

Victoria Owen

# The Information Professional's Imperative to Advance Accessibility as a Human Right

“Access on an equal basis with others.” Article 9, CRPD

**This chapter will demonstrate the significance and importance of accessibility law, and the societal role and responsibility of information professionals in ensuring, advocating for, and expanding accessibility to information for people with disabilities. What does the legal framework provide, and what is required to make digital information accessible for everyone? It considers the legal policies and practices, nationally and internationally, that underpin accessibility and the additional practical policies, attitudes and frameworks required to achieve access for people with disabilities on an equal basis with the mainstream.**

## Introduction

Libraries have a history of remarkable commitment “to equity and access for persons with disabilities [...] long before it became a consideration for other organizations and institutions” (Jaeger et al. 2017). Information professional, librarians, archivists, curators, technicians, are recognized as having deep expertise in information: in its collection, description, preservation, safeguarding, and, up to a point, in making information accessible. Indeed, access to information is an essential component of job descriptions for librarians and other information professionals (Canada 2023). While information professionals have a lot of expertise in information, there are policies and tools to be employed, gaps and barriers to be examined and bridged, to enable equality of access to information and culture. In examining the tools available and the gaps and barriers to accessibility, information professionals can expand the knowledge base and deepen existing expertise in making information more accessible. The chapter will set out key legal instruments, treaties, conventions, doctrines, and provide an approach to significantly advance access to works for people with disabilities for information professionals.

## International Legal Environment for Accessibility

The legal environment offers information professionals a reliable framework in which to operate. There is a wide array of official, enforceable instruments that set out a range of human rights, obligations and duties, and provide an approach to their interpretation (Cornell 2020). Several United Nations (UN) treaties underpin the rights of people with

disabilities, employing specific language related to human rights and access to information and culture. The wide adoption of UN treaties among member states ensures that accessibility of information for people with disabilities is part of the global culture.

## **Universal Declaration of Human Rights**

First to be considered is the United Nations' Universal Declaration of Human Rights (UDHR) of 1948. It was the earliest international instrument to define human rights and their protection. Pertinent to the information sphere, Article 19 of UDHR declares that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (United Nations 1948).

Access to knowledge is a most fundamental human right and is the practitioner's cornerstone in the information field. It is broad and inclusive; everyone has the right to seek and receive information. UDHR is the key foundational document for subsequent legally binding human rights treaties.

## **International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly in 1966, is a legally binding instrument that effectively enshrines UDHR's Article 19 in its own Article 19 (2):

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (United Nations 1966).

## **International Covenant on Economic, Social and Cultural Rights**

The International Covenant on Economic, Social and Cultural Rights (ICESCR), also adopted in 1966, provides within Article 15 that everyone has the right to take part in cultural life and enjoy the benefits of scientific progress and its applications (United Nations 1966).

## **Convention on the Rights of People with Disabilities**

In 2006, the United Nations Convention on the Rights of People with Disabilities (CRPD), a groundbreaking international treaty, was adopted (United Nations 2006). By May 2024

one hundred and ninety-one (191) States have ratified or acceded to the treaty, compelling them to implement the treaty provisions in the development of national laws and practices and establishing equal protection and treatment for people with disabilities (Blanck 2023). Access to information is a human right and CRPD addressed this in three specific articles that relate to access for people with disabilities:

*Article 9 – Accessibility, specifically 1(b) and 2(g) and(h)*

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

(g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

*Article 21 – Freedom of expression and opinion, and access to information, specifically 21(a)*

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

*and Article 30 – Participation in cultural life, recreation, leisure and sport, specifically 30(1), 30(1)(a) and 30(3):*

30(1) States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

a) Enjoy access to cultural materials in accessible formats...

30(3). States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

## Human Rights, Copyright, and Disabilities

This group of landmark treaties, ICESCR, ICCPR and CRPD, are binding and enforceable in all states that have ratified them. They are essential for ensuring that laws and practices that guarantee access to information for all, including people with disabilities, are in place. However significant these treaties are in relation to rights of access to information, they abut but don't overlap or eclipse, rights granted by other legal regimes, in particular, copyright. The challenges posed by balancing the rights of copyright and the rights of access to information and culture for people with disabilities, needed to be addressed.

The rights of authors are mentioned in the international documents related to human rights and access to information and culture. UDHR, which includes Article 19, as above, also includes Article 27, which provides for both the right to participate in the cultural life of the community, and, with the potential for conflicting interests, especially as it relates to access, the right of authors for the protection of moral and economic interests in their productions. In Article 15 of the legally binding ICESCR, there is a provision that everyone has the right to take part in cultural life and enjoy the benefits of knowledge, and again, with the potential for tension and coercion, that the author has the right to benefit from economic and moral interests in their productions. Copyright is inextricably and clearly included in the human rights treaties, linking rights of the creator and the user in a complicated balance.

Access to knowledge and culture for people with disabilities often requires adaptations. With regards to books and reading for information, education and culture, adaptations often involve reproducing the work and distributing it, both of which involve copyright related rights. In numerous jurisdictions, governments have subordinated the responsibility for providing accessible works, shifting it from the producer or publisher to a third party, often the state itself or a non-profit disability organization (Reid 2021).<sup>1</sup> These are costly adaptations to make for public and non-profit institutions. It makes strong financial sense for the institutions to share the adapted works across institutions and across borders, rather than duplicate the same work many times over in different jurisdictions. In the copyright realm, the cross-border exchange would implicate importation and exportation rights (Dreyling / Hackett 2022). The tension between property rights and human rights for people with disabilities was seminal to the negotiation and adoption of the Marrakesh Treaty.

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<sup>1</sup> Legislation in the European Union is about to change the situation with third party producers. In 2025, the European Accessibility Act of 2016 will come into force and require the removal of barriers that discriminate against people with disabilities in e-books in the market in the European Union's member states.

## Marrakesh Treaty

To address the conflicting rights of access to information and culture for people with disabilities and the rights of authors, the United Nations' World Intellectual Property Organization (WIPO) negotiated the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (MT). It entered into force in 2016. It is an historic treaty in two spheres. First, it is a human rights treaty for people with disabilities, and secondly, it is a copyright treaty (Zemer / Gaon 2015), the first in the history of WIPO dealing with the public interest side of copyright, namely users' rights (Vaver 2013).

The main purpose of the Treaty was to create mandatory limitations and exceptions to copyright, to the rights reproduction, distribution, and importation and exportation, for the benefit of people with print disabilities. WIPO maintains an ongoing item to address limitations and exceptions for persons with other disabilities on its agenda (WIPO 2023).

## Other Legal Frameworks

Almost all 193 UN member states have ratified or acceded to ICCPR (174), ICESCR (172) and CRPD (191);<sup>2</sup> the Marrakesh Treaty, while the fastest moving treaty in WIPO's history, has only 95 ratifications by May 2024.<sup>3</sup> Each member state would have enshrined human rights into their national legislative framework, ensuring compliance and enforcement. In addition to human rights treaties and national laws, other legal structures, such as agreements regarding interpretation (e.g., the Vienna Convention), and doctrinal guidance, have a bearing on the interpretation and applicability of laws in providing access to knowledge and culture to people with disabilities.

## Interpreting International Treaties

ICCPR, ICESCR, CRPD, MT, and national laws are to be interpreted in accordance with the guidance from a range of sources. Of particular interest are interpretations by the UN Treaty Bodies, committees of independent experts that monitor implementation of the core international human rights treaties. Their "General Comments" provide guidance on the interpretation and practical implementation of certain rights enshrined in

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<sup>2</sup> UN: <https://treaties.un.org> (26.06.2024).

<sup>3</sup> WIPO: [https://www.wipo.int/wipolex/en/treaties/ShowResults?search\\_what=C&treaty\\_id=843](https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=843) (26.06.2024). The MT ratification by the European Union is counted as a single ratification but applies to all 27 member states.

the respective conventions. General Comments are addressed to all contracting States. For example, the UN Committee on Economic, Social and Cultural Rights (CESCR), which monitors implementation of the ICESCR, has published two General Comments that provide interpretation of Article 15. Both emphasize the importance of accessibility for equal participation in culture and science<sup>4</sup>.

The UN Committee on the Rights of Persons with Disabilities has adopted eight General Comments by May 2024. Of particular significance for libraries is General Comment No. 2 on accessibility (United Nations, CRPD 2014).

At the treaty level, the Vienna Convention on the Law of Treaties, Articles 31 and 32, directs interpretations to apply the ordinary meaning of the terms used in context, and taking into consideration the object and purpose of the treaty. The treaty's preamble and annexes are also to be given weight (United Nations 1969). The preamble is indispensable to the interpretation of the treaties and can have a legislative effect (Klabbers 2018).

Considering CRPD, for example, it has twenty-five recitals in its preamble, explaining the purpose of the treaty and highlighting issues of significance. In the context of accessibility, recital (v) emphasizes the importance of accessibility, which is addressed later in Article 9 (Cera 2017). The preamble to the Marrakesh Treaty references UDHR and CRPD both by name and in substance. Of the twelve recitals in the MT preamble there are four that are significant and helpful to the interpretation of the Treaty:

*Recalling* the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities,

*Mindful* of the challenges that are prejudicial to the complete development of persons with visual impairments or with other print disabilities, which limit their freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education, and the opportunity to conduct research,

*Aware* of the barriers of persons with visual impairments or with other print disabilities to access published works in achieving equal opportunities in society, and the need to both expand the number of works in accessible formats and to improve the circulation of such works,

*Recognizing* the need to maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairments or with other print disabilities (WIPO 2013).

The preamble provides the context, non-discrimination, and full and effective participation in society, building on CRPD, and specifies the object and purpose of the MT,

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<sup>4</sup> Committee on Economic Social and Cultural Rights: General Comment No. 21, The right of everyone to take part in cultural life (2009) and General Comment No 25, Science and economic, social and cultural rights. <https://www.ohchr.org/en/treaty-bodies/cescr/general-comments> (26.06.2024).

including access to knowledge, education and research, expansion of the number of accessible works, cross-border exchange to reduce duplication, and timely access to works. Member states that have ratified or acceded to the MT agree to be bound by the terms of the Treaty in its entirety (United Nations 1969), including the preamble.

## Interpreting National Legislation

In implementing the human rights treaties related to people with disabilities, UN member states have an obligation to enact national laws to eliminate discrimination and remove barriers to accessibility. The interpretation of national laws, especially in the absence of relevant jurisprudence, becomes the remit of information professionals navigating the legal landscape of accessibility. “The librarian’s role encompasses dissemination of knowledge,” and includes a responsibility to liberally interpret users’ rights for the benefit of society (Owen 2014).

Information professionals have readily available sources of guidance at the national level. They may begin by framing it in the international community’s context and its agreement on the treaty’s object and purpose. However, interpretation of national laws must rely on the intent and language in the legislation itself, related jurisprudence, and legal doctrinal guidance.

National laws implementing the Marrakesh Treaty address both aspects of the treaty, the human rights treaty and the copyright treaty (Zemer / Gaon 2015). Legislative language can be challenging to interpret for the information practitioner as there is ambiguity in the language in the statutes related to users’ rights with respect to access on an equal basis with others, and in exceptions and limitations to copyright with their lack of specificity and detail. In such circumstances, statutes are drafted to be purposefully ambiguous “to indicate indeterminacy” (Poscher 2012). This ambiguity must be resolved through the context of the legislation and based on the treaties. Ambiguity and indeterminacy are valuable and beneficial constituent parts of the statutory regime. Information professionals must claim the ambiguity and indeterminacy as tools in asserting rights for users with disabilities (Chapdelaine 2013). Interpreting the statute to the advantage of people with disabilities, and in favour of human rights, will counter the lack of certainty in the claims (Chapdelaine 2013).

Statutory guidance also comes in the form of case law and legal precedents in similar jurisdictions. Human rights legislation can be clarified by the courts in relation to a specific fact set. Court cases in relevant jurisdictions can be studied by information professionals to help them understand their national courts’ approach and the court’s adjudication on disability matters.

In addition, there are applicable legal doctrines that judges use in their court decisions, which are also available to assist the information professional in interpreting legislation for practical implementation. In the realm of human rights and accessibility,

the doctrine of strict and liberal construction would apply. It asserts that in circumstances where legislation inhibits freedoms and individual rights, the statute is interpreted narrowly, and where the statute advances social benefits, it is liberally interpreted (Sullivan 2007). Property rights will always yield to dignity, equality, and freedom of expression (van der Walt 2014).

A powerful tool entirely within the scope of work of information professionals is consistency in practice across the profession. A set of consistent, documented actions and interpretations, across jurisdictions, based on standards of professional practice, will be persuasive to the courts. Information professionals and their associations must actively seek to establish standards related to access for all, and specifically for people with disabilities, and present library use cases and fact sets before the courts. The courts are the locus of the determination of users' rights (Owen 2012) and while the prospect of a court action is intimidating, information professionals and organizations can also intervene in cases in which they are not party. They can submit information on the accessibility of information such as standards and guidelines, to inform the courts of implications in the broader societal context.

## **Information Professionals' Role in Advancing Accessibility**

The long involvement and commitment of information organizations to access to information and culture for people with disabilities is well recognized. Information professionals have achieved many milestones in making analogue and digital information accessible, however work remains in determining the distance yet to travel and the strategies required in making it accessible for all. The curtailment or narrowing of any interpretation of the human rights of people with disabilities is contrary to professional ethics and not in the remit of the information professional (IFLA 2012). On the contrary, there is a duty to provide positive assistance in making works accessible. The information professional cannot forfeit the human rights of others but must vigorously defend against incursion and narrowing. For example, local administrative policies and practices, or rightsholder overreach, hinder accessibility and are counter to the intent and purpose of the legislation (ARL 2023). Barriers to accessibility are to be eradicated and not replaced with new ones. When equality and freedom of expression are involved the balance of rights must turn in favour of human rights (van der Walt 2014).

Information professionals are ideally situated to uphold the balance of rights of copyright with the rights of access for people with disabilities, and to advocate for fairness on an equal basis with others. Information practitioners have the professional imperative and the societal role to advocate for and provide access for people with disabilities.



As presented above, the international frameworks of UDHR, ICCPR, CRPD, MT, and national laws deliver the legal authority to information organizations and professionals to fully occupy the users' rights policy space and harness the flexibility to shape the customs and practices of accessibility for people with disabilities.

## Conclusion

The requisite legislative and policy frameworks are available to information professionals to advance accessibility of information and culture to people with disabilities and overcome the barriers that prevent full access on an equal basis with others.

Information professionals can proactively and unequivocally claim the human rights of access for users. In professional practice, they should utilize the ambiguity and indeterminacy available in the law, to assert rights on behalf of and for the benefit of people with disabilities. Such use cases, as standard professional practice, will clarify the law. While such actions may invoke fears of liability, their understanding of the context and scope of human rights to access will counter their concern (Chapdelaine 2013).

Indeed, information professionals may seek to present library use case fact sets in front of the courts. Information professionals operate at the margins of human rights and for the benefit of society as a whole. In this space they can work out the ambiguities in the law in favour of access to people with disabilities (Gillespie 2007). The courts make decisions on specific fact sets, and consistent action by librarians and information professionals shapes and influences customs and practices, and can be influential in the courts (Patterson / Lindberg 1991).

Information professionals understand the context of human rights legislation and the far-reaching purview entrusted to them to interpret and implement human rights legislation in the broadest possible manner. They recognize their societal responsibility in delivering on accessibility in their institutions. They can be confident that the object and purpose of the legislation was to provide access. Information professionals are reassured that the broadest possible interpretation for implementation was intended and is a profound responsibility: the human rights of access to knowledge and culture for people with disabilities is in their hands.

## Author

**Victoria Owen** holds a joint appointment as Information Policy Scholar-Practitioner in the Faculty of Information at the University of Toronto and as Special Advisor to the Dean on Information Accessibility at UTSC. Her background is in library administration in academic, special and public libraries, including the University of Toronto and the CNIB Library for the Blind. Victoria holds a Master's in Library Science and a Master's in

Law, specializing in intellectual property. She serves on the board of the World Intellectual Property Organization's Accessible Book Consortium, Chair of the IFLA Advisory Committee on Standards, and a member of national and provincial policy and copyright committees. She was awarded the Robert Blackburn Distinguished Paper Award, the Ken Haycock Award for Promoting Librarianship, and the Larry Moore Distinguished Service Award.

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