# #1: The *Copyright Act* Demystified for Production of Alternative Format Materials

Presented September 15th, 2018 – Braille Literacy Canada Teleconference

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# #2: About Me

Low vision – but used large print, screen readers, OCR, braille, etc.

Community organizations

- Braille Literacy Canada, Media Access Canada

- Alliance for Equality of Blind Canadians

Lawyer by trade

- Civil and class action litigation

- Human rights (employment, education, discrimination in service provision)

# #3: Purpose and Scope

This presentation aims to provide you with general information about the Copyright Act and implications for the production of alternative format materials

Impetus

Not addressing Marrakesh issues re: international importing/exporting of alternative format materials

Nothing in this presentation should be taken as legal advice pertaining to your specific fact situation. Consult a lawyer if a formal opinion is required.

# #4: Who’s Here?

Individual readers?

Braille transcribers?

Alternative format producers from K-12, colleges, universities?

Parents?

Classroom teachers?

TVIs?

Lawyers?

Publishers?

# #5: Why are you here?

How have you learned about the Copyright Act?

How often do you encounter “problems”?

What challenges have you encountered?

What do you hope to learn today?

# #6: Recent changes to the *Copyright Act*

*Copyright Act* amended in 2016 to implement the Marrakesh Treaty, allowing for easier sharing of alternative format resources across international borders

 Marrakesh is beyond the scope of this presentation

Important change: It is now legal to make large print copies of a book (previously outlawed)

Adapting videos and movies still requires permission of the copyright owner

# #7: Defining “Perceptual Disability”

**perceptual disability** means a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format, and includes such a disability resulting from

(a) severe or total **impairment of sight or hearing** or the inability to focus or move one’s eyes,

(b) the **inability to hold or manipulate a book**, or

(c) an **impairment relating to comprehension**;

# #8: The Perceptual Disability Exemption

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

(a) reproduce a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;

(a.1) fix a performer’s performance of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;

(a.2) reproduce a sound recording, or a fixation of a performer’s performance referred to in paragraph (a.1), 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;

(b.1) provide a person with a perceptual disability with, or provide such a person with access to, a work or other subject-matter to which any of paragraphs (a) to (b) applies, in a format specially designed for persons with a perceptual disability, and do any other act that is necessary for that purpose; 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.

# #9: The Exception to the Perceptual Disability Exemption

“(2) Subsection (1) does not apply if the work or other subject-matter is commercially available … in a format specially designed to meet the needs of the person with a perceptual disability referred to in that subsection.”

- Obligation to determine whether an existing ‘accessible’ copy can be purchased

“**commercially available** means, in relation to a work or other subject-matter,

(a) available on the Canadian market within a reasonable time and for a reasonable price and may be located with reasonable effort, or

(b) for which a licence to reproduce, perform in public or communicate to the public by telecommunication is available from a collective society within a reasonable time and for a reasonable price and may be located with reasonable effort”

- “reasonable price” / “reasonable time”: depends on the circumstances

- “available … in a format … designed to meet the needs of the person”

-- strictly speaking, this is not necessarily the format the person *wants*

-- if reproducing into another ‘accessible’ format, document justification for doing so

# #10: Who is “protected”?

32 (1) It is not an infringement of copyright

 for **a person with a perceptual disability**,

 for **a person acting at the request of such a person** or

 for **a non-profit organization acting for the benefit of such a person** to …

- The end user can make their own ‘accessible’ copies

- Note “acting **at the request of** such a person” vs “acting **for the benefit of** such a person”

-- End user can ask a friend or family member to do it

-- Non-profit organizations could produce, whether or not a specific user has requested

- Uncharted waters when acting ‘at the request’ of an end user

-- Would a ‘person’ include an individual who charges for the service (where they are paid not ***for the book*** but ***for the service*** of rendering the book accessible)?

-- Would a ‘person’ include a for-profit entity hired to make an accessible copy at the request of a specific individual?

# #11: “Format specially designed for persons with a perceptual disability”

Clear examples

- braille (paper or hard copy)

- sign language

- DAISY books, Bookshare (sort of)

Fairly clear examples

- PDF or Word document with transcribed book (reformatted with navigation elements added, etc.)

Less clear examples

- Audio books (MP3) – wrap in DAISY?

- Plain text files – use / develop “TEN-like” standard? (http://www.headstar.com/ten/)

- Direct PDF image scans

# #12: A curious provision: Sharing per s. 32(1)(b.1)?

“32 (1) (b.1): It is not an infringement of copyright for a person with a perceptual disability, for a person acting at the request of such a person or for a non-profit organization acting for the benefit of such a person **to provide** a person with a perceptual disability with, **or provide** such a person with **access to, a work** or other subject-matter to which any of paragraphs (a) to (b) applies, **in a format specially designed for persons with a perceptual disability,** and do any other act that is necessary for that purpose”

- Seems to suggest that user A could “provide access to” alternative format materials to user B (without necessarily producing them specifically for user B)

#13: On “One Book, One Copy” Provisions and Requirements to Show “Proof of Purchase”

- *Copyright Act* is silent on preconditions to making an “alternative format” – but since it speaks of reproducing, access to the original content is implied

- *Copyright Act* is silent on preconditions for “providing access to” an alternative format – new section not well understood yet

- Common sense approach, and this is the approach taken by many institutions, would seem to be:

 S*o long as you have (in your possession or control, or access to) the original inaccessible version, you can have (in your possession or control, or access to) an accessible version*

- Assuming purchase is necessary at all, purchasing **any** variety is enough

-- New or used?

-- Print, eBook, Kindle?

#14: On “One Book, One Copy” Provisions and Requirements to Show “Proof of Purchase”

- But this is not how entities are actually behaving

- Bookshare or CELA (formerly the CNIB library): unlimited copies available to patrons on demand (without buying “originals”).

- Alternative Education Resources for Ontario (“AERO”): “Books that are downloaded must be deleted from the storage site at the school and deleted under the student's holdings at the end of the school year.”

- ***On what basis are such “limitations” imposed?!***

- **Impression**: Access Copyright, etc. have layered their own provisions relating to ‘alternative format production’ – could be moot given s. 32

# #15: “Fair use” provisions apply

- If it would be “fair use” for a sighted student making a copy, it’ll be “fair use” for the blind

- Students may need to scan **some** of a book to read it

- This is equivalent to a student photocopying **some** of a book and taking the copies home

- Can keep electronic copies of **some** of a book made this way

- For **entire** books, rely on s. 32 provisions

# #16: Your Nemesis: Testy Publishers

- Often easier to make alternative formats from original electronic source files

-- Publishers often reluctant to provide electronic copies

-- ***Yet they’ll give away free print copies?***

-- Need to educate that accessible copies **will be made**, one way or the other

- Publishers often attempt to impose additional “restrictions”

-- Conditions may be inconsistent or more restrictive than *Copyright Act* entitlements

-- Important that end users stand up for their rights

# #17: Your Nemesis: Testy Professors

- In many cases, individual teachers or professors may *in effect* own the copyright to their own materials (e.g. PowerPoint slides, exam guides)

- As with publishers, some are reluctant to provide electronic copies

- Creates real accessibility barriers if slides cannot be obtained in advance

- Need to educate that accessible copies **will be made**, one way or the other

# #18: It’s Your Turn

- Tricky situations?

- Case examples?

# #19: Conclusion

- An individual with a perceptual disability, where they own or otherwise have (legal) access to inaccessible content, is entitled to have that content made accessible to them

- Copyright holders cannot stop you from making accessible copies

- Virtually no “case law” on any of these provisions

-- Students facing unreasonable restrictions often must accept them, because they do not have months or years to fight a court battle to prove otherwise

- Collective pushback on publishers, professors, etc. imposing additional unreasonable restrictions is needed

# #20: Thank you!

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