



Statement of the National Federation of the Blind
Presented by Scott C. Labarre, Esq., Legal Counsel
Before the Committee on Foreign Relations
United States Senate
Washington, DC

Re: Ratification of the Marrakesh Treaty

April 18, 2018

INTRODUCTION

Good Morning Chairman Corker, Senator Menendez, and Members of the Foreign Relations Committee:

Today, I bring you greetings on behalf of President Mark Riccobono and the over fifty thousand members of the National Federation of the Blind, our nation's oldest and largest organization of the blind. I am Scott LaBarre and I serve as Legal Counsel to the Federation, and specific to the topic of today's hearing, I have also been serving as NFB's delegate to the World Intellectual Property Organization (WIPO) since 2009 when Dr. Marc Maurer, our Immediate Past President, appointed me to do so. Over the last nine years, I have attended all of the relevant negotiating sessions that occurred mostly in Geneva and concluded in Marrakesh. After the Treaty's adoption, WIPO created the Accessible Books Consortium (ABC) to help implement the Treaty and I serve as a member of ABC's board representing the World Blind Union of which the Federation is a member.

I thank you for today's opportunity to provide testimony regarding the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (Marrakesh Treaty). This Treaty will dramatically improve the lives of blind and print disabled Americans as well as help our blind brothers and sisters around the world by opening up access to countless accessible works that we cannot currently acquire. We urge you to ratify the Marrakesh Treaty without delay and also adopt S. 2559, the Marrakesh Treaty Implementation Act.

Before addressing the substance of my remarks, I must first thank you, Senator Corker, for your hard work, and that of your staff for laying the groundwork necessary to bring about today's important hearing. I also thank you, Senator Menendez, for your efforts in this regard. We additionally want to express our gratitude to Senator Grassley of Iowa and Senator Feinstein of California for introducing S. 2559 which will amend our copyright law to implement this life changing treaty.

GENERAL BACKGROUND

For us, the Marrakesh Treaty represents far more than a copyright treaty that creates exceptions and limitations to reproduce materials into accessible formats and exchange those formats across international borders. The Treaty embraces a fundamental human right. The Federation's founder, Dr. Jacobus tenBroek, said, "The blind have a right to live in the world. That right is as deep as human nature; as pervasive as the need for social existence; as ubiquitous as the human race; as invincible as the human spirit." Fundamental to the right to live in the world is the right to access information.

Accessing information, especially in a timely fashion, has been one of the significant barriers posed by blindness and print disabilities. Those without such disabilities take for granted the ability to pick up a book or other printed material and simply read it. For us, it is necessary to convert the printed word into some type of accessible format such as Braille, audio, or accessible electronic text. It is true that modern technology has allowed electronic text to be turned into speech. Conceptually, that would allow anything produced electronically to be read with assistive technology. However, much of the material produced in electronic text is designed in such a way to be incompatible with the assistive technology used by the blind, thus requiring conversion into a format that is accessible for the blind and print disabled.

PERSONAL STORY

Allow me a moment to explain how these barriers have affected me directly. Prior to losing my vision to a childhood virus at age ten, I absolutely loved reading. One of my greatest joys as a young child was going to my elementary school's library and perusing the thousands of books available there. To this day, my memories of the library at Royal Oaks Elementary School located in Woodbury, Minnesota are vivid and ones I recall with great fondness.

When I lost my vision, I thought that the treasure trove of information available to me had been stolen and lost to me permanently. After a while, I realized that all was not lost. By learning Braille, I recovered the ability to read for myself and once again go to sleep at night with a book in my hands. These books came to me through the Library of Congress National Library Service for the Blind and Physically Handicapped. In addition to the Braille texts, I had access to books in an audio form. At first, these books came to me on vinyl records, later replaced by cassette tapes.

Although my ability to read Braille and audio books allowed me to regain some of my independence, it was not a complete solution. Even though I grew up in a wealthy nation with substantial resources, I had access to a negligible percentage of what my sighted peers took for granted.

Even when I could get my hands on accessible books, it often occurred long after my sighted friends had read the same information. I was always trying to catch up and struggling to keep pace. Many times, my Braille or audio school books came to me months after my sighted colleagues had plowed through the information. Later I ran into another significant information barrier while attending college at St. John's University in Minnesota. Originally, I had planned on a double major in Government and Spanish. Ultimately, I dropped that Spanish major precisely because I could not get access to Spanish novels and other materials.

Despite the barriers I faced, I regard myself as a fortunate and successful person. I am an attorney who runs and operates his own law firm. I have argued before courts all over the United States and had the privilege of engaging in international projects like the Marrakesh Treaty. I own my home in Denver, Colorado and I have a beautiful wife and two terrific children.

I attribute my success largely to my family. My mom and dad pushed the local school system hard to insure that I learned the alternative techniques of blindness like Braille and independent cane travel and to provide books in alternative formats.

The National Federation of the Blind's positive philosophy on blindness has also been absolutely critical in helping me achieve success. Our official and heart felt message is: "The National Federation of the Blind knows that blindness is not the characteristic that defines you or your future. Every day we raise the expectations of blind people, because low expectations create obstacles between blind people and our dreams. You can live the life you want; blindness is not what holds you back."

I have been fortunate because I managed to gain access to a wide array of accessible information, but it has always been a struggle to keep up. Tragically, the vast majority of blind and visually impaired individuals do not have access to enough information to put them on a path to success.

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NEED FOR THIS COPYRIGHT TREATY

In addition to the traditional barriers limiting our right to read, namely the barriers of our inability to read the printed word and that of inaccessible information technology, there is another significant barrier to our full enjoyment of the right to access information, and it is copyright law. Without an exception or limitation, international law makes it abundantly clear that reproducing a copyrighted work without the permission of the rights holder, any kind of reproduction, violates the exclusive right that the copyright holder possesses to control distribution of the work. The only way around this exclusive right has been to ask permission of the rights holder, permission that either is denied or takes a long time to acquire. That is why the National Federation of the Blind joined the Association of American Publishers in 1996 and urged and ultimately convinced Congress to amend the United States Copyright Act to include an exception permitting reproduction of published works into accessible formats such as Braille, audio, and accessible electronic text, the so-called Chafee Amendment.

Our domestic exception, however, did not address the great dearth of accessible works throughout the world. It has been estimated that well over 95 percent of the world's works have not been made available in accessible formats. Unfortunately international copyright law either outright banned the practice or made it incredibly difficult to exchange accessible works across international borders. These circumstances also led to the needless duplication of accessible works in nations that shared a common language. This phenomenon later became known as the book famine for the blind.

BRIEF HISTORY ON TREATY'S ADOPTION

That is why we engaged with our partners in the World Blind Union to put forward an international agreement that would amend international copyright law proactively to permit exceptions and limitations allowing reproduction of works into accessible formats and to allow such accessible works to flow across international borders. Reproduction of these works will be carried out by what are known as authorized entities that create the accessible material on a nonprofit basis for the exclusive use by the blind or those with print disabilities. Ultimately, these efforts culminated in the Marrakesh Treaty adopted by the member states of WIPO in June of 2013, signed by the United States in October of 2013, and forwarded to the United States Senate in February of 2016.

The treaty proposal was first tabled before WIPO in 2009, and the Diplomatic Convention successfully concluded negotiations in 2013. In the international agreement context, this is a relatively quick time period, but the process was arduous and, at times, hotly contested. The Marrakesh Treaty represents the first time that the international community has adopted an agreement exclusively expanding exceptions and limitation to copyright law without granting further rights to intellectual property holders. Naturally, traditional copyright stakeholders vigorously debated with one another about the scope and reach of what would become the Marrakesh Treaty. Additionally, concerns of developing and least developed nations were pitted against the interests of the first world. All of these factors played into the circumstances we encountered while entering the first days of the Marrakesh Diplomatic Conference. At the time, thirty-seven issues remained unresolved as that Conference began. Most were skeptical about whether the treaty text could be successfully concluded.

To achieve the birth of the Marrakesh Treaty, it took the hard work and tireless advocacy of key stakeholders. The Federation led the effort here in the United States to advocate for a strong and practical treaty, and we enjoyed the support of the American Council of the Blind, American Foundation for the Blind, and Benetech (operator of Bookshare), the largest private authorized entity in the world. It also took the good will and ability to compromise by traditional copyright stakeholders such as publishers and libraries represented here in the US by the Association of American Publishers and the Library Copyright Alliance. Strong leadership from key WIPO member states was required to reach consensus and ultimate success.

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In the United States, we have a great deal for which to be proud. The US government delegation exercised tremendous leadership and skill and brought unwilling nations to the table. I particularly wish to thank Professor Justin Hughes of the Loyola Law School at Loyola Marymount University in Los Angeles who led the US delegation for his tireless work, creative drafting, and negotiating skills. Without our US based stakeholders, it would not have been possible to bring the Marrakesh Treaty into existence. It has been the same group of organizations and individuals who have helped Senate staff draft the implementation language now in consideration by this chamber in S. 2559.

SUPPORT FOR THE TREATY

Ratification and implementation of the Marrakesh Treaty is being supported by a broad coalition of stakeholders. The American Council of the Blind, American Foundation for the Blind, American Library Association, American Printing House for the Blind, Association of American Publishers, Association of College and Research Libraries, Association of Research Libraries, Association of University Centers on Disabilities, Authors Alliance, Authors Guild, Benetech (operator of Bookshare), National Center for Learning Disabilities, National Federation of the Blind, National Industries for the Blind, National Music Publishers Association, Open Society Policy Center, and Perkins School for the Blind, all urge you to ratify Marrakesh and pass S. 2559 without delay! I should also mention that I happen to sit on the American Bar Association Board of Governors and as a Member of our House of Delegates. In 2014, we passed Annual Resolution 100 urging ratification and implementation of the Marrakesh Treaty.

TREMENDOUS BENEFITS OF THE TREATY FOR THE BLIND AND PRINT DISABLED

As I alluded to earlier, there is a great dearth of accessible material available to the world's 285 million blind and visually impaired individuals. Millions more undoubtedly have a print disability that is also covered by the Treaty. In dozens of nations throughout the world, there are exactly zero texts available in an accessible format for blind individuals in their native language. Although it must be admitted that no one knows precisely the exact number of published works currently available in accessible formats, the World Blind Union has estimated that approximately 95 percent of published works are not accessible to the blind and visually impaired.

The situation is slightly better here in the US. If you combine the collections of the National Library Service for the Blind and Physically Handicapped and that of Bookshare, our two largest authorized entities, you will find approximately 800,000 accessible titles. Even this falls far short of the tens of millions of works available to those who are not blind or otherwise have a print disability.

The benefits of ratifying and implementing the Marrakesh Treaty are clear for blind and print disabled Americans as well as for those throughout the world. For Americans, we would almost immediately have access to hundreds of thousands of accessible works in English from the United Kingdom, Canada, and Australia as well as the dozens of other English speaking nations. Nearly 200,000 accessible works in Spanish will be available from Spain and Latin America, something that would have been incredibly helpful to me when I was in college. There are hundreds of thousands of accessible titles available in dozens of additional foreign languages which will also be available to those of us here in the United States. Meanwhile, the hundreds of millions of blind and visually impaired individuals living elsewhere in the world will gain the ability to access the accessible titles we have produced here in America.

There are tremendous benefits to ratifying and implementing the Marrakesh Treaty, and we are aware of no disincentives. The amount of money we are requesting Congress to appropriate to bring Marrakesh into reality in the US is exactly zero. The Treaty and the implementing legislation before Congress have been crafted carefully to protect the rights of creators and publishers while meeting the accessibility needs of the blind and print disabled. No one is opposing ratification and implementation of the Marrakesh Treaty.

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CONCLUSION

On behalf of blind and print disabled Americans and my friends throughout the world, I thank you for the opportunity to testify here today. In 1969, I am sure that Crosby, Stills, and Nash never imagined that their express to Marrakesh might be hijacked by the blind, but as Crosby, Stills, and Nash sing, "all aboard that train!" It is time for the United States to join the thirty-seven, and growing, nations of the world and board the Marrakesh Express! We in the National Federation of the Blind urge you to ratify the Marrakesh Treaty and pass S. 2559 to implement it. In so doing, you will throw open the door to a wealth of information available to the blind and print disabled. Access to that information will significantly further our ability to live the lives we want by obtaining better education and increased employment. Through bold legislative action now, you will help us gain much greater inclusion into mainstream life and access to all of the promise our great nation holds. Please help us shatter the information barrier that for far too long has stood in our way!

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