

## Education Exemptions to Copyright : Mulidimensional study

BADI BOUKEMIDJA Nadjiba

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### Abstract

*The ownership of intellectual rights, and more precisely copyright, implies an exclusivity linked to the economic exploitation of the rights.*

*Thus, when the interest is private, the exploitation by a third party requires a license agreement. But when the interest is general, the rules concerning the limits and exceptions to copyright, set out in international treaties and national legislations, also by specific texts when it is a question of exploitation by disabled persons, intervene.*

### Keywords

Copyright, Limits,  
Exceptions, Texts,  
Persons With Disabilities

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### Introduction

Intellectual property is directly related to the production and distribution of new and real goods and services that all citizens can benefit from. This requires an optimal and cost-effective IP “infrastructure” that covers the legal recognition, registration, use and effective and appropriate implementation of various forms of IPR in the infrastructure (European Commission, 2020)<sup>1</sup>.

Under such circumstances, it is necessary to treat trained human resources and intellectual capital as key elements of nation-state and corporate innovation strategies. It is necessary to establish, maintain, and consolidate an appropriate intellectual property system within the country, as well as to participate in international forums. Conduct discussions, such as the World Trade Organization (W.T.O.) and the World Intellectual Property Organization (W.I.P.O.), in order to safeguard and defend national interests (Ana Maria NUNES GIMENEZ, 2012) .

Additionally, copyright is an incentive for intellectual or cultural creation. Others use this knowledge or culture to resist payment to the author. However, just providing such works certainly does not mean that everyone can use these works. There will be those who cannot pay the reward. In some cases, the use of certain forms of works cannot prove the lengthy process of obtaining the author’s consent and/or payment of any or "full" remuneration.

Furthermore, international copyright law provides for certain limitations and exceptions (L&E) to copyright protection to safeguard the public interest in obtaining copyrighted works and for educational purposes (Klaus D. BEITER, 2020) .

### Research problem:

The study imposes to pose the following problematic :

Are the internal texts of the countries in conformity with international treaties ?

This issue leads to the next questions :

-Is the constitutionalization of the right to education mandatory for the strengthening of the protection ?

-Are the texts relating to exceptions and limitations for persons with disabilities sufficient ?.

### Objectives of the study:

The current study seeks to achieve research goals and theory and practice. It aims to understand the right to education as a whole, and also when it is considered as an exception and limits to copyright.

### Methodology:

This study imposes the descriptive method by collecting information and classification. Similarly, the analytical method is also required for the phenomenon described, analyzing the relationship between the various aspects that have been revealed for proper understanding and drawing conclusions.

## **2- Humanisation of right of education**

The position of copyright in education implies recognition by human rights. Which imposes to study in the first place the human rights of education, mainly the position of the U.N through the universal declaration of human rights, then the position of U.N.E.S.C.O, visible in these objectives , as a strict qualification.

Concerning the U.N. Office of the High Commissioner for Human Rights, it defines human rights education as training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the molding of attitudes directed to:

The strengthening of respect for human rights and fundamental rights; the full development of the human personality and the sense of its dignity; the promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious, linguistic groups; and, the enabling of all persons to participate effectively in a free society (United Nations, Office of the High Commissioner for Human Rights, 1997, p. 5.) .

For the U.N Special Rapporteur on the right to education, he said that education involves more people than any other institutionalized activity in the world. In a 2002 report to the U.N Human Rights Commission, Katarina Tomaševski stated that although the commitment to institutionalized education has become ubiquitous worldwide, the commitments everywhere are " At the cost of "hardware", at the cost of "software" (Katarina TOMASEVSKI, 2001).

In addition to the will of the U.N previously cited, we find the importance of texts, and it is mandatory to refer to the Universal Declaration of Human Rights (UDHR) (United Nations General Assembly, 1948 )<sup>2</sup>.

Firstly, Article 26 /1 reads as follows:

“Everyone has the right to education.

Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit... Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding... ».

This article includes the right to free basic education in a broad sense. The term "free" may refer to education itself, it must be free, but this does not mean that students must bear a certain fee. The regulations do not distinguish between basic education and other kinds of education, but it is clear that basic education must be compulsory.

While, Article 26/ 2 emphasizes the importance of education for the development of personality and strengthening respect for human rights. This is consistent with the preamble of the Universal Declaration of Human Rights, which mentions the "inherent dignity" of all human beings as the overall source of human rights (Philipp Maximilian USADEL, 2016 ).

This definition does not specifically target the school sector. In fact, the United Nations proposes to provide human rights education to all sectors of society, as part of the process of personal "lifelong learning" (United Nations, 1997 ).

However, U.D.H.R cannot be regarded as legally binding under international law, because it has neither the status of a treaty or convention nor the right to education up to the level of customary international law. This is the reason for the conclusion of a binding treaty, which clearly addresses the goals of the Universal Declaration of Human Rights(Philipp Maximilian USADEL, 2016 ).

With the exception of the Universal Declaration of Human Rights, all the above-mentioned instruments are binding on their States parties. On the basis of these legally binding declarations, the international human rights institutions responsible for administering these treaties and ensuring that the country abides by the right to education have also explained and elaborated on the country's obligations with regard to the right to education (Jacqueline MOWBRAY, 2020).

The right to education is enshrined in articles 13 and 14 of International Covenant on Economic, Social and Cultural Rights (I.C.E.S.C.R.), which provide the following :

According to the article 13 The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental rights.

They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Also, the States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right :

- (a) Primary education shall be compulsory and available free to all ;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education ;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; ...

In parallel, according to article 14, each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

None of the international laws that establish the right to education clearly stipulates the right to public education. In fact, apart from the U.N.E.S.C.O Convention on the Elimination of Discrimination in Education, they did not use the term "public education" at all, but did not define or explain the term. Therefore, according to international human rights law, in order to determine the extent of the obligation of countries to provide public education, it is necessary to first define the term "public education" (Jacqueline MOWBRAY, 2020).

This was emphasized by Mr. Koichiro MATSUURA (2009), the Director General of U.N.E.S.C.O. in his addressing speech at the U.N.E.S.C.O Future Forum on Knowledge Acquisition and Sharing when he stated: "Never before in human history has so much information been so readily available to so many. In an increasingly connected global community, the ability to access information and transform it into meaningful and useful knowledge is a key driver of sustainable social and economic development. Yet, knowledge acquisition and sharing is still far from equitable. Huge numbers of people, particularly in developing countries but also marginalized groups elsewhere, are denied the opportunities to acquire, use and share knowledge in this way".

Identically, many countries believe that human rights education is almost the only focus of the formal education system: by including human rights topics in the curriculum, revising textbooks in schools, organizing university courses and conferences to provide human rights education, and other more participatory activities ( For example, Hong Kong's school essay writing and drawing competition). Frequently mentioned training programs and seminars for specific groups, such as professional groups. The contact points and specific agencies responsible for these plans are less frequently mentioned ([www.ohchr.org](http://www.ohchr.org)).

Within the framework of the objectives, education is a human right and a force for sustainable development and peace. Each goal in the "2030 Agenda" requires education so that people have knowledge, skills and values to live with dignity, build their own lives and contribute to society. Today, more than 262 million children and young people are out of school. Six out of ten people did not acquire basic literacy and numeracy skills after several years of schooling. 750 million adults are illiterate, increasing poverty and marginalization. The Sustainable Development Goal 4 (SDG 4) of the 2030 Agenda basically captures the ambitions of education, which aims to "ensure inclusive and fair quality education and provide lifelong learning opportunities for all by 2030."

The roadmap for achieving education goals, adopted in November 2015, provides guidance for governments and partners on how to turn commitments into action (the Education 2030 Framework for Action). U.N.E.S.C.O is responsible for coordinating the international community to achieve this goal through partnership, policy guidance, capacity building, monitoring and advocacy ([www.unesco.org](http://www.unesco.org) ).

Both the United Nations and the regional system reflect certain human values. Although the wording and circumstances are different, it can be considered that this is the basic commonality of all three concepts. The best example may be the principle of fully developed personality (usually linked to the child's best interest theory), but it is obviously not the only example. Understanding, tolerance, and specific cultural values are also

promoted in every human rights system. On the darker side, the risks of cultural indoctrination have emerged in different contexts (Pablo MEIX-CERECEDA, 2020 ).

In response to the question of the obligation of international treaties in the area of education right and its impact on domestic texts, according to Human Rights Council (A/HRC/23/35 )<sup>3</sup> : State obligations regarding the right to education have been based on International human rights law establishes defensible rights. Usable The literature reveals the importance of determining “justiciable components”. Economic, social and cultural rights, including the right to education and Law enforcement at the international level, as well as national protection, Respect and realize them. Indeed, the court has dealt with education issues before them, many key aspects of the right to education has accepted judicial or quasi-judicial review. The right to education has been considered to be fully justiciable in many jurisdictions.

Before concluding the point concerning the humanization of the right to education, it is necessary to pronounce on the imperativity of the provisions of international treaties, because this subject has known several interpretations, which differ in principle according to the reading of the country and according to the level of economic development of each country.

For this, we refer to the constitution of Finland (Entry into force and adopted : October 12, 2010 ), which has detailed the right to education, unlike many countries which have recognized this right in its generality in their constitutions, and even without however detailed it in the texts application, which opens the door to differentiation in the application and thus instability whether in the texts or in the application.

Returning to the example of Finland, and for this reason we have chosen Finland, in relation to its first place ranking, in the 2019 ranking of the best countries in the quality of education. It is based on the article 16 of constitution, which widened the field of application, representing a guarantee for the right to education, and which states that :

Everyone has the right to receive free basic education. Compulsory education is regulated by law. The State guarantees to everyone, in accordance with more precise provisions laid down in a law, an equal possibility of access, according to their capacities and their particular needs, to an education going beyond basic education as well as to improve, without deprivation constituting an obstacle. The right of scientific research, artistic expression and higher education is guaranteed.

From the example of Finland, we can conclude that the use of education should not stop at the level of international treaties. It is true that the international character is the main one, but this character must be completed by the national recognition, a clear and complete recognition of the right to education, otherwise the humanization at the level of international treaties will remain without soul, without scope, finally, incomplete and without continuity.

### **3- Differentiating aspects of copyright**

Since education has been clearly integrated as a human right, according to the U.N and U.N.E.S.C.O, as explained in the previous section. There remains the second aspect related to education, which is copyright, and more precisely the exceptions and limitations related to it. For this, it will be necessary to study the international institutions specialized in this area, mainly the World Intellectual Property Organization (WIPO)<sup>4</sup>, through the Berne Convention<sup>5</sup>, and also the World Trade Organization(W.T.O)<sup>6</sup>, through agreement on trade-related aspects of intellectual property rights(T.R.I.P.S)<sup>7</sup>.

Starting with article 8 of the Berne Act 1886, state as follows: “With regard to the right to make lawful borrowings from literary or artistic works for publications intended for education or of scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special arrangements existing or to be concluded between them is reserved”.

After several years of negotiations and discussions, the current Article 10(2) of the Berne Convention for the Protection of Literary and Artistic Works 1886 specifically provides on the exception of copyright law related to teaching, which reads as follows:

“It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice”.

Early international treaties focused on analog works, because the use of the Internet and digital works did not begin until the early 1990s. The 1996 W.I.P.O treaty was the first treaty that began to deal with digital media,

clarifying that the provisions of the Berne Convention cover the right of reproduction, exceptions related to computer programs, performances, and all forms or formats of recording (Robert J. CONGLETTON, 2017).

The adoption of T.R.I.P.S is a good example because it forces countries to review their laws and reminds governments and business members of the importance and concern of intellectual property rights. In the process of economic development. Therefore, the increasing use of I.P systems has been regarded as one of several key factors for successful economic realization.

These understandings also affect the choice of educational form and content that universities and educational institutions should teach, which makes the establishment of a plan compatible with intellectual property teaching an increasingly important issue. At the same time, the scope of specific intellectual property issues is very important to academia, regardless of its field of knowledge or whether it involves technical issues (Ana Maria NUNES GIMENEZ, 2012).

In addition, the benefits of information and communication technology (I.C.T.) in higher education are also unevenly distributed around the world. I.C.T. is used as a tool to concentrate the ownership of publishers, databases and other key resources in the hands of the most powerful universities and educational institutions. Some multinational companies are almost all located in developed countries.

As early as the first edition of the Berne Convention, the most important international agreement on copyright and related rights recognized copyright exceptions for educational purposes.

Similarly, the 2003 United Nations Development Programme (U.N.D.P.) report pointed out that the cost of copyrighted educational materials and software has increased due to the increase in the T.R.I.P.S. According to WIPO in 1996, copyright owners may control and restrict information. Obtain treaty arrangements on technological protection measures.

Knowing that the U.N.D.P. is the United Nations' global development network. It promotes technical and investment cooperation among nations and advocates for change and connects countries to knowledge, experience and resources to help people build a better life for themselves.

It also extends the three-step test to the evolving digital network environment. Although specific parts of each treaty can be expanded to resolve some of these issues, there are still many issues that have not yet been resolved.

Correspondingly, no treaty specifically addresses whether digital materials are copies, rather than original works, and thus fall outside the scope of educational exemption. These treaties also did not anticipate and deal with the increasing use of digital materials in higher education, their use in classrooms, the availability of learning management systems, or distance learning accessed through electronic libraries or other means in university libraries (Robert J. CONGLETTON, 2017).

In the application of texts, the diagnosis made by W.I.P.O. in many countries and the opinions expressed by scholars are that the intellectual property of Unicamp (a research university) has not yet been popularized in undergraduate courses, but less in graduate and extension courses.

Although the intellectual property culture is developing and public policy has expanded on this subject, it still cannot be regarded as a solid thing. According to the understanding of most interviewees, Unicamp's I.P. teaching methods still need to be developed in many ways, especially in the decision-making of university leadership, in order to organize more effective actions around the issue.

It is understandable that this should not only be achieved by raising the awareness of the academic community and by supporting teaching, but also by constructing specific curriculum units by constructing products that are consistent with the curriculum requirements (Ana Maria NUNES GIMENEZ, 2012).

To conclude this part, we specify the point of the main condition granted by the Berne Convention, in order to take advantage of the limits and exceptions, and which is the condition of « fair use ».

From this condition it can be seen that the Convention has linked two aspects : the material aspect, which is that of use and economic exploitation, and the moral aspect, which is that of fair use.

Furthermore, the problem which arises in practice is this last aspect; more precisely, the contours which command it, are not the texts which pronounce themselves in matters of loyalty, but rather custom. Of course, the latter differs from one country to another, and sometimes it differs within a single country. this difference in application, which implies a difference in reading and in qualification, will undoubtedly affect rights, rather than the rights of persons who are not in a position of strength. The solution is that W.I.P.O. addresses indicative provisions<sup>8</sup>, concerning the criteria that can be qualifying, especially for the judges of the member countries in case of dispute.

#### **4- Limitations and exceptions in national texts**

The impact of intellectual property law on human rights and constitutional rights has spread to academic textbooks and articles. It is worth noting that both legislators and courts have begun to pay attention to many aspects of the interaction between human rights and intellectual property rights. This phenomenon is sometimes referred to as the “constitutionalization” of the IP legal system (Christophe GEIGER, Elena IZYUMENKO, 2020).

An interesting finding was discovered by analyzing the similarities and differences in copyright exceptions related to teaching purposes among the U.K, Australia and Malaysia, which mainly use educational materials. Australia provides the most flexible copyright exception for teaching purposes. The "Australian Copyright Act of 1968" takes into account the amendments to Act No. 113 of 208, establishing open fair trade clauses for research purposes, allowing copying, multiple copying, the right to include works in collections, and the right to exchange works condition (Ratnaria WAHID, 2012).

In principle, educational publishing includes schools, higher education institutions, continuing education institutions (collectively referred to as "education institutions"), and all works purchased by students for educational purposes. The educational publishing value chain depends on authors and publishers, who believe that they can obtain sufficient financial returns in time and money (PricewaterhouseCoopers, 2012)<sup>9</sup>.

After this, in its mission to disseminate knowledge and culture to the greatest number of people, the library must strike a balance between two requirements: the interest of readers in freely disposing of as much content as possible and the right of authors to remuneration for their creation. The solutions that have been found to reconcile these two principles are important elements of the regulatory framework governing the activities of libraries

The so-called library exception - in reality granted to heritage institutions that include a dissemination mission (archives, libraries, museums) - which organizes a form of compromise by admitting certain acts of conservation and dissemination that are strictly supervised. Users can access digital content, but the exception does not allow them to copy digital files.

Then, the right to lend in libraries, transposition of the European directive of November 19, 1992, which recognizes the right to authorize or prohibit the lending of originals or copies: the law of June 18, 2003 relating to remuneration for lending in libraries and strengthening the social protection of authors introduces a legal license regime.

The author gives up his right to authorize or prohibit lending in exchange for remuneration. The development of digital books made available by public libraries is not included in the scope of the library lending right. For example, France favors the contractual approach by seeking solutions shared by all players in the book . The round table clearly showed that this balanced regulatory framework is very important for the preservation of the different principles at stake. At a time when the European Commission is considering reforming the European law governing copyright, France wants to ensure that this system can be preserved (Nicolas GEORGES, 2015 ).

Concerning algerian law relating to copyright<sup>10</sup>, especially art.21 , the author has moral and economic rights on the work he creates.

The moral rights are inalienable and imprescriptible and cannot be renounced. Economic rights are exercised by the author, its representative or any other rights holder.

When it is a question of limits and exceptions, the author cannot have the exclusivity concerning the material right, because it is the public interest which takes precedence, over article 33 of the preceding law stipulates that any literary or artistic work, produced in printed, radio, audiovisual or any other form, intended to school or university education, may result in :

A compulsory non-exclusive translation license for publication in Algeria, in the form of graphic editing or by sound broadcasting or audiovisual if it has not been translated into a foreign language.

national and put into circulation or communicated to the public in Algeria one year after the first publication ; a compulsory license of non-exclusive reproduction for the purpose of publication, if it has not been published in Algeria at a price equivalent to that charged by the national editions, three years after its publication.

First publication if it is a scientific work, seven years after its first publication, if it is a work of fiction, and five years after its publication, the first publication for any other work.

The license referred to in the above paragraphs shall be issued by the national copyright and royalties office neighbors, in accordance with duly ratified international conventions.

It is important to emphasize that beneficiary of the compulsory licence of translation or reproduction must exploit the work in respect of the moral rights of the author.

He must pay the rights holder an equitable remuneration. This remuneration is collected by the national office of the author of copyright and neighbouring rights and paid to the holder of the rights (art 39 of ordinance 03-05 on the copyright and related rights).

For application of this context by jurisdiction, on September 11, 2014, the Court of Justice of the European Union (CJEU) ruled on the following case: a German university library allowed its users to consult a work on site and to take the complete copy on their USB key. The court considers that the library exception does not extend to such a practice, which it therefore condemns. Indeed, if the library can communicate the work by virtue of the exception, on the other hand, the new act of reproduction performed by the user is not covered by the exception. However, still according to the court, the play of another exception, "private copying", could legitimize this practice. But this is then on condition that "equitable compensation" be organized for the benefit of the rights holders (this was not the case here). The CJEU limits itself to indicating what the States of the Union may or may not legislate... but one can guess the extent of the possibilities open (CJUE sept11. 2014 )<sup>11</sup>.

Subsequently with the advancement of technology and the high popularity of the Internet, the far-reaching nature of the network has formed a fast information flow channel, and the acquisition and exchange of knowledge is no longer limited to time and space.

In such a time and space environment, the traditional education model has entered a new height, learning activities are transferred from the classroom to the virtual network environment, and learning materials are transformed from paper textbooks to digital content. The emergence of e-learning has created a new education and a diverse environment, adapting to the rapid changes in modern society. High learning ability breaks through the limitations of traditional teaching on time and space, creating an autonomous and personalized e-learning space, which can easily implement the concept of lifelong learning (Aimin Qi, 2018).

Indeed, informal discussions illustrate the link between new knowledge and the creation of economic value, which is essential for the treatment of modern technological progress driven by innovation. As long as agents value new ideas, they have economic incentives to allocate precious resources to their production. The idea of extracting value from new ideas will provide agents with ex-ante incentives to encourage them to invest in their products. This is not to say that the study of business motivations is the only source of new knowledge.

In addition to commercial research and development (R&D) companies, we also find other institutions such as universities and publicly funded research centers. Although they play an important role in providing new knowledge (especially basic science), and the concept of publicly funded research fields is attractive from an economic point of view, the focus of this paper is entirely on the analysis of business-driven R&D firms (Juan Felipe BERNAL URIBE, 2012).

Hence, the L&E allows spontaneous use occasionally (Gervais, 2017, p.93). However, L&E does not allow educational institutions to photocopy (mostly) textbooks and provide them to students for free or cheaply, or include them in course packages. In more developed states, it is customary for educational institutions to sign use agreements with collection associations. These associations regulate use outside of L&E to avoid remuneration. However, even these agreements generally do not provide bulk access. In addition, educational institutions in developing countries often lack the necessary capacity and resources to sign such agreements.

In general, in the short to medium term, the social model of collections does not seem to be applicable to developing countries. The collection society is expensive and bureaucratic, tends to exert important market forces, and in developing countries, intellectual property rights holders in rich countries charge much higher royalties than local creators (Klaus D. BEITER, 2020 ).

To conclude this part related to national legislation, based on the literary or artistic work, intended to school or university education, and which may give rise, according to the algerian text cited above, to the following :  
A compulsory licence of non-exclusive reproduction for publication purposes, three years after its first publication, if it is a scientific work.

Thus, it is noticeable that the algerian legislator has based itself on teaching, while excluding scientific research, despite its extreme importance in terms of compulsory licence.

Also, the duration of three years for the compulsory licence, being a scientific work, which is according to our qualification a rather long duration, and which may even diminish the value of the information contained in the scientific work.

Finally, to be more complete, national legislations, such as the Algerian legislation, must link the compulsory licence not only with teaching, but also with scientific research, and also not relativise the compulsory licence with time, especially in the face of the speed of technology.

### **5-The relation with health : Case of persons with disabilities**

By educating on the inseparable link between human rights and public health, students face the challenge of looking at global health through the lens of universal dignity, community empowerment, and social justice. New educational resources can lay the foundation for more integration of human rights into health professional research and enable the next generation to participate in human rights learning and practice. Human rights education empowers health professionals to put human rights at the center of their work, can promote justice and bring about a global health future (Lawrence O. GOSTIN, Hanna HUFFSTETLER, Benjamin MASON MEIER, 2020 ).

The World Health Organization (W.H.O) and the World Bank's 2011 World Disability Report is one of the most cited statistics on the global disability epidemic. The report states that "one billion people in the world suffer from some form of disability. Of the disabled, nearly 200 million of them have encountered considerable difficulties in operation." The W.H.O and World Bank report that most people with disabilities live in the developing world. /This constituency faces several challenges and belongs to the "most marginalized group in the world" (WHO, [2018b](#) ).

Of the millions of books published worldwide each year, only 01% to 07% (refer to the World Blind Union (W.B.U) press release, June 2013) are available to 285 million blind, visually impaired and printed users. People with disabilities, 90% of whom live in low-income areas in developing countries (refer to the World Health Organization's online fact sheet on visual impairment and blindness) ([wipo\\_pub\\_marrakesh\\_flyer-version1](#) ). The world intellectual property organization was interested in the subject of exceptions and limitations related to copyright for persons with disabilities by the convention on the rights of person with disabilities, known as the Marrakech treaty .

It was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations.

The Convention entered into force on 3 May 2008. ([A/RES/61/106](#))

The policy of this treaty appear from its preamble, which considered that It is recognized that there is a need to maintain a balance between effective protection of the rights of authors and the greater public interest (especially education, research, and information access), and that this balance must promote effective and timely access to works for the benefit of persons with disabilities Visual impairment or other printing obstacles, According to texts of this treaty (Article 3 Marrakesh : Beneficiary Persons), a beneficiary person is a person who:

- (a) is blind;
  - (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
  - (c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;
- regardless of any other disabilities.

From a copyright perspective, there are different types of disabilities, and people belonging to this group face special challenges in obtaining protected works. Disability categories include hearing (deaf or hard of hearing), vision (blindness, visual impairment or other printing disabilities), cognitive and intellectual, physical or motor impairment, and multiple disabilities (combination of two or more of the above). Classifying persons with disabilities in this way is a useful framework for understanding the degree of material conversion required to



ensure that different communities of persons with disabilities have access to various forms of copyrighted content (Caroline B. NCUBE, Blake E. REID, Desmond O. ORIAKHOGBA, 2020) .

The Member States of the World Intellectual Property Organization (WIPO) passed the Marrakesh Treaty on June 27, 2013 to facilitate the blind, visually impaired or other printed materials to access published works (Marrakesh Treaty) ), in order to solve this problem, it is usually called a global famine. According to the human rights principles outlined in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (U.N.C.R.P.D), the Marrakesh Treaty is the first copyright treaty that contains a clear view of human rights.

The Marrakesh Treaty shows that the copyright system is an important part of solving this challenge, which is to improve access to books and other printed works for persons with print disabilities (-wipo\_pub\_marrakesh\_flyer-version1 ).

The definition provided by the Marrakesh Treaty is the basis for understanding its scope and application. These definitions provide clear information: who will be able to enjoy the limitations and exceptions outlined in the treaty ("beneficiaries"), what is available ("works"), and in what format these works can be adapted ("accessible" ). format").

A "beneficiary" is defined as a person who is affected by a range of or multiple disabilities and cannot effectively read printed materials. The broad definition includes people with visual impairments and physically disabled people who can prevent them from holding and operating books.

In a sense, the definitions of "work" and "accessible format copy" are closely related to the concept of beneficiaries, because "work" refers to those materials that the "beneficiary" will not be able to read or access, unless alternative methods or Accessible format. The definition of "work" in the treaty is limited to materials in the form of words, symbols and/or related illustrations, and the declaration provisions agreed by the parties, which also include audiobooks.

The definition of " accessible format copy " is quite broad and covers any format, including digital formats, that allows people with visual impairments or other print disabilities to access content as comfortably and comfortably as people without such disabilities (wipo\_pub\_marrakesh\_flyer-version1 ).

he accessibility technologies discussed above are very important to ensure that people with disabilities participate effectively in education, entertainment, and other related activities in society, but the economic effort to make copyrighted works accessible is complicated. Restoring certain types of copyrighted works into an accessible format is usually labor and cost intensive. The differences between video and text and the differences between auditory, visual, and cognitive impairments mean that small-scale, individualized restorations may not be a sustainable way to achieve the goal of widespread access to copyrighted works (Caroline B. NCUBE, Blake E. REID, Desmond O. ORIAKHOGBA, 2020)

For application of contexts of this treaty, we find A.B.C, which is a WIPO-led public-private partnership that brings together all of the key players – organizations representing people who are blind, visually impaired or otherwise print-disabled, authors, publishers, collective management organizations, libraries and other authorized entities, as well as standards bodies.

A.B.C was established in June 2014 to implement the goals of the Marrakesh Treaty. Through an effective international alliance of relevant state and non-state actors, ABC seeks to increase, and distribute, the number of books worldwide in accessible formats - such as Braille, audio, e-text and large print.

ABC works in three areas, namely:

-Capacity building-ABC provides training and funding in developing and least developed countries, and produces books in an accessible format.

-ABC Global Book Service-a global library catalog in an accessible format that enables blind participating libraries from all over the world to share items in their collections and distribute the accessible book titles obtained through ABC to their customers.

-free publishing – Promote the production technology of barrier-free books in the publishing industry\_so that both insight and people with reading disabilities can use e-books ([www.AccessibleBooksConsortium.org](http://www.AccessibleBooksConsortium.org) ).

Also, at the end of 2019, Hachette Livre, the world's third largest publisher, became the 100th signatory of the "Accessible Books Alliance (A.B.C) Charter" and is committed to enabling all users, especially the blind or visually impaired, to fully use its products. Hachette Livre is at the forefront of accessible e-book production. Starting in 2018, all of its novels are "naturally accessible", that is, produced in an accessible format for the visually impaired.

Accessibility has been a priority for Hachette Livre over the last decade, with efforts spearheaded by Luc Audrain, Hachette Livre's technical expert on digital accessibility standards.

On products and services accessibility requirements of the new E.U. directive 2019/882, has brought new obligations for the E.U's publishers and distributors, in 2025 the application needs. Luc AUDRAIN praised the E.U directive as an indispensable shock for the European publishing industry, but he warned that the current standards should be retained, especially "E.P.U.B accessibility 1.0". He believes that inventing new standards is harmful to both visually impaired people and publishers (Catherine SAEZ, 2020 ).

Even the United Nations member states have an obligation to ensure that their intellectual property laws do not prevent persons with disabilities from fully participating in the social life of their communities. People with disabilities need a combination of accessible formats of distinctive or copyrighted works in order to effectively participate in educational, cultural, scientific, and social activities.

Although various technologies have been developed to enable the creation of accessible formats of copyrighted works, the use of these technologies may adversely affect the exclusive rights of copyright owners. Similarly, the exercise of exclusive rights by copyright owners may also pose obstacles to the deployment of copyrighted works in accessible formats by persons with disabilities.

Therefore, an appropriate legal framework needs to be adopted to eliminate the obstacles that exclusive rights create and use accessible format copies for persons with disabilities, while retaining the economic rights of copyright owners (Caroline B. NCUBE, Blake E. REID, Desmond O. ORIAKHOGBA, 2020).

To conclude, it should be noted that national and international texts have protected the rights of persons with disabilities, visibly in the exceptions and limits to copyright, going beyond the stage of popularization of their rights.

Their presence thus remains in other aspects, such as the ownership of copyright, because this category often needs to be heard as an author, rather than to be a beneficiary in a category of exceptions. So let's plead for new, and more captive texts, because we are not facing a category of people with hesitant voices.

## **Conclusion :**

From this study we conclude that the right to education represents an important interest in the legal framework, because on the one hand it is recognized as an absolute right, and on the other hand it enjoys copyright exemptions in its material aspect. This protection is reinforced in the case of disabled persons. But in order to give meaning to the texts, countries will have to strengthen the application of these rights by different infrastructures.

## **Recommandations :**

-It is necessary for international treaties to first define and delineate the contours of the term « public education ».

-The clear, direct and complete recognition of the right to education by internal legislations, in order to attribute international treaties their value.

-Democratization and equity in information sharing, increasing poverty and marginalization, according to the goals of sustainable development.

-In order to be more perfect, national legislation such as Algeria's legislation must not only link compulsory licenses with teaching, but also with scientific research, and must not relativize compulsory licenses over time, especially in the face of rapid technological development.

-In addition to include persons with disabilities in the category of limitations and exceptions, they must also be encouraged in copyright production, in order to be an author and benefit from the rights.

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## **Notes :**

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- <sup>1</sup> - European Commission, Commission Staff Working, Document Report on the protection and enforcement of intellectual property rights in third countries, Brussels, 8.1.2020 SWD(2019) 452 final/2
- <sup>2</sup> - United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.
- <sup>3</sup> - Human Rights Council Twenty-third session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. May10, 2013, A/HRC/23/35.
- <sup>4</sup> -The WIPO Convention, the constituent instrument of the World Intellectual Property Organization, was signed at Stockholm on July 14, 1967, entered into force in 1970 and was amended in 1979. WIPO is an intergovernmental organization which in 1974 became one of the specialized agencies of the United Nations system.
- <sup>5</sup> -The Berne Convention, adopted in 1886, deals with the protection of works and the rights of their authors. As amended on September 28, 1979.
- <sup>6</sup> -The Marrakesh Agreement, manifested by the Marrakesh Declaration, was an agreement signed in Marrakesh, Morocco, by 123 nations on 15 April 1994, marking the culmination of the 8-year-long Uruguay Round and establishing the World Trade Organization, which officially came into being on 1 January 1995.
- <sup>7</sup> -This Agreement constitutes Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization. Entry into force : January 1, 1995. Adopted : April 15, 1994.
- <sup>8</sup> - The same legislative policy of W.I.P.O. concerning the provisions against unfair competition, and the indicative provisions, intended for the judges of the member countries, on the qualification of the well-known trademark.
- <sup>9</sup> - PricewaterhouseCoopers LLP (PwC), An economic analysis of education exceptions in copyright, March 2012, p03.
- <sup>10</sup> - Ordinance 03-05 of July 20, 2003, on the copyright and related rights.
- <sup>11</sup> - C.J.U.E. sept11. 2014, aff. C-117/13, CCE 2014, n° 11, comm. 83, note Ch. Caron.

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**Web page :**

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[www.AccessibleBooksConsortium.org](http://www.AccessibleBooksConsortium.org)  
[www.unesco.org](http://www.unesco.org)

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**Author Information**

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**Nadjiba BADI BOUKEMIDJA**

University of Algiers-1- Benyoucef BENKHEDDA,  
Faculty of law, Algiers, Algeria  
Contact e-mail: [n.boukemidja@univ-alger.dz](mailto:n.boukemidja@univ-alger.dz)

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