

Postsecondary Students, Perceptual Disabilities and Copyright Reform

A Discussion Paper

Prepared by Davina M. DesRoches

March 2006

CARL is the leadership organization for the Canadian research library community. The Association's members represent Canada's major academic research libraries plus Library and Archives Canada, the Library of Parliament and the Canada Institute for Scientific and Technical Information (CISTI).



Context

Canadians take pride in belonging to a nation which fosters inclusiveness and a respect for difference. One of the ways in which the state promotes inclusiveness is through legislation that protects the rights of minorities. This helps ensure that all Canadians, regardless of ability level, are able to contribute to, and feel valued within, Canadian society.

In this context, copyright legislation takes into consideration the needs of the perceptually disabled in the Copyright Act. Section 32 (1) allows for copies of certain works to be made in formats specially designed for people with perceptual disabilities. This is particularly important in a university setting, as alternate formats make it possible for perceptually disabled students to access the material they need to succeed at the institution they attend. Not all alternate formats, however, are covered under the exception, and this may hinder certain students in their studies. As well, the issue of university accessibility in relation to acquiring alternate formats in a timely matter is a major concern for many perceptually disabled students.

Canadians wish to have a society which fully includes its disabled population. Certain inequalities, however, are structural in nature and must be changed if all Canadians are to succeed to their fullest potential: this includes reform of the Copyright Act to take into account the needs and aspirations of Canada's perceptually disabled population.

Recommendations

Section 32(1) of the Copyright Act should be format neutral.

It is unjust that certain alternate formats are excluded from section 32(1) of the Copyright Act. A print disabled student should not be disadvantaged because they require a certain type of alternate format. Although Access Copyright does not charge any additional fees for large print books in its contracts with postsecondary institutions, the ability to provide large print textbooks for perceptually disabled students should not come as a result of an agreement with the organization or with individual publishers. The need for large print books for the perceptually disabled is evident. As such, the federal government must examine the issue and implement changes to guarantee equitable access. This will not affect the ability of publishers to benefit economically from producing large print books, as large print materials published in Canada are predominantly recreational, and as such are commercially available. Academic large print does not produce "harm" to an economic gain for publishers.

Section 32(1) of the Copyright Act should be technology neutral.

Technology is continually changing in Canadian society. It simply does not make sense for the legislation to be limited to current technology, as the technology used today may not be relevant in several years time. By creating a technology neutral exception, all technological advances that benefit the perceptually disabled will be utilized to their fullest potential.

Use of sign language to transcribe a cinematographic work should be expressly permitted.

Signed languages, including American Sign Language and la Langue des Signes Québécoise, are crucial components of Deaf Culture within Canada. It is both unfair, and bizarre, that signing a cinematographic work live or in a format specially designed for the perceptually disabled is impermissible under the Copyright Act.

The Government should encourage the development of reciprocal international laws to benefit perceptually disabled students in the area of copyright.

Reciprocal international laws are vital if perceptually disabled students are to receive alternate formats of the materials they need in a timely manner. International agreements will facilitate access to materials, thus making the process easier for both students and those who provide services to them.

Introduction

The purpose of this report is to examine how copyright legislation intersects with the needs of perceptually disabled postsecondary students. A perceptual disability is defined under the Canadian Copyright Act as a disability that “prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format.”¹ Perceptual disabilities include impairment of vision, hearing and mobility, as well as disabilities affecting comprehension.

The report is divided into several sections. The first section discusses the exceptions currently permitted under the Copyright Act, and gives examples of some of the adaptive technology that is currently being used in postsecondary institutions. The second section considers the needs of students which cannot be met under current legislation, or can only be met with high restrictions. Changes to the Copyright Act which would benefit these postsecondary students are then discussed. The final section deals with the issue of university accessibility as it relates to alternate formats. Although this issue is not directly related to copyright reform, accessibility is a major issue in providing fair and equitable services to disabled students. This section looks at some of the problems in this area, and suggests several ways in which to improve the situation.

Please note that the scope of this project is restricted to English language materials. I would be both interested and grateful to receive information on the services currently provided to francophone perceptually disabled students.

¹ *Copyright Act* (R.S., 1985, c. C-42). To see the Act in its entirety, please visit <http://www.cb-cda.gc.ca/info/act-e.html>. Section 32 is included as an appendix to this report.

Acknowledgements

I would like to thank all of those who assisted me with my research for their contributions and valuable insights into the world of copyright. Their names, titles and organizations are listed below.

Heather Cross is the Coordinator of Library Services for Students with Disabilities at Carleton University.

Mary Anne Epp is the Director of Contract Administration, Library Services, at Langara College.

Ross Mutton is the Director of Instructional Media Services at Carleton University.

Donna Passey is the Coordinator of the Blind and Visually Impaired Services Unit, Manitoba Education, Citizenship and Youth and is also a member of the Canadian Association of Educational Resource Centres (CAER).

John Tooth is the Coordinator of the Instructional Resources Unit (Library), Program and Student Services Branch, Manitoba Education, Citizenship and Youth.

I would also like to thank Ms. Wanda Noel, Barrister and Solicitor, for reviewing the final draft of this report.

This work was completed as part of an undergraduate student practicum initiated by the School of Canadian Studies at Carleton University. I would like to thank both my academic evaluator, Richard Nimijean, and my practicum supervisor at CARL, Tim Mark, for this unique opportunity to examine an issue of great interest to me.

Any errors or omissions found within this report are the responsibility of the author. Comments and suggestions regarding the text are welcomed and should be forwarded to the author.

1.0 Current Accommodations Postsecondary Institutions are Able to Provide

The Copyright Act allows universities to provide a number of accommodations for perceptually disabled students. This includes transcribing academic materials into the format students require. Ross Mutton of Carleton University asserts that while in times past this was not always the case, with the most recent amendments to the Act in Bill C-32 the situation has improved considerably.

Many alternate formats are used in postsecondary institutions across Canada. Students with visual disabilities are able to access formats such as Braille, descriptive narration, computer files, large print books, audio cassettes and Digital Talking Books. Braille is a reading system which uses raised dots so that material can be read through touch. Descriptive narration is a tool used in video and film to explain diagrams, charts and other visual

components. Material put on a computer file can further enable access if the computer is connected to devices such as a Braille printer, voice synthesizer or a large monitor equipped with a Screen Magnification System such as Magic or Zoomtext Plus. Although large print books are not included in Section 32 (1) of the Copyright Act, institutions may enter an agreement with Access Copyright, which gives them permission to create large print materials on behalf of print disabled students. A nominal fee is charged for the master and for each copy. A record must be kept for each item, and there is the possibility that the institution will be required to submit a copy of the alternate format to Access Copyright upon request.

Digital Talking Books evolved from the traditional analog recording alternate format. Analog recordings are, in many cases, unable to meet the needs of those who use them. Many educational institutions and CNIB still use analog books on tape. Most institutions create their works in digital format, and then convert to analog, MP3 or DAISY depending on the student's need. Digital Talking Books, digital text books and a combination of synchronized audio and text books are some of the most innovative alternate formats currently in operation. The globally recognized technological standard for producing these materials is the NISO standard. DAISY is a brand name that complies with the NISO standard. DAISY is the acronym for Digital Accessible Information SYstem. DAISY is an open non-proprietary international standard. The DAISY standard was established on the belief that "[a]lternate format materials should be a faithful representation of a published work to ensure that those who are blind or print-disabled have access to the same information as the rest of society."² There are many types of DAISY books, including audio only, text only, and full audio and text books. A full text DAISY book may even be used to produce hard copy Braille.

An example of a centralized transcription service is found in the W. Ross Macdonald School. The W. Ross Macdonald School provides alternate formats for postsecondary students with print disabilities in Ontario. The school, which first opened in 1872, offers a full range of educational services, in accordance with Ministry of Education curriculum guidelines, to students who are blind or visually impaired. Since 1983, the School has coordinated the transcription of postsecondary textbooks into formats including audio CD, electronic text, in Braille or in large print. As well, the School has a Resource Library of books that have already been converted to alternate format, which can speed up the time the student is waiting for a particular work considerably. The services provided by the W. Ross Macdonald School are funded by the Government of Ontario.

While a student is waiting for a book to be transcribed, the Kurzweil 3000 machine, if available, can assist them in keeping up with their readings. The Kurzweil 3000 is a visual scanning and reading aid for learning disabled students.³ This is a product which is commercially available. As Heather Cross explains, material can be scanned and downloaded onto a disk in the form of e-text. It is also possible to email the material to the

² Source: <http://www.daisy.org/publications/guidelines/sg-daisy3/principles.htm>. Please see www.daisy.org for information on DAISY and the DAISY standard.

³ For more information on the Kurzweil 3000 Assistive Technology Software, please visit www.kurzweiledu.com.

student as an attachment. While some universities may scan the entire book for a student, others, such as Carleton University, do not. Instead, just enough is scanned so that students are able to keep up with their readings until the transcribed textbook has been received from the W. Ross Macdonald School.

The type and level of service provided varies from province to province.

2.0 Accommodations Which Currently Cannot be Provided and Other Restrictions

Although many alternate formats are available for perceptually disabled students, not all are exempt under Section 32 (1) of the Copyright Act. Certain formats, such as large print books, are excluded from the Act. For the most part, however, alternate formats of Canadian materials remain commercially unavailable. In any given year, a mere 10 unabridged titles may be printed in an accessible format from Canadian publishers. In the year 2000, for example, out of the 814 commercial audio books produced by Canadian publishers, only 5 were unabridged.⁴

Electronic media works are another area of concern. Media works are tools of culture and communication, which allow people to receive, process and disseminate information. Students with perceptual disabilities, however, will be unable to process these works if they are not in a format that the students can understand. One concern includes videotapes without captioning. The Copyright Act does not give institutions the right to caption videotapes. Although many videotapes are captioned, some are not. Most educational videotapes are not captioned. If such a tape is used by educational institutions in lectures, workshops and presentations, the perceptually disabled student is placed at a disadvantage. As the Copyright Act expressly forbids the use of sign language to transcribe a cinematographic work, an uncaptioned videotape could be a major concern to a Deaf or hearing-impaired student.

Digital copy protections may also affect the ability of an institution to reproduce a work into a format a student can use. The protections themselves may hinder transcription of a work. Obtaining permission to remove the protections may be time-consuming, thus forcing perceptually disabled students to have to wait an undue length of time for their materials. This dilemma is becoming increasingly prominent as more and more organizations and copyright owners insist on using technological protection measures. Many of those who support technological protection measures have stated that they feel that any attempt to circumvent these technological measures should be prohibited and severely sanctioned. As well, many would expressly forbid the production of circumvention devices. Were these measures to be implemented through changes to the Copyright Act or other legislation, print disabled students would face additional disadvantages within the educational system.⁵

⁴ Source: "Issues and Myths about Library Services for Canadians with a Print Disability," CNIB Library for the Blind. Available at: http://www.cnib.ca/library/advocacy/issues_and_myths.htm

⁵ For a thorough examination of some organizations' views on copyright reform and technological protection measures, I invite the reader to consult "A Compilation of Views on Aspects of Copyright Reform, as submitted in response to the *Consultation Paper on Digital Copyright Issues*," available at: <http://www.carl->

Educational institutions face challenges when they attempt to transcribe a non-Canadian work for a student. Although institutions are not required by law to contact foreign publishers and seek permission to create alternate formats for perceptually disabled students, the practice is often to contact each foreign publisher individually. This can slow the process of transcribing a work into an alternate format considerably. This can affect the amount of time students actually have with the work in a format they can use before tests, assignments and examinations begin. It is not uncommon for a student to wait up to four weeks to receive their copy of the transcribed work.

3.0 Legislative Changes Which Would Benefit Postsecondary Students

In many cases, Section 32 (1) of the Copyright Act is of great benefit to perceptually disabled postsecondary students. However, owing to ever-increasing technological advances and the lack of an exception within Section 32(1) to produce large print books, the Act may actually hinder some students in obtaining the materials they need for their studies. Clearly, changes to the Copyright Act are needed in order for all students to have equitable access to academic materials.

Amendments to legislation take time; however, action is needed now to benefit those students currently completing their studies. Subsection (1) presents the views of several experts in relation to legislation and the needs of the perceptually disabled. Subsection (2) examines a unique initiative of copyright owners and the user community coming together to ensure equitable and prompt access to materials for print disabled students across Canada.

3.1 Some Views

Ross Mutton feels that an exception to cover all technologies, all alternate formats and all methods of production would be most beneficial not just to students with disabilities, but for educational institutions as a whole. In relation to digital copy protections, there needs to be an exception to circumvent for non-infringing purposes these protections on behalf of people with disabilities. The issue of software, such as DAISY technology, which can read books for persons with disabilities, is also an important one. Although such software is not illegal, it is not expressly permitted under current legislation. An exception in the Copyright Act expressly allowing this technology would greatly benefit students. Using sign language to transcribe a work for a student in an educational setting should be expressly permitted. Temporary captioning of videotapes should also be allowed. Mr. Mutton also pointed out that there are other reasons besides the production of alternate format materials that may require the need to circumvent digital protection. This may apply in a case such as archiving, where making a copy from the current digital format is necessary in order to ensure a robust

abrc.ca/projects/copyright/pdf/copyright_reform_views.pdf. Furthermore, while I do not believe that any organization wishes to hinder print disabled students through digital protection measures, I also feel as though not all organizations have thoroughly examined the issues of circumvention devices and reverse engineering from every angle. As evidenced within the report, in certain cases there are legitimate reasons for the use of circumvention devices.

format of digital storage that would survive many generations. Any changes to the Copyright Act should consider these issues, as well.

Mary Anne Epp feels there is a need to provide exceptions that are format neutral in the Copyright Act. All references which currently refer to a type of format should be removed. As well, all alternate formats should be included in the exception. This would very likely reduce the delay students currently experience in receiving services.

Ms. Epp also considers the need for reciprocal international laws in the area of copyright. Only about 20% of the material Canadian students use is, in fact, published in Canada. As it currently stands, the law does not get to the core of the issue. Ideally, international laws would permit free exchange of alternate format materials between countries.

Heather Cross sees a need to amend the Copyright Act in order to provide an exception for the production of large print books. Universities are able to form agreements with Access Copyright in order to work within the limitations of the Act; however, not all Canadians have the means to form an agreement with the organization, and are therefore subject to the restrictions outlined within the Copyright Act.

John Tooth feels the section should be both format neutral and technology neutral.

3.2

The Canadian Association of Educational Resource Centres (CAER) is a group of Production Centres and Resource Libraries, funded by Provincial Ministries, or directly a part of Ministries of Education, which provide alternate format textbooks to elementary, secondary and postsecondary students. CAER materials are able to be loaned to other Educational Resource Centres inter-provincially. This allows students to receive their materials much faster than if an alternate format has to be created from the original format. Alternate resource centres may search the AMICUS database, provided for free by the Library and Archives Canada, for the title of the work they require. If the title in the alternate format required is available from another resource centre, it may be borrowed or leased from that centre. If the title is not available, the resource centre will have to produce the work itself and then post the production to AMICUS so that it may be borrowed in the future. This is also a cost efficient way of using alternate formats, as many can cost upwards of thousands of dollars to initially produce.⁶ Donna Passey estimates the combined savings attributable to CAER's services is between three to four million dollars per year.

In order to make an alternate format, a copy of the text must be obtained by the educational resource centre or institution. The longer a resource centre must wait to receive the material, the longer it takes for the student to receive it. As well, scanning a text and making sure the formatting is correct takes time. One strategy to get around this issue has been the development of a pilot project for an electronic clearinghouse. This involves a contract with publishers, in which CAER members and the CNIB are able to obtain electronic formats of

⁶ Braille can be particularly expensive to produce. One book transcribed in Braille can cost up to \$15 000 to create.

texts, and turn them into readable formats for students. With an electronic copy of the text, production of alternate formats can be much faster. The disc, however, must be an easy format to use and contain the complete information.

Ms. Passey feels the project promotes a sense of goodwill between the publishing and user communities, and that if there is a relationship of trust between CAER and participating publishers, the program will be successful.

Difficulties remain in obtaining discs from publishers. In many cases, books used in Canadian educational institutions are from American publishing companies. In some cases, although the publisher may be operating in Canada, the parent company is based in the United States. American publishers are often hesitant to share their discs, and many will refuse the request for discs altogether. Others will insist contracts be signed stipulating how their disks are to be used. Once again, the need for reciprocal agreements between Canada and the United States is evident. As well, the federal government should encourage acts of goodwill between publishers, both American and Canadian, and institutions such as CAER which facilitate access to resources for print disabled students.

Ms. Passey believes that if individual university producers would produce alternate format books to a common standard, their titles could then be posted to AMICUS and allow other institutions the benefit of sharing more material. This would cut production time and costs even further for all alternate format textbook producers across Canada. More importantly, it would allow producers to provide books in a more timely and efficient manner to students.

4.0 Issues Related to University Accessibility

Legislation and public policy inform Canadian values. Currently, there is a difference between the rhetoric of our values and the reality of our laws. Change must occur at the federal level in order for perceptually disabled students to truly have equitable access in Canadian society. Legislation, however, is not the only matter which requires change. Universities across Canada have inconsistencies when it comes to providing alternate formats for those who require them.

While Mr. Mutton sees the disadvantages facing perceptually disabled students under the Copyright Act to be fairly small, students may be disadvantaged because of delays at the institutional level. This includes some technological problems, such as data projectors not being equipped with captioning technology.⁷

Others, however, feel the problem is more serious. Ms. Epp points to a number of concerns related to accessibility at the institutions themselves. The first is that it often takes time to get educational material transcribed. This can result in students falling behind in their studies. A second issue is that there is an unevenness of service from institution to institution. In some institutions, alternate formats are provided by the school. In others,

⁷ Universities are, however, able to purchase external captioning decoders in order to make the material accessible.

students are required to produce their own alternate formats. This may also take away from valuable study time. Finally, there is an issue of unevenness of quality. Not all institutions are aware of the BANA⁸ and DAISY standards for the production of alternate formats. This may result in poor transcription, or the omission of key information. For example, a transcribed work may not include a description of the diagrams or illustrations which are integral to an understanding of the work.

In Ontario, although the W. Ross MacDonald School for the Blind provides alternate formats and receives provincial funding for doing so, the service can be slow if students are unable to provide their requests for required readings in July or August for courses beginning in the fall. Heather Cross strongly suggests that professors make their course outlines available to students with perceptual disabilities as soon as possible, preferably in June or July.

With the number of sessional lecturers teaching at postsecondary educational institutions increasing, and with sessionals often only being hired a few weeks before a course begins, in many cases it has become impossible for students to submit their requests in time so that they may have their materials ready for them come September. University administrators may wish to reflect on this issue not merely as a matter of concern for print disabled students, but also one of importance for other students and the sessional lecturers themselves. Hiring sessionals should be done several months in advance to a new term starting, so that the sessionals are able to create and provide course outlines to print disabled students as quickly as possible, so that they may receive the full benefit of the texts the instructor has assigned.

Conclusion

The issues surrounding copyright reform and exceptions to the Copyright Act are complex and multifaceted. What remains crystal clear, though, is the need for all Canadians, regardless of ability level, to be able to access the works they need in a format that can use. This is particularly true in educational settings such as postsecondary institutions. Canadian institutions have done an admirable job of working within the confines of the Copyright Act to provide alternate formats for perceptually disabled students, and adaptive technologies have made access to academic resources such as textbooks both easier and faster than ever before.

Still, more must be done in order to ensure equitable treatment for students who require material in an alternate format due to a perceptual disability. Section 32 (1) of the Copyright Act must be changed so that it is format neutral. Technology is changing rapidly. It is important to have legislation that will still be relevant even as technological advances continue, and therefore Section 32(1) of the Copyright Act must be technology neutral. Equitable treatment is not merely a matter of enacting the appropriate legislation. A number of Canadian publishers have shown a willingness to assist organizations in providing efficient and quality alternate formats to perceptually disabled students. It is critical for the

⁸ BANA is the acronym for the Braille Authority of North America.

Canadian community to reach out to their American counterparts to encourage the sharing of material and best practices. By fostering such a relationship, any concerns in the publishing community about the provision of alternate formats to perceptually disabled people in any country can be alleviated. Universities must adopt policies to help perceptually disabled students in their pursuit of academic success. All Canadians should feel that they are able to participate in society to the best of their ability. Equal access should be considered a right, and one of the building blocks towards creating a more inclusive society.

APPENDIX

Persons with Perceptual Disabilities

32. (1) It is not an infringement of copyright for a person, at the request of a person with a perceptual disability, or for a non-profit organization acting for his or her benefit, to

(a) make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;

(b) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or

(c) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

(2) Subsection (1) does not authorize the making of a large print book.

(3) Subsection (1) does not apply where the work or sound recording is commercially available in a format specially designed to meet the needs of any person referred to in that subsection, within the meaning of paragraph (a) of the definition "commercially available".

R.S., 1985, c. C-42, s. 32; R.S., 1985, c. 10 (4th Supp.), s. 7; 1997, c. 24, s. 19.

Room 239, Morisset Hall
65 University Private
Ottawa, Ontario, Canada K1N 9A5
Telephone: 613.562.5385
Facsimile: 613.562.5195
E-mail: carladm@uottawa.ca
Website: www.carl-abrc.ca

President
John Teskey
University of New Brunswick

Executive Director
Timothy Mark



Member Institutions

University of Alberta
University of Calgary
Canada Institute for Scientific and
Technical Information
Dalhousie University
Université Laval
Library of Parliament
McGill University
Memorial University of Newfoundland
University of New Brunswick
Université du Québec à Montréal
University of Regina
Université de Sherbrooke
University of Toronto
University of Waterloo
University of Windsor

University of British Columbia
Carleton University
Concordia University

University of Guelph
Library and Archives Canada
University of Manitoba
McMaster University
Université de Montréal
University of Ottawa
Queen's University
University of Saskatchewan
Simon Fraser University
University of Victoria
University of Western Ontario
York University