseded by social or collective interests where all members are benefitting from each other's labour. That is not to say there is no longer an individual right, but that it is now protected equally along with the rights of all other members by the Commonwealth.[59] In copyright terms, an author's property right is no longer to be held as their personal and natural entitlement, but to be protected in positive law in the pursuit of the common good of all. Thus, a contextual interpretation of Lockean theory supports a form of copyright protection that is not exclusively author-centric, but is in fact for the common good, and therefore not prejudicial to the rights of persons with disabilities. To the extent that it has not been applied in this way, it is due to misplaced emphasis on the starting position of Lockean theory and not on the end state.

The third and final support for the proposition that Lockean theory does not justify an author-centric construction of copyright is the fact that even the natural right to property that Locke envisages as in the state of nature is not an absolute right. It is

---

[53] *Ibid*
[54] *Ibid*, 302
[55] *Ibid*, 288
[56] *Ibid*, 353
[57] *Ibid*
[58] *Ibid*
[59] *Ibid*

subject to two important provisos which clearly indicate that the Lockean construct of property was not intended to be detrimental to the rights of others. These provisos - namely, the sufficiency and the no spoilage provisos[60] - offer promising caveats for perceiving copyright in a way that is inclusive of the rights of persons with disabilities. These provisos do not pertain to the question of whether a right to property exists, but rather they caveat the scope of the property right. The application of these provisos to copyright and disability rights is a perspective not offered in the current literature.[61]

Turning first to the sufficiency proviso, Locke proposes that a proprietary right may exist in as much as the labourer leaves enough and as good left in the commons for others.[62] Locke's rationale for this is the fact that the Creator gave all things to all mankind in common, thus, it is not God's intention that one person or group of people should dominate resources to the significant detriment of others.[63] This proviso essentially requires that a labourer must not worsen the position of others by their appropriation from the commons.[64] In copyright terms, where the protection of the rights of authors in their literary works has been detrimental to access to works by visually impaired persons and has had a stifling effect on their human rights, such protection is in conflict with this Lockean proviso. In other words, there has not been enough and as good for visually impaired persons to access and create from.

With regard to the no spoilage or no waste proviso, Locke maintains that one may hold a property right only in "as much as anyone can make use of to any advantage of life before it spoils."[65] Whatever is beyond this is more than his share and belongs to others."[66] Merges elaborates that "spoilage" as applied to

---

[60] Gordon Hull, "Clearing the Rubbish: Locke, the Waste Proviso, and the Moral Justification of Intellectual Property" (2009) Public Affairs Quarterly Vol 23:1, 67-93
[61] See, for example, Eric Roark, "Applying Locke's Proviso to Unappropriated Natural Resources" (2012) Political Studies Vol 60:3, 687-702; Josh Milburn, "The Demandingness of Nozick's 'Lockean' Proviso" (2016) European Journal of Political Theory Vol 15:3, 276-292
[62] Peter Laslett (n23) 288
[63] *Ibid*, 290
[64] Maxime Lambrecht, "On Water Drinkers and Magical Springs: Challenging the Lockean Proviso as a Justification for Copyright" (2015) Ratio Juris Vol 28:4 504, 506
[65] Peter Laslett (n23) 290
[66] *Ibid*

intellectual property pertains to unused creations.[67] However, his interpretation of this as meaning that the creation only needs to be put to *some* use to satisfy this proviso does not align with the spirit of Locke's writing which intends maximal use, not minimal.[68] Any part of the property which is unused is considered as belonging to others i.e., there should not be any spoilage at all. In the context of the written word, books hold social, cultural, and educational value.[69] When they are published and protected in formats inaccessible to visually impaired persons and the benefit of them is thereby denied to a sizable proportion of the world population, the work cannot be said to be fulfilling its maximum usage - it is therefore wasting a substantial amount of the social, cultural, and educational value and purpose of the work.[70]

These two provisos therefore indicate that Lockean theory does not support a copyright system that either makes the position of others worse or is wasteful of the object that is protected as private property. Indeed, Locke himself is known to have advocated for access rights to books and limits on authors' privileges granted by the copyright system of his time, arguing that books are for the use of others and access to literature must be facilitated rather than impeded by copyright.[71] Thus, in sum, the justification of an exclusive form of author-centric copyright protection that is detrimental to the access rights of visually impaired persons cannot be validly supported on the basis of Lockean theory.[72]

2.2.1.2 Desert/Reward Theory

After Lockean theory, a second prominent justification is closely linked to a number of theoretical variations which should not be conflated. These are reward, desert, incentive, and economic theory. These names all pertain to a theory that supports

---

[67] Robert Merges (n24) 58
[68] Peter Laslett (n23) 290
[69] Carys Craig, "Locke, Labour and Limiting the Author's Right: A Warning Against a Lockean Approach to Copyright Law" (2002) Queen's Law Journal Vol 28:1, 1-60, 32-33
[70] *Ibid*
[71] John Willinsky, "When the Law Advances Access to Learning: Locke and the Origins of Modern Copyright" (2017) Knowledge Creation, Dissemination, and Preservation Studies Vol 1:1 2, 4-5
[72] Mitchell Longan, "A System Out of Balance: A Critical Analysis of Philosophical Justifications for Copyright Law Through the *Lenz* of Users' Rights" (2023) University of Michigan Journal of Law Reform Vol 56:3 779, 784

the protection of copyright as a way of “giving something back to the creator.”[73] The difference in these variations of the justification pertains to the purpose of this “giving back,” whether primarily for the creators’ interests or for the social good. Desert or reward theory is concerned with the creators’ interests,[74] whereas incentive and economic theories consider protection as an individual means to a social end.[75] Both incentive and reward theory are expressed in the Marrakesh Treaty,[76] and therefore merit particular attention. Desert/reward theory is discussed here due to its author-centric nature, while economic and incentive theories are discussed in the socio-centric section. Two considerations should be separated preliminarily. Firstly, an understanding as to why creators should be rewarded for their works at all. Then, secondly and more controversially, a consideration as to what manner or form the reward should take.

Turning first to the argument as to why authors and creators deserve a reward for their works, the classic rationale is that copyright works are valuable - be it culturally, socially, educationally, and so on - thus, it is only just or fair to reward authors for producing something beneficial.[77] This is, of course, based on the hypothetical assumption that all copyright works are valuable, regardless of their quality. At a more practical level, authors and creators have expended effort and cost in the production of the work which is typically a much higher cost than the later reproduction of the work.[78] In other words, they have laboured intellectually, physically, financially, etc., and this labour should not go unrewarded.[79] There is some similarity here with labour theory, except that Lockean labour theory supports a property right based on an inherent entitlement, whereas property based on desert theory is something earned.[80]

---

[73] Ruth Towse, “Partly for the Money: Rewards and Incentives to Artists” (2001) Kyklos International Review for Social Sciences Vol 54:2-3 473, 478
[74] *Ibid*
[75] Jeanne Fromer, “Expressive Incentives in Intellectual Property” (2012) Virginia Law Review Vol 98:8 1745, 1752
[76] Preamble, Marrakesh Treaty [2016]
[77] Justin Hughes, “The Philosophy of Intellectual Property” (1988) Georgetown Law Journal Vol 77, 12
[78] William Landes and Richard Posner, “An Economic Analysis of Copyright Law” (1989) Journal of Legal Studies Vol 18:2 325, 326
[79] Diane Leenheer Zimmerman, "Copyrights as Incentives: Did We Just Imagine That?" (2011) Theoretical Inquiries in Law Vol 12:1 29, 58
[80] *Ibid*

That authors deserve some form of benefit or reward is a premise consistent with Article 27(2) of the Universal Declaration of Human Rights (UDHR) which recognises the right of authors to benefit from the material and moral interests arising from their works, as further echoed in Article 15 (1)(c) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).[81] However, the difficulty is ascertaining what that reward should look like. This leads to a Pandora's box of subjective considerations as to how much labour and cost have been expended, how valuable the work in question is, how much can be attributed to natural talent and hard work, whether all works should receive the same reward, and so on.[82] Indeed, the most controversial issue pertains to whether a property right is merited, and opposition to a property right based on desert theory is typically on grounds of necessity or proportionality i.e., that authors can be sufficiently rewarded by other means that do not necessitate the grant of a proprietary right, or that granting such a right would be excessively disproportionate in comparison to the contribution of the author.[83] These rewards may be categorised as being monetary such as access fees and public financial support, or non-monetary, including reputation, honour, recognition and fame.[84]

There is no watertight argument for substantiating a property right based on desert theory alone. The strongest argument may be to propose that copyright protection is the most effective way that authors and creators may have their rewards guaranteed since ownership naturally entails the right to derive income from the property by sale, licensing, or otherwise.[85] Without ownership, the work is susceptible to exploitation by others who may seek the rewards from works they

---

[81] Article 27(2) UDHR [1948], Article 15(1)(c), ICESCR [1976]
[82] Edwin Hettinger, "Justifying Intellectual Property" [1989] Philosophy & Public Affairs Vol 18:1, 42; Daniel Gervais, "Human Rights and the Philosophical Foundations of Intellectual Property" in Christophe Geiger, *Research Handbook on Human Rights and Intellectual Property* (Edward Elgar, 2015) 89
[83] Stephen Maurer, "Intellectual Property Incentives: Economics and Policy Implications" in Rochelle Dreyfuss and Justine Pila, *The Oxford Handbook of Intellectual Property Law* (1st Edn, OUP, 2018) 163-164
[84] Yoonmoo Sang, "Revisiting Copyright Theories: Democratic Culture and the Resale of Digital Goods" (2018) Communication Theory Volume 29:3, 279; Edwin Hettinger (n82) 41
[85] Lawrence Becker, "Deserving to Own Intellectual Property" (1993) Chicago-Kent Law Review Vol 68:2 609, 621

did not create.[86] The focus is therefore shifted from copyright protection being the reward itself, to being the means that the reward of economic and moral rights is secured. Nevertheless, amidst all of these complexities, what is certainly clear is that desert/reward theory does not substantiate a claim for an unconditional or unlimited reward.[87] In other words, desert theory does not offer a blank cheque for copyright protection. Rather, whatever reward may be granted, it is to be construed as subject to the general rights of mankind.[88] As such, where intellectual property rights and, more specifically, copyright is justified on the basis of desert, there is no necessary conflict with the rights of persons with disabilities since they are not mutually exclusive - making works accessible to visually impaired persons does not prejudice the right of authors to be rewarded for their works. It may only be perceived as diminishing the reward of creators when their entitlement is misconstrued as being unlimited. How the Marrakesh Treaty avoids compromising authorial reward is discussed in Chapter 4.[89] Finally, if indeed the creation of works merits reward, denying access to works by persons with visual impairment commits a further injustice in that doing so limits their enjoyment, not just as consumers, but also as creators. A dearth of accessible literature means a limited resource base from which to create, which in turn limits the creation of new works by visually impaired persons and the rewards that follow. A just society should facilitate equal opportunities for all to benefit from the rewards of creation.

2.2.1.3 Personality Theory

Although it has not been utilised as such, perhaps the philosophical justification of copyright protection that is most complementary to disability rights is the personality theory propagated by Hegel.[90] It also bears similarities to Lockean theory except that, when labour is mixed with materiality, it is not the labour attached to the resultant product that gives rise to a proprietary entitlement but the

[86] Eric Johnson, “Intellectual Property and the Incentive Fallacy” (2012) Florida State University Law Review Vol 39:3 623, 629
[87] Peter Drahos, *A Philosophy of Intellectual Property* (First Published 1996, ANU Press, 2016) 37
[88] *Ibid*
[89] See page 141
[90] Thomas Knox, *Hegel’s Philosophy of Right* (First Published 1952, OUP, 1967)

personhood of the author vested within it.[91] While the same labour could in theory be executed by multiple creators, personhood is unique to the creator. While there are variations of personality theory,[92] for reasons of brevity, the focus will remain on classic Hegelian thought.

Personality theory should not be misconstrued as arguing for a right to the protection by copyright of one's personality as an entity in and of itself, but rather of extensions of that personality as expressed in tangible objects.[93] Nor should it be conflated with the concept of sentimental attachment or an emotional connection to an external object.[94] Rather, it is not that personality has become attached to the object, but that the very existence of the object emanates from the personality of its creator and is therefore an embodiment of the creator's personhood.[95] As with desert theory, the personality justification also entails vague subjectivities which cast doubt on its legitimacy, including the ability to measure the level of personality in a work, to explain why personality is something that merits such exclusive protection, and so on.[96] In doctrinal terms, this theory typically translates to the moral rights authors have in their works, one of which is protecting the work from any modifications that damage its integrity.[97] There is a subtle hint to this within the provisions of the Marrakesh Treaty whereby, when an accessible format copy of a protected work is produced, "it must respect the integrity of the original work," with the only changes permitted being those which are necessary for the work to be made accessible.[98]

---

[91] David Dante Troutt, "I Own Therefore I Am: Copyright, Personality, and Soul Music in the Digital Commons" (2010) Fordham Intellectual Property Media & Entertainment Law Journal Vol 20:2 373, 389

[92] For a Kantian account of personality theory: Anne Baron, "Kant, Copyright, and Communicative Freedom" (2012) Law & Philosophy Vol 31:1, 1-48; Paul Guyer, *Kant* (First Published 2006, Routledge, 2008) 268-279; Robert Merges (n24) 68-101.

[93] Adam Moore, "Personality-Based, Rule-Utilitarian, and Lockean Justifications of Intellectual Property" in Kenneth Himma et al, *The Handbook of Information and Computer* Ethics (Wiley, 2008) 108

[94] Justin Hughes, "The Personality Interest of Artists and Inventors in Intellectual Property" (1998) Cardozo Arts & Entertainment Law Journal Vol 16:1 81, 87

[95] *Ibid*

[96] David Dante Troutt (n91), 386

[97] Justin Hughes (n94) 81

[98] Article 2(b), Marrakesh Treaty [2016]

Hegel's construct of property is based on the concept of inalienability, and it is this aspect which is susceptible to being interpreted out of context to create an inalienable form of exclusive right.[99] The property which Hegel refers to as inalienable is a person's "private personality and universal essence of self-consciousness" in abstract, including will, ethical life, and religion.[100] However, when these characteristics are externalised via will, they at that point become alienable as in the external product i.e., the inalienable personhood of an author becomes alienable when expressed in a literary work.[101] Moreover, taking the example of books, Hegel considers that it is in fact their purpose and value that they come into the possession of others who can learn and similarly produce their own works to the betterment of human advancement,[102] as Locke also argued.[103] With the development of knowledge in mind, Hegel's notion of copyright is a restricted one which secures the property rights of authors within limits.[104] While the author retains the right of reproduction, their right is an alienable capital asset, not an inalienable natural right.[105]

Along these lines, Schroeder provides a robust rebuttal of the 'romanticised notion' that Hegelian theory in any way attaches a special status to copyright protection.[106] She contends that an object which is not fully alienable cannot be considered property or therefore governed by a property regime.[107] Rather, a Hegelian-consistent position is to view the works as a means to the creator's ends to be exploited through possession, enjoyment, and alienation.[108] Regrettably, as a result of this 'romanticised' notion of copyright, personality theory has typically been used to grant authors near absolute control, and in some ways inalienable rights, over many aspects of copyright protection to the exclusion of audiences and follow-on

---

[99] Christopher Yoo, "Rethinking Copyright and Personhood" (2019) University of Illinois Law Review Vol 423 1039, 1041-1042
[100] Thomas Knox (n90) 52
[101] *Ibid*, 54
[102] *Ibid*, 54
[103] John Willinsky (n71) 4-5
[104] Thomas Knox (n90) 56
[105] *Ibid*, 55
[106] Jeanne Schroeder, "Unnatural Rights: Hegel and Intellectual Property" (2006) University of Miami Law Review Vol 60:4 453, 500
[107] *Ibid*
[108] *Ibid*, 499

authors.[109] Indeed, this absolute control may extend well after the author's death and therefore enable authors to control how their works are presented from the grave.[110] There is concern that this approach to justifying copyright, as with the commodification of physical property, may systemically prevent prospective personhood interests from developing.[111] This is a concern that directly pertains to the right to education contained in Article 24 of the Convention on the Rights of Persons with Disabilities which mandates that education is to be directed to the development by persons with disabilities of their personality, talents, and creativity to their fullest potential.[112] The over-protection of personhood interests has the potential to restrict creative expression and personality development, which would be an effect contrary to a Hegelian understanding of the purpose and value of property.

2.2.1.4 Human Rights Theory

Although the spheres of copyright and human rights are usually understood as separate areas of law, the boundary between them may not be as clear cut as may be assumed. Indeed, there is a vein of scholarship advancing the notion that copyright may be justified on the basis that it is a human right in itself.[113] Two connected questions are considered here: whether copyright is currently protected as a human right in international human rights law, and a more controversial enquiry as to whether it *should* be considered as a human right.

a) *Is* copyright a human right?

Support for the proposition that copyright is currently protected as a human right is typically based on the closely linked provisions of Article 27(2) of the Universal Declaration of Human Rights (UDHR) and Article 15(1)(c) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) on the right of authors to "the protection of the moral and material interests resulting from any

[109] Christopher Yoo (n99) 1042
[110] Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic* Battle (Princeton University Press, 2014) 245
[111] Justin Hughes (n94) 81
[112] Article 24(1)(b), CRPD [2008]
[113] See for example: Peter Yu, "Intellectual Property and Human Rights 2.0" (2019) University of Richmond Law Review Vol 53:4, 1375-1453

scientific, literary or artistic production of which he is the author."[114] The inclusion of this right was a much debated and highly controversial issue - while some delegates found it unworthy of protection as a basic human right, others questioned its overlap with the protection already granted under the right to own property, the right to just remuneration for work, or both."[115] Some viewed its inclusion as a tool to strengthen authors' protection in international copyright law, rather than as a new set of human rights.[116] Indeed, it was intended by some negotiators that Article 15 would give moral authority and backing to the further expansion of the international copyright regime.[117]

Helfer notes that the skeletal and under-theorised nature of these provisions in the UDHR and ICESCR has left critical questions unanswered, particularly their relationship with intellectual property laws.[118] Indeed, in the light of their apparent overlap, the Committee on Economic, Social and Cultural Rights felt it necessary to expressly dispel any conflation of the Article 15 ICESCR right with intellectual property rights, and to elaborate on the connection between them.[119] The Committee clarified that, while human rights are fundamental, inalienable, and universal entitlements belonging to individuals, intellectual property rights are first and foremost means by which States seek to provide incentives for inventiveness and creativity, encourage the dissemination of creative and innovative productions, as well as the development of cultural identities, and preserve the integrity of scientific, literary, and artistic productions for the benefit of society as a whole."[120]

---

[114] Article 27(2) UDHR [1948], and Article 15(1)(c) ICESCR [1976]
[115] Peter Yu, "Reconceptualising Intellectual Property Interests in a Human Rights Framework" (2007) U.C. Davis Law Review Vol 40:3 1039-1150, 1070
[116] Saleh Al-Sharieh, "Toward a Human Rights Method for Measuring International Copyright Law's Compliance with International Human Rights Law" (2016) Utrecht Journal of International and European Law Vol 32:82, 5-26
[117] Audrey Chapman, "Approaching Intellectual Property as a Human Right: Obligations Related to Article 15 (1) (c)" in Evgueni Guerassimov, *Approaching Intellectual Property as a Human Right* (Digital Version Edn, UNESCO Publishing, 2001) 11
[118] Laurence Helfer, "Toward a Human Rights Framework for Intellectual Property" (2007) U.C. Davis Law Review Vol 40:3 971, 976-977
[119] Committee on Economic, Social, and Cultural Rights, "General Comment No. 17 on the Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of which He or She is the Author" (2006) E/C.12/GC/1712
[120] *Ibid*, para 1

Although the Committee went to great lengths to distinguish the Article 15(1)(c) right from intellectual property rights, this is hampered by its elaboration of the Article's object and purpose. It is elaborated that what Article 15 seeks to safeguard is the personal link between authors and their creations and their basic material interests.[121] This quite clearly embodies both the personality theory and desert theory used to justify copyright.[122] The Committee further clarified that the Article 15 (1)(c) right "seeks to encourage the active contribution of creators to the arts and sciences and to the progress of society as a whole."[123] Strikingly, this is in fact a facsimile of the classic utilitarian justification of copyright explored in subsection 2.2.2.1, thereby aligning the two forms of the right in purpose and subject. There still remains, however, a divergence in the extent of the protection afforded. While Article 15(1)(c) does not specify the modalities or provide any specific parameters as to how the right should be protected in national law,[124] the general tone is to protect only as much as is necessary to enable authors and creators to enjoy an adequate standard of living. It is noted that higher standards of protection are permissible, so long as they do not unjustifiably limit the enjoyment by others of their rights under the Covenant.[125]

With the grounds for justifying copyright as a human right based on Article 15 (1)(c) being contentious, an alternative approach to legitimising copyright on human rights grounds is to interpret the right to own property provided in Article 7 of the UDHR flexibly so as to include forms of intellectual property. There is no clear support for this approach in international law,[126] however, although there is more explicit support to this effect at a European level - the European Court of Human Rights elaborating that the right to property in the European Convention on Human Rights does not only pertain to physical goods, and Article 17(2) of the Charter of

---

[121] *Ibid*, para 2
[122] See pages 57 and 55 respectively
[123] Committee on Economic, Social, and Cultural Rights, "General Comment No. 17" (n119) para 4
[124] Peter Yu (n115), 1072
[125] Committee on Economic, Social, and Cultural Rights, "General Comment No. 17" (n119), para 11
[126] Peter Yu, "The Anatomy of the Human Rights Framework for Intellectual Property" (2016) SMU Law Review Vol 69:1 37, 92

Fundamental Rights of the European Union stating that intellectual property shall be protected within the human right to property.[127]

b) *Should* copyright be considered as a human right?

Turning to the more abstract question of whether copyright *should* be protected as a human right, the literature is divided. One view is that copyright may be considered a human right in the sense that it fulfils the same objectives i.e., the protection/expression of human dignity and creativity, and creating an environment conducive to the fulfilment of human potential.[128] Essentially, this circles back to natural rights theory and personality theory discussed earlier.[129] However, alignment in objective does not equate to alignment in nature. Another view considers copyright to be a human right based on its universal recognition, though this is countered by recalling that there are still fundamental differences which defeat the premise that the universality of its protection grants it human rights status - such as its temporary nature and the need for registration of other intellectual property rights more generally.[130] Additionally, Chapman notes that, in order for copyright to be recognised as a universal human right, the design and implementation of the regime must first be consistent with the realisation of all other internationally recognised human rights.[131] In particular, it must facilitate and promote cultural participation and scientific progress in a manner that broadly benefits society.[132] In other words, a predominantly author-centric approach would be inconsistent with a human rights justification of copyright.

In sum, the generally accepted position appears to be that while authors do have a human right in connection with their works, copyright itself does not equate to a

---

[127] Article 17(2) Charter of Fundamental Rights of the European Union (2012/C 326/02). See also Timothy Pinto, "The Influence of the European Convention on Human Rights on Intellectual Property Rights" (2002) E.I.P.R. Vol 24:4 209, 212; Balan v Moldova, App No. 19247/03 (European Court of Human Rights, 2008); European Court of Human Rights, "Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights: Protection of Property" (2022) 7, available here: <https://www.echr.coe.int/documents/d/echr/Guide_Art_1_Protocol_1_ENG> accessed 22.08.2023

[128] Ruth Gana, "The Myth of Development, the Progress of Rights: Human Rights to Intellectual Property and Development" (1996) Law & Policy Vol 18:3-4 315, 323

[129] See pages 48 and respectively 57

[130] Peter Drahos, "Intellectual Property and Human Rights" (1999) IPQ Vol 3 349, 366

[131] Audrey Chapman, "The Human Rights Implications of Intellectual Property Protection" (2002) Journal of International Economic Law Vol 5:4 861–882, 868

[132] *Ibid*

human right and the human right that authors do have does not justify copyright protection to the scope and extent that it is currently protected in international law.[133] Rather, a human rights justification of copyright would construe a lighter touch, non-absolute right which is caveated by other fundamental human rights and subject to lawful limitations.[134] Although there is some concern that considering copyright as a human right (and thereby elevating its status) could heighten tensions with the rights of persons with disabilities,[135] on the contrary, such an approach could create a copyright construction more consistent with the rights of persons with disabilities. This is buttressed by the fact that neither the UDHR nor the ICESCR require the protection of authors' moral and material interests by means of exclusive rights,[136] and the fact that a human-rights approach further establishes a requirement for the State to protect its citizens from the negative effects of intellectual property.[137] Moreover, by connecting the Article 15 right with the right to enjoy the arts and share in the benefits of scientific advancements,[138] a balance is expressed between the interests of the community and the interests of the individual which leans towards conferring limited property rights to reward and encourage production, while recognising the community interest in unfettered access and use.[139] Indeed, the Marrakesh Treaty makes reference to this right as an objective of copyright law.[140]

2.2.2 Socio-Centric Philosophies

Moving on from author-centric justifications, this section explores four mainstream socio-centric philosophical justifications for copyright protection. These are utilitarian, economic, incentive, and distributive justice theory. As the first three are

---

[133] Paul Harpur, *Discrimination, Copyright, and Equality: Opening the E-Book for the Print-Disabled* (Cambridge University Press, 2017) 60 & 66
[134] E.g., as discussed in Republic of Poland v European Parliament and Council of the European Union [2019] Case C-401/19
[135] Abbe Brown and Charlotte Waelde, "Human Rights, Persons with Disabilities and Copyright" in Christophe Geiger, *Research Handbook on Human Rights and Intellectual* Property (Edward Elgar, 2015) 591-594
[136] Saleh Al-Sharieh (n116)
[137] Audrey Chapman, "Approaching Intellectual Property as a Human Right: Obligations Related to Article 15 (1) (c)" (n117) 15
[138] Article 27 (1) of the UDHR [1948], Article 15(1)(b) ICESCR [1976]
[139] Alex Byrne, "The Sounds of Silence: Copyright and Human Rights" (2002) Australian Academic & Research Libraries Vol 33:4, 275, 278
[140] Preamble Text, Marrakesh Treaty [2016]

closely linked, they are discussed together. The focus here is on how these theories may be useful in forming a copyright policy that complements the interests of persons with disabilities, without unduly diminishing the interests of authors at the same time.

2.2.2.1 Utilitarian, Economic & Incentive Theory

Utilitarian theory is often considered to be the predominant or default justification of intellectual property rights, particularly among Western countries.[141] The origins of classic utilitarian theory can be traced back to Bentham's seminal work, "An Introduction to the Principles of Morals and Legislation."[142] Utility, according to Bentham, is the property in any object which either produces benefit, advantage, pleasure, good, or happiness, or prevents the converse from happening (i.e., pain, unhappiness, etc.). to the party whose interest is considered.[143] Bentham goes further to list types of pleasure and pain.[144] The most relevant to copyright are the pleasure of possession and the pleasure of using one's skills on an object, a given example of which being the pleasure of singing or musical performance as bringing more pleasure than just being a listener.[145] The most relevant pain is that of privation - the pain of not enjoying the listed pleasures. The objective is to achieve the greatest possible measure of pleasure, and the least amount of pain.[146]

Applying these arguments to copyright, incentive theory supports protection on the basis that, if possession of property and "the use of skills" bring pleasure and are beneficial both to the individual and to the community, they should be encouraged so as to maximise benefit and increase utility.[147] In this sense, incentive theory goes further than reward theory in acknowledging that, if indeed copyright works are socially valuable and worthy of reward, the production of them should be incentivised.[148] Naturally, an incentive is more robust than a reward since reward

---

[141] Samuel Trosow (n22) 217; Estelle Derclaye and Tim Taylor (n16) 197-209
[142] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation: An Authoritative Edition* (Oxford Clarendon Press, 1996)
[143] *Ibid*, 3-4
[144] *Ibid*
[145] *Ibid*, 58
[146] Justin Koo (n9) 473
[147] Michael Falgoust, "The Incentives Argument Revisited: A Millean Account of Copyright" (2014) The Southern Journal of Philosophy Vol 52:2 163, 164
[148] *Ibid*

applies to creative behaviour that has already occurred, whereas incentives aim to stimulate the production of more creative works and must therefore be attractive enough to authors.[149] Utilitarian theory as applied to copyright law has therefore been categorised as ‘consequentialist’ in nature given that it grants a property right in copyright works with the aim of maximising the creation and dissemination of works in the interest of furthering the public good.[150] To the extent that copyright does not incentivise the creation of works, or fails to maximise the public good, the law should be reformulated to produce results that justify the grant of copyright on utilitarian grounds.[151] This has led to what is commonly termed the incentives-access framework whereby competing interests are balanced to some degree while avoiding the over or under protection of copyright.[152]

Connecting this to disability rights, overly restrictive copyright laws have caused the ‘pain of privation’ to be experienced by persons with disabilities who have lacked the pleasure and benefits of socially valuable copyright works.[153] If intellectual property, and copyright specifically, are truly to be justified on the grounds of social utility, the fact that a sizable proportion of the global population of blind or visually impaired people have been denied access to literary works and the consequential ‘unhappiness’ that this has caused are clear indications that the balance has been tilted too far in favour of the individual utility of authors than on the wider public or social utility. From a utilitarian point of view, supposing the creation of works is beneficial to society, enabling persons with disabilities to also contribute to society by the creation of works would in fact support societal development further.

Important questions arise from utilitarian theory, such as whether it is permissible to cause one individual or a small group of individuals some “pain” if in the interests of bringing “pleasure” to a greater number of beneficiaries (i.e., a net value

---

[149] Sara Stadler, "Incentive and Expectation in Copyright" (2006) Hastings Law Journal Vol 58:3 433, 450-454
[150] Justin Koo (n9) 474
[151] David Resnik, "A Pluralistic Account of Intellectual Property" (2003) Journal of Business Ethics Vol 46:4 319, 324
[152] Glynn Lunney Jr, “Re-examining Copyright's Incentives-Access Paradigm” (1996) Vanderbilt Law Review Vol 49:3, 495-498
[153] See page 17

approach),[154] or whether there is a limit on how much benefit one individual could amass. It entails a sensitive balancing act by ensuring the benefit provided by the copyright regime outweighs the level of detrimental impacts it may cause. A connected issue here is the difficulty of measuring "happiness." A purely economic analysis of copyright justification would interpret happiness in monetary terms.[155] The primary concern is avoiding market failure due to the lack of works, thus, to avoid this, authors must be able to recuperate the costs of creation and reproduction of their works in the very least.[156] It again entails a balance as a marginal cost approach may improve access at the expense of a diminished incentive to create.[157] It has been argued that the concept of happiness or utility should be broadly construed as 'well-being' which encapsulates a range of subjective and objective measures, including but not limited to, economic factors.[158] This would mitigate the risk of utilitarian theory being used for individual interests instead of wider social justice issues, yet still not concrete in terms of measurement.

Incentivising the creation of works in the form of copyright protection is undoubtedly contentious. A radical view would suggest that, without protection as an incentive, there would be a widespread lack of works and development would be hindered.[159] Others suggest that this is not a realistic assumption, maintaining instead that there would not be a complete lack of works in the absence of financial reward as intrinsic motivations may also stimulate the creation of works, and given that human creativity and ingenuity flourished well before there was any suggestion of economic incentives or rewards for creation.[160] Additionally, granting legal protection as a form of incentive may be perceived as a step further than some

---

[154] Justin Hughes (n77) 15
[155] Richard Posner, "Intellectual Property: The Law & Economics Approach" (2005) Journal of Economic Perspectives Vol 19:2, 57-73
[156] *Ibid*, 72
[157] *Ibid*, 58
[158] Estelle Derclaye and Tim Taylor (n16) 204
[159] Christopher Sprigman, "Copyright and Creative Incentives: What We Know (and Don't)" (2017) Houston Law Review Vol 55:2 451-478
[160] Seana Shiffrin, "The Incentives Argument for Intellectual Property" in Axel Gosseries et al, *Intellectual Property and Theories of Justice* (First Published 2008, Palgrave Macmillan) 98. See also David Vaver, "Need Intellectual Property Be Everywhere? Against Ubiquity and Uniformity" (2002) Dalhousie Law Journal Vol 25:1 14

may consider necessary in that there are other options through which to incentivise creativity.[161] The flourishing of 'negative spaces' - referring to areas of creation and innovation that thrive with little or no intellectual property protection such as open-source software and stand-up comedy - are cited in support of this position.[162] Moreover, it has been argued that incentivising the creation of works through the grant of legal protection is paradoxical in that it establishes a right to restrict the current availability and use of intellectual products, for the purposes of increasing the production, availability, and use of new intellectual products in the future.[163] Thus, it would be better to employ equally powerful ways to stimulate the production and use of intellectual products which did not also restrict their use and availability.[164] Although perhaps idealistic, this type of approach may be less detrimental to the rights of persons with disabilities.

2.2.2.2 Distributive Justice Theory

While utilitarian theory has the potential to complement the rights of persons with disabilities, it should be clarified that social utility does not equate to social justice i.e., social usefulness versus social equity or fairness.[165] Distributive justice, on the other hand, considers social and communal goals beyond wealth maximisation and considers the interests of copyright users in addition to creators.[166] As such, it may prove more beneficial in realising the rights of persons with disabilities. Indeed, the Marrakesh Treaty nods to distributive justice theory in the text of its Preamble in that it is grounded on the principle of equal opportunity,[167] and it clearly addresses social and economic equalities.[168]

Referred to as a hidden yet flourishing justification of intellectual property, distributive justice is concerned with the allocation and re-allocation of "social

---

[161] *Ibid*, 96
[162] Elizabeth Rosenblatt, "Intellectual Property's Negative Space: Beyond the Utilitarian" (2013) Florida State University Law Review Vol 40:3 441, 447. See also Kal Raustiala and Christopher Sprigman, *The Knockoff Economy: How Imitation Sparks Innovation* (OUP, 2012) 125
[163] Edwin Hettinger (n82) 48
[164] *Ibid*
[165] Lateef Mtima, "Copyright Social Utility and Social Justice Interdependence: A Paradigm for Intellectual Property Empowerment and Digital Entrepreneurship" (2009) 112 West Virginia Law Review Vol 112:1 97, 119
[166] Elizabeth Rosenblatt (n162), 458
[167] Preamble Text, Marrakesh Treaty [2016]
[168] Neil Yap, "Fitting Marrakesh into a Consequentialist Copyright Framework" (2017) Journal of Intellectual Property and Entertainment Law Vol 6:2 376

resources", including capital and other goods as well as power and rights, in their broadest sense, among individuals or groups in society based on principles of justice.[169] In this context, copyright is a concern of distributive justice theory as it plays a role in the allocation of proprietary rights i.e., a form of social resource.[170] It allocates these 'resources' to the authors primarily, and to a broad category of users via limitations and exceptions.[171] However, it also restricts the distribution of resources through the rights of distribution, public communication, and reproduction.[172] Thus, the concepts of copyright and distributive justice are typically seen as pulling in opposite directions, since property prefers allocation to the individual, whereas distributive justice pushes for socially fair redistribution.[173] The Marrakesh Treaty itself has been viewed as a distributive justice tool in that it seeks to shape copyright allocations for social justice ends.[174] In other words, this theory reframes the balance of the incentives-access paradigm in a broader sense of social justice. The question then becomes whether the copyright system allocates rights and benefits fairly in line with social justice principles and, where it does not (e.g., by the marginalisation of users' rights), the rights should be redistributed i.e., through legal reform.[175]

Classic distributive justice theory is based on Rawlsian school of thought.[176] When applied to copyright law, the theory of distributive justice can be used to advance the interests of users in copyright law by focusing on copyright law's role in empowering individuals to have access to knowledge and culture.[177] It has been argued that addressing distributive concerns should fall within the realms of tax

---

[169] Shlomit Yanisky-Ravid, "The Hidden Though Flourishing Justification of Intellectual Property Laws: Distributive Justice, National Versus International Approaches" (2017) Lewis & Clark Law Review Vol 21:1 1-43
[170] *Ibid*, 26
[171] *Ibid*, 19-23
[172] WIPO, "Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)" <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html>
[173] Robert Merges (n24), 102
[174] Shlomit Yanisky-Ravid (n169), 29-31
[175] Ezieddin Elmahjub and Nicolas Suzor, "Fair Use and Fairness in Copyright: A Distributive Justice Perspective on Users' Rights" (2017) Monash University Law Review Vol 43:1 274, 287
[176] John Rawls, *A Theory of Justice* (Revised Edition, First Published 1999, Oxford University Press)
[177] Ezieddin Elmahjub and Nicolas Suzor (n175) 287

and welfare laws, not copyright law.[178] However, as Bracha and Syed note, it is not that the burden is on copyright law to correct general distributive inequities at large, but only the distributive inequalities that stem from the way it regulates the production and dissemination of expressive works.[179] Moreover, the need to address the specific distributive inequalities that copyright causes to be experienced by visually impaired persons is further buttressed by the distributive justice theory.[180] As with all of the philosophical constructs discussed, distributive justice is not immune to imperfections. It is criticised for representing a compromise position that may not satisfy all of the interests at stake depending on where the balance is struck.[181] However, for the purposes of realising the rights of persons with disabilities, it is the most directly applicable theory as it specifically targets inequalities caused by the copyright law system.[182]

2.2.3 Author-Centric and Socio-Centric Philosophies in Action – Comparing the Philippines and the Dominican Republic

The philosophical discussions above are not just abstract considerations. The reality is that there is doctrinal evidence demonstrating that the various philosophical justifications of copyright are still influential in shaping legislative policy. This is prominently evident in the contrasting national approaches to protection in the copyright law of the Philippines and the Dominican republic. A socio-centric approach to copyright protection is taken in the Intellectual Property Code of the Philippines,[183] wherein an entire section is dedicated to outlining state policy on copyright protection.[184] It is acknowledged that the use of intellectual property has a *social function* and, to that end, the diffusion of knowledge and information for the promotion of national development, progress, and the common good is to be promoted by the State.[185] Particular instances of the common good identified are the development of domestic and creative activity, the facilitation of

---

[178] Daniel Benoliel, “Copyright Distributive Injustice” (2007) Yale Journal of Law & Technology Vol 10 45-81
[179] Oren Bracha and Talha Syed, “Beyond Efficiency: Consequence-Sensitive Theories of Copyright” (2014) Berkeley Technology Law Journal Vol 29:1, 289
[180] *Ibid*, 303-305
[181] David Resnik (n151) 330
[182] Lea Sheaver, “Copyright and Inequality” (2014) Washington University Law Review Vol 92:1 117
[183] Intellectual Property Code of the Philippines (Republic Act No. 8293) (2015 Edition)
[184] *Ibid*, Section 2
[185] *Ibid*

the transfer of technology, and the attraction of foreign investments.[186] Moreover, intellectual property protection is granted “particularly when beneficial to the people” - a phrase appearing in the legislation and within the constitutional protection of intellectual property rights.[187] Evidently, this policy is heavily based on utilitarian, economic, and social justice philosophies, so much so that there is almost no emphasis on the personal rights of creators and authors themselves. Given this focus on social justice and the common good, it is not surprising to note that the Philippines is one of a select group of countries that already provided for an exception permitting the production of “specialised format copies of works” for the blind, visually impaired, and reading-impaired prior to the adoption of the Marrakesh Treaty,[188] and has robust provisions on limitations and exceptions in general.[189]

A contrasting example to the approach of the Philippines can be seen in the copyright law of the Dominican Republic which provides a much more author-centric justification of copyright. To begin with, the title of the Act is “Law No. 65-00 of Author’s Rights (“Derecho de Autor” in original Spanish).” Perhaps controversially, the Act then begins by noting that, in accordance with the Constitution of the Republic, exclusive ownership of inventions and discoveries and of scientific, artistic, and literary productions shall be protected as a human right.[190] This is based on Article 8(14) of the 1994 edition of the Dominican Republic Constitution which included intellectual property within the list of the rights pertaining to the human person.[191] While there is some support in the literature for the proposition that copyright should be protected as a human right,[192] as was discussed earlier, it is not common for this to be included in national legislation. In

---

[186] *Ibid*
[187] *Ibid*, see also Section 13, Constitution of the Republic of the Philippines [1987]
[188] S.184 (l) Intellectual Property Code of the Philippines (Republic Act No. 8293) (2015 Edition), as amended by *Republic Act No.10372 or an Act Amending certain provisions of Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines, and for other Purposes*
[189] *Ibid*, s.184-185
[190] *Ibid*
[191] Political Database of the Americas, “Dominican Republic Constitution of 1994” Available here: <https://pdba.georgetown.edu/Constitutions/DomRep/domrep94.html> accessed 24.07.2023
[192] See for example, Laurence Helfer and Graeme Austin, “Creator’s Rights as Human Rights and the Human Right of Property” in Laurence Helfer et al, *Human Rights and Intellectual Property: Mapping the Global Interface* (First Published 2011, Cambridge University Press, 2012) 171-220

the Dominican Republic, protecting intellectual property as a human right is part of the State's objective to maintain the means that allow citizens to "progressively perfect themselves within an order of individual freedom and social justice, compatible with public order, general well-being and the rights of all."[193] In contrast with the approach in the copyright law of the Philippines, the priority here is the individual creator first and foremost. To strengthen this further, Article 3 goes on to provide that copyright shall be an *inherent right* that shall originate with the creation of the work and shall be independent of the ownership of the physical medium in which the work is embodied.[194] Furthermore, the author is granted "perpetual, inalienable, imprescriptible and un-renounceable" moral rights in their work.[195] This is indeed the same terminology that is used to describe the nature of human rights.[196]

From all of these extracts, it can be deduced that Dominican copyright law is emphatically aligned with author-centric philosophical justifications, including Hegelian personality theory, natural rights theory, and a human rights justification of copyright. In this context, it is not surprising that Dominican copyright limitations and exceptions are to be interpreted restrictively,[197] and in line with the three-step test provided in the Berne Convention.[198] Strikingly, although the Dominican Copyright Act does provide an exception for the benefit of "sightless persons and persons with other physical disabilities,"[199] this is an exception to the right of public communication, and not the right of reproduction. Indeed, reproduction is expressly excluded from the scope of the exception.[200]

The contrast between the copyright laws of the Philippines and the Dominican Republic provides demonstrable evidence to support the premise that the scope and extent of copyright protection provided is practically influenced by the philosophical justificatory theories adopted, and that this in turn affects approaches

---

[193] Article 8, Dominican Republic Constitution of 1994
[194] Article 3, Law No. 65-00 on Rights of Authors [2000]
[195] *Ibid*, Article 17
[196] Committee on Economic, Social, and Cultural Rights, "General Comment No. 17" (n119)
[197] Article 30, Law No. 65-00 on Rights of Authors [2000]
[198] Article 9(2), Berne Convention [1979]
[199] Article 44(3), Law No. 65-00 on Rights of Authors [2000]
[200] *Ibid*

to disability rights exceptions. In these cases, a “social good” approach led to a much more robust disability exception than the restrictive, author-centric approach did.

2.2.4 Dualistic & Pluralistic Philosophies – New Approaches to Justifying Copyright Protection

The above separation between author-centric and socio-centric justifications of copyright represents the classic standpoints within the philosophical copyright discourse. However, that is not to suggest that there must be a binary choice between one or the other. On the contrary, an alternative approach to justifying copyright may be to adopt philosophical pluralism (i.e., a combination of several justifications). The objective of a pluralistic approach is typically to buttress the justification of copyright in the light of the fact that the justifications are not singularly foolproof.[201] It also acknowledges the diversity within copyright and society in general as requiring a diverse approach to philosophical justification on a case-by-case basis,[202] or the need to consider competing interests and modern advancements more holistically.[203]

Exemplary of a robust pluralistic approach is Merges’ concept of liberal property.[204] Merges proposes a consolidated theory of intellectual property which encompasses all of the ‘foundational writings’ (i.e., Locke, Hegel, and Rawls) in one coherent construct.[205] The foundational components of this theory are a commitment to individual ownership as a primary right, respect for third-party interests that conflict with this right, and an acceptance of redistributive policies intended to remedy the structural hardships caused by individual property rights.[206] These components and normative theories are to be guided by the ‘mid-level’ principles of non-removal, proportionality, efficiency, and dignity.[207] Using this

[201] David Resnik (n151), 474
[202] *Ibid*, 330-332
[203] *Ibid*, 479-480
[204] Robert Merges (n24)
[205] *Ibid*
[206] *Ibid*, 13
[207] *Ibid*, 14

framework would create, according to Merges, an individual property right that is personal but not selfish.[208]

At first glance, it appears to be a robust construction that ticks all of the boxes. However, there are several problematic aspects for the purposes of realising the rights of persons with disabilities which require fine tuning. Firstly, the individual right to intellectual property described as a primary right pits it as the priority.[209] Doing so complicates its relationship with disability rights to say the least. Secondly, the phrasing implies that it is third-party rights which conflict with the individual property right, not the other way around, and these are only to be 'respected' not protected.[210] It goes without saying that presenting the human rights of persons with disabilities as the cause of conflict is itself conceptually problematic.[211] Similarly, the needs of users and consumers being 'accommodated' by 'waiver schemes' embellishes the 'tolerance paradigm' that has been problematic for disability rights.[212]

In addition to the above, the pluralistic approach to copyright justification in general is criticised in that its "one size fits all" application is unrealistic, considering that the basis on which copyright is justified in practice is above all a matter of national policy.[213] For the purposes of this thesis, the main concern with a pluralistic account is that it is not definitive as to proportionality between author or social centralism. For example, if natural rights, reward theory, personality theory and human rights bases are combined to provide a pluralistic account of copyright justification, it could construct a form of radical author-centric pluralism. Similarly, a pluralistic approach with a combination of utilitarian, distributive justice, and social planning theories would be a heavily socio-centric stance. For the purposes of achieving a balance between copyright and disability rights, neither of the radical pluralisms would be appropriate. Rather, I argue that a dualistic approach is

---

[208] *Ibid*
[209] *Ibid*
[210] *Ibid*
[211] Paul Harpur and Nicolas Suzor, "Copyright Protections and Disability Rights: Turning the Page to a New International Paradigm" (2013) University of New South Wales Law Journal Vol 36:3 745-778
[212] *Ibid*
[213] Justine Pila (n21) 190

preferrable - what may also be referred to as a hybrid approach – whereby both authorial and social interests are balanced. There may, of course, be pluralism within the dualism i.e., multiple justifications on each side combined, so long as both sides of the coin are appropriately represented. Although it is not an exact science considering the challenges of measurement associated with socio-centric justifications highlighted in earlier discussions, philosophical dualism would provide a more balanced concept that embodies elements of both author-centric and socio-centric justifications.[214] Indeed, the Marrakesh Treaty itself takes a dualistic approach by incorporating both author and socio-centric justifications in its Preamble.[215]

2.3 Authorial Exclusivity: Exclusive Rights, Moral Rights, & Minimum Standards – Considering the Impact of the Expansion and Reinforcement of International Copyright Law

Having explored the philosophical underpinnings of the way in which copyright protection has been justified, the focus of the discussion now turns to the development of the exclusive rights of authors through the expansion of the international copyright law framework. Scholars reviewing this development identify two landmark Conventions as forming the foundational ‘multilateral pillars’ of the regime[216] - namely, the Paris Convention,[217] and the Berne Convention.[218] Together they offer a robust portfolio of rights covering patents, trademarks, and designs in the Paris Convention, with the Berne Convention focusing entirely on copyright works and therefore being of more pertinent importance to this thesis. Notably, copyright had been protected to various degrees in national laws well before the development of international law during what has been referred to as the “territorial period” whereby intellectual property sprouted organically at national levels.[219] Notwithstanding the historical importance of this era of national development,

---

[214] Ezieddin Elmahjub and Nicolas Suzor (n175) 289
[215] Preamble Text, Marrakesh Treaty [2016]
[216] Peter Drahos (n130) 353
[217] Paris Convention for the Protection of Industrial Property (of March 20, 1883, and as amended on September 28, 1979)
[218] Berne Convention for the Protection of Literary and Artistic Works (Paris Act of July 24, 1971, as amended on September 28, 1979)
[219] Peter Drahos (n130) 351-352

particularly since territoriality is still a feature of copyright law,[220] the parameters of this present section are, however, to discuss copyright law at an international level only as the context of this thesis pertains to key international legal instruments.[221] National copyright law has in any case been heavily influenced, and largely circumscribed by, the international copyright law regime.[222] Thus, the focus is on the 'international period' of international copyright law development.

The bedrock of international copyright law, and the main focus of this section, is the Berne Convention with an exposition of the key stages in its development. For more than a century after the adoption of the Berne Convention, copyright norms have advanced through gradual and modest expansions of protected subject matters and exclusive rights.[223] This section focuses on the incremental expansion of copyright protection and how this upwards trajectory gradually led to an increasingly restrictive stance on access to works. Two other subsequent international laws are considered, namely, the TRIPS Agreement which reinforced adoption of the Berne Convention among all WTO members and bolstered the enforcement of copyright,[224] and the WIPO Copyright Treaty which extended the Berne Convention's provisions to the digital environment.[225] As these international laws either supplement, complement, or reinforce the Berne Convention, the expansion of its provisions remains the primary focus.

2.3.1 Expanding Author's Rights One Revision at a Time - A Review of Exclusive Rights Under the Berne Convention

One of the key objectives of the Berne Convention is to strengthen the rights of authors and creators by establishing minimum standards of copyright protection

---

[220] Thomas Dreier, "Copyright in the Times of the Internet - Overcoming the Principle of Territoriality Within the EU" (2017) ERA Forum Vol 18:1 7, 8
[221] Particularly the Berne Convention [1979], the Convention on the Rights of Persons with Disabilities [2008], and the Marrakesh Treaty [2016]
[222] Jane Ginsburg, "International Copyright: From a "Bundle" of National Copyright Laws to a Supranational Code?" (2000) Journal of the Copyright Society USA Vol 47 265, 272
[223] Laurence Helfer, "Mapping an Evolving and Contested Relationship" (n2) 119
[224] Antony Taubman et al, *A Handbook on the WTO TRIPS* Agreement (Cambridge University Press, 2012) 135
[225] Julie Sheinblatt, "The WIPO Copyright Treaty" (1998) Berkeley Technology Law Journal Vol 13:1 535

that apply internationally among Berne Union countries.[226] In addition to minimum standards, the Berne Convention established the concepts of exclusivity, moral rights, and the 'three-step' test.[227] The impact of this test on disability rights is analysed in Section 2.4.[228] Suffice to note preliminarily that the general approach of the Berne Convention places no duties on copyright owners to make accessible copies of works, but places restrictions on those trying to make the written word available to visually impaired persons.[229] As there was not in existence a disability rights law regime at the time of its promulgation, there could not have been any intention for the Berne Convention to limit, or conflict with, disability rights and obligations or indeed the international human rights regime more widely. Rather, the territoriality of copyright at national levels meant that a different package of rights would apply in different jurisdictions, giving rise to uncertainty for authors.[230] Thus, an international minimum standard was a more practical and reliable approach in the context of the period.[231]

The minimum standards set in the Berne Convention relate to the scope of works subject to protection, the range of rights protected (or infringing actions prohibited), and the duration of protection. This section briefly outlines how these three aspects have been expanded and refined throughout the many revisions to the Berne Convention.

a) The Scope of Works Protected

Regarding the scope of works protected, Article 4 of the original version of the Berne Convention stated that protection applied to "every production whatsoever in the literary, scientific, and artistic domain," and provided a brief list of the types of work that this would cover.[232] Undoubtedly, the scope of protection was intended to

---

[226] Peter Burger, "The Berne Convention: Its History and Its Key Role in the Future" (1988) Journal of Law and Technology Vol 3, 1-70, 15; WIPO, "Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)" <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html>
[227] *Ibid*
[228] See page 84
[229] Paul Harpur, *Discrimination, Copyright and* Equality (n133) 70
[230] Paul Goldstein et al, *International Copyright: Principles, Law, and Practice* (4th Edn, OUP, 2019) 9
[231] *Ibid*
[232] Article 4, Berne Convention [1886]

be all-encompassing even from its inception.[233] The list of the types of works included in protection was incrementally expanded throughout the various revisions to the Berne Convention, such that the latest version of Berne now features an embellished non-exhaustive list of the types of work protected.[234] The scope of works being this extensive is not problematic in itself per se - it depends largely on what rights are granted, or what obligations are imposed, in relation to these works. However, as is discussed later in Section 3.3.2.1,[235] it does create a subject-matter overlap between the rights protected by copyright and the subject matter to which persons with disabilities have a right of access under Article 30 of the Convention on the Rights of Persons with Disabilities.[236] This overlap has only become more evident with the expansion of the categories of works protected under the Berne Convention.

b) The Exclusive Rights Granted

The original edition of the Berne Convention primarily granted authors an exclusive right over the translation of their works, and this protection only lasted for a period of ten years.[237] The main concern of the time was the illicit appropriation of works written in English and protected in England which could be translated into French and sold in France, for example, by a third party as if they were the author.[238] An author who had created a lawful translation of their work could therefore prevent it from being reproduced during the ten year period from the date of publication, after which it would become part of the public domain and could then be reproduced.[239] The objective was to preserve the ability of authors to market their works in other countries and languages i.e., an economic agenda.[240] The original edition also saw the beginnings of the exclusive right to adaptation whereby non-essential changes to a work which did not produce the character of a new original work were

---

[233] Sam Ricketson and Jane Ginsburg, “The Berne Convention: Historical and Institutional Aspects” in Daniel Gervais, *International Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar, 2015) 17
[234] Article 1, Berne Convention [1979]
[235] See page 117
[236] Article 30(3), Convention on the Rights of Persons with Disabilities [2008]
[237] Article 5, Berne Convention [1886]
[238] Sam Ricketson and Jane Ginsburg (n233) 8-9
[239] Article 6, Berne Convention [1886]
[240] Sam Ricketson and Jane Ginsburg (n233) 9

considered as indirect unauthorised appropriations.[241] Nevertheless, at the outset, the protection granted to authors was relatively light touch. Subsequently, the range of rights granted to authors was gradually increased with the introduction of the exclusive right to reproduction and public representation in the 1908 revision.[242] Later, the Rome Revision of 1928 saw the explicit introduction of moral rights for the first time in international copyright law.[243] Article 6bis provided for the right to claim authorship of the work, as well as the right to object to any distortion, mutilation or other modification of the said work which would be prejudicial to the author's honour or reputation.[244] The duration of these moral rights was extended from the life of the author until 50 years after the author's death.[245] Strikingly, for the first time, reference was also made to an "inalienable" moral right.[246]

It is significant to note that all of the expansions up to this stage in the range of rights granted were prior to the birth of international human rights law. Revisions proposed in 1967, after the adoption of the Universal Declaration of Human Rights though prior to the ICESCR entering into force, saw international pushback for the first time, primarily from the Global South.[247] In the 1967 revision, the right to reproduction was given an independent life of its own and extended to prohibit reproduction in any manner, not in specific manners as was previously the case.[248] A wider catalogue of exclusive rights were also introduced, including communication to the public,[249] and the right to make adaptations, arrangements, and alterations.[250] However, these additional exclusive rights did not garner enough support at the time and did not come into effect until the 1971 edition.[251] Although a

---

[241] Article 10, Berne Convention [1886]. See also Sam Ricketson and Jane Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond Volume I* (2nd Edn, OUP, 2006) 79
[242] Article 14, Berne Convention [1908]
[243] Article 6bis, Berne Convention [1928]
[244] *Ibid*
[245] Article 6bis (2), Berne Convention [1948]
[246] *Ibid*, Article 14bis (1)
[247] Bashar Malkawi, "A Long "TRIP" Home: How the Berne Convention, TRIPS Agreement, and Other Instruments Complement the International Copyright System" (2013) EIPR Vol 35:2, 97-99
[248] Article 9(1), Berne Convention [1967]
[249] *Ibid*, Article 11bis (1)
[250] *Ibid*, Article 12
[251] Berne Convention [1971]

final revision was adopted in 1979 (which is currently the latest version), there were no substantive improvements at this stage.[252]

c) The Duration of Protection Provided

The term of copyright protection was not initially prescribed in the Berne Convention.[253] It was to be determined by the law of the country of origin or, if the work had been published simultaneously in several countries, the country with the shortest term of protection would apply.[254] This illustrates that, initially, a delegatory approach was taken to copyright protection. However, it was not long until the term of protection was extended to the life of author plus 50 years in the 1908 Berlin Revision.[255] However, at this stage, Berne Union countries retained the discretion to adopt a different term of protection (i.e., a shorter length of time) in their domestic law if they so wished.[256] A landmark shift in approach was subsequently taken in the 1948 revision, whereby the term of the life of the author plus 50 years became a mandatory minimum duration, with the only discretion remaining being the possibility of implementing a higher term, not a lower term, than this.[257] With that, any hopes of waiting for the duration of the exclusive rights of authors to expire in order to reproduce a work in an accessible format were significantly delayed. Yet again, the prospect of accessibility for those who are blind or visually impaired was moved even further out of reach.

In sum, the expansions in the scope of works protected, the exclusive rights granted to authors, and the duration of copyright protection outlined above meant that the scope of legal activities that a visually impaired person may legally carry out was gradually diminished until almost nothing could be done without the permission of the author or copyright holder.[258] Needless to say, this had and continues to have a substantial impact on the accessibility of copyright works.[259]

---

[252] WIPO, “Berne Notification No. 112” <https://www.wipo.int/treaties/en/notifications/berne/treaty_berne_112.html> accessed 03.08.2023
[253] Berne Convention [1886]
[254] *Ibid*, Article 2
[255] Article 7, Berne Convention [1908]
[256] *Ibid*
[257] Article 7 (2), Berne Convention [1948]
[258] Paul Harpur, *Discrimination, Copyright, and Equality* (n133) 74-75
[259] *Ibid*

2.3.2 Strengthening the Enforcement of Copyright – Exploring the Effect of the TRIPS Agreement

In addition to the expansions to copyright exclusive rights, beginning in the mid-1980s, industrialised nations and their content and innovation industries began a campaign to strengthen the protection of intellectual property worldwide, especially in the Global South.[260] The TRIPS Agreement was adopted in 1995 as a result of this push for stronger and more robust protection of intellectual property.[261] It has been noted that the TRIPS agreement revolutionised international intellectual property law by enhancing the substantive rules of pre-existing Conventions and incorporating them into a single omnibus Treaty.[262] When it comes to copyright, the TRIPS Agreement did not radically change the substance of international copyright law - its approach was instead to reinforce the provisions of the Berne Convention.[263] This was done by mandating compliance with Articles 1 to 21 of the Berne Convention (save for the moral rights provided in Article 6bis),[264] by backing the application of the three-step test,[265] and by extending the Berne Convention's definition of 'literary works' to include computer programs and compilations of data.[266] This was a significant move in that compliance with the Berne Convention's provisions was previously only required of Berne Union Members. Thus, through TRIPS, there became an element of coercion and imposition of minimum protection standards upon countries that were previously not under any of the Berne Convention's obligations.[267]

Although the substantive provisions on copyright did not substantially change, the effect of the TRIPS Agreement on international copyright is more potent in the realms of enforcement.[268] None of the other international copyright laws discussed

---

[260] Laurence Helfer, "Mapping an Evolving and Contested Relationship" (n2), 119
[261] *Ibid*
[262] *Ibid*, 121
[263] Article 9(1), Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") [1995]
[264] *Ibid*
[265] Article 13, TRIPS [1995]
[266] *Ibid*, Article 10
[267] Ryan Cardwell and Pascal Ghazalian, "The Effects of the TRIPS Agreement on International Protection of Intellectual Property Rights" (2012) The International Trade Journal Vol 26:1 19, 23
[268] Keith Maskus, "International Agreements on Intellectual Property Rights: TRIPS and Beyond" in Robert Looney et al, *Handbook of International Trade Agreements: Country, Regional, and Global* Approaches (1st Edn, Routledge, 2018) 29-33

in this section offered any internal enforcement mechanisms - the discretion was in the hands of States parties to provide in their own national laws for measures of enforcement as they saw fit.[269] As some scholars describe it, they had no “teeth” as they relied on diplomatic cooperation among countries,[270] whereas TRIPS “contains detailed, comprehensive substantive rules and is linked to the WTO's comparatively hard-edged dispute settlement system in which Treaty bargains are enforced through mandatory adjudication backed up by the threat of retaliatory sanctions.”[271] The enforcement measures which the TRIPS Agreement prescribes involve civil judicial procedures[272] - i.e., injunctions, payment of damages, the disposal of infringing items – and criminal procedures in relation *at least* to copyright piracy on a commercial scale.[273] Criminality may be applied to other forms of infringement as may be decided in national policy.[274] For example, writing in the context of Ethiopia’s copyright system, Sileshi details how the application of the TRIPS criminality provision led to excessive restriction and over-criminalisation in Ethiopian copyright law.[275] Under the Ethiopian system, intentional violations of exclusive rights entail a sentence of five to ten years imprisonment, while violations by way of gross negligence carry a sentence of between one to five years imprisonment.[276] This is an example of a “TRIPS Plus” approach whereby countries adopt more stringent laws on intellectual property than is required under the TRIPS Agreement.[277] The push for this has further embellished the strength of copyright protection.[278] In the UK and the US, for example, copyright protection lasts for the life of the author plus seventy years;[279] twenty years longer than mandated. Some

---

[269] Paul Goldstein et al, (n230) 387
[270] Bashar Malkawi (n247)102
[271] Laurence Helfer, “Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking” (2004) Yale Journal of International Law Vol 29:1-2, 1-82
[272] Article 42, TRIPS [1995]
[273] *Ibid*, Article 61
[274] *Ibid*
[275] Sileshi Hirko, “The Implications of TRIPs’ Criminal Provisions on Copyright Exception for Education in Ethiopia: A Critical Approach from A Human Rights Perspective” (2021) African Journal of International and Comparative Law Vol 29:2, 263–287
[276] Article 36 (1-2) Copyright and Neighbouring Rights Protection Proclamation No. 410/2004
[277] Beatrice Lindstrom, "Scaling Back Trips-Plus: An Analysis of Intellectual Property Provisions in Trade Agreements and Implications for Asia and the Pacific" (2010) New York University Journal of International Law and Politics Vol 42:3 917, 919
[278] Keith Maskus (n268) 37
[279] S.12 (2) Copyright, Designs and Patents Act [1988]; s.302 Copyright Law of the United States (Title 17) [1976] as amended up to December 2022

Global South countries have followed suit, including Ghana[280] and Brazil,[281] while others resisted and maintained the minimum benchmark of the life of the author plus 50 years.[282]

The impact of the TRIPS Agreement meant that, not only was the scope of accessibility significantly diminished by the Berne Convention, but there were also now serious civil (and potentially criminal) consequences for any accessibility activities that were deemed to be an infringement of the exclusivity of copyright.[283] This was again another step further in maximising author's rights while diminishing other legitimate interests, particularly those of visually impaired persons. As will be seen in Chapter 5, these civil and criminal sanctions have been incorporated into the national laws of some of the Marrakesh Treaty's Contracting Parties even as at the time of writing.[284]

2.3.3 Extending the Reach of Copyright Law to the Digital Realm – Analysing the WIPO Copyright Treaty

A final landmark stage which impacted on the accessibility of copyright works was the adoption of the WIPO Copyright Treaty.[285] The WIPO Copyright Treaty was established to develop and further extend the rights of authors to the digital arena.[286] Thus, it is often considered as an extension or supplement to the Berne Convention.[287] From a philosophical standpoint, the WIPO Copyright Treaty adopts the dualistic approach referred to in Section 2.2.4 in promoting both the incentive theory of protection,[288] which is author-centric, and elements of socio-centric distributive justice theory by acknowledging the need to balance protection with social justice objectives, including education.[289] Many of the WIPO Copyright

---

[280] Article 12(1) Ghana Copyright Act [2005]
[281] Article 41, Law No. 9.610 of February 19, 1998 (Law on Copyright and Neighbouring Rights, as amended up to Provisional Measure No. 907 of November 26, 2019)
[282] For example, Kenya: Article 23(2)(2) Copyright Act [2011] as revised to 2017, and Malawi: Article 35(1)(a) Malawi Copyright Act [2016]
[283] Part III, TRIPS Agreement [1995]
[284] See *5.4 Countries Yet to Implement – Analysing National Provisions, Policies, and Priorities*
[285] WIPO Copyright Treaty [1996]
[286] Jörg Reinbothe and Silke von Lewinski, *The WIPO Treaties on Copyright: A Commentary on the WCT, the WPPT, and the BTAP* (Second Edition, Oxford University Press, 2015) 153; Julie Sheinblatt (n225) 535
[287] *Ibid*
[288] Preamble Text, Line 4, WIPO Copyright Treaty [1996]
[289] *Ibid*, Preamble, Line 5

Treaty's provisions relate to the protection of computer programs and databases.[290] However, it is of significance to this thesis for three reasons. Firstly, extending exclusive rights to works in digital formats, particularly the reproduction right, meant that the more accessible formats like eBooks and audio books were now explicitly circumscribed by copyright regulations.[291] Secondly, on a practical level, producing accessible format copies of works is essentially a technological process - a process hindered by the technological protection measures prescribed in Article 11.[292] Thirdly, this process is carried out by means of computer programs which the WIPO Copyright Treaty expressly included within the scope of works protected by copyright.[293] With regards to limitations and exceptions, it extends the application of the Berne Convention's "three-step test" to works in the digital environment, though with some flexibility to devise new exceptions appropriate for the digital network environment.[294] Thus, the overall effect of the WIPO Copyright Treaty was to circumscribe access to copyright works both in print and digital format.

In sum, the protection of copyright at an international law level has undergone substantial expansion since the adoption of the Berne Convention in 1886. The Berne Convention itself has been radically expanded in the scope of the works it protects, the exclusive rights it offers, and the duration for which they are applicable. This expansion has been facilitated by additional international copyright laws which reinforce, supplement, and strengthen the protection granted by the Berne Convention. This expansion has been gradual and led primarily by Global North countries at the expense of Global South countries and human rights interests.[295] Authorial exclusivity expanded, gained civil and criminal 'teeth,' and extended into the digital realm in such a way that the scope for accessibility became substantially diminished. As there was no disability rights or international human rights regime at the time of the birth of international copyright law, and for much of its development, it was not designed to be contrary to disability rights from

---

[290] *Ibid,* Articles 4, 5, and 7
[291] Paul Harpur, *Discrimination, Copyright, and Equality* (n133) 111
[292] Article 11, WIPO Copyright Treaty [1996]
[293] *Ibid,* Article 4
[294] *Ibid*, Article 10; Agreed Statement Concerning Article 10, Agreed Statements Concerning the WIPO Copyright Treaty adopted by the Diplomatic Conference on December 20, 1996, TRT/WCT/002
[295] Alan Story, ""Balanced" Copyright: Not a Magic Solving Word" (2012) E.I.P.R. Vol 34:8 493

the outset. Regardless of any intention, it has in any case had the effect of aggravating the global book famine. Making international copyright law complementary to disability rights prospectively entails another gradual process, and perhaps a significantly more arduous one. Indeed, although international copyright law started at a much narrower position and proceeded through an era of expansion, it is now going through a new era of refinement and compromise with the development of disability rights and the international human rights regime more generally.[296]

2.4 The Confinement of Limitations & Exceptions: Examining the Three-Step Test and the Scope for Disability-Based Exceptions

While the exclusive rights of authors were undergoing expansion on the one hand, as discussed above, the Berne Convention's provisions on exceptions and limitations were becoming increasingly narrowed and prescriptive on the other.[297] For example, exceptions permitting the extraction of portions from literary and artistic works for use in publications destined for educational or scientific purposes were initially to remain within the purview of national legislation.[298] Later in the 1948 revision, a condition was added that these extracts must be justified by their purpose, and that they must be accompanied by an acknowledgment of the source and the name of the author.[299] This was in line with the move to recognise inalienable moral rights in the same revision.[300] A more robust expansion to the exception was implemented in the 1971 revision where it became permissible for quotations to be made from any work, now including but no longer limited to, newspapers and periodicals.[301] However, new conditions were similarly incorporated to balance this widening, including the concepts of 'fair practice' and 'lawful access.'[302]

---

[296] Laurence Helfer, "Mapping an Evolving and Contested Relationship" (n2) 134
[297] Ruth Okediji, "The Limits of International Copyright Exceptions for Developing Countries" (2019) Vanderbilt Journal of Entertainment & Technology Law Vol 21:3 689, 710
[298] Article 8, Berne Convention [1886]
[299] Article 10 (2-3), Berne Convention [1948]
[300] *Ibid*, Article 14bis
[301] Article 10(1), Berne Convention [1971]; Tanya Aplin and Lionel Bently, *Global Mandatory Fair Use: The Nature and Scope of the Right to Quote Copyright Works* (Cambridge University Press, 2020) 6-28
[302] *Ibid*, Article 10(1-2)

This prescriptivist approach culminated in the establishment of the “three-step test” in the 1967 revision which sought to limit the exceptions that could be made in national law to the exclusive right to reproduction.[303] The starting position is that the author has the exclusive right to authorise the reproduction of their works in any manner or form i.e., including accessible formats.[304] Then, discretion is reserved to Berne Union countries to provide in their own national laws for limitations and exceptions to this exclusive right, provided they meet the criteria of the “three-step-test.”[305] In other words, Berne Members are not under an obligation to provide an exception to the right of reproduction in national law, they are only under an obligation to ensure that any exceptions they do provide meet the requirements of the three-step-test.[306] Those requirements are that exceptions apply in certain special cases, that they do not conflict with a normal exploitation of the work, and that they do not unreasonably prejudice the legitimate interests of the author.[307] The applicability of these requirements was bolstered in the TRIPS Agreement which mandated compliance with the three-step-test for all exclusive rights, not only the reproduction right.[308] In effect, the test has now become the cornerstone filter for almost all exceptions and limitations to copyright.[309] The test serves the dual purpose of directly controlling national limitations and providing an additional safeguard against further limitations of exclusive rights.[310]

The interpretation of the three-step test may be generally categorised as either traditionalist or balanced. On the balanced side of the scholarship is the view that the three-step-test offers sufficient flexibility to accommodate the access rights of visually impaired persons, and indeed public interest matters more generally, only

---

[303] Kamiel Koelman, “Fixing the Three Step Test” (2006) European Intellectual Property Review Vol 28:8, 407; Berne Convention [1967]
[304] Article 9 (1), Berne Convention [1979]
[305] *Ibid*, Article 9(2)
[306] Paul Harpur, *Discrimination, Copyright, and Equality* (n133) 70
[307] Article 9(2) Berne Convention [1979]
[308] Article 13, TRIPS Agreement [1996]
[309] Daniel Gervais, “Fair Use, Fair Dealing, Fair Principles: Efforts to Conceptualise Exceptions and Limitations to Copyright” (2010) Copyright Society of the USA Journal Vol 57:3 499, 511
[310] Martin Senftleben, *Copyright, Limitations, and the Three-Step Test: An Analysis of the Three-Step Test in International and EC Copyright Law* (Kluwer Law International, 2004) 118

that this flexibility has been under-utilised in national law.[311] This view is adopted in the Marrakesh Treaty and by the World Blind Union.[312] A counterview on the traditionalist side is that the three-step test permits only limited and narrowly-tailored exceptions to copyright which subjugates any social measures designed to enhance access rights to the interests of copyright holders,[313] and has foreclosed more ambitious action by governments worldwide to address the book famine.[314] It is further argued that, even if the three-step-test was interpreted in the widest possible sense, it would not resolve the book famine due to a lack of commitment from authors and publishers, the prohibitively expensive cost of converting books into accessible formats, and the fact that the sharing of accessible format works is not expressly permitted.[315] I take the position that the traditionalist interpretation of the three-step test is the most accurate, and it is for this reason that access to works by visually impaired persons has been so severely constrained. This interpretation is in line with the phrase, “Members shall *confine* limitations or exceptions” added in by the TRIPS Agreement which indicates that a restrictive interpretation is indeed intended.[316]

The issue at hand, then, is the extent to which the reproduction of works in accessible formats may be permitted under the three-step-test. This is a particularly important consideration as the Marrakesh Treaty does not undermine the applicability of the test, but rather reaffirms and is declaredly compliant with it.[317] The interpretation of the test and its three ‘limbs’ is undoubtedly contentious. To some extent, this is a result of intentional ambiguity built into the test to preserve an element of flexibility in national law making.[318] Indeed, the open-ended wording

---

[311] Jade Kouletakis, “A Critical Examination of Copyright Limitations and Exceptions for the Visually Impaired Pertaining to Literary Works in South Africa in the Local and Global Context” (2014) South African Intellectual Property Law Journal Vol 2, 6
[312] Preamble, The Marrakesh Treaty [2016]; see also Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals* (OUP, 2017) 165-170
[313] Henning Grosse Ruse-Khan, “Time for a Paradigm Shift? Exploring Maximum Standards in International Intellectual Property Protection” (2009) Journal on Trade, Law, and Development Vol 1:1, 56
[314] Paul Harpur and Nicolas Suzor, “Copyright Protections and Disability Rights” (n211) 752
[315] Paul Harpur, *Discrimination, Copyright, and Equality* (n133) 74
[316] Article 13, TRIPS Agreement [1995]
[317] Preamble and Article 11, The Marrakesh Treaty [2016]
[318] Kamiel Koelman (n303) 407

of the three-step test allowed the settling of the sensitive question of exceptions and limitations in a way that countries of both the “open clause” and “closed list” traditions could accept.[319] It is also a natural consequence of compromise in international legislative negotiations.[320] While some nations were against introducing the three-step test at all due to the difficulty of defining exceptions and matters to be left to domestic legislation,[321] others were in favour of adopting strict criteria.[322] The objective here is not to resolve this contention, but to consider the extent to which the application of the test has restricted access to works by the visually impaired. Regarding a dispute concerning whether exceptions and limitations introduced in American law were in breach of the three-step-test, the decision of a World Trade Organisation Panel (“the Panel”) offers interpretive insights into the definitions of each of the three limbs by elaborating each of their constituent parts.[323] These insights are not without criticism and are therefore not a conclusive interpretation of the three-step test.[324] Nevertheless, they serve as a helpful template for the discussion here, in addition to scholarly interpretation.

2.4.1 Criterion No.1 - ‘Certain Special Cases’

Negotiations on this aspect of the three-step test were split. Israel argued against the inclusion of this phrase due to uncertainty surrounding its interpretation.[325] It was originally proposed as ‘certain particular cases’ by the Working Group but was

[319] Christophe Geiger et al, “The Three Step Test Revisited: How to Use the Test’s Flexibility in National Law” (2013) American University International Law Review Vol 29:3 1, 12
[320] Katerina Linos and Tom Pegram, “The Language of Compromise in International Agreements” (2016) International Organisation Vol 70:3 587
[321] WIPO, “Records of the Intellectual Property Conference of Stockholm: June 11 to July 14, 1967” (1971) available here <https://www.wipo.int/export/sites/www/treaties/en/docs/prep-docs/1967_july_Stockholm_311-vol1-en.pdf> Ireland and Portugal at 620 and 628 respectively
[322] *Ibid*, Denmark and Belgium at 615 and 669 respectively
[323] World Trade Organisation, “United States – Section 110(5) of the US Copyright Act: Report of the Panel” (2000) WT/DS160/R, available here: <https://www.wto.org/english/tratop_e/dispu_e/1234da.pdf>
[324] See for example Martin Senftleben, “Towards a Horizontal Standard for Limiting Intellectual Property Rights? WTO Panel Reports Shed Light on the Three-Step Test in Copyright Law and Related Tests in Patent and Trademark Law” (2006) International Review of Intellectual Property and Competition Law Vol 37:4 407-438; Jo Oliver, "Copyright in the WTO: The Panel Decision on the Three-Step Test" (2002) Columbia Journal of Law & the Arts Vol 25:2-3 119-170.
[325] WIPO Stockholm Conference (n321) 622

amended from ‘particular’ to ‘special’ by the UK delegation.[326] In interpreting the ‘certain special cases’ limb, the Panel reached the following conclusion:[327]

- ‘Certain’ requires that the scope of the exception be clearly defined and particularised to ensure legal certainty

In addition to the Panel’s interpretation, the literature offers further insight into possible interpretive approaches that affect the scope of the three-step-test. Senftleben notes that the original French text translates to ‘some special cases’ as meaning that the limitations or exceptions provided in national law must be distinguishable from each other i.e., an incalculable, shapeless provision exempting a wide variety of different uses would be impermissible.[328] Thus, the emphasis would not be on how definitive the exception itself is, but how distinguishable it is from other exceptions. ‘Some’ may also be interpreted quantitatively. This interpretation would require that the exclusive rights of authors are not subject to an unlimited or arbitrary list of possible exceptions as too many exceptions may conflict with the second and third limbs i.e., the greater the number of excepted cases, the more likely there will be a conflict with the author’s exploitation of the work or prejudice to their legitimate interests. A value at the heart of the Berne Convention is the enshrinement of exclusivity as the norm of authorial protection.[329] Were the number of exceptions not restricted, this value would be at risk of being undermined - accessibility may become the new norm. When connected with the word ‘special,’ it can be further understood that emphasis is on exceptions not being common or widespread. In fact, one of the options which the Study Group considered was to indicate the exceptions in the text of the Convention by means of a list intended to be restrictive.[330] This would have prescribed the exact number of exceptions permitted and therefore the most explicit way of quantitatively limiting provisions for exceptions. However, this approach was not carried forward due to concerns that the list may either be too long and therefore considerably restrictive of authors’ rights or would otherwise

[326] *Ibid*, 630
[327] WTO Panel Report (n323) 33
[328] Martin Senftleben, *Copyright, Limitations and the Three-Step Test* (n310) 134-137
[329] Peter Burger (n226) 59-60
[330] WIPO Stockholm Conference (n321) 111-112

encourage the adoption of all permitted exceptions.[331] In light of these contextual notes, it becomes apparent that ‘certain’ or ‘some’ relates both to legal clarity and quantity. In other words, while the number of exceptions may vary nationally, what is for certain is that States must ensure they do not provide for too greatly an expansive list. After all, one of the dual purposes of the three-step-test is to safeguard against further limitations of Berne exclusive rights.[332]

Considering the Panel’s interpretation of ‘certain’ as ‘clearly defined,’[333] there are some definitional issues with regards to visually impaired persons. The Study Group formulating the wording of this phrase explained that “exceptions should only be made for clearly specified purposes, e.g., private use, the composer's need for texts, *the interests of the blind*.”[334] Moreover, they noted that exceptions for the reproduction in special characters for the use of the blind and sound recordings of literary works for the use of the blind were already present in some national laws, and that the incorporation of the three-step-test would not seek to invalidate these.[335] At first glance, it may appear that there is no doubt that persons with visual impairments were anticipated as being one of these certain special cases. However, careful attention must be paid to the terminology used. In all of these instances, the Study Group only referred to the blind, and not to those with visual impairments or print disabilities more generally.[336] This is perhaps due to the fact that referring to visual impairment and print disability would open up a much wider scope of application which is relative and variable i.e., different levels of visual impairment. In the least, it casts some doubt as to whether it was only blind persons that were envisaged as being a certain special case and not the wider scope of beneficiaries which the Marrakesh Treaty encompasses.[337] In fact, a Committee tasked with considering exceptions for visually impaired persons directly acknowledged the importance of taking a restrictive approach to defining the beneficiaries that the exceptions would apply to so as not to unduly limit or

---

[331] *Ibid*
[332] *Ibid*
[333] WTO Panel Report (n323) 33
[334] WIPO Stockholm Conference (n321) 111-112
[335] *Ibid*
[336] *Ibid*
[337] Article 3, Marrakesh Treaty [2016]

restrict the legitimate interests of authors.[338] Moreover, the trend in national law prior to the Marrakesh Treaty was for exceptions to apply more commonly to the blind and in Braille.[339] Thus, it appears there is at least an arguable case to suggest that the category of beneficiary included within the meaning of certain special case may not have been intended to be inclusive of all types of visual impairment initially, though there is support for the fact that this is now the case.[340]

On the other hand, if interpreted as requiring distinguishability, the interests of visually impaired persons would satisfy the first limb of the test i.e., an exception relating to the visually impaired is sufficiently distinguishable from an exception for parodic purposes, for example. Moreover, when viewed as restricting the quantity of exceptions permitted in national law, an exception for visually impaired persons is not directly excluded either. However, this would be a matter of national priority i.e., incorporating an exception for the visually impaired may only be a problem where a wide range of exceptions for other purposes had already been provided, such that incorporating another exception would go beyond the quantitative limits of 'some.'

- 'Special' means the exception should be narrow both quantitatively and qualitatively, as well as pursuing a distinctive or exceptional objective

The term 'special' was also subject to some contention. Italy suggested 'special' may lend itself to too expansive an interpretation and should be replaced by 'exceptional.'[341] Doing so would have set a higher normative threshold i.e., many cases may be special, but exceptional cases are the most special of special cases. This amendment did not garner enough support,[342] perhaps in light of the fact that normative considerations were not envisaged as relevant given the initial term was 'particular' - it was never a question of worthiness. In this spirit, the Panel took what

---

[338] Annex II, Page 5, Report on behalf of the Intergovernmental Copyright Committee (of the Universal Copyright Convention) and the International Union for the Protection of Literary and Artistic Work Executive Committee: Wanda Noel, "Copyright Problems Raised by the Access by Handicapped Persons to Protected Works" (1985) IGC (1971)/VI/11, available here: <https://unesdoc.unesco.org/ark:/48223/pf0000065169>
[339] WIPO, "Study on Copyright Limitations and Exceptions for the Visually Impaired" (2007) SCCR/15/7, <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf>
[340] Paul Harpur, *Discrimination, Copyright, and Equality* (n133) 72-23
[341] WIPO Stockholm Conference (n321) 623
[342] *Ibid*

has been labelled as a “dictionary approach” by relying on a dictionary definition of the word ‘special’ in their interpretation.[343] The literature has discussed whether the term ‘special’ might entail teleological considerations beyond a literal interpretation.[344] This line of argument suggests that exceptions and limitations need to be based on specific and sound public policy reasons (i.e., the needs of disabled persons),[345] or be a reaction to an understandable need for the reconciliation of users’ interests at stake with the author's legitimate interests.[346] Those favouring this interpretation argue that a qualitative understanding of ‘special’ is the most appropriate due to the impracticalities of quantitively predicting the number of potential users and uses an exception may involve.[347] However, the Panel dismissed the notion of this being a precondition - the public policy behind a particular exception merely provides a factual basis to make inferences as to whether it is sufficiently clear and narrow.[348]

Of the two, a qualitative interpretation would be more directly inclusive of visually impaired persons since the realisation of their human rights is a legitimate and important public policy rationale. There is a potential conflict when viewing ‘special’ in a quantitative sense as the world population of visually impaired persons was recently estimated at 285 million.[349] Thus, while the policy of realising their rights is qualitatively special, it would certainly not be considered special in the sense of being quantitatively narrow in scope and reach at an international level (though the number of potential beneficiaries in a national context may, in some cases, be narrow enough). The final term ‘cases,’ requiring that the exception applies to specific circumstances or beneficiaries, is uncontested and is therefore not discussed further.

What can be concluded from the above analysis is that there are sufficient grounds to at least affirm that exceptions for the benefit of the blind would satisfy the

---

[343] Daniel Gervais, “Fair Use, Fair Dealing, Fair Principles” (n309) 512-514
[344] *Ibid*
[345] Jörg Reinbothe and Silke von Lewinski (n286) 154
[346] Martin Senftleben, *Copyright, Limitations and the Three-Step Test* (n310) 152
[347] *Ibid*
[348] WTO Panel Report (n323) 34
[349] WIPO, “The Marrakesh Treaty – Helping to End the Global Book Famine” [2016] available here <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_overview.pdf>

criterion of ‘certain special case.’ However, it is reasonable to conclude that the wider scope of beneficiaries encompassing those with visual impairment and print disabilities were not anticipated as being included within the scope of the ‘certain special case’ criterion, at least not explicitly during the negotiation of the three-step test. Although there is room for inclusivity in a qualitative interpretation of ‘special,’ the Panel were clear that this is not the intended interpretation. Instead, it requires that exceptions be narrow in scope and reach which is problematic for the number of beneficiaries in question.

Regardless of definitional and interpretive complexities, to say that Berne Union countries may provide for exceptions which are in theory applicable to visually impaired persons is not the same as mandating that such an exception must exist – a gap which the Marrakesh Treaty now fills.[350] Moreover, the scope of the exceptions that Berne Union Members may provide is circumscribed by the second and third criteria which are cumulative - failure to comply with any one of the limbs invalidates the exception.[351] It is not enough that an exception *may* exist where it may only exist in a heavily restricted form. Thus, this section now turns to the second limb of the three-step test.

2.4.2 Criterion No.2 - ‘Does not conflict with a normal exploitation of the work’

In a similar style as with ‘certain special cases,’ the Panel defined this second limb by interpreting each word singularly. The following elaborations were provided:[352]

- ‘Exploitation’ refers to the extraction of economic value by authors from the exclusive rights in their works
- ‘Normal’ defined quantitatively as the areas of the market in which the copyright owner would ordinarily expect to exploit their work, and normatively as ‘normalcy’ inclusive of future technological and market developments
- ‘Work’ encapsulates all of the exclusive rights relating to it

[350] The Marrakesh Treaty [2016]
[351] WTO Panel Report (n323) 31
[352] *Ibid*, 44-50

- ‘Conflict’ occurs where excepted uses enter into economic competition with the ways that right holders normally extract economic value from their works and authors are thereby deprived of significant or tangible commercial gains

In other words, the priority is protecting the ability of authors to financially benefit from all of the exclusive rights they have in their works, both presently in the markets they would ordinarily expect to exploit, and prospectively in other markets which future developments may provide.[353] There is at least some flexibility in this. For instance, an important point to note from the Panel’s interpretation of this second limb is that copyright does not provide absolutes.[354] A normal exploitation of a work does not equate to full exploitation, otherwise, no exception would be permissible.[355] Similarly, the exception may deprive authors of some commercial gains, but not significant gains, meaning that copyright does not provide a right to full commercial gain either.[356] This does offer some flexibility, but the question is whether that flexibility is enough.

Whether an exception conflicts with the normal exploitation of a work is assessed on a right-by-right basis, such that a far-reaching exception to the right of reproduction could not be justified on the grounds that there is no conflict with any of the other rights.[357] This limb is particularly problematic when it comes to the market of textbooks for education.[358] The market for their exploitation is so specific to the extent that authors may more easily be deprived of significant commercial gains if an exception to the reproduction right is too generic,[359] as opposed to other literary and cultural materials which have many more market streams. The sentiments of the Study Group were explicit in noting that, if an exception implies producing a large number of copies, it should never be permitted as it conflicts with a normal exploitation of the work but, if a smaller number of copies is made, it may be permitted for individual or scientific use.”[360] Thus, it is clear that whatever activity

---

[353] Martin Senftleben, *Copyright, Limitations and the Three-Step Test* (n310) 178
[354] Robin Wright, “The ‘‘Three-Step Test’’ and the Wider Public Interest: Towards a More Inclusive Interpretation” (2009) The Journal of World Intellectual Property Vol 12:6 600, 601
[355] WTO Panel Report (n323) 44
[356] *Ibid*, 48
[357] Jörg Reinbothe and Silke von Lewinski (n286) 155
[358] *Ibid*
[359] *Ibid*
[360] WIPO Stockholm Conference (n321) 96

the exception permits, it must be minimal. Indeed, the proliferation of electronic copies, though known to facilitate the making of accessible copies for visually impaired persons, could arguably be a mode of exploitation that may result in potential revenue loss."[361]

The effect of this second criterion is to essentially prioritise the author's ability to benefit from the material interests in their works which is to some extent protected as a human right in Article 15 (1)(c) of the ICESCR,[362] but not to the extent as the three-step test requires. A more human rights focused argument would suggest that the need for the author to be rewarded should be balanced with other legitimate social interests. However, the construction of this criterion is the converse - that material interests of authors can only be limited in an insignificant way. This goes to emphasise the author-centric nature of the test and gives weight to the traditional interpretation.

2.4.3 Criterion No.3 - 'Does not unreasonably prejudice the legitimate interests of the author'

The third and final limb of the three-step-test was interpreted by the Panel as follows:[363]

- 'Interests' defined holistically not just pertaining to economic interests but anything of importance or impactful on any aspect of proprietary title
- 'Legitimate' denotes lawfulness and justifiability
- 'Prejudice' connotes damage, harm, or injury, economic or otherwise
- 'Unreasonably' means disproportionately, inappropriately, or unfairly

In sum, a limitation or exception will be unreasonably prejudicial to the legitimate interests of copyright holders where it causes, or has the potential to cause, an unreasonable loss of income to the copyright owner.[364] It may be considered reasonable to prejudice the author's interests to an extent where appropriate remuneration is provided.[365] However, this would only perpetuate the financial

---

[361] Corinne Hui Yun Tan, "Moving Towards a More Inclusive Copyright Regime for the Visually Impaired" (2012) Singapore Academy of Law Journal Vol 24:2 433, 445
[362] Article 15(1)(c) ICESCR [1976]
[363] WTO Panel Report (n323) 57-59
[364] *Ibid*
[365] WIPO Stockholm Conference (n321) 740

inaccessibility that visually impaired persons have faced in accessing works.[366] Moreover, the flipped perspective of perceiving the legitimate interests of visually impaired persons in accessing works as causing harm to author's rights, instead of the other way around, is not supportive of the realisation of their rights. Nevertheless, there is at least some element of flexibility here. The wording acknowledges that it may be acceptable for an exception or limitation to cause some prejudice to the interests of a rights holder, as long as this does not extend to an unreasonable level, and also that a right holder will not be able to insist on the protection of illegitimate interests.[367] In essence, it is a proportionality test between the two competing rights - a balance which continues to be unsettled. Moreover, it is not a neutral one, nor one stipulated by the criterion itself - it is to be decided at a national level as to where to draw the 'reasonable' line.[368] No matter how widely reasonableness may be interpreted conceptually, it is ultimately a choice of national priority, under which access rights for visually impaired persons have been significantly limited.[369] Further, it only serves to intensify a conflict of interests whereby the copyright regime seeks to prevent unreasonable prejudice to authorial rights by disability rights, or indeed other access rights more generally, while the disability rights regime purports to ensure that copyright law does not unreasonably prejudice the rights of visually impaired persons and persons with disabilities more generally. Finding the optimal point at which neither sphere of rights suffers unreasonable prejudice may seem unachievable. In whatever manner this may be achieved, it is at least unlikely to be achieved via a test with an author-centric philosophy such as that embodied by the three-step test.

2.4.4 Overall Interpretation, Remaining Issues, and Potential Solutions

Putting the definitional specifics aside, the three-step test nevertheless embodies paradigmatic problems which still render it unhelpful for the rights of visually impaired persons.[370] Although there are calls for a balanced interpretation of the

---

[366] Jingyi Li and Niloufer Selvadurai, "Reconciling the Enforcement of Copyright with the Upholding of Human Rights: A Consideration of the Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired and Print Disabled" (2014) E.I.P.R. Vol 36:10 653, 660
[367] Robin Wright (n354), 610
[368] Andre Lucas, "For a Reasonable Interpretation of the Three-step Test" (2010) E.I.P.R. Vol 32:6 277
[369] Paul Harpur and Nicolas Suzor, "Copyright Protections and Disability Rights" (n211) 752
[370] *Ibid*

three-step test which leans more towards the socio-centric function of copyright,[371] it must not be forgotten that this was not the reason why the three-step test was formulated. Albeit that there is some reference to public policy, it is not weighted equally with exclusive rights which are prioritised.[372] It was designed first and foremost as a tool to safeguard authorial rights and, as such, can only be stretched so far in this respect. No matter how it is interpreted, the balance of the test will always be tilted in favour of authors. This is confirmed by the rhetoric of the Study Group when formulating the three-step test which referred to exceptions as inevitable, of lesser importance, and unacceptable where they prevent the author of a work from securing economic benefits from their works.[373] It is clear from this that the main agenda is the protection of authorial rights. Furthermore, the stances of a number of countries commenting on the draft provisions of the three-step test also buttress this point. For example, Luxembourg considered the general right of reproduction to be a fundamental right of the author and obviously deserving of being specified in its own independent provision.[374] Other countries like Belgium and Denmark advocated for an even stricter formula than the present wording.[375] There was some acknowledgement that the introduction of a general right of protection must be accompanied by certain reservations in favour of the domestic legislators for the purpose of satisfying specific social or cultural needs,[376] but these were not emphasised as a priority.

Thus, overall, the elements of the three-step test should be understood in line with its purpose of maximising and protecting authorial rights against the diminishment of their exclusivity. There is no doubt that the three-step test takes an author-centric approach and the subtle hints to socio-centric concern are a long distance away from the test being considered in any way dualistic which, as discussed earlier,[377] is the most appropriate way of encompassing the interests on both sides.

---

[371] Christophe Geiger et al, “Declaration on a Balanced Interpretation of the ’Three-Step Test’ in Copyright Law” (2008) International Review of Intellectual Property and Competition Law Vol 39:6, 707-713
[372] WIPO Stockholm Conference (n321) 111
[373] *Ibid*
[374] *Ibid*, 663
[375] *Ibid*, 612 (Belgian) and 615 (Danish)
[376] *Ibid*, 669
[377] See page 72

The author-centric nature of the three-step test has led to an exceptions paradigm which treats the market of uncapped copyright protections as the norm, and access by people with print disabilities as a relatively rare, and thus tolerable, exception that can be accommodated up until the point at which it destabilises the market overall.[378] This tolerance paradigm has been one of the key aggravating factors of the global book famine.

In light of these issues, Okediji suggests three potential ways in which a more explicit balance between author's rights and access rights could be struck.[379] These are either to reform the three-step test in a way that is more inclusive of public interest values, to insert a US-style "fair use" provision into the international copyright law framework, or to establish a list of minimum limitations and exceptions.[380] Since the three-step test has become such an entrenched facet of international copyright law,[381] it is not likely that there will be sufficient political consensus in support of revising its wording in the foreseeable. The insertion of a "fair use" clause would not be less detrimental to the access rights of persons with visual impairment to any significant degree as it also gives weight to market concerns similar to those of the second limb of the three-step test,[382] and is restrictive as to the amount of substantiality of the work being used.[383] A list of minimum limitations and exceptions would be similarly difficult to achieve international consensus on given that many countries have not provided for disability rights exceptions at all,[384] and over half of WIPO's Members are still not

[378] David Adair and Paul Harpur, "Books and People with Print Disabilities: Public Value and the International Disability Human Rights Agenda" in Katie Ellis et al, *The Routledge Companion to Disability and Media* (Routledge, 2019) 401
[379] Ruth Okediji, "The International Copyright System: Limitations, Exceptions, and Public Interest Considerations for Developing Countries" (2006) UNCTAD - ICTSD Project on IPRs and Sustainable Development Issue Paper No.15, 34
[380] *Ibid*
[381] Daniel Gervais (n309) 511
[382] s.107(4), Copyright Law of the United States (Title 17) and Related Laws Contained in Title 17 of the United States Code <https://www.copyright.gov/title17/title17.pdf>
[383] *Ibid*, s.107(3)
[384] WIPO, "Study on Copyright Limitations and Exceptions for the Visually Impaired" (2007) SCCR/15/7, <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf>

Contracting Parties to the Marrakesh Treaty.[385] Thus, none of these options would improve on the current three-step test to any notable extent.

Nevertheless, building on Okediji's proposals, it is suggested here that revising the scope of the three-step test's applicability may be a more appropriate and feasible option than redrafting its wording. At present, the three-step test applies to all limitations and exceptions to exclusive rights.[386] It is therefore suggested that a differentiation could be made between exceptions and limitations in general, and those for human rights purposes. Then, while the current three-step test would remain applicable as currently worded to exceptions and limitations in general, a separate test would apply to human rights exceptions and limitations. For illustrative purposes, an alternative human rights test could be worded as follows:

"Members may provide in their national law for exceptions and limitations to the exclusive rights of authors, provided that such exceptions and limitations:

1. Are for the purposes of facilitating the realisation of a fundamental human right
2. Apply to the extent as is justified by their human rights objective(s)
3. Are proportionately balanced with the human rights of the author in accordance with international human rights law"

Applying such a test would be more facilitative of the human rights of all parties, even those of the author as per Article 15 (1)(c) of the ICESCR discussed earlier.[387] Moreover, treating human rights exceptions as of distinct importance independently, rather than equating them with other exceptions, would emphasise the primacy of human rights. Additionally, it may allow greater room for the Marrakesh Treaty to fulfil its objectives than is possible under the presently applicable test. As an amendment to the operation of a key element of the international copyright law regime, this option would undoubtedly face pushback from pro-authorial rights lobbyists. However, redefining the scope of the three-step

[385] WIPO-Administered Treaties, "Contracting Parties: Marrakesh VIP Treaty" <https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=843>
[386] Daniel Gervais (n309) 511
[387] See page 60

test's applicability may face less opposition than attempting to redraft its current wording.

2.5 Concluding Remarks

Philosophical stance on the justification of copyright law is an influential component in formulating a legal policy framework which is conducive to the rights of visually impaired persons and mutually protective of copyright holders. While classic author-centric philosophies are not inherently contrary to disability rights upon deeper exposition, without a counterweight, they entail the risk of an excessively exclusive and individualistic regime. Similarly, a purely socio-centric approach has the potential to devalue the rights of copyright holders to a similarly extreme level. In the spirit of balance and the objectives of the Marrakesh Treaty, a dualistic approach which represents the holistic purpose and function of copyright is the most appropriate. The expansion in international copyright law of the exclusive rights of authors and copyright holders, combined with the confinement of exceptions and limitations particularly by the device of the three-step test, have also played significant roles in the creation and exacerbation of the global book famine. These are symptoms of the overall culture of prioritising authorial protection over the protection of the fundamental rights of blind and visually impaired persons.[388] It is not argued that international copyright law is itself the only cause of the global book famine. Indeed, it has been noted that much of the failure to ensure adequate levels of access can be attributed to a systematic lack of political will and imagination to make structural changes to the regulatory regime that creates the problem.[389] However, the focus is on international copyright law as, if the right legislative policy is in place, the resolution of secondary causes is more likely to follow.

[388] Joseph Lelliott and Paul Harpur (n4) 84
[389] David Adair and Paul Harpur (n378) 402

Chapter 3: Disability Models, Substantive Rights, and Legal Obligations – Exploring the Disability Rights Regime & its Relationship with International Copyright Law

3.1 Introduction

The international copyright law framework explored in the previous chapter is only one side of the Marrakesh Treaty coin which brings together both copyright and disability rights under one roof.[1] It is not only the justification of copyright protection that influences national protection of copyright and approach to the limitations and exceptions provided, but also the model of disability adopted based on societal, cultural, and political attitudes.[2] In the same way that copyright protection has been supported on the basis of a range of justificatory theories, the way in which disability is perceived has been constructed from various "models" of disability that have evolved over time, some of which have been found to be less problematic and more helpful than others.[3] The term 'model' refers to a conceptual framework through which disability is defined and understood.[4] As Mander explains, they are "socially constructed 'truths' about disability" which meet the purposes of their definers.[5] As such, a definer that wishes to take an oppressive stance towards disability would adopt a model that supports this agenda. More positively, the same can be said for those who seek to protect the interests of persons with disabilities. Indeed, just as the way in which copyright is justified influences the manner and scope of its legal protection, so too does the model of disability adopted influence the approach of legislative policy both in the sphere of copyright and more generally. It has therefore been posited that these models of disability are powerful in the sense that they bear economic, social, political, and legal consequences.[6]

---

[1] Lior Zemer and Aviv Gaon, "Copyright, Disability, and Social Inclusion: The Marrakesh Treaty and the Role of Non-Signatories" (2015) Journal of Intellectual Property Law & Practice Vol 10:11 836, 837

[2] Jane Campbell and Mike Oliver, *Disability Politics: Understanding Our Past, Changing Our Future* (First Published 1996, Routledge, 2006) 20

[3] Andrew Hogan, "Moving Away from the "Medical Model": The Development and Revision of the World Health Organisations Classification of Disability" (2019) Bulletin of the History of Medicine Vol 93:2, 241-269

[4] Michael Palmer and David Harley, "Models and Measurement in Disability: An International Review" (2012) Health Policy and Planning Vol 27:5, 357–364, 358

[5] Alice Mander, "The Stories That Cripple Us: The Consequences of The Medical Model of Disability in the Legal Sphere" (2022) Victoria University of Wellington Law Review Vol 53:2, 343

[6] Julie Smart, "The Power of Models of Disability" (2009) Journal of Rehabilitation 75:2, 3-11

They are influential in shaping both self and public perceptions of disability, determining resource allocation, and guiding legislation,[7] and have been at the forefront of disability politics for the past 40 years.[8] Thus, understanding how the various models of disability influence legislative policy is of central importance.

In answer to research sub-question three regarding the relationship between copyright and disability rights law, the discussion here is approached in three stages. Firstly, in Section 3.2, the three main approaches to modelling disability are examined with emphasis on how the inaccessibility of the written word is perceived under each model. These are the individual, social, and human rights models. This analysis is undertaken as a precursor to the exploration in Chapter 5 as to the extent to which the Marrakesh Treaty has facilitated a departure from individual models of disability in the national copyright laws of its Contracting Parties.[9] Indeed, conceptualising disability appropriately is essential to the work of the Marrakesh Treaty and the fulfilment of the rights of its beneficiaries.[10] The model commonly attributed to shaping the provisions of the Marrakesh Treaty is the social model of disability.[11] The human rights model is also evident in the way that the Marrakesh Treaty builds on the new disability paradigm brought about by the Convention on the Rights of Persons with Disabilities (CRPD).[12]

Secondly, doctrinal analysis of the cross-cutting principles, substantive rights, and obligations for the realisation of rights under disability rights law are discussed in Section 3.3, with particular emphasis on the connection between them and copyright law. The rights to participation in cultural life and the right to education are identified as the two most pertinent gatekeeper rights connected to the work of the Marrakesh Treaty.[13] Thirdly, the various conceptual frameworks that have been put forward in the literature in attempt to define the relationship between the two

---

[7] *Ibid*
[8] Anna Lawson and Angharad Beckett, “The Social and Human Rights Models of Disability: Towards a Complementarity Thesis” (2021) The International Journal of Human Rights Vol 25:2, 348
[9] See discussion from page 230
[10] Chen Li, “Interpretation of the Marrakesh Treaty Based on the Human Rights Model of Disability” (2022) Journal of Human Rights Vol 21:4 645, 653-658
[11] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals* (OUP, 2017) 61
[12] Preamble, The Marrakesh Treaty [2016]
[13] *Ibid*

areas are examined in Section 3.4. Overall, conclusions are drawn as to an approach which supports an effective balance between protecting the rights of authors on one hand, and ensuring the rights of persons with disabilities are not hindered by copyright protection on the other.

3.2 Conceptualising Disability Appropriately - Disability Rights Theories & Models

It should be highlighted at the outset of this section that disability is considered to be an evolving concept.[14] Indeed, models of disability have developed from individual, to social, to rights-based constructs. Oliver, an influential advocate for disability rights, categorises models of disability as either individual or social.[15] Individual models emphasise difference over shared commonality by focusing attention on specific impairments or individual experience, whereas social models emphasise the collective existence of disability in the social world beyond individual experience.[16] Organising in this way aligns with the approach to discussing copyright philosophies as author or socio centric in the previous chapter.[17] Thus, Oliver's taxonomy is adopted, with an additional category pertaining to the more recently discussed "human rights model."[18] There are various other models of disability found in the disability legal theory scholarship including the capability and cultural models,[19] social contract theories,[20] and distributive justice,[21] among others.[22] However, as these are niche approaches unrelated to the Marrakesh Treaty, they are not discussed here.

---

[14] Para (e), Preamble, Convention on the Rights of Persons with Disabilities [2008]
[15] Michael Oliver, *Understanding Disability: From Theory to Practice* (First Published 1996, 2nd Edn, Palgrave Macmillan, 2009) 45
[16] Mark Priestley, "Constructions and Creations: Idealism, Materialism and Disability Theory" (1998) Disability & Society Vol 13:1 75, 83-86
[17] See page 46
[18] Michael Stein, "Disability Human Rights" (2007) California Law Review Vol 95, 75-121
[19] Anne Waldschmidt, "Disability Goes Cultural: The Cultural Model of Disability as an Analytical Tool" in Hanjo Berressem, *Culture – Theory – Disability: Encounters Between Disability Studies and Cultural Studies* (Transcript Verlag, 2017) 19
[20] Christie Hartley, "Justice for the Disabled: A Contractualist Approach" (2009) Journal of Social Philosophy Vol 40:1 17-36
[21] Mark Stein, *Distributive Justice and Disability: Utilitarianism Against Egalitarianism* (Yale University Press, 2006)
[22] Marno Retief and Rantoa Letsosa, "Models of Disability: A Brief Overview" (2018) Theological Studies Vol 74:1, 1-8

3.2.1 Individual Model: Medical, Charity, Tragedy & More

After coming under sustained scrutiny from scholars and disability rights activists, individual models are now all but defunct constructions of disability,[23] though they remain influential in other contexts such as in medical schools and in the field of medical research.[24] As they have also been influential in the implementation of legal policy and there are lingering traces of them in some national contexts,[25] it is instructional to explore their problematic nature and the detrimental impact they have had on the rights of persons with disabilities.

Under the broad category of individual models of disability are the religious/morality, personal tragedy, charity, and medical models. The model with the longest history is that which is commonly known as either the morality or religious model of disability which traditionally construes disability as a punishment for sin.[26] Considering whether this is a theologically sound interpretation of religious text is not within the scope of this thesis. Nevertheless, whether correct or not, it has been historically used as a justification to marginalise and discriminate against persons with disabilities who were demonised and associated with evil.[27] Closely linked to this is the personal tragedy model which perceives disability as a predominantly negative experience of pain, suffering, and unhappiness.[28] In response to this perception, persons with disabilities are viewed as either dependent on the care of others ("the care model"),[29] or as requiring charity ("the charity model")[30] perpetuating again negative stereotypes of dependence and vulnerability.[31] Subsequently, as the medical field developed, the perception of disability shifted from a spiritual phenomenon to a biological one. This led to the

---

[23] Jonas-Sébastien Beaudry, "Beyond (Models of) Disability?" (2016) Journal of Medicine and Philosophy, 41: 210–228, 211
[24] Paul Harpur, "Embracing the New Disability Rights Paradigm: The Importance of the Convention on the Rights of Persons with Disabilities" (2012) Disability & Society Vol 27:1 1-14, 3
[25] See discussion from page 230
[26] Marno Retief and Rantoa Letsosa (n22) 2
[27] *Ibid*
[28] John Swain and Sally French, "Towards an Affirmation Model of Disability" (2000) Disability & Society Vol 15:4 569, 572
[29] Eva Kittay, "The Ethics of Care, Dependence, and Disability" (2011) Ratio Juris Vol 24:1, 49-58
[30] Gerard Quinn, "The United Nations Convention on the Rights of Persons with Disabilities: Toward a New International Politics of disability" (2009) Texas Journal on Civil Liberties & Civil Rights Vol 15:1 15 33-53, 37
[31] Thomas Hammarberg, "Disability Rights: From Charity to Equality" (2011) European Human Rights Law Review 6, 638-641

medical model which approaches disability as a medically definable and diagnosable phenomenon that is seen as a deviation from the 'normal' health status which needs to be treated, cured, fixed, or at least rehabilitated.[32] The problem with this is that it regards the person with a disability as the one who needs to change or 'be fixed,' not the conditions that might be contributing to the person's disability.[33] This framing diminishes the hidden gifts and intrinsic value of people with disabilities.[34] It also fuels stigmatisation by drawing a problematic distinction between 'normal persons' without disability and 'abnormal persons' who experience impairment.[35]

In sum, these models view disability as either a form of punishment, a physical or economic limit, or something disastrous that should be treated, fixed, pitied, or the subject of charity. In all of these constructs, the source of the "problem" of disability is the individual, and it is the individual who bears the consequences.[36] The social and economic exclusion of persons with disabilities under these constructs is justified on the grounds that they are not 'well enough.'[37] Connecting this to copyright law, the inability of visually impaired persons to access works would not be considered as the responsibility of copyright owners or something for copyright law to fix at all from the viewpoint of individual models.[38] Instead, the inaccessibility experienced is viewed as a consequence of a physical condition which should either be medically treated or, if uncurable, the exclusion that follows is justified as either punishment or an unfortunate result of a deviation from "normal health

---

[32] Theresia Degener, "A Human Rights Model of Disability" in Elionior Flynn et al, *Routledge Handbook of Disability Law and Human Rights* (Routledge, 2017) 33
[33] Paul Harpur, "Access to Information Communication Technologies, Universal Design and the New Disability Human Rights Paradigm Introduced by the Convention on the Rights of Persons with Disabilities" in Paul Harpur et al, *Discrimination, Copyright and Equality: Opening the E-book for the Print Disabled* (Cambridge University Press, 2017) 35
[34] Angelica Guevara, "The Need to Reimagine Disability Rights Law Because the Medical Model of Disability Fails Us All" (2021) Wisconsin Law Review Vol 2 269, 278
[35] Chandra Kavanagh, "What Contemporary Models of Disability Miss" (2018) International Journal of Feminist Approaches to Bioethics Vol 11:2, 65
[36] Stephen Bunbury, "Unconscious Bias and the Medical Model: How the Social Model may hold the Key to Transformative Thinking about Disability Discrimination" (2019) International Journal of Discrimination and the Law Vol 19:1 26, 29
[37] Alice Mander (n5), 343
[38] As was noted in the approach of the Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright, see page 22

status."[39] In other words, if they cannot be made 'normal' then they must remain 'abnormal' outsiders unable to cope with the real world.[40] Individual models would therefore view the making of an accessible format copy available as an act of pity, depending on whether the copyright owner was charitably disposed. As Mander notes, the prominence of the medical model of disability can explain harmful stereotypes and attitudes which fail to create spaces of belonging for disabled people in the modern world.[41] Thus, the individual models and the negative attitudes they engender towards persons with disabilities may have played an influential role in forming copyright laws which have been prejudicial to the rights of visually impaired persons. As is discussed in Chapter 5, they are also commonly present among Contracting Parties that have not yet implemented the Marrakesh Treaty.[42]

3.2.2 Social Model: Distinguishing Between Impairment & Social Barriers

In light of the problems with individual models, disability rights activists challenged the conceptions of 'normal', the assumptions that shape these norms, and the treatment of those who fall outside these norms.[43] Thus, in stark opposition to the medical model came the social model of disability initially proposed by the Union of the Physically Impaired against Segregation (UPIAS) in 1976, and subsequently christened and pioneered by disability rights activist Mike Oliver.[44] This model emphasises the distinction between impairment on the one hand - relating to the functional limitations of an individual's physical, mental, or sensory abilities[45] - and disability on the other, being something imposed on top of individual impairment by oppressive societal treatment.[46] The social model of disability views disability as socially created and locates the problem of disability outside the individual in

---

[39] Bradley Areheart, "When Disability Isn't "Just Right": The Entrenchment of the Medical Model of Disability and the *Goldilocks* Dilemma" (2008) Indiana Law Journal Vol 83, 181, 188
[40] Anna Lawson, "The EU Rights Based Approach to Disability: Strategies for Shaping an Inclusive Society" (2005) International Journal of Discrimination and the Law Vol 6, 270
[41] Alice Mander, "The Stories That Cripple Us" (n5), 344
[42] See page 230
[43] Claire Tregaskis, "Social Model Theory: The Story So Far" (2002) Disability & Society Vol 17:4, 457
[44] Anna Lawson and Mark Priestley, "The Social Model of Disability: Questions for Law and Legal Scholarship?" in Elionior Flynn et al, *Routledge Handbook of Disability Law and Human Rights* (Routledge, 2017) 4
[45] *Ibid*, 4
[46] *Ibid*, 7

discrimination policies, social factors, and law and policy more generally.[47] The purpose of the social model is to stimulate a shift in thinking about disability from an approach that focuses on the individual impairment as the cause of disadvantage, to one that focuses on social and environmental barriers.[48] It emphasises that, although impairment is individual, disability is socially caused and therefore a collective responsibility.[49] It is not just a theory but a practical oppositional device which facilitates resistance practices.[50] Contrary to its criticisms, the social model does not deny the physical and medical aspects of disability.[51] Rather, it highlights the fact that the empowerment of persons with disabilities requires a shift in attention away from the individual to society.[52] Thus, contrary to the individual model approach, the inaccessibility of the written word as per the social model is caused by socially-imposed barriers and therefore a social problem.[53]

Accordingly, advocates of the social model suggest that the law should be used as a mechanism to change embedded attitudes and unconscious biases by focusing on the social barriers individuals with disabilities face.[54] Law, however, is also part of the problem to the extent that it operates to disadvantage, exclude, and oppress people with impairments.[55] The social model provides a helpful lens through which to analyse legal rules and principles with a view to identifying such effects.[56] The

---

[47] Theresia Degener (n32) 32
[48] Laura Hemingway, "Understanding Disability: From 'Personal Tragedy' to Social Disadvantage" in Laura Hemingway, *Disabled People and Housing: Choices, Opportunities and Barriers* (Policy Press, 2011) 54
[49] Ann Llewellyn and Kevin Hogan, "The Use and Abuse of Models of Disability" (2000) Disability & Society Vol 15:1, 159
[50] Angharad Beckett and Tom Campbell, "The Social Model of Disability as an Oppositional Device" (2015) Disability & Society Vol 30:2, 276
[51] Bill Hughes and Kevin Paterson, "The Social Model of Disability and the Disappearing Body: Towards a Sociology of Impairment" (1997) Disability & Society Vol 12:3, 325-340; Lorella Terzi, "The Social Model of Disability: A Philosophical Critique" (2004) Journal of Applied Philosophy Vol 21:2, 141-157; Dimitris Anastasiou and James Kauffman, "The Social Model of Disability: Dichotomy between Impairment and Disability" (2013) Journal of Medicine and Philosophy Vol 38, 441–459
[52] Colin Barnes, "Understanding the Social Model of Disability: Past, Present and Future" in Nick Watson et al, *Routledge Handbook of Disability Studies* (2nd Edn, Taylor and Francis, 2020) 20
[53] In line with the approach of the Marrakesh Treaty: Preamble, The Marrakesh Treaty [2016]
[54] Stephen Bunbury, "Unconscious Bias and the Medical Model: How the Social Model may hold the Key to Transformative Thinking about Disability Discrimination" (2019) International Journal of Discrimination and the Law Vol 19:1 26, 29
[55] Anna Lawson and Mark Priestley (n44) 14
[56] *Ibid*

social model of disability has had a powerful influence over international and regional law policy, particularly in informing the provisions of the CRPD,[57] most relevantly the Article 30 (3) obligation.[58] Moreover, the Marrakesh Treaty is one of the key legal mechanisms aimed at removing the discriminatory barriers faced by visually impaired persons stemming from copyright law policy.[59] Indeed, it makes reference to the fact that access is hindered by barriers,[60] and not by impairment, and adopts person-first terminology which are both indicative of a social model approach.[61] Thus, as the social model was influential in the formulation of the Marrakesh Treaty, it is also important to its interpretation and implementation.

3.2.3 Human Rights Model: Empowering Persons with Disabilities as Rights Holders

The human rights model is the latest formulation of disability, attributed to having been codified by the CRPD.[62] It has been considered as an improvement on the social model[63] or, in the very least, complementary to it,[64] and therefore has the potential to become the next mainstream model of disability. Indeed, its use has rapidly increased since the adoption of the CRPD and has now become the CRPD Committee's preferred model of choice.[65] It is quite succinctly stated in the following extract provided by Quinn and Degener:

> "The human rights model focuses on the inherent dignity of the human being and subsequently, but only if necessary, on the person's medical characteristics. It places the individual centre stage in all decisions affecting him/her and, most importantly, locates the main 'problem' outside the person and in society."[66]

In other words, the human rights model puts the social model on a legal footing by the creation of a legally-binding Treaty which gives persons with disabilities and

---

[57] Anna Lawson and Angharad Beckett (n8) 351
[58] Article 30(3), Convention on the Rights of Persons with Disabilities [2008]
[59] Preamble, The Marrakesh Treaty [2016]
[60] *Ibid*
[61] David Bolt, "From Blindness to Visual Impairment: Terminological Typology and the Social Model of Disability" (2005) Disability & Society Vol 20:5 539, 548
[62] Theresia Degener, "A Human Rights Model of Disability" (n32) 32
[63] *Ibid*
[64] Anna Lawson and Angharad Beckett (n8)
[65] *Ibid*, 368
[66] Gerard Quinn and Theresia Degener, *Human Rights and Disability: The Current Use and Future Potential of Human Rights Instruments in the Context of Disability* (United Nations, 2002) 14

their organisations the lever to ensure that there is effective advocacy for their rights.[67] It emphasises the principle of equality and the need to adapt society to persons with disabilities, not the other way around.[68] In addition to the removal of social barriers, it requires the proactive enablement of persons with disabilities in the exercise of their rights.[69] The added layer is that, not only is the inaccessibility of the written word a socially-imposed barrier, it is in fact a breach of the fundamental rights of visually impaired persons who are empowered with a right of access.

Whether the human rights model improves the social model is an unsettled point. Degener notes that the human rights model moves beyond the successes of the social model in six ways, including that, whereas the social model merely explains disability, the human rights model establishes fundamental values for policy making and provides a roadmap for change.[70] However, Lawson and Beckett provide a robust unpicking of these claims while clarifying the differentiation in how the social model models disability, whereas the human rights model models disability policy.[71] Nevertheless, both models remain relevant as of current discourse. What matters most is that a sophisticated and multi-faceted approach is taken to understanding disability not singularly physical or social, but as a complex phenomenon encompassing a range of diversities.[72] Thus in order for the Marrakesh Treaty to be effective, it is imperative that both the social and human rights models of disability are adopted by Contracting Parties in the way that implementing laws are drafted, and in national policy generally. Regrettably, it has been noted that most States Parties to the CRPD are far from comprehending these newer models of disability and are still stuck with the medical model of disability, with several States Parties reports revealing an understanding of disability that follows the traditional medical

---

[67] Dimitris Michailakis, “When Opportunity is the Thing to be Equalised” (1997) Disability & Society Vol 12:1, 19-20
[68] Anna Lawson, “The EU Rights Based Approach to Disability” (n40) 273
[69] Paul Harpur, *Discrimination, Copyright and Equality,* as referenced (n33), 39-40
[70] Theresia Degener, “A Human Rights Model of Disability” (n32) 34-48
[71] Anna Lawson and Angharad Beckett (n8) 360-363, 371
[72] Tom Shakespeare, “The Social Model of Disability” in Lennard Davis et al, *The Disability Studies* Reader (4th Edn, Routledge, 2013) 221

model of disability.[73] The extent to which this has stymied the progress of the Marrakesh Treaty is analysed in Chapter 5.[74]

3.3 Introducing the Convention on the Rights of Persons with Disabilities – Cross-Cutting Principles, Substantive Rights, and Legal Obligations

The adoption of the Convention on the Rights of Persons with Disabilities is widely recognised as a landmark stage in the disability rights advocacy movement.[75] It was the first binding human rights instrument to recognise that persons with disabilities are subjects of human rights, the fastest ratified Treaty among the core UN treaties, and is record-breaking in many other ways.[76] More pertinently, it is the first international convention that is predicated on communication and media as underpinning equal access and participation in society and, as such, central to the achievement of human rights.[77] Indeed, the Convention empowers persons with disabilities by not merely re-stating existing rights, but by buttressing them in a directly applicable way to their needs and by giving them a voice in its operation.[78] Thus, the CRPD elevated the rights of persons with disabilities from general protection in universally applicable rights, to specific legally binding applicability in one international law.[79] Not only did the CRPD create for the first-time specific disability rights, but it was also the first time that the rights of persons with disabilities imposed an obligation on the protection of intellectual property law.[80] This marked a turning point in the relationship between the two spheres of law. In the context of this thesis, it is also worthy to note that the Convention recognises the importance of accessibility to the cultural environment, education, and to information and communication in enabling persons with disabilities to fully enjoy

---

[73] See for example, Concluding Observations on the Initial Report of India CRPD/C/IND/CO/1
[74] See page 230
[75] Arlene Kanter, *The Development of Disability Rights Under International Law* (Routledge, 2015) 24
[76] Theresia Degener, “10 years of Convention on the Rights of Persons with Disabilities” (2017) Netherlands Quarterly of Human Rights Vol 35:3 152
[77] Gerard Goggin, “Communications Rights, Disability, and Law: The Convention on the Rights of Persons with Disabilities in National Perspective” (2017) Disability, Rights, and Law Reform in Australia Vol 35:2 132
[78] Paul Harpur, “Embracing the New Disability Rights Paradigm” (n24) 1
[79] Raymond Lang et al, “Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations” (2011) European Journal of Disability Research Vol 5:3 206, 208
[80] Article 30 (3), CRPD [2008]

all human rights and fundamental freedoms.[81] Thus, the matters pertaining to the impact of international copyright law on the rights of persons with disabilities are not only influential in the realisation of the two rights which are the subject of focus, but they also affect the realisation of the CRPD provisions holistically. This goes to emphasise the gravity of what is at stake with the implementation of the Marrakesh Treaty and the formulation of copyright policy.

3.3.1 Cross-Cutting Principles & Substantive Rights

Before going into a specific discussion on the rights to cultural life and education, this section begins by setting out the cross-cutting principles and substantive rights which form the pillars of all CRPD rights and particularly shape the two rights in focus. These cross-cutting principles, set out in Article 3 of the CRPD,[82] are: equality, non-discrimination, and reasonable accommodation; accessibility and universal design; autonomy, independence, and participation. It is clear that these cross-cutting principles and substantive rights should shape legislative policy on copyright law and the implementation of the Marrakesh Treaty.

3.3.1.1 Equality, Non-Discrimination & Reasonable Accommodation

The principles of non-discrimination and equality are dominant and recurring themes in international human rights law,[83] and indeed run consistently throughout the provisions of the CRPD linking all substantive rights to the Convention's Article 5 on non-discrimination measures.[84] They are multifunctional in that they are principles, rights, and interpretive tools for all other CRPD rights.[85] Discrimination on the basis of disability means any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms.[86] Where international copyright law has this effect, it is considered discriminatory. Indeed, the obligation under Article 30 (3) of the

---

[81] Para (v) Preamble, CRPD [2008]
[82] *Ibid*, Article 3
[83] Jessica Corsi, "Equality and Non-Discrimination" in Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018) 141
[84] Committee on the Rights of Persons with Disabilities, General Comment No. 6, "Equality and Non-discrimination" [2018] CRPD/C/GC/6, 2
[85] *Ibid*, 3
[86] Article 2, CRPD [2008]

Convention on the Rights of Persons with Disabilities mandates the removal of intellectual property law barriers to access by persons with disabilities to cultural materials which are discriminatory and unreasonable.[87] Discrimination has many forms, including direct, indirect, structural, and multiple, among others.[88] Direct discrimination refers to a situation where an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground, while indirect discrimination refers to laws, policies, or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination.[89] The most applicable to copyright law is indirect discrimination in that persons with disabilities specifically are not explicitly excluded from accessing copyright works at a legislative level. In this sense, the copyright law regime is considered to have been, to varying degrees depending on the national approach, indirectly discriminatory towards persons with disabilities to the extent that copyright laws have restricted access for the visually impaired and hindered the full enjoyment of their fundamental human rights.[90] Moreover, in the context of education and as has been referred to, the CRPD Committee has noted that, if a school does not provide books in Easy-Read format, it would indirectly discriminate against persons with intellectual disabilities (and, assumedly, others), who, although technically allowed to attend the school, would in fact need to attend another.[91]

When it comes to equality, the CRPD is understood as enshrining and promoting a new principle of equality known as inclusive or transformative equality in that it requires proactive structural change in societal systems including, for example, the education system.[92] Inclusive equality corresponds with the human rights model of disability and recognises that members of discriminated groups are individuals with multiple layers of identities, statuses, and life circumstances.[93] Thus, non-

---

[87] Article 30 (3), CRPD [2008]
[88] Coomra Pyaneandee, *International Disability Law: A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities* (Routledge, 2019) 29
[89] Committee on Economic, Social and Cultural Rights General Comment No. 20, "Non-discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2 of the International Covenant on Economic, Social and Cultural Rights)" [2009] E/C.12/GC/20 page 4
[90] As discussed, see page 17
[91] Committee on the Rights of Persons with Disabilities, General Comment No. 6 (n84) 5
[92] Jessica Corsi (n83) 141-142
[93] Committee on the Rights of Persons with Disabilities, General Comment No. 6 (n84) 4

discrimination measures must be inclusive of both the individual and the group.[94] Equality can also be considered as either formal or substantive, with formal equality being concerned with equal treatment,[95] while substantive equality is concerned with equality of opportunity, respect, and results.[96] It is imperative that copyright law policy does not stand in the way of inclusive and substantive equality for persons with disabilities.

As defined in the CRPD, "reasonable accommodation" means any modification and/or adjustment that is necessary and appropriate in a particular case to ensure that the individual(s) with a disability may enjoy or exercise, on an equal basis with others, all their human rights and fundamental freedoms, provided that the proposed accommodation does not impose a disproportionate or undue burden.[97] As is evident from this definition, these measures are taken on a case-by-case basis due to the diversity of contexts in which a reasonable accommodation may be needed.[98] The concept of reasonable accommodation therefore emphasises the importance of taking a tailored approach to ensuring that equality is effective and meaningful, as opposed to a blanket approach based on formal equality.[99] The term ‘reasonable’ acts as a qualifier in balancing the needs of the individual and the burden which the accommodation may place on the duty bearer - if it would result in an undue burden in terms of excessive cost or inconvenience, this would not be a reasonable accommodation.[100] That is not to say that a reasonable accommodation must not entail any cost. Indeed, changes which do require financial expenditure will also be required in many cases depending on the

---

[94] *Ibid*
[95] Lida Ayoubi, “Deciphering the “Right to Read” Under International Human Rights Law: A Normative Framework for Equal Access” (2019) Wisconsin International Law Journal Vol 36:3 424, 436
[96] *Ibid*
[97] Article 2, CRPD [2008]
[98] Delia Ferri, “Reasonable Accommodation as a Gateway to the Equal Enjoyment of Human Rights: From New York to Strasbourg” (2018) Social Inclusion Vol 6:1 40, 43
[99] *Ibid*
[100] Frédéric Mégret and Dianah Msipa, “Global Reasonable Accommodation: How the Convention on the Rights of Persons with Disabilities Changes the Way We Think About Equality” (2014) South African Journal on Human Rights Vol 30:2 252, 262

circumstances of the duty-bearer in question.[101] Moreover, these reasonable accommodations are to be provided free of charge and at all levels of education.[102]

This balancing act has come under criticism in that it may be abused as a "get out of jail free" card for institutions who may seek to justify not being able to provide reasonable accommodation due to a limit in the availability of resources and other priorities for allocation.[103] Indeed, it has been broadly interpreted by States Parties as a defence with negative consequences for persons with disabilities despite reminders from the CRPD Committee.[104] Nevertheless, as Lawson notes, a failure to comply with a reasonable accommodation obligation will necessarily constitute disability discrimination within the meaning of Article 2 of the CRPD, and the requirement of reasonable accommodation is subject to immediate implementation, as opposed to progressive realisation.[105] Thus, such measures being provided in an educational setting for students who are blind or visually impaired is not dependent on the ratification or implementation of the Marrakesh Treaty. It is clear that reasonable accommodations alone, being case-by-case applicable, could not address the scale of the global book famine. However, neither are they replaced by the Treaty - it is imperative that States continue to provide reasonable accommodations, particularly in a way that complements the operation of the Treaty. For example, a book being made available in an accessible format is an important stage, but a student may also need an appropriately accessible study environment in which to study the book, make notes, etc. Reasonable accommodations become more essential where social design, including the education system, become decreasingly accessible.[106] More positively, they will

---

[101] Anna Lawson, "People with Psychosocial Impairments or Conditions, Reasonable Accommodation and the Convention on the Rights of Persons with Disabilities" (2008) Law Context: A Socio-Legal Journal Vol 26:2 62, 64

[102] Gauthier De Beco, "The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions" (2014) Netherlands Quarterly of Human Rights Vol 32:3 263, 279

[103] Jan Grue, "Inclusive Marginalisation? A Critical Analysis of the Concept of Disability, Its Framings and Their Implications in the United Nations Convention on the Rights of Persons with Disabilities" (2019) Nordic Journal of Human Rights Vol 37:1, 3-17, 14

[104] Coomra Pyaneandee, *International Disability Law* (n88) 31

[105] Anna Lawson, "Accessibility Obligations in the UN Convention on the Rights of Persons with Disabilities: Nyusti & Takacs v Hungary" [2014] South African Journal on Human Rights Vol 30:2 380, 390

[106] Rafael De Asís Roig, "Reasonableness in the Concept of Reasonable Accommodation" (2016) The Age of Human Rights Journal Vol 6:6 42, 46-47

gradually become less of a necessary measure where the social and education systems become more accessible, and particularly where the concept of universal design is employed.[107]

3.3.1.2 Accessibility & Universal Design

"Universal design" refers to the design of products, environments, programmes, and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.[108] The long-term vision should be for a society which is inclusive and accessible to all. In other words, States should not only be focusing on accommodations in individual cases without a long-term plan. This same principle applies to the production of copyright materials. The end goal would be for all materials to be designed in such a way that they are accessible to all. Where universal design is adopted, many access barriers would not be created in the first place, reducing the need for accessibility measures.[109] However, in order to get to that stage, much work needs to be done and both the CRPD's obligations and the operation of the Marrakesh Treaty are essential to this. The digital era and benefits of technology will also be instrumental in that eBook libraries that embrace universal design principles can provide persons with print disabilities access to books on the same terms as the wider population.[110]

The principle of accessibility is key to persons with disabilities enjoying full and effective participation and inclusion in society, the right to education, and indeed all other substantive CRPD rights.[111] Whereas reasonable accommodation applies responsively to individual requests, accessibility applies to all unconditionally without the need for request.[112] As the CRPD Committee notes in its General Comment No.2, accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society, without which, persons with disabilities would not have equal opportunities for participation in their

---

[107] *Ibid*
[108] Article 2, CRPD [2008]
[109] Paul Harpur, *Discrimination, Copyright and Equality* (n33) 48-49
[110] Paul Harpur and Nicolas Suzor, "The Paradigm Shift in Realising the Right to Read: How eBook Libraries are Enabling in the University Sector" (2014) Disability & Society Vol 29:10, 1667
[111] Article 9, CRPD [2008]
[112] Coomra Pyaneandee, *International Disability Law* (n88) 129

respective societies.[113] Its importance is further evidenced by the fact that it appears 25 times within the Convention's text.[114] However, while it is a centrally important principle, it is not defined in the CRPD, although a range of possible definitions were discussed in the negotiation stages of the Convention.[115] It is instead a fluid concept with some degree of uncertainty as to the limits of its scope. Nevertheless, the Committee has referred to it in four important dimensions: non-discrimination, physical accessibility, economic accessibility and information accessibility.[116] While this was discussed in the context of the right to health, as a principle, accessibility also applies to the Article 24 CRPD Right to Education in that "the entire education system must be accessible, including information and communication, […], curriculum, education materials, teaching methods, assessment […]."[117] If ratified and implemented effectively, the Marrakesh Treaty presents an opportunity to achieve a greater level of information accessibility within the education system and, in fact, the Committee further emphasises the urgent need for States to ratify and implement the Treaty to address the widespread lack of textbooks and learning materials in accessible formats and languages, including sign language.[118]

3.3.1.3 Autonomy, Independence & Participation

All of the principles and rights contained in the CRPD should be contextualised against the spirit of the Convention which is the empowerment of persons with disabilities to be autonomous and independent participants in all areas of life.[119] Indeed, these principles are ubiquitous in the CRPD, featuring part of the definition of disability, the Convention's objectives, general principles and obligations, substantive provisions, and monitoring processes.[120] This spirit is particularly

---

[113] Committee on the Rights of Persons with Disabilities General Comment No.2, "Article 9: Accessibility" [2014] CRPD/C/GC/2 1
[114] Anna Lawson, "Article 9: Accessibility" in Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018) 262
[115] *Ibid*, 279-280
[116] Committee on Economic, Social and Cultural Rights, General Comment No. 14: "The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)" [2000] E/C.12/2000/4 4
[117] Committee on the Rights of Persons with Disabilities, General Comment No. 4, "Article 24: Right to Inclusive Education" [2016] CRPD/C/GC/4 8-9
[118] *Ibid*, 13
[119] Article 3(a), CRPD [2008]
[120] Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities* (n83) 97-98

embodied in the rights to cultural life and education where it is emphasised that the development and utilisation by persons with disabilities of their creative, artistic, and intellectual potential is not only for their own benefit, but also for the enrichment of society."[121] This is particularly important to highlight in the context of access rights in the light of the historical stigmatisation of persons with disabilities as being dependent, vulnerable, or in need of charity.[122] The access rights in focus are not for the purposes of persons with disabilities to become users, consumers, or observers only but to be similarly empowered to be creators and active participators on an equal basis with others. Thus, any hierarchy between creators and users that may exist in national policy should not be used as a means to subjugate access rights when persons with disabilities are seen equally as creators.

3.3.2 The Rights to Education & Participation in Cultural Life – Exploring their Obligations, Realisation & Interaction with International Copyright Law

In addition to the cross-cutting principles pertaining to the CRPD's provisions in general, the rights to education and participation in cultural life contain further specific obligations of relevance to this thesis. Regarding the Article 30 right, this is the obligation to remove unreasonable and discriminatory barriers posed by intellectual property law impeding access to books and cultural materials for persons with disabilities.[123] In the context of the Article 24 right, the focus is on the concept of inclusive education, as codified by the CRPD and what this means for the 4-A framework of acceptability, availability, adaptability, and accessibility.[124] It is widely understood in the human rights discourse that these two (and, indeed, all) rights, although provided for separately, are interdependent and indivisible,[125] particularly in their realisation. In its General Comment No. 21 on the right to cultural life, the Committee on Economic, Social and Cultural Rights note how the rights to education and cultural life are intrinsically linked, education being the

[121] Article 24 (1) (b), Convention on the Rights of Persons with Disabilities [2008]
[122] See page 103
[123] Article 30(3), CRPD [2008]
[124] CRPD Committee, General Comment No. 4 (n117)
[125] World Conference on Human Rights, *Vienna Declaration and Programme of Action* [1993] <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> para 5

primary medium through which culture is imparted.[126] Equally, education is instrumental to the ability of an individual to engage fully in cultural life and is even considered as an indispensable prerequisite to supporting persons with disabilities to participate in cultural life and the wider society.[127] Thus, they are linked together here.

3.3.2.1 Article 30 CRPD – Connecting the Right to Participation in Cultural Life & the Intellectual Property Obligation

Engaging with, and contributing to, the many facets of cultural life is a fundamental part of human freedom, autonomy, self-expression, self-development, and self-actualisation.[128] It enables the individual to feel connected to the diversities of the community around them, buttresses their sense of identity, and enables them to feel part of something bigger than their individual context.[129] Culture is a broad, inclusive, and living concept encompassing all manifestations of human existence in past, present and future senses.[130] For persons with disabilities, interacting with culture is typically more arduous in light of the socially imposed barriers which may be exclusionary or discriminatory, such as the inability to physically access a history museum, for example.[131] Unsurprisingly, rates of participation in culture by persons with disabilities as users is low, and as creators even lower.[132] Accordingly, the right to participation in cultural life, recreation, leisure, and sport provided by the CRPD is wide-ranging and countenances multiple layers.[133] Under its umbrella comes access to theatres, sporting venues, tourism activities, and many more.[134]

---

[126] Committee on Economic, Social and Cultural Rights, General Comment No. 21, "Right of Everyone to Take Part in Cultural Life (Art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights)" [2009] E/C.12/GC/21 6

[127] Dimitris Anastasiou et al, "Article 24: Right to Education" in Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018) 658

[128] Michael Stein and Matthew Smith, "Article 30 of the CRPD as a Vehicle for Social Transformation: Harnessing the CRPD's Potential for Persons with Intellectual Disabilities" in Emily Kakoullis et al, *Recognising Human Rights in Different Cultural Contexts: The United Nations Convention on the Rights of Persons with Disabilities (CRPD)* (Palgrave Macmillan, 2020) 269-294

[129] *Ibid*

[130] ICESCR Committee General Comment No. 21 (n126) 3

[131] Ann Leahy and Delia Ferri, "Barriers to Cultural Participation by People with Disabilities in Europe: A Study Across 28 Countries" (2023) Disability and Society 13

[132] Ann Leahy and Delia Ferri, "Barriers and Facilitators to Cultural Participation by People with Disabilities: A Narrative Literature Review" (2022) Scandinavian Journal of Disability Research Vol 4:1 68, 70

[133] ICESCR Committee General Comment No. 21 (n126) 13

[134] Article 30, CRPD [2008]

However, the scope of this thesis is not sufficient for a full elaboration into the intricacies of these aspects. Rather, the focus is on the accessibility of cultural materials and intellectual property law as one of the barriers to the right to cultural life.

a) Article 30: The Right

The starting position is that persons with disabilities have a right to enjoy access to cultural materials in accessible formats which is a necessary facet of ensuring they are able to participate in cultural life on an equal basis with others.[135] This is a right codified for the first time in the CRPD which affirms access to cultural materials as a human right in international law.[136] Neither the Universal Declaration of Human Rights (UDHR) nor the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provided for this right specifically for persons with disabilities, though they did include a more generic right to participate in cultural life.[137] Not only does it grant persons with disabilities a legal right, it also imposes an obligation on States to take all appropriate measures to ensure that persons with disabilities have access to cultural materials.[138] Such measures come under the triad of obligations to respect, protect, and fulfil.[139] The CRPD does not provide a definition of 'cultural materials', and the CRPD Committee is yet to publish a general comment on the Article 30 right providing guidance on this. At this time, interpretation can be gleaned from the General Comment of the Committee on Economic, Social and Cultural Rights (ICESCR Committee), and various other international laws which touch on the subject of cultural materials to some degree. The ICESCR Committee provide a robust list of examples of culture which encompasses, among others, oral and written literature, music and song, methods of production or technology, and clothing.[140] 'Cultural property' has been defined to

[135] Article 30(1)(a) CRPD [2008]
[136] David Adair and Paul Harpur, "Books and People with Print Disabilities: Public Value and the International Disability Human Rights Agenda" in Katie Ellis et al, *The Routledge Companion to Disability and Media* (Routledge, 2019) 404
[137] Article 27(1) UDHR [1948], Article 15 ICESCR [1976]
[138] Article 30(1) CRPD [2008]
[139] David Jason Karp, "What is the Responsibility to Respect Human Rights? Reconsidering the 'Respect, Protect, and Fulfil' Framework" (2020) International Theory Vol 12:1 83-108, 86
[140] ICESCR Committee General Comment No. 21 (n126) 13

include books, works of art, and other objects of artistic interest.[141] In the context of forms of popular culture or folklore, this included literature, music, handicrafts, and other arts.[142] Finally, a more general understanding considers cultural material to be the expression or embodiment of cultural identity in diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.[143] In other words, the understanding of the meaning of cultural materials is similar to the categorisation of literary and artistic works in copyright law,[144] save for the scope being much wider and more diverse i.e., copyright works plus any other expression of cultural identity. As a result, most of these categories of cultural materials that persons with disabilities have a right to access in accessible formats are protected by copyright laws, some form of intellectual property law, or traditional knowledge.[145]

b) Article 30: The Obligation

In light of this predicament, Article 30 (3) of the Convention on the Rights of Persons with Disabilities further obliges State Parties to "take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials."[146] It has been noted that the inclusion of this duty requires a move away from the tolerance paradigm and ad-hoc approach to copyright exceptions towards internationally co-ordinated, large-scale, systematic attempts to resolve the book famine.[147] A thorough understanding of the intricacies of the formulation of this obligation is of importance to this thesis as it provides the legislative context to the adoption of the Marrakesh Treaty which focuses on the copyright law aspect of intellectual property barriers.

---

[141] Article 1(a), Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention [1954]
[142] Section A, Recommendation on the Safeguarding of Traditional Culture and Folklore [1989]
[143] Article 4(1) Convention on the Protection and Promotion of the Diversity of Cultural Expressions [2007]
[144] Article 2(1) Berne Convention [1979]
[145] Justin Hughes, "Traditional Knowledge, Cultural Expression, and the Siren's Call of Property" (2013) San Diego Law Review Vol 49, 1215
[146] Article 30 (3) Convention on the Rights of Persons with Disabilities [2008]
[147] Paul Harpur, *Discrimination, Copyright and Equality,* as referenced (n33) 91

The first important point to note is that the duty relates to laws protecting intellectual property law broadly, as opposed to a specific intellectual property right. While copyright law has the most prominent direct effect on the realisation of human rights, followed by patent law,[148] imposing the duty in terms of intellectual property in its entirety avoids the need to consider issues with specific rights that may later arise. However, although the duty is broad in this respect, it then contains several narrowing conditions which refine and reduce the burden on State Parties. Firstly, the obligation only relates to intellectual property barriers at a legislative level, requiring States to take steps in relation to amending or correcting national law.[149] It is imperative that both legislative and non-legislative barriers are addressed in relation to intellectual property, such as collaborative work with publishers on the importance of factoring in accessibility into their business models to overcome reluctance by the publishing industry which may constitute an economic barrier. Furthermore, the Article 30 (3) wording does not impose any strict obligation on when or how these steps must take place. For example, discussing a policy for legislative reform would be one of these steps, even if it does not result in any legislative adoption. Secondly, these legislative steps need only be taken if a State's national intellectual property laws constitute an unreasonable or discriminatory barrier to access. In other words, barriers may exist so long as they are reasonable and non-discriminatory. Given that no definition is provided as to what type of intellectual property barrier may be considered unreasonable or discriminatory, these terms should be interpreted in the context of their definitions within the CRPD's text, aims, and objectives.[150] Interpreting in this way would mean an intellectual property law would constitute a discriminatory barrier where it distinguishes, excludes, or restricts persons with disabilities with the purpose or effect of impairing the enjoyment or exercise of their rights.[151] Due to the element of exclusivity in copyright law, such laws which have this effect do

---

[148] Ruth Okediji, "Securing Intellectual Property Objectives: New Approaches to Human Rights Considerations" in Margot Salomon et al, *Casting the Net Wider: Human Rights, Development, and New Duty-Bearers* (Intersentia, 2007) 227-229
[149] Article 30(3) CRPD [2008]
[150] Ilias Bantekas et al, "Article 30: Participation in Cultural Life, Recreation, Leisure and Sport" in Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018) 897
[151] Article 2, CRPD [2008]

exist to varying degrees in national law, as is explored in Chapter 5,[152] in that the rights granted to authors hinder the realisation of the rights of visually impaired persons. Nevertheless, Article 30(3) does not require that national intellectual property laws be inclusive, facilitative, or supportive of access rights, only that they must not be prohibitive. Thirdly, any steps a State may take must also be in accordance with the rights and obligations of international law. This could give rise to an impasse situation in which an intellectual property law presents an unreasonable or discriminatory barrier to access by persons with disabilities, but taking steps to resolve it may be contrary international law. Finally, States need only take those steps which are 'appropriate' with no guidance as to what may be considered an appropriate or, rather, an inappropriate step to take, though this most commonly means steps permitted under intellectual property laws.[153]

These analytical revelations do not suggest that the obligation is ineffective. Rather, they highlight areas for the Committee to bear in mind when interpreting the obligation in a General Comment, and in its Concluding Observations on State Parties. It is advisable for interpretive guidance to be provided to States on this to ensure that State Parties are not simply doing the minimum that a literalist interpretation of the obligation requires.

3.3.2.2 Article 24 CRPD – Connecting the Right to Education & International Copyright Law

The importance of the right to education cannot be overstated. When one is educated, they have a stronger voice, more choice, and greater capacity for change.[154] Education is instrumental to the ability of an individual to engage fully in cultural life and is an indispensable prerequisite to supporting persons with disabilities to participate in the wider society.[155] It is the primary vehicle through which individuals and communities pass on their values, religion, customs, language, and other cultural references.[156] If persons with disabilities are truly

---

[152] See page 230
[153] Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities* (n150) 890
[154] Nicole Thomas, "An Education: The Three-Step Test for Development" (2012) European Intellectual Property Review Vol 34:4, 245
[155] Dimitris Anastasiou et al (n127) 658
[156] ICESCR Committee General Comment No. 21 (n126) 6

going to be effective participators in cultural life and not just observers, the right to education must be prioritised to ensure they are empowered to do so with the necessary skills and personal development opportunities. Furthermore, education acts as a multiplier by enhancing the economic, social, cultural, civil, and political rights of persons with disabilities, thereby alleviating their marginalised position and empowering them to take control of their life.[157] Resolving issues in connection with copyright and education may lead to a long-term improvement in the realisation of the right to cultural life and a more meaningful fulfilment of the Article 30(3) obligation, as opposed to a short-term stimulation and inevitably needing to resolve educational issues later down the line.

There is no specific obligation in international human rights law to remove intellectual property barriers to education. However, it is widely understood in the human rights discourse that human rights, although provided for separately, are interdependent and indivisible,[158] particularly in their realisation. In its General Comment No. 21 on the right to cultural life, the Committee on Economic, Social and Cultural Rights note how the rights to education and cultural life are intrinsically linked as they each impact on the other's realisation.[159] The interconnection between Article 24 and the Article 30 CRPD right to participate in cultural life, therefore, is such that the obligation in respect of the Article 30 (3) is intertwined with the right to education. Thus, this section provides an analytical overview of the principles and obligations that the right to education entails. Again, in line with the scope of the thesis, a full-scale elaboration into the right to education cannot be covered. Rather, only the most relevant aspects with a connection to international copyright law are discussed.

a) The Right to Education: Principles

The most prominent principle when it comes to the right to education is the concept of inclusive education.[160] Although not defined in the CRPD itself, the CRPD

[157] Gauthier De Beco, "Transition to Inclusive Education Systems According to the Convention on the Rights of Persons with Disabilities" (2016) Nordic Journal of Human Rights Vol 34:1, 1
[158] World Conference on Human Rights, *Vienna Declaration and Programme of Action* [1993] <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> para 5
[159] ICESCR Committee General Comment No. 21 (n126) 6
[160] Article 24(1), CRPD [2008]

Committee has provided further insight into its interpretation. In brief, it entails a transformation in culture, policy, and practice which fosters the full and effective participation, accessibility, attendance and achievement of all students, especially persons with disabilities.[161] As such, it requires a move away from segregation and exclusion which have marginalised persons with disabilities, and a step beyond integration which inadequately supports their development as it does not guarantee inclusion.[162] The overarching principles of non-discrimination, equal opportunity, reasonable accommodation, universal design, and the "four A's" work collaboratively and complementarily to achieve this vision of an inclusive education system.[163] In other words, an education system which is universally designed to be available, acceptable, adaptable, and accessible to persons with disabilities on an equal basis with all other pupils will undoubtedly be an inclusive one. The end goal of this is to work towards the full development of, and participation in society by, all persons with disabilities.

b) The Right to Education: Obligations

Article 24 of the Convention on the Rights of Persons with Disabilities requires state parties to progressively move towards the full realisation of an inclusive education system at all levels free from discrimination and on the basis of equal opportunity.[164] In this sense, Anastasiou and Bantekas suggest that the Article 24 right is predominantly modelled on an anti-discrimination paradigm which prioritises equal access.[165] The fact that the right to education is subject to progressive realisation does not mean that States may be passive. Rather, they must show that they have a strategy for the achievement of inclusive education.[166] To this end, Article 24 lists the measures which must be taken to ensure this is achieved, including individualised support and reasonable accommodation measures, education on life and social development skills, and facilitating the learning and use of alternative methods of communication including textbooks and materials in

---

[161] CRPD Committee, General Comment No. 4 (n117) 9
[162] *Ibid*
[163] *Ibid,* 6-8
[164] Article 24 (1) Convention on the Rights of Persons with Disabilities [2008]
[165] Dimitris Anastasiou et al (n127) 660
[166] Gauthier De Beco, "The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities" (n102) 276

alternative formats.[167] All of these are positive obligations which complement each other - an accessible format book alone would not achieve full accessibility if the skills required to access it were not taught.

On the other side of the positive obligation to provide inclusive education is the negative obligation to not exclude persons with disabilities from the general education system. On a basic level, an inclusive and accessible education for visually impaired persons necessarily involves the availability of accessible format copies of core textbooks.[168] For as long as such barriers exist, education cannot be fully inclusive for persons with visual impairment and, in fact, it is impossible to study without access to such materials which States Parties have an obligation in Article 24 to facilitate access to.[169] Furthermore, the CRPD puts persons with disabilities in a position to demand this as of right, not of discretionary permission.[170]

Availability and accessibility are two of the key dimensions of the realisation of the right to education.[171] If this accessibility is not provided, the education system would not be acceptable for persons with visual impairment i.e., the quality of education they receive will be significantly diminished, as shown in the statistics provided in Chapter 1.[172] Consequently, it would not be adaptable to their educational needs and, finally, the number of accessible schools will be reduced and thereby fall short of the availability requirement.[173] Thus, ensuring that copyright law does not pose an unreasonable or discriminatory barrier to the accessibility of education for persons with visual impairment is of utmost importance to the realisation of their rights. As Ayoubi notes, copyright law may be in breach of the obligations to respect, protect, and fulfil the right to education.[174] Where copyright laws interfere with access to educational materials, the respect obligation is breached;[175] by giving copyright holders the discretion to

---

[167] Various subsections of Article 24 CRPD [2008]
[168] Committee on the Rights of Persons with Disabilities, General Comment No. 6 (n84) 5
[169] Paul Harpur, *Discrimination, Copyright, and* Equality (n33) 52
[170] *Ibid*
[171] CRPD Committee, General Comment No. 4 (n117)
[172] See page 17
[173] CRPD Committee, General Comment No. 4 (n117)
[174] Lida Ayoubi, “Deciphering the “Right to Read” (n95) 448-449
[175] *Ibid*

unreasonably limit production and distribution of accessible works, States are failing to protect the right to education for visually impaired persons from third party interference, and; where States are not proactively taking steps to increase the accessibility of educational materials, they are breaching their obligation to fulfil.[176] In this context, the work of the Marrakesh Treaty in facilitating access to the written word, and the importance of its efficacy in doing so, become all the more crucial.

3.3.3 Enforcing CRPD Rights – Progressive Realisation & National Action

The main difficulty faced in the human rights sphere has been a question of how to hold States accountable for their human rights breaches, and how to enforce progress on the realisation of rights. Initially, human rights as of the Universal Declaration of Human Rights (UDHR) were not justiciable or even monitored.[177] Enforcement has typically been more of a challenge for economic, social, and cultural rights which generally impose obligations subject to progressive realisation,[178] as opposed to civil and political rights which entail an immediate legal obligation of compliance.[179] The principle of progressive realisation acknowledges that it is not feasible for the full realisation of economic, social, and cultural rights to be achieved within a short period of time.[180] Accordingly, States Parties have the flexibility to achieve the full realisation of rights over a longer period of time, though with the obligation to move as expeditiously and effectively as possible towards that goal.[181] Although this means that States Parties cannot act passively or retrogressively, this flexibility can make enforcement more complex.[182] A blend of national strategies and action plans, framework laws, indicators, and benchmarks are therefore employed to monitor national progress.[183] In this respect, Mapulanga-Houston offers a compelling distinction

---

[176] *Ibid*
[177] *Ibid*, 15
[178] Article 2, International Covenant on Economic, Social, and Cultural Rights [1976]
[179] Article 2, International Covenant on Civil and Political Rights [1976]; Laurence Helfer, “Mapping the Interface of Human Rights and Intellectual Property” in Laurence Helfer et al, *Human Rights and Intellectual Property: Mapping the Global Interface* (First Published 2011, Cambridge University Press, 2012) 10
[180] Committee on Economic, Social and Cultural Rights, “General Comment No. 3: The Nature of States Parties Obligations” (1990) para 9
[181] *Ibid*
[182] *Ibid*
[183] Oliver De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (3rd Edn, Cambridge University Press, 2019) 587

between justiciability and judicialism, noting that rights need not be dealt with in courts of law (i.e., judicially) in order to be justiciable; they can effectively be reviewed by non-judicial bodies.[184] Accordingly, Treaties are established with their own monitoring Committees which perform five essential functions: the review of State reports, providing general comments on particular rights, handling inter-state complaints, resolving individual complaints, and launching inquiries into suspected State violations of Treaty obligations.[185] Indeed, it has been noted that the most significant practical contribution of international human rights law has been its role in providing a basis for citizens' groups to monitor the practices of States, to document abuses, and to call attention to the discrepancies between those practices and the standards prescribed by international law.[186] Nevertheless, human rights treaties are more susceptible to the risk of non-compliance than international copyright laws which, as mentioned earlier,[187] entail the possibility of sanctions, civil judicial enforcement procedures and, in some instances, criminal procedures.[188] Similarly, as Waddington notes, the extent to which CRPD rights may be effectively enforced judicially in national courts is heavily dependent on domestic law, legal culture, and the extent to which the CRPD's provisions have been domesticated via incorporation into national legislation which varies from country to country.[189] Thus, CRPD rights face the same difficulties of enforcement as the international human rights regime historically has.

3.4 Two Rights, Three Approaches - Theorising the Relationship between Copyright & Disability Rights

The relationship between the spheres of intellectual property law and the international human rights regime has been rather aptly described as an evolving and contested relationship.[190] It is evolving in the sense that both areas of law have

---

[184] Jackbeth Mapulanga-Hulston, "Examining the Justiciability of Economic, Social and Cultural Rights" (2002) The International Journal of Human Rights Vol 6:4, 37
[185] Nigel Rodley, "The Role and Impact of Treaty Bodies" in Dinah Shelton et al, *The Oxford Handbook of International Human Rights Law* (OUP, 2013) 627-637
[186] Aryeh Neier, *The International Human Rights Movement: A History* (Princeton University Press, 2012) 90
[187] See page 80
[188] Part III, TRIPS Agreement [1995]
[189] Lisa Waddington and Anna Lawson, *The UN Convention on the Rights of Persons with Disabilities in Practice: A Comparative Analysis of the Role of the Courts* (OUP, 2018) 538
[190] Laurence Helfer et al (n179) 117

undergone significant development to the extent that the nature of the way each area interacts with the other has adapted and reshaped, and it is contested in that numerous conceptions theorising the relationship of the two areas have been posited. From considering copyright as a species of human right to viewing them as distinct rights in conflict with each other, their relationship has been defined in a multiplicity of manners.[191] Notably underpinning the background to the Marrakesh Treaty and the Article 30 (3) obligation is the quest to find an appropriate balance between the exclusive rights of copyright holders on the one hand, and the human rights of persons with disabilities on the other.[192] Since the Marrakesh Treaty is uniquely situated between these two regimes, it is important to explore the relationship between the two spheres of law. This is not merely a theoretical exercise. Indeed, the impassioned contest over the nature, scope, and implications of the intellectual property/human rights interface has important consequences for the way nations understand and comply with their obligations in each field.[193] The analytical contribution of this chapter in terms of how the two cogs of copyright and disability rights work together or in conflict with each other informs a deeper understanding of how the global book famine came to be, and aids the investigation in Chapter 5 into the way that the Marrakesh Treaty has been implemented within national contexts.[194] The literature on this aspect is largely framed as between intellectual property and human rights, and less commonly as between copyright and disability rights specifically. As such, the discussion here alternates between the two.

Theorising the relationship between copyright and disability rights is a delicate and intricate task in that there are multiple angles and layers to consider. Indeed, with difficulty, scholars in this area have proposed and attempted to formulate in various shapes and sizes a conceptual framework which clearly demarcates their

---

[191] Jingyi Li and Niloufer Selvadurai, “Reconciling the Enforcement of Copyright with the Upholding of Human Rights: A Consideration of the Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired and Print Disabled” (2014) European Intellectual Property Review Vol 36:10, 2-4

[192] Para 9, Preamble, The Marrakesh Treaty [2016]

[193] Ruth Okediji, “Does Intellectual Property Need Human Rights?” (2018) New York University Journal of International Law & Politics Vol 51:1, 3

[194] See page 189

relationship.[195] Doing so is of fundamental importance as a guide to States which find themselves between a rock and a hard place in meeting the legal obligations of both fields. There have also been longstanding calls and attempts to clarify this relationship by influential human rights bodies.[196] In the context of this thesis, it is an essential part of facilitating the implementation of the Marrakesh Treaty, particularly considering its desire to achieve harmonisation in limitations and exceptions provided in the international copyright law system for the purposes of alleviating the global book famine. For this harmonisation to be achieved, at least to a greater extent than prior to the Marrakesh Treaty, it is essential for the complexities and incongruencies in the relationship between the two areas to be preliminarily explored. The discourse in this area can be organised into three approaches to theorising the relationship between the two spheres of law. These are: the conflict approach, the coexistence approach, and the integrationist approach. Each of these approaches are discussed in turn here.

3.4.1 Conflict Approach – A Legal Tug of War

While the proposition that intellectual property and human rights law are in a state of co-existence within the same policy arena is not without support, as is explored in the next sub-section, there is a stronger current towards pitting the two regimes as in conflict with each other. This approach does not singularly apply to copyright, with scholars noting conflicts in the fields of patents and access to medicine, the rights to health and food, and so on.[197] A resolution adopted by the Sub-Commission on the Promotion and Protection of Human Rights in 2000 was instrumental in garnering endorsement for both recognising a conflict between intellectual property and human rights, and a primacy-based approach towards addressing it.[198] The resolution declared that “there are apparent conflicts between the intellectual property rights regime embodied in the TRIPS Agreement, on the one hand, and international human rights law, on the other.”[199] Accordingly, the

---

[195] Peter Yu, “Reconceptualising Intellectual Property Interests in a Human Rights Framework" (2007) U.C. Davis Law Review Vol 40:3 1039-1150
[196] Sub-Commission on the Promotion and Protection of Human Rights, “Resolution on Intellectual Property Rights and Human Rights” (Aug 17, 2000) UN Doc. E/CN.4/Sub.2/RES/2000/7
[197] Audrey Chapman, “The Human Rights Implications of Intellectual Property Protection” (2002) Journal of International Economic Law Vol 5:4 861, 872-873
[198] Sub-Commission on Promotion and Protection of Human Rights (n196)
[199] *Ibid*

Sub-Commission emphasised the primacy of human rights obligations over economic policies and agreements, and appealed to Governments to integrate into their national and local legislation - in accordance with international human rights obligations and principles - policies and provisions that protect the *social function* of intellectual property.[200] Being a resolution, the Sub-Commission's comments had no immediate legal effect but led to a comprehensive investigation into the conflicts between intellectual property and the realisation of human rights.[201]

A conflict can be said to exist where the fulfilment of two legal obligations is mutually inconsistent in that compliance with one would violate the other[202] i.e., where the CRPD mandates the right to participation in cultural life, but the application of copyright law restricts access to cultural materials. When exploring the conflict approach, it is imperative that careful attention is paid to clearly defining in what way the conflict arises and to what extent it does so. For instance, whether the conflict arises intrinsically from the nature of the rights themselves, or extrinsically in the way that their protection has been formulated in national and international laws. One insight into the conflict distinguishes between internal conflicts, as between a variety of human rights within the international human rights regime, and external conflicts as at the intersection between human rights and intellectual property, depending on how the relationship between the two rights is perceived.[203] The extent of the conflict may either be considered marginal as pertaining to minor or peripheral issues, or essential as between core features of each regime.[204] Marginal conflicts may be reconciled through balance, whereas essential conflicts denoting incompatibility are resolved through primacy.[205] In the context of this thesis, the conflict is between the exclusive rights of copyright holders and the inalienable rights of persons with disabilities. Conceptually, the notions of exclusivity and inalienability are an essential conflict as neither permit

---

[200] *Ibid*
[201] Laurence Helfer, "Mapping the Interface of Human Rights and Intellectual Property" in Laurence Helfer et al, *Human Rights and Intellectual Property: Mapping the Global Interface* (First Published 2011, Cambridge University Press, 2012) 53
[202] *Ibid*, 66
[203] Peter Yu, "Reconceptualising Intellectual Property Interests in a Human Rights Framework" (n195), 1044
[204] Gabriele Spina Ali, "Intellectual Property and Human Rights: A Taxonomy of Their Interactions" (2020) Max Planck Institute for Innovation and Competition Vol 51:11, 424-425
[205] *Ibid*

any room for compromise. Doctrinally, on the other hand, both regimes provide some flexibility via limitations and exceptions to copyright, and the concept of progressive realisation in disability rights. Thus, the conflict can be said to be a 'marginal' one which may be resolved via balance.

Where a conflict exists, the next consideration is what the resolution may look like since a conflict paradigm requires reconciliation to some extent.[206] Proposed resolutions tend to result in the primacy of one right over the other, or undertaking a balancing act leading to a compromise position in which both rights are limited.[207] Although attempting reconciliation via the internal means of limitations and exceptions has been suggested,[208] their impact has not been as holistic or as effective as is needed, particularly for visually impaired persons. Similarly, external means of reconciliation through constitutional law/courts is not ideal given nationally divergent approaches to disability rights and copyright exceptions.[209] For the conflict relevant to this thesis, as between copyright and disability rights, the Marrakesh Treaty seeks to provide a resolution to the conflict via mandatory exceptions and limitations. The extent to which the Treaty has achieved this is discussed in Chapter 5.[210]

3.4.2 Co-Existence Approach – Prospects for a Harmonious Relationship

As the name suggests, a co-existence approach to defining the relationship between intellectual property and human rights views them as essentially compatible.[211] Scholars on this side of the debate maintain that intellectual property and human rights are more fraternal than adversarial.[212] Okediji maintains that the international human rights framework does not encounter intellectual property as much as it complements it, and it does not resist it as much as it attempts to

---

[206] Ruth Okediji, "Does Intellectual Property Need Human Rights?" (n193) 24
[207] Gabriele Spina Ali (n204)
[208] *Ibid*, 426-228
[209] *Ibid*, 428-431
[210] See page 189
[211] Laurence Helfer, "Human Rights and Intellectual Property: Conflict or Coexistence?" (2003) Minnesota Intellectual Property Review Vol 5:1 47, 49
[212] Neil Yap, "Fitting Marrakesh into a Consequentialist Copyright Framework" (2017) Journal of Intellectual Property and Entertainment Law Vol 6:2, 367

contain its effects.[213] A co-existence approach also considers that they are not "enemies" by nature as there are sufficient synergies and convergences between them to make for an eminently congenial relationship.[214] A key principle of this approach is complementarity whereby intellectual property and human rights "supplement each other so as to figuratively represent two sides of the same coin."[215] Rather than pitting them as fundamentally in conflict as areas of law, they are coexisting within the same policy space but only unsettled as to where to strike the balance between incentives on the one hand, and access on the other[216] i.e., the incentives-access paradigm referred to earlier in Chapter 2.[217]

The presupposition denoted above raises the question as to how it is possible for these two areas of law to coexist. The rationale for this typically has two prongs: the synergising of their objectives, and the employment of balance.[218] In terms of objectives, Okediji notes that the correlation between intellectual property and human rights goals is strongest in the realms of copyright.[219] Indeed, it is claimed that, since copyright serves the purpose of promoting progress and development, there can be no true conflict with human rights.[220] While this may be true in the context of US policy in which this proposition was made, it is an overly simplistic summation of a multifaceted issue. As was analysed in detail in Chapter 2, copyright law cannot be said to have a universal objective.[221] Where it is justified on the basis of author-centric theory, its objective is primarily to strengthen the protection of authors rights. If justified on socio-centric bases, on the other hand, the proposition may hold true. Thus, there is a level of incoherence in defining the

---

[213] Ruth Okediji, "The Limits of Development Strategies at the Intersection of Intellectual Property and Human Rights" in Daniel Gervais, *Intellectual Property, Trade and Development: Strategies to Optimize Economic Development in A TRIPS-plus Era* (OUP, 2007) 367–68
[214] Samuel Murumba, 'Foxes and Hedgehogs at the Intersection of Human Rights and Intellectual Property' (2012) Monash University Law Review Vol 38:1 119, 121
[215] Gabriele Spina Ali (n204) 434
[216] Laurence Helfer, "Intellectual Property and Human Rights: Mapping an Evolving and Contested Relationship" in Rochelle Dreyfus and Justine Pila, *The Oxford Handbook of Intellectual Property* (OUP, 2018) 130
[217] See page 64
[218] Ruth Okediji, "Securing Intellectual Property Objectives" (n148) 227-229
[219] *Ibid*
[220] Jakob Cornides, "Human Rights and Intellectual Property: Conflict or Convergence?" (2004) The Journal of World Intellectual Property Vol 7:2 135, 158-159; Peter Drahos, "Intellectual Property and Human Rights" (1999) IPQ Vol 3 349, 362-363
[221] See page 46

purpose and objective of copyright law and, if the two regimes are to pursue the same objectives, an overarching purpose would need to be identified.[222]

The employment of balance is advocated as an alternative to the win-lose ultimatum posed by the conflict approach.[223] By weighing interests on a case-by-case basis in domestic courts, a balanced outcome can be reached that is appropriate for the national context, as opposed to the rigidity of absolutism in a conflict paradigm.[224] However the purpose of copyright is defined, the fact that both regimes seek to strike a balance between private and public interests is considered as evidence of a degree of compatibility between them.[225] The problem, however, is that both regimes have different positions as to where the balance should be struck. Balance implies an essence of fairness but does not necessarily entail equal weighting. As discussed, the moral argument is often in support of an imbalance in favour of human rights as the more fundamentally important component.[226] This would be considered a just or morally right imbalance, whereas an imbalance in favour of property rights would be an unjust imbalance according to a human rights primacy position. There is an underlying premise that any restrictions imposed on intellectual property rights by the sphere of human rights are justified, whereas any obstacles posed by intellectual property to human rights are unjustifiable, since human rights are fundamental and therefore of higher normative importance.[227] This premise is predicated on State's acceptance that the protection and promotion of human rights and fundamental freedoms is the first responsibility of Governments.[228] An author-centric construct of copyright would argue for the exact opposite. The dualistic philosophical approach advanced in the

---

[222] Guido Westkamp, 'The Three-Step Test and Copyright Limitations in Europe: European Copyright Law between Approximation and National Decision Making' (2008) Copyright Society USA Journal Vol 56 1, 37
[223] Sharon Foster, "Prelude to Compatibility between Human Rights and Intellectual Property" (2008) Chicago Journal of International Law Vol 9:1 171, 204
[224] *Ibid*, 205-206
[225] UN Commission on Human Rights (UNCHR) (Sub-Commission), 'The Impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights on Human Rights: Report of the High Commissioner' (27 June 2001) UN Doc E/CN.4/Sub.2/2001/13 (Report of the High Commissioner) paras 11-12
[226] See note 196
[227] Paul Torremans, "Copyright (and Other Intellectual Property Rights) as a Human Right" in Paul Torremans, *Intellectual Property Law and Human Rights* (4th Edn, Wolters Kluwer, 2020) 196
[228] World Conference on Human Rights, "Vienna Declaration and Programme of Action" (1993) <https://www.ohchr.org/sites/default/files/vienna.pdf> accessed 12.08.2023

previous chapter, however, would be more conducive to a fair balance between to the two regimes.[229] Furthermore, three guiding principles have been proposed to aid this balance, namely, no absolute rights, no hierarchy between rights, and a holistic view of rights.[230] Balance is an evident principle of the Marrakesh Treaty which attempts to find a compromise position between the rights of visually impaired persons under the CRPD on one hand, and the rights of copyright holders on the other. How effective the Treaty is in striking this balance is considered in Chapter 4.

3.4.3 Integrationist Approach – An Alternative Relationship Model

One of the newer, perhaps more long-term sustainable, approaches proposed is to integrate the two regimes. This approach recognises that the two spheres of law both conflict and coexist with each other in different ways, not one or the other.[231] Integrationist proposals seek to work with the existing intellectual property system, rather than against it, by redirecting market incentives toward socially desirable goals.[232] The Marrakesh Treaty is a prime example of this, using international copyright law to facilitate the realisation of the human rights of persons with visual impairment. As such, they work hand in hand in cooperation, mutually reinforcing each other.[233] This approach would be consistent with the dualistic philosophical stance proposed in the previous chapter.[234] Conceptually, Okediji notes that human rights can both legitimise copyright objectives while also operating as an internal constraint.[235] A second feature of the integrationist approach is that it is empirically grounded and urges the use of human rights impact assessments and other indicators to evaluate whether a specific legal or policy proposal is likely to help or hinder the realisation of particular human rights.[236] This is an element present in this thesis which considers the impact of the Marrakesh Treaty in achieving its

---

[229] See page 72
[230] Saleh Al-Sharieh, “Toward a Human Rights Method for Measuring International Copyright Law’s Compliance with International Human Rights Law” (2016) Utrecht Journal of International and European Law 32:82, 16-25
[231] Peter Yu, “Reconceptualising Intellectual Property Interests in a Human Rights Framework" (n195), 1078
[232] Laurence Helfer, “Mapping an Evolving and Contested Relationship” (n216) 131
[233] Gabriele Spina Ali (n204) 434-440
[234] See page 72
[235] Ruth Okediji, “Securing Intellectual Property Objectives” (n148)
[236] Laurence Helfer, “Mapping an Evolving and Contested Relationship” (n216) 131

disability rights objectives. It is not yet certain whether an integrationist approach to the two regimes will alleviate or exacerbate tensions. However, the Marrakesh Treaty has become exemplary of both an integrationist and a coexistence approach by combining copyright law concepts and disability rights principles within one legal instrument. Analysing its successes and shortcomings may prospectively pave the way for further, even more successful, integrationist efforts.

3.5 Concluding Remarks

In the same way that author-centric justifications of copyright protection have been used to construct copyright as an individual exclusive right as against all others, individual models of disability have worsened the marginalisation and diminishment of the rights of persons with disabilities, including in subconscious or unarticulated ways. In both spheres, it is clear that taking a dualistic approach is appropriate i.e., a philosophical approach to justifying copyright protection which balances both individual and social interests, and a model of disability which empowers the rights of persons with disabilities and focuses on socially constructed barriers while not neglecting the physical and individual experiences of persons with disabilities. Traditionally, it has been a matter of national sovereign discretion to determine the policy of the State towards the basis on which copyright is justified and protected, and to adopt the model of disability that suits its cultural, social and, in some cases, religious preferences. However, modern international laws and, particularly the Marrakesh Treaty, are exerting influence over this discretion. By embodying the social and human rights models of disability and adopting a dualistic approach to copyright as both individually and socially justifiable, the Treaty has the potential to stimulate change not just on a doctrinal level, but on a deeper philosophical and conceptual level. This change is one which will see a shift away from purely author-centric bases of copyright protection to a dualistic approach which more effectively addresses issues of social justice, combined with a dualistic model of disability using both the social and human rights models of disability complementarily. Where national copyright policy is disproportionately individualistic, and where the model of disability employed is similarly based on individual conceptions of disability, a reconceptualisation of national approach will be necessary in order for the Marrakesh Treaty to be effective in alleviating the impact of the global book

famine. Although the intellectual property and international human rights regimes were conceived separately and evolved in unique ways, their interaction is now unavoidable as the scope of international copyright law has substantially expanded and provisions in international human rights law have proliferated from universality to direct applicability of protection. The dynamics of their interaction has evolved as a result, but this evolution is yet inconclusive. A new era is underway which is redefining this relationship further. Though they conflict in some respects, and coexist in others, the integrationist approach of connecting the two spheres adopted by the Marrakesh Treaty provides the most promise for a balanced way forward.

Chapter 4: Template Provisions, Internal Flexibilities, and Implementational Choices – A Critical Textual Analysis of the Marrakesh Treaty

4.1 Introduction

As an international copyright law Treaty formulated to pursue disability rights objectives, the Marrakesh Treaty sits uniquely at a sensitive intersection between the international human rights and international intellectual property law regimes.[1] Its adoption has been hailed a historically significant landmark, even dubbed a miracle in that it is the first and only multilateral international intellectual property law Treaty to provide solely for exceptions and limitations to copyright, and those solely for the benefit of persons with disabilities.[2] The Treaty soon became a trending topic in various news reports,[3] particularly in the US.[4] Among others, two key achievements have been ascribed to the Treaty - ideological and practical

[1] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals* (OUP, 2017)
[2] Danielle Conway, "The Miracle at Marrakesh: Doing Justice for the Blind and Visually Impaired While Changing the Culture of Norm Setting at WIPO" in Irene Calboli, *Diversity in Intellectual Property: Identities, Interests, and Intersections* (Cambridge University Press, 2015) 30
[3] Such as: Jonathan Band, "How the Marrakesh Treaty Opens Vistas for Print-Disabled Readers" (2013) American Libraries Vol 44:9-10, 14; Lesley Harris, "The Marrakesh Treaty to Facilitate Access for the Blind and Others" (2013) The Copyright & New Media Law Newsletter Vol 17:3, 7-10
[4] See for example: Natalie Abbott, "Marrakesh Treaty in Action: Patrons with Print Disabilities Will Soon Have Improved Access to Accessible Materials as the United States Ratifies a Global Initiative" (2019) New York Library Journal Vol 144:4, 32-34; Jean Galbraith, "Congress Passes Legislation Implementing the Marrakesh Treaty" (2019) The American Journal of International Law Vol 113:1, 141–43

achievements.[5] An ideological achievement is recognised in the sense that the Treaty represents a change in culture within the World Intellectual Property Organisation (WIPO), and a new approach to disability rights.[6] Indeed, as Helfer notes, the Marrakesh Treaty marks a shift in the normative approach to the relationship between human rights and intellectual property.[7] The disability rights advocacy movement has progressed from theoretically challenging discourse on the impact of intellectual property on human rights, to providing concrete proposals for ceilings or limits on the scope and extent of copyright protection.[8] The Treaty's practical achievement is in the way it unites the international community and incorporates a role for non-State national actors in its practical operation.[9] In this sense, the Marrakesh Treaty adopts a bottom-up approach to resolving copyright and disability rights issues by creating a scaffolding which empowers national actors and those whose rights are affected to influence the realisation of their rights.[10]

Achieving such a landmark piece of international law, however, was not without challenge or compromise. The Marrakesh Treaty, adopted on 27 June 2013, was the product of a middle-ground solution between two rather polarised positions. The US and the EU maintained a restrictive, non-binding and pro-right holder stance, while the joint World Blind Union and Brazil, Ecuador, Paraguay and Mexico proposals adopted a much broader, binding, and pro-disability rights approach.[11] Indeed, this is yet another reason why the Marrakesh Treaty is acclaimed as a miracle in that, while some nations including the United States, for example, were initially in opposition to any agreement which would result in an

---

[5] Lior Zemer and Aviv Gaon, "Copyright, Disability, and Social Inclusion: The Marrakesh Treaty and the Role of Non-Signatories" (2015) Journal of Intellectual Property Law & Practice Vol 10:11 836, 847

[6] *Ibid*

[7] Laurence Helfer, "Intellectual Property and Human Rights: Mapping an Evolving and Contested Relationship" in Rochelle Dreyfuss and Justine Pila, *The Oxford Handbook of Intellectual Property Law* (OUP, 2018) 134

[8] *Ibid*

[9] Lior Zemer and Aviv Gaon (n5) 848

[10] Molly Land, "The Marrakesh Treaty as "Bottom Up" Law Making: Supporting Local Human Rights Action on IP Policies" (2018) UC Irvine Law Review Vol 8:3 513, 548; Laurence Helfer, "Mapping an Evolving and Contested Relationship" (n7) 134

[11] Cesar Ramirez-Montes, 'The Marrakesh Treaty: Study for the PETI Committee' [2016] European Parliament Policy Department for Citizens' Rights and Constitutional Affairs 30

enforceable Treaty and were instead in favour of informal ‘soft law’ policy recommendations, the negotiations resulted in the Marrakesh Treaty being a ‘hard law’ international legal instrument.[12] In some ways, this is considered preferable as it is more likely to stimulate the hand of national legislative change, whereas non-binding policy recommendations, on the other hand, run the greater risk of becoming ‘dead-letter’ law.[13] However, since the Marrakesh Treaty is a ‘hard law’ instrument, it was subject to tougher negotiations and compromises than a soft-law instrument might be.[14] The Marrakesh Treaty as it now stands is the outcome of intense diplomatic negotiations, and the result of a tug of war between two spheres of rights. Compromise is realistically inevitable in the negotiation of an international legal instrument in any field,[15] much more in the negotiation of an instrument intended to limit the exclusive rights of an intellectual property right.[16] It is questionable, however, whether the above accolades hold true under deeper scrutiny, and whether the resultant ‘compromise Treaty’ is effective in meeting the disability rights ends it is purportedly drafted to meet, both in its formulation and subsequent implementation and enforcement.

Thus, in answer to research sub-question four, this chapter is concerned with the extent to which the current formulation of the Marrakesh Treaty is fit for purpose. The analysis here is streamlined into two sections: behind the Treaty in Section 4.2, and beneath the Treaty in Section 4.3. The matters discussed under the heading of “behind the Treaty” uncover the philosophy, theory, principles, and objectives that are behind the Treaty’s formulation i.e., the foundations on which the Treaty is built. First, the philosophical justifications of copyright protection discussed in Chapter 2,[17] along with the models of disability and principles

---

[12] Margot Kaminski and Shlomit Yanisky-Ravid, “The Marrakesh Treaty for Visually Impaired Persons: Why a Treaty Was Preferable to Soft Law” (2014) University of Pittsburgh Law Review Vol 75:3 255, 261
[13] *Ibid, 262*
[14] Aaron Scheinwald, “Who Could Possibly be Against a Treaty for the Blind?” (2012) Fordham Intellectual Property Media & Entertainment Law Journal Vol 22:2 445, 468-474
[15] Katerina Linos and Tom Pegram, “The Language of Compromise in International Agreements” (2016) International Organisation Vol 70:3 587
[16] Milana Karayanidi, “Bargaining Power in Multilateral Negotiations on Intellectual Property Rules: Paradox of Weakness” (2011) The Journal of World Intellectual Property Vol 14:3-4 265-275
[17] See page 46

explored in Chapter 3,[18] are applied to the Marrakesh Treaty as guidelines for an informed and contextualised interpretation of the Treaty's text. Then, second, both the Treaty's core and supplementary objectives are elaborated upon. The Treaty's objective and purpose is an essential benchmark in considering the extent to which it is effective.

Subsequently, the focus then turns in Section 4.3 to matters under the category of "beneath the Treaty," referring to an in-depth analysis which goes beyond the surface of the Treaty's provisions. A critical evaluation of the definitions adopted by the Treaty are covered first, particularly in respect of the scope of works, beneficiary persons, and authorised activities permitted, and how these affect the fulfilment of the Treaty's objectives. Clearly, the more refined the scope of beneficiary and activity permitted, the more constrained the resultant impact will be on the realisation of fundamental human rights, yet the more squarely it will fit within the boundaries of the three-step test analysed previously in Chapter 2.[19] An intricate examination of the Treaty's substantive provisions is then provided, particularly the formulation of the exceptions and limitations template, and the dynamics of the international mechanism for the cross-border exchange of accessible format copies of works. Emphasis is added on clarifying the elements of the Treaty which are either mandatory, optional (such as the commercial availability clause), or supplementary. Lastly, matters pertaining to the monitoring and enforcement of the Marrakesh Treaty's implementation are highlighted as important considerations in ensuring the Treaty is effective in practice and not just a "hard law" legal instrument on paper only.

Overall, original recommendations are made as to how the text of the Treaty could, in an ideal world and without the limitations of political compromise, be revised to strengthen and reinforce the Treaty's efficacy in achieving its disability rights objectives. These recommendations are made in the awareness that, although technically possible, amendments to the Treaty may face similar political resistance, compromise, and complex negotiation as the adoption of the current

---

[18] See page 102

[19] Silke Von Lewinski, "The Marrakesh Treaty" in Irini Stamatoudi, *New Developments in EU and International Copyright Law* (Kluwer Law International, 2016) Chapter 5

version entailed.[20] Nevertheless, although textual perfection may not be practically achievable, envisaging potential improvements is still valuable. Doing so may inspire change in the right direction, provide guidance to disability rights activists on areas of concern to focus on in lobbying and the campaigning strategies of non-governmental organisations, or may even lead to some (if not all) changes being adopted. Moreover, as the Marrakesh Treaty provides a pioneering template on which subsequent international laws on limitations and exceptions may be modelled (such as the proposals for a Treaty on limitations and exceptions to copyright for the benefit of libraries and archives),[21] improving its text could hold long-term value beyond the Treaty itself. Thus, it is important to reflect on what the ideal wording of the Treaty might be, and to make the arguments for it available to stakeholders who are in a position to propose and adopt revisions to the Treaty's text.[22] This textual analysis, combined with the analysis of the Marrakesh Treaty's global implementation in Chapter 5,[23] form a comprehensive basis for the recommendations provided in the Concluding Chapter.[24]

4.2 Behind the Marrakesh Treaty – Interpreting the Treaty's Normative Framework, Guiding Principles & Objectives

As an international legal instrument on copyright law which aims to achieve disability rights ends, the Marrakesh Treaty adopts both key disability rights principles and copyright law definitions.[25] The formulation of the Marrakesh Treaty is therefore a unique one in that it is informed by principles from two distinct areas of law. On the one hand are principles established in the Convention on the Rights of Persons with Disabilities (CRPD) and the wider human rights field,[26] and on the other are philosophical considerations and field-specific principles established in

---

[20] Joseph Lelliott and Paul Harpur, *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts* (1st Edn, Routledge, 2020) 89

[21] WIPO Standing Committee on Copyright and Related Rights, "Updated Version of the Document "Objectives and Principles for Exceptions and Limitations for Libraries and Archives" (2023) SCCR/44/5

[22] Revisions to the Marrakesh Treaty's text may be proposed by the Assembly as per Article 13(2)(c)

[23] See page 189

[24] See page 284

[25] Rui Guo, "The Human Rights Attributes of the Marrakesh Treaty and Its Practical Significance" (2022) Journal of Human Rights Vol 21:5 983, 986

[26] Particularly, the International Covenant on Economic, Social, and Cultural Rights [1976]

the Berne Convention,[27] TRIPS Agreement,[28] and WIPO Copyright Treaty.[29] In light of this blend of principles, it is essential that Contracting Parties have a clear understanding of the theoretical framework on which to base their national implementing legislation. Moreover, Contracting Parties should also have a clarified view of the objectives that the Treaty purports to fulfil to ensure purpose-driven implementation.

The first step in evaluating the Marrakesh Treaty is to elaborate on the normative framework on which its interpretation is to be based. It is noted that the Treaty presents a necessary challenge to a long and well-established limited-exceptions paradigm under which the legitimate rights of persons with disabilities have been subordinated and, to a minimal extent, tolerated.[30] This has been perpetuated by only considering disability accessibility on a limited, ad-hoc basis under the three-step test.[31] The Treaty challenges this paradigm with its approach to copyright philosophy and the models of disability it embodies. With a view to ensuring that the Marrakesh Treaty is implemented by Contracting Parties in a way that is consistent with the Treaty's framework, it is important to preliminarily explore the philosophy and normative approach of the Treaty towards the justification of copyright protection and the models of disability it adopts. As was alluded to in the discussions in Chapters 2 and 3,[32] the Marrakesh Treaty embodies numerous philosophical justifications for copyright protection and models of disability. Accordingly, the Treaty explicitly links the disability rights and intellectual property regimes in a way that allows interpretations that draw on both sets of norms.[33] Moreover, it should be interpreted in accordance with the CRPD principles and substantive rights that it is modelled on.[34] Elaborating on these will encourage a

[27] The Berne Convention [1979]
[28] TRIPS Agreement [1995]
[29] WIPO Copyright Treaty [1996]
[30] Paul Harpur and Nicolas Suzor, "Copyright Protections and Disability Rights: Turning the Page to a New International Paradigm" (2013) University of New South Wales Law Journal Vol 36:3, 761-768
[31] Paul Harpur, *Discrimination, Copyright, and Equality: Opening the E-Book for the Print-Disabled* (Cambridge University Press, 2017) 75
[32] See pages 46 and 100 respectively
[33] Molly Land (n10) 550
[34] Preamble, Marrakesh Treaty [2016]

more meaningful implementation of the Treaty and not a “tick box” approach which seeks only to fulfil the bottom line of obligations.

4.2.1 Theorising the Marrakesh Treaty – Copyright Philosophy & Disability Models

Turning first to the philosophy of copyright protection, five justifications are present in the Marrakesh Treaty: incentive theory, reward theory, utilitarian theory, distributive justice, and a subtle hint to personality theory.[35] Accordingly, the Marrakesh Treaty adopts the dualistic approach to justifying copyright protection which I argue for by emphasising the importance of balancing both authorial and social interests. In its Preamble, the Treaty particularly highlights the function of copyright protection as an incentive, a reward, and a means of social utility.[36] By connecting these together, copyright protection as a reward contextually is for the purposes of rewarding the creation of a social good, with less emphasis on reward for the individual labour and skills of the author. On the face of it, this may seem like a sweeping proposition intended to capture both sides of the copyright coin. However, there are subtle intricacies in the choice of which justifications to incorporate. Firstly, it is important to take account of what is missing. The Treaty does not refer to natural rights, labour theory, or human rights theory, and only minimally links to personality theory.[37] With respect to the human rights angle, only the social side of the Article 15 ICESCR right is referenced,[38] and not the individual side of the right to benefit from the moral and material interests in a work.[39] The common thread is that all of these theories have typically resulted in more author-centric forms of copyright policy with stronger grounds for authorial exclusivity.[40] In this way, the Treaty seeks to steer away from the emphasis on copyright as an individual right.

Secondly, the theories which are included all present copyright protection as something positive, beneficial to society, and particularly facilitative of the realisation of key human rights.[41] This is a clear attempt to rebrand copyright as a

---

[35] *Ibid*
[36] *Ibid*, Para C & I
[37] *Ibid*
[38] Para C, Marrakesh Treaty [2016]
[39] Article 15 (1)(c) ICESCR [1976]
[40] See page 48
[41] Preamble, The Marrakesh Treaty [2016]

useful tool and not a barrier. Thus, overall, the Treaty not only steers away from author-centric justifications, but it also equally seeks to rebrand copyright protection as a beneficial social good. For countries whose national copyright law is similarly socio-centric, implementing the Treaty will require less of a policy shift. However, for those which are rooted in natural rights or other commonly author-centric grounds, this will be an additional hurdle to pass and may lead to a compromised implementation which does not fully align with the Treaty's philosophy. This can be seen practically in the "Partial Approaches to Implementation" section in Chapter 5.[42]

Moving on to models of disability, the Treaty is informed by both the social and human rights models.[43] The social model approach of the Marrakesh Treaty is most explicit in line four of the Treaty's Preamble which refers to the barriers that persons with visual impairments face in accessing published works.[44] In this sense, the social model of disability views the international copyright law regime as the disabling factor, not visual impairment.[45] The human rights model is evidenced by the way the Treaty incorporates some of the key principles and substantive rights of the CRPD,[46] and in the way the Treaty empowers its beneficiaries as right holders, recipients, and also active participants in the Treaty's fulfilment.[47] Thus, in implementing the Treaty, Contracting Parties are encouraged to do so in a way which addresses social barriers, and which empowers the rights of the beneficiaries provided in the Treaty. Again, this may lead to a more seamless implementation in countries where the social and/or human rights models of disability are already adopted in national policy. However, where countries still employ the medical or other individual models of disability, a shift in approach will be required to ensure implementation in line with the Treaty's spirit and objectives. This can be seen practically in the "Yet to Implement Section" of Chapter 5.[48]

---

[42] See page 196
[43] Anna Lawson and Angharad Beckett, "The Social and Human Rights Models of Disability: Towards a Complementarity Thesis" (2021) The International Journal of Human Rights Vol 25:2, 348-379
[44] Para (d), Preamble, Marrakesh Treaty [2016]
[45] *Ibid*
[46] *Ibid*
[47] Article 3, Convention on the Rights of Persons with Disabilities [2008]
[48] See page 230

4.2.2 Modelling the Marrakesh Treaty - The Four Substantive Rights & Cross-Cutting Principles

In addition to the aforementioned approach to copyright philosophy and models of disability, the Marrakesh Treaty endorses several substantive rights and cross-cutting principles contained in the CRPD which form the bedrock of the Treaty's approach to addressing the global book famine.[49] By doing so, the Treaty fosters a degree of alignment with the CRPD which is another unique trait to witness in a piece of international copyright law.[50] Each of these substantive rights and principles are intertwined and are essential for Contracting Parties to factor in when implementing the Treaty's provisions in their national law. Listed in the first line of the Treaty's Preamble, these rights and principles are: non-discrimination, equal opportunity, accessibility, and full and effective participation and inclusion in society.[51] This section considers each of these in turn and their significance to the interpretation and implementation of the Marrakesh Treaty.

a) Non-Discrimination & Equal Opportunity

As was discussed in the preceding chapter, beneficiary persons experience indirect discrimination at a legislative level where national copyright laws hinder their access to cultural materials.[52] This has meant that they do not have equal opportunities to access the written word, and in a wider sense equal opportunities in education, employment, and social life more generally.[53] The Marrakesh Treaty, then, is corrective and reformative in that it seeks to facilitate the removal of these indirect discriminatory copyright barriers.[54] Accordingly, the Treaty should be implemented with a view to achieving inclusive and substantive equality for persons with visual impairments,[55] leading to equal participation in the education

---

[49] Preamble, Marrakesh Treaty [2016]
[50] Delia Ferri and Katie Donnellan, "The Implementation of the Marrakesh Treaty in the European Union: An Important Piece in the Accessibility Jigsaw?" (2022) Legal Issues of Economic Integration Vol 49:3 269, 270
[51] *Ibid*
[52] See page 110
[53] See page 17
[54] Laurence Helfer et al, "Copyright Exceptions Across Borders: Implementing the Marrakesh Treaty" (2020) European Intellectual Property Review Vol 42:6 332, 333
[55] Lida Ayoubi, "Deciphering the "Right to Read" Under International Human Rights Law: A Normative Framework for Equal Access" (2019) 36 (3) Wisconsin International Law Journal Vol 36:3 424, 438

system and society more widely. The Treaty's definitions, particularly the definition of accessible format copy discussed below, quite clearly promote equality of access in that the level of accessibility should be as feasible and comfortable as sighted persons.[56] It has been noted, though, that although the Marrakesh Treaty plays an important part in achieving equality of access, it will not achieve equality alone - that requires further transformation.[57] Thus, Contracting Parties should view the Marrakesh Treaty as one essential tool in fulfilling their wider non-discrimination and equality of opportunity obligations under the CRPD.[58]

b) Accessibility

Accessibility is the cornerstone of the Marrakesh Treaty. Most directly, the Treaty focuses on the accessibility of literary and artistic works in the form of text, notation, and/or related illustration.[59] This kind of accessibility could be considered as format accessibility i.e., the Treaty only addresses the accessibility of the work's format. While format accessibility is certainly an essential element of resolving the global book famine, the Treaty is criticised for not effectively addressing economic accessibility i.e., there is no stipulation as to reasonable pricing or, in other words, the affordability of the work.[60] This is a particularly important consideration in light of the statistics provided on the gap in educational attainment and employment rates between persons with visual impairment and sighted individuals discussed in Chapter 1.[61] While noting that the activities of authorised entities must be on a not-for-profit basis, the Treaty does not contain a proviso guaranteeing the reasonable pricing of accessible format copies which, if too high, may be particularly difficult for beneficiary persons in Global South countries.[62] It may pose a further challenge in countries where the optional commercial availability feature has been opted for which restricts the operation of the Treaty's exceptions and limitations to circumstances in which the work cannot be commercially obtained under

---

[56] Article 2(b), Marrakesh Treaty [2016]
[57] Paul Harpur, *Discrimination, Copyright and Equality* (n31), 82
[58] Articles 3 and 5, Convention on the Rights of Persons with Disabilities [2008]
[59] Article 2, Marrakesh Treaty [2016]
[60] Jingyi Li and Niloufer Selvadurai, "Reconciling the Enforcement of Copyright with the Upholding of Human Rights: A Consideration of the Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired and Print Disabled" (2014) E.I.P.R. Vol 36:10 653, 660
[61] See page 17
[62] *Ibid*

reasonable terms.[63] This may have the effect of limiting economic accessibility to some extent. Moreover, Contracting Parties should bear in mind that a comprehensive approach to accessibility is needed in order for the Treaty to be effective. The libraries which provide accessible format copies of works, for instance, should be physically accessible and offer reasonable accommodations where requested. Equally, website databases holding electronic copies of works must also be digitally accessible. Even more pertinently, the educational level and skills required to access the content of the written word are all the more fundamental to beneficiary persons having meaningful access to works. In essence, accessing the written word takes more than just the format in which it is published. A recent study on the accessibility of higher education in an Ethiopian context is exemplary in its approach to considering issues of accessibility holistically, including but not limited to the accessibility of resources.[64]

c) Full and Effective Participation and Inclusion in Society

The end goal of the Marrakesh Treaty is to ensure that persons with disabilities can fully and effectively participate in society as a whole.[65] In its Preamble, the Treaty emphasises "the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits."[66] This shifts the perspective of, and further empowers, persons with disabilities as not only users and consumers of cultural works, but also creators. The objective is not just for the Treaty's beneficiaries to enjoy access to the works themselves, but to further contribute to the creation of such works as equal members of society. Achieving this is predicated on the preceding principles of non-discrimination, equal opportunity, and accessibility. Education is also a fundamental and necessary vehicle to achieve this end goal as the realisation of

---

[63] Article 4(4) Marrakesh Treaty [2016]. See the critique of Canada's adoption of this feature: Liwah Keller, "Improving the Right to Read in Canada: The Marrakesh Treaty, Commercial Availability and Beyond" (2023) Canadian Bar Review Vol 101:1 148, 165

[64] Wondwossen Mulualem Beyene et al, "Inclusion, Access, and Accessibility of Educational Resources in Higher Education Institutions: Exploring the Ethiopian Context" (2023) International Journal of Inclusive Education Vol 27:1, 18-34

[65] Preamble, Marrakesh Treaty [2016]

[66] *Ibid*

the right to education naturally leads to the realisation of a plethora of other fundamental human rights.[67] Again, it cannot be overemphasised that Contracting Parties should adopt the Marrakesh Treaty as part of a wider package of national measures targeted at fulfilling the rights of beneficiary persons.

4.2.3 Directing the Marrakesh Treaty - Understanding the Treaty's Objectives as a Copyright Tool to Achieve Disability Rights Ends

International Treaties in the sphere of international human rights law have at their heart the realisation of fundamental rights, and their provisions are drafted so as to ensure that these rights are realised to the fullest extent.[68] The Marrakesh Treaty is unique in this context in that, despite intellectual property law instruments being typically geared towards the protection of the rights of copyright holders to the fullest extent,[69] its provisions are instead quite the contrary. It has at its heart the realisation of the fundamental human rights of its beneficiary persons which it utilises the aforementioned principles and theoretical approaches to achieve.[70] The object and purpose of the Treaty is an important benchmark when considering how effective the Treaty has been. The World Blind Union emphasise that State Parties are required to implement the Treaty in such a way as to give effect to its overarching object and purpose.[71] The Treaty's use of human rights language is significant, Ayoubi maintains, in determining the object and purpose of the Treaty, particularly in indicating that national limitations and exceptions should be drafted with the Treaty's end goal to facilitate disability rights objectives in mind to ensure that national implementation meets up with the expectations and spirit of the Treaty.[72] This is of course ideal as ineffective, poorly drafted exceptions are not what are envisaged by the Treaty.

---

[67] Gauthier De Beco, "Transition to Inclusive Education Systems According to the Convention on the Rights of Persons with Disabilities" (2016) Nordic Journal of Human Rights Vol 34:1, 1
[68] Article 2, ICESCR [1976], Article 4 CRPD [2008]
[69] Peter Yu, "The Objectives and Principles of the TRIPS Agreement" (2009) Houston Law Review Vol 4 979, 993
[70] See page 142
[71] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 54
[72] Lida Ayoubi, "The Marrakesh Treaty: Fixing International Copyright Law for the Benefit of the Visually Impaired Persons" (2015) New Zealand Journal of Public and International Law Vol 13:2 255, 288-291

Self-evidenced by the title of the Treaty and its Preamble, the World Blind Union define the object and purpose of the Marrakesh Treaty as “the promotion of the human rights of individuals with print disabilities by expanding their access to copyrighted works consistently with existing rules of international intellectual property law.”[73] The specific disability rights intended to be encompassed by the Treaty are referred to in its Preamble, namely: the Article 21 CRPD right to freedom of expression which covers the right to seek, receive and impart information; the Article 24 CRPD right to education; and the Article 15 (1)(b) International Covenant on Economic, Social, and Cultural Rights and Article 30 CRPD rights to participation in cultural life. Unlike the direct link made between the right to participation in cultural life and intellectual property barriers in Article 30 (3) of the CRPD, the Marrakesh Treaty adopts a more subtle, somewhat passive approach. There is in fact no reference to this obligation, to cultural materials, or to unreasonable or discriminatory intellectual property barriers. Participation in cultural life is noted only once, and copyright protection is linked to it as a facilitator, not a barrier.[74]

Two important points can be deduced from the definition of object and purpose provided by the World Blind Union. Firstly, while the Marrakesh Treaty is an important move forward, it is not expected that the Treaty will lead to the full realisation of the rights listed in its Preamble, nor fully resolve the global book famine – rather, it is just one piece of the puzzle.[75] Secondly, the overarching object and purpose of the Treaty is a nuanced one as its disability rights objectives are to be pursued to the extent as is consistent with the international copyright framework. Since the Marrakesh Treaty is still in essence an intellectual property law instrument, though it purports to achieve disability rights ends, the aforementioned objective is to be met in a way that does not conflict with Contracting Parties’ obligations within international intellectual property law[76] (i.e.,

[73] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 54
[74] Line (c), Preamble, Marrakesh Treaty [2016]
[75] Paul Harpur, *Discrimination, Copyright and Equality* (n31) 82
[76] Article 1, The Marrakesh Treaty [2016]

the Berne Convention,[77] the TRIPS Agreement[78] and the WIPO Copyright Treaty.)[79] In other words, the Treaty is intended to be compatible and operate in tandem with the rights and values, and even obligations, of other international laws in both the spheres of intellectual property and disability rights. Accordingly, Lida considers the use of human rights language as fundamental to the interpretation of the text of the Treaty in such a way as is conducive to the realisation of the rights of beneficiary persons and equally compliant with copyright norms.[80]

The object and purpose of the Marrakesh Treaty to promote the realisation of the fundamental human rights of beneficiary persons will be met to varying degrees depending on national approaches to the implementation of the Treaty at a legislative level, and the extent to which national mobilisations facilitate the production of accessible format copies of works.[81] As the World Blind Union notes, it is these choices that will determine whether the Treaty realises its overarching objective.[82] Realistically, there are other interests at play, and it should be expected that Contracting Parties will not draft exceptions solely with the view of disability rights objectives in mind - it will be a subjective national trade off, each nation finding their own suitable balance. This further necessitates the global case study approach taken in Chapter 5 which explores in depth the way in which those Contracting Parties that have implemented the Treaty have drafted their national limitations and exceptions, and the extent to which they are aligned with the spirit of the Treaty.[83]

Under the overarching objective of promoting the realisation of the aforementioned rights, the Treaty has three supporting objectives: enhancing and harmonising the international legal framework on copyright exceptions and limitations,[84] establishing a resource-effective international mechanism for the creation and circulation of

---

[77] Berne Convention for the Protection of Literary and Artistic Works [1979]
[78] World Trade Organisation (WTO), Agreement on Trade-Related Aspects of Intellectual Property Rights [2017] (as amended)
[79] WIPO Copyright Treaty (adopted in Geneva on December 20, 1996)
[80] Lida Ayoubi, “Human Rights Principles in the WIPO Marrakesh Treaty: Driving Change in Copyright Law from Within” (2019) Queen Mary Journal of Intellectual Property Vol 9:3, 282, 291-294
[81] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 16-17
[82] *Ibid*
[83] See page 189
[84] Enhancing, para (f); Harmonising, para (i), Preamble, Marrakesh Treaty [2016]

works,[85] and progressing the Development Agenda in addressing the needs of beneficiaries in Global South countries.[86] Fulfilling these objectives is key to the overall fulfilment of the Treaty. Harmonisation of exceptions and limitations is particularly important in light of the divergencies in definitions of format, beneficiaries, etc. that have been present in national laws.[87] That is not to say that the Treaty aims to harmonise limitations and exceptions in general, or indeed the whole international copyright law regime. These are separate, even more grandiose projects which may be considered in future. For now, the Marrakesh Treaty facilitates at least one step towards harmonisation in the field of disability rights exceptions.

4.3 Beneath the Marrakesh Treaty – A Critical Exposition of the Treaty's Substantive Provisions, Monitoring, and Enforcement

Having thoroughly explored the copyright philosophy, models of disability, disability rights and principles, and overarching objectives that underpin the Treaty's formulation, this section now delves deeper by offering a detailed textual analysis of its substantive provisions. Okediji recommends that an international instrument on limitations and exceptions should embody three features: flexibility, judicial manageability, and scope for national cultural autonomy.[88] The extent to which these features are built into the Marrakesh Treaty is highlighted throughout the subsequent analysis.

4.3.1 From Restrictive Tolerability to Expansive Inclusivity - A Critical Evaluation of the Scope of the Marrakesh Treaty's Definitions

The formulation of exceptions and limitations is an intricate task due to the competing obligations and interests of the Marrakesh Treaty's beneficiaries on the one hand, and copyright holders on the other. The wider the scope of applicability, the greater the benefits for beneficiaries, but the further it will reduce the scope of copyright exclusive rights, and vice versa. In the context of the Marrakesh Treaty,

---

[85] *Ibid*, para (g)
[86] *Ibid*, para (k)
[87] Guy Whitehouse, "A New Clash Between Human Rights and Copyright: The Push for Enhanced Exceptions for the Print-Disabled" (2009) Publishing Research Quarterly Vol 25:4 219, 224-225
[88] Ruth Okediji and Bernt Hugenholtz, "Conceiving an International Instrument on Limitations and Exceptions to Copyright" (2012) Open Society Institute Research Paper, 42

adopting expansive definitions maximises the prospects of accessibility for visually impaired persons, albeit with a degree of compromise to ensure the legitimate interests of the copyright holder are not unreasonably prejudiced in accordance with the three-step test analysed in Chapter 2.[89] The Marrakesh Treaty navigates a sensitive path in carving out a mutually agreeable approach to definitional issues. Indeed, the scope of definitions and categories were a notable sticking point during negotiations with some countries taking opposingly restrictive or wide-ranging stances.[90] The resultant definitions and categories are essentially a compromise between those nations. There are four key definitions to consider here: 'works,' 'accessible format copy,' 'authorised entity,' and 'beneficiary persons.' This section critically analyses these definitions with particular emphasis on how they influence the ability of the Treaty to fulfil its disability rights objectives.

a) "Works"

The definition of the works which the exceptions and limitations pertain to is a fundamental one as, in order to enjoy their rights to the fullest, beneficiaries require access to the widest possible scope of materials to ensure the enjoyment of their rights on an equal basis with others.[91] In other words, they should be able to access the same scope of materials that a person without a visual impairment can access. To achieve such an extensive scope, the Treaty does not define the meaning of "work" internally but instead adopts the standard international copyright law definition found in Article 2(1) of the Berne Convention.[92] Accordingly, the exceptions and limitations that the Marrakesh Treaty mandates apply to literary and artistic works in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media."[93] This further enhances the Treaty's all-encompassing approach given that the Berne Convention defines the concept of a work extensively as "every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression."[94] Essentially, the Treaty intends to bring within its scope the widest

[89] See page 84
[90] Cesar Ramirez-Montes (n11) 26
[91] Article 30(3), CRPD [2008]
[92] Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works [1979]
[93] Article 2(1) Marrakesh Treaty [2016]
[94] Article 2 Berne Convention for the Protection of Literary and Artistic Works [1979]

possible range of works to have the greatest possible effect in alleviating the global book famine, and the most positive impact on the realisation of the rights of beneficiaries. This is particularly important due to the divergences in national law as to the scope of works exceptions have applied to and the often-restrictive approach taken.[95] Therefore, this is a key area where international harmonisation could make real progress in expanding the types of works which beneficiaries may access. Defining 'works' in this way, then, may have a significant impact on widening the scope of limitations and exceptions both nationally and internationally.

Yet, there is room to develop the Treaty's definition of works even further. As suggested by Harpur and Lelliott, this could be done by expanding its scope to include other forms of visual art (such as drawings, paintings, architecture etc.),[96] recalling that it is cultural materials that beneficiaries have a right of access to, not specifically copyright works.[97] As explored in Chapter 3, the meaning of 'cultural materials' to which the Article 30 CRPD right applies is even broader than the Berne category of works.[98] This could be done by revision or extension to the Treaty (i.e. including visual art and cultural materials within the scope of Article 2(a)), or through domestic law reform and advocacy.[99] In addition to Harpur and Lelliott's recommendation, due to the importance ascribed to the right to education and given the widespread lack of accessible educational materials referred to previously,[100] specific mention of educational materials could be helpful. Although the definition already inexplicitly covers these, an explicit reference may lead to better prioritisation of educational needs. Scholarship on the Marrakesh Treaty has also recommended that, although the Treaty's definition of works does encompass works in any media, it should be expanded to include explicit reference to digital

---

[95] WIPO, "Study on Copyright Limitations and Exceptions for the Visually Impaired" (2007) SCCR/15/7 <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf> 31-32
[96] Joseph Lelliott and Paul Harpur, "Paradigm Shifting to a Point: Disability Human Rights, Copyright Protection, and Access to Visual Art in International Law" in Ana Ramalho et al, *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts* (Routledge, 2020)
[97] *Ibid*
[98] Article 30(3) CRPD [2008]. See page 117
[99] Joseph Lelliott and Paul Harpur (n96) 90
[100] See page 121

and other ICT-related formats.[101] This would not constitute a substantive change since the definition of works is already inclusive of these formats, but it may be a helpful addition to Agreed Statement #1 which currently only refers to works in audio form.[102]

Revising the definition of "works" in the above ways, though made difficult by political resistance and compromise, could ensure better alignment with the CRPD and a more extensive range of accessible resources.[103] This is particularly pertinent since the Treaty promotes consistency with the CRPD.[104]

b) "Accessible Format Copy"

The second important definition contained in the Marrakesh Treaty is that of "accessible format copy" which means "a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability."[105] The wording "alternative manner or form" is intentionally a format-neutral approach to ensure that the widest available technological means may be used,[106] instead of confining the accessible copy to Braille which tended to be the case in national law prior to the adoption of the Marrakesh Treaty. The Ugandan Copyright and Neighbouring Rights Act [2006], for example, permitted "any work [to be] transcribed into Braille or sign language for educational purposes of persons with disabilities."[107] In a modern society of technological advancement, the Treaty takes a dynamic, innovative move in modernising copyright exceptions and limitations in this field. For the purposes of education, this is increasingly essential as educational delivery moves online and library resources undergo a process of digitisation.[108] Furthermore, the standard of the accessibility provided by the accessible format copy must enable the

---

[101] Jingyi Li, "Facilitating Access to Digital Content for the Print Disabled: The Need to Expand Exemptions to Copyright Laws" (2015) Intellectual Property Journal Vol 27:3 355, 376
[102] Agreed Statement 1, Marrakesh Treaty [2016]
[103] See Annex – Envisaging the Marrakesh Treaty 2.0 for proposed text.
[104] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 57
[105] Article 2 (b) Marrakesh Treaty [2016]
[106] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 72
[107] S.15 (1) (k) The Copyright and Neighbouring Rights Act [2006]
[108] Paul Harpur and Nicolas Suzor, "The Paradigm Shift in Realising the Right to Read: How eBook Libraries are Enabling in the University Sector" (2014) Disability & Society Vol 29:10, 1659

beneficiary person to access the work as feasibly and comfortably as a person without visual impairment or other print disability, thereby promoting the disability rights principles of equality and non-discrimination discussed earlier.[109] Moreover, it ensures that access is of good quality, thereby moving from a paradigm of tolerance and permissibility, to full facilitative enjoyment of fundamental human rights. The production of accessible format copies is only caveated in the sense that the integrity of the original work must be respected, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of beneficiary persons.[110] This is a clear attempt to respect the moral rights of the author of the work and an attempt to strike the balance noted in the Treaty's Preamble between the effective protection of the rights of authors and the larger public interest.[111]

c) "Authorised Entity"

The third definition provided by the Marrakesh Treaty is that of "authorised entity", meaning an entity that is authorised or recognised by the Government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis."[112] Although beneficiary persons are also empowered, these authorised entities play an important role in making accessible format copies, obtaining them from other beneficiaries and authorised entities, and distributing or making them available to beneficiary persons and to authorised entities in other Contracting Parties.[113] Thus, they are crucial to achieving the Marrakesh Treaty's overarching objective.[114] Notably among this list of authorised entities are education providers, the scope of which is not refined to a particular level of education and, thus, assumedly applies to educational providers at all levels of education. By empowering educational providers at all levels to proactively engage in the facilitation of access to accessible format copies of works, the Marrakesh Treaty holds significant potential to make real progress on the realisation of the Article 24 right and, more widely, the Article 30 right to

[109] See page 142
[110] Article 2 (b) Marrakesh Treaty [2016]
[111] Preamble, Marrakesh Treaty [2016]
[112] Article 2 (c) Marrakesh Treaty [2016]
[113] Article 4(2)(a) Marrakesh Treaty [2016]
[114] See page 146

participate in cultural life. The most prominent limiting factor here, however, is that the scope of activities authorised entities may carry out is delineated by national law.[115] As is highlighted in Chapter 5, this has led to stringent regulatory control and monitoring in some cases.[116] Additionally, there is a financial limit at play given that authorised entities must carry out their activities on a non-profit basis and, particularly for educational institutions that rely on public funding, this may limit the amount of facilitative work they can carry out.[117] Moreover, concern has been expressed that only permitting non-profit activities may reinforce the perception of persons with disabilities as in need of charity which is problematic for the reasons explored in Chapter 3.[118] As already noted, the Treaty seeks to maintain a balance between the human rights of beneficiary persons and the rights of copyright holders. Accordingly, the limitation as to non-profit activities shows perhaps more concern for protecting the economic interests of copyright holders in line with the three-step test than for the negative perception of persons with disabilities it may entail.

d) "Beneficiary Persons"

The final definition provided by the Treaty of beneficiary person is perhaps the most important of all the Treaty's definitions as it defines the scope of who may benefit from the Treaty's exceptions and limitations and, consequentially, the scope of whose fundamental human rights will be enhanced.[119] From a disability rights point of view, it is essential that this definition be drafted as widely as possible, yet within the object and purpose of the Treaty so as to prevent the exploitation of works by unintended beneficiaries outside the scope of the Treaty's remit, and so also as not to derogate from Contracting Parties' obligations under the Berne Convention. There has been a wide-ranging spectrum of interpretations of this definition at a pre-Marrakesh national legislation level.[120] The most restrictive of approaches to the category of beneficiary on the left side of the spectrum applied

---

[115] Article 4(2)(a) Marrakesh Treaty [2016]
[116] See page 224
[117] Article 4(2)(a)(iv) Marrakesh Treaty [2016]
[118] Paul Harpur, *Discrimination, Copyright and Equality* (n31) 79
[119] Silke Von Lewinski, "The Marrakesh Treaty" (n19) Chapter 5
[120] Jingyi Li, "Copyright Exemptions to Facilitate Access to Published Works for the Print Disabled – The Gap Between National Laws and the Standards Required by the Marrakesh Treaty" (2014) International Review of Intellectual Property and Competition Law Vol 45:7 740, 742

only to persons who are blind. In Greece, for example, the exception to copyright only applied specifically for the benefit "of blinds and deaf-mute."[121] The beneficiaries of the exception in the Ugandan Copyright and Neighbouring Rights Act [2006] were defined as "persons with disabilities", but only permitted the work to be transcribed into Braille or sign language, thus, primarily applied to persons who are blind.[122] In the middle of the spectrum, a more liberal approach in other national copyright laws saw the additional inclusion of those with visual impairments. In Brazilian Copyright Law, the exception was exclusively for the benefit of the visually impaired,"[123] while in Japanese Copyright Law, it applied more broadly to those with a "visual impairment, developmental disorder, or other disability."[124] The most inclusive of definitions of beneficiary on the far right of the spectrum, such as in the United States Copyright Act, extended to those with other non-visual impairments, referring to "the blind or other persons with disabilities."[125]

The Marrakesh Treaty seeks to resolve these disparities in definitional approach by harmonising the definition of who is to be considered a beneficiary. The Treaty's definition sits at the far end of the spectrum and defines a beneficiary person broadly and inclusively.[126] Notably, the Treaty explicitly ensures that people who also have other types of disability (i.e., learning, intellectual, or auditory disabilities) are not precluded from benefitting from the Treaty's provisions.[127] In line with the object and purpose of the Treaty, prescribing such an expansive definition of beneficiary is a clear attempt to ensure the widest possible access to the widest range of beneficiaries possible. It is understood that this definition of beneficiary persons assumedly fits within the scope of the three-step test flexibly.[128] The Treaty

---

[121] Article 28A Law No. 2121/1993 on Copyright, Related Rights and Cultural Matters (as amended up to Law No. 4281/2014)
[122] S.15 (1) (k) The Copyright and Neighbouring Rights Act [2006]
[123] Article 46 (1) (d) Law No. 9.610 of February 19, 1998 (Law on Copyright and Neighbouring Rights, as amended by Law No. 12.853 of August 14, 2013)
[124] Article 33 (2) (1) Copyright Act (Act No. 48 of May 6, 1970, as amended up to Act No. 72 of July 13, 2018)
[125] S.121 (b)(1)(a) U.S. Copyright Act of 1976, 17. U.S.C. §§ 101 et seq. (consolidated version as of December 2011)
[126] Article 3 Marrakesh Treaty [2016]
[127] *Ibid*
[128] Simonetta Vezzoso, "The Marrakesh Spirit – A Ghost in Three Steps?" (2014) Max Planck Institute for Innovation and Competition 796, 802; Lida Ayoubi, "The Marrakesh Treaty: Fixing International Copyright Law for the Benefit of the Visually Impaired Persons" (n72) 273

does not provide a definition of who is considered to be blind and, again, this is a matter of diverging national interpretation.[129] As a generic international standard, the World Health Organisation defines blindness as having a visual acuity of 3/60 or less.[130] What may be problematic, however, is approaching the scope of beneficiary persons purely from a medical perspective, as has been the case in some Contracting Parties,[131] as this may perpetuate the issues associated with the medical model explored in Chapter 3.[132]

4.3.2 The Exceptions & Limitations Template

It is clear from all four definitions analysed above that the Marrakesh Treaty is remarkable for the expansive category of works it applies to, beneficiary persons it benefits, and excepted activities it permits. The Marrakesh Treaty has also been considered to be 'remarkable' for being the first and only WIPO instrument to create mandatory exceptions and limitations to copyright.[133] While this is true to some extent, it is important to remember that the Treaty does not itself create a mandatory exception or limitation to copyright - rather, it requires Contracting Parties to do so and instead provides an optional template for States to follow.[134] In this sense, the Treaty prescribes an exception or limitation by effect but not by form. The Treaty is drafted in such a way that there is apt flexibility for national copyright philosophy, amongst other factors, to influence the implementation of the Treaty. Article 4 of the Treaty essentially sets out what national law exceptions must include or achieve but does not provide a mandatory text which must be implemented by all Contracting Parties.[135] States are consequentially in a position of flexibility when drafting their limitations or exceptions to their own specification, so long as they produce the end result required by the Treaty of "facilitating the availability of works in accessible format copies for beneficiary persons."[136] Naturally, national factors will be influential in the end form those exceptions or

---

[129] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1)
[130] World Health Organisation, "Blindness and Vision Impairment" [2019] available here: <https://www.who.int/news-room/fact-sheets/detail/blindness-and-visual-impairment>
[131] See discussion from page 189
[132] See page 103
[133] Molly Land (n10) 548; Laurence Helfer, "Mapping an Evolving and Contested Relationship" (n7) 134
[134] Article 4(1) of the Marrakesh Treaty [2016]
[135] *Ibid*
[136] *Ibid*

limitations take. One of these factors is the interplay between national copyright philosophy and disability rights policy. This has indeed been found to be the case, as is detailed in Chapter 5.[137] Furthermore, even if countries adopt verbatim the definitions contained in the Treaty into their national law, interpretations of the details of the terms are likely at some point to diverge as the terms are interpreted by the courts and administrative agencies of the individual countries.[138]

It is important to differentiate between what is, and what is not, mandated as it clarifies what is expected of States in their implementation of the Treaty. Accordingly, the discussion here is streamlined into two sections: mandatory and optional provisions. The core of the Marrakesh Treaty's optional provisions is found in Article 4. The Treaty contains various administrative and procedural provisions which are not discussed in detail here since they do not substantively affect the efficacy of the Treaty.[139]

4.3.2.1 Mandatory Provisions

The first point to note is that the Marrakesh Treaty mandates that either an exception or limitation to the rights of reproduction, distribution, and making available to the public which facilitates the availability of works in accessible format copies for beneficiary persons must be provided in national law.[140] This directly requires a State which did not previously include such an exception or limitation in their national law to take legislative steps to implement one. Additionally, although it does not explicitly stipulate so, because the exception or limitation must have the effect of facilitating the availability of works in accessible format copies for beneficiary persons, it is not enough that a State has a pre-existing provision if it does not fulfil this effect.[141] However, this is not prescriptive as to a minimum standard that an exception or limitation must meet i.e., it is sufficient that it is facilitative to some extent. There is room here for the obligation to go much further in emulating the language of the CRPD in terms of States being required to fulfil

[137] See page 189
[138] Marketa Trimble, "The Marrakesh Puzzle" (2014) Max Planck Institute for Innovation and Competition Vol 45:7 768, 782
[139] Articles 18-22, Marrakesh Treaty [2016]
[140] Article 4(1)(a) Marrakesh Treaty [2016]
[141] *Ibid*

their obligations to the maximum available resources.[142] In a similar fashion, Contracting Parties would also be required to meet their obligations under the Treaty to the maximum availability of their resources. For instance, in prioritising resource allocation to the establishment and work of authorised entities, developing training programmes within the educational system both for beneficiaries and those providing services to them, and so on. In other words, while there are minimum standards in terms of definitional approaches, there is no similar minimum standard pertaining to measuring or assessing the extent to which an exception or limitation is facilitative.

Another important layer of analysis of this obligation is to whom it applies. Quite clearly, it applies at a State level on the Contracting Party but does not impose any obligations on the publishing industry or copyright holders themselves. It has been argued that, since the Treaty does not mandate that publishers offer accessible versions of their works, the effectiveness of the Treaty is undermined, and this is in fact a symptom of a conflict of interest within WIPO which represents publisher's interests above others.[143] While the role of publishers and copyright holders is important, as indeed noted by the Treaty itself,[144] it would not have been appropriate for an obligation to be imposed on national publishing industries at an international level due to respect for national sovereignty. Rather, it is for each Contracting Party to determine what the publishing industry within their jurisdiction will be obliged to do, or not do as the case may be. Thus, even though an obligation on the publishing industry is not contained in the Treaty itself, it is most probable that the State level obligation will in any event work its way down to publishers at a national level.

A final important mandatory provision to highlight is Article 7 which relates to the technological protection measures often employed to protect against copyright infringement.[145] Where legal protection applies to the enforcement of these

---

[142] Article 4(2) Convention on the Rights of Persons with Disabilities [2008]
[143] Auston Stamm and Yu-Chang Hsu, "The Marrakesh Treaty's Impact on the Accessibility and Reproduction of Published Works" (2021) Association for Educational Communications & Technology Vol 65:5, 692–695
[144] Para (h), Preamble, Marrakesh Treaty [2016]
[145] *Ibid,* Article 7

measures, and where remedies are to be provided to copyright holders where such measures have been circumvented, Article 7 requires Contracting Parties to take appropriate and necessary measures to ensure that they do not prevent beneficiary persons from enjoying the limitations and exceptions provided for in the Treaty.[146] In other words, beneficiary persons or authorised entities acting on their behalf may need to circumvent technological protection measures in order to produce an accessible format copy of a work. The legal protection and remedies that typically apply to such activities should not apply where the activity is being carried out under the rights granted by the Treaty. There is considerable flexibility in determining what measures are necessary or appropriate. Nevertheless, it is vital in ensuring that the access rights of beneficiary persons are not hindered in practice by technological barriers. The extent to which this issue has been addressed in the national implementing laws of Contracting Parties is discussed in Chapter 5.[147]

4.3.2.2 Optional Provisions

Though indeed a copyright treaty in nature, the Marrakesh Treaty is uniquely situated and aligned with both intellectual property and disability rights laws, as opposed to one or the other.[148] This was indeed a sticking point during the negotiations of the Treaty with Global North countries concerned that the 'Berne Gap' in Global South countries may lead to the flouting of exclusive authorial rights were the Marrakesh Treaty to not be confined to the contours of the three-step test, and Global South countries conversely concerned that, if restricted to the boundaries of the three-step test and other international laws, the object and purpose of the Treaty may equally be flouted.[149] To reconcile these two positions, the Treaty features in-built flexibility in its implementation which permits Contracting Parties to give effect to the Treaty's provisions in a variety of ways depending on the Party's international law obligations.[150] As noted by Conway, delegating to sovereign state discretion may either lead to the strengthening of the Treaty's

[146] *Ibid*
[147] See page 224
[148] Laurence Helfer et al, "Copyright Exceptions Across Borders" (n54) 338
[149] Danielle Conway (n2) 54
[150] Article 4, Marrakesh Treaty [2016]

purpose and objectives if a broad national approach is taken, or a weakening of the same if a restrictive, pro-authorial approach is adopted.[151] Apart from the mandatory stipulation in Article 4 (1) that an exception with the prescribed effect must be provided in national law, the remaining provisions of Article 4 are all optional. As the name suggests, optional provisions are those which Contracting Parties have the discretion as to whether they choose to incorporate them in the way they implement the Treaty or not.

(a) Changes to Works & Public Performance

Taking them in order, the first optional facet is that the exception or limitation only *should*, not must, permit changes needed to make the work accessible in the alternative format.[152] Not doing so would pay more respect to the author's moral rights in the integrity of the work, but at the cost of making the reproduction process practically challenging and potentially impossible. Thus, not making this requirement mandatory may give rise to additional barriers for authorised entities. It is recommended that this provision should be made mandatory in order to improve the Treaty's efficacy. Secondly, Contracting Parties may also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons.[153] It is desirable that Contracting Parties do indeed provide for this as it would foster greater facilitation of the right to participation in cultural life and could also improve the quality of education a beneficiary receives where public performance is incorporated into the curriculum. As it is not a fundamental aspect of accessing the written word, it is not essential that this provision be made mandatory, as has been suggested in relation to other provisions. However, rewording it in a less passive, and more facilitative way, could encourage national implementation. This still grants Contracting Parties the discretion to determine whether providing such an exception or limitation is appropriate for their national context, but at least prompts that consideration to be made. The proposed wording can be found in the Annex – Envisaging the Marrakesh Treaty 2.0.

---

[151] Danielle Conway (n2) 54
[152] Article 4(1)(a) Marrakesh Treaty [2016]
[153] *Ibid*, Article 4(1)(b)

(b) Limitations & Exceptions Template

The third, and indeed most fundamental feature of the optional provisions, is the template provided in Article 4 (2). It essentially outlines the activities which should be permitted under a national exception in order for accessible format copies of works to be made, obtained, and supplied to beneficiary persons. It should be permissible for such activities to be carried out either by an authorised entity, a beneficiary person themselves, or someone acting on their behalf.[154] This should ensure a positive balance of empowering beneficiary persons to be active participators in fulfilling their rights, while also ensuring activities can be carried out at an institutional level with greater resources and reach. Where the activities are carried out by an authorised entity, they should be made possible without requiring the authorisation of the copyright holder, thereby avoiding the typical obstacles of time, cost, and potential refusal which beneficiaries have encountered in seeking to obtain a licence.[155] It should be permissible for authorised entities to supply the accessible format work via any means, allowing for digital transmission of electronic copies which would be the most cost-effective method.[156] Finally, authorised entities should also be permitted to carry out any intermediate steps necessary in order for the activities of making, obtaining, and supplying of works to be possible.[157] To balance these activities with the protection of the interests of the copyright holder, a number of conditions may be imposed as safeguards on the practices of authorised entities.[158] It may be required that the authorised entity must have lawful access to the work, that no unnecessary changes are introduced to the work, that accessible format copies must only be provided to beneficiary persons, and that the activities are carried out on a non-profit basis.[159] These are not intended to limit the Treaty's ability to meet its overarching object and purpose but to ensure that no activities are carried out which are outside the scope of the Treaty's ambit.[160] In addition to this institutional exception, the template also

---

[154] *Ibid*
[155] Paul Harpur, *Discrimination, Copyright and Equality* (n31), 94
[156] Shae Fitzpatrick, "Setting Its Sights on the Marrakesh Treaty: The U.S. Role in Alleviating the Book Famine for Persons with Print Disabilities" (2014) Boston College International & Comparative Law Review Vol 37:1 139, 142
[157] Article 4(2)(a) Marrakesh Treaty [2016]
[158] *Ibid*, Article 4(2)(a) (i-iv)
[159] *Ibid*
[160] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 86-87

provides a model individual exception under which a beneficiary may make an accessible format copy of a work for their personal use only, provided they have lawful access to the work.[161] Additionally, someone acting on their behalf may also either assist the beneficiary person to make and use the accessible format copy or make it on their behalf.[162] A limitation or exception which permits all of these features, particularly providing both institutional and individual exceptions, would be considered as in fulfilment of the Article 4(1) obligation.

Adopting a template approach entails a number of strengths and drawbacks. On the one hand, clarifying what Contracting Parties may provide in their national laws in a way that is compliant with their obligations makes for a guided navigation through what is certainly a complex web of international laws. This level of legal certainty is particularly helpful for Global South countries who have been typically less active in the area of limitations and exceptions due to lesser institutional capacity than the higher-income countries of the Global North.[163] Moreover, considering that the model provision already has a level of international consensus behind it, implementing it as is may be the path of least resistance.[164] However, in light of the fact that one of the Treaty's objectives is to achieve international harmonisation, providing a template that is not mandatory may fall short of achieving this objective. The vision for harmonisation is further blurred by Article 4(3) which makes it clear that Contracting Parties may fulfil their Article 4(1) obligation by exceptions and limitations of their own design. Furthermore, they may do so by implementing any assortment of exceptions and limitations in combination with any judicial, administrative, or regulatory determinations they may deem appropriate.[165] In the midst of these flexibilities, harmonising national provisions on exceptions and limitations becomes all the more complex.

Perhaps a more controversial concern with the Marrakesh Treaty's template approach is the fact that it is shaped to be a 'safe harbour' option that is compliant

---

[161] Article 4(2)(b) Marrakesh Treaty [2016]
[162] *Ibid*
[163] Ruth Okediji, "The Limits of International Copyright Exceptions for Developing Countries" (2019) Vanderbilt Journal of Entertainment & Technology Law Vol 21:3 689**,** 710
[164] Annette Kur, "From Minimum Standards to Maximum Rules" in Hanns Ullrich et al, *TRIPS plus 20: From Trade Rules to Market Principles* (Springer, 2016) 146
[165] Article 10(3) Marrakesh Treaty [2016]

with the three-step test.[166] Moreover, national discretion is caveated further in that any other limitations or exceptions that Contracting Parties may formulate must be compliant with the variations of the three-step test found in the Berne Convention, TRIPS Agreement, and WIPO Copyright Treaty where they are Parties to these international laws.[167] Stance on the involvement of the three-step test in the Marrakesh Treaty's provisions is polarised. On the one hand, it has been viewed as a confidence builder for those nations who may have wished to implement national limitations and exceptions but were hesitant due to concerns over conflicting with the test's criteria.[168] On the other, as Senftleben notes, the open-ended nature of the three-step test may undermine the element of international legal certainty on exceptions and limitations for beneficiary persons that the Treaty intends to provide.[169] This places the Marrakesh Treaty between a rock and a hard place in the sense of balancing legal certainty and flexibility. Moreover, although it is noted in the Treaty's Preamble that there is flexibility within the three-step test,[170] its application within the Treaty exercises an additional constraining function and is not utilised as a tool of flexibility.[171] For these reasons, Senftleben argues for greater reliance on the Article 4(3) than the model provision in Article 4(2) as it offers more flexibility and scope for the three-step test to perform an enabling function.[172]

While the approach of discouraging the national application of Article 4(2) and encouraging reliance on the 'sui generis' option of Article 4(3) may perhaps be a pragmatic way to maximise flexibility in national law making, as Article 4(3) is in any event an optional provision, there is no way to guarantee consistency with this selective approach.[173] Moreover, any limitations and exceptions made under the flexibility of Article 4(3) must still be compliant with the three-step test.[174] As was explored in Chapter 2 of this thesis, the three-step test as a tool to protect authorial

---

[166] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 112
[167] *Ibid*, Article 11
[168] Simonetta Vezzoso, "The Marrakesh Spirit – A Ghost in Three Steps?" (n128) 804
[169] Martin Senftleben, "A Copyright Limitations Treaty Based on the Marrakesh Model: Nightmare or Dream Come True?" (2017) SSRN Electronic Journal, 4
[170] Para (j) Preamble, Marrakesh Treaty [2016]
[171] Martin Senftleben (n169) 12
[172] *Ibid*, 13
[173] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 117
[174] Articles 4(3) and 11, Marrakesh Treaty [2016]

interests can only be stretched so far, in addition to the paradigmatic issues it embodies pertaining to the subjugation of the rights of persons with disabilities.[175] It should also be clarified that encompassing some flexibility to an extent does not mean that the three-step test is flexible i.e., that it has a substantial degree of flexibility. Thus, although it has been suggested that the Treaty presents the potential to reconceive the three-step test and its relationship to human rights law in a way that views the exceptions under the test as affirmative expressions of policy and not permissible restrictions,[176] the position is maintained that, regardless of any internal flexibilities, the three-step test remains a limiting factor of the Marrakesh Treaty's efficacy. While applying the alternative human rights version of the three-step test suggested in Chapter 2 would grant the Treaty more room to fulfil its objectives and would therefore be more ideal,[177] it would require a much greater level of diplomatic negotiation and compromise to achieve. Thus, at present, the most practical approach is to encourage Contracting Parties to utilise the maximum flexibility possible under the current three-step test when drafting their national implementing law.

(c) Commercial Availability Clause

The fourth optional feature under Article 4 is the commercial availability clause whereby a Contracting Party may confine limitations or exceptions to works which, in the particular accessible format, cannot be obtained commercially under reasonable terms for beneficiary persons in that market.[178] This is in line with the recognition in the Treaty's Preamble concerning the importance of both the right holder's role in making their works accessible and the importance of appropriate limitations and exceptions when the market is unable to provide such access.[179] The use of the word *confine* here directly emulates the wording of the TRIPS variation of the three-step test and indicates a similarly restrictive approach.[180] It is also in the same spirit of the second limb of the three-step test which seeks to

[175] See page 96
[176] Molly Land (n10) 548
[177] See page 96
[178] Article 4(4) Marrakesh Treaty [2016]
[179] Para (h) Marrakesh Treaty [2016]
[180] Article 13, TRIPS Agreement [1995]

protect the author's right to exploit the markets they would normally expect to benefit from.[181]

Dreyling and Hackett highlight how implementing the commercial availability clause would create an impractical administrative burden for libraries (and indeed authorised entities in general), and the risk of liability in the case of producing an accessible format copy of a work that was already commercially available may have a disincentivising effect.[182] In addition to these burdens, it leaves unanswered a number of important considerations concerning what may constitute a work being commercially available, how 'reasonable terms' is to be interpreted, and when the work must be available from.[183] In light of these concerns, the World Blind Union consider it inconsistent with the Treaty's overarching objective and recommend that it is not opted for.[184] Indeed, so far, only four countries have implemented the Treaty's optional commercial availability feature: Australia, Canada, China, and Japan.[185] However, although avoiding certain provisions in a "pick and mix" style may be a more pragmatic and achievable approach, an ideal solution would be to revise any of the Treaty's provisions that are considered inconsistent and bring them more in line with its objectives. For instance, further clarity on the terms of the commercial availability clause could be provided in an agreed statement. In the same spirit as the Treaty's definition of accessible format copy, the phrase 'reasonable terms' could also be replaced with 'equal terms' meaning at the same convenience that sighted persons are able to purchase books on the market. Where the publishing industry within a Contracting Party is particularly proactive and facilitative in providing a wide range of accessible format copies on the market, any burdens caused by this clause may be minimised. However, an additional criterion could be added in for any Contracting Party that wishes to avail itself of this clause to ensure a stagnant or obstructive market does not ensue. Albeit that implementing these revisions would likely be more difficult to achieve than the

---

[181] Article 9(2) Berne Convention [1979]
[182] Justus Dreyling and Teresa Hackett, "Success for People with Print Disabilities: The Marrakesh Treaty" in Jessica Coates et al, *Navigating Copyright for Libraries: Purpose and Scope* (De Gruyter Saur, 2022) 258
[183] Cesar Ramirez-Montes (n11) 34
[184] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 120
[185] WIPO Notifications, see here: <https://www.wipo.int/treaties/en/ShowResults.jsp?search_what=N&treaty_id=843>

World Blind Union's recommended strategy due to the logistics and political compromise involved, wording to this effect may provide a greater level of assurance to beneficiary persons in Contracting Parties where this clause is implemented who may face market complications, while also promoting better consistency with the overall approach of the Marrakesh Treaty.[186]

(d) Remuneration

The fifth and final optional feature under Article 4 is the discretion to subject any national limitations and exceptions made to mandatory remuneration.[187] It follows that details as to the circumstances which will give rise to a requirement of remuneration, the level of remuneration to be paid (i.e., whether to be limited by a condition of reasonableness or not), and so on are all within the purview of national discretion. It is likely that this may follow a similar assessment as carried out under the third limb of the three-step test in terms of assessing the level of 'harm' caused to the copyright holder by the limitation or exception.[188] Considering that economic accessibility has been a particular challenge faced by visually impaired persons in accessing the written word, leaving these matters to be entirely decided at a national level may lead to unnecessary burdens and may disincentivise the creation and distribution of accessible format works particularly in low-income contexts. The World Blind Union recommend that the requirement be avoided entirely.[189] I maintain that a middle-ground approach whereby a reasonableness element is drafted into the wording may offer a more balanced option between the material interests of authors and ensuring that remuneration requirements do not constitute an unreasonable or discriminatory economic accessibility barrier to accessing works.[190]

(e) Overall Flexibility

Ultimately, Contracting Parties retain the discretion to determine how they wish to fulfil the Treaty's obligations according to their national law and practice.[191] This

[186] See Annex – Envisaging the Marrakesh Treaty 2.0 for proposed wording
[187] Article 4 (5) Marrakesh Treaty [2016]
[188] Jingyi Li and Niloufer Selvadurai (n60), 8
[189] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 123
[190] See "Annex – Envisaging the Marrakesh Treaty 2.0" for proposed wording
[191] Article 10 (2) Marrakesh Treaty [2016]

reserves an essential degree of flexibility but, in doing so, may inadvertently encourage the influence of national policy over legislative formulation, particularly, a nation's approach to justifying copyright protection and the model of disability they support. This concern is buttressed by the fact that the Treaty explicitly reserves the discretion of Contracting Parties to factor in their economic situation, social and cultural needs, and their pre-existing international law obligations when formulating exceptions and limitations.[192] Although this gives required flexibility to Global South countries, it may be that there is too great a scope for national discretion that the Treaty's objectives are not met with any hint of harmonisation. How this flexibility has unfolded so far at a national level is considered in Chapter 5.[193]

4.3.3 The International Dynamics of Cross-Border Exchange

Mirroring the format of Article 4, the provisions under Article 5 similarly stipulate an overall obligation with a binding effect, elaborated by a range of options that a Contracting Party may utilise to fulfil it. The effect of this obligation is that, where an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorised entity to a beneficiary person or an authorised entity in another Contracting Party.[194] It follows that unauthorised or infringing copies will not be permitted for exportation. As the book famine is a global problem, this feature is aimed at increasing the circulation of accessible format copies of works internationally. This is particularly important due to the way in which the territoriality of copyright law has restricted the circulation of works.[195] It has been noted that the international exchange of accessible copyright works is critical in light of the significance of technology and resources in the production of accessible formats and the number of countries in the world that share the same language.[196]

There is room for a potential interpretive complication in that the wording of Article 5(1) is constructed in the future tense i.e., if an accessible format copy ***is*** made, not

[192] Article 12 (1) Marrakesh Treaty [2016]
[193] See page 189
[194] Article 5(1) Marrakesh Treaty [2016]
[195] Article 5 Berne Convention [1979]
[196] Lida Ayoubi (n72) 274

has been made. A literalist interpretation would exclude copies which had been produced prior to the ratification of the Treaty in national law. This would of course not be in line with what the Treaty aims to achieve in terms of maximum facilitation, and the idea of needing to reproduce a work in an accessible format copy again after ratifying the Treaty would be an unnecessary duplication of efforts. This would only be the case where a Contracting Party chose to interpret in a literalist manner. However, for the avoidance of doubt, it is recommended that this be clarified in more certain wording both in the Treaty's text,[197] and in national implementing law.

Article 5(2) elaborates on the exchange of accessible format copies by differentiating whom the exchange may occur between.[198] A limitation or exception in national law should permit the exchange between authorised entities based in different Contracting Parties for the exclusive use of beneficiary persons, or directly between an authorised entity and a beneficiary in another Contracting Party.[199] In both cases, the exchange should be permissible without requiring the authorisation of the copyright holder.[200] However, if the authorised entity knows or has reasonable grounds to believe that the intended recipient is not a beneficiary person, or the exchange is not for the use of a beneficiary person, it must not be permitted.[201] Further measures to confirm are required in the case of a direct distribution to a beneficiary person.

Once an accessible format copy of a work has been received by an authorised entity in another Contracting Party, Article 5(4) prescribes further restrictions on what activities may be carried out in respect of the work depending on the status of the Contracting Party's international law obligations.[202] If the recipient authorised entity is located in a Contracting Party which is not subject to the Berne three-step test applicable to the right of reproduction, the accessible format copy must only be reproduced, distributed, and made available within its jurisdiction i.e., no further international exchanges are permitted.[203] Similarly, if the recipient authorised entity

---

[197] See "Annex – Envisaging the Marrakesh Treaty 2.0" for proposed text.
[198] Article 5(2) Marrakesh Treaty [2016]
[199] *Ibid*
[200] *Ibid*
[201] *Ibid*
[202] Article 5(4) Marrakesh Treaty [2016]
[203] *Ibid*, Article 5(4)(a)

is located in a Contracting Party that is not subject to the WIPO Copyright Treaty or does not in any case apply the three-step test to exceptions to the rights of distribution and making available to the public, the accessible format copy can only be distributed or made available within its jurisdiction.[204] These conditions do not mean that such a Contracting Party must apply the three-step test, nor ratify the WIPO Copyright Treaty. However, they are designed to ensure that the limitations imposed by international copyright law are not competitively bypassed in “Berne Gap” countries.[205] Only two of the current Contracting Parties are not a Party to the Berne Convention or indeed any variation of the three-step test.[206] As such, the risk of bypassing international copyright law obligations should not be a widespread risk, provided that these two countries do not violate the terms of the Marrakesh Treaty.

The provisions of Article 5 cannot singularly secure an effective cross border exchange of accessible format copies between countries. While it may be legally permitted for an accessible work to be exported from one country, it would only be beneficial in those countries where national law permits its importation. Thus, Article 5 and Article 6 work in conjunction with each other. The effect of Article 6 is to mandatorily include the importation of works into any national law that is made to permit the making of accessible format copies.[207] However, this is in accordance with national law.[208] If the exporting country’s law permitted changes to the work, for example, but the importing country did not, the importation would not be permissible. Similarly, if a country’s national law permits authorised entities but not beneficiary persons to make accessible format copies, only accessible format copies produced by authorised entities could be imported.[209] Moreover, the importation of works is also subject to the same flexibilities as applicable to Article 4.[210] Namely, Contracting Parties are free to implement the importation right according to their own national design, may apply the commercial availability

---

[204] *Ibid*, Article 5(4)(b)
[205] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 139-140
[206] These two Contracting Parties are Ethiopia and the Marshall Islands
[207] Article 6, Marrakesh Treaty [2016]
[208] *Ibid*
[209] Justus Dreyling and Teresa Hackett (n182) 259
[210] Agreed Statement #10, Marrakesh Treaty [2016]

clause to imported works, and may subject imports to remuneration.[211] This could present some practical challenges for the Treaty's goal of harmonisation and potentially lead to a degree of fragmentation. At present, since there are only four countries that have opted to implement the commercial availability clause, this may not present a significant concern. However, the flexibilities in national design and remuneration apply to all Contracting Parties without notification. Thus, these flexibilities have the potential to cause the most fragmentation in national approach.

Linking both of these provisions together is the overall spirit of international co-operation which is strongly encouraged in Article 9.[212] The wording "shall endeavour" and "voluntary sharing" clearly indicate that there is no obligation on Contracting Parties to fulfil their obligations under the Treaty collaboratively.[213] They may focus their priorities on national compliance, which is a considerable task in itself and indeed a minimum requirement, without going beyond this. However, where they do implement collaboratively, this would lead to a more effective approach to tackling the global book famine in line with the spirit of facilitation and international harmonisation. It is likely that this collaborative spirit will gradually blossom as progress is made at national levels first. It is for this reason that the global mapping of the implementation of the Treaty offered in Chapter 5 is of utmost importance in understanding inconsistencies between national approaches to implementation and how these can be ironed out to achieve a greater level of harmonisation and collaboration. Although creating a mandatory obligation may have led to a greater level of international co-operation, it would not have been practical to do so in light of the complex and multifaceted arena of international relations and political sensitivities between countries.[214] It is something to be encouraged and not coerced.

---

[211] Justus Dreyling and Teresa Hackett (n182) 259
[212] Article 9, Marrakesh Treaty [2016]
[213] *Ibid*
[214] Lisa Martin, "The Political Economy of International Cooperation" in Inge Kaul et al, *Global Public Goods: International Cooperation in the 21st Century* (OUP, 1999) 55-57

4.3.4 Implementation, Monitoring & Enforcement

The implementation of the Marrakesh Treaty is an elusive facet of its provisions. The flexibility that has underpinned the substantive provisions analysed previously also extends here. In order for beneficiary persons to enjoy the positive effects of the Treaty, essential questions are considered here in terms of when the Treaty must be implemented, whom it will be implemented by, how its implementation may be monitored or measured, and whether its implementation is judicially enforceable. All of these points are considered in view of reinforcing the efficacy of the Treaty.

(a) Treaty Implementation: When?

While there are general principles regarding the Treaty's implementation, under which Contracting Parties undertake to adopt the measures necessary to ensure the application of the Treaty,[215] there is no guidance as to when these measures must be adopted. For instance, there is no clear stipulation as to whether the Treaty's obligations are subject to progressive realisation,[216] as in the disability rights field, or are immediately applicable and enforceable i.e., whether there is a time frame between ratifying the Treaty and when implementing legislation must be adopted. Although there is a three-month window between ratification and when the Treaty's provisions become binding on a Contracting Party,[217] this is only when the obligations begin and not when they must be fulfilled. Thus, if the Treaty is going to achieve maximum impact, its implementation must be carried out in a timely manner, particularly in light of the fact that the effects of the global book famine are still felt on a day-to-day basis by beneficiary persons. As is detailed in Chapter 5, the fact that 20 Contracting Parties have still not implemented the Treaty even after five or more years since the Treaty came into force in their jurisdiction further buttresses this argument for the need of a time period for expected implementation.[218] Stipulating a universal time period would not be appropriate given the diversity of countries and national settings at play. However,

[215] Article 10(1) Marrakesh Treaty [2016]
[216] Jerome Bickenbach, "Disability, Culture and the UN Convention" (2009) Disability and Rehabilitation Vol 31:14 1111, 1119
[217] Article 19(b) Marrakesh Treaty [2016]
[218] See page 256

at least incorporating a grace period into Article 10 (1) similar to that adopted in the European Union's Marrakesh Directive could perhaps reduce the risk of non-action or intentional delays.[219] Global South counties should benefit from an extended grace period, in line with the flexibilities they enjoy under the TRIPS Agreement and other international laws.[220] This proviso may stimulate a timelier implementation while also granting enough flexibility for the national legislative process to take its due course.

(b) Treaty Implementation: Who?

In addition to when the Treaty must be implemented, the next question is by whom. Although the legal obligation to implement the provisions of the Treaty rests at a State level within Contracting Parties,[221] it cannot be fulfilled by Governmental actors via a top-down approach alone. Rather, there are a number of key actors and facilitators which, if their part is played effectively, may significantly improve on-the-ground implementation. Indeed, as Land notes, the Marrakesh Treaty creates a scaffolding and rhetorical frame for national actors to make rights claims and participate in intellectual property decision-making from a bottom-up approach.[222] A bottom-up implementation involves a network of interdependent State and non-governmental policy actors whose collaborative efforts over time may contribute to both reforms to the Treaty and changes in its practical operation.[223] Localised empirical research has been carried out to shed light on the role of these national actors in the implementation of copyright policy in practice.[224]

One of the most prominent types of national actors discussed in the literature are libraries.[225] It is noted that the definition of authorised entity was intentionally

---

[219] Article 11, Directive (EU) 2017/1564 of the European Parliament and of the Council
[220] See "Annex – Envisaging the Marrakesh Treaty 2.0" for proposed text.
[221] Article 4(1)(a) Marrakesh Treaty
[222] Molly Land (n10) 549
[223] Anthony Giannoumis and Wondwossen Beyene, "Cultural Inclusion and Access to Technology: Bottom-Up Perspectives on Copyright Law and Policy in Norway" in Margherita Antona and Constantine Stephanidis, *Universal Access in Human-Computer Interaction: Applications and Practice* (Springer, 2020) 343
[224] *Ibid*, 353
[225] Samuel Macharia et al, "Framework for the Provision of Information to the Visually Impaired in Academic Libraries in Compliance with the Marrakesh Treaty" (2022) International Federation of Library Associations and Institutions Vol 48:4 727–741; Samuel Macharia et al, "Exploiting the Marrakesh Treaty to Obviate Copyright-related Challenges on Access to Information by Visually Impaired People in Academic Libraries" (2020) Library Management Vol. 41:4/5 235-246

drafted expansively to ensure that a range of libraries would be included, and not merely 'specialised libraries' which only serve beneficiary persons.[226] This is in line with the full inclusion of persons with disabilities in mainstream society, and a move away from segregated approaches. Of these libraries, the International Federation of Library Associations and Institutions (IFLA) is well positioned for a prominent role in the implementation of the Marrakesh Treaty through advocacy programmes, advisory functions, and monitoring schemes, among others.[227] Influential disability rights advocacy institutions, such as the World Blind Union and the Royal National Institute for the Blind, will also be key stakeholders and indeed have been involved in meetings of the Assembly.[228] In order for educational accessibility to be improved, it is recommended that educational institutions also play a proactive role. Additionally, even though the exceptions that the Treaty models do not require permission from copyright holders, their role and that of publishing associations and collective rights management organisations cannot be overlooked. Collaborative efforts between institutional actors in both fields would provide the most effective way forward. Finally, a category of national actor that is not as commonly identified as having an important role in the implementation of the Marrakesh Treaty are companies and organisations within the ICT sector.[229] The digitisation and electronic transmission of accessible format copies makes for the most efficient means of producing works and making them available to beneficiaries, though it is a double-edged sword in that it also carries the greatest risk of content piracy.[230] In order for accessibility technologies and the companies that create them to be of use in granting access to beneficiary persons, an enabling legal framework is necessary which is now provided, at least to an extent,

---

[226] Francisco Javier Martínez Calvo**,** "The Role of Libraries in the Implementation of the Marrakesh Treaty for Persons with a Print Disability" (2014) available here: <https://library.ifla.org/id/eprint/913/>

[227] Fredrick Otike et al, "IFLA's Role in the Implementation of the Marrakesh Treaty" (2023) International Federation of Library Associations and Institutions Vol 49:2, 457-459

[228] See for example, WIPO, "Assembly - Status of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled" First (1st Ordinary) Session Geneva, October 3 to 11, 2016 MVT/A/1/2 REV

[229] Jingyi Li, "Facilitating Access to Digital Content for the Print Disabled" (n101) 380; Paul Harpur, *Discrimination, Copyright and Equality* (n31) 26-30

[230] Abigail Rekas, "Access to Books: Human Rights, Copyright and Accessibility" in Margherita Antona, *Universal Access in Human-Computer Interaction: Applications and Services for Quality of Life* (Springer, 2013) 386

by the Marrakesh Treaty.[231] In light of the benefits and the risks, collaboration with technological institutions becomes all the more imperative to ensure the effective delivery of accessible format copies of works in a way that eliminates, or at least substantially reduces, the opportunity for illicit activities. It is noted that patent law may pose some obstacles with respect to certain technology platforms.[232] However, a discussion of patent law is outside the scope of this thesis.

In addition to whom the Marrakesh Treaty is to be implemented by, it is pertinent to also consider with whom the oversight of the Treaty's operation rests at a Treaty-body level. As per Article 14, [233] administrative oversight of the Treaty's operation is held by the International Bureau which functions as the Secretariat of WIPO, headed by the Director General.[234] In relation to the Marrakesh Treaty, the International Bureau is involved in: reporting to the Assembly on the status of accession and ratification of the Treaty,[235] reporting on the work of the Accessible Books Consortium,[236] promoting the Treaty by hosting national, regional, and inter-regional events,[237] providing legislative assistance to Contracting Parties,[238] preparing the Rules of Procedure for the operation of the Assembly,[239] and managing an information access point on the Treaty including collecting data via questionnaires on Treaty implementation.[240] All of these tasks are essential in

---

[231] Caroline Ncube et al, "Beyond the Marrakesh VIP Treaty: Typology of Copyright Access-enabling Provisions for Persons with Disabilities" (2020) The Journal of World Intellectual Property Vol 23:3-4 149, 153-154

[232] Patrick Hely, "A Model Copyright Exemption to Serve the Visually Impaired: An Alternative to the Treaty Proposals before WIPO" (2010) Vanderbilt Journal of Transnational Law Vol 43:5 1369, 1404

[233] Article 14 Marrakesh Treaty [2016]

[234] Article 9, Convention Establishing the World Intellectual Property Organization (as amended on September 28, 1979)

[235] WIPO, "Assembly - Status of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled" First (1st Ordinary) Session Geneva, October 3 to 11, 2016 MVT/A/1/2 REV

[236] WIPO, "Assembly – Report on the Accessible Books Consortium" Second (2nd Ordinary) Session Geneva, October 2 to 11, 2017 MVT/A/2/INF/1 REV.

[237] See for example, WIPO, "Assembly – Status of the Marrakesh Treaty" Fourth (4th Ordinary) Session Geneva, September 30 to October 9, 2019, MVT/A/4/1

[238] See for example, WIPO, "Assembly – Status of the Marrakesh Treaty" Fifth (5th Ordinary) Session
Geneva, September 21 to 29, 2020 MVT/A/5/1

[239] WIPO, "Assembly – Rules of Procedure" First (1st Ordinary) Session Geneva, October 3 to 11, 2016 MVT/A/1/1

[240] WIPO, "The Marrakesh Treaty" <https://www.wipo.int/marrakesh_treaty/en/>

ensuring that the work of the Marrakesh Treaty maintains momentum and dynamism, and does not become static or stagnant.

More substantive oversight of the Treaty's operation comes within the domain of the Assembly constituting an annual meeting of delegates representing each of the Treaty's Contracting Parties.[241] It is within the Assembly's role to deal with matters concerning the maintenance, development, application, and operation of the Treaty, though without elaboration into what is covered under these categories.[242] They also have a function in terms of the admission of Intergovernmental Organisations as Contracting Parties to the Treaty,[243] and they may convene a diplomatic conference for the purposes of revising the Treaty,[244] or indeed any other required ad hoc meeting.[245] To date, there have been eight sessions of the Assembly since the Treaty's entry into force.[246] The format of these meetings has been for delegates representing certain Contracting Parties to provide feedback on the Treaty-related activities and initiatives being run within their jurisdiction.[247] This has meant that the extent of detail provided on national activities has depended on how forthcoming delegates have been about their country's progress, and this can be seen in how the length of each feedback report varies significantly.[248] Moreover, feedback from delegates often contains flattering language concerning the importance of the Treaty with political statements as to national intentions, yet without any detail on the status of national law.[249] This has only been provided in a

[241] Article 13, Marrakesh Treaty [2016]
[242] *Ibid*, Article 13(2)(a)
[243] *Ibid*, Article 13(2)(b)
[244] *Ibid*, Article 13(2)(c)
[245] *Ibid*, Article 13(5)
[246] WIPO, "Marrakesh Treaty – Assembly" <https://www.wipo.int/meetings/en/topic.jsp?group_id=302>
[247] See, for example, WIPO, "Assembly – Report" Third (3rd Ordinary) Session Geneva, September 24 to October 2, 2018, MVT/A/3/2
[248] *Ibid*, page 3
[249] *Ibid*, page 4

robust manner by a handful of delegates over the years: Turkey in the 1st session,[250] Ecuador in the 4th session,[251] and Colombia in the fifth session.[252]

Overall, the Assembly functions as a helpful forum for discussion and diplomatic cooperation between Contracting Parties. It does not, however, investigate the extent to which Contracting Parties have implemented the Treaty in their national laws or hold them to account in any strict legal sense. The Assembly's authority to call for revisions to the Treaty is also yet to be exercised. Moreover, over time, the discussions of the Assembly have become increasingly light-touch from a 15-page report at the first meeting,[253] down to 6-page reports shortly after.[254] Consequently, reports of the Marrakesh Treaty Assembly have now been consolidated as part of the reports from all WIPO Assemblies,[255] with the last individual report being published at the sixth session in 2021.[256] While this may give the discussion of matters pertaining to the Marrakesh Treaty a wider platform among other WIPO Members who are not currently Party to the Treaty, it does not give the Treaty as much focal attention as is desirable in the midst of the discussions of twenty-one other Assemblies.

Overall, the potential role that the Assembly could play in reinforcing the progress of the Treaty under the broad scope of the function and authority granted to them under Article 13 is not being fully utilised at present. An alternative format, similar to that of the EU Open Method of Cooperation whereby EU countries are evaluated by one another,[257] may prove a more effective method of monitoring than relying

---

[250] WIPO, "Assembly – Report" First (1st Ordinary) Session Geneva, October 3 to 11, 2016 MVT/A/1/3
[251] WIPO, "Assembly – Report" Fourth (4th Ordinary) Session Geneva, September 30 to October 9, 2019, MVT/A/4/2
[252] WIPO, "Assembly – Report" Fifth (5th Ordinary) Session Geneva, September 21 to 25, 2020, MVT/A/5/2
[253] MVT/A/1/3 (n250)
[254] WIPO, "Assembly – Report" Second (2nd Ordinary) Session Geneva, October 2 to 11, 2017 MVT/A/2/2
[255] See WIPO, "Assemblies of the Member States of WIPO" Sixty-Third Series of Meetings Geneva, July 14 to 22, 2022 A/63/10, and WIPO, "Assemblies of the Member States of WIPO" Sixty-Fourth Series of Meetings Geneva, July 6 to 14, 2023 A/64/14
[256] WIPO, "Assembly - Report" Sixth (6th Ordinary) Session Geneva, October 4 to 8, 2021 MVT/A/6/2
[257] European Parliament, "The Open Method of Coordination: At a Glance" (October 2014) https://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf

on individual reports from Contracting Parties as at present. However, instead of each Contracting Party evaluating each other, those countries identified in Chapter 5 as adopting exemplary approaches to the implementation of the Treaty should play a greater role in assisting those who have taken partial or limited approaches to implementation, or indeed have not done so at all. Another option could be for the Assembly itself to establish a subsidiary body within its auspices to conduct a more top-down evaluation of national implementation monitoring or do so via an existing WIPO body such as the WIPO Standing Committee on Copyright and Related Rights.[258]

(c) Treaty Implementation: Measurement?

A key consideration in assessing the implementation of the Marrakesh Treaty is how its purpose and objectives are to be monitored and measured. The flexibilities that the Treaty embodies makes a blanket measurement or one-size-fits-all approach impractical. How much progress is being made will essentially depend on the starting position, national factors including institutional capacity and economic status, and the legislative approach adopted to national lawmaking. A first important stage of measurement is a doctrinal evaluation into how the Treaty has been implemented within national contexts, and how this has widened the scope of access by beneficiary persons at a legislative level. This assessment is carried out from an international perspective in the subsequent chapter. Further quantitative measurements could be made regarding the number of accessible format copies of works available to beneficiary persons within a Contracting Party, held by libraries or within educational institutions. More meaningful, qualitative measures may evaluate the extent to which educational attainment and employment rates improve post Treaty implementation, though it may take longer to see these numbers improve. Ayoubi suggests that the Treaty should be subject to impact assessment by human rights bodies.[259] As far as legal accountability goes, it is clear that the monitoring of the operation of the Treaty is not subject to the authority of international treaty bodies such as the Committee on the Rights of Persons with

[258] WIPO, “Standing Committee on Copyright and Related Rights (SCCR)” <https://www.wipo.int/policy/en/sccr/>
[259] Lida Ayoubi, “Deciphering the “Right to Read” (n55) 294-296

Disabilities. On the one hand, this is appropriate given that human rights bodies do not have the expertise on copyright law policy to monitor the Treaty's implementation. On the other, neither do intellectual property law bodies have the expertise to consider whether the Treaty has been successful in meeting its disability rights objectives. Thus, while not subject to international human rights bodies, it is recommended that bodies in both fields cooperate effectively for the fulfilment of the Treaty: such harmonised approach is recommended by the World Blind Union.[260] Indeed, the objective and operation of the Treaty is intricately intertwined with the objectives and operation of other international human rights treaties, such that the implementation of the Treaty will be of vital significance to those bodies whose reports and recommendations concerning the Treaty will naturally be highly influential to the discussion of the Assembly. This can also be seen in the way that the Committee on the Rights of Persons with Disabilities (CRPD Committee) has utilised the Marrakesh Treaty within its Concluding Observations on State Parties,[261] and in its General Comment No. 4 on the right to inclusive education,[262] to further buttress the international shift in policy towards copyright and disability access rights.

(d) Treaty Enforcement: Justiciability?

Perhaps an even more vital aspect to consider about the Marrakesh Treaty is the enforcement of its obligations. A mandatory exception without an effective implementational enforcement mechanism is at risk of becoming 'dead letter' law and not truly functioning as a 'hard law' instrument in practice. Thus, a statement as to the significance of the Treaty due to its mandatory hard law nature cannot be fully justified without a critical consideration of its enforcement. These issues are of central significance to the subsequent ability of the Treaty to attain its disability rights objectives. In other words, an enquiry into what legal options would be available to beneficiary persons, or indeed authorised entities acting on their

[260] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 177
[261] Discussed further in Chapter 5. See, for example, Concluding Observations on the Initial Report of Armenia CRPD/C/ARM/CO/1
[262] See Committee on the Rights of Persons with Disabilities, General Comment No. 4, "Article 24: Right to Inclusive Education" [2016] CRPD/C/GC/4, para 22, encouraging the ratification of the Marrakesh Treaty

behalf, where either a Contracting Party or a copyright owner breaches their obligations under the Treaty is an essential consideration.

There is no reference to enforcement within the Marrakesh Treaty itself, nor any mention of sanctions that may apply where a Contracting Party were not to fulfil their obligations. In this sense, and unlike the TRIPS Agreement, the Treaty does not come with "teeth."[263] Article 10 does require Contracting Parties to undertake the measures necessary to ensure the application of the Treaty, however, emphasis on *application* and not *enforcement*. Thus, the obligation is in respect of ensuring the Treaty's provisions have legal effect within national law, but not in terms of how they are enforced. Furthermore, enforcement does not come within the purview of either the WIPO International Bureau or the Assembly explored above. The conclusion, therefore, is that enforcement of the Treaty's provisions remains within national discretion in the absence of a stipulation to the contrary. In this respect, the World Blind Union offer recommendations on how Contracting Parties may ensure the effective enforcement of Treaty rights via the creation of legal remedies, including damages and injunctions, ensuring judicial enforcement mechanisms are in place, and attributing oversight to national institutions in monitoring violations of Treaty rights.[264] These measures would indeed give more weight to the rights of beneficiaries under the Treaty. However, the fact that they are not mandatory places too heavy a reliance on the political goodwill of Contracting Parties.

As with the role of the Courts in judicially enforcing the CRPD rights referred to in Chapter 3,[265] the extent to which a Court may intervene will predominantly depend on the way in which the provisions of the Treaty have been domesticated. The decisions in two recent cases give promising indications that the accessibility rights of Marrakesh Treaty beneficiaries can be effectively judicially enforced at the national level. The most recent of these two cases reached the Constitutional Court of South Africa where it was decided that certain provisions in the South African Copyright Act are unconstitutional, invalid, and inconsistent with the rights of

[263] Laurence Helfer, "Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking" (2004) Yale Journal International Law Vol 29:1-2, 1-83
[264] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty* (n1) 172-176
[265] See page 125

persons with visual impairments in as much as they discriminatorily limit accessibility to the written word.[266] In doing so, the Constitutional Court elevated the rights of persons with visual impairment above copyright interests in landmark fashion.[267] What is even more remarkable is the Constitutional Court's reliance on the Marrakesh Treaty in their judgement, and their decision to transpose some of its text into South African Copyright Act temporarily while legislative amendments were being processed at a Parliamentary level, despite South Africa not being a Contracting Party to the Treaty.[268] While not all of the Treaty's Contracting Parties may share the same sentiments or approach to constitutionally enforcing the rights of persons with visual impairments, it is hoped that this case may have a positive ripple effect on the Treaty's domestic judicial enforcement. Indeed, another recent case in the United States District Court for the Central District of California concerning the accessibility of education saw another win for the rights of visually impaired persons.[269] The case discovered a failure to provide meaningful access to accessible documents, course materials, and educational technology.[270] There was no specific mention of the Marrakesh Treaty, but the case did occur after the Treaty was implemented in the US by the Marrakesh Treaty Implementation Act [2018].[271]

While the above cases are positive signs, in the spirit of sharpening the efficacy of the Treaty, it is proposed here that the Assembly is advised to consider rewording the Article 10(1) provision to include the terminology of enforcement.[272] Doing so would still preserve sufficient discretion in the hands of Contracting Parties as to

---

[266] Blind SA v Minister of Trade, Industry and Competition and Others [2022] ZACC 33. See also Caroline Ncube and Sanya Samtani "Copyright, Disability Rights, and the Constitution: Blind SA v Minister for Trade, Industry and Competition" (2023) Constitutional Court Review Vol 13:1 471-503

[267] Paul Harpur et al, "South African Constitutional Court Prioritises Constitutional Right to Access Information by Print Disabled Over Protected Copyright Interests" (2023) European Intellectual Property Review Vol 45:5, 299-305

[268] Blind SA v Minister of Trade (n266) 46-48

[269] Roy Payan v Los Angeles Community College District [2021] Case Nos. 19-56111 and 19-56146. See also: National Federation of the Blind, "Federal Court Rules in Favor of Blind Students" (21 August 2019) available here: <https://nfb.org/about-us/press-room/federal-court-rules-favor-blind-students> accessed 03.11.2023. These two cases are illustrative. Note, however, that the scope of the thesis does not permit a wider investigation into any further constitutional cases that may have arisen in other Contracting Parties, such as in Mexico: Supreme Court of Justice of the Nation, "Copyright Article 148, Section VIII, of the Relative Federal Law does not Violate Property and Copyright Rights, Nor Is It Unconventional" 2a./J. 83/2016 (10th) available here: <https://bj.scjn.gob.mx/doc/tesis/YPVpMHYBN_4klb4HqN4j/%22Obras%20audiovisuales%22>

[270] *Ibid*

[271] The Marrakesh Treaty Implementation Act [2018] 17 USC 101 132 STAT. 3667

[272] See "Annex – Envisaging the Marrakesh Treaty 2.0" for proposed text.

what legal remedies, judicial channels, or other measures of enforcement they may provide, but in the minimum requires that some are provided. This would be in line with the format of Articles 4 & 5 in providing a general obligation with flexibility on how it is fulfilled. As a backstop option, beneficiaries may utilise the CRPD infrastructure to report violations of their rights, particularly through individual communications, since a failure to provide cultural materials in accessible formats would be a breach of the Article 30 right.[273] However, this is dependent on the Contracting Party being party to the CRPD's optional protocol.[274] This backstop option would therefore not be available to beneficiaries in the US, for instance, which has not ratified the CRPD.

4.4 Concluding Remarks

There is no doubt that the adoption of the Marrakesh Treaty marks a significant step forward in improving the accessibility of the written word for beneficiary persons. To arrive at a hard law, multilateral instrument on exceptions and limitations to copyright under the auspices of WIPO which has the promotion of disability rights at its heart is itself a creditable achievement. Despite the intense negotiations that preceded it, initial reluctance and calls for alternative solutions, the Marrakesh Treaty nevertheless represents the possible step forward that WIPO Members were able to garner enough diplomatic support behind. The provisions of the Treaty are most impressive in the expansive definitions provided which, if implemented fully, have the potential to substantially widen the scope of beneficiaries who may access works, the scope and level of accessibility of the works in question, and the range of national actors who may produce and distribute them. The Treaty's bottom-up approach to implementation is also one of its key strengths. However, the story does not end there. There is yet more progress to be made in addressing the global book famine and ensuring that copyright law does not stand in the way of the fundamental rights of persons with disabilities. Accordingly, this chapter has provided an in-depth investigation into the many facets of the Treaty and offered original recommendations as to how it may be

[273] Article 30(3), CRPD [2008]
[274] States Parties must have ratified the Optional Protocol, see: Committee on the Rights of Persons with Disabilities, "Individual Communications" <https://www.ohchr.org/en/treaty-bodies/crpd/individual-communications>

textually improved, better enforced, and its implementation effectively monitored. Although it is recognised that negotiating these revisions would entail similar political debate and compromise to that involved in the drafting of the original Treaty, the imagining of an ideal text has value regardless in that it may inspire change in the right direction, facilitate an improved model for future Treaty-making on exceptions and limitations, provide guidance to disability rights activists on areas of concern to focus on in lobbying and the campaigning strategies of non-governmental organisations, or may even lead to some (if not all) changes being adopted. In implementing the Marrakesh Treaty, Contracting Parties should steer away from purely author-centric policies of copyright protection and more towards a rebranded version of copyright as a social good from a dualistic perspective. Similarly, they should adopt the social and human rights models of disability complementarily with a move away from individual models. Moreover, this should be done with a holistic approach to adopting the disability rights principles the Treaty incorporates, not just in terms of access to works but in viewing the Treaty as one important tool in the toolbox of national measures.

Chapter 5: International Obligations, National Approaches, and Remaining Gaps – Global Perspectives on the Implementation of the Marrakesh Treaty

5.1 Introduction

The core objective of the Marrakesh Treaty in facilitating access to works for beneficiary persons is to be achieved in the first instance through legislative shifts in the national law of its Contracting Parties.[1] Once this shift has occurred, on-the-ground progress can be made to a much greater extent in the work of authorised entities and a more free-flowing circulation of accessible works.[2] In the spirit of this shift, and as discussed in the preceding chapter, the Treaty further aims to harmonise national laws on limitations and exceptions, and to rebrand copyright law as a social tool.[3] Each Contracting Party's policy approach to the justification of copyright protection and the model(s) of disability it adopts are particularly

[1] Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals* (Oxford University Press, 2017) 69
[2] *Ibid*
[3] Preamble, The Marrakesh Treaty [2016]

influential in whether this harmonisation and rebranding are achieved. In answer to research sub-question five, the purpose of this chapter is to provide a robust global analysis on the extent to which the Marrakesh Treaty has been successful in stimulating this legislative shift. While the question of *how* the Marrakesh Treaty has been implemented domestically amongst its Contracting Parties is a central question, this would be a surface level consideration only. The adoption of legislative change at a national level is, in any sphere of law, an intricate process involving a variety of political, economic, and philosophical factors.[4] In the context of an international law, and one which touches sensitively on the balance between the rights of authors on the one hand, and the rights of persons with disabilities on the other, this becomes increasingly so. Thus, of more pressing importance is an enquiry into *why* it has been implemented in such a way, or not at all as the case may be. This understanding fundamentally informs a clearer and more holistic perspective of the progress the Marrakesh Treaty has made in moving towards the realisation of the rights of beneficiary persons, and highlights challenges which need to be addressed to further facilitate the Treaty's efficacy. The discussion here begins in Section 5.2 with a demographical overview of the Treaty's current Contracting Parties, their national development status and the legal obligations they are required to fulfil from both the international copyright law regime and in disability rights law. These contextual factors influence the scope each Contracting Party has in its capacity for national law making. Following on from this, Contracting Parties that have adopted legislation to implement the Treaty in their national laws are analysed in Section 5.3 under three broad categories: exemplary approaches, partial approaches, and minimal approaches to implementation depending on the extent of their implementing laws. Finally, Contracting Parties that have not yet fulfilled their obligations in adopting national legislation to implement the Treaty are discussed in Section 5.4. Overall, trends in implementation and non-implementation are highlighted and recommendations are made on addressing these areas to further facilitate the Treaty's efficacy.

[4] James Maclean, *Rethinking Law as Process: Creativity, Novelty, Change* (Routledge, 2012) 188

5.2 Understanding Contracting Parties – A Preliminary Overview of the Marrakesh Treaty's Demographic

The harmonisation of limitations and exceptions to copyright among all of the Treaty's Contracting Parties is an ambitious and complex task given the diversity of countries involved.[5] The flexibility that each party has in implementing the Treaty differs according to the extent of their international law obligations, and their economic capacity to pool resources into the production and distribution of accessible format copies of works also varies according to their national income levels. This preliminary section outlines this diversity before going into a full-scale analysis of national laws in the subsequent sections.

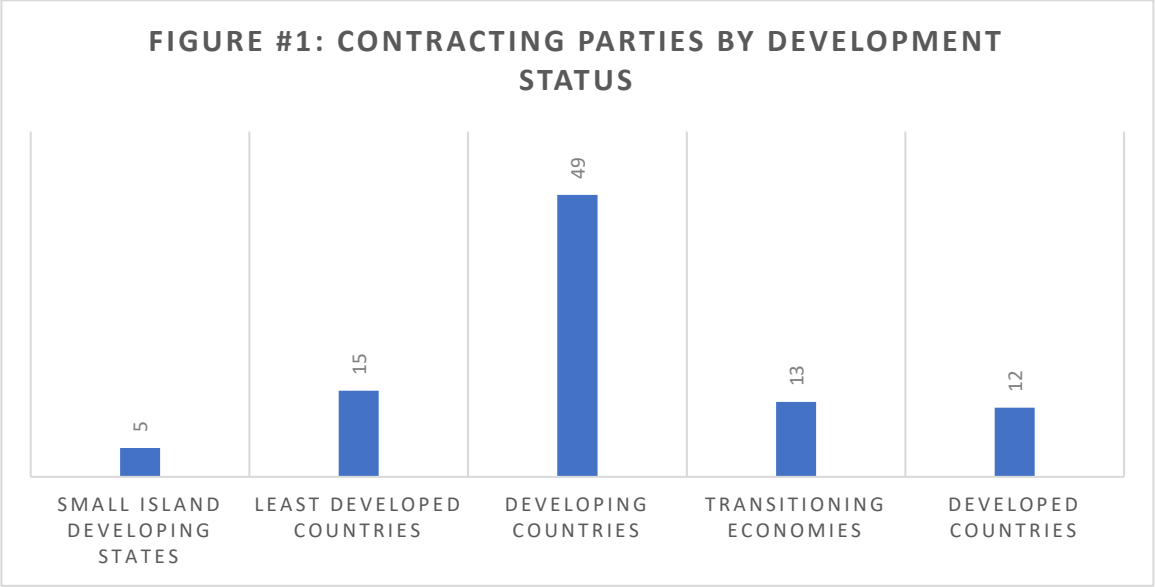
5.2.1 Membership & National Development Status

It is of preliminary note that the language of developed, developing, and least-developed carries with it an assumption that all countries are expected to develop in the same way or to the same extent. An alternative classification which avoids this assumption would be to classify by income, according to the World Bank's system.[6] However, the Marrakesh Treaty itself uses the language of developing and least developed, noting how the majority of persons with visual impairments or print disabilities live in these countries.[7] This terminology is also employed by the UN,[8] WIPO,[9] and the WTO[10] particularly in affording additional flexibilities in law making and legal obligations regarding intellectual property. Thus, for the purposes of consistency with the Treaty's language and that of the intergovernmental organisations under whose auspices come the international laws of importance to this thesis, it is also adopted here using the UN Classification of Countries.[11] Understanding the demographic of Contracting Parties is pertinent as the non-profit

---

[5] See Figure #1 in Section 5.2.1 below.
[6] The World Bank, "World Bank Open Data" <https://data.worldbank.org/>
[7] Para (e), Marrakesh Treaty [2016]
[8] United Nations Committee for Development Policy, "List of Least Developed Countries (as of 18 December 2013)" <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf>
[9] WIPO, "Division for Least-Developed Countries" <https://www.wipo.int/about-wipo/en/activities_by_unit/index.jsp?id=46>
[10] World Trade Organisation, "Who are the Developing Countries in the WTO?" <https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm>
[11] United Nations, "World Economic Situation and Prospects" (4 January 2024) available here: <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP_2024_Web.pdf>

work of authorised entities will primarily rely on public funding which will vary according to national resources. The following figure provides a snapshot of this demographic.



This graph shows that the majority of the Treaty's Contracting Parties are developing countries (approximately 52%),[12] combined with a further 35% which are either least developed countries, small developing islands, or transitioning economies.[13] The fact that the Contracting Parties with the least scope for the allocation of financial resources to the work of authorised entities are a majority may bear impact on the production and circulation of accessible format copies of works. This goes to emphasise the importance of the role of developed and transitioning economy countries in the Global North who are in a stronger economic position to support the work of the Treaty.

5.2.2 Membership & International Law Obligations

Contracting Parties must implement the Marrakesh Treaty within the contours of their international obligations both under the international human rights and international copyright law regimes. As such, these may either function as reinforcers or confiners of national law making. The terrain here is complex with differing obligations depending on which international laws Contracting Parties are

[12] 49 out of 94 countries: 52.1%
[13] 33 out of 94 countries: 35.1%

bound by. Specifically, whether they are Party to the Convention on the Rights of Persons with Disabilities (CRPD) and therefore obliged to fulfil the rights of persons with disabilities and indeed the Article 30(3) mandate specifically, and whether they are bound by the three-step test and other minimum standards of exclusive rights prescribed by the Berne Convention, TRIPS Agreement, and the WIPO Copyright Treaty.[14] This is particularly important to point out given the nuances in the Treaty's approach to countries that do not have these obligations (i.e., Berne gap countries).[15] National policy factors are also influential in national law making and are considered in later sections.

5.2.2.1 International Human Rights & Disability Rights Law Obligations

It is a positive sign to note that all but three of the Marrakesh Treaty's Contracting Parties have either ratified or acceded to the Convention on the Rights of Persons with Disabilities and are therefore bound to fulfil the rights contained therein.[16] Of most significance to this thesis is that they are required to fulfil the Article 30(3) obligation. Moreover, they should theoretically be more accustomed to the human rights and social models of disability through the CRPD's influence. The three Contracting Parties that have not ratified or acceded to the CRPD – Liechtenstein, Tajikistan, and the United States – are all signatories and bound at least to refrain from acts that would defeat the object and purpose of the CRPD.[17] It is worth noting here that Cameroon only recently ratified the CRPD in September 2023.[18] As such, its national law may need additional reform in implementing both the CRPD and the Marrakesh Treaty. It is also important to consider the extent to which Contracting Parties have ratified or acceded to the CRPD's Optional Protocol as it establishes important mechanisms for individual complaints and

---

[14] The Berne Convention [1979]; TRIPS Agreement [1995]; WIPO Copyright Treaty [1996]
[15] Article 5(4), Marrakesh Treaty [2016]
[16] United Nations Treaty Collection, "Status of Treaties: Convention on the Rights of Persons with Disabilities" <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en>
[17] United Nations Department for Economic and Social Affairs Disability, "Chapter Four: Becoming a Party to the Convention and the Optional Protocol – Joining the Convention" <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-four-becoming-a-party-to-the-convention-and-the-optional-protocol.html>
[18] UN Treaty Body Database, "Ratification Status for CRPD - Convention on the Rights of Persons with Disabilities" <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD>

inquiry procedures which are invaluable in monitoring and putting CRPD rights into practice.[19] As was noted in the preceding chapter, these avenues may be helpful for the Treaty's beneficiary persons in the event that their right to accessible format copies of works is violated.[20] In terms of individual communications, 42 Contracting Parties have not accepted to participate in the procedures – almost half of the Treaty's demographic.[21] Regarding Committee-led inquiries, 45 Contracting Parties have not accepted which includes all 42 that have not accepted the individual communications procedure, plus three additional countries.[22] What is concerning about this is that beneficiary persons in these countries do not have the option to submit an individual complaint to the CRPD Committee should their right to participation in cultural life, education, or their rights under the Marrakesh Treaty be breached, nor can the CRPD Committee initiate an inquiry should any of these countries breach their obligations in respect of accessible works in a widespread manner.[23] Thus, it will be all the more imperative that alternative and effective procedures are established within these Contracting Parties to ensure that the rights of beneficiaries are not being hindered.

In terms of the wider human rights framework, it is also worthy to note the obligations that Contracting Parties may have under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) since it also provides for the right to cultural life more generally.[24] There are only 9 Contracting Parties that are not party to the ICESCR,[25] with a further 2 signatories.[26] Most importantly, two of the

[19] Articles 1 and 6 respectively of the Optional Protocol to the Convention on the Rights of Persons with Disabilities [2006]
[20] See page 187
[21] The countries are Barbados, Belarus, Belize, Botswana, Cabo Verde, Cameroon, China, Comoros, Côte d'Ivoire, Democratic People's Republic of Korea, Ethiopia, Iceland, India, Indonesia, Israel, Japan, Jordan, Kenya, Kiribati, Kyrgyzstan, Lesotho, Liberia, Liechtenstein, Malawi, Malaysia, Marshall Islands, Mauritius, Norway, Pakistan, Philippines, Qatar, Russian Federation, Singapore, Sri Lanka, Switzerland, Tajikistan, Trinidad and Tobago, UAE, USA, Uzbekistan, Vanuatu, and Viet Nam.
[22] The three additional countries are Republic of Korea, Republic of Moldova, and São Tomé and Príncipe.
[23] States Parties must have ratified the Optional Protocol, see: Committee on the Rights of Persons with Disabilities, "Individual Communications" <https://www.ohchr.org/en/treaty-bodies/crpd/individual-communications>
[24] Article 15, ICESCR [1976]
[25] These countries are Botswana, Cook Islands, Kiribati, Malaysia, Saint Lucia, Saudi Arabia, Singapore, UAE, Vanuatu
[26] Comoros and the United States of America

three Contracting Parties that are only signatories to the CRPD have at least ratified the ICESCR and are therefore bound to fulfil the rights to cultural life and education for everyone, even if not for persons with disabilities specifically.[27] The only Contracting Party that is merely a signatory to both the CRPD and the ICESCR is the United States.[28] It should be noted, however, that being a party to the CRPD and/or the ICESCR does not provide any conclusions in itself as to whether a Contracting Party is particularly active in facilitating the realisation of CRPD rights, nor indeed gives any indication as to national policy approach. More light can be shed on this through the analysis of national laws, including the Concluding Observations of the Committee on the Rights of Persons with Disabilities (CRPD Committee), in the subsequent sections.

5.2.2.2 International Copyright Law Obligations

As was discussed in depth in Chapter 2, the international copyright law regime consists of a triage of bedrock international laws: the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty.[29] These three instruments contain iterations of the three-step test applicable to the Marrakesh Treaty.[30] It is important therefore to highlight which Contracting Parties are obliged to comply with these laws. The Berne Convention is the most widely subscribed to with 181 members.[31] There are only two Contracting Parties that are not members: Ethiopia and the Marshall Islands. This means that, excluding the European Union as an Intergovernmental Organisation which features its own three-step test, 91 of the Treaty's 94 Contracting Parties are held to Berne's standards on the exclusive rights of authors, and indeed the applicability of the three-step test to the right of reproduction. Following this is the TRIPS Agreement with 164 members who are bound by the Agreement as part of their WTO membership.[32] There is a bigger gap here with 13 Contracting Parties not obligated by the TRIPS Agreement: 8

[27] Article 13, ICESCR [1976]
[28] UN Treaty Body Database (n18)
[29] The Berne Convention [1979]; TRIPS Agreement [1995]; WIPO Copyright Treaty [1996]
[30] Article 11, Marrakesh Treaty [2016]
[31] WIPO-Administered Treaties, "Berne Convention" <https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15>
[32] World Trade Organisation, "Members and Observers" <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm>

observers,[33] and 5 non-affiliated.[34] Thus, these 13 Contracting Parties have greater scope in national law making in that they do not need to apply the three-step test to other exclusive rights (i.e., the right of distribution and making available to the public).[35] This could lead to a greater distribution of works both nationally and internationally between this group of countries. Finally, the least-subscribed international copyright law is the WIPO Copyright Treaty with 116 members and 24 Contracting Parties that are not bound by its provisions: 4 signatories,[36] and 20 non-affiliated.[37] These countries need not extend the applicability of the three-step test to limitations and exceptions pertaining to works in the digital realm,[38] meaning that there may be greater scope for the digital production and distribution of accessible format copies of works within these jurisdictions.

Out of this data, there are four Contracting Parties in particular with the most flexibility in terms of obligations from international copyright law: Ethiopia, the Marshall Islands, the Democratic People's Republic of Korea, and Turkmenistan. Both Ethiopia and the Marshall Islands are not a Party to any of the three international laws and are therefore not bound by any variation of the three-step test. Turkmenistan and the Democratic People's Republic of Korea are only a party to the Berne Convention and not (yet) TRIPS or the WIPO Copyright Treaty, and so need only comply with the three-step test in relation to the right of reproduction.[39] This in theory provides greater scope for national law making on exceptions and limitations in fulfilment of the Treaty's obligations in these countries.

---

[33] These eight countries are: Azerbaijan, Belarus, Comoros, Ethiopia, São Tomé and Príncipe, Serbia, Turkmenistan, Uzbekistan

[34] These five countries are: Cook Islands, Democratic People's Republic of Korea, Kiribati, Marshall Islands, and San Marino

[35] The Berne Convention three-step test only applies to the right to reproduction, see: Article 9(2), Bernece Convention [1979]

[36] These four countries are: Bolivia, Israel, Kenya, and Venezuela

[37] These twenty countries are: Bangladesh, Brazil, Cameroon, Central African Republic, Cote D'Ivoire, Democratic People's Republic of Korea, Ethiopia, Iceland, Lesotho, Liberia, Marshall Islands, Mauritius, Norway, Pakistan, Rwanda, Saudi Arabia, Sri Lanka, Turkmenistan, Tanzania, and Zimbabwe.

[38] Article 10(1), WIPO Copyright Treaty [1996]

[39] Article 9(2), Berne Convention [1979]

5.3 Success, Stagnation, and All Things In Between – Tracking National Approaches to Implementing the Marrakesh Treaty So Far

The Marrakesh Treaty entered into force on 30 September 2016, upon receiving its twentieth ratification, as per Article 18.[40] Now in its eighth year of operation, signature and ratification has substantially expanded with 94 Contracting Parties and a further 35 signatories at the time of writing. While the number of Contracting Parties is still gradually increasing, it is now showing signs of troughing with nine new parties in the year 2022, three new parties in the year 2023,[41] and only one so far in 2024. As the Marrakesh Treaty is not yet in force in Pakistan - the 94th Contracting Party which joined in March 2024 – it has not been included in the subsequent analysis. At this decadal landmark in which it has been ten years since the adoption of the Treaty, a reasonably significant period of time has passed since the Treaty came into force, and at a time when new membership is decelerating, it is pertinent to consider the progress that the Treaty has made in its implementation thus far. Since the Marrakesh Treaty is a global solution to a global problem, the overarching objective of this thesis to analyse the Treaty's efficacy necessitates a critical perusal into its success from a global perspective.

The majority of the literature on the aspect of the Treaty's implementation has offered a single jurisdiction case-study approach.[42] A handful of scholarship has gone further to provide a comparative commentary: for example, Australia and India,[43] and the UK and the European Union.[44] Fewer have offered regional

---

[40] Article 18 of the Marrakesh Treaty. See also: Marrakesh Notification No. 21 <https://www.wipo.int/treaties/en/notifications/marrakesh/treaty_marrakesh_21.html>

[41] These are Barbados, Ukraine, and Viet Nam. See: WIPO-Administered Treaties, "Marrakesh VIP Treaty" <https://www.wipo.int/wipolex/en/treaties/ShowResults?start_year=ANY&end_year=ANY&search_what=C&code=ALL&treaty_id=843>

[42] For example: Neel Purmah, "Envisioning the Effective Implementation of the Marrakesh Treaty for Blind, Visually Impaired and Print-Disabled Individuals in Mauritius" (2023) African Journal of Legal Studies Vol 15:2 160-184; Fei Yang et al, "Creating Intangible Accessible Environments: The Implementation of the Marrakesh Treaty on Visually Impaired People in China" (2023) Disability & Society Vol 38:9 1734-1739

[43] K Ishwarya, "Implementation of the Marrakesh Treaty, 2014 in India and Australia – A Comparative Study" (2020) Supremo Amicus Vol 15, 121

[44] Charles Oppenheim, "The Marrakesh Copyright Treaty for those with Visual Disabilities and its Implications in the European Union and in the United Kingdom" (2017) The Journal of National and International Library and Information Issues Vol 27:1, 4–9

perspectives across a group of European countries,[45] the six Arab Gulf States,[46] or at most a wider but not complete range of countries.[47] Globally speaking, there have been three reports on the implementation of the Marrakesh Treaty. The first is provided by the Association of Research Libraries.[48] However, as an organisation composed of research libraries and archives with a self-professed lack of copyright law expertise, only a compilation of relevant extracts of laws is provided with no substantive analysis or legal interpretation. The second was published by the International Federation of Library Associations and Institutions (IFLA),[49] but this only focused on the activities that libraries are permitted to conduct under national exceptions. The third and final report was compiled by the WIPO Standing Committee on Copyright and Related Rights.[50] As an intellectual property organisation, more legal analysis was provided than the Association of Research Libraries and IFLA's compilations. However, it only focused on categorising *how* limitations and exceptions have been drafted in domestic law: as either specific, general, or hybrid i.e., a mix of general and specific provisions.[51] It did not consider the *why* factors behind the formulation, nor compare to the Marrakesh Treaty's provisions - only the limitations and exceptions that were present in national law at the time of the study.

---

[45] Delia Ferri, "The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled in the European Union: Reflecting on Its Implementation and Gauging Its Impact from a Disability Perspective" (2024) International Review of Intellectual Property and Competition Law Vol 55:7, 89-109; Delia Ferri and Giulia Rossello, "The Role of the Marrakesh Treaty in Supporting Access to Printed Material for People Who Are Blind or Visually Impaired: A Critical Discussion of the Results of an Empirical Study Conducted in Six European Countries" (2023) Disabilities Vol 3:2, 147–164

[46] Rami Olwan, "The Ratification and Implementation of the Marrakesh Treaty for Visually Impaired Persons in the Arab Gulf States" (2017) Journal of World Intellectual Property Vol 20:5-6, 178–205

[47] Jingyi Li, "Copyright Exemptions to Facilitate Access to Published Works for the Print Disabled – The Gap Between National Laws and the Standards Required by the Marrakesh Treaty" (2014) Institute for Innovation and Competition Vol 45:7, 740–767; Laurence Helfer et al, "Copyright Exceptions Across Borders: Implementing the Marrakesh Treaty" (2020) EIPR Vol 42:6, 332-340

[48] Association of Research Libraries <https://www.arl.org/national-implementations-marrakesh/>

[49] IFLA, "Marrakesh Treaty Implementation: February 2023 Update" (2023) available here: <https://repository.ifla.org/bitstream/123456789/2496/2/Marrakesh%20Monitoring%20Report%20Update%20February%202023.docx>

[50] WIPO Standing Committee on Copyright and Related Rights, "Revised Scoping Study on Access to Copyright Protected Works by Persons with Disabilities" (2019) SCCR/38/3 <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_38/sccr_38_3.pdf>

[51] *Ibid*, 19-21

All of the above studies are helpful reference points and have been incorporated into this chapter's findings to an extent. However, they are insufficient in themselves to be able to provide a comprehensive evaluation of how the Treaty has been implemented amongst all of its Contracting Parties. Either the range of countries they discuss is limited, the data is now outdated due to legislative changes post-publication, or the analysis is either not substantive at all or does not cover a sufficient breadth of factors. This chapter goes further to fill a gap in the literature by providing an original substantive global analysis of the implementation of the Marrakesh Treaty in all of the Contracting Parties where it is currently in force. This involved an intricate and methodical process which was approached in four main stages. Firstly, in order to provide the most accurate and current international landscape of the Treaty's implementation possible, the national legislation of these Contracting Parties was doctrinally analysed directly from the primary source of law accessible via WIPO's legal database.[52] As part of this analysis, both pre and post Treaty ratification editions of national copyright laws were cross-checked to determine whether the Contracting Party had incorporated an exception in fulfilment of the Treaty's obligations, or had only maintained a pre-existing exception. There are a total of 47 countries which had a disability-related exception in their national law prior to the Marrakesh Treaty. The 2007 "Sullivan Report" rather extensively analysed these,[53] the findings of which will not be repeated here. The focus of this chapter is much more forward-looking and implementation focused. Although both Berne and WTO Members have obligations to promptly communicate all new laws and official texts concerning the protection of copyright to WIPO,[54] in some instances, a Contracting Party had passed a new law but this had not yet been made available in the WIPO database, and so the law was sourced directly from the Contracting Party's national law database. Links have been provided where this is the case. Secondly, the data arising from the analysis of the primary sources of national law was verified and cross-checked with the aforementioned compilations to ensure its accuracy and to highlight areas of

[52] WIPO, "Member Profile – Laws, Treaties, and Judgments" <https://www.wipo.int/wipolex/en/members>
[53] WIPO, "Study on Copyright Limitations and Exceptions for the Visually Impaired" (2007) SCCR/15/7, <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf>
[54] See Article 24(2) Berne Convention [1979], and Article 63(2) TRIPS Agreement [1995]

change post publication, and also with the Marrakesh Treaty Questionnaires completed by Contracting Parties and published by WIPO, where available.[55] Thirdly, Contracting Parties could then be categorised accordingly as to whether their national policy indicated a pro-copyright, pro-disability rights, or balanced stance, and whether they had either implemented prior to ratification, post ratification, or were yet to implement. This data was collated into a coded and filtered master spreadsheet along with each Contracting Party's national development status and the extent of their international law obligations, as discussed in Sections 5.2.1 and 5.2.2 above. The fourth and final stage could then be carried out whereby the substantive content of national copyright laws was analysed as to the extent to which it aligned with the Treaty's framework, and areas of concern and remaining gaps could be highlighted for further action. This provided the basis of the categorisation of Contracting Parties' implementations as either being exemplary, partial, or limited. Finally, for non-implementing Contracting Parties, an additional fifth stage was carried out whereby both the CRPD Committee's database of Concluding Observations,[56] and the Constitutions of Contracting Parties also available in the WIPO lex database,[57] were consulted to shed further light on national approach to disability policy. The original findings from this analysis are explored in detail in the subsequent sections.

5.3.1 Implementing Countries – Tracking Exemplary, Partial, and Minimal National Implementations of the Treaty

At the time of writing, there are currently 42 Contracting Parties that have adopted national legislation to implement the provisions of the Marrakesh Treaty in their copyright laws.[58] As was highlighted in the previous chapter, doing so entails a variety of flexibilities and scope for national choices.[59] Thus, these 42 countries have not implemented the Treaty in a harmonised manner such that some have

---

[55] Questionnaires accessible here: WIPO, "The Marrakesh Treaty – Questionnaire on Cross-Border Accessibility" <https://www.wipo.int/web/marrakesh-treaty>
[56] Concluding Observations of the CRPD Committee, accessible here: <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5>
[57] WIPO Lex, (n52)
[58] Based on the analysis of national laws sourced from WIPO's Legal Database. See WIPO, "Member Profile – Laws, Treaties, and Judgments" <https://www.wipo.int/wipolex/en/members>
[59] See page 159

adopted more robust provisions than others. Accordingly, these implementing countries have been split into three categories: exemplary approaches, partial approaches, and minimal approaches. Exemplary approaches are those which have implemented the Treaty almost perfectly save for minor discrepancies. Partial approach countries are those which have adopted robust laws in implementation yet have fallen short of the Treaty's standard in a number of ways. Lastly, minimal approach countries are those which haven taken steps to implement but a substantial gap remains between their implementation and the standard expected by the Treaty's framework. In their recent review of international Treaty implementation patterns, Okediji, Land and Helfer[60] categorise Contracting Parties as either having ratified with or without domestic implementation.[61] While compartmentalising State implementations in this way does, to some extent, offer clarity, it does not offer any indication of whether the implementation meets the Treaty's standards or not and, thus, has not been adopted as a categorisation for the purposes of the research question at hand. Although a number of countries have been identified as adopting a self-executing approach to the application of international Treaties in their jurisdiction,[62] the Marrakesh Treaty is unique in that it requires specific legislative choices for it to be implemented. Thus, although these countries have been noted, it does not guarantee that they are fulfilling the Treaty's obligations in itself.

5.3.1.1 Exemplary Approaches to Treaty Implementation

An approach to implementing the Marrakesh Treaty may be considered as exemplary where it does the following:

a) Adopts verbatim all four of the Treaty's definitions: beneficiary person, accessible format copy, authorised entity, and works
b) Applies at least to the three exclusive rights identified by the Treaty or beyond: namely, the rights of reproduction, distribution, and making available to the public
c) Permits the work of authorised entities

[60] Laurence Helfer et al, "Copyright Exceptions Across Borders: Implementing the Marrakesh Treaty" (2020) E.I.P.R. Vol 42:6, 332
[61] *Ibid*, 335-338
[62] These are Argentina, Armenia, Kenya, Mexico, and the Republic of Moldova.

d) Establishes a framework for the cross-border exchange of works
e) Allows circumvention of technological protection measures for exception purposes
f) Prevents the contractual override of the exception
g) Does not contain any additional restrictions that restrict the enjoyment of the exception beyond what the Treaty outlines

There are only two Contracting Parties that have fully satisfied this checklist, that is, Norway and Nigeria. In light of this, Contracting Parties that need only implement further legislative amendment in one of these checklist areas have also been included in this category, namely, Trinidad & Tobago, the United States of America (USA), and Uruguay which all only do not prevent contractual override. As such, they take exceptional approaches to Treaty exceptions. More detail on these countries is provided below:

Norway

Treaty Definitions	• All four Treaty definitions adopted verbatim
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Allows circumvention specifically for Treaty exception (Article 100, Copyright Act)
Contractual Override	Specifically prevents contractual override of Treaty exception (Section 14)
Additional Restrictions	N/A
Remaining Gap	• None: exemplary legislative implementation
Relevant Law	Regulation of 26 August 2021 nr. 2608 to the Copyright Act [2021][63] and Copyright Act (Act No. 40 of June 15, 2018, Relating to Copyright in Literary, Scientific and Artistic Works) (consolidated version, status as of December 20, 2018)

[63] Full text available here: <https://lovdata.no/dokument/SF/forskrift/2021-08-26-2608/KAPITTEL_1-2#%C2%A713>

Nigeria

Treaty Definitions	• All four Treaty definitions adopted verbatim
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Allows circumvention for all acts permitted by law (Article 50(3)(c))
Contractual Override	Prevents contractual override of all acts permitted by law (Article 20(3))
Additional Restrictions	N/A
Remaining Gap	• None: exemplary legislative implementation
Relevant Law	Article 26, Copyright Act, 2022 (Act No.8 of 2022)

Trinidad & Tobago

Treaty Definitions	• Adopts Treaty definitions of beneficiary persons, authorised entity, and accessible format copy • Applies to all works
Excepted Rights	Applies to all three exclusive rights and adaptation
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Specifically allows the circumvention of technological protection measures for Treaty exception (Article 12A (5))
Contractual Override	Does not prevent contractual override
Additional Restrictions	N/A
Remaining Gap	• Prevent contractual override of Treaty exception

Relevant Law	The Copyright (Amendment) Act No. 14 of 2020

United States of America (USA)

Treaty Definitions	• All four Treaty definitions of accessible format copy, beneficiary person, authorised entity, and works adopted
Excepted Rights	All three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Circumvention allowed for limitations and fair uses generally (s.1201(c)(1))
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Prevent contractual override of Treaty exception
Relevant Law	Marrakesh Treaty Implementation Act (Public Law No. 115-261)

Uruguay

Treaty Definitions	• All four Treaty definitions of beneficiary person, works, authorised entity and accessible format copy adopted
Excepted Rights	Reproduction, distribution, communication to the public including making available to the public, and adaptation
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Specifically allows the circumvention of technological protection measures for Treaty exception (Article 10)
Contractual Override	Does not prevent override

Additional Restrictions	N/A
Remaining Gap	• Prevent contractual override of Treaty exception
Relevant Law	Decree No. 295 of October 16, 2017, on the Implementation of the Marrakesh Treaty approved by Law No. 19.262, regarding the Exceptions to Copyright for the Benefit of Persons with Disabilities

The implementations of these countries, particularly Norway and Nigeria, serve as benchmarks for the rest of the Treaty's Contracting Parties to follow in their implementation of the Treaty.

5.3.1.2 Partial Approaches to Treaty Implementation

Following on from the above categorisation of implementations as exemplary, Contracting Parties categorised in the present category as partial approaches are those whose implementation has fallen short of the standard required by the Marrakesh Treaty in two or three of the checklist areas but nonetheless have moved towards the Treaty's framework on multiple aspects. Further legislative amendment is necessary in these jurisdictions to bring their national laws into full alignment with the Treaty's framework. There are 22 Contracting Parties in this category and it therefore constitutes the majority of implementing Parties.

Argentina

Treaty Definitions	• Adopts Treaty definitions of authorised entity and accessible format copy with an exemplary list of formats • Does not adopt Treaty definition of beneficiary person - "blind people and people with other sensory disabilities" – and takes a medical model approach in noting that it is the sensory disability that prevents access • Applies to all works
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted

Technological Protection Measures	Allows circumvention of technological protection measures specifically for this exception (Article 36ter)
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Adopt Treaty definition of beneficiary person in a move away from medical model approach • Prevent contractual override of Treaty exception
Relevant Law	Law No. 27.588 of November 11, 2020, on Amendments to Law No. 11.723 of September 30, 1933, on Legal Intellectual Property Regime (Copyright Law, as amended up to Law No. 27.588 of December 16, 2020)

Brazil

Treaty Definitions	• Fully adopts Treaty definitions of works, beneficiaries, accessible format copy, and authorised entity • Medical model approach to beneficiaries: proof of "deficiencies" required either by medical report, biopsychosocial or psycho-pedagogical assessments
Excepted Rights	Applies to all three rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Allows circumvention of technological protection measures for Treaty exception (Article 19)
Contractual Override	Does not prevent contractual override
Additional Restrictions	Robust supervision and regulation of authorised entities (Articles 11-15)
Remaining Gap	• Move away from a medical model approach to the exception

	• Prevent contractual override of Treaty exception • Ensure that supervision and regulation of authorised entities does not detrimentally impact the effective implementation of the Treaty
Relevant Law	Decree No. 10,882, of December 3, 2021: <https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/decreto/d10882.htm>

Canada

Treaty Definitions	• Treaty definition of beneficiary person and authorised entity adopted • Specialised format undefined, Treaty definition not adopted • Applies to a broad range of works beyond the Treaty's definition: literary, musical, artistic, or dramatic work (other than a cinematographic work), and sound recordings
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Allows circumvention of technological protection measures for Treaty exception (Section 41.16)
Contractual Override	Does not prevent contractual override
Additional Restrictions	• Commercial availability restriction • Author's right to an injunction if a work is already available in another Contracting Party • Payment of royalties
Remaining Gap	• Adopt Treaty definition of beneficiary person • Prevent contractual override of Treaty exception • Ensure that additional restrictions do not constitute an unreasonable or discriminatory barrier to access

Relevant Law	Act to Amend the Copyright Act (Access to Copyrighted Works or other Subject-matter for Persons with Perceptual Disabilities) (S.C. 2016, c. 4)

Cabo Verde

Treaty Definitions	• No Treaty definitions adopted • Applies to "people with motor, mental, hearing or visual disabilities" – wider than Treaty definition but medical model approach • Applies to Treaty's literary, dramatic, musical, or artistic works (except cinematographic) – wider than Treaty scope • Accessible format undefined
Excepted Rights	Reproduction, distribution, making available to the public, translation, adaptation, public performance: beyond the Treaty's requirements
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Allows circumvention for all free uses (Article 138-A (2))
Contractual Override	Does not prevent contractual override
Additional Restrictions	N/A
Remaining Gap	• Adopt Treaty definitions of beneficiary person, authorised entity, and accessible format copy • Prevent contractual override of Treaty exception
Relevant Law	Article 64, Decree-Law No. 2/2017 of November 16, 2017

China

Treaty Definitions	• Treaty definitions of accessible format copy and authorised entity adopted

	• Treaty definition of beneficiary person partially adopted – concept of "dyslexia" applies to "visually disabled people and people who are unable to read normally due to visual defects, perceptual impairments, physical disabilities and other reasons" • Applies to all published works
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Specifically allows circumvention of technological protection measures for Treaty exception (Article 4 Interim Rules)
Contractual Override	Does not prevent override
Additional Restrictions	• Direct application of the three-step test entailing potential civil and criminal liability (Article 3(9) and Article 12, Interim Rules) • Additional regulations on authorised entities and cross-border exchange of works
Remaining Gap	• Fully align with the Treaty's definition of beneficiary person • Prevent contractual override of Treaty exception • Ensure additional restrictions do not constitute an unreasonable or discriminatory barrier to access
Relevant Law	Interim Rules on Provision of Works to the Print Disabled in an Accessible Way [2022],[64] and Copyright Law of the People's Republic of China (amended up to November 11, 2020)

Cook Islands

Treaty Definitions	• Treaty definition of accessible format copy adopted • Applies to all works

[64] Full text available here: <https://www.ncac.gov.cn/chinacopyright/contents/12228/356853.shtml>

	• Applies to persons with disability, vaguely defined as anyone who requires an accessible format copy due to disability
Excepted Rights	Reproduction and supply of works
Authorised Entities	The making of accessible format copies is only by a "person" Import/export by authorised entities
Cross Border Exchange	Permitted
Technological Protection Measures	Allows the general circumvention of technological protections measures for all exceptions (Article 25(1))
Contractual Override	Prevention of contractual override applicable to all exceptions (Article 11(5))
Additional Restrictions	N/A
Remaining Gap	• Adopt Treaty definitions of beneficiary person and authorised entity • Expand permitted activities by authorised entities
Relevant Law	Pre-Marrakesh Implementation: Cook Islands Copyright Law [2013]

European Union (EU)

Treaty Definitions	• Adopts all Treaty definitions on works, beneficiaries, accessible format copy and authorised entity • Adopts Treaty's template exception
Excepted Rights	Reproduction, communication, making available, distribution and lending
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention

Contractual Override	Specifically prevents contractual override of Treaty exception (Article 3(5))
Additional Restrictions	Explicitly applies the three-step test to the exception
Remaining Gap	• Allow the circumvention of technological protection measures for exception purposes • Note also: Formal notices issued to 17 EU Members for failure to provide notification on the implementation of Directive within the required timeframe. These were non-communication cases only, not active infringement cases, and have all been closed.[65]
Relevant Law	Directive (EU) 2017/1564 and Regulation (EU) 2017/1563 of the European Parliament and of the Council

Guatemala

Treaty Definitions	• Adopts all four Treaty definitions of beneficiary person, works, accessible format copy and authorised entity
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Allow circumvention of technological protection measures for exception purposes

[65] Note, this does not provide any conclusions as to whether substantive implementation had taken place or not. These 17 Members were Belgium, Cyprus, Czech Republic, Germany, Estonia, Greece, Finland, France, Italy, Lithuania, Luxembourg, Latvia, Poland, Portugal, Romania, Slovenia, and the UK. For more info, see here: European Commission Infringement Decisions <https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/>

	• Prevent contractual override of Treaty exception
Relevant Law	Decree No. 21-2018 on Amendments to the Law on Copyright and Related Rights (Decree No. 33-98)

Japan

Treaty Definitions	• Treaty definitions not adopted • Applies to “persons with a visual or vision-related impairment” • Permits “any form necessary” • Applies to all works
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Not explicitly permitted but confirmed by Marrakesh Questionnaire
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	Commercial availability clause
Remaining Gap	• Adopt Treaty definitions of beneficiary person, accessible format copy, and authorised entity • Allow the circumvention of technological protection measures for exception purposes • Prevent contractual override of Treaty exception
Relevant Law	Copyright Act (Act No. 48 of May 6, 1970, as amended up to January 1, 2022)

Kenya

Treaty Definitions	• Adopts verbatim Treaty definitions of accessible format copy, beneficiary person, authorised entity, and works
Excepted Rights	Applies to all three exclusive rights

Authorised Entities	Permitted
Cross Border Exchange	Permits importation of works
Technological Protection Measures	Allows circumvention for Treaty exception specifically
Contractual Override	Does not prevent contractual override
Additional Restrictions	N/A
Remaining Gap	• Permit export of works • Prevent contractual override of Treaty exception
Relevant Law	The Copyright (Amendment) Act, 2019 (Act No. 20 of 2019)

Kyrgyzstan

Treaty Definitions	• Adopts verbatim Treaty definitions of accessible format copy, beneficiary, and authorised entity • Applies to all works
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Does not provide for import and export of works specifically (only transfer between authorised entities)
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent contractual override
Additional Restrictions	N/A
Remaining Gap	• Permit cross-border exchange of works explicitly • Allow circumvention of technological protection measures for exception purposes • Prevent contractual override of Treaty exception

Relevant Law	Law of the Kyrgyz Republic No. 6 of January 14, 1998, on Copyright and Related Rights (as amended up to Law No. 42 of March 9, 2017)

Mauritius

Treaty Definitions	• Definition of beneficiary partially adopted – "blind, visually impaired, or otherwise print disabled" • Authorised entity and alternative format not defined • Applies to all published works
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Allows circumvention for some exceptions but not for Treaty exception (Article 37(3))
Contractual Override	Does not prevent override
Additional Restrictions	• The work must not be reasonably available in a perceptible form
Remaining Gap	• Fully adopt all four of the Treaty's definitions • Add the Article 23 exception to the list of exceptions to the circumvention of technological protection measures • Prevent contractual override of Treaty exception
Relevant Law	Article 23, Copyright Act 2014 (Act No. 2 of 2014)

Mexico

Treaty Definitions	• Does not adopt Treaty definitions • "Accessible format" and "authorized entities" undefined • Applies to "persons with disabilities" undefined • Applies to a "work, interpretation or performance, or a phonogram"
Excepted Rights	All three exclusive rights

Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Specifically allows circumvention for Treaty exception (Article 114 Quater VIII and Article 114 Quinquies IA)
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Adopt all four of the Treaty's definitions • Prevent contractual override of Treaty exception
Relevant Law	Federal Law on Copyright [2020]

Mongolia

Treaty Definitions	• Treaty definitions of accessible format copy and authorised entity adopted • Treaty definition of beneficiary person partially adopted – "blind, deaf, visually impaired, or hearing impaired, or print impaired people" • Applies to all works
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Fully adopt Treaty definition of beneficiary person

	• Allow circumvention of technological protection measures for exception purposes • Prevent contractual override of Treaty exception
Relevant Law	Article 41, Law of Mongolia on Copyright and Related Rights (6 May 2021)[66]

New Zealand

Treaty Definitions	• Treaty definition of accessible format copy and authorised entity adopted • Wider scope of works included than required: applies to published literary, dramatic, musical, or artistic works • Treaty definition of beneficiary person partially adopted: applied to "print disabled"
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Allows circumvention for all permitted acts generally (Article 226E (1))
Contractual Override	Does not prevent contractual override
Additional Restrictions	N/A
Remaining Gap	• Adopt full Treaty definition of beneficiary person • Prevent contractual override of Treaty exception
Relevant Law	Copyright (Marrakesh Treaty Implementation) Amendment Act 2019

Peru

Treaty Definitions	• Adopts verbatim all four Treaty definitions
Excepted Rights	Applies to all three exclusive rights

[66] Full text available here: <https://legalinfo.mn/en/edtl/16531498267681>

Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Allow the circumvention of technological protection measures for exception purposes • Prevent the contractual override of Treaty exception
Relevant Law	Law 3117 that Incorporates and Amends Articles of Legislative Decree 822, Law on Copyright, to Implement the Treaty of Marrakech and Facilitate Access to Published Works for People Who Are Blind, Visually Disabled or With Other Difficulties in Accessing Company Text (30 January 2021)[67]

Republic of Moldova

Treaty Definitions	• Adopts verbatim Treaty definitions of accessible format copy, beneficiary, and authorised entity • Applies to all works
Excepted Rights	Beyond Treaty requirements: allows the reproduction, distribution, communication to the public, broadcasting, making available to the public, rental, and lending of a work
Authorised Entities	Permitted
Cross Border Exchange	Does not specifically provide for the cross-border exchange of works
Technological Protection Measures	Allows circumvention of technological protection measures for Treaty exception (Article 60(3))

[67] Full text available here: <https://www2.congreso.gob.pe/Sicr/TraDocEstProc/Expvirt_2011.nsf/Repexpvirt?OpenForm&Db=201604208&View>

Contractual Override	Specifically prevents the contractual override of Treaty exception (Article 58(4))
Additional Restrictions	N/A
Remaining Gap	• Permit the cross-border exchange of works explicitly
Relevant Law	Law No. 230 of July 28, 2022, on Copyright and Neighbouring Rights

Singapore

Treaty Definitions	• Applies to a broader category of works than the Treaty requires: “published literary, dramatic, or artistic work; a published sound recording, sound broadcast, or recording of a protected performance” • Adopts Treaty definition of beneficiaries • Treaty definition of accessible format copy not adopted but wide range of permitted formats
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Allows circumvention of technological protection measures for authorised entities (Article 428(a)(iii)) or prescribed exceptions (Article 435(1))
Contractual Override	Exception may be limited by contract where the terms are fair and reasonable (Article 186)
Additional Restrictions	N/A
Remaining Gap	• Full alignment with Treaty definition of accessible format copy • Add the Treaty exception to the category of permitted uses that may not be excluded or restricted by contract under Article 187
Relevant Law	Part 5 Division 4, Copyright Act 2021 (Act No. 22 of 2021, amended by the Statutes (Miscellaneous Amendments) Act 2022)

Sri Lanka

Treaty Definitions	• Adopts verbatim Treaty definitions of accessible format copy, beneficiary, and authorised entity • Applies to all works
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Does not specifically provide for the cross-border exchange of works
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Permit the cross-border exchange of works explicitly • Allow for the circumvention of technological protection measures for exception purposes • Prevent the contractual override of Treaty exception
Relevant Law	Intellectual Property (Amendment) Act, No. 8 of 2021

Ukraine

Treaty Definitions	• Adopts Treaty definitions of accessible format copy and authorised entity • Treaty definition of beneficiary person partially adopted – omits blind persons
Excepted Rights	Applies to all three exclusive rights and beyond: reproduction, distribution, electronic and interactive access provisions, translation, and hiring
Authorised Entities	Permitted
Cross Border Exchange	Permitted

Technological Protection Measures	Allows for the circumvention of technological protection measures (Article 53(3))
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Fully adopt Treaty definition of beneficiary person • Prevent the contractual override of Treaty exception
Relevant Law	Law of Ukraine No. 2811-IX of December 1, 2022, on Copyright and Related Rights

United Arab Emirates (UAE)

Treaty Definitions	• Adopts Treaty definitions of authorised entity, accessible format copy, and beneficiary person • Applies to all works, undefined
Excepted Rights	Reproduction and making available
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	Standard conditions on the work of authorised entities provided by the Treaty[68]
Remaining Gap	• Allow the circumvention of technological protection measures for the purposes of exception • Prevent contractual override of Treaty exception

[68] Article 16, Cabinet Decision No. 47/2022 On the Implementing Regulation of Federal Decree-Law No. 38/2021 on Copyrights and Neighbouring Rights: <https://www.moec.gov.ae/documents/20121/0/CabinetDecision_47_2022_pdf.pdf/deccddc2-536a-2123-d02c-dd84bffcc5a5?t=1656667925081>

Relevant Law	Federal Decree-Law No. 38 of 2021 on Copyrights and Neighbouring Rights

United Kingdom (UK)

Treaty Definitions	• Adopts Treaty definitions of accessible format copy and authorised entity • Medical model approach to perceiving physical impairment as preventing access
Excepted Rights	Reproduction, communication, making available, distribution or lending
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention directly but establishes a specific complaints mechanism and procedure in the event that technological protection measures prevent access contrary to the Marrakesh Treaty (Article 296ZE)
Contractual Override	Prevents contractual override (Article 31F (8))
Additional Restrictions	N/A
Remaining Gap	• Permit circumvention of technological protection measures for exception measures in addition to the complaints procedure where this is prevented • Adopt the Treaty definition of beneficiary person for the exception and not just in the context of circumvention
Relevant Law	Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018 (S.I. 2018/995, updated on October 22, 2020)

5.3.1.3 Minimal Approaches to Treaty Implementation

This final category of implementing Contracting Parties includes those whose implementation falls significantly short of the standard required by the Marrakesh Treaty such that the alignment still required far outweighs the minimal progress that has been made thus far. Many of these implementations also incorporate additional restrictions which further limit the operation of the exception or limitation. There are 15 Contracting Parties in this category:

Australia

Treaty Definitions	• Adopts Treaty definition of authorised entity • Does not adopt Treaty definition of beneficiary person and takes medical model approach in noting that it is the physical impairment that prevents access not formatting • Permitted format undefined, Treaty definition not adopted • Applies to all works
Excepted Rights	Does not specify the rights which are excepted, only 'use' and 'fair dealing'
Authorised Entities	Permitted
Cross Border Exchange	No specific provision on cross-border exchange of works
Technological Protection Measures	Allows circumvention of technological protection measures (Article 113D)
Contractual Override	Does not prevent contractual override
Additional Restrictions	• Commercial availability restriction • The purpose, character, nature, potential market impact, and substantiality of work "dealt with" assessed
Remaining Gap	• Adopt Treaty definitions of beneficiary person and accessible format copy • Provide guidance for beneficiary persons and authorised entities on what activities may be considered "fair dealing" • Permit the cross-border exchange of works specifically • Prevent contractual override of Treaty exception

	• Ensure that additional restrictions do not constitute an unreasonable or discriminatory barrier to access
Relevant Law	Copyright Amendment (Disability Access and Other Measures) Act 2017 No. 49, 2017; 113E-F Copyright Act 1968 (consolidated as of July 1, 2022)

Belarus

Treaty Definitions	• No Treaty definitions adopted • Applies to all published works • Applies to "blind, visually impaired, and other persons with limited ability to perceive visual information" – similar to Treaty definition but not exact • Special format includes "bump-dot type, bump graphics, tactile editions, special audio formats, "clear language," etc." – more specific than Treaty definition
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	No explicit provision on who may conduct activities
Cross Border Exchange	Importation permitted No explicit provision on export
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Adopt Treaty definitions of beneficiary person, accessible format copy, and authorised entity • Permit activities by authorised entity • Permit the export of works • Allow circumvention of technological protection measures for exception purposes • Prevent contractual override of Treaty exception

Relevant Law	Law of the Republic of Belarus No. 216-Z of July 15, 2019, on Amendments to the Law of the Republic of Belarus on Copyright and Related Rights

Costa Rica

Treaty Definitions	• Treaty definition of works adopted, and format definition partially adopted • Applies to persons with visual disabilities or other disabilities which prevent access to works - medical model approach
Excepted Rights	Reproduction, distribution, making available to the public, representation, exception, transcription, conversion
Authorised Entities	No explicit provision on who may conduct activities
Cross Border Exchange	Import permitted No provision on export of works
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent contractual override
Additional Restrictions	N/A
Remaining Gap	• Adopt Treaty definition of authorised entity, beneficiary person and accessible format copy fully • Permit activities by authorised entity, exportation of works, and circumvention of technological protection measures for exception purposes • Prevent contractual override of Treaty exception
Relevant Law	Law No. 9858 of October 16, 2020, on the Addition of Subparagraph (r) to Article 4 and of Article 76 bis to Law No. 6683 of October 14, 1982, on Copyright and Related Rights for the Implementation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled)

Côte d'Ivoire

Treaty Definitions	Definition of beneficiary persons adopted verbatim. No other definitions adopted.
Excepted Rights	Reproduction and representation only
Authorised Entities	Permitted
Cross Border Exchange	No provisions
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	Subject to fair remuneration
Remaining Gap	• Adopt definitions of accessible format copy, works, and authorised entity • Expand exception to rights of distribution and making available to the public • Establish framework for cross-border exchange of works • Allow circumvention of technological protection measures • Prevent contractual override of Treaty exception
Relevant Law	Law No. 2016-555 of July 26, 2016, on Copyright and Related Rights

Ecuador

Treaty Definitions	• Only Treaty definition of authorised entity adopted • Only applies to forms of artistic works, not literary works • Applies to “persons with disabilities” generally, undefined
Excepted Rights	All three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	No provisions

Technological Protection Measures	Allows circumvention for all exceptions and limitations (Article 130)
Contractual Override	Does not prevent override
Additional Restrictions	Explicitly subject to the three-step test (Article 212)
Remaining Gap	• Adopt definitions of accessible format copy, works, and beneficiary persons • Expand exceptions to literary works • Establish framework for cross-border exchange of works • Prevent contractual override of Treaty exception
Relevant Law	Organic Code on the Social Economy of Knowledge, Creativity, and Innovation [2016]

Indonesia

Treaty Definitions	• Treaty definition of accessible format copy, only specific formats permitted: “Braille, audio books, or other means” • Treaty definition of beneficiary person partially adopted: applies to persons with total blindness, visual or reading disabilities • Specific authorised entities identified; general definition not adopted • Applies to all works
Excepted Rights	Wider range than Treaty: “acquisition, use, change of format, duplication of format, announcement, distribution of formats, and/or communication of a work in whole or in substantial part”
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention

Contractual Override	Does not prevent contractual override
Additional Restrictions	• Arduous application procedure to obtain an accessible format copy • Stringent Government monitoring and supervision of Authorised Entities
Remaining Gap	• Fully align exception with all four Treaty definitions • Allow the circumvention of technological protection measures for exception purposes • Prevent contractual override of Treaty exception • Ensure that application, supervision, and regulation of authorised entities does not detrimentally impact the effective implementation of the Treaty
Relevant Law	Pre-Ratification Implementation: Government Regulation No. 27 of 2019 on the Facilitation of Access to Works for Persons with Reading Disabilities and Users of Braille, Audio Books, and Other Means

Israel

Treaty Definitions	• No Treaty definitions adopted • Applies to all works • Medical model approach to defining person with disability • Format generally defined, “a format accessible for use by a person with disabilities”
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override

Additional Restrictions	Limited to when an accessible copy is not available on reasonable terms (price, location, availability)
Remaining Gap	• Adopt Treaty definitions of beneficiary person, accessible format copy, authorised entity, and works • Permit circumvention of technological protection measures for exception purposes • Prevent contractual override of Treaty exception
Relevant Law	Pre-Marrakesh Implementation: Law for Making Works, Performances and Broadcasts Accessible for Persons with Disabilities (Law Amendments), 5774-2014

Kiribati

Treaty Definitions	• Only Treaty definition of accessible format copy adopted • Applies to all works, wider scope than Treaty • Broad definition of “person with disability” as including anyone who requires an accessible format copy of a work
Excepted Rights	Reproduction only
Authorised Entities	Not permitted – copying only by a “person”
Cross Border Exchange	No provisions
Technological Protection Measures	Allows circumvention for all exceptions and limitations (Article 25)
Contractual Override	Prevents contractual override of all exceptions and limitations (Article 11(5))
Additional Restrictions	N/A
Remaining Gap	• Adopt definitions of beneficiary persons and authorised entity • Permit activities of authorised entities • Expand exceptions to rights of distribution and making available to the public • Establish framework for cross-border exchange of works
Relevant Law	Copyright Act 2018 (Act No. 8 of 2018)

Liberia

Treaty Definitions	• No Treaty definitions adopted • Applies to all works, wider scope than Treaty • Applies to "print disabled and visually or aurally impaired persons" generally, undefined • Specialised format, undefined
Excepted Rights	Reproduction and distribution
Authorised Entities	No explicit provision on who may conduct activities
Cross Border Exchange	Allows national distribution of accessible works produced abroad No provision on export of works
Technological Protection Measures	Allows circumvention for all exceptions and limitations (Article 9.32b)
Contractual Override	Does not prevent override
Additional Restrictions	Work must not be reasonably available in an identical or largely equivalent accessible form provided same conditions are met
Remaining Gap	• Adopt Treaty definitions of beneficiary persons, accessible format copy, works, and authorised entity • Permit activities of authorised entities • Expand exceptions to right of making available to the public • Establish framework for cross-border exchange of works • Prevent contractual override of Treaty exception
Relevant Law	Liberia Intellectual Property Act [2016]

Malawi

Treaty Definitions	• No Treaty definitions adopted • Applies to literary, artistic, and musical works: wider scope than Treaty • Applies to "visually impaired persons, persons with disabilities" but medical model approach taken

	• Specific format, undefined
Excepted Rights	Reproduction and making available
Authorised Entities	No explicit provision on who may conduct activities
Cross Border Exchange	No provisions
Technological Protection Measures	Allows circumvention for specific exceptions, including the disability exception (Article 86(1))
Contractual Override	Does not prevent override
Additional Restrictions	• No accessible forms commercially available • Musical works may not be sound or audio-visually reproduced • Sound or audio-visual reproductions of other works may only be lent
Remaining Gap	• Adopt Treaty definitions of beneficiary persons, accessible format copy, works, and authorised entity • Permit activities of authorised entities • Expand exceptions to right of distribution • Establish framework for cross-border exchange of works • Prevent contractual override of Treaty exception
Relevant Law	Copyright Act, 2016 (Act No. 26 of 2016)

Morocco

Treaty Definitions	• No Treaty definitions adopted • Applies to all published works • Applies to “the blind, visually impaired or otherwise print disabled” but without the full Treaty definitions and medical model approach taken • All accessible forms, undefined
Excepted Rights	All three exclusive rights
Authorised Entities	No explicit provision on who may conduct activities
Cross Border Exchange	No provisions

Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	Subject to the three-step test
Remaining Gap	• Adopt Treaty definitions of beneficiary persons, accessible format copy, works, and authorised entity • Permit activities of authorised entities • Establish framework for cross-border exchange of works • Prevent contractual override of Treaty exception • Allow circumvention of technological protection measures for the purposes of the exception
Relevant Law	Pre-Implementation: Law No. 66-19 Amending and Supplementing Law No. 2-00 on Copyright and Related Rights (promulgated by Dahir n° 1-22-35 of 23 chaoual 1443 (May 24, 2022))

Russian Federation

Treaty Definitions	• Treaty definition of beneficiary person only partially adopted • Does not adopt the Treaty's definition of accessible format copy: only specific formats allowed, others prohibited by law • Applies to all works except phonograms consisting mostly of music
Excepted Rights	Applies to all three exclusive rights
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention

Contractual Override	Does not prevent contractual override
Additional Restrictions	Arduous registration and access process in accessing copies of works via libraries and requires a service contract between user and entity
Remaining Gap	• Adopt Treaty definitions of beneficiary person, accessible format copy, works, and authorised entity • Allow circumvention of technological protection measures for exception purposes • Prevent contractual override of Treaty exception • Ensure service contract and registration process do not prevent access to works
Relevant Law	Civil Code of the Russian Federation (Part Four, as amended up to June 29, 2023), and Decree of the Government of the Russian Federation of January 23, 2016, No. 32.

Switzerland

Treaty Definitions	• Only Treaty definition of authorised entity adopted • Applies to all published works • Applies to people with disabilities generally, undefined • All accessible forms, undefined
Excepted Rights	All three exclusive rights
Authorised Entities	No explicit provision on who may conduct excepted activities Cross-border exchange of works only by authorised entities
Cross Border Exchange	Permits cross-border exchange of works in countries with corresponding exception
Technological Protection Measures	Allows circumvention for all legally permitted uses (Article 39(a))
Contractual Override	Does not prevent override
Additional Restrictions	• Right to remuneration may be asserted by an authorised collective rights management organisation where activities are not for individual use

	• Already available forms cannot be perceived or can only be perceived with difficulty
Remaining Gap	• Adopt Treaty definitions of beneficiary persons, accessible format copy, and works • Permit excepted activities by authorised entities • Establish framework for cross-border exchange of works • Prevent contractual override of Treaty exception
Relevant Law	Federal Decree of June 21, 2019, on the Approval and Implementation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (Amendment of the Federal Act on Copyright)

Thailand

Treaty Definitions	• Only Treaty definition of authorised entity adopted • Applies to all published works • Applies to persons with "impairment in vision, hearing, mobility, intelligence, learning or other impairments" – broader scope than the Treaty but medical model approach • Format undefined[69]
Excepted Rights	Reproduction, adaptation, communication to the public
Authorised Entities	Permitted
Cross Border Exchange	Permits import, No explicit provision on export but covered under the act of communication to the public[70]
Technological Protection Measures	Allows circumvention for all exceptions (Article 53/5 (1))

[69] To be defined in "The Notification of the Ministry of Commerce Re: The Use of the Exceptions to Copyright Infringement for the Benefit of Persons with Disabilities Who Are Unable to Access Copyright Works" B.E. 2562 (2019). Document unavailable.
[70] Marrakesh Treaty Questionnaire – Thailand: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_th.pdf>

Contractual Override	Does not prevent override
Additional Restrictions	Subject to the three-step test
Remaining Gap	• Adopt Treaty definitions of beneficiary persons, accessible format copy, and works • Prevent contractual override of Treaty exception
Relevant Law	Copyright Act B.E. 2537 (1994) (as amended up to Copyright Act B.E. 2561 (2018))

Vietnam

Treaty Definitions	• Does not adopt any Treaty definitions • Applies to "people with visual disabilities, print-disabled people, and other disabled people" – wider scope and vaguer than Treaty definition • Permitted format is "a copy of the works rendered in another form or format for the disabled" – vaguer than Treaty definition • Applies to all works, undefined
Excepted Rights	Reproduction, distribution, performance, and communication
Authorised Entities	Permitted
Cross Border Exchange	Permitted
Technological Protection Measures	Does not allow circumvention
Contractual Override	Does not prevent override
Additional Restrictions	N/A
Remaining Gap	• Adopt Treaty definitions of beneficiary person, accessible format copy, authorised entity, and works • Allow the circumvention of technological protection measures for the purposes of exception

	• Prevent contractual override of Treaty exception
Relevant Law	Law No. 07/2022/QH15 of June 16, 2022, Amending and Supplementing a Number of Articles of the Law on Intellectual Property

5.3.1.4 Implementing Parties Trend Analysis

The legislative profiles provided above indicate that full implementation of the Marrakesh Treaty is a rarity, with most Contracting Parties opting for partial implementation, and a considerable proportion only doing so marginally. The findings from these profiles reveal the following trends:

- Treaty Definitions

The four definitions which the Treaty provides set out a minimum foundation on which national limitations and exceptions should be drafted i.e., they are a minimum requirement and should be adopted verbatim. However, the approach on this aspect has been largely for Contracting Parties to “cherry pick” which definitions to adopt as written, and to adapt others as they deem fit. Indeed, all four definitions are adopted as verbatim in only 12 of the 42 implementing parties.[71] This complicates the cross-border exchange of works due to different formats being produced of distinct categories of works by different entities and for different beneficiaries. It also means that the divergency in the definitional scope of exceptions which has been prevalent in national laws prior to the adoption of the Marrakesh Treaty still persists,[72] albeit to a gradually lesser extent.

- Excepted Rights

The exclusive rights to which exceptions and limitations apply is the area of greatest harmonisation in Treaty implementation, with the majority of countries applying their exceptions either to the three exclusive rights identified by the Treaty, or even going beyond this scope to additional rights. This is a positive sign for ensuring authorised entities can provide a wider range of access services to

[71] These 12 are Brazil, the European Union (EU), Guatemala, Kenya, Kyrgyzstan, Sri Lanka, the Republic of Moldova, Nigeria, Norway, Peru, Uruguay, and the Unites States of America (USA)
[72] Jingyi Li, “Copyright Exemptions to Facilitate Access to Published Works for the Print Disabled” (n47) 740–767

beneficiary persons. There are, however, a handful on Contracting Parties whose implementations do not apply to the minimum three exclusive rights which the Treaty requires. The most restrictive approach was adopted by Kiribati's implementation which only applies to the making of accessible format copies (i.e., the right of reproduction).[73] This is closely followed by Côte d'Ivoire which only applies to reproduction and representation, and not distribution or making available.[74] The Liberian exception does not apply to the right of making available to the public.[75] Additionally, the implementations of three countries – Malawi, Thailand, and the UAE – do not include the right of distribution.[76] Despite the discrepancies in these six countries, the overall scope of excepted rights among implementing countries is broad.

- Authorised Entities

The aspect of authorised entities follows closely behind the categories of excepted rights in terms of national harmonisation. The majority of Contracting Parties have established a role for authorised entities in one manner or another. However, there are a small number of countries where issues remain. Again, the most restrictive stance is found in Kiribati where the making of accessible format copies can only be carried out by a "person."[77] A similar but slightly less restrictive approach is taken in the Cook Islands where the reproduction is carried out by a person, but an organisation may carry out the cross-border exchange of works.[78] Finally, there is a group of five Contracting Parties where the concept of authorised entity is not introduced and there is no specification as to whom may carry out the excepted activities.[79] It is imperative that both beneficiary persons and authorised entities may carry out permitted activities due to the cost and technological process required to produce accessible format copies and to distribute them widely.[80] Not

[73] Kiribati Copyright Act 2018 (Act No. 8 of 2018)
[74] Law No. 2016-555 of July 26, 2016, on Copyright and Related Rights
[75] Liberia Intellectual Property Act [2016]
[76] Malawi Copyright Act, 2016 (Act No. 26 of 2016); Thailand Copyright Act B.E. 2537 (1994) (as amended up to Copyright Act B.E. 2561 (2018); UAE Federal Decree-Law No. 38 of 2021 on Copyrights and Neighbouring Rights
[77] Kiribati Copyright Act 2018 (Act No. 8 of 2018)
[78] Cook Islands Copyright Law [2013]
[79] These five are Belarus, Costa Rica, Liberia, Malawi, and Morocco
[80] Caterina Sgana, "Disability, Right to Culture and Copyright: Which Regulatory Option?" (2015) International Review of Law Computers & Technology Vol 29:2, 90

establishing a role for authorised entities may also hinder the cross-border exchange of works in these countries.

- Cross-Border Exchange

The approach to provision on the cross-border exchange of works in national implementations has been incoherent. An explicit framework for this exchange is established in 27 of the 42 implementing parties. However, five implementations only provide for the import of works, and not exportation. In Kenya and Costa Rica, this is noted in their implementing laws and acknowledged in the Marrakesh Treaty Questionnaires they have completed.[81] In Belarus, this is evidenced in Belarusian implementing law,[82] though this Contracting Party is yet to complete a questionnaire. It is also evidenced in Liberian implementing law[83] and, although there has been a completed questionnaire, it does not provide a clarification on this aspect.[84] Finally, in Thailand, while national law only permits importation,[85] the questionnaire indicates that exportation comes within the meaning of communication to the public.[86] However, the definition of communication to the public within the Thai copyright act does not refer to exportation.[87] Thus, this is still an area which requires explicit provision.

In addition to these five Contracting Parties that only explicitly allow importation, there is a further category of ten implementations that do not contain any provisions on the cross-border exchange of works at all. In Australia, Ecuador, Japan, and Kyrgyzstan, confirmation was provided in questionnaires that importation and exportation of works come within the general activities of the

---

[81] See Marrakesh Treaty Questionnaire – Kenya: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_ke.pdf> and Marrakesh Treaty Questionnaire – Costa Rica: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_costa_rica.pdf>

[82] Law of the Republic of Belarus No. 216-Z of July 15, 2019, on Amendments to the Law of the Republic of Belarus on Copyright and Related Rights

[83] Liberia Intellectual Property Act [2016]

[84] See Marrakesh Treaty Questionnaire – Liberia: https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_liberia.pdf

[85] Thailand Copyright Act B.E. 2537 (1994) (as amended up to Copyright Act B.E. 2561 (2018)

[86] Marrakesh Treaty Questionnaire – Thailand: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_th.pdf>

[87] Thailand Copyright Act B.E. 2537 (1994) (as amended up to Copyright Act B.E. 2561 (2018)

exception.[88] In Malawi, Morocco, and the Republic of Moldova, completed questionnaires confirm that national laws do not regulate the cross-border exchange of works,[89] though in Morocco a bill is in process to legislate on this.[90] Finally, in Côte d'Ivoire, Kiribati, and Sri Lanka, national laws do not explicitly establish a framework and there are no completed questionnaires at the time of writing to provide further elaboration.

- Circumvention of Technological Protection Measures

The trend on the circumvention of technological protection measures is generally positive, with 24 of the implementing Parties either allowing for circumvention specifically for the Treaty exception, or for all exceptions generally. This may be due to the fact that, unlike contractual override, the Treaty specifically requires Contracting Parties to ensure that technological protection measures do not prevent beneficiary persons from enjoying the exceptions and limitations.[91] Yet, a further 17 Contracting Parties are yet to fulfil this obligation. The UK takes a unique approach in putting the burden on beneficiary persons to make a complaint where technological protection measures prevent access to works permitted by law.[92] This is contrary to the Treaty's framework which places the obligation on the State, not on the beneficiary.[93]

---

[88] See Marrakesh Treaty Questionnaire – Australia: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_australia.pdf>; Marrakesh Treaty Questionnaire – Ecuador: <https://www.wipo.int/export/sites/www/marrakesh_treaty/es/docs/mt_questionnaire_ecuador.pdf>; Marrakesh Treaty Questionnaire – Japan: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_ja.pdf>; Marrakesh Treaty Questionnaire – Kyrgyzstan: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_kyrgyzstan.pdf>

[89] See Marrakesh Treaty Questionnaire – Malawi: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_mw.pdf>; Marrakesh Treaty Questionnaire – Morocco: <https://www.wipo.int/export/sites/www/marrakesh_treaty/fr/docs/mt_questionnaire_morocco.pdf>; Marrakesh Treaty Questionnaire – Republic of Moldova: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_republic_of_moldova.pdf>.

[90] *Ibid*

[91] Article 7, Marrakesh Treaty [2016]

[92] Article 296ZE, Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018 (S.I. 2018/995, updated on October 22, 2020)

[93] Article 7, Marrakesh Treaty [2016]

- Contractual Override

Out of the total 42 implementing Contracting Parties, only 7 prevent the contractual override of the rights of beneficiary persons provided by the Treaty. Even in these seven instances, only four prevent the specific override of the Treaty exception,[94] while the other three provisions apply generally to all exceptions and limitations.[95] This means that in the majority of implementing countries, the rights of access by beneficiary persons are at risk of being circumscribed by the contract terms of agreements between publishers, copyright owners, and other providers. The Contracting Party of most concern in this respect is Singapore which explicitly allows contractual override, albeit conditionally.[96] The scarcity of provisions on preventing contractual override may be due to the fact that the Marrakesh Treaty does not require it to be prevented. This is an area for the consideration of the Assembly for future revisions to the Treaty's provisions.[97]

- Additional Restrictions

The investigation into national implementing laws also revealed that 17 Contracting Parties have opted to introduce additional restrictions and/or conditions on the enjoyment of the Treaty exception. These include direct application of the three-step test to the exception in five Contracting Parties,[98] limiting to where the work is not commercially/reasonably available in eight implementations,[99] remuneration required in three countries,[100] arduous authorised entity monitoring and application procedures for access to accessible copies of works in four Contracting Parties,[101] and the incorporation of injunctions in Canadian law to prevent authorised entities from providing access to works already available.[102] While the application of the

[94] These four are the Republic of Moldova, Norway, the United Kingdom (UK), and the European Union
[95] These three are Nigeria, Cook Islands, and Kiribati
[96] Part 5 Division 4, Copyright Act 2021 (Act No. 22 of 2021, amended by the Statutes (Miscellaneous Amendments) Act 2022)
[97] See page 181
[98] These Contracting Parties are China, the European Union (EU), Ecuador, Morocco, and Thailand
[99] These seven Contracting Parties are Australia, Canada, Israel, Japan, Liberia, Malawi, Mauritius, and Switzerland
[100] These three Contracting Parties are Canada, Côte d'Ivoire, and Switzerland
[101] These four Contracting Parties are Brazil, China, Indonesia, and Russia
[102] Act to Amend the Copyright Act (Access to Copyrighted Works or other Subject-matter for Persons with Perceptual Disabilities) (S.C. 2016, c.4)

commercial availability clause, three-step test, and possibility of remuneration are all optional (but not recommended) features of the Treaty, additional application procedures involving a requirement of a service contract in Russia,[103] medical proof of eligibility in Brazil,[104] and injunctions in Canada are of more concern as they do not come within the Treaty's framework.[105] These Contracting Parties must ensure any additional restrictions they impose do not constitute and unreasonable or discriminatory barrier to accessing works, as per Article 30(3) of the CRPD.[106]

The overall conclusion from this analysis is that, while progress has been made to an extent, the Marrakesh Treaty has not achieved its objective of achieving harmonisation of limitations and exceptions for beneficiary persons. With only 42 of the 93 Contracting Parties in which the Marrakesh Treaty is in force having implemented, and there being such divergencies and fragmentation in their approaches, the effectiveness of the Treaty is called into doubt.

5.4 Countries Yet to Implement – Analysing National Provisions, Policies, and Priorities

There are 51 Contracting Parties yet to adopt domestic legislation to implement the Marrakesh Treaty in their national law. This constitutes a staggering 55% (approximately) of the Treaty's membership, meaning that the majority of Contracting Parties are not fulfilling their obligations. This section therefore provides a deeper analysis of these Contracting Parties than those who have implemented as the focus is on analysing and improving the efficacy of the Treaty. The central consideration is whether an exception is currently present in national copyright law. Then, links are made back to the approaches to copyright protection discussed in Chapter 2,[107] and the models of disability in Chapter 3,[108] to determine whether policy approach in these two areas is preventing further action on implementing the Treaty. Evidence of these policies is found primarily in national

---

[103] Civil Code of the Russian Federation (Part Four, as amended up to June 29, 2023), and Decree of the Government of the Russian Federation of January 23, 2016, No. 32.
[104] Decree No. 10,882, of December 3, 2021: <https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/decreto/d10882.htm>
[105] Act to Amend the Copyright Act (Access to Copyrighted Works or other Subject-matter for Persons with Perceptual Disabilities) (S.C. 2016, c. 4)
[106] Article 30(3), CRPD [2008]
[107] See page 46
[108] See page 102

copyright law, constitutional provisions on the two rights, and the Concluding Observations of the CRPD Committee where they are available. This will highlight whether the Treaty's attempt to rebrand copyright protection as a social good, its move away from author-centric approaches, and adoption of the social and human rights models of disability have been successful in stimulating a paradigmatic shift in national policy. All of these factors are indicative, though not conclusive, of national priorities i.e., where a Contracting Party has stronger constitutional protection of copyright than disability rights, does not have a pre-existing exception for disability purposes, adopts an individual model of disability and/or an author-centric approach to copyright protection, this may be an indicator that the Treaty is yet to be implemented due to pro-authorial rights interests. Addressing any such instances will be imperative in ensuring more robust and meaningful implementation of the Treaty. In light of the fact that the process of national law making varies depending on each Contracting Parties circumstances and constitutional framework, it would not be appropriate to consider a Contracting Party in which the Treaty has been in force less than a year with another that has had an obligation under the Treaty since its entry into force in 2016. Accordingly, these non-implementing Contracting Parties are separated as either less than 5 years, or more than 5 years since their ratification or accession took effect. Those who have not fulfilled their obligations within less than 5 years should be on the radar as early warning signs of stagnation, whereas those who have failed to act within five years or more should be considered as more concerning cases of inaction.

5.4.1 No Implementation - 1 to 5 Years Since Ratification/Accession

There are 31 countries which have been Contracting Parties to the Marrakesh Treaty for up to and including 5 years and have not yet implemented any national legislation to provide for limitations and exceptions in accordance with the Treaty's obligations. As can be seen in the table below, in nearly all of these instances it is largely due to outdated copyright laws which, in the longest case, have not been updated for sixty-six years. There are also a handful of occurrences where a recent copyright law was passed post-Treaty, but it did not make any amendments to the pre-existing exception.

Contracting Party	*Year of Latest Copyright Law*	*Year MT Entered into Force*
Armenia	2013	2022
Bangladesh	2005	2022
Barbados	2006	2023
Belize	2020	2019
Bolivia (Plurinational State of)	1992	2019
Bosnia & Herzegovina	2010	2021
Cameroon	2000	2022
Central African Republic	1985	2020
Comoros	1957	2021
Ethiopia	2004	2021
Iceland	2020	2022
Liechtenstein	2006	2021
Malaysia	2012	2022
Marshall Islands	1991	2019
Montenegro	2021	2022
Nicaragua	2020	2020
Philippines	2015	2019
Qatar	2002	2019
Rwanda	2009	2022
Saint Lucia	2015	2020
San Marino	1991	2020
Sao Tome & Principe	2017	2021
Saudi Arabia	2018	2019
Serbia	2019	2020
Tajikistan	2009	2019
Turkmenistan	2017	2021
Tanzania (United Republic)	1999	2020
Uzbekistan	2018	2022
Vanuatu	2018	2020
Venezuela (Bolivarian Republic of)	1993	2020
Zimbabwe	2004	2019

These Contracting Parties are analysed individually in the following profiles:

- Armenia

The CRPD Committee called on Armenia to urgently ratify and implement the Marrakesh Treaty in a 2017 Concluding Observation.[109] Its accession came five years later, and it has still not adopted national legislation to implement the Treaty. Although Treaty's are self-executing in Armenia,[110] as explained earlier, the Treaty requires specific implementation. Armenian policy on copyright protection is largely author centric with the constitutional protection of intellectual property,[111] and emphasis on copyright as the author's exclusive right in its Copyright Act.[112] It does provide an exception which allows the reproduction of published works in Braille "or other special means" for the blind.[113] However, as with many others, this requires considerable expansion in scope of beneficiary persons, permitted formats, excepted rights, and establishing a framework for the cross-border exchange of works and the role of authorised entities. Regarding disability policy, constitutional provisions are mixed. On the one hand, discrimination on the grounds of disability is prohibited,[114] and promoting the participation of persons with disability in public life is one of the State's policy objectives,[115] yet there are also medical approaches to the prevention, treatment, and rehabilitation of disability within the same vein.[116] Accordingly, the CRPD Committee has called for a move away from this approach and full alignment with the human rights model.[117] Overall, a shift is required in both spheres of policy.

- Bangladesh

---

[109] Concluding Observations on the Initial Report of Armenia CRPD/C/ARM/CO/1
[110] Article 2, Law of the Republic of Armenia of June 15, 2006, on Copyright and Related Rights (as amended on September 30, 2013). See also: https://www.arl.org/national-implementations-marrakesh/
[111] Article 60 (7), Constitution of the Republic of Armenia (as amended up to December 6, 2015)
[112] Articles 11 & 12, Law of the Republic of Armenia of June 15, 2006, on Copyright and Related Rights (as amended on September 30, 2013)
[113] *Ibid*, Article 22 (2)(h)
[114] Article 29, Armenian Constitution (2015)
[115] *Ibid*, Article 86(8)
[116] *Ibid*
[117] Concluding Observation CRPD/C/ARM/CO/1

Bangladeshi copyright law is perhaps one of the strongest in terms of the protection of authorial rights as it does not contain a limitations or exceptions framework. The authority over what happens to the work is almost entirely in the hands of the author to grant licenses at their discretion.[118] Although copyright is not constitutionally protected, this is outweighed by the robustness of the copyright legislation. In terms of policy on disability rights, while there are constitutional provisions on non-discrimination, disability is not one of the protected grounds.[119] Moreover, the individual charity model of disability is adopted by positioning persons with "disablement" as in need of state assistance due to undeserved want, along with widows, orphans, and other stereotypically "needy" groups.[120] In order for Bangladesh to implement the Marrakesh Treaty effectively, a radical overhaul is needed of state policy on copyright and disability rights, and the introduction of a new limitations and exceptions framework.

- Barbados

The policy stance of Barbadian copyright law is quite overtly author centric.[121] It contains robust provisions on the exclusive moral and economic rights of the author and is particularly detailed in terms of copyright infringement.[122] This is balanced to some extent with exceptions largely in respect of educational activities.[123] However, it does not contain a disability rights exception, neither do persons with disabilities enjoy any form of constitutional protection.[124] While there are provisions on non-discrimination, disability is not a protected characteristic.[125] Again, there is need for a paradigmatic shift in national policy on copyright protection and disability rights, and the introduction of a completely new limitation and/or exception for the Treaty's beneficiary persons.

- Belize

---

[118] Article 48, Copyright Act [2000] (Act No. 28 of 2000, as amended up to Act No. 14 of 2005)
[119] Article 28(1), The Constitution of the People's Republic of Bangladesh (Act No. of 1972)
[120] *Ibid*, Article 15(d)
[121] Copyright Act, Chapter 300 (Act 1998-4, as amended up to Act 2006-1)
[122] *Ibid*, Part IV
[123] *Ibid*, Articles 55-64
[124] The Constitution of Barbados (1966)
[125] *Ibid*, Article 23(2)

Belize is yet to adopt national legislation to fulfil its obligations under the Marrakesh Treaty. While it does have a disability-related exception in its current national law, this applies to television broadcasts and cable programs,[126] not the category of literary works to which the Marrakesh Treaty applies. It is yet another example of an author centric formulation with robust provisions of exclusive rights and copyright infringement. There is no constitutional protection of copyright but, again, this is outweighed by the robustness of the copyright legislation. Reference is made to a requirement placed on the Government by the people of Belize that their policies eliminate economic and social inequalities based on disability (and other protected characteristics) which indicates a social model of disability,[127] yet disability is not included as a protected characteristic in the substantive provisions on discrimination.[128] Nevertheless, the fact that there is some mention of the rights of persons with disabilities, and an exception in some form, is evidence of the potential for a meaningful implementation of the Marrakesh Treaty with development of the existing framework.

- Bolivia (Plurinational State of)

Intellectual property rights, including copyright, are robustly protected in the Bolivian constitution.[129] On the one hand, Bolivia's national law does identify copyright protection as being a matter of public and social interest.[130] However, this is not reflected in its substantive provisions with only minimal scope for limitations.[131] In addition to educational quotation, the State has the power to prescribe the use of a particular work where it is considered of high cultural value in the public or social interest,[132] but this of course is exceptional in nature and by no means amounts to a disability rights exception. Thus, the incorporation of a new Treaty compliant exception is needed in Bolivian copyright law. In terms of disability policy, although constitutional provisions reflect a human rights model approach,[133]

---

[126] Article 83, Copyright Act (Chapter 252, Act No. 12 of 2000, Revised Edition 2020)
[127] Para (e) Preamble, Constitution of Belize [2017]
[128] *Ibid*, Article 16(3)
[129] Articles 102, Constitution of the Plurinational State of Bolivia (2009)
[130] Article 1, Law No.1322 of April 13, 1992, on Copyright
[131] *Ibid*, Articles 24-26
[132] *Ibid*, Article 25
[133] Articles 14 II, 70-72 of the Bolivian Constitution (2009)

the CRPD Committee has noted that the medical model is adopted in the criteria used to certify disability.[134] Full alignment with the human rights model is therefore required, in addition to copyright reform.

- Bosnia & Herzegovina

Although the CRPD Committee called for Bosnia & Herzegovina to urgently ratify and implement the Marrakesh Treaty,[135] it did not ratify until four years later and is yet to make progress on its implementation in national law. It has acknowledged that its copyright law is not currently harmonised with the Treaty and has confirmed that doing so is under consideration to take place “in the coming period.”[136] Its current copyright law, dating back to 2010, follows an author-centric approach to protection.[137] In line with Lockean labour theory and personality theory, copyright is recognised as an indivisible right which stems from the author and therefore belongs to them inherently.[138] Accordingly, the disability exception that is provided is rather stringently prescribed.[139] A work may be reproduced and distributed for the benefit of persons with disabilities, provided that an accessible format version is not currently available (i.e., similar to the commercial availability clause), the use is limited to the beneficiary persons, it is done on a non-profit basis, and both the source and authorship are indicated in the reproduced copy.[140] Further expansion will be required to bring this exception into line with the Marrakesh Treaty, including specifying the works and beneficiaries to which the exception applies, extending to the right of public communication, and establishing a cross-border exchange framework. At a constitutional level, while there is no reference to copyright protection, the constitution is also silent on disability rights, though the provision on non-discrimination is non-exhaustive on the protected grounds which could be interpreted to cover disability.[141] Although it contains a list of human rights

---

[134] Concluding Observations on the Initial Report of the Plurinational State of Bolivia CRPD/C/BOL/CO/1
[135] Concluding Observations on the Initial Report of Bosnia and Herzegovina CRPD/C/BIH/CO/1
[136] Marrakesh Treaty Questionnaire - Bosnia & Herzegovina: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_bosnia_and_herzegovina.pdf>
[137] Law on Copyright and Related Rights [2010]
[138] *Ibid*, Articles 14 and 15
[139] *Ibid*, Article 42
[140] *Ibid*
[141] Article 4, Constitution of Bosnia and Herzegovina [1995]

agreements applicable within its jurisdiction,[142] as the constitution pre-dates the CRPD, it is not listed. Incorporating it during the next round of constitutional amendments may give better protection to the rights of persons with disabilities, especially in light of the fact that the individual medical model of disability is employed in Bosnia & Herzegovina.[143] Overall, a shift in policy and legislative reform on copyright are both required.

- Cameroon

Cameroon copyright policy is another example of an author-centric approach to protection that is based on inherent exclusive rights reflective of Lockean and personality theory.[144] Although copyright is not constitutionally protected, it is noted in the copyright law itself that authors enjoy an exclusive right in their works as against all others just by reason of the work's creation.[145] Unsurprisingly, it has one of the shortest disability exceptions which permits "Braille reproductions for the blind" of published works.[146] This is a long distance away from fulfilling the Marrakesh Treaty's obligations in that it is too narrow in format, beneficiary, and excepted rights. It also does not permit a role for authorised entities or cross-border exchange of works. The CRPD Committee is yet to produce a Concluding Observation on Cameroon. However, based on its constitutional provisions on persons with disabilities, it is clear that a care/welfare approach is taken to disability which views such persons as dependent on the state.[147] Thus, overall, both a shift in disability model and legislative copyright reform are needed in Cameroon.

- Central African Republic

As was seen with Cameroon and Bosnia and Herzegovina, the copyright law of the Central African Republic adopts the same natural rights approach to protection by recognising an exclusive property right enforceable against all based on the act of

---

[142] *Ibid*, Annex I
[143] Concluding Observation CRPD/C/BIH/CO/1
[144] Law No. 2000/011 of December 19, 2000, on Copyright and Neighbouring Rights
[145] *Ibid*, Article 13(1)
[146] *Ibid*, Article 29(1)(g)
[147] Article 18(4) and Article 25(1), Constitution of the Republic of Cameroon [1996]

creation.[148] Accordingly, it is author-centric in policy and does not include a disability related exception. While there are a handful of limitations provided,[149] these closely follow Berne Convention standards and explicitly apply the three-step test.[150] Furthermore, sanctions apply to any works that are reproduced, distributed, or imported in violation of authorial rights,[151] meaning not only is the production of accessible format copies not permitted, but it would also incur legal repercussions. Thus, a radical U-turn in policy is required in order for the Central African Republic to revise its national law to align with the spirit and work of the Marrakesh Treaty, followed by the incorporation of a Treaty-compliant exception. The fact that copyright is not protected constitutionally may make this an easier shift.[152] While the CRPD Committee is yet to produce a Concluding Observation on the Central African Republic, progress on national model of disability can be seen in recent constitutional amendments. Previously, a welfare/care approach to disability was taken in only affording State assistance.[153] However, in the latest amendments, this has been revised to a State assurance of the reinforced protection of the rights of persons with disabilities which better aligns with the human rights model.[154] It is hoped that this shift in approach will also occur in copyright policy as a result of the Marrakesh Treaty's influence.

- Comoros

Comoros is another example of a country whose copyright protection is based on exclusive inherent rights enforceable against all granted by the mere act of creation of a work.[155] In line with this approach, its copyright law does not provide for a disability related exception, and in fact only contains one brief Article on limitations and exceptions.[156] Copyright is not constitutionally protected, but neither are the rights of persons with disabilities.[157] The only relevant Article guarantees their

[148] Article 1, Ordinance No. 85.002 of January 5, 1985, on Copyrights
[149] *Ibid*, Articles 10-18
[150] *Ibid*, Article 17
[151] *Ibid*, Article 44
[152] Constitution of the Central African Republic of December 5, 2004
[153] *Ibid*, Article 9
[154] Article 6, Constitution of the Central African Republic [2016]
[155] Article 1, Law on Literary and Artistic Property of March 11, 1957
[156] *Ibid*, Article 41
[157] Constitution of the Union of the Comoros [2018]

protection from all forms of neglect, exploitation, and violence by public powers.[158] This perceives persons with disabilities as a vulnerable group and in any case does not amount to a full protection of their rights. Further light on disability model is yet to be provided by the CRPD Committee. In any case, it is evident that a shift in the policy of both areas of law is certainly required in Comoros, particularly the new incorporation of a Marrakesh Treaty compliant exception or limitation.

- Ethiopia

The constitutional protection of copyright in Ethiopia explicitly follows a Lockean theory approach, noting that intangible products which are of value and the result of labour will be protected as property.[159] In contrast, Ethiopian copyright law begins with a statement as to the social utility of the protection of copyright in the cultural, social, economic, scientific, and technological development of a country.[160] Combining these two approaches which would suggest that its policy is dualistic. Indeed, it does proceed to provide for a range of exceptions to copyright.[161] However, a disability related exception is not included. It is also of interest to note that, although Ethiopia is not bound by any of the three bedrock international laws on copyright, it nevertheless explicitly incorporates the three-step test.[162] Moreover, it goes further to provide both civil and criminal repercussions in the instance that the rights of the copyright owner are violated.[163] Thus, not only is the production of accessible format copies of works currently impermissible, but it would also entail civil and criminal penalties. It is regrettable to see that one of the very few countries which has the most flexibility to provide a robust legal framework on disability accessibility has opted instead to adopt one of the most stringent approaches. Ethiopian copyright law therefore requires a radical overhaul in order to comply with, and not contradict, the Marrakesh Treaty's spirit and objectives. This will also entail delicate drafting in meeting the obligations that apply to Berne-gap countries. This is combined with the CRPD Committee's call for Ethiopia to move away from

[158] *Ibid*, Article 30
[159] Article 40(2), Constitution of the Federal Democratic Republic of Ethiopia (1995)
[160] Preamble, Copyright and Neighbouring Rights Protection Proclamation No. 410/2004
[161] *Ibid*, Articles 9-19
[162] *Ibid*, Article 9(2)(e)
[163] *Ibid*, Articles 33-36

derogatory references to persons with disabilities and towards a human rights model of disability.[164] The Ethiopian constitution also adopts a charity/welfare approach, offering only rehabilitation and assistance to persons with disabilities.[165] Thus, a substantial reform package is required in Ethiopia to shift policy in both spheres and bring its copyright law in alignment with the Marrakesh Treaty. A draft amendment to implement the Treaty was reported by Ethiopia in 2021,[166] but this has not yet been published.

- Iceland

Iceland has two sources of obligations to implement the Marrakesh Treaty: one by way of directly being a Contracting Party, and also being bound to implement the EU directives and regulations on the Marrakesh Treaty as part of its membership of the European Economic Area.[167] Despite this duality of obligations, Iceland is yet to bring its copyright law in line with the Treaty. The most recent copyright law passed in 2020 did not amend the pre-existing disability related exceptions and was in any case almost two years prior to Iceland becoming a Contracting Party.[168] Nevertheless, Icelandic copyright law is generally balanced between protecting authorial rights on the one hand,[169] and providing a wide range of exceptions and limitations in the public interest on the other.[170] Among these are three disability-related provisions found in Article 19. Firstly, any work may be reproduced and distributed on a non-profit basis provided the reproduced and distributed copies are specifically intended for use by the blind, visually impaired, deaf, dyslexic, or other persons who are unable to use normal printed language for reading.[171] Secondly, audio recordings of literary works may be produced on a non-profit basis and "lent" to the same beneficiary persons, though this is subject to reasonable compensation.[172] Finally, certain authorised institutions may produce video or audio

---

[164] Concluding Observations on the Initial Report of Ethiopia CRPD/C/ETH/CO/1
[165] Article 41(5), Ethiopian Constitution (1995)
[166] Marrakesh Treaty Questionnaire – Ethiopia: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_ethiopia.pdf>
[167] Association of Research Libraries <https://www.arl.org/national-implementations-marrakesh/>
[168] Copyright Act No. 73/1972 of May 29, 1972 (as amended up to Act No. 88/2019 of June 27, 2019)
[169] *Ibid*, Article 1
[170] *Ibid*, Article 10a-25b
[171] *Ibid*, Article 19
[172] *Ibid*

copies of works that are televised, broadcast, or otherwise made available via media services.[173] All of these exceptions are helpful in ensuring copyright does not present an obstacle to participation in cultural life. However, there is further room for alignment with the Treaty particularly in moving from specific formats to the wider definition of accessible format copy provided by the Treaty, mirroring the category of authorised entities, and allowing for the cross-border exchange of works. A Concluding Observation on Iceland is yet to be produced, and the Icelandic constitution is silent on both copyright and disability rights. The only inexplicitly relevant provision is that everyone is equal before the law and entitled to their human rights irrespective of a list of characteristics followed by a general category of "or other status."[174] As this is open to interpretation, disability could be included as one of these protected characteristics. Were persons with disabilities explicitly included, the provision would reflect a human rights model of disability, but it falls short of this due to the omission. Icelandic legislation on persons with disabilities takes a mixed approach with a recognition of the equality of rights of persons with disabilities on the one hand, and derogatory language reflecting the medical and tragedy models on the other.[175] Thus, both more explicit adoption of the human rights model of disability and an expansion of pre-existing exceptions in alignment with the Treaty are both needed in Iceland.

- Liechtenstein

As with Iceland, the copyright law of Liechtenstein is similarly balanced between protecting the exclusive rights of the author in the work they have created (i.e., Lockean theory) on the one hand,[176] and providing a robust catalogue of exceptions on the other.[177] However, its disability exception is much narrower.[178] The reproduction of a work in an accessible format is permitted for persons with disabilities provided several conditions are met.[179] The work in its published form

[173] *Ibid*
[174] Article 65, Constitution of the Republic of Iceland [1999]
[175] Articles 1-2, Act on the Affairs of Disabled People as amended by Act No. 128/2016
[176] Article 6, Act on Copyright and Neighbouring Rights of May 19, 1999, (consolidated version of December 19, 2006)
[177] *Ibid*, Articles 22-31
[178] *Ibid*, Article 26(c)
[179] *Ibid*, Article 26(c)(1)

must either not be accessible at all or only accessible under difficult conditions.[180] While this appears to be intended to ensure persons with disabilities have more comfortable access to works, it is definitionally problematic in determining the line between what circumstances of access would be sufficiently difficult to meet this requirement. Moreover, it must be non-profit and is subject to a requirement of remuneration for the reproduction and distribution of multiple copies.[181] There is clearly some way to go in bringing the copyright law of Liechtenstein in line with the Treaty, particularly in expanding the excepted rights, the role of authorised entities, and the cross-border exchange of works. At a national policy level, copyright is constitutionally protected,[182] whereas the rights of persons with disabilities are not. Instead, only the guarantee of assistance and the promotion of insurance schemes for persons with disabilities along with other "poor" categories of citizens, indicating an individual charity-based model of disability.[183] Thus, both significant reform in copyright law and policy of disability model are needed in Liechtenstein which it would be helpful for the CRPD Committee to pick up on when a Concluding Observation is being produced on this jurisdiction.

- Malaysia

The Malaysian constitution does not protect copyright directly but delegates the authority to legislate on copyright protection to Parliament.[184] The copyright law it has passed is predominantly author centric though with one key Article providing for certain fair dealings and free uses.[185] Among these is a disability-related exception which, though prior to the adoption of the Marrakesh Treaty, features some elements of the Treaty in that it allows the reproduction of works in specialised formats and the making available to the public of these copies by non-profit bodies.[186] However, implementation is needed to adopt the Treaty's definitions, include the right to distribution, and establish a framework for cross-border exchange of works. Moreover, the language of "special needs" reflects a

---

[180] *Ibid*
[181] *Ibid*, Article 26(c) (2-3)
[182] Article 34(2), Constitution of the Principality of Liechtenstein [2021]
[183] *Ibid*, Articles 25-26
[184] Ninth Schedule, Article 8(e), The Federal Constitution of Malaysia [2010]
[185] Article 13 (2) & (2A) Copyright Act 1987 (Act No. 332, as amended up to Act No. A1420)
[186] *Ibid*, Article 13(3) (gggg)

medical model of disability and should be replaced with the Treaty's wording. Given that the concept of print disability is introduced in an additional exception permitting the sound or video recording of a performance, this move only requires a minimal shift in legislative approach.[187] Despite recent amendments in 2020,[188] this was not addressed. A Concluding Observation has not yet been completed on Malaysia, but the absence of any provision on the rights of persons with disabilities within the constitution indicates a human rights model has not yet been adopted.

- Marshall Islands

The Marshall Islands does not have a copyright law framework per se. While there are constitutional provisions on property, intellectual property and copyright specifically are not protected.[189] Its main copyright law only regulates audiovisual works and sound recordings.[190] Moreover, as was highlighted at the outset of this chapter, the Marshall Islands is not a party to any of the three main international copyright laws. Thus, this jurisdiction is one of the exceedingly rare few without a legal framework that hinders access to copyright works or cultural materials. Nevertheless, it is still obliged to incorporate the provisions of the Marrakesh Treaty into its national copyright law which may be of practical benefit in establishing the practices and function of authorised entities and improving the circulation of works. In terms of disability policy, there are no constitutional references to disability, but the CRPD Committee note how persons with disability are covered by the blanket provision on equality and also note evidence of a human rights model in some national laws.[191]

- Montenegro

Though the CRPD Committee called on Montenegro to ratify and implement the Marrakesh Treaty back in 2017,[192] it did not ratify until five years later and is yet to

[187] *Ibid*, Article 13(3)(c)(iii)
[188] Copyright (Amendment) Act 2020 (Act No. A1612)
[189] Constitution of the Marshall Islands [1995]
[190] Unauthorized Copies of Recorded Materials Act, 1991 (P.L. 1991-132, §1, 20 MIRC Ch. 2.)
[191] "Section 12(1), Marshall Islands Constitution. See also Initial Report Submitted by the Marshall Islands under Article 35 of the Convention, Due in 2017 CRPD/C/MHL/1
[192] Concluding Observations on the Initial Report of Montenegro CRPD/C/MNE/CO/1

implement. In line with the constitutional protection of author's rights,[193] Montenegro's copyright law is predominantly author centric in that it emphasises exclusive authorial rights based on a natural rights argument of creation,[194] and explicitly subjects all of the exceptions it provides to the three-step test.[195] This is further evident in its disability related exception which states that the property right of the author cannot be acquired by any activities under the exception, which appears to be an additional safeguard for authors.[196] Nevertheless, without paying compensation, a work can be adapted in an alternative form for persons with disabilities if the desired form is not available provided it is non-profit and is limited to the specific requirements of the beneficiary.[197] It is evident from this wording that the author's interests are being prioritised, and not the needs of persons with disabilities. Significant reform is needed here to bring Montenegro's copyright law into line with the Treaty, particularly in expanding the excepted rights, the role of authorised entities, the cross-border exchange of works, and shifting the overall paradigm of only tolerating the rights of persons with disabilities. While the constitutional provisions of disability do reflect the human rights model of disability,[198] the CRPD Committee has noted that the medical model is still prevalent in several national laws.[199]

- Nicaragua

Nicaraguan copyright policy adopts a balanced approach overall with the author-centric natural rights theory in considering that the act of creation itself merits protection and protecting exclusive rights accordingly,[200] yet with a range of limitations and exceptions taking into account the wider public interest including disability rights.[201] Constitutional provisions on the protection of copyright and intellectual property take a more socio-centric stance, emphasising the need to

---

[193] Article 76, Constitution of Montenegro (Official Gazette of Montenegro, No. 1/2007 and 38/2013)
[194] Article 13, Law on Copyright and Related Rights (Official Gazette of Montenegro, No. 37/2011, 53/2016 and 145/2021)
[195] *Ibid*, Article 45
[196] *Ibid*, Article 48
[197] *Ibid*, Article 48(1)
[198] Articles 68 and 69, Constitution of Montenegro (2007)
[199] Concluding Observation CRPD/C/MNE/CO/1
[200] Articles 4 and 5, Law No. 312 on Copyright and Neighbouring Rights (consolidated text of June 25, 2020)
[201] *Ibid*, Articles 31-43

strengthen and develop national culture.[202] Although a new copyright law was passed just two months after the Treaty entered into force in Nicaragua, it did not make any amendments to the pre-existing disability related exception.[203] Under this exception, a work may be reproduced in Braille or another specific format for the blind without the permission of the author provided it is for personal use and non-profit.[204] The scope is significantly narrower than what the Treaty requires in that the category of beneficiary persons only applies to the blind, it only excepts the right of reproduction, and must only be for personal use i.e., not for distribution to others nationally or internationally. In order to comply with the Treaty, this exception will need to be broadened in beneficiaries, format, excepted rights, and permitted activities. In terms of policy on disability, the CRPD Committee is yet to produce a Concluding Observation on Nicaragua. However, constitutional provisions on disability reflect the human rights model in emphasising the equal rights of persons with disabilities,[205] followed by several other guarantees of State support.[206] Overall, there is promise for a positive shift in policy in Nicaragua with the development of its pre-existing exception and overall stance on copyright and disability rights.

- Philippines

The declared state policy on copyright protection in the copyright law of the Philippines is markedly similar to the language of the Treaty in emphasising its social function.[207] A similar provision is provided in the constitution.[208] As it protects exclusive rights as a means to a social end, the approach is tilted more towards being more socio-centric than dualistic. In line with this policy, a range of exceptions are provided for, including a disability related exception which was introduced in 2013.[209] This exception allows for the non-profit reproduction and distribution of published works in specialised formats for the blind, visually and

---

[202] Articles 125-126, Political Constitution of the Republic of Nicaragua [2014]
[203] Article 34, Law No. 312 on Copyright and Neighbouring Rights (revised text of February 2001)
[204] *Ibid*
[205] Article 5, Nicaraguan Constitution [2014]
[206] *Ibid*, Articles 56 and 62
[207] Article 2, Intellectual Property Code of the Philippines (Republic Act No. 8293) (2015 Edition)
[208] Article XIV, Section 14, Constitution of the Republic of the Philippines [1987]
[209] Republic Act No. 10372, entitled 'An Act Amending Certain Provisions of Republic Act No. 8293, otherwise known as the ‘Intellectual Property Code of the Philippines', and for Other Purposes'

reading impaired persons.[210] Positively, two of the three rights are excepted, the format permitted is open to interpretation, and the beneficiary persons it applies to essentially reflects the Treaty's definition. However, there is yet room for the Philippines to bring its law in line with the Treaty by extending the exception to cover the right of public communication, the cross-border exchange of works, and the role of authorised entities. It is also recommended that "specialised formats" is either defined or amended to "accessible format copies." These areas of reform were acknowledged as being included in pending implementing rules and regulations in 2019 but these have not yet come into force.[211] Moreover, much groundwork is needed in re-envisaging its policy on model of disability. As the CRPD Committee has highlighted, the medical and charity models of disability are prevalent in national laws.[212] This is also evident in the constitutional provisions on disability.[213]

- Qatar

Although the CRPD Committee recommended that Qatar ratify and implement the Treaty in 2015,[214] it did not ratify until 3 years later and is yet to implement. Implementation is required urgently in light of the fact that Qatari copyright law does not contain a disability related exception at all and applies sanctions to copyright infringement.[215] Thus, not only is the production of accessible format copies of works currently impermissible, but it would also entail legal repercussions under the present law. Accordingly, a Treaty-compliant exception or limitation should be incorporated in Qatari copyright law expediently. These reforms were reportedly under consideration as noted in a 2021 questionnaire.[216] However, they are yet to come into force. In addition, progress is needed in moving to the human rights model of disability,[217] though persons with disabilities do have equal rights

[210] Section 184(1)(l), Intellectual Property Code [2015]
[211] Marrakesh Treaty Questionnaire – Philippines: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_philippines.pdf>
[212] Concluding Observations on the Initial Report of the Philippines CRPD/C/PHL/CO/1
[213] Article XIII, Sections 11 and 13, Philippine Constitution [1987]
[214] Concluding Observations on the Initial Report of Qatar CRPD/C/QAT/CO/1
[215] Chapter X, Law No. 7 of 2002 on the Protection of Copyright and Related Rights
[216] Marrakesh Treaty Questionnaire – Qatar: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_qatar.pdf>
[217] CRPD/C/QAT/CO/1

under the constitution, albeit inexplicitly.[218] Copyright is also not protected constitutionally, meaning at least that there is no constitutional imbalance in protection of rights.

- Rwanda

Although copyright is not constitutionally protected, Rwandan copyright policy is explicitly dualistic, stating how protection is for the mutual advantage of producers and users, overall innovation, development, and welfare.[219] Accordingly, it offers a range of limitations and exceptions,[220] including a disability related exception.[221] Under this exception, a work may be reproduced in an alternative manner that enables perception of the work and distributed to visually impaired persons without authorisation, provided it is done on a non-profit basis and the work is not reasonably available in the required format.[222] Additionally, accessible works produced abroad may also be distributed within Rwanda provided the same national conditions are met.[223] This exception is remarkable for how closely aligned it is with the Treaty's framework despite having been formulated four years prior to the Treaty's adoption. Nevertheless, there is still scope for further alignment in also excepting the right of public communication, including the export of works and not just their import, a role for authorised entities, and developing the intended beneficiary persons from visual impairment to the Treaty's category of beneficiaries. It is encouraging to see that Rwanda has fulfilled the CRPD Committee's call for it to sign and ratify the Treaty.[224] However, its recommendation on implementation is yet to be fulfilled, including a move away from the medical model of disability currently prevalent in Rwandan national law.[225] Indeed, although there is a constitutional right against disability discrimination,[226] persons with disabilities are then categorised as "needy persons" which perpetuates the charity

[218] Articles 34-35, Constitution of Qatar [2004]
[219] Article 2, Law No. 31/2009 of 26/10/2009 on the Protection of Intellectual Property
[220] *Ibid*, Articles 203-215
[221] *Ibid*, Article 215
[222] *Ibid*
[223] *Ibid*
[224] Concluding Observations on the Initial Report of Rwanda CRPD/C/RWA/CO/1
[225] *Ibid*
[226] Article 16, The Constitution of the Republic of Rwanda of 2003 (amended up to December 24, 2015)

model of disability.[227] Thus, while there are only a few aspects of copyright law which need to be brought in line with the Treaty, there is much more progress to be made on national disability policy.

- Saint Lucia

Saint Lucian copyright law offers a robust framework on the protection of exclusive rights and, indeed, the stated purpose of the latest copyright law amendments was to strengthen the protection of these rights.[228] This is balanced with an equally robust range of exceptions and limitations of thirty-three Articles,[229] including a disability related exception.[230] The Treaty's beneficiaries are included in this exception as it applies to any form of physical or mental impairment. However, it only relates to subtitled or modified versions of TV broadcasts or cable programmes, and not to literary works.[231] While it is promising that there is at least an exception to work with, and that national policy is relatively embracing of exceptions, significant reform is needed to introduce a Treaty-compliant exception in Saint Lucian law which relates to the accessibility of the full category of literary and artistic works to which the Treaty applies. Constitutionally, neither copyright nor disability rights are directly protected. The protection of copyright may be interpreted to come under the right to property as the definition encompasses anything capable of being owned.[232] Similarly, although persons with disabilities are not directly referenced, the general provision on protection from discrimination applies to all.[233] The CRPD Committee is yet to produce a Concluding Observation on Saint Lucia. However, its national law on disability takes a mixed approach in legislating against discrimination on the grounds of disability indicating a human rights model approach yet defining a "disabled person" as someone disadvantaged by their "exceptionalities" strongly indicating a medical and tragedy model of

[227] Ibid, Article 51
[228] Preamble, Copyright Act (Chapter 13.07, Act No. 10 of 1995, as amended by Copyright (Amendment) Act, 2000, Revised Edition 2015)
[229] *Ibid*, Articles 54-87
[230] *Ibid*, Article 85
[231] *Ibid*
[232] Article 6(8), Constitution of Saint Lucia (Chapter 1.01) [2006]
[233] *Ibid*, Article 13(2)

disability.[234] The omission of persons with disabilities from constitutional protection is a further indication that the human rights model has not been adopted.

- San Marino

Despite issuing a Council Decree in 2020 acceding to the Marrakesh Treaty, San Marino is yet to amend its national copyright law accordingly. The present law does not contain a disability-related exception and is predominantly author centric with limited provision on free uses which closely follow Berne Convention standards.[235] Thus, the incorporation of a Treaty-compliant exception is needed. The constitution of San Marino is silent on both copyright and the rights of persons with disabilities,[236] and a Concluding Observation is yet to be completed on this Contracting Party. However, a recent law was passed in 2021 to protect the fundamental rights and freedoms of persons with "sensory disabilities."[237] It reflects the social model in its aim to remove barriers, and the human rights model in the empowerment of human rights. However, it also contains derogatory references which reflect the medical model, and it does not apply to all persons with disabilities. While it is a step in the right direction, a full move to the human rights model is required.

- Sao Tome & Principe

The policy of Sao Tome & Principe copyright law aligns with the incentive theory of protection, noting how reinforced protection of exclusive authorial rights is needed as motivation for greater intellectual creativity.[238] This is buttressed by the constitutional protection of intellectual property as an inherent right, following natural rights theory.[239] Yet, this is still counterweighted with a list of exceptions,[240]

---

[234] Articles 2 and 3, Saint Lucia Equality of Opportunity and Treatment in Employment and Occupation Act [2001]
[235] Law No. 8 of 25 January 1991 - Protection of Copyright
[236] Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order. Coordinated Text of Law No. 59 of 8th July 1974, with the Amendments resulting from Law No. 95 of 19th September 2000 and Law No. 36 of 26th February 2002
[237] Law No.136 of 19 July 2021 Protection of People with Sensory Disabilities and Interventions to Remove Barriers to Communication
[238] Preamble, Copyright and Related Rights Code (approved by Decree-Law No. 02/2017)
[239] Article 46, Constitution of the Democratic Republic of São Tomé and Príncipe [2003]
[240] *Ibid*, Articles 75-82

including for persons with disabilities.[241] This exception allows the reproduction and public communication (or making available to the public) of works for people with disabilities without the consent of the author or remuneration, though on a non-profit basis and limited to the extent as is required.[242] This is supplemented by an additional provision that the non-profit reproduction in Braille or alternative format for the visually impaired will always be permitted.[243] In many respects, this exception already reflects the Marrakesh Treaty's framework. Yet, further expansion is needed in also excepting the right of distribution, aligning with the Treaty's definitions of format and beneficiaries, permitting the work of authorised entities and the cross-border exchange of works. Moreover, reference to "deficiencies" reflects the medical model of disability and should be edited out. A charity model is also indicated in the constitutional provision on disability,[244] thus, an overall shift in disability model is required which will likely be picked up on by the CRPD Committee when a Concluding Observation is produced in future.

- Saudi Arabia

Saudi Arabian policy on copyright protection is rather elusive, with no reference in its constitution and no elaboration in the copyright Act itself. Nonetheless, it appears to be an author-centric regime with only one Article dedicated to exceptions and no disability related exception.[245] Moreover, penalties for infringement include up to a 250,000 riyals fine (£52,000 approximately) and/or a possible 6-month imprisonment.[246] Thus, not only is the production of accessible format copies not permitted, but it would also incur substantial penalties. It is therefore imperative that Saudi Arabian copyright law policy is reformed to ensure that its law does not conflict with the purpose and provisions of the Treaty. Regarding disability policy, the CRPD Committee has noted that many national laws adopt the charity model of disability.[247] Indeed, this is also reflected in the

---

[241] *Ibid*, Article 75 (i)
[242] *Ibid*
[243] *Ibid*, Article 80
[244] Article 44(1), Constitution of São Tomé and Príncipe [2003]
[245] Article 15, Copyright Law (issued by Royal Decree No. M/41 of 2 Rajab 1424H (August 30, 2003), and amended by Decision of the Council of Ministers No. 536 of 19 Shawwal 1439H (July 3, 2018))
[246] *Ibid*, Articles 22 (2) and (5)
[247] Concluding Observations on the Initial Report of Saudi Arabia CRPD/C/SAU/CO/1

constitution.[248] A radical shift in the policy on both copyright and disability rights are therefore needed in Saudi Arabia.

- Serbia

Serbian constitutional approach to the rights of persons with disabilities appears to adopt a human rights model by prohibiting discrimination on the grounds of disability,[249] and providing for "special protections",[250] though the CRPD Committee note the use of the medical model in the context of capacity for work.[251] The Committee also called on Serbia to urgently ratify and implement the Treaty.[252] However, it did not ratify until four years later and is yet to amend its national copyright law to implement the Treaty. The current policy on copyright protection is dualistic, with constitutional provisions taking a human rights-based approach to protecting the moral and material rights of authors in accordance with Article 15(1)(c) ICESCR.[253] It also shows socio-centric utilitarian aims in the promotion of the development of science, culture, and art.[254] In line with this policy approach, a disability related exception is provided for which permits the reproduction and distribution of works for the needs of persons with disabilities.[255] This is a solid foundation to work with in bringing Serbian copyright law in line with the Treaty's framework. To do so, the Treaty's definitions should be adopted, the excepted rights should include the right of making available to the public, the cross-border exchange of works should be permitted, and a framework for the work of authorised entities incorporated.

- Tajikistan

[248] Article 27, Basic Law of Governance (issued by the Royal Decree No. A/90 dated 27/08/1412H (March 1, 1992))
[249] Article 21, Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 98/2006)
[250] *Ibid*, Article 60 and 69
[251] Concluding Observations on the Initial Report of Serbia CRPD/C/SRB/CO/1
[252] *Ibid*
[253] Article 73, Serbian Constitution (2006)
[254] *Ibid*
[255] Article 54, Law on Copyright and Related Rights (Official Gazette of the Republic of Serbia No. 104/2009, 99/2011, 119/2012, 29/2016 and 66/2019)

Intellectual property is constitutionally protected in Tajikistan,[256] though without any indication as to the policy behind it. Similarly, Tajikistan's copyright law does not elaborate on state policy, though it can be deduced, from the fact that there are five articles on limitations[257] including a disability related exception,[258] that it takes a balanced approach to protection overall. However, this exception only permits the non-profit reproduction of published works in specialised formats for the blind.[259] Noticeably, the beneficiaries and excepted rights to which it applies are considerably narrower than what the Marrakesh Treaty requires. It also does not provide for the role of authorised entities or the cross-border exchange of works. Considerable progress is therefore need in bringing Tajikistan's copyright law in line with its obligations under the Treaty. In terms of disability policy, the CRPD Committee is yet to produce a Concluding Observation on Tajikistan, and there are no constitutional references to disability which indicates that a human rights model has not yet been adopted in Tajikistan. Moreover, its national law on the social protection of persons with disabilities takes a mixed approach with a definition of disability that reflects the medical model, yet with the objective of achieving equality and the protection of human rights.[260] Overall, full alignment with the human rights model is required.

- Turkmenistan

The copyright policy of Turkmenistan is dualistic in that the protection of exclusive authorial rights are counterweighted with social utilitarian interests in the development of science, culture, and the arts.[261] Accordingly, it does feature a disability related exception.[262] However, it is similarly narrow as the Tajikistan exception in that it only allows for the reproduction of published works in special

[256] Article 40, Constitution of the Republic of Tajikistan [2003]
[257] Articles 19-24, Law of the Republic of Tajikistan on Copyright and Related Rights (as amended up to 2009)
[258] *Ibid*, Article 20(6)
[259] *Ibid*
[260] Law of the Republic of Tajikistan dated December 29, 2010, No. 675 on Social Protection of Disabled People (As Amended by the Law of the Republic of Tajikistan dated December 17, 2020, No. 1739)
[261] Article 39, Constitution of Turkmenistan [2008], and Article 4(1), Law of Turkmenistan No. 257-IV of January 10, 2012, on Copyright and Related Rights (as amended by Law No. 668-V of November 25, 2017)
[262] *Ibid*, Article 19(6)

formats for the blind on a non-profit basis, though without authorisation or payment of royalties.[263] Thus, the same reforms are required as in Tajikistan in terms of expanding its beneficiaries, excepted rights, and introducing the role of authorised entities and the cross-border exchange of works. There is a helpful provision that gives priority to international Treaties over national law.[264] This may pave the way for a full implementation of the Treaty in national copyright law. However, as the Treaty requires specific implementation and there are multiple Treaties in the sphere of copyright law which are applicable, this Article is not sufficient in itself, and legislative reform is still required. The CRPD Committee had called on Turkmenistan to ratify and implement the Treaty in a 2015 Concluding Observation,[265] yet it did not accede until five years later and is yet to complete implementation as discussed. The Committee also noted that a medical model of disability is adopted in Turkmenistan law,[266] and a charity model is reflected in the constitution.[267] Considering that its copyright exception only applies to the blind, adopting a medical approach to this will detrimentally impact on the rights of the Treaty's beneficiaries. Thus, both further legislative reform and shift in disability model are both required in Turkmenistan.

- Tanzania (United Republic of)

Tanzanian copyright policy is dualistic, noting that the protection of authorial rights is for the purpose of promoting the creation of traditional culture, to further productive activities and other cultural productions and events of general interest.[268] Despite this, it only contains on article on free uses which incorporate the three-step test,[269] and does not provide for a disability exception. Thus, the incorporation of a new Treaty-compliant disability exception is needed. While the CRPD Committee is yet to produce a Concluding Observation on Tanzania, the constitutional approach to disability adopts a blend of the human rights and the

[263] *Ibid*
[264] *Ibid*, Article 2(2). See also Article 6, Constitution of Turkmenistan
[265] Concluding Observations on the Initial Report of Turkmenistan CRPD/C/TKM/CO/1
[266] *Ibid*
[267] Article 37, Constitution of Turkmenistan [2008]
[268] Article 2, The Copyright and Neighbouring Rights Act, 1999 (Act No. 7 of 1999)
[269] *Ibid*, Article 12

social models of disability.[270] The State authority is obliged to take measures to ensure the realisation of certain key rights,[271] though this should be expanded to include all rights. Additionally, provision on non-discrimination and equality shows awareness of socially created disabilities.[272] Copyright, on the other hand, is not constitutionally protected - another rare instance of disability rights being better protected than author's rights.

- Uzbekistan

The constitution of Uzbekistan takes an exemplary approach on the protection of both copyright and the rights of persons with disabilities. Intellectual property is protected in the same article with the right to enjoy cultural benefits, indicating a dualistic approach to protection.[273] Provision on the rights of persons with disabilities reflects the human rights model of disability and, even more pertinently, their right to access social, cultural, and economic spheres is explicitly protected.[274] Accordingly, its national copyright law offers a wide range of exceptions[275] and does already provide for a disability exception.[276] However, it follows a similar approach as Tajikistan and Turkmenistan in only applying to the reproduction of works in special formats for the blind.[277] Thus, the same expansions in beneficiaries, excepted rights, role of authorised entities and cross-border exchange of works are required to bring the exception in line with the Treaty. Until a Concluding Observation is produced on Uzbekistan by the CRPD Committee, it can be assumed from the constitutional approach that the human rights model has already been adopted.

- Vanuatu

---

[270] The Constitution of the United Republic of Tanzania [1977]
[271] *Ibid*, Article 11(1)
[272] *Ibid*, Article 13(5)
[273] Article 53, Constitution of the Republic of Uzbekistan [2023]
[274] *Ibid*, Article 15
[275] Articles 25-33, Law of the Republic of Uzbekistan No. ZRU-42 of July 20, 2006, on Copyright and Related Rights (as amended up to Law of the Republic of Uzbekistan No. ZRU-476 of April 18, 2018)
[276] *Ibid*, Article 26
[277] *Ibid*

Vanuatu fulfilled the CRPD Committee's recommendation to ratify the Marrakesh Treaty within a year but is yet to implement it in national legislation.[278] Indeed, although recent copyright amendments were passed in 2021,[279] post accession to the Treaty, these amendments did not introduce a new disability exception. The present law is balanced overall with robust provision on both protection and limitations and exceptions which provides the foundation for the incorporation of a Treaty-compliant exception.[280] This is required urgently due to the serious criminal and civil consequences that producing accessible format copies of works would currently attract under Vanuatuan copyright law.[281] Although the constitution is silent on both copyright and disability rights,[282] the CRPD Committee has noted the need to move to the human rights model of disability in Vanuatuan national law.[283] Despite national policy adopting the CRPD definition of disability,[284] there is as of yet no national legislation to enforce this. Thus, reform of both copyright and disability law is needed in Vanuatu.

- Venezuela (Bolivarian Republic of)

The rights of authors in their works are constitutionally protected in Venezuela, though this is expressly caveated by the conditions and exceptions established in national law and international Treaties which have been ratified.[285] This indicates a dualistic approach to protection and paves the way for a meaningful implementation of the Marrakesh Treaty in Venezuela. However, Venezuelan copyright law does not currently contain a disability exception and is in fact thirty years old,[286] though it does provide for a wide range of other exceptions.[287] Thus, the introduction of a Treaty-compliant disability exception is required urgently in Venezuela to ensure that the Treaty's beneficiaries do not face any of the criminal

[278] Concluding Observations on the Initial Report of Vanuatu CRPD/C/VUT/CO/1
[279] Copyright and Related Rights (Amendment) Act No. 10 of 2021
[280] *Ibid*, Articles 10-18
[281] *Ibid*, Part 6
[282] Constitution of the Republic of Vanuatu [2020]
[283] Concluding Observation CRPD/C/VUT/CO/1
[284] Government of the Republic of Vanuatu, "Vanuatu National Disability Inclusive Development Policy 2018-2025" (2018) 4, available here: <https://mjcs.gov.vu/images/policy/DID_Policy_2018-2025.pdf>
[285] Article 98, Venezuela (Bolivarian Republic of) 1999 (rev. 2009)
[286] Venezuelan Law on Copyright [1993]
[287] *Ibid*, Articles 43-49

and civil sanctions that pertain to copyright infringement.[288] In terms of disability model, the constitution largely reflects a human rights model,[289] though the CRPD Committee has noted that the medical model is still present in some national laws.[290] Thus, a package of national measures to reform copyright law and harmonise national approach on disability model are needed in Venezuela.

- Zimbabwe

Constitutional protection of the rights of persons with disabilities is exemplary and one of the best among the Treaty's Contracting Parties.[291] The human rights model is applied meaningfully with numerous sections dedicated to enshrining the rights of persons with disabilities,[292] supplemented by references throughout other constitutional rights.[293] This is particularly impressive in light of the fact that copyright is not constitutionally protected in one of the rare instances that disability rights are protected more strongly than intellectual property rights. Although the CRPD Committee is yet to produce a Concluding Observation on Zimbabwe, these constitutional provisions unquestionably adopt the human rights model. It is regrettable, however, that this exemplary stance has not yet filtered through to national copyright policy as the current copyright act does not provide for a disability exception,[294] despite there being a catalogue of other exceptions.[295] Thus, the introduction of a new Treaty-compliant exception is needed to bring Zimbabwean copyright law in line with the Treaty.

5.4.2 No Implementation - 5+ Years Since Ratification/Accession

There are 20 countries in which the Marrakesh Treaty's obligations have been in force for more than five years but national legislation to implement its provisions has not been adopted. The number of years since the last time a new copyright law was passed ranges from three years in the most recent instance, and thirty-four

---

[288] *Ibid*, Parts VI and VII
[289] Article 81, Venezuelan Constitution [1993]
[290] Concluding Observations on the Initial Report of the Bolivarian Republic of Venezuela CRPD/C/VEN/CO/1
[291] Constitution of Zimbabwe Amendment (No. 20) Act, 2013
[292] *Ibid*, Articles 3(2)(i)(ii), 22, and 83
[293] *Ibid*, Articles 24, 56(3), 56(4)(a), 102(1)(d), 155(2)(b), and 194(1)(k)
[294] Copyright and Neighbouring Rights Act (Chapter 26:05, as amended up to Act No. 32 of 2004)
[295] *Ibid*, Articles 24-44

years at the longest. This indicates that a substantial number of countries require a modernisation of their national copyright laws in addition to compliance with the Marrakesh Treaty.

Contracting Party	*Year of Latest Copyright Law*	*Year MT Entered into Force*
Afghanistan	2008	2018
Azerbaijan	2013	2018
Botswana	2006	2017
Burkina Faso	2000	2017
Chile	2017	2016
Democratic People's Republic of Korea	2006	2016
Dominican Republic	2000	2018
El Salvador	2017	2016
Ghana	2005	2018
Honduras	2006	2017
India	2017	2016
Jordan	2014	2018
Lesotho	1989	2018
Mali	2008	2016
Paraguay	2010	2016
Panama	2012	2017
Republic of Korea	2023	2016
Saint Vincent and the Grenadines	2009	2016
Tunisia	2009	2016
Uganda	2006	2018

These Contracting Parties are analysed individually in the following profiles:

- Afghanistan

Despite having ratified the Marrakesh Treaty five years ago, Afghanistan is yet to fulfil its obligations in providing for an exception or limitation in its national law. This is particularly important since its main copyright law passed in 2008 does not

contain a disability-specific exception.[296] While reproduction is allowed without the author's authorisation, this is for personal use only and does not expressly allow for format changing.[297] Although this exception was formulated prior to Afghanistan acceding to the Berne Convention in 2018, the overall stance of the law is restrictive and emphasises elements of the three-step test in not allowing direct or indirect commercial gain in an educational context.[298] Overall, the Act presents copyright as a function of protecting the author's economic and moral interests and is therefore author-centric in approach.[299] Moreover, copyright is constitutionally protected as guaranteeing the rights of authors.[300] While there is some constitutional support for the active participation in society of persons with disabilities, this is combined with an individual charity model in noting them as recipients of aid along with other poor or vulnerable groups,[301] though Afghanistan notes that an action plan is being put in place to better protect the rights of persons with disabilities.[302] Nevertheless, a substantial amount of work is needed to shift Afghanistan's national policy on copyright and disability in line with the spirit of the Treaty, and for its national copyright law to be updated with new provisions on limitations and exceptions.

- Azerbaijan

Azerbaijan is another country that acceded to the Marrakesh Treaty five years ago and is yet to reform its national copyright law accordingly. However, the pre-Marrakesh exception found in Article 19 of its main copyright law does already reflect certain elements of the Treaty's template.[303] An exception to the right of reproduction is provided which does not require the author's approval and is not subject to remuneration.[304] The reproduction can be in Braille or "special means"

---

[296] Law Supporting the Rights of Authors, Composers, Artists, and Researchers (Copyright Law) [2008]
[297] *Ibid*, Article 39 (1)
[298] *Ibid*, Article 40(2)(1)
[299] *Ibid*, Article 1
[300] Article 47, The Constitution of Afghanistan [2004]
[301] *Ibid*, Article 53
[302] Marrakesh Treaty Questionnaire – Afghanistan: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_afghanistan.pdf>
[303] Article 19, Law of the Republic of Azerbaijan on Copyright and Related Rights (as amended up to Law No. 636-IVQD of April 30, 2013)
[304] *Ibid*

which could be interpreted to include digital accessibility, and the activity is to be non-profit.[305] Nevertheless, further clarification is needed on who may carry out the reproduction, and who may be a beneficiary of it according to the Treaty's definitions. Moreover, exceptions will need to be incorporated regarding the rights of distribution and making available to the public in order to fulfil the Article 4 obligation, along with a mechanism for the export and import of works. Additionally, the format permitted for reproduction will need to be expanded from "Braille characters or other special means" to align with the Treaty's definition of accessible format copy. Azerbaijan has emphasised the primacy of international law of the Marrakesh Treaty over its national copyright law.[306] However, as emphasised severally, specific implementation of the Treaty is required. At a policy level, Azerbaijan has robust provisions on the exclusive rights of authors in its copyright legislation, and constitutionally protects copyright as an individual right and not a social tool.[307] Moreover, while it also constitutionally protects the equal rights of persons with disabilities, an individual medical approach is adopted in noting that their enjoyment of their rights may be "impeded by their limited abilities."[308] Thus, while there is more ground to work with in bringing Azerbaijan's law in line with the Marrakesh Treaty, a shift in policy approach on copyright and disability rights will still be necessary.

- Botswana

Significant reform is needed in Botswana to bring its copyright legislation in line with the Marrakesh Treaty. In addition to the fact that it has not been updated for almost two decades throughout Botswana's membership of the CRPD, the current copyright law Act does not contain a disability rights exception.[309] There is evidence of potential in that there is at least quite a broad range of exceptions more generally which shows there is some recognition of balancing copyright with public

[305] *Ibid*, Article 19(6)
[306] Marrakesh Treaty Questionnaire – Azerbaijan: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_azerbaijan.pdf>
[307] Articles 30 and 51, The Constitution of the Republic of Azerbaijan [1995] (as amended up to 26 September 2016)
[308] *Ibid*, Article 25
[309] Copyright and Neighbouring Rights Act, 2000 (Chapter 68:02, as amended by Act No. 6 of 2006)

interest matters.[310] Copyright is also not protected constitutionally which may allow for greater scope in exception-drafting. On the other hand, while fundamental rights are guaranteed to all without discrimination, disability is not included in the category of protected characteristics,[311] nor are the rights of persons with disabilities protected. Indeed, it has been noted that Botswana does not provide any specific legislation on persons with disabilities.[312] Its national policy on disability adopts a mix of the care model, medical model, and hints of the human rights model in recognising the human rights and respect for dignity of persons with disabilities.[313] The CRPD Committee is yet to provide a Concluding Observation on Botswana, but it is likely that it will call for the urgent implementation of the Treaty under recommendations on Article 30. This is particularly important in light of the fact that Botswana has not acceded to the CRPD's optional protocol and therefore does not allow for individual communications or inquiries. Overall, substantial reform is needed in updating national copyright law, incorporating a Treaty-mandated limitation or exception, and in the better protection of persons with disabilities.

- Burkina Faso

National policy in Burkina Faso is predominantly author-centric, with some consideration for public interest. While the right to copyright protection is constitutionally protected in clear terms,[314] there is only one reference to persons with disabilities who are guaranteed "assistance" along with the aged which is another example of the individual charity model of disability.[315] Its copyright law is

---

[310] *Ibid*, Part III, Sections 12-21
[311] Section 3, Chapter II, Constitution of Botswana [1966]
[312] Open Society Initiative for Southern Africa, "Situation Analysis of Disability Rights in the Context of Botswana" (2016) 14, available here: <https://www.rodra.co.za/images/countries/botswana/research/Situation%20Analysis%20Report%20of%20Disability%20Rights%20in%20the%20Context%20of%20Botswana%20-%202016.pdf> See also, Jimcall Pfumorodze and Charles Manga Fombad, "Protecting the Disabled in Botswana: An anomalous Case of Legislative Neglect" 101, available here: <https://www.rodra.co.za/images/countries/botswana/research/Protecting%20the%20disabled%20in%20Botswana%20(An%20anomalous%20case%20of%20legislative%20neglect).pdf>
[313] Botswana Ministry of Health, "National Policy on Care for People with Disabilities" (February 1996), available here: <https://extranet.who.int/mindbank/item/2134#:~:text=Description,people%20with%20disabilities%20in%20Botswana.>
[314] Article 28, Burkina Faso Constitution [1991] (as amended up to 2015)
[315] *Ibid*, Article 18

formulated as providing for the benefits that authors enjoy and emphasises exclusivity.[316] There are a handful of exceptions, albeit that they are heavily caveated.[317] A disability rights exception is not provided, though an exemption from paying remuneration is offered concerning the acquisition of recording media for the purpose of assisting persons with visual or auditory disabilities.[318] Thus, overall, there are signs of potential to work with the existing recognitions of the interests of persons with disabilities and to expand the current exception regime. A shift in policy is not required in a fundamental sense, but a refining and reinforcement will need to take place, in addition to incorporating a Treaty-compliant exception.

- Chile

Chile's national law is a prime example of a balanced approach to copyright policy. Copyright protection is constitutionally protected in an author-centric manner,[319] though this is balanced with a provision for equal representation of persons with disabilities in the drafting of the Constitution.[320] Similarly, while its copyright law is balanced with the economic and moral rights of the author on the one hand, and a robust limitation and exceptions regime on the other. A recent Copyright Law Act was passed in 2017 after ratifying the Treaty,[321] however, there was no amendment to its pre-existing exception in Article 71(c). Nevertheless, that exception already reflects the Treaty's provisions to a substantial extent. It is without the authorisation of the copyright holder, without remuneration, and on a non-profit basis.[322] It encompasses multiple exclusive rights including reproduction, adaptation, distribution, or communication to the public.[323] Moreover, the beneficiaries it applies to is broad ranging from those with visual, hearing, or other disabilities that prevent normal access to the work.[324] The main area of expansion to fulfil the Treaty's

---

[316] Article 1, Law No. 032-99/AN of December 22, 1999, on the Protection of Literary and Artistic Property
[317] *Ibid*, Articles 21-25
[318] *Ibid*, Article 83
[319] Article 25, Political Constitution of the Republic of Chile (Codified Law promulgated by Supreme Decree No. 100) [2021]
[320] *Ibid*, Article 47
[321] Law No. 17.336 of August 28, 1970, on Intellectual Property (as amended up to Law No. 21.045 of November 3, 2017)
[322] *Ibid*, Article 71(c)
[323] *Ibid*
[324] *Ibid*

obligations will be to allow for the importation and exportation of works, and allow for authorised entities to carry out these activities to boost on-the-ground implementation. Additionally, there is room for greater protection of the rights of persons with disabilities in the constitution more generally, and not just in the context of drafting the constitution. The CRPD Committee's Concluding Observation on Chile came one month prior to it becoming a Contracting Party and did not pick up on Article 30 matters.[325] It may be helpful in a future observation for the Committee to recommend that Chile's copyright law is brought more fully into line with the Marrakesh Treaty.

- Democratic People's Republic of Korea

Copyright is constitutionally protected in the Democratic People's Republic of Korea,[326] while persons with disabilities are only guaranteed material assistance from the State in another example of the individual charity model of disability in which they are not equally empowered as right holders along with copyright holders.[327] Nevertheless, copyright law policy is dualistic in protecting both the author's rights and utilitarian objectives of the development of literature, art, science, and technology.[328] This is reflected in a later provision on an exception permitting the sound recording of a copyrighted work or its reproduction in Braille for "blind people" which can be carried out without requiring the right holder's permission.[329] This is a good starting point to work with. However, noticeable expansions will be required to fulfil the Treaty in expanding the category of beneficiary persons, format of the reproduced work, the exclusive rights excepted, importation and exportation of works, and empowerment of national authorised entities. Moreover, a clear shift to the human rights and social models of disability will also be necessary.

- Dominican Republic

---

[325] Concluding Observations on the Initial Report of Chile CRPD/C/CHL/CO/1
[326] Article 74, Socialist Constitution of the Democratic People's Republic of Korea [2019]
[327] *Ibid*, Article 72
[328] Article 1, Law on Copyright of the Democratic People's Republic of Korea (amended up to Decree No. 1532 of 2006 of the Presidium of the Supreme People's Assembly)
[329] *Ibid*, Article 32(9)

The constitution of the Dominican Republic protects copyright with emphasis on it as an exclusive property right.[330] However, this is firmly counterweighted with direct and emphatic constitutional protection of the rights of persons with disabilities which embodies both the social and human rights models of disability,[331] including a robust right to equality.[332] This is an exemplary stance on disability rights and illustrates that Contracting Parties do not need to compromise on one area of rights for the other. Accordingly, the Dominican Republic's copyright policy situates protection as a matter of public and social interest, while also recognising the "inherent" rights of authors and thereby adopting the dualistic approach to protection emphasised by this thesis.[333] Nevertheless, there is room for substantial improvement in the drafting of limitations and exceptions. At present, the current not-for-profit exception only applies to the right of communication to the public and explicitly does not amount to permitting reproduction.[334] The beneficiary persons are "sightless persons or persons with other physical disabilities" which is similar to the Treaty's scope but not as expressly.[335] Further legislative amendment is required to expand the exception to include reproduction and distribution in accessible formats, to develop the category of beneficiaries, establish an importation and exportation framework, and empower nationally authorised entities. The CRPD Committee recommended that the Dominican Republic ratify the Marrakesh Treaty in a 2015 Concluding Observation,[336] however, this was not followed until three years later with ratification in 2018. Further follow-up by the Committee may be helpful to ensure the next step in the process of bringing the Dominican Republic's national law in line with the Treaty does not also face undue delay.

- El Salvador

The national policy of El Salvador on copyright protection and models of disability is mixed. Regarding models of disability, on the one hand, the social model is

---

[330] Article 52, Constitution of the Dominican Republic [2015]
[331] *Ibid*, Article 58
[332] *Ibid*, Article 39
[333] Articles 1 & 3, Law No. 65-00 on Copyright
[334] *Ibid*, Article 44(3)
[335] *Ibid*
[336] Concluding Observations on the Initial Report of the Dominican Republic, CRPD/C/DOM/CO/1

applied in the context of the constitutional right of “people with physical, mental or social limitations or disabilities” to employment.[337] However, this is then contrasted with a provision that the State shall assume charge of “indigents” who are unable to work due to their physical or mental incapacity.[338] Doing so perpetuates individual medical and charity models as presenting persons with disabilities as in need of the State’s charity. A shift is required here in rephrasing support as a matter of empowered human rights status and not medical need. In relation to copyright policy, protection is based on the social function of copyright within the constitution (i.e., socio-centric approach).[339] However, this is contrasted in the copyright legislation itself where moral rights are imprescriptible and inalienable.[340] Nevertheless, a wide range of limitations and exceptions to copyright are provided,[341] including an exception to the right of communication to the public without authorisation and without requiring remuneration for the benefit of “the blind and other people with disabilities.”[342] Despite this copyright law being post ratification of the Treaty, no change was adopted to the Article 44(d) exception to implement it. Accordingly, similar legislative amendments as in the case of the Dominican Republic are required to expand the exception to include reproduction and distribution in accessible formats, to develop the category of beneficiaries, establish an importation and exportation framework, and empower nationally authorised entities. Moreover, the conflicting policy stances on models of disability and approach to copyright protection should be ironed out to prevent any internal conflicts. The CRPD Committee, though having produced three reports on El Salvador,[343] is yet to pick up on matters pertaining to the Marrakesh Treaty. Although El Salvador has indicated that copyright reform to implement the Treaty is being considered,[344] this is yet to come to fruition.

---

[337] Article 37, Constitution of the Republic of El Salvador [2014]
[338] *Ibid*, Article 70
[339] *Ibid*, Article 103
[340] Article 6, Intellectual Property Law (Decree No. 604 as amended up to Legislative Decree No. 611 of May 17, 2017)
[341] *Ibid*, Articles 44-49
[342] *Ibid*, Article 44(d)
[343] Concluding Observations CRPD/C/SLV/CO/1 and CRPD/C/SLV/CO/2-3
[344] Marrakesh Treaty Questionnaire – El Salvador: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_el_salvador.pdf>

- Ghana

The constitution of Ghana explicitly and prominently protects the rights of persons with disabilities.[345] The right to participate in social, creative, or recreational activities is particularly helpful in constitutionally enshrining aspects of Article 30 CRPD.[346] Moreover, the protection of the rights of persons with disabilities is further highlighted as one of the State's social objectives[347] This approach is exemplary and characteristic of the human rights model of disability. The enjoyment of culture is protected for all,[348] while copyright is not. This constitutional framework provides a solid foundation for a copyright regime which is complementary to the rights of persons with disabilities. However, significant reform is needed to achieve this in Ghana as its current copyright law does not contain a disability rights exception,[349] and the provisions of the Marrakesh Treaty are yet to be implemented. There are already a wide range of exceptions provided more generally,[350] and in light of the constitutional framework, there is promise for a positive implementation of the Treaty in the next amendments to Ghana's copyright law.

- Honduras

Copyright is constitutionally protected in Honduras, with particular emphasis on the exclusivity that copyright owners enjoy, indicating author-centric policy.[351] The rights of persons with disabilities do not enjoy the same strength of protection. While the State is obliged to support and promote the education of "handicapped persons,"[352] this is of course only one right out of the robust catalogue of substantive rights provided in the CRPD. Moreover, the language used in the context of children is strongly indicative of the individual medical and tragedy models of disability, whereby physically or mentally handicapped minors are grouped with children with "abnormal behaviour", orphans, or otherwise abandoned children who are to be

[345] Article 29, Constitution of the Republic of Ghana [1996]
[346] *Ibid*, Article 29(1)
[347] *Ibid*, Article 37(2)(b)
[348] *Ibid*, Article 26(1)
[349] Copyright Act, 2005 (Act 690)
[350] *Ibid*, Articles 19-23
[351] Article 108, Political Constitution (approved by Decree No. 131-82) [2017]
[352] *Ibid*, Article 169

rehabilitated.[353] A policy shift is required here in moving towards the empowerment of children with disabilities as right holders, and the better protection of the rights of persons with disabilities more generally. This is also needed in light of the fact that Honduras has not implemented the Treaty and its current national law does not contain a disability rights exception.[354] The three-step test is also incorporated in respect of an exception to the right of reproduction which can only be for personal use.[355] Thus, overall, Honduras is a prime example of a country that would require a shift in both copyright and disability rights policy, while also requiring the introduction of a new exception or limitation that is Treaty-compliant. The CRPD Committee praised the Honduras for its ratification of the Marrakesh Treaty in its Concluding Observation.[356] However, as it was published just over a month before the Treaty would enter into force, the Committee did not comment on implementational matters. It would be helpful for these to be highlighted in any follow-up observations.

- India

Despite being the first country to ratify the Marrakesh Treaty,[357] Indian copyright law still has some way to go in the implementation of the Treaty. The constitution of India does not protect copyright per se but lists it as a subject matter which Parliament has the authority to legislate on, and which the Supreme Court has jurisdiction over.[358] However, the language it uses in respect of persons with disabilities is particularly problematic and indicative of the individual medical, charity, and tragedy models of disability. It is noted that the safeguarding of the interests of “weaker sections of society, including the handicapped and mentally retarded” comes within the purview of municipalities and local village councils.[359] This approach was highlighted in the CRPD Committee’s Concluding Observations

---

[353] *Ibid*, Article 120
[354] Law on Copyright and Related Rights (approved by Decree No. 4-99-E and amended by Decree No. 16-2006)
[355] *Ibid*, Article 47
[356] Concluding Observations on the Initial Report of Honduras CRPD/C/HND/CO/1
[357] WIPO, “India Is First to Ratify “Marrakesh Treaty” Easing Access to Books for Persons Who Are Visually Impaired” PR/2014/761 <https://www.wipo.int/pressroom/en/articles/2014/article_0008.html>
[358] Articles 138 and 246 (49), The Constitution of India [2020]
[359] *Ibid*, Article 243G (6) and 243W (9)

on India and its recommendation to shift towards the human rights model in national law-making is echoed here.[360] Nevertheless, current national copyright law does offer provision on exceptions in the case of disability.[361] One of these is the creation of a compulsory licence scheme which bears some resemblance to the Treaty's mechanism of empowering authorised entities.[362] However, the need to apply to the Appellate Board to be able to carry out activities is one aspect which will need to be removed in light of the undue burden and delay it would cause to the work of authorised entities, especially since application is not a feature of the Treaty's framework and may conflict with it. A more robust provision, and one which more squarely reflects the Marrakesh Treaty, is found in Article 51.[363] Both of these provisions were already present in the 2012 version of Indian Copyright Law and, thus, were not implemented to fulfil India's obligations under the Treaty.[364] While the term "accessible format" is used, a definition is not provided, nor one of beneficiary persons or authorised entities. The CRPD Committee further note concern over the insufficiency of measures to further promote the implementation of the Marrakesh Treaty and recommended that India should adopt policies to incentivise publishers to make reading material available in accessible formats and promote the cross-border exchange of resources.[365] Thus, overall, a shift in model of disability and copyright reform to fully implement the Treaty are still required in India.

- Jordan

A year after the CRPD Committee's Concluding Observation,[366] Jordan followed the recommendation to ratify the Marrakesh Treaty, and this was praised by the Committee's follow-up report.[367] However, Jordan has not yet followed up on its implementation. Its current national copyright law does not contain a disability exception and is overall author-centric with limited provision on exceptions which

[360] Concluding Observations on the Initial Report of India CRPD/C/IND/CO/1
[361] The Copyright Act, 1957 (Act No. 14 of 1957, as amended up to Act No. 33 of 2021)
[362] *Ibid*, Article 31B
[363] *Ibid*, Article 51(1) (zb)
[364] Articles 31B and Article 51(1) (zb) The Copyright (Amendment) Act, 2012 (Act No. 27 of 2012)
[365] Concluding Observations on the Initial Report of India CRPD/C/IND/CO/1
[366] Concluding Observations on the Initial Report of Jordan CRPD/C/JOR/CO/1
[367] Concluding Observations on the Initial Report of Jordan Addendum CRPD/C/JOR/CO/1/Add.1

closely follow Berne Convention language.[368] Copyright is not constitutionally protected, but neither are the rights of persons with disabilities.[369] The only relevant provision reflects the individual care model of disability in noting that care will be provided for persons with disabilities who will be protected from abuse or exploitation.[370] Significant reform is therefore required in Jordan through the incorporation of a new Treaty-compliant exception, a shift in model of disability, and the better protection of the rights of persons with disabilities.

- Lesotho

The copyright law of Lesotho is the third oldest among the Treaty's Contracting Parties, the last edition being in 1989.[371] As such, it is one of the country's most in need of contemporary provision on copyright implementing the Treaty and also modernising its legal framework more generally. The 1989 law does not contain a disability exception and reform implementing the Treaty is yet to be made. However, the fact that it does provide a range of free uses and limitations to various exclusive rights provides scope to expand the existing framework.[372] Copyright is not constitutionally protected, but reference to persons with disabilities is made indicating a mix of models.[373] On the one hand, the creation of "specialised institutions" and social resettlement of persons with disabilities within those suggests a level of segregation, as opposed to inclusivity.[374] On the other hand, emphasis is placed on ensuring persons with disabilities can access employment, though this is only encouraged and not obligated.[375] There is room for improvement here in more explicitly adopting a human rights model in the constitutional protection of the rights of persons with disabilities, in addition to copyright reform incorporating a Treaty-compliant exception or limitation.

---

[368] Articles 17-20, Law No. 22 of 1992 on the Protection of Copyright and Neighbouring Rights (as amended up to Law No. 23 of 2014)
[369] Constitution of the Hashemite Kingdom of Jordan [2022]
[370] *Ibid*, Article 6(5)
[371] Copyright Order 1989 (Order No.13 of 1989)
[372] *Ibid*, Articles 9-12
[373] Article 33, Constitution of Lesotho [1998]
[374] *Ibid*, Article 33(a)
[375] *Ibid*, Article 33(b)

- Mali

Mali's copyright law is author-centric, emphasising the exclusivity of the author's right as enforceable against all.[376] While there are some provisions on exceptions and limitations, there is no disability-related exception and those that are present closely follow the format and standards of the Berne Convention.[377] The constitution of Mali is silent on both copyright protection and the rights of persons with disabilities. The CRPD Committee is yet to produce a Concluding Observation on Mali which may shed further light on the national approach of Mali towards models of disability. Nevertheless, from Mali's copyright law itself, it is clear that reform is needed to incorporate a new Treaty-compliant exception and to shift towards balancing exclusivity with the social function of copyright. While the Standing Committee on Copyright and Related Rights note that Treaties are self-executing in Mali,[378] this appears to be erroneous as it is inconsistent with Mali's Constitution which states that Treaties related to international organisations (i.e., WIPO) may not be approved or ratified except by law.[379]

- Panama

The national policy of Panama on copyright protection is dualistic. In the constitution, copyright is protected as the exclusive right of the author.[380] However, in national copyright law itself, protection is noted as being a matter of social well-being and public interest.[381] Indeed, Panama's copyright law contains two disability-related exceptions. There appears to be an error in both the Association of Research Libraries' compilation, and the study conducted by the Standing Committee on Copyright and Related Rights, whereby the exception as per the copyright law of Paraguay is listed under Panama in both.[382] Hence, another

---

[376] Article 2, Law No. 08-024 of July 23, 2008, establishing the regime of literary and artistic property in the Republic of Mali
[377] *Ibid*, Articles 24-35
[378] WIPO Standing Committee on Copyright and Related Rights, "Revised Scoping Study on Access to Copyright Protected Works by Persons with Disabilities", as referenced (n123), 80
[379] Article 115, Constitution of the Republic of Mali [1992]
[380] Article 53, Constitution of the Republic of Panama [2004]
[381] Article 1, Law No. 64 of October 10, 2012, on Copyright and Neighbouring Rights
[382] See WIPO Standing Committee on Copyright and Related Rights, "Revised Scoping Study on Access to Copyright Protected Works by Persons with Disabilities", and Association of Research Libraries https://www.arl.org/national-implementations-marrakesh/, both referenced (n123)

reason that this thesis utilises them only for cross-checking information and relies on its own original research findings. Nevertheless, the first exception, matching exactly that of the Dominican Republic, only applies to the right to public communication, without remuneration and without authorial authorisation.[383] However, it goes a step further than Dominican law by providing an additional exception to the rights of reproduction and distribution for people with disabilities generally, again without remuneration or authorisation, provided that it is on a non-profit basis and is limited only to what is necessary to provide access to the work.[384] This matches some of the elements of the Marrakesh Treaty's framework, though there are areas of improvement in adopting Treaty definitions, an importation and exportation framework, and designating roles for authorised entities. Indeed, in its Concluding Observation on Panama, while the CRPD Committee praised the ratification of the Marrakesh Treaty, it expressed concern over the lack of effective implementation and recommended that all necessary measures to implement the Treaty be taken accordingly.[385] Moreover, it noted that the individual medical and charity models of disability were still being adopted and recommended a move to the human rights model.[386] Thus, there is yet progress to be made in bringing existing exceptions fully into line with the Treaty and moving away from individual models of disability. So far, Panama has adopted a law to ratify the Treaty,[387] and relies on this in its Marrakesh Treaty Questionnaire.[388] A Resolution has also been issued to establish guidelines and procedure on the accreditation and recognition of authorised entities within Panama.[389] However, it has not yet been categorised as an implementing country within this chapter as the

---

[383] Article 67(5), Law No. 64 of October 10, 2012, on Copyright and Neighbouring Rights
[384] *Ibid*, Article 69(4)
[385] Concluding Observations on the Initial Report of Panama CRPD/C/PAN/CO/1
[386] *Ibid*
[387] Law 9 of April 12, 2016 "By which the Treaty of Marrakech is Approved to Facilitate Access to Works Published for Blind People, With Visual Disabilities or With Other Difficulties in Accessing the Printed Text, Signed in Marrakech, June 27, 2013" <https://legispan.asamblea.gob.pa/norms/38e760c6-dc18-4d4e-ae71-e8ec1086cd8f>
[388] Marrakesh Treaty Questionnaire – Panama: <https://www.wipo.int/export/sites/www/marrakesh_treaty/es/docs/mt_questionnaire_panama.pdf>
[389] Resolution MC-OAL-R-No.013-2022, "By Which the Guidelines and Procedure are Established For Recognition and Accreditation in the Ministry of Culture, of Legal Persons as Entities Authorized to Provide Beneficiaries of the Marrakesh Treaty Education, Teaching Training, Adapted Reading, or Access to Information" (January 21, 2022) available here: <https://www.gacetaoficial.gob.pa/pdfTemp/29479/90162.pdf>

aforementioned law only approves the text of the Treaty and does not amend national copyright law. Given the steps taken so far, copyright amendment should be the logical next step in the foreseeable for Panama.

- Paraguay

Copyright policy in Paraguay is expressly dualistic. Constitutionally, copyright is protected as an exclusive property right.[390] However, in Article 9 of its copyright law, it is stated that, although the protection provided is first and foremost for the benefit of the author, there are other persons who need also benefit.[391] Accordingly, it features a robust framework on limitations and exceptions,[392] including a disability-related exception which permits the reproduction of a work for the blind.[393] This can be done in Braille or another accessible format and does not require authorial permission or remuneration, provided it is carried out on a non-profit basis and the work has already been disclosed.[394] This is a good starting position on which to build. However, there is a need for considerable expansion to bring the exception in line with the Treaty. The beneficiaries will need to be expanded from the blind to the full category of beneficiary persons, the exception should apply also to the rights of distribution and making available to the public, allow for importation and exportation of works, and create a role for authorised entities. Indeed, in its Concluding Observation, the CRPD Committee called on Paraguay to effectively enforce copyright legislation enacted to implement the Marrakesh Treaty in light of a failure to do so at present.[395] It is not common for the Committee to directly call for copyright reform. This may be an indication of an increasingly closer relationship between copyright and disability rights. Reform is especially necessary in light of the fact that there is a prevalence of the individual medical model of disability in Paraguay.[396] These are further evidenced in the constitutional

---

[390] Article 110, Political Constitution of the Republic of Paraguay [2011]
[391] Article 9, Law No. 1328/1998 on Copyright and Related Rights (as amended by Law No. 4.046/2010)
[392] *Ibid*, Articles 38-46
[393] *Ibid*, Article 39(6)
[394] *Ibid*
[395] Concluding Observations on the Combined Second and Third Periodic Reports of Paraguay CRPD /C/PRY/CO/2-3
[396] *Ibid*

provisions on persons with disabilities which focus on individual impediments.[397] Applying such model to the current copyright exception which is only for the blind may detrimentally exclude a wide range of beneficiaries. Thus, action is needed in shifting stance on disability and bringing national copyright law into full alignment with the Treaty. The dualistic nature of Paraguay's copyright policy shows promise that this will happen.

- Republic of Korea

National policy on copyright is dualistic in South Korea. While it is protected constitutionally as an authorial right,[398] it is noted in Article 1 that the protection of authorial rights is for the purposes of the development and improvement of culture and related industries.[399] Accordingly, two disability-related exceptions are provided; one for the visually impaired,[400] and one for the auditory impaired.[401] Although the latest copyright law was passed in 2020, post Treaty ratification, these exceptions were not updated. The exception relating to visual impairment permits the reproduction of a work in Braille, and its distribution, thereafter, provided the work has already been disclosed to the public.[402] This exception is noticeably limited in the format that the work may be reproduced in, and does not include an exception to the right of public communication as required by the Treaty. Nevertheless, in addition to this exception, certain authorised entities may produce sound recordings of literary works and distribute them to visually impaired persons on a non-profit basis and only to intended beneficiaries.[403] The scope of authorised entities and category of "visually impaired persons" elaborated on in the implementing Presidential Decree quite closely mirror the Treaty's definitions with minor discrepancies.[404] Yet, further expansion is needed in the scope of accessible formats, the rights to which the exception applies, and in the importation and

[397] Article 6 and 58, Paraguay Constitution [2011]
[398] Article 22 (2), Constitution of the Republic of Korea [1988]
[399] Article 1, Copyright Act (Act No. 432 of January 28, 1957, as amended up to Act No. 17588 of December 8, 2020)
[400] *Ibid*, Article 33
[401] *Ibid*, Article 33-2
[402] *Ibid*, Article 33 (1)
[403] *Ibid*, Article 33 (2)
[404] Articles 14 and 15, Enforcement Decree of the Copyright Act (Presidential Decree No. 1482 of April 22, 1959, as amended up to Presidential Decree No. 30898 of August 4, 2020)

exportation of works as per the Treaty's framework. When the CRPD Committee initially expressed concern that the Republic of Korea had not ratified the Marrakesh Treaty,[405] it did so a year later. More recently, in 2022, the Committee expressed further concern about the lack of specific measures put in place to effectively implement the Marrakesh Treaty.[406] These concerns are yet to be acted upon, in addition to the implementing a shift away from the individual medical model of disability which is prevalent national policy.[407] Indeed, the only constitutional provision on disability focuses on the incapability to earn a living due to physical disability, emphasising the medical approach.[408] Overall, while a significant shift is needed in model of disability, national copyright law is substantially aligned with the Treaty and requires revision only in the few areas outlined.

- Saint Vincent and the Grenadines

The copyright law of Saint Vincent and the Grenadines has one of the most robust frameworks on limitations and exceptions to copyright with thirty-three Articles.[409] Despite this, there is only one Article that is disability related, and even that is narrow.[410] Under Article 80, a designated body may make subtitled (or otherwise accessible) copies of television broadcasts or cable programmes and issue copies to those who are "deaf, hard of hearing, or physically or mentally handicapped in other ways."[411] The blind, visually impaired, or print disabled are not explicitly referenced but would come under the general category of physically impaired. This is a long way away from the Marrakesh Treaty's framework in that all categories including scope of works, permitted formats, and excepted rights. In the least, the designated body mechanism may make it easier for Saint Vincent and the Grenadines to align with the Treaty's framework on authorised entities. A Concluding Observation is yet to be produced on this Contracting Party. When one

[405] Concluding Observations on the Initial Report of the Republic of Korea CRPD/C/KOR/CO/1
[406] Concluding Observations on the Combined Second and Third Periodic Reports of the Republic of Korea CRPD/C/KOR/CO/2-3
[407] *Ibid*
[408] Article 34 (5), Constitution of the Republic of Korea [1988]
[409] Articles 49-82, Copyright Act, 2003 (Act No. 21 of 2003)
[410] *Ibid*, Article 80
[411] *Ibid*, Article 80(1)

is being produced, it would be helpful for the CRPD Committee to focus on the need to implement the Treaty in reforming national copyright law. This is particularly important considering that the rights of persons with disabilities are not constitutionally protected. Copyright, on the other hand, is indirectly protected under the definition of property.[412] Thus, a rebalancing in national priorities is needed to give greater prominence and weight to disability rights, and in substantially reforming national copyright law in fulfilment of the Treaty's obligations. While there is currently no Disability Act in force in Saint Vincent and the Grenadines, the Government have confirmed legislation is being drafted and have pledged to complete this process by the end of 2025.[413]

- Tunisia

The Tunisian constitution contains provisions on persons with disabilities that may be useful in empowering the rights of beneficiary persons in accessing works. As per Article 48, persons with disabilities are to be protected from all forms of discrimination and are to benefit from any measures necessary for their full integration into society.[414] As this is a broad-ranging provision, this could encompass the measures in accordance with the Article 30(3) CRPD obligation. Intellectual property is guaranteed generally, with no specific emphasis or importance paid to copyright law specifically.[415] Thus, in this rare instance, constitutional provision on disability rights is more robust than of copyright. Nevertheless, the CRPD Committee has noted that there is still progress to be made in revising the Tunisian definition of disability in line with the human rights model.[416] Moreover, the support for disability rights has not translated into copyright law as the Tunisian framework does not provide for a disability-related exception

[412] Article 6, Constitution of Saint Vincent and the Grenadines [2005]
[413] Pledge submitted by Saint Vincent and the Grenadines to the Human Rights 75 Secretariat December 2023, available here: <https://www.ohchr.org/sites/default/files/udhr/publishingimages/75udhr/Saint%20Vicent%20and%20the%20Grenadines_EN.pdf>. See also Government Press Release: <https://mobilization.gov.vc/mobilization/images/PDF/Press_release_Disability_Act.pdf>
[414] Article 48, Constitution of Tunisia [2014]
[415] *Ibid*, Article 41
[416] Concluding Observations on the Combined Second and Third Periodic Reports of Tunisia CRPD/C/TUN/CO/2-3

and is in fact fourteen years old.[417] Overall, it is predominantly author-centric with robust provisions on economic and moral rights but only minimal provision on exceptions and limitations which closely follow Berne standards.[418] Of more concern are the provisions on economic sanctions for the importation and exportation of copyright works in breach of the law which, without a disability exception, will detrimentally constrain the application of the Treaty's framework.[419] These sanctions also cover the reproduction, distribution, and marketing of the violating works and so it is imperative that accessible format works are excluded from this category. Thus, while the Tunisian constitution lays good ground in support of the rights of persons with disabilities, substantial reform is yet needed in national copyright law to not only to facilitate the work of the Treaty, but especially to ensure it is not in conflict with the Treaty's objectives and obligations.

- Uganda

The constitution of Uganda is another rare instance in which the rights of persons with disabilities are more prominently protected than copyright.[420] Various articles relate to disability rights including the recognition of the right of persons with disabilities to respect and human dignity as a social objective,[421] equality and freedom from discrimination,[422] affirmative actions by the State in their favour,[423] the enactment of laws appropriate for their protection,[424] the right to vote,[425] and representation in Parliament and the Regional Assembly.[426] All of these provisions are emblematic of the human rights model of disability and is an exemplary approach. Copyright, on the other hand, is only referred to once as a matter for which the Government is responsible.[427] Surprisingly, this pro-disability rights constitutional framework is not similarly reflected in national copyright law in

[417] Law No. 94-36 of February 24, 1994, on Literary and Artistic Property (as amended and completed by Law No. 2009-33 of June 23, 2009)
[418] *Ibid*
[419] *Ibid*, Chapter IX
[420] Constitution of the Republic of Uganda [2018]
[421] *Ibid*, Objective XVI
[422] *Ibid*, Article 21(2-3)
[423] *Ibid*, Article 32(1)
[424] *Ibid*, Article 35
[425] *Ibid*, Article 59
[426] *Ibid*, Article 78(1)(c) and Article 178(1)(c) respectively
[427] *Ibid*, Article 189(6)

Uganda which is predominantly author-centric with only one Article on a fair use framework.[428] Under this Article, it is permitted, without the authorisation of the author, to transcribe any work into Braille or sign language for educational purposes of persons with disabilities.[429] Moreover, this use and indeed all of the fair uses listed are prescribed by four conditions which confine them largely in line with the three-step test.[430] Particularly limiting is the condition of substantiality of the amount of work being transcribed which implies that the whole work should not be transcribed.[431] Moreover, the exception is in any case far too narrow to be compliant with the Marrakesh Treaty, particularly in format and purpose limiting, in addition to the absence of a cross border exchange mechanism or provisions on authorised entities. Thus, substantial copyright reform is required in Uganda to implement the Treaty's provisions. This was addressed to an extent by the CRPD Committee which recommended that the Treaty be ratified and implemented.[432] The ratification took place two years later, but implementation is yet to be acted upon.

5.4.3 Non-Implementing Parties Trend Analysis

From the detailed country profiles, and the holistic overview of non-implementing countries provided in the table at the end of this section, the following trends can be deduced:

- Exception Making

There are 23 non-implementing Contracting Parties that do not currently have a disability-related exception at all - just less than half. Thus, in these 23 Contracting Parties, there is a need for a new introduction a Treaty-compliant exception. The remaining 28 non-implementing Contracting Parties that do currently provide for a disability-related exception require further legislative reform as these exceptions fall short of the Marrakesh Treaty's frameworks to varying degrees. Overall,

[428] Article 15, The Copyright and Neighbouring Rights Act, 2006 (Act No. 19 of 2006)
[429] *Ibid*, Article 15 (1)(k)
[430] *Ibid*, Article 15(2)
[431] *Ibid*, Article 15(2)(c)
[432] Concluding Observations on the Initial Report of Uganda CRPD/C/UGA/CO/1

considerable progress is still to be made in the national laws of all 51 of these non-implementing countries.

- Copyright Policy

Policy on copyright law is divided with 26 non-implementing Contracting Parties adopting a dualistic approach, and 24 being author centric with the exception of one party that does not have a copyright law. Even among those that are considered dualistic in that they consider both authorial and social interests, 7 do not have disability related exceptions. This highlights a difference between countries whose policy is dualistic in word or in action.

- Disability Models

There is only sufficient evidence of the human rights and/or social model being adopted in national policy approaches in 11 out of these non-implementing Contracting Parties, showing a strong correlation between non-implementation and negative approaches to perceiving disability. Even in these 11 Contracting Parties, only 5 have pre-Marrakesh exceptions, which suggests that approach to disability model is yet to filter through to the sphere of copyright law in the remaining 6 Contracting Parties.

- Constitutional Provisions

Although there were only three instances in which there was constitutional provision on copyright and none on disability rights, this does not mean that disability rights receive stronger constitutional protection than copyright. On the contrary, many of those constitutional references to disability reflect individual models of disability and do not amount to the protection of a right. Indeed, stronger constitutional protection of copyright over disability rights is most common, while instances of stronger constitutional protection of disability rights are a rarity. This is a strong indicator that copyright is elevated in importance in national priorities among these non-implementing countries.

- Actions Required

The summary of the analysis above shows that, out of the 51 non-implementing Contracting Parties, 40 require a shift in disability model, 25 require a shift in copyright policy, 23 require a new disability exception, and 28 require revisions to pre-existing exceptions.

An overview of all of these country profiles is provided in the following table:

Countries Yet to Implement – Overview of National Policy & Actions Required

Contracting Party	***Copyright Policy***	***Disability Model***	***Constitutional Provision on Copyright/Disability***	***Existing Exception***	***Action Required***			
					Revise Existing Exception	Introduce New Exception	Shift in Disability Model	Shift in Copyright Policy
Afghanistan	Author Centric	Charity model	Both	None	-	Y	Y	Y
Armenia	Author Centric	Mixed	Both	Yes	Y	-	Y	Y
Azerbaijan	Author Centric	Medical model	Both	Yes	Y	-	Y	Y
Bangladesh	Author Centric	Charity model	Disability only	None	-	Y	Y	Y
Barbados	Author Centric	Unspecified	None	None	-	Y	Y	Y
Belize	Author Centric	Social Model	Disability only	Yes	Y	-	-	Y
Bolivia (Plurinational State of)	Dualistic	Mixed	Both	None	-	Y	Y	N
Bosnia & Herzegovina	Author Centric	Medical Model	None	Yes	Y	-	-	Y
Botswana	Dualistic	Mixed	None	None	-	Y	Y	N
Burkina Faso	Author Centric	Charity Model	Both	None	-	Y	Y	Y
Cameroon	Author Centric	Care/Welfare Model	Disability only	Yes	Y	-	Y	Y

Central African Republic	Author Centric	Human Rights Model	Disability only	None	-	Y	-	Y
Chile	Dualistic	Medical & Charity	Both	Yes	Y	-	Y	N
Comoros	Author Centric	Welfare model	Disability only	None	-	Y	Y	Y
Democratic People's Republic of Korea	Dualistic	Charity Model	Both	Yes	Y	-	Y	N
Dominican Republic	Dualistic	Human Rights & Social Models	Both	Yes	Y	-	-	N
El Salvador	Dualistic	Mixed	Both	Yes	Y	-	Y	N
Ethiopia	Dualistic	Individual models	Both	None	-	Y	Y	N
Ghana	Author Centric	Human Rights Model	Disability only	None	-	Y	-	Y
Honduras	Author Centric	Medical Model	Both	None	-	Y	Y	Y
Iceland	Dualistic	Mixed	None	Yes	Y	-	-	N
India	Dualistic	Various individual models	Both	Yes	Y	-	Y	N
Jordan	Author Centric	Care Model	None	None	-	Y	Y	Y

Lesotho	Author Centric	Mixed	Disability only	None	-	Y	Y	Y
Liechtenstein	Dualistic	Charity model	Both	Yes	Y	-	Y	N
Malaysia	Dualistic	Medical Model	Copyright only	Yes	Y	-	Y	N
Mali	Author Centric	Human Rights Model	None	None	-	Y	-	Y
Marshall Islands	No Copyright Law	Human Rights Model	None	None	-	Y	-	Y
Montenegro	Author Centric	Mixed	Both	Yes	Y	-	Y	Y
Nicaragua	Dualistic	Human Rights Model	Both	Yes	Y	-	-	N
Panama	Dualistic	Medical & Charity Models	Both	Yes	Y	-	Y	N
Paraguay	Dualistic	Medical Model	Both	Yes	Y	-	Y	N
Philippines	Socio Centric	Medical & Charity Models	Both	Yes	Y	-	Y	N
Qatar	Author Centric	Mixed	Disability only	None	-	Y	Y	Y
Republic of Korea	Dualistic	Medical Model	Both	Yes	Y	-	Y	N

Rwanda	Dualistic	Medical & Charity Models	Disability only	Yes	Y	-	Y	N
Saint Lucia	Dualistic	Mixed	Both indirectly	Yes	Y	-	Y	N
Saint Vincent and the Grenadines	Dualistic	Unspecified	Copyright only	Yes	Y	-	Y	N
San Marino	Author Centric	Mixed	None	None	-	Y	Y	Y
Sao Tome & Principe	Author Centric	Medical & Charity Models	Both	Yes	Y	-	Y	Y
Saudi Arabia	Author Centric	Charity Model	Disability only	None	-	Y	Y	Y
Serbia	Dualistic	Mixed	Both	Yes	Y	-	Y	N
Tajikistan	Dualistic	Mixed	Copyright only	Yes	Y	-	Y	N
Tanzania (United Republic)	Dualistic	Human Rights & Social Models	Disability only	None	-	Y	-	N
Tunisia	Author Centric	Mixed	Both	None	-	Y	Y	Y
Turkmenistan	Dualistic	Medical & Charity Models	Both	Yes	Y	-	Y	N
Uganda	Author Centric	Human Rights Model	Both	Yes	Y	-	N	Y
Uzbekistan	Dualistic	Human Rights Model	Both	Yes	Y	-	N	N

Vanuatu	Dualistic	Mixed	None	None	-	Y	Y	N
Venezuela (Bolivarian Republic of)	Dualistic	Mixed	Both	None	-	Y	Y	N
Zimbabwe	Dualistic	Human Rights Model	Disability only	None	-	Y	N	N

5.5 Concluding Remarks

Stimulating a legislative shift in the national laws of all 94 of the Treaty's current Contracting Parties is undoubtedly an ambition of great magnitude given the intricacies of international law obligations, national income and development status, policies, and priorities on the protection of copyright and disability rights that can be seen in the analysis provided in the discussion of this chapter. The fact that implementation has taken place to some extent across 42 of the Contracting Parties is no small feat and should be both recognised and celebrated. However, a closer inspection revealed that the Treaty's framework had only been adopted in an exemplary manner in 5 of the Contracting Parties, while the majority have only partially met the Treaty's standard and a sizable group of 15 Contracting Parties had only done so minimally. Key issues remain in Treaty definitions being adopted in narrower scope than the Treaty provides, failing to prevent contractual override of the Treaty exception, not allowing the circumvention of technological prevention measures to ensure access to works, not establishing a framework for authorised entities or the cross-border exchange of works, and in some instances the adoption of additional restrictions on the activities of authorised entities. Of even further concern is that over half of the Treaty's Contracting Parties have not implemented at all, with many still adopting author centric approaches to copyright protection, adopting individual models of disability, and requiring considerable legislative action in either introducing new exceptions or revising existing ones. The original research and analysis conducted here, in addition to the textual analysis of the Treaty in the previous chapter, should pave the way for greater success in stimulating the desired shift in national laws. Conclusions and recommendations on this follow in the concluding chapter of the thesis.

Chapter 6: Thesis Findings, Recommendations & Conclusion – Bringing It All Together

6.1 Research Findings

This section provides a comprehensive summary of the research findings collated from the substantive chapters and answers to the research sub-questions.

6.1.1 The Impact & Resolution of the Book Famine

The discussion of Chapter 1 highlighted the severe shortage of accessible cultural and educational materials which has caused clear gaps in the educational attainment between beneficiary persons and sighted persons and has had a knock-on effect on employment rates. Accordingly, the global book famine has had an impact on not just hindering the right to participation in cultural life, but also the rights to education and work. By exploring the various options considered as potential solutions to this situation, it was found that the Marrakesh Treaty's approach to resolving the global book famine via mandatory limitations and exceptions was decidedly the most effective option on the table, therefore necessitating the question posed in this research as to the Treaty's efficacy as the intended copyright solution.

6.1.2 The Role of Copyright Law in the Global Book Famine

As argued in Chapter 2, copyright law has contributed to the global book famine in three main ways. Firstly, the philosophical and theoretical grounds used to justify its protection have been used to construct a form of copyright which is author-centric and embodies a strong form of authorial exclusivity. Evidence of this was shown in Chapter 5 by the fact that the majority of Contracting Parties that are yet to implement the Marrakesh Treaty adopt author-centric approaches, and even those that adopt dualistic approaches on paper, in practice take author centric approaches with no disability exceptions. The influence of these justifications over the formation of limitations and exceptions was also shown in the comparison between the copyright law of the Philippines and the Dominican Republic in Chapter 2. However, the original analysis of these justifications illustrated that they are not inherently opposed to disability rights upon closer, more robust interpretation. Secondly, the analysis of Chapter 2 also demonstrated that the consistent expansion and upwards trajectory on

the strengthening of authorial rights throughout the revisions to the Berne Convention, the added enforcement measures by the TRIPS Agreement, and the extension of exclusive authorial rights to the digital realm via the WIPO Copyright Treaty all gradually restricted access to works by beneficiary persons. These expansions not only made the reproduction of works in accessible formats largely impermissible, but also technologically impossible and judicially sanctionable as a form of copyright infringement. Finally, it was also found that the application of the three-step test in confining limitations and exceptions further reduced the scope of lawful activities that a beneficiary person may carry out and led to a tolerance paradigm whereby the rights of persons with disabilities to access the written word were subjugated to the author's interests in exploiting their works.

6.1.3 The Relationship between Disability Rights & Copyright Law

Throughout the various frameworks theorising the relationship between copyright and disability rights, what was clearly illustrated was that it is an evolving relationship. As the two spheres of law originated and developed both separately and uniquely, there was initially no direct relationship. However, as copyright law underwent considerable expansion, the two rights came in direct conflict with one another in as much as the fulfilment of one right meant the limitation of the other, more so the limitation of the rights of persons with disabilities. The Marrakesh Treaty is shifting this trend from disability rights being limited by copyright, to copyright being limited in favour of disability rights. It was found that an integrationist approach to the two spheres of law, as adopted by the Marrakesh Treaty, holds the most promise for the road ahead, but that this is predicated on adopting an appropriate approach to copyright and disability rights policy, as argued at various points within this thesis.

6.1.4 The Current Formulation of the Marrakesh Treaty

The formulation of the Marrakesh Treaty was found to be remarkable in many respects. At a conceptual level, it is exemplary for the dualistic stance it takes on copyright protection in balancing both author-centric and socio-centric interests in a move away from purely author-centric policy, and in adopting the social and human rights models of disability in another shift away from individualising disability. Its alignment with the substantive rights and cross-cutting principles of the CRPD was also a note of commendation. Moreover, the

expansive approach the Treaty takes definitionally is another noteworthy achievement in light of the tolerability approach that has traditionally been taken in defining beneficiaries, permitted formats, and the range of permitted activities that can be carried out. However, as a result of diplomatic compromise, there are respects in which the text falls short of formulations that would enable more effective implementation and fulfilment of the Treaty's objectives. Several areas in the Treaty's text were identified for potential improvement. While such revisions are technically possible, under the Assembly's authority to call for revisions to the Treaty, it is recognised that negotiating them would entail similar political debate and compromise to that involved in the drafting of the original Treaty. The imagining of an ideal text has value regardless in that it may inspire change in the right direction, facilitate an improved model for future Treaty-making on exceptions and limitations, provide guidance to disability rights activists on areas of concern to focus on in lobbying and the campaigning strategies of non-governmental organisations, or may even lead to some (if not all) changes being adopted. The suggested textual improvements are detailed fully in the recommendations section and in the Annex: Envisaging the Marrakesh Treaty 2.0.

6.1.5 The Implementation of the Marrakesh Treaty So Far

The comprehensive analysis of all the national laws of the Marrakesh Treaty's Contracting Parties revealed that 42 have adopted national legislation to implement the provisions of the Treaty, while 51 are yet to do so. Of more concern was the finding that 20 of these Contracting Parties have not done so in over five years after the Treaty entering into force within their jurisdiction. Moreover, substantial policy and legislative change is required in these jurisdictions to revise existing exceptions and in many cases introduce entirely new ones, move away from the author-centric justification of copyright, and move away from individual models of disability. Additionally, even among the 42 that have implemented the Treaty, exemplary approaches in full alignment with the Treaty's framework were only found in 5 Contracting Parties, with the majority of implementations indicating that only a partial approach to aligning with the Treaty is being taken, with a sizeable proportion only taking minimal approaches to legislative change. It was therefore concluded that, while the Marrakesh Treaty has stimulated some movement towards the harmonisation of

laws on disability limitations and exceptions to copyright through shifts in national policy, this is yet far from being achieved.

6.2 Original Recommendations

From the findings summarised above, the following original recommendations are proposed:

6.2.1 New Approaches to Justifying Copyright Protection

Two recommendations are made in respect of justifying copyright protection. Firstly, the philosophical constructs which copyright protection is grounded on should be re-interpreted in a manner that is complementary to disability rights, not contradictory. This is possible as they are not necessarily mutually exclusive, as per the research findings. It is also an essential aspect of stimulating a paradigmatic shift in the relationship between the two rights. Nevertheless, although the in-depth analysis of author-centric justifications of copyright protection covered in Chapter 2 revealed that they are not theoretically opposed to the rights of persons with disabilities, given their susceptibility to being used as such in national law making to construct heavily exclusive forms of copyright protection, it is also recommended that a move to the dualistic approach to copyright policy embodied by the Marrakesh Treaty is advisable. A dualistic approach to copyright protection is one that recognises and balances both authorial and social interests and is formulated accordingly. The era in which protecting authorial rights was the primary concern has ended, and implementation of the Marrakesh Treaty requires a shift away from author-centric approaches to national policy.

6.2.2 Human Rights Approaches to Limitations and Exceptions

It was recommended in Chapter 2 that a differentiation could be made between exceptions and limitations in general, and those which are for the purposes of the fulfilment of a fundamental human right. Accordingly, the current three-step test would continue to apply to exceptions and limitations in general, but a new human rights-based formulation of the three-step would apply to human rights exceptions. This would ensure a greater recognition of the value and primacy of human rights, without in any way changing the wording of the current three-step test. It would also address the problematic subjugation of human rights to

authorial rights as discussed in Chapter 2. As a helpful reminder, the illustrative wording of this human rights-based three-step test is as follows:

“Members may provide in their national law for exceptions and limitations to the exclusive rights of authors, provided that such exceptions and limitations:

1. Are for the purposes of facilitating the realisation of a fundamental human right
2. Apply to the extent as is justified by their human rights objective(s)
3. Are proportionately balanced with the human rights of the author in accordance with international human rights law”

This suggestion is inspired by, but builds further on, the proposals recommended by Okediji.[1]

6.2.3 Revisions to the Marrakesh Treaty’s Provisions

The textual analysis of the Treaty’s formulation carried out in Chapter 4 gave rise to original proposals for the rewording of specific provisions aimed at increasing the effectiveness of the Treaty. These include:

a) Widening the scope of works which may be reproduced in accessible formats to include cultural materials in alignment with the language of Article 30(3) of the CRPD
b) Actively recommending an exception or limitation to the right of public performance, instead of passively permitting it
c) Refining the commercial availability clause to ensure that beneficiary persons are not limited to only accessible works in a market with low availability or on more difficult terms than sighted persons
d) Inserting a reasonableness element to the optional remuneration clause to safeguard beneficiaries from economic inaccessibility or discriminatory affordability barriers
e) Ensuring that all accessible format copies of works, both those already available and those made under the Treaty exception, are included in the scope of permitted activities

[1] Ruth Okediji, “The International Copyright System: Limitations, Exceptions, and Public Interest Considerations for Developing Countries” (2006) UNCTAD - ICTSD Project on IPRs and Sustainable Development Issue Paper No.15, 34. See page 96.

f) Introducing an obligation on Contracting Parties to safeguard the rights of beneficiary persons from the contractual override of their access rights
g) Incorporating a proviso to ensure the Treaty is implemented in national law in a timely manner to avoid the inaction and stagnation that has been revealed in the findings of Chapter 5
h) Incorporating a mandatory provision on the enforcement of the Treaty to ensure that there are effective remedies and channels in place in the event that a beneficiary person's rights under the Treaty are being hindered

The full wording of these proposals can be found in the Annex: Envisaging the Marrakesh Treaty 2.0. Overall, the fact that the Treaty features a great deal of flexibility in optional provisions may be an influential factor in the reality of how the Treaty has been implemented in such a sporadic manner. It is recommended that any future amendment to the Treaty's text could tilt the balance more firmly towards mandatory provisions and less towards optional flexibilities.

6.2.4 Guiding & Improving the Treaty's Implementation

Based on the findings of Chapter 5, there is a clear need for: harmonisation in the full adoption of the Treaty's definitions; ensuring that exceptions apply to all three of the exclusive rights mandatorily listed in the Treaty; establishing legal frameworks for the cross-border exchange of works and greater cooperation in this respect; permitting the circumvention of technological protection measures for exception purposes; safeguarding the rights of beneficiaries from contractual override provisions; and, lastly, in monitoring Contracting Parties that have introduced additional exceptions to ensure they do not constitute unreasonable or discriminatory barriers to accessing works. It is recommended that these issues are highlighted at the next meeting of the Marrakesh Treaty Assembly for Contracting Parties to act on in their implementations. Additionally, as the absence of safeguards against contractual override is such a widespread issue, it has been recommended that a mandatory provision be inserted into the Treaty (as above), in addition to the Assembly and the Director General providing guidance.

6.2.5 Alternative & Collaborative Approaches to Monitoring & Enforcement

The investigation into the role of the International Bureau of WIPO and the Marrakesh Treaty Assembly in Chapter 4 highlighted that neither hold the function of monitoring the Treaty's implementation from a top-down approach. The current format of Assembly meetings in deferring to delegates from Contracting Parties to report on their own progress has not generally been forthcoming with details on national laws only being provided in a handful of cases. Thus, although there is a level of political accountability in this approach, further accountability and monitoring is required. It is recommended that this is either carried out from a top-down approach by the Assembly, International Bureau, or another subsidiary body, or from a peer-level approach with exemplary implementing Contracting Parties evaluating and assisting others who have not implemented or require further action. Moreover, as recommended in Chapter 4, a collaborative approach should be taken in cooperation between Treaty bodies in both spheres of intellectual property and disability rights, such as the Committee on the Rights of Persons with Disabilities. This is pertinent since the Treaty aims to achieve disability rights objectives. Finally, there is no enforcement mechanism within the Treaty itself or within the function of the Assembly. Incorporating provision on this within the Treaty was recommended under the revisions to the Treaty section.

6.2.6 Expanding the Treaty's Membership

As per Article 15 (1) of the Marrakesh Treaty, all Member States of WIPO are eligible to become Contracting Parties. Of WIPO's 193 members, 64 have not signed, ratified, or acceded to the Marrakesh Treaty at all.[2] Combined with the 35 Members that have signed the Treaty but not ratified or acceded, this total comes to 99 Members which are not Contracting Parties. Thus, there is greater scope for the harmonisation of disability limitations and exceptions and shifts in national policy beyond the current pool of Contracting Parties. In the

[2] The list of these countries is as follows: Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Bahamas, Bahrain, Benin, Bhutan, Brunei Darussalam, Bulgaria, Croatia, Cuba, Democratic Republic of Congo, Dominica, Egypt, Equatorial Guinea, Eritrea, Estonia, Eswatini, Fiji, Gabon, Gambia (the), Georgia, Grenada, Guinea-Bissau, Guyana, Hungary, Iraq, Italy, Jamaica, Kazakhstan, Kuwait, Lao People's Democratic Republic, Latvia, Libya, Madagascar, Maldives, Malta, Monaco, Myanmar, Nauru, Netherlands, Niger, Niue, North Macedonia, Oman, Papa New Guinea, Portugal, Romania, Saint Kitts and Nevis, Samoa, Seychelles, Slovakia, Solomon Islands, Somalia, South Africa, Spain, Suriname, Sweden, Timor-Leste, Tonga, Tuvalu, Yemen, Zambia.

foreseeable, this is something that could come within the Director General of the International Bureau's role in the promotion of the Marrakesh Treaty explored in Chapter 4. A longer-term, though more contentious, option would be to consider making being a Party to the Treaty mandatory for all WIPO Members, in the same way that WTO Members sign up to the full package of laws when becoming a member.

6.2.7 Holistic Approach to Viewing the Marrakesh Treaty as one Tool in a Toolbox of State Measures

It should be remembered that Contracting Parties (save for Liechtenstein, Tajikistan, and the United States who are not party to the CRPD) have wider obligations under international law on disability rights than just the Marrakesh Treaty. The rights to participation in cultural life and education require more than access to cultural and educational materials alone. As was highlighted in the analysis of Chapters 3 and 4, the implementation of the Marrakesh Treaty should not be a tick-box exercise but carried out as part of a robust package of measures aimed at the realisation of the rights of beneficiary persons including, but not limited to, the physical accessibility of libraries holding repositories of accessible format copies of works, reasonable accommodations where required, national funding and initiatives, and an overall focus on long term universal design not short term access.

6.3 Overall Thesis Conclusion

The Marrakesh Treaty has undoubtedly stimulated progress in facilitating access to the written word by persons who are blind, visually impaired, or otherwise print disabled through legislative shifts in the national law of its Contracting Parties. Its accomplishments so far are recognised and celebrated. Ideologically, it represents a shift in culture within WIPO and ushers in a new era of working towards integration and complementarity with disability rights, and not conflict or opposition. It is exemplary for the dualistic stance on copyright protection it takes, the social and human rights models of disability it adopts, and the disability rights objectives it aims to achieve. Its alignment with the substantive rights and cross-cutting principles of the Convention on the Rights of Persons with Disabilities, the expansive definitions it adopts, and the template it provides on limitations and exceptions are all noteworthy commendations. Practically, the Treaty has increased the availability of

accessible format copies of works via the Accessible Books Consortium and similar initiatives, has facilitated diplomatic discussion and cooperation internationally, and has indeed stimulated legislative change to an extent. However, in answering the overall research question as to how effective the Marrakesh Treaty is as a copyright solution to the global book famine, the upshot from the findings and recommendations of this research is that it has been partially effective yet with the potential for greater effectiveness. Exemplary implementation of the Treaty within five Contracting Parties, and partial implementation within twenty-two Contracting Parties are indications that the Treaty has been effective in at least prompting a move in the right direction. Yet, harmonisation has not yet been achieved and copyright obstacles still remain in those Contracting Parties that have not yet implemented the Treaty despite their obligation to do so, and in those whose implementation does not fully align with the Treaty. A long road ahead is yet to be travelled in further shifts to policy on the justification of copyright, model of disability, and provision on disability limitations and exceptions. The findings and original recommendations proposed in this thesis provide a road map for that journey in developing and strengthening the efficacy of the Treaty in achieving its disability rights objectives and, above all, improving the daily lives of those who have been detrimentally impacted by the global book famine for far too long.

Annex – Envisaging the Marrakesh Treaty 2.0

Revised wording of the Marrakesh Treaty proposed by the analysis of Chapter 4. Italicised text shows proposed wording.

Article 2 (a): "works" means *all categories of cultural and educational materials, including* literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media.

Article 4(1)(b): Contracting Parties *should* also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons, *in accordance with national policy*.

Article 4(4): A Contracting Party may confine limitations or exceptions under this Article to works which, in the particular accessible format, cannot be

commercially obtained by beneficiary persons in that market o*n equal terms as persons without visual impairment or other print disability*. Any Contracting Party availing itself of this possibility *shall endeavour to foster a facilitative and robust market for accessible format copies of works* and shall so declare in a notification deposited with the Director General of WIPO at the time of ratification of, acceptance of or accession to this Treaty or at any time thereafter.

Article 4(5): It shall be a matter for national law to determine whether limitations or exceptions under this Article are subject to *reasonable* remuneration, *provided that such requirement does not constitute a prejudicial or discriminatory barrier to access by beneficiary persons.*

Article 5(1): Contracting Parties shall provide that *any accessible format copy produced* under a limitation or exception, or pursuant to operation of law, may be distributed or made available by an authorised entity to a beneficiary person or an authorised entity in another Contracting Party.

Article 7bis – Obligations Concerning Contractual Override

Contracting Parties shall take appropriate measures, as necessary, to ensure that the rights of beneficiary persons cannot be overridden, limited, or waivered by contract.

Article 10(1): Contracting Parties undertake to adopt the measures necessary to ensure the application of this Treaty *in a timely manner, having regard to their national economic situation and capacity.*

This revised Article 10(1) should then be supplemented by an Agreed Statement to the following effect:

It is understood that a "timely manner" as applicable to Contracting Parties that are Global South countries may constitute a reasonably longer period than for Contracting Parties of the Global North.

Article 10(4): *Contracting Parties undertake to adopt the measures necessary to ensure the application and effective enforcement of this Treaty in national law, including through the creation of legal remedies, judicial channels of enforcement, and any other appropriate measure in accordance with national practice.*

Bibliography

Primary Sources

- International Laws

Agreed Statements Concerning the WIPO Copyright Treaty adopted by the Diplomatic Conference on December 20, 1996, TRT/WCT/002

Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) [1995]

Berne Convention for the Protection of Literary and Artistic Works [1886]

Berne Convention for the Protection of Literary and Artistic Works [1908]

Berne Convention for the Protection of Literary and Artistic Works [1928]

Berne Convention for the Protection of Literary and Artistic Works [1948]

Berne Convention for the Protection of Literary and Artistic Works [1967]

Berne Convention for the Protection of Literary and Artistic Works [1971]

Berne Convention for the Protection of Literary and Artistic Works [1979]

Charter of Fundamental Rights of the European Union (2012/C 326/02)

Convention Establishing the World Intellectual Property Organization (as amended on September 28, 1979)

Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention [1954]

Convention on the Protection and Promotion of the Diversity of Cultural Expressions [2007]

Convention on the Rights of Persons with Disabilities [2008]

Directive (EU) 2017/1564 of the European Parliament and of the Council

International Covenant on Civil and Political Rights [1976]

International Covenant on Economic, Social, and Cultural Rights [1976]

Optional Protocol to the Convention on the Rights of Persons with Disabilities [2008]

Recommendation on the Safeguarding of Traditional Culture and Folklore [1989]

Regulation (EU) 2017/1563 of the European Parliament and of the Council

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled [2016]

The Paris Convention for the Protection of Industrial Property [1883]

Universal Declaration of Human Rights [1948]

Vienna Convention on the Law of Treaties [1969]

WIPO Copyright Treaty [1996]

- National Legislation

(USA) The Marrakesh Treaty Implementation Act [2018] 17 USC 101 132 STAT. 3667

Afghanistan Law Supporting the Rights of Authors, Composers, Artists, and Researchers (Copyright Law) [2008]

Argentina Copyright Law, as amended up to Law No. 27.588 of December 16, 2020

Argentina Implementing Law: Law No. 27.588 of November 11, 2020, on Amendments to Law No. 11.723 of September 30, 1933, on Legal Intellectual Property Regime

Australia Copyright Act 1968 (consolidated as of July 1, 2022)

Australia Implementing Law: Copyright Amendment (Disability Access and Other Measures) Act 2017 No. 49, 2017

Bangladesh Copyright Act [2000] (Act No. 28 of 2000, as amended up to Act No. 14 of 2005)

Barbados Copyright Act, Chapter 300 (Act 1998-4, as amended up to Act 2006-1)

Belize Copyright Act (Chapter 252, Act No. 12 of 2000, Revised Edition 2020)

Bolivia Law No.1322 of April 13, 1992, on Copyright

Bosnia & Herzegovina Law on Copyright and Related Rights [2010]

Botswana Copyright and Neighbouring Rights Act, 2000 (Chapter 68:02, as amended by Act No. 6 of 2006)

Brazil Copyright Law, Law No. 9.610 of February 19, 1998 (Law on Copyright and Neighbouring Rights, as amended up to Provisional Measure No. 907 of November 26, 2019)

Brazil Implementing Law: Decree No. 10,882, of December 3, 2021: <https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/decreto/d10882.htm>

Burkina Faso Constitution [1991] (as amended up to 2015)

Burkina Faso Law No. 032-99/AN of December 22, 1999, on the Protection of Literary and Artistic Property

Cabo Verde Implementing Law: Decree-Law No. 2/2017 of November 16, 2017

Cameroon Law No. 2000/011 of December 19, 2000, on Copyright and Neighbouring Rights

Canada Implementing Law: Act to Amend the Copyright Act (Access to Copyrighted Works or other Subject-matter for Persons with Perceptual Disabilities) (S.C. 2016, c. 4)

Central African Republic Ordinance No. 85.002 of January 5, 1985, on Copyrights

Chile Law No. 17.336 of August 28, 1970, on Intellectual Property (as amended up to Law No. 21.045 of November 3, 2017)

China Copyright Law of the People’s Republic of China (amended up to November 11, 2020)

China Implementing Law: Interim Rules on Provision of Works to the Print Disabled in an Accessible Way [2022] available here: <https://www.ncac.gov.cn/chinacopyright/contents/12228/356853.shtml>

Civil Code of the Russian Federation (Part Four, as amended up to June 29, 2023), and Decree of the Government of the Russian Federation of January 23, 2016, No. 32.

Comoros Law on Literary and Artistic Property of March 11, 1957

Constitution of Belize (2017)

Constitution of Bosnia and Herzegovina [1995]

Constitution of Botswana [1966]

Constitution of Lesotho [1998]

Constitution of Montenegro (Official Gazette of Montenegro, No. 1/2007 and 38/2013)

Constitution of Qatar [2004]

Constitution of Saint Lucia (Chapter 1.01) [2006]

Constitution of Saint Vincent and the Grenadines [2005]

Constitution of the Central African Republic [2016]

Constitution of the Central African Republic of December 5, 2004

Constitution of the Democratic Republic of São Tomé and Príncipe [2003]

Constitution of the Dominican Republic [2015]

Constitution of the Federal Democratic Republic of Ethiopia (1995)

Constitution of the Hashemite Kingdom of Jordan [2022]

Constitution of the Marshall Islands [1995]

Constitution of the Plurinational State of Bolivia [2009]

Constitution of the Principality of Liechtenstein [2021]

Constitution of the Republic of Armenia (as amended up to December 6, 2015)

Constitution of the Republic of Cameroon [1996]

Constitution of the Republic of El Salvador [2014]

Constitution of the Republic of Ghana [1996]

Constitution of the Republic of Iceland [1999]

Constitution of the Republic of Korea [1988]

Constitution of the Republic of Mali [1992]

Constitution of the Republic of Panama [2004]

Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 98/2006)

Constitution of the Republic of Tajikistan [2003]

Constitution of the Republic of the Philippines [1987]

Constitution of the Republic of Uganda [2018]

Constitution of the Republic of Uzbekistan [2023]

Constitution of the Republic of Vanuatu [2020]

Constitution of the Union of the Comoros [2018]

Constitution of Tunisia [2014]

Constitution of Turkmenistan [2008]

Constitution of Zimbabwe Amendment (No. 20) Act, 2013

Cook Islands Copyright Law [2013]

Copyright Law of the United States (Title 17) and Related Laws Contained in Title 17 of the United States Code <https://www.copyright.gov/title17/title17.pdf>

Costa Rica Implementing Law: Law No. 9858 of October 16, 2020, on the Addition of Subparagraph (r) to Article 4 and of Article 76 bis to Law No. 6683 of October 14, 1982, on Copyright and Related Rights for the Implementation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled)

Côte d'Ivoire Law No. 2016-555 of July 26, 2016, on Copyright and Related Rights

Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order. Coordinated Text of Law No. 59 of 8th July 1974, with the Amendments resulting from Law No. 95 of 19th September 2000 and Law No. 36 of 26th February 2002

Dominican Copyright Law, Law No. 65-00 on Rights of Authors [2000]

Dominican Republic Constitution of 1994

Ecuador Organic Code on the Social Economy of Knowledge, Creativity, and Innovation [2016]

El Salvador Intellectual Property Law (Decree No. 604 as amended up to Legislative Decree No. 611 of May 17, 2017)

Ethiopian Copyright Law, Copyright and Neighbouring Rights Protection Proclamation No. 410/2004

Ghana Copyright Act [2005] (Act 690)

Greece Copyright Law, Law No. 2121/1993 on Copyright, Related Rights and Cultural Matters (as amended up to Law No. 4281/2014)

Guatemala Implementing Law: Decree No. 21-2018 on Amendments to the Law on Copyright and Related Rights (Decree No. 33-98)

Honduras Law on Copyright and Related Rights (approved by Decree No. 4-99-E and amended by Decree No. 16-2006)

Honduras Political Constitution (approved by Decree No. 131-82) [2017]

Iceland Act on the Affairs of Disabled People as amended by Act No. 128/2016

Iceland Copyright Act No. 73/1972 of May 29, 1972 (as amended up to Act No. 88/2019 of June 27, 2019)

India Copyright (Amendment) Act, 2012 (Act No. 27 of 2012)

India Copyright Act, 1957 (Act No. 14 of 1957, as amended up to Act No. 33 of 2021)

Indonesia Implementing Law: Government Regulation No. 27 of 2019 on the Facilitation of Access to Works for Persons with Reading Disabilities and Users of Braille, Audio Books, and Other Means

Intellectual Property Code of the Philippines (Republic Act No. 8293) (2015 Edition)

Israel Implementing Law: Law for Making Works, Performances and Broadcasts Accessible for Persons with Disabilities (Law Amendments), 5774-2014

Japan Copyright Act (Act No. 48 of May 6, 1970, as amended up to January 1, 2022)

Japan Copyright Act (Act No. 48 of May 6, 1970, as amended up to Act No. 72 of July 13, 2018)

Jordan Law No. 22 of 1992 on the Protection of Copyright and Neighbouring Rights (as amended up to Law No. 23 of 2014)

Kenya Copyright Act [2011] as revised to 2017

Kenya Implementing Law: The Copyright (Amendment) Act, 2019 (Act No. 20 of 2019)

Kiribati Copyright Act 2018 (Act No. 8 of 2018)

Law of Mongolia on Copyright and Related Rights (6 May 2021) available here: <https://legalinfo.mn/en/edtl/16531498267681>

Law of the Kyrgyz Republic No. 6 of January 14, 1998, on Copyright and Related Rights (as amended up to Law No. 42 of March 9, 2017)

Law of the Republic of Armenia of June 15, 2006, on Copyright and Related Rights (as amended on September 30, 2013)

Law of the Republic of Azerbaijan on Copyright and Related Rights (as amended up to Law No. 636-IVQD of April 30, 2013)

Law of the Republic of Belarus No. 216-Z of July 15, 2019, on Amendments to the Law of the Republic of Belarus on Copyright and Related Rights

Law of the Republic of Tajikistan dated December 29, 2010, No. 675 on Social Protection of Disabled People (As Amended by the Law of the Republic of Tajikistan dated December 17, 2020, No. 1739)

Law of the Republic of Tajikistan on Copyright and Related Rights (as amended up to 2009)

Law of the Republic of Uzbekistan No. ZRU-42 of July 20, 2006, on Copyright and Related Rights (as amended up to Law of the Republic of Uzbekistan No. ZRU-476 of April 18, 2018)

Law of Turkmenistan No. 257-IV of January 10, 2012, on Copyright and Related Rights (as amended by Law No. 668-V of November 25, 2017)

Law of Ukraine No. 2811-IX of December 1, 2022, on Copyright and Related Rights

Law on Copyright of the Democratic People's Republic of Korea (amended up to Decree No. 1532 of 2006 of the Presidium of the Supreme People's Assembly)

Lesotho Copyright Order 1989 (Order No.13 of 1989)

Liberia Intellectual Property Act [2016]

Liechtenstein Act on Copyright and Neighbouring Rights of May 19, 1999, (consolidated version of December 19, 2006)

Malawi Copyright Act, 2016 (Act No. 26 of 2016)

Malaysia Copyright (Amendment) Act 2020 (Act No. A1612)

Malaysia Copyright Act 1987 (Act No. 332, as amended up to Act No. A1420)

Mali Law No. 08-024 of July 23, 2008, establishing the regime of literary and artistic property in the Republic of Mali

Mauritius Copyright Act 2014 (Act No. 2 of 2014)

Mexico Federal Law on Copyright [2020]

Montenegro Law on Copyright and Related Rights (Official Gazette of Montenegro, No. 37/2011, 53/2016 and 145/2021)

Morocco Implementing Law: Law No. 66-19 Amending and Supplementing Law No. 2-00 on Copyright and Related Rights (promulgated by Dahir n° 1-22-35 of 23 chaoual 1443 (May 24, 2022))

New Zealand Implementing Law: Copyright (Marrakesh Treaty Implementation) Amendment Act 2019

Nicaragua Law No. 312 on Copyright and Neighbouring Rights (consolidated text of June 25, 2020)

Nicaragua Law No. 312 on Copyright and Neighbouring Rights (revised text of February 2001)

Norway Copyright Act (Act No. 40 of June 15, 2018, Relating to Copyright in Literary, Scientific and Artistic Works) (consolidated version, status as of December 20, 2018)

Norway Implementing Law: Regulation of 26 August 2021 nr. 2608 to the Copyright Act [2021] available here: <https://lovdata.no/dokument/SF/forskrift/2021-08-26-2608/KAPITTEL_1-2#%C2%A713>

Panama Law 9 of April 12, 2016 “By which the Treaty of Marrakech is Approved to Facilitate Access to Works Published for Blind People, With Visual Disabilities or With Other Difficulties in Accessing the Printed Text, Signed in Marrakech, June 27, 2013.” <https://legispan.asamblea.gob.pa/norms/38e760c6-dc18-4d4e-ae71-e8ec1086cd8f>

Panama Law No. 64 of October 10, 2012, on Copyright and Neighbouring Rights

Panama Resolution MC-OAL-R-No.013-2022, “By Which the Guidelines and Procedure are Established For Recognition and Accreditation in the Ministry of Culture, of Legal Persons as Entities Authorized to Provide Beneficiaries of the Marrakesh Treaty Education, Teaching Training, Adapted Reading, or Access to Information".” (January 21, 2022) available here: <https://www.gacetaoficial.gob.pa/pdfTemp/29479/90162.pdf>

Paraguay Law No. 1328/1998 on Copyright and Related Rights (as amended by Law No. 4.046/2010)

Peru Implementing Law: Law 3117 that Incorporates and Amends Articles of Legislative Decree 822, Law on Copyright, to Implement the Treaty of Marrakech and Facilitate Access to Published Works for People Who Are Blind, Visually Disabled or With Other Difficulties in Accessing Company Text (30 January 2021) available here <https://www2.congreso.gob.pe/Sicr/TraDocEstProc/Expvirt_2011.nsf/Repexpvirt?OpenForm&Db=201604208&View>

Political Constitution of the Republic of Chile (Codified Law promulgated by Supreme Decree No. 100) [2021]

Political Constitution of the Republic of Nicaragua [2014]

Political Constitution of the Republic of Paraguay [2011]

Political Database of the Americas, “Dominican Republic Constitution of 1994” Available here: <https://pdba.georgetown.edu/Constitutions/DomRep/domrep94.html> accessed 24.07.2023

Qatar Law No. 7 of 2002 on the Protection of Copyright and Related Rights

Republic Act No. 10372, entitled 'An Act Amending Certain Provisions of Republic Act No. 8293, otherwise known as the ‘Intellectual Property Code of the Philippines', and for Other Purposes'

Republic of Korea Copyright Act (Act No. 432 of January 28, 1957, as amended up to Act No. 17588 of December 8, 2020)

Republic of Korea Enforcement Decree of the Copyright Act (Presidential Decree No. 1482 of April 22, 1959, as amended up to Presidential Decree No. 30898 of August 4, 2020)

Republic of Moldova Law No. 230 of July 28, 2022, on Copyright and Neighbouring Rights

Rwanda Law No. 31/2009 of 26/10/2009 on the Protection of Intellectual Property

Saint Lucia Copyright Act (Chapter 13.07, Act No. 10 of 1995, as amended by Copyright (Amendment) Act, 2000, Revised Edition 2015)

Saint Lucia Equality of Opportunity and Treatment in Employment and Occupation Act [2001]

Saint Vincent and the Grenadines Copyright Act, 2003 (Act No. 21 of 2003)

San Marino Law No. 8 of 25 January 1991 - Protection of Copyright

San Marino Law No.136 of 19 July 2021 Protection of People with Sensory Disabilities and Interventions to Remove Barriers to Communication

Sao Tome & Principe Copyright and Related Rights Code (approved by Decree-Law No. 02/2017)

Saudi Arabia Basic Law of Governance (issued by the Royal Decree No. A/90 dated 27/08/1412H (March 1, 1992))

Saudi Arabia Copyright Law (issued by Royal Decree No. M/41 of 2 Rajab 1424H (August 30, 2003), and amended by Decision of the Council of Ministers No. 536 of 19 Shawwal 1439H (July 3, 2018))

Serbia Law on Copyright and Related Rights (Official Gazette of the Republic of Serbia No. 104/2009, 99/2011, 119/2012, 29/2016 and 66/2019)

Singapore Copyright Act 2021 (Act No. 22 of 2021, amended by the Statutes (Miscellaneous Amendments) Act 2022)

Socialist Constitution of the Democratic People's Republic of Korea [2019]

Sri Lanka Implementing Law: Intellectual Property (Amendment) Act, No. 8 of 2021

Switzerland Implementing Law: Federal Decree of June 21, 2019, on the Approval and Implementation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (Amendment of the Federal Act on Copyright)

Tanzania The Copyright and Neighbouring Rights Act, 1999 (Act No. 7 of 1999)

Thailand Copyright Act B.E. 2537 (1994) (as amended up to Copyright Act B.E. 2561 (2018))

The Constitution of Afghanistan [2004]

The Constitution of Barbados (1966)

The Constitution of India [2020]

The Constitution of the People's Republic of Bangladesh (Act No. of 1972)

The Constitution of the Republic of Azerbaijan [1995] (as amended up to 26 September 2016)

The Constitution of the Republic of Rwanda of 2003 (amended up to December 24, 2015)

The Constitution of the United Republic of Tanzania [1977]

The Federal Constitution of Malaysia [2010]

The Marshall Islands Unauthorized Copies of Recorded Materials Act, 1991 (P.L. 1991-132, §1, 20 MIRC Ch. 2.)

Trinidad & Tobago Implementing Law: The Copyright (Amendment) Act No. 14 of 2020

Tunisia Law No. 94-36 of February 24, 1994, on Literary and Artistic Property (as amended and completed by Law No. 2009-33 of June 23, 2009)

Uganda Copyright Law, The Copyright and Neighbouring Rights Act [2006]

UK Copyright, Designs and Patents Act [1988]

United Arab Emirates (UAE) Federal Decree-Law No. 38 of 2021 on Copyrights and Neighbouring Rights

United Kingdom (UK) Implementing Law: Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018 (S.I. 2018/995, updated on October 22, 2020)

Uruguay Implementing Law: Decree No. 295 of October 16, 2017, on the Implementation of the Marrakesh Treaty approved by Law No. 19.262, regarding the Exceptions to Copyright for the Benefit of Persons with Disabilities

Vanuatu Copyright and Related Rights (Amendment) Act No. 10 of 2021

Venezuela (Bolivarian Republic of) 1999 (rev. 2009)

Venezuelan Constitution [1993]

Venezuelan Law on Copyright [1993]

Vietnam Law No. 07/2022/QH15 of June 16, 2022, Amending and Supplementing a Number of Articles of the Law on Intellectual Property

Zimbabwe Copyright and Neighbouring Rights Act (Chapter 26:05, as amended up to Act No. 32 of 2004)

- Case Law

Balan v Moldova, App No. 19247/03 (European Court of Human Rights, 2008)

Blind SA v Minister of Trade, Industry and Competition and Others [2022] ZACC 33

Case C 469/17 Funke Medien NRW v Germany [2019] 7 WLUK 466

Case C-476/17 Pelham GmbH v Hutter [2019] 7 WLUK 462

Case C-516/17 Spiegel Online GmbH v Beck [2019] 7 WLUK 458

Republic of Poland v European Parliament and Council of the European Union [2019] Case C-401/19

Roy Payan v Los Angeles Community College District [2021] Case Nos. 19-56111 and 19-56146

Supreme Court of Justice of the Nation, “Copyright Article 148, Section VIII, of the Relative Federal Law does not Violate Property and Copyright Rights, Nor Is It Unconventional” 2a./J. 83/2016 (10th) available here: <https://bj.scjn.gob.mx/doc/tesis/YPVpMHYBN_4klb4HqN4j/%22Obras%20audiovisuales%22>

Secondary Sources

- Books & Book Chapters

Abbe Brown and Charlotte Waelde, “Human Rights, Persons with Disabilities and Copyright” in Christophe Geiger, *Research Handbook on Human Rights and Intellectual Property* (Edward Elgar, 2015)

Abigail Rekas, “Access to Books: Human Rights, Copyright and Accessibility” in Margherita Antona, *Universal Access in Human-Computer Interaction: Applications and Services for Quality of Life* (Springer, 2013)

Adam Moore, “Personality-Based, Rule-Utilitarian, and Lockean Justifications of Intellectual Property” in Kenneth Himma et al, *The Handbook of Information and Computer Ethics* (Wiley, 2008)

Ana Ramalho et al, *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts* (Routledge, 2020)

Anna Lawson and Mark Priestley, “The Social Model of Disability: Questions for Law and Legal Scholarship?” in Elionior Flynn et al, *Routledge Handbook of Disability Law and Human Rights* (Routledge, 2017)

Anna Lawson, “Article 9: Accessibility” in Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018)

Anne Waldschmidt, “Disability Goes Cultural: The Cultural Model of Disability as an Analytical Tool” in Hanjo Berressem, *Culture – Theory – Disability: Encounters Between Disability Studies and Cultural Studies* (Transcript Verlag, 2017)

Annette Kur, “From Minimum Standards to Maximum Rules” in Hanns Ullrich et al, *TRIPS plus 20: From Trade Rules to Market Principles* (Springer, 2016)

Anthony Giannoumis and Wondwossen Beyene, “Cultural Inclusion and Access to Technology: Bottom-Up Perspectives on Copyright Law and Policy in Norway” in Margherita Antona and Constantine Stephanidis, *Universal Access in Human-Computer Interaction: Applications and Practice* (Springer, 2020)

Antony Taubman et al, *A Handbook on the WTO TRIPS Agreement* (Cambridge University Press, 2012)

Arlene Kanter, *The Development of Disability Rights Under International Law* (Routledge, 2015)

Aryeh Neier, *The International Human Rights Movement: A History* (Princeton University Press, 2012)

Audrey Chapman, "Approaching Intellectual Property as a Human Right: Obligations Related to Article 15 (1) (c)" in Evgueni Guerassimov, *Approaching Intellectual Property as a Human Right* (Digital Version Edn, UNESCO Publishing, 2001)

Caterina Sganga, *Propertising European Copyright: History, Challenges and Opportunities* (Edward Elgar, 2018)

Colin Barnes, “Understanding the Social Model of Disability: Past, Present and Future” in Nick Watson et al, *Routledge Handbook of Disability Studies* (2nd Edn, Taylor and Francis, 2020)

Coomra Pyaneandee, *International Disability Law: A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities* (Routledge, 2019)

Daniel Gervais, “Human Rights and the Philosophical Foundations of Intellectual Property” in Christophe Geiger, *Research Handbook on Human Rights and Intellectual Property* (Edward Elgar, 2015)

Danielle Conway, “The Miracle at Marrakesh: Doing Justice for the Blind and Visually Impaired While Changing the Culture of Norm Setting at WIPO” in Irene Calboli, *Diversity in Intellectual Property: Identities, Interests, and Intersections* (Cambridge University Press, 2015)

David Adair and Paul Harpur, “Books and People with Print Disabilities: Public Value and the International Disability Human Rights Agenda” in Katie Ellis et al, *The Routledge Companion to Disability and Media* (Routledge, 2019)

Dawn Watkins and Mandy Burton, *Research Methods in Law* (2nd Edn, Routledge, 2018)

Dimitris Anastasiou et al, “Article 24: Right to Education” in Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018)

Gerard Quinn and Theresia Degener, *Human Rights and Disability: The Current Use and Future Potential of Human Rights Instruments in the Context of Disability* (United Nations, 2002)

Graeme Dinwoodie, “Universalism in International Copyright Law as Seen through the Lens of Marrakesh” in Henning Grosse Ruse-Khan et al, *Intellectual Property Ordering Beyond Borders* (Cambridge University Press, 2022)

Graham Dutfield and Uma Suthersanen, *Global Intellectual Property Law* (Second Edition, Edward Elgar, 2020)

Ilias Bantekas et al, “Article 30: Participation in Cultural Life, Recreation, Leisure and Sport” in Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018)

James Maclean, *Rethinking Law as Process: Creativity, Novelty, Change* (Routledge, 2012)

Jan Klabbers, *International Law* (4th Edn, Cambridge University Press, 2024)

Jane Campbell and Mike Oliver, *Disability Politics: Understanding Our Past, Changing Our Future* (First Published 1996, Routledge, 2006)

Jane Ginsbug, “Copyright” in Rochelle Dreyfuss and Justine Pila, *The Oxford Handbook of Intellectual Property Law* (Oxford University Press, 2017)

Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation: An Authoritative Edition* (Oxford Clarendon Press, 1996)

Jessica Corsi, “Equality and Non-Discrimination” in Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, 2018)

John Rawls, *A Theory of Justice* (Revised Edition, First Published 1999, Oxford University Press)

Jörg Reinbothe and Silke von Lewinski, *The WIPO Treaties on Copyright: A Commentary on the WCT, the WPPT, and the BTAP* (Second Edition, Oxford University Press, 2015)

Joseph Lelliott and Paul Harpur, “Paradigm Shifting to a Point: Disability Human Rights, Copyright Protection, and Access to Visual Art in International Law” in Ana Ramalho et al, *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts* (Routledge, 2020)

Joseph Lelliott and Paul Harpur, *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts* (1st Edn, Routledge, 2020)

Justus Dreyling and Teresa Hackett, “Success for People with Print Disabilities: The Marrakesh Treaty” in Jessica Coates et al, *Navigating Copyright for Libraries: Purpose and Scope* (De Gruyter Saur, 2022)

Kal Raustiala and Christopher Sprigman, *The Knockoff Economy: How Imitation Sparks Innovation* (OUP, 2012)

Keith Maskus, “International Agreements on Intellectual Property Rights: TRIPS and Beyond” in Robert Looney et al, *Handbook of International Trade Agreements: Country, Regional, and Global Approaches* (1st Edn, Routledge, 2018)

Laura Hemingway, “Understanding Disability: From ‘Personal Tragedy’ to Social Disadvantage” in Laura Hemingway, *Disabled People and Housing: Choices, Opportunities and Barriers* (Policy Press, 2011)

Laurence Helfer and Graeme Austin, “Creator’s Rights as Human Rights and the Human Right of Property” in Laurence Helfer et al, *Human Rights and*

Intellectual Property: Mapping the Global Interface (First Published 2011, Cambridge University Press, 2012)

Laurence Helfer et al, *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals* (Oxford University Press, 2017)

Laurence Helfer, “Intellectual Property and Human Rights: Mapping an Evolving and Contested Relationship” in Rochelle Dreyfus and Justine Pila, *The Oxford Handbook of Intellectual Property* (OUP, 2018)

Laurence Helfer, “Mapping the Interface of Human Rights and Intellectual Property” in Laurence Helfer et al, *Human Rights and Intellectual Property: Mapping the Global Interface* (First Published 2011, Cambridge University Press, 2012)

Lisa Martin, “The Political Economy of International Cooperation” in Inge Kaul et al, *Global Public Goods: International Cooperation in the 21st Century* (OUP, 1999)

Lisa Waddington and Anna Lawson, *The UN Convention on the Rights of Persons with Disabilities in Practice: A Comparative Analysis of the Role of the Courts* (OUP, 2018)

Mark Stein, *Distributive Justice and Disability: Utilitarianism Against Egalitarianism* (Yale University Press, 2006)

Martin Senftleben, *Copyright, Limitations, and the Three-Step Test: An Analysis of the Three-Step Test in International and EC Copyright Law* (Kluwer Law International, 2004)

Maya Sabatello and Marianne Schulze, *Human Rights and Disability Advocacy* (University of Pennsylvania Press, 2014)

Michael Oliver, *Understanding Disability: From Theory to Practice* (First Published 1996, 2nd Edn, Palgrave Macmillan, 2009)

Michael Stein and Matthew Smith, “Article 30 of the CRPD as a Vehicle for Social Transformation: Harnessing the CRPD’s Potential for Persons with Intellectual Disabilities” in Emily Kakoullis et al, *Recognising Human Rights in*

Different Cultural Contexts: The United Nations Convention on the Rights of Persons with Disabilities (CRPD) (Palgrave Macmillan, 2020)

Natalie Martiniello et al, “Employment and Visual Impairment: Issues in Adulthood” in John Ravenscroft, *The Routledge Handbook of Visual Impairment* (Routledge, 2019)

Nigel Rodley, “The Role and Impact of Treaty Bodies” in Dinah Shelton et al, *The Oxford Handbook of International Human Rights Law* (OUP, 2013)

Oliver De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (3rd Edn, Cambridge University Press, 2019)

Paul Chynoweth, “Chapter 3: Legal Research” in Andrew Knight and Les Ruddock, *Advanced Research Methods in the Built Environment* (First Published 2008, Blackwell)

Paul Goldstein et al, *International Copyright: Principles, Law, and Practice* (4th Edn, OUP, 2019)

Paul Guyer, *Kant* (First Published 2006, Routledge, 2008)

Paul Harpur and Michael Stein, “The Convention on the Rights of Persons With Disabilities as a Global Tipping Point for the Participation of Persons With Disabilities” in William Thompson, *Oxford Research Encyclopaedias: Politics* (OUP, 2017)

Paul Harpur and Michael Stein, “The Relevance of the CRPD and the Marrakesh Treaty to the Global South’s Book Famine” in Michael Stein et al, *Accessible Technology and the Developing World* (OUP, 2021)

Paul Harpur et al, *Discrimination, Copyright and Equality: Opening the E-book for the Print Disabled* (Cambridge University Press, 2017)

Paul Torremans, “Copyright (and Other Intellectual Property Rights) as a Human Right” in Paul Torremans, *Intellectual Property Law and Human Rights* (4th Edn, Wolters Kluwer, 2020)

Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle* (Princeton University Press, 2014)

Peter Drahos, *A Philosophy of Intellectual Property* (First Published 1996, ANU Press, 2016)

Peter Laslett, *Locke: Two Treatises of Government* (First Published 1960, Cambridge University Press, 1988)

Robert Merges, *Justifying Intellectual Property* (Harvard University Press, 2011)

Ruth Okediji, “Securing Intellectual Property Objectives: New Approaches to Human Rights Considerations” in Margot Salomon et al, *Casting the Net Wider: Human Rights, Development, and New Duty-Bearers* (Intersentia, 2007)

Ruth Okediji, “The Limits of Development Strategies at the Intersection of Intellectual Property and Human Rights” in Daniel Gervais, *Intellectual Property, Trade and Development: Strategies to Optimize Economic Development in A TRIPS-plus Era* (OUP, 2007)

Sam Ricketson, *The Berne Convention for the Protection of Literary and Artistic Works: 1886*-1986 (First Published 1987, Kluwer)

Sam Ricketson and Jane Ginsburg, “The Berne Convention: Historical and Institutional Aspects” in Daniel Gervais, *International Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar, 2015)

Sam Ricketson and Jane Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond Volume I* (2nd Edn, OUP, 2006)

Seana Shiffrin, “The Incentives Argument for Intellectual Property” in Axel Gosseries et al, *Intellectual Property and Theories of Justice* (First Published 2008, Palgrave Macmillan)

Silke Von Lewinski, “The Marrakesh Treaty” in Irini Stamatoudi, *New Developments in EU and International Copyright Law* (Kluwer Law International, 2016)

Sir Robert Jennings and Sir Arthur Watts, *Oppenheim’s International Law* (9th Edn, Longman, 1992)

Stephen Maurer, “Intellectual Property Incentives: Economics and Policy Implications” in Rochelle Dreyfuss and Justine Pila, *The Oxford Handbook of Intellectual Property Law* (1st Edn, OUP, 2018)

Tanya Aplin and Lionel Bently, *Global Mandatory Fair Use: The Nature and Scope of the Right to Quote Copyright Works* (Cambridge University Press, 2020)

Theresia Degener, “A Human Rights Model of Disability” in Elionior Flynn et al, *Routledge Handbook of Disability Law and Human Rights* (Routledge, 2017)

Thomas Knox, *Hegel’s Philosophy of Right* (First Published 1952, OUP, 1967)

Tom Shakespeare, “The Social Model of Disability” in Lennard Davis et al, *The Disability Studies Reader* (4th Edn, Routledge, 2013)

Uwe Kischel and Andrew Hammel, *Comparative Law* (Oxford University Press, 2019)

Victor Nuovo, *John Locke: The Philosopher as Christian Virtuoso* (1st Edn, OUP, 2017)

Virginia Rodes and Regina Motz, “A Concrete Action Towards Inclusive Education: An Implementation of Marrakesh Treaty” in Alvaro Rocha et al, *Trends and Innovations in Information Systems and Technologies* (Springer, 2020)

- Journal Articles

Aaron Scheinwald, “Who Could Possibly be Against a Treaty for the Blind?” (2012) Fordham Intellectual Property Media & Entertainment Law Journal Vol 22:2 445

Adam Mosoff, “Saving Locke from Marx: The Labour Theory of Value in Intellectual Property Theory” (2012) Social Philosophy & Policy Vol 29:2 283

Alan Story, “"Balanced" Copyright: Not a Magic Solving Word” (2012) E.I.P.R. Vol 34:8 493

Alex Byrne, “The Sounds of Silence: Copyright and Human Rights” (2002) Australian Academic & Research Libraries Vol 33:4, 275

Alice Mander, “The Stories That Cripple Us: The Consequences of The Medical Model of Disability in the Legal Sphere” (2022) Victoria University of Wellington Law Review Vol 53:2, 343

Alina Ng, “Literary Property and Copyright” (2012) Northwestern Journal of Technology and Intellectual Property Vol 10:7 531

Allan Rocha de Souza, “Fundamental Rights, Development and Cultural Inclusion: The Marrakesh Treaty in Brazil” (2016) W.I.P.O.J. Vol 8:1, 75

Andre Lucas, “For a Reasonable Interpretation of the Three-step Test” (2010) E.I.P.R. Vol 32:6 277

Andrew Hogan, “Moving Away from the “Medical Model”: The Development and Revision of the World Health Organisations Classification of Disability” (2019) Bulletin of the History of Medicine Vol 93:2, 241

Angelica Guevara, “The Need to Reimagine Disability Rights Law Because the Medical Model of Disability Fails Us All” (2021) Wisconsin Law Review Vol 2 269

Angharad Beckett and Tom Campbell, “The Social Model of Disability as an Oppositional Device” (2015) Disability & Society Vol 30:2, 276

Ann Leahy and Delia Ferri, “Barriers and Facilitators to Cultural Participation by People with Disabilities: A Narrative Literature Review” (2022) Scandinavian Journal of Disability Research Vol 4:1 68

Ann Leahy and Delia Ferri, “Barriers to Cultural Participation by People with Disabilities in Europe: A Study Across 28 Countries” (2023) Disability and Society 13

Ann Llewellyn and Kevin Hogan, “The Use and Abuse of Models of Disability” (2000) Disability & Society Vol 15:1, 159

Anna Lawson and Angharad Beckett, “The Social and Human Rights Models of Disability: Towards a Complementarity Thesis” (2021) The International Journal of Human Rights Vol 25:2, 348

Anna Lawson, “Accessibility Obligations in the UN Convention on the Rights of Persons with Disabilities: Nyusti & Takacs v Hungary” (2014) South African Journal on Human Rights Vol 30:2 380

Anna Lawson, “People with Psychosocial Impairments or Conditions, Reasonable Accommodation and the Convention on the Rights of Persons with Disabilities” (2008) Law Context: A Socio-Legal Journal Vol 26:2 62

Anna Lawson, “The EU Rights Based Approach to Disability: Strategies for Shaping an Inclusive Society” (2005) International Journal of Discrimination and the Law Vol 6, 270

Anne Baron, “Kant, Copyright, and Communicative Freedom” (2012) Law & Philosophy Vol 31:1, 1

Audrey Chapman, “The Human Rights Implications of Intellectual Property Protection” (2002) Journal of International Economic Law Vol 5:4 861

Auston Stamm and Yu-Chang Hsu, “The Marrakesh Treaty’s Impact on the Accessibility and Reproduction of Published Works” (2021) Association for Educational Communications & Technology Vol 65:5 692

Barry Hindess, “Locke’s State of Nature” (2007) History of the Human Sciences Vol 20:3 1

Bashar Malkawi, “A Long "TRIP" Home: How the Berne Convention, TRIPS Agreement, and Other Instruments Complement the International Copyright System” (2013) EIPR Vol 35:2, 97

Beatrice Lindstrom, "Scaling Back Trips-Plus: An Analysis of Intellectual Property Provisions in Trade Agreements and Implications for Asia and the Pacific" (2010) New York University Journal of International Law and Politics Vol 42:3 917

Bill Hughes and Kevin Paterson, “The Social Model of Disability and the Disappearing Body: Towards a Sociology of Impairment” (1997) Disability & Society Vol 12:3, 325

Blake Reid, “Copyright and Disability” (2021) California Law Review Vol 109 2173

Bradley Areheart, “When Disability Isn’t “Just Right”: The Entrenchment of the Medical Model of Disability and the Goldilocks Dilemma” (2008) Indiana Law Journal Vol 83, 181

Brian Watermeyer, “Freedom to Read: A Personal Account of the ‘Book Famine’” (2014) African Journal of Disability Vol 3:1

Bronagh Byrne, “How Inclusive is the Right to Inclusive Education? An Assessment of the UN Convention on the Rights of Persons with Disabilities’

Concluding Observations” (2022) International Journal of Inclusive Education Vol 26:3 301

Bryan Cwik, “Labor as the Basis for Intellectual Property Rights” (2014) Ethical Theory and Moral Practice Vol 17:4 681

Carol Priestley, “The Book Famine: A Selective Directory for Book and Journal Assistance to Universities in Africa” (1990) Journal of the International African Institute Vol 60:1

Carolina Toldeo et al, “Early Detection of Visual Impairment and Its Relation to Academic Performance” (2010) Journal of the Brazilian Medical Association Vol 56:4

Caroline Ncube and Sanya Samtani “Copyright, Disability Rights, and the Constitution: Blind SA v Minister for Trade, Industry and Competition” (2023) Constitutional Court Review Vol 13:1 471

Caroline Ncube et al, “Beyond the Marrakesh VIP Treaty: Typology of Copyright Access-enabling Provisions for Persons with Disabilities” (2020) Journal of World Intellectual Property Vol 23:3-4, 149

Carys Craig, "Locke, Labour and Limiting the Author's Right: A Warning Against a Lockean Approach to Copyright Law" (2002) Queen's Law Journal Vol 28:1, 1

Caterina Sgana, “Disability, Right to Culture and Copyright: Which Regulatory Option?” (2015) International Review of Law Computers & Technology Vol 29:2

Chandra Kavanagh, “What Contemporary Models of Disability Miss” (2018) International Journal of Feminist Approaches to Bioethics Vol 11:2, 65

Charles Oppenheim, “The Marrakesh Copyright Treaty for those with Visual Disabilities and its Implications in the European Union and in the United Kingdom” (2017) The Journal of National and International Library and Information Issues Vol 27:1

Chen Li, “Interpretation of the Marrakesh Treaty Based on the Human Rights Model of Disability” (2022) Journal of Human Rights Vol 21:4, 645

Christian Stallberg, “Towards a New Paradigm in Justifying Copyright: A Universalistic-Transcendental Approach” (2008) Fordham Intellectual Property Media & Entertainment Law Journal Vol 18:2 333

Christie Hartley, “Justice for the Disabled: A Contractualist Approach” (2009) Journal of Social Philosophy Vol 40:1 17

Christophe Geiger et al, “Declaration on a Balanced Interpretation of the ’Three-Step Test’ in Copyright Law” (2008) International Review of Intellectual Property and Competition Law Vol 39:6, 707

Christophe Geiger et al, “The Three Step Test Revisited: How to Use the Test’s Flexibility in National Law” (2013) American University International Law Review Vol 29:3 1

Christophe Geiger and Elena Izyumenko, “The Constitutionalisation of Intellectual Property Law in the EU and the Funke Medien, Pelham and Spiegel Online decisions of the CJEU: Progress, but still some way to go!” (2020) IIC Vol 51:3 282

Christopher Sprigman, "Copyright and Creative Incentives: What We Know (and Don't)" (2017) Houston Law Review Vol 55:2 451

Christopher Yoo, “Rethinking Copyright and Personhood” (2019) University of Illinois Law Review Vol 423 1039

Claire Tregaskis, “Social Model Theory: The Story So Far” (2002) Disability & Society Vol 17:4, 457

Corinne Hui Yun Tan, “Moving Towards a More Inclusive Copyright Regime for the Visually Impaired” (2012) Singapore Academy of Law Journal Vol 24:2 433

Daniel Benoliel, “Copyright Distributive Injustice” (2007) Yale Journal of Law & Technology Vol 10 45

Daniel Gervais, “Fair Use, Fair Dealing, Fair Principles: Efforts to Conceptualise Exceptions and Limitations to Copyright” (2010) Copyright Society of the USA Journal Vol 57:3 499

David Bolt, “From Blindness to Visual Impairment: Terminological Typology and the Social Model of Disability” (2005) Disability & Society Vol 20:5 539

David Dante Troutt, “I Own Therefore I Am: Copyright, Personality, and Soul Music in the Digital Commons” (2010) Fordham Intellectual Property Media & Entertainment Law Journal Vol 20:2 373

David Jason Karp, “What is the Responsibility to Respect Human Rights? Reconsidering the ‘Respect, Protect, and Fulfil’ Framework” (2020) International Theory Vol 12:1 83

David Resnik, "A Pluralistic Account of Intellectual Property" (2003) Journal of Business Ethics Vol 46:4 319

David Vaver, “Need Intellectual Property Be Everywhere? Against Ubiquity and Uniformity” (2002) Dalhousie Law Journal Vol 25:1

Delia Ferri and Giulia Rossello, “The Role of the Marrakesh Treaty in Supporting Access to Printed Material for People Who Are Blind or Visually Impaired: A Critical Discussion of the Results of an Empirical Study Conducted in Six European Countries” (2023) Disabilities Vol 3:2 147

Delia Ferri and Katie Donnellan, “The Implementation of the Marrakesh Treaty in the European Union: An Important Piece in the Accessibility Jigsaw?” (2022) Legal Issues of Economic Integration Vol 49:3 269

Delia Ferri, “Reasonable Accommodation as a Gateway to the Equal Enjoyment of Human Rights: From New York to Strasbourg” (2018) Social Inclusion Vol 6:1 40

Delia Ferri, “The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled in the European Union: Reflecting on Its Implementation and Gauging Its Impact from a Disability Perspective” (2024) International Review of Intellectual Property and Competition Law Vol 55:7 89

Diane Leenheer Zimmerman, "Copyrights as Incentives: Did We Just Imagine That?" (2011) Theoretical Inquiries in Law Vol 12:1 29

Dimitris Anastasiou and James Kauffman, “The Social Model of Disability: Dichotomy between Impairment and Disability” (2013) Journal of Medicine and Philosophy Vol 38, 441

Dimitris Michailakis, “When Opportunity is the Thing to be Equalised” (1997) Disability & Society Vol 12:1

Edwin Hettinger, “Justifying Intellectual Property” (1989) Philosophy & Public Affairs Vol 18:1

Elena Schmidt et al, “Inclusive Education for Children with Visual Impairments in Sub-Saharan Africa: Realising the Promise of the Convention on the Rights of Persons with Disabilities” (2022) International Journal of Educational Development 91

Elizabeth le Roux, “The Myth of the ‘Book Famine’ in African Publishing” (2021) Review of African Political Economy 48:168

Elizabeth Rosenblatt, “Intellectual Property's Negative Space: Beyond the Utilitarian” (2013) Florida State University Law Review Vol 40:3 441

Eric Johnson, “Intellectual Property and the Incentive Fallacy” (2012) Florida State University Law Review Vol 39:3 623

Eric Roark, “Applying Locke's Proviso to Unappropriated Natural Resources” (2012) Political Studies Vol 60:3, 687

Erika Lambert, “Bread for the Blind: Ending the International Book Famine Through Negotiation of an International Instrument on Access to Copyright Works for Persons with Blindness or Visual Impairment” (2011) Dalhousie Journal of Legal Studies Vol 20:2

Estelle Derclaye and Tim Taylor, “Happy IP: Replacing the Law and Economics Justification for Intellectual Property Rights with A Well-Being Approach” (2015) E.I.P.R. Vol 37:4, 198

Eva Kittay, “The Ethics of Care, Dependence, and Disability” (2011) Ratio Juris Vol 24:1, 49

Ezieddin Elmahjub and Nicolas Suzor, “Fair Use and Fairness in Copyright: A Distributive Justice Perspective on Users' Rights” (2017) Monash University Law Review Vol 43:1 274

Fei Yang et al, “Creating Intangible Accessible Environments: The Implementation of the Marrakesh Treaty on Visually Impaired People in China” (2023) Disability & Society Vol 38:9 1734

Frédéric Mégret and Dianah Msipa, “Global Reasonable Accommodation: How the Convention on the Rights of Persons with Disabilities Changes the Way We Think About Equality” (2014) South African Journal on Human Rights Vol 30:2 252

Fredrick Otike et al, “IFLA’s Role in the Implementation of the Marrakesh Treaty” (2023) International Federation of Library Associations and Institutions Vol 49:2, 457

Gabriele Spina Ali, “Intellectual Property and Human Rights: A Taxonomy of Their Interactions” (2020) Max Planck Institute for Innovation and Competition Vol 51:11

Gauthier De Beco, “The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions” (2014) Netherlands Quarterly of Human Rights Vol 32:3 263

Gauthier De Beco, “Transition to Inclusive Education Systems According to the Convention on the Rights of Persons with Disabilities” (2016) Nordic Journal of Human Rights Vol 34:1

Gerard Goggin, “Communications Rights, Disability, and Law: The Convention on the Rights of Persons with Disabilities in National Perspective” (2017) Disability, Rights, and Law Reform in Australia Vol 35:2 132

Gerard Quinn, “The United Nations Convention on the Rights of Persons with Disabilities: Toward a New International Politics of disability” (2009) Texas Journal on Civil Liberties & Civil Rights Vol 15:1 33

Glenn Bowen, "Document Analysis as a Qualitative Research Method" (2009) Qualitative Research Journal Vol 9:2

Glynn Lunney Jr, “A Natural Right to Copy” (2019) Boston University Law Review Vol 99:6 2491

Glynn Lunney Jr, “Re-examining Copyright's Incentives-Access Paradigm” (1996) Vanderbilt Law Review Vol 49:3, 495

Gordon Hull, “Clearing the Rubbish: Locke, the Waste Proviso, and the Moral Justification of Intellectual Property” (2009) Public Affairs Quarterly Vol 23:1, 67

Guido Westkamp, 'The Three-Step Test and Copyright Limitations in Europe: European Copyright Law between Approximation and National Decision Making' (2008) Copyright Society USA Journal Vol 56 1

Guy Rub, “Rebalancing Copyright Exhaustion” (2015) Emory Law Journal Vol 64:3 741

Guy Whitehouse, “A New Clash Between Human Rights and Copyright: The Push for Enhanced Exceptions for the Print-Disabled” (2009) Publishing Research Quarterly Vol 25:4 219

Henning Grosse Ruse-Khan, “Time for a Paradigm Shift? Exploring Maximum Standards in International Intellectual Property Protection” (2009) Journal on Trade, Law, and Development Vol 1:1

Jackbeth Mapulanga-Hulston, “Examining the Justiciability of Economic, Social and Cultural Rights” (2002) The International Journal of Human Rights Vol 6:4, 37

Jade Kouletakis, “A Critical Examination of Copyright Limitations and Exceptions for the Visually Impaired Pertaining to Literary Works in South Africa in the Local and Global Context” (2014) South African Intellectual Property Law Journal Vol 2, 6

Jade Kouletakis, “Decolonising Copyright: Reconsidering Copyright Exclusivity and the Role of the Public Interest in International Intellectual Property Frameworks” (2022) GRUR International Vol 71:1 24

Jakob Cornides, “Human Rights and Intellectual Property: Conflict or Convergence?” (2004) The Journal of World Intellectual Property Vol 7:2 135

Jan Grue, “Inclusive Marginalisation? A Critical Analysis of the Concept of Disability, Its Framings and Their Implications in the United Nations Convention on the Rights of Persons with Disabilities” (2019) Nordic Journal of Human Rights Vol 37:1, 3

Jane Ginsburg, “International Copyright: From a "Bundle" of National Copyright Laws to a Supranational Code?” (2000) Journal of the Copyright Society USA Vol 47 265

Jean Galbraith, “Congress Passes Legislation Implementing the Marrakesh Treaty” (2019) The American Journal of International Law Vol 113:1

Jeanne Fromer, “Expressive Incentives in Intellectual Property” (2012) Virginia Law Review Vol 98:8 1745

Jeanne Schroeder, “Unnatural Rights: Hegel and Intellectual Property” (2006) University of Miami Law Review Vol 60:4 453

Jerome Bickenbach, “Disability, Culture and the UN Convention” (2009) Disability and Rehabilitation Vol 31:14 1111

Jingyi Li and Niloufer Selvadurai, “Reconciling the Enforcement of Copyright with the Upholding of Human Rights: A Consideration of the Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired and Print Disabled” (2014) E.I.P.R. Vol 36:10, 653

Jingyi Li, “Copyright Exemptions to Facilitate Access to Published Works for the Print Disabled – The Gap Between National Laws and the Standards Required by the Marrakesh Treaty” (2014) International Review of Intellectual Property and Competition Law Vol 45:7 740

Jingyi Li, “Facilitating Access to Digital Content for the Print Disabled: The Need to Expand Exemptions to Copyright Laws” (2015) Intellectual Property Journal Vol 27:3 355

Jo Oliver, "Copyright in the WTO: The Panel Decision on the Three-Step Test" (2002) Columbia Journal of Law & the Arts Vol 25:2-3 119

John Swain and Sally French, “Towards an Affirmation Model of Disability” (2000) Disability & Society Vol 15:4 569

John Willinsky, “When the Law Advances Access to Learning: Locke and the Origins of Modern Copyright” (2017) Knowledge Creation, Dissemination, and Preservation Studies Vol 1:1 2

Jonas-Sébastien Beaudry, “Beyond (Models of) Disability?” (2016) Journal of Medicine and Philosophy, 41: 210

Jonathan Band, “How the Marrakesh Treaty Opens Vistas for Print-Disabled Readers” (2013) American Libraries Vol 44:9-10, 14

Joseph Gerber, “Locking out Locke: A New Natural Copyright Law” (2017) Fordham Intellectual Property Media & Entertainment Law Journal Vol 27:3 613

Josh Milburn, “The Demandingness of Nozick’s ‘Lockean’ Proviso” (2016) European Journal of Political Theory Vol 15:3, 276

Julia Osei-Tutu, “Humanising Intellectual Property: Moving Beyond the Natural Rights Property Focus” (2017) Vanderbilt Journal of Entertainment and Technology Law Vol 20:1 207

Julie Sheinblatt, “The WIPO Copyright Treaty” (1998) Berkeley Technology Law Journal Vol 13:1 535

Julie Smart, “The Power of Models of Disability” (2009) Journal of Rehabilitation 75:2

Justin Bruner, “Locke, Nozick and the State of Nature” (2020) Philosophical Studies Vol 177:3 705

Justin Haegele and Samuel Hodge, “Disability Discourse: Overview and Critiques of the Medical and Social Models” (2016) Quest Vol 68:2 193

Justin Hughes, “The Personality Interest of Artists and Inventors in Intellectual Property” (1998) Cardozo Arts & Entertainment Law Journal Vol 16:1 81

Justin Hughes, “The Philosophy of Intellectual Property” (1988) Georgetown Law Journal Vol 77

Justin Hughes, “Traditional Knowledge, Cultural Expression, and the Siren’s Call of Property” (2013) San Diego Law Review Vol 49, 1215

Justin Koo, “A Justificatory Pluralist Toolbox: Constructing a Modern Approach to Justifying Copyright Law” (2020) E.I.P.R Vol 42:8, 469

Justine Pila, “Pluralism, Principles and Proportionality in Intellectual Property” (2014) Oxford Journal of Legal Studies Vol 34:1, 181

K Ishwarya, “Implementation of the Marrakesh Treaty, 2014 in India and Australia – A Comparative Study” (2020) Supremo Amicus Vol 15, 121

Kamiel Koelman, “Fixing the Three Step Test” (2006) European Intellectual Property Review Vol 28:8, 407

Katerina Linos and Tom Pegram, “The Language of Compromise in International Agreements” (2016) International Organisation Vol 70:3 587

Kaya Koklu, “The Marrakesh Treaty – Time to End the Book Famine for Visually Impaired Persons Worldwide” (2014) Institute for Innovation and Competition 45:737–739

Kenneth Einar Himma, “Toward a Lockean Moral Justification of Legal Protection of Intellectual Property” (2012) San Diego Law Review Vol 49:4 1105

Krista Cox, “The Right to Read for Blind or Disabled Persons” (2012) Landslide Vol 4:5, 32-36

Laetitia Cassells and Caitlin Weber, “A Report on the Current Access to Academic Information at the University of Pretoria for Visually Impaired Students: Challenges and Opportunities” (2018) Perspectives: Policy and Practice in Higher Education Vol 22:3

Lateef Mtima, “Copyright Social Utility and Social Justice Interdependence: A Paradigm for Intellectual Property Empowerment and Digital Entrepreneurship” (2009) 112 West Virginia Law Review Vol 112:1 97

Laurence Helfer et al, “Copyright Exceptions Across Borders: Implementing the Marrakesh Treaty” (2020) European Intellectual Property Review Vol 42:6 332

Laurence Helfer, “Human Rights and Intellectual Property: Conflict or Coexistence?” (2003) Minnesota Intellectual Property Review Vol 5:1 47

Laurence Helfer, “Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking” (2004) Yale Journal of International Law Vol 29:1-2, 1

Laurence Helfer, “Toward a Human Rights Framework for Intellectual Property" (2007) U.C. Davis Law Review Vol 40:3 971

Lawrence Becker, “Deserving to Own Intellectual Property” (1993) Chicago-Kent Law Review Vol 68:2 609

Lea Sheaver, “The Right to Read” (2015) Columbia Journal of Transnational Law Vol 54:1, 1-58

Lea Sheaver, “Copyright and Inequality” (2014) Washington University Law Review Vol 92:1 117

Lee Edwards and Giles Moss, “Evaluating Justifications of Copyright: An Exercise in Public Engagement” (2020) Information, Communication & Society Vol 23:7, 927

Lesley Harris, “The Marrakesh Treaty to Facilitate Access for the Blind and Others” (2013) The Copyright & New Media Law Newsletter Vol 17:3, 7

Lida Ayoubi, “Deciphering the “Right to Read” Under International Human Rights Law: A Normative Framework for Equal Access” (2019) Wisconsin International Law Journal Vol 36:3 424

Lida Ayoubi, “Human Rights Principles in the WIPO Marrakesh Treaty: Driving Change in Copyright Law from Within” (2019) Queen Mary Journal of Intellectual Property Vol 9:3 282

Lida Ayoubi, “The Marrakesh Treaty: Fixing International Copyright Law for the Benefit of the Visually Impaired Persons” (2015) New Zealand Journal of Public and International Law Vol 13:2 255

Lior Zemer and Aviv Gaon, “Copyright, Disability, and Social Inclusion: The Marrakesh Treaty and the Role of Non-Signatories” (2015) Journal of Intellectual Property Law & Practice Vol 10:11 836

Liwah Keller, “Improving the Right to Read in Canada: The Marrakesh Treaty, Commercial Availability and Beyond” (2023) Canadian Bar Review Vol 101:1 148

Lorella Terzi, “The Social Model of Disability: A Philosophical Critique” (2004) Journal of Applied Philosophy Vol 21:2, 141

Margot Kaminski and Shlomit Yanisky-Ravid, “The Marrakesh Treaty for Visually Impaired Persons: Why a Treaty Was Preferable to Soft Law” (2014) University of Pittsburgh Law Review Vol 75:3

Mark Lemley, “Ex Ante versus Ex Post Justifications for Intellectual Property” (2004) The University of Chicago Law Review Vol 71:1, 129

Mark Priestley, “Constructions and Creations: Idealism, Materialism and Disability Theory” (1998) Disability & Society Vol 13:1 75

Marketa Trimble, “The Marrakesh Puzzle” (2014) Max Planck Institute for Innovation and Competition Vol 45:7 768

Marno Retief and Rantoa Letsosa, “Models of Disability: A Brief Overview” (2018) Theological Studies Vol 74:1

Martin Senftleben, “A Copyright Limitations Treaty Based on the Marrakesh Model: Nightmare or Dream Come True?” (2017) SSRN Electronic Journal

Martin Senftleben, “Towards a Horizontal Standard for Limiting Intellectual Property Rights? WTO Panel Reports Shed Light on the Three-Step Test in Copyright Law and Related Tests in Patent and Trademark Law” (2006) International Review of Intellectual Property and Competition Law Vol 37:4 407

Mary Gani-Ikilama, “Copyright Theory and a Justificatory Framework for Creative Autonomy in Cultural Industries” (2016) Queen Mary Journal of Intellectual Property Vol 6:2 154

Maxime Lambrecht, “On Water Drinkers and Magical Springs: Challenging the Lockean Proviso as a Justification for Copyright” (2015) Ratio Juris Vol 28:4 504

Michael Falgoust, “The Incentives Argument Revisited: A Millean Account of Copyright” (2014) The Southern Journal of Philosophy Vol 52:2 163

Michael Palmer and David Harley, “Models and Measurement in Disability: An International Review” (2012) Health Policy and Planning Vol 27:5, 357

Michael Stein, “Disability Human Rights” (2007) California Law Review Vol 95, 75

Michele McDonnall and Andrew Tatch, “Educational Attainment and Employment for Individuals with Visual Impairments” (2021) Journal of Visual Impairment & Blindness Vol 115:2

Milana Karayanidi, “Bargaining Power in Multilateral Negotiations on Intellectual Property Rules: Paradox of Weakness” (2011) The Journal of World Intellectual Property Vol 14:3-4 265

Mitchell Longan, “A System Out of Balance: A Critical Analysis of Philosophical Justifications for Copyright Law Through the Lenz of Users' Rights” (2023) University of Michigan Journal of Law Reform Vol 56:3 779

Molly Land, “The Marrakesh Treaty as Bottom-Up Lawmaking: Supporting Local Human Rights Action on IP Policies” (2018) UC Irvine Law Review Vol 8:3 513

Natalie Abbott, “Marrakesh Treaty in Action: Patrons with Print Disabilities Will Soon Have Improved Access to Accessible Materials as the United States Ratifies a Global Initiative” (2019) New York Library Journal Vol 144:4

Neel Purmah, “Envisioning the Effective Implementation of the Marrakesh Treaty for Blind, Visually Impaired and Print-Disabled Individuals in Mauritius” (2023) African Journal of Legal Studies Vol 15:2 160

Neil Yap, “Fitting Marrakesh into a Consequentialist Copyright Framework” (2017) Journal of Intellectual Property and Entertainment Law Vol 6:2 376

Neža Šubic and Delia Ferri, “National Disability Strategies as Rights-based Cultural Policy Tools” (2023) International Journal of Cultural Policy Vol 29:4 467

Nicolas Suzor, “Access, Progress, and Fairness: Rethinking Exclusivity in Copyright” (2013) Vanderbilt Journal of Entertainment and Technology Law Vol 15:2 297

Nicole Thomas, “An Education: The Three-Step Test for Development” (2012) European Intellectual Property Review Vol 34:4 245

Nigel Duncan and Terry Hutchinson, “Defining and Describing What We Do: Doctrinal Legal Research” (2012) Deakin Law Review Vol 17:1 101

Obsa Alemu, "The System of Copyright Limitations under the Marrakesh Treaty (2013) in Light of the TRIPS Standards: The Strengths and Weaknesses" (2021) Journal of Law, Policy, and Globalisation Vol 114 7

Oren Bracha and Talha Syed, “Beyond Efficiency: Consequence-Sensitive Theories of Copyright” (2014) Berkeley Technology Law Journal Vol 29:1, 289

Patricia Laughlan, “Pirates, Parasites, Reapers, Sowers, Fruits, Foxes…The Metaphors of Intellectual Property” (2006) Sydney Law Review Vol 28:2 211

Patrick Hely, "A Model Copyright Exemption to Serve the Visually Impaired: An Alternative to the Treaty Proposals before WIPO" (2010) Vanderbilt Journal of Transnational Law Vol 43:5 1369

Paul Harpur and Brooke Szucs, “Using the new Disability Human Rights Paradigm to Create Higher Education Leadership Opportunities” (2023) International Journal of Discrimination and the Law Vol 23:1-2

Paul Harpur and Nicolas Suzor, “Copyright Protections and Disability Rights: Turning the Page to a New International Paradigm” (2013) University of New South Wales Law Journal Vol 36:3 745

Paul Harpur and Nicolas Suzor, “The Paradigm Shift in Realising the Right to Read: How eBook Libraries are Enabling in the University Sector” (2014) Disability & Society Vol 29:10

Paul Harpur et al, “Digital Copyright and Disability Discrimination: From Braille Books to Bookshare” (2008) Media and Arts Law Review Vol 13:1

Paul Harpur et al, “South African Constitutional Court Prioritises Constitutional Right to Access Information by Print Disabled Over Protected Copyright Interests” (2023) European Intellectual Property Review Vol 45:5, 299

Paul Harpur, “Embracing the New Disability Rights Paradigm: The Importance of the Convention on the Rights of Persons with Disabilities” (2012) Disability & Society Vol 27:1

Peter Burger, "The Berne Convention: Its History and Its Key Role in the Future" (1988) Journal of Law and Technology Vol 3, 1

Peter Drahos, “Intellectual Property and Human Rights” (1999) IPQ Vol 3 349

Peter Yu, “Intellectual Property and Human Rights 2.0” (2019) University of Richmond Law Review Vol 53:4, 1375

Peter Yu, “Reconceptualising Intellectual Property Interests in a Human Rights Framework" (2007) U.C. Davis Law Review Vol 40:3 1039

Peter Yu, “The Anatomy of the Human Rights Framework for Intellectual Property” (2016) SMU Law Review Vol 69:1 37

Peter Yu, “The Objectives and Principles of the TRIPS Agreement” (2009) Houston Law Review Vol 4 979

Rafael De Asís Roig, “Reasonableness in the Concept of Reasonable Accommodation” (2016) The Age of Human Rights Journal Vol 6:6 42

Rami Olwan, “The Ratification and Implementation of the Marrakesh Treaty for Visually Impaired Persons in the Arab Gulf States” (2017) Journal of World Intellectual Property Vol 20:5-6, 178

Raymond Lang et al, “Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations” (2011) European Journal of Disability Research Vol 5:3 206

Richard Posner, “Intellectual Property: The Law & Economics Approach” (2005) Journal of Economic Perspectives Vol 19:2, 57

Robin Wright, “The ‘‘Three-Step Test’’ and the Wider Public Interest: Towards a More Inclusive Interpretation” (2009) The Journal of World Intellectual Property Vol 12:6 600

Rui Guo, “The Human Rights Attributes of the Marrakesh Treaty and Its Practical Significance” (2022) Journal of Human Rights Vol 21:5 983

Ruth Gana, “The Myth of Development, the Progress of Rights: Human Rights to Intellectual Property and Development” (1996) Law & Policy Vol 18:3-4 315

Ruth Okediji and Bernt Hugenholtz, “Conceiving an International Instrument on Limitations and Exceptions to Copyright” (2012) Open Society Institute Research Paper, 42

Ruth Okediji, “Does Intellectual Property Need Human Rights?” (2018) New York University Journal of International Law and Politics (JILP) Vol 50:1

Ruth Okediji, “The International Copyright System: Limitations, Exceptions, and Public Interest Considerations for Developing Countries” (2006) UNCTAD - ICTSD Project on IPRs and Sustainable Development Issue Paper No.15

Ruth Okediji, “The Limits of International Copyright Exceptions for Developing Countries” (2019) Vanderbilt Journal of Entertainment & Technology Law Vol 21:3 689

Ruth Towse, “Partly for the Money: Rewards and Incentives to Artists” (2001) Kyklos International Review for Social Sciences Vol 54:2-3 473

Ryan Cardwell and Pascal Ghazalian, “The Effects of the TRIPS Agreement on International Protection of Intellectual Property Rights” (2012) The International Trade Journal Vol 26:1 19

Saleh Al-Sharieh, “Toward a Human Rights Method for Measuring International Copyright Law’s Compliance with International Human Rights Law” (2016) Utrecht Journal of International and European Law Vol 32:82

Samuel Macharia et al, “Exploiting the Marrakesh Treaty to Obviate Copyright-related Challenges on Access to Information by Visually Impaired People in Academic Libraries” (2020) Library Management Vol. 41:4/5 235

Samuel Macharia et al, “Framework for the Provision of Information to the Visually Impaired in Academic Libraries in Compliance with the Marrakesh Treaty” (2022) International Federation of Library Associations and Institutions Vol 48:4 727

Samuel Murumba, “Foxes and Hedgehogs at the Intersection of Human Rights and Intellectual Property” (2012) Monash University Law Review Vol 38:1 119

Samuel Trosow, “The Illusive Search for Justificatory Theories: Copyright, Commodification and Capital” (2003) Canadian Journal of Law & Jurisprudence Vol:16 217

Sara Stadler, "Incentive and Expectation in Copyright" (2006) Hastings Law Journal Vol 58:3 433

Saudin Mwakaje, “Accession by Tanzania to the Marrakesh Treaty on Access to Publications for Visually Impaired Persons: Policy and Legal Implications” (2021) The African Review Vol 48:1 215

Sergus Stepniak, “Book Famine in Russia” (1891) Free Russia Vol 2:10

Shae Fitzpatrick, “Setting Its Sights on the Marrakesh Treaty: The U.S. Role in Alleviating the Book Famine for Persons with Print Disabilities” (2014) Boston College International & Comparative Law Review Vol 37:1 139

Sharon Foster, “Prelude to Compatibility between Human Rights and Intellectual Property” (2008) Chicago Journal of International Law Vol 9:1 171

Shlomit Yanisky-Ravid, “The Hidden Though Flourishing Justification of Intellectual Property Laws: Distributive Justice, National Versus International Approaches” (2017) Lewis & Clark Law Review Vol 21:1 1

Sileshi Hirko, “The Implications of TRIPs’ Criminal Provisions on Copyright Exception for Education in Ethiopia: A Critical Approach from A Human Rights Perspective” (2021) African Journal of International and Comparative Law Vol 29:2 263

Simonetta Vezzoso, “The Marrakesh Spirit – A Ghost in Three Steps?” (2014) Max Planck Institute for Innovation and Competition 796

Stephen Bunbury, “Unconscious Bias and the Medical Model: How the Social Model may hold the Key to Transformative Thinking about Disability

Discrimination” (2019) International Journal of Discrimination and the Law Vol 19:1 26

Terry Hutchinson, “The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law” (2015) Erasmus Law Review Vol. 8:3 130

Theresia Degener et al, “Introducing a Human Rights-based Disability Research Methodology” (2020) Human Rights Law Review Vol 20:3

Theresia Degener, “10 years of Convention on the Rights of Persons with Disabilities” (2017) Netherlands Quarterly of Human Rights Vol 35:3 152

Thomas Dreier, “Copyright in the Times of the Internet - Overcoming the Principle of Territoriality Within the EU” (2017) ERA Forum Vol 18:1 7

Thomas Hammarberg, “Disability Rights: From Charity to Equality” (2011) European Human Rights Law Review 6, 638

Timothy Pinto, “The Influence of the European Convention on Human Rights on Intellectual Property Rights” (2002) E.I.P.R. Vol 24:4 209

Tobias Buchner et al, “Same Progress for All? Inclusive Education, the United Nations Convention on the Rights of Persons with Disabilities and Students with Intellectual Disability in European Countries” (2021) Journal of Policy and Practice in Intellectual Disabilities Vol 18:1

William Landes and Richard Posner, “An Economic Analysis of Copyright Law” (1989) Journal of Legal Studies Vol 18:2 325

Wondwossen Mulualem Beyene et al, “Inclusion, Access, and Accessibility of Educational Resources in Higher Education Institutions: Exploring the Ethiopian Context” (2023) International Journal of Inclusive Education Vol 27:1, 18

Yoonmoo Sang, “Revisiting Copyright Theories: Democratic Culture and the Resale of Digital Goods” (2018) Communication Theory Volume 29:3, 279

- Reports & Publications

AGCAS Disability Task Group, “What Happens Next? 2022: A Report on the Outcomes of 2019 Disabled Graduates” (2022) available here: <https://www.agcas.org.uk/write/MediaUploads/Resources/Research%20and%20knowledge/WHN_2022.pdf>

Botswana Ministry of Health, “National Policy on Care for People with Disabilities” (February 1996), available here: <https://extranet.who.int/mindbank/item/2134#:~:text=Description,people%20with%20disabilities%20in%20Botswana.>

Cabinet Decision No. 47/2022 On the Implementing Regulation of Federal Decree-Law No. 38/2021 on Copyrights and Neighbouring Rights: <https://www.moec.gov.ae/documents/20121/0/CabinetDecision_47_2022_pdf.pdf/deccddc2-536a-2123-d02c-dd84bffcc5a5?t=1656667925081>

CALD, ‘Statement on the Nature of Legal Research’ (October 2005) 3, available here: <http://www.cald.asn.au/docs/cald%20statement%20on%20the%20nature%20of%20legal%20research%20-%202005.pdf>

Cesar Ramirez-Montes, ‘The Marrakesh Treaty: Study for the PETI Committee’ [2016] European Parliament Policy Department for Citizens’ Rights and Constitutional Affairs

Eleni Koustriava et al, “InSIDE: Including Students with Impairments in Distance Education: Development of Educational Materials” (September 2019) available here: <https://www.ummto.dz/wp-content/uploads/2023/05/InSIDE-Newsletter-1.pdf>

European Court of Human Rights, “Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights: Protection of Property” (2022) 7, available here: <https://www.echr.coe.int/documents/d/echr/Guide_Art_1_Protocol_1_ENG> accessed 22.08.2023

European Parliament, “The Open Method of Coordination: At a Glance” (October 2014) https://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf

Francisco Javier Martínez Calvo, “The Role of Libraries in the Implementation of the Marrakesh Treaty for Persons with a Print Disability” (2014) available here: <https://library.ifla.org/id/eprint/913/>

Fredric Schroeder, “Ending the Book Famine Literacy for the Blind without Borders” (2013)

<https://nfb.org/sites/default/files/images/nfb/publications/fr/fr32/4/fr320410.htm
>

Government of the Republic of Vanuatu, “Vanuatu National Disability Inclusive Development Policy 2018-2025” (2018) 4, available here: <https://mjcs.gov.vu/images/policy/DID_Policy_2018-2025.pdf>

Gwen Hinze, “Making Knowledge Accessible Across Borders: The Case for Mandatory Minimum International Copyright Exceptions and Limitations for Education, Capacity Building and Development” (2008) Electronic Frontier Foundation 5 <https://files.eric.ed.gov/fulltext/ED509860.pdf>

IFLA, “Marrakesh Treaty Implementation: February 2023 Update” (2023) available here: <https://repository.ifla.org/bitstream/123456789/2496/2/Marrakesh%20Monitoring%20Report%20Update%20February%202023.docx>

Integrated Food Security Phase Classification, “Understanding the IPC Scales” (2022) 4, available here: <https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/communication_tools/brochures/IPC_Brochure_Understanding_the_IPC_Scales.pdf>

Jan Smits, “What Is Legal Doctrine? On The Aims and Methods of Legal-Dogmatic Research” Maastricht European Private Law Institute Working Paper No. 2015/06

Jenny Chanfreau and Andreas Cebulla, “Educational Attainment of Blind and Partially Sighted Pupils” (RNIB, November 2009) available here: <https://www.rnib.org.uk/professionals/health-social-care-education-professionals/knowledge-and-research-hub/reports-and-insight/educational-attainment/>

Jimcall Pfumorodze and Charles Manga Fombad, “Protecting the Disabled in Botswana: An Anomalous Case of Legislative Neglect” available here: <https://www.rodra.co.za/images/countries/botswana/research/Protecting%20the%20disabled%20in%20Botswana%20(An%20anomalous%20case%20of%20legislative%20neglect).pdf>

Kazuyuki Uji, ‘Time to End the Global Book Famine’ (UNDP, 23 July 2018) <https://www.undp.org/asia-pacific/blog/time-end-global-%E2%80%98book-famine%E2%80%99>

National Federation of the Blind, “Federal Court Rules in Favor of Blind Students” (21 August 2019) available here: <https://nfb.org/about-us/press-room/federal-court-rules-favor-blind-students> accessed 03.11.2023

Open Society Initiative for Southern Africa, “Situation Analysis of Disability Rights in the Context of Botswana” (2016) 14, available here: <https://www.rodra.co.za/images/countries/botswana/research/Situation%20Analysis%20Report%20of%20Disability%20Rights%20in%20the%20Context%20of%20Botswana%20-%202016.pdf>

Pledge submitted by Saint Vincent and the Grenadines to the Human Rights 75 Secretariat December 2023, available here: <https://www.ohchr.org/sites/default/files/udhr/publishingimages/75udhr/Saint%20Vicent%20and%20the%20Grenadines_EN.pdf>

Report on behalf of the Intergovernmental Copyright Committee (of the Universal Copyright Convention) and the International Union for the Protection of Literary and Artistic Work Executive Committee: Wanda Noel, “Copyright Problems Raised by the Access by Handicapped Persons to Protected Works” (1985) IGC (1971)/VI/11, available here: <https://unesdoc.unesco.org/ark:/48223/pf0000065169>

RNIB, “Educational Attainment: Summary of Official Data on Children and Young People with a Vision Impairment in England” (July 2022) available here: <https://www.rnib.org.uk/professionals/health-social-care-education-professionals/knowledge-and-research-hub/reports-and-insight/educational-attainment/>

Saint Vincent and the Grenadines Government Press Release: <https://mobilization.gov.vc/mobilization/images/PDF/Press_release_Disability_Act.pdf>

SCCR/9/7 Sam Ricketson, “WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment” [2003]

Sub-Commission on the Promotion and Protection of Human Rights, “Resolution on Intellectual Property Rights and Human Rights” (Aug 17, 2000) UN Doc. E/CN.4/Sub.2/RES/2000/7

Sue Hubble and Paul Bolton, “Support for Disabled Students in Higher Education in England” (February 2021) available here: <https://commonslibrary.parliament.uk/research-briefings/cbp-8716/>

UN Commission on Human Rights (UNCHR) (Sub-Commission), ‘The Impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights on Human Rights: Report of the High Commissioner’ (27 June 2001) UN Doc E/CN.4/Sub.2/2001/13 (Report of the High Commissioner)

UNESCO Global Education Monitoring Report, “Education of Children with Visual Impairments in Sub-Saharan Africa: Challenges and Opportunities” [2020] ED/GEMR/MRT/2020/P1/24

UNICEF, “Accessible Digital Textbooks: Creating Digital Tools to Enable Universal Design for Learning and Inclusive Education” (2022) <https://www.unicef.org/paraguay/media/8371/file/Accessible%20Digital%20Textbooks.pdf>

UNICEF, “The State of the World’s Children 2023” (April 2023) Table 16, 195-198, available here: <https://www.unicef.org/media/108161/file/SOWC-2023-full-report-English.pdf>

United Nations Committee for Development Policy, “List of Least Developed Countries (as of 18 December 2013)” <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf>

United Nations Department for Economic and Social Affairs Disability, “Chapter Four: Becoming a Party to the Convention and the Optional Protocol – Joining the Convention” <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-four-becoming-a-party-to-the-convention-and-the-optional-protocol.html>

United Nations, “World Economic Situation and Prospects” (4 January 2024) available here: <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP_2024_Web.pdf>

WIPO SCCR 22nd Session, ‘Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives’, SSCR/22/12, 3 June 2011 <http://www.wipo.int/edocs/mdocs/copyright/en/sccr_22/sccr_22_12.pdf> accessed 14 September 2019

WIPO Standing Committee on Copyright and Related Rights, “Draft Consensus Instrument: Proposal by the Delegation of the United States of America” [2010] SCCR/20/10 available here: <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_20/sccr_20_10.pdf>

WIPO Standing Committee on Copyright and Related Rights, “Draft Joint Recommendation Concerning the Improved Access to Works Protected by Copyright for Persons with a Print Disability” [2010] SCCR/20/12 available here: <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_20/sccr_20_12.pdf>

WIPO Standing Committee on Copyright and Related Rights, “Proposal by Brazil, Ecuador and Paraguay, relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU)” (2009) SCCR/18/5

WIPO Standing Committee on Copyright and Related Rights, “Revised Scoping Study on Access to Copyright Protected Works by Persons with Disabilities” (2019) SCCR/38/3 <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_38/sccr_38_3.pdf>

WIPO Standing Committee on Copyright and Related Rights, “Updated Version of the Document “Objectives and Principles for Exceptions and Limitations for Libraries and Archives” (2023) SCCR/44/5

WIPO, “India Is First to Ratify “Marrakesh Treaty” Easing Access to Books for Persons Who Are Visually Impaired” PR/2014/761 <https://www.wipo.int/pressroom/en/articles/2014/article_0008.html>

WIPO, “Proposal by Morocco on Behalf of the African Group Entitled “The African Proposal for the Establishment of a Development Agenda for WIPO””

[2005] available here:
<www.wipo.int/edocs/mdocs/mdocs/en/iim_3/iim_3_2.doc>

WIPO, “Records of the Intellectual Property Conference of Stockholm: June 11 to July 14, 1967” (1971) available here
<https://www.wipo.int/export/sites/www/treaties/en/docs/prep-docs/1967_july_Stockholm_311-vol1-en.pdf>

WIPO, “Study on Copyright Limitations and Exceptions for the Visually Impaired” (2007) SCCR/15/7,
<https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf>

WIPO, “The Global Publishing Industry in 2021” (2023) 10, available here:
<https://www.wipo.int/edocs/pubdocs/en/wipo-pub-1064-2023-en-the-global-publishing-industry-report-2021.pdf>

WIPO, “The Marrakesh Treaty – Helping to End the Global Book Famine” [2016] available here
<https://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_overview.pdf>

Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright (1982)
<https://www.wipo.int/edocs/pubdocs/en/copyright/120/wipo_pub_120_1982_12.pdf>

World Blind Union, “The Marrakesh Treaty to Facilitate Access to Published Works for Persons with Print Disabilities for Inclusive, Equitable and Sustainable Development” (December 2017) available here:
<https://worldblindunion.org/wp-content/uploads/2020/10/undp-rbap-2017-issue-brief-asia-pacific-marrakesh-treaty.pdf>

World Conference on Human Rights, Vienna Declaration and Programme of Action [1993]
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

World Health Organisation, Blindness and Visual Impairment (13 October 2022) available here: <https://www.who.int/news-room/fact-sheets/detail/blindness-and-visual-impairment>

World Trade Organisation, “United States – Section 110(5) of the US Copyright Act: Report of the Panel” (2000) WT/DS160/R, available here: <https://www.wto.org/english/tratop_e/dispu_e/1234da.pdf>

- Treaty Body Reports

Committee on Economic, Social and Cultural Rights General Comment No. 20, “Non-discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2 of the International Covenant on Economic, Social and Cultural Rights)” [2009] E/C.12/GC/20

Committee on Economic, Social and Cultural Rights, “General Comment No. 3: The Nature of States Parties Obligations” [1990]

Committee on Economic, Social and Cultural Rights, General Comment No. 14: “The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)” [2000] E/C.12/2000/4

Committee on Economic, Social and Cultural Rights, General Comment No. 21, “Right of Everyone to Take Part in Cultural Life (Art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights)” [2009] E/C.12/GC/21

Committee on Economic, Social, and Cultural Rights, “General Comment No. 17 on the Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of which He or She is the Author” [2006] E/C.12/GC/1712

Committee on the Rights of Persons with Disabilities, “Individual Communications” <https://www.ohchr.org/en/treaty-bodies/crpd/individual-communications>

Committee on the Rights of Persons with Disabilities, General Comment No. 6, “Equality and Non-discrimination” [2018] CRPD/C/GC/6

Committee on the Rights of Persons with Disabilities, General Comment No. 4, “Article 24: Right to Inclusive Education” [2016] CRPD/C/GC/4

Concluding Observations CRPD/C/SLV/CO/1 and CRPD/C/SLV/CO/2-3

Concluding Observations of the CRPD Committee, accessible here: <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5>

Concluding Observations on the Combined Second and Third Periodic Reports of Paraguay CRPD /C/PRY/CO/2-3

Concluding Observations on the Combined Second and Third Periodic Reports of the Republic of Korea CRPD/C/KOR/CO/2-3

Concluding Observations on the Combined Second and Third Periodic Reports of Tunisia CRPD/C/TUN/CO/2-3

Concluding Observations on the Initial Report of Armenia CRPD/C/ARM/CO/1

Concluding Observations on the Initial Report of Bosnia and Herzegovina CRPD/C/BIH/CO/1

Concluding Observations on the Initial Report of Chile CRPD/C/CHL/CO/1

Concluding Observations on the Initial Report of Ethiopia CRPD/C/ETH/CO/1

Concluding Observations on the Initial Report of Honduras CRPD/C/HND/CO/1

Concluding Observations on the Initial Report of India CRPD/C/IND/CO/1

Concluding Observations on the Initial Report of Jordan Addendum CRPD/C/JOR/CO/1/Add.1

Concluding Observations on the Initial Report of Jordan CRPD/C/JOR/CO/1

Concluding Observations on the Initial Report of Montenegro CRPD/C/MNE/CO/1

Concluding Observations on the Initial Report of Panama CRPD/C/PAN/CO/1

Concluding Observations on the Initial Report of Qatar CRPD/C/QAT/CO/1

Concluding Observations on the Initial Report of Rwanda CRPD/C/RWA/CO/1

Concluding Observations on the Initial Report of Saudi Arabia CRPD/C/SAU/CO/1

Concluding Observations on the Initial Report of Serbia CRPD/C/SRB/CO/1

Concluding Observations on the Initial Report of the Bolivarian Republic of Venezuela CRPD/C/VEN/CO/1

Concluding Observations on the Initial Report of the Dominican Republic, CRPD/C/DOM/CO/1

Concluding Observations on the Initial Report of the Philippines CRPD/C/PHL/CO/1

Concluding Observations on the Initial Report of the Plurinational State of Bolivia CRPD/C/BOL/CO/1

Concluding Observations on the Initial Report of the Republic of Korea CRPD/C/KOR/CO/1

Concluding Observations on the Initial Report of Turkmenistan CRPD/C/TKM/CO/1

Concluding Observations on the Initial Report of Uganda CRPD/C/UGA/CO/1

Concluding Observations on the Initial Report of Vanuatu CRPD/C/VUT/CO/1

Initial Report Submitted by the Marshall Islands under Article 35 of the Convention, Due in 2017 CRPD/C/MHL/1

Marrakesh Treaty Questionnaire – Afghanistan: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_afghanistan.pdf>

Marrakesh Treaty Questionnaire – Australia: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_australia.pdf>

Marrakesh Treaty Questionnaire – Azerbaijan: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_azerbaijan.pdf>

Marrakesh Treaty Questionnaire - Bosnia & Herzegovina: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_bosnia_and_herzegovina.pdf>

Marrakesh Treaty Questionnaire – Costa Rica: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_costa_rica.pdf>

Marrakesh Treaty Questionnaire – Ecuador: <https://www.wipo.int/export/sites/www/marrakesh_treaty/es/docs/mt_questionnaire_ecuador.pdf>

Marrakesh Treaty Questionnaire – El Salvador: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_el_salvador.pdf>

Marrakesh Treaty Questionnaire – Ethiopia: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_ethiopia.pdf>

Marrakesh Treaty Questionnaire – Japan: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_ja.pdf>

Marrakesh Treaty Questionnaire – Kenya: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_ke.pdf>

Marrakesh Treaty Questionnaire – Kyrgyzstan: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_kyrgyzstan.pdf>

Marrakesh Treaty Questionnaire – Liberia: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_liberia.pdf>

Marrakesh Treaty Questionnaire – Malawi: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_mw.pdf>

Marrakesh Treaty Questionnaire – Morocco: <https://www.wipo.int/export/sites/www/marrakesh_treaty/fr/docs/mt_questionnaire_morocco.pdf>

Marrakesh Treaty Questionnaire – Panama: <https://www.wipo.int/export/sites/www/marrakesh_treaty/es/docs/mt_questionnaire_panama.pdf>

Marrakesh Treaty Questionnaire – Philippines: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_philippines.pdf>

Marrakesh Treaty Questionnaire – Qatar: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_qatar.pdf>

Marrakesh Treaty Questionnaire – Republic of Moldova: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_republic_of_moldova.pdf>

Marrakesh Treaty Questionnaire – Thailand: <https://www.wipo.int/export/sites/www/marrakesh_treaty/en/docs/mt_questionnaire_th.pdf>

WIPO, “Assemblies of the Member States of WIPO” Sixty-Fourth Series of Meetings Geneva, July 6 to 14, 2023 A/64/14

WIPO, “Assembly – Report on the Accessible Books Consortium” Second (2nd Ordinary) Session Geneva, October 2 to 11, 2017 MVT/A/2/INF/1 REV

WIPO, “Assembly – Report” Fifth (5th Ordinary) Session Geneva, September 21 to 25, 2020, MVT/A/5/2

WIPO, “Assembly – Report” First (1st Ordinary) Session Geneva, October 3 to 11, 2016 MVT/A/1/3

WIPO, “Assembly – Report” Fourth (4th Ordinary) Session Geneva, September 30 to October 9, 2019, MVT/A/4/2

WIPO, “Assembly – Report” Second (2nd Ordinary) Session Geneva, October 2 to 11, 2017 MVT/A/2/2

WIPO, “Assembly - Report” Sixth (6th Ordinary) Session Geneva, October 4 to 8, 2021 MVT/A/6/2

WIPO, “Assembly – Report” Third (3rd Ordinary) Session Geneva, September 24 to October 2, 2018, MVT/A/3/2

WIPO, “Assembly – Rules of Procedure” First (1st Ordinary) Session Geneva, October 3 to 11, 2016 MVT/A/1/1

WIPO, “Assembly - Status of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled” First (1st Ordinary) Session Geneva, October 3 to 11, 2016 MVT/A/1/2 REV

WIPO, “Assembly – Status of the Marrakesh Treaty” Fifth (5th Ordinary) Session Geneva, September 21 to 29, 2020 MVT/A/5/1

WIPO, “Assembly – Status of the Marrakesh Treaty” Fourth (4th Ordinary) Session Geneva, September 30 to October 9, 2019, MVT/A/4/1

- Websites & Blogs

Association of Research Libraries, “National Implementations of the Marrakesh Treaty” <https://www.arl.org/national-implementations-marrakesh/>

European Blind Union, ‘About Blindness and Partial Sight: Facts and Figures’ <https://www.euroblind.org/about-blindness-and-partial-sight/facts-and-figures>

European Commission Infringement Decisions <https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/>

https://www.keionline.org/r2r/marrakesh/draft-texts

IFLA, “Marrakesh Treaty Implementation: February 2023 Update” (2023) available here: <https://repository.ifla.org/bitstream/123456789/2496/2/Marrakesh%20Monitoring%20Report%20Update%20February%202023.docx>

Leyonid Taycher, “Books of the World, Stand Up and be Counted! All 129,864,880 of You” (2010) available here: <http://booksearch.blogspot.com/2010/08/books-of-world-stand-up-and-be-counted.html> accessed 08.09.2023

Marrakesh Notification No. 21 <https://www.wipo.int/treaties/en/notifications/marrakesh/treaty_marrakesh_21.html>

RNIB, “Bookshare” <https://www.rnibbookshare.org/cms/> accessed 07.10.2023

The World Bank, “World Bank Open Data” <https://data.worldbank.org/>

UN Treaty Body Database, “Ratification Status for CRPD - Convention on the Rights of Persons with Disabilities” <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD>

United Nations Treaty Collection, “Status of Treaties: Convention on the Rights of Persons with Disabilities” <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en>

WIPO Notifications, see here: <https://www.wipo.int/treaties/en/ShowResults.jsp?search_what=N&treaty_id=843>

WIPO, “Accessible Books Consortium” <https://www.accessiblebooksconsortium.org/> accessed 07.10.2023

WIPO, “Berne Notification No. 112” <https://www.wipo.int/treaties/en/notifications/berne/treaty_berne_112.html> accessed 03.08.2023

WIPO, “Division for Least-Developed Countries” <https://www.wipo.int/about-wipo/en/activities_by_unit/index.jsp?id=46>

WIPO, “Marrakesh Treaty – Assembly” <https://www.wipo.int/meetings/en/topic.jsp?group_id=302>

WIPO, “Member Profile – Laws, Treaties, and Judgements” <https://www.wipo.int/wipolex/en/members>

WIPO, “Questionnaire on Cross-border Accessibility” accessible here: <https://www.wipo.int/marrakesh_treaty/en/>

WIPO, “Standing Committee on Copyright and Related Rights (SCCR)” <https://www.wipo.int/policy/en/sccr/>

WIPO, “Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)” <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html>

WIPO, “The Marrakesh Treaty” <https://www.wipo.int/marrakesh_treaty/en/>

WIPO-Administered Treaties, “Contracting Parties: Berne Convention” <https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15>

WIPO-Administered Treaties, “Contracting Parties: Marrakesh VIP Treaty” <https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=843>

World Blind Union, “Marrakesh Treaty Ratification and Implementation Campaign” <https://worldblindunion.org/programs/marrakesh-treaty/>

World Services for the Blind, ‘Employment Barriers for the Blind and Visually Impaired’ <https://www.wsblind.org/blog/2021/6/16/employment-barriers-for-the-blind-and-visually-impaired>

World Trade Organisation, “Members and Observers” <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm>

World Trade Organisation, “Who are the Developing Countries in the WTO?” <https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm>