

The Marrakesh Treaty for Visually Impaired People: a focus on (Public) Libraries in Europe

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Abstract:

This paper aims at raising awareness on the activities of EBLIDA (with IFLA and EIFL) on the Marrakesh Treaty at EU level as well as showing how its implementation is perceived/happening in some countries in Europe and whether it includes libraries (or not). Considering the level of development of the topic, the impact on (public) libraries in Europe is not yet known. As a result, the paper explains the current situation and how some key countries in Europe are addressing the issue.

Keywords: Marrakesh Treaty, Copyright, Exceptions, Copyright exceptions, Visually Impaired People, disabled people, European Union, Legal Framework

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Summary:

This paper aims at raising awareness on the activities of EBLIDA (with IFLA and EIFL) on the Marrakesh Treaty at EU level as well as showing how its implementation is perceived/happening in some countries in Europe and whether it includes libraries (or not). Considering the level of development of the topic, the impact on (public) libraries in Europe is not yet known. As a result, the paper explains the current situation and how some key countries in Europe are addressing the issue.

EBLIDA in brief

The European Bureau of Library, Information and Documentation Associations is an independent association representing the + 70.000 libraries of all types, their 400.000 professionals and 100 million users in 36 countries in Europe since 1992. EBLIDA promotes unhindered access to information for all, defends the interests of the library and information science sector and lobbies at European level on their behalf.

Situation in the EU

In Europe, 1 in 30 Europeans experiences sight loss, this represents a population of about 17 million people. In comparison with the 285 million people that are estimated to be visually impaired worldwide¹ Europe represents 6% of this total estimation.

The authority of the European Union created a dedicated webpage entitled the *Legislative Train Schedule* that brings key information on the current situation on the Marrakesh Treaty Implementation Framework. Although the implementation of the Marrakesh Treaty is part of the Copyright reform, this aspect is not deeply touched upon. The reason comes from the importance of exceptions and limitations for persons with disabilities that was recognised by the European Parliament on 9 July 2015 upon the adoption of the resolution on the implementation of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (rapporteur, Julia Reda, Greens/EFA, Germany). The resolution called for a swift ratification without making it conditional to the revision of the EU legal framework.

In effect, “the Marrakesh Treaty requires its parties to provide exceptions or limitations to copyright and related rights for the benefit of blind, visually impaired and otherwise print-disabled persons, such as dyslexic people. The treaty also allows for the cross-border exchange of special format copies of books, including audio books and digital files, and other print material between those countries that are parties to the treaty.

The EU signed the treaty in April 2014 and must transpose it into EU law²”.

The requirement of the transposition pushed the EU Commission to propose a Regulation and a Directive to the European Parliament and Council to ensure the implementation of the Marrakesh Treaty in the Union.

A regulation and a Directive are both legislative acts of different nature. A "regulation" is a binding legislative act. It must be applied in its entirety across the EU³. Whereas a “directive” is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals⁴.

¹ <http://www.who.int/mediacentre/factsheets/fs282/en/> (14.08.2017).

²

<http://www.europarl.europa.eu/legislative-train/theme-connected-digital-single-market/file-the-marrakesh-treaty-implementation-framework> (11.08.2017).

³ https://europa.eu/european-union/eu-law/legal-acts_en (11.08.2017).

⁴ *ibidem*

In that context, the Regulation proposal addresses the issue of *Cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled*⁵.

The Directive proposal addresses the issue of *Permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled*⁶.

An additional point with the proposed directive is that it requires the amendment of the Directive 2001/29/EC⁷ that is *the Copyright Directive in Europe* and a part of the European Copyright acquis.

Furthermore, on 14th February 2017, the Court of Justice of the European Union ruled that “*The conclusion of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled falls within the exclusive competence of the European Union*⁸”. Although it recognises the competence of the EU as a legal entity, it might well not be enough to ensure a swift ratification when individual member-states haven’t ratify the Treaty.

EU Parliament Study

In November 2016, the Directorate General for International Policies, Policy Department for citizen’s rights and constitutional affairs published a study on the Marrakesh Treaty. The study provides background information on the treaty, the current situation in relation to its content, issues around its ratification, particularly by the EU. It also examines future developments around copyright reform and makes recommendations to EU institutions and Member States.

In its conclusion the study notably underlines that “*If the human right of equal access to cultural knowledge is to be fully realised, law must go further than ensuring books for the VIPs and specific classes of print disabled persons. The EU should take the lead in championing the need to adapt IP laws to promote and serve the basic human rights of all disabled people*⁹”[...]. It also underlines that “*The Marrakesh Treaty is an international solution to the global book famine and for that solution to work it requires a broad based membership. EU accession and ratification is thus imperative*¹⁰”.

Clearly the European Union has a role to play. And to ensure a consistent and meaningful ratification in such a context, library organisations together with blind organisations are instrumental.

⁵ [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0279\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0279(COD)&l=en) (11.08.2017).

⁶ [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0278\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0278(COD)&l=en) (11.08.2017)

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:167:0010:0019:EN:PDF> (11.08.2017).

⁸ See EBLIDA Newsletter #3 of March 2017, <http://bit.ly/2wzVrCf> (11.08.2017).

⁹ [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571387/IPOL_STU\(2016\)571387_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571387/IPOL_STU(2016)571387_EN.pdf) (11.08.2017).

¹⁰ Ibidem.

Briefing

Throughout the process of negotiations within the EU institutions, namely in the relevant European Parliament Committees (representing the voice of the Europeans) and in the Council of the European Union (representing the Members-States interests), EBLIDA and its partners maintained a lot of activities and actions.

The ultimate aim being to **activate the network of library representatives and have an Impact on the decision-making process.**

For this to happen, a briefing package was created. It contains key information relevant to association boards, policy-makers and is composed of statements, model letters for politicians, contacts lists of blind organisations, and representatives of national governments or of European institutions.

Indeed, impacting on the decision-making process can only be achieved through a general mobilisation of the sector and not on a single action in isolation. It requires to motivate the professionals in providing them with the tools they need to effectively know how, when and with whom to act.

Example of Statements and actions

The briefing activities were completed by frequent release of public statements and press releases that both made the position of the library and information science sector clear, shed lights on activities taking place behind closed doors and help steering the discussion in the right direction. In short, to influence the process positively.

We published 6 statements since July 2017 of which the below:

22 September 2016: **European Commission (Almost) Does the Right Thing on Marrakesh.**

13 December 2016: **Implementing the Marrakesh Treaty in Europe – Library positions – A call to MEPs and Member States by EBLIDA and IFLA.**

13 January 2017: **IFLA/EIFL/EBLIDA Don't Go Back on the Deal: No Barriers to Realising the Promise of the Marrakesh Treaty.**

24 March 2017: **JURI committee vote to respect the spirit and the letter of the Marrakesh Treaty in Europe.**

15 May 2017: **EU Compromise on Marrakesh Treaty Directive Comes with a Sting in the Tail.**

A graphic document was also published to support the fact that Europe has a unique opportunity to end the book famine containing clear information to respect the spirit and the letter of the Treaty.

All those actions were combined and strongly relayed by EBLIDA's members. Below is a list of countries with the names of the EBLIDA members and representatives who helped out in the process of influencing policy-makers:

Bulgaria: Snejana V Ianeva (BLIA, Bulgarian Library and Information Association)

Hungary: Ágnes Hajdu Barát (AHL/MKE, Association of Hungarian Librarians)

Italy: Enrica Manenti and Stefano Parise (AIB, Italian Library Association)

Lithuania: Emilija Banionytė (LMBA, Lithuanian Research Library Consortium)

The Netherlands: Annemarie Beunen (KB, National Library) and Francien van Bohemen (VOB, Dutch Public Library Association)

Poland: Szczepanska, Barbara (Polish Librarian's Association)

Slovenia: Irena Sešek (ZBDS, Union of Associations of Slovene Librarians)

Spain: Alicia Selles Carot (FESABID, Spanish Federation of Archives, Libraries, Documentation and Museum Associations)

Sweden: Ulrika Domellof Mattson (SB, Swedish Library Association)

UK: Barbara Stratton (UK, Chair of EBLIDA EGIL and Vice Chair of LACA)

Example of results

Thanks to the activities of all our members, the Marrakesh topic was highly discussed among policy makers.

When we originally started, several provisions were threatening the proposals in adding new complexities to the implementation of the Marrakesh Treaty such as:

- additional remuneration for rightholders;
- obliging authorised entities to join a mandatory register;
- limiting the numbers of potential beneficiaries;
- supplementary remuneration provisions;
- obligation to check for commercially available copies before making or sharing an accessible format copy of a book

Out of those threatening provisions, only one remains in the final Directive proposal, i.e. commercial compensation.

Additionally, Bulgarian librarians asked for the issues to be put on the EU Council Presidency programme to be held from January to June 2018. Thus, if accepted, it will get a good press and policy coverage, and would help giving the topic greater importance.

A focus on 5 countries in Europe

Throughout the paper, we always referred to the European Union, since the Treaty has to be implemented in this specific area. However, the 5 countries selected are from within and outside the EU because Europe is bigger than the EU; Regulations and Directives often have relevance in the European Economic Area; and the current situation of the UK existing the EU (i.e. Brexit) will also bring changes in the near future.

The selected countries are:

- Germany:

The country has an important (inter)national publishing market and the biggest population in the EU.

- Spain:

The country has an important international publishing market and strong links and influence on Latin America

- The United Kingdom

The country has an important international publishing market with a global outreach and is currently leaving the EU.

- Switzerland:

The country has 3 official languages: German, French and Italian, and has therefore natural links with three 3 markets. It additionally hold the seat of the World Intellectual Property Organisation (WIPO) in Geneva.

- France:

The country has an important international publishing market and strong links and influence on French-speaking countries worldwide.

1. Germany

The structure of libraries serving people with print disabilities is composed of the German Central Library for the blind and of Medibus a community of libraries working for the blind and visually sighted people.

Currently, the copyright law in Germany contains a special article allowing the Central Library for the Blind the production of Braille and audiobooks to make any content available for blind and other visually impaired people. It is however not possible to further extend the exception to other formats.

Outside of copyright itself, the main discussion revolves around the remuneration of rights holders by the Central Library for the Blind as a producer of accessible media. The library pays for each different format on offer. Payment are made for each 100 copies in Braille and each in DAISY.CD. In addition, a cost of 0,12 € plus VAT is applied for each single download.

Germany as a member state of the European Union plaid a strong role in trying to make mandatory some of the Marrakesh Treaty proposals that are only optional, and succeeded in keeping the commercial compensation in the Directive text.

However, with the current review of the Copyright law and the upcoming implementation of the Marrakesh Treaty the libraries for the blind and other visually impaired people are hoping to gain some positive results.

2. Spain

The market of books published in Spanish language is huge since it covers Spain, Latin America as well as North America. However, there is no specific provisions regarding the cross-border availability of books for blind and other visually impaired people in Spain.

It is true anyhow that Spain will have a specific role to play in its relation with third countries, and therefore will have a strong role in working with the Marrakesh Treaty text as voted in the European Parliament. There is therefore a strong expectation that the ONCE's library will play an important role once the treaty will be in place in the country.

ONCE¹¹ is the biggest library in Spanish with a high-level of quality. And since most Latin American countries have no or very few accessible books for blind and visually impaired people, it is expected to receive a huge demand of available content in the next few years.

¹¹ <http://www.once.es/new/otras-webs/english> (14.08.2017).

Spanish colleagues are considering several options to meet the demand especially with a focus on digital versions of the books and through electronic distribution to wherever it is needed. Solutions such as the ABC Consortium at WIPO or Benetech's Bookshare are also contemplated. A third option is to open the current digital library of ONCE members (where all braille and DAISY books are downloadable) to non-members.

Outside of Spain, but for Spanish-speaking countries, Tiflolibros¹² is a service that was just set up in Argentina as a book sharing service, ahead of Marrakesh, building on the fact that there are a great numbers of Spanish-speaking countries and few available resources. It works using electronic books, with about 48K books available and 7K registered users. It's free, but there are recommended donations. Contrary to ABC that is only for institutions, individuals can sign up to use Tifolibros and must be registered blind people.

It seems that the service offers the possibility to share books within Argentina thanks to local copyright rules, and around 6000 internationally.

It is a great example of a practical approach to resolving the challenge that Marrakesh set out to tackle, but requires proper ratification to fulfil its potential.

3. United Kingdom

Nothing will be done about the EU Marrakesh legislation in the United Kingdom until the Directive has to be implemented and the Regulation comes into force, presumably in summer 2018.

The Directive probably will be implemented, but it's unclear as yet what primary legislation underpinning any secondary legislation implementing EU directives will be in force at the time because of the Brexit. There will be no parliamentary time in the next 2 years for new primary legislation not already announced in the Queen's Speech of 21 June 2017.

If Marrakesh is not implemented before the UK exits the EU, whether in 2019 or later after a negotiated period of transition, it probably will be at the back of a long queue of legislation (which may or may not be compliant with the Directive or Regulation and, if not, may not be part of the EU's internal cross-border arrangements) so that the UK can ratify the Treaty in its own right.

If it is already compliant, having implemented EU legislation for Marrakesh before fully exiting the EU, then ratification in its own right should come fairly swiftly post-Brexit, but if more legislation is needed, it'll probably be slow.

¹² <http://www.tiflolibros.com.ar/> (14.08.2017).

4. Switzerland

In Switzerland there is no specific law as it exist for instance in France.

The current copyright law is under review and there is a good level of confidence that the copyright exception will be adapted to the Marrakesh treaty since the text should coincide with the Marrakesh formulation.

The Swiss Federal Institute of Intellectual Property also supports it so Switzerland should ratify the Treaty without further complication.

However, the first draft of the new copyright law contained other issues that are very controversial. And therefore a comprehensive revision of the draft law is on-going as we speak and will require some time before the new law can be introduced, at best in 2019.

As far as our Swiss colleagues know, the copyright exception clause should not change, but nothing is certain before they have read the second draft of the new law.

Anyway, within the libraries for the blind of German speaking countries (Germany, Austria, Switzerland), a legal agreement allowing for the international exchange between trusted intermediaries already exists since the introduction of DAISY audio books (ca. 2003/2004). The Swiss library for the blind is a partner in Medibus that works very well, is highly beneficial for library patrons and help in saving money.

As regards to the way other libraries are included (or not) in Switzerland, consideration should be given to the way the federal system of the country. Public Libraries are actually the sole responsibility of the 2300 communities that each define its own rules for its libraries. The Federal State doesn't interfere with this system.

The libraries for the blinds are private Non-Governmental Organisations that are financed (in part) from the state as a part of integration of disabled people. Culture is financed by tax money, inclusion of disabled people is financed by an insurance on salaries. In order to ensure that print disabled can enjoy their rights in the whole country, the library for the blinds (composed of 5 NGOs) get some money from the state (who is also responsible for copyright law).

If an individual public library would like to serve print disabled people by itself (and not sending the customers to the library for blind people) it would require a special arrangement with the library for the blind.

The Library for the blind would be open for such a model but is currently not in the position of informing and coordinating the thousands of libraries in Switzerland about accessible books.

So if a library would start to develop a service of accessible books it would do it on a voluntary basis and not on a legal basis. Therefore, it doesn't challenge the implementation of the Marrakesh Treaty per se.

5. France

In France, the Intellectual Property code includes an exception to copyright to improve access to works for persons with disabilities¹³.

The exception to copyright in favor of persons with disabilities allows non-profit organizations to produce and communicate adapted versions of protected works to persons with disabilities, without having to seek prior authorization from the rights holders (authors, publishers, producers, performers, etc.) or to remunerate them. Adapted versions can be books in Braille, books adapted to the needs of dyslexic or partially sighted persons, embossed works, sign language videos, etc. Consultation of these adapted versions is strictly personal and reserved for the beneficiaries of the exception.

In order to improve the conditions for adapting printed works, organizations approved for this purpose may obtain access to digital files of works transmitted to them by publishers following a secure procedure on the Plato platform of the Bibliothèque nationale de France.

Actually a new legal framework anticipating the transposition of the Marrakesh Treaty (in particular the provisions relating to the cross-border exchange of adapted works) was created by a law of 7 July 2016, and enacted by the decree of 27 February 2017¹⁴.

The French text of law goes far beyond blind people since it also includes people suffering from dyslexia, dyspraxia or dyscalculia. In terms of books, it also covers school books. So the text offers a broad outreach.

The interesting part of the project, is also how it plans to include public libraries in the process. See below an excerpt of the impact assessment form of the decree of February 2017. *“The reform of the exception will have an impact on local public libraries of which a growing number is developing actions to produce or disseminate documents adapted to disabled people. First of all, the institutions listed in the first paragraph of Article L. 122-5-1 of the LCAP Act, which carry out activities to produce documents adapted to the needs of persons with disabilities (12 Establishments in 2016). The institutions participating in the "Daisy in your libraries" program, which is sponsored by the Media Library of the Valentin Haüy Association (AVH) in partnership with the Ministry of Culture and Communication, are also involved. This program makes it possible for the readers of the library who are entitled to benefit from the exception to make available a collection of documents adapted from the AVH media library.*

It concerns 78 territorial libraries in 2016 and the target is 200 partner libraries in 2019.

For these institutions, the new copyright exception provisions for persons with disabilities will result in new burdens: the verification of deficiencies suffered by persons claiming to have access to adapted documents will no longer be a simple presentation of an administrative attestation or a medical certificate, but will require a personalized assessment of their needs, for example through an individual interview. These establishments must also verify, before communicating an adapted

¹³

<http://www.culturecommunication.gouv.fr/Thematiques/Livre-et-Lecture/Economie-du-livre/Exception-handicap-a-u-droit-d-auteur> (13.08.2017).

¹⁴ <https://www.legifrance.gouv.fr/eli/decret/2017/2/27/MCCB1632092D/jo/texte> (14.08.2017).

version of a work, that it is not available commercially in a form that meets the needs of the person who requests it¹⁵.

Although the project looks promising, it also raises some concerns in the profession in a period of budget cuts. Indeed, in creating new burden for local libraries without further compensation from the State, the task on sight would be difficult to ensure.

In any case, the anticipation of the Marrakesh Treaty in the French law is already a promising sign, and the project to enlarge the number of participating libraries is also a positive point. Even if the project might be slower than anticipated, it is nevertheless a good example to underline in this session.

Next steps

The Council of the European Union Council should have been given its final approval to the new legislation on Monday 17th July. And the text should therefore be published in the Official Journal of the EU probably after the summer.

This will open the process of transposition of the Directive for European countries into their national copyright legislation with a one year period.

In parallel the ratification of the Treaty by the EU has to be achieved.

How the process itself will really happen is yet not clearly known. However, EU member states need to be part of the Treaty and there is a strong need to convince individual countries (within and outside the EU) to ratify the Treaty.

The matter goes beyond the countries themselves and it could also be addressed through individual libraries of all types (such as public and university or research libraries), so has to gain momentum or to increase the weight of the libraries in the discussions.

Of course libraries for the blinds are offering dedicated services for their communities, but with the development of digital tools, libraries of all types often host special services for blind and visually impaired people, and develop special programmes to include the whole population.

Even if it is sometimes difficult to work with local libraries, the example of France offers an interesting development.

Working together and in partnership should really make a difference, and I guess that other countries are already developing new ideas to increase access to books for visually impaired people. I hope this session will help out in discovering inspiring examples.

Thank you for your attention

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¹⁵ Free translation of the text in French available at: <http://bit.ly/2vBe8Fx> (13.08.2017).