

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2559

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IN THE HOUSE OF REPRESENTATIVES

JULY 3, 2018

Referred to the Committee on the Judiciary

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## AN ACT

To amend title 17, United States Code, to implement the Marrakesh Treaty, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Marrakesh Treaty Im-  
3 plementation Act”.

4 **SEC. 2. IMPLEMENTATION AMENDMENTS.**

5 (a) IN GENERAL.—Chapter 1 of title 17, United  
6 States Code, is amended—

7 (1) in section 121—

8 (A) in subsection (a)—

9 (i) by inserting “in the United States”  
10 after “distribute”;

11 (ii) by striking “, nondramatic”;

12 (iii) by inserting “or of a previously  
13 published musical work that has been fixed  
14 in the form of text or notation” after “lit-  
15 erary work”;

16 (iv) by striking “specialized formats”  
17 and inserting “accessible formats”; and

18 (v) by striking “blind or other persons  
19 with disabilities” and inserting “eligible  
20 persons”;

21 (B) in subsection (b)(1)—

22 (i) in subparagraph (A)—

23 (I) by inserting “in the United  
24 States” after “distributed”;

1 (II) by striking “a specialized  
2 format” and inserting “an accessible  
3 format”; and

4 (III) by striking “blind or other  
5 persons with disabilities” and insert-  
6 ing “eligible persons”; and

7 (ii) in subparagraph (B), by striking  
8 “a specialized format” and inserting “an  
9 accessible format”;

10 (C) in subsection (c)(3), by striking “spe-  
11 cialized formats” and inserting “accessible for-  
12 mats”; and

13 (D) in subsection (d)—

14 (i) by striking paragraphs (2) and (4);

15 (ii) by redesignating paragraph (1) as  
16 paragraph (2);

17 (iii) by redesignating paragraph (3) as  
18 paragraph (4);

19 (iv) by inserting before paragraph (2),  
20 as so redesignated, the following:

21 “(1) ‘accessible format’ means an alternative  
22 manner or form that gives an eligible person access  
23 to the work when the copy or phonorecord in the ac-  
24 cessible format is used exclusively by the eligible per-  
25 son to permit him or her to have access as feasibly

1 and comfortably as a person without such disability  
2 as described in paragraph (3);”;

3 (v) by inserting after paragraph (2),  
4 as so redesignated, the following:

5 “(3) ‘eligible person’ means an individual who,  
6 regardless of any other disability—

7 “(A) is blind;

8 “(B) has a visual impairment or perceptual  
9 or reading disability that cannot be improved to  
10 give visual function substantially equivalent to  
11 that of a person who has no such impairment  
12 or disability and so is unable to read printed  
13 works to substantially the same degree as a  
14 person without an impairment or disability; or

15 “(C) is otherwise unable, through physical  
16 disability, to hold or manipulate a book or to  
17 focus or move the eyes to the extent that would  
18 be normally acceptable for reading; and”;

19 (vi) in paragraph (4), as so redesignated,  
20 by striking “; and” at the end and  
21 inserting a period; and

22 (2) by inserting after section 121 the following:

1 **“§ 121A. Limitations on exclusive rights: reproduc-**  
2 **tion for blind or other people with dis-**  
3 **abilities in Marrakesh Treaty countries**

4 “(a) Notwithstanding the provisions of sections 106  
5 and 602, it is not an infringement of copyright for an au-  
6 thorized entity, acting pursuant to this section, to export  
7 copies or phonorecords of a previously published literary  
8 work or of a previously published musical work that has  
9 been fixed in the form of text or notation in accessible  
10 formats to another country when the exportation is made  
11 either to—

12 “(1) an authorized entity located in a country  
13 that is a Party to the Marrakesh Treaty; or

14 “(2) an eligible person in a country that is a  
15 Party to the Marrakesh Treaty,

16 if prior to the exportation of such copies or phonorecords,  
17 the authorized entity engaged in the exportation did not  
18 know or have reasonable grounds to know that the copies  
19 or phonorecords would be used other than by eligible per-  
20 sons.

21 “(b) Notwithstanding the provisions of sections 106  
22 and 602, it is not an infringement of copyright for an au-  
23 thorized entity or an eligible person, or someone acting  
24 on behalf of an eligible person, acting pursuant to this  
25 section, to import copies or phonorecords of a previously  
26 published literary work or of a previously published musi-

1 cal work that has been fixed in the form of text or notation  
2 in accessible formats.

3 “(c) In conducting activities under subsection (a) or  
4 (b), an authorized entity shall establish and follow its own  
5 practices, in keeping with its particular circumstances,  
6 to—

7 “(1) establish that the persons the authorized  
8 entity serves are eligible persons;

9 “(2) limit to eligible persons and authorized en-  
10 tities the distribution of accessible format copies by  
11 the authorized entity;

12 “(3) discourage the reproduction and distribu-  
13 tion of unauthorized copies;

14 “(4) maintain due care in, and records of, the  
15 handling of copies of works by the authorized entity,  
16 while respecting the privacy of eligible persons on an  
17 equal basis with others; and

18 “(5) facilitate effective cross-border exchange of  
19 accessible format copies by making publicly avail-  
20 able—

21 “(A) the titles of works for which the au-  
22 thorized entity has accessible format copies or  
23 phonorecords and the specific accessible formats  
24 in which they are available; and

1           “(B) information on the policies, practices,  
2           and authorized entity partners of the authorized  
3           entity for the cross-border exchange of acces-  
4           sible format copies.

5           “(d) Nothing in this section shall be construed to es-  
6           tablish—

7           “(1) a cause of action under this title; or

8           “(2) a basis for regulation by any Federal agen-  
9           cy.

10          “(e) Nothing in this section shall be construed to  
11          limit the ability to engage in any activity otherwise per-  
12          mitted under this title.

13          “(f) For purposes of this section—

14           “(1) the terms ‘accessible format’, ‘authorized  
15           entity’, and ‘eligible person’ have the meanings given  
16           those terms in section 121; and

17           “(2) the term ‘Marrakesh Treaty’ means the  
18           Marrakesh Treaty to Facilitate Access to Published  
19           Works by Visually Impaired Persons and Persons  
20           with Print Disabilities concluded at Marrakesh, Mo-  
21           rocco, on June 28, 2013.”.

22          (b) TABLE OF SECTIONS AMENDMENT.—The table of  
23          sections for chapter 1 of title 17, United States Code, is  
24          amended by inserting after the item relating to section  
25          121 the following:

“121A. Limitations on exclusive rights: reproduction for blind or other people with disabilities in Marrakesh Treaty countries.”.

Passed the Senate June 28, 2018.

Attest: JULIE E. ADAMS,  
*Secretary.*