SETTING ITS SIGHTS ON THE MARRAKESH TREATY: THE U.S. ROLE IN ALLEVIATING THE BOOK FAMINE FOR PERSONS WITH PRINT DISABILITIES

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Abstract: Today, a global book famine deprives hundreds of millions of persons with print disabilities access to basic information worldwide. The World Intellectual Property Organization (WIPO) reports that the visually impaired have access to merely 5 percent of published books. Amid the global movement to reevaluate copyright laws for the digital age, a watershed opportunity exists to harmonize the deficient patchwork of national and international copyright laws perpetuating the book famine. After years of stalled progress, WIPO recently adopted the landmark Marrakesh Treaty to alleviate copyright barriers to access for the print-disabled worldwide. This Note argues that the United States should support the Marrakesh Treaty, while also continuing its national reform efforts. Since the Marrakesh Treaty is not a comprehensive solution, this Note advocates for United States to utilize this historic treaty as a vehicle to modernize its own national copyright laws to achieve equitable access for persons with print disabilities.

In a word, literature is my Utopia. Here I am not disenfranchised. No barrier of the senses shuts me out from the sweet, gracious discourses of my bookfriends. They talk to me without embarrassment or awkwardness.

—Helen Keller1

Introduction

Technological advances drive the digital revolution and accelerate the dissemination of knowledge, facilitating access to information.2 Notwithstanding this progress, millions of people are deprived access to

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1 HELEN KELLER, THE STORY OF MY LIFE 100 (1954).

basic information worldwide.\textsuperscript{3} Barriers to copyrighted works disadvantage individuals with visual impairments and precipitate a global “book famine.”\textsuperscript{4} Currently, the World Health Organization estimates that there are approximately 285 million visually impaired persons (VIPs) worldwide, and of that population 90 percent live in developing countries.\textsuperscript{5} The World Intellectual Property Organization (WIPO) reports that the visually impaired have access to merely 5 percent of published books.\textsuperscript{6} This lack of access creates an information crisis that is rife in developing countries where as few as 0.5 percent of copyrighted works are available to the visually impaired.\textsuperscript{7}

Amid the global movement to reevaluate and modernize copyright laws for the digital age, an opportunity exists to provide broader meaningful access to published works.\textsuperscript{8} Increased access would promote the public policy behind copyright law—to encourage the free flow of information.\textsuperscript{9} Even though the current print plight results from “complex social, economic, technological, and legal factors,” national and international copyright reform could eradicate the inequality experienced by the visually impaired.\textsuperscript{10}

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\textsuperscript{5} Visual Impairment and Blindness, WORLD HEALTH ORG. (June 2012), http://www.who.int/mediacentre/factsheets/fs282/en/.

\textsuperscript{6} Williams, supra note 2, at 1037.


\textsuperscript{10} Lambert, supra note 2, at 1–2; see Reply Comments of Library Copyright Alliance, the Electronic Frontier Foundation, the Internet Archive, and the Chief Officers of State Library Agencies 12–13 (2009), available at http://www.librarycopyrightalliance.
Recently, WIPO adopted a new multilateral treaty, the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled (Marrakesh Treaty), to address the access issues that advance the book famine. This treaty presents a landmark occasion to pioneer new international norms in copyright law while maintaining the integrity of the current U.S. copyright regime. But, because the United States has not yet become a signatory, questions remain as to the extent of the United States’ support for this treaty. Presently, U.S. laws provide copyright exceptions that limit copyright holder rights to increase access for the visually impaired.

This Note explores the role of the United States in the context of this new multilateral treaty to benefit the visually impaired. Part I of this Note provides a background on the barriers to accessing published works for persons with print disabilities. It then presents a historical overview of efforts to achieve change. Part II explores U.S. copyright law and its legal treatment of the blind, while also surveying the divergent national copyright exceptions across WIPO Member States before the treaty. In addition, Part II examines the core components of a new international agreement: mandatory minimum national exceptions and cross-border sharing to facilitate access. Part III analyzes the United States’ role in supporting the Marrakesh Treaty, focusing on the implications in the United States. As a result of this analysis, Part III suggests that the United States should utilize this international instrument as a vehicle to update and modernize its own copyright exceptions to benefit the blind. This Note concludes that the United States should support

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org/bm~doc/replycomments_facilitating_disability_access.pdf [hereinafter LIBRARY COPYRIGHT ALLIANCE REPLY COMMENTS]; Williams, supra note 2, at 1069.


the Marrakesh Treaty, while also continuing its national efforts to provide persons with print disabilities increased access to printed works.

I. Background

A. Barriers to Print Access for the Visually Impaired

In today’s knowledge-driven world, the visually impaired navigate significant hurdles in order to access published works. The intersection of technology, market failure, and copyright law creates a complex access dilemma for the visually impaired that likely deprives them of an equal opportunity for education, civic participation, and cultural expression. When a published work is only available in print or in certain electronic forms, then the visually impaired are often excluded from the use and enjoyment of the work. Even though the universe of accessible format works is diversifying from older forms like Braille, large print, or audio, to newer electronic books (e-books), including text-to-speech functions or refreshable Braille, the availability of these forms remains inadequate.

As Braille evolves to digital formats, new technologies present more easily produced and distributed accessible works. The innovative efforts of non-profits like Digital Accessible Information System (DAISY) Consortium and Benetech create more versatile electronic platforms for VIP access. For instance, in the United States, Benetech launched Bookshare.org (Bookshare) to share scanned books and facilitate broader access for the blind or other persons with disabilities. This site offers unparalleled access for print-disabled users through the


17 See Cox, supra note 4, at 32.

18 World Blind Union, supra note 3, at 2–3.


21 See Franz, supra note 14, at 517.
world’s largest online digital library for accessible format.\textsuperscript{22} Notwithstanding such technological progress, other barriers continue to impede broad access.\textsuperscript{23}

Market factors limit the creation and distribution of accessible formats and thus further restrict access.\textsuperscript{24} Most authors and publishers refuse to license or make their works available in accessible formats because they view the market for the visually impaired and other persons with disabilities as an “orphan market” that is not economically worthwhile.\textsuperscript{25} High production costs of older accessible-format works discourage industry innovation.\textsuperscript{26} As a result, businesses lack the capital and the production models to increase availability of accessible works in the market.\textsuperscript{27} Additionally, the high costs are often passed onto the visually impaired consumer, thus limiting the demand for and distribution of accessible works.\textsuperscript{28}

Consequently, the market for the visually impaired is primarily served by non-profit, charitable, and governmental organizations.\textsuperscript{29} In the non-profit sector, limited resources constrain the number of accessible works that are produced and distributed.\textsuperscript{30} One method that WIPO has employed to address this market failure is through voluntary stakeholder agreements.\textsuperscript{31} Through the WIPO Stakeholder Platform,

\textsuperscript{22} Franz, supra note 14, at 517; see also George Kerscher, DAISY Consortium, Response to Copyright Office Questions on the Topic of Facilitating Access to Copyrighted Works for the Blind or Other Persons with Disabilities para. A.1 (2009), available at http://www.copyright.gov/docs/sccr/comments/2009/kerscher.pdf (establishing the term “print disability” to describe “[a] person who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability”).

\textsuperscript{23} See Sebastian, supra note 19, at 258.

\textsuperscript{24} Library Copyright Alliance Reply Comments, supra note 10, at 5; Cox, supra note 4, at 32–33; Hely, supra note 15, at 1372.

\textsuperscript{25} Library Copyright Alliance Reply Comments, supra note 10, at 5; Maurer, supra note 19, at 3; see Allan Adler, Am. Ass’n of Publishers, Comments in Response to Notice of Inquiry on Facilitating Access to Copyrighted Works for the Blind or Other Persons with Disabilities 7 (2009), available at http://www.copyright.gov/docs/sccr/comments/2009/adler.pdf. Because publishers were unlikely to publish works for the blind or other persons with disabilities they would not experience any economic harm from allowing non-profits and governmental agencies to reproduce and distribute accessible copies of copyrighted works. Adler, supra, at 7.

\textsuperscript{26} See Maurer, supra note 19, at 3–4.

\textsuperscript{27} See id.

\textsuperscript{28} See id.; Hely, supra note 15, at 1372.

\textsuperscript{29} Cf. Hely, supra note 15, at 1390–92 (stating that nations with copyright limitations similar to the United States limit creation of accessible format works to non-profits, governmental, and charitable organizations).

\textsuperscript{30} See Pesco, supra note 3.

\textsuperscript{31} See Franz, supra note 14, at 525–27.
publishers opposed to the Marrakesh Treaty established a forum in which stakeholders can reach voluntary agreements that would permit the lawful transfer of licensed material in accessible formats.  

An additional barrier is the outdated legal framework in copyright law. Copyright laws around the globe aim to foster the public interest and disseminate knowledge, yet they also circumscribe the public’s access. International copyright law focuses strongly on author rights and exemplifies the historical reluctance of developed nations to strengthen user rights through more flexible copyright laws. To reward authors and artists for their innovation and encourage future creative investments, copyright guarantees original authors a bundle of monopoly rights, subject to some exceptions. While the rights afforded under copyright law vary slightly across countries, the rights generally included are those controlling reproduction, public distribution, adaptation, public performance, and public display.

Some countries have exceptions in their domestic copyright laws to allow for production of printed works in formats accessible to persons with print disabilities. Despite these exceptions, there are no international requirements for foreign national exceptions to provide even a minimum level of access for persons with print disabilities. According to a 2006 study, only fifty-seven of the 184 WIPO Member States had national exceptions to permit the production and distribution of copyrighted works in accessible formats. As a result, in states without national law exceptions, the original copyright owner must grant permission to reproduce works in accessible formats. Without an applicable exception or author permission, reproduction is an in-

32 See id.
33 Id. at 517.
34 See Lambert, supra note 2, at 3; cf. Statement on Copyright Exceptions, supra note 16, at 1 (highlighting the words of the U.S. Supreme Court, that copyright is “the engine of free expression,” but that should be a balanced opportunity for active citizenship).
35 Franz, supra note 14, at 523–24 (discussing the fact that the United States provides more flexible IP laws and user right exceptions in its domestic laws); Study on Copyright Limitations, supra note 8, at 12.
36 See Lambert, supra note 2, at 3; Study on Copyright Limitations, supra note 8, at 12.
37 Lambert, supra note 2, at 3.
38 Cf. Statement on Copyright Exceptions, supra note 16, at 4–5 (supporting the WIPO’s work to reach an international consensus on the minimum copyright exemptions in national legislation).
39 Id.
40 Study on Copyright Limitations, supra note 8, at 9 (noting that fifty-seven countries worldwide provide some form of national law exemption); see Lambert, supra note 2, at 4.
41 See World Blind Union, supra note 3, at 4.
fringement of the copyright. Additionally, because copyright laws are territorial in scope, national law exceptions only increase access for the visually impaired within that nation’s borders. Thus, the current patchwork of national copyright laws and the international copyright regime limit the information available to VIPs worldwide.

B. Historical Overview: Stalled Efforts for International Reform

For nearly thirty years, WIPO has entertained discussions, studies, and negotiations to remedy the access problem the visually impaired face. These efforts commenced in 1982 when WIPO and the United Nations Educational, Scientific, and Cultural Organization assembled a Working Group to address copyright barriers to access. Separately, in 1985 the Intergovernmental Copyright Committee (IGC) published a report that suggested creating an “entirely new international instrument” to tackle the production and distribution issues that still face the global visually impaired community today.

Following the IGC report, general discussions continued at WIPO, but it was not until the early 2000s that discourse progressed to reform proposals. In November 2004, the WIPO Standing Committee on Copyright and Related Rights (SCCR) held discussions on a copyright-exemptions treaty for increased access for VIPs. Unfortunately, there was an expansive division between Member States’ views on strong intellectual property protection for rights holders and greater access to protected works. In addition, the uncertainty among WIPO Member States as to whether the discussions were intended to generate a restatement of current legal principles or to create new principles slowed

42 See Cox, supra note 4, at 33; Hely, supra note 15, at 1390.
43 See Franz, supra note 14, at 518.
44 Id. at 524; Lambert, supra note 2, at 3–4; Pescod, supra note 3.
45 Cox, supra note 4, at 34.
48 Cox, supra note 4, at 35; see Scheinwald, supra note 4, at 468–69.
49 Scheinwald, supra note 4, at 468–69.
50 Id.
progress. A U.S. objection during the course of negotiations signaled their reticence to alter the status quo with copyright reform at WIPO.

Over the following six years, discussions continued, but the United States and the European Union’s reluctance to support a legally binding instrument, coupled with opposition from non-state groups like the International Publishers Association, stalled progress. Draft proposals finally materialized in 2008 when Brazil, Ecuador, and Paraguay introduced a treaty developed by the World Blind Union. Additional proposals from the EU, the United States, and the WIPO’s African group followed. The United States introduced a draft “consensus instrument” supporting agreement on copyright exceptions for the visually impaired. Despite the non-binding nature of the U.S. proposal, it signaled waning opposition to international efforts to harmonize copyright-exemptions.

In 2011, the various proposals evolved into a single text signed by the United States and many other nations. This draft treaty represented a significant step forward, but still lacked agreement on the specific international copyright reforms. In response to this progress at WIPO, Senators Tom Harkin and Bernard Sanders of the U.S. Senate Committee on Health, Education, Labor and Pensions sent a letter to the United States Patent and Trademark Office. The Senators expressed their support for the timely consideration of a copyright-
exemption treaty to benefit persons who are blind or have other dis-
abilities.\textsuperscript{61}

Recently, WIPO adopted the Marrakesh Treaty at a diplomatic
conference in June 2013.\textsuperscript{62} Finally, a resolution is in sight.\textsuperscript{63} WIPO
adopted a landmark treaty to address access issues for persons with
print disabilities worldwide.\textsuperscript{64} Although the United States made an
announcement in late 2012 that it affirmatively supported a legally bind-
ing agreement to establish new international norms for those with print
disabilities, the United States is not currently among the treaty’s fifty-
one signatories.\textsuperscript{65}

\textbf{C. Platform for Change: Growth of IP Reform Efforts}

Traditionally, the reform efforts at WIPO have favored strong intel-
lectual property protections for rights holders rather than flexible user
rights.\textsuperscript{66} For both developed and developing nations, there is a critical
need for limits on absolute grants of IP rights to encourage innovation,
creativity, and competition.\textsuperscript{67} In particular, developing nations can util-
ize downstream IP benefits to foster economic development.\textsuperscript{68}

\begin{itemize}
  \item \textsuperscript{61} See Letter from Senators, supra note 60.
  \item \textsuperscript{62} WIPO Press Release, supra note 11.
  \item \textsuperscript{63} See Hughes, supra note 12.
  \item \textsuperscript{64} WIPO Press Release, supra note 11 (“This treaty is a victory for the blind, visually
impaired and print disabled, but also for the multilateral system. With this treaty, the
international community has demonstrated the capacity to tackle specific problems, and to
agree to a consensus solution . . . .”).
  \item \textsuperscript{65} See id.; Franz, supra note 14, at 525. On Friday June 2, 2013, WIPO held a ceremony
for WIPO Member States to sign the Marrakesh Treaty to Facilitate Access to Published
Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled, includ-
ing: Afghanistan, Bosnia and Herzegovina, Brazil, Burkina Faso, Burundi, Cambodia,
Cameroon, the Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa 
Rica, Côte d’Ivoire, Cyprus, the Democratic People’s Republic of Korea, the Democratic
Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ethiopia, Ghana,
Guinea, Haiti, the Holy See, Jordan, Kenya, Lebanon, Luxembourg, Mali, Mauritania, 
Mauritius, Mongolia, Morocco, Nepal, Nigeria, Panama, Paraguay, Peru, Republic of 
Moldova, Sao Tome and Principe, Senegal, Sierra Leone, Sudan, Switzerland, Togo, Tuni-
sia, Uganda, United Kingdom, Uruguay. WIPO, Diplomatic Conference to Conclude a 
Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons 
with Print Disabilities, WIPO Doc. VIP/DC/12 (June 28, 2013).
  \item \textsuperscript{66} See Franz, supra note 14, at 518 (noting the rapid expansion of rights holders’
rights); Williams, supra note 2, at 1045. Initially, WIPO was an independent governmental
organization that was controlled by Western-industrialized nations. See Williams, supra note 
2, at 1044.
  \item \textsuperscript{67} International Centre for Trade and Sustainable Development [ICTSD], Ruth L.
Okediji, The International Copyright System: Limitations, Exceptions and Public Interest Considera-
tions for Developing Countries, at x, ICTSD Issue Paper No. 15 (March 2006).
  \item \textsuperscript{68} Id.
\end{itemize}
At WIPO, developed nations dominated the forum until the governing body became a part of the United Nations (UN). Following its UN incorporation, WIPO now had the express obligation to account for the economic, social, and cultural needs of developing countries. Notwithstanding these obligations, the shift at WIPO to better accommodate the needs of developing nations in its IP policy agenda was not immediate. Instead, WIPO initially continued its support for strict IP protections to safeguard copyright holders’ rights.

Despite earlier resistance, recent developments signal new momentum for change at WIPO. Both the WIPO Development Agenda’s adoption and the recent growth of the Access to Knowledge (A2K) movement represent that shift. These recent IP reform efforts present a more nuanced approach to the potential human rights, developmental, and social welfare benefits that could arise from greater flexibility in IP law.

In 2007, WIPO formally adopted the WIPO Development Agenda, representing progress made by the organization to recognize the importance of maintaining balance and flexibility in IP protection through its international efforts. The Development Agenda contains forty-five recommendations designed to enhance WIPO’s accommoda-

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69 Williams, supra note 2, at 1043–44; see also Convention Establishing the World Intellectual Property Organization art. 3(i), July 14, 1967, 828 U.N.T.S. 3.


71 See Williams, supra note 2, at 1044, 1048 (discussing calls for a more nuanced view of IP at WIPO).

72 See id. at 1044.


74 See Franz, supra note 14, at 522; Kapczynski, supra note 73, at 806; Williams, supra note 2, at 1048–49.


76 Williams, supra note 2, at 1048–49; cf. Franz, supra note 14, at 523 (describing the new movement at WIPO as a paradigm shift because limitations and exceptions in copyright were on the WIPO agenda).
tions for particular societal needs through IP rights. For example, one recommendation calls for WIPO to “initiate discussions on how . . . to further facilitate access to knowledge and technology for developing countries and . . . foster creativity and innovation.”

Beyond the internal efforts at WIPO, the broader A2K movement challenges the existing bounds of intellectual property law. A2K is a loose affiliation of advocacy groups that promotes innovative methods to enhance flexibility and balance within existing legal frameworks. Specifically, A2K activism focuses on rebalancing copyright laws through new limitations and exceptions. To further its vision, A2K supports the efforts at WIPO to create a new international instrument to benefit the visually impaired.

II. Discussion

A. U.S. Copyright Law and the “Blind or Other Persons with Disabilities”

In the United States, IP rights have both statutory and Constitutional origins. Rooted in the Progress Clause of the Constitution, IP rights are designed to encourage creativity and spur innovation by rewarding authors and artists with a grant of exclusive rights. The Supreme Court has heralded copyright law as “the engine of free expression,” but access to such works is essential to serve the intended public interest. U.S. copyright law restricts the monopoly rights of authors through exemptions that permit the creation of accessible works for educational purposes, libraries, and persons with disabilities. Never-
theless, the “blind and other persons with disabilities” in the United States only have access to about 5 percent of published works.\textsuperscript{87}

The Copyright Act of 1976 serves as the primary source for U.S. copyright law.\textsuperscript{88} Since its enactment, the detailed statute has been amended more than sixty times.\textsuperscript{89} More than a decade ago, a progressive amendment, known as the Chafee Amendment, had a momentous impact on the accessibility of printed works for the blind and disabled in the United States.\textsuperscript{90}

This Amendment created a copyright infringement exception to make accessible copies more efficient and to expand access to published works for the “blind or other persons with disabilities.”\textsuperscript{91} In general, a legal exception immunizes certain behaviors from copyright infringement.\textsuperscript{92} The Chafee Amendment authorizes both the reproduction and distribution of “previously published, nondramatic literary work” in “specialized formats” by “authorized entity[ies]” for exclusive use by the “blind or other persons with disabilities.”\textsuperscript{93} This exception does not require remuneration to the original copyright holder.\textsuperscript{94} The Chafee Amendment defines the permissible “specialized formats” to include works reproduced in “[B]raille, audio, or digital text.”\textsuperscript{95} Nevertheless, the entities that can reproduce these works are limited.\textsuperscript{96} An “authorized entity” is defined as a “nonprofit organization or a governmental individual author in order to benefit the public.”); see United States of America, \textit{Statement on Improving Accessibility to Copyrighted Works for Blind and Visually Impaired Persons}, at 1 (May 25–29, 2009) [hereinafter \textit{Statement on Improving Accessibility}], http://www.copyright.gov/docs/scct/statements/us-intervention.pdf.

\textsuperscript{87} Williams, \textit{supra} note 2, at 1037.

\textsuperscript{88} \textit{See} 17 U.S.C. § 102.

\textsuperscript{89} Peter B. Maggs, \textit{The Balance of Copyright in the United States of America}, 58 \textit{Am. J. Comp. L.} 369, 375 (2010) (discussing the role of the Congress in the United States to update and amend the Copyright Act).

\textsuperscript{90} 17 U.S.C. § 121; \textit{see} Adler, \textit{supra} note 25, at 2.

\textsuperscript{91} 17 U.S.C. § 121; \textit{see} Adler, \textit{supra} note 25, at 2; Cox, \textit{supra} note 4, at 33. In a recent U.S. delegation statement at WIPO, the US stated that “over fifteen years ago the United States was at the forefront of the now roughly sixty countries that have exceptions for persons with print disabilities in their national laws.” Hughes, \textit{supra} note 12.

\textsuperscript{92} Hely, \textit{supra} note 15, at 1390.

\textsuperscript{93} 17 U.S.C. § 121(d)(1) (defining “authorized entity” to include the work of nonprofit and charitable organizations).

\textsuperscript{94} Cox, \textit{supra} note 4, at 33.

\textsuperscript{95} 17 U.S.C. § 121(d)(4). The “specialized formats” authorized under the Chafee Amendment were expanded to include large print instructional materials after the reauthorization of Individuals with Disabilities Act in 2004. 17 U.S.C. § 121(d)(4)(B); Joanne Karger, Nat’l Ctr. for Learning Disabilities, Accessible Instructional Material: Ensuring Access for Students with Learning Disabilities 2 (2010).

\textsuperscript{96} 17 U.S.C. § 121(a).
agency” whose primary goal is to deliver dedicated services to meet the educational or informational access needs of the “blind or other persons with disabilities.”

Additionally, U.S. copyright law provides the affirmative defense of fair use when the production of accessible format works for the “blind or persons with other print disabilities” falls outside the scope of the Chafee exception. Specifically, the legislative history of the Copyright Act indicates that the creation of “specialized formats” for the blind qualifies as a legally fair use and does not violate the copyright holder’s rights. Codified in Section 107, four fair use factors guide courts to determine whether certain uses of material are legal, or fair, without the copyright holder’s permission. The factors are: (1) “purpose and character of the use,” (2) “nature of the copyrighted work,” (3) “amount and substantiality of the portion used,” and (4) “effect of the use upon the potential market for or value of the copyrighted works.” On a case-by-case basis, courts assign variable weight to each factor.

Even though the production of accessible formats to facilitate access for the blind has been traditionally accepted under the fair use doctrine, new legal questions have emerged due to technological advances. In Authors’ Guild v. HathiTrust, a U.S. District Court in 2012 considered one such technology, the Mass Digitization Project, and held it to be a legal fair use. At issue in HathiTrust was Google’s partnership with several university libraries for the MDP to create digital

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97 See id. § 121(d)(1). One of the key providers of accessible format works under the Chafee Amendment is the National Library Service that distributes two million Braille and audiobook copies of published works to about 800,000 blind and other persons with disabilities each year in the United States. Statement on Copyright Exceptions, supra note 16, at 2.

98 See Sony Corp. of Am., 464 U.S. at 455 n.40; Statement on Improving Accessibility, supra note 86, at 1.

99 Sony Corp. of Am., 464 U.S. at 455 n.40 (“Making a copy of a copyrighted work for the convenience of a blind person is expressly identified by the House Committee Report as an example of fair use, with no suggestion that anything more than a purpose to entertain or to inform need motivate the copying.”); H. R. Rep. No. 94–1476 (1976), at 73.


102 See H. R. Rep. No. 94–1476 at 65; see also Statement on Improving Accessibility, supra note 86, at 1.

103 See Sony Corp. of Am., 464 U.S. at 455 n.40; Maurer, supra note 19, at 6; Cox, supra note 4, at 33.

copies of 10 million copyrighted books. In balancing the four fair use factors, the judge noted that the most important factor was the “unprecedented” benefit to the blind of providing equal access to copyrighted works.

The HathiTrust decision marked a noteworthy educational fair use victory in copyright law for the print-disabled. In particular, the court in HathiTrust afforded significant weight to the “transformative” nature of the MDP because it increased search capabilities and provided print-disabled individuals with an equal platform for access. The flexibility of the U.S. fair use doctrine enables courts to allow this benefit to society.

Nevertheless, that flexibility produces unpredictability surrounding the production of accessible-format works beyond the scope of the Chafee Amendment because judges might balance the factors differently. Moreover, uncertainty persists as to the legality of other unprecedented or novel uses of technology to aid the print-disabled. Therefore, notwithstanding the application of fair use doctrine to enable and facilitate digital access for the blind and disabled, more progress is needed.

Moreover, current U.S. laws limit the potential benefits of copyrighted works that are initially published in e-book or other electronic text formats for the blind or other persons with disabilities. Until recently, the accessible works available to the blind or other persons with

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105 See HathiTrust, 2012 WL 4808939, at *1–2; Nazer, supra note 104.

106 HathiTrust, 2012 WL 4808939, at *14 (“[M]ost importantly, the unprecedented ability of print-disabled individuals to have an equal opportunity to compete with their sighted peers in ways imagined by the [Americans with Disabilities Act] protect[s] the copies made by [MDP] as fair use.”).

107 See Nazer, supra note 104; see also Matthew Rimmer, Copyright and the Digital Economy: Disability Rights 15 (2012), available at: http://works.bepress.com/cgi/viewcontent.cgi?article=1192&context=matthew_rimmer (noting that the Australian Law Reform Commission should take note of the recent HathiTrust decision and the judge’s application of fair use to benefit the print-disabled).


109 See id. (“I cannot imagine a definition of fair use that would not encompass the transformative uses made by Defendants’ MDP and would require that I terminate this invaluable contribution to the progress of science and cultivation of the arts that at the same time effectuates the ideals espoused by the ADA.”).

110 See Maurer, supra note 19, at 6; Nazer, supra note 104 (discussing the downsides of a flexible fair use doctrine).

111 See HathiTrust, 2012 WL 4808939, at *11; Nazer, supra note 104.

112 See Maurer, supra note 19, at 7; cf. Sebastian, supra note 19, at 238 (noting the outstanding question on whether the Chafee Amendment encompasses electronic texts).

113 See Maurer, supra note 19, at 4, 7.
disabilities were limited to fixed formats like printed books, large-print books, or audiotapes.\footnote{114} Today, however, digital works, such as e-books, provide a mainstream medium for persons with print disabilities.\footnote{115} Some of these works make text-to-speech capabilities commercially available, while others make it easier for persons with print disabilities to employ assistive technologies to enjoy the work.\footnote{116} Consequently, flexibility of digital media affords persons with print disabilities autonomy to access copyrighted materials.\footnote{117} In effect, the evolution of accessible formats from Braille to e-books provides an opportunity for self-help to allow readers to individually tailor the digital content in the way that is most accessible.\footnote{118}

Yet for publishers—and likely also authors—digital media signals an increased risk of unauthorized distribution of their works beyond their intended users.\footnote{119} Accordingly, authors now typically employ technological protective measures (TPMs), such as passwords or encrypted compatibility features, as a form of digital rights management (DRM) to prevent unauthorized copying and to preserve the integrity of their works.\footnote{120} Therefore, the potential for greater autonomy through e-books or text-to-speech functions for persons with print disabilities has been limited by authors’ increased use of and reliance on these protective mechanisms.\footnote{121} Despite these protections, authors and publishers in the digital copyright age have lobbied for additional safe-

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\textsuperscript{115} See Electronic Frontier Found., supra note 114; cf. Maurer, supra note 19, at 4 (discussing the need for wider availability of e-books to increase access for the print-disabled).

\textsuperscript{116} See id.

\textsuperscript{117} See id.

\textsuperscript{118} See Study on Copyright Limitations, supra note 8, at 11 (discussing the desirability of allowing self-help on part of persons with print disabilities to access copyrighted works); Memorandum from Marybeth Peters, Register of Copyrights, to James H. Billington, Librarian of Congress 71 & n.121 (Oct. 27, 2003), [hereinafter Peters memorandum], available at http://www.copyright.gov/1201/docs/registers-recommendation.pdf.


\textsuperscript{120} See Electronic Frontier Found., supra note 114.

\textsuperscript{121} See id.
guards against the threat of “leakage” of their electronic formats into the commercial market.\footnote{In 1998, Congress enacted the Digital Millennium Copyright Act (DMCA) in response to the growing concerns of unfettered copying in the digital age.\footnote{Congress developed this legislation not only to address copyright holders’ concerns, but also to comply with U.S. obligations under the WIPO Copyright Treaty.\footnote{The Copyright Treaty imposed an obligation on the United States, as a contracting state, to provide adequate legal protection and remedies to combat illegal circumvention of copyrighted digital works.}}

In 1998, Congress enacted the Digital Millennium Copyright Act (DMCA) in response to the growing concerns of unfettered copying in the digital age.\footnote{See id. (discussing how publishers are concerned with the potential for their digital media content to users outside of the intended users); Maurer, supra note 19, at 4.} Congress developed this legislation not only to address copyright holders’ concerns, but also to comply with U.S. obligations under the WIPO Copyright Treaty.\footnote{See Robinson, supra note 120, at 958; see also 17 U.S.C. § 1201 (2006).} The Copyright Treaty imposed an obligation on the United States, as a contracting state, to provide adequate legal protection and remedies to combat illegal circumvention of copyrighted digital works.\footnote{See Robinson, supra note 120, at 958.}

The DMCA provides the legal reinforcement for publishers’ use of TPMs or, more broadly, DRM.\footnote{See id. Under the DMCA, publishers are permitted to place “access controls” on their digital works, the circumvention of which is illegal.\footnote{The legal protections that the DMCA affords to publishers greatly affect persons with print disabilities.\footnote{Specifically, sections 1201(a) and 1201(b) of the DMCA provide anticircumvention protections for authors and right holders.\footnote{Section 1201(a) states: “[n]o person shall circumvent a technological measure that effectively controls access to a work protected [by the Copyright Act].”\footnote{This provision operates in conjunction with section 1201(b) to ban any manufacture, sale, or trafficking of the technologies that facilitate unlawful circumvention.\footnote{These anti-circumvention provisions limit access to digital works for persons with print disabilities because they proscribe the flexibility needed for assistive technologies.\footnote{For instance, individuals with print disabilities may need to utilize special text-to-speech or screen reader software to enjoy the digital content of the work.\footnote{The TPMs, however, are designed to prohibit the type of}}}}}}

\footnote{Id.; see Electronic Frontier Found., supra note 114.\footnote{See id. § 1201 (a).\footnote{See id. § 1201 (b)(1)(A).}}\footnote{See Am. Found. for the Blind, Comments of the American Foundation for the Blind 6 (2008), available at http://www.copyright.gov/1201/2008/comments/american-foundation-blind.pdf; see supra text accompanying note 127.\footnote{See 17 U.S.C. § 1201 (a)–(b).\footnote{Id. § 1201 (a).}}\footnote{See supra text accompanying note 127.\footnote{See supra text accompanying note 127.}}\footnote{Cf. Electronic Frontier Found., supra note 114 (stating that text-to-speech function provide comparable access for the print-disabled).}
manipulation required to activate these technologies and the DMCA bans circumventing the TPMs.\textsuperscript{134}

In response to the DMCA’s impact on the print-disabled, the Librarian of Congress granted an exception that allows assistive technologies such as read-aloud functions or screen readers in the use of ebooks.\textsuperscript{135} Although this exception protects print-disabled users from liability under the anti-circumvention provisions of section 1201(a), it does not grant access to the technology banned under section 1201(b).\textsuperscript{136} Thus, the technology ban makes the rulemaking exception ineffective for its intended beneficiaries.\textsuperscript{137}

B. Overview of Foreign National Copyright Exceptions

Notwithstanding the challenges facing the “blind or other persons with disabilities” under current U.S. copyright laws, the United States offers well-established legal protections through its copyright exceptions.\textsuperscript{138} In contrast, many states did not provide copyright exceptions in their national laws to benefit the print-disabled before the Marrakesh treaty.\textsuperscript{139} Further, the strength and scope of existing copyright exceptions across different jurisdictions vary considerably.\textsuperscript{140} As a result, diverse national law exceptions provide inconsistent access for those with print disabilities.\textsuperscript{141} Presently, only fifty-seven countries—less than half of WIPO’s Member States—have created specific national exceptions to assist the visually impaired.\textsuperscript{142} Variations between states’ copyright laws include (1) the types of works that can be used, (2) the types of accessible formats that can be produced, (3) who can produce or distribute accessible formats, (4) restricted or permitted acts, and (5) remuneration to the copyright owners.\textsuperscript{143} These restrictions reflect the general tradition of strong IP protections for authors, rather than the end beneficiaries of their works.\textsuperscript{144}

\textsuperscript{134} See id.

\textsuperscript{135} See 37 CFR § 201.40(b)(6) (2011).

\textsuperscript{136} See id.; Maurer, supra note 19, at 7; Electronic Frontier Found., supra note 114.

\textsuperscript{137} See, e.g., Electronic Frontier Found., supra note 114.

\textsuperscript{138} Cox, supra note 4, at 33.

\textsuperscript{139} Study on Copyright Limitations, supra note 8, at 28–29.

\textsuperscript{140} Cox, supra note 4, at 33; see Study on Copyright Limitations, supra note 8, 28–29 annex at 138 (surveying the national copyright exceptions across WIPO Member States).

\textsuperscript{141} See Lambert, supra note 2, at 4.

\textsuperscript{142} Study on Copyright Limitations, supra note 8, at 9; see id.

\textsuperscript{143} See Study on Copyright Limitations, supra note 8, at 9–10, 28–29; Lambert, supra note 2, at 4–8.

\textsuperscript{144} See Hely, supra note 15, at 1392.
Most foreign nations that provide copyright exceptions for producing accessible formats limit the exceptions to entities in the non-profit sector.\textsuperscript{145} Few commercial entities seek to create accessible works because copyright holders or licensees do not perceive the accessible format market as economically viable.\textsuperscript{146}

Generally, states with exceptions limit only the exclusive reproduction rights of the copyright holder within the country.\textsuperscript{147} Because third parties often produce the copyrighted works in accessible formats, the works need to be distributed after production to their intended beneficiaries, persons with print disabilities.\textsuperscript{148} Therefore, exceptions to copyright holders’ exclusive right to reproduce do not fully encompass the process of supplying accessible formats to the print disabled.\textsuperscript{149} Thus, the inability to distribute the accessible-format works limits the effectiveness of a reproduction right exemption.\textsuperscript{150} By contrast, the United States and several European nations explicitly exempt both the lawful reproduction and distribution of accessible-format works.\textsuperscript{151} In many nations, however, the legality of distributing the copyrighted works after they are reproduced in accessible formats is uncertain.\textsuperscript{152}

C. Landmark Solution: New Multilateral Treaty at WIPO

The current legal landscape in national and international copyright law perpetuates the book famine, rather than alleviating it.\textsuperscript{153} Even in the United States, the Chafee Amendment and market solutions have failed to provide better access to more than 5 percent of accessible format works.\textsuperscript{154} In 1985, the IGC first suggested a new international instrument as one possible solution to harmonize the existing patchwork of copyright laws.\textsuperscript{155} More than two decades later, the mo-

\textsuperscript{145} See Study on Copyright Limitations, supra note 8, at 32.
\textsuperscript{146} Cf. Hely, supra note 15, at 1392 (“If the ability to make a profit by creating an accessible work exists, then the author or a licensee would undertake such a venture . . . .”).
\textsuperscript{147} See Study on Copyright Limitations, supra note 8, at 33 (finding nearly half of all WIPO Member States with exceptions exempt only the reproduction of accessible-format works).
\textsuperscript{148} See Lambert, supra note 2, at 5.
\textsuperscript{149} See Study on Copyright Limitations, supra note 8, at 33–34.
\textsuperscript{150} See Lambert, supra note 2, at 5.
\textsuperscript{151} Hely, supra note 15, at 1392 & nn.179–80.
\textsuperscript{152} See id. at 1392.
\textsuperscript{153} See Franz, supra note 14, at 518–20; Sebastian, supra note 19, at 238.
\textsuperscript{154} See Library Copyright Alliance Reply Comments, supra note 10, at 5.
\textsuperscript{155} See Copyright Problems, supra note 47, at 25.
mentum behind adopting a new international instrument at WIPO has finally resulted in the adoption of the Marrakesh Treaty.\textsuperscript{156}

The Marrakesh Treaty evolved from years of draft proposals and negotiations among the Member States in the SCCR.\textsuperscript{157} Article 3 of the Marrakesh Treaty provides that “beneficiary” include not only a blind person, but also a person with “visual impairment[s] or a perceptual or reading disability,” and those who are “unable, through physical disability, to hold or manipulate” reading materials.\textsuperscript{158} This functional definition not only encompasses visual, but also physical, perceptual, and learning disabilities that impair reading ability.\textsuperscript{159}

The Marrakesh Treaty addresses two critical barriers that prevent the print-disabled from accessing copyrighted works.\textsuperscript{160} First, the treaty mandates that authors’ rights are limited to provide for lawful creation \textit{and} distribution of accessible-format works.\textsuperscript{161} Second, the Marrakesh Treaty requires WIPO signatories to legalize the export and import of accessible format works made under national copyright exceptions.\textsuperscript{162}

The first barrier—lack of national minimum exceptions—exacerbates the scarcity of accessible-format works available.\textsuperscript{163} Because publishers do not make their copyrighted works accessible to individuals with print disabilities, copyright laws need to provide the legal means to produce and distribute copyrighted works in accessible formats.\textsuperscript{164} In providing this access, the Marrakesh Treaty addresses both aspects of the dual access problem—the creation and distribution of

\begin{footnotesize}
\begin{enumerate}
\item See Library Copyright Alliance Reply Comments, \textit{supra} note 10, at 11; Williams, \textit{supra} note 2, at 1049.
\item See Cox, \textit{supra} note 4, at 34–35.
\item See WIPO, \textit{Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled}, art. 3, WIPO Doc. VIP/DC/8 Rev. (July 31, 2013) [hereinafter \textit{Marrakesh Treaty}]. The treaty’s language is consistent with the term “print disabled” that George Kerscher, Secretary General of the Digital Accessible Information System (DAISY) Consortium, proposed in 1987. \textit{Compare id.}, \textit{with Kerscher, supra} note 22, para. A.1.
\item See Manon Ress et al., \textit{Comments to the Copyright Office and the USPTO Regarding the WIPO Draft Proposal to Facilitate Access to Copyrighted Works for Persons, Who Are Blind, Have Visual Impairments and Other Reading Disabilities} 4 (2009).
\item See Franz, \textit{supra} note 14, at 524.
\item See Marrakesh Treaty, \textit{supra} note 158, art. 4.
\item See \textit{id.} art. 5.
\item See Library Copyright Alliance Reply Comments, \textit{supra} note 10, at 3–4; Franz, \textit{supra} note 14, at 524.
\item Cf. \textit{Study on Copyright Limitations}, \textit{supra} note 8, at 113 (stating that exceptions for reproduction and distribution that are not limited to non-profit entities would likely cut into authors’ markets were demand for accessible formats to grow).
\end{enumerate}
\end{footnotesize}
accessible-format works.165 Specifically, the Marrakesh Treaty allows authorized entities to reproduce, distribute, and make publicly available accessible-format copies to the defined beneficiaries.166 These entities, however, must satisfy four conditions to lawfully create accessible-format works.167 The provisions specify that: (1) the party converting the work must have “lawful access” to the copyrighted work, (2) the conversion of the work must only change what is needed to make the work accessible to the beneficiary, (3) the convertor may only supply the accessible works to beneficiaries, and (4) this activity must be “undertaken on a non-profit basis.”168

The Marrakesh Treaty presents a global solution to address the second barrier—the national scope of copyright laws.169 The exceptions mandated under the first part of the Marrakesh Treaty exempt certain conduct from infringement, but only on an intra-state basis.170 Therefore, the legality of distributing accessible works across borders is uncertain.171 To rectify this issue, the Marrakesh Treaty requires states to allow cross-border exchange of accessible-format copies made under national copyright exceptions.172 Furthermore, the cross-border exchange transpires only between authorized entities and beneficiaries, presumably to reduce risks of piracy and mitigate publisher concerns.173

Creating accessible copies of copyrighted works requires considerable financial resources.174 Production costs remain high because entities in separate states must undertake their own efforts to produce individual works in accessible formats.175 Cross-border sharing, however, could drive down costs per copy because accessible-format producers in different states would not necessarily have to repeat each other’s work to produce the same title.176 It may also incentivize economies of scale

165 See Copyright Problems, supra note 47, at 25; Ress et al., supra note 159, at 1.
166 See Marrakesh Treaty, supra note 158, art. 4(1)(a).
167 See id. art. 4(2)(a).
168 Id. art. 4(2)(a) (i–iv).
169 See Study on Copyright Limitations, supra note 8, at 47 (discussing the national territoriality of copyright law even though there are a number of international treaties governing the framework for national copyright laws); Cox, supra note 4, at 33, 35.
170 See Study on Copyright Limitations, supra note 8, at 47.
171 See Kerscher, supra note 22, para. B.2. For example, Bookshare’s digital library of over sixty thousand books is only available to the print-disabled within the United States. Franz, supra note 14, at 517.
172 See Marrakesh Treaty, supra note 158, art. 5.
173 See id. art. 5. (2)(a), (b).
174 See Study on Copyright Limitations, supra note 8, at 119.
175 See id.
176 See id.
when print-disabled persons across borders want the same title. Also, organizations in the United States mainly produce accessible-format works in English, but the Marrakesh Treaty would increase access to foreign-language works. The existing international legal framework does not permit the United States to share its accessible format works and reduce duplicative production efforts, but the treaty would attempt to resolve this legal issue.

D. U.S. Obligations Under International Law

The Marrakesh Treaty fits within the United States’ current international copyright obligations. The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) permit the United States to adopt the Proposal. In addition, the UN Convention on the Rights of Persons with Disabilities (CRPD) includes several provisions that safeguard the human rights at stake in the Marrakesh Treaty.

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177 See Study on Copyright Limitations, supra note 8, at 47. For very popular books, non-profit organizations worldwide must produce separate national Braille files in, for example, Australia, Canada, the United Kingdom, the United States, and other countries, in the absence of cross-border sharing. Cox, supra note 4, at 33. These duplicative efforts force organizations to incur unnecessary expenses, which instead could be used more effectively to increase the number of accessible titles produced and made available worldwide. Id.


179 See Cox, supra note 4, at 33, 35.

180 See Marrakesh Treaty, supra note 158, art. 1 (providing that the Marrakesh Treaty shall not affect any rights that a Contracting Party has under any other treaties); Study on Copyright Limitations, supra note 8, at 9, 12; Comments of Library Copyright Alliance, the Electronic Frontier Foundation, the Internet Archive and the Chief Officers of State Library Agencies 12–21 (2009), available at http://www.copyright.gov/docs/sccr/comments/2009/comments-2/carrie-russell-library-copyright-alliance.pdf [hereinafter Library Copyright Alliance Comments]; cf. James Love, Knowledge Ecology Int’l, Comments to the Copyright Office and the USPTO Regarding the WIPO Draft Proposal to Facilitate Access to Copyrighted Works for Persons Who Are Blind or Have Other Reading Disabilities 2 (2009), available at http://www.copyright.gov/docs/sccr/comments/2009/comments-2/james-love-knowledge-ecology-international.pdf (noting that the United States is proud of its copyright exception for production for the print-disabled).

181 See Library Copyright Alliance Comments, supra note 180, at 12–13.

182 See Scheinwald, supra note 4, at 459–60.
1. Berne Convention

The Berne Convention gives authors several rights with respect to their copyrighted works in the literary, scientific, and artistic sphere.\textsuperscript{183} Specifically, the Convention establishes authors’ exclusive right to reproduction, translation, and creation of particular derivative works.\textsuperscript{184} Article 9(2) of the Berne Convention allows national exceptions to authors’ exclusive reproduction rights, provided the exceptions satisfy a three-step test.\textsuperscript{185} The three steps that exceptions must satisfy are (1) the work must be needed for a “certain special case,” (2) reproduction under the exception(s) must “not conflict with normal exploitation of the work,” and (3) reproduction must “not unreasonably prejudice the legitimate interests of the author.”\textsuperscript{186} This three-step test has since been incorporated into the TRIPS, the WIPO Copyright Treaty, and the WIPO Internet Treaties.\textsuperscript{187} Several states and the EU have created national exceptions that, while complying with the Berne Convention, also increase access for the visually impaired.\textsuperscript{188}

2. The CRPD

The CRPD recognizes that access to knowledge and information is fundamentally important to persons with disabilities.\textsuperscript{189} The CRPD entered into force in 2008, with 149 signatories, 103 of which have since ratified the Convention.\textsuperscript{190} The United States signed the CRPD in December 2012, but the Senate failed to ratify the agreement.\textsuperscript{191}

\textsuperscript{183} See Berne Convention for the Protection of Literary and Artistic Works arts. 1–2, Sept. 9, 1886, 828 U.N.T.S. 221 [hereinafter Berne Convention]; Study on Copyright Limitations, supra note 8, at 17; Hely, supra note 15, at 1378.

\textsuperscript{184} See Berne Convention, supra note 183, art. 9(1).

\textsuperscript{185} See id. art. 9(2); Study on Copyright Limitations, supra note 8, at 17.

\textsuperscript{186} Berne Convention, supra note 183, art. 9(2).

\textsuperscript{187} Hely, supra note 15, at 1378–79. The TRIPS Agreement recognizes the core objective of IP protection and enforcement as maximizing “the mutual advantage of producers and users of technological knowledge . . . conducive to social and economic welfare, and to a balance of rights and obligations.” Agreement on Trade-Related Aspects of Intellectual Property Rights art. 7, Apr. 15, 1994, 1869 U.N.T.S. 299 (1994).

\textsuperscript{188} Hely, supra note 15, at 1378–79.


\textsuperscript{190} See Cox, supra note 4, at 32.

The CRPD offers the most explicit recognition and protection of individual rights for the visually impaired. The CRPD recognizes VIPs within a broader category of persons with disabilities and provides specific rights to access information. The language in the CRPD addresses the multi-faceted needs of VIPs with regard to educational access, political engagement, and cultural participation, and accordingly grants rights to access necessary in each of these activities. Broadly, the CRPD signals greater support for disability-inclusive collaboration at the multilateral level.

For example, CRPD Article 21 obliges states to make information publicly available and accessible to persons with disabilities within a reasonable time and without additional costs. Moreover, Article 30(3) of the CRPD explicitly addresses intellectual property barriers to access. This provision requires that state parties take all necessary action "to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials."

III. Analysis

The globally debilitating effects of the book famine demand international cooperation to address the scarcity of copyrighted works available to persons with print disabilities. The WIPO Member States have shifted in favor of a more balanced international copyright regime. Now, the Marrakesh Treaty helps achieve that balance. Broadly, the Marrakesh Treaty establishes new global copyright

192 Scheinwald, supra note 4, at 459–60.
193 See CRPD, supra note 189, art. 21(a)–(b) (listing “use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions” as appropriate to ensure disabled persons’ right to free expression).
194 Scheinwald, supra note 4, at 460; see CRPD, supra note 189, arts. 9–30.
195 Cf. Lambert, supra note 2, at 2–3 (“Facilitating [VIPs'] access to information will advance human social and economic development.”).
196 CRPD, supra note 182, art. 21(a).
197 See id. art. 30(3).
198 Id.
199 See Library Copyright Alliance Reply Comments, supra note 10, at 13; Franz, supra note 14, at 524.
200 See Franz, supra note 14, at 522; P. Bernt Hugenholtz & Ruth L. Okediji, Contours of an International Instrument on Limitations and Exceptions, in The Development Agenda: Global Intellectual Property and Developing Countries 473, 474 (2009); see also Statement on Copyright Exceptions, supra note 16, at 5 (declaring the United States' support for more balanced in national and international copyright regimes).
201 See Library Copyright Alliance Reply Comments, supra note 10, at 19–20.
norms. These norms manifest that, at a minimum, persons with print disabilities need copyright exceptions to facilitate access to copyrighted works. Moreover, this new multilateral treaty harmonizes the insufficient patchwork of existing national copyright exceptions for people with print disabilities. Additionally, the Marrakesh Treaty would facilitate global sharing of accessible-format works. Collectively, the Marrakesh Treaty’s balanced approach presents a positive step toward alleviating global copyright barriers for those with print disabilities.

Consequently, the United States should support the Marrakesh Treaty as a landmark instrument to increase access to copyrighted works for people with print disabilities in the United States and worldwide. The United States’ support is critical for the effectiveness of the Marrakesh treaty in creating a more balanced international IP regime. In addition, by supporting the Marrakesh Treaty, the United States would solidify its leadership role and support for the social welfare goals that the treaty promotes. This is a momentous occasion where the United States can support an IP treaty that stands to benefit persons with print disabilities in both developed and developing nations.

As discussed earlier, the access dilemma confronting the print-disabled is complex and involves copyright law, technology, and market

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202 Cf. Love, supra note 180, at 2 (stating that a WIPO Treaty would harmonize copyright norms globally).
203 See Library Copyright Alliance Reply Comments, supra note 10, at 12.
204 See Love, supra note 180, at 2.
205 See Marrakesh Treaty, supra note 158, art. 5; Maurer, supra note 19, at 8.
206 Compare Study on Copyright Limitations, supra note 8, at 100–01, with supra notes 198–199 and accompanying text (indicating the benefits that would likely stem from the type of norms the Proposal would implement).
208 See Library Copyright Alliance Reply Comments, supra note 10, at 7–8, 10; Statement on Copyright Exceptions, supra note 16, at 5.
209 See Electronic Frontier Found., supra note 114 (noting that that the United States has an important leadership role in improving persons with print disabilities access to copyrighted works); Library Copyright Alliance Reply Comments, supra note 10, at 7–8, 10; Love, supra note 180, at 3.
210 See Love, supra note 180, at 3.
failure requiring both national and international efforts.\textsuperscript{211} Notwithstanding the benefits that can flow from the new Marrakesh Treaty, it does not present a comprehensive solution to eradicate the book famine.\textsuperscript{212} Therefore, in addition to supporting the treaty, the United States should address aspects of its domestic copyright laws that the Marrakesh Treaty does not address to complement it and provide broader access.\textsuperscript{213}

\textbf{A. Supporting the Marrakesh Treaty: Implications for the United States}

Over a decade ago, with the passage of the Chafee Amendment, the United States pioneered the creation of domestic copyright exceptions to benefit the “blind or other persons with disabilities.”\textsuperscript{214} Building on this precedent, the Marrakesh Treaty advances global copyright norms through similar copyright exceptions.\textsuperscript{215} These international norms address the impact of copyright law on human rights, disability rights, and the societal needs of developing nations.\textsuperscript{216} Prior to the adoption of the Marrakesh Treaty, the WIPO Proposal was heralded as the “cornerstone of WIPO history on working for human rights.”\textsuperscript{217} In contrast to the traditional efforts at WIPO to strengthen author rights, this treaty embraces the global aims underlying the WIPO Development Agenda.\textsuperscript{218}

As a global pioneer of national law exceptions benefitting the “blind or other persons with disabilities,” the United States’ support for the Marrakesh Treaty would illustrate its disability-inclusive goodwill.

\textsuperscript{211} See Study on Copyright Limitations, supra note 8, at 14; Library Copyright Alliance Reply Comments, supra note 10, at 13.

\textsuperscript{212} Cf. Library Copyright Alliance Reply Comments, supra note 10, at 5 (stating that only 5 percent of copyrighted works are available in accessible formats in the United States, where exceptions like those in the Proposal are in force).

\textsuperscript{213} See Library Copyright Alliance Reply Comments, supra note 10, at 13; Love, supra note 180, at 2; Maurer, supra note 19, at 7; see also Statement on Copyright Exceptions, supra note 16, at 2 (acknowledging that additional steps are needed to increase access, but nevertheless the United States is proud of what the Chafee Amendment has accomplished).

\textsuperscript{214} See Cox, supra note 4, at 33; Statement on Improving Accessibility, supra note 86, at 1–2.

\textsuperscript{215} See Benetech, supra note 207, at 2; see also Statement on Copyright Exceptions, supra note 16, at 1–2 (noting achievements under Chafee Amendment).

\textsuperscript{216} Cf. Library Copyright Alliance Reply Comments, supra note 10, at 18 ("WIPO and the international copyright system it administers thrive on the idea of creativity and innovation that enable people and societies to evolve and achieve.").


\textsuperscript{218} See WIPO Development Agenda, supra note 75, para. 45; Williams, supra note 2, at 1049.
and effectuate the human rights principles of the CRPD to increase disabled persons’ access to information and technology.\textsuperscript{219} Notwithstanding the United States’ failure to ratify the CRPD, it should take affirmative steps to comply with Article 30(3).\textsuperscript{220} Such steps would signal that the United States not only recognizes the copyright barriers to access for the print-disabled, but also that it is willing to undertake measures to alleviate those barriers.\textsuperscript{221}

The United States should support the Marrakesh Treaty to not only further normative policy goals, but also because the treaty would likely increase access to copyrighted works for print-disabled persons in the United States and worldwide.\textsuperscript{222} Despite the United States’ regulatory and market-based efforts, the mere 5 percent of copyrighted works available in the United States confirms that the present national and international copyright system is inadequate to meet needs of the print-disabled.\textsuperscript{223}

The static language of the Chafee Amendment has become outdated.\textsuperscript{224} At the time of its passage, the amendment was viewed as simple legislation with a clearly defined end beneficiary.\textsuperscript{225} Over time, however, the restrictions under the Chafee Amendment to the “blind or other persons with disabilities” to use “specialized formats” have been deemed inconsistent and unclear.\textsuperscript{226} This definition has been criticized as inconsistent with other U.S. disability laws because those laws include “print disabilities” that have been interpreted broadly to include not just physical or visual impairments.\textsuperscript{227} Moreover, because the exception is intended to address a person’s inability to access copyrighted materials, the nature of the disability should not be the focus, but rather whether published materials are accessible.\textsuperscript{228}

\textsuperscript{219} See Library Copyright Alliance Reply Comments, infra note 10, at 8; cf. Lambert, supra note 2, at 10 (stating that the CRPD was intended to “mainstream disability in the development agenda”).

\textsuperscript{220} See CRPD, supra note 189, art. 30(3); Love, supra note 180, at 1.

\textsuperscript{221} See Love, supra note 180, at 2–3.

\textsuperscript{222} See id.; Franz, supra note 14, at 526–27 (highlighting the various benefits of the Proposal).

\textsuperscript{223} See Karger, supra note 95, at 9 (discussing both the market and regulatory approaches utilized in the United States); Library Copyright Alliance Reply Comments, supra note 10, at 5; Franz, supra note 14, at 517.


\textsuperscript{225} See Adler, supra note 25, at 7.

\textsuperscript{226} 17 U.S.C. § 121; see Ress et al., supra note 159, at 4.

\textsuperscript{227} See Ress et al., supra note 159, at 4.

\textsuperscript{228} See id.
The Marrakesh Treaty, in contrast, adopts a more functional definition of beneficiary than the Chafee Amendment by incorporating the concept of “print disability.” A functional definition is targeted to an individual’s inability to read published materials and, therefore, it broadly captures other visual or physical impairments. For the United States, utilizing a more functional definition would update and clarify access under the Chafee Amendment because those with other perceptual or cognitive disabilities could benefit from the exception. By clarifying the end beneficiary, this definition would reduce the uncertainty and legal risks for “authorized entities” in producing and distributing accessible format works.

Additionally, the Marrakesh Treaty aims to create a lawful global platform to share accessible works for people with print disabilities.

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229 See id.; see also Study on Copyright Limitations, supra note 8, at 111 (“A functional definition [of end beneficiary] would be based on a person’s inability to read the material that has already been published.”). The Marrakesh Treaty provides the following definition:

A beneficiary is 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.

**Marrakesh Treaty, supra note 158, art. 3.**

230 See supra note 222, and accompanying text.

231 See Ress et al., supra note 159, at 4; Study on Copyright Limitations, supra note 8, at 111. Furthermore, the WIPO treaty definition would harmonize “blind and other persons with disabilities” with other functional definitions in U.S. disability laws. Ress et al., supra note 159, at 4. For instance, under the Individuals with Disabilities Act (IDEA), the definition of a “child with a disability” encompasses visual, physical, and perceptual disabilities. Id.; see supra note 225.

232 See Ress et al., supra note 159, at 3–6. The Education for All Handicapped Children Act of 1975 and the IDEA both define “child with a disability” as “a child . . . with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and . . . who, by reason thereof, needs special education and related services.” Individuals with Disabilities Education Act § 101(a)(1), 14 U.S.C. § 1401(3)(A) (2006); Education for all Handicapped Children Act of 1975, § 4(a), Pub. L. No. 94–142, 89 Stat. 773 (1975).

233 See Marrakesh Treaty, supra note 158, art. 5; Maurer, supra note 19, at 8. The benefits not only extend to the United States; other countries would reap tremendous benefits from the cross-border sharing provisions. See Aisola & Filak, supra note 178, at 4–5 (dis-
The United States is the largest producer of accessible-format copies in the world and, therefore, United States participation is essential to the viability of the cross-border sharing dimension of the treaty.\textsuperscript{234} The innovative efforts for the print-disabled at Bookshare place the United States in a unique position to significantly contribute to the cross-border sharing aspect of the treaty.\textsuperscript{235} Digital works in the Bookshare library could be easily shared across U.S. borders to supplement existing accessible work collections or provide the first English-language accessible-format works.\textsuperscript{236}

Moreover, opening up legal channels to permit the sharing of accessible formats between countries would potentially create an accessible-format industry.\textsuperscript{237} The demand for the same accessible works across countries could drive down the costs for the producers of these works because they would create a larger amount of copies.\textsuperscript{238} Non-profits or other organizations could capitalize on the potential for increased economies of scale stimulating the creation of more published works in accessible formats.\textsuperscript{239}

Persons with print disabilities in the United States also stand to benefit from the cross-border sharing dimension of the Marrakesh Treaty.\textsuperscript{240} After all, the mere 5 percent of published works available to the estimated 1.3 million blind people (not including persons with other disabilities) in the United States is insufficient to meet the population’s basic access needs.\textsuperscript{241} This classic market failure in the United States underscores the need to pursue alternative means, like the treaty,
to address the paucity of accessible format works available both in the United States and worldwide.\textsuperscript{242} By legalizing the export and import of accessible-format works, the Marrakesh Treaty seeks to provide a platform to reduce costly, duplicative efforts.\textsuperscript{243} In doing so, authorized organizations in each country would no longer need to incur the significant preparatory costs to create accessible-format works because the works could be imported.\textsuperscript{244} Therefore, these organizations could allocate their limited resources more efficiently to increase the number of titles available to persons with print disabilities.\textsuperscript{245} Although publishers could facilitate the sharing of their works across borders, past experience demonstrates that access to copyrighted works cannot be left to business judgments of publishers.\textsuperscript{246} The Marrakesh Treaty provides a viable legal framework for contracting states to import and export accessible-format copies without relying on publishers and authors.\textsuperscript{247} Under the Marrakesh Treaty, the United States could import foreign accessible format works in other languages to benefit those with print disabilities within U.S. borders.\textsuperscript{248}

B. Marrakesh Treaty as a Vehicle to Modernize U.S. Copyright Laws

The complex nature of barriers to print access necessitates copyright reform efforts at both the national and international level.\textsuperscript{249} Even though the formal adoption of the Marrakesh Treaty is a positive step forward, it is not a comprehensive global solution for persons with print disabilities.\textsuperscript{250} Accordingly, WIPO Member States must continue

\textsuperscript{242} See Library Copyright Alliance Reply Comments, supra note 10, at 3, 5; Benetech, supra note 207, at 1.
\textsuperscript{243} See Marrakesh Treaty, supra note 158, art. 5; Study on Copyright Limitations, supra note 8, at 119.
\textsuperscript{244} See Marrakesh Treaty, supra note 158, art. 5; Study on Copyright Limitations, supra note 8, at 119.
\textsuperscript{245} See Study on Copyright Limitations, supra note 8, at 119; Library Copyright Alliance Reply Comments, supra note 10, at 5; Memorandum from Marybeth Peters, supra note 118, at 77.
\textsuperscript{246} See Study on Copyright Limitations, supra note 8, at 89; Benetech, supra note 207, at 1.
\textsuperscript{247} Cf. Ress et al., supra note 159, at 10 (discussing WIPO’s stakeholders platform, wherein publishers and non-profit entities examine both voluntary and non-voluntary (on the publishers’ behalf) databases for accessible formats).
\textsuperscript{248} See Marrakesh Treaty, supra note 158, art. 6; Aisola & Filak, supra note 178, at 4–5.
\textsuperscript{249} See Maurer, supra note 19, at 5–6; Lambert, supra note 2, at 2.
\textsuperscript{250} See Study on Copyright Limitations, supra note 8, at 107; Library Copyright Alliance Reply Comments, supra note 10, at 13.
their own national efforts.\textsuperscript{251} For the United States, the Marrakesh Treaty does not address certain narrow issues of U.S. copyright laws that could facilitate broader access for persons with print disabilities.\textsuperscript{252} Consequently, the United States should utilize the adoption of the Marrakesh Treaty as an opportunity to update its own national laws.\textsuperscript{253} In doing so, the United States could demonstrate not only strong leadership on global disability and human rights issues, but also set an example that additional national copyright reforms are needed to complement the Marrakesh Treaty.\textsuperscript{254}

In the digital age, emerging technologies hold great promise for persons with print disabilities.\textsuperscript{255} Despite the potential of these digital forms to be mainstream accessible works, persons with print disabilities in the United States have failed to reap the benefits because of novel legal questions regarding the Chafee Amendment.\textsuperscript{256} Since the Marrakesh Treaty does not address these questions, the United States needs to clarify the reach of the Chafee Amendment.\textsuperscript{257}

Starting with the language of the Chafee Amendment, it is not clear whether reproductions of electronic texts fall within the current exception.\textsuperscript{258} Although the National Federation for the Blind believes that the Chafee Amendment does cover electronic texts, it calls for authoritative approval of that interpretation.\textsuperscript{259} Therefore, the uncertainty

\textsuperscript{251} See Library Copyright Alliance Reply Comments, \textit{supra} note 10, at 13; Love, \textit{supra} note 180176, at 2.

\textsuperscript{252} Cf., e.g., Maurer, \textit{supra} note 19, at 7 (noting, separate from its analysis of international proposals, that Congress may have to act to apply access-control-circumvention mandates to e-texts).

\textsuperscript{253} See Library Copyright Alliance Reply Comments, \textit{supra} note 10, at 7–8, 13; Maurer, \textit{supra} note 19, at 7.

\textsuperscript{254} See Library Copyright Alliance Reply Comments, \textit{supra} note 10, at 7–8, 13; Maurer, \textit{supra} note 19, at 7–8.

\textsuperscript{255} Maurer, \textit{supra} note 19, at 3.

\textsuperscript{256} See Electronic Frontier Found., \textit{supra} note 114; Maurer, \textit{supra} note 19, at 6, 8 (noting the “Gordian knot” facing persons with print disabilities through digital rights management and the DMCA); Maria A. Pallante, Register of Copyrights, Section 1201 Rulemaking: Fifth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention 24 (2012), available at http://www.copyright.gov/1201/2012/Section_1201_Rulemaking _2012_Recommendation.pdf (finding that the Chafee Amendment is “ill-suited to the digital world” and, as a result, Congress should thoroughly review its provisions); Ress et al., \textit{supra} note 159, at 3.

\textsuperscript{257} See Library Copyright Alliance Reply Comments, \textit{supra} note 10, at 13; Maurer, \textit{supra} note 19, at 13.

\textsuperscript{258} See Maurer, \textit{supra} note 19, at 5–6; cf. Study on Copyright Limitations, \textit{supra} note 8, at 115 (discussing the benefits of DAISY formats, but also how many national exceptions for “special formats” do not likely include the DAISY or digital media).

\textsuperscript{259} Maurer, \textit{supra} note 19, at 5.
that flows from the present language makes the Chafee Amendment insufficient to ensure proper access to electronically accessible formats. Additionally, because sighted individuals and the print-disabled could use commercially available e-books, these digital works might not be considered for the “exclusive” use of the “blind or other persons with disabilities.” Since the amendment was adopted at a time when Braille and audio formats were most prevalent, Congress should now modernize the language to more clearly cover e-books and digital files.

The Chafee Amendment defines “authorized entity” as a “non-profit organization or a governmental agency that has a primary mission to provide specialized services” to increase accessibility. As defined, “primary mission,” is ambiguous and welcomes publishers or others to contest its applicability to—for example—university disability service offices or public libraries. Congress should amend the Chafee Amendment so that its language is not construed as a technical impediment to the beneficial efforts of libraries or educational institutions.

To complement the Chafee Amendment, the legal doctrine of fair use provides an alternative defense against potentially infringing creations of accessible format works for the blind. The Marrakesh Treaty lends support for the application of fair use to facilitate increased access for the blind. The flexible fair use doctrine, however, is unique to the United States, and as a result, the Marrakesh Treaty does not di-

260 See id. at 6 (discussing fair use doctrine’s applicability to accessible-format distribution “because of ambiguities surrounding . . . the Chafee Amendment”).
261 See Ress et al., supra note 159, at 3.
262 See id.; Maurer, supra note 19, at 2–5; see also The Register’s Call for Updates to U.S. Copyright Law Before the Subcomm. on Courts, Intellectual Property and the Internet Comm. on the Judiciary, 113th Cong. 1 (2013) (statement of Maria A. Pallante, Register of Copyrights) (calling for a comprehensive review of U.S. copyright to achieve greater balance to accommodate changes in society).
263 17 U.S.C. § 121(d) (1).
264 See Study on Copyright Limitations, supra note 8, at 114 (discussing how technology has expanded the types of organizations that can produce accessible-format works); Ress et al., supra note 159, at 3.
265 See Maurer, supra note 25, at 5; see also Study on Copyright Limitations, supra note 8, at 114 (“Exceptions that limit activity to organizations which have a primary mission helping people with a disability could in particular rule out much assistance that could be given to visually impaired people by mainstream schools and libraries for example.”); cf. Authors Guild, Inc. v. HathiTrust, No.11–6351, 2012 WL 4808939, at *15 (S.D.N.Y. Oct. 10, 2012) (interpreting the work of libraries in educational institutions in light of the Americans with Disabilities Act (ADA)).
266 See 17 U.S.C. §§ 107, 121.
267 See Maurer, supra note 19, at 7.
rectly impact its role in the United States.\textsuperscript{268} Despite the well-established history of fair use to aid print-disabled users, the United States should reaffirm the importance of traditionally-accepted flexible fair use applications as technological advances present new legal questions.\textsuperscript{269} Congress can use the recent \textit{HathiTrust} judgment as support for a fair use application that encompasses such “transformative” and socially beneficial uses.\textsuperscript{270}

To support accessibility in accordance with the Marrakesh Treaty, WIPO Member States should harness advances in technology.\textsuperscript{271} For its part, the United States should address the DMCA’s “accessibility loophole” because people with print disabilities rarely possess the sophisticated means necessary to circumvent the TPMs without assistive devices.\textsuperscript{272} Without Congressional action to address this loophole, persons with print disabilities are deprived of a meaningful form of self-help to access copyrighted works.\textsuperscript{273}

Because the Marrakesh Treaty does not address the DMCA’s harmful legislative impediment, either Congress or the Librarian of Congress should make available assistive tools for limited acts of circumvention.\textsuperscript{274} By taking this additional step, persons with print disabilities can independently employ their external software or text-to-speech func-

\textsuperscript{268} See \textit{id.} at 7–8 (stating that a treaty would encourage “progressive interpretations of existing law”).


\textsuperscript{270} See \textit{HathiTrust}, 2012 WL 4808939, at *14 (“[T]he court cannot imagine a definition of fair use that would not encompass the transformative uses made by the Defendants’ MDP and would require I terminate this invaluable contribution to the progress of science and cultivation of the arts that at the same time effectuates the ideals espoused by the ADA.”); \textit{see also Maurer, supra note 19}, at 6 (“[R]ecasting text works in accessible formats . . . is . . . transformative use.”).

\textsuperscript{271} See \textit{Marrakesh Treaty, supra note 158}, pmbl.; \textit{cf. Maurer, supra note 19}, at 3 (discussing potential benefits from new technologies); \textit{Sebastian, supra note 19}, at 238 (“[T]he global information society has given rise to international legal barriers to reading for print disabled people that can and ought to be removed at the level of WIPO.”).


\textsuperscript{273} See \textit{Peters Memorandum, supra note 118}, at 71 & n.121; \textit{Electronic Frontier Found., supra note 114}.

\textsuperscript{274} See \textit{Marrakesh Treaty, supra note 158}, art. 7 (stating that Contracting Parties shall take measures, as needed, to provide protection and remedies against the circumvention of technological measures); \textit{Electronic Frontier Found., supra note 114}; \textit{Ress et al., supra note 159}, at 3; \textit{cf. Hartzog, supra note 272}, at 337 (noting the insufficient scope of the Chafee Amendment’s exception in light of the DMCA).
tions to access digital content.\textsuperscript{275} Otherwise, the print-disabled are unable to utilize the exception created through the DMCA rulemaking process.\textsuperscript{276}

Finally, the United States should not view the Marrakesh Treaty as a substitute for its national efforts to encourage private licensing agreements.\textsuperscript{277} A new multilateral treaty is necessary because of the prior market failure in the publishing industry, but adopting the Marrakesh Treaty does not preclude concurrently pursuing voluntary agreements.\textsuperscript{278} In fact, the complex nature of the access dilemma demands a multi-faceted approach to achieve progress.\textsuperscript{279} Accordingly, even though voluntary stakeholder agreements in the private sector alone will not solve the access dilemma, they could diversify the viable alternatives for making more works available in accessible formats.\textsuperscript{280} These agreements among authors, publishers, and advocacy groups could license or make accessible-format works commercially available to the print-disabled, because they are willing to pay market price or above to access works.\textsuperscript{281}

For example, Google expressed strong support for a new multilateral treaty at WIPO, while also reiterating its private commitment to alleviating barriers to access for persons with print disabilities.\textsuperscript{282} The United States should harness support from companies like Google to foster new partnerships and technological solutions in the marketplace to alleviate barriers to access.\textsuperscript{283} To that end, the WIPO Stakeholder Platform provides a forum for stakeholders to make voluntary agreements that permit the lawful transfer of licensed material to benefit

\textsuperscript{275} See Electronic Frontier Found., supra note 114.
\textsuperscript{276} See id.; Hartzog, supra note 272, at 337.
\textsuperscript{277} See Library Copyright Alliance Reply Comments, supra note 10, at 5; cf. Franz, supra note 14, at 525 (stating that the voluntary WIPO stakeholders’ platform, in spite of its weaknesses, is welcome progress, even in light of the potential for a new multilateral treaty at WIPO).
\textsuperscript{278} See Franz, supra note 14, at 525–26.
\textsuperscript{279} See id. at 526–27.
\textsuperscript{280} Cf. Library Copyright Alliance Reply Comments, supra note 10, at 5 (stating the availability of private licensing to publishers, and pointing to insufficient pursuit of such licenses as a major shortcoming of the current regime).
\textsuperscript{281} See Franz, supra note 14, at 526; Maurer, supra note 19, at 3–4; see also Study on Copyright Limitations, supra note 8, at 123 (discussing the potential stakeholders to engage in these discussions at the international level).
\textsuperscript{283} See id.; Franz, supra note 14, at 525; Library Copyright Alliance Reply Comments, supra note 10, at 13.
persons with print disabilities.\textsuperscript{284} This platform provides a foundation for the United States’ efforts to secure more voluntary cooperation among publishers and authors.\textsuperscript{285} The United States should continue to pursue voluntary cooperation with industry stakeholders while also supporting the Marrakesh Treaty.\textsuperscript{286}

**CONCLUSION**

Thirty years of discussions, studies, and proposals to address the access barriers to copyrighted works facing persons with print disabilities have taught us that a new international instrument is necessary to alleviate the book famine. Now, the Member States at WIPO are on the brink of that solution—a landmark treaty—to alleviate the copyright barriers to published works for the print-disabled. The unparalleled impact of the Marrakesh Treaty on the lives of the 285 million VIPs and print-disabled worldwide is unequivocal. Consequently, the United States must confirm its commitment to a balanced international copyright regime by signing and ratifying the Marrakesh Treaty. Moreover, since the Marrakesh Treaty is not a comprehensive solution, the United States must continue its national efforts to achieve equitable access for persons with print disabilities.

\textsuperscript{284} See Franz, *supra* note 14, at 525.


\textsuperscript{286} See Library Copyright Alliance Reply Comments, *supra* note 10, at 5; cf. Franz, *supra* note 14, at 525.