

Zimbabwe
Copyright and Neighbouring Rights Act (Chapter 26:05, as amended up to Act No. 32 of 2004)

**EIFL recommendations for amendments
to implement the Marrakesh Treaty for persons with print disabilities**

EIFL (Electronic Information for Libraries) works with libraries in developing and transition economy countries to enable access to knowledge. EIFL's partner in Zimbabwe is the Zimbabwe University Libraries Consortium (ZULC). We hope that the government of Zimbabwe will soon ratify the Marrakesh Treaty for persons with print disabilities.

Once ratified, in order to implement the treaty into national law, two amendments to the Copyright and Neighbouring Rights Act (Chapter 26:05, as amended up to Act No. 32 of 2004) are necessary.

First, a new exception permitting use by persons with disabilities should be added to Part III 'Permitted acts in relation to copyright works'. Second, to support the new exception, two new definitions should be included in Part I 'Preliminary'.

Copyright and Neighbouring Rights Act (2004)	Explanatory Note
<p>Part I Preliminary</p> <p>Section 2 Interpretation</p> <p><u>New definitions</u></p> <p>‘accessible format copy’ means a copy of a work in an alternative manner or form, which gives a person with a disability access to the work and which permits such person to have access as feasibly and comfortably as a person without a disability;</p> <p>‘person with a disability’ means a person who has a physical, intellectual, neurological, or sensory impairment and who requires the work to be in a format that enables that person to access and use the work in the same manner as a person without a disability;</p>	<p>The definition of ‘accessible format copy’ is drawn from the Marrakesh Treaty for persons with print disabilities (Article 2 Definitions)</p> <p>The definition of ‘person with a disability’ is drawn from the Copyright Amendment Bill of South Africa [B 13B—2017] (Section 1 p.2-3)¹, that extends the definition in the Marrakesh Treaty to include not only persons print disabilities but also those with other disabilities, such as deaf people.</p> <p>The definition supports two documents adopted by Zimbabwe in 2013: the Constitution of Zimbabwe and the UN Convention on the Rights of Persons with Disabilities (UNCRPD).</p> <p>The Constitution (or Bill of Rights) takes a human rights approach to</p>

¹ https://libguides.wits.ac.za/ld.php?content_id=45613747

	<p>disability and recognizes the broad rights of persons with disabilities, while UNCRPD is a binding international instrument that sets out specific political, social, economic and cultural rights of all persons with disabilities.</p>
<p>Part III Permitted acts in relation to copyright works</p> <p><u>New section 44a Use of works by persons with a disability</u></p> <p>(1) Any person may, without the authorisation of the author, make an accessible format copy for the benefit of a person with a disability, supply that accessible format copy to a person with a disability by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve these objectives, if the following conditions are met:</p> <p>(a) The person wishing to undertake any activity under this subsection must have lawful access to the copyright work or a copy of that work;</p> <p>(b) the copyright work must be converted into an accessible format copy, which may include any means necessary to create such accessible format copy but which does not introduce changes other than those needed to make the work accessible to a person with a disability; and</p> <p>(c) the activity under this subsection must be undertaken on a non-profit basis.</p> <p>(2) (a) A person with a disability to whom the work is communicated by wire or wireless means as a result of an activity</p>	<p>The Copyright and Neighbouring Rights Act (2004) grants the owner the exclusive right over the reproduction, adaptation, and distribution of his or her work.</p> <p>Part III of the Act sets out a range of permitted uses of copyright-protected works including educational uses, preservation by libraries, fair dealing for criticism, review or news reporting.</p> <p>To comply with the Marrakesh Treaty for persons with print disabilities, a new article is needed.</p> <p>The suggested provision is drawn from the Copyright Amendment Bill of South Africa [B 13B—2017] (Section 19D p.17-18)², that is itself based on the Marrakesh Treaty. The provision would facilitate the right to read for persons with disabilities by allowing works to be converted into accessible formats, such as braille, audio, large print and digital accessible formats and to exchange accessible works across borders, subject to certain conditions.</p> <p>By increasing the availability of learning and other materials in accessible formats, it supports implementation of Zimbabwe's Bill of Rights that mandates access to education for persons with disabilities, and participation in social, creative and recreational activities (Section 83).</p> <p>Further, when an institution, such as a library, can get an accessible copy of a work from another country instead of having to produce it</p>

² https://libguides.wits.ac.za/ld.php?content_id=45613747

under subsection (1) may, without the authorisation of the author of the copyright work, reproduce the work for personal use.

(b) The provisions of paragraph (a) are without prejudice to any other limitations or exceptions that the person referred to in that paragraph may enjoy

(3) A person with a disability or an organisation that serves persons with disabilities may, without the authorisation of the author, export to or import from another country any copy of an accessible format copy of a work referred to in subsection (1), as long as such activity is undertaken on a non-profit basis by that person or organisation.

(4) The exception created by this section is subject to the obligation of indicating the source and the name of the author on any accessible format copy in so far as it is practicable.

themselves, it saves time and money, in many cases public funds, resulting in significant cost savings.

In addition, the provision helps to implement UNCRPD in particular Article 9 Accessibility, Article 21 Freedom of access to information, and Article 30 Participation in cultural life, recreation, leisure and sport.

For a compilation of known implementing legislation for countries that have ratified or acceded to the Marrakesh Treaty,
see www.arl.org/publications-resources/4347-marrakesh#.WYTqhXA8BIH

For further information, questions or comments, please contact Teresa Hackett, EIFL Copyright and Programme Manager
teresa.hackett@eifl.net or Kathy Matsika, Librarian, National University of Sciences and Technology (NUST) kathymatsika@gmail.com.