

# Review of UK Intellectual Property Law (the Gowers Review)

## Response from organisations representing the needs of people with reading impairments including dyslexia and other Specific Learning Difficulties.

### 1 Executive summary

We have seen and endorse the response from the Royal National Institute of the Blind (RNIB) and agree with its recommendations. The only purpose in duplicating its arguments would be to add further weight to them. We trust that the Review will agree the importance without having to endure the repetition.

We have added our detail to RNIB's Recommendation 4: *that the current Review actively consider ways of removing copyright and related barriers faced by other categories of disabled people not covered by the term "visually impaired"*. This is the single most important recommendation for our stakeholders, who are not covered by the current copyright exception. This leads to anomalies, injustices and discrimination. We suggest that the Copyright (Visually Impaired Persons) Act 2002 be amended in effect so that it refers to The [Disability Discrimination Act 1995](#) (DDA) for its definition of persons affected, so removing the possibility of anomalies and discrimination between disabilities. We suggest the term "media impaired" to describe those who cannot fully access a copyright work in its original form and who therefore need to modify or add to the format to improve their access.

We have also seen the submission from Share The Vision and endorse it in detail. We particularly echo the paragraph:

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.

## 2 Who we are

### 2.1 **The [British Dyslexia Association](#)**

The BDA is the voice of dyslexic people. We aim to influence government and other institutions to promote a dyslexia friendly society. The BDA promotes early identification and support in schools to ensure opportunity to learn for dyslexic learners. We want to represent the needs of dyslexic people on leaving school, in higher education and in work.

### 2.2 **Dyslexia Action (formerly the Dyslexia Institute and Hornsby International Dyslexia Centre)**

Dyslexia Action is a national charity and the UK's leading provider of services for people with dyslexia and literacy difficulties. Dyslexia Action specialises in assessment, teaching, training and the development and distribution of teaching materials.

### 2.3 **[iansyst Ltd/dyslexic.com](#)**

iansyst has been specialising in technology tools to help dyslexic people make the most of their abilities since 1994. It runs the information and commercial web site dyslexic.com. ITS (iansyst technology services) also supplies computers and technology to people with other disabilities, including visual impairments. It is an Organisational Member of the BDA.

### 2.4 **The National Association of Disability Officers**

NADO Ltd is the professional organisation for disability and support staff in further and higher education. NADO is for anyone working in the post-16 education sector and involved in the management or delivery of services for students with disabilities.

### 2.5 **The Adult Dyslexia Organisation (ADO)**

The Adult Dyslexia Organisation was founded in 1991 and is run by dyslexics for dyslexics and all those concerned with adult dyslexics.

### 2.6 **Association of Dyslexia Specialists in Higher Education (ADSHE)**

The Association of Dyslexia Specialists in Higher Education was formed in order to share knowledge and inform good practice so that any dyslexic student will be assured of appropriate support throughout the HE sector.

### 2.7 **The National Network of Assessment Centres (UK)(NNAC)**

The NNAC is an organisation of over 50 centres in England and Wales providing assessment services for disabled people, including those who have a reading impairment and thus difficulties with access to standard media. Clients include students in Higher Education, who may experience problems with access to print and other resources and require special arrangements such as use of specialist technologies. Such special arrangements may be

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constrained by issues such as copyright, limited availability of accessible resources or problems of compatibility between standard media and specialist technology.

### 3 List of recommendations

This list comments on, refers to, and follows the numbering of the list of recommendations in RNIB's Response, from the point of view of our stakeholders. We have attached a copy of RNIB's Response for convenience.

#### **3.1 Recommendation 1**

When Recommendation 4 is in effect our stakeholders and those who serve them will also benefit from the suggested amendments to the CDPA 1988 to improve the efficiency of administering the licensing schemes.

#### **3.2 Recommendation 2**

Dyslexic and other reading impaired people will also benefit if, for example, alternative formats which are already available in the USA from organisations like [Recording for the Blind and Dyslexic](#) (RFBD) and [bookshare.org](#) can be made available in the UK without needing to be wastefully recreated. It is appalling that this is not already the case.

#### **3.3 Recommendation 3**

The UK government must do all that it can to facilitate this international transfer within and beyond the European Union. It must ensure that such transfer facilities are worded in terms of reading impairment or media impairment and the definitions within the DDA rather than being limited to visual impairment.

#### **3.4 Recommendation 4**

That the current Review actively consider ways of removing copyright related barriers faced by certain other categories of disabled people, not covered by the term "visually impaired".

We discuss this in more detail in section 4 below.

#### **3.5 Recommendation 5**

People with other disabilities apart from visual impairment also need copyright exceptions to be extended to films, DVDs and other audiovisual products. This is less relevant to people with dyslexia unless they also happen to have other relevant disabilities. Our comments about media impairment in Section 4 below are, however, directly relevant.

### **3.6 Recommendation 6**

Dyslexic and other reading impaired people also need alternative format access to all forms of database, so need the UK Government to press for the extension of copyright exceptions at European level. Again this needs to be in terms of reading or media impairment and the definitions within the DDA rather than being limited to visual impairment.

### **3.7 Recommendation 7**

As with Recommendation 6, eventual UK legislation extending the exceptions to databases needs to cover all reading or media impairments.

### **3.8 Recommendation 8**

As discussed below, dyslexic people are often reliant on technology to overcome literacy difficulties. Electronic works are in general highly beneficial compared with paper reading matter. It is vital that technological protection measures are not allowed to have the effect of thwarting the ability of reading- and other media impaired people to access electronic media.

### **3.9 Recommendation 9**

Reading impaired people should indeed have the Right of Access to published material as far as possible on the same basis as those who can read normal print. The Disability Discrimination Act 1995 uses the concept of *reasonable adjustment* to iron out discriminatory behaviour. The interpretation of the words *reasonable adjustment* may be different in the context of the design and production of goods. But the protection of the DDA should be extended to the design and production of copyright materials (and possibly to the production of other goods too). In an age where practically all written materials now go through a stage of electronic text, it requires a very small and utterly reasonable adjustment to work flow to make that electronic text available to those who act for reading impaired people. It will require similarly small adjustments to work flow to make that electronic text more immediately accessible to disabled people than it tends to be at present.

### **3.10 Recommendation 10**

All reading impaired students would benefit if producers of educational textbooks were obliged, as in many of the United States, to make electronic versions available.

All reading- and media impaired people would benefit if publishers had to deposit an electronic version of copyright works in a central repository that could then be accessed by organisations producing alternative formats for reading impaired people. The Irish Republic's [Copyright And Related Rights](#)

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[Act, 2000](#) ironically gives the British Library the right to demand electronic versions of Irish printed copyright works. But there does not seem to be any equivalent UK right. We presume that the Gowers review will be looking at best practice in other nations' copyright legislation.

A central repository of electronic forms of copyright material will need to be funded. Such a role should be in the hands of a non-commercial organisation like the British Library. But it will need funding unless it is to be left to a non-UK based organisation like Google or Microsoft to do whatever they consider that the law allows them to do. This is, in any case, unlikely to be enough properly to meet the needs of disabled people and will be subject to commercial pressures.

## **4 Recommendation 4** **The reading impairment anomaly.**

### **4.1 Background: Reading Impairment -- Visual Impairment and dyslexia, compared and contrasted:**

To appreciate the needs of dyslexic people it is helpful to compare and contrast with other reading impaired people eg visual impairment.

Many dyslexic and most visually impaired people are reading impaired, ie they have difficulties reading traditional printed text with normal comfort, normal fluency, and normal comprehension. They share a need for "accessible" texts, but may have different ways to make the text accessible. What follows are some generalisations which attempt to explain some of the differences in policy for those catering to the two areas.

#### **4.1.1 What is Dyslexia?**

##### **4.1.1.1 A Definition from the [BDA](#):**

The word 'dyslexia' comes from the Greek and means 'difficulty with words'.

It is a difference in the brain area that deals with language. It affects the under-lying skills that are needed for learning to read, write and spell. The difficulty is with Phonological Processing, which is the ability to relate sounds to how you write them. Brain imaging techniques show that dyslexic people process information differently.

Around 4% of the population is severely dyslexic. A further 6% have mild to moderate problems. Dyslexia occurs in people from all backgrounds and of all abilities, from people who cannot read to those with university degrees. Dyslexic people, of all ages, can learn effectively but often need a different approach.

Dyslexia is a puzzling mix of both difficulties and strengths. It varies in degree and from person to person. Dyslexic people often have distinctive talents as well as typical clusters of difficulties.

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Dyslexia often occurs with Dyspraxia (clumsiness), Dyscalculia (problems with numbers), ADHD (Attention Deficit and Hyperactivity Disorder) and Audio Processing Disorder (APD). The main relevance to copyright is dyslexia although APD may also have implications for copyright in recorded media.

### 4.1.1.2 Accessibility Needs:

Not all dyslexic people have reading difficulties. But for those that do, there are two main causes:

### 4.1.1.3 Phonological Deficit:

Some have purely phonological problems, ie in decoding individual words to work out what the word says, and therefore what it means. They will often benefit from being able to hear the word:

1. by listening to a recorded text;
2. by using [Text to Speech synthesis](#) (TTS or speech feedback, where the computer turns the written text into synthetic speech);

### 4.1.1.4 Visual Stress:

Many dyslexic people also suffer from Visual Stress, also known as Scotopic Sensitivity, Meares-Irlen syndrome, Visual Dyslexia and by various other names. See the web page on [Vision](http://www/dyslexic.com/vision) at <http://www/dyslexic.com/vision>. They have difficulty focussing and moving their eyes in coordinated jumps to track words ("saccades"), such that the print may appear to move, swim or blur. (They may not realise that it doesn't do this for everybody!) Their needs may be similar to those of partially sighted people. They may benefit from:

1. Changing font size and style;
2. Changing foreground and background colours (by using coloured overlays or tinted lenses for print);
3. Changing the spacing between characters, words and lines.

These can easily be done with electronic text.

There is some controversy as to whether Visual Stress is part of dyslexia or something different, but it is certainly a reading impairment.

People with Visual Stress can use technology:

1. They may like to listen to the text, whether by recorded speech or TTS, often whilst reading visually.
2. Magnification may be useful although it will rarely be enough on its own, in contrast to partial sight.
3. Screenreaders -- programs which read text out loud from the screen using TTS -- are useful for visually impaired and dyslexic people alike, although the specific programs are different.
4. A dyslexic person (as, to a degree, someone with partial sight) can see the cursor, icons and menus so just needs to hear the text and possibly the menus. Screenreaders for Dyslexia often combine with the synthesised speech other useful features for Dyslexia - [OCR](#) (Optical Character Recognition to turn printed text into digital text),

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word and sentence highlighting, spell checkers, dictionaries, word prediction. These can all work from the electronic text. Typical products are those from [textHELP](#) and [Kurzweil](#).

### **4.1.1.5 Age & Stage of Life:**

A comparatively small proportion of visually impaired people are so from birth or early years. Most have lost their sight as they get older.

Dyslexia on the other hand is usually present at or before birth (although it can be 'acquired'), apparently governed by genes, the womb and early years' health, environment and diet.

So the emphasis in Dyslexia provision has been on the education years, when dyslexic students are at a particular disadvantage in a world largely based on the written word.

Dyslexic students need help in reading contemporary writing (including their own school work), reference and text books. TTS -- synthesised speech -- is often the only way of listening to such texts and can only be done if texts are in electronic format. They will rarely have learnt to read for pleasure.

Many visually impaired people will have spent a life reading for pleasure, and with the leisure of old age will have plenty of time for novels. These can happily be recorded by professional narrators, which are more pleasant to listen to than even the best synthesised speech.

Formats such as DAISY -- Digital Accessible Information System -- can now be produced semi-automatically from digital text and can be suitable for most reading impaired people.

## **4.2 The Disability Discrimination Act 1995**

The DDA defines disability in the following terms:

*a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.*

To avoid anomalies and inadvertent discrimination between people with different disabilities we believe this definition should be carried through into other legislation affecting disabled people, in particular to copyright exceptions.

## **4.3 Copyright and Dyslexia:**

Since the passage of the [Copyright \(Visually Impaired Persons\) Act 2002](#), UK copyright law has contained an anomaly. The Act gave visually impaired

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people rights to have copyright texts converted so that they can read them as comfortably as possible, without needing to get permission from the publisher. The Act also covers some people with physical impairments who are, pragmatically but somewhat incongruously, defined as "visually impaired" in terms of the 2002 Act. Dyslexic and other reading impaired people, however, although equally covered by the Disability Discrimination Act 1995, were not included in the 2002 Act and so do not enjoy the same rights.

This means that many dyslexic people waste a lot of time scanning text so that they can read it (using OCR and [Text to Speech](#)). And the organisations that create Talking Books and do other conversions for visually impaired people cannot serve those with other reading impairments and so have to discriminate against them. Educational libraries, who have an obligation to all their disabled students under the DDA, daily have to make impossible decisions whether to make conversions or not.

In fact **the 2002 Act has so far actually made matters worse for those reading impaired people** whom it excludes. Both Calibre and RNIB's own Talking Books service, for example, have apparently stopped supplying talking books to people whom they supplied before. After the 2002 Act they no longer have to get permission for each book from the publisher, so the extra costs of doing so for a dyslexic person make it economically impossible to do so.

### **4.4 What needs to be done?**

It would be possible to rework the definition in the 2002 Act in terms of reading impairment rather than visual impairment. This would also have the advantage of better covering the physical disabilities which are currently defined, incongruously, as "visual impairment".

We have made three suggestions for a redefinition in terms of the 2002 Act, to bring it within the terms of the DDA. Whilst Option C is more radical, we believe that something similar is the only way to minimise the chance of creating further anomalies and continuing discrimination.

#### **4.4.1 Option A**

(This is intended as an addition to the Act's definitions of Visual Impairment, in the same way that physical disabilities were added during the passage of the Act)

In the 2002 Act:

*Any person who is reading impaired as a result of any impairment as defined within Section 12 of this Act or as a result of any disability as defined in Schedule 1 of the Disability Discrimination Act 1995 (c. 50) (as amended by DDA 2004?)*

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*is deemed to fall within the definition of visually impaired and all references to visual impairment include reading impairment and all references to visually impaired include reading impaired.*

*Reading impaired person means a person-*

*(d) who is unable, through a disability, to read any copyright work in the form in which it is published with normal fluency, comfort and comprehension.*

### 4.4.2 Option B

This is to revise the definition from the VI Act to use "Reading Impaired" instead of "Visually Impaired" (*notes in () and suggested deletions in []*)

(9) "Reading 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 with the accuracy, consistency or stamina [to the extent] that [would] is normally needed [be acceptable] for reading. (*to cover Meares-Irlen more clearly*)

(e) who is unable, through cognitive disability, to decode words visually with the fluency and accuracy normally needed for reading. (*to cover phonological processing*)

### 4.4.3 Option C

We should be looking further forward and even wider, not just at reading impaired and reading, but at the full range of disabilities that might affect the use of copyright materials. We need to be talking about "media impaired":

A media impaired person means a person-

who is unable, through a disability (as defined *in Schedule 1 of the Disability Discrimination Act 1995 (c. 50) (as amended by DDA 2004?)*), to access any copyright work in the form in which it is published with normal fluency and comprehension (-- such that they consider it worth while going to the trouble and expense of getting the work in or into another format which they can better access).

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This is the test. Getting something in a different format is inconvenient, even with the help of technology. If you can be bothered to, it is highly likely that you need to.

Would this not cover all disabled people's needs including from the D/deaf and learning disabled (Mencap) points of view?

The wording implies:

- 1) You have got to have a legally recognised disability;
- 2) The disability has to cause the media impairment (so an irrelevant disability is not enough);
- 3) The media impairment has to be significant.

You then have the right to enjoy a more accessible format without the permission of the copyright owner.

Whilst our wording for Option C will certainly need tidying up, can any other, less inclusive, definition ultimately be justifiable in a world that has the DDA and in a world where copyright is not limited to the technology of Caxton?

## **5 Conclusion**

We welcome the Review as an opportunity to improve the situation of disabled people without significantly affecting the rights of copyright holders.

We suspect that the review will get many submissions from those who own Intellectual Property and have an interest in strengthening their control over its ownership. Owners know the value of IP, and know the law and how it relates to them. We trust you will also give due weight to the voice of the consumer, and particularly the consumer with dyslexia or other disabilities. The consumer is less likely to know the law, less likely to know of the Review and so much less likely to make sure that their voice is heard by you. Very few organisations have even as many resources as RNIB to monitor and comment on IP issues for their stakeholders.

Ian Litterick, Executive Chairman of Iansyst Ltd  
20 April 2006.