

Managing in Light of ***Marrakesh***:
Making Materials Available to Canadians
with Print Disabilities

Victoria Owen,

Chief Librarian, University of Toronto Scarborough,

Margaret Ann Wilkinson,

Law Professor, Western University,

Margaret Williams,

Centre for Equitable Library Access (CELA)

Session Agenda: Overview

1. Background
2. Where does *Marrakesh* fit into the Canadian legal framework?
3. Implementation at a practical level
4. How can I get a book today?

Session Agenda: Background

1. **Background**
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Title "Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled"



- **Goal** – to end the book famine. Change the number of books available to people with print impairment from between 5-7% to 100%

About “our” Marrakesh Treaty...

- ***Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled***
 - See www.wipo.int/edocs/mdocs/diplconf/en/vip_dc/vip_dc_8.pdf
- Recently, certainly in library circles, “Marrakesh Treaty” is taken to refer to this development, but there are other “Marrakesh” agreements!
- On the World Intellectual Property Organization (WIPO) site, this one is referred to as the “Marrakesh VIP Treaty”
- At the World Trade Organization (WTO), the Marrakesh Agreement Establishing the WTO was signed April 15, 1994 (at the end of the Uruguay Round of negotiations – and is also known as the “Uruguay Round Agreement”)

Marrakesh Treaty

- Years of preparation
 - CNIB Library for the Blind – prepped documents in 1993 for use at WIPO
- Diplomatic Conference called to negotiate the Marrakesh Treaty, 2013
- First users' rights treaty
- Great opposition from developed countries, European Union and rightsholder groups, (publishers, motion picture industry)

Shift away from Rights Holders

- Civil society took on an advocacy role
- WIPO Subcommittee on Copyright and Related Rights (SCCR) commissioned studies on Limitations & Exceptions; the visually impaired, and education
- In 2008 World Blind Union proposed a treaty for the visually impaired – unique action
- In 2009 Member States, Brazil, Ecuador and Paraguay formally introduced the treaty text into the SCCR

India was the First to Ratify



Key international development

- ***Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled***
 - See www.wipo.int/edocs/mdocs/diplconf/en/vip_dc/vip_dc_8.pdf
- Designed to be acceptable under, and compatible with, existing copyright treaties in force at WIPO, at the World Trade Organization [WTO], and elsewhere (see paragraph 10 of the Preamble): adopted by WIPO – June 27, 2013
- **60** countries signed (not Canada, not Japan) but, beyond that signing, **20** nations were required to ratify or accede in order to bring it into force (see Article 18) and make it part of international law: on June 30, 2016 Canada was the 20th to accede and *Marrakesh* came into force on September 30, 2016!

Progress on the Marrakesh Treaty

- **Accessions** to date: Singapore, United Arab Emirates, Israel, Canada, St Vincent & The Grenadines, Botswana, Sri Lanka, Liberia
- **Ratifications** to date: India, El Salvador, Mali, Paraguay, Uruguay, Argentina, Mexico, Mongolia, Korea, DPR Korea, Australia, Brazil, Peru, Chile, Ecuador, Guatemala, Tunisia. WIPO website as of Jan 18, 2017
- *Marrakesh* binds Canada and other signatories just as other UN obligations bind nation states.

Accession

- "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. **It has the same legal effect as ratification.**
 - [Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]

Ratification




- Ratification defines the international act whereby a state indicates its consent to be bound to a treaty...
- The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.
 - [Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]
- https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml#ratification

Entry into Force

- Typically, the provisions of the treaty determine the date on which the treaty enters into force...
- In cases where multilateral treaties are involved, it is common to provide for a fixed number of states to express their consent for entry into force...
- A treaty enters into force for those states which have given the required consent.
 - [Art.24, Vienna Convention on the Law of Treaties 1969]

Enabling Legislation

??

- India, Chile, Australia, and others had MT compliant legislation; Canada, Singapore... revised laws
 - Inclusive language for persons with disabilities;
 - Authorized entities not unduly restricted;
 - Accessible format – large print now included 
 - A few commercial availability clauses 
 - A few with royalty clauses 
 - Export provisions – open & restricted

Implementation – Case Study

- Entry into force September 30th 2016
 - Canada-Australia exchange was symbolic
- While Australia seems to have *Marrakesh Treaty*-compliant legislation, it is waiting on improved legislation to remove barriers that prevent import of materials

Implementation – Early Achievements

- **GREAT Achievement to have *Marrakesh!***
- Authorized entities are getting organized
 - Allow discovery and facilitate exchange
- South America
 - Brazil, Chile and Argentina have set up an exchange
 - Using 'dropbox' for the transfer
- Proposing a Summit to work on practical plans to implement *Marrakesh*



Countries ratifying or acceding to the Treaty must:

1. Allow an exception to national copyright law to allow for visually impaired and print disabled people, and the organizations that serve them to create works in accessible formats.
 - Limitations and exceptions to copyright law allow uses without requiring permission of the right holders.

Provisions that Facilitate Access

- **Art 4.** Limitation or exception in national copyright laws for reproduction, distribution and making available – to facilitate availability of accessible works
- **Art 5 & 6.** Allows for cross-border exchange and importation of accessible format copies



Other Provisions - Improve Access

- **Art 2. Definitions**
 - Accessible format copy
 - Format neutral – to provide beneficiary with access
 - Authorized entity
 - No mandatory registration
 - Authorized or recognized by government, or not
 - Not-for-profit requirement
 - Create and follow its own practices
- **Art 3. Beneficiary Persons**
 - Blind, visually impaired, perceptual or reading disability, physical disability

Additionally

Art 7. Technological protection measures may be removed to grant access to the beneficiaries of the Treaty.

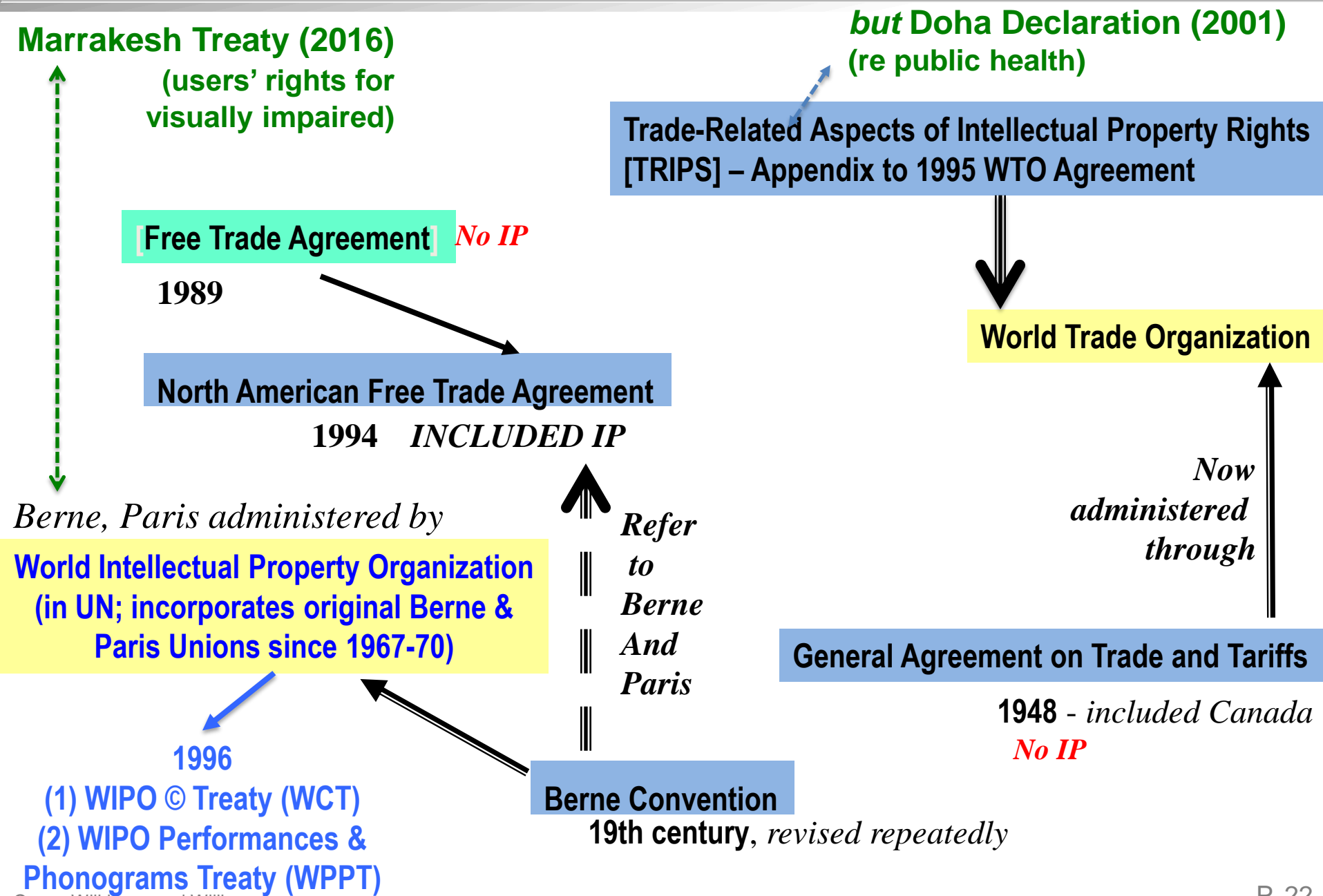
Art 8. Privacy protection



Session Agenda: Legal Framework

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- 2. Where does *Marrakesh* fit into the Canadian legal framework?**
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Trade treaties increasingly constrain national IP decisions.



International Copyright Environment

Public Int'n'l Law (cooperative)

UNITED NATIONS
(World Intellectual Property Organization)

Berne Convention (1886)

WIPO Copyright Treaty (1996)

WPPT (1996)
[WIPO Performances & Phonograms Treaty]

Marrakesh Convention (2016)

Int'n'l Trade Law (coercive)

World Trade Organization

**Trade-Related Aspects of
Intellectual Property Rights
[TRIPS] (1995)**

international

regional

**North American Free Trade
Agreement [NAFTA] (1994)**

**Other bi- or multi- lateral : e.g.
Canada-Europe Trade Agreement
[CETA] (2016 but not yet in force)**

*No US now, no TPP [Trans Pacific
Partnership]*

In TRIPS –

Specifically, with trade sanctions available:

Article 13 on **COPYRIGHT**:

Members **shall** confine limitations or exceptions to exclusive rights

- to certain special cases
- which do not conflict with a normal exploitation of the work
- and do not unreasonably prejudice the legitimate interests of the right holder.

Public Interest Considerations, in the section of TRIPS on **GENERAL PROVISIONS AND BASIC PRINCIPLES**

Article 8:

1. Members **may**, . . . adopt measures necessary . . . to promote the public interest in sectors of vital importance to their socio-economic and technological development, **provided that such measures are consistent with the provisions of this Agreement.**

2. Appropriate measures, **provided that they are consistent with the provisions of this Agreement**, may be needed

- to prevent the abuse of intellectual property rights by right holders or
- the resort to practices which
 - unreasonably restrain trade or
 - adversely affect the international transfer of technology.

The 3 step test is preserved in *Marrakesh*:

Preamble:

Reaffirming the obligations of Contracting Parties under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international instruments,

Article 1

Relation to Other Conventions and Treaties

Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties.

Bringing international law into the laws of nation states:

- Some countries of the world have “direct” reception of international law into their “domestic” (national) law
 - When such a country signs a treaty, it becomes immediately part of the domestic law of that state;
 - Kenyan law, for example, behaves more this way than Canadian...
- A federated state, such as Canada, cannot do that
 - here the federal government is responsible for treaties (*Constitution Act, 1867, s 132*),
 - but implementation, in areas of exclusive provincial constitutional jurisdiction (see *Constitution Act, 1867, s 92*), cannot be accomplished by the federal government and so signing a treaty, constitutionally, cannot mean that international law is received directly into the law of the provinces... and therefore international law cannot be received directly into Canadian law at all...

Implementing Copyright in Canada:

- The *Constitution Act, 1867*, s 91(23) gives Parliament the exclusive power over “copyrights”
- So, in Canada, the federal government was able to not only enter into *Marrakesh*, but Parliament was also able to unilaterally implement it.
- **Canadian libraries are directly responsible for complying with the *Copyright Act* (not the *Marrakesh Treaty*)...**

Canada's Implementation vis-à-vis *Marrakesh*:

- Parliament specifically made amendments to the Copyright Act in order to comply with *Marrakesh*, through “An Act to amend the Copyright Act (access to copyrighted works or other subject-matter for persons with perceptual disabilities),” SC 2016, c 4, which received Royal Assent on June 22, 2016.
- Canada had always been one of the leading nations in terms of Copyright Act provisions for the blind, even before *Marrakesh* was contemplated internationally
- Parliament made two sets of changes in the Act:
 - New “perceptual disability” definition in ss 2 and 32, governing activities within Canada (and including both visual and hearing impairment)
 - Import & export provisions, particularly with other *Marrakesh* signatories, in s 32.01, where the defined beneficiaries are those with print disabilities (defined in s 32.01(8))

Where copyright interests are involved, the Copyright Act prevails over provincial legislation focussing on disabilities:

Note: arguing that a library took action pursuant to the dictates of provincial disability legislation will be no defence when a rights holder sues for copyright infringement:

- This applies currently in respect of the Accessibility for Ontarians with Disabilities Act [AODA] (2005); and Accessibility for Manitobans Act [AMA] (2013);
- And will also apply to the further provincial enactments in progress in British Columbia, Saskatchewan, Nova Scotia, Newfoundland & Labrador.

Session Agenda: Putting into Practice

1. Background
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Meet Celina, 'Beneficiary'

- Lives in Canada
- Speaks English, French, Polish
- Teenager, aging parents
- Small business owner
- Syrian refugee sponsor
- Reads about business, politics, parenting
- Losing vision
- Uses text magnification, highlighting, audio



What Is In Place Now (and Historically)

- International networks
 - International Federation of Library Associations – Libraries Serving Persons with Print Disabilities section,
<http://ifla.org/lpd>
 - DAISY Consortium daisy.org
- Bi- or multilateral exchanges AND/OR centralized exchange
 - Cooperative agreements between libraries +
 - National laws complying with Marrakesh Treaty
 - Agreements between libraries and rights holders
 - Permissions clearance title by title

Bi- or Multilateral Exchanges

Typically among libraries within a country or between countries where:

- Service needs and delivery are similar:
 - Languages and cultures
 - Reading materials (content)
 - Alternate formats
 - Reading apps and devices
 - Cataloguing practices
- Libraries work cooperatively on:
 - collection development (e.g., Arabic)
 - discovery and access
 - standards and technology

Nordic countries



South America



Centralized Exchange - History

GAL Survey Respondents

Australia
Canada
China (H. Kong)
Croatia
Denmark
Egypt
Finland
France
Germany
India
Israel
Italy
Japan
Korea
Malaysia
Netherlands
New Zealand
Norway
South Africa
Sri Lanka
Sweden
UK
USA

- Global Accessible Library (GAL), 2008
 - Library-driven
 - **Showstopper**: copyright
- TIGAR (Trusted Intermediaries Global Accessible Resources), 2010
 - Merger of GAL with Trusted Intermediaries (TI) initiative of rights holders
 - Technical framework for Marrakesh (option)
 - Functioning since 2011
 - Initial boycott by World Blind Union – avoid weakening argument for treaty

Centralized Exchange - Current

- Book Exchange, **Accessible Books Consortium (ABC)**, 2014
- Multi-stakeholder platform
- Board representation:
 - 8 users : 6 rights holders
- 3 initiatives:
 - Book Exchange
 - Capacity Development (developing countries)
 - Inclusive Publishing (e.g., baseline for born-accessible EPUB)



accessiblebooksconsortium.org

ABC Book Exchange – What Is It?

- **Shared catalogue** of digital accessible books produced by participants
- **Permissions management** system and request service - *for countries not yet compliant with Marrakesh or with limitations (e.g., export restrictions)*
- **Secure facility** for requesting, uploading and downloading files
- **Reporting system** for usage statistics *to measure value of service*

ABC handles pre-Marrakesh, post-Marrakesh and everything in between.

ABC Book Exchange – Getting Started

A. Sign an ABC agreement

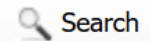
- Titles you agree to share
- Files at request of Authorized Entity or rights holder
- High-level, anonymous usage statistics

B. Add your information to the shared catalogue

- Upload metadata - from full MARC to simple spreadsheet
- Synchronization can be automated
- Download metadata from other producers

C. Exchange accessible books

- Provide files on request from other producers
- Upload can be automated, system trigger on request
- Download files for your own repository



Format

[Reset filters](#)

☒ Select all

☒ Clear all

☒ Add to wishlist

☒ Export results to CSV

☐ Daisy Audio (9047)

☒ Daisy Text (1811)

1 - 25 of 1811 results

Language

☐ English (7050)

☒ Polish (1811)

☐ Bengali (14)

☐ Nepali (11)

☐ Undetermined (1)

Permission status

☐ Rights cleared (16539)

Production status

☐ Available (251467)

☐ In Progress (2639)

Producer

☐ DZDN (1811)

File status

☐ Downloadable (5853)

☐ Życie po arabsku

by Khidayer, Emire

Language: Polish, **Format:** Ebook/Txt TextOnly, **Producer:** DZDN, **Publisher:** N/A

ISBN: N/A, **First listed:** 15-Dec-2016, **First cleared:** N/A

☐ Duma Jareda

by Roberts, Nora

Language: Polish, **Format:** Ebook/Txt TextOnly, **Producer:** DZDN, **Publisher:** N/A

ISBN: N/A, **First listed:** 15-Dec-2016, **First cleared:** N/A

ABC Book Exchange – Screenshots (2)

My Orders

Wish List

Pending Orders(1530)

For Download

History(3)

Order Date	Title	Author	Producer	Tigar ID	Format	Permissions	File	Action
02/02/2017	Życie po arabsku	Khidayer, Emire	DZDN	7922-WOL26144	Ebook/Txt TextOnly	Requested by TI	Upload Pending	Remove
04/01/2017	Bambi	Salten, Felix	NLS	0008-DB24596	DAISY (ANSI/NISO Z39.86:2002); 1 level and 3 navigation points. Analog to digital conversion.	Permission pending Note: Unfortunately there will be a delay in progress with this title. It is published by an imprint of Simon & Schuster US, currently not responding to TIGAR enquiries. However, enquiries will be made re. rights for particular territories	Upload Pending	Remove

```
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<collection xmlns="http://www.loc.gov/MARC21/slim">
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    <controlfield tag="001">0000388332</controlfield>
    <controlfield tag="005">20161215095632.0</controlfield>
    <controlfield tag="008">|||||||pl|||||||pol||</controlfield>
    <datafield tag="020" ind2=" " ind1=" ">
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    </datafield>
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    </datafield>
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      <subfield code="b"/>
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      <subfield code="c"/>
    </datafield>
  </record>
</collection>
```



The_Happiness_Equation_Want_
Nothi-DE77196-CNIB-INCA

Statistics

Downloads

Uploads

Downloading TI:

CNIB

Producer TI:

AVH

Authorizing Rights Holder:

ALL

Start Date:

MONTH

YEAR

End Date:

MONTH

YEAR

Exclude repeated downloads by the
same TI:



ABC Book Exchange – Value and Concerns

- Collection development
 - CNIB – 1,600 titles to date, \$2m
 - Includes *forthcoming* works
- Streamlined processes
 - Sign one agreement, technical set up once
 - Country ratifications, restrictions managed
- Trusted service by rights holders
 - Potential concerns about privacy, reporting?
Today: no patron data, total titles and circulations 2x year, statistics used to demo service usage overall
- Catalogue not currently open

The Numbers

- 20 participants
- 18 countries
- 350k items
- 35 languages (with 20+ items) and growing
- 100k+ beneficiaries served
- 16.5k items with rights cleared while waiting for Marrakesh

ABC Book Exchange – To Overcome

- Adapt for post-Marrakesh
 - Revising agreement
 - Removing permissions clearance where applicable
- Capacity to add participants
 - All want in at once since Sep. 30!
 - National realities – *multiple organizations*
 - International prioritization
 - Technical readiness of participants
 - Increasing technical complexity (e.g., non-latin alphabets)

All aboard!

On board:

- 20 – see website

Just joined:

- Poland
- UK

In progress:

- Argentina
- Croatia
- Estonia
- India
- Israel
- Japan
- Korea
- Nepal
- Portugal
- Russia

ABC Book Exchange – Community Input

Requests from participants for:

- Improved system support for:
 - Cataloguing (e.g., subject searching)
 - Metadata harvesting
 - File validation, standards conversion
 - More than DAISY, braille
- Access for multiple organizations in a country
 - Including Canada, already exists in some
- Access for beneficiaries
 - User authentication (anonymous via Authorized Entity in country of beneficiary)

Session Agenda: How Can I Get a Book?

1. Background
2. Where does *Marrakesh* fit into the Canadian legal framework?
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How Does **Celina** Get a Book *Today*?

CELA Case Study: Access for Canadians with Print Disabilities

- Books already in CELA collection:
 - Direct access through:
 - CELA member public libraries
 - Educators with library card from a CELA member library
 - CELA self-service
- Books not yet available via CELA:
 - Suggest titles – international sources checked



Documentaire

Affaires et économie - 4 sous-catégories

[Carrières et recherche d'emploi](#)

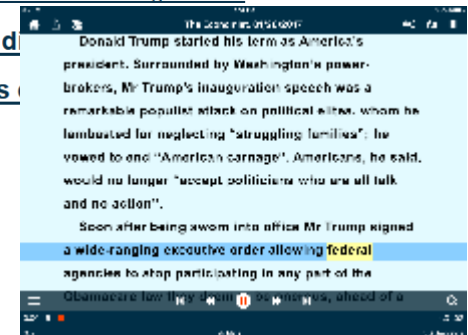
[Économie](#)

[Finances personnelles et investissements](#)

[Affaires et économie générales](#)

Arts et d

Auteurs



How Does **Celina** Get a Book *Tomorrow*?

CELA Case Study: Access for Canadians with Print Disabilities

- Influx to CELA collection as countries ratify
- Access to ABC Book Exchange
 - Via CELA member libraries, CELA self-service
 - Via other Authorized Entities
- Access to books CELA acquires through bi- or multilateral agreements
- **To be determined...**

How Will It Be Determined?

The answer is 'in the room'.
Talk to each other!



Challenges

- Multiple stakeholders: beneficiaries, Authorized Entities, rights holders
- Disparate services, audiences, practices and policies:
 - Public and/or educational
 - Collection development (e.g., formats)
 - Access requirements
 - Mandate and vision
 - Funding jurisdictions
- Lack of guidance and clarity
 - Helpful guidelines from World Blind Union (forthcoming)
 - No national action plan (yet)
 - Knowing and interpreting restrictions in countries

Opportunities

- Leverage what is in place and we can learn from:
 - ABC Book Exchange experience
 - Successful bi-, multilateral agreements
- Leverage and support advocacy of international community
- Use international impetus to address national challenges

Power of international co-operation

‘Don’t go back on the deal – call on EU member states to deliver on Marrakesh’,
January 17

Symposium on the
Way Forward for an
Egyptian Ratification
of the Marrakesh
Treaty, Alexandria,
February 12



My Thoughts (From the Trenches)

- Marrakesh wasn't built in a day...
 - 20+ years of advocacy
 - No sudden 'opening of the floodgates'
 - Worth the time to implement wisely!
- Don't underestimate resources required
- Don't get 'bogged down' in a grand vision - small steps will get us there faster
- Find a way to co-operate nationally



The Only Thing That Really Matters?

Celina in Canada and the **Celinas** in other countries can find and get the full range of reading materials to which they have the right to read.



Resources

- Margaret Ann Wilkinson, “International Copyright: *Marrakesh* and the future of users' rights exceptions,” Chapter 7 in Mark Perry (ed) *Global Governance of Intellectual Property in the 21st Century* (New York: Springer, 2016) 107-127.
- [Exchanging accessible books across borders: As easy as ABC](#), WIPO Magazine, October 2016
- [The Marrakesh Treaty, An EIFL Guide for Libraries](#), Electronic Information for Libraries, 2014
- The World Blind Union Guide to the Marrakesh Treaty, forthcoming
- [Baseline for Born Accessible EPUB](#), Inclusive Publishing Hub, forthcoming

Q&A? Discussion?



Thank you

Contact us:

- Victoria Owen, owen@utsc.utoronto.ca
- Margaret Ann Wilkinson, mawilk@uwo.ca
- Margaret Williams, margaretjwilliams@rogers.com