

THE PUBLISHERS ASSOCIATION

Consultation on Copyright in the Knowledge Economy European Commission Green Paper

Submission to the Internal Market and Services Directorate
General by the UK Publishers Association

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Executive summary

- We welcome any encouragement for contractual arrangements between rightsholders and users for the implementation of copyright exceptions, but we urge the Commission to avoid any prescriptive regulation or guidelines in this area.
- As a general rule, we believe that regulatory alternatives to existing contracts and licences should only be contemplated if there is clear evidence of market failure.
- Any amendments to existing legislation regarding copyright exceptions should continue to be limited within the Berne Convention three-step test, and where appropriate in line with national concepts such as fair dealing.
- As online access to content is already expanding exponentially through publisher investments, licensing initiatives should be given room to develop according to users' needs, and in line with continuing technological developments.
- We urge the Commission not to disturb the careful balance achieved by the 2001 Directive on Copyright for the limited special case of orphan works, and we support the self-regulatory system of sector-specific codes already recommended by the High Level Expert Group.
- We believe that mandatory provisions requiring that works are made available to people with a reading disability in a particular format would be inflexible as there already exist collective licensing schemes in the UK to increase access to works for visually impaired and dyslexic people.
- We support limited amendments to existing copyright exceptions at Sections 35 and 36 of the UK Copyright, Designs and Patents Act 1988 within the three-step test limitations, in order to allow for distance learning needs, but only to the extent that no licensing scheme exists.
- We do not support more precise rules regarding what acts end users can or cannot do when making use of materials protected by copyright, nor should an exception for user-created content be introduced into the Directive.

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Introduction

The Publishers Association

The UK Publishers Association (the PA) is the leading trade body representing consumer trade, academic and educational publishers in the UK. The UK publishing industry is one of the largest in the EU, and our members represent approximately £4 billion of the £5 billion UK turnover in these sectors. According to a recent survey conducted by the Federation of European Publishers (the FEP), the EU publishing sector employs 123,000 full-time employees and the annual sales revenue of book publishers within the EU and the EEA is approximately €22 billion.

We welcome the opportunity to comment on the Commission's work in this crucial area for the creative industries. We also support and endorse the submission of the FEP, to which we have contributed.

Copyright in the UK Knowledge Economy

The UK knowledge economy was estimated by the recent Gowers Review (www.hm-treasury.gov.uk/gowers_review_index.htm) as constituting 7.3% of the total UK Gross Domestic Product. Publishing is a significant part of this sector. The creative industries represent a significant growth opportunity for the UK economy, as outlined by the UK Government in its *Creative Britain* strategy, which was published in February 2008 (www.culture.gov.uk/reference_library/publications/3572.aspx) and the effective management and exploitation of IP rights in digital content will be an essential element of any such strategy. Technologies such as Automated Content Access Protocol (ACAP) (www.the-acap.org) that can communicate such rights in machine-readable form to web crawlers, and around which fresh business models will be built, need support and encouragement within the regulatory framework.

None of this growth has come about by accident or without considerable energy and investment by creators and the creative industries over recent years. Intellectual property, and copyright in particular, is the essential legal underpinning for this investment and, indeed, for the entire publishing industry: apart from neighbouring rights, such as database rights, it is virtually the only specific legal protection to which publishers have recourse. This means that protection and enforcement of IP rights is inevitably crucial for us, particularly in a digital age which facilitates easy copying and dissemination. The Gowers Review acknowledged this at the outset of its report (paragraph 1.4):

“Ideas are expensive to produce but cheap to copy. The fixed costs of producing knowledge are high... Without protection, others will free ride on the creator's initial investment and sell the invention or creation at much lower cost. If the innovator knows that someone else can do this easily, there will be no financial incentive to innovate in the first place.”

The EU Commission itself acknowledged the importance of copyright in the Information Society Directive of 2001 (recital 9):

“Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. Their protection helps to ensure the maintenance and development of creativity in the

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interests of authors, performers, producers, consumers, culture, industry and the public at large.”

For the same reason, copyright exceptions are equally of concern to publishers, if they have the potential to weaken or lessen the protection for published works. It is essential in the digital age that they should be designed to be balanced in the interests of consumers and society without jeopardising the underlying legal protection for the published works themselves and without opening dangerous or unintended loopholes which may be unfairly exploited. An increasingly important test for balance in copyright exceptions is contained in the Berne Convention three-step test, reproduced verbatim in the Information Society Directive (Article 5.5), which affirms that exceptions should be limited to 1) certain special cases, which 2) do not conflict with normal exploitation of the work, and which 3) do not unreasonably prejudice the interests of the rights holder. In the digital environment, this test is becoming an essential yardstick.

The role of publishers, through investments made at their own risk, is to deliver maximum access to the IP works that they bring to market. Nevertheless, publishers are not averse to the development of appropriate and controlled copyright exceptions to adapt to changing needs and circumstances. It is important to bear in mind that publishers are users too, of each others' products, with permission (for example, in anthologies), and so need to use copyright exceptions themselves in appropriate circumstances. Publishers are also very aware of their own users' needs for easy, cost-effective access to the works they publish, and are constantly looking to develop improved licensing solutions to complement and enhance the limited access rights already given by copyright exceptions. The publishing industry is not about 'locking up' content. Publishers are here to publish: this is what we do.

In our view any workable and fair copyright system must depend on a reasonable balance between rights and exceptions. In the UK's case, this balance has been at the root of copyright protection since the UK's first Copyright Act of 1709, and has survived intact through 300 years of rapid social and technological change, not as an historical legacy but because balance is vital for the system to work, and this need still pertains today. The EU's Charter of Fundamental Rights of 2000 illustrates the same need for balance, in protecting both freedom of information (Article 11) and the right to property (expressly including IP) (Article 17). Clearly both cannot be protected effectively without achieving a balance between the two. In another example, the Green Paper cites the Commission's review of the Single Market, *A Single Market for 21st Century Europe*, of November 2007 as “highlighting the need to promote free movement of knowledge and innovation as the ‘5th Freedom’ in the single market”. It neglects to add that, on the same page, protection for IP rights is specifically referred to as well, including enforcement and awareness of IP rights by small and medium enterprises and action plans against counterfeiting and piracy. The necessary balance between free movement of knowledge and protection of IP rights is only achieved when both are acknowledged and discussed together, since both are vitally important to the single market.

These issues have already been addressed, both at EU and UK level. The 2001 EU Information Society Directive went a long way towards preparing the ground for the digital marketplace and, we believe, struck a fair balance between all stakeholders, after seven years of vigorous lobbying on all sides of the debate. In the UK, the recommendations of the Gowers Review achieved, in our opinion, a similar balance.

We urge the Commission to do all it can to preserve this hard-won balance, so that the copyright protections and exceptions underpinning the knowledge economy may continue to develop as they have so far, in the interests of creators as much as other stakeholders.

Responses to specific questions

1. Should there be encouragement or guidelines for contractual arrangements between rightsholders and users for the implementation of copyright exceptions?

Publishers would welcome any encouragement for such contractual arrangements, which are already widely used in the publishing world, particularly where they offer users a greater or more flexible degree of access than existing copyright exceptions might do on their own. Publishing contracts or licences often have this effect, for the benefit of users. A good recent UK example has been the copyright exception for Visually Impaired People, contained in the Copyright (Visually Impaired Persons) Act of 2002.

In fact there were two exceptions, 1) for the benefit of individual visually impaired people, to make 'accessible' copies themselves, within stated limits, and 2) for the benefit of organisations such as the RNIB (www.rnib.org.uk) acting collectively to make multiple copies for their members. Two important points should be made with reference to these exceptions. Firstly, the second (collective) exception for multiple copies did not come into effect if, and to the extent that, agreed suitable licensing scheme existed. Two licensing schemes have now come into effect, for literary works (operated by the Copyright Licensing Agency (CLA), www.cla.co.uk) and for musical works (operated by the Music Publishers Association (MPA)). Both schemes give greater access and flexibility for users than the statutory exception does itself. Secondly, rights holders are going even further than this, after continuing discussions with visually impaired (and, more recently, dyslexic) people, and are initiating pilot projects for secure access to publishers' digital files as close to publication date as possible, covering both trade and educational titles. A pilot which offers a range of 30 newly published trade titles will shortly go live, with the expectation that these titles will be available in selected Waterstones outlets and other retailers from 2009.

Both pilots are being facilitated by the UK Government's Department of Business, Enterprise and Regulatory Reform (BERR), which has worked effectively to ensure that fair access for all relevant disabled people in the 21st century should be respected, but not at the expense of the creative industries' legitimate need for copyright protection. All those involved in these UK discussions feel this is a good example of how stakeholders, facilitated where necessary by government, can better achieve access through effective licensed arrangements than might be possible under copyright exceptions alone.

It is however important to sound a note of caution about 'guidelines'. In the example above, UK government intervention was helpfully limited to facilitation and validation of existing stakeholder discussions, which led to bilateral agreements in accord with UK government (and EU) policy relating to disabled people. However, prescriptive

regulations (or, even worse, laws) would be likely to have the opposite effect, and we urge the Commission to avoid any temptation to over-legislate in this area. The only example given in the Green Paper of any alleged need to intervene is that of (unidentified) composers, directors, journalists and performers who, it is claimed, argue that they have not received any revenue from the exercise of the new 'making available' right.

Whilst we cannot speak for other industries, in the book publishing industry most author contracts provide reasonable remuneration for all exploitation of their works, including online uses and via the 'making available' right. Revenue attributable to making available might not always be separately identified as such, but it will certainly be included, along with other electronic revenues. Author representative bodies in the UK such as the Society of Authors regularly monitor and inspect publishers' royalty accounting procedures and, where improvements are necessary, make practical proposals for change. We have no evidence that remuneration for the making available right is an issue for authors in the UK.

Finally, the UK and EU are already well supplied with effective contract laws, designed to protect consumers against issues such as unfair contracts, and EU competition laws already protect against anti-competitive behaviour or abuse of dominant positions. There is no evidence that interference with either well-established regime is necessary.

2. Should there be encouragement, guidelines or model licences for contractual arrangements between rightsholders and users on other aspects not covered by copyright exceptions?

See answer to (1) above for our views on the important distinction between encouragement, which is welcome, and formal guidelines, particularly if the latter are to have legislative force. The points made above will apply with even greater force to areas not covered by copyright exceptions, where there is no proven need to disturb existing EU and national contract and competition laws. Article 9 and Recital 40 of the Information Society Directive 2001 provide for promotion and protection of existing contracts or licences, for the very good reason that in most cases these demonstrably work, and very much in the user's interests. As a general rule, we believe that regulatory alternatives to existing contracts and licences should only be contemplated if there is clear evidence of market failure.

Publishers do, of course, provide their own guidelines, for example the PA Code of Practice relating to general contracts between authors and publishers, which is currently under revision in response to changes in the digital environment. Self-regulatory industry guidelines also exist in specific areas such as the needs of visually impaired and disabled people (see Appendix A, which contains the PA's publisher guidelines for meeting permissions requests on behalf of reading impaired people). Model licences are effective when negotiated and discussed fully between stakeholders, but model licences drafted or imposed without full consultation would have limited use, and in our view might actively restrictive innovation to a dangerous extent.

Machine-readable contract and rights information technology which is open-source and interoperable, such as ACAP, is still in the process of development and

negotiation between the stakeholders in the online marketplace, but we believe that such technology will rapidly mature and preclude the need for regulatory intervention in contractual arrangements.

3. Is an approach based on a list of non-mandatory exceptions adequate in the light of evolving Internet technologies and the prevalent economic and social expectations?

At the time of the 2001 Directive this approach was not necessarily the preferred option for rights holders, and we can understand why in retrospect the end result may appear unwieldy, but after seven years of very vigorous lobbying by all stakeholders it seemed the only effective way to provide the necessary flexibility to cover 1) rapidly evolving technologies, and 2) the experience of different member states' national laws and cultures. It also has the advantage of lower costs for enforcement and review via member states' own domestic legislatures and courts. Since the 2001 Directive has only just been fully implemented it is too early to say whether this structure is effective across the expanded EU. However, we are not aware of any objective evidence to date suggesting otherwise.

4. Should certain categories of exceptions be made mandatory to ensure more legal certainty and better protection of beneficiaries of exceptions?

Not in our view, no. Article 5.1, the exception for temporary and transient acts of reproduction, is already mandatory, and we believe has been effectively implemented in all member states, but we can find no other examples of exceptions where mandatory force would in any way provide better protection (the limited effect of the visually impaired exception in the UK, described at (1) above, is a good example). There is also the considerable risk that any mandatory exception would have to incorporate generic terms which would inevitably be interpreted differently, or according to different languages and cultures, in different member states.

5. If so, which ones?

See our response to (4), above.

3.1 Exceptions for libraries and archives

The introductory discussion in this section of the Green Paper raises key issues, helpfully referring to the High Level Expert Group recommendations of 4 June 2008 on digitisation and access as part of the i2010 European Digital Library initiative, and the Memorandum of Understanding under which a wide range of industry and other stakeholder representatives agreed to proceed on a self-regulatory basis, sector by sector, but incorporating common elements such as due diligence for orphan works searches. We have participated fully in the discussions leading up to these recommendations, represented by the FEP, and we urge the Commission to continue to give this approach their full support, particularly since it appears to be making considerable progress in helping stakeholders to identify a welcome degree of common ground.

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We should point out one area of apparent confusion in this section relating to the Google programmes, particularly on pp 8-9 of the Green Paper. The section describing the Google Book Search programme at the third full paragraph of p8 quite rightly describes how this achieves positive results for publishers via an opt-in licensing approach, and many UK publishers are already willingly participating in this programme. However, this opt-in programme is completely different from the Google Library Programme, referred to in the following sentence, which includes the Bodleian Library in the UK (in their case, including public domain works only). The participating libraries in the US, however, are including copyright works held in their collections under assurances from Google that the wholesale copying involved (scanning of whole works) was somehow permissible under US fair use principles. Our US publishing and author colleagues disputed this interpretation of US copyright law, particularly in view of the manifestly commercial nature of Google's activities, and took legal action against Google in the US courts. However, a Settlement for this case has been provisionally agreed subject to Court approval in June 2009 on terms which at first sight seem closer to established industry models.

The reference to Google Book Search on p9 of the consultation document should also be to the Google Library Programme, which is where the area of dispute lay. Publishers are perfectly comfortable with licensed programmes such as Google Book Search, but dispute the legality of opt-out programmes for their copyright works which are launched without consultation.

6. Should the exception for libraries and archives remain unchanged because publishers themselves will develop online access to their catalogues?

Publishers are not of the view that any copyright exception (or any other law) should remain unchanged for ever. In an environment of rapid and continuing development of digital technology, publishers, like everyone else, need practical, balanced, reasonable copyright exceptions which reflect these developments. If amendments to existing laws are needed, publishers (who are users too, as we have already pointed out), need sensible updating revisions which take all stakeholders' needs into account (including, of course, those of rights holders, without whose investment the works concerned would not exist in the first place).

Any such revisions should continue to be limited within the Berne Convention three-step test, and where appropriate, in some member states such as the UK, within national limits such as fair dealing. In the UK, our IP Office, implementing the recommendations of the Gowers Review, is already consulting stakeholders on possible revisions to exceptions for libraries and archives, to allow the amendment of provisions which now seem anomalous, for example the strict analogue copy limits for purposes of archiving or preservation, and the original exclusion of copying film or sound records. Within accepted fair dealing limits, and drafted so as not to impinge on normal commercial exploitation, such updating amendments would be sensible. A draft Statutory Instrument is expected along these lines from the UK IP Office in 2009. A similar agreement relating to multiple copies for preservation purposes has been facilitated by the High Level Expert Group.

Other than in the specific circumstances described above, which are currently being addressed in the UK through the recommendations made in the Gowers Review, we do not see the need to amend the exceptions for libraries since online access to

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material in both publisher and library catalogues is expanding exponentially (see case study 1, below). We estimate that almost 90% of scholarly journals are now available electronically (see the Association of Learned and Professional Society Publishers' publication, *Scholarly Publishing Practice, Third Survey, 2008*, www.alpsp.org). In the near future it is reasonable to suppose that the entire catalogues of academic and reference publishers will be available online to libraries.

Case study 1: Academic publishers – enabling access online

Major academic publishers are now setting up both their frontlist and their active backlist in e-book format. The PA estimates that Taylor and Francis offers over 20,000 e-books, Springer 27,000 and Elsevier 10,000. Further examples of such initiatives are numerous: Elsevier's Science Direct; Wiley InterScience, SpringerLink, Oxford Scholarship Online, Ingenta, mylibrary, JStore, and HighWire. Powerful search and abstract services are also available to libraries through programme such as Thomson ISI, Scopus (Elsevier) and Google Scholar.

Consumer trade publishers are also experimenting with e-book retail models at a rapidly expanding rate (see case studies 2 and 3, below). This trend will gather momentum if allowed to develop, and any blanket exception in favour of libraries risks undermining these innovations.

Case study 2: Trade publishers – developing e-book retail models

Penguin was the first UK publisher to launch an online e-book store in 2001. Penguin has around 1250 e-books available to buy in the UK through its websites and digital delivery supplier Ingrams. Penguin is also in the process of ensuring simultaneous e-book publication on all its frontlist titles. These e-books are available in ePub format, currently compatible with the Sony e-book Reader. Penguin has also been selling e-audio titles through Audible and, shortly, through its own website as well as other e-audio vendors.

Penguin is working with UK libraries to make its digital content available in the same way as its physical product, and is also in discussion with wholesalers to make its catalogue available to the library market.

We recognise that libraries may also wish to make available online their own collections of 'out of print' and orphan works, but we believe, as discussed elsewhere in this submission, that such provision can be achieved through collective licensing solutions without the need for regulation or extending the scope of exceptions.

Case study 3: Trade publishers – digitising and repurposing content

In the UK Dorling Kindersley (DK) has around 800 e-books available for sale. These are provided in PDF format through Business Partners and will soon be available through DK's websites in the US, UK and Canada. DK has been digitising backlist titles since 2003 and now builds digital files of all frontlist titles. In addition content has been re-purposed and published across a range of platforms including in-flight entertainment screens, mobile phones and satellite navigation systems:

- The Eyewitness Top 10 Travel Guides are available through Navteq digital maps for satellite navigation systems.
- Online grocery retailer Ocado is launching a new recipe engine powered by DK's lead cookery title, *The Cooking Book*, enabling shoppers to add the exact ingredient quantities for their recipes to their virtual shopping basket.

7. In order to increase access to works, should publicly accessible libraries, educational establishments, museums and archives enter into licensing schemes with the publishers? Are there examples of successful licensing schemes for online access to library collections?

All academic and research libraries in the UK offer extensive onsite and remote electronic access to their collections to bona-fide users through registration and access technology such as Athens and Shibboleth. In the UK, all 159 higher education institutions benefit from the NESLi2 licences available through the Joint Information Systems Committee Collections (www.nesli2.ac.uk), which are now so pervasive as to amount to a national 'opt-in' provision (see case study 4, below).

Case study 4: NESLi2

NESLi2 is the UK's national initiative for the licensing of electronic journals on behalf of the higher and further education and research communities, 2003-2006. NESLi2 is a product of the JISC and underwritten by the Higher Education Funding Council for England on behalf of the Funding Bodies.

Key features of NESLi2 are as follows:

- Use of the Model NESLi2 Licence for Journals
- A clearly defined list of publishers to seek agreements with, based on feedback from the community
- An independent and experienced Negotiation Agent
- Pre-defined criteria to assist the negotiation process
- Order channels and access routes that support the negotiation process

Most recent surveys demonstrate that researchers have good and improving online access to the resources they need. It is widely accepted there has been a major revolution in provision for users of academic and research libraries since the turn of the century.

Furthermore, any article not available to researchers through their library network can be easily obtained through document delivery services such as those offered by the British Library, either fee-paid for electronic collection via BL Direct, or for a delivery charge only via their library privilege service for research or private study. Many publishers also offer 'pay per view' services directly from their own platforms. Again it is recognised that voluntary collective licensing solutions are needed for out of print and orphan works, but we believe the process of collective negotiation will with time provide the most effective solution. Work in this area is already underway following the European Digital Library High Level Expert Group recommendations in June 2008 and through EU-wide projects such as ARROW.

In addition the UK is a world leader in the availability of electronic and online learning material for schools. This position has been achieved largely through the activity of a thriving open market (see, for example, www.becta.org.uk and case study 5, below).

- 8. Should the scope of the exception for publicly accessible libraries, educational establishments, museums and archives be clarified with respect to:**
- (a) Format shifting;**
 - (b) The number of copies that can be made under the exception;**
 - (c) The scanning of entire collections held by libraries**

There are very important differences between the three issues set out above, and different responses must be given for each. The activities listed under (a) and (b) are already being included in proposals for revised exceptions in the UK, described in our answers to (6) and (7) above, on the basis that the activity concerned would be clearly limited to archival and preservation purposes, and expressly not for wider dissemination, for example via the open Internet.

The Green Paper itself acknowledges that scanning of entire library collections is clearly not permitted under existing EU law without rights holders' consent, and we see no need for further clarification. We strongly agree with the Green Paper's view at p9 that "if this scanning is undertaken by entities and in circumstances not covered in Article 5(2)(c), rightsholders have to give prior permission for such a reproduction to take place. Similarly, making a digitised work available online requires the prior consent of the rightsholder(s)."

We set out our view of the Google Library Programme at 3.1 above.

- 9. Should the law be clarified with respect to whether the scanning of works held in libraries for the purpose of making their content searchable on the Internet goes beyond the scope of current exceptions to copyright?**

No. We believe current EU law is perfectly clear. See our response to (8) above, and also on the Google Library Programme at 3.1 above.

10. Is a further Community Statutory Instrument required to deal with the problem of orphan works, which goes beyond the Commission Recommendation 2006/585/EC of August 2006?

Not in our view, no. The High Level Expert Group's reports of 4 June 2008 clearly recommend a self-regulatory system of sector-specific Codes, via a Memorandum of Understanding, based on certain important common principles, for example due diligence. It is proposed that the sector and national codes should be structured so as to recognise each other on a fully interoperable basis. Publishers were represented on the High Level Expert Group, and support these sensible and practical recommendations. This should preclude any need for a Community Statutory Instrument, or any other EU legislation.

There may appear to be a case for enabling legislation at national level, in some cases, in order to deal with any liability issues which may arise under national law (this has been suggested under UK law, and is the subject of current debate with the UK IP Office, but stakeholders are agreed that any legislation would need to do no more than enable or authorise the self-regulatory system of Codes described above).

11. If so, should this be done by amending the 2001 Directive on Copyright in the Information Society or through a stand-alone instrument?

See our response to (10), above. The 2001 Directive has already gone a long way to harmonising EU copyright law, achieving a fair balance after seven years of unprecedented lobbying by all stakeholders. We urge the Commission not to disturb this careful balance simply to deal with the limited special case of orphan works.

12. How should the cross-border aspects of the orphan works issue be tackled to ensure EU-wide recognition of the solutions adopted in different Member States?

The High Level Expert Group has already provided for this, by recommending mutual recognition by member states of each others' sector-specific Codes, on the basis of interoperability. This process is being supported by the ARROW project, which is gathering evidence on current practice in permissions and rights data issues across the EU. Publishers are actively participating in this project and will support its conclusions.

3.2 People with a disability

Much progress on accessibility is already being made in the UK, where publishers, authors, agents and booksellers have been in positive and fruitful discussions for some time with visually impaired people and their representatives, such as the RNIB. These discussions have helpfully been facilitated by the UK government. We refer to these discussions in our answer to (1) above. Publishers in the UK are also now extending these discussions to include dyslexic people, under general UK and EU disability law, with an important proviso that any exception should be limited to disabilities directly connected to that person's ability to read or access published materials. We believe this is an important proviso – dyslexia is a complex condition, and not all dyslexics have difficulty reading. There are also disabilities not connected

with reading at all, such as physical disabilities of lower limbs which might require wheelchairs, but not special access to books.

The existing CLA and MPA licences for visually impaired people, cited under (1) above, afford significant benefits above and beyond any applicable exception, but the direct digital access which visually impaired users really want requires trusted and secure arrangements which are currently being tested in pilot schemes, as the examples in (1) illustrate.

On the issue of remuneration, which the Green Paper raises, the UK is proceeding on a pragmatic basis. Traditionally, most author/publisher contracts in the UK licensed the publisher to grant permission to blind people to make accessible copies free of charge, but this was before it became clear that visually impaired people preferred direct but secure access to digital files. The discussions surrounding the two pilot projects in the UK have made it clear to all stakeholders that too little is known about actual conversion costs in this process, which may turn out in practice to be considerable. Visually impaired representatives have made it clear that they do not necessarily expect the analogue 'free' system to continue, and are willing to enter into reasonable discussions with rights holders and the UK government about any remuneration which may be feasible. This would probably initially be on a cost recovery basis, but all stakeholders are agreed that this matter needs to be kept under review.

The most recent UK Accessibility Newsletter (Appendix B) contains details of the UK industry's progress to date on issues affecting people with a disability. As has already been noted, Appendix A details the PA's current guidelines on permissions for visually impaired and disabled people. In addition to these resources, the joint PA and TechDis guidelines for obtaining textbooks in alternative formats can be found here www.techdis.ac.uk/getaltformat, and the Publisher Lookup UK website, a tool for signposting information and good practice with regard to accessible documents in an educational context, can be found here: www.publisherlookup.org.uk.

13. Should people with a disability enter into licensing schemes with the publishers in order to increase their access to works? If so, what types of licensing would be most suitable? Are there already licensing schemes in place to increase access to works for the disabled people?

Yes – see details of licensing schemes in the UK set out above, and at (1). See also the PA's guidelines for meeting permissions requests on behalf of reading impaired people at Appendix A.

14. Should there be mandatory provisions that works are made available to people with a disability in a particular format?

Not in our view, no. Mandatory provisions would easily get out of date (unless kept constantly under review). It is important to keep abreast not only of developing technical formats but also the changing needs of the various categories of disabled people. It is difficult to see what mandatory wording would add to the progress already being made, especially in member states such as the UK and Netherlands (this progress is fully described in the FEP response).

15. Should there be a clarification that the current exception benefiting people with a disability applies to disabilities other than visual and hearing disabilities?

We do not believe such a clarification is necessary, or would add anything to the existing generic and clear meaning of the word 'disabled'. In any event, any such intervention would need to be very carefully worded, so that (as is being proposed in the UK) any further disabilities should clearly be limited to those which directly impact on the person's ability to read or access published works (see our response at 3.2 above). In the UK discussions are already taking place between the PA and dyslexics, via BERR and the UK IP Office. It is also likely that the UK IP Office will fit any extension into the existing regime for visually impaired people, so that no exception will apply if and to the extent that a suitable licensing scheme exists.

Generally, on this issue, we support and agree with the FEP and European Blind Union joint proposal for a platform of stakeholders, rather than any attempt to reopen the 2001 Information Society Directive, which we believe would only cause confusion, and add nothing to progress already being made.

16. If so, which other disabilities should be included as relevant for online dissemination of knowledge?

See our response at 3.2 and 15 above. At the time of writing, dyslexia seems a disability with similar characteristics, and in the UK we are discussing possible expansion of the discussions with visually impaired people to accommodate the needs of dyslexics. However, we feel very strongly that the construction of a list of approved disabilities would be extremely unhelpful and inflexible, and would quickly become out of date, as the needs of disabled people, and the technology available to help them, develop. This is something that member states are already obliged to account for, under their existing obligation to disabled people generally.

17. Should national laws clarify that beneficiaries of the exception for people with a disability should not be required to pay remuneration for using a work in order to convert it into an accessible format?

No, since conversion costs might prove to be substantial (see notes on UK pilot schemes at 3.2 above) and there is no reason why publishers alone (as opposed to the state) should be required to shoulder these costs, which are social costs of disability rather than general publishing costs. There are broad social and cultural issues here, which will vary in each member state depending on that member state's approach to disabled people and their needs. This is best left to member states. The UK is discussing these issues as part of the two pilot schemes already described, but all the stakeholders have deliberately left open the issue of remuneration until the scale of the actual costs of conversion becomes more clearly known. It may then be for stakeholders to share such costs, if their budgets will allow, or if not ask their national government to intervene, if subsidy is required.

18. Should Directive 96/9/EC on the legal protection of databases have a specific exception in favour of people with a disability that would apply to both original and *sui generis* databases?

Only if it has the same carefully balanced conditions and provisos as the Information Society Directive, for example regarding lawful access only, the three-step test, restrictions on making available and other digital uses without consent, and reasonable provision for remuneration where applicable. Many databases contain copyright content, and it should remain clear that such content will remain protected by copyright law, irrespective of *sui generis* provisions.

3.3 Teaching and Research

A number of the issues raised in the Green Paper are already being dealt with in the UK through consultation with stakeholders around recommendations from the Gowers Review. Educational and academic publishers, who make up 50% of the PA's membership, are of course fully aware of current changes in technology, and have already adapted their publishing to match. At the time of writing, 15-20% of UK publishers' sales to schools derive from their digital publications (see case study 5, below).

Case study 5: Online learning provisions for schools

The educational publisher Nelson Thornes is the first to provide all its new electronic content online, rather than on CD Rom, and offers a portal providing teaching support, guides and lesson plans which support a large and diverse range of courses set by the Assessment and Qualifications Alliance, the largest of the three English exam boards, at both GCSE and A-level.

In early 2009 Dorling Kindersley will be announcing a partnership with Promethean. This will allow teachers to buy the bestselling Eyewitness children's reference titles in chunked content and use them to create and teach lessons using the latest whiteboard technology.

Hodder Education's e-learning platform Dynamic Learning provides content which is ready to use in virtual learning environments, enabling teachers to create interactive lessons through the Lesson Builder function, and allowing students to personalise the content of their textbooks and resources.

To reflect this, publishers are supporting limited amendments to existing copyright exceptions at sections 35 and 36 of the Copyright, Designs and Patents Act 1988 in order to allow for distance learning needs, and the rise of virtual learning environments (VLEs), interactive whiteboards etc., but only to the extent that no licensing schemes exist (extended licensing schemes are also under discussion). Publishers will support such developments, provided they are kept within the three-step test limitations, preventing any conflict with normal exploitation, and preferably not coming into effect if a licensing scheme is already available (as in the UK). We also need "educational establishments" to be defined narrowly and carefully within Article 5.2 of the Information Society Directive, which provides that such establishments must be limited to publicly accessible establishments which are "not

for direct or indirect commercial advantage”. It is crucially important that a clear distinction should be made between research for teaching and educational purposes and commercial research. Dissemination must be within a secure network, and users must be authorised and monitored within that network, to prevent leakage of copyright material onto the open Internet.

19. Should the scientific and research community enter into licensing schemes with publishers in order to increase access to works for teaching or research purposes? Are there examples of successful licensing schemes enabling online use of works for teaching or research purposes?

As described in our responses to questions (6) and (7) above, there are now numerous and extensive examples of online access to scholarly, academic and educational works for the benefit of researchers and students (see also case study 6, below). According to responses to the recent ALPSP survey of *Scholarly Publishing Practice, Third Survey, 2008*, including publishers accounting for over 90% of articles in scholarly journals, virtually the entire scholarly journal output, especially for scientific, technical and medical publishers, is available on licensed terms that permit use for electronic course packs by educational institutions and use as electronic reserves or for access via VLEs by students on specific courses. The multiplicity of academic e-books available directly from publishers and through aggregators is available on the same terms.

Case study 6: Developing e-book models for higher education

Pearson in the UK are developing a number of online and e-book options including:

Vitalsource – a retail partner aimed directly at students offering e-book versions of over 20 higher education textbooks made available through John Smith's bookstores. E-books are either packaged with the main text or as a stand-alone version. The Vitalsource platform is downloadable and allows students to view their e-book on or offline. The e-book can be highlighted, printed (in part) and allows the student to make notes. Notes and highlights can be shared amongst other students who have also purchased the text.

Custom publishing – Pearson's custom programme enables academics to develop bespoke texts according to their specific teaching requirements. Many customers opt to receive e-book chapters, often packaged with a physical textbook. The e-book chapters are delivered either through a password protected website or a learning management system. The chapters can be combined with the many other online resources Pearson have created to support their texts.

MyLabs – these are web-based interactive learning programmes containing diagnostic assessment material and learning support material including e-book versions of the textbooks that the MyLab supports. MyLabs have been published by Pearson in the UK in accounting, finance, marketing, psychology, and mathematics, with many others in development.

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In the UK, the collective licence recently agreed on behalf of our higher education institutions with the CLA permits the copying of scanned extracts from publications owned by the university for use in course packs and VLEs on an 'opt-out' basis, and the equivalent use of original electronic material on a publisher 'opt-in' basis. To date over 600 publishers have opted-in to this digital licence. An equivalent scanning licence is available to schools from the CLA, and an opt-in digital licence for schools is under discussion with the publishers.

20. Should the teaching and research exception be clarified so as to accommodate modern forms of distance learning?

This is already being discussed in the UK (see 3.3, above). However, there are obvious risks to normal commercial exploitation if care is not taken to define research narrowly so as to exclude commercial research and to keep any proposed clarification within the three-step test. Given the progress already being made in the publishing market, we believe any clarification or alteration of the exception should not come into effect to the extent that a licensing scheme exists.

21. Should there be a clarification that the teaching and research exception covers not only material used in classrooms or educational facilities, but also use of works at home for study?

See 3.3 above. This would also need to be very carefully drafted to avoid confusion with any personal format shifting exception.

22. Should there be mandatory minimum rules as to the length of the excerpts from works which can be reproduced or made available for teaching and research purposes?

We have found previous 'rule of thumb' rules relating to permitted word length to be extremely confusing and unhelpful in the UK, since under UK law fair dealing is as much a matter of *quality* as of quantity, and recent judgements have shown that taking even comparatively short excerpts can still fall outside the fair dealing rules and count as copyright infringement, if a sufficiently "substantial" part is taken without consent. There are certain designated limits remaining in the UK Copyright, Designs and Patents Act 1988 (for example, reprographic copying of up to 1% of certain works by educational establishments under s. 36(2)), although these have often been improved upon in collective licences, for example CLA licences permitting 5% under certain circumstances. We strongly believe that new mandatory rules from the EU Commission relating to the length of excerpts which may be made available under exceptions would only confuse matters more, and would not do justice to the considerable experience built up over many years by national laws.

23. Should there be a mandatory minimum requirement that the exception covers both teaching and research?

Only if it is made clear that commercial research is excluded, but even then any such requirement should be limited to research done by authorised students on recognised

(and supervised) educational courses, as opposed to the so-called ‘research’ done by the public on the open internet, which could mean anything.

3.4 User-created content

Although the Gowers Review did indeed call for an exception for creative, transformative or derivative works as one of its 54 recommendations, this was clearly to be within the parameters of the Berne three-step test. We doubt very much whether such a US fair use style exception, coming from a jurisdiction with a very different language and jurisprudence from that of either the EU or indeed the UK, could be introduced into EU law, without the potential for serious damage to the legitimate interests of rightsholders. The evidence cited by the Gowers Review for such a recommendation was distinctly limited, depending on the sole example of hip hop music. Although the Green Paper refers to “calls” (plural) for such an exception, it also provides no evidence of any other calls than the sole Gowers example of hip hop. We are not aware of any evidence in the publishing world ourselves, certainly no evidence which might justify any broadly-based exception in terms which are bound to become the basis of dispute and litigation across a whole range of creative industries.

The Green Paper alleges that current copyright requirements for prior permission “can be perceived as a barrier to innovation”, without any mention of current industry progress towards increasingly prompt and user-friendly access via rights management technologies such as ACAP, or indeed of the High Level Expert Group’s recent recommendations relating to orphan and out of print works, all of which are actively reducing this “perceived” problem. There is every sign that market solutions are well under way here, which would remove any need for Commission intervention.

Finally, the suggestions that user created content could legitimately be included under Articles 5(3)(d) and 5(3)(k), dealing with the very different and distinct areas of criticism and review, and caricature, parody and pastiche respectively, would involve significant, illogical and unjustified extensions to the accepted language and meaning of current exceptions. In our view these would fall well outside the Berne Convention three-step test and be highly detrimental to the legitimate interests of rightsholders, without meeting any evidence of consumer need.

24. Should there be more precise rules regarding what acts end users can or cannot do when making use of materials protected by copyright?

Not in our view, no. The 2001 Information Society Directive went a very long way towards harmonising EU rules relating to permitted copyright uses, itself implementing the WIPO Copyright Treaty of 1996. In the process, a crucial balance between the interests of all stakeholders was achieved. The Directive is still in the process of being effectively implemented across the EU and there is no evidence that further or different rules are necessary. Evidence of flexibility under existing rules is already emerging from some member states (see the FEP submission for references to Germany and France), and we strongly believe that EU law, harmonised recently after so many years of consultation and compromise on all sides, already has the flexibility to deal with any perceived problems.

25. Should an exception for user-created content be introduced into the Directive?

No, emphatically not. We believe very strongly that there is no proven need for any such exception and that if it were introduced it would almost inevitably lead to further uncertainty. Users who create their own original content already have the benefit of copyright protection for that content, under existing EU copyright law, even if they are creating adaptations of existing works. However, there is a significant difference between original content which is truly 'user-created' and non-original uses or linkages, particularly if made for commercial purposes by third party entrepreneurs such as ISPs or search engines. There is a risk that such non-original content may amount to little more than purely derivative uses of other people's content without consent, which would not in any way justify the protection of an EU copyright exception. In our view, such merely 'user-generated' content would clearly fall outside the Berne Convention three-step test, particularly in jeopardising normal exploitation of the copyright works concerned.

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Appendix A: Publisher guidelines for meeting permissions requests on behalf of reading impaired people

September 2007

These Guidelines have been developed by The Publishers Association after extensive consultation to assist publishers in responding effectively to requests on behalf of people with reading impairments, particularly visually impaired people (referred to throughout as VIPs), in order to facilitate access to their material. It is the intention that these Guidelines can be refined and improved over time, and any comment or suggestion should be sent to Graham Taylor at the PA (gtaylor@publishers.org.uk).

The Guidelines derive from an initiative by the copyright committee of the academic and professional division, and thanks are due for their input, especially to Clare Hodder, Kevin Taylor, and Hugh Jones. Thanks are also due for valuable input from Alistair McNaught, TechDis Senior Advisor and to colleagues from RNIB. These Guidelines are offered as suggestions for good practice and do not constitute legal advice.

This guidance falls into two sections:

- Specific detailed guidance on granting permissions to visually impaired people, for whom the law offers significant accommodations.
- More general guidance on maximising the accessibility of digital versions of text for the benefit of all users with reading impairment.

Guidelines for granting permissions to visually impaired people in the UK (and others who have difficulty accessing text)

Publishers and Disabled People

Under the Disability Discrimination Act 1995, it is illegal for ‘service providers’ to discriminate against disabled people (including visually impaired people (VIPs)). The legislation is mainly aimed at libraries, schools, shops, restaurants and hotels, but ‘service providers’ probably includes those who provide goods as well as services to the public, i.e. publishers of either printed or electronic books or electronic services such as websites.

‘Discriminating’ is widely defined as “treating less favourably”, or failing to make “reasonable adjustments” to account for the disability concerned. If necessary, a service provider must now provide “a reasonable alternative method” of making its services available to disabled people where a physical feature makes it impossible or unreasonably difficult for them to use them. Publishers are not required to produce Braille or talking book editions of every book published, but may rely on, for example, a reasonably accessible licensing scheme.

Copyright (Visually Impaired Persons) Act 2002

VIPs now benefit from a copyright exception under the Copyright (Visually Impaired Persons) Act 2002. The Act in fact provides two different exceptions with slightly different conditions, as follows:

1. Single copies for personal use

Individual VIPs may make, free of charge, single ‘accessible copies’ in other formats, such as Braille or for adapted computer use, for their own personal use, or they may ask others (such as teachers or librarians) to make such copies for them, without infringing copyright, provided that:

- The copies are made from lawfully acquired originals, are not adapted unnecessarily and are not passed on to others.
- The copies are accompanied by a statement that they are made under the Act, and carry a sufficient acknowledgment.

This means that individual VIPs, or those acting for them, no longer need to seek permission to make single copies for personal use. This applies to commercially published literary, dramatic, musical or artistic works and to published editions (i.e. typographical copyright), but it does *not* apply to recorded performances or databases.

2. Multiple copies for collective use

Organisations such as the RNIB may make multiple copies for their members of the same copyright works if both of the provisos set out above are complied with, but *only* provided that no licensing scheme exists. In fact, a Copyright Licensing Agency (CLA) licence is now available, so organisations wishing to make multiple copies still need to seek permission, ideally via the CLA licence. Any copies made under this exception must incorporate any (or equally effective) copy-protection applied to the original, so far as reasonably practicable, unless agreed otherwise.

What this means in practice

1. An individual VIP seeking to make a single copy for personal use does not now need to ask permission at all, provided the above conditions are complied with. However, if a VIP (or teacher, librarian etc. acting on the VIP's behalf) does ask for permission, a publisher may wish to issue a free licence so that they have a record of the use, or if the VIP specifically requests such a document for their own records. This need only be a very simple document confirming that the VIP has the right to make a copy and listing the above conditions.
2. Organisations seeking to make multiple copies still need a licence to do so, and should be referred to the CLA (whose address is: Saffron House, 6-10 Kirby Street, London EC1N 8TS: <http://www.cla.co.uk/>).

Access to Digital Files – a Feasibility Study

As a result of discussions chaired by the DTI and involving RNIB, NLB, publishers and relevant trade associations, a Scoping Project began in 2006 to investigate the potential for bringing about a significant increase in accessible book products for VIPs.

Central to the project is investigation of the extent to which published material can be made available in digital form, then converted and processed into large print, Braille and audio products. Investigations will include looking at the feasibility of bringing these accessible products into mainstream bookshops as well as through existing distribution methods and new online services. The project involves a wide range of stakeholders and interests.

The project is being led by RNIB, who are the project sponsor, and managed by an independent project manager. A steering group with broad representation and chaired by DTI has been established along with a smaller project management team with representatives from the Publishers Licensing Society, The Booksellers Association, Book Industry Communication and RNIB. These representatives are co-ordinating the input required from other organisations and individuals. The Feasibility Project will report in March 2007 and whatever it recommends will be subject to wider consultation and approval before subsequent implementation of recommendations.

Good Practice in Responding to a Permissions Request for Visually Impaired Use

Remember that if the applicant is an individual seeking permission to convert a legitimately acquired book to accessible formats by scanning, they have a statutory right to do so anyway (subject to the conditions listed above) and can be told this in a brief e-mail or by way of a simple licence.

Consolidate responses from your company. Try to ensure that everyone in your company knows that permissions requests of this nature should always be forwarded to the same department to ensure consistency of approach and careful record keeping. Well-meaning colleagues could easily send out files if they receive a request directly, which could cause complications. It may be helpful to post a clear contact for such requests on your website, with a link to RNIB for further advice.

Respond promptly. You should aim to get back to the applicant as soon as possible to acknowledge receipt and advise next steps. If possible, you should aim to have fulfilled the request within two weeks of receipt, and all the better if you can do so sooner. Remember that learning support departments often have little notice, if any, that they need to prepare materials for someone with a visual impairment. In some cases, students can effectively be denied access to reading materials for weeks after their peers as a result of waiting for files, and in the worst cases don't get access to appropriate materials until after their course has been completed.

Clarify what is being requested and the use to which the material will be put. It's worth doing this straight away to ensure you are providing what is wanted. The applicant does not have a statutory right to obtain an electronic file from you (only to scan from a legitimately acquired original), but in many cases you will be asked for an electronic file to facilitate the end-user's conversion of the book into an appropriate format. Sometimes you may find that you already publish an e-book version of the title in question, in a form that will be of use to the applicant, and in such a case you can simply suggest that they purchase the e-book. And sometimes you will be asked for permission to do things which are covered by a CLA licence - in which case you just need to explain the position to the applicant and point them in the appropriate direction. It's well worth picking up the phone for a discussion with the applicant if the request is at all unclear or you suspect the applicant is asking for the wrong thing or you think you can provide a better alternative.

Always issue an appropriate licence if requested, and especially if you are supplying electronic files. Make it clear that the files are being provided for the sole purpose of making an accessible version of the content for a named visually impaired person for his/her own personal non-commercial use, and for no other purpose. Record details of the licence that has been granted and any files or other materials supplied. Security of files is an issue for publishers. Unfortunately locking up files with technical protection methods often means the file cannot be converted and renders it useless. In most cases therefore files will need to be sent out 'on trust'. A carefully worded

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licence outlining the terms and conditions under which material is being supplied and countersigned by the applicant will help ensure the security of your files. [An example of such a licence is included in Appendix 1.] It is important to record what has been sent out and to whom, so that you are able to track back if any misuse is reported at a later date.

Consider your policy on charging for provision of files. Some publishers issue files or other materials free of charge, others charge a recovery cost or handling fee, often equivalent to the cover price of the printed copy. Some publishers supply material free of charge but require that the applicant has purchased a copy of the book they wish to convert. It is really up to individual publishers to determine what they feel is appropriate. There is no statutory requirement to supply materials free of charge. However, it would not be appropriate to charge over the odds for supply of such material, and the 2002 Act also provides that copies made must not be charged at more than the cost of making and supplying them. Whatever the policy, be very clear about it from the beginning so the applicant knows what to expect. If the applicant is insistent on you providing a file in a format that you have to have specially converted and will incur additional cost, discuss that with the applicant and establish (a) whether it is necessary and (b) if they will accept a share, or the whole, of the additional cost.

You do not need to provide Word files. These are frequently asked for but mostly not necessary. Learning Support Departments can usually convert PDFs into an appropriate format for the end user. If in doubt discuss the specific requirements with the appropriate technical people in your company and those of the applicant.

Try to avoid licensing individuals. It is preferable wherever possible to license an institution or organisation rather than individual students or employees. In this way the institution or organisation takes responsibility for ensuring that the terms of any licence are adhered to and can provide confirmation that the individual is entitled to the licence.

Responding to those who have difficulty accessing text by conventional means

Disability legislation in the UK applies to all those who have a substantial, continuing disability which means they cannot carry out normal day to day activities. This almost certainly includes not being able to access content conventionally. There are many more people in education with these kinds of problems than there are those who are visually impaired and they have the same rights under general disability legislation but they do not benefit from the special copyright exceptions for visually impaired people set out in the Copyright (Visually Impaired Persons) Act 2002. Applications on behalf of these users should still be treated in a way that does not discriminate against them, although this may include access to reasonable alternatives, such as a licensing scheme.

Maximising the accessibility benefits of digital text

[We are grateful to the TechDis service for supplying the text for this section.]

Accessible texts – who are they for?

Traditional paper-based publishing can create problems, in terms of accessing the educational content, for a wide range of people. For example:

- Many readers struggle to effectively skim read written materials for key words or concepts.
- Many readers, particularly older or disabled readers, have difficulties with font style, size or contrast, making the text hard to ‘see’ and difficult to read.
- Many dyslexic readers can ‘see’ text but have difficulties in processing its meaning.
- Some readers have too little vision to see text.
- Some readers with motor control issues may have difficulties in handling a book or turning pages.

For all these groups the most significant drawback of traditional publishing is the inflexibility of the final medium. By contrast, text in digital form can be displayed in many ways (depending on suitability for the reader) or, if appropriate, read aloud by a software package.

As the implications of the Disability Discrimination Act become more apparent, more learners will be demanding digital versions of books. Tutors, librarians and disability officers will be actively seeking to meet this need. In fact, VIPs represent only 2.8% of disabled people in Higher Education.

Altered Font Size and Style

Many readers – with or without a disability - can benefit from adjusting font size, style and colour contrasts. Those with modest demands can achieve this within existing software (e.g. Adobe® Acrobat Reader) but those with greater needs may need to use screen magnification software.

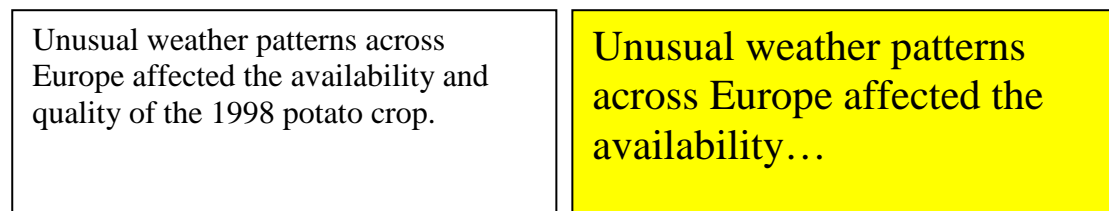


Figure 1 – Electronic versions of text allows user control

Text-to-Speech

A range of users benefit from hearing the text read out to them. Text in digital format can easily be converted to speech using appropriate (and easily available) software. Now that free versions of text-to-speech software are available the demand to have text in a digital format is likely to increase substantially.

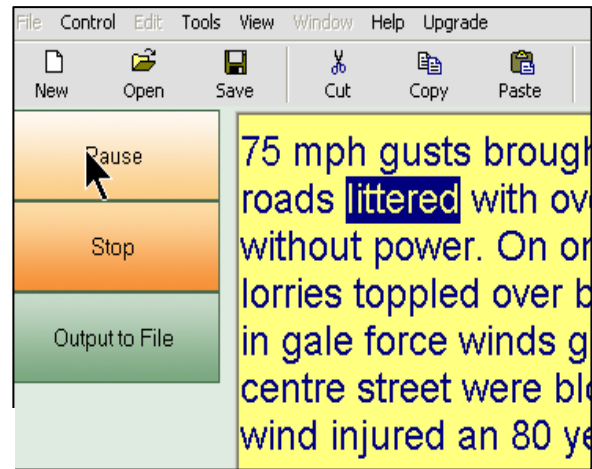


Figure 2
Text-to-speech software can read content aloud to the user

Screen Readers

For some readers with no vision the only realistic option for accessing content is to have an electronic version that can be read by a Screen Reader. A Screen Reader is significantly different from text-to-speech software as it not only has to read the textual content, it also has to provide navigation and structural information. For example, whether a line of text is a structural heading or just a short sentence and, if a heading, whether it is a sub heading or heralds a new chapter. If this vital information is available within the structure of the document it becomes considerably easier for a blind person to visualise the relationships between different concepts.

What formats are accessible?

To be suitable as a medium for VIPs, the format used must be capable of being accessible. The format must also be popular with users and thus easy and familiar to those who will want to use it. Of all the many formats available this limits the candidates to a very familiar list: Microsoft® Word, Rich Text Format and Adobe® PDFs. There is one further format with an international standard called DAISY. This format, becoming popular in the United States and Scandinavia, has very big advantages but is currently far less familiar to UK users.

The importance of structure

Most Screen Reader software will read from a block of text that has no inbuilt 'structure'. This can make it very difficult to understand the result if you cannot see the screen itself. For visually impaired users this lack of 'structure' can necessitate listening to the whole document in order to be sure of the content. For those with other reading difficulties it can present a mass of intimidating text. However, if a document has been created with inbuilt structure (headings, sections and bookmarks), a Screen Reader can interpret the parts of the document for the visually impaired reader. Structure also makes it easier for everyone to scan the publication for the part they want. Once a document has structure this is usually retained when formats are changed, so the earlier in the process this happens the less time it is likely to take to rectify later.

Examples of structured and unstructured documents

Figure 3 shows a structured document in Microsoft® Word. The Document Map has been enabled and is showing the structure of the document in the left hand pane of the screen. The use of the Document Map enables a user to navigate to appropriate sections of the document via a collapsible/expandable menu which hyperlinks to document headings.

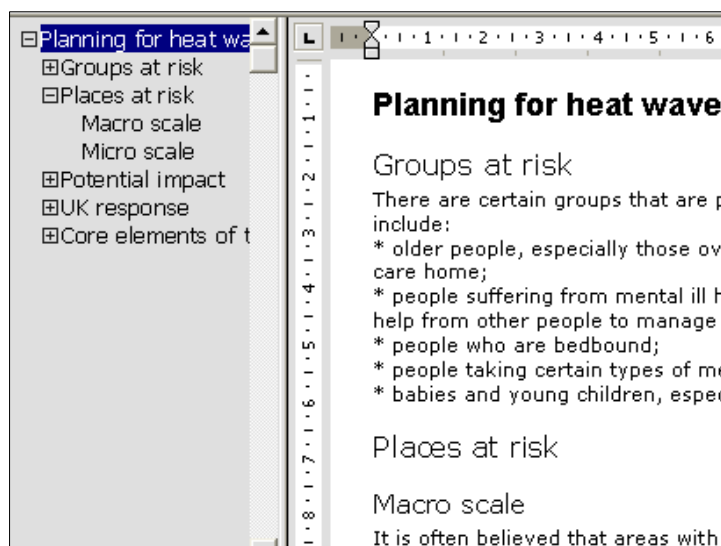
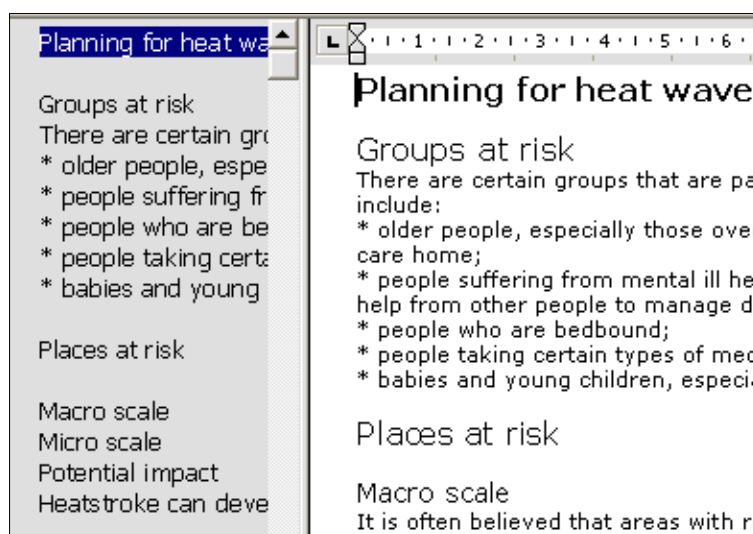


Figure 4 shows the same document in Microsoft® Word. The print versions (right hand side) look identical but, because formatting was used to define headings rather than structural styles, the Document Map cannot create an intelligent collapsible navigation navigable by a Screen Reader.



Where does the structure come from?

Sadly few authors produce documents with inbuilt structure, tending instead to use bold text or enlarged font to define new sections. The importance of effective structure, using inbuilt styles, needs to be emphasised more vigorously in the guidance notes to authors. Alternatively, a reasonable structure can be inserted into a publication at the mark-up stage or by the typesetter if software like Adobe® Acrobat or InDesign® is used.

Where can we start?

Editing

In order to include structure in a publication, information has to be entered at the electronic mark-up or typesetting stages. Information on headings, sections and subsections, footnotes and references has to be identified. This information, the key to making the document accessible, can be added to the other changes that have to be made at this stage.

Images

Images are a particular difficulty for those with visual impairment. An essential part of the structural information of a document is a description of any image. This description is read out to the Screen Reader user. The best person to provide this description is the originator of the document, who will be able to make the description meaningful. (Images tagged as ‘picture of building’ are rarely useful!)

The way forward

By adopting additional procedures in the authoring and editing process, books and publications can be set up with the structure that will make them much more accessible to millions of potential users. Although some areas - for example, mathematical symbols - remain problematical, most documents can be hugely improved to ensure their usefulness and accessibility to new audiences who are increasingly demanding information in digital formats.

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Appendix 1

Sample licence

Dear [NAME]

Re: Provision of electronic files for the Work [TITLE, AUTHOR, ISBN]

The electronic files for the above book (hereinafter termed the Original Files) are being provided in order for you to make the Work available to [STUDENT'S NAME] (hereinafter termed the Student) who is a visually impaired student registered at [INSTITUTION NAME] (hereinafter termed the Institution) in an alternative electronic format suitable for the visually impaired (hereinafter termed Alternative Format). This Alternative Format must have the express purpose of enabling visually impaired persons to have access to a work which would not otherwise be accessible to them. Permission to use the Work named above is subject to the following conditions:

You **MAY**

- Store the Original Files on a computer or electronic device belonging to the Institution, for the purposes of converting the file into an Alternative Format, and making this Alternative Format accessible to the visually impaired Student named above.

The Student **MAY**

- Store the Alternative Format on his/her own computer or electronic device, for personal use.
- Access the Alternative Format on a computer or electronic device belonging to the Institution for personal use, strictly within a secure password-protected Intranet limiting access to the Student only.
- Print or download the contents of the Alternative Format or elements of it, for personal use.

The Alternative Format or the Original Files **MAY NOT** be used for any other purpose, including:

- To download, copy, print, or make available via any method, including use of the world wide web, the Original Files, the Alternative Format or any material contained within either file, **for distribution to third parties** - even for non-commercial purposes.
- Use of either the Original Files or the Alternative Format file for any commercial purpose.
- Making available the Original Files to anyone other than those that need access to them in order to carry out the conversion to the Alternative Format, in particular the Student should not have access to the Original Files.

In addition, the following conditions apply:

- No alteration may be made to the material without our permission, except as required for conversion to the Alternative Format. Delivery and use must be in a format that retains the integrity of the text.

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- An acknowledgement is made to the material as follows: “[author/editor], [title], [year of publication], [publisher - as it appears on our copyright page] reproduced with permission of [PUBLISHER]” prominently on the introductory screen of the Alternative Format.
- This agreement is valid for [TERM]. At the end of this period, all copies of the Original Files held by [Institution] or [Student] should be destroyed, unless you have a specific requirement which means you need to retain them, in which case our further written consent should be obtained. Any Alternative Format created from the Original Files may be retained by [Student] in perpetuity.

This Agreement is subject to payment of a fee equal to the list price of the print edition of the work. In this case, the fee to be charged is [PRICE]. One copy of the attached invoice should be returned with your payment within 30 days.

OR

This Agreement is subject to the purchase of a print edition of the work [optional: “and is not valid until proof of purchase is supplied to us.”]

OR

This Agreement is subject to a fee of [FEE]. One copy of the attached invoice should be returned with your payment within 30 days.

OR

No charge will be made for supply of the Original Files as detailed in this Agreement.

Please note that whilst the author retains copyright in the Work, [PUBLISHER] has the exclusive publishing rights in the Work, and also has copyright in the design, layout and typography. As such, we are entitled to take legal action should illegitimate copies of the work be distributed by yourself or any third party, or should you be found otherwise in breach of our rights.

Any queries relating to this licence should be directed to [PUBLISHER]

[ends]

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Appendix B

Publisher Accessibility Newsletter

Issue 3, October 2008

Welcome, to the second issue of the Publisher Accessibility Newsletter. Inside you will find an overview of current activities in progress – both in the UK and abroad - designed to help publishers meet the precise requirements of people with reading impairments. We hope you will find the information contained in this document both interesting and educational.

This newsletter is produced under the auspices of the **Accessibility Action Group**, which is formed of the following:



THE PUBLISHERS
ASSOCIATION



The Newspaper
Society



ALPSP
www.alpsp.org

And with participation from the Newspaper Publishers Association

UK Activities

Invitation to Tender (ITT) For Accessible Resources Project

You are invited to
tender for an
Accessible
Resources Pilot
sponsored by the



department for
children, schools and families

DCSF. Anyone interested in bidding for the work can do so until **noon on 11 November 2008**. A question and answer page has been set up on teachernet (<http://www.teachernet.gov.uk/wholeschool/sen/arp/>).

The purpose of the work is to develop and test ways of offering text books and other Key Stage 3 and 4 curriculum materials in IT based formats that are accessible to pupils who are visually impaired or dyslexic. This is intended to be a two year project starting early 2009.

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Publisher Lookup UK

This website is a collaborative facility jointly organised by the JISC TechDis service and the Publishers Association. The purpose of the website is to enable educationalists working with disabled learners to get an electronic version of published texts as quickly as possible. Is your publishing company included?



Trade Book Pilot

There will be two marketing pushes in October & November 2008 and also a mailing campaign to those already known to RNIB promoting a set of latest titles available and directing them to RNIB to buy them. This is being timed for Christmas. The major promotion campaign will be in spring with a mix of national and local activity.



New CLA Higher Education e-Licence

From 1st August 2008, the new Copyright Licensing Comprehensive HE License will provide HE institutions with extended rights for the use of digital material. The new license includes photocopying, scanning, and for the first time, copying from electronic publications. This enhanced license means that the universities can make use of their paper and digital holdings for teaching. It also includes enhanced rights to make accessible copies to support visually impaired and dyslexic users. Further details can be found on the CLA website – <http://www.cla.co.uk/news.php?id=60>



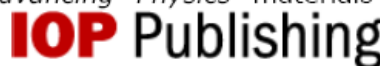
Lightning Source large print

Lightning Source, which won an Innovation Award in 2007 for its large print programme, is still helping publishers make books available in 16 point font size. To discover these titles navigate to the amazon.co.uk website and search for 'large print'.



Advancing Physics

IOP Publishing has been involved in making *Advancing Physics* materials available to a number of schools and colleges with reading impaired students. This generally involves sending them the book electronically in the editable PDF format so that the school and/or student can make changes. The related CDs are already an adaptable resource which is used widely with reading impaired students.



IOP has worked very closely with Dr Chris Stonehouse at the New College Worcester, pioneers in making resources available to



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students with a wide range of impairments and needs. *Advancing Physics* materials are used at the college and the RNIB make the adapted material available to the wider AP community, and Dr Stonehouse is keen to work with other publishers on similar initiatives.

Defining Disability Discrimination – a Judicial Update

The House of Lords, in the recent case of *London Borough of Lewisham v Malcolm* (2008) UKHL 43, has clarified the meaning of “less favourable treatment” in relation to disability discrimination. For actionable “less favourable treatment”, the alleged perpetrator must have known about the disability and used this as a factor in deciding on how to treat the person. It should be noted that the other duties under the Disability Discrimination Act 1995 (such as the requirement to make reasonable adjustments) are independent of this, and still apply. The full text of the decision by the House of Lords is available at:

<http://www.bailii.org/uk/cases/UKHL/2008/43.html>

Becta’s vi-forum

Becta provides the vi-forum discussion list for discussing issues relating to the teaching of students with visual impairments. The list aims to provide an opportunity for teachers and other educational practitioners to discuss issues and provide a practical information-sharing forum. See

<http://lists.becta.org.uk/mailman/listinfo/vi-forum>



International

European Conformity for Accessibility Requirements in Public Procurement of ICT

In 2005 the European Commission mandated a team of specialists to review the feasibility of implementing a set of harmonised accessibility requirements for public procurement of products and services in the ICT domain (European Commission mandate M/376). The report called “Conformity assessment systems and schemes for accessibility requirements” is available on the CEN Website at: <http://www.econformance.eu/euconformacereport.html>

Audiobooks

Publishers Weekly reports that the online audiobook service Simply Audiobooks is to make 5,000 Random House audiobooks available for purchase and download in a format with no digital rights management (DRM). The article says that initially the service will only be available to members of the Simply Audiobooks Download Club but à la carte downloads will be available later in the summer. According to the article Simply Audiobooks has been negotiating the distribution of DRM-free audiobooks with publishers since the autumn of 2007.



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Bringing you the best in fiction, nonfiction & children's books.

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Accessibility in France

In France, the implementation of the Copyright directive in 2006 led to the creation of an exception for disabled people (article 5.3.b of the Directive). The exception to the reproduction and making available rights allows associations representing handicapped people, public libraries, archives as well as documentation and cultural centres to **ask publishers to provide their digital files within a period of 2 years after legal deposit to a one-stop shop (the French National Library) to be accessed by disabled people.** Publishers will not receive any compensation.

The main organisations representing visually impaired people, INJA and BrailleNet have used the **model contract** drawn up in cooperation with the French Publishers Association in 2003. This framework agreement is meant to be an instrument for all publishing houses who received requests to provide digital files for a transcription in Braille or large print.



As the exception only covers recent works, this model contract may still be used for **older works and for cross-border exchanges.** Indeed, when publishers grant world-wide rights via the model contract, this may also allow cross-border exchanges of their files, to the benefit of visually impaired people abroad.

Hong Kong Society for the Blind

The Hong Kong Society for the Blind was founded in 1965 and is a government-subsidised voluntary organisation in Hong Kong that provides services for 75,000 blind and visually impaired people. With a staff of over 500, the society provides rehabilitation, Braille and talking book production, a library, adaptive technology, children, elderly, ophthalmology care and career support.



US Higher Education Act

This Act deals in part with textbooks and other academic books used in education and were passed by both houses of the U.S. Congress on July 31st 2008. Instead of a requirement dealing with access by disabled people which would have required publishers to provide copies in a mandated list of technological media, advisory language was adopted.

BeneTech

The US organisation behind Bookshare.org is looking for a University Program Manager to build a consortium of universities to increase the availability of college textbooks for students with print disabilities. Several universities are said to be ready to

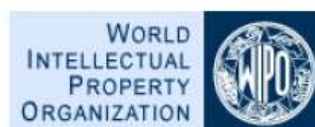


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guide and join this effort, and the appointed person will work with the first university partners to define the program and encourage others to join. Universities in the program will share digital accessible books and encourage their students with print disabilities to become Bookshare.org members. [More Information](#)

WIPO

WIPO has ascertained that more countries do not have any kind of Copyright exceptions for VIPs than countries that do. All countries in Europe have some kind of exception.



Sierra Leone

Sierra Leone has formed a Right to Read national alliance to bring focus onto the VIP community.

Do you know enough about dyslexia?

- Mainly affects development of literacy skills: reading and spelling
- Is characterised by difficulties in processing word-sounds and by weakness in short-term verbal memory
- Can also affect personal organisation, maths, short-term memory and sequencing
- Current evidence suggests that these difficulties arise from inefficiencies in language-processing areas in the left hemisphere of the brain which, in turn, appear to be linked to genetic differences
- Varies in severity and often occurs alongside other specific learning difficulties, such as Dyspraxia or Attention Deficit Disorder, resulting in variation in the degree and nature of individuals' strengths and weaknesses



Ever wonder how your publications sound when read aloud by a computer?

Read the Words.com is a platform that allows users alternative methods to access written information. It began in January to assist students with learning disabilities with their studies, by means of auditory learning and auditory processing. <http://www.readthewords.com>.



Try it yourself and hear how your publications sound! The results may be surprising.

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Accessible resources in universities

The accessibility of many academic resources is assessed by a resource from the Open University. It gives accessibility hints and tips for the 38 online reference databases (e.g. My-i-Library, JSTOR etc) to which the OU subscribes. How does your product stack up against the competition? [More Information](#)

Anecdotally we hear that PDFs, particularly of academic journals, can be inaccessible. A helpful guide to improving the accessibility of your PDFs is available at <http://www.techdis.ac.uk/resources/sites/accessibilityessentials4/index.html>

Accessible PowerPoint guidelines

The World Blind Union have created some helpful guidelines for those wishing to create PowerPoint slides to deliver to audiences that include visually impaired or dyslexic people. For more information on this and to obtain your copy please visit: http://www.pls.org.uk/ngen_public/default.asp?id=154



Expert information

The Journal of Special Educational Needs is published on behalf of Nasen by Wiley-Blackwell. It is a peer-reviewed, international, and established forum for the dissemination of research on special educational needs. See <http://www.blackwellpublishing.com/journal.asp?ref=1471-3802&site=1>. We publish this edition of the newsletter keen to know which publishers and publications will win the 2008 Nasen awards which celebrate inclusive practice, see <http://www.nasen.org.uk/NewsArticleM.asp?id= SX1203-A77FAA47>



Disability law protects disabled learners by requiring the educational institution to make appropriate provision. Copyright law protects publishers from inappropriate copying of textbooks. In most cases the optimum accessibility solution is to obtain the textbook in electronic format.

- *Guide to obtaining textbooks in alternative formats* by JISC TechDis and the Publishers Association



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Dates for your diary



Adaptive Content Processing Conference 2008 (ACP 08) Beurs van Berlage, Amsterdam -6th and 7th November 2008

The ACP 08 conference is jointly hosted by the EUAIN Network, the ProAccess Project, DEDICON and the Federation of Dutch Publishers (NUV) and is held as part of the Amsterdam World Book Capital celebrations.

New technologies are changing the way in which we create, produce and consume content. Over the last few years, the publishing industry in Europe and beyond has been active in responding to the growing demand for more accessible, adaptive content.

RNIB Literacy Conference, November 12 2008, Stockport



The conference, named 'Great Expectations: Pathways to literacy for blind and partially deaf sighted children' will provide an important opportunity to review established policies and practices in the light of new research, changing pupils' needs and developments in technology. [More Information](#)



3-5 December 2008, Birmingham, UK

This is an international conference on tactile diagrams, maps, and pictures. Booking is now open for Tactile Graphics 2008, Please visit the [Booking Information](#) page. Conference booking closes on 10 November 2008.



The **British Education and Training Technology (BETT) Awards** is an annual scheme that highlights exemplar digital products intended for the education marketplace.

The BETT Awards is committed to five key principles one of these includes **rewarding inclusive and accessible designs**. [More Information](#)