

Getting Started



**Implementing the Marrakesh Treaty
for persons with print disabilities**

A practical guide for librarians

KENYA EDITION



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Implementing the Marrakesh Treaty for persons with print disabilities

A practical guide for librarians

International Edition

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Foreword to International Edition

The *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled* presents an unprecedented opportunity for access to printed works for blind and other print-handicapped persons. Libraries play a key role in facilitating access, and this guide was conceived to enable staff in libraries of all types to take the final, practical steps to deliver materials into the hands of print-disabled readers.

As the former director of library services at Canada's CNIB Library for the Blind and past chair of the International Federation of Library Associations and Institutes (IFLA)'s Copyright and Other Legal Matters Strategic Programme, I am especially pleased to see that the Marrakesh Treaty enables improved access to printed works and that the beneficiaries include blind and low-vision readers.

The information in this guide is organized as an FAQ (Frequently Asked Questions), answering questions and providing links for further information. It is meant to be a starting point, a template, available for customization in each Marrakesh Treaty country. It is our hope that, once the guide is customized to each country's law, it will be posted on the IFLA website.

This guide was made possible through generous funding from the World Blind Union, the University of Toronto, IFLA and the Canadian Association of Research Libraries (CARL). I am enormously grateful to the funders, my co-authors and other contributors to this guide; together we are working to end the book famine¹ for print-disabled persons worldwide.

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March 2018

¹ "There is a global book famine. It is a huge problem. Without books, journals and magazines, people are cut off from life." From [The Marrakesh Treaty – Helping to end the global book famine. WIPO 2016](#)

Foreword to Kenyan edition

This Kenyan edition of the Getting Started guide is based on the international version of the guide published in March 2018. It reflects the implementation of the Marrakesh Treaty into Kenyan copyright law (2019). The Kenyan edition was prepared by Jonathan Band, PLLC and checked by the Kenya Copyright Board (KECOBO). Additional information was provided by the Kenya Libraries and Information Services Consortium (KLISC). We hope the guide will encourage libraries in Kenya to make full use of their new rights, and that it will contribute to an increase in the availability of reading materials for people with print disabilities.

Teresa Hackett
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August 2022

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Praise for *Getting Started*

“When I read a book, two things are essential: choose the right book and read it well. And that is what the Marrakesh Treaty helps me with, to enlarge the number of books I have access to, and to find them all over the world, and in particular, in the best place ever, a library. With this guide, libraries will contribute to make the Marrakesh Treaty dream come true for millions of blind, visually impaired or otherwise print-disabled people.”

Bárbara Martín

Second Vice President, European Blind Union (EBU)

Manager of the Technical Office of European Affairs of ONCE

“The Marrakesh Treaty is a crucially important international treaty for persons with print disabilities who have for long struggled with access to books and knowledge. When the Treaty is implemented, the whole library field together can ensure that people with print disabilities will have equal opportunities to read, learn and enjoy literature. This guide offers practical advice for public, academic, special and school librarians on how to achieve that goal worldwide as well as in their own countries.”

Kirsi Yläne

Chair, IFLA Section, Libraries Serving Persons with Print Disabilities

Accessibility Specialist, Celia Library, Finland

“For far too long we, as visually impaired and print-disabled people, have been denied access to reading and learning, which are fundamental to our full and equal participation in education, employment and our communities. The Marrakesh Treaty brings with it the promise to remove the barriers that have hindered our access to books in formats that we can read, and to share what is available with our visually impaired brothers and sisters in developing countries who up until now have been unable to access even the few books that are available. Indeed, we believe that the Marrakesh Treaty is the most significant development in the lives of blind and visually impaired people since the invention of Braille, nearly 200 years ago.”

Penny Hartin

Chief Executive Officer

World Blind Union

Preface

When member states of the World Intellectual Property Organization (WIPO) adopted the Marrakesh Treaty for persons with print disabilities in 2013, they committed to removing legal barriers to accessing books and other reading material for people who are blind, are partially sighted or have other print disabilities, such as dyslexia. They opened the way to dealing with a key cause of the book famine² – the fact that less than 7% of published books³ are made available globally in accessible formats, such as Braille, audio and large print, and digital DAISY formats.

In September 2016, when the Marrakesh Treaty entered into force, this commitment became a reality for those countries that joined the WIPO-administered treaty. It created an obligation to introduce the changes required by the Treaty into national law.

Since then many countries have been busy bringing their copyright laws into line with the Marrakesh Treaty, either because they are party to the Treaty or because they intend to join the Treaty in the near future. The key changes to the law should ensure that an accessible format copy may be made and supplied to a print-disabled person or an institution, such as a library, within a country or across a national border.

Libraries are central to the success of this ground-breaking Treaty, and librarians have a key role in its implementation. The economic and social benefits will be enormous and will transform information services to print-disabled users.

This is a practical guide for librarians on how to start using the Marrakesh Treaty, and how to make full use of their new rights. It is aimed at libraries of all types and sizes, from specialist libraries already providing services to people with disabilities, to libraries eager to begin such services.

It is mainly aimed at countries that have joined the Marrakesh Treaty, and where national implementation is completed or advanced, so that libraries are ready to offer improved services to print-disabled patrons. When as many libraries as possible take full advantage of the Treaty, they are playing their part in finally ending the book famine.

Teresa Hackett
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EIFL – Electronic Information for Libraries
March 2018

² “There is a global book famine. It is a huge problem. Without books, journals and magazines, people are cut off from life.” From [The Marrakesh Treaty – Helping to end the global book famine. WIPO 2016](#)

³ From [The Marrakesh Treaty – Helping to end the global book famine. WIPO 2016](#)

Important Notes before Starting

- This guide sets out to explain the basic concepts that every country joining the Marrakesh Treaty has to apply. It reflects specific amendments made to the copyright law of Kenya to implement the Treaty into national law. Nonetheless, this guide should not be treated as legal advice.
- In 2017, the Republic of Kenya acceded to the Marrakesh Treaty, and in 2019 implemented the Treaty's requirements into domestic copyright law. The amendments are contained in the Copyright (Amendment) Act No. 20 of 2019, set out in the Appendix to this guide.
- If your library is already providing services to people with a broader range of disabilities (e.g., deafness) under national law, joining the Marrakesh Treaty does not affect these services.⁴
- While this guide focuses on uses by libraries, a range of institutions, as well as individual beneficiaries, come within the scope of the Marrakesh Treaty and can use its provisions.
- The guide may be updated from time to time⁵.

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⁴ IFLA opposes any new restrictions on other disabilities.

⁵ <https://www.ifla.org/copyright>

Acronyms

- Acronyms used in the guide:
 - DAISY – Digital Accessible Information System
 - EIFL – Electronic Information for Libraries
 - IFLA – International Federation of Library Associations and Institutions
 - KECOBO - Kenya Copyright Board
 - KLISC - Kenya Libraries and Information Services Consortium
 - WBU – World Blind Union
 - WIPO – World Intellectual Property Organization

Disclaimer

The information in this document does not constitute legal advice. The authors assume no responsibility for information contained in this document and disclaims all liability in respect of such information. If in doubt, seek local legal advice.

The Marrakesh Treaty: The Basics

1. What is the Marrakesh Treaty?

The Marrakesh Treaty (<http://www.wipo.int/wipolex/en/details.jsp?id=13169>) (accessible format version <http://www.wipo.int/wipolex/en/details.jsp?id=14613>) is an international treaty adopted in 2013 by member states of the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations. The full title is *The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled*.

It is the first copyright treaty with human rights principles at its core, with specific references to the Universal Declaration of Human Rights and the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

2. What does the Marrakesh Treaty do?

For the first time, it creates an international legal framework that allows the making and distribution of accessible format copies for people with print disabilities, and the sharing of accessible books across national borders. Under the Marrakesh Treaty, people with print disabilities include those who are blind, those who have a visual impairment or a perceptual or reading disability and those who are unable to focus the eyes or to hold or manipulate a book.

3. Why was the Marrakesh Treaty adopted?

The Marrakesh Treaty was adopted to remove copyright barriers that prevented access to print works for print-disabled people. Only about 7% of published works are made available globally in accessible formats, and in the developing world, where 90% of blind and visually impaired people live, the figure is less than 1%.⁶ This problem is partly due to obstacles created by copyright law – obstacles that the Treaty seeks to remove.

⁶ From [The Marrakesh Treaty – Helping to end the global book famine. WIPO 2016](#)

4. Were libraries involved in developing the Marrakesh Treaty?

Yes.⁷ The draft treaty was first proposed to WIPO member states by the World Blind Union (WBU). IFLA and other library partners strongly supported negotiations over more than five years at WIPO, and participated in the Diplomatic Conference in Marrakesh that led to the Treaty's adoption. Individual governments sought advice and commentary from their national blindness and low vision organizations and library associations.

Now librarians are working hard to ensure that the benefits of the Treaty are maximized, and that libraries play their full role in helping to end the book famine for people with print disabilities.

5. What countries have joined the Marrakesh Treaty?

For an up-to-date list of countries that have joined the Marrakesh Treaty, check the WIPO website at wipolex.wipo.int/en/treaties/ShowResults?start_year=ANY&end_year=ANY&search_what=C&code=ALL&treaty_id=843 or search 'WIPO Marrakesh' and click 'Has your country joined the Marrakesh Treaty?'

Kenya joined the Marrakesh Treaty in 2017. The Treaty was implemented into national law in 2019. The relevant provisions are found in the Copyright (Amendment) Act No. 20 of 2019.

6. Who benefits from the Treaty?

Any person with a print disability can benefit from the Treaty.

A print disability can be caused by a visual disability, such as blindness or low vision; a developmental or learning disability, such as dyslexia and autism; or a physical disability, such as Parkinson's disease and paralysis.

The disability does not have to be permanent.⁸ Individuals who experience temporary blindness, for example, can benefit for as long as the condition persists.

People with other disabilities, such as deafness, are not covered by the Marrakesh Treaty (although they might be covered under national copyright law). A person who is deaf-blind would qualify under the Treaty.

According to Kenyan legislation, beneficiaries in Kenya are blind and visually impaired people, as well as persons with other disabilities that affect the ability to perceive visual information. In particular, the beneficiaries may include persons with

⁷ World Blind Union (WBU) drafted the first version of the Treaty, which was modified during negotiations. WIPO Member States Brazil, Ecuador and Paraguay proposed the treaty at WIPO.

⁸ WBU Guide, p. 32

cerebral palsy, autism, dyslexia and persons with intellectual disabilities⁹.

Libraries and the Marrakesh Treaty

7. How does the Marrakesh Treaty support library services?

Once implemented into national law, the Marrakesh Treaty transforms library services for people with print disabilities:

- a. By removing legal barriers to making and sharing accessible format works, it immediately increases the amount of reading material available to print-disabled readers.
- b. It saves time, money and effort because libraries can pool their resources within a country, within a region or further afield. Libraries can coordinate the production of works, which results in less duplication where the same book might otherwise be converted multiple times in different countries.

8. Is my library eligible to provide services under the Marrakesh Treaty?

Any library or other organization in Kenya that provides services on a not-for-profit basis is entitled to make use of the Treaty when serving patrons with a print disability.¹⁰

Thus any library, regardless of its type (public, academic, school, special, etc.), is entitled to convert copies of works into accessible formats for the benefit of qualifying persons.

However, the definition of authorized entity in Kenyan law is somewhat ambiguous. It appears to be narrower than the Treaty, as it would seem that authorized entities, such as libraries, should be authorized or recognized by the government.¹¹ If a recognition process is required, it is important that any such process avoids burdening libraries and other authorized entities or chilling unrecognized organizations from exercising rights under the Treaty.¹²

⁹ See Section 2 of Copyright Act of 2001 (as amended by the Copyright (Amendment) Act No. 20 of 2019

¹⁰ In the Marrakesh Treaty, and the Kenyan law, these are referred to as Authorized Entities.

¹¹ See Section 2 of Copyright Act of 2001 (as amended by the Copyright (Amendment) Act No. 20 of 2019 (“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 and 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)

¹² World Blind Union Guide to the Marrakesh Treaty (2017), p. 27

9. Is my library obliged to provide services under the Marrakesh Treaty?

The Marrakesh Treaty does not impose an obligation to provide accessible format copies – it simply confers the right to produce, supply, import and export an accessible copy. In other words, the Treaty grants permission to do things that can't be done without permission.

10. What can libraries do under the Marrakesh Treaty?

A library can supply the accessible copy directly to the print-disabled person or to someone acting on their behalf, such as a caregiver.

The library can also supply the accessible copy to, or receive it from, another library or institution in the country or in another country.^{13 14}

A library can produce an accessible format copy of a work and add information about converted copies of works to their catalogues.

The issue of cataloguing works converted into accessible formats will be addressed in the future when the number of accessible works increases.

11. What works are covered by the Marrakesh Treaty?

Text-based works and notations, such as books, e-books, audiobooks, newspapers, journals and musical scores, are included, as well as related illustrations and images.

The Treaty applies not only to works that are published but also to works otherwise made publicly available, such as material in digital repositories and pre-print servers.

Audio-visual works such as films are not covered, although textual works embedded in audio-visual works, such as an educational multimedia DVD, are included.

12. What is an accessible format?

An accessible format is any format that allows a print-disabled person to read the work as comfortably as a person without a disability.¹⁵ Typical examples of accessible formats include Braille, large print and books in audio form; it also includes digital formats such as audio-only DAISY (Digital Accessible Information

¹³ Section 26C(1)(b) of the Kenyan Copyright Act states that it is not infringement “to make, import, distribute, lend or share accessible format copies by a beneficiary person or authorized entities or persons acting on behalf of a beneficiary person.”

¹⁴ A library can receive accessible format copies from any country regardless of whether the other country has joined Marrakesh or not. In some countries, national law may also allow accessible copies to be sent to countries that have not joined the Treaty, thus expanding the availability of accessible works to print-disabled individuals and libraries wherever they are located. Marrakesh Treaty, Art 6; WBU Guide, p. 56

¹⁵ Section 2 defines an accessible format copy as “a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including permitting the person to have access as feasibly and comfortably as a person without visual impairment or other print disability”.

System) books, full-text DAISY books (highlighted text synchronized with text-to-speech or human narration audio), EPUB3 (e-book format with embedded accessibility features) and LKF (commonly used in Russian-speaking countries).

In Kenya, a specialized format means a copy of a work in an accessible format.¹⁶ Any format that is convenient for the perception of information by blind people is by definition accessible and libraries have the right to transform, at the request of the beneficiaries, printed texts into accessible formats.

In addition, documents in common formats such as Word or PDF can also easily be made accessible.

13. How do libraries share accessible works?

There is no one-size-fits-all procedure on how to exchange accessible works between libraries. Exchange workflows will depend on the format of the work and how the person prefers to receive it, the frequency of the requests and the existing infrastructure to deliver such services.

For example, library systems for inter-library document (ILL) supply might be used, or another secure digital exchange platform. Electronic delivery of documents in an accessible format using ILL and Electronic Document Delivery (EDD) systems do not contradict Kenya law¹⁷.

Exchange mechanisms should be simple and straightforward, especially if international exchange is to be encouraged. For example, online platforms such as Dropbox can be used to share links to resources between libraries.

For examples of accessible book services, see question 15.

14. Does my library need to keep records?

The Treaty's provisions concerning record-keeping are subject to different interpretations, so the actual requirements, if any, will turn on national law. The Treaty is clear, however, that any record-keeping practices are to be established by the libraries, not a government agency. In any event, it is good practice to keep records (as libraries commonly do for other types of transactions), for example, to show that eligible persons and institutions are being served, if and when such information is requested by the competent authorities.

According to the Treaty, libraries establish and follow their own practices regarding matters such as recipients that are eligible to benefit, how to limit the distribution to eligible libraries and persons, how to discourage the distribution of unauthorized copies and how to maintain care in the handling of accessible copies. The Kenyan

¹⁶ Sections 26C(1)(a) and (2)(a)

¹⁷ Sections 26C(1)(a) and (b)

law does require accessible format copies made and distributed under the Marrakesh exception to bear a notice that further reproduction or distribution in a format other than a specialized format is an infringement.¹⁸ Furthermore, the copies must include a notice identifying the copyright owner and the date of publication.¹⁹

The scope of the records on these matters should not differ significantly from those you keep for your other services. Check any local regulations for more specific details on any records you need to keep and the institutions that can ask for them.

The library must also endeavour to respect the privacy of the print-disabled person on an equal basis to others.

It is recommended that best practice guidelines for the provision of accessible services be drawn up in consultation with other providers, in accordance with national law.

Guidelines should include best practices for establishing the eligibility of beneficiaries, procedures for due care in the production and distribution of accessible formats, and preventing unauthorized uses.

Accessible Book Services

15. What accessible book services already exist, and is my library eligible to participate?

There are global services available, such as the following:

- Accessible Books Consortium (ABC) Global Book Service facilitates an exchange service for accessible format materials (www.accessiblebooksconsortium.org)
- Bookshare International (www.bookshare.org/cms/global/faq)

There are services in Kenya, such as the following:

- Bookshare Kenya (kenya.bookshare.org/en)
- Kenya Institute for the Blind (keib.or.ke)
- Kenya Institute of Special Education (KISE) (kise.ac.ke)

¹⁸ Section 26C(2)(b)

¹⁹ Section 26C(2)(c)

- Kenya Libraries and Information Services Consortium (KLISC) can provide access to Bookshare for its members (eifl.net/e-resources/bookshare)
- Kenya National Library Service Braille Library Services (knls.ac.ke/braille-library-services)
- Kenyatta University (www.ku.ac.ke)

Contact each organization to determine how to become involved.

16. How can I find out about other libraries with accessible collections?

Many countries have a national library service for people with print disabilities, and not-for-profit organizations that provide services. They are ideally set up to exchange materials with your library.

IFLA's Libraries Serving Persons with Print Disabilities section (www.ifla.org/lpd) and Library Services to People with Special Needs section (www.ifla.org/lsn) can assist you with identifying and contacting libraries. Check with the IFLA section on national libraries for help locating national libraries (www.ifla.org/national-libraries).

Sources of accessible books for people with sight loss and print disabilities are compiled by WIPO. The list includes libraries and commercial providers around the world (www.accessiblebooksconsortium.org/sources/en/).

Other good sources of information are library associations, library consortia, universities (some of which offer disability support services) and organizations for people with disabilities, including the World Blind Union (www.worldblindunion.org), the International Dyslexia Association (dyslexiaida.org/) and their members.

17. How can libraries make their accessible format works discoverable for other libraries?

The creation of a world accessible library was a key ambition of the proponents of the Marrakesh Treaty. Thus, making accessible works discoverable to other libraries around the world is crucial.

The most effective way to achieve this is to include specific metadata in the catalogue record, such as format type, version/code, file size, etc., in accordance with international cataloguing standards.

It is also recommended that libraries participate in any information or catalogue sharing schemes that operate in their local jurisdiction. If none exist, it may be useful to consider starting one.

In Kenya, the issue of cataloguing works converted into accessible formats will be addressed in the future when the number of accessible works increases.

18. Can my library charge to provide an accessible book service?

To take advantage of the Marrakesh Treaty, the library must provide the accessible book service on a not-for-profit basis. The library may recover costs to cover production and/or distribution when necessary.

The issue of payment to cover actual costs, such as paper and other physical media, should be set out in internal library regulations. The provisions should be based on the legislation of Kenya in the field of copyright, as well as on norms on librarianship and the provision of paid services by libraries²⁰.

The regulations should clear spell out what services may be charged for, and what services are provided by the library on a free basis.

19. Do libraries have to pay royalties²¹?

No, the legislation of Kenya does not require libraries to pay the copyright holder for the right to make a copy in an accessible format.

20. Some countries introduced a “commercial availability” check. Did Kenya?

No, in the legislation of Kenya there is no requirement for a library to check if a work is commercially available before making an accessible format copy. Therefore, libraries in Kenya have the right to make copies in accessible formats without such verification, and can focus instead on the requests of their blind and visually impaired users.

²⁰ Section 2 of the Kenyan copyright law (Interpretation) provides that an authorized entity must provide its services on a non-profit basis, but the World Blind Union's Marrakesh Treaty Guide clarifies that authorized entities may require funds to cover the actual costs of converting to accessible formats, although the access to information services themselves must be provided on a non-profit basis.

²¹ IFLA opposes royalties for alternate format works.

Working with Accessible Formats

21. There's a digital lock on the non-accessible work. Can I remove it?

Under the Marrakesh Treaty, countries are required to ensure that digital locks do not prevent those with print disabilities from using or accessing a book. The Treaty doesn't specifically state how this should be implemented in national law.

The legislation of Kenya provides that “the circumvention of any technological protection measures that may be in place” is not infringement, subject to terms and conditions that may be set forth in regulations.²²

22. The e-resource licence doesn't allow the library to copy or distribute a work. What can I do?

The Treaty is silent on the relationship between licences and copyright exceptions.

A number of countries have protected their exceptions from override by licence terms, thus allowing copies to be made in accordance with copyright law. For example, the European Union implementation of the Marrakesh Treaty does just that; EU member states must ensure that the exception allowing the making of accessible format copies cannot be overridden by a licence. However, the Kenyan law does not contain such a provision prohibiting the exception from being overridden by licence terms.

²² Section 26C(1)(b)

Further reading

Creating Accessible Formats

23. Where do I find information on creating accessible format documents?

Bookshare has created a helpful guide to creating accessible formats at <https://benetech.org/about/resources/>.

DAISY Consortium has authoring and production tools at <http://www.daisy.org/tools/production>.

Other Marrakesh Guides

24. Are there other guides to the Marrakesh Treaty?

Yes, EIFL created an advocacy guide for libraries:

www.eifl.net/resources/marrakesh-treaty-eifl-guide-libraries-english

The World Blind Union created a guide to the legal framework of the Marrakesh Treaty: worldblindunion.org/wp-content/uploads/2020/10/WBU-Guide-to-the-Marrakesh-Treaty-English.docx

The United Nations Development Programme produced a guide titled *Our Right to Knowledge* with versions in accessible formats of electronic Braille, DAISY, audio (MP3) (English only):

www.asiapacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/our-right-to-knowledge--legal-reviews-for-the-ratification-of-th.html

Appendix Kenya Copyright Act

Kenya Copyright (Amendment) Act No. 20 of 2019.

Amendments to Copyright Act of 2001:

Section 2. Interpretation

“*accessible format copy*” means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including permitting the person to have access as feasibly and comfortably as a person without visual impairment or other print disability;

“*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 and 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;

“*beneficiary person*” means a person who —

(a) is blind;

(b) 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

(c) 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, regardless of any other disabilities;

Section 26C. Visually impaired, and persons with other disabilities

(1) Notwithstanding the provisions of section 26, it shall not be an infringement of copyright for—

(a) an authorized entity to reproduce or to distribute copies or sound recordings of a previously published literary work if such copies or sound recordings are reproduced or distributed in specialized formats exclusively for use by visually impaired or other persons with disabilities; or

(b) to make, import, distribute, lend or share accessible format copies by a beneficiary person or authorized entities or persons acting on behalf of a beneficiary person, including the circumvention of any technological protection measures that may be in place, subject to the terms and conditions set out under Regulations.

(2) Copies or sound recordings to which this section applies shall—

(a) not be reproduced or distributed in a format other than a specialized format exclusively for use by visually impaired or other persons with disabilities;

(b) bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement; and

(c) include a copyright notice identifying the copyright owner and the date of the original publication.

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