

Response by National Disability Authority

Copyright and Innovation consultation paper

Introduction

Who we are

The National Disability Authority is the independent statutory advisory body to Government on disability policy and practice. The statutory Centre of Excellence in Universal Design is an integral part of the National Disability Authority. Its remit is to promote Universal Design, specifically through work on standards, curricula, and promoting knowledge and awareness

Universal Design

Universal design means design of products, services or information and communications technology that can be accessed used or understood by people regardless of their age, size, ability or disability.

Focus of submission

This submission focuses on issues of accessibility to people with disabilities as covered in pages 73-79, and related matters

Access for people with disabilities

The National Disability Authority (NDA) broadly supports the relaxations proposed in relation to a suggested revised text of s104 of the Copyright Act, but does not feel they go far enough to address the problems being experienced by people with disabilities.

UN Convention on the Rights of People with Disabilities

The Government have signed the UN Convention on the Rights of People with Disabilities, and are working towards its ratification. Relevant articles on universal design, on access to information and to cultural materials are referenced in an appendix to this submission

Background

In 2005, the World Intellectual Property Organization (WIPO) commissioned a study to examine the barriers to the transfer of accessible material for blind and visually impaired people between jurisdictions, to draw authoritative conclusions and to make recommendations on any necessary changes to national laws or

international treaties. The study was published in February 2007. It examined copyright exceptions for blind and visually impaired people in the national legislation of WIPO member states; analysed the rules and operation of distribution and importation rights; presented multiple case studies from developed and developing countries, identified copyright problems with the production and dissemination of materials in Braille and other accessible formats; analysed alternative ways of addressing identified problems.

An obligation to provide electronic source copies

The key issue is the absence of any obligation on authors/copyright holders to make available to designated authorities a suitable electronic source copy which is capable of being adapted to other formats. The Copyright Committee of the World Intellectual Property Organisation (WIPO) is considering an international treaty to improve access to books for blind and other visually impaired people. While a European Parliament resolution has been adopted calling for early agreement on such a treaty, the European Union has been very cautious around agreeing to such a proposal. The NDA would welcome a constructive role by Ireland in advancing adoption of such a treaty, which could progress the international commitments enshrined in the UN Convention on the Rights of Persons with Disabilities, and align with the goals of our National Disability Strategy.

Formats for electronic source copies

Universally-designed source copies would facilitate making other accessible copies, without a requirement to scan in or mark up text before conversion to other formats.

Our advice is that eXtensible Mark-up Language (XML) would be the preferred format to generate source documents, as XML can support ready conversion to a number of different accessible formats. Source files in XML can be used to develop multiple specialised formats (such as Braille, large print, HTML, audio books) for people who cannot use printed materials.

For example, XML is the basis for the US's National Instructional Materials Accessibility Standard used to generate accessible educational materials for students with disabilities.

The amended legislation could provide for the designation, following consultation with the Centre for Excellence in Universal Design, of the standard in which source documents are to be provided. The Centre for Excellence in Universal Design has a statutory mandate to work on national and international standards, and is already working with the National Standards Authority of Ireland and with

European and international standards bodies on development of a range of appropriate standards including information and ICT.

Consultation draft of s 104

Exemption of databases?

It is not clear why access to databases would enjoy greater copyright protection vis a vis people with disabilities than would access to other material. (104 2 b' 104A2 (b))

Definition of disability

The provision of goods and services is covered by the Equality Acts, which outlaw discrimination on grounds of disability, and place an obligation to reasonably accommodate someone with a disability, provided the cost is nominal to do so. The definition of disability in the Equality Acts is broader than physical disability.¹

In considering the appropriate definition of disability to use for copyright law, it is worth looking at the language used in the Disability Act 2005² and the Equality Acts, as well as at the presence of a relevant functional difficulty.

The NDA advises that the specific text for 104E (1) (2) should not be limited to a physical disability, and could be rephrased along the following lines

‘Disability’ in this context includes physical, sensory or cognitive impairment which significantly restrict the capacity of an individual to access, use, or

¹ “disability” means—

- (a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person’s body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, disease or illness which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour (Equal Status Act 2000, s 2)

² “disability”, in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment (Disability Act 2005, s 2)

understand a work in its standard format, without access to an alternative format.

The definition of disability set out in the Statute of Limitations Act 1957³ does not fit with modern understandings of equal citizenship, and would not be appropriate to use for any purpose in revised Copyright Act

The NDA advises that draft section 104 (7) should refer to a person with a disability, defined on the lines suggested above, rather than being confined to visually impaired persons

Section-by-section comments

104 (9). Rephrase ‘made available to the public’ with ‘made available to the general public (other than to people with disabilities who are unable to access the work in its standard format)’

104A(9) It is not clear why retention of an accessible copy when an organisation stopped being a designated body for making or supplying copies would be unacceptable

104(c) (2) and (3). The effect of clause 3(b), for which no criteria are offered, would negate the provisions in subsection 2 about what would be unreasonably restrictive.

104E (c) 2 – an ‘Easy to Read’ copy of a work which would be suited to a person with an intellectual disability would generally consist of very simplified text and images, and so would go beyond simply aids to navigating the document. The text of c (2) would appear to preclude such versions.

³ 48.—(1) For the purposes of this Act, a person shall be under a disability while—

(a) he is an infant, or

(b) he is of unsound mind, or

(c) he is a convict subject to the operation of the Forfeiture Act, 1870, in whose case no administrator or curator has been appointed under that Act.

(2) For the purposes of subsection (1) of this section but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is detained in pursuance of any enactment authorising the detention of persons of unsound mind or criminal lunatics.

Appendix

UN Convention on the Rights of Persons with Disabilities

Article 4 General obligations

I. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

Article 9 Accessibility

I. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

(f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

Article 30 Participation in cultural life, recreation, leisure and sport

I. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;