



10 years into Marrakesh – what does the data say?

KEY CONCLUSIONS

- *The Marrakesh Treaty helps to lift copyright-related barriers to the making and sharing of copies of copyrighted books in formats which are accessible for persons with print disabilities.*
- *The Marrakesh Treaty has been a great success in terms of the rapid increase in numbers of states ratifying or acceding; almost 2/3 of states have now done so.*
- *However, only around half of states have made amendments to national law so far, underlining a need for action in order to offer libraries and others greater certainty in using the Treaty's provisions.*
- *For the most part, countries have not chosen to restrict the possibilities created by the Treaty, for example by obliging payment of supplementary remuneration to rightholders or prior commercial availability checks. In particular, those countries which have passed national reforms have overwhelmingly opted to maximise access.*
- *For states where we have data, more have chosen to extend Treaty provisions to persons with print disabilities.*
- *This data both highlights the need for an ongoing focus on national reform in general, but also provides useful data for advocating for these to maintain their focus on access.*

0. Introduction

So far, 123 countries have ratified or acceded to the Marrakesh Treaty, including those which joined subsequent to the European Union's ratification. This represents almost 2/3 of the countries of the world, an impressive achievement for a Treaty that was only voted through ten years ago, and only entered into force in September 2016.

As can be seen in Graph 1, once the Treaty entered into force globally in 2016, there was a rapid increase in ratifications or accessions, with a particularly strong jump in 2019, when the European Union joined the Treaty on behalf of its Member States.

Crucially, ratifying or acceding to the Treaty does not necessarily guarantee that action is being taken nationally to include Marrakesh provisions in national law, or that this implementation is following best practice in order to maximise impact.

IFLA has therefore for a number of years been sharing its Marrakesh Monitoring Report, looking at how well countries are doing at turning the goals of the Treaty into national legislation that really does lift unnecessary copyright-related barriers to making, sharing and receiving accessible formal copies of works.

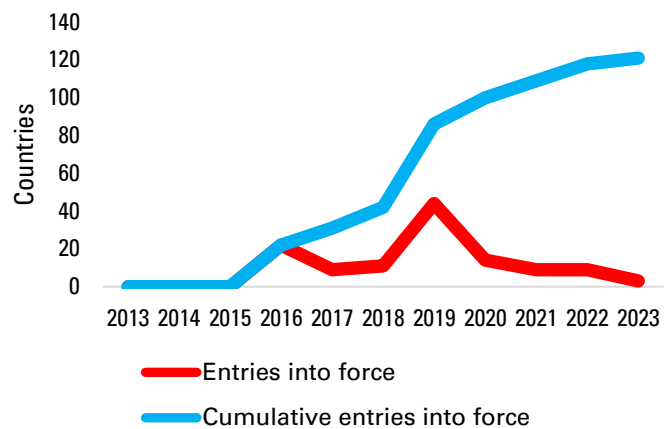
Based on the edition published in [February 2023](#), this paper offers some glimpses at what we can see from the data.

1. How often has ratification or access led to changes in national law?

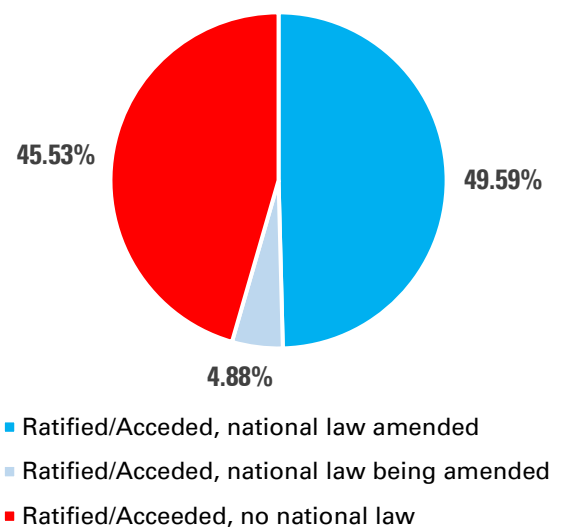
A key reason for acting at the international level is the impulsion that this gives to make practical changes to national law that, even though desirable, are not seen as enough of a priority to justify the effort. Moreover, the passage of the Treaty has meant that including Marrakesh-compliant exceptions into national law has become part of WIPO's capacity building efforts.

The impact of this is seen in the Graph 2, where half of all countries which have acceded or ratified have passed new laws to ensure compliance with the Treaty, and a further 5% are currently passing reforms. Clearly, this is not necessarily enough, and more work is needed to ensure that beneficiaries and the institutions that support them (authorised entities) need not fear

Graph 1: Spread of the Marrakesh Treaty



Graph 2: Parties to the Treaty and national implementation

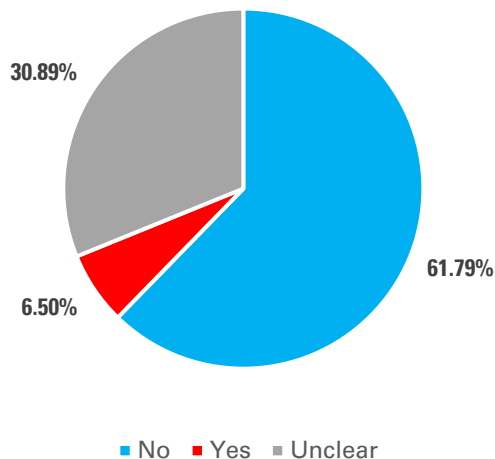


infringing copyright when simply working to deliver on their right of access to information.

2. Are countries imposing supplementary remuneration requirements?

A controversial point in the Treaty agreed in 2013 was the possibility created for countries to oblige beneficiaries and/or the institutions serving them to pay supplementary remuneration to rightholders for making use of Treaty provisions. This was opposed by libraries and others, given the drain it represents on resources that could otherwise be used to support users.

Graph 3a: Are Parties choosing to impose supplementary remuneration obligations? (All parties)



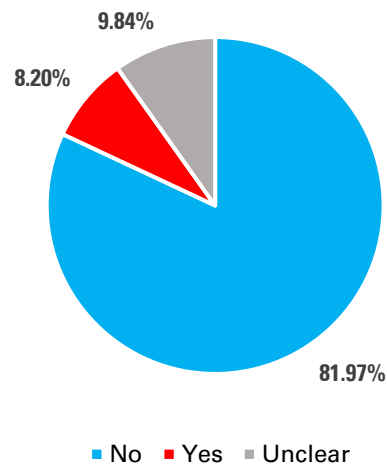
Graph 3a indicates that across the countries which have ratified or acceded to the Treaty, this is indeed the case, with nearly 62% having no obligation to pay, and just 6.5% making it necessary to do so.

This is very welcome news, demonstrating that almost ten times as many countries have chosen to allow authorised entities to focus their resources on providing services, rather than simply compensating the actors whose failure to provide works in accessible formats create the problem of the book famine in the first place.

It is even more instructive to look at those countries which have taken action (Graph 3b). We see that nearly 82% of those who have acted are not imposing supplementary remuneration provisions on beneficiaries or authorised entities. Only 8.2% (5 countries) have chosen to do so (compared to 8 among the total number of countries which have ratified or acceded to the Treaty).

Overall, this indicates that a crushing majority of countries have rejected provisions on supplementary remuneration which undermine the achievement of the Treaty's goals.

Graph 3b: Are Parties choosing to impose supplementary remuneration obligations (reformers)



3. Are countries forcing beneficiaries and libraries to carry out commercial availability checks

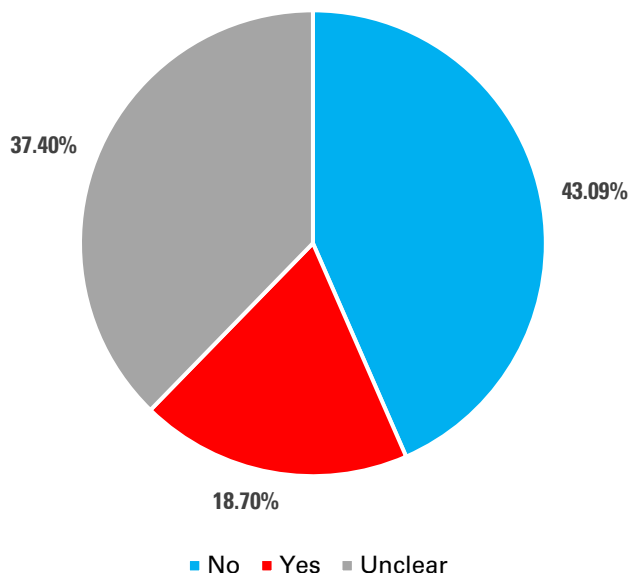
Perhaps even more harmful for the achievement of the goals of the Marrakesh Treaty is the possibility to limit use of Marrakesh provisions to only those situations where there is no commercially available copy. While this may sound reasonable at first, it is in strong contradiction to the fact that the Treaty was created precisely because there were only a tiny share of works available in accessible formats, and that where they are, it is typically far cheaper for an authorised entity to buy one, rather than make it.

Furthermore, saying whether a book is available in the format required is not so easy. It relies not only on there being a comprehensive and up-to-date database of commercially available books, but also on this having the right metadata to describe particular formats – for example, different print sizes, or types of contrast. This sort of information is often missing even in richer countries, let alone less wealthy ones. As a result, it can be hard for a beneficiary or a librarian supporting them to say with confidence that a book genuinely is not commercially available.

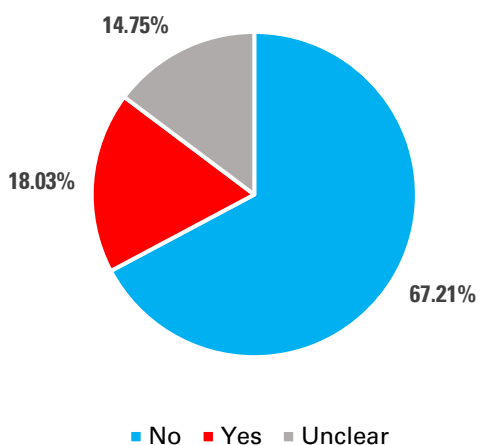
Graph 4a looks at the numbers here for all countries having ratified or acceded to the Marrakesh Treaty. Just over 43% have no commercial availability checks in place while fewer than half that share (18.7%) do impose such a check. The situation is less clear for nearly 38% of countries, usually due to decisions being left to secondary legislation.

However, it can be assumed that if they have not notified WIPO of the intention to imposing commercial availability checks, then they are not legally allowed to apply them under law.

Graph 4a: Are Parties choosing to impose commercial availability checks? (All Parties)



Graph 4b: Are Parties choosing to impose commercial availability checks? (reformers)



Again, we see more favourable results for beneficiaries and authorised entities among those countries which have passed laws compared to those which have not (Graph 4b). Over 2/3 of reformers have chosen to exclude the obligation to carry out commercial availability checks, while only 18% include them.

This points to a trend that where an effort is made to evaluate national laws, the choice made, almost 4 out of every 5 times, is not to include such burdensome obligations.

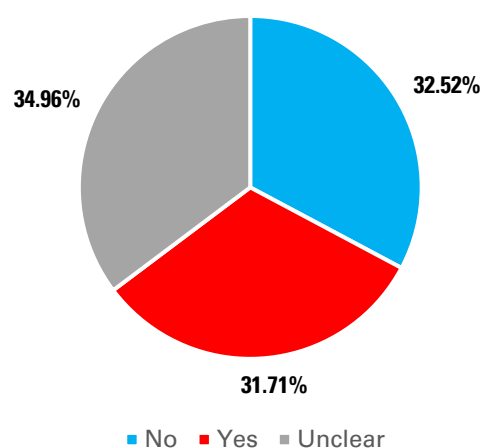
4. Are countries extending Marrakesh provisions to people with other disabilities?

The Marrakesh Treaty is clear – countries are free to extend its provisions to ensure that people with disabilities other than those covered explicitly – those who are blind, visually impaired, or otherwise not able to read a book in the same way as others.

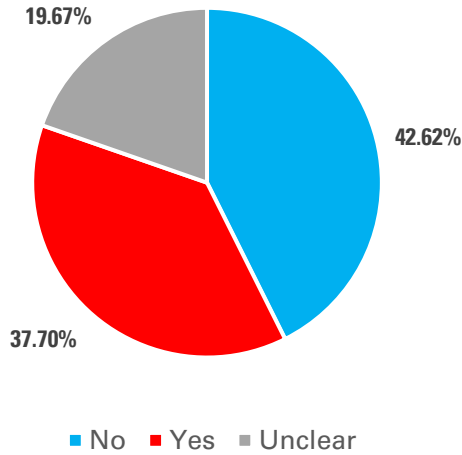
Graph 5a looks at the state of the 123 countries which have ratified or acceded to the Treaty, and finds that there is a relatively equal mix in the data that we have, with slightly more countries extending provisions than choosing explicitly not to. There remain just over a third of Parties where the decision isn't clear.

This clearly underlines that it is relatively normal practice to extend Marrakesh provisions more broadly, drawing on this possibility under the Treaty. Indeed, there is little reason why people with one disability may benefit, and others may not.

Graph 5a: Are Parties extending Marrakesh provisions to people with other disabilities? (All parties)



Graph 5b: Are Parties extending Marrakesh provisions to people with other disabilities? (reformers)



As for the 61 countries which have passed reformers, there is a slightly stronger tendency in favour of including people with other disabilities (43% include, 38% do not) (Graph 5b). Some countries or blocs such as the EU do explicitly keep open the possibility to expand the definition of beneficiaries later.

This is perhaps does underline the value of action at the global level, in order to ensure that the very soft/optional nature of provisions in Marrakesh do not end up meaning reduced pressure to support access to information for all.

5. Conclusion

This short study lends itself to the following key conclusions:

- 1) It is important to keep up the pressure for national implementations to match ratifications of or accessions to the Marrakesh Treaty. When only one happens, this leads to uncertainty and frustration.
- 2) Where countries have consciously updated their laws, they have tended to be more in line with the Treaty's underlying goal of maximising access to information for people with disabilities, for example by not imposing supplementary remuneration or commercial availability check obligations
- 3) Unsurprisingly, it is the weaker elements of the Treaty – the optional extension of Treaty provisions to people with other disabilities – that have the poorest response from Member States, implying that further clarification at the international level may be needed in order to accelerate progress.