



**BEFORE THE U.S. SENATE COMMITTEE ON FOREIGN RELATIONS  
HEARING ON THE RATIFICATION OF THE MARRAKESH TREATY**

**TESTIMONY OF JONATHAN BAND  
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Chairman Corker, Ranking Member Menendez, Members of the Committee, I am honored to testify here today in support of Senate ratification of the World Intellectual Property Organization (“WIPO”) Marrakesh Treaty to Facilitate Access to Published Works For Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“Marrakesh Treaty”).

I represent the Library Copyright Alliance (“LCA”). LCA consists of three major library associations in the United States: the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries. These associations represent over 100,000 libraries in the United States employing more than 350,000 librarians and other personnel. An estimated 200 million Americans use these libraries over two billion times each year.

I would like to make three points. First, ratification of the Marrakesh Treaty will greatly enhance the ability of U.S. libraries to provide services to Americans with print disabilities.

Second, the Treaty is based on an existing exception in U.S. copyright law.

Third, the Treaty and implementing legislation has broad support among U.S. stakeholders.

## **I. The Treaty Will Help U.S. Libraries Provide More Accessible Materials to Americans With Print Disabilities.**

Many of the 200 million Americans who use our libraries have print disabilities. They may be blind, dyslexic, or simply elderly and in need of large print. Libraries in the United States currently serve the needs of these people either by lending copies in accessible formats when publishers make accessible format copies; or by making the accessible format copies themselves when an accessible format is not available. There is a specific exception in the U.S. Copyright Act known as the Chafee amendment, 17 U.S.C. § 121, which permits entities that provide services to print disabled people to make and distribute accessible format copies without infringing copyright. These entities, which the Chafee amendment calls “authorized entities,” include libraries. The fair use doctrine, 17 U.S.C. § 107, supplements the Chafee amendment and enhances libraries’ ability to make and distribute accessible copies.<sup>1</sup>

The problem is that many books published overseas are not available in any U.S. library in accessible formats—not even in the HathiTrust Digital Library, which contains over 8 million titles in 16 million volumes. This is particularly the case with books in languages other than English or the other major European languages, which are not found in U.S. libraries in great numbers. If a book isn’t in one of our collections, we can’t make an accessible format copy. Our

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<sup>1</sup> The complete tapestry of services libraries provide to Americans with print disabilities is complex. Libraries at all levels purchase and circulate copies in accessible formats such as audio books and large print books. The National Library Service for the Blind and Physically Handicapped, a unit of the Library of Congress, makes accessible copies of books and magazines in braille and audio formats. It circulates these accessible copies through a network of cooperating libraries, by mail, or by digital download. Some state libraries and local public libraries also make and distribute accessible format copies. Many research libraries collaborate in the HathiTrust Digital Library, which among other services provides full-text online access to people with print disabilities. Libraries at post-secondary institutions assist students and faculty with research by making accessible copies of needed materials. And libraries in K-12 institutions help those schools meet their obligations under the Individuals with Disabilities Education Act to students with print disabilities.

libraries report that they frequently cannot supply users with print disabilities with the foreign titles they request.

This is where the Marrakesh Treaty comes in. The existing copyright laws of the countries in which these books are published usually permit domestic authorized entities to make and distribute accessible formats in those countries. These copyright laws, however, often do not authorize the export of the accessible copies to other countries, including the United States. The Marrakesh Treaty creates a system that allows the cross-border exchange of accessible format copies among authorized entities of the countries that have joined the Treaty. Countries that join Marrakesh must permit an authorized entity in their country to export accessible format copies to an authorized entity in another Marrakesh country. Similarly, Marrakesh countries must allow authorized entities to import accessible format copies from authorized entities in other Marrakesh countries. With digital formats such as renewable braille or audio books, Americans with print disabilities would receive access to foreign books within minutes of requesting them.<sup>2</sup>

Significantly, the Treaty makes this happen only if both the exporting country and the importing country have joined the Marrakesh Treaty. Thirty-five countries have already acceded to or ratified the Treaty, including major publishing centers such as Argentina, Australia, Brazil, Canada, Israel, India, Mexico, Russia and South Korea.<sup>3</sup> Moreover, the European Union has announced that it will ratify the Treaty this July. All European Union member states must implement the Treaty in national law by October. Thus, once we ratify the Treaty, libraries in the

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<sup>2</sup> Under Article 4(2)(a) of the Treaty, an authorized entity may supply accessible copies “by electronic communication by wire or wireless means.” The Treaty provides that accessible format copies distributed by an authorized entity must be “supplied exclusively to be used by beneficiary persons.”

<sup>3</sup> A compilation of the implementations of the Treaty by countries that have ratified or acceded to it can be found at [http://www.arl.org/storage/documents/2018.04.11\\_MarrakeshTreaty.pdf](http://www.arl.org/storage/documents/2018.04.11_MarrakeshTreaty.pdf).

United States will have access to the accessible format copies in over 60 countries.<sup>4</sup> This will greatly benefit Americans with print disabilities who are interested in reading foreign books for research or pleasure.

## **II. The Treaty is Based on a Provision of the U.S. Copyright Act**

Before I mentioned the Chafee Amendment, the provision in the U.S. Copyright Act that allows authorized entities to make and distribute accessible format copies. The Marrakesh Treaty is based on the Chafee amendment. Like the Chafee amendment, the Treaty operates by permitting authorized entities to make and distribute accessible format copies. Indeed, the Treaty uses the same term as Chafee: authorized entity. This is no accident. The first draft of the Treaty was developed by the U.S. delegation to WIPO. Because of the similarity between Chafee and the Treaty, the Marrakesh Treaty Implementation Act, S. 2559, co-sponsored by Chairman Corker and Ranking Member Menendez, makes only modest changes to U.S. copyright law.

## **III. The Treaty Has Broad Support Among All U.S. Stakeholders.**

When WIPO adopted the Treaty in 2013, it was supported by a broad spectrum of U.S. stakeholders, including rightsholders, authorized entities, and organizations that support people with print disabilities. This same spectrum of stakeholders worked together to develop the implementing legislation and is sitting at this table today. Indeed, the three of us have been involved throughout the entire process: working here in Washington to influence the U.S. government position on the Treaty; meeting with the delegations of other member states in Geneva; cheering as the member states crossed the finish line at the diplomatic conference in

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<sup>4</sup> The authorized entities organized in the Accessible Book Consortium (“ABC”), sponsored by WIPO, possess approximately 325,000 titles that would become available to American with print disabilities once the United States joins the Marrakesh Treaty. Americans with print disabilities would also get access to titles held by authorized entities that have not yet joined ABC, such as ONCE in Spain and TifloLibros in Argentina, each of which has collections of approximately 50,000 titles in accessible digital formats.

Marrakesh; and then reaching consensus back in the U.S. on the implementing legislation. I personally want to express my gratitude to Mr. Adler and Mr. LaBarre for all their labors to get us to this point.

I also would like to acknowledge the efforts of the many U.S. government officials involved in the WIPO negotiations and the development of the implementing legislation, as well as the staffs of this Committee and the Senate Judiciary Committee.

And of course, I would like to thank the Committee for holding this hearing today.

Members of the Committee, we urge the Senate to ratify the Treaty expeditiously to ensure that print disabled Americans can benefit from it as soon as possible.