



Amendments to the Copyright Act
as a result of the
MARRAKESH TREATY IMPLEMENTATION ACT

OCTOBER 2018



MARRAKESH TREATY IMPLEMENTATION ACT

§ 121 • Limitations on exclusive rights:

Reproduction for blind or other people with disabilities

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for an authorized entity to reproduce or to distribute in the United States 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 if such copies or phonorecords are reproduced or distributed in accessible formats exclusively for use by eligible persons.

(b)(1) Copies or phonorecords to which this section applies shall —

(A) not be reproduced or distributed in the United States in a format other than an accessible format exclusively for use by eligible persons;

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

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

(2) The provisions of this subsection shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if—

(1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;

(2) the publisher had the right to publish such print instructional materials in print formats; and

(3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in accessible formats.

(d) For purposes of this section, the term —

(1) ‘accessible format’ means an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability as described in paragraph (3);

(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;

(3) ‘eligible person’ means an individual who, regardless of any other disability—

(A) is blind;

(B) has a visual impairment or perceptual or reading disability that 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; and

(4) ‘print instructional materials’ has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act.

§ 121A • Limitations on exclusive rights:

Reproduction for blind or other people with disabilities in Marrakesh Treaty countries

(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.

(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 (a) or (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.

(d) Nothing in this section shall be construed to establish—

- (1) a cause of action under this title; or
- (2) a basis for regulation by any Federal agency.

(e) Nothing in this section shall be construed to limit the ability to engage in any activity otherwise permitted under this title.

(f) For purposes of this section—

- (1) the terms ‘accessible format’, ‘authorized entity’, and ‘eligible person’ have the meanings given those terms in section 121; and
- (2) the term ‘Marrakesh Treaty’ means the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities concluded at Marrakesh, Morocco, on June 28, 2013.

