

Print Disability Copyright Guidelines

1: INTRODUCTION

These guidelines were written by the [Australian Copyright Council](#) as part of a project funded by Copyright Agency. We are grateful to those who participated in the project, including representatives of the following organisations:

- Australian Human Rights & Equal Opportunity Commission (HREOC)
- Australian Publishers Association (APA)
- Australian Society of Authors (ASA)
- Blind Citizens Australia
- Deakin University (Learning Services)
- Macquarie Customised Accessibility Services (M-CAS)
- National Information Library Service (NILS) (now part of Vision Australia)
- Royal Blind Society of NSW
- Royal Institute for Deaf & Blind Children
- Royal Society for the Blind.

USING THESE GUIDELINES

1. Except as otherwise indicated, you may print, download and reproduce these guidelines in any format for access by people with disabilities, and communicate the guidelines in any format, provided that:

- you only print, download, reproduce or communicate the whole of the Guidelines or whole Parts;
- you do not make any changes or additions to, or deletions from, the text of the Guidelines or relevant Parts;
- you do not charge any fee for making or supplying copies of the Guidelines or Parts, including copies in accessible formats; and
- all copies are marked with the words “© Australian Copyright Council 2005–2007.
- For all other uses of this material, please [contact](#) the Copyright Council.

This Part provides a brief overview of copyright as it relates to people with a print disability.

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Generally, someone wanting to use copyright material in the ways reserved to the copyright owner needs permission, unless a special exception to infringement applies.

2.1 WHAT MATERIAL IS PROTECTED BY COPYRIGHT?

Only certain categories of material are protected by copyright. These include:

- literary works (this category includes novels, articles, reports, letters, stories, poems, tables of information, compilations and computer software);
- dramatic works (such as plays and screenplays);
- artistic works (including graphs, illustrations and diagrams);
- musical works;
- films (including TV programs); and
- sound recordings.

Copyright does NOT protect the following:

- information or ideas (copyright only protects the work itself, not the ideas or information expressed in the work);
- names, titles or slogans (these things are too “insubstantial” to be regarded as “works”); or
- methods, styles or techniques.

2.2 WHAT ARE THE RIGHTS OF THE COPYRIGHT OWNER?

Copyright owners are generally entitled to control certain uses of their material. In particular, if you are not the copyright owner, you generally need permission to:

- reproduce the material (for example by photocopying, scanning, copying a digital file, printing from a digital file, or making a sound recording of someone reading out the text); or
- communicate the material (this includes transmitting the material electronically, for example by putting it online on the internet or an intranet, emailing a file, faxing, and broadcasting).

2.3 WHEN CAN YOU USE COPYRIGHT MATERIAL WITHOUT PERMISSION?

The Copyright Act sets out some situations in which copyright material can be used without permission. These are known as “exceptions” to infringement. Exceptions apply where the material is being used for particular purposes, but they do not necessarily allow the whole of a work to be used.

In many cases, the exceptions only apply to particular people or organisations. In

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some cases, the person using the material also has administrative obligations (such as keeping records). In some cases, the user is also required to pay for the use.

Exceptions to infringement include:

- fair dealing for research or study
- “format-shifting” books and magazines you own
- copying and communication by “institutions assisting people with a print disability”
- copying and communication by educational institutions
- copying and communication by libraries and archives
- use of copyright material for the services of State, Territory or Commonwealth governments
- a “special case” exception that may apply in some cases where no other exceptions to infringement deal with the situation.

Exceptions that are particularly relevant to people with print disabilities are outlined in these Guidelines, in Parts [3](#), [4](#) and [5](#).

2.4 PERMISSION (LICENCES)

If you want to use copyright material in one of the ways reserved to the copyright owner, and you cannot rely on an exception to infringement, you need to get permission. In legal terms, this permission is called a “licence”. Generally, the copyright owner can give permission. In some situations you can get permission from other people or organisations – a publisher or a copyright collecting society (such as Copyright Agency), for example. Permission can be granted verbally or in writing, and in some cases can be implied, as discussed in the following paragraphs.

A. EXPRESS LICENCES

In some cases, copyright owners expressly grant permission to use their material without users having to contact them. For example, many websites contain statements about what people visiting the site may do with the material, such as “You may download and print one copy, for your reference, of documents available from this site.” Sometimes other material, such as reports or educational books, also contain express licences.

If you want to do something that is outside what is granted by an express licence, you should contact the copyright owner.

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In some cases, there may be a symbol indicating that the item is subject to a “shareware” type licence, such as a “Free for Education” (FfE) or “Creative Commons” licence. The terms and conditions of such licences may be set out in the material, or on a website whose URL is provided.

B. IMPLIED PERMISSION

An implied licence (or permission) must be so obvious that it goes without saying that you may use the material without express permission. For example, if a PDF file is provided on a website without any access protection or copy protection, you would generally have implied permission to download it and make an accessible copy for your own personal use. The implied licence would not necessarily give you permission to make more copies than you need in order to access the file, nor to make copies for others, nor to “communicate” the file (for example, by emailing it or putting it on another website).

You cannot rely on an implied licence if:

- there is an express statement to the contrary (even if there otherwise appears to be an implied licence);
- you have made an agreement not to use the material in the particular way; or
- the material you want to use is an infringing copy.

2.5 “TECHNOLOGICAL PROTECTION MEASURES” (TPMS)

TPMs are technological methods designed to prevent people from infringing copyright in material in digital form. A TPM does this by either preventing unauthorised access (“access-control” TPMs) or preventing unauthorised use such as copying (“copy-control” TPMs).

In some cases, software is available that enables you to “circumvent” TPMs. Generally, people who make and/or supply such software are liable for civil and criminal penalties under the Copyright Act. There are penalties for:

- circumventing an access-control TPM (except in the circumstances set out below);
- manufacturing or supplying a device to circumvent a TPM; and
- providing a service to circumvent a TPM.

There are some “permitted purposes” for which a person may circumvent an access-control TPM to get access to copyright content. These include:

- access to copyright material by libraries, archives and educational institutions in order to make an acquisition decision, where the material is not available in unprotected form;
- reproduction or communication by educational institutions of literary, dramatic and artistic works and print music in electronic form, under the educational provisions of the Copyright Act;
- reproduction or communication by print disability institutions of literary or dramatic works under the print disability provisions of the Copyright Act; and
- reproduction and communication of material by libraries under certain of the library provisions of the Copyright Act.

2.6 MORAL RIGHTS

Creators (writers and composers, for instance) have rights in relation to their work even when they do not own copyright in it. Generally, even if you have permission from the copyright owner to use a work (or an exception to infringement applies), you are still obliged to respect the creators’ moral rights. You can usually fulfil this obligation by making sure that creators are properly attributed, and that if you make changes to material you are using (for example, inserting a verbal description of a diagram), the changes do not distort the meaning or effect of the work.

2.7 COPYRIGHT AND THE DISABILITY DISCRIMINATION ACT

The Disability Discrimination Act 1992 (Cth) (DDA) prohibits discrimination in (among other things) the provision of goods or services on the basis of disability, unless non-discriminatory action would impose unjustifiable hardship on the provider of goods or services.

In some circumstances, the DDA may require organisations to make certain publications available in a form accessible to people with a print disability. For example, educational institutions may be required to provide course material in accessible forms.

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For information on the requirements, see

http://www.hreoc.gov.au/disability_rights/education/education.html.

The DDA does not override copyright owners' rights to control certain uses of their material, and does not generally require publishers to make books or other materials available in accessible formats. Organisations (including educational institutions) that need to make copies in accessible formats must rely on specific exceptions to infringement or get permission from copyright owners.

3: INDIVIDUALS WITH A PRINT DISABILITY

This Part sets out what individuals with a print disability can do under Australian law without permission. If you are not familiar with copyright, you should first read [Part 2](#). Following amendments to the Copyright Act in 2006, there are now some situations in which individuals with a print disability may make copies in order to access material.

Also, some publishers have agreed to grant the Individuals Print Disability Licence in relation to some or all of their books. Check the Licence to see which publishers are listed, and what you can do under the Licence.

3.1 WHAT YOU CAN DO UNDER THE COPYRIGHT ACT

A. “FORMAT SHIFT” BOOKS, NEWSPAPERS AND MAGAZINES YOU OWN

Following amendments to the Copyright Act which came into force on 1 December 2006, a new exception to infringement allows you to make a single copy of a book, newspaper or periodical publication in a different format for your personal use, provided you own the original published copy. The new provision does not apply if you have already made a copy in that format.

If you make a copy in an accessible format relying on this exception, you must not do any of the following:

- sell, rent or distribute the copy (to anyone other than members of your family or household);
- make a copy for anyone else; or
- dispose of the original to another person.

If you need to get someone else to make the accessible-format copy for you (for example, because you do not have sufficient vision to scan the pages), you may be able to rely on the new “special case” exception (see 3.1c. Where no other exception applies ..., below).

B. COPY BOOKS, SOUND RECORDINGS AND OTHER MATERIAL AS A FAIR DEALING FOR RESEARCH OR STUDY

You can make a copy of all or part of any kind of material in a form you can access, if it is a “fair dealing for the purpose of research or study”. You do not need to be enrolled in a course – you could be researching or studying something for your own interest.

Generally, this means that if you need material for research or study and it is not available in a format you can access, you can make a copy of it in the format you need.

You can't rely on this exception if your purpose in using the material is not genuinely for research or study. Nor can you rely on this exception if your use of the material is not “fair”. The dealing will not be fair if it unduly prejudices the rights of the copyright owner. However, it is always considered “fair” to copy up to 10% or one chapter of a book for the purpose of research or study.

It would not be a fair dealing for research or study to copy more than 10% or one chapter of a book if:

- you could buy or license a copy in a format you can use;
- you are making the copy for a purpose other than research or study; or
- in some cases, if you are copying from an infringing or pirate copy (there may be some exceptions to this: if you want to copy from an infringing copy, seek legal advice).

We consider that you could get someone else to make a copy for you as your agent and communicate that copy to you (for example, by emailing it to you), where you need the material as a fair dealing for research or study. The person who makes the copy must not charge more than the cost of making it. If he or she communicates the copy (for example by email), he or she should delete the email and any extra digital copies that were made, once you have received the copy.

Note: The Copyright Act does not make it clear whether you can get someone else to copy for you in these circumstances, and other interpretations are possible. However, our interpretation is consistent with court decisions in other countries, including New Zealand.

C. WHERE NO OTHER EXCEPTION APPLIES, RELY ON THE “SPECIAL CASE” OR “FLEXIBLE DEALING” EXCEPTION FOR PEOPLE WITH DISABILITIES

A new “special case” exception for people with disabilities (also known as the “flexible dealing” exception) came into effect on 1 January 2007. If an individual has a disability that causes him or her “difficulty in reading, viewing or hearing” copyright material, that person, or someone acting on his or her behalf, may do what is necessary for the person to obtain a copy “in another form, or with a feature, that reduces the difficulty”.

The “special case” exception does not apply if any other provision of the Copyright Act applies (or would apply if the conditions were met).

When is the exception available?

The new exception may help you if you have a disability and:

- you don’t own a copy of the material you want to copy into an accessible format; or
- you own a copy of the material, but cannot copy it into an accessible format yourself; and
- you want the copy for purposes other than research or study.

In these circumstances, provided you meet the conditions outlined below, you may be able to rely on the new exception to copy the material into a format you can access, or get someone else to make the copy for you. The other person may be a friend, family member, librarian or anyone else – they do not have to be from a print disability organisation. Similarly, you could provide a copy in an accessible format to another person with a disability (for example, by emailing them a digital file), provided the conditions and restrictions are met.

If someone asks for payment for making a copy for you in reliance on this exception, they must not charge you more than the cost of making the copy.

WHAT CONDITIONS NEED TO BE MET TO RELY ON THE EXCEPTION?

There are some restrictions on when copies can be made under this exception, and probably on what can be done with them. However, because of the way the new exception has been written in the law, it is difficult to be sure exactly what these restrictions may be in any particular case.

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The Copyright Act states that, for the exception to be available, the circumstances of the use must:

- amount to a special case;
- not conflict with a normal exploitation of a work; and
- not unreasonably prejudice the legitimate interests of the owner of the copyright.
- We consider that you need to check the following things on the publisher’s website, or from another reliable source, before making a copy in reliance on the “special case” exception:
 - whether the work is (or will shortly become) commercially available in an accessible format; and
 - whether a licence is (or will shortly become) available to copy the work into an accessible format.

If a copy in an appropriate format, or a licence, is commercially available or about to be available, you would normally be expected to make use of it. However, the “special case” exception might still be available in some circumstances – for example, if required urgently, or only on a short-term, temporary basis.

WHAT LIMITS ARE THERE ON THE USE OF THE COPY?

Again, the Copyright Act does not spell out what may or may not be done with copies made in reliance on the “special case” exception. We consider that you would need to ensure that:

- the copy is only used by the person for whom the copy was made, or by another person who would have been entitled to make the copy under the “special case” exception; and
- if the copy is only needed on a short-term or temporary basis, it is destroyed after that period.

D. GET PRINT DISABILITY OR EDUCATIONAL ORGANISATIONS TO COPY FOR YOU

Print disability organisations and educational institutions can make copies in accessible formats for their members or students under certain conditions (see Part 4). Print disability organisations can make accessible copies for you for any purpose: it does not have to be for your research or study.

Sometimes, copies you get from these organisations may include a message stating that the copy must be destroyed within three months. There is no requirement under the Copyright Act to destroy the copies. However, if your agreement with the organisation that provided the copy requires you to destroy the copy, you must do so. If in doubt, check with the organisation.

E. ASK LIBRARIES TO COPY FOR YOU

Librarians can rely on provisions in the Copyright Act that generally allow them to copy limited amounts of material (for example 10% or one chapter of a book, more if it is not commercially available) for library users. Before a library can copy for you under these provisions, you have to provide a written declaration (or email) that you need the material for research or study. The library can then also communicate the copy to you (for example, by email).

Legally, the copy can be made in any format, but a particular library may not be able to make a copy in the format you need.

Also, librarians might legally be able to copy the whole of a book on your behalf where you need it as a fair dealing for your research or study. However, they may often refuse to do so, because either they are not sure that they won't be doing something illegal or they have limited resources.

If you want a copy for a purpose other than research or study, libraries may now also be able to make a copy for you in an accessible format under the "special case" exception, (see c. Where no other exception applies ..., above).

F. IN SOME CASES, LEND ACCESSIBLE-FORMAT COPIES TO OTHER PEOPLE

In the digital world, what is often described as "lending" or "swapping" in fact involves copying, and often communication as well. Both copying and communication generally require permission. This means you can't make a copy for another person, or email the file to him or her, without permission, unless doing so is a fair dealing for that person's research or study, or the new "special case" exception applies. You will in almost all cases need the copyright owner's permission to upload your digital file to a website.

In some cases you may be able to lend your accessible-format copy to someone else, for example a friend with a print disability. This means that while the item is on loan to the borrower, you no longer have access to it. (For digital copies you may be able to

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lend the copy by lending the physical equipment on which the accessible copy is stored.) However, you cannot lend your copy if:

- you made the copy under the “format-shifting” provision (discussed at 3.1a. “Format shift” books, newspapers and magazines you own, above); or
- you have a contractual obligation not to lend it (for example, if the terms and conditions on which the copy was supplied by a print disability or other organisation prevent you from lending the copy).

If your accessible-format copy was made under the “special case” exception, we consider that you could lend the copy to another person with a print disability, provided he or she would have been entitled to make the copy under the “special case” exception. However, we consider that you could not lend the copy in other circumstances, or to a person who does not have a disability that prevents them from accessing the commercially available version.

G. USE PDF FILES

If you need to read a PDF file, you may need to use software to extract the text first. This involves making a digital copy of the file. You can do this legally if:

- you can copy the file as a fair dealing for research or study; or
- you have express or implied permission to copy the PDF file.
- Note: If the PDF file has access-protection or copy-protection, this may be a TPM (“technological protection measure”. If the PDF is protected by an access-control mechanism, you may need permission to “crack” such protection, as well as to copy the file (see 2.5 “Technological protection measures”).

H. COPY UNDER LICENCES OR PERMISSIONS

If the copyright owner has granted express or implied permission to copy the material, you can rely on this permission. Statements on websites, and sometimes in print publications, may set out what permission is granted, and any terms or conditions (see 2.4 (“Permission and licences”, above).

3.2 WHAT YOU CAN'T DO UNDER THE COPYRIGHT ACT

This section sets out things that individuals with a print disability are not entitled to do under the Copyright Act, unless they have permission from the copyright owner(s).

A. NO RIGHT TO UPLOAD BOOKS TO WEBSITES

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You can't put an accessible-format copy of a book on an internet or intranet website without permission, even if the website is only accessible to people with a print disability.

B. NO RIGHT TO DOWNLOAD INFRINGING COPIES OF BOOKS FROM WEBSITES

If someone else has put a copy of a book on the internet without the copyright owner's permission, you can't legally download a copy, even if it is not commercially available in accessible form.

C. NO RIGHT TO MAKE, SUPPLY OR USE SOFTWARE TO "BREAK" ACCESS-CONTROL CODES

You can't make circumvention devices (such as software that bypasses passwords or "read-only" protection), or supply such devices to other people, unless you can rely on an exception that permits you to do so.

Nor can you make or supply devices to circumvent copy-control TPMs, although the Copyright Act does not prevent you from using such devices.

4: PRINT DISABILITY ORGANISATIONS

This Part sets out what print disability organisations can do under the Copyright Act. Note that educational institutions are also, by definition, print disability organisations for the purposes of the Copyright Act. If your organisation is an educational institution, you should read [Part 5](#) as well.

Amendments to the Copyright Act passed in 2006 introduced exceptions allowing individuals with disabilities to make copies in accessible formats, or to get others to make copies for them, in some situations. However, the amendments do not greatly affect what print disability organisations can do. This is because the new “special case” exception does not apply if any other provision in the Copyright Act covers the situation. In most cases, therefore, print disability organisations will continue to rely on the pre-existing print disability provisions.

In some respects, the provisions in the Copyright Act do not go as far as print disability organisations would like, because of the need to maintain a balance between various interest groups and comply with Australia’s international obligations. Print disability organisations will still need to deal with copyright owners if they wish to, for example, make copies available in accessible formats online without checking for commercial availability.

In many cases, Australian and overseas print disability organisations have developed good relationships with publishers and other copyright owners whose material they wish to use. In light of the consultations conducted for this project, we believe that the best approach to solving the administrative difficulties print disability organisations currently face is to develop and build on such relationships. To this end, we have drafted a Sample Agreement for publishers and print disability organisations.

The Agreement provides for:

- simplified procedures for checking for commercial availability (including when accessible copies are delivered online);
- making copies in accessible formats when material is commercially available in the relevant format but is not accessible to people with a print disability (or to a particular person with a print disability); and

- terms and conditions for the provision of digital files by publishers to print disability organisations.

4.1 WHAT IS A PRINT DISABILITY ORGANISATION?

Your organisation is a print disability organisation (in Copyright Act terms, an “institution assisting persons with a print disability”) if it is an educational institution, or if:

- at least one of the organisation’s principal functions is to provide accessible copies of literary and dramatic works to people with a print disability; and
- the Attorney-General has declared the organisation to be an institution assisting people with a print disability.

If your organisation is an educational institution, you will in some cases rely on the educational provisions, rather than the print disability provisions, to copy for those of your students with a print disability. Part 5 sets out the differences between the provisions and explains when, in practice, you should rely on each.

In order to rely on the print disability provisions in the Copyright Act, you must sign an agreement with Copyright Agency. Under this agreement, you may be obliged to take part in “sampling surveys” of the copies you make under the licence during a particular period, if requested by Copyright Agency. Alternatively, you could make an agreement under which you keep full records of all copies you make under the licence. For further information (including how to have your organisation declared a print disability organisation for these purposes), contact Copyright Agency.

4.2 WHAT PRINT DISABILITY ORGANISATIONS CAN DO UNDER THE COPYRIGHT ACT

A. MAKE “MASTER COPIES”

Print disability organisations can make and communicate a copy of a literary or dramatic work (but not other kinds of copyright work) in any of the following formats in order to make accessible copies for people with a print disability:

- sound recording;
- hard copy (including Braille and large print); and
- electronic.

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These are generally known as “master copies”. There is no requirement to check for commercial availability before making a master copy. You must mark master copies, as set out below.

Master copies of sound recordings must include the following message:

This is a sound recording made on [day on which the recording was made] in reliance on section 135ZQ of the Copyright Act 1968, solely for use in the making of a reproduction or communication under section 135ZP of that Act for a person with a print disability.

Hard copy or electronic master copies must be marked with the following information:

- the name of the organisation for which the copy was made;
- the date the copy was made;
- a reference to section 135ZQ of the Copyright Act; and
- if the master is in digital form, the warning notice (see 4.2e. “Make copies for individuals”).

The following requirements also apply:

- within three months of making a master copy, you must notify Copyright Agency (this information is recorded in Copyright Agency’s “Master Copy Catalogue”);
- you must not allow the master copy to be used for any purpose other than assisting people with a print disability; and
- you must not sell the master copy for a profit.

B. MAKE NEW MASTERS IN DIFFERENT FORMATS

The Copyright Act allows you to make further copies from your masters – for example, if you need a master in a different format, or using different software, or if you need digital copies of analogue masters. Each time you make such a copy, the requirements are the same as for any other master: Copyright Agency must be notified, copies must be marked, copies can only be made for the purpose of assisting people with a print disability, and copies must not be sold for a profit.

C. COPY FOR OTHER PRINT DISABILITY ORGANISATIONS

If another print disability organisation has made a master, you can ask it to make a copy and communicate it to you (for example, by email). Similarly, if another

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organisation asks for a copy of one of your masters, you can make and communicate it to that organisation. This is subject to the following conditions:

- the copy must be made solely for the purpose of assisting people with a print disability (by being supplied to individuals with a print disability, used as a master, or used in creating a new master);
- the copy must not be sold for a profit; and
- if the organisation receiving the copy makes a new master copy, it must notify Copyright Agency within three months.

Note: When you make copies in accessible formats for organisations that are not print disability organisations, such as public libraries, technically you are making copies for the individuals with a print disability who will be served by that library. Requirements when making these copies are set out at 4.2e. “Make copies for individuals”.

D. USE THE MASTER COPY CATALOGUE

As a service to print disability organisations, Copyright Agency maintains a catalogue of master copies made by print disability organisations, based on the information supplied to it. Print disability organisations can check the Master Copy Catalogue held by Copyright Agency before making an accessible copy, to avoid duplicating effort where an accessible-format copy has already been made.

The Copyright Act does not require you to check the catalogue before making a new master. Even if the catalogue shows that a master is available, you are not obliged to request a copy of it in preference to creating your own. However, it would obviously be poor practice not to check the catalogue and request a copy if one is available in a format that is useful to you.

If you do request a copy of a master from another organisation, you are entitled to make any changes needed in making your own master – to improve the accuracy, clarity or accessibility of the material, for example. You would then need to notify Copyright Agency of the new master you have made.

E. MAKE COPIES FOR INDIVIDUALS

You can make copies of your masters for individuals with a print disability. You can also communicate the copies to individuals with a print disability (for example, by email, or making available on a secure server or website).

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When making copies for individuals, you must:

- check whether a copy of the material is commercially available in the format you intend to use before each copy is made (if it is, you can't make the copy without permission); and
- if required under your agreement with Copyright Agency, mark the copy (not required under the sampling system).

Sound recordings to be provided to clients of print disability organisations must include the following message:

This is a sound recording made on [day on which the recording was made] in reliance on section 135ZP of the Copyright Act 1968.

If you supply an accessible copy in digital form, you must:

- ensure that the copy is not readily available except to people with a print disability; and
- supply a warning notice with the copy.

WARNING NOTICE FOR SUPPLY OF DIGITAL COPIES

The wording to use for the warning notice is:

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969 WARNING

This material has been reproduced and communicated to you by or on behalf of [insert name of institution] pursuant to Part VB of the Copyright Act 1968 (the Act).

The material in this communication may be subject to copyright under the Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

REASONABLE ENQUIRIES ABOUT COMMERCIAL AVAILABILITY

Before making or communicating a copy to an individual, you must make reasonable enquiries as to whether a copy of the work is commercially available in the format you are using (Braille, large print, photographic, electronic or sound recording).

If the work is commercially available in the relevant format, the Copyright Act does not permit you to make a copy for someone with a print disability without permission, even if that person cannot access the commercially available copy (for example,

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because the commercially published large print edition is not in a font size large enough for that person). In this situation, you need permission from the copyright owner to make copies in the format required. However, if you can make a general agreement with the publisher along the lines of the Sample Agreement for publishers and print disability organisations, you will not need permission in each individual case.

You would not be able to rely on the new “special case” exception for people with disabilities in this situation, because it is covered by the print disability provisions.

You can check the commercial availability of an accessible copy in the ways set out in the following paragraphs. If you want to make a hard copy (in print, or an analogue recording), you can check for commercial availability by contacting:

- a bookshop which has access to the TitlePage availability service; or
- a book distributor that distributes books for that publisher; or
- the book’s publisher.
- If you want to make a digital copy (for example by scanning the book or copying a digital file), you can check commercial availability of an accessible copy by:
 - searching the website of an ebook distributor that supplies that publisher’s books in digital form; or
 - contacting a distributor that distributes books in digital form for that publisher; or
 - contacting the publisher; or
 - searching the publisher’s online catalogue, if available.

DELIVER ACCESSIBLE COPIES ONLINE

If you wish to make the work continually available online to your members, the easiest way to administer the system is to get permission from the publisher to check for commercial availability in the relevant formats at fixed intervals (we suggest annually). Suitable wording for a permission request is set out in the Sample Agreement for publishers and print disability organisations. If the publisher will not grant permission to vary the requirement, the Copyright Act requires you to check for commercial availability before each download by an individual.

In either case, you must supply the “warning notice” set out above (4.2e “Make copies for individuals”).

ABRIDGED COPIES

In copyright terms, an abridged version is a different literary work from the full text version. Therefore, if, for example, a book is commercially available as a sound recording but only in an abridged version, the Copyright Act would allow you to make a sound recording of the unabridged work (or a different abridged version) for people with a print disability.

F. WHERE NO OTHER EXCEPTIONS APPLY, COPY FOR PEOPLE WITH DISABILITIES UNDER THE NEW “SPECIAL CASE” OR “FLEXIBLE DEALING” EXCEPTION

The new “special case” exception is of limited relevance to print disability organisations, as it is not available in a situation that is covered by another exception – or would be, “assuming the conditions or requirements of that other provision were met”. A print disability organisation could not, for example, avoid the need to check for commercial availability by relying on the “special case” exception (indeed, the requirements under that exception are far more uncertain, and might arguably be more onerous, than under the print disability provisions).

A print disability organisation might, in the right circumstances, be able to rely on the “special case” exception to copy:

- print music or artistic works in books of which accessible copies are being made (unless the organisation is also an educational institution, in which case it would need to rely on the educational provisions); or
- a video or DVD with added commentary describing the visuals.
- For guidelines on this exception, go to 3.1c Where no other exception applies: “special case” exception for people with a disability.

4.3 WHAT PRINT DISABILITY ORGANISATIONS CAN’T DO UNDER THE COPYRIGHT ACT

A. NO COPYING IF THE WORK IS COMMERCIALY AVAILABLE IN THAT FORMAT

As noted earlier, the Copyright Act does not allow you to make copies in a particular format if the work is commercially available in that format (even if the available version is not suitable for a particular person with a print disability – see 4.2e. Make copies for individuals). However, you may be able to make an agreement with the publisher that

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allows you to do so (see the Sample Agreement for publishers and print disability organisations).

It sometimes happens that after a print disability organisation has made an accessible master copy, the work becomes commercially available in the same format. In this situation, the organisation is not required to destroy the master copy. However, if you wish to continue making copies for individuals with a print disability when the work is commercially available in the same format, you will need to contact the copyright owner for permission. If, at some later date, the work is no longer commercially available in that format, the organisation could begin making copies for individuals again from the master it had kept.

B. THINGS THAT CAN'T BE COPIED

The following cannot be copied or communicated under the print disability provisions of the Copyright Act:

- music;
- artistic works (including graphs or diagrams); and
- audiovisual material (such as films, videos, recorded music, TV and radio programs).

However, if your organisation is also an educational institution, you can copy such material for your students, within certain limits and provided you meet certain requirements (see Part 5).

If your organisation is not an educational institution, you may be able to copy such material under the new “special case” exception, in the right circumstances. For further information, go to 3.1c Where no other exception applies: “special case” exception for people with a disability.

Alternatively, you may need to contact the copyright owner(s) for permission. However, note that publishers can't necessarily grant permission for third party material included in their books.

5: EDUCATIONAL PROVISIONS OF THE COPYRIGHT ACT

Under the Copyright Act, educational institutions are, by definition, also print disability organisations. If your organisation is an educational institution, you are likely to rely on the print disability provisions for some things and on the educational provisions for others. Note that the administrative requirements for each set of provisions are different.

This Part gives a simplified account of the provisions for educational institutions. For detailed information, see the following:

- Australian Copyright Council material for educational institutions, including Practical Guides, listed at <http://www.copyright.org.au>;
- Copyright Agency, at <http://www.copyright.com.au/licences/people-with-disabilities> (for information about using print material); and
- Screenrights, at <http://www.screenrights.org> (for information about copying from radio and television).

The differences between the print disability provisions and the educational provisions are summarised in the table below.

5.1 DIFFERENCES BETWEEN THE PRINT DISABILITY AND EDUCATIONAL PROVISIONS OF THE COPYRIGHT ACT

	Print disability provisions	Educational provisions
Things that can be copied and communicated for individuals	Literary and dramatic works only (hard copy, digital file or sound recording originals).	Literary, dramatic, musical or artistic works in hard copy or electronic form; audiovisual material from broadcasts.
Amount that can be copied and communicated for individuals	All of a literary or dramatic work.	Generally, a “reasonable portion” (10% or one chapter); more if the work is not commercially available; a whole article from a journal or a program copied from a radio or TV broadcast (including podcast and vodcast versions of programs that have been or will be

		broadcast).
Administrative requirements when copying for individuals	<p>Copies must be used for people with a print disability only.</p> <p>If you supply copies in digital form, you must send a warning notice with the copy.</p> <p>You must report copies to Copyright Agency, on a sampling or full records basis.</p> <p>Currently, no licence fee is paid.</p> <p>You must check commercial availability in that format.</p> <p>You must not sell copies for more than the cost of making and supplying them.</p>	<p>Copies must be used for educational purposes only.</p> <p>If you supply copies in digital form, you must send a warning notice with the copy.</p> <p>You must report copies to Copyright Agency and Screenrights, on a sampling or full records basis.</p> <p>Annual licence fees are paid to Copyright Agency and Screenrights under the statutory licence.</p> <p>If more than a “reasonable portion” is used, you must check commercial availability.</p> <p>You must not sell copies for more than the cost of making and supplying them.</p>
Other issues	<p>You can copy and communicate master copies for other print disability organisations, including educational institutions (provided the copies will only be used for people with a print disability).</p>	<p>You can only use copies made under these provisions for the educational purposes of your organisation or another educational institution.</p> <p>You can make and communicate copies on behalf of print disability organisations.</p>

5.2 WHEN ARE THE EDUCATIONAL PROVISIONS RELEVANT?

In many cases, you could rely on either set of provisions to copy for students with a print disability. In most cases where you need to copy the whole of a literary or dramatic work in an accessible format, you will rely on the print disability provisions. However, as a rule of thumb, it is probably simplest to rely on the educational provisions in the circumstances set out in the following paragraphs.

A. HANDOUTS FOR ALL STUDENTS IN A COURSE

Any time you are copying material such as course handouts, “reading bricks” and other material that is distributed to students generally, you will rely on the educational provisions. You do not need to rely on the print disability provisions to make accessible-format copies of this material for students with a print disability (although you could do so if the material being copied is text only).

Relying on the educational provisions in this situation may make administration easier, as you can (within the relevant limits) copy diagrams, illustrations or other artistic works, and print music, in the materials without needing permission.

B. MUSIC, ARTISTIC WORKS

Since you can’t copy print music or artistic works under the print disability provisions, you will always need to rely on the educational provisions when copying such material for your students. (However, you do not need permission to create a text description of an image.)

C. AUDIOVISUAL MATERIAL

Since you can’t copy audiovisual material under the print disability provisions, you will always need to rely on the educational provisions when copying from television or radio for your students. These provisions allow you to edit the recordings, and make modifications necessary for students with a disability. There are no limits on the amount of a program that can be copied, and there is no need to check for commercial availability of the broadcast material you copy. However, there are marking and other requirements.

You can’t copy or communicate non-broadcast copies of audiovisual material (such as commercial copies of videos, DVDs and sound recordings) under the educational provisions. However, in some cases, you may be able to do it under the new “special case” exceptions for educational institutions or for people with disabilities.

5.3 ADMINISTRATIVE REQUIREMENTS

During a period when Copyright Agency has asked you to complete a sampling survey, accessible copies made in reliance on the educational provisions should be recorded in the survey – even if the accessible copies are being made separately in a specialised unit for students with a print disability.

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Note that if you request a digital file from a publisher, you may enter into an agreement with the publisher about how the material will be used. You should make sure you are aware of, and comply with, the terms and conditions on which the digital file is provided (see the Sample Agreement for publishers and print disability organisations).

6: COPYRIGHT OWNERS

Publishers and other copyright owners need to be aware of print disability issues for a number of reasons. One of these is that copyright owners' rights are affected by the special provisions in the Copyright Act for print disability organisations.

Another reason is that individuals and print disability organisations sometimes need to contact publishers and copyright owners for permission, or to ask for digital files of books to help them make accessible copies. Dealing with these requests takes time and resources. To simplify the process of dealing with these requests, we have drafted two documents (see below at 6.3 "The Print Disability Licence and Sample Agreement").

6.1 TECHNOLOGY USED BY PEOPLE WITH DISABILITIES

A wide range of adaptive software and devices is available for people with a print disability. For example, computer programs are available that can:

- "read" documents out loud in a computer-synthesised voice;
- "read" text on computer screens out loud (allowing navigation of websites); and
- translate text into "refreshable" Braille that can be read using a keypad.
- Most of these require text or html files to work properly. Some software, such as Acrobat 7.0, can "read" appropriately formatted PDF files out loud.

The DAISY (Digital Accessible System) standard allows people with a print disability to locate particular chapters or page numbers in a digital text or sound recording file almost as easily as a sighted person. This standard is increasingly being adopted internationally, and Australian organisations are moving towards adopting it here.

In practice, however, many people with a print disability are unable to use the most sophisticated adaptive technology. Adaptive software can be extremely expensive, and devices, such as refreshable Braille readers, cost up to \$10,000. Even people using free or inexpensive software need computer equipment with adequate memory and processing speed, and assistance with learning new software. Students, and people who are not in full-time employment, generally cannot afford such equipment.

A. THE PROCESS OF MAKING ACCESSIBLE COPIES: HOW DIGITAL FILES ARE USED

Apart from narration services (which provide recordings of people reading out the text), most print disability organisations use various forms of software to produce copies in accessible formats. The organisation may ask the publisher for a digital file of the work, or may use other methods for getting a digital file, such as scanning the text or even, in rare circumstances, re-keying it.

Publishers are not legally obliged to supply digital files. A publisher who grants express permission, or provides a digital file, can set terms and conditions that may or may not follow those of the statutory licence in the Copyright Act.

Where a digital file has been provided in an “image” format such as PDF or Quark, the print disability organisation must “extract” the text using specialised software. This process introduces errors that are time-consuming to correct – such as incorporation of page numbers into text, substitution of letters and words, and displacement of sections of text. Tables, columns, images and text in boxes are skipped by the software and must be added manually.

Editors then work on the files, correcting the errors and introducing formatting or other text needed for a person with a print disability to understand the material. For example, the editor may write a text description of an illustration or diagram, describing its content and explaining its significance. The editor may also incorporate text describing or explaining visual cues and formatting. This task is sometimes outsourced to specialist contractors, especially for subjects such as maths and science, where the use of symbols, for example, requires editors to have detailed knowledge of the subject.

Both the files ultimately used as masters and the copies delivered to individuals with a print disability usually look quite different from the ones provided by a publisher, and are generally not visually attractive or easy for sighted people to use.

6.2 PROBLEMS IDENTIFIED BY PRINT DISABILITY ORGANISATIONS AND INDIVIDUALS

In consultations with individuals and organisations in the print disability community, the Australian Copyright Council has been told of a number of difficulties in making copies in accessible format; some of these arise from the wording of the legislation, and others arise from general circumstances.

The issues that are relevant to publishers are outlined below. Many of these are addressed in the Individuals Print Disability Licence and the Sample Agreement for publishers and print disability organisations.

A. REASONABLE ENQUIRIES ABOUT COMMERCIAL AVAILABILITY

As noted above, print disability organisations must make “reasonable enquiries” about whether a copy in the relevant format is commercially available before making a copy in an accessible format for an individual with a print disability. This requirement is in line with the “three-step test” for exceptions to copyright infringement that is set out in international treaties. However, the way the requirement is drafted in the Copyright Act causes some problems for print disability organisations, without necessarily benefiting copyright owners: •

- The Act does not define “reasonable enquiries”.
- The requirement does not take into account the fact that a work may be commercially available in one of the formats specified in the Act but still not accessible to some or all people with a print disability. For example, a book may be available in electronic form but only in a copy-protected format that cannot be accessed by adaptive software. In this case, a print disability organisation cannot rely on the Copyright Act to make copies, even though its members cannot buy a copy in a format they can use.
- Repeated checking may be pointlessly onerous where the material is never likely to be commercially available in Australia in the relevant format (such as Braille, or very large print formats).
- It may be pointlessly onerous to check for commercial availability before making each individual copy if the organisation receives frequent requests for a particular work, since commercial availability in the relevant format is unlikely to change from day to day. In particular, it is effectively impossible to make accessible material available online and meet this requirement, even though the Copyright Act allows online delivery of this material provided access is only available to people with a print disability. (We understand that most organisations require members to provide medical certificates when joining, and members need user ID or passwords to access material.)
- Print disability organisations sometimes spend considerable time and resources making an accessible master copy of a book, but are then unable to use it for their print-disabled clients without permission because a copy in the same format becomes commercially available. However, the commercially

available version may be inferior from the point of view of a person with a print disability (for example, because it lacks navigation information such as chapter and page information).

The Sample Agreement for publishers and print disability organisations is drafted to address most of these issues. However, the final point in the list is not addressed in the Sample Agreement. In such circumstances the print disability organisation could approach the copyright owner for specific permission, or could negotiate to include a general term in their Agreement with publishers.

B. THINGS THAT CAN'T BE COPIED UNDER THE COPYRIGHT ACT SCHEME

The print disability provisions do not allow print disability organisations to copy music (whether in printed or recorded form) or artworks (including diagrams) without permission. In some cases, such material may be copied for people with a disability under the new “special case” (or “flexible dealing”) exception. However, the drafting of the exception leaves considerable uncertainty as to what is required for the exception to be available.

C. ACCESS TO DIGITAL FILES

Generally, print disability organisations negotiate arrangements with publishers for delivery of digital files, where these are available. Although in many cases print disability organisations and publishers have developed good relationships, people interviewed in consultations for this project commented that it can be difficult to identify the appropriate contact person in a publishing house, and that practices and attitudes can vary greatly between publishers or even within a publishing organisation.

Print disability organisations consulted for this project identified the following as key issues for supply of digital files:

- integrity (files should be “true copies”, that is, the digital file should be the same as the published version, down to chapter headings and page numbers); and
- format (generally, the easiest formats for print disability organisations to use are text files or html or xml files – the process of transferring a PDF file into a text file for people with a print disability is complex and time-consuming).

However, we understand that most publishers use publishing or graphic design programs from early in the publishing process, and therefore do not produce or hold text files of the final version. The optimal solution in each situation will depend on the circumstances.

Similarly, in consultations, publishers have noted that dealing with requests can take significant time and resources. This is especially the case for publishers who rarely receive such requests and therefore have not developed procedures or agreements to deal with them. Major concerns raised by publishers related to the uses that may be made of digital files, and the risk of “leakage” of such files into the general community.

The Sample Agreement for publishers and print disability organisations addresses these concerns.

6.3 THE INDIVIDUALS PRINT DISABILITY LICENCE AND SAMPLE AGREEMENT

A. INDIVIDUALS

Following amendments to the Copyright Act in 2006, an individual is entitled to make a copy in another format of a book, magazine or other periodical he or she owns, for personal use. The Act places restrictions on the use of such copies and on subsequent use of the original material.

This is, however, in some respects more restricted than the uses permitted under the Individuals Print Disability Licence.

The Individuals Print Disability Licence is broadly similar to the provisions for individuals with print disabilities in the UK Copyright Act. The Licence is drafted so that individuals do not need to contact the publisher directly where all they want to do is to make a copy to access the material. They would still need to contact the publisher for permission for any more extensive use, or to ask for a digital file.

When a publisher signs up to the Licence, an individual with a print disability can make a copy of that publisher’s material in a format he or she can access, provided it is not commercially available in the format he or she needs, and he or she has legitimate access to the material (for example, he or she owns a copy or could borrow it from a library).

Publishers can grant the Licence by emailing the Copyright Council at info@copyright.org.au (include the words “Print Disability Licence” in the subject heading). They may specify particular lists or imprints, or even individual books, in relation to which they grant the Individuals Print Disability Licence, or they may grant the Licence in relation to all books for which they hold the relevant rights.

The name of the organisation, and any limitations (such as particular imprints or titles to be covered by, or excluded from, the Licence) will be added to the list in the online Guidelines. Eligible people will then be able to rely on the Licence. Alternatively, publishers can use the Individuals Print Disability Licence as a reference when making agreements directly with individuals.

B. PRINT DISABILITY ORGANISATIONS

In recognition of the fact that there are relatively few print disability organisations, and of the importance they place on their relationships with publishers, we have taken a different approach with print disability organisations. Rather than asking copyright owners to grant a general licence for the benefit of print disability organisations, we have drafted a Sample Agreement for publishers and print disability organisations that can be used as a basis for the relationships. Using the Sample Agreement allows publishers to deal with requests efficiently, and develop effective working relationships with organisations they trust.

6.4 PROVIDING MATERIAL IN ACCESSIBLE FORMATS

When publishers make their material commercially available in accessible formats, everyone wins. People with a print disability benefit, because it will be quicker and easier for them to get the material they want in a form they can read. Copyright owners benefit because they can get a commercial return (which is not normally the case when copies are made under the print disability provisions).

Obviously, it may not be commercially viable to publish in hard copy Braille or large print formats. However, it may well be feasible to publish e-books in formats that are accessible to people with a print disability.

A number of organisations publish material that can help publishers make their publications accessible to people with a print disability, and some provide online information.

These include:

VISION AUSTRALIA

Vision Australia provides free material online, including Readability guidelines and Large Print guidelines (go to <http://www.visionaustralia.org>). It also runs workshops and offers consultancies on making websites and publications accessible to people with a print disability (go to <http://www.visionaustralia.org.au>).

ROUND TABLE ON INFORMATION ACCESS FOR PEOPLE WITH A PRINT DISABILITY

The Round Table provides guidelines on production of material in accessible form (go to <http://printdisability.org>).

MACQUARIE CUSTOMISED ACCESSIBILITY SERVICES (M-CAS)

M-CAS offers consultancy services and converts documents into accessible formats for commercial and other organisations as well as for educational institutions (go to http://mq.edu.au/about_us/offices_and_units/mqas).

DIGITAL ACCESSIBLE INFORMATION SYSTEM (DAISY)

DAISY is a standard developed to allow easy navigation of digital and audio files for people with a print disability. It is increasingly being adopted internationally. For information on the standard, go to <http://www.daisy.org>.

WEB ACCESSIBILITY INITIATIVE

For information on making websites accessible to people with print disabilities, go to <http://www.w3.org/WAI/Resources>.

Acrobat and PDF files

For information on how to make Adobe PDF files more accessible, go to <http://www.adobe.com/ap/accessibility>. However, many people with a print disability find even the most advanced PDF formats extremely difficult or impossible to access. In most cases, other formats are very much preferred.

7: GLOSSARY

This Part defines some of the words used in these guidelines. Where noted, the terms are defined in the Copyright Act. Further information is provided in [Part 2](#).

Access protection: Technological protection that prevents equipment opening a digital file without an access code or process supplied by the copyright owner (such as a decryption key or an unscrambling code).

Accessible copy: A copy of print material in a format that is useful to a person with a print disability. (Note that a copy that is accessible to one person may not be “an accessible copy” for another person.)

Circumvention device: Defined in the Copyright Act as a device or computer program with no significant commercial purpose apart from “cracking” a technological protection measure.

Communication to the public: Defined in the Copyright Act as any form of electronic transmission of material outside a personal or domestic setting. Forms of communication include emailing digital files, uploading files to websites or intranets, faxing and broadcasting.

Copy protection: Technological protection that prevents a user copying material.

Fair dealing: Exceptions to infringement set out in the Copyright Act, where the dealing is both “fair” and genuinely for one of the specified purposes (research or study, criticism or review, reporting news, satire or parody, or legal advice).

Infringing copy: A copy of copyright material that was made without the permission of the copyright owner, and outside the scope of the exceptions in the Copyright Act. In some cases, a copy imported into Australia without the copyright owner’s permission may also be an “infringing copy”.

Legitimate copy: A copy made by the copyright owner or under an express or implied licence, or under an exception to infringement, or in which copyright has expired.

Licence: Permission from the copyright owner to use the material in any or all of the

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ways reserved to the copyright owner. Licences may be express or implied by the circumstances, and may be granted on particular terms or conditions (which may include payment of a fee). See Part 2 for more information.

Personal use: Use of copyright material by an individual for his or her own private, non-commercial purposes (for example, scanning a book to make a copy you can read). Supplying a copy to another person would not be “personal use”.

Reasonable portion: The amount the Copyright Act generally allows libraries and educational institutions to copy for students or researchers, and the amount that the Copyright Act deems to be “fair” to copy for research or study: 10% of a published literary, dramatic or musical work, or one chapter (if the work is divided into chapters), is deemed to be a “reasonable portion”.

Sampling: A system used by copyright collecting societies (such as CAL) in administering their licences. Where sampling systems are used, instead of having to keep full records of all copies made under the relevant licences, licensees are asked to keep full records for a period of time. The collecting societies use this information to identify how their members’ works are being used, and as a basis for passing on licence fees to copyright owners (where these are charged).

Statutory licence: A licence set out in the Copyright Act. Copyright owners do not have the right to refuse permission for their material to be used in the ways covered by a statutory licence, but they may have a right to receive payment for the use. Examples of statutory licences include the special provisions for print disability organisations and for educational institutions.

Technological protection measure (TPM): Defined in the Copyright Act as a device, product or component in a process that is designed to inhibit copyright infringement by restricting access to the material or through a copy-control mechanism.

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