



# Copyright (Visually Impaired Persons) Act 2002

## 2002 Chapter 33

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## Copyright (Visually Impaired Persons) Act 2002

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An Act to permit, without infringement of copyright, the transfer of copyright works to formats accessible to visually impaired persons.

[7th November 2002]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

**1 Accessible copies of copyright work for visually impaired persons**

In the Copyright, Designs and Patents Act 1988 (c. 48), after section 31 insert-

*"Visual impairment*

**31A Making a single accessible copy for personal use**

(1) If a visually impaired person has lawful possession or lawful use of a copy ("the master copy") of the whole or part of-

- (a) a literary, dramatic, musical or artistic work; or
- (b) a published edition,

which is not accessible to him because of the impairment, it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for an accessible copy of the master copy to be made for his personal use.

(2) Subsection (1) does not apply-

(a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or

(b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

(3) Subsection (1) does not apply in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

(4) An accessible copy made under this section must be accompanied by-

(a) a statement that it is made under this section; and

(b) a sufficient acknowledgement.

(5) If a person makes an accessible copy on behalf of a visually impaired person under this section and charges for it, the sum charged must not exceed the cost of making and supplying the copy.

(6) If a person holds an accessible copy made under subsection (1) when he is not entitled to have it made under that subsection, the copy is to be treated as an infringing copy, unless he is a person falling within subsection (7)(b).

(7) A person who holds an accessible copy made under subsection (1) may transfer it to-

(a) a visually impaired person entitled to have the accessible copy made under subsection (1); or

(b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within paragraph (a).

(8) The transfer by a person ("V") of an accessible copy made under subsection (1) to another person ("T") is an infringement of copyright by V unless V has reasonable grounds for believing that T is a person falling within subsection (7)(a) or (b).

(9) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with-

(a) it is to be treated as an infringing copy for the purposes of that dealing; and

(b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.

(10) In subsection (9), "dealt with" means sold or let for hire or offered or exposed for sale or hire or included in a broadcast or cable programme service."

## **2 Multiple copies for visually impaired persons**

In the Copyright, Designs and Patents Act 1988 (c. 48), after section 31A insert-

### **"31B Multiple copies for visually impaired persons**

(1) If an approved body has lawful possession of a copy ("the master copy") of the whole or part of-

(a) a commercially published literary, dramatic, musical or artistic work; or

(b) a commercially published edition,

it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for the body to make, or supply, accessible copies for the personal use of visually impaired persons to whom the master copy is not accessible because of their impairment.

(2) Subsection (1) does not apply-

(a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or

(b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

(3) Subsection (1) does not apply in relation to the making of an accessible copy if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to the same or substantially the same degree.

(4) Subsection (1) does not apply in relation to the supply of an accessible copy to a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

(5) An accessible copy made under this section must be accompanied by-

(a) a statement that it is made under this section; and

(b) a sufficient acknowledgement.

(6) If an approved body charges for supplying a copy made under this section, the sum charged must not exceed the cost of making and supplying the copy.

(7) An approved body making copies under this section must, if it is an educational establishment, ensure that the copies will be used only for its educational purposes.

(8) If the master copy is in copy-protected electronic form, any accessible copy made of it under this section must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the copyright owner agrees otherwise).

(9) If an approved body continues to hold an accessible copy made under subsection (1) when it would no longer be entitled to make or supply such a copy under that subsection, the copy is to be treated as an infringing copy.

(10) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with-

(a) it is to be treated as an infringing copy for the purposes of that dealing; and

(b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.

(11) In subsection (10), "dealt with" means sold or let for hire or offered or exposed for sale or hire or included in a broadcast or cable programme service.

(12) "Approved body" means an educational establishment or a body that is not conducted for profit.

(13) "Supplying" includes lending."

### **3 Intermediate copies and records**

In the Copyright, Designs and Patents Act 1988 (c. 48), after section 31B insert-

#### **"31C Intermediate copies and records**

(1) An approved body entitled to make accessible copies under section 31B may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only-

(a) if and so long as the approved body continues to be entitled to make accessible copies of that master

copy; and

(b) for the purposes of the production of further accessible copies.

(2) An intermediate copy which is held in breach of subsection (1) is to be treated as an infringing copy.

(3) An approved body may lend or transfer the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under section 31B.

(4) The loan or transfer by an approved body ("A") of an intermediate copy to another person ("B") is an infringement of copyright by A unless A has reasonable grounds for believing that B-

(a) is another approved body which is entitled to make accessible copies of the work or published edition under section 31B; and

(b) will use the intermediate copy only for the purposes of the production of further accessible copies.

(5) If an approved body charges for lending or transferring the intermediate copy, the sum charged must not exceed the cost of the loan or transfer.

(6) An approved body must-

(a) keep records of accessible copies made under section 31B and of the persons to whom they are supplied;

(b) keep records of any intermediate copy lent or transferred under this section and of the persons to whom it is lent or transferred; and

(c) allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time.

(7) Within a reasonable time of making an accessible copy under section 31B, or lending or transferring an intermediate copy under this section, the approved body must-

(a) notify each relevant representative body; or

(b) if there is no such body, notify the copyright owner.

(8) A relevant representative body is a body which-

(a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned; and

(b) has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it.

(9) The requirement to notify the copyright owner under subsection (7)(b) does not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner."

#### **4 Licensing schemes**

In the Copyright, Designs and Patents Act 1988 (c. 48), after section 31C insert-

##### **"31D Licensing schemes**

(1) Section 31B does not apply to the making of an accessible copy in a particular form if-

(a) a licensing scheme operated by a licensing body is in force under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form;

(b) the scheme is not unreasonably restrictive; and

(c) the scheme and any modification made to it have been notified to the Secretary of State by the licensing body.

(2) A scheme is unreasonably restrictive if it includes a term or condition which-

(a) purports to prevent or limit the steps that may be taken under section 31B or 31C; or

(b) has that effect.

(3) But subsection (2) does not apply if-

(a) the copyright work is no longer published by or with the authority of the copyright owner; and

(b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work.

(4) If section 31B or 31C is displaced by a licensing scheme, sections 119 to 122 apply in relation to the scheme as if it were one to which those sections applied as a result of section 117."

#### **5 Limitations, etc. following infringement of copyright**

In the Copyright, Designs and Patents Act 1988 (c. 48), after section 31D insert-

**"31E Limitations, etc. following infringement of copyright**

(1) The Secretary of State may make an order under this section if it appears to him that the making of copies-

(a) under section 31B; or

(b) under a licence granted under a licensing scheme that has been notified under section 31D,

has led to infringement of copyright on a scale which, in the Secretary of State's opinion, would not have occurred if section 31B had not been in force, or the licence had not been granted.

(2) The order may prohibit one or more named approved bodies, or one or more specified categories of approved body, from-

(a) acting under section 31B; or

(b) acting under a licence of a description specified in the order.

(3) The order may disapply-

(a) the provisions of section 31B; or

(b) the provisions of a licence, or a licensing scheme, of a description specified in the order,

in respect of the making of copies of a description so specified.

(4) If the Secretary of State proposes to make an order he must, before making it, consult-

(a) such bodies representing copyright owners as he thinks fit; and

(b) such bodies representing visually impaired persons as he thinks fit.

(5) If the Secretary of State proposes to make an order which includes a prohibition he must, before making it, consult-

(a) if the proposed order is to apply to one or more named approved bodies, that body or those bodies;

(b) if it is to apply to one or more specified categories of approved body, to such bodies representing approved bodies of that category or those categories as he thinks fit.

(6) An approved body which is prohibited by an order from acting under a licence may not apply to the Copyright Tribunal under section 121(1) in respect of a refusal or failure by a licensing body to grant such a licence."

## 6 Interpretation

In the Copyright, Designs and Patents Act 1988 (c. 48), after section 31E insert-

### **"31F Definitions and other supplementary provision for sections 31A to 31E**

(1) This section supplements sections 31A to 31E and includes definitions.

(2) A copy of a copyright work (other than an accessible copy made under section 31A or 31B) is to be taken to be accessible to a visually impaired person only if it is as accessible to him as it would be if he were not visually impaired.

(3) "Accessible copy", in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work.

(4) An accessible copy may include facilities for navigating around the version of the copyright work but may not include-

(a) changes that are not necessary to overcome problems caused by visual impairment; or

(b) changes which infringe the right (provided by section 80) not to have the work subjected to derogatory treatment.

(5) "Approved body" has the meaning given in section 31B(12).

(6) "Lending", in relation to a copy, means making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.

(7) For the purposes of subsection (6), a loan is not to be treated as being for direct or indirect economic or commercial advantage if a charge is made for the loan which does not exceed the cost of making and supplying the copy.

(8) The definition of "lending" in section 18A does not apply for the purposes of sections 31B and 31C.

(9) "Visually impaired person" means a person-

(a) who is blind;

(b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;

(c) who is unable, through physical disability, to hold or manipulate a book; or

(d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.

(10) The Secretary of State may by regulations prescribe-

(a) the form in which; or

(b) the procedure in accordance with which, any notice required under section 31C(7) or (8), or 31D(1), must be given.

(11) Any power to make regulations or orders is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament."

## **7 Consequential amendments**

(1) In section 27(6) of the Copyright, Designs and Patents Act 1988 (c. 48) (meaning of "infringing copy"), after "provisions" insert-

"section 31A(6) and (9) (making a single accessible copy for personal use),

section 31B(9) and (10) (multiple copies for visually impaired persons),

section 31C(2) (intermediate copies held by approved bodies)".

(2) In section 179 (index of defined expressions for the purpose of Part I), insert at the appropriate places-

"accessible copy                      section 31F(3)

approved body                      section 31B(12)

visually impaired person section 31F(9)"

## **8 Short title, commencement and extent**

(1) This Act may be cited as the Copyright (Visually Impaired Persons) Act 2002.

(2) This Act (apart from this section) comes into force on such

day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions or for different purposes.

(3) An order under subsection (2) may contain transitional provisions and savings relating to the provisions being brought into force by the order.

(4) This Act extends to Northern Ireland.

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