

IMPLEMENTING THE MARRAKESH TREATY: THE AUSTRALIAN EXPERIENCE



Australian Government

Department of Communications and the Arts

Kirsti Haipola and Hari Sundaresan,
Copyright Law



This [Marrakesh] treaty can make a huge difference in the lives of our members. Access to education, employment, culture, and recreational reading, gives people choice. Without it, those people are marginalised and for many this means they do not take their rightful place in the community.

- Maryanne Diamond, 2013

253 million

People who are blind or partially sighted worldwide

Less than 10%

Of published materials worldwide that can be read by blind or partially sighted people

Less than 1%

Of published materials available in an accessible format for those in developing countries

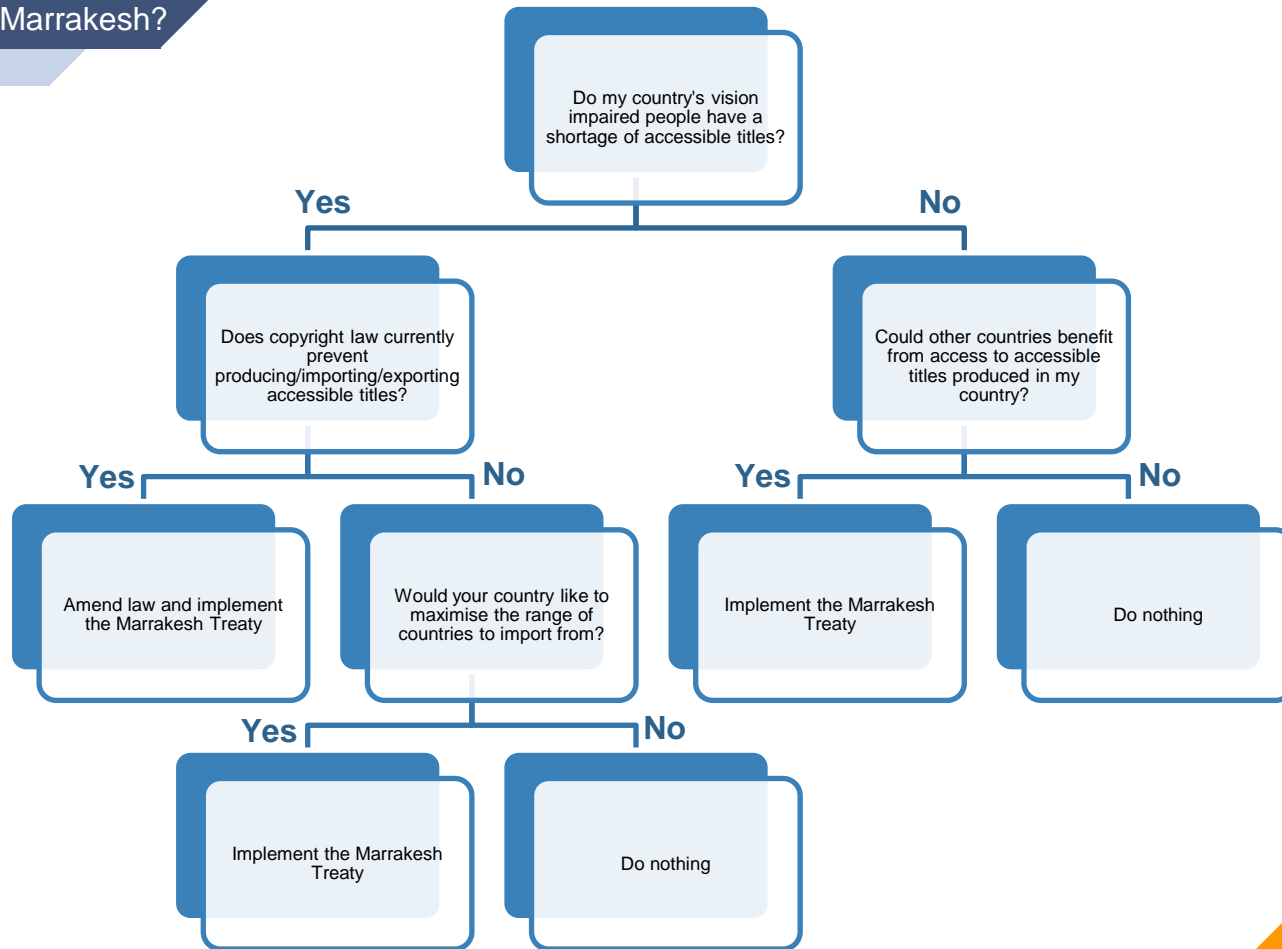
Why Australia?

*National Disability Strategy
2010-2020*

*Australian aid: promoting
prosperity, reducing poverty,
enhancing stability*

Development for All 2015-2020

Why implement Marrakesh?





BRIEF OVERVIEW OF THE AUSTRALIAN IMPLEMENTATION PROCESS

NEGOTIATION
AND SIGNATURE
OF THE
MARRAKESH
TREATY

INTERNAL
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RATIFICATION
AND ENTRY
INTO FORCE

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NEGOTIATION AND SIGNATURE





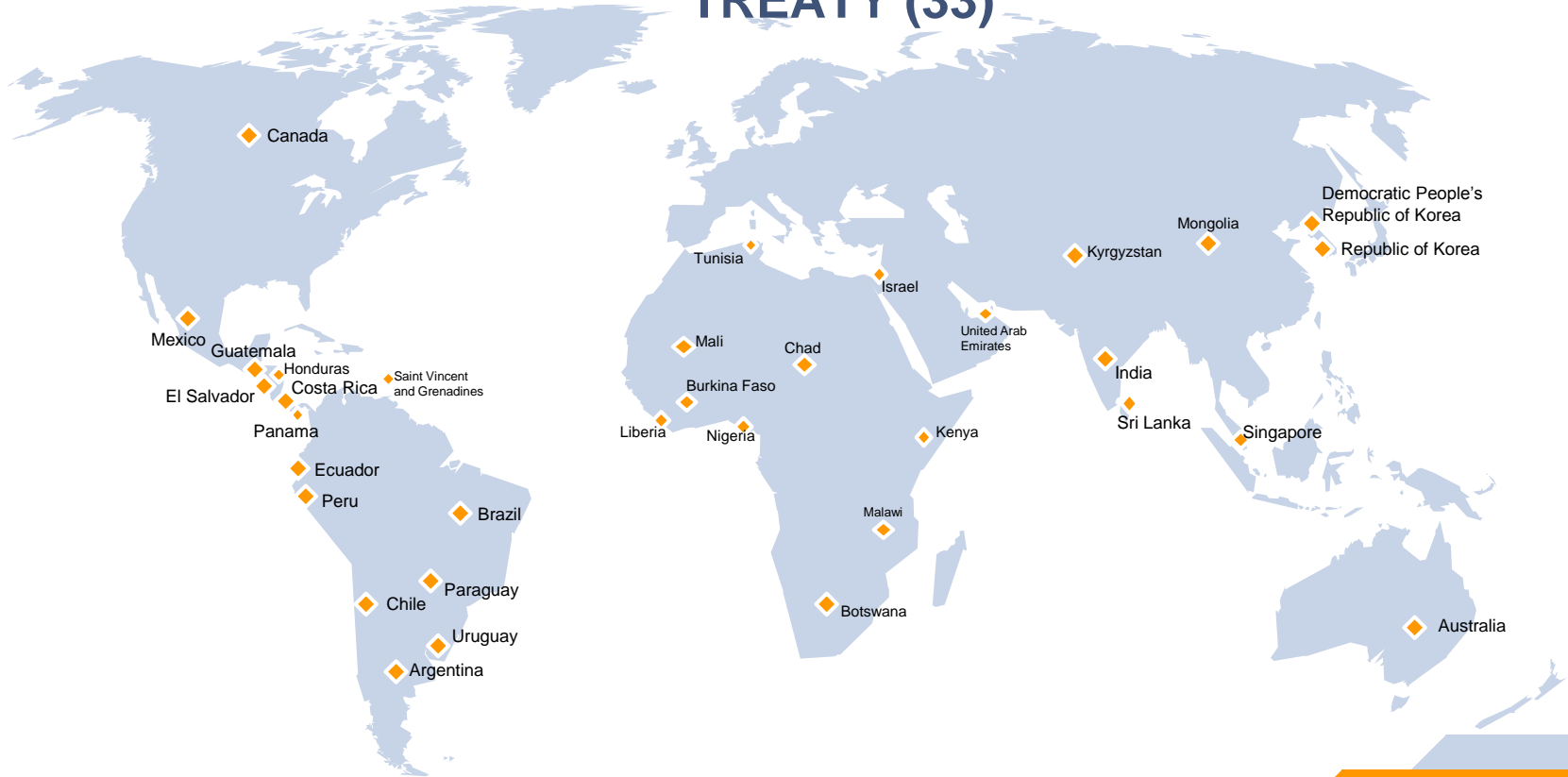
AUSTRALIA'S INVOLVEMENT IN THE NEGOTIATION OF THE MARRAKESH TREATY

- Australia was an active participant in the Marrakesh Treaty negotiations
- Australia became a signatory party to the Marrakesh Treaty on June 23 2014
- Australia continues to promote the benefits of implementing the Marrakesh Treaty

SIGNATORIES TO THE MARRAKESH TREATY (91)



PARTIES WHO HAVE RATIFIED OR ACCEDED TO THE MARRAKESH TREATY (33)



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INTERNAL CONSULTATION



COMMONWEALTH AGENCIES

Attorney-General's Department: *International Law and Human Rights Division*

Department of Foreign Affairs and Trade: *Treaty Secretary, International Intellectual Property Section*

Office of Best Practice Regulation (During implementation development)

Department of Prime Minister and Cabinet

Department of Social Services

Department of Industry, Innovation and Science



ISSUES WE CONSIDERED DURING INTERNAL CONSULTATION

- What are our treaty obligations?
- Will we limit cross border exchange to treaty countries or all countries?
- Do we comply with the Treaty obligations? Particularly: does our national legislation allow exportation and importation of accessible-format copies? (**Article 2 b**)¹ and 2 of the *Marrakesh Treaty*)
- What will implementation options look like? For example, what changes will be required to domestic legislation?
- Is our copyright exception broad enough to allow individuals to make their own accessible format copies and does it cover all printed material and not just books?

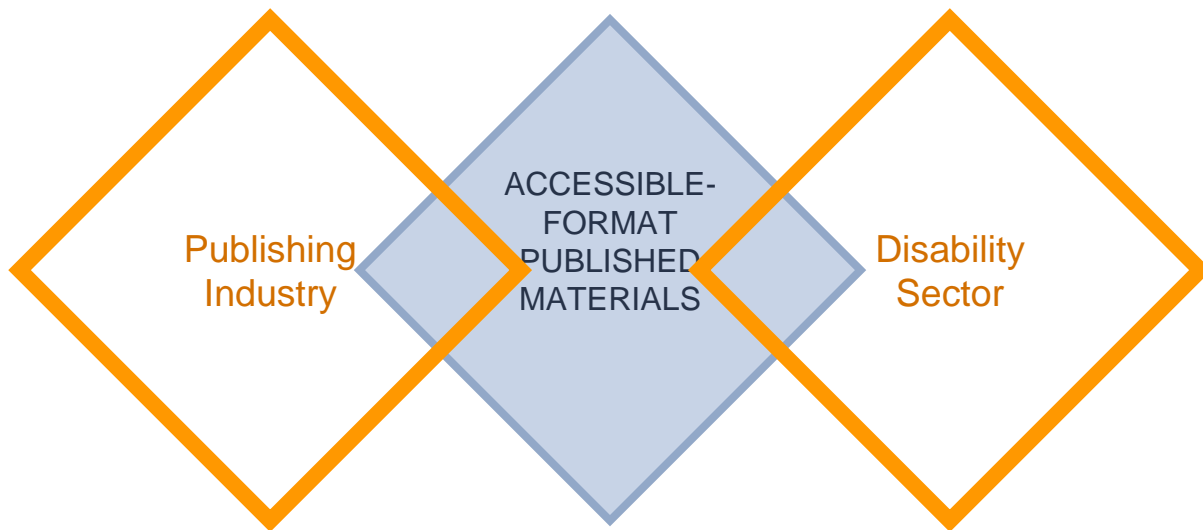
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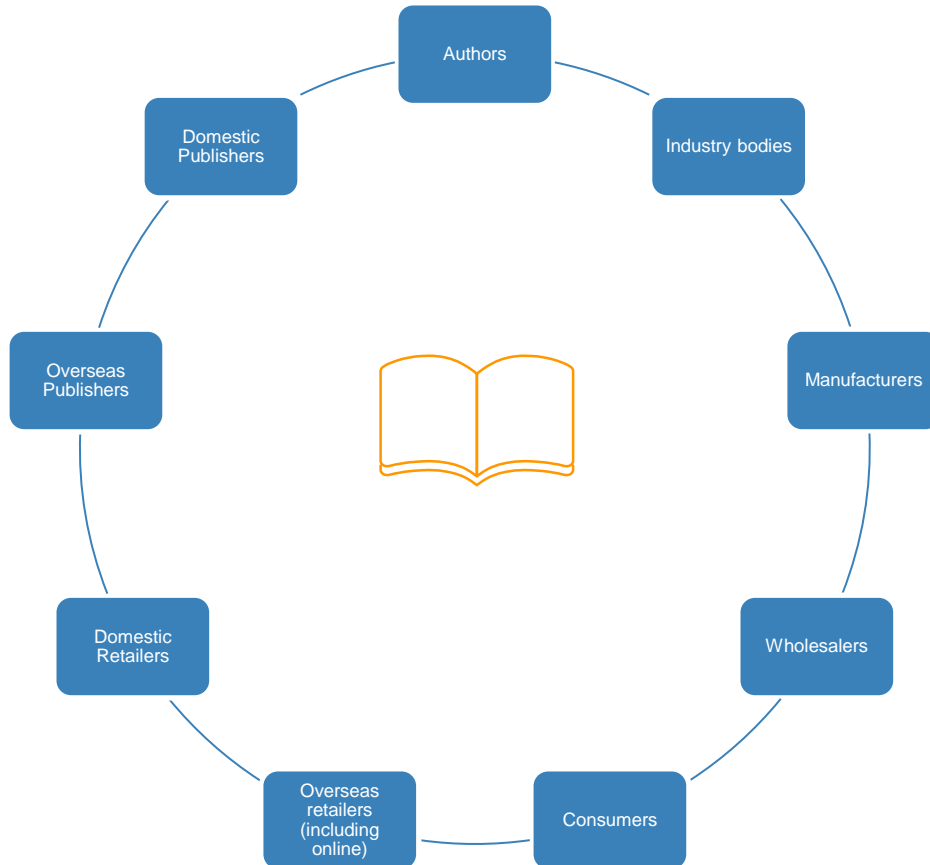
PUBLIC CONSULTATION





THE DOMESTIC LANDSCAPE





- No. of Australian Publishers: 3996
- No. of 'active' publishers: 371 (more than 5 titles published annually)
- No. of books published annually: 19,971 (Australian ISBN records for 2015)
- The **Australian Publishers Association** is the peak national body representing the interests of the Australian publishing industry. It's membership accounts for **90%** of the Australian publishing industry

Sources (2016): Australian Bureau of Statistics, Thorpe-Bowker, Nielsen BookScan, Australian Booksellers Association, IBISWorld



DISABILITY SECTOR



PRINT DISABILITY SERVICES:

Authorised entities providing a catalogue of accessible-format published materials:

- Vision Australia (VIC State)
- VisAbility (WA State)
- Royal Society for the Blind of South Australia (SA State)
- Royal Institute for Deaf and Blind Children (NSW State)
- Queensland Braille Writing Association
- Queensland Narrating Service



CONSULTATION PROCESS

RELEASE
CONSULTATION
PAPER

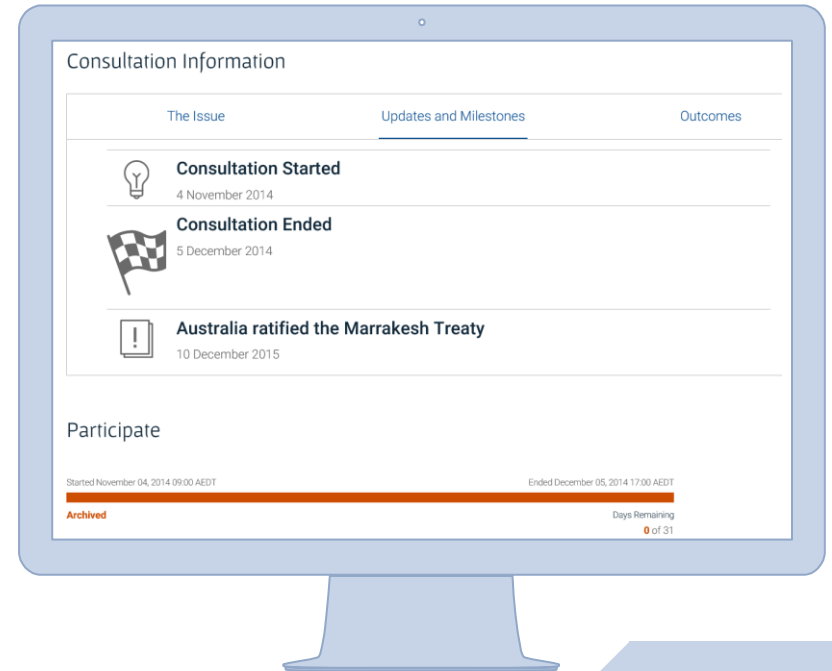
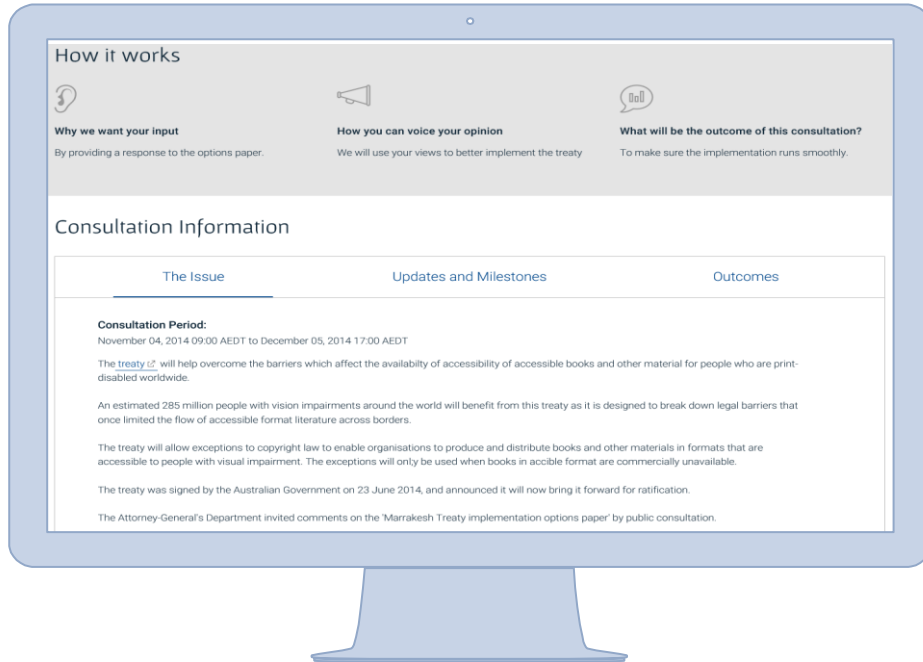
RELEASE
'NATIONAL
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CONSULTATION WEBSITE





ISSUES WE CONSIDERED DURING PUBLIC CONSULTATION

- What would guided questions for submissions look like? For example:
 - ❑ What kind of disability organisations exist in Australia?
 - ❑ Which option would work best for an organisation?
 - ❑ Would guidelines be helpful?
 - ❑ What would be an appropriate way to reduce regulatory burden?

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RATIFICATION



THE RATIFICATION PROCESS IN AUSTRALIA

IMPLEMENTATION
DEVELOPMENT

PARLIAMENTARY
SCRUTINY

ENTRY INTO
FORCE



ARE LEGISLATIVE AMENDMENTS REQUIRED?

- Australia already complied with the obligations of the Marrakesh Treaty and so no legislative amendments were necessary before ratification
- However, to ensure the *Copyright Act 1968* would be adaptive to the needs of persons with a disability: new simplified measures were introduced in the *Copyright Amendment (Disability Access and Other Measures) Act 2017* (which takes effect from 22 December 2017).

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OTHER CONSIDERATIONS

New copyright exceptions for persons with a disability

■ 113E Fair dealing for purpose of access by persons with a disability

(1) A fair dealing with copyright material does not infringe copyright in the material if the dealing is for the purpose of one or more persons with a disability having access to copyright material (whether the dealing is by any of those persons or by another person).

(2) The matters to which regard must be had, in determining whether the dealing is a fair dealing for the purposes of this section, include the following matters:

- (a) the purpose and character of the dealing;
- (b) the nature of the copyright material;
- (c) the effect of the dealing upon the potential market for, or value of, the material;
- (d) if only part of the material is dealt with—the amount and substantiality of the part dealt with, taken in relation to the whole material.

New copyright exceptions for persons with a disability

■ 113F Use of copyright material by organisations assisting persons with a disability

An organisation assisting persons with a disability, or a person acting on behalf of such an organisation, does not infringe copyright in copyright material by using the material if:

- (a) the use is for the sole purpose of assisting one or more persons with a disability to access the material in a format that the person or persons require because of the disability (whether the access is provided by or on behalf of the organisation or by another body or person); and
- (b) the organisation, or the person acting on behalf of the organisation, is satisfied that the material (or a relevant part of the material) cannot be obtained in that format within a reasonable time at an ordinary commercial price.



TECHNOLOGICAL PROTECTION MEASURES (TPMs)

WHAT

Technical locks owners use to stop their material being accessed or copied. For example:

- Password-control systems, encryption measures, software locks that prevent copying of certain material

WHY

TPMs can fetter copyright policy outcomes such as access to material by persons with a disability. For example:

- Schools have submitted that TPMs on audio-visual content has prevented the provision of accessible material to hearing impaired students

HOW

Allow for the circumvention of TPMs in certain circumstances through legislation.

- In Australia, the Copyright Regulations allow the creation of certain 'prescribed acts' allowing the circumvention of TPMs.
- In the Copyright Regulations 2017, a new 'TPM exception' was introduced for the new fair

Commercial availability

- Article 4(4) allows contracting parties to decide whether they would like to include a commercial availability test before accessible copies can be made/distributed
- Factors for consideration:
 - Existence of domestic publishing industry
 - Likelihood that accessible copies will be published



LEVERAGE IMPORTATION FROM NEIGHBOURING COUNTRIES

■ The *Marrakesh Treaty* helps address a shortage of accessible-format materials for persons with a disability :

□ **Article 5:** Cross-Border Exchange of Accessible Format Copies

□ **Article 6:** Importation of Accessible Format Copies

■ On September 30 2016, the first cross-border exchange of accessible format books took place between the Canadian National Institute for the Blind (CNIB) to Vision Australia via the 'Accessible Book Consortium' (ABC). This means that Vision Australia will not need to reproduce the books themselves- saving approximately USD 2000 per book.

THANK YOU

Do you have any questions?

You can also contact us at:

Kirsti.Haipola@communications.gov.au

and

Hari.Sundaresan@communications.gov.au