

Marrakesh Treaty Questionnaire – Canada

1. Please indicate the relevant provisions in your national legislation providing for or regulating the limitations and exceptions to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled.

Please consult the following sections of Canada's Copyright Act:

s. 32 – exception for making and providing accessible format copies within Canada

s. 32.01 – exception for making and providing accessible format copies to non-profit organizations and persons with print disabilities outside Canada

s. 32.02 – clarification that non-profit organization includes a department, agency or other portion of any order of government, when it is acting on a non-profit basis

s. 41.16 – exception for circumventing technological protection measures for the benefit of persons with perceptual disabilities

s. 27(2.1) – clarification that importation into Canada is permitted so long as the accessible format copy in question could have been made in Canada under a limitation or exception in Canada's Copyright Act

Canada's Copyright Act: <http://laws-lois.justice.gc.ca/PDF/C-42.pdf>

2. Does your national legislation permit the cross-border exchange (i.e. exportation) of “accessible format copies”, as defined in Article 2 b)¹ MVT? If yes, under which conditions?

Yes – s. 32.01 of Canada's Copyright Act permits the making and providing of accessible format copies to non-profit organizations and persons with print disabilities outside Canada. The exception is available to any “non-profit organization” acting for the benefit of persons with a print disability. The term “non-profit organization” is defined broadly in the Copyright Act (see s. 32.02).

A non-profit organization may provide an accessible format copy to:

- (i) a non-profit organization, in a country other than Canada, acting for the benefit of persons with a print disability in that country, or*

¹ Article 2 b) “accessible format copy” means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons.

- (ii) a person with a print disability, in a country other than Canada, who has made a request to be provided with the accessible format copy through a non-profit organization acting for the benefit of persons with a print disability in that country.

Condition – commercial availability

The exception does not apply if the work in the format specially designed for persons with a print disability is commercially available in the other country – i.e., available in the other country within a reasonable time and for a reasonable price and may be located in that country with reasonable effort.

However, when providing accessible format copies to Marrakesh Treaty countries, in order for the commercial availability limitation to apply, the onus would be on the copyright owner to demonstrate that the work in the accessible format is already commercially available in the destination market under reasonable terms.

This critical shifting of the burden to the copyright owner was put in place in recognition of the difficulty that a non-profit organization in Canada would face in trying to determine whether a work in the accessible format was already commercially available in a foreign market. The exception further provides that in circumstances where the copyright owner can demonstrate that the work is already commercially available in the accessible format in the destination country, the remedies that could be sought against the non-profit organization in Canada would be limited to an injunction, such as a court order to prevent the organization from providing any further copies of the work in question in the accessible format to that country.

It would be in line with the policy intent for a non-profit organization in Canada to defer to the knowledge of the non-profit organization in the Marrakesh Treaty country on the question of whether the work is already available in the accessible format there. Ultimately, if there is an error in this regard, it would be up to the copyright owner in Canada to demonstrate that this is the case, and in such circumstances the remedies available against the non-profit organization in Canada would be limited to an injunction.

Condition – cinematographic works

The exception does not apply to cinematographic works.

3. Does your national legislation allow the importation of “accessible format copies”, as defined in Article 2 b)² MVT? If yes, under which conditions?

Yes – s. 27(2.1) of Canada's Copyright Act clarifies that the importation into Canada of an accessible format copy is permitted so long as the copy in question could have been made in Canada under a limitation or exception in Canada's Copyright Act. The conditions that apply to Canada's exception for making and providing accessible format copies within Canada (i.e., s. 32) apply equally to the importation of accessible format copies – namely:

- *The making and providing of the accessible format copy must be undertaken by a person with a perceptual disability, a person acting at the request of such a person, or for a non-profit organization acting for the benefit of such a person;*

² See above.

- *The exception does not apply if the work is commercially available in a format specially designed to meet the needs of the person with a perceptual disability – in this context "commercially available" means available on the Canadian market within a reasonable time and for a reasonable price and may be located with reasonable effort (see paragraph (a) of the definition "commercially available" in s. 2 of Canada's Copyright Act); and*
- *The exception does not apply to cinematographic works.*

4. Does your national legislation provide a definition of “authorized entity”, as defined in Article 2 c)³ MVT? If yes, please provide the reference.

Canada's Copyright Act uses the term “non-profit organization”, which is defined broadly. The definition in s. 32.02 merely clarifies that “non-profit organization” includes a department, agency or other portion of any order of government, including a municipal or local government, when it is acting on a non-profit basis.

5. Please provide a list with contact details of entities that can operate as authorized entities in your territory, and any further information that you can provide, such as number of accessible titles in the catalogue of the authorized entity and the languages covered.

There is no specific list of authorized entities in Canada. Canada uses the term “non-profit organization”, which is defined broadly. The domestic, import, and export exceptions, and the exception for circumventing technological protection measures, in Canada's Copyright Act are available to any non-profit organization acting for the benefit of persons with a print/perceptual disability.

Non-profit organizations within Canada who engage in the production and provision of accessible format materials are encouraged to share with WIPO their contact information, as well as information concerning the number of accessible titles in their collections and the languages covered.

³ Article 2 c) “authorized entity” means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.