EDITORIAL

Libraries, digitisation and disability

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Abstract

Purpose – To point out the limitations of recent legislation designed to enhance digital library service provision to the disabled and, in general, to point out the impact of observing moral rights on the feasibility of larger-scale digitisation services in libraries.

Design/methodology/approach – A simple, summary analysis of the legislation combined with brief observations of library practice.

Findings – That the law needs to be extended in important respects to help larger sections of the disabled community in Higher Education, and that quality control issues, as enforced by consideration of our legal obligations under moral rights legislation, will always restrict the level of digital service libraries can offer to readers who need either accessible or digitised texts.

Research limitations/implications – This practice-based supposition will be tested more extensively by investigation of the relevant legal and operational issues through practitioner experience.

Practical implications – Suggests that the library profession should lobby to improve legislation for services to the reading impaired, and that, in terms of on demand digitisation, general, all-purpose digital short loan collections can only offer a limited spin-off service to disabled users. Digitisation for reading and visual impairment will continue to have specialist features that make it a specialist activity.

Originality/value – The paper describes how copyright and moral rights are quite separate, distinct issues affecting library digitisation activity, and that it is easy to overlook the arguably more pronounced limiting effect of moral rights (as opposed to pure copyright) legislation on digitisation services to disabled users.

Keywords Disabled people, Blind people, Digital libraries, Library services

Paper type Viewpoint

In the UK there have been two recent changes to copyright legislation relating to digitisation which are of great benefit to libraries and their users. The first of these changes was the Copyright (Visually Impaired Persons) Act 2002[1] while the second has been the introduction in 2005 of a trial scanning licence for HE[2] and creating institutional repositories.

Why are these new pieces of law important? In the first place, the original 1988 Copyright Act[3] gave users no right to digitise someone else's text in any way shape or form, not even if you were visually impaired. But the 2002 Act has made it possible for entire texts to be made accessible legally (that is, to be digitised if appropriate) as long as the reader is visually impaired. There are certain restrictions: in particular, digitisation for the visually impaired can only be carried out if there are no commercially available digital versions of that text already available. So library staff who are automatically tempted to photocopy large print versions of entire textbooks for blind readers should be careful. If there is a large print version of the conventional textbook available for purchase, that version must be purchased rather than a large print version improvised by means of the library photocopier. If you do not check, you are making a mistake – although if no commercial version exists you will get away

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with the error! If you do not check and there does turn out to have been a commercial version available, the in-house version you have provided is an infringing copy, in spite of the noble intentions behind the 2002 Act.

Moving on, the 2005 trial scanning licence is made available to all members of the UK HE community, not just the visually impaired, and allows libraries to run digital versions of hardcopy short loan collections, where the contents are excerpts of texts or recommended reading photocopied into course packs. So digital collections of such excerpts can now be offered under the terms of the new licence, although there are a variety of restrictions and provisos that must be observed. Interestingly, clause 10 of the new licence is aimed at the visually impaired, and permits the reproduction of entire texts, not just 5 per cent excerpts, in line with the provision of the 2002 Act.

There are two misconceptions that may arise as a result of such legislation. Firstly, the 2002 Act may be wrongly interpreted as allowing digital versions of whole texts to be provided for any disabled user (for example the reading impaired as well as the visually impaired), while secondly, the insertion of clause 10 into the 2005 EHElicence may make it appear that scanning for the visually impaired can now easily piggy back on the digital services of central library electronic collections. Neither of these assumptions is true.

To take the issue of the 2002 Act and reading impairment first, the great drawback of this bill is that dyslexic readers are not covered by its provisions. In fact, according to my own experience in HE (which is probably representative), the real beneficial effect of this bill has been to enable blind students to use their disabled students allowance to pay non-medical student helpers to digitise core texts which can then be manipulated in a variety of ways: the print can be enlarged, the background colour to the text changed together with the colour of the text, or a speech synthesis package can be used with the digital text scanned in from hardcopy originals. This would have been illegal prior to 2002 but can now be done openly and legitimately, and libraries can facilitate by providing texts and digitisation equipment for such practices.

However, I also know dyslexic students whose impairment is as severe as students who are defined as visually impaired. Yet such dyslexic students are not allowed to digitise texts under the terms of the 2002 legislation and I as a librarian am not allowed to provide them with enhanced texts, nor with assistive technology to digitise hardcopy texts. As a result, under the terms of the UK Disability Discrimination Act my university might be deemed guilty of discrimination against such dyslexic students: by being denied accessible texts, they might not be receiving a comparable educational experience to students without dyslexia. It is not much of a choice: should an institution meet its obligations in the easiest and most user-friendly way possible and risk digitising entire texts for the disabled but possibly incur litigation from the publishers, or should they refuse to supply digital texts to the disabled and risk action under the DDA? In reality, HEIs find some sort of third, cumbersome way of meeting their obligations (e.g. by outsourcing their digitisation work to an expert, if expensive specialist digitisation service), but it is not the most customer-friendly route to take.

This is a great dilemma. Typically, the reading impaired form a much greater part of the disabled population of a university than all those in other categories of disability. While the severely visually impaired as members of a large HE institution may be numbered in double figures, reading impaired students will be numbered in the hundreds or even in four figures (if the reading impaired were to make up a

percentage of the university student body proportionate to their numbers in the general population, on average 10 per cent of the student population in any university would need accessible texts as a result: Wright and Stephenson, 2003, as quoted by Craven, 2006 in this issue of *Library Review*). Yet the copyright law prevents these hundreds of library users from being given accessible texts. The inevitable conclusion is that, in this case, our legislators have failed both the reading impaired and the educational community. In response, the library and information profession should lobby hard to have copyright accommodations for the visually impaired extended to the reading impaired as well.

Turning to other aspects of the 2002 Act, it is noteworthy that its provisions affect copyright clearance but not necessarily the moral rights of authors. What the law now says is that a library does not have to seek permission from rights holders if it wants to digitise an entire text for a blind user, so long as there is no other commercially available copy. It does not say that the author's moral rights can be disregarded – the text must be reproduced accurately therefore in order not to be subjected to derogatory treatment. In terms of the costs of digitisation, this is an absolutely vital point to remember.

It is true for all general digitisation services for all categories of users in libraries, that such digitisation is expensive. There are numerous reasons for this, but two considerations are key:

- Getting copyright clearance by contacting rights holders takes a long time and is very expensive in terms of labour costs;
- Preserving the moral rights of authors is also expensive because this involves accurate proof reading of the digitised text to make sure that it does not deviate from the original. Reproducing and circulating inaccurate copies of a hardcopy original would be to subject that original to derogatory treatment.

Very often, what happens in practice with digitisation services for the visually impaired in HE is that non-medical student helpers scan hardcopy text and then make sure the digitised version is accurate by working closely with the disabled user to eliminate errors. This quality control may not be so much a result of knowledge of the law on moral rights as a simple necessity: a digital text with errors in it is no use to anyone, so proof reading becomes part of the job of non-medical student helpers by default.

Now the explicit integration of provisions concerning the visually impaired into the 2005 HE scanning licence may make it appear that the time has come to taking scanning for the disabled out of the province of non-medical student helpers and integrate it into the work of new library digital short loan collections staff who will now have a "free hand" in terms of digital copyright, at least for their visually impaired library users. However, it is not as easy as that.

Having removed the need to pursue rights clearance individually with rights holders, the 2005 licence does not remove the obligation to preserve moral rights. Nor is an inaccurately scanned copy much use to any reader. This means that only half the costs of digitisation have been removed: there is still a legal obligation to guarantee the integrity of the scan (as opposed to a service quality obligation, which will always apply of course). This means that proof reading is still an expensive chore for central library digitisation units who might be asked to additionally service the visually impaired. It is one thing to run a short loan collection, but quite another to be expected, on top of collecting and circulating the material, to proof

read the contents of everything in that short loan collection. And there will still be the obligation, mentioned above, to pursue rights clearance for the reading impaired, who form the majority of those readers in a university who need accessible teaching texts digitised in their entirety, as opposed to just the excerpts authorised by the new licence.

Legislative copyright accommodations for the visually impaired are thus only partial triumphs for libraries. Copyright permissions are done away with, but not the proof reading required by moral rights.

There is however an apparently novel way around both copyright and moral rights obstacles. This is for a library or disability service to contact a publisher of a hard copy item directly and ask them for the so-called digital "production copy" of a text to be provided. This version is the digital master frequently used for mass production of any conventionally printed, hardcopy educational text. This version will be authoritative and error free (it is the original from which all print versions derive after all), so there is no need to proof read, and given that the publisher has provided it willingly, there seems to be no problem with copyright permissions. Both copyright and moral rights requirements seem to be met.

However, it should be remembered that production copies are provided for creating hard copy output. There is no guarantee that if a publisher were to provide such a digital copy that the author has given the publisher permission to distribute it as a public digital copy for end user purposes. It is simply a means outputting a particular version – specifically a way of creating a hard copy, not digital output. Indeed, it is explicit policy in Higher Education for academic authors to give hardcopy permissions to publishers for their work, but to reserve digital rights over their intellectual property so that it can be retained in institutional digital repositories. Higher education policy is thus to make digital production copies only usable as hardcopy output, not as digital output. Thus, ironically, digital production copies may well have the authority and accuracy that avoids the charge of derogatory treatment, but nevertheless may fall foul of a different sort of copyright difficulty. Yet again, with both copyright and moral rights issues, it is hard to obtain and/or provide digital versions that are clear on both counts.

So for those who think that the law is now on the side of the disabled, the truth is that for those who need digital, accessible text, the situation has remained in many ways largely unchanged. Although it would be relatively easy to extend copyright accommodation from the visually impaired to the greater number of the reading impaired, this has not happened, and the costly need to proof read scanned material (for legal reasons and because inaccurate scans are useless to readers) will always limit the possibilities for digitisation at local library level. There is only so much proof reading that a library can afford. Now that government grants are available in the UK for the disabled to employ helpers as proof readers, the situation is much improved, but this keeps digitisation for accessibility in the hands of helpers and users rather than in the hands of the library.

Full, seamless integration of large-scale digitisation for accessibility into the digital short loan collection services that are likely to be created by the new UK scanning licence will definitely only be possible once OCR (optical character recognition) technology has advanced to new levels of accuracy. If and when this happens, then technology will be able to safeguard moral rights entirely on its own. And accessible library services in particular could then reach a new level of service delivery. But, sadly, this time has not yet arrived.

Notes

1. RNIB (2003), "Information about the Copyright (Visually Impaired Persons) Act", available at: www.rnib.org.uk/xpedio/groups/public/documents/publicwebsite/public_cvipsact2002.hcsp (accessed Dec 20th 2005).
2. Copyright Licensing Authority (2005), "HE trial photocopying & scanning licence", available at: www.cla.co.uk/support/he/HE_TrialPhotocopyingandScanningLicence.pdf (accessed Dec 20th 2005).

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