
SECTION 12 COPYRIGHT LAW

Objective 12: To highlight key issues of copyright exemption and restriction and to suggest what options are available to address these issues.

Outcome: Summary of current UK Copyright law and exemptions, and how these apply to the production and distribution of accessible curriculum materials for pupils in Scotland and the UK

Summary

- 1) Copyright exemption under the Copyright (Visually Impaired Persons) Act 2002 currently applies to a subset of print-disabled people: people who are visually impaired, who have difficulty holding or turning the pages of a book or who have a physical difficulty focusing or tracking.
- 2) Copyright exemption allows accessible versions of books to be created and shared without needing to obtain permission from the publisher or rightsholder. This has improved availability of accessible materials for pupils with visual impairments who are copyright exempt.
- 3) The needs of those who have difficulty holding or turning the pages of a book are not well served by existing service providers or procedures, even though they are covered by copyright exemption.
- 4) Other print-disabled groups of pupils could benefit from copyright exemption: pupils who are Deaf or hearing impaired; pupils with specific learning difficulties; those with language or communication impairments, autistic spectrum disorder or the majority of the 34,680 pupils in Scotland who had some form of support plan in place in September 2005.
- 5) Copyright exemption appears to be at odds with all other aspects of Disability Discrimination including the Education (Disability Strategies & Pupils' Educational Records) (Scotland) Act 2002, Additional Support for Learning (Scotland) Act 2004, and the Disability Discrimination Act 2005. The Disability Working Group of the Scottish Executive, in mentioning access to print, has drawn attention to the fact that this remains a reserved matter to the UK Parliament.
- 6) There is a strong argument for broadening the groups of pupils that are currently copyright exempt. Since copyright is a reserved matter, this would require legislation at Westminster.
- 7) An alternative approach to dealing with copyright for those pupils who are not copyright exempt is to negotiate amendments to licences held by schools and local authorities with the Copyright Licensing Agency.

Disability Equality Duty and Copyright legislation

The Disability Equality Duty is a duty on public bodies to promote disability equality that came into force in December 2006. There are two duties: a general one and a specific one.

General duty

The general duty applies to all public bodies and covers:

- The need to promote equality of opportunity between disabled persons and other persons.
- The need to eliminate discrimination that is unlawful under the DDA.
- The need to eliminate harassment of disabled persons that is related to their disabilities.
- The need to promote positive attitudes towards disabled persons.
- The need to encourage participation by disabled persons in public life.
- The need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons.

Specific duty

The specific duty applies to certain public bodies (e.g. local authorities, health boards, police authorities, Scottish Ministers, Scottish Arts Council, Scottish Qualifications Authority, SSSC, Audit Scotland, Accounts Commission) and requires them to:

- Produce a disability equality scheme to enable bodies to plan, deliver, evaluate and report on measures to promote disability equality. Bodies must involve disabled people in developing their scheme.
- Produce an action plan to improve equality for disabled people, setting out key targets in employment and service provision, for example.

When applied to education, disability discrimination legislation requires local authorities to "ensure that any information that is important to enable pupils to learn or to be able to participate in school activities can be provided in an alternative form if the pupil may have difficulty reading information provided in standard written form" (Scottish Executive 2002 para. 64).

As discussed in the earlier sections of this report, many children with additional support needs have difficulty reading information provided in standard written form, for many reasons. To meet the obligations of the Disability Equality Duty and provide material in an alternative form, the school or local authority must either be able to purchase or otherwise obtain the learning resources in the particular format required, or, if the resource does not exist in that format, create the alternative format resource 'in house'.

However, such adaptation is illegal under Copyright legislation, for the majority of children who require alternative formats, unless permission is obtained from the publisher or rightsholder.

The Copyright, Designs and Patents Act 1988⁹⁴ restricts copying or adaptation of published works to the owner of the copyright and to licence holders. Most local authorities in Scotland have a 'photocopy' licence with the Copyright Licensing Agency which permits 5% of a work to be copied, but this is clearly insufficient for children with additional support needs who require to read 100% of a textbook.

Copyright (Visually Impaired Persons) Act 2002

Copyright Licensing Agency Photocopy Licence

The CLA Photocopy licence for schools in Scotland⁹⁵ contains a section drawn from the Copyright (Visually Impaired Persons) Act 2002⁹⁶, which states that a local authority in Scotland (the Licensee) can make accessible copies for a student (the Authorised Person) who is 'visually impaired'. (Note also that there are some publications that the CLA licence does not cover – the CLA web site <http://www.cla.co.uk> has a list of exempted works.)

The definition of a "visually impaired person", in accordance with s.31F (9) of the Copyright, Designs and Patents Act 1988 is a pupil:

- (a) who is blind;
- (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;
- (c) who is unable, through physical disability, to hold or manipulate a book; or
- (d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.

An employee of the local authority can therefore legally make and supply an accessible copy of any book or other publication that is covered by the CLA licence, for any pupil who meets the definition above in the local authority without having to ask permission from, or notify, the publisher. If the pupil does not meet the definition, permission must be obtained from the publisher to adapt the book.

Staff, pupils or parents are legally obliged to check whether an accessible copy exists, and if so, buy or obtain it, if possible, before making their own accessible copy.

The definition (d) above is likely to apply to pupils with 'visual dyslexia': for example, those who perceive the text to flicker or move, who have difficulty scanning accurately along the text and moving from line to line, and as a result, who experience headaches and eyestrain when reading for any length of time, because these visual problems are due to difficulties in focussing or tracking.

However, this dispensation does not apply to the majority of pupils who have difficulty with standard written text as a result of:

⁹⁴ Copyright, Designs and Patents Act 1988,
http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm

⁹⁵ CLA Licence applying to Schools of Scottish Councils
<http://www.cla.co.uk/support/schools/index.html>

⁹⁶ Copyright and Visually Impaired Persons Act 2002,
<http://www.opsi.gov.uk/acts/acts2002/20020033.htm>

- learning difficulties (specific or general);
- hearing impairment;
- speech and language difficulties;
- autistic spectrum disorder, for example.

A number of authors have noted that as a result of the restrictions on which disabled people are exempt, copyright exemption law appears itself to discriminate against most groups of disabled pupils.

The 2002 Copyright Act in practice

Earlier sections of this report have noted that:

- staff in schools spend considerable time and effort writing to publishers and rights holders to request permission to adapt books and learning materials;
- adapted materials cannot be shared (for example, given to another school for use by a pupil with a print-disability, who is not covered by the 2002 VIP Act) without obtaining permission again from the rights holder;
- services and agencies (such as local authority visual impairment or sensory services) who have already produced adapted materials cannot legally provide materials to pupils who could benefit from them and who are not covered by the 2002 VIP Act – it is legal for a Sensory Service to create materials for a visually impaired pupil, but illegal to give those same materials to a child with a hearing impairment, for example;
- there is widespread confusion in schools and local authorities regarding what can be adapted and for whom; for example most staff in schools are not aware that they can share adapted resources for pupils who are covered by the VIP 2002 act;
- most pupils with additional support needs are not able to access learning resources in accessible formats.

Copyright Licensing Agency ‘VIP’ licence

As discussed above, the standard CLA photocopy licence permits materials to be adapted and provided across a local authority for children covered by the 2002 VIP act, but wider dissemination (i.e. outwith the local authority) is not permitted under that licence. CLA has another licence available to ‘Approved Bodies’ (educational establishments or not-for-profit bodies) which “is specifically designed for those not-for-profit bodies who make accessible editions for circulation outside their organisation.”⁹⁷ This free CLA ‘VIP’ licence⁹⁸ permits an agency to create an accessible version of a resource and to distribute the copy to pupils covered by the 2002 act. The licence allows the organisation to “make a charge for the supply of the copy no greater than the cost of production”. The Approved Body is obliged to check to establish if a suitable accessible version is commercially available and if so, is not permitted to create another one. The VIP licence requires the Approved Body to ‘notify’ the publisher or rightsholder that an

⁹⁷ CLA VIP Licensing Scheme: Guidelines For Licensees, www.cla.co.uk/licensing/CLA%20VI%20guidelines.doc

⁹⁸ CLA VIP Licence, www.cla.co.uk/licensing/FINALVIP-Licence-29-10-03.pdf

accessible copy has been created, and this is achieved by reporting the copy on Revealweb (www.Revealweb.org.uk).

Revealweb is an online database of accessible books and resources. By registering an accessible copy on the web site, other Approved Bodies and individuals covered by the 2002 VIP act can then locate resources. Revealweb lists over 100,000 titles in alternative formats available from 146 sources in the UK. The majority of the titles are in formats for blind and partially sighted people and most of the Approved Bodies will only supply to people who are visually impaired (see Section 7). Revealweb is supported and managed by The Royal National Institute of the Blind (RNIB) and National Library for the Blind (NLB), and is funded by The Department of Culture, Media and Sport (DCMS); Resource, the council of museums, libraries and archives; The British Library Co-operation and Partnership Programme; The Lloyds TSB Foundation; The Ellerman Foundation; RNIB and the NLB.

What might be done to address restrictions

This short section is intended as a lead-in to Sections 13 and 14 of the Books for All report. It describes briefly some practical steps that could be taken to address limitations imposed by copyright exemption introduced under the 2002 Copyright VIP act.

Raise awareness of existing copyright exemption

It would be helpful to raise awareness of copyright exemption and the fact that it applies not just to pupils who have difficulty seeing print. Throughout the period in which we have carried out the Books for All project we have, with one exception, noted a complete lack of awareness about who the current copyright exemption legislation applies to and who is not exempt. For example:

- Major voluntary organisations that work with people who cannot hold books or turn pages are unaware that copyright exemption applies to them.
- Staff at all levels of local authorities – from senior management to classroom assistants – if they are aware of the act, believe it applies only to visually impaired pupils.
- All local authority transcription services and producers of materials in alternative formats should be encouraged to take out a free CLA VIP licence. Local authorities and school-based VI transcription services mostly do not hold a CLA VIP licence. This means that the materials they produce can be used only by pupils in their local authority. Pupils in other authorities cannot benefit.
- Many VI services are unaware of the need to, and do not check Revealweb for the availability of materials before they produce them.
- Those VI services that do produce materials generally do not notify Revealweb, therefore if another service were to check for availability they would not be found. While this is not breaking the law, and it could be argued the materials would be of limited value outside Scottish education so not worth posting information about them on a UK site, it does mean that the same materials can be produced several times over: an inefficient use of resources.

Extend copyright exemption

The single most important step that could be taken to improve accessibility to print materials for those who are not visually impaired is to extend copyright exemption to the wider group of print disabled people. By extending exemption copyright legislation would reflect other disability legislation in the UK.

Such a step would come under disability discrimination legislation, which is a policy matter reserved to the UK Westminster Parliament; neither the Scottish Executive nor local authorities can progress on their own. Nonetheless the Scottish Executive could raise this matter within Westminster.

Produce accessible resources more efficiently

One of the most time-consuming parts of the process of creating accessible books is that of scanning the material into the computer. Some publishers (e.g. Harcourt, OUP, Leckie and Leckie) are able and willing to provide digital versions of the material (usually in PDF) where files exist. However, traditionally, printers rather than publishers keep PDF files of materials and sometimes it can be difficult or costly to obtain these files.

A number of steps are currently being taken by the Museums, Libraries and Archives (MLA) Council (see Section 13) and RNIB to encourage publishers and others to create a repository of digital source files which could then be accessed in appropriate formats. Any service development in Scotland should have regard to the future potential of these new arrangements and in particular they should not be limited only to people who are visually impaired.

Negotiate licences with publishers through CLA

Although the Copyright (Visually Impaired Persons) Act 2002 restricts the creation and distribution of accessible learning resources, the limitations can be addressed by responsible bodies by requesting permission from publishers and rightsholders to adapt materials for pupils who cannot use standard texts and who are not covered by the 2002 exemption.

Typically, permission is requested and granted for adaptation of a book for an individual pupil, leading to duplication of effort for both education staff and publishers: staff all over the country request permission to adapt the same books for different pupils. A more efficient approach would be for local authorities to negotiate licences with publishers, or preferably for COSLA or another body representing education in Scotland to negotiate a licence with CLA that would enable local authorities to meet their obligations under the Disability Equality duties.

The relevant sections of the CLA licences could then apply to all persons with a print disability, not just those covered by the copyright VIP act. The current definition and a possible new wording drawn from a report from the Scottish Executive Disability Working Group are given below.

Currently, the CLA licences allow adaptation of materials for a pupil:

- “who is blind;

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- who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;
 - who is unable, through physical disability, to hold or manipulate a book; or
 - who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.”⁹⁹

A more equitable licence would allow adaptation of materials for pupils who

“cannot obtain access to information in a print format because they:

- are blind or vision impaired;
- have physical disabilities which limit their ability to hold or manipulate information in a printed form;
- have perceptual or other disabilities which limit their ability to follow a line of print or which affect their concentration;
- cannot comprehend information in a print format due to insufficient literacy or language skills.”¹⁰⁰

⁹⁹ Section s.31F (9) of the Copyright, Designs and Patents Act 1988 as amended by the Copyright (Visually Impaired Persons) Act 2002.

¹⁰⁰ Witcher, S. (2006) Report of the Disability Working Group. Scottish Executive. ISBN: 0-7559-5141-7. Available from <http://www.scotland.gov.uk/Publications/2006/10/16092613/0>

