

Implications and Recommendations for the Implementation of the Marrakesh Treaty in China in the Context of Safeguarding the Health of Dyslexic Groups

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Abstract

The Marrakesh Treaty, in response to the difficulty of visually impaired people and other reading-impaired people in obtaining works that they can read, enjoy and study, stipulates limitations and exceptions to copyright, which guarantees the basic rights of special groups to access information and ideas, and safeguards the physical and mental health development of these groups from the perspective of human rights. As one of the parties to the Marrakesh Treaty, China has actively promoted the implementation of the content of the treaty, expanding the scope of beneficiaries and accessible format versions and adding exceptions to technological measures in the Copyright Law amended in 2020, in order to prepare for the fulfillment of international treaty obligations. However, there is still a gap between the current legislation of China and the requirements of the treaty, and the problems are specifically reflected in the unclear qualifying conditions for circumventing technological measures, disputes over the types of restricted rights, and the absence of provisions related to cross-border exchange. In order to implement the provisions of the treaty, China should adjust the existing legislation to address the problems, reasonably interpret the term "normal way" in the provisions of the circumvention of technical measures, and clarify the types of restricted rights, including the right of reproduction, the right of distribution, the right of dissemination in the information network, the right of modification, the right of translation, and the right of exhibition. Separate regulations should be established for the cross-border exchange system.

Keywords: Marrakesh Treaty, right to health, technical measures, rights limitations

1. Introduction

Visually impaired people and other dyslexic people have high reading costs and narrower access to information than the general population. The World Blind Union estimates that there are approximately 180 million visually impaired people in the world. For humanitarian reasons and to ensure healthy physical and mental development, it is widely accepted that visually impaired people and other reading disabled people need to be provided with the necessary accessible versions of books to increase their access to the written word. However, only about 5 per cent of the books currently published are in alternative formats accessible to the visually impaired. [1] This is not conducive to the healthy physical and mental development of the visually impaired. The question of how to guarantee the basic right of the visually impaired to equal access to and reading of cultural products has become a matter of strong international concern.

The Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired and Other Persons with Print Disabilities (the "Marrakesh Treaty") was concluded in 2013 under the auspices of the World Intellectual Property Organization ("WIPO"), following tireless efforts by international organisations such as the International Union of the Blind ("IUB") and other parties, and entered into force in 2016. "Marrakesh Treaty"), which entered into force in 2016. This treaty is a historic attempt to explore the issue of how to guarantee the fundamental rights of visually impaired persons and other persons with print disabilities. Meanwhile, China, as one of the initial States Parties to the Marrakesh Treaty, has been taking a positive attitude to promote the implementation of the Treaty in China. The purpose of this paper is to analyse and discuss the interface problems that may exist in the process

of interpreting or implementing the Marrakesh Treaty in China's existing relevant laws, and to put forward further ideas and suggestions.

2. Significance of the Conclusion and Implementation of the Marrakesh Treaty

The Parties to the Marrakesh Treaty, recognising the social problem of unequal access to and reading of cultural products by persons with visual impairments due to the impairment of the right to health, and with a view to guaranteeing freedom of access to information and reading for persons with visual impairments in order to achieve equality of opportunity in society and to safeguard the greater public good, in the light of the Convention on the Rights of Persons with Disabilities, which establishes the principles of non-discrimination, equal opportunity, accessibility, and full and effective participation and inclusion in society. After several rounds of negotiations, the parties concluded the Marrakesh Treaty on the basis of the principles set out in the United Nations Convention on the Rights of Persons with Disabilities, with a view to guaranteeing freedom of access to information and reading for visually impaired persons in the territories of the parties, thereby safeguarding the physical and mental health of the visually impaired population as a whole.

2.1 Treaty Guarantees the Right of Access to Information and the Right to Read for People with Visual Impairments

The number of people with impaired health is currently huge, and among them, visual impairment is very common. The World Health Organisation has published the World Sight Report, which states that at least 2.2 billion people worldwide are visually impaired or blind. [2] The right to access information and the right to read of visually impaired people has not been fully realised. According to surveys, blind people and other visually impaired groups generally have a low level of education, and their difficulties in reading, access to information and communication stem to a large extent from the limited availability of reading products, which make it difficult to meet the needs of this group. [3] The Marrakesh Treaty guarantees the right of access to information and the right to read for the visually impaired. The Marrakesh Treaty is a landmark agreement on limitations and exceptions to the international copyright regime. Firstly, it establishes, through mandatory obligations, a "minimum standard of protection" for access to works by visually impaired persons and other persons with print disabilities in order to address the "book shortage" of hundreds of millions of such persons around the globe; and secondly, it adopts the concept of "accessible communication" to encourage the "dissemination of information". Secondly, the treaty adopts the concept of "accessible communication" to encourage parties to adopt more user-friendly standards to guarantee the fundamental rights of visually impaired persons and other persons with print disabilities. [4] Finally, the treaty's provisions on the cross-border exchange of works in accessible formats provide an international treaty basis for the acquisition of accessible versions between countries, especially developing countries, from developed countries at lower import costs. [5]

2.2 Guaranteeing the Right to Accessible Reading for the Visually Impaired Contributes to the Healthy Development of the Individual and the Community

Guaranteeing the fundamental rights of the visually impaired requires guaranteeing the right to read for the visually impaired. Australian academics have found that people with disabilities have the same or similar experiences to those of able-bodied people in all aspects of life, which greatly affects the realisation of their fundamental rights. [6]. The realisation of the right to read is essential to guaranteeing the basic rights of this group of visually impaired people.

Guaranteeing the right to accessible reading for the visually impaired contributes to the healthy development of the individual. Education is essential for the survival and development of the individual and is a major factor in personal growth. However, the visually impaired generally receive only compulsory education, and only 1 per cent of the total number of blind persons enrolled in higher education. [7] The National Human Rights Action Plan (2021-2025) stresses the need to "improve the mechanism for guaranteeing special education." [8] Therefore, guaranteeing the right to read for the visually impaired is conducive to helping them acquire relevant knowledge, safeguarding their right to education and cultural rights, affirming their personal values, and helping them to develop in a healthy manner both physically and mentally.

Guaranteeing the right to accessible reading for the visually impaired contributes to the healthy development of society. Guaranteeing the right to read not only indirectly contributes to the sustainable development of a country's economy. Reading not only helps visually impaired people to better understand the job information, preventing them from being disadvantaged in the job application; it also helps visually impaired people to obtain higher level of knowledge and education or professional skills training, so that they can seek for a better salary. Therefore, reading can indirectly protect the labour rights of visually impaired workers, improve their economic level and promote the economic development of the country [9].

The guarantee of the right to read can also indirectly contribute to the development of national human rights. Reading helps visually impaired people to be informed of national policies and to exercise their political rights. Article 21 of the Convention on the Rights of Persons with Disabilities stipulates that States Parties shall take all appropriate measures to ensure that persons with disabilities have access to the right to express their views freely. [10]. Guaranteeing the right of free expression for the visually impaired can enable them to speak out more for the visually impaired on the government platform, thus further improving the measures for the protection of human rights in China and promoting the development of the human rights cause in China.

In conclusion, by guaranteeing the right to read to the visually impaired, the Treaty is safeguarding the healthy development of the visually impaired as individuals as well as the sustainable development of society.

2.3 Implementation of the Treaty has Contributed to the Achievement of Guaranteeing the Right to Read for the Visually Impaired Population

The Marrakesh Treaty guarantees the physical and mental integrity of the human rights of the visually impaired. The Marrakesh Treaty pays more attention to the actual objective status of the beneficiaries in terms of the existence of dyslexia. The Treaty has diluted the "able-bodied-disabled" dichotomy, making it possible to assist special groups in a more humane manner, focusing more on the physical health of the social group than on the physical impairment, and breaking down the barrier between the visually impaired and the able-bodied. [11] It is also clearly stipulated that the privacy of the beneficiaries should be protected, so that the self-confidence of the visually impaired and other reading-disabled persons will not be undermined while they are provided with facilities. [12]

Information and knowledge are essential to enable people to live freely and realise their potential. The Marrakesh Treaty guarantees, among other things, the right of visually impaired people to access information and reading. Following the entry into force of the Treaty, WIPO established the Accessible Books Consortium (hereinafter referred to as the "ABC Organisation") as a permanent organisation within WIPO, and clarified the rules on accessible formats and encouraged publishers to develop accessible formats. The ABC organisation has established regulations on accessible formats and encourages publishers to produce accessible editions. These measures have led to an increase in the number of producers of accessible publications, and [13] has expanded the sources of reading for the visually impaired. With cross-border exchange provisions, the exchange of works in accessible formats between Parties is facilitated and cultural sharing is promoted.

3. Impact of the Marrakesh Treaty on China's Copyright Act

China signed the Marrakesh Treaty on 28 June 2013 and formally ratified the Marrakesh Treaty on 23 October 2021, and the Treaty entered into force on 5 May 2022 for China. In order to bring China's Copyright Law into line with the provisions of the Marrakesh Treaty, certain amendments have been made to the relevant provisions of the existing Copyright Law, including the expansion of the scope of beneficiary and accessible format versions, and the addition of exceptions to technological measures.

3.1 Expanded Range of Beneficiaries

Article 3 of the Marrakesh Treaty defines the beneficiaries as "persons with low vision who, despite correction, are unable to achieve the vision necessary for the normal reading of books, as well as persons who are unable to read books normally because of other impediments or physical disabilities". However, the original Copyright Law and the relevant provisions of the Regulations on the Protection of the Right to Information Network Dissemination only limit the beneficiaries to blind people who use "Braille", which obviously narrows the scope of beneficiaries of the Marrakesh Treaty, and there is a certain distance between the two. [14] Article 24 of the current Copyright Act addresses this issue by stipulating that among the limitations and exceptions to the right is the right to "make published works available to persons with print disabilities in accessible formats that they can perceive". The amendment of this article brings our provisions on beneficiaries more in line with the provisions of the Marrakesh Treaty.

3.2 Expanded Scope of Accessible Format Versions

Format-accessible versions are defined broadly in the Marrakesh Treaty to include "versions of a work that enable the beneficiary to use the work as practically and comfortably as a person without a visual impairment or other print disability". However, the limitations and exceptions of the Copyright Act 2010 provide for accessible format versions only in Braille, which is a far cry from the requirements of the Marrakesh Treaty. In response, the current Copyright Act was amended to no longer limit the version of a work that can be made available to persons with print disabilities to Braille, but to include "large print" paperbacks, e-books, and audio books, by providing that they be made available "in an accessible format that can be perceived by a person with a print disability". Instead,

by stipulating "in an accessible format that is perceivable by persons with print disabilities", the scope of accessible format versions is greatly expanded to include "large print" paperbacks, e-books, and audio books, thus further fulfilling the requirements of the treaty. [15]

3.3 Increased Exceptions to Technical Protection Measures

The Copyright Act 2010 does not provide for exceptions to technological protection measures for the dyslexic community. However, the Marrakesh Treaty requires parties to take measures to avoid technological measures that prevent beneficiaries from enjoying the limitations and exceptions provided for in the treaty. In this regard, Article 50 of the current Copyright Law stipulates: "Technological measures may be circumvented in the following cases, provided that the technology, device or component that circumvents the technological measures is not made available to others, and that it does not infringe upon other rights enjoyed by the right holders in accordance with the law: (b) not for profit, but in an accessible manner that is perceivable by persons with dyslexia accessible means that can be perceived by the person with print disabilities to whom the published work is made available and to whom the work cannot be accessed through normal means;". This provision adds an exception to the direct circumvention of technical measures by providing accessible format copies to persons with print disabilities, and explicitly prohibits the provision of means of circumvention, and does not allow for exceptions to be made by law or administrative regulations, in line with the Marrakesh Treaty.

4. Specific Aspects of the Implementation of the Marrakesh Treaty in the Country

Although China's Copyright Law has been amended to adapt to the Marrakesh Treaty, there is still a gap between China's legislation and the provisions of the Marrakesh Treaty, and some of the provisions of the Treaty have not yet been clarified through legislation in China. In order to promote the effective implementation of the Marrakesh Treaty in China, it is necessary to explain the gaps between China's legislation and the provisions of the Treaty, and to specifically analyse the problems that exist in existing laws and regulations. These problems are mainly reflected in the following three major areas.

4.1 Lack of Clarity in the Qualifying Conditions for Circumvention of Technical Measures

According to Article 7 of the Marrakesh Treaty, "appropriate measures shall be taken, where necessary, to ensure that where it provides for appropriate legal protection and effective legal remedies against the circumvention of effective technological measures, such legal protection does not prevent the beneficiaries from benefiting from the limitations and exceptions provided for in this Treaty." To give effect to this provision, Article 50(2) of China's Copyright Law adds a new exception to the prohibition on the circumvention of technological measures, namely, "making a published work available to persons with print disabilities in an accessible manner that is perceivable by such persons without the purpose of making a profit, where such work is not accessible through normal means". The restriction imposed in this case includes the phrase "not accessible by normal means", but as of now, there is a lack of regulations that clearly explain "normal means". [16] This issue has led to disputes between the copyright owner and the authorised subject over the circumstances in which Article 50(2) of the Copyright Law can be applied, which may lead to a number of litigation activities that could have been avoided and increase the litigation costs for the relevant subjects. For copyright owners, this provision will further increase the uncertainty and cost of defending their rights, which will further aggravate the difficulty of defending their rights; while the increase in litigation cost will bring a huge economic burden to the non-profit authorised bodies, resulting in a lower proportion of the budget of the authorised bodies for the production of accessible format versions of the works, and a decrease in the number of works in accessible format, which is not in line with the legislative purpose of Article 50(2).

4.2 Disputes over the Types of Rights Restricted

With regard to the types of rights that should be subject to limitations, the Marrakesh Treaty establishes as peremptory norms the right of reproduction, the right of distribution and the right of communication to the public [17], while it establishes as arbitrary norms the right of public performance [18], the right of translation, the right of adaptation and the right of neighbouring rights. In other words, States Parties should make the reproduction right, the distribution right and the right of communication to the public the minimum requirements for limitations and exceptions in their domestic copyright laws, while limitations and exceptions to the right of public performance, the right of translation, the right of adaptation and the neighbouring right are not mandatory. Specifically, under the Marrakesh Treaty, it is up to the contracting parties to decide whether or not to limit the right of public performance; the right of translation [19] is up to the contracting parties to decide whether or not to provide limitations and exceptions to the limitation and exceptions "which neither narrow nor widen the scope of application of the limitations and exceptions permitted by the Berne Convention"; and the right of adaptation [20] is up to the contracting parties to decide whether or not to The right of adaptation is subject to limitations and

exceptions determined by the Contracting Parties within the limits of "the modifications required for the transformation of the work into an alternative accessible format and the accessibility needs of the beneficiaries"; [21] The requirements relating to neighbouring rights are set out in the Agreed Statement, whereby, on the one hand, works to which the limitations and exceptions provided for in the treaty are applicable include such works in their audio form, e.g., audio books [22]. On the other hand, the act of reproducing, distributing or making available the work to beneficiaries shall also be subject to the limitations and exceptions of the treaty *mutatis mutandis*. [23]

There is little dispute in China as to whether there is a need to limit the types of rights covered by the peremptory norms of the Marrakesh Treaty, but there are different views as to whether there is a need to limit the types of rights covered by the arbitrary norms. From the perspective of comparative law, there are fewer countries that set limitations and exceptions to the right of public performance, the right of translation, the right of adaptation and the right of neighbouring rights. One of the main reasons for this is that some countries have different views on how to interpret the "equality" of visually impaired persons and other reading disabled persons with normal persons, with one view suggesting that the limits of the guarantee of equal access to works for this category of persons should be equal to, and not exceed, the range of works available to normal persons, while the opposite view exists as well. However, there are also opposing views. [24] Although Article 24(1)(12) of China's Copyright Law stipulates the limitations and exceptions to copyright for works provided to dyslexics, it does not explicitly limit the types of rights, but actually points to many of the rights stipulated in Article 10. The inclusion of all rights under Article 10 in the scope of limitations, while more favourable to the protection of the rights of persons with print disabilities, may unreasonably prejudice the interests of copyright holders. Therefore, the necessity of restricting some of the rights is controversial. [25]

4.3 Lack of Provisions on Cross-Border Exchange

Article 5 of the Marrakesh Treaty provides for a system of "cross-border exchange", whereby a party shall provide for a domestic authorised entity to distribute or make available legally produced accessible format copies to beneficiaries or authorised entities of another party. The purpose of the system is to break down geographical barriers to accessible formats, promote international circulation, assist parties in sharing information to ensure that visually impaired persons and other persons with print disabilities in different countries have equal access to information at , and to expand their knowledge of the outside world with a wealth of accessible formats to further enrich their spiritual and cultural life.

Regrettably, however, there is no system of "cross-border exchange" in the current Copyright Law. The absence of such a system is not only detrimental to the fulfilment of China's treaty obligations; it may also lead to the duplication of production of some works by domestic authorised subjects, which will increase production costs; and it may even lead to the situation where people with print disabilities in China are unable to enjoy some of the works of art due to the geographical restriction of copyright, which is not conducive to the active protection of the basic rights of people with print disabilities in China.

5. Recommendations for the Improvement of Our System (Direct and Clear Responses to the Problem)

The system for safeguarding the fundamental rights of persons with print disabilities in China is not yet complete, as our legislation still contains problems such as unclear qualifying conditions for the circumvention of technical measures, disputes over the types of rights subject to restriction, and the absence of provisions relating to cross-border exchanges. In order to implement the provisions of the Marrakesh Treaty as soon as possible and assume the responsibilities that States parties should undertake, it is necessary to prescribe the right medicine and establish and improve the relevant institutional rules.

5.1 Clarifying the Qualifications of Technical Measures

According to the Marrakesh Treaty, the circumvention of technological measures is based on the principle of not hindering the implementation of the content of the Treaty, and the interpretation of the qualifying conditions should not be overly expansive, as it may otherwise unduly jeopardise the rights and interests of right holders. It has been argued that the "normal way" should be based on "the work cannot be obtained unless technical measures are taken to avoid it". [26] However, this view is too harsh. On the one hand, if this standard is adopted, it in fact imposes an excessive searching obligation on the authorised subject, requiring the authorised subject to exhaust all possible ways of obtaining the work, increasing the possibility of infringement by the authorised subject, and overriding the relevant provisions on the restriction of technical measures. On the other hand, this criterion increases the time cost and production cost of the authorised subject, which is not conducive to the achievement of the legislative purpose of this amendment.

In order to rationalise the meaning of "normal means", reference can be made to the definition of "commercial availability" under the "minimum conditions". Article 4, paragraph 4, of the Marrakesh Treaty establishes "commercial availability" as a condition for the production of a work in an accessible format, i.e., only works that are not commercially available in the relevant market in a particular accessible format on reasonable terms for the benefit of beneficiaries are exempted from infringement as a limitation and exception under the treaty. This paragraph limits the scope of works covered by the limitations and exceptions of the treaty, but the lack of a clear definition of "reasonable conditions" makes it difficult to fulfil the limiting effect of the article. In order to clarify the meaning of "commercial availability", the existing views on the interpretation of "reasonable conditions" are divided into two categories, one of which is the "minimum conditions" from the perspective of the protection of reading impaired persons. The first is the "minimum conditions" argument, which is based on the protection of the reading impaired, and the second is the "general conditions" argument, which is based on the consideration of market economy, and considers that "reasonable conditions" refer to the general conditions of access to the work in the market, which refers to the general conditions of access to the work in the marketplace. [27] This paper argues that "reasonable conditions" should be taken to mean "minimum conditions". If the "general conditions" approach is adopted, the provision in fact expects "commercial availability" to adequately compensate the copyright owners so as to encourage them to publish more accessible versions of the works for people with dyslexia, but according to the results of the implementation of a similar system in the UK in the early days, the "commercial availability" approach has been effective in encouraging the publication of works for people with dyslexia. However, based on the results of the implementation of a similar system in the UK in the early days, the incentive effect of "commercial availability" on copyright owners is limited. [28] It also increases the time and cost for the authorised subject to ascertain whether it meets the requirement of "commercial inaccessibility". [29] On the other hand, the fact that the "authorised subject" obtains the relevant work in an accessible format constitutes a limitation and an exception in itself, and the exclusion of the exhaustion of distribution rights does not extend the scope of the prejudice further to the interests of the copyright owner, and the condition minimises the cost of confirmation for the authorised subject.

5.2 Types of Rights that Provide for Limitations and Exceptions

With regard to the types of rights that the Marrakesh Treaty explicitly stipulates that States parties should include in the limitations and exceptions, namely, the right of reproduction, the right of distribution, and the right of communication to the public, our country should comply with the corresponding provisions of the legislation to clarify them. For other types of rights, this paper suggests that the right of amendment, the right of translation and the right of exhibition should be included in the limitations and exceptions.

5.2.1 Right to Amend

When producing accessible format versions of a work, it is inevitable that the work will need to be altered to a certain extent in order to facilitate comprehension by persons with print disabilities, and this alteration is an act of modification rather than an act of adaptation. Some scholars believe that the modification of the text can create a new work that is easy to be understood by the visually impaired and dyslexic people. [30] should be regarded as an act of adaptation. However, it should be noted that the act of modification controlled by the right of revision refers to the partial change of the content of the work, as well as the correction of words and phrases, whereas the act of adaptation in the right of adaptation refers to the creation of a new work based on the basic expression of the original work, with the addition of a unique understanding and expression [31]. According to the relevant provisions of the Marrakesh Treaty, the act of alteration involved in the production of an accessible version is only a necessary modification to adapt to the accessible format version, and if this alteration is interpreted as an act of adaptation that creates a new work by adding originality, it will break the limitations of this provision. Although Article 36 of China's Copyright Law stipulates that book publishers, newspaper publishers, and periodical publishers may make modifications to a work with the author's permission, since the subjects providing accessible format versions are not limited to the subjects mentioned in this article, it is still necessary to separately clarify that the right to make modifications is one of the types of rights that are subject to limitations and exceptions for people with print disabilities.

5.2.2 Translation Rights

As one of the developing countries, we should make maximum use of the provisions for developing countries to guarantee the basic rights of our dyslexic population and help them to have more opportunities for development. The right to translation is an arbitrary norm set out in the Marrakesh Treaty, and it is up to domestic law to decide whether or not to allow a foreign work that has not been published in the country to be translated into the national language and made available in an accessible format. If the exception to the right of translation is excluded, the

direct translation of a foreign work into the national language, or the translation of a Chinese translation of a foreign work into a minority language and its production in an accessible format would require a licence from the copyright holder. The resulting licence fees, which are ultimately passed on to persons with print disabilities, are a significant and unnecessary burden on them, and are inconsistent with the legislative intent of the Marrakesh Treaty to give preferential treatment to disadvantaged groups. [32] Therefore, Article 12 of the Marrakesh Treaty stipulates that the contracting states may consider applying limitations and exceptions not mandated by the Treaty in accordance with their own economic conditions and social and cultural needs, and that China may consider whether to include the right of translation as one of the types of limitations and exceptions to copyright in China based on the income level of the dyslexic population in the country as well as the demand for cultural products. According to the 2013 Annual Monitoring Report on the Situation of Persons with Disabilities and the Progress of Xiaokang in China, persons with disabilities in China in general do not have a high level of education, have difficulties in employment, and have lower incomes, while visually impaired persons and other persons with print disabilities also face the same difficulties. [33] According to statistics from the World Health Organization, the number of blind and other visually impaired persons in China accounts for approximately 20 per cent of the total number of blind persons in the world, and the number of visually impaired persons stands at 17.31 million. [34] In order to guarantee the fundamental right of access to cultural and artistic achievements for the reading impaired in our country despite their disadvantaged position, it is necessary to include the right to translation as one of the types of rights that are subject to limitations and exceptions to the right.

5.2.3 Exhibition Rights

It has been argued that persons with print disabilities are unable to appreciate the "beauty" contained in works of art and photography by means of interpretation by others, and that if works of art and photography should be excluded from the types of works subject to restriction, the corresponding right of exhibition should not be restricted. [35] But in fact, according to the definition of the Marrakesh Treaty, dyslexics are divided into three categories, namely, blind people, people with visual impairment, perceptual impairment or dyslexia, and people who are unable to read normally due to physical disability. According to our visual disability standards, the entire visual disability is divided into four levels, with levels 1 and 2 called blindness and levels 3 and 4 called low vision. [36] Therefore, not all dyslexics are completely unable to enjoy art and photography. For those dyslexics who still have a sense of light, they can still feel the "sense of beauty" in the works through the co-operation of other teaching aids. As dyslexics have a need to appreciate art and photography works, and exhibition is an important way to satisfy this need, in order to balance the interests of the right holders and dyslexics, this article believes that the restriction of the right to exhibition can be managed by the relevant departments of the national copyright organisation. For example, it is stipulated that the main body of the exhibition has the right to organise the exhibition, and the report of the exhibition activities, etc., so as to ensure that the exhibition will not unreasonably damage the legitimate interests of the copyright holders.

5.3 Establishment and Improvement of a System for the Cross-Border Exchange of Works in Accessible Formats (not to be Overly Broad, but to be Used as a Reference)

As mentioned earlier, due to the lack of relevant provisions on the cross-border exchange of accessible format works in China, in order to fully fulfil its international treaty obligations, China should improve the system in a timely manner. With regard to the choice of legislative model, considering that the system of cross-border exchange of works in accessible formats is rich in details, it is more suitable for this part of the system to be uniformly provided for in the form of a separate regulation.

The author suggests that our country can specify the authorised subject in charge of cross-border exchange in the separate legislation, so that the authorised subject can join the ABC organisation. The adoption of multiple coordination and guarantee mechanism is more suitable for the reality of China's national conditions. [37] In this state, it is clear that the national public libraries are the representatives for receiving and exporting cross-border exchanges in China, and joining the ABC organisation on behalf of our country, which will help our country to provide the list of works in accessible formats in a timely manner, avoiding the duplication of receiving the relevant accessible works, and improving the efficiency of cross-border exchanges.

The duty of care of the authorised subject is clarified through the procedure of taking care. Article 5, paragraph 2, subparagraph 2, of the Marrakesh Treaty in fact imposes a certain degree of duty of care on the authorised subject. [38] Failure to specify the extent of the duty of care to be assumed by the authorised subject may result in the authorised subject being involved in litigation as a result of the act of cross-border exchange and being liable to pay compensation, which will impose a greater burden on the authorised subject and will not be conducive to its

proactive participation in cross-border exchanges, thus undermining the realisation of the legislative intent of the Marrakesh Treaty.

Standardise the production and management of accessible format versions of works. Strengthen training in the production of accessible format versions of works. It is most appropriate to adopt inclusive publishing for works in accessible formats, i.e. inherently accessible formats using EPUB3 technology. China can provide relevant organisations with targeted training in EPUB3 technology to facilitate the exchange of relevant accessible formats within and across borders, in order to realise the legislative intent of the Marrakesh Treaty and safeguard the right to read of the visually impaired. Establishment of a platform for the preservation of works in accessible formats. This measure will help realise the collection and unified management of works in accessible formats, which will help China to provide a clear exchange list when exchanging accessible format documents with foreign countries, so as to avoid duplication or omission and improve the efficiency of exchange.

In order to present more clearly the relevant recommendations of this paper for this one-line treaty, the author summarises the relevant recommendations as follows Table 1:

Table 1. Legislative Recommendations Relating to Cross-Border Exchange Regimes

Legislative recommendations relating to cross-border exchange regimes	
International level	Join the ABC organisation
Authorised entities	Clarification of the duty of care of authorised subjects in cross-border exchanges through a care procedure
	Identify public libraries as authorised entities responsible for cross-border exchanges in the country
Works in accessible formats	Establishment of a preservation platform for works in accessible formats
	Enhanced training in accessible format production

6. Conclusion

The Marrakesh Treaty took five years to draft and conclude, and although the content of the Treaty was hotly debated by countries based on their own interests, a consensus was finally reached, and it was made clear in the preamble that the Treaty would always abide by the principles of guaranteeing non-discrimination, equal opportunities, accessibility, and full and effective participation and integration of visually impaired persons and other persons with print disabilities into society. Our country has actively participated in promoting the work of the treaty and will amend the Copyright Law in 2020 to prepare legislation for the implementation of the treaty, reflecting our country's attention to the fundamental rights of special populations and our practical efforts to protect the physical and mental health of visually impaired persons and other persons with print disabilities. However, at present, China's legislation has not yet reached a level that fully meets the requirements of the Marrakesh Treaty, and lacks more specific and clear provisions on technical measures, types of restricted rights and cross-border exchanges, making it difficult to fully fulfil international treaty obligations. In this regard, China should address the existing problems by clarifying the qualifying conditions for circumventing technical measures and the types of restricted rights, and at the same time gradually establish and improve the relevant rules on cross-border exchange through the establishment of separate regulations.

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