

**Copyright Exceptions for
Persons with
a Print Disability under the
Marrakesh Treaty and the
Copyright Ordinance**

**“Marrakesh Treaty to Facilitate
Access to Published Works for
Persons Who Are Blind, Visually
Impaired, or Otherwise Print
Disabled”**

The Marrakesh Treaty

- Adopted by the Member States of the World Intellectual Property Organization (WIPO) in Marrakesh on 27 June 2013.
- Administered by the WIPO.
- Came into force on 30 September 2016.

Objective of the Marrakesh Treaty

To facilitate and enhance access to books, magazines and other printed materials for persons with print disabilities by making it easier for accessible format copies to be created and shared across international borders.

The Marrakesh Treaty

A beneficiary person is a person who —

- is blind;
- has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
- is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

The Marrakesh Treaty

An authorized entity means —

an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.

The Marrakesh Treaty

Types of copyright works covered

- Literary and artistic works in the form of text, notation and/or related illustrations; and
- The above works in audio form, e.g. audiobooks.

The Marrakesh Treaty

Copyright limitations and exceptions

- A contracting party shall, under its domestic laws, allow the making and supplying of copies of the above types of copyright works in an accessible format, so that a range of acts (including reproduction, distribution and making copies available to the public) may be performed for the benefit of beneficiaries, without infringing the copyright in the works, if certain conditions are fulfilled.

Accessible format copy means —

a copy in any format that enables a beneficiary to have access to the content as feasibly and comfortably as someone who is not print disabled.

The Marrakesh Treaty

Cross-border exchange of accessible format copies

To provide for exchange across international borders of accessible format copies of works produced as provided under the Marrakesh Treaty

— an authorized entity may distribute or make available such accessible copies to a beneficiary or authorized entity in another contracting party.

**Copyright Exceptions for
Persons with a Print Disability
under the Copyright Ordinance
(sections 40A to 40F)**

“Print Disability”

“Print disability” in relation to a person means —

a) blindness;

b) an impairment of his visual function which cannot be improved by the use of corrective lenses to a level that would normally be acceptable for reading without a special level or kind of light;

c) inability, through physical disability, to hold or manipulate a book; or

d) inability, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.

Copyright Exceptions

The making and supplying of accessible copies from the whole or part of a copy of literary, dramatic, musical or artistic work for the personal use of the persons with a print disability are allowed without infringing copyright or, in the case of a published edition, copyright in the typographical arrangement, provided that the prescribed conditions are satisfied.

Accessible copy

- For example, in the form of a Braille, large-print, electronic version, or sound recording, etc.
- Basically encompasses the same meaning as that of the defined term “accessible format copy” in the Marrakesh Treaty.

Copyright Exceptions — Making a Single Accessible Copy by or on Behalf of a Person with a Print Disability

For a literary, dramatic, musical or artistic work possessed by a person with a print disability, one accessible copy of such copyright work can be made by or on behalf of the person for his personal use.

Applicable conditions —

- After making reasonable enquiries, it is satisfied that copies of the relevant work in a form that is accessible to the person with a print disability cannot be obtained at a reasonable commercial price.
- The fee charged, if any, must not exceed the cost incurred in making and supplying the copy.

Copyright Exceptions — Making or Supplying Multiple Accessible Copies by Specified Bodies for Persons with a Print Disability

If a specified body possesses a copy of a commercial publication of a literary, dramatic, musical or artistic work, it can make or supply to persons with a print disability accessible copies of such work for their personal use.

Applicable conditions —

- After making reasonable enquiries, it is satisfied that copies of the relevant copyright work in a form that is accessible to persons with a print disability cannot be obtained at a reasonable commercial price.
- The fee charged, if any, must not exceed the cost incurred in making and supplying the copy.
- The copyright owner should be notified before or after the accessible copies are made or supplied.
- A record should be made and retained for at least 3 years.

Definition of “Specified Bodies”

“Specified bodies” include —

- a. government schools;
- b. non-profit-making schools (exempt from tax under section 88 of the Inland Revenue Ordinance);
- c. schools receiving direct recurrent subvention from the Government; or
- d. an organization which is not established or conducted for profit and whose main objects are charitable or concerned with the advancement of welfare for persons with a print disability.

Copyright Exceptions – Lending or Transferring an Intermediate Copy of Accessible Copies by Specified Bodies

A specified body may lend or transfer to another specified body an intermediate copy created during the production of accessible copies provided that the prescribed conditions are met.



**The Government's Review of
the Existing Copyright
Exceptions for Persons with a
Print Disability**

To align with the Marrakesh Treaty, the Government considers that amendments to the Copyright Ordinance in the following areas may be required:

- (i) the scope of “beneficiary person”;
- (ii) the scope of “specified body”;
- (iii) the types of copyright works covered by the print disability-related exceptions;
- (iv) the acts which could be performed by persons with a print disability and/or specified bodies;
- (v) the conditions to be met under the existing provisions;
- (vi) the application of provisions against the circumvention of effective technological measures; and
- (vii) the cross-border exchange of accessible copies.

Scope of “Beneficiary Persons”

- The existing scope of “person with a print disability” under the Copyright Ordinance is largely comparable with the scope of “beneficiary person(s)” under the Marrakesh Treaty.
- However, the definition of “beneficiary person(s)” under the Marrakesh Treaty further extends to persons with a perceptual or reading disability. The Government understands that “perceptual or reading disability” may cover dyslexia.

Issues for consultation –

- Whether the Copyright Ordinance should be amended to expand the scope of “beneficiary person(s)” so that people with a “perceptual or reading disability” would be covered?
- The definition of “beneficiary person(s)”.

Scope of “Specified Bodies”

- The current definition of “specified bodies” under the Copyright Ordinance largely covers the “entities” that the Marrakesh Treaty intends to cover.

Issue for consultation –

- Whether the definition of “specified bodies” under the Copyright Ordinance should be expanded to cover other organizations that do not come within the current definition?

Copyright Works Covered by the Exceptions

Scope of copyright works

- The scope of copyright works in our existing exceptions under the Copyright Ordinance is sufficiently broad to cover the works specified in the Marrakesh Treaty, except that “works in audio form” is not currently included.
- The Marrakesh Treaty requires that accessible copies should only be made from works that are “published or otherwise made publicly available in any media”.

Issue for consultation —

- Should the scope of exceptions be expanded to cover copyright works that are published or otherwise made publicly available in any media?

Copyright Works Covered by the Exceptions

Accessible format copies

- Our current exception provides for basically the same range of accessible format copies as set out in the Marrakesh Treaty.

Issue for consultation —

- Are there any formats which should be added to the definition of “accessible copies”?

Permitted Acts

- The existing permitted acts of making and supplying accessible copies to persons with a print disability are largely comparable to the limitations and exceptions provided under the Marrakesh Treaty for facilitating the availability of copyright works in accessible format copies for beneficiary persons.
- There is room for improvement in the provisions of the Copyright Ordinance by, for example, clarifying that the act of “supplying” accessible copies covers “distribution” and “making available to the public”.

Issue for consultation –

- Should it be clarified that the act of “supplying” covers “distribution” and “making available to the public”?

Permitted Acts

- Under the Marrakesh Treaty, a limitation or an exception to the right to public performance may be provided to facilitate access to works for beneficiary persons, but this is not a mandatory requirement.
- The scope of situations which may be addressed by such an exception appears to be very limited. Such situations may already be covered under other existing copyright exceptions or permitted acts.

Issue for consultation –

- Is there a need to provide for an additional exception to the right to public performance?

Conditions for Using Copyright Exceptions

- a) to possess a master copy of the copyright work which is not an infringing copy, from which accessible copies may be made;
- b) to be satisfied that accessible copies cannot be obtained at a reasonable commercial price after making reasonable enquiries;
- c) to notify the copyright owner;
- d) to make a record and retain it for 3 years.

The above conditions are comparable to those provided under the Marrakesh Treaty.

Issues for consultation –

- Do you agree that the current conditions should be retained?
- If not, how should we modify them?

Application of Provisions Against the Circumvention of Effective Technological Measures

- The existing Copyright Ordinance contains provisions against the circumvention of effective technological measures. Any person who does an act which circumvents a technological measure applied to a copyright work or performance may attract legal liability.
- Some exceptions are provided for in the Ordinance.
- The Marrakesh Treaty requires that legal protection and remedies against the circumvention of effective technological measures do not prevent beneficiary persons from enjoying the limitations and exceptions provided for in the Marrakesh Treaty.

Issues for consultation –

- Are there in practice any difficulties in gaining access to copyright works for the purpose of making accessible copies?
- Could such difficulties be resolved by non-legislative means such as requesting the copyright owner concerned to provide copies of the works for making accessible copies?
- Should it be provided that the use of the relevant copyright exceptions is exempt from provisions against the circumvention of effective technological measures?

Cross-border Exchange of Accessible Format Copies

- The Marrakesh Treaty provides for cross-border exchange of accessible format copies made pursuant to the exceptions, i.e. exporting such copies to or importing such copies from other contracting parties for use by beneficiaries.
- The Marrakesh Treaty sets out the conditions that should be met and the conditions that can be imposed.
- There is no provision in the existing Copyright Ordinance for exporting accessible copies made pursuant to the exceptions or allowing the import of such copies from other jurisdictions.

Issue for consultation –

- Should cross-border exchange of accessible copies be permitted? Is there a need to impose additional conditions?

Way Forward and Guiding Principles

- Public views are invited. The Government will duly consider the views received before taking a policy decision on whether and how the legislation should be amended. In considering any legislative amendments, we would be guided by the following broad principles –
 - (a) fair balance should be maintained between protecting the legitimate interests of copyright owners and the public interest of facilitating and enhancing access to copyright works in accessible forms for persons with a print disability;
 - (b) any copyright exceptions to be introduced must be fully compliant with our international obligations such as the “three-step test” requirement under Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization; and
 - (c) any proposed amendment to the Copyright Ordinance must be sufficiently clear and certain so as to provide a reasonable degree of legal certainty.

Providing Submissions

- Providing submissions through post, email or facsimile on or before 9 August 2017 –
- Mail: Intellectual Property Department
The HKSAR Government
25th Floor, Wu Chung House
213 Queen's Road East, Wanchai
Hong Kong
- Fax: 2574 9102
- Email: mat_consultation@ipd.gov.hk
- An electronic copy of the consultation paper is available on the following websites:
<http://www.cedb.gov.hk/citb>
<http://www.ipd.gov.hk>