

Technical review of draft legislation to amend the exceptions for people with disabilities

Response from LACA: The Libraries and Archives Copyright Alliance

August 2013

Introduction

The Libraries and Archives Copyright Alliance (LACA) is a UK umbrella group convened by CILIP (Chartered Institute of Library and Information Professionals). LACA brings together the UK's major professional organisations and experts representing librarians and archivists to lobby in the UK and Europe about copyright issues which impact delivery of access to knowledge and information by libraries, archives and information services in the digital age¹.

LACA has submitted a large body of evidence to all the UK reviews of Intellectual Property and to EU consultations on copyright over the years to highlight and communicate to policy makers the deficiencies in the current copyright framework in relation to the organisations that it represents.

General Comments

LACA is much encouraged by the draft legislative text supporting a more balanced copyright regime recently published by the Intellectual Property Office. Overall, we believe that the draft regulations will achieve the objectives of extending the existing exceptions for visually impaired people to cover all impairments that prevent a person from accessing and making use of all types of copyright work on an equal basis to non-disabled people.

However, since a great many library and archive users who need to access works in alternative formats suffer from dyslexia, dyspraxia and other learning disabilities, we believe that it should be made absolutely clear that the definition of "disabled people"

¹ www.cilip.org.uk/laca

includes people with these types of impairment. We suggest that the IPO work with the British Dyslexia Association and other similar organisations on this.

We very much welcome the provision that contracts should not undermine this exception, but point out that for disabled people this provision also needs to extend to the functioning of Technological Protection Measures (TPMs) since TPMs are an enormous barrier to access by disabled people to digital works and to the conversion of such materials to alternative (accessible) formats.

LACA notes that the introduction states that the current law on visual impairment allows for the copying of a “book”. This is true, but is not the whole truth. The current law covers the copying of any “literary, dramatic, musical or artistic work”. Furthermore, Schedule 2, uses the word “illicit” when the word “infringing” would be more appropriate in the context of copyright law.

Specific Comments

We have just made responses to questions raised when our response requires a specific comment. Our lack of response to certain questions indicates our general satisfaction with the proposals.

Section 31A: Disabled persons- making copies of copyright works for personal use.

Subsection 1. Does the drafting of this subsection achieve the intended policy aim?

We believe that it does. However, we would suggest that the word “the” should be inserted between the words “person” and “same” in line three of subsection 1[c].

Subsection 3. Are such examples helpful?

We are not sure that this is helpful in that it only cites two examples and, from the perspective of blind people in particular, does not mention the making of Braille copies which are very important as a reading medium for many of them. We strongly suggest that the list of examples should be expanded and, accepting that the list cannot be exhaustive, that the wording of the subsection should be extended to read “The acts authorised by this section include but are not limited to:” Insertion of such wording will help ensure that the list of examples is indeed clearly perceived to be non-exhaustive and will also future-proof the exception against the development of new technologies and formats.

Section 31B: Making Copyright works for disabled persons generally

Subsection 4. Are such examples helpful?

Our comments on Section 31A, Subsection 3 above also apply here except that the reference to “an intermediate copy” is essential and should remain in the text.

Subsections 10 and 11. Are these safeguards acceptable?

We believe they are reasonable in setting out that it is an infringement of copyright for an accessible copy to be used by a non-disabled person or for dealing as set out in subsection 13.

Marrakesh Treaty 2013

We have noted that in your announcement of the publication of this consultation that the IPO is not seeking to implement the Marrakesh Treaty at this time, but that you will bring forward measures to enable its ratification in due course. LACA will of course respond to any forthcoming consultation on such proposed further amendments to copyright legislation to achieve this. However, in the meantime we wish to express our sincere thanks to Ministers and the IPO for their support in securing this ground-breaking treaty, which has so much potential to transform the lives of blind, visually impaired and reading-disabled people worldwide. It is extremely pleasing to note that the UK was one of the 51 initial signatories to the treaty at the close of the Diplomatic Conference on 28th June.