



Addis Ababa University

College of Law and Governance Studies
School of Law

**THE IMPACT OF THE MARRAKESH TREATY ON
THE SYSTEM OF COPY RIGHT LIMITATIONS AND
EXCEPTIONS IN ETHIOPIA: THE CHALLENGES
AND THE PROSPECTS.**

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February, 2018

Declaration

I, the undersigned, declare that this LLM Thesis is my original work, and this thesis has not been presented for a degree in any other University, and that all sources of materials used for the thesis have been acknowledged.

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Acronyms

ABA: American Bar Association

BC: Berne Convention for the Protection of Literary and Artistic Works

EIFL: Electronic Information for Libraries.

ICESCR: International Covenant on Economic, Social, and Cultural Rights

ICTSD: International Centre for Trade and Sustainable Development

IFLA: The International Federation of Library Associations

IPA: International Polishers Association

IPRs: Intellectual property rights

Marrakesh Treaty: An International Treaty for VIPs

SCCR: Standing Committee on Copyright and Related Rights

TPM: Technological Protection Mechanism

TRIPS Agreement: Agreement on Trade-Related Aspects of Intellectual Property Rights

UDHR: Universal Declaration of Human Rights

UNCRDP: The United Nations Convention on the Rights of Persons with Disabilities

UNDP: United Nations Development Programme

UNESCO: United Nations Educational and scientific and Cultural Organizations.

VIPs: Visually Impaired Persons

WCT: World Intellectual Property Organization Copyright Treaty

WHO: World Health Organization

WHO: World Health Organization

WIPO: World Intellectual Property Organization

WPPT: World Intellectual Property Organization Performances and Phonograms Treaty

WTO: World Trade Organization

Abstract

Reading for Various purposes is a human rights issue guaranteed by international and regional human rights laws and some international copyright standards. However, there are barriers to these rights. The major barrier is the dynamic interaction of the market, technology and the copyright systems. To be more specific copyright law with its territorial nature that grants monopoly powers to the authors and rights holders is a typical barrier. The issue of obtaining copyrighted literary and artistic works in accessible format copies is a challenge to the blind, the visually impaired or otherwise print disabled persons. To eliminate this problem, the Marrakesh Treaty was adopted on 27 June 2013 and became effective in 30 September 2016. The treaty requires the contracting parties to establish mandatory exceptions or limitations in their copyright systems based on which the relevant entities including VIPs can reproduce, distribute, and make them available to the beneficiaries the copyrighted work without the consent of the authors/ the right holders in appropriate accessible formats copies. In addition, the copyright exceptions and limitations facilitate cross- border exchange of works in accessible format copies. The purpose of this study is to analyze the impact of the Marrakesh Treaty on the exceptions and limitations of the Ethiopian copyright and neighboring rights system, understand whether it is compliant to its principles or not and make possible recommendations.

To answer the research questions, the study has employed doctrinal legal research methodology. In addition, both primary and secondary sources of data were used. The primary data sources were the constitution, copyright legislations; rules and regulations of administrative entities. The secondary data sources were books, journal articles, legal commentaries, abstracts and conference papers. Furthermore, on line sources through the internet were the predominant source of information. The texts of data collected from primary and secondary source were qualitatively analyzed and interpreted.

The findings of the research showed that the exceptions and limitations in the Ethiopian copyright and neighboring rights protection regime are not compatible to the Marrakesh Treaty for VIPs. Moreover, there are no mandatory copyright exceptions and limitations specific to VIPs in order to facilitate the making and distributions of works inaccessible format copies with in the nation and promote cross-border exchange of the same. These are new obligations imposed by the treaty on the contracting states. Furthermore, there are no specific dispute settlement mechanisms to provide remedies.

To conclude, the Ethiopian copyright and neighboring rights system is not compatible to the objectives of the Marrakesh Treaty set for the benefit of the VIPs. In addition, the copyright system failed to enforce the human rights of the VIPs granted by general international human rights laws in (UDHR, ICCPR, ICESCR) and by specific disability law such as UNCRPD and the Marrakesh Treaty. Moreover, currently, the local legal and institutional frameworks of Ethiopian copyright system is not capable of enforcing the obligations required by the above mentioned international laws and the Marrakesh treaty in to its local contexts.

Therefore, the government with its key stake holders including the VIPs and the content creators/ the rights holders should cooperatively identify groups of VIPs in Ethiopia and understand the extent of their problems. Based on this result the legal and the institutional frame works should be reoriented to accede the Marrakesh. Respect international human rights obligations.

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CHAPTER ONE

INTRODUCTION

1.1. Back ground of the Study and Literature Review.

Gorman defines Copyright as ‘the body of law that deals with the ownership and use of works of literature, music and art. The basic purpose of copyright is to enrich our society’s wealth of culture and information.’¹ He further states that ‘copyright protects against the unauthorized copying of an author’s “expression,” i.e., the particular pattern of words, lines and colors, or musical notes, and not against the copying of an underlying idea’² It is briefly explained by Vaver that ‘copyright protects only a work’s expression, not the ideas it contains; ideas may be freely taken and applied.’³ Another author defines copyright ‘as a branch of law regulating the rights of the author’s creative works, marked by individuality, produced by his intellectual activity and usually described as literary, musical, theatrical, artistic, scientific and audiovisual works’.⁴ It is also asserted that ‘the basic purpose of copyright is to enrich our society’s wealth of culture and information. The means for doing so is to grant exclusive rights in the exploitation and marketing of a work as an incentive to those who created it.’⁵In general, ‘the copyright system rewards artistic expression by allowing the creator to benefit commercially from his work. In addition ... copyright also bestows moral rights, which allow the creator to claim authorship and prevent mutilation or deformation of his work that might harm his reputation.’⁶

Another issue which deserves attention in both national and international forms is the issue of neighboring rights. Neighboring rights is ‘the rights allied to copyright which guarantees that certain classes of persons or enterprises contributing to a cultural act can

1 Robert A. Gorman, Copyright Law. (2nd edition (2006), Federal Judicial Center USA). 1.

2 ibid 23.

3David Vaver, Principles of Copyright: cases and Materials. Available at:

<http://www.wipo.int/edocs/pubdocs/en/copyright/844/wipo_pub_844.pdf>, accessed on 5/12/2017.

4 Delia Lipszyc, Copyright and neighboring rights, (published in 1999 by the United Nations Educational, Scientific and Cultural Organization 1999 Printed in France).21.

5Gorman (n1).

6The ICC, intellectual Property Roadmap: Current and emerging issues for business and policymakers (13th Edition ICC Publisher 2017).2.

derive an income from their activities’.⁷ Neighboring rights, also called ‘related rights, were consecrated by law step by step, in order to ensure that people who are auxiliaries to the creation and/or production of content can have more control over their creative endeavors.’⁸ It is noted that ‘the law of related rights deems that the productions that result from the activities of such persons and entities merit legal protection as they are related to the protection of works of authorship under copyright.’⁹As stated by some studies, ‘copyright law protects the owner of property rights in literary and artistic works against those who ‘copy’ or otherwise take and use the form in which the original work was expressed by the author.’¹⁰ In addition, ‘copyright law guarantees monopoly rights to the copyright owner to reap the fruits of his/her labor in producing a work.’¹¹

It is argued that ‘copyright laws must take into consideration the interests of authors and creators and the needs of society for access to knowledge and information. In order to strike a balance between the two, copyright is subjected to sorts of limitations.’¹² According to Lepage, ‘most copyright laws have been framed with a view to striking a balance between the monopoly granted to creators over their work on the one hand and society’s need to have free access to creative work without being impeded by authors ‘exclusive rights on the other hand.’¹³ Most importantly, ‘after the exclusive rights in copyright have been consolidated in a century-long historical development, limitations

⁷ Commission of the European Communities, Copyright and neighboring rights in the European Community: The emergence of Community-wide protection for creativity. (The European File, 1991). 12.

⁸ Annabelle Gauberti, *Neighboring rights in the digital era, Intellectual Property*, Magazine, 2015.17. Available at: <<http://crefovi.com/Intellectual%20property%20magazine.pdf>>, accessed on 14/10/2017.

⁹ WIPO, *Understanding Copyright and Related Rights*, (WIPO Publication No. 909E ISBN 978-92-805-2799-5). 27. Available at: <www.wipo.int>, accessed on 14/10/2017.

¹⁰WIPO, *Managing Intellectual Property in the Book Publishing Industry A business-oriented information booklet*

Creative industries – Booklet No. 1 available at: <www.wipo.int>, accessed on 6/12/2017.

¹¹ Betsy V. R, Treatment of limitations and Exceptions under International Copyright Law. (International Journal of Legal Insight, Volume ii Issue 3| Issn: 2456-3595).32.

¹²United Nations Educational, scientific and Cultural Organization, The ABC of Copyright,(Here After UNESCO, The ABC of Copyright) Paris 2010.45 available at: <http://www.unesco.org/fileadmin/Multimedia/HQ/CLT/diversity/pdf/WAPO/ABC_Copyright_en.pdf>, accessed on 14/10/2017.

¹³ Anne Lepage, *Doctrine And Opinions: Overview Of Exceptions And Limitations To Copyright In The Digital Environment*,(e-Copyright Bulletin January -March 2003).3. Available:<<http://unesdoc.unesco.org/images/0013/001396/139696E.pdf>>, accessed on 13/10 2017.

and exceptions have become the main instrument to determine the exact scope of copyright. Limitations and exceptions do not merely fine-tune copyright protection.’¹⁴ It is argued that, ‘understanding these facts is of particular importance in the digital and networked information society, where copyrighted information is not only created and consumed, but constantly extracted, re-grouped, repackaged, recombined, abstracted and interpreted.’¹⁵ As it is argued by some studies, “without these exceptions and limitations, copyright protection would undermine socially, culturally, and economically significant uses such as educational uses, uses for scholarship and research, and use by the disabled persons.’¹⁶ It is asserted that, ‘in order to maintain an appropriate balance between the interests of right holders and users of protected works, copyright laws allow certain limitations on economic rights, that is, cases in which protected works may be used without the authorization of the right holder and with or without payment of compensation.’¹⁷

The above discussions give a general overview as to how the copyright system promotes or inhibits the rights of the disabled persons particularly those persons who are blind, visually impaired or otherwise print disabled. This will be dealt in the subsequent sections of this paper. The issue of VIPs is a global agenda which has got serious attention around the world. Most importantly, ‘in 2004, WIPO country members have recognized the need for clear exceptions and limitations, and have asked the WIPO to develop studies on the need of international instruments on exceptions and limitations for visually impaired people and people with print disabilities, libraries and archives and for education.’¹⁸ It is argued that:

¹⁴ Thomas Dreier, *Limitations: The Centerpiece of Copyright in Distress: An Introduction*. (Jipitec, Institute for Information and Economic Law, Karlsruhe Institute of Technology (KIT), and Honorary Professor, University of Freiburg, Germany, 2010). 49.

¹⁵ *ibid.*

¹⁶ Electronic Frontier Foundation, *Copyright Limitations and Exceptions and the Trans-Pacific Partnership Agreement*. Available at: <https://www.eff.org/files/filenode/limitationsandexceptionsintpp-fnl_0.pdf> accessed on 15/10/2017.

¹⁴WIPO, *Limitations and Exceptions*. Available at: <<http://www.wipo.int/copyright/en/limitations/>>, accessed on 15/10/2017.

¹⁸*ibid.* 5.

*At the international level, limitations and exceptions must be more carefully considered for their efficacy in promoting access, use, and dissemination of copyrighted goods, more consistently emphasized as an important feature of the copyright system, more explicitly integrated into the fabric of the international copyright regime and more rigorously enforced as a requisite for follow-on innovation and economic development.*¹⁹

It is briefly explained by Armstrong and his colleagues that ‘statutory limitations and exceptions are among the most important tools for national lawmakers to achieve balanced copyright systems that suit the specific needs of their respective countries’²⁰ It is asserted that ‘as described by the Berne Convention and the TRIPS Agreement, according to ‘the three-step test,’ limitations and exceptions must be: 1) applicable only in certain special cases; 2) not in conflict with the normal exploitation of the work; and 3) not unreasonably prejudicial to the legitimate interests of the author/rights-holder.’²¹ What we can infer from the above mentioned paragraph is that in one hand, the legislature should create a balance between the right holders of the creative works and the public interests through copyright limitations and exceptions. On the other hand, the three-step test guides the legislator and the judiciary to avoid unnecessary exceptions that may violate the rights of the right holders. Some argued that ‘normatively, copyright has always sought to strike a balance between protection and access’.²² It is also asserted that ‘the three-step test in the international copyright law constitutes a flexible balancing tool that offers national policy makers breathing space for the creation of an appropriate system of copyright E&Ls at the national level, including the option to adopt open-ended, flexible provisions regulating E&Ls at the national level.’²³

¹⁹Ruth L. Okediji William L. *The international copyright system: Limitations, Exceptions and Public Interest Considerations for Developing Countries.*(Issue Paper No. 15, Switzerland: CTSD ((2006). 7.

²⁰ Chris Armstrong and et al, *Comparative Review of Research Findings, African Copyright and Access to Knowledge (ACA2K) Project* August 2010. Available at: <www.aca2k.org>, accessed on 6/12/2017.

²¹Berne Convention for the Protection of Literary and Artistic Works Enacted by General Assembly in Paris on 04 May 1896, Amended on 28 September 1979,(Here after Berne Convention) Art. 9(2) and Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, (Here after TRIPS Agreement), Art.13.

²² Daniel J. Gervais, *Making Copyright Whole: A Principled Approach to Copyright Exceptions and Limitations.* Available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1825342>, accessed on 6/12/2017.

²³ Christophe Geiger, Daniel J. Gervais and Martin Senftleben, *The Three-Step-Test Revisited: How to Use the Test’s Flexibility in National Copyright Law?* (2014) (American University International Law Review 29 no. 3 (2014):581-626). 625.

The above mentioned paragraphs briefly show that the copyright regimes both at national and international level should strike a balance between the rights of the rights holders and the public interests through copyright exceptions and limitations observing the principles of the three-step test to determine the scope of those exceptions and limitations. This is important to protect unnecessary encroachments of the rights of the authors and right owners. This right may be economic or moral rights or both.

In this study, the most important issue is that how the Marrakesh Treaty for VIPs impacts the exceptions and limitations of the Ethiopian copyright and related rights systems. It is noted that ‘the Marrakesh Treaty was adopted on June 27, 2013 in Marrakesh and it forms part of the body of international copyright treaties administered by WIPO. It has a clear humanitarian and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of VIPs.’²⁴ As stated by Perkins, ‘the Marrakesh Treaty is an international copyright law. It allows people who are blind, have low vision, or have print disabilities to access books and other material in accessible formats (Braille, audio, digital, large print, DAISY, etc)’.²⁵ Williams asserted that, ‘the Treaty is a humanitarian treaty, constituting a segment of WIPO's development agenda.... [It] breathes new life into the long-neglected social aspects of global copyright law, seeking to dismantle many barriers faced by VIPs when accessing creative works, and raise awareness about them.’²⁶ It is further elaborated by the WIPO that ‘the treaty has a clear humanitarian and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired, and otherwise print disabled persons’.²⁷

²⁴WIPO, Marrakesh Treaty(2013) to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.(Here after Marrakesh Agreement). Available at:<<http://www.wipo.int/treaties/en/ip/marrakesh/>>, accessed on 6/12/2017.

²⁵Perkins, Marrakesh Treaty: Frequently asked Questions Available at: <<http://www.perkins.org/sites/default/files/marrakesh-treaty-faq.pdf>>, Accessed on 26/3/2017.

²⁶Sean Williams, Closing in on the Light at WIPO: Movement towards a Copyright Treaty for VIPs and Intellectual property movement.

(2012), Vol. 33, Issue. 4, University of Pennsylvania Journal of International Law. Art.4.

²⁷WIPO, Summary of the Marrakesh Treaty. Available at: <<http://www.wipo.int/treaties/en/ip/marrakesh/>>, accessed on 15/10/ 2017.

According to International Authors' Forum (IAF), 'based on the World Health Organization's statistical data, there are around 285 million blind and visually impaired persons in the world.'²⁸ As estimated by WHO, '39 million of them are blind and the remaining 246 million have low vision. Individuals with blindness, visual impairments or other reading disabilities need accessible copies of copyright protected material. Accessible formats are mainly braille, large print or audio copies of copyright works.'²⁹ Another study shows that 'there are an estimated 314 million visually-impaired people globally. Ninety percent of them live in developing countries. It is emphasized that 'the provision of accessible reading and learning materials is an important means of protecting and promoting human rights and development generally, and economic, social, and cultural rights in particular.'³⁰ According to WBU 'each year, of the millions of books published worldwide, only 1–7 percent is made available to the 285 million persons in the world who are blind and visually impaired, 90 percent of who live in low-income settings in developing countries.'³¹ This implies that 'despite advances in technology, only a small fraction of existing published works are available in formats that are accessible to persons who are visually impaired.'³² T.Pilch has explained the differences between copyright principles and its practice especially in the case of visually impaired persons as follows:

The need to maintain a balance in copyright law between the interests of rights holders and the broader public interest is a longstanding principle in the international copyright system The barriers experienced by blind, visually impaired and other reading disabled persons in accessing copyrighted works reflect an imbalance that needs to be addressed in order to equalize possibilities for all people to read copyrighted works. In addition to visually impaired persons are those with other disabilities that prevent them from being

²⁸ International Authors Forum (IAF) (2013). *International Treaty to Enable Access to Copyright Content for Visually Impaired and Print Disabled*. Available at: <www.internationalauthors.org>, accessed on april2, 2017.

²⁹ World Health Organization (2014). "Visual impairment and blindness". Available at: <www.who.int>, accessed on April 2, 2017.

³⁰WIPO, Limitations and Exceptions – Access to Books for the Visually Impaired. Available at: <http://www.wipo.int/export/sites/www/pressroom/en/briefs/pdf/VIPs_Final_June10_e.pdf>, accessed on 17/102017.

³¹ World Blind Union (WBU) press release, June 2013. 2 and World Health Organization Fact sheet on Visual Impairment and Blindness. Available at: <www.who.int/mediacentre/factsheets/fs282/en/#>, accessed on april12, 2017.

³²World Blind Union (WBU) and Knowledge Ecology International (KEI) Meeting on a WIPO Treaty for Blind, Visually Impaired and Other Reading Disabled Persons KEI Offices, Washington, DC July 24–25, 2008. P....

*able to read, such as those who are unable to turn pages of books, or who have limited mobility, or those who suffer from dyslexia, other learning disabilities, or cognitive limitations.*³³

Electronic Information Library (EIFL) noticed that ‘the unauthorized distribution of accessible format copies could infringe on the distribution or making available of works to the public. Similarly, the cross border exchange of accessible format copies could trigger infringement liability.’³⁴ To solve the problems of the disabled persons especially persons who are blind, visually impaired or otherwise disable, the United Nations Convention on the Right of Persons with Disabilities (UNCRPD) came in to the picture in 1966. It declares that ‘people with disabilities have a right to education without discrimination. Countries must ensure that people with disabilities can access an inclusive, quality and free primary and secondary education in their own community. Countries must also provide reasonable accommodation and individualized support to maximize academic and social development.’³⁵ Another relevant issue is that the ‘freedom of expression and opinion, and access to information.’³⁶ In addition, the convention grants the right to participate in ‘cultural life, recreation, leisure and sport’³⁷ activities. These and other relevant rights will be discussed in detail in the subsequent chapters.

Calvo, stated that ‘the Marrakesh Treaty was designed to make the objectives of the above mentioned Conventions true by providing signatory countries with the mechanisms required to allow for exceptions and limitations to the rights of production, distribution, and making available of information in accessible formats, at both domestic and

³³ Janice T. Pilch, Library Copyright Alliance Issue Brief: Treaty for Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons. Available at: <http://www.librarycopyrightalliance.org/storage/documents/brieftvifinalrev101509.pdf>, accessed on 6/12/2017.

³⁴ The Marrakesh Treaty (2013): an EIFL Guide for Libraries. Available at:

http://www.eifl.net/sites/default/files/eifl-guide-marrakesh_en_1.pdf, accessed on 17/10/2017.

³⁵ . United Nations Convention on the Right of Persons with Disability 1966 (Here after UNCRPD), Art .24.

³⁶ *ibid.* Art. 21.

³⁷ *ibid.* .Art.30.

international level.³⁸ In addition, it is asserted that ‘the WIPO Marrakesh Treaty for VIPs’ is the first multilateral, legally binding instrument primarily devoted to copyright limitations and exceptions.’³⁹ Moreover, the ‘three-step test informed the complex framework within which the Marrakesh Treaty was negotiated, as this test is generally seen as the international legal standard for copyright limitations and exceptions.’⁴⁰

It is argued that ‘the World Intellectual Property Organization (WIPO) at the United Nations recently confronted a human rights problem of global scale: visually impaired people face a “book famine” stemming from the inability of persons with print and other reading disabilities to obtain accessible versions of copyrighted works.’⁴¹ According to Trimble, ‘the Marrakesh Treaty for VIPS has created a remarkable puzzle for the experts who will have to implement the Treaty into national legislations. The puzzle is presented by the rules that the Treaty sets out for the “Cross-Border Exchange of Accessible Format Copies.’⁴² Moreover, ‘the treaty aims to alleviate what has been described as the “book famine,” and has been lauded as a significant achievement in advancing the rights of and promoting equal opportunity for the visually disabled.’⁴³ Furthermore, UNDP noted that ‘the Marrakesh Treaty requires Contracting Parties to adopt copyright exceptions that allow the creation and distribution, including cross-border exchange, of accessible format works’.⁴⁴ This is complemented by declaring that ‘contracting states are

³⁸ Francisco Javier Martínez Calvo: *The role of libraries in the implementation of the Marrakesh Treaty for persons with a print disability*. (Spain: IFLA, 2014).1.

³⁹ Simonetta Vezzoso. *The Marrakesh Spirit – A Ghost in Three Steps?* (IIC, 2014) .796.

⁴⁰ibid.

⁴¹Margot E. Kaminski and Shlomit Yanisky-Ravid, *The Marrakesh Treaty for Visually Impaired persons: Why a Treaty was preferable to Soft Law*. (Vol. 75. ISSN 0041-9915) Available at: <<http://lawreview.law.pitt.edu>>, accessed on April 20, 2017.

⁴² Marketa Trimble, *The Marrakesh Puzzle*. (IIC Published by Max Planck Institute for Innovation and Competition, Munich 2014). 770.

⁴³ Rafael Vazquez, *Marrakesh Treaty to Facilitate Access to Published Works for Persons, Who Are Blind, Visually Impaired or Otherwise Print Disabled Satellite Meeting IFLA Section Preservation and Conservation*. (Geneva: WIPO, Copyright Division, 2014). 29.

⁴⁴Northern Uplands Development Programme (Here after NUDP: Our right to knowledge: Legal review for the ratification of the Marrakesh Treaty for persons with print disabilities in Asia and the Pacific. (2015). 15-23.

required to implement copyright limitations and exceptions to facilitate access to copyrighted material for the global print-disabled community'.⁴⁵ It is stated that:

*The Treaty promises to help end the “global book famine” for people who cannot read traditional print because of a disability. Only a tiny percentage of published works are currently available in formats that they can use. To change this, the Treaty allows the creation and cross-border exchange of accessible books on a nonprofit basis without the permission of rights holders. Cross-border exchange is vital to minimize the duplication of effort and cost when two or more “authorized entities” – government or nonprofit organizations serving beneficiaries – make the same work accessible rather than adding to the overall number of works available.*⁴⁶

Wechsler explained that 'the Marrakesh Treaty constitutes a landmark in global copyright policy as it increases access to information for millions of visually impaired people around the world, and in particular in developing countries.'⁴⁷ Olwan stated his fear that “without considering the cultural and legal implications that influence disability and visual impairment in these states ratifying the Marrakesh Treaty and amending copyright laws in the Gulf States will not alleviate the “book famine” for VIPs in these countries.”⁴⁸ Wilkinson explains that ‘Marrakesh, a treaty devoted entirely to ensuring uniform rights for a set of users of copyrighted materials, challenges previously held notions that international copyright treaties must deal exclusively with rights holders’ rights.’⁴⁹ It is also briefly asserted that ‘a central feature of Marrakesh is to be the first multilateral, binding agreement primarily devoted to the rights of users in the global copyright regime by recognizing their fundamental human right to equal access to

⁴⁵NEIL YAP, Fitting Marrakesh into a Consequentiality Copyright Framework. (2017) Volume 6 Spring Number 2, N.Y.U. Journal Of Intell. Prop. & Ent. Law, . 351.

⁴⁶ WIPO, Magazine, Exchanging accessible books across borders – as easy as ABC.2016, No.5, Available at: <http://www.wipo.int/wipo_magazine/en/2016/05/article_0002.html>, accessed on 17/10/ 2017.

⁴⁷Andrea Wechsler, ‘WIPO’s Global Copyright Policy Priorities Herrmann’, C., Krajewski M., Terhechte J. (eds), WIPO’s Global Copyright Policy Priorities: The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. European Yearbook of International Economic Law, vol 6. Springer, Berlin, Heidelberg/, (2015).1

⁴⁸ Rami Olwan , The ratification and implementation of the Marrakesh Treaty for visually impaired persons in the Arab Gulf States. Available at: <<http://onlinelibrary.wiley.com/doi/10.1111/jwip.12088/abstract>>, accessed on 6/12/ 2017.

⁴⁹Margaret Ann Wilkinson, *International Copyright: Marrakesh and the Future of Users’ Rights Exceptions*, Perry M. (eds) Global Governance of Intellectual Property in the 21st Century. Springer, Cham, Abstract. (2016).1.

information and participation in culture.’⁵⁰ Furthermore, ‘the Marrakesh Treaty for VIPs is ‘designed to be acceptable under, and compatible with, existing copyright treaties in force at WIPO, at the World Trade Organization [WTO], and elsewhere.’⁵¹

When we come to the Ethiopia situation, ‘there are legal regimes for the protection of intellectual property rights and the country is also member of the World Intellectual Property Organization’.⁵² Muradu Asserted that:

*The intellectual property law of Ethiopia is more or less clear, comprehensive and in touch with current global and national developments. Many commentators in the field describe the legal regime for intellectual property which the country has put in place as ‘strong’, the main problem being its enforcement due to different practical factors including weak institutions and inadequate awareness of the nature of intellectual property on the part of relevant actors.*⁵³

This paragraph contains some important points. It states that the Ethiopian intellectual property protection regime is strong. Is a strong intellectual property protection important to our situations as a least developed country? The other important issue is that a strong IP protection with weak institutional frameworks and in adequate awareness of the relevant actors. What would be the implications of these problems to the rights of the VIPs and to adopt the Marrakesh Treaty (2013). He also specifically argued that ‘copyrights are protected by the Copyright and Neighboring Rights Protection Proclamation that aims at rewarding those who create literary, artistic and similar creative works. Such works play a major role in enhancing economic, scientific and technological development of the country.’⁵⁴ This paragraph shows that the copyright doesn’t have

⁵⁰European Parliament, The Marrakesh Treaty: The study, commissioned by the European Parliament Policy Department for Citizens’ Rights and Constitutional Affairs upon request by the PETI Committee. Available at:

<<http://www.europarl.europa.eu/supporting-analyses>>, accessed on 7/12/2017.

⁵¹Victoria Owen, Margaret Ann Wilkinson and Margaret Williams, Managing in Light of Marrakesh: Making Materials Available to Canadians with Print Disabilities. OLA Super conference, Toronto, February 2, 2017. Available at:

<http://accessola2.com/superconference2017/Sessions/ThursFeb2/Managing_in_Light_of_Marrakesh_OLA_2017_Final_Version.pdf>, accessed on 7/12/2017.

⁵² WIPO, Member States. Available at: <<http://www.wipo.int/members/en/>>, accessed on 6/12/2017.

⁵³ Muradu Abdo, Legislative Protection of Property Rights in Ethiopia: An Overview.(December 2013), Vol. 7 No.2, MIZAN LAW REVIEW.196.

⁵⁴ *ibid.*

any intention as to the rights of the disable persons' but gives strong protection for the authors. These would also be analyzed in the discussion part of this paper.

The 1960's Civil Code of Ethiopia has provided protection for rights related to the ownership of literary and artistic works.⁵⁵ Though the current Ethiopian constitution didn't give a separate part to intellectual property rights protection, it recognizes the same in general terms in Arts. 51 (19), 77(5) and 40(1) and (2). It also gives due attention to disability issues under Art. 41(5) in general.⁵⁶ The current law in force, the Copyright and Neighboring Rights Protection Proclamation No. 410/ 2004 came into force in July 2004. This Proclamation covers broader rights protection than those few provisions stipulated in the Civil Code.⁵⁷ This Proclamation (410/2004) has recently been amended by Proclamation No 872/2014 that entered into force on the 14th of January 2015. The preamble of this proclamation states that 'where as it has become necessary to amend the copyright and Neighboring Rights protection Proclamation No. 410/2004 to provide legal protection that is compatible with an ever growing development of copyright and neighboring rights and to create conditions enabling the right holders to administer their rights in an organized manner.'⁵⁸ As to the belief of the researcher the amending proclamation gives a stronghold to the right holders than creating flexibility to properly accommodate the public interests general and VIPs in particular. Generally, the copyright system does not show any intention to bring about a balance between the right of the right holders and the public interests as international copy right laws do.

Since the purpose of this study is examining the Ethiopian Copyright regimes in line with the Marrakesh Treaty for VIPs, the detailed analysis of exceptions and limitations of the

⁵⁵ Civil Code of The Empire of Ethiopia, proclamation no. 165 of 1960, Negarit Gazeta, Extraordinary Issue, No. 2 Addis Ababa 1960, Article 271.(here after civil code of Ethiopia), Arts.1647-1674.

⁵⁶FDRE Constitution, proclamation no 1/1995Federal Negarit Gazeta 1st Year No.1Addis Ababa - 21st August,1995. (here after FDRE Constitution) Art. 40 and 41.

⁵⁷FDRE Proclamation No.410/2004 Federal Negarit Gazeta 21ST YEAR NO 20 Addis Ababa 4th January 2015, Protection of Copyrights and Neighboring rights.

⁵⁸FDRE Proclamation No 872/2014.Federal Negarit Gazeta 21STyear no 290 Addiss Ababa 14th January 2015 Preamble.

Ethiopian Copyright and Neighboring Rights and the impacts of the Marrakesh Treaty for VIPs on them will be treated in the analysis part of this study.

1.2 Statement of the Problem.

According to Sganga, ‘access to knowledge and participation in cultural life for persons with disabilities has always constituted a tough challenge. Recent studies show that only 5% of published works are available in accessible format, and the number plummets (falls) to 1% in developing countries.’⁵⁹ The World Blind Union (WBU) argued that, ‘reading is a human right, but currently not all people can access books or other reading materials. Over 90% of all published materials cannot be read by blind or print-disabled people, leading to a “book famine.”’⁶⁰ It is argued by WIPO that;

*This “book famine” is aggravated by the fact that relatively few countries have limitations and exceptions in their national laws to ensure that copyrighted works can be made into accessible formats. More importantly, these limitations and exceptions only apply in the country in question. Works made into accessible formats in one country cannot be shared with visually impaired persons in another country, thus causing considerable unnecessary duplication of book production in accessible formats.*⁶¹

The International Covenant on Economic, Social and Cultural Rights (ICESCR) under Article 15, asserts that ‘Everyone has the right to take part in cultural life; enjoy the benefits of scientific progresses.’⁶² It is also declared that ‘under the Convention on the Rights of Persons with Disabilities, accessibility is regarded as an enabler for persons with disabilities to live independently and participate fully in all aspects of society and development’.⁶³ The Marrakesh Treaty (2013) ‘requires the contracting parties to adopt

⁵⁹Caterina Sganga, *Disability, right to culture and copyright: which regulatory option?* *International Review of Law Computers & Technology* · May 2015, Central European University.1.

⁶⁰ World Blind Union, Marrakesh Treaty Ratification and Implementation Campaign. Available at: <http://www.worldblindunion.org/English/our-work/our-priorities/Pages/right-2-read-campaign.aspx>, accessed on 7/12/ 2017.

⁶¹Bridges Net Work, WIPO Adopts Treaty for Visually Impaired in Marrakesh: Global News from a Sustainable Development Perspective. Volume 17, Issue 24, 4 July 2013.1.

⁶²International Covenant on Economic, Social and Cultural _16 December 1966 (here after ICESCR) Art.15 (1) (a) (b).

⁶³United Nations Convention on the Right of Persons With Disability, Enhancing the accessibility of information and Technology and inclusive development. Conference of States Parties to the Convention on the Rights of Persons with Disabilities Ninth session New York, (here after UNCRPD)14-16 June 2016Item 5 (d).

national law provisions that permit the reproduction, distribution and making available of published works in accessible format copies to VIPs and to permit exchange of these works across borders by organizations that serve those beneficiaries.’⁶⁴ It is argued that ‘however, due to lack of published works in accessible formats, the rights to knowledge is often out of reach for the nearly 300 million people who are blind, visually impaired or have reading difficulties due to physical or learning disabilities. Ninety percent of these ‘persons with print disabilities’ are estimated to live in developing countries.’⁶⁵ The World Intellectual Property Organization (WIPO) reports that:

*The visually impaired have access to merely 5 percent of published books. Amid the global movement to reevaluate copyright laws for the digital age, a watershed opportunity exists to harmonize the deficient patchwork of national and international copyright laws perpetuating the book famine. It is explained by some scholars that ‘after years of stalled progress, WIPO recently adopted the landmark Marrakesh Treaty to alleviate copyright barriers to access for the print-disabled worldwide’.*⁶⁶

Koklu argued that ‘providing accessible formats for blind persons normally requires a certain format shifting of the original work. Format shifting of works, however, is subjected to copyright laws as it may interfere with the exclusive reproduction right of the copyright holder. Also, online access to and cross-border circulation of the accessible format copies may further interfere with the exclusive rights of distribution and making available of the right holder.’⁶⁷ It is argued that ‘this famine, unlike many, is not exclusive to less-developed countries (LDCs), although the famine weighs most heavily on them. Rather, the global book famine is a condition exclusive to visually impaired persons.

⁶⁴ WIPO, Marrakesh Treaty, Art,4(1).

⁶⁵ United Nations Development Programme (2015) (here after UNDP). *Our right to knowledge: Legal review for the ratification of the Marrakesh Treaty for persons with print disability in Asia and the Pacific*.16.

⁶⁶Shae Fitzpatrick, *Setting Its Sights on the Marrakesh Treaty: The U.S. Role in Alleviating the Book Famine for Persons with Print Disabilities*. Boston College International and Comparative Law Review, Volume 37, Issue1.1.

⁶⁷Kaya Koklu, *The Marrakesh Treaty – Time to End the Book Faminefor Visually Impaired Persons Worldwide*. Available at: <<https://link.springer.com/content/pdf/10.1007%2Fs40319-014-0266-z.pdf>>, accessed on June 06/2017.

Somewhat ironically, one might call them VIPs.’⁶⁸ Researchers argue that ‘governments around the world need to take immediate coordinated action to reverse the ‘book famine. There are over 129 million book titles in the world, but persons with print disabilities can obtain less than 7 per cent of these titles in formats that they can read. The situation is most acute in developing countries, where less than 1 per cent of books are accessible.’⁶⁹

Abuja noted that ‘the Marrakesh Treaty was adopted in 2013 at the World Intellectual Property Organization (WIPO) with the aim of facilitating the availability and cross-border exchange of books and other print material in accessible formats around the world.’⁷⁰ As stated by some studies ‘technological advances over the last few decades have altered what is possible. Digital distribution now enables people with print disabilities to access books electronically through a variety of assistive technologies – including screen readers, large-font displays, and refreshable Braille.’⁷¹ It is argued that ‘unfortunately, persons with print disabilities have not yet been able to take full advantage of these technological advances, and the number and range of books that are accessible in electronic form remains low’.⁷² It is also argued that ‘the situation is dire in western countries and much worse for the 90 per cent of visually-impaired people who live in developing countries’.⁷³ It is noted that ‘the major accessibility barriers today are two-fold: it remains costly to digitize existing print books and new electronic books (‘e-

⁶⁸ Aaron Scheinwald, *Fordham Intellectual Property: Who Could Possibly be Against a Treaty for the Blind*, (2012), Volume 22, Issue 2, *Media and Entertainment Law Journal*, Fordham University School of Law. 448.

⁶⁹Paul Harpur and Nicolas Suzor, *Copyright Protections and Disability Rights: Turning a Page to a New International Paradigm*, (2013), Volume 36(3), *UNSW Law Journal*, 745.

⁷⁰V.K. Ahuja, *Marrakesh Treaty to Facilitate Access to Published Works for Visually Disabled: Putting an End to Global Book Famine*. In: Sinha M., Mahalwar V. (eds) *Copyright Law in the Digital World*. Springer, Singapore, (2017). 21.

⁷¹ DanaA.Draa, *Assistive Technology for Individuals with Blindness and Vision Impairment*. Available at: <http://www.herl.pitt.edu/symposia/advancedtechnology/presentations/DANA%20DRA_AT%20for%20Ind%20with%20Blindness%20and%20Visually%20Impairment.pdf>, accessed on 7/12/2017.

⁷² Royal National Institute of the Blind (2006), *Where’s My Book? Tackling the Textbook Deficit Faced by School Pupils with Sight Loss*. Available at: <<http://www.rnib.org.uk/getinvolved/campaign/>>, accessed on 8/12/2017.

⁷³ World Health Organization (2013), *Visual Impairment and Blindness*. Available at: <<http://www.who.int/media centre/factsheets/fs282/en/>>, accessed on 8/12/2017.

books’) are often released in formats that exclude people with disabilities.’⁷⁴ In addition, ‘technological advances have decreased the costs of digitizing print books, but the process remains expensive.’⁷⁵ It is explained that ‘some of the assistive technologies which visually impaired persons use consist both hardware and software products including screen readers, screen magnifiers, closed-circuit televisions, electronic magnifiers, scanners and optical character readers, portable and refreshable Braille displays, digital and electronic data, digital readers, and accessible cell phone.’⁷⁶ Contrary to this situations ‘public funds have not been made available to digitize books on a large scale, and the one private attempt to do so by Google has stalled in the face of copyright infringement suits brought by rights-holders and their representatives.’⁷⁷

The above mentioned statistical data from different sources show the severity of the problems of VIPs around the globe. Furthermore, the problems are universal which must be the concern of all nations at large. But as clearly stated in the background, national and regional variations of copyright regime create serious obstacles to alleviate the problems. The other crucial issue is that, since the Marrakesh treaty is an international copyright Treaty which has human rights and development dimensions, it needs adequate local legal and institutional frameworks for its implementation and proper dispute settlement mechanisms to grant remedies for the beneficiaries whose rights may be infringed. However, the literature is not clear as to this effect. This shows that the problems are worthy enough to be researched and properly addressed.

The researcher has attempted to search for previously undertaken research findings in Ethiopia relevant to the research problem to create a context for the study. But, there are

⁷⁴ Bradley Guy White, B.G, Access to Books for the Visually Impaired: Minimizing Charity and Maximizing Choice. (PhD Thesis, Southborough University, discussing accessibility of e-books platforms in academia, 2011). 48–9.

⁷⁵ Pamela Samuelson, Google Book Search and the Future of Books in Cyberspace. Available at: <<http://people.ischool.berkeley.edu/~pam/GBSandBooksInCyberspace.pdf>>, accessed on 8/12/2017.

⁷⁶ Wong M.E. and Cohen L., Assistive technology use amongst students with visual impairments and their teachers: Barriers and challenges in special education, (2012). Available at: <http://www.nie.edu.sg/files/oer/NIE_research_brief_12-005.pdf>, accessed on July 09/2017.

⁷⁷ Google Book Search Settlement: Implications for Australia’ (2010) (unpublished) Available at: <<http://eprints.qut.edu.au/31879/>9/12/2017>>, accessed on 9/12/2017.

no scientifically and empirically conducted research findings except some unreliable works. Therefore, the purpose of this study is to critically examine the exceptions and limitations of the Ethiopian copyright and neighboring rights systems through library research method (doctrinal legal research methodology) in light of the Marrakesh Treaty for VIPs and other relevant international copyright and human rights laws to know whether the exceptions and limitations of the Ethiopian copyright and neighboring rights system are impacted by or compliant to the Marrakesh treaty. Based on the findings, the researcher suggests possible recommendations for the relevant authority to come up with policy reform or new legislations that conform to Marrakesh Treaty in order to alleviate the problems of VIPs in Ethiopia.

1.3. The Research Questions

- Are the existing Ethiopian copyright and neighboring rights' exceptions and limitations compatible with the Marrakesh treaty for Visually Impaired Persons?
- To what extent do the existing Human Rights and Intellectual Property instruments address access issues affecting the Visually Impaired Persons?
- What are the new obligations brought about by Marrakesh Treaty on the contracting states?
- Where do disputes among copyright owners, beneficiaries and authorized entities, or national government and the beneficiaries or between contracting parties be referred, and what would be the procedures to be followed?
- If Ethiopia ratifies the Marrakesh Treaty for Visually Impaired Persons, does it have adequate local legal and institutional frame work to give effect to the rights of VIPs in the Marrakesh Treaty?

1.4. Objectives of the Study

This study has both general and specific objectives.

1.4.1. General Objective

The general objective of the study is to identify the exceptions and limitations of the Ethiopian copyright and neighboring rights regime, to critically examine their contents and analyze them in light of the Marrakesh treaty for VIPs and understand whether it is impacted by this treaty and compliant to it.

1.4.2. Specific Objectives

- To analyze whether the existing Ethiopian copyright and neighboring rights' Exceptions and Limitations are compatible with the Marrakesh treaty for VIPs.
- To examine the extent which the existing Human Rights and Intellectual Property instruments address access issues affecting VIPs in Ethiopia.
- To identify the new obligations brought about by the Marrakesh Treaty for VIPs on contracting states?
- To explore the place where disputes among copyright owners, beneficiaries and authorized entities or national government and the beneficiaries or between contracting parties, would be referred and the procedures to be followed?
- To assess the adequacy of the local legal and institutional framework of the Ethiopian copyright system to implement the rights of the VIPs, if Ethiopia ratifies the Marrakesh Treaty.

1.5. Research Methodology.

The study has employed doctrinal legal research method (library based research). Both primary and secondary data sources were used. The sources of primary data are the national Constitutions, Statutes, and Subsidiary regulations, publications of statutory authorities, conventions, treaties and declarations. Secondary sources of data are books, legal commentaries and legal journal articles. The internet was used to access relevant on line information.

Since the purpose of the study is to critically examine the impact of the Marrakesh Treaty for VIPs on the Ethiopian copyright and neighboring rights limitations and exceptions, the relevant international conventions and treaties such as the Berne convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement"), the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) and the Marrakesh Treaty for VIPs were the major legal frameworks used to analyze the same. These are purposefully selected because they are expressly adopted by the Marrakesh Treaty and it operates harmoniously with them. Furthermore the UDHR, UNCRPD, and ICESCR are relevant human rights laws used in this study. The purpose of selecting these human rights instruments was they are more relevant to access issues particularly to VIPs. In addition, when necessary other human rights instruments, intellectual property laws and copyright laws were consulted.

The relevant laws of Ethiopia, the constitution, copyright and neighboring rights legislations and other relevant laws were examined in line with the Marrakesh Treaty to understand whether they contain specific exceptions and limitations that are compatible with the Marrakesh Treaty to facilitate access to published works for VIPs.

Finally, to answer the research questions, the texts of the data collected through primary and secondary sources are analyzed and interpreted qualitatively. The limitation of the research methodology is that it did not employ non-doctrinal research method that could address the assess issues empirically and offsets the weakness of the library based research (doctrinal research method).

1.6. The Significant of the Study

The findings of this research will contribute some knowledge to the existing pool in the discipline. In addition, it generates policy ideas that may help the policy makers to understand the extent of the problems and revisit the existing copyright and other related policies, laws and other related laws. Moreover, this can help the legislature to provide

copyright limitations and exceptions that could accommodate the norms set by the Marrakesh treaty in order to serve the beneficiaries (VIPs) in Ethiopia. Most importantly, it helps the government to establish adequate regulatory and institutional frameworks by which those exceptions and limitation could be implemented nationally and facilitate cross- border exchange of accessible format copies. Furthermore, it will help the practitioners in the field to enhance the enforcement of copyrights and manage copyright infringements by establishing institutional frameworks that promote internal and international cooperation's. This in turn, helps them specifically to implement the Marrakesh Treaty to realize its objectives in Ethiopia. Last, but not least, the outcome of this research will serve as a background document for those who may undertake further study on the topic.

1.7. The Scope of the Study

The focus of this study is to critically examine the impact of the Marrakesh Treaty on the exceptions and limitations of the Ethiopian copyright systems. To answer the research questions the study has employed the domestic primary data sources such as the Ethiopian Civil Code (1960), EPDR Constitution (1994/5), the Ethiopian Copyright and neighboring rights proclamation No.410/2004 and its amending proclamation (Proclamation No,872/2014). In addition, documents such as policies, laws, decisions of administrative agencies were identified and reviewed. The foreign data sources were international copy right treaties/conventions and human rights instruments. The major ones are the Berne Convention, the TRIPS Agreement; The WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) and the Marrakesh Treaty for VIPs. The relevant International Human rights instruments, such as UDHR, ICESCR and UNCRPD were analyzed. Publications by the WIPO, WBU and other relevant sources were consulted. Most importantly the scope of the study is limited to the problems persons who are blind, visually impaired, and or otherwise printed disabled persons specific to access issue to published to literary and artistic and literary works in accessible format copies at national and international level (cross- border exchange of works in accessible format copies)

1.8. Limitations of study

This study has employed more of a library research method. The researcher has focused on documents in the library and international experiences and treaties through the internet. During the process of the research, the researcher has faced serious problems of access to relevant data because there are no well organized, efficient and effective library services and expertise. In addition, due to poor database system, accessing relevant information was a challenge. Moreover, the internet services to access relevant resources are not efficient. As we all know there is frequent power interruption. The above mentioned critical problems and others have compromised the quality of the research findings. In addition, they had serious impacts to complete the research within the given timeframe.

1.9. Organization of the Paper

This paper is organized in to four chapters. Chapter one deals with the introduction. Chapter two focuses on overview of major copyright and Neighboring Rights relating rights laws pertaining to the Marrakesh Treaty for VIPs. Chapter three analyzes and discusses exceptions and limitations of the Ethiopian copyright and neighboring rights law in line with the Marrakesh treaty. The final chapter deals with conclusion and recommendations.

CHAPTER TWO

COPYRIGHT AND NEIGHBORING RIGHTS EXCEPTION AND LIMITATION IN GENERAL

According to Saleena K. B. 'to be acceptable, any system of intellectual property rights has to strike a balance, on the one hand, between providing incentives and rewards to the right holder, and on the other hand, facilitating access to and widespread diffusion and adoption of fruits of creativity and innovation'⁷⁸ Exceptions to copyright protection can be defined as 'provisions that allow for the giving of immunity from infringement proceedings for particular kinds of use. According to WIPO, 'these can be termed exceptions to protection in that they allow for the removal of liability that would otherwise arise.'⁷⁹ It is also defined by WIPO that 'the term "limitations" is 'provisions that excludes, or allow for the exclusion of protection for particular categories of works or material. These might be described as "limitations" on protection, in the sense that no protection is required for the particular kind of subject-matter in question.'⁸⁰ It goes on saying that 'the exception must be confined to a certain special case that does not interfere with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the rights-holder.'⁸¹

The preceding brief discussion gives a general overview of exceptions and limitations in the intellectual property systems that could create balance between the creators and consumers of their creation. The next discussions focus on exceptions and limitations of Intellectual property Rights (with a special focus on copyright because it is a subject of the Marrakesh Treaty) in the perspective of persons who are blind, visually impaired or otherwise print disabled.

⁷⁸Saleena K.B. *Exceptions and Limitations to Intellectual property right with special Reference to Patent and Copyright Law*. (India: Dissertations/School of Legal Studies, 2011).1.

⁷⁹ WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment. Geneva 3 and 4 November 2008. 3 (here after WIPO exceptions and limitations)

⁸⁰ *ibid.*

⁸¹ World Trade Organization Trade and Related Intellectual Property Rights (here after WTO TRIPS Agreement), 1994. Art. 13.

2.1 Overview of International copyright Instruments with respect to Limitations and Exceptions pertinent to VIPs

It is asserted that ‘intellectual property laws established side by side, intellectual property rights. On the other hand, exceptions and limitations to these rights mainly distributing the ownership rights in intellectual property products to a broader group of users.’⁸² Specifically, ‘all copyright systems around the world include exceptions and limitations on the rights of copyright owners. An ‘exception’ to copyright is a full exemption that permits copyright material to be used without authorization or compensation.’⁸³ In addition, ‘a number of exceptions and limitations share the common objective of encouraging the preservation, dissemination of knowledge and information among the members of society at large.’⁸⁴

As explained by some scholars, ‘exceptions to intellectual property rights are of fundamental importance to achieving the policy objectives that justify the grant of intellectual property rights. To the extent which an IP right is considered to be “too strong”, the way to “weaken” (or, to better “balance”), it is through the use of an exception to it.’⁸⁵ According to some sources ‘both of the words ‘exception’ and ‘limitation’ have been used in international treaties, and in some writings about those treaties, with little in the way of reasoned definition. To the extent to which writers do give reasoned meanings for these terms, there is no consensus. It is argued that ‘this lack

⁸² Yanisky- Ravid, S. The hidden though flourishing justification of Intellectual property laws: distributive justice, National versus international approaches, (2017), vol. 21:1 Lewis & Clark law review. 21.

⁸³ Ruddock, P, Fair Use and Other Copyright Exceptions An examination of fair use, fair dealing and other exceptions in the Digital Age Issues Paper(2005). Available at: <<http://creativecommons.org/licenses/by/3.0/au/legalcode>>, accessed on April 30, 2017.

⁸⁴ WIPO, Standing Committee on Copyright and Related Rights Thirtieth Session Geneva, June 29 to July 3, 2015.SCCR/30/2. Available at: <http://www.wipo.int/meetings/en/details.jsp?meeting_id=35590>, accessed on October 21, 2017.

⁸⁵ F. Christie, A., Kur, A. and Mizaras, V. (eds), The Structure of Intellectual Property Law: *Can One Size Fit All?* (Edward Elgar, 2011, Available at: <<http://www.austlii.edu.au/au/journals/UMelbLRS/2011/8.pdf>>, accessed on April 27, 2017.

of principled analysis is surprising, given the major roles that exceptions and limitations play in intellectual property law.⁸⁶

It is noted that 'whereas limitations and exceptions can be found in all fields of IP law, it is the area of copyright and related rights that offers the richest variety of such rules. In addition, it is with regard to copyright and related rights that the differences existing between civil law and common law systems . . . are the most prominent.'⁸⁷ It is also noted that 'these are two major copyright law traditions: the Anglo-American copyright (common law) system and the continental European authors' rights (civil law) system. Generally, the former stresses the economic aspects of copyright; the latter is based on the intimate connection between the work and its author.'⁸⁸ As explained by some studies:

*International law making and harmonization activities have led to a remarkable approximation of Anglo-American copyright and continental European droit d'auteur. To this day, however, the approach to copyright limitations differs significantly: Whereas continental European countries provide for a closed catalogue of carefully defined exceptions, the Anglo-American copyright tradition allows for an open-ended fair use system that leaves the task of identifying individual cases of exempted unauthorized use to the courts.*⁸⁹

According to Senftleben, 'the traditional continental European approach to copyright limitations promotes legal certainty by providing for precisely defined exceptions. In the Anglo-American copyright tradition, open-ended fair use legislation enhances flexibility. The current EC regulation of copyright limitations, how-ever, fails to realize any of these potential advantages'.⁹⁰ It is noted that 'a closed system of exceptions to copyright is based on an exhaustive list of lawful acts. This is the solution adopted by

⁸⁶<<http://docplayer.net/24896904-Intellectual-property-law.html>>, Accessed on June 2017.

⁸⁷ Annette Kur, Of Oceans, Islands, and Inland Water – How Much Room for Exceptions and Limitations Under the Three-Step Test? (2009) Volume 8 | Issue 3, Richmond Journal of Global Law & Business, Article 3. 289.

⁸⁸ Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine, Sophie Valais, *Exceptions and limitations to copyright*, European Audiovisual Observatory(Council of Europe), Strasbourg, 2017, ISSN 2079-1062.1.

⁸⁹ Martin Senftleben, The International Three-Step Test: A Model Provision for EC Fair Use Legislation, 1 (2010) JIPITEC 67, para. 1 Available at:<<https://www.jipitec.eu/issues/jipitec-1-2-2010/2605/JIPITEC%202%20-%20Senftleben-Three%20Step%20Test.pdf>>, Accessed on June 2017.

⁹⁰ibid.

European countries, whether governed by civil law, like France, or common-law, like England and Ireland.⁹¹ As explained by some studies:

*In countries that have adopted the Roman law approach, the exceptions regime is usually “closed”. It is interesting to relate this aspect to the way in which the rights are set out. In most cases, but not all, the overall structure is as follows: there is a synthetic definition of the scope of the author’s exclusive monopoly, but an analytic list of exceptions, i.e. they are indicated in a highly descriptive and limitative way. This means that the scope of the rights given to the creator is wide open and should be viewed as advantageous for the authors, while the list of exceptions which users can claim is restrictive and cannot be interpreted in such a way as to impair the interests of the creator.*⁹²

It is also asserted that ‘in the civil law systems of Europe, every detailed statutory exception is incorporated into national copyright laws.’⁹³ Schwartz elaborated that ‘the difference, then, from U.S. fair use jurisprudence, is that the courts and administrative bodies in these European countries do not have nearly the latitude and flexibility to find uses fair or not, based on each new set of facts presented.’⁹⁴

When we analyze the above mentioned paragraphs, in one hand, the closed system of copyright exceptions in the civil law legal system are rigid which don’t give space to courts to use their discretions to decide in one or another way to accommodate the dynamic changes in social, economic and cultural circumstances. But on the other hand, they bring about legal certainty and predictability in the system. This is highly authors’ rights protection centered and gives lesser regard to user’s right. We can say that it deviates from the main stream copyright principle that ‘the mainstream copyright theory generally accepts that copyright is a balance between providing incentives to authors to invest in the production of cultural works and enhancing the dissemination of those works to the public’.⁹⁵ Nicholas, concluded that ‘thinking of copyright as a

⁹¹ibid.

⁹²Workshop on Implementation Issues of the WIPO Copyright Treaty (WCT) and the WIPO Performances And Phonograms Treaty (WPPT) Geneva, December 6 and 7, 1999:Exceptions and Limits to Copyright and Neighboring rights. WCT-WPPT/IMP/1/December 3, 1999. 18.

⁹³Eric Schwartz,An Overview of the International Treatment of Exceptions .PIJIP Research Paper No. 2014- 02,American University Washington College of Law, Washington, D.C, 2014 .5.

⁹⁴ibid.

⁹⁵ Nicolas Suzo. Access, Progress, and Fairness: Rethinking Exclusivity in Copyright: Access, progress, and fairness : rethinking exclusivity in copyright. Vanderbilt Journal of Entertainment and TechnologyLaw,15(2). 297-342.

necessary balance between the rights of authors and the interests of the public precludes some more fundamental critiques that aim to investigate whether society can realize the goals of the copyright system without the most harmful effects of exclusivity'.⁹⁶ Another researcher argues that 'in the current online environment, more flexibility in the field of copyright limitations is a legislative necessity rather than a mere regulatory option.'⁹⁷

Generally, 'exceptions and limitations to copyright are enshrined in two kinds of legislation. The first concerns open systems, the second involves closed systems. Finally, the Berne Convention has instituted a test aimed at justifying recognition thereof.'⁹⁸ Griffiths stated that 'in international copyright law, the "three-step test" restricts the ability of states to introduce and maintain exceptions to the exclusive rights of authors and other right-holders.'⁹⁹ According to Geiger, 'traditionally, the payment of equitable remuneration is seen as the primary tool to enhance flexibility for the introduction of copyright limitations and exceptions under the international three-step test.'¹⁰⁰ Researchers noted that 'the mother of the three-step test, the Berne Convention (Art. 9(2)), applies only to the right of reproduction guaranteed in Berne Art. 9(1). On the other hand, 'other economic rights guaranteed under the Convention come either with corresponding specific limitations (e.g., quotation), or none at all.'¹⁰¹ It is described that 'the Berne Convention, one of the oldest international copyright regime, states that it shall be a matter for legislation in the countries of the union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably

⁹⁶ *ibid.* 341.

⁹⁷ Martin Senftleben, Bridging the Differences between Copyright's Legal traditions – the emerging EC Fair use Doctrine. (June 2010) *Journal of the Copyright Society of the U.S.A.* 521.

⁹⁸ Anne Lepage, *Doctrine and Opinions: Overview of exceptions and limitations to copyright in the Digital Environment. e-Copyright Bulletin* January -March 2003. 5.

⁹⁹ Jonathan Griffiths, *The 'Three-Step Test' in European Copyright Law - Problems and Solutions*, Queen Mary University of London, School of Law Legal Studies Research Paper No. 31/2009. 1.

¹⁰⁰ Christophe Geiger, *Doctrine and Opinions: The Role of the three-step test in the adaptation of Copyright law to the Information Society. E-copyright bulletin*, January - march 2007. 4.

¹⁰¹ P. Bernt Hugenholtz & Ruth L. Okediji, *Conceiving an International instrument on Limitations and Exceptions to Copyright* Available at: <https://www.ivir.nl/publicaties/download/limitations_exceptions_copyright.pdf>, accessed on 22/10/2017.

prejudice the legitimate interests of the author.’¹⁰² Likewise, ‘the preamble of the WCT explicitly recognizes the need for a balance of interests between authors and the larger public, which ultimately leads to the requirement of exceptions and limitations.’¹⁰³ In addition, ‘the WCT asserts that Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.’¹⁰⁴ Moreover, ‘Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.’¹⁰⁵

It is noted that ‘with the advent of the "TRIPS" Agreement the three-step test was introduced as the international yardstick to be observed in all areas of IP law with regard to the contents and reach of limitations and exceptions, thereby restricting the freedom of national legislatures to create such rules with a view only to their own domestic situation.’¹⁰⁶ As we can understand from its texts, the TRIPS Agreement vests more flexibility to the contracting states in providing limitations and exceptions in their copyright regimes. The TRIPS Agreement declares that ‘members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.’¹⁰⁷ It is also argued that ‘in the current debate on flexibility in the area of copyright exceptions and limitations, three-step test is

¹⁰² Berne Convention (n21). Art 9(2).

¹⁰³ Reto M. Hilty, *Declaration on the “Three-Step Test” Where do we go from here?* 1 (2010) JIPITEC 83.83

¹⁰⁴ WIPO Copyright Treaty, Art 10.

¹⁰⁵ WIPO Performances and Phonograms Treaty (here after WIPO WPPT), 1996 (adopted in Geneva on December 20, 1996). Art.16(2).

¹⁰⁶ Annette Kur, *Of Oceans, Islands, and Inland Water – How Much Room for Exceptions and Limitations Under the Three-Step Test?*, 8 Rich. J.Global L. & Bus, 2009. 287. Available at: [http://scholarship.richmond.edu/global/vol8/iss3/3\(PP.2887-289\)](http://scholarship.richmond.edu/global/vol8/iss3/3(PP.2887-289)), accessed on June 2017.

¹⁰⁷ TRIPS Agreement (n 81). Art.13.

sometimes presented as an obstacle to the adoption of open-ended, flexible provisions at the national level'.¹⁰⁸ As it is stated by some researchers:

*The Three-Step Test has already established an effective means of preventing the excessive application of limitations and exceptions. However, there is no complementary mechanism prohibiting an unduly narrow or restrictive approach. For this reason, the Three-Step Test should be interpreted so as to ensure a proper and balanced application of limitations and exceptions. This is essential if an effective balance of interests is to be achieved.*¹⁰⁹

Goold argues that 'creators require some copyright protection to ensure a fair reward for their labor and to preserve their creative incentives. However, the interests of copyright owners must be balanced against the interest of wider society in accessing copyrighted material.'¹¹⁰ Roberto and others argued that 'copyright law has been broadening its scope for decades now, and as a result it often clashes with other rights (frequently, fundamental rights), raising the question of which right prevails.'¹¹¹ Another researcher asserted that 'copyright laws are an instrument of balancing the interests of creators and the societal obligations to facilitate the free flow of information. Advances in technology have demanded a review and reworking of the copyright laws.'¹¹²

Therefore, many agree that copyright should create a balance between creation and consumption. To this effect, there must be an international standard based on which copyright systems could be flexibly regulated. As stated above, the mechanism by which this balance could be provided for is through copyright limitations and exceptions set in

¹⁰⁸ Christophe Geiger, Daniel J. Gervais and Martin Senftleben, *The Three-Step-Test Revisited: How to Use the Test's Flexibility in National Copyright Law*. American University International Law Review 29 no. 3 (2014):581-626. 584.

¹⁰⁹DECLARATION: A balanced Interpretation of the "three-step test" in Copyright law. Available at: <http://www.ip.mpg.de/fileadmin/ipmpg/content/forschung_aktuell/01_balanced/declaration_three_step_test_final_english1.pdf> accessed on 20/10/2017.

¹¹⁰ Patrick R. Goold, The Interpretive Argument for a Balanced Three-Step Test? *Am. U. Int'l L. Rev.* (33:1) American University, Washington College of Law Symposium on Globalizing Fair Use, and the editors of the American University International Law Review.2014.198.

¹¹¹ Caso, Roberto and Giovanella, Federica, *Balancing Copyright Law in the Digital Age - Comparative Perspectives*: Preface (November 24, 2014). And R. Caso, F. Giovanella (eds), *Balancing Copyright Law in the Digital Age - Comparative Perspectives*, Springer, 2015. 1. Available at: <SSRN<https://ssrn.com/abstract=2529954>>, accessed on june 2017.

¹¹² Shalini R. Urs, Shalini R. Urs, *Copyright, academic research and libraries: balancing the rights of stakeholders in the digital age* 2004 ,Program, Vol. 38 Issue:3. 201-207. Availabel at: <<https://doi.org/10.1108/00330330410547250>>, accessed on 10/12/2017.

line with the three-step test which is an international standard inserted in different international copyright regimes. Exceptions to copyright protection break the monopoly of the right-holders by providing limited rights to use works without their consent. Steward says that ‘the limitations on copyright are necessary to keep the balance between two conflicting public interests: the public interest in rewarding creators and the public interest in the widest dissemination of their works, which is also the interest of the users of such works.’¹¹³ It is argued that ‘these days, limitations and exceptions to copyright are becoming a contested issue. The reason is that the process of creating and exploiting copyrighted works has dramatically changed with the development of digital technologies, such as digital reproduction and the Internet.’¹¹⁴

One of the important rationales why this study focuses on copyright exceptions and limitations is that the Marrakesh Treaty for VIPs requires countries to provide mandatory exceptions and limitations in their copyright regimes in order to solve the problems of VIPs in their respective jurisdictions. Ethiopia, as a member of the international community shares this common problem. Another problem is that as stated above, international copyright regimes don’t impose mandatory obligations in establishing copyright exceptions and limitations in order to benefits persons who are blind, visually impaired or otherwise print disable persons(*see Art. 2(b) of the Marrakesh Treaty*). They give much autonomy to national jurisdictions. As can be understood from the close reading of its texts, the aim of the Marrakesh Treaty for VIPs (2013) is to solve the problems of VIPs by requiring the contracting parties to establish mandatory exceptions or limitations in their copyright laws. This is relevant point which will be discussed in the section where the obligations of the contracting parties will be analyzed.

¹¹³ Baratsits. A Copyright in the Digital Age – Exceptions and Limitations to Copyright and Their Impact on Free Access to Information.(L.L.M. Thesis) ,USA: the Law Faculty, of Johannes Kepler University Linz 2005. 23.

¹¹⁴ Kojima, *Copyright Limitations and the Three-Step Test in the Digital Era: How to Preserve National Autonomy*. Contemporary Issues in International Economic and Business Law Joint Hokkaido-Kyushu Universities, Seminar, 2010. 1.

2.2. Flexibility and Facilitation of Access to Published works for Visually Impaired Persons in International Copyright Treaties

Madiega asserts that ‘copyright protection is territorial since rights are normally acquired and enforced on country-by-country basis, and exceptions and limitations to copyright protection vary from one member state to another.’¹¹⁵ It is argued that ‘in the early days, international protection of copyright was ensured on the basis of bilateral copyright agreements, that is, agreements whereby only two countries were involved. However, these agreements failed to provide a reliable legal basis for cross-border trade with protected works as they were limited in scope and varied widely.’¹¹⁶ It is noted that ‘countries... gradually turned to multilateral conventions which commit all parties to a single set of obligations. International instruments do not usually constitute a directly applicable source of rights to private parties. An international treaty rather imposes obligations on states parties, to adapt their domestic legislation according to its provisions.’¹¹⁷ Based on this principle, ‘copyright limitations and exceptions have already been acknowledged by a number of international treaties. However, these regulations are not explicit enough to create a universal practice for facilitating access to information and communication for people with print disabilities.’¹¹⁸ As contested by WIPO, ‘generalized exceptions and limitations to copyright protection, however, are not well-suited to international harmonization because exceptions must reflect the nuances of individual national markets.’¹¹⁹ This is the reason why the Marrakesh Treaty for VIPs, an international copyright treaty becomes a universal agenda across the world to solve the problems of VIPs. These problems are worse in developing and least developed nations

¹¹⁵ Tambiama Madiega, EU copyright reform: Revisiting the principle of territoriality. European Parliamentary Research Service, Briefing September, 2015. Available at: <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568348/EPRS_BRI\(2015\)568348_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568348/EPRS_BRI(2015)568348_EN.pdf)>, accessed on 22/10/2017.

¹¹⁶ UNESCO 2010, the ABC of Copyright. Available at: <<http://www.unesco.org/culture/copyright>>, accessed on 22/10/2017.

¹¹⁷ *ibid.*

¹¹⁸ Jingyi Li, *Copyright Exemptions to Facilitate Access to Published Works for the Print disabled: The Gap between National Laws and the Standards required by the Marrakesh Treaty*. 2014. 740–767.

¹¹⁹ WIPO, International Copyright Treaties. Available at: <<http://publishers.org/priorities-positions/international-copyright-treaties>>, accessed on 19/11/2017.

because of many constraints such as technology, inefficient legal and institutional frame works. EIFL briefly summarized the nature and purpose of the Marrakesh Treaty as follows:

*The Marrakesh Treaty represents a significant development in international copyright law because it is the first treaty devoted exclusively to creating international minimum standards for the benefit of users of copyright protected materials. It has the potential to greatly increase the availability of materials in accessible formats globally. The ability to share these accessible formats across borders will benefit people with print disabilities all around the world, in both developed and developing nations.*¹²⁰

In the following subunits, the study will analyze major international copyright laws that would help the researcher to examine the impact of the Marrakesh Treaty for VIPs on the limitations and exceptions of copyright and neighboring rights in the Ethiopian copyright system. In addition, this helps the researcher to examine how the Marrakesh treaty harmoniously operates with these international copy right frame works. The Marrakesh Treaty states that ‘Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties.’¹²¹ Moreover, the Marrakesh treaty has adopted the three-step test which the legislature and the judiciary of each contracting party should observe in providing exceptions and limitations in their copyright laws. This is expressly stipulated in its preamble that ‘*Reaffirming* the obligations of Contracting Parties under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international instruments.’¹²² What we can infer from the preceding paragraphs is that the three-step test in the Berne Convention and its descendants could accommodate the norms set by the Marrakesh Treaty for the benefits of its beneficiaries.

¹²⁰EIFL, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled: An EIFL Guide for Libraries. October 2015 v2, Available at: <www.eifl.net>, accessed on 10/12/2017

¹²¹ Marrakesh Treaty (n121). Art.1.

¹²² *ibid.* Para. 10.

2.2.1. The Berne Convention

As clearly stated by WIPO, ‘the Berne Convention deals with the protection of works and the rights of their authors. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.’¹²³ As stated in the convention, ‘the three basic principles are national treatment, independence and automatic protections.’¹²⁴ It is noted by WIPO that ‘the Berne Convention is not only the oldest international copyright instrument, but even now, the most fundamental element of the complex structure of conventions and other treaties in the field of copyright and related rights.’¹²⁵ Berne Convention provides for two exceptions that may affect teaching related uses in the digital world: the exception for teaching purposes and the imperative exception for quotation. Why teaching and quotation are given emphasis in this study is that these are some of the important rights that should be realized by the state parties as per the Marrakesh Treaty for VIPs. And this is also most relevant to the topic of this research. As we can see from the texts of the Marrakesh Treaty, ‘the right to development, freedom of information and their enjoyment of the right to education and the opportunity to conduct research by VIPs are some of the crucial intents and purposes of the treaty.’¹²⁶ In addition, ‘countries that are members of the Berne Union may introduce any other exception to the reproduction right provided that the three-step test in the Berne Convention and other treaties is fulfilled.’¹²⁷ Article 9 of the Berne Convention is labeled, “The Right of Reproduction,” but probably the most interesting part and the most quoted part of Article 9, Article 9(2), which sets forth the three-step test.’¹²⁸ As to the belief of the researcher, this test guides the national legislature to determine the scope of copyright limitations and exceptions to the exclusive rights of

¹²³WIPO, Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886.) Available at: <http://www.wipo.int/treaties/en/ip/berne/summary_berne.html>, Accessed on 23/10/2017.

¹²⁴WIPO, Berne Convention for the protection of Literal and Artistic Works (1979), Art.5.

¹²⁵ Summaries of Conventions, Treaties and Agreements Administered by WIPO (2013). Available at: <www.wipo.int>, accessed on June 12, 2017.

¹²⁶Marrakesh Treaty for VIPs (n81) Para. II . preamble.

¹²⁷Papadopoulos, M.D., Copyright Limitations and Exceptions in an E-Education Environment 2010, Vol. 1, Issue 2, European Journal of Law and Technology. 5.

¹²⁸ Carson, D., *Session iv: Fair use and other Exceptions* 2017, 40 Colum. Journal Law. Arts 389.

reproduction. In addition, these exceptions and limitations determine the scope of the copyright system.

Generally, the Berne Convention is an international copyright law which gave rise to copyright limitations and exceptions based on the principles of the three-step test. The convention asserted that 'it shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.'¹²⁹ It is explained that 'the Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as "free uses" of protected works and are set forth in Articles 9(2) of The Berne conventions. (reproduction in certain special cases),¹³⁰ quotations and use of works by way of illustration for teaching purposes¹³¹ 10bis, reproduction of newspaper or similar articles and use of works for the purpose of reporting current events and 11bisephemeral recordings for broadcasting purposes.'¹³² As some sources clearly put it:

The Berne Convention recognizes two types of limitations: compensated limitations and uncompensated limitations. Uncompensated limitations usually mirror uses or practices that are not considered part of the legitimate scope of the author's proprietary grant. Compensated limitations usually suggest that the copyright owner is not entitled to control whether the work is used, but is always entitled to remuneration as part of the copyright incentive scheme. Compensated limitations are a form of compulsory licensing.¹³³ This is also stipulated under the Berne Convention.¹³⁴

Cerda Silva argued that 'the standards of copyright protection promoted by the Berne Convention are highly problematic for developing countries because these countries need to ensure a wide dissemination of works for teaching, scholarship, and research

¹²⁹ Berne Convention, (n21) Art. 9(2).

¹³⁰ *ibid.*

¹³¹ *ibid.*, Art.10.

¹³² *ibid.*, Art. 11*bis*.

¹³³ Ruth L. Okediji William L., *The International Copyright System: Limitations, Exceptions and Public Interest Considerations for Developing Countries*. University of Minnesota Law School Issue Paper No. 15, ICTSD and UNCTAD, 2006. 12.

¹³⁴ Berne Convention (n21). Art.11*bis* (2).

purposes.’¹³⁵ Most importantly, ‘after subsequent revisions ... the Berne Appendix provides for the grant of a compulsory license, if authorization is desired, may favorably influence negotiation and may lead to increased the scope for voluntary licensing.’¹³⁶ It is described that ‘in order to accommodate these needs and to promote accession to this Convention, the 1971 Paris Act of the Berne Convention included an Appendix that allowed developing countries to issue compulsory licenses for translating and/or reproducing foreign works into languages of general use in their territories.’¹³⁷ Therefore, ‘the Appendix of the Berne Convention is intended to provide some flexibility for developing countries in order to meet their needs for a wider dissemination of knowledge.’¹³⁸

As stated by WIPO, ‘the Appendix to the Paris Act of the Convention ... ‘permits developing countries to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.’¹³⁹

Based on the above mentioned paragraph, the researcher argues that the Berne three-step test is not an impediment for developing countries to use the privileges in the appendix. This shows that The Berne Appendix is a privilege given to developing countries to exploit and this a specifically defined purpose that cannot oppose the three-step test. Another implication of the Appendix is that the Marrakesh Treaty for VIPs has the humanitarian and development dimensions which the implementation of the treaty could be promoted by those privileges granted to developing countries. It is asserted that:

¹³⁵Alberto Cerda Silva, Beyond the Unrealistic Solution for Development Provided by the Appendix of the Berne Convention on Copyright.PIJIP Research Paper No. 2012.2.

¹³⁶WIPO Intellectual Property Handbook: Policy, Law and Use. Available at: <http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf>, accessed on 10/11/2017.

¹³⁷ibid.

¹³⁸ibid.51.

¹³⁹WIPO, Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886).Available at: <http://www.wipo.int/treaties/en/ip/berne/summary_berne.html>, accessed on 9/11/2017.

*Conceived in line with the human rights principles outlined in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the Marrakesh Treaty is the first copyright treaty to include a clear human rights perspective. The Marrakesh Treaty demonstrates that copyright systems are an important part of the solution to the challenge of improving access to books and other printed works for persons with print disabilities.*¹⁴⁰

In addition, to restate the previous points, the Marrakesh Treaty acknowledged the Berne Convention's three-step test in its preamble in order to determine the scope of national copyright limitation and exceptions in the contracting parties' jurisdictions.¹⁴¹ It is explained that:

*Apart from the detailed exceptions Berne Convention provides, a more general one in Article 9(2), which has the form of a test for determining whether or not an unauthorized reproduction is lawful. The three distinct conditions that must be complied with before an exception to the reproduction right can be justified under national law: Limitation of application to 'certain special cases', the unauthorized reproduction 'does not conflict with the normal exploitation of the work' and the unauthorized reproduction 'does not unreasonably prejudice the legitimate'*¹⁴²

Davis has given stress that 'of particular importance in maintaining the copyright balance is Article 9(2) which provides an adaptable "three step test" that allows for free reproduction of works in special cases that neither conflict with the normal exploitation of the work nor unreasonably prejudice the legitimate interest of the author.'¹⁴³ Based on this, 'the Berne Convention creates flexibility in the international copyright system by establishing exceptions and limitations to the exclusive rights on authors.'¹⁴⁴ Another important issue is that the Berne convention accommodates public interest considerations not only by system of limitations and exceptions under Art.9(2) but also by putting protection of certain subject matters like political speeches and other current works within the discretion of member countries. There are also other flexibilities like requirements.¹⁴⁵ In addition, 'the Berne Convention states that 'the protection of this Convention shall not

¹⁴⁰ WIPO, Main Provisions and Benefits of the Marrakesh Treaty (2013) Available at:<http://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_flyer.pdf>, accessed on 10/11/2017.

¹⁴¹Marrakesh Treaty for VIPs (n121).para.8.

¹⁴² Dreier, T and Hugenholtz, P eds.,*Concise European Copyright Law*, The Hague: Kluwer Law International, 2006.9.

¹⁴³ Philippa Davies,*Access v Contract Competing freedoms in the context of copyright limitations and exceptions for libraries:The European Intellectual Property Review*, 2013, no 7. 482.

¹⁴⁴Berne Convention (n21) Art. 9(2).

¹⁴⁵Berne Convention, (n21). Art.2 (8).

apply to news of the day or to miscellaneous facts having the character of mere items of press information'.¹⁴⁶It is also asserted that:

*it shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved.*¹⁴⁷

When we analyze the Berne Convention in light of the Marrakesh Treaty for VIPs, in the Berne Convention, there are no specific and mandatory exceptions and limitations imposed on member states for the benefits of VIPs. And Art.1 of the Marrakesh Treaty for VIPs states that 'Nothing in this treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties'.¹⁴⁸ This paragraph implies that the Marrakesh Treaty should adopt those international copyright principles but it also provides remedies to the short comings of the same. That means in the one hand, the Marrakesh Treaty entirely focuses on mandatory copyright exceptions and limitations notionally and internationally for the benefits of users, VIPs. In addition, it allows optional exceptions and limitations to achieve its objectives as far as they conform to the three-step test and other international obligations. On the other hand, it adopts the three-step test provided in the Berne convention to determine the scope of those limitations and exceptions. It is stated by some scholars that:

*The standards of copyright protection promoted by the Berne Convention is highly problematic for developing countries because these countries need to ensure a wide dissemination of works for teaching, scholarship, and research purposes. In order to accommodate these needs and to promote accession to this Convention, the 1971 Paris Act of the Berne Convention included an Appendix that allowed developing countries to issue compulsory licenses for translating and/or reproducing foreign works into languages of general use in their territories.*¹⁴⁹

¹⁴⁶ibid.

¹⁴⁷ ibid.Art. 10^{bis} (1).

¹⁴⁸Marrakesh Treaty for VIPs(n121). Art1.

¹⁴⁹ Alberto Cerda Silva, *Beyond the Unrealistic Solution for Development Provided by the Appendix of the Berne Convention on Copyright*.PIJIP Research Paper no. 2012-08 American University Washington College of Law, Washington, D.C, 2012.1.

Furthermore, WIPO asserted that “the Appendix to the Paris Act of the Convention also permits developing countries to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.”¹⁵⁰

When we analyze the Berne Convention in relation with the research topic, it has retained its norm setting features in the Marrakesh treaty for VIPs. The treaty has adopted the standard set by the convention, the three-step test. Based on which the Marrakesh Treaty requires the contracting states to provide copyright exceptions and limitations in their respective copyright system to create a balance between the interest of these specific beneficiaries (VIPs) and the rights of the right holders.

By and large, the Berne convention’s three-step test has a great role to establish copyright limitations and exceptions to meet the objectives of the Marrakesh treaty designed for the benefit of the VIPs. In its preamble, the Marrakesh Treaty states that ‘Reaffirming the obligations of Contracting Parties under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international instruments.’¹⁵¹ In addition, Art.11(1) of the Marrakesh Treaty asserts that ‘in accordance with Article 9(2) of the Berne Convention, a Contracting Party may permit the reproduction of works in certain special cases provided that such reproduction does not conflict with abnormal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.’¹⁵² Furthermore, it is stated in the Marrakesh Treaty that ‘in accordance with Article 10(2) of the WIPO Copyright Treaty, a Contracting Party shall confine, when applying the Berne Convention, any limitations of or exceptions to rights to certain special cases that do not

¹⁵⁰ . WIPO, Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886). Available At: <http://www.wipo.int/treaties/en/ip/berne/summary_berne.html> accessed on 12/1 2018.

¹⁵¹Marrakesh Treaty for VIPs (n21). Para, 10.

¹⁵²ibid Art.11 (1).

conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author'.¹⁵³

To sum up as it is adequately evaluated in the preceding discussions, the three-step test in the Berne Convention and in the consecutive treaties and agreements are international standards based on which the Marrakesh treaty provided mandatory and optional copyright exceptions and limitations in respective national copyright laws of the contracting parties to create access to copyright protected works for the VIPs. To this effect the Marrakesh treaty incorporated the three-test in Art. 11. The researcher asserted that this test permits the norms set by the Marrakesh Treaty and facilitates the achievement of its objectives.

2.2.2. TRIPS Agreement

The World Trade Organization (WTO) asserted that 'the TRIPS Agreement is an international agreement administered by the WTO that was negotiated and concluded in 1994. TRIPS establish minimum standards for many forms of intellectual property protection in member countries of the WTO, including copyright.'¹⁵⁴ Most importantly, 'the TRIPS Agreement, administered by the World Trade Organization, was developed to address the growing issue of enforcement of intellectual property laws and disputes. By linking international trade and intellectual property protection, it puts "teeth" into the Berne Convention within the world trading system.'¹⁵⁵ As stated under Art.7, the objectives of the TRIPS Agreement are:

*The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.*¹⁵⁶

¹⁵³ibid. Art, 11(4).

¹⁵⁴WTO, Intellectual Property and Developing countries: An over View<https://en.wikipedia.org/wiki/Member_states_of_the_World_Trade_Organization>, accessed on July 12, 2017.

¹⁵⁵Janice T. Pilch, *International Copyright: Why It Matters to Libraries*. Library Copyright Alliance, University of Illinois at Urbana-Champaign Visiting Program Officer on International Copyright, Association of Research Libraries October 12, 2009 Issue Brief.2.

¹⁵⁶ TRIPS Agreement (n81), Art.7.

The preceding paragraph presents the overall objectives of the TRIPS Agreement in intellectual property systems including copyright. The Marrakesh treaty also shares many of these objectives for the benefit of VIPs. Providing the beneficiaries with works in accessible format copies, requires cross border exchange. The exceptions and limitations provided by the Marrakesh treaty for VIPs create this favorable environment. Developing and least developed countries will benefit from the preceding objectives (the TRIPS' objectives) because they can import the works in appropriate format copies. This will save scarce resources and avoid duplication of efforts.

As explained by Hugenholtz 'the mother of all three- step tests, art. 9(2) of the Berne Convention, applies only to the right of reproduction guaranteed in Art. 9(1) of the Berne Convention. Other economic rights guaranteed under the Convention come either with corresponding specific limitations (for example, quotation), or none at all.' ¹⁵⁷ Later, Art. 13 of the TRIPS Agreement take the test an important step further. It now applies to all economic rights guaranteed by TRIPS as minimum standards'. ¹⁵⁸ Thus, it is asserted that 'there is no conflict between the Berne Convention and the TRIPS Agreement as far as exceptions and limitations to the exclusive rights are concerned.' ¹⁵⁹ When we specifically analyze the TRIPS Agreement concerning copyright issues, Art.13 of the TRIPS Agreement requires that 'exceptions and limitations to copyright in national laws meet the Three-Step Test and thus confined(1) to certain special cases (2)which don't conflict with the normal exploitation of the work and (3)don't unreasonably prejudice the legitimate interests of the right holder'.¹⁶⁰ To be more specific, 'Article 13 of the TRIPS Agreement states that members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and

¹⁵⁷P. BerntHugenholtz, Limits, Limitations and Exceptions to Copyright under the TRIPS Agreement WTO, TRIPS Agreement 1994/95. Available at: <<https://www.elgaronline.com/view/9781847209047.00017.xml>>, accessed on November 11'2017.

¹⁵⁸ibid.

¹⁵⁹WIPO ,Implications of the TRIPS Agreement on Treaties Administered by WIPO. WIPO Publication No 464 (E) ISBN 978-92-805-0681-1 Reprinted 2012 Available at:

<http://www.wipo.int/edocs/pubdocs/en/intproperty/464/wipo_pub_464.pdf>, accessed on 11/12/2017.

¹⁶⁰ Cook, T.,*Exceptions and Limitations in European Union Copyright*. (2012), Journal of Intellectual Property Rights, Vol. 17.243-245.

do not unreasonably prejudice the legitimate interests of the right holder.’¹⁶¹As it is analyzed by Woods, ‘unlike the Berne Convention, Art.13 of the TRIPS Agreement ‘widens the applicability of the three-step test to all economic rights, declares the test in mandatory terms, and makes references to beneficiaries as right holders as opposed to “authors and established enforcement mechanisms”’.¹⁶² The Marrakesh treaty has adopted this test. The Marrakesh treaty states that ‘in accordance with Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, a Contracting Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder’.¹⁶³ On the other hand the TRIPS Agreement gives due attention to public policy issues and puts flexibilities for the benefits of least-developed countries. It asserts that ‘*Recognizing* the underlying public policy objectives of national systems for the protection of Intellectual property, including developmental and technological objectives.’¹⁶⁴ In addition, recognizing ‘*also* that the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base.’¹⁶⁵

When we analyze the Marrakesh Treaty in light of the aforementioned paragraphs, the TRIPS Agreement creates conducive environment to facilitate cross-border exchange of technologies that could promote access to creative works in accessible format copies. In addition, this may help for the full development of VIPs. Furthermore, the Marrakesh Treaty is an international copyright treaty which requires the contracting parties to establish mandatory exceptions and limitation in their national copyright system to create access to copyrighted works in accessible formats for VIPs. As mentioned above, the Marrakesh Treaty recognized the three- step test provided in the TRIPs agreement. The

¹⁶¹ The TRIPs Agreement (n81) Art.13.

¹⁶²Michele Woods, *Limitations and Exceptions to Copyright and Related Rights. WIPO Copyright Division*, no Academic Law School Geneva November 16, 2015.8.

¹⁶³ Marrakesh Treaty, (121)Atr11 (2)

¹⁶⁴TRIPS Agreement,(n81) para.5

¹⁶⁵ *ibid.*para5

case of VIPs is a special case that would be accommodated by the trips Agreement which in turn promotes providing works in accessible formats for VIPs. Therefore, the three-step test in Art. 13 of the TRIPS Agreement accommodate the norms set by the Marrakesh Treaty for VIPs.

2.2.3. WIPO Copyright Treaty (WCT)

It is noted that ‘in the past few years the Internet has grown markedly in terms both of numbers of users and of its development as a broad band, commercial network with the ability to make available a whole new range of digital content and interactive services.’¹⁶⁶ In addition, some scholars believe that ‘the Internet enables the nearly-instantaneous, original quality reproduction of and world-wide, lightening-speed dissemination of copyrighted works.’¹⁶⁷ It is argued that ‘this has caused concerns for content producers as to their ability to protect their intellectual property. To address these concerns, they have sought enhanced and more internationally harmonized protection in the form of a new right encompassing works on the internet and in legal protection of the use of digital rights management devices with penalties for their bypass.’¹⁶⁸ Moreover ‘the WCT and the WPPT are denoted as internet treaties. These treaties respond to the contemporary challenges of digital technologies particularly to the problems posed by the internet.’¹⁶⁹ Dinwiddie argues that, ‘the WIPO Copyright Treaty radically changed the international copyright lawmaking environment. It was in the 1996 Diplomatic Conference that one begins to see the most widespread explicit discussion of the concept of "balance" being integral to international instruments. Indeed, this led to recognition of that concept in the preamble to the treaty (WCT).’¹⁷⁰ He illustrated that, ‘for example, on the crucial issue of prohibiting the circumvention of technological protection measures (TPMs), contracting

¹⁶⁶A. Flanagan S.M. Maniatis, *Intellectual property on the Internet Section A: Digital copyright*. Central Printing Service, University of London, 2008.67.

¹⁶⁷ Fareed Ahmad Rafiqi & Iftikhar Hussian Bhat, Copyright Protection in Digital Environment: Emerging Issues (April 2013), Volume 2 Issue 4 , International Journal of Humanities and Social Science Invention ISSN (Online): 2319 – 7722, ISSN (Print): 2319 – 7714 www.ijhssi.org.1.

¹⁶⁸ibid.

¹⁶⁹ibid.

¹⁷⁰Graeme Dinwiddie, The WIPO Copyright Treaty: A Transition to the Future of International Copyright Lawmaking. Case Western Reserve Law Review, Volume 57 | Issue 4, Western Reserve University School of Law Scholarly Commons.752.

states sought an international solution at a very early stage in the development of norms.¹⁷¹ Furthermore, Vaver asserted that 'the WIPO treaties bless the copyright industries' adoption of technological means to fend off unauthorized copiers. "Adequate" protection and "effective legal remedies" must be enacted against "circumvention of effective technological measures" used "by authors" in connection with the exercise of rights under the WCT, WPPT or Berne'.¹⁷²

The preambles of WCT¹⁷³ and WPPT¹⁷⁴ explicitly recognized the need to maintain a balance between the rights of the right-holders and "the larger public interest, particularly education, research and access to information. It is asserted that:

*The digital agenda covered basically four issues(i) the concept of reproduction and the application of the right of reproduction in the digital environment; (ii) the right or rights to be applied for interactive digital transmissions; (iii) the application of exceptions and limitations in the new environment; and (iv) obligations concerning technological protection measures and rights management information..*¹⁷⁵

According to some researchers, 'the World Intellectual Property Organization's Internet treaties, namely, WCT and the WPPT, which were adopted by WIPO at a diplomatic conference in 1996, were brought into existence to respond to the effects of new technologies on copyright protection.'¹⁷⁶ It is argued that 'technological protection measures require appropriate legislative and legal support: (i) to ensure that these measures are respected, and (ii) to deter the defeat of such measures by parties that might otherwise violate the rights of content owners. This imperative was recognized in both the Wetland WPPT.'¹⁷⁷ The WIPO Copyright Treaty (WCT) is a special agreement under the

¹⁷¹ *ibid.* 753

¹⁷² David Vaver Copyright and the Internet: From Owner Rights and User Duties to User Rights and Owner Duties. *Case Western Reserve Law Review*(2007), Volume 57 | Issue 4.738.

¹⁷³ WIPO Copyright Treaty(WCT) (adopted in Geneva on December 20, 1996)(here after WIPO, WCT), Para4.

¹⁷⁴ WIPO, WPPT,(n105), para,4.

¹⁷⁵ *ibid.*14.

¹⁷⁶ Khaw Lake Tee, Tay Pek San and Kuala Lumpur, *Copyright and Developing Countries: A balancing exercise. The 4th ASLI Conference*. Available on: <<http://eprints.um.edu.my/13475/1/0001.pdf>>, accessed on 12/11/2017.

¹⁷⁷ S. Marks and Bruce H. Turnbull, *Workshop on implementation Issues of the WCT and the WPPT : Technical Protection Measures: The Intersection of Technology, Law and Commercial licenses*. Geneva, December 6 and 7, 1999, WCT-WPPT/IMP/3.5.

Berne Convention that deals with the protection of works and the rights of their authors in the digital environment.¹⁷⁸

The WCT, in its preamble states that ‘recognizing the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments.’¹⁷⁹ In addition, it declares that ‘*recognizing* the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention.’¹⁸⁰ According to the WCT:

*Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.*¹⁸¹

The very important question is that is WCT relevant to the Marrakesh Treaty in achieving its goals for VIPs. It can be understood from the preceding paragraphs that the contracting parties are required by WCT to provide laws that enforce technological protection measures (TPMS). On the other hand, the Marrakesh treaty for VIPS needs the contracting parties to design mechanisms in order to prevent the VIPs from deprivation of works in accessible formats caused by TPMS. To counteract this, the Marrakesh Treaty puts that “Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.”¹⁸² Furthermore, it stipulates that ‘it is understood that authorized entities, in various circumstances, choose to apply technological measures in the making, distribution

¹⁷⁸ Summaries of Conventions, Treaties and Agreements Administered by WIPO. Available at: www.wipo.int/treatiesassessed, on 11/11/2017.

¹⁷⁹ WIPO, WCT(n174). Para. I.

¹⁸⁰ *ibid*, Para. IV.

¹⁸¹ *ibid*, Atr.11.

¹⁸² Marrakesh Treaty (n121), Atr.7.

and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law.’¹⁸³

When we see the texts of the two treaties (WCT and Marrakesh Treaty) concerning technological issues, they seem inconsistent. But they are not contradictory in the provision of accessible format copies for VIPs. WCT asserts that ‘Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author’¹⁸⁴ The Marrakesh Treaty recognized these exceptions that ‘in accordance with Article 10(1) of the WIPO Copyright Treaty, a Contracting Party may provide for limitations of or exceptions to the rights granted to authors under the WCT in certain special cases, that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author,’¹⁸⁵

Therefore, the above mentioned international copyright regimes are important to solve the problems of the copyright holders and the VIPs by complementing each other. Because such technological measures protects unauthorized use of copyright protected materials and facilitates legally authorized use for VIPs. As can be understood from the above paragraph, the exceptions and limitations provided in Article 10 (WCT) is more comprehensive and flexible to accommodate future changes in the national and international copyright regimes. It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention which the Marrakesh Treaty conforms to both. Finally, the three-step test in the WCT accommodates the norms set by the Marrakesh Treaty for VIPs.

¹⁸³Marrakesh treaty Agreed statement concerning Article 7.

¹⁸⁴WIPO,WCT(n174), Art10 (1)

¹⁸⁵ Marrakesh Treaty (n121). Art .11(c).

2.2.4. WIPO Performance and Phonograms Treaty (WPPT)

It is asserted that ‘the WIPO Performances and Phonograms Treaty deals with the rights of two kinds of beneficiaries, particularly in the digital environment: the performers and producers of phonograms.’¹⁸⁶ The treaty asserts that ‘desiring to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible.’¹⁸⁷ Furthermore, the treaty stipulates that ‘recognizing the need to maintain a balance between the rights of performers and producers of phonograms and the larger public interest, particularly education, research and access to information.’¹⁸⁸

In the aforementioned paragraphs, the treaty shows how it could protect the right holders from unauthorized uses of their creation. Another important point is that it intends to create a balance between the right holders and the public interest. It is stated that:

*As to limitations and exceptions, Article 16 of the WPPT incorporates the so-called “three-step” test to determine limitations and exceptions, as provided for in Article 9(2) of the Berne Convention, extending its application to all rights. The accompanying Agreed Statement provides that such limitations and exceptions, as established in national law in compliance with the Berne Convention, may be extended to the digital environment. Contracting States may devise new exceptions and limitations appropriate to the digital environment. The extension of existing or the creation of new limitations and exceptions is allowed if the conditions of the “three-step” test are met.*¹⁸⁹

The relevance of the above mentioned discussion to the topic of the research can be impliedly understood from Paragraph IV of its preamble that substantiates the intention of the Marrakesh Treaty for VIPs. In addition, the exceptions and limitations established in the treaty (Art. 16) are based on the Berne three-step test that is already recognized and adopted by the Marrakesh Treaty for VIPs. This is also stated in Art.11 (a) that when the legislature of a contracting provides copyright limitations and exceptions, it is required to

¹⁸⁶Summary of the WIPO Performances and Phonograms Treaty (WPPT) (1996). Available at: <http://www.wipo.int/treaties/en/ip/wppt/summary_wppt.html>, accessed on 10/11/2017.

¹⁸⁷ WPPT(n105) preamble, Para..I.

¹⁸⁸ ibid, Para. IV.

¹⁸⁹ WIPO exceptions and limitations (n79). 48.

make it in line with the three-step test.¹⁹⁰The treaty (Marrakesh) also adopted Art. 9(2) of the Berne Convention in its Preamble.¹⁹¹

Another relevant issue is the issue of technological protection measures. The WIPO Copyright Treaty (WCT)¹⁹² and the WIPO Performances and Phonograms Treaty (WPPT)¹⁹³ require adequate legal protection and effective legal remedies against the circumvention of TPMs applied to protected works and phonograms. These provisions are formulated in a broad and neutral way, oriented more to the desired result than on how to achieve it. In implementing these treaty provisions, however, ‘governments have recognized that their laws need to cover the act of circumvention itself, as well as the manufacture and distribution of a range of circumvention devices, in order to provide adequate and effective protection.’¹⁹⁴

The important issues that should be considered are the above mentioned internet treaties incorporated technological protection measures and the contracting parties are required to adopt them. When we attempt to analyze these requirements in light of the goals of the Marrakesh Treaty for VIPs, they seem constraints to accessing copyrighted materials through accessible format copies. But, the Marrakesh Treaty requires contracting parties to provide provisions that prevent these problems in their national copyright. This is stated as follows:

Article 7 provides that a technological protection measure, such as a copy or access control, cannot prevent a beneficiary person from enjoying the exceptions provided under the treaty, even when a country prohibits the circumvention of technological protection measures in its general copyright legislation. Thus, in such cases the country must adopt a mechanism such as an exception to the circumvention prohibition to permit an authorized entity, for example, to make an accessible format copy. Other mechanisms for example, requiring the rights holder to provide the authorized entity with a key to open the digital lock would also appear to satisfy Art. 7¹⁹⁵

¹⁹⁰ Marrakesh Treaty (2013) for VIPs, (n121), Art.11 (1).

¹⁹¹ *ibid*, para.10.

¹⁹² WIPO, WCT (n174) Art. 11.

¹⁹³ WPPT (n105). Art. 18.

¹⁹⁴ International Federation of the Phonographic Industry (IFPI), The WIPO Treaties: Technological measures, March 2003. Available at: <<http://www.ifpi.org/content/library/wipo-treaties-reproduction-right.pdf>>, accessed on 11/11/2017.

¹⁹⁵ EIFL, The Marrakesh Treaty: An EIFL guide for Libraries December 2014. Available at: <http://www.eifl.net/sites/default/files/eifl-guide-marrakesh_en_1.pdf>, accessed on 11/11/2017.

The WPPT states that the contracting parties may provide limitation or exceptions to protect the rights of the beneficiaries.¹⁹⁶ This is put in a permissible way that gives discretion to the contracting parties. In addition; it has stipulated that the contracting parties shall observe the three- step test when they establish limitations or exceptions.¹⁹⁷ Whereas this is mandatory that requires the contracting parties to observe. The treaty (WPPT) states that:

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.

Therefore, the WPPT provides exceptions or limitations to the exclusive rights of the right holders in line with the three-step test provided in the treaty and also provide adequate legal protection to prevent unauthorized use of the works of the right holders. The Marrakesh treaty on the other hand requires the contracting parties to establish mandatory exceptions or limitations in their national copyright laws to create access to creative works for VIPs nationally and through cross-border exchange. In addition, the Marrakesh provides VIPS with Adequate legal protection and remedies when technological protection measures provided in WCT and WPPT illegally deprive them from using creative works. This will be discussed in detail in the following subsections.

2.3. An overview of the Three-step test in Copyright Regimes.

As stated by J. Gervais, ‘a 1967 Stockholm Berne convention revision conference, a general rule known as the “three-step test” was added to the Berne Convention to limit exceptions to the right of reproduction—a right which was added to the Convention at the same Revision Conference.’¹⁹⁸ When he stated the policy implication of the test, he explained that:

¹⁹⁶WPPT,(n105)Art.16(1).

¹⁹⁷ibid. Art.16 (2).

¹⁹⁸ Daniel J. Gervais, Making Copyright Whole: A Principled Approach to Copyright Exceptions and Limitations. Available at: <<http://ssrn.com/abstract=1825342>>, accessed on 12/11/2017.

*The first lesson to be drawn is that the three-step test is in reality a two-step test when applied directly in national law because the “special case” nature of an exception is but an instruction addressed to lawmakers to provide reasonably narrow exceptions (a quantitative component), with a well-defined public interest justification (the normative/qualitative component).*¹⁹⁹

Some scholars argue that ‘in the current debate on flexibility in the area of exceptions and limitations to intellectual property, the three-step test embodied in the Berne Convention, the TRIPS Agreement and several other more recent instruments is sometimes presented as an obstacle to the adoption of open-ended, flexible provisions at the national level’²⁰⁰ As its history tells us ‘the three-step test qualifies the permissible scope of an exception to an IP right. The test was first incorporated into international IP law through the introduction, in 1967 of Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works of 1886(‘Berne’)’.²⁰¹ As described in the Berne Convention, ‘it shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author’.²⁰² Similarly, it is declared in the TRIPS Agreement that ‘members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder’.²⁰³ When we critically read the texts of the preceding copyright laws, there are visible variation as to their language and the focus they give. The Berne Convention is concerned with the reproductions right and give due emphasis to the author’s right whereas the TRIPS Agreement focuses on the right holders. It is asserted by some studies that ‘the Three-Step Test performs distinct functions at different regulatory levels and within different legal systems. Internationally, it controls state autonomy in drafting domestic exceptions and limitations. At the domestic level, the

¹⁹⁹ *ibid.*31.

²⁰⁰ Christophe Geiger, Daniel Gervais and Martin Senftleben, *Understanding the "three-step test"*. <https://www.researchgate.net/publication/298519957_Understanding_the_three-step_test>, accessed on 11/11/17.

²⁰¹ Andrew F. Christi, *Maximizing Permissible Exceptions to Intellectual Property Rights. The Structure of Intellectual Property Law: Can One Size Fit All?* Edward Elgar, 2011).4.

²⁰² Berne Convention. (n21), Art.9 (2).

²⁰³ TRIPS Agreement, (n81), Art.13.

Test may be incorporated directly or it may function exclusively as an aid to the interpretation of domestic legislation.²⁰⁴ In addition, ‘in international copyright law, the “three-step test” restricts the ability of states to introduce, and maintain, exceptions to the exclusive rights of authors and other right-holders.’²⁰⁵ Senftleben has put the functions of the three-step test as follows:

*The three-step test is central to the regulation of copyright limitations at the international level. Delineating the room for exemptions with abstract criteria, the three-step test is by far the most important and comprehensive basis for the introduction of national use privileges. It is an essential, flexible element in the international limitation infrastructure that allows national law makers to satisfy domestic social, cultural, and economic needs. Given the universal field of application that follows from the test’s open-ended wording, the provision creates much more breathing space than the more specific exceptions recognized in international copyright law.*²⁰⁶

Kojima Argues that ‘when a legislative body implements new copyright limitations or courts flexibly interpret existing limitation clauses, these have to be compatible with the “Three-step test” which defines the discretion to implement copyright limitations and exceptions.’²⁰⁷ In addition, ‘in the current debate on flexibility in the area of exceptions and limitations to intellectual property, the three-step test embodied in the Berne Convention, the TRIPS Agreement and several other more recent instruments have taken centre stage.’²⁰⁸

As Stated by WIPO’s SCCR, ‘the present international IPR framework, consisting of exclusive rights combined with a set of exceptions and limitations governed by the three-

²⁰⁴Declaration: A balanced Interpretation of the “Three-Step test” in Copyright law. Available at: <http://www.ip.mpg.de/fileadmin/ipmpg/content/forschung_aktuell/01_balanced/declaration_three_step_test_final_english1.pdf>, accessed on 11/11/2017.

²⁰⁵Jonathan Griffiths. *The ‘Three-Step Test’ in European Copyright Law - Problems and Solutions*. Available at: <<http://ssrn.com/abstract=1476968>>, accessed on 13/12/2017.

²⁰⁶Martin Senftleben, the International Three-Step Test: A Model Provision for EC Fair Use Legislation. (2010), Vol. 1, No. 2 *Journal of Intellectual Property, Information Technology and E-Commerce Law*. 67-82.

²⁰⁷ Takahiro Kojima, *Copyright Limitations and the Three-Step Test in the Digital Era: How to Preserve National Autonomy: Contemporary Issues in International Economic and Business Law* Joint Hokkaido-Kyushu Universities Seminar February 15, 2010.2.

²⁰⁸Christophe Geiger, Daniel J. Gervais and Martin Senftleben. *International Intellectual Property: Understanding the “three-step test*. Vanderbilt University Law School, USA, Edward Elgar publisher, 2015.167.

step-test, is based on a delicate equilibrium which has benefited creators and users alike, and should continue to be. Optimal flexibility requires general international principles which leave specific Implementation for Member States.’²⁰⁹ It goes on saying that ‘the three-step test, as set out in the major international intellectual property treaties, is a common international standard and a long-established high-level principle. According to Article 9(2) of the Berne Convention, Article 10 WCT, Article 16 WPPT and Article 13 of the TRIPS Agreement, the three-step test provides a safety net for all exceptions and limitations, allowing flexibilities as long as the common criteria are respected.’²¹⁰ In addition, ‘application of the three-step test by national legislatures and courts has shown time and again that its inherent flexibility allows for appropriate national solutions. This flexibility is vital to equilibrium at national level.’²¹¹

The Marrakesh Treaty ... explicitly refers to the different versions of the “three-step test” in international copyright law. Article 11 of the Treaty makes it clear that there are many versions and that an E&L must comply with all versions by which a country is bound under the Berne Convention, the TRIPS Agreement and the WIPO Copyright Treaty, including their interpretative agreements.²¹² It is asserted that ‘the Marrakesh Treaty ensures that all signatories will be obliged to introduce a minimum baseline exception that allows visually-impaired people to receive, make, and use accessible copies of works. Importantly, the Marrakesh Treaty also allows the cross-border flow of accessible books, laying the groundwork for a globally-coordinated approach to pooling accessible books digitized around the world.’²¹³ Sophie Valais and his Colleagues Argued that the “Three-step test”, issued to determine whether or not an exception or limitation is permissible under the international norms on copyright and related rights. Although the three-step test

²⁰⁹ WIPO (2008), Copyright Exceptions and Limitations Joint Position WIPO Standing Committee on copyright and related rights, 17th Session. Available at: <http://ifrro.org/sites/default/files/WIPO_SCCR_Joint_Position_1029_2008_EN.pdf>, accessed on 13/11/2017.

²¹⁰ *ibid.*

²¹¹ *ibid.*

²¹² *ibid.*

²¹³ Harpur, Paul D. & Suzor, Nicolas P. Copyright protections and disability rights: turning the page to a new international paradigm, (2013,), vol 36(3) University of New South Wales Law Journal. 745-778.

under Article 9(2) initially applied exclusively to the right of reproduction, it was later extended to all exclusive rights under other international treaties.²¹⁴

The preceding paragraph shows that the previous international treaties did not impose mandatory copyright exceptions and limitations that accommodate the problems of the VIPs. That is why this treaty came in to existence. It is asserted that ‘the Marrakesh Treaty requires contracting parties to introduce a standard set of limitations and exceptions to copyright rules in order to permit reproduction, distribution and the making available of published works in formats designed to be accessible to VIPs and to permit the exchange of these works across borders by organizations that serve those beneficiaries.’²¹⁵ Sophie Valais and his Colleagues also asserted that ‘the Treaty leaves contracting parties the freedom to implement its provisions taking into account their own legal systems and practices, including determinations on "fair practices, dealings or uses", provided they comply with their “three-step test” obligations’.²¹⁶ According to WIPO:

*There is no requirement to be a member of any other international copyright treaty to join the MVT; membership is open to Member States of WIPO and to the European Union. However, Contracting Parties that receive accessible format copies and do not have obligations to comply with the three-step test under Article 9 of the Berne Convention must ensure that accessible format copies are not redistributed outside their jurisdictions. Also cross-border transfer by authorized entities is not permitted unless the Contracting Party in which the copy is made is a party to the WIPO Copyright Treaty or otherwise applies the three-step test to limitations and exceptions implementing the MVT..*²¹⁷

The Marrakesh treaty declares that ‘any Member State of WIPO may become party to this Treaty.’²¹⁸ It is also stipulated that ‘the European Union, having made the declaration referred to in the preceding paragraph at the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.’²¹⁹

²¹⁴Francisco Javier Cabrera Blázquez, Maja Cappello , Gilles Fontaine and Sophie Valais, *Exceptions and limitations to copyright*. European Audiovisual Observatory (Council of Europe), Strasbourg, 2017. 10.

²¹⁵ *ibid.*17.

²¹⁶ *ibid.*,p.18.

²¹⁷ WIPO,Summary of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT) (2013). Available at:

http://www.wipo.int/treaties/en/ip/marrakesh/summary_marrakesh.html > accessed on 12/1 2018

²¹⁸ Marrakesh Treaty,(n121)Art.15(1)

²¹⁹ *ibid.* Art.15 (3).

By and large, ‘the three-step test informed the complex framework within which the Marrakesh Treaty was negotiated, as this test is generally seen as the international legal standard for copyright limitations and exceptions.’²²⁰ Yanisky-Ravid stated the conditions of the VIPs before and after the advent of Marrakesh treaty and its roles in alleviating their problems as follows:

*The Marrakesh Treaty permits visually impaired persons to transfer printed materials into other accessible formats, such as Braille or audio, without seeking permission or paying licensing rights to the owner (i.e., the publisher). Before the treaty went into effect, converting material in this way or trading these audio or Braille versions across borders was considered a copyright infringement. Therefore, the treaty achieves distributive justice through the international exceptions and legal tools.*²²¹

The above mentioned paragraphs briefly gave us a general overview about the origin and the functions of the three-step test as a guide to provide exceptions and limitation in the copyright system generally and its role in Marrakesh Treaty in particular. The three-step test provided by the Berne Convention, the TRIPs Agreement, the WCT and WPPT are adopted by the Marrakesh Treaty (in Art. 11). This is fundamental to provide copyrighted works in accessible formats in both local and international level. This tells us the Marrakesh treaty is in conformity with the three-step test to achieve its objectives and the test accommodates its norms.

2.4. The Copyright System and the Human Rights instruments in the contexts of Access to published works for VIPs.

This section deals with copyright law including the Marrakesh Treaty in the human rights instruments perspectives which are relevant to the topic of the research. The specific human right instruments and institutions that are used as a framework of analysis are the World Blind Union, the Universal Declaration of Human Rights, the United Nations Convention on the Right of Persons with Disability, international Convention on Economic, social and Cultural Rights, the Marrakesh Treaty for VIPs. Other general human rights instruments may be discussed when necessary. In addition, other international copyright laws shall be consulted when the need arises. The purpose of analyzing the preceding international instruments is to know how they could facilitate

²²⁰ Simonetta Vezzoso, *The Marrakesh Spirit – A Ghost in Three Steps?*, 2014 .796.

²²¹ Shlomit Yanisky-Ravid, *The Hidden Though flourishing justification of Intellectual Property Laws: distributive Justice, National Versus International Approaches*(2017:30), Vol. 21 Lewis & Clark Law Review.1.

access to copyrighted materials for the benefits of VIPs. As stated by the WBU ... ‘one of its achievements to date has been to provide a forum where blind and low vision people established the right to speak for themselves.’²²²

It asserted that ‘international law recognizes the fundamental human right to IP in the United Nations Universal Declaration of Human Rights. Article 27(2) specifically calls for the protection of both the “moral and material interests” of those who create “scientific, literary or artistic” works.’²²³ The Marrakesh Treaty has recognized these human rights instruments specific to persons with disabilities that are already adopted by UNCPD and ICESCR.

It is noted by UN that ‘the Convention on the Rights of Persons with Disabilities and its Optional Protocol were adopted on 13 December 2006 and entered into force on 3 May 2008.’²²⁴ According to the UNCHC ‘the Convention on the Rights of Persons with Disabilities is a wide-ranging human rights treaty covering the full spectrum of civil, cultural, economic, political and social rights.’²²⁵ One of the most relevant provisions to the topic of discussion is Art.9 ‘which requires the state parties to identify and avoid obstacles of access to ‘information, communications and other services, including electronic services and emergency services.’²²⁶ In addition, The convention stipulates that ‘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.’²²⁷ Furthermore, the obligations of the state

²²²The World Blind Union, Changing What It Means to Be Blind”. Available at:

<<http://www.un.org/esa/socdev/ngo/docs/2010/directory/wbu.pdf>>, accessed on 22/11/2017.

²²³ Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No. 17, New York and Geneva, 2010.24.

²²⁴ United Nations, The Convention on the Rights of Persons with Disabilities Training Guide Professional Training Series No. 19. New York and Geneva, 2014. 1.

²²⁵United Nations human rights: office of the high commissioner for human rights: Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No. 17, New York and Geneva, 2010. 24.

²²⁶UNCRPD,(n63)Art .9 (1) (b).

²²⁷ibid, Art .21.

parties to' recognize the right to education and realize the same is stated in the convention.'²²⁸

Moreover, the convention requires states parties 'to 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 deserve.'²²⁹ And requires them to "take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials'²³⁰ Another international human right instrument relevant to the topic of discussion is the International Covenant on Economic, Social and Cultural Rights. Some researchers believed that:

*A human rights approach to intellectual property takes what is often an implicit balance between the rights of inventors and creators and the interests of the wider society within intellectual property paradigms and makes it far more explicit and exacting. The International Covenant on Economic, Social and Cultural Rights (the ICESCR) is the major international human rights instrument addressing these issues.*²³¹

Based on the preceding paragraphs as a framework, it is possible to analyze the relationships between the UDHR, ICESCR, and the UNRPD in terms of the users and creators rights. Ante Wessels asserted that 'Article 15 (1) (a) and (b) of the ICESCR recognize the right of everyone to take part in cultural life; and to enjoy the benefits of scientific progress and its applications. This note uses "rights to access to knowledge and culture" for these two rights.'²³² He went on saying that ' under ICESCR 15 (1) (c), authors have the right to benefit from the protection of the moral and material interests

²²⁸ibid, Art. 24(3) .

²²⁹ibid, Art. 30(1).

²³⁰. ibid. Art30 (3).

²³¹ Audrey R. Chapma, *A human rights Perspective on Intellectual property, Scientific Progress, and Access to the benefits of science*. Available at:

<http://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_5.pdf>, accessed on 13/11/2017.

²³² Ante Wessels, *Copyright law and the International Covenant on Economic, Social and Cultural Rights*, 2014. Available at: <<https://people.ffii.org/~ante/copyright/Wessels-copyright-ICESCR-2014.pdf>>, accessed on 13/11/2017.

resulting from any scientific, literary or artistic production of which he is the author. This note uses “authors' rights”. The Universal Declaration of Human Rights has the same balance between these rights in Article 27.²³³

Therefore, access issues incorporated in the preceding human rights instruments are also adopted by the Marrakesh Treaty for VIPs in its preambles follows: ‘*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.’²³⁴

Some researchers argue that ‘apart from human rights, scholars began to advocate for the use and development of other internal policy tools to bring a balance between authors’ exclusive rights and the wider public interests of access to copyright works which was perceived to be distorted by the one way-ratchet of international IP law, particularly copyright.’²³⁵ It is stipulated in its preamble that ‘emphasizing the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits.’²³⁶ It is also asserted by some researchers that ‘the ability to access the written word is essential to the realization of many human rights. It provides the foundation to the right to political involvement, freedom of expression, the right to education and the right to access culture and take advantage of scientific progresses’.²³⁷

²³³ibid.

²³⁴Marrakesh Treaty for VIPs(n121) (20013), Para.1.

²³⁵ J Ramirez-Montes, C.. The Marrakesh Treaty, (2016). Available at:<<http://www.europarl.europa.eu/supporting-analyses>>, accessed on 25/05/2017

²³⁶Marrakesh Treaty (n121) .para.3.

²³⁷Rekas A. P. Access to Books: Human Rights, Copyright and Accessibility’ in Constantine Stephanidis and Margherita Antona, *Universal Access in Human-Computer Interaction: Applications and Services for Quality of Life*. Berlin Heid elberg: Springer-Verlag, 2013. 383.

International human rights law has specific requirements for the protection of authors and users of intellectual works. As it is mentioned above in this paper, ‘Article 27 of the UDHRs and Article 15(1) of ICESCRs protect ‘the moral and material interests of authors and the human rights of individuals to ‘participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.’²³⁸ It is noted that ‘Article 15 of the ICESCR builds on the text of a parallel article in the Article 27 tries to balance the right of every person in a society to enjoy all kinds’ of intellectual property produced in this world such as copyright, patent and rights in design, with the right of the author or inventor of such property to claim the benefit of his ownership to a reasonable extent.’²³⁹

Croella has described that ‘in 2007, the General Assembly of WIPO adopted the WIPO Development Agenda containing recommendations; many of which stressed the importance of establishing and maintaining due balance of interests through adequate limitations of and exceptions to IP rights from the viewpoint of economic, social and cultural development.’²⁴⁰ He went on saying that ‘this has offered a favorable legal-political background for the preparation of an instrument on exceptions and limitations for VIPs.’²⁴¹ As evaluated by some researchers, ‘Moral rights are intended to protect the non-pecuniary interests of authors of copyright works, and have a human rights dimension (UDHR art 27(2); ICESCR, art 15(1) (c)). The Berne Convention requires states that are parties to it to confer on authors the moral right of integrity, or the right not to have their

²³⁸United Nations Universal Declaration of Human Rights 1948 (here after UDHRs) Art 27 cum International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 (here after ICESCRs). Art.15 (1).

²³⁹ Online International Interdisciplinary Research Journal, {Bi-Monthly}, ISSN2249-9598, Volume-III, Issue-VI, Nov-Dec2013. Available at: <<http://www.oijrj.org/>>, accessed on October 21,2017.

²⁴⁰ Carole Croella (2015). *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT or Marrakesh VIP Treaty, 2013*. Available at <www.wipo.int/copyright/>, accessed on April 30, 2017.

²⁴¹ibid.

works subjected to derogatory treatment.’²⁴² Citing the UDHR (1948), R. Helfer recalls that:

*‘the foundational document of international human rights law, the 1948 Universal Declaration of Human Rights, provides that everyone has the right ‘to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author,’ as well as the right ‘to enjoy benefits of scientific progress and its applications’.*²⁴³

He went on arguing that ‘these references – long overlooked by governments, courts and commentators – reveal that the goals of incentivizing private innovation and promoting public access that underpin most intellectual property laws have also been concerns of the human rights movement since its founding.’²⁴⁴ He generally stated that ‘the fascinating and challenging issues of law and policy arise at the interface of human rights and intellectual property’.²⁴⁵ Bus argues that ‘when an individual refers to the human right of free speech to hold and impart copyright protected material, it triggers the collision between the two rights’.²⁴⁶ It is noted that ‘one possible future relationship between human rights and intellectual property is an expansion of intellectual property protection standards at the expense of other human rights and the interests of licensees, users, and consumers.’²⁴⁷ According to Al-Sharieh, ‘states parties to international copyright instruments are required to give effect to their obligations under international copyright law and fulfill their international human rights obligations with respect to striking a balance between the human rights of the authors of intellectual works and human rights of the users of those same works.’²⁴⁸ He strongly argues that ‘reaching a verdict on whether

²⁴²Yin Harn Lee, *Emily Laidlaw and Daithi Mac Sithigh, Copyright and Freedom of Expression: A Literature Review*. CREATE Working Paper 2015/04 College of Social Sciences / School of Law University of Glasgow May 2015. 23.

²⁴³Laurence R. Helfer, Mapping the interface between human rights and Intellectual property. The keynote address delivered on April 5, 2013 to the Conference on Human Rights and Intellectual Property: From Concepts to Practice, held at the European Court of Human Rights in Strasbourg, France.1.

²⁴⁴ibid.

²⁴⁵ ibid.15.

²⁴⁶Krisjanis Buss, Copyright and Free speech: The human rights perspective.(2015): *Baltic Journal of Law & Politics*8:2 182–202 Available at: <<http://www.degruyter.com/view/j/bjlp> DOI: 10.1515/bjlp-2015-0024>, Accessed on august 12, 2017.1.

²⁴⁷Laurence R. Helfer, *Toward a Human Rights Framework for Intellectual Property*.University of California,Davis Vol. 40:971/2007.972.

²⁴⁸ Saleh Al-Sharieh, ‘Toward a Human Rights Method for Measuring International Copyright Law’s Compliance with International Human Rights Law’ (2016) 32(82) *Utrecht Journal of International and European Law* 5.233.

balance in international copyright law is compliant with the balance that international human rights law requires between authors' and users' human rights is a work in progress.'²⁴⁹

R. Helfer asserted that 'the Marrakesh Treaty is a very unusual international instrument. It sits at the intersection of human rights law and intellectual property law. It serves both of those goals and attempts to seek a balance among the objectives of those two legal regimes.'²⁵⁰ Helfer has clearly put the UNCRPD and the Marrakesh treaty chronologically and their operational relationship as follows:

*The Convention for the Rights of Persons with Disabilities contains a clause which says that intellectual property should not be used as a barrier or impediment to access cultural materials for persons with disabilities. The CRPD pre-exists the Marrakesh Treaty by seven years, and it provides a human rights foundation for the treaty. It is not coincidental that the CRPD, among other human rights instruments, is mentioned in the first paragraph of the Marrakesh Treaty preamble.*²⁵¹

The abovementioned relations show that the contracting parties are required to implement the Marrakesh treaty in order to enforce the human rights of VIPs in the UDHR, ICESCK and UNCRPD, As stated by Hefler and his colleagues, 'the Marrakesh Treaty for VIPs is a watershed development in the fields of intellectual property and human rights. As the first international legal instrument to establish mandatory exceptions to copyright, the Marrakesh Treaty uses the legal and policy tools of copyright to advance human rights.'²⁵²The *Marrakesh Treaty* constitutes a landmark in global copyright policy as it increases access to information for millions of visually impaired people around the world, and in particular in developing countries.²⁵³ The very crucial point noted in the above discussion is the interface between human rights and intellectual property rights. This is a controversial area which is a work in progress which needs further research.

²⁴⁹ibid. 25.

²⁵⁰Laurence R. Helfer, A Human Rights Approach to Implementing the Marrakesh VIP Treaty” Statement on behalf of the World Blind, Duke University to the Committee on the Rights of Persons with Disabilities 18th Session – Geneva – 14 August 2017. 89.

²⁵¹ ibid.

²⁵²Laurence R. Helfer, Molly K. Land, Ruth L. Okediji, and Jerome H. Reichman. *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals*. Published to Oxford Scholarship Online: March 2017.1.

²⁵³ WIPO's Global Copyright Policy Priorities: The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. *European Yearbook of International Economic Law* 2015. 391-403.

CHAPTER THREE

PROTECTION OF VIPS UNDER THE MARRAKESH TREATY AND UNDER THE ETHIOPIA COPYRIGHT LAW

3.1. Objectives of the Marrakesh Treaty for VIPS

Paul Goldstein(1970) cited in Christophe Geiger argued that ‘born in the Age of the Enlightenment, copyright was originally intended as a means to secure the author’s ability to create freely, protecting him from the interference of others and from risks of censorship’.²⁵⁴ In most countries, copyright law presents a legal barrier to the making and distribution of copies of works in formats accessible to print disabled people.²⁵⁵ As stated by EIFL that ‘ access to information and knowledge contained in print and online resources is essential to ensuring participation of people who are blind or print disabled in educational pursuits, scientific progress, democratic processes, cultural/recreational activities, and employment opportunities.’²⁵⁶ It is argued that ‘however, international standards of copyright protection under the Berne Convention, the WTO/ TRIPS Agreement, and national legislation give authors and artists rights to prevent others from making copies of their works without their permission.’²⁵⁷

The concepts of exceptions in these laws are discretionary. They are not mandatory obligations on the members of the unions. As mentioned above, the Berne Convention states that ‘it shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.’²⁵⁸In addition, ‘the so-called "three-step test"

²⁵⁴Christophe Geiger, *Freedom of Artistic Creativity and Copyright Law: A Compatible Combination?* : Centre for International Intellectual Property Studies Research Paper No. 2017.4.

²⁵⁵EIFL, The Marrakesh Treaty: An EIFL Guide for Libraries, December 2014, Conference, Available at:<http://www.eifl.net/sites/default/files/eifl-guide-marrakesh_en_1.pdf>, Accessed on .4/28/10/2017.

²⁵⁶ Brook K. Baker, Challenges Facing a Proposed WIPO Treaty for Persons Who are Blind or Print Disabled. Law and Society Association Annual Meeting, June 2, 2013 Session: Law, Society, and Technologies: A Disability Perspective.1.

²⁵⁷ibid.

²⁵⁸Berne Convention (n21). Art.9 (2).

contained in Article 9(2) defines the freedom of member countries to create exceptions or limitations to authors' rights to control reproductions of their works. Other provisions of the Berne Convention give member countries discretion to create more specific exceptions.²⁵⁹

It is clearly noted that ‘the WCT also requires member countries to prohibit the circumvention of technologies set by rights holders to prevent the copying and distribution of their works. These technologies include encryption or “rights management information” (data that identify works or their authors and are necessary for the management of their rights).’²⁶⁰ Similarly, It is also stipulated in the TRIPS Agreement that ‘members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder’.²⁶¹ It is obvious that ‘making copyrighted works available in accessible formats can present a challenge to the exclusive rights of copyright owners. It is argued that ‘ absent a blanket exception that would allow for the creation of accessible formats for all persons with disabilities, individuals and educational institutions must navigate the existing narrow statutory exceptions or rely on a fair use defense in order to make works accessible.’²⁶²

As indicted by some researchers, ‘hundreds of millions of blind, visually impaired and print-disabled people (VIPs) around the world are in lack of access to books. Access to printed material for these people is affected by an international copyright environment that features variable rules among many nations.’²⁶³

²⁵⁹The International Framework of Copyright Law. Available at: http://cyber.law.harvard.edu/copyrightforlibrarians/Module_2:_The_International_Framework_, accessed on 2/11/2017.

²⁶⁰ibid.4.

²⁶¹TRIPS Agreement (n81) (1994), Art.13.

²⁶²Maria Scheid, [Copyright and Accessibility](https://library.osu.edu/blogs/copyright/tag/marrakesh-vip-treaty/accessed). Available at: <https://library.osu.edu/blogs/copyright/tag/marrakesh-vip-treaty/accessed>, Accessed on 14/12/2017.

²⁶³ Generally, WIPO, Limitations and Exceptions – Access to Books for the Visually Impaired. Available at: http://www.wipo.int/export/sites/www/pressroom/en/briefs/pdf/VIPs_Final_June10_e.pdf, accessed on 8/11/2017.

What we learn from the preceding paragraphs is that there were no provisions in the Berne Conventions, WCT, TRIPS and other international copyright frameworks mentioning about the rights of VIPs and the mechanisms to implement the same. It is the Marrakesh Treaty for VIPs (2013) next to UNCRPD (1966) clearly put the rights of VIPs and the obligations of the contracting parties. As specifically put in this study, the Marrakesh treaty is an international copy right treaty which is entirely devoted to copyright exceptions and limitations for the benefits of the VIPs.

According to WIPO, ‘the Marrakesh Treaty seeks to remove those barriers in two main ways: by requiring countries which ratify the Treaty to have exceptions in domestic copyright law for the benefit of print disabled people and by making it legal to send and receive accessible versions of books and other printed works from one country to another.’²⁶⁴ It is also clearly stipulated in its preamble that ‘the treaty requires contracting parties to establish national law limitations or exceptions regarding access format copies.’²⁶⁵ In addition, it has broadly defined accessible format copy.²⁶⁶ Furthermore, it has created legal and institutional frameworks as to how accessible format copies are made sent²⁶⁷ and received.²⁶⁸

Therefore, the Marrakesh treaty is an international copyright treaty which brings about harmony between the north and the south in solving access issues specific to VIPs. It has also created mandatory international copyright exceptions and limitations to provide copyrighted works in accessible format copies for its beneficiaries (VIPs). In addition, it harmonizes these copyright exceptions and limitations at the national levels. By doing so, it corrects the shortcomings of both national and international copyright exceptions and limitations that were in place prior to it. The Marrakesh treaty was one of the agendas of UNCRPD. The purpose of UNCRPD is ‘to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities

²⁶⁴ *ibid.*

²⁶⁵ Marrakesh Treaty (n 121)Art.4 (a).

²⁶⁶ *ibid.*art 2(b)

²⁶⁷*ibid.* Art.5.

²⁶⁸*ibid.* Art.6.

and to promote respect for their inherent dignity.²⁶⁹ It asserted by some researchers that ‘as the first international legal instrument to establish mandatory exceptions to copyright, it uses the legal and policy tools of copyright to advance human rights.’²⁷⁰ The above mentioned rights of VIPs have been already recognized by the UDHR. Article 27 (1) states that ‘everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.’²⁷¹ In addition, Art. 27(2) asserts that ‘everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author’.²⁷² Most importantly, the principles of UDHR and the UNCRPD are incorporated in the preamble of the Marrakesh Treaty for (2013) VIPs. The preamble declares that ‘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.’²⁷³ Furthermore, Article 15 of the ICESCR incorporates the rights of the disabled persons “to take part in cultural life and enjoy the benefits of scientific progress.”²⁷⁴

Recently, ‘the *Marrakesh Treaty* promises to level out some of the disparities of access between people in developed and developing nations and remove the need for each jurisdiction to digitize a separate copy of each book. This is a remarkable advance, and suggests the beginnings of a possible paradigm shift in global copyright politics.’²⁷⁵

Here, access issue does not refer to its broadest sense, but access to published works specific to VIPs as it is expressed in the Marrakesh Treaty in paragraph one of its

²⁶⁹UNCRPD (n63). Art 24.

²⁷⁰Laurence R. Helfer, Molly K. Land, Ruth L. Okediji and Jerome H. Reichman, *The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals* 1st Edition. Oxford University Press; 1 edition April 4, 2017) .I.

²⁷¹ UDHR, (n 239)Art.27 (1)

²⁷² ibid. Art.27(2).

²⁷³Marrakesh Treaty (121), Para. I preamble.

²⁷⁴ICESCR(n239) art 13.

²⁷⁵Paul, Harpur (2011). ‘*Time to Be Heard: How Advocates Can Use the Convention on the Rights of Persons with Disabilities to Drive Change.*’(2011) 45 Valparaiso University Law Review. 1271.

preamble. The Treaty has a single objective: to increase access to books, magazines and other printed materials for people with print disabilities. As noted above its aims to achieve this by making it easier for accessible copies to be created and shared across international borders.²⁷⁶ According to Scheid, ‘the Marrakesh Treaty intends to promote the making and distribution of copies of, among others, books in formats accessible to visually impaired persons.’²⁷⁷ In addition, ‘it also aims to remove this barrier by providing an international legal framework for copyright exceptions to facilitate the cross border exchange of accessible versions of books and other print materials.’²⁷⁸

The main goal of Marrakesh Treaty is to create a set of mandatory limitations and exceptions for the benefit of (VIPs). It addresses the “book famine” ‘by requiring its contracting parties to adopt national law provisions that permit the reproduction, distribution and making available of published works in accessible formats -such as Braille - to VIPs and to permit exchange of these works across borders by organizations that serve those beneficiaries.’²⁷⁹ In its preamble, the Marrakesh Treaty for VIPs states that ‘*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.’²⁸⁰

In nutshell, the Marrakesh Treaty (2013) for VIPs as an international copyright regime harmonizes national copyright laws and creates mandatory exception and limitations which the contracting parties should observe for the well being of its beneficiaries. But,

²⁷⁶ Maria Scheid, Copyright and Accessibility, August 28, 2015. Available at: <www.wipo.int/about-wipo/en/offices/>, accessed on 26/5/2017.

²⁷⁷ Bram Van Wiele (2012).The ratification and implementation of the Marrakesh treaty: A look at the future of south African copyright law. (LL.M. thesis), University of Cape town.36.

²⁷⁸ Discussion Document, Marrakesh Treaty, MBIE Oct. 2015available at: <http://www.wipo.int/edocs/mdocs/govbody/en/mvt_a_2/mvt_a_2_2_prov.pdf>, accessed on October, 2017.

²⁷⁹Press Information Bureau, Government of Indiahe-marrakesh-treaty.pdf. 56.

²⁸⁰ Marrakesh Treaty,(n121) Para. Preamble.

adopting and ratifying it in the absence of the required resources and involvements of critical stakeholders is a practical challenge for its implementation. It is asserted that:

*To successfully address the book famine, governments, libraries, educational institutions, and other organizations will need to take advantage of domestic provisions to deliver accessible format works to persons with disabilities. Doing so will require the development of capacity. Institutions serving the print disabled will need to be created and funded, technology purchase, and personnel trained. Such developments obviously will take time.*²⁸¹

The Marrakesh Treaty, as an international copyright regime, has the intention of harmonizing exceptions and limitations in member states for the benefit of VIPs. This is clearly stated in its preamble that ‘Recognizing the importance of the international copyright system and desiring to harmonize limitations and exceptions with a view to facilitating access to and use of works by persons with visual impairments or with other print disabilities.’²⁸² Wechsler stated that ‘the Marrakesh Treaty constitutes a landmark in global copyright policy as it increases access to information for millions of visually impaired people around the world, and in particular in developing countries’.²⁸³

As asserted by some researchers, ‘the Marrakesh Treaty intends to promote the making and distribution of copies of, among others, books in formats accessible to visually impaired persons. ‘Accessible publications provide print-disabled users with a wealth of material which they have never had access to before.’²⁸⁴To facilitate this role, ‘Accessible Books Consortium (ABC) was launched in June 2014 and is an alliance led by the World Intellectual Property Organization (WIPO). It involves advocacy organizations, authors, libraries for the blind, publishers, and standards bodies.’²⁸⁵In addition, the aim of the

²⁸¹Our right to knowledge: Legal reviews for the ratification of the Marrakesh Treaty for persons with print disabilities in Asia and the Pacific.23.Rajdamnern Nok Avenue, Bangkok 10200, Thailand, 2015.Available at: <<http://asia-pacific.undp.org/>>, Accessed on September 16, 2017.

²⁸² Marrakesh Treaty,(n121) Para12.

²⁸³Andrea Wechsler, WIPO’s Global Copyright Policy Priorities: The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. Available at: <https://link.springer.com/chapter/10.1007/978-3-662-46748-0_16>, accessed on 1/11/2017.

²⁸⁴ EFLA Libraries Serving Persons with Print Disabilities Section, Newsletter October 2016. Available at: <<https://www.ifla.org/files/assets/libraries-for-print-disabilities/newsletters/lpd-newsletter-2016.pdf>>, accessed on 5/11/2017.

²⁸⁵ Bram van Wiele, The ratification and implementation of the Marrakesh treaty: a look at the future of South African copyright law. Published (L.L.M. Thesis), South Africa: Published by the University of Cape Town, 2014.96.

Accessible Books Consortium (ABC) is ‘to increase the number of books worldwide in accessible formats (braille, audio and large print) and to make them available to people who are blind, visually impaired or otherwise print disabled’.²⁸⁶ Furthermore, ‘the Marrakesh Treaty has rightly been recognized as an important tool to increase the number of literary works available as so-called ‘Accessible Format Copies’(AFC) worldwide and to maximize the number of visually impaired and print disabled readers that may thus gain access to literary works.’²⁸⁷ It is to be noted that the Marrakesh treaty aims at increasing the number of published works in accessible format copies and distribute the same for VIPs globally. This is principally undertaken on a non-profit basis. The treaty has put this practice expressly. As stated by some studies:

By providing specific limitations and exceptions to copyright, the Marrakesh Treaty allows VIPs global access to printed materials (and, consequently, to the knowledge embodied therein). The Marrakesh Treaty permits visually impaired persons to transfer printed materials into other accessible formats, such as Braille or audio, without seeking permission or paying licensing rights to the owner (i.e., the publisher).²⁸⁸

It is further argued that ‘before the treaty went into effect, converting materials in this way or trading these audio or Braille versions across borders was considered a copyright infringement. Therefore, the treaty achieves distributive justice through the international exceptions and legal tools.’²⁸⁹

The preceding paragraphs imply that the Marrakesh Treaty for VIPs is an international copyright law which strikes a balance between the rights of VIPs and the rights the right holders. This is stipulated in the preamble that ‘the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to

²⁸⁶Accessible Books Consortium (ABC) Factsheet, Available at: <www.AccessibleBooksConsortium.org>, accessed on april3, 2017.1.

²⁸⁷Guide to the Marrakesh Treaty a WIPO Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, of 27 June 2013 A Guide for Publishers and their trade associations in membership with IPA, .6.

²⁸⁸Shlomit Yanisky-Ravid,, The Hidden though Flourishing Justification of Intellectual Property Laws: Distributive Justice, National versus International Approaches.. Lewis & Clark Law Review ,Vol. 21:1,2017. 28.

²⁸⁹ibid.

participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits.’²⁹⁰

For all intents and purposes, ‘the Marrakesh Treaty will forever be remembered as the first WIPO treaty that reaffirms exceptions and limitations in the copyright regime, but also as a means to end the book famine that has long plagued people with visual impairment and print disabilities.’²⁹¹ Accordantly ‘the range of obligations imposed by the Treaty on contracting parties, as well as the comprehensive and detailed governance framework created for the provision of material in accessible formats, will significantly enhance the well-being of the beneficiaries to the Treaty.’²⁹² In addition, ‘the Marrakesh Treaty represents a significant development in international copyright law because it is the first treaty devoted exclusively to creating international minimum standards for the benefit of users of copyright protected materials.’²⁹³ UNDP asserted that ‘ the Marrakesh Treaty Once in force, it will pave the way for removing legal barriers to accessible information and culture among print-disabled people across the world, while balancing the protection of authors’ rights. It is the second international treaty specifically addressing rights of persons with disabilities, next to UNCRPD.’²⁹⁴ As stated by Senftleben:

The Marrakesh Treaty combines both very specific and very open rules on L&Es for blind and print-disabled persons with the abstract criteria of the “three-step test” known from Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works (“Berne Convention” or “BC”), Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement” or “TRIPS”), Article 10 of the WIPO Copyright Treaty (“WCT”) and Article 16 of WPPT.’²⁹⁵

The Marrakesh Treaty also adopted the three-step test found in the preceding international copyright regimes as a standard to be used by the legislature of contracting parties in

²⁹⁰ WIPO, Marrakesh Treaty,(n121) preamble Para.3.

²⁹¹ South Africa. Dept. of Women, Children and People with Disabilities, 2013:. 2. Avail;able at :<<https://pmg.org.za/committee-meeting/16573/>>, accessed on October , 2017.

²⁹²Jingyi Li,*Reconciling the enforcement of copyright with the upholding of human rights: Consideration of the Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired and Print Disabled*. European intellectual property review · September 2014(E.I.P.R. 2014, 36(10), 653-664).11.

²⁹³The Marrakesh Treaty: an EIFL guide for Libraries, December 2014, http://www.eifl.net/sites/default/files/eifl-guide-marrakesh_en_1.pdf, Accessed on june 12, 2017.

²⁹⁴UNDP (n65). Vii.

²⁹⁵ Martin Senftleben, *A Copyright Limitations Treaty Based on the Marrakesh Model: Nightmare or Dream Come True?* Available at: <<https://ssrn.com/abstract=3064823>> accessed on 22/11/2017.

proving exceptions and limitations in their copyright laws for the benefit of the VIPs. In addition, Courts are supposed to observe this standard in adjudicating cases. The copyright exceptions and limitations in contracting parties should promote the creation and distribution of works inaccessible format copies and facilitate the cross border-exchange of the same.

3.2. Major Obligations imposed on Member States by the Marrakesh Treaty for VIPs

As argued by Copyright Alliance Replay Comments (2009) cited in Fitzpatrick, ‘the intersection of technology, market failure, and copyright law creates a complex access dilemma for the visually impaired that likely deprives them of an equal opportunity for education, civic participation, and cultural expression.’²⁹⁶It is noted that ‘a recent international effort seeks to remove these barriers to access, in limited instances, by allowing the creation of accessible formats of copyrighted works.’²⁹⁷ In Addition, ‘copyright laws and publishers currently limit access to published works in a restrictive manner that many argue is a violation of the basic human rights of the print disabled community’. It is estimated that ‘only 5% of the world's written materials are available in accessible formats for print disabled people. This is commonly referred to as the book famine.’²⁹⁸ According to some studies ‘blind, partially sighted and other print disabled people face a "book famine". International legislation is needed to complement cooperation between specialist agencies and rights holders in order to increase the amount

²⁹⁶ Shae Fitzpatrick, *Setting Its Sights on the Marrakesh Treaty: The U.S. Role in Alleviating the Book Famine for Persons with Print Disabilities*. Boston College International and Comparative Law Review, Volume 37 | Issue 1 Article6, 2014.142

²⁹⁷Patrick Hely, A Model Copyright Exemption to Serve the Visually Impaired: An Alternative to the Treaty Proposals before WIPO.(2011),Vol. 43:1369, Vanderbilt Journal of Transnational Law Vanderbilt University Law School.1369.

²⁹⁸Kate Middleton,The Potential Significance for Print Impaired New Zealanders of Accession to the Marrakesh Treaty, (Master’s Thesis in Information Studies), Victoria University of Wellington,2016.7.

of accessible format books such as audio, large print and Braille, from the current level of five per cent'.²⁹⁹

Schulze explained that 'UNCRPD spells out clearly and unconditionally that persons with disabilities have equal access and a right to full and effective enjoyment of all human rights – the removal of barriers explicitly termed as a condition for access and the enjoyment of equality.'³⁰⁰ Moreover, 'the UNCRPD requires state parties to' provide 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.'³⁰¹ Furthermore, the CRPD 'imposes explicit obligations on states to ensure that persons with disabilities 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' and states that intellectual property should not be an obstacle to this.'³⁰² Yep argues that 'in order to remove these barriers, 'contracting states are required to establish and implement copyright limitations and exceptions to facilitate access to copyrighted material for the global print-disabled community'.³⁰³ It is asserted that:

*The Marrakesh Treaty contains two principal requirements. First, it requires parties to provide an exception or limitation in their national copyright laws for the creation and distribution of accessible format copies for the exclusive use of blind and other print-disabled persons, subject to their international obligations, including the well-established international standard for copyright exceptions and limitations known as the three-step test. Second, the treaty requires parties to permit the export of accessible format copies made under such an exception for the use of blind and other print-disabled persons in other contracting parties to the treaty, subject to various safeguards.*³⁰⁴

²⁹⁹ Christopher Friend, Improving access to works for visually impaired persons Available at: <<http://www.europarl.europa.eu/studies>>, accessed on 25/11/2017.

³⁰⁰ Marianne Schulze, *A Handbook on the Human Rights of Persons with Disabilities* September 2009: *Understanding The UN Convention On The Rights of Persons with Disabilities*, Edited by: Handicap International.10.

³⁰¹ UNCRPD (n63)21(1)(a).

³⁰² *ibid.* , Art, 30(2).

³⁰³ Neil Yap, Fitting Marrakesh into a Consequentiality Copyright Framework. *Journal of Intellectual Property and Entertainment Law*, (2017), Volume 6 Spring, Number 2, New York University.351.

³⁰⁴ USA Department of Commerce, The "Marrakesh Treaty Implementation Act of 2016" Statement of Purpose and Need and Sectional Analysis. Available at: <https://ogc.commerce.gov/sites/ogc.commerce.gov/files/media/files/2016/sopan_marrakesh_treaty_only_sopan_final_02-1_16_clean.pdf> accessed on 4/11/2017.

Furthermore, ‘the Marrakesh Treaty requires its contracting parties to adopt national law provisions that permit the reproduction, distribution and making available of published works in accessible formats to VIPs and to permit exchange of these works across borders by organizations that serve those beneficiaries.’³⁰⁵ As noted by some studies ‘the central provision of the Marrakesh Treaty, Art.4 (1), which imposes an obligation on contracting parties to enact in their national copyright laws a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WCT, to facilitate the availability of works in accessible formats for beneficiary persons.’³⁰⁶ It is also asserted that ‘limitations and exceptions benefit all members of society. If they did not exist, copyright holders would have a monopoly over all uses except reading. In the case of visually impaired persons, even the act of reading is compromised if there are not sufficient exceptions in national copyright laws to support the creation and distribution of accessible and affordable versions of works’³⁰⁷

The preceding paragraphs show us how the copyright regimes operate against the rights of the VIPs. We can also see that how much the international society including the users of creative works struggled against those deprivations in different terms to emancipate the VIPs. EBU argued that ‘currently, copyright law is a national jurisdiction which has the effect of preventing blind organizations from sharing books with neighboring countries, thus causing considerable unnecessary duplication of production of books in accessible formats.’³⁰⁸ According to WIPO’s background information, ‘hundreds of millions of blind, visually impaired and print-disabled people (VIPs) around the world lack access to

³⁰⁵Ojha Seema S. Creating an Effective Learning Environment for Visually Impaired Students: Assessing their Perception of Audio Books (2015), Vol. 3(1), Research Journal of Educational Sciences. 1-5.

³⁰⁶ Marrakesh Treaty (n121)art.4(1)(a).

³⁰⁷Janice T. Pilch, Treaty for Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons. Library Copyright Alliance Issue Brief, University of Illinois at Urbana-Champaign Visiting Program Officer on International Copyright, Association of Research Libraries October 12, 2009.5.

³⁰⁸The European Blind Union (EBU), The Marrakesh Treaty:Why we are campaigning. Available at: <<http://www.euroblind.org/campaigns-and-activities/current-campaigns/marrakesh-treaty>>, accessed on 17/12/2017.

books. Access to printed material for these people is affected by an international copyright environment that features variable rules among many nations.’³⁰⁹

The above discussions tell us how much the problems of VIPs are serious. In addition, indicate how much the WBU, CRDP, WIPO and other entities had been striving to come up with an international copyright law that specifically focuses on the problems of VIPs. The Marrakesh Treaty (2013) for VIPs is a response to such problems. As briefly stated by International Publishers Association (IPA), contracting states must fulfill the following four obligations:

i). Art.4 of the Marrakesh Treaty, creates a national copyright exception or limitation in copyright law ‘to the right of reproduction, the right of distribution, and the right of making available to the public... for the purpose of facilitating access for beneficiaries’; ii). Art: 5 of the treaty, allows the distribution and making available of accessible format copies by an authorized entity to Authorized Entities and to eligible print disabled persons in other Contracting Parties; iii). Art, 6 of the treaty allows the importation of Accessible Format Copies where these could have been made under national law. This provision also means that if the country of importation has a commercial non-availability requirement, importation is not possible; iv). Art. 7 of the treaty ensure that TPMs do not hinder the enjoyment of aforementioned exceptions and limitations.’³¹⁰

IPA also noted that ‘all copyright exceptions, whether national copyright exceptions, or the cross-border sending or receiving of accessible format copies, are subject to the Three-Step Test. In addition special rules apply to *countries* that are not members of the Berne Convention, which must follow stricter rules nationally and cannot export AFCs. This applies only to a small group of countries.’³¹¹ It went on saying that, ‘all other exceptions and limitations are limited to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the

³⁰⁹WIPO, Background Brief: Limitations and Exceptions – Access to Books for the Visually Impaired. Available at:

<http://www.wipo.int/export/sites/www/pressroom/en/briefs/pdf/VIPs_Final_June10_e.pdf >, accessed on 27/11 /2017.

³¹⁰ IPA, IPA Guide to the Marrakesh Treaty. A WIPO Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, of 27 June 2013 A guide for publishers and their trade associations in membership with the IPA.38. (here after IPA)

³¹¹ibid. 39.

author/rights holder. This, together with certain flexibility clauses in the Treaty, creates policy space for national implementation.’³¹²

As we can understand from the language used by the treaty, the national copyright exceptions or limitations imposed on the contracting parties specific to VIPs are mandatory. We can see these facts from Art.4 (1) (a):

*Contracting Parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format.*³¹³

Also Art.5(1) stipulates that ‘Contracting Parties *shall provide* that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party.’³¹⁴

The aforementioned requirements are new obligations introduced by the Marrakesh Treaty in to the copyright laws of the contracting parties. As mentioned above, the exceptions and limitations provided by the previous international copyright regimes are flexible which give wider discretions to the legislature of member countries. In addition, even though there are exceptions and limitations to strike a balance between the rights of the copyright owners and the public interests, there were no specific provisions that are mentioned to protect the interest of the VIPs. Another new addition to the existing national and international copyright regimes is the exceptions and limitations introduced by the Marrakesh Treaty to facilitate cross boarder exchange of copyright protected literary and artistic works in accessible format copies. All of them have positive social, economic and technological implications for the contracting parties especially for developing and least developed countries. Another new introduction is designating

³¹²ibid.

³¹³ Marrakesh Treaty, (n121) Art. 4(1)(a).

³¹⁴ Marrakesh Treaty, (n121) Art. 5(1).

government and other social institutions to undertake the task on a non-profit basis. The above mentioned facts are substantiated as follows:

*The Marrakesh Treaty also requires contracting parties to provide for exchange across international borders of accessible format copies of works produced as provided under the Marrakesh Treaty, so that contracting parties can pool their respective efforts in creating accessible formats and increase the overall number of accessible works worldwide. Specifically, the Marrakesh Treaty requires that the provisions should enable an authorized entity to distribute or make available such accessible copies to a beneficiary or authorized entity in another contracting party.*³¹⁵

Furthermore, a significant development that the treaty has introduced is the obligations relating with technological protection measures. The technological protection Measures introduced by WCT and WPPT prohibit VIPs from using copyright exceptions and limitations in general terms. This on the one hand, protects an unauthorized use of copyrighted works. On the other hand, it hinders the beneficiaries (VIPs) from using exceptions and limitations provided by the treaty to use these works in accessible format copies. But the treaty requires contracting parties to provide legal protection against such hindrances. As stated by Li, ‘the recently enacted Marrakesh Treaty for [VIPs] gives consideration to information distributed through information and communication technologies. It is suggested that this forms a significant limitation on the operation and effect of the Treaty and substantially compromises its utility in the digital age’.³¹⁶ He further explains that ‘in order to determine whether it is necessary to expand the *Marrakesh Treaty* to encompass digital access, it is necessary first to consider the role of ICTs in facilitating access to information for visually disabled persons. It is well documented that the print disabled face significant technological and economic barriers to information access.’³¹⁷ This is also recognized by the Marrakesh Treaty that ‘despite the differences in national copyright laws, the positive impact of new information and communication technologies on the lives of persons with visual impairments or with other

³¹⁵WIPO, Review of Copyright Exceptions for Persons with a Print Disability Consultation Paper. Available at: https://www.gov.hk/en/residents/government/publication/consultation/docs/2017/Copyright_Exceptions.pdf accessed on 24/11/2017.

³¹⁶ Li (N293). 355.

³¹⁷ibid. 358.

print disabilities may be reinforced by an enhanced legal framework at the international level'.³¹⁸

This is the positive impact of technology to facilitate access to creative works for VIPs. But technology may deprive access to same works. To counteract this negative impact, the Marrakesh Treaty provides legal mechanisms. This is stipulated in the treaty that 'contracting parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.'³¹⁹ This is also substantiated by its agreed statement that 'It is understood that authorized entities, in various circumstances, choose to apply technological measures in the making, distribution and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law.'³²⁰ The treaty required the contracting parties to protect the privacy of the VIPs while providing accessible format copies to the beneficiaries.³²¹ WIPO also plays an unusual role in coordinating the contracting parties in cross-border exchange of accessible format copies.³²²

As it can be understood from the preceding analysis, the Marrakesh Treaty for VIPs is an international copyright treaty which imposed mandatory exceptions and limitations on contracting parties to enforce the rights of VIPs as stipulated in it and other human rights instruments specific to VIPs such as UDHR, UNCRPD and ICESCR. It also allows the parties to provide optional exceptions and limitations as far as they conform to the three-step test and other international obligations. It is not simply a legal prescription but it also creates the legal and institutional frameworks to facilitate its implementation. It is argued that 'access to printed material for these people is affected by an international copyright

³¹⁸ Marrakesh Treaty, (n121) preamble 6.

³¹⁹ *ibid.* Art. 7.

³²⁰ *ibid.* agreed statement.

³²¹ *ibid.* Art.8

³²² *ibid.* Art.9.

environment that features variable rules among many nations.’³²³ According to the Marrakesh Treaty, ‘Contracting states are required to implement copyright limitations and exceptions to facilitate access to copyrighted material for the global print-disabled community.’³²⁴ This tells us the treaty sets an international standard and harmonizes the national copyright systems by creating mandatory copyright exceptions to provide VIPs with creative works in accessible format copies and create conducive environment for cross boarder exchange of these formats without the consent of the right holders. It is asserted that ‘Marrakesh Treaty requires that Contracting Parties fulfill these two main obligations when implementing the Treaty at the national level, although they may do so according to their own legal systems.’³²⁵ Some scholars argue that:

*The Marrakesh Treaty is not only a treaty by and for persons with print disabilities – it is also a treaty for libraries, for societies, to help them become more inclusive and fair; it is the first international legal instrument, sanctioned by a UN agency, that can help the UN Convention on the Rights of Persons with Disabilities to carry out part of its purpose, to promote respect for the inherent dignity of persons with a print disability.*³²⁶

As explained in the preceding paragraphs, some of the institutional and legal mechanisms established by the treaty to facilitate its implementations are authorized entities, coordinating roles played by WIPO in cross-border exchange of works in AFCs. In addition, it provides a legal framework to implement its goals and objectives. As an example, libraries are one of the important institutions that are playing significant roles to provide information to the general public and render special services for VIPs creating or obtaining works in Accessible format nationally and across the globe. It is stated that, ‘the MT specifically calls on Member States to establish exceptions and limitations to copyright holders’ exclusive rights in their national laws to allow for the unauthorized creation of accessible formats. It does not, however, exclude the possibility of individual

³²³ WIPO, Review of Copyright Exceptions for Persons with a Print Disability, Consultation Paper. <http://www.wipo.int/export/sites/www/pressroom/en/briefs/pdf/VIPs_Final_June10_e.pdf>, accessed on 26/5/2017>, accessed on October 12, 2017.

³²⁴ NEIL YAP, Fitting Marrakesh into a Consequentiality Copyright Framework. Journal of Intellectual Property and Entertainment Law, Volume 6, Number 2, New York, University, 2017. 65.

³²⁵ Copyright, Disability and Social Inclusion: the Marrakesh Treaty and the Role of Non-signatories. <<https://techcrunch.com/2016/07/01/marrakesh-treaty-will-limit-copyright-easing-book-access-for-blind-and-print-dis/>>, accessed on september12, 2017.

³²⁶ Francisco Javier Martínez Calvo, The role of libraries in the implementation of the Marrakesh Treaty for persons with a print disability <<http://creativecommons.org/licenses/by/3.0/>>, accessed on 2/11/2017.

States requiring the payment of reasonable royalties to copyright holders for conversion of their works to accessible formats.³²⁷

Therefore it is possible to argue that the prior international and national copyright systems were not adequately serving the visually impaired persons as the Marrakesh treaty intended to do. Generally, ‘the Marrakesh treaty for VIPs has the humanitarian and developmental dimensions for these specific categories of persons which are fundamental to enforce the Human Rights of VIPs and promote national development. This is clearly stipulated in its preamble, paragraph one’³²⁸. In sum up, ‘Some of the characteristics of the territorial nature of IP legislation are: ‘access to all kinds of information for VIPs as everyone else was not in place, cross- border exchange of works in accessible was difficult, no access to books in other languages, no donation of books to institutions that cannot produce their own and books in accessible formats are highly expensive and specialized’. ³²⁹As it is briefly summarized, unlike the existing traditional copyright regimes, the implications of the Marrakesh Treaty are:

*It provides exceptions & limitations in national laws to allow for the unauthorized creation of accessible formats. In addition, provides for free flow of accessible copies for use by persons with visual disabilities locally, regionally and/or internationally. Furthermore, technological protection measures must not block/ hinder flexibilities granted to Treaty beneficiaries. Moreover, the national law must have exceptions for the benefit of print disabled people; the law must allow blind peoples, libraries and other organizations to make accessible format copies and to distribute the accessible copies.*³³⁰

It is also expounded by Harpur and his colleague that:

The Marrakesh Treaty (2013) aims to increase the amount of accessible material available worldwide by creating a standardized framework to ensure that countries all around the world introduce exceptions into their copyright regimes to enable both people with print disabilities and the institutions that assist them to create accessible

³²⁷Nicholson, D.R.,. *Treaty for Visually Impaired Persons (TVI) and treaty proposal on Copyright Limitations and Exceptions for Libraries and Archives (Tlib): implications for the Developing World*. Scholarly Communications and Copyright Services Office Johannesburg, South Africa: University of the Witwatersrand. 2013. 98.

³²⁸ Marrakesh Treaty, (n121) preamble, para.1.

³²⁹ Denise R. Nicholson and Francisco Javier Martínez Calvo, Cross- border Exchange of Accessible Format Copies and the role of authorized entities. Available at:

<http://www.wipo.int/edocs/mdocs/copyright/en/wipo_cr_mct_15/wipo_cr_mct_15_inf_t4.pdf>, accessed on 25/11/2017.

³³⁰ibid. .11.

*copies of publicly available written materials. Importantly, the treaty also enables cross-border sharing of accessible books, making international cooperation in digitization possible and enabling the substantial number of books already available to be made available in other.*³³¹

In sum, the Marrakesh Treaty (2013) firmly establishes a baseline exception to global copyright norms to ensure that copyright does not operate as a barrier to accessibility. It ensures that all signatories will be obliged to introduce a minimum baseline exception that allows visually-impaired people to receive, make, and use accessible copies of works. Most importantly, ‘the Marrakesh Treaty also allows the cross-border flow of accessible books, laying the groundwork for a globally-coordinated approach to pooling accessible books digitized around the world.’³³²

Based on the above discussions, the rest of the paper focuses on analyzing the Ethiopian copyright and related rights systems. The analysis based on the above mentioned frameworks helps the researcher to examine and understand whether it is compliant to the Marrakesh Treaty for VIPs and impacted by it (by the treaty).

3.3. The Ethiopian copyright and neighboring rights Exceptions and Limitations to protect VIPs.

It noted that ‘the Marrakesh Treaty is a human rights treaty and it is fully in accordance with the principle of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)’.³³³ In addition, ‘the UNCRPD specifically refers to’ the right to enjoy access to cultural material in accessible formats and the duty of Member States to ensure that laws on intellectual property rights do not constitute an unreasonable or

³³¹ Paul Harpur & Nicolas Suzor (2014) The paradigm shift in realizing the right to read: how ebook libraries are enabling in the university sector, *Disability & Society*, 29:10,1658-1671, DOI: 10.1080/09687599.2014.973476. 166.

³³² Harpur, Paul D. & Suzor, Nicolas P., Copyright protections and disability rights: turning the page to a new international paradigm, (2013), Volume 36(3), *UNSW Law Journal*. 761.

³³³ UNESCO, *Sharing Your Work in Open Access* <http://icevi.org/pdf/ICEVI-Marrakesh_Treaty_Workshop-Philippines-Report.pdf>, accessed on 25/10/2017.

discriminatory barrier to access to cultural materials by persons with disabilities.³³⁴ It is asserted that ‘‘the need for a mandatory disability exception to copyright that permits the international distribution of accessible books was identified at least as far back as the 1980s.’³³⁵ Harpur argued that ‘the adoption of UNCRPD in 2006 recognized that intellectual property rights (including copyright) can act as discriminatory barriers to the right of people with disabilities to read. The UNCRPD thus, created an international obligation on states to take steps to remove such barriers.’³³⁶ It is also argued that ‘people with a print disability have a fundamental right to access cultural works for their education, work, play and pleasure’.³³⁷ Some scholars argued that:

*Although the world’s attention has on several occasions been turned to the plight of the vision impaired, there has been no international copyright instrument that specifically provides for limitations or exceptions to copyright for their benefit. Such an instrument becomes imperative amidst the growing number of persons in this category and the need to facilitate their access to information that will give them the opportunity to participate in public affairs.*³³⁸

He further elaborated that ‘limitations and exceptions for the benefit of VIPs are not likely to switch the field of copyright much in any direction. These exceptions are justifiable by the public duty to provide access to information to the visually impaired, who have an extremely limited amount of information compared to non-impaired persons in any case.’³³⁹ It is asserted that ‘the issue of whether and to what extent the law of copyright should provide exemptions in order to facilitate access to published works by VIPs is complex and emotive, integrating a variety of areas of law, most notably intellectual property and human rights law.’³⁴⁰ Rami noted that ‘the Marrakesh Treaty ... forms part of the body of international copyright treaties administered by WIPO. It has a

³³⁴Electronic Information Library, Draft Law on Copyright:including Model Exceptions & Limitations for libraries and their users, based on WIPO Draft Law on Copyright and Related Rights (version 2005) Recommendations (2016) Work In Progress. 36. (here after EIFL)

³³⁵ César J Ramirez-Montes, The Marrakesh Treaty. Available at: <<http://www.europarl.europa.eu/supporting-analyses>>, accessed on 26/10/2017.

³³⁶ *ibid.*

³³⁷ Harpur (n333). 745-778, specific. 778.

³³⁸ Iheanyi Samuel Nwankwo, Proposed WIPO Treaty for Improved Access for Blind, Visually Impaired, and Other Reading Disabled Persons, 2 (2011) JIPITEC 203. 203.

³³⁹*ibid.* 213.

³⁴⁰Li (n293).1.

clear humanitarian and social development dimension and its main goal is to create mandatory limitations and exceptions for the benefit of VIPs.³⁴¹ It is to be recalled that:

*The Marrakesh Treaty requires contracting parties to adopt limitations and exceptions to national copyright protection for the reproduction, distribution and making available of published works in accessible formats. The treaty harmonizes these limitations and exceptions across borders to allow organizations serving the blind, visually impaired or print disabled to exchange published works.*³⁴²

As we can understand from the texts of the Marrakesh Treaty,³ it requires the contracting parties to establish exceptions or limitations in their national copy right laws³⁴³and ‘put directions as to how these obligations could be made effective.³⁴⁴ In addition, as it is broadly defined in the treaty, ‘works should be provided to VIPs in accessible format copies.’³⁴⁵ Moreover, ‘the treaty has designated entities (authorized entities) which are responsible to make or obtain accessible format copies and distribute them to the VIPs up on their practices.’³⁴⁶Other substantive obligations imposed by the Marrakesh treaty on the contracting parties are ‘to establish exceptions and limitations that can facilitate the export³⁴⁷and import of accessible formats by authorized entities.³⁴⁸ The Marrakesh treaty has defined works that should be provided in accessible format copies that ‘Works’ means literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media.’³⁴⁹In addition, ‘the agreed statement concerning Article 2(a) also elaborated that for the

³⁴¹Ahmed Rami, .International Intellectual property Treaties (2017) Part-2.Available at: <<http://lawhelpbd.com/intellectual-property/international-intellectual-property-treaties-part-2/#>>, accessed on 19/12/2017.

³⁴² International Chamber of Commerce (ICC), The ICC Intellectual Property Roadmap: Current and emerging issues for business and policymakers (13thEdition 2017:41). Saudi Arabia, ICC. 76.

³⁴³ Marrakesh Treaty, (n121), Art. 4(1) (a).

³⁴⁴ibid. Art. 4(2).

³⁴⁵ibid. Art.2(b).

³⁴⁶ ibid. Art.2(c).

³⁴⁷ibid.Art.5.

³⁴⁸ ibid. Art.6.

³⁴⁹ ibid.Art.2 (a).

purposes of this Treaty, states it is understood that this definition includes such works in audio form, such as audio books.³⁵⁰

The Marrakesh treaty has broadly categorized the beneficiaries of the treaty into three. These are persons who are 'blind, visually impaired or persons who have perceptual or reading disability and physically disabled persons.'³⁵¹ Another substantive issue in this digital era is how to strike a balance between the rights of the copyright owners in taking technological measures in order to protect their creations from unauthorized use and the rights of the users of those creations. 'Technological challenges related to the access of information arise because of the format in which the information is being presented, as well as the digital rights management regime of a country'.³⁵²

It is described that 'access to knowledge for persons with disabilities can be facilitated to a significant extent by conformance with certain technological standards and sharing platforms, namely open standards and open access/content. Open standards are very important to ensure interoperability between different software technologies.'³⁵³ Some argued that 'Digital Technologies have opened new possibilities for facilitating access to works in alternative formats but these technologies suffer from a lack of interoperability that reflects inconsistent standards and formats, creating further barriers to access.'³⁵⁴ To prevent this problem 'the Marrakesh treaty has imposed obligations on the contracting parties to protect VIPs from such encroachments.'³⁵⁵ Furthermore, this obligation is made more clear under its Agreed statement that ... 'authorized entities, in various circumstances, choose to apply technological measures in the making, distribution and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law'.³⁵⁶ Moreover, 'it is understood that the treaty does not imply mandatory registration for authorized entities nor does it constitute a

³⁵⁰ *ibid.* Art.2(a).

³⁵¹ WIPO, Marrakesh Treaty (n121) (2013), Art.3 .

³⁵² Nirmita Narasimhan, The Centre for Internet & Society, Bangalore, Available at: <Indiahttp://www.e-accessibilitytoolkit.org/toolkit/technology_areas/access_to_published_works>, accessed on 25/10/2017.

³⁵³ *ibid.*

³⁵⁴ WIPO, Facilitating Access to Copyright works for Visually Impaired Persons (VIPs) The WIPO VIP Initiative. Available at: <www.visionip.org>, accessed on 25/10 2017.

³⁵⁵ Marrakesh Treaty (n121). art7.

³⁵⁶ *ibid.* Agreed statement.

precondition for authorized entities to engage in activities recognized under this Treaty; but it provides for a possibility for sharing information to facilitate the cross-border exchange of accessible format copies'.³⁵⁷ That means, what is required is to satisfy the definitions in the treaty in Art. 2(c). In addition, the Marrakesh treaty gives critical attention to the privacy of the VIPs when limitations and exceptions are implemented. It is stated that 'in the implementation of the limitations and exceptions provided for in this treaty, contracting parties shall endeavor to protect the privacy of beneficiary persons on an equal basis with others'.³⁵⁸ The Treaty also stipulates about other important issues that are cooperation between authorized entities to facilitate cross-border exchange. It states that:

*Contracting Parties undertake to assist their authorized entities engaged in activities under Article 5 to make information available regarding their practices pursuant to Article 2(c), both through the sharing of information among authorized entities, and through making available information on their policies and practices, including related to cross-border exchange of accessible format copies, to interested parties and members of the public as appropriate.*³⁵⁹

It is noted that 'the Marrakesh Treaty has created flexible situations for the contracting parties' in order to fulfill their rights and obligations stated in the treaty.³⁶⁰ Moreover, the contracting parties are imposed with 'general obligations concerning exceptions and limitations to the exclusive rights of the rights holders that they are supposed to observe the three-step test in the above mentioned international copyright treaties.'³⁶¹ Furthermore, 'parties to the treaty can implement other exceptions and limitations in their national law for the benefits of VIPs based on their economic, social and cultural situations conforming to their international rights and obligations.'³⁶²

In the aforementioned paragraphs, the major obligations of the contracting parties and the mechanisms to enforce these substantive obligations are briefly described. These descriptions on the Marrakesh treaty will help the researcher to evaluate the status of the

³⁵⁷ibid. Agreed statement concerning Article 9.

³⁵⁸ ibid. Art. 8.

³⁵⁹ ibid. Art. 9(2).

³⁶⁰ ibid. Art.10 (2).

³⁶¹ ibid. Art. 11.

³⁶²ibid. Art.12.

Ethiopian copyright and related rights systems in light of the Treaty's objectives. The main purpose of the evaluation is to understand whether the copyright and related right system is compliant to the treaty's objectives or not. Since the problem of VIPs is both a local and a global one which Ethiopia could not be an exception, the evaluation is supposed to consider these contexts. As thoroughly discussed in this paper, the problem is more serious in developing and least developed countries because the resource and technology bases of these countries are poor. As can be impliedly understood, the issue is current and important because Ethiopia is one of the least developed countries in which majority of VIPS live. It is obvious that designing legal and institutional frameworks that would be compliant to the Marrakesh treaty will have humanitarian and developmental implications that could make the objectives of the Marrakesh treaty effective. For these reasons, 'the Marrakesh Treaty gives special attention to VIPs living in developing countries which is stated in its preamble.'³⁶³ It is also important to note the function of the MT as an international copyright treaty to harmonize copyright exceptions and limitations at national levels.'³⁶⁴

The crucial point that instigated the study is that, is ratifying/acceding the Marrakesh Treaty a priority to the Ethiopian situation? The response of the researcher is positive. Even though Ethiopia is not a member of the Berne Convention, the TRIPS Agreement, the WCT and the WPPT, it could have a copy right and related rights that are Compliant to the Marrakesh Treaty in order to serve the visually impaired persons. It is argued by some researchers that 'before the adoption of the Marrakesh Treaty, it was possible for countries to enact copyright exceptions and limitations for their disabled population and carry them forward into the digital era, as long as they were drafted in conjunction with the stipulations of the Berne Convention's three-step test.'³⁶⁵ The Marrakesh treaty is a priority to Ethiopia because as can be understood from different statistical data cited in this study, the problems are more serious like many of its counterparts. The American Bar Association (ABA) declares that:

³⁶³ *ibid.* preamble,para.6.

³⁶⁴ *ibid.* preamble,para.12

³⁶⁵ Lior Zemer and Aviv Gaon, Copyright, disability and social inclusion: the Marrakesh Treaty and the role of non-signatories.(2015), Vol. 10, No. 11 *Journal of Intellectual Property Law & Practice*, 2. 845.

*The Marrakesh Treaty is designed to address a problem that has become known as the “book famine.” Over 300 million visually-impaired and other print-disabled persons, the majority of them in developing countries, are excluded from accessing over 95 percent of all published works. The Treaty provides a legal framework for addressing that problem in a manner that respects the architecture of the international copyright system. In so doing, it achieves a balance that advocates on all sides have recognized as fair and just.*³⁶⁶

It is further asserted that ‘once in effect, the Treaty will require Contracting Parties to adopt exceptions to their domestic copyright laws to permit the making of copies in accessible formats, as well as the distribution of those copies, both domestically and internationally.’³⁶⁷ This will be one of the important implications that will happen to the Ethiopian situation if it is willing to ratify the Treaty. Senftleben asserted that ‘the Treaty combines both very specific and very open rules on L&Es for blind and print-disabled persons with the abstract criteria of the “three-step test” known from Article 9(2) of the Berne Convention, Article 13 of the TRIPS Agreement and Article 10 of the WCT’³⁶⁸ It is also argued that ‘before the adoption of the Marrakesh Treaty, it was possible for countries to enact copyright exceptions for their disabled population and carry them forward into the digital era, as long as they were drafted in conjunction with the stipulations of the Berne Convention three-step test. Sadly, not many countries, including Israel, took it upon themselves to do so’.³⁶⁹ It is strongly noted that ‘as some countries are not bound by the three-step test with regard to exceptions to some or all rights because they are not members either of the BC, the WCT, or the TRIPS Agreement...some developed countries wanted to ensure that these countries did not somehow misuse the treaty provisions in cross-border situations.’³⁷⁰ It is understood that ‘nothing in this treaty creates any obligations for a Contracting Party to ratify or accede to the WCT or to comply with any of its provisions and nothing in this Treaty prejudices any rights, limitations and

³⁶⁶A Resolution by American Bar Association Adopted by The House of Delegates August 11-12, 2014. For a prompt Ratification of the Marrakesh Treaty <https://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/2014_hod_annual_100%20Marrakesh.authcheckdam.pdf>, accessed on 3/12/2017.

³⁶⁷ *ibid.*

³⁶⁸ Martin Senftleben. A Copyright Limitations Treaty Based on the Marrakesh Model: Nightmare or Dream Come True? (November 3, 2017). Available at: <SSRN:<https://ssrn.com/abstract=3064823>>, accessed on October 12, 2012.

³⁶⁹ Zemer (366). 844.

³⁷⁰The Marrakesh Treaty: an EIFL Guide for Libraries, December 2014. Available at: <http://www.eifl.net/sites/default/files/eifl-guide-marrakesh_en_1.pdf>, Accessed on 2/12/ 2017.

exceptions contained in the WCT.³⁷¹ If Ethiopia ratifies the treaty this will be an opportunity to exploit the privileges given to developing countries under various copyright treaties. Another important issue is that Ethiopia is a member country to WIPO. This grants it to be a contracting party to the Marrakesh Treaty. The Marrakesh Treaty stipulates that ‘any member state of WIPO may become party to this treaty.’³⁷²

The researcher argues that Ethiopia should have adjusted its copyright and neighboring rights systems in a way that serves the rights of visually impaired persons since some years back because it has endorsed those rights and obligations in the 1994/5 FDRE’s constitution and later in UNCPD. For many reasons stated in the aforementioned discussions, ratifying the Marrakesh treaty has many developmental and human rights implications. It is asserted that:

*The Marrakesh Treaty constitutes a landmark in global copyright policy as it increases access to information for millions of visually impaired people around the world, and in particular in developing countries. In addition to the conclusion of the Marrakesh Treaty WIPO policies have placed particular emphasis on development policies, innovation policies, and on environmental policies.*³⁷³

This is also expressly stipulated in the preamble of the treaty in paragraph eleven.³⁷⁴ Respecting its obligations that may be imposed by the WIPO, Ethiopia could have benefited from the Marrakesh Treaty in terms of legal framework, resources, technology and expertise which could promote the rights of VIPs in particular and the public interests in general. Failure to exploit these and other opportunities shows deprivation of the rights of VIPs which implies human rights violation. . It is argued by some researchers that ‘indeed, leaving the disabled persons without a legal arrangement specifically tailored to

³⁷¹ Marrakesh Treaty (n121), Agreed statement concerning Article 5(4) (b).

³⁷² .ibid.Art.15.

³⁷³Andrea Wechsler, WIPO’s Global Copyright Policy Priorities: The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. European Yearbook of International Economic Law(2015). 391-403.

³⁷⁴ Marrakesh Treaty, (n121) Preamble, Para. 12.

their needs carries the risk of perpetuating cultural inequality and other social wrongs'.³⁷⁵

As it is briefly summarized by Accessible Books Consortium (ABC):

*It has (the Marrakesh Treaty) a clear Humanitarian and social development dimension, and its main goal is to create a set of mandatory limitations and exceptions for the benefit of people who are blind, visually impaired and otherwise print disabled. It requires Contracting Parties to introduce a standard set of limitations and exceptions to copyright rules in order to permit reproduction, distribution and the making available of published works in formats designed to be accessible to those with sight loss and print disabilities, and to permit exchange of these works across borders by organizations that serve those beneficiaries.*³⁷⁶

Based on the preceding contexts, the rest of the discussion focuses on the analysis of the Exceptions and limitations of the Ethiopian copyright and related rights protections law in line with the Marrakesh treaty and other disability specific human rights laws.

3.3.1 Copyright protection in The Ethiopian Civil Code of in1966.

Taame asserted that 'the Ethiopian copyright regime dates back to the time of immense codification of laws in the 1960s. The copyright law was incorporated in the Civil Code of the 1960. The Code grants exclusive rights to authors to use their works and include certain copyright exceptions and limitations even though the code was not comprehensive'.³⁷⁷ It is also noted that 'the Civil Code incorporates provisions relating exceptions and limitations whereby users may use copyrighted works without the authorization of authors as the code uses the term author instead of copyright holders/owners'.³⁷⁸ In addition, another study asserted that 'the history of legal protection of copyrights in Ethiopia dates back to the 1960 Civil Code, which included a fairly comprehensive protection to copyrights'.³⁷⁹ From these paragraphs, we can understand

³⁷⁵ Lior Zemer and Aviv Gaon, Copyright, Disability and Social Inclusion: the Marrakesh Treaty and the Role of Non-signatories. Available at: <<http://www.iposgoode.ca/2015/11/copyright-disability-and-social-inclusion-the-marrakesh-treaty-and-the-role-of-non-signatories>>, accessed on 3/12/2017.

³⁷⁶ Wipo, books for all as tarter kit for accessible publishing in developing and least developed countries, Published by the Accessible Books Consortium (ABC). Available at: <http://www.accessiblebooksconsortium.org/export/abc/abc_starter-kit_300616.pdf>, accessed on 3/12/2017.

³⁷⁷ Taame Berihu, Exceptions and Limitations under Ethiopian Copyright Law: A Comparative Analysis. (LL.M Thesis), School of Law, Addis Ababa University, 2013. 46.

³⁷⁸ *ibid*, 47.

³⁷⁹ Balew Mersha & G/Hiwot Hadush, *Law of Intellectual Property: Teaching Material: The Justice and Legal System Research Institute*. 67.

that copyright protection in Ethiopia had a long history. Here what is comprehensive and what is not needs interpretation. The crucial issue to look at in the copyright system of Ethiopia is that is it compliant to the Marrakesh Treaty. Are the existing legal and institutional frameworks adequate to make the treaty's effective? As it is argued by Kouletaki, 'Prior to the Marrakesh Treaty, there was no direct international obligation on states to include any exceptions in their national copyright laws pertaining to the visually impaired persons.'³⁸⁰ It is asserted that 'with the adoption of the Marrakesh treaty in 2013, the international copyright community has shown its willingness to take further steps in the harmonization of limitations and exceptions in the field of copyright.'³⁸¹

Therefore, the following discussions will examine the Ethiopian Constitution, the UNCRPD, and the copyright and neighboring rights Proclamation No.410/2004 in line with the preceding discussions.

3.3.2. Overview of the FDRE's Constitution, 1994/95

In this section some of the constitutional provisions relevant to the topic of discussion are identified and analyzed. Ethiopia has adopted and ratified a number of international treaties, conventions and pacts. As stipulated by the Constitution, 'those international instruments ratified by the parliament are integral part of the domestic law of the country.'³⁸² In addition, the constitution asserts that 'the fundamental rights and freedoms specified in Chapter 3, shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia'.³⁸³ Furthermore, as declared by the constitution, 'the state shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to

³⁸⁰ Jade Katherine Kouletakis, A critical examination of Copyright Limitations and Exceptions for the Visually impaired Pertaining to Literary works in south Africa in the Local and Global Context. (LLM. Thesis), South Africa, University of Cape Town, 2013. 59.

³⁸¹ Senftleben, Martin, A Copyright Limitations Treaty Based on the Marrakesh Model: Nightmare or Dream Come True? (November 3, 2017). Available at <SSRN: <https://ssrn.com/abstract=3064823>>, accessed on October 12, 2017.

³⁸² FDRE Constitution (n56). Art 9(4).

³⁸³ *ibid*, Art. 13 (2).

children who are left without parents or guardian.³⁸⁴The Ethiopian Parliament has ratified the ‘United Nations Convention on the Rights of Persons with Disability by Proclamation No .676/2010. ³⁸⁵ It is asserted that the above mentioned instruments are also recognized by the contracting parties in their respective copyright laws through the Marrakesh treaty for VIPs in its preamble, paragraph one.³⁸⁶

The FDRE Constitution states that ‘everyone has the right to freedom of expression without any interference. This rights shall include the 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 media of his choice.’³⁸⁷ This is also comprehensively stipulated in ‘the Marrakesh treaty preamble paragraph two.’³⁸⁸ The FDRE constitution gives recognition to intellectual property rights. It declares that:

*Private property", for the purpose of this Article, shall mean any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law or in appropriate circumstances by communities specifically empowered by law to own property in common.*³⁸⁹

When we cross refer the preceding provision with the Marrakesh treaty, it clearly states that ‘copyright protection is an incentive and reward for further creativity and creates opportunities for users including the visually impaired persons’.³⁹⁰ According to the constitution, ‘the state has the obligation to allocate ever increasing resources to provide to the public health, education other social services.’³⁹¹ It is generally stated that ‘the Federal Government’...shall patent inventions and protect copyrights.’³⁹² Moreover, ‘enacting patent and copyright laws is under the jurisdiction of the House of Peoples’

³⁸⁴ FDRE’s Constitution, (n56). Art .41(5).

³⁸⁵ FDRE Proclamation No. 676/2010. Federal Negara Gazeta, Convention on the Rights of Persons with Disability Ratification Proclamation. Preamble.

³⁸⁶ WIPO, Marrakesh Treaty (2013) for VIPs (n121) (preamble Para. I).

³⁸⁷ FDRE’s Constitution (n56) (1994/92), Art, 29(2).

³⁸⁸ WIPO, Marrakesh Treaty(n121) (2013), preamble Para. II.

³⁸⁹ *ibid.* Art. 40(2).

³⁹⁰ Marrakesh, Treaty, (n121) preamble paragraph 3.

³⁹¹ FDRE’s Constitution, (n56) Art.41(4) .

³⁹² *ibid.* Art.51 (19).

Representatives.’³⁹³ Furthermore, ‘the council of Ministers ...’ shall protect patents and copyrights’.³⁹⁴

The above mentioned discussion gives general overview about the constitution concerning property rights in general and patent and copyright issues in particular. The constitution has also recognized the rights of disabled persons in general terms. But there are no specific provisions that are related to the rights of the blind, visually impaired or otherwise print disabled persons for the provision of copyrighted works inaccessible formats copies. This implies that the copyright and neighboring systemic is potentially expected to provide specific provisions relating with VIPs that should conform to the constitutional principles, the UDHR, UNCRPD, the Marrakesh Treaty for VIPs and other human rights law such as ICESCR for the benefits of VIPs. The next discussion will focus on the analysis of the Ethiopian Copyright and neighboring rights protection systems. The purpose of this examination is to see whether these laws are compliant and compatible to the constitutional, principles, the UNCRPD, the Marrakesh treaty for VIPs and other specific disability laws in order to enforce the rights of VIPs in Ethiopia.

3.3.3 The Current Ethiopian Copyright and Neighboring Rights System and the protection VIPs

The fundamental question here is that what are the implications of the Marrakesh treaty on the exceptions and limitations of the Ethiopia copyright and neighboring rights protection systems. As can be understood from a close reading of paragraph one and two of Proclamation No. 410/2004 for the protection of copyright and Neighboring Rights, ‘there are no indications as to the human rights issues in general and the specific rights of VIPs in particular.’³⁹⁵Based on the international development and the constitutional principles, its preamble should have indicated the intention of the legislature concerning the rights of the disabled persons at least in a general manner. It should have been coined in line with The Marrakesh Treaty’s paragraph one to enforce the human rights of this specific

³⁹³ FDRE Constitution, (n56) Art, 55(2)(g).

³⁹⁴ibid.Art, 77(5).

³⁹⁵Proclamation No.410/ 2004 (n57), paragraph 1 and 2.

category of persons³⁹⁶ This is a place where the Marrakesh Treaty adopted the human rights of the persons with disabilities i.e. the commitments the contracting states entered in. In addition, the Ethiopian constitution has ratified those rights in the manner described above. Moreover, paragraph IV (the preamble) of the Marrakesh Treaty has another intention concerning VIPs. It declares that ‘*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.*’³⁹⁷ Furthermore, under its preamble, the Marrakesh Treaty gives more emphasis to VIPs who are found in developing and least developed countries which states that “*taking into account that the majority of persons with visual impairments or with other print disabilities live in developing and least-developed countries.*”³⁹⁸ Another important concern is that the Marrakesh Treaty gives due attention to technological issues at both the national and international level. It has been briefly stated that “*recognizing that, despite the differences in national copyright laws, the positive impact of new information and communication technologies on the lives of persons with visual impairments or with other print disabilities may be reinforced by an enhanced legal framework at the international level*”.³⁹⁹

Based on the above mentioned description it is possible to say that all of the intentions expressed in the preamble of the Marrakesh Treaty are commitments to be implemented in each contracting parties through their copyright laws and other related laws of each state party to enforce the objectives of the treaty for VIPs. In addition, these are the intents and purposes of the international society to be enforced by the provisions of the treaty. Furthermore, these will be other implications to the Ethiopian copyright system if it would be ready to ratify the Marrakesh Treaty.

The Ethiopian copyright and neighboring rights protection Proclamation No. 41/2004 states that ‘copyright protection enhances the cultural, social, economic, scientific and

³⁹⁶ Marrakesh Treaty (n121), Para. 1.

³⁹⁷ *ibid.* Para., 4.

³⁹⁸ *ibid.* para,5.

³⁹⁹ *ibid.* Para. , 6.

technological development of a country'.⁴⁰⁰ In addition, it intends to make the copyright protection effective by protecting the neighboring rights.⁴⁰¹

From the preceding paragraphs, we can infer that the law focuses on the utility functions of copyright protections. It does not show any intention by which the balance between the rights of the right holders and the users including the visually impaired person could be made. Art. 2(8) of the same substantiate this intention that 'copyright' means an economic right subsisting in a work and where appropriate includes moral right of an author.⁴⁰² In addition, according to Art.2 (14), "Neighboring rights" means 'the rights of performers, Producers of sound recordings, broadcasting organizations over their works.'⁴⁰³ The law grants exclusive economic rights in an illustrative manner subject to legal limitations and exceptions for the benefits of users⁴⁰⁴ and the moral rights are put expressly.⁴⁰⁵ Art. 32 of Proclamation, No. 410/2004 stipulates as to how the rights in Arts. 26-31 could be limited. The above paragraph shows that the Ethiopian copyright systems give strong protection to copyright holders and it does not seem flexible enough to accommodate public interests in general and the rights of VIPs in particular.

The Ethiopian Copyright and Neighboring Rights protection Proclamation No.410/2004 contains copyright limitations and exceptions to the exclusive rights of the authors or right holders in Arts.9-19. These exceptions and limitations are general that serve general public purposes. They cannot adequately and specifically serve the interest of 'VIPs who are identified in the Marrakesh Treaty'⁴⁰⁶ which is the main objective of the study. It has been mentioned in this paper that the legal and institutional frameworks designed by the treaty are entirely geared to enforce the rights of VIPs at national and international copyright system. In Ethiopian case, though there may be copyright exceptions and

⁴⁰⁰ FDRE Proclamation No. 410/2004 (n57), para.I of its preamble

⁴⁰¹ *ibid*, paraxial.

⁴⁰² *ibid*. Paragraph I and II Cum Art. 2(8)

⁴⁰³ *ibid*. Art.2 (14).

⁴⁰⁴ *ibid*. art.7(1).

⁴⁰⁵ *ibid* Art.8.

⁴⁰⁶ Marrakesh Treaty, (n.121) Art.3.

limitations, their adequacy is not reliable. Some of the Ethiopian general copy right Exceptions are analyzed and discussed in the following section.

Reproduction for personal purpose is one of the exceptions to the rule. In the Ethiopian case, for a person to use this exception he is required to fulfill some conditions i.e. ‘to use this exception; a published work *should* be ‘reproduced in a single copy, by a physical person exclusively for his own personal purposes’.⁴⁰⁷This exception may serve an individual who is not in the categories of VIPs as broadly defined in the Marrakesh Treaty.⁴⁰⁸ It doesn’t adequately serve a physical person who is blind, visually impaired or otherwise print disabled because the work must be provided in an accessible format copy as intended by the Marrakesh Treaty for VIPs.⁴⁰⁹In other words, even though the disabled persons are financially capable to purchase the work in accessible formats, it may not be available in the domestic market or the price may be costly to purchase. In addition, when we analyze Proclamation No. 872/2014 that has amended Proclamation No.410/2004, it did not have specific provision as to the rights of the VIPs. Instead, it has given a well organized strong protection to copyrighted works. As adequately discussed above, to avoid discrimination between the haves and the have not or between VIPs and the sighted ones, the state has the obligation to implement the rights incorporated in the constitutions, the UDHR, ICESCR UNCRPD and in the Marrakesh Treaty. In addition, to solve this problem there must be a system in which the disabled person obtains the service on a non-profit basis. To make it effective, there must be legal and institutional frameworks that promote access to VIPs at both local and international levels. That means if it is not available in the local market the copyright system must have exception and limitations for cross-border exchange of works in accessible format. Furthermore, **quotation** is a ‘permitted act without the consent of the authors but this requires observing the requirements that are put in the provisions.’⁴¹⁰ It is stated that ‘the quotation shall be compatible with fair practice and does not exceed the extent justified by the purpose.’⁴¹¹

⁴⁰⁷ Proclamation, No. 410/2004, (n57) Art.9 (1).

⁴⁰⁸ Marrakesh Treaty, (n121) Art.3.

⁴⁰⁹ *ibid.*Art.2 (b).

⁴¹⁰ *ibid.*, Art.10.

⁴¹¹ *ibid.* Art.10(2).

This statement lacks clarity and subjected to interpretation. There must be some clear standard to evaluate what faire practice is. Otherwise it will be a source of contention that may result in unnecessary litigations. This is also another problem for persons who are visually impaired. Because to be quoted by VIPs, the literary and artistic works must be provided in appropriate accessible format copies as already described. Otherwise it creates discrimination between VIPs and who are sighted and physically capable.

Moreover, '*reproduction for teaching purposes* without seeking the authorization of the author is a permitted act.'⁴¹² This is the most relevant issue to the topic of the study. But the phrase 'fair practice' lacks clarity that may cause similar problems to the preceding paragraph. To use this exception, the teaching materials should be made in appropriate accessible formats. This is not only the responsibility of the teacher and the educational institutions even though their roles are significant. It requires policy decisions which start from designing the curriculums. As can be under stood from the Marrakesh treat there are different groups of VIPs that need different appropriate accessible formats. For example, the blind category need works in certain type of accessible format copies and the physically handicapped also need a different type. Some of these are the Braille, large font copy or Audio- visual books. This needs political commitment and has huge resource implications. If the education system does not conform to the provision of the Marrakesh Treaty, it can discriminate visually impaired students from obtaining the required competencies that will have series of implications in their future economic, social and cultural life in the society. Furthermore, '*reproduction by libraries, archives and similar institutions* is one of the important exceptions which serves educational, scholastic and research purposes and covers wider areas of responsibilities for public purposes'.⁴¹³ This exception has general public purposes. For these institutions to serve the visually impaired persons works should be made in accessible formats and need adequate legal and institutional frameworks to safely play their roles as authorized entities in the language of the Marrakesh Treaty (*see Art.2(c)*). These institutions must be authorized to make or obtain works in different formats according to the nature of their problems. They cannot

⁴¹² *ibid.* Art, 11.

⁴¹³ *ibid.*, Art, 12.

serve different groups of VIPs with a format designed for general purposes. The role of these institutions in addressing the problems of VIPs is fundamental. They can play the role of ‘authorized entities as stated in the Marrakesh Treaty’.⁴¹⁴ They can make copyrighted works in accessible formats and distribute the same nationally. In addition, they can make cross-border exchange of works in accessible formats to serve informatory functions of copyright law. So, ‘the national copyright system must establish exceptions and limitations to facilitate domestic distributions and international exchange of works to serve VIPs.’⁴¹⁵ This is an exception to the rights of the authors for social, economic, political and religious purposes which has broader public purposes. It is one of the mechanisms by which the freedom to information may be realized. But in this respect, the Ethiopian copyright law does not say anything as to how the rights of visually impaired persons shall be respected as sighted persons. This has to be taken care of based the specific provisions of UNCRPD and the Marrakesh Treaty and other relevant human right instruments as elaborated in this paper. ‘*The exceptions and limitation for the reproduction and adaptation of computer program*’⁴¹⁶ is a relevant exception especially in this modern digitized era and relevant to the topic of this study. The Ethiopian copyright law did not put anything as to the negative and positive effects of technology relating to the benefits of VIPs. This exception should have been coined in line with Art. 11 of WCT and 18 WPPT and adjusted in line with Art. 7 of the Marrakesh treaty. ‘*Importation for personal purposes*’⁴¹⁷ is an important exception which would help the users to solve their needs when the local market is not able to provide them. But the Ethiopian copyright system did not take the right of the disabled persons in to account. This should have been designed the Marrakesh Treaty for VIPs (*see, Art.4,5 & 6 of this treaty*). ‘*A copyright exception for the purpose of private performance free of charge*’⁴¹⁸ plays significant social and educational purposes. This exception should have been designed in line with Art. 4(1)(b) of the Marrakesh Treaty. Issuance of non-voluntary

⁴¹⁴ *ibid.* Art.2 (b).

⁴¹⁵ *ibid.*,Art.13.

⁴¹⁶ *ibid.*, Art. 14.

⁴¹⁷ *ibid.*, Art. 15.

⁴¹⁸ *ibid.*, Art. 16.

license⁴¹⁹, display of works⁴²⁰and distribution of copies of works⁴²¹ are also important exceptions for public uses. However, these don't accommodate the rights of the visually impaired persons because they should be treated in specific and appropriate mode of communications. This could avoid discrimination and prejudice against VIPs.

As can be understood from the above mentioned analysis, exceptions and limitations in the Ethiopian copyright system are general that can serve general public purposes. The fundamental question is that are these exceptions helping VIPs and are they compatible with the international disability laws including the Marrakesh Treaty for VIPs. The researcher has tried to analyze them using some mandatory requirements and some optional conditions found in the Marrakesh treaty for VIPs. The Marrakesh Treaty has identified and broadly defined 'VIPs and grouped them into 'three categories.'⁴²² This is very important for entities that serve them to avoid an unauthorized use of copyright protected materials. Another important point is that what are 'works,'⁴²³ in what 'format'⁴²⁴are they provided to the VIPs (beneficiaries) and who is responsible for this provision⁴²⁵are clearly defined in the Marrakesh treaty.

The VIPs in Ethiopia may invoke the preamble and exceptions and limitation provided in Arts. 9-19 of Proclamation No.410/2004. When there is such case the Ethiopian courts may entertain the cases and interpret the same in light of the Marrakesh treaty and exceptions and limitations available in other international copyright treaties in line with the three-step test. As to the belief of the researcher, the Ethiopian copyright regime does not give that space to the courts and the decisions may not be effective. On the other hand, the issues of VIPS are not only legal problems. This category of persons cannot be served by copyright exceptions and limitations provided for general public purposes. Even, assuming that the Marrakesh Treaty is in place, they need differential treatments among

⁴¹⁹ *ibid*, Art.17.

⁴²⁰ *ibid*, Art.18.

⁴²¹ *ibid*, Art.19.

⁴²²WIPO, Marrakesh treaty (n121),Art.3.

⁴²³ *ibid*. Art.2(a).

⁴²⁴ *ibid*. 2(b).

⁴²⁵ *ibid* , 2(c).

themselves because their cases and needs are different. The aforementioned copyright exceptions and limitations don't mention any thing about the rights of disabled persons in genera and VIPs in particular. To solve the problems of VIPs in Ethiopia there must be adequate legal frameworks, mandatory and optional copyright exceptions and limitations specific to these category of persons (VIPs) that should be compliant to the Marrakesh treaty as mentioned above(Art 4(1) that is not currently in place. In addition, the government has to establish institutional frameworks that could involve entities in serving the VIPs according to Art. 2(c), 5 and 6 of the Marrakesh Treaty. Some studies argued that' copyright is not only a legal regime for the creation and recognition of exclusive, proprietary rights in the fruits of human creativity. It also comes with an associated bureaucratic system: a series of institutions and agencies which play various roles in managing copyright and the relations between copyright owners and users.⁴²⁶ When we evaluate the problem of VIPs in line with this paragraph, it tells us that we need specific legal provisions, institutional frameworks and a system of transparency and accountability. This does not mean that the governments should come up with new legal and institution frameworks. It is possible to accommodate the Marrakesh Treaty for VIPs with the existing one by voiding uneasy obstacles, amending the copyright system and involving the existing institutions that could be compliant to the Marrakesh Treaty for VIPs. The implementation of the Marrakesh treaty seeks international cooperation in terms of resources; technology and expertise. These are inputs required by the Marrakesh Treaty to implement the obligations imposed by UNCRPD on the state parties. To this effect, Ethiopia has ratified this convention and entered into commitments.

In a nutshell, the assumption of the Marrakesh Treaty is that countries have already established copyright limitations and exceptions to enforce its objectives. We can see this trust from the texts of treaty that are stipulated as follows:

Recognizing that many Member States have established limitations and exceptions in their national copyright laws for persons with visual impairments or with other print disabilities, yet there is a continuing shortage of available works in accessible format copies for such persons, and that considerable resources are required for their effort of making works accessible to these persons, and that the lack of possibilities of cross-

⁴²⁶ Kimberlee Weatherall, Of Copyright Bureaucracies and Incoherence: Stepping back from Australia's recent Copyright reforms. (2006), Vol 31, Melbourne University Law Review. 968.

*border exchange of accessible format copies has necessitated duplication of these efforts*⁴²⁷

Based on the preceding paragraph, the researcher argued that the Ethiopian copyright regimes don't conform to these assumptions. That means, the copyright regime in Ethiopia does not provide mandatory Exceptions and Limitations to make the objectives of the Marrakesh Treaty for VIPs effective. As it is already explained by different scholars, 'the issue of whether and to what extent the law of copyright should provide exemptions in order to facilitate access to published works by VIPs is complex and emotive, integrating a variety of areas of law, most notably intellectual property and human rights law.'⁴²⁸ To this effect, UNCRPD came in to existence in 1966 .It imposes an obligation on the states parties 'to ' provide 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'.⁴²⁹ Based on the this convention the Marrakesh Treaty 'attempts to extend the exceptions to infringements that currently exist in developed nations to developing nations and to reduce some of the duplicative effort that is required under the current scheme by enabling accessible books to be shared across national borders'.⁴³⁰ It is argues that 'copyright law has generally become a barrier to accessing information in developing countries. Many have not updated their copyright laws for a long time, or have updated them without taking advantage of legal flexibilities called limitations and exceptions to the exclusive rights of authors and creators, which are allowed in international intellectual property treaties.'⁴³¹ It is noted that 'the exclusive rights of the authors subject to such limitation or exception are 'the right of reproduction, the right of distribution, and the right of making available to the public the rights of public performance.'⁴³² As we can understand from the texts of

⁴²⁷ Marrakesh Treaty, (n121) para.Vii.

⁴²⁸ Li, J. (n293). 741.

⁴²⁹ . UNCRPD, (n63)Art. 21(b).

⁴³⁰Paula (n333). 759.

⁴³¹ Denise Rosemary Nicholson . *The South African Copyright Law: a historical overview and challenges to address access to knowledge issues in a country in transformation*. South Africa: University of the Witwatersrand, 2015 2.

⁴³² WIPO, Summary of the Marrakesh Treaty (2013)for VIPs. Available at:

<http://www.wipo.int/treaties/en/ip/marrakesh/summary_marrakesh.html>, accessed on 26/102017.

Marrakesh Treaty for VIPs, the exclusive rights impacted by those exceptions or limitations are clearly stipulated in the treaty that:

*Contracting Parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WCT to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format. In addition, Contracting Parties may also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons.*⁴³³

The term beneficiary persons are broadly defined in the Marrakesh treaty as follows. 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;*
- (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.*⁴³⁴

These groups of beneficiaries need differential treatment concerning accessible format copies as it is defined in the Marrakesh Treaty in the following Manner:

*“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..*⁴³⁵

When the Ethiopian copyright and neighboring rights protection Proclamation No 410/2004 is evaluated in line with the preceding paragraphs, it does not mention any thing about the categories of VIPs and what accessible format copy means. It is argued that ‘disability advocates have long expressed concern that copyright law can impede the adaptation of works into formats functional for people with disabilities when copyright holders fail to publish works in accessible formats, such as Braille, or allow others to do

⁴³³ Marrakesh Treaty, (n212) (2013) for VIPs, Art. 4(a)(b).

⁴³⁴ Marrakesh treaty, , (n121) Art.3.

⁴³⁵ *ibid.* Art .2 (b).

so.⁴³⁶ It is further asserted that ‘to resolve that problem, many countries have adopted copyright exceptions and limitations allowing authorized not-for-profit organizations to produce and distribute accessible works to persons with disabilities.’⁴³⁷ As noted by some researchers ‘under the Marrakesh Treaty which references the right to science and culture among its motivating principles, states commit to enacting exceptions and limitations to facilitate access to published works by persons with disabilities and to allow cross-border transfers of those works.’⁴³⁸ In addition, ‘the recent WIPO Marrakesh Treaty requires signatory States to enact copyright exceptions and limitations in favor of visually impaired readers’⁴³⁹. It is further asserted that ‘pursuant to Article 4 (1), contracting jurisdictions must have copyright exceptions legislation in place to allow for the production of printed works in accessible formats without requiring permission from the copyright holder.’⁴⁴⁰ It is also asserted that ‘the Marrakesh Treaty is a welcome step towards the realization of human rights of the beneficiaries. The Treaty aims at improving access for the beneficiaries to published works in the formats such as Braille, Daisy, large print text, audio books, etc.’⁴⁴¹ In addition, ‘the Contracting Parties shall be required to bring their copyrights laws in conformity with the provisions of the Marrakesh Treaty by providing limitations or exceptions for this purpose’.⁴⁴² Moreover, ‘the Treaty empowers the State Parties to exchange, import or export the published materials in the accessible format.’⁴⁴³

⁴³⁶ United Nations’ General Assembly, General Assembly. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Copyright policy and the right to science and culture. Human Rights Council Twenty-eighth session Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 24 December 2014 A/HRC/28. 14.

⁴³⁷ *ibid.*

⁴³⁸ *ibid.*

⁴³⁹ *ibid.* 15.

⁴⁴⁰ World Blind Union.. WIPO Marrakesh Treaty for global organization representing blind and partially sighted people worldwide. Implementation Reports, *September 2017*. Available at: <<https://www.google.com/search?q=International+Copyright:+Marrakesh+and+the+Future+of+Users%E2%80%99+Rights+Exceptions/pdf&ei=LLkeWu2jCcG0gAb0153IBA&start=70&sa=N&biw=1280&bih=912>>, accessed on 29/11/2017.

⁴⁴¹ Manoj Kumar Sinha. Copyright Law in the Digital World: Challenges and Opportunities. New Delhi: Springer Nature Singapore Pte Ltd, (2017) 106-107.

⁴⁴² Marrakesh Treaty, (n121) Art. 4(1) (a).

⁴⁴³ *ibid.* Art.5.

In this section, to answer the research questions, the researcher has examined exceptions and limitations provided in the Ethiopian copyright and neighboring rights protections Proclamations No.410/2004 and its amending proclamation based on the substantive provisions of the Marrakesh treaty for VIPs, Art.4 through Art.7 and other relevant literatures to the research topic. It is possible to argue that the copyright exceptions and limitations provided by this law may serve some purposes for VIPs, if we simply think that these categories of persons are members of the public. But these persons have diverse problems that need specific solutions. These are persons who must be given special attentions in the national and international arena. Some of these attentions are expressly declared in international human rights instruments which are adequately treated in the preceding sections. Based on those legal instruments, the Marrakesh Treaty, an international copyright treaty, that is designed to solve these global problems of this specific group of persons. The other important issue is that the Ethiopian legislators didn't give recognition to the rights of VIPs that are mentioned above in our copyright protection law. In addition, the government has ratified the UNCRDP. This Convention incorporated different social, economic and cultural rights that must be mainstreamed in different sectors of the country. The UNCRDP states that:

*States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.*⁴⁴⁴

Ferraina asserted that 'the UNCRDP marks a shift of thinking in the disability sector; it lays down the premises for the enjoyment of human rights by persons with disabilities and it demands State parties to put into place proper structures and services to make sure the conditions for enjoyment of human rights are respected.'⁴⁴⁵ He further stated that 'the

⁴⁴⁴ UNCRDP, (n63)Art. 33(2).

⁴⁴⁵ Sabrina Ferraina, Analysis of the Legal Meaning of Article 27 of the UN CRPD: Key Challenges for Adapted Work Settings. Available at: <<http://digitalcommons.ilr.cornell.edu/gladnetcollect/560>>, accessed on 30/11/2017.

UNCRPD applies human rights to a specific category of vulnerable persons, merely persons with disabilities.’⁴⁴⁶

In accordance with the above mentioned principles (UNCRPD), ‘the Ethiopian legislature has given such an authority to regulate the proclamation for the Ministry of Labor and social Affairs.’⁴⁴⁷As to the researcher’s belief, one of the important institutions to play a significant role to handle these issues is the Ethiopian Intellectual Property Office. Because the Marrakesh Treaty is predominantly a special copyright law that needs legal expertise for its effectiveness. At least, it should have played an advocacy role for the adoption and implementation of the Marrakesh treaty for VIPs. Ethiopian is one of the least developed countries in which the problems of VIPs are more serious. However, the government did not show visible exercise to this effect. Ahuja.V. asserted that ‘the Marrakesh Treaty obligates Contracting Parties to provide limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public in their national laws to facilitate the availability of works in accessible format copies for beneficiary persons.’⁴⁴⁸

In nut shell, based on the findings of the above mentioned discussion and analysis, the researcher strongly argued that the exceptions and limitations in the Ethiopian copyright and neighboring rights protection law is not compatible to the goals of the Marrakesh treaty for VIPs including other disability specific human rights laws such as the United Nations Convention on the Right of Persons with Disability and International Convention on Economic Social and Cultural Rights.

⁴⁴⁶ *ibid.* 9.

⁴⁴⁷ FDRE proclamation no. 676/2010.(386). Preamble.

⁴⁴⁸ V.K. Ahuja(2017:1) Marrakesh Treaty to Facilitate Access to Published Works for Visually Disabled: Putting an End to Global Book Famine. In: Sinha M., Mahalwar V. (eds) Copyright Law in the Digital World. Springer, Singapore. 16.

CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS

4.1. Conclusion

Based on the findings of the study, the researcher has drawn the following conclusions. The findings of the above discussions showed that ratifying the Marrakesh Treaty has different implications. The major ones are revisiting the IP policy frameworks of the state, reforming the copyright and neighboring rights law and other relevant laws, reforming the institutional frameworks to enforce the constitutional principles, the UNCRPD more specific to VIPs, ICESCR and the Marrakesh Treaty. Ethiopia may encounter those implications if it will ratify the treaty in order to make the copyright law compatible to the Marrakesh treaty and other international copyright standards to serve the VIPs adequately. As clearly stated in this paper, the FDRE constitution, gives recognition to the patent and copyright regimes. In addition, the executive is mandated to protect the same. Furthermore, the right of the disabled persons is acknowledged by the state through the Federal Government Constitution and the UNCRPD. More over the economic, social and cultural rights recognized by the constitution and in the ratified UNCRPD. The right to participate in the cultural life of the society is incorporated in the constitution which contains the principles of the UDHR and ICESCR, and through UNCRPD.

The above mentioned general statements tell us nothing about the specific problems of VIPs in Ethiopia. It is obvious that in the Ethiopian copyright regime (ProclamationNo.410/2004), there are some exceptions and limitations for different public objectives that don't specifically and adequately accommodate the rights of the VIPs. When we examine exceptions and limitations in the Ethiopian copyright and neighboring rights system based the discussions we made in the above sections of the paper and the objectives of the Marrakesh treaty for VIPs, it is not compliant to the Marrakesh Treaty. Even though the country has recognized the human rights aspects of VIPs and ratified UNCRDP through Proclamation No. 676/2010, the signed document to ratify the Marrakesh treaty laid down before the legislative body for a long period. The legal and

institutional frameworks are not reformed based on the social, economic and cultural requirements imposed by this convention. Therefore, the limitations and exceptions in the existing copyright and neighboring rights system in Ethiopia are not compatible to the Marrakesh Treaty for VIPs (2013) and they are not impacted by the treaty. They failed to provide published materials for VIPs in accessible format copies on an on-profit basis. In addition, the human rights of VIPs is not well addressed because the copyright system in Ethiopia does not have specifically and clearly established mandatory copyright exceptions and limitations to promote access to published works in accessible format copies for the domestic contexts and cross-border exchange of the same. More specifically the rights of VIPs expressed in UDHR, UNCPD and the Marrakesh Treaty are not addressed because the copyright system in Ethiopia is not operating in line with these fundamental principles to promote and facilitate access issues for VIPs. The Ethiopian Copyright and neighboring rights system doesn't incorporate the new obligations imposed by the Marrakesh Treaty that are fundamental to end the scarcity of published material for VIPs in accessible format copies. These new obligations imposed by the treaty on the contracting parties are identified and analyzed in different section of this study. These obligations are mandatory which should be implemented by the contracting states parties to the Marrakesh Treaty. If the contracting state fails to enforce these obligations, it result in disputes which require appropriate dispute settlement mechanisms. The researcher also concluded that the Ethiopian copyright system doesn't have dispute settlement mechanisms specific to VIPs. If Ethiopia ratifies the Marrakesh treaty, such disputes that require both national and international remedies may be settled in accordance with its principles and the international dispute settlement mechanisms adopted by the Marrakesh Treaty.

Finally, the current copyright and neighboring rights system and the institutional frameworks are not capable to accommodate the Marrakesh treaty and make its objectives effective.

4.2. Recommendations

Based on the above mentioned conclusions the researcher has made the following possible recommendations:

- The Ethiopian Government should undertake rigorous study to know the number of VIPs in the country and identify their categories (the blind, visually impaired, physically impaired etc.) The purpose of doing so is important to design legal and institutional mechanisms that could make or obtains works in accessible formats according to their needs. In addition, it helps allocate resources to make and distribute those formats.
- The government should create a form to conduct series of discussions with key stakeholders and collaborators to create awareness about the extent of the problems and seek their help because the problems of VIPs are not only legal problems. They are also social problems which the social institutions should own it.
- Based on the results of the evaluation, it has to reorient the existing copyright and Related Rights protection laws and institutional frameworks in ways compatible to the constitutional provisions and the international human rights and copyrights principles adopted by the Marrakesh Treaty specifically relevant to the blind, visually impaired and print disabled persons.
- The legislature should establish mandatory and optional copyright exceptions and limitations for the benefits of VIPs and which are compatible to the norms set by the Marrakesh Treaty. These norms are set based on the international human rights and copyright standards that limit the scope of copyright limitations and exceptions adopted by the treaty (the three-step test). These are important for the provision of literary and artistic works in accessible format copy at national level and for cross-border exchange of the same. This is also important to advance the human rights of VIPS.
- The Marrakesh treaty may be acceded by amending the existing copyright and neighboring rights system and other relevant laws or as a self-executing law. To be more specific, Arts.9-19 and Arts.26-32 of the Ethiopian copyright regime must contain specific provisos to accommodate norms set by the Marrakesh Treaty (see, *the Marrakesh Treaty, Arts2 and 3 Arst.4-7*). *The provisions should allow provide copyrighted works for VIPs in appropriate format copies based on the categories of VIPs(see,Art.2(b)and Art.3 of the MT)*

- Finally, there must be legislative, judicial and administrative systems to make the objectives of the Marrakesh treaty effective and the remedial systems when the rights of the beneficiaries (VIPs) may be encroached. The government has to link the local remedial systems to the international dispute settlement mechanism when it is necessary based on the relevant laws that are mentioned above (to the CRPD committee).

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