

Gowers Review of Intellectual Property: Evidence from Share The Vision

1. Share The Vision [STV] is a UK wide partnership of the main voluntary sector organisations which produce and lend alternative format reading materials for visually impaired people and the main bodies for publicly funded libraries. Hence, our membership comprises:

Calibre Cassette Library

ClearVision Project

National Library for the Blind

RNIB

Talking Newspapers

Association UK

British Library

Chartered Institute of Library
and Information Professionals

Library and Information

Services Council: Northern
Ireland

Scottish Library and
Information Council

Society of Chief Librarians

Society of College, National and
University Libraries

The Museums, Libraries and Archives Council and its Welsh counterpart, CyMAL, have observer status. STV was founded in 1989 to enhance access to library and information services for visually impaired people via greater partnership working between and within the public and voluntary sectors.

2. Copyright law is a major concern for all of our Members in our attempts to fulfil our goal of enhancing access for visually impaired people because of the numerous challenges we have had to overcome and still face. After many years of campaigning the passage of the Copyright [Visually Impaired Persons] Act 2002 was a welcome enhancement of the rights of visually impaired people to access content in one or more alternative formats appropriate for their personal needs. This Act has made it so much easier and cost effective for our voluntary sector library members to produce the multiple copies required by their users. It has also made it much easier for publicly funded libraries to provide single copies of alternative formats for individual users of their institutions by removing the requirement to seek copyright permission. **It is absolutely essential that this exception to copyright law is retained.**

3. However, it is important to recognise that the 2002 Act only applies to a person who is “blind or partially sighted or has uncorrectable sight loss or who has a physical disability which makes it impossible for them to hold a book or move their eyes”. This exception was legislated under the terms of Article 5(3)(b) of Directive 2001/29/EC, The Information Society Directive. Article 5(3)(b) is not limited to visually impaired people but permits Member States to adopt an exception for the benefit of people with a disability. Other print disabled people, such as those with dyslexia and learning difficulties, find great benefit from using audiobooks and assistive technology primarily designed for the use of visually impaired people. These aids provide the opportunity to overcome educational disadvantage and social exclusion. **In terms of equitable provision we believe the exception under the Copyright [Visually Impaired Persons] Act 2002 should be extended to include all people with a print handicap.**
4. In relation to this exception and other issues raised in the Call for Evidence it is important to remind ourselves that all publicly funded libraries [national libraries, university libraries, college libraries, school libraries and public libraries] have a statutory responsibility to make reasonable adjustments to meet the needs of disabled people under the terms of the Disability Discrimination Act 1995 and the Special Education Needs and Disability Act 2001. Reasonable adjustments include the provision of materials in a format which the disabled person can use [e.g. Braille, audio, large print and giant print] and equipment ranging from a magnifying glass to assistive technology providing synthetic voice output and refreshable Braille. Copyright limitations and protection measures often prevent libraries from fulfilling their duty to make reasonable adjustments or make it extremely difficult and costly to do so.
5. Furthermore, the Disability Discrimination Act 2005 has placed a Disability Equality Duty on all public authorities to tackle disability discrimination in a practical way by introducing policies that actively promote opportunities. This general duty applies to Government Departments as well as to local authorities and governing bodies of national libraries, universities, colleges and schools. We therefore assume that the Gowers Review will audit every one of its proposals to ensure that H. M. Treasury complies with its duty to promote equality of opportunity for disabled people.

In addition to retaining the exception for visually impaired people and extending it to apply to other print disabled people we would suggest that there are other areas where the Gowers Review could promote equality of opportunity.

6. On 12th December 2005 the EC published its “First Evaluation of Directive 96/9/EC on the legal protection of databases”. Most surprisingly the evaluation document made no reference to the proposals contained in the “Commission Staff Working Paper on the review of the EC Legal Framework in the field of copyright and related rights” published on 19th July 2004, SEC (2004) 995. That paper explained that the Database Directive does not contain an exception for the benefit of disabled people and the list of exceptions permitted under Article 6 is exhaustive. Therefore the Database Directive does not accord with the later provisions of Article 5(3)(b) of the Information Society Directive 2001. SEC (2004) 995 concluded that it was logical to harmonise criteria by “adding a new exception for the benefit of disabled persons for databases” and proposed doing so in the course of 2005. We would recommend that the British Government should urge the EC to fulfil this commitment as soon as possible in order that it can apply the exception to UK copyright law for the benefit of all disabled people.

7. As the Review Team is “aware of all formal submissions that have been made to the All Party Internet Group” Inquiry on Digital Rights Management we will not repeat what we stated in our written evidence. However, we do wish to refer to two major points we made in our oral evidence. Firstly, a colleague from RNIB explained how she had purchased an e-book version of the Bible from Amazon but the T.P.M.’s meant that she could not access the content via her assistive technology. She contacted Amazon who referred her to the publisher who referred her back to Amazon. Similarly, university colleagues have reported that they cannot provide access to e-publications for visually impaired students using the assistive technology provided in university libraries. As e-publishing becomes ever more the norm it is crucially important that disabled people are not prevented from legitimate access to content. The digital revolution provides the opportunity for disabled people to have legitimate access for the first time to content which was not accessible to them previously and we do not believe that publishers have a right to deny them their human rights.

8. Indeed, there is a general lack of knowledge on the part of the public in terms of their rights under copyright law. We do not advocate that the law should be broken and we recognise that organised systematic copyright piracy is not in the interests of this country. However, it is in nobody's interest for the public to be in ignorance of what they can and cannot do with material in copyright. Therefore, we believe that Government should provide simple guidance in the interests of both publishers and consumers.
9. We note that the "Review may ... also make policy recommendations at the international level". We would request the Review Team to approach WIPO to ascertain when they will be issuing their Model Copyright law provision to permit the importation of alternative formats made abroad. We need to ensure that the amount of alternative format available is increased beyond the current level of 4.4% of UK publishers' output by legislating to allow UK citizens to have access to overseas productions. We should also legislate to permit all alternative format materials legitimately produced in the UK to be exportable abroad. There is a particular dearth of alternative format materials in Third World Countries for obvious reasons and the UK can make a valuable contribution to improving the education and life prospects of the poorest sections of the community in the poorest parts of the world by making its materials available. This would contribute to the Chancellor of the Exchequer's policy of reducing Third World poverty.
10. In compiling this response STV has had the privilege of studying the draft responses from two of our members, the British Library and SCONUL, which address the wider library issues arising from copyright law. We endorse their responses and believe they provide sound practical evidence of why the balance of copyright law is no longer equitable and has been undermined by the licences and contracts imposed by publishers for access to their digital publications. Clearly, copyright needs to be updated to take account of the digital age but we do not believe that digital technology should be allowed to undermine the rights conferred to libraries and archives via existing copyright exceptions. It cannot be in society's interest to allow the technology to determine policy and drive the regulation. We believe the British Library has a unique and well-balanced understanding of the full range of issues which arise from copyright law and would advise the Review

Team to take advantage of its expertise in the interests of all parties concerned.

11. To summarise, we recommend the Gowers Review to propose:

- that the exception for visually impaired people be retained
- that it should be extended to address the needs of other people with a print disability
- that the UK Government should press the EC to legislate to provide for an exception to the Database Directive 1999 for the benefit of disabled people
- that the UK Government should then apply the exception as soon as possible
- that the UK Government should legislate to protect the human rights of disabled people to have access to material legitimately acquired by preventing publishers from applying T.P.M.'s which deny them those rights
- that the UK should press WIPO to issue its Model Copyright law to permit and encourage the import and export of alternative format materials and that the UK should introduce the legislation for the benefit of print disabled people in the UK and elsewhere

We also recommend that the Gowers Review carries out the whole process of the review mindful of its duty to promote equality of opportunity for disabled people and indicates in its report how it has complied with the Disability Discrimination Act 2005.

David Owen
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Share The Vision
20.04.06