

Marrakesh Treaty Questionnaire

United States of America

1. Please indicate the relevant provisions in your national legislation providing for or regulating the limitations and exceptions to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled.

In 2018 the Marrakesh Treaty Implementation Act made changes to the Copyright Act. The relevant provisions in United States legislation are 17 U.S.C. §§ 121 and 121A.

2. Does your national legislation permit the cross-border exchange (i.e. exportation) of “accessible format copies”, as defined in Article 2 b)1 MVT? If yes, under which conditions?

Yes, United States law does permit the export of accessible format copies. Specifically, see section 121A, which states in pertinent part:

(a) Notwithstanding the provisions of sections 106 and 602, it is not an infringement of copyright for an authorized entity, acting pursuant to this section, to export copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation in accessible formats to another country when the exportation is made either to—

(1) an authorized entity located in a country that is a Party to the Marrakesh Treaty; or

(2) an eligible person in a country that is a Party to the Marrakesh Treaty,

if prior to the exportation of such copies or phonorecords, the authorized entity engaged in the exportation did not know or have reasonable grounds to know that the copies or phonorecords would be used other than by eligible persons.

...

(c) In conducting activities under subsection (a) . . . an authorized entity shall establish and follow its own practices, in keeping with its particular circumstances, to—

(1) establish that the persons the authorized entity serves are eligible persons;

(2) limit to eligible persons and authorized entities the distribution of accessible format copies by the authorized entity;

(3) discourage the reproduction and distribution of unauthorized copies;

(4) maintain due care in, and records of, the handling of copies of works by the authorized entity, while respecting the privacy of eligible persons on an equal basis with others; and

(5) facilitate effective cross-border exchange of accessible format copies by making publicly available—

(A) the titles of works for which the authorized entity has accessible format copies or phonorecords and the specific accessible formats in which they are available; and

(B) information on the policies, practices, and authorized entity partners of the authorized entity for the cross border exchange of accessible format copies.

3. Does your national legislation allow the importation of “accessible format copies”, as defined in Article 2 b) MVT? If yes, under which conditions?

Yes, United States law does permit the importation of accessible format copies. Specifically, see section 121A, which states in pertinent part:

(b) Notwithstanding the provisions of sections 106 and 602, it is not an infringement of copyright for an authorized entity or an eligible person, or someone acting on behalf of an eligible person, acting pursuant to this section, to import copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation in accessible formats.

(c) In conducting activities under subsection . . . (b), an authorized entity shall establish and follow its own practices, in keeping with its particular circumstances, to—

(1) establish that the persons the authorized entity serves are eligible persons;

(2) limit to eligible persons and authorized entities the distribution of accessible format copies by the authorized entity;

(3) discourage the reproduction and distribution of unauthorized copies;

(4) maintain due care in, and records of, the handling of copies of works by the authorized entity, while respecting the privacy of eligible persons on an equal basis with others; and

(5) facilitate effective cross-border exchange of accessible format copies by making publicly available—

(A) the titles of works for which the authorized entity has accessible format copies or phonorecords and the specific accessible formats in which they are available; and

(B) information on the policies, practices, and authorized entity partners of the authorized entity for the cross border exchange of accessible format copies.

4. Does your national legislation provide a definition of “authorized entity”, as defined in Article 2 c) MVT? If yes, please provide the reference.

Yes, United States law does define the term “authorized entity. Specifically, see section 121(d)(2), which reads:

(2) ‘authorized entity’ means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities..

5. Please provide a list with contact details of entities that can operate as authorized entities in your territory, and any further information that you can provide, such as number of accessible titles in the catalogue of the authorized entity and the languages covered.

Because “authorized entities” in the United States are self-designating, there exists no definitive list of all such entities. Many college and university libraries and public libraries are, or could be, authorized entities. Other authorized entities located in the U.S. include:

- Bookshare, <https://www.bookshare.org/cms/>, 779,420 titles
- Learning Ally, <https://learningally.org/>, over 80,000 audiobooks
- HathiTrust, <https://www.hathitrust.org/>, over 13.7 million online books