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Towards the Ideal: Steps to Improved Access

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Abstract: *The Library of the Canadian National Institute for the Blind (CNIB), a leader in library service development for people blind and print disabled, has embarked on two innovative plans to acquire digital content from publishers, in order to facilitate alternate format production of braille, e-text and audio materials. CNIB Library has contracted for licensed access to the files of five Canadian publishers. The Library is also participating in a nationwide pilot project to establish a clearinghouse, to make publishers' files available to alternate format producers. These two creative solutions have a potential to be used as a model for resource sharing among libraries for the blind worldwide.*

Founded in 1906, CNIB Library for the Blind, is a not-for-profit, national organization offering free library and information services to approximately 3 million Canadians who are blind, visually impaired, and otherwise print-disabled. A recognized leader among libraries for the blind, the CNIB Library is one of the largest producers of materials in alternative formats in the world and circulates more than 1.2 million items each year. Its ever-growing collection includes braille books, audio books, and a wide array of electronic and digital materials.

Towards the Ideal: Steps to Improved Access

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WLIC Session 129 "Balance of Copyright and Licensing: Access to Information for Print Handicapped People"

In order to offer alternate format library services, CNIB transcribes books and information into audio, Braille and electronic formats. Acquiring and transforming content necessitates knowledge of copyright and licensing conventions in Canada and in all jurisdictions from which CNIB purchases or acquires material.

The Canadian Copyright Act is the national legal framework in which CNIB operates. In 1997 Canadian Copyright Act (CCA) was updated to include Section 32(1) Persons with Perceptual Disabilities which covers reproduction in alternate format. Section 32 states

- 32. (1)** It is not an infringement of copyright for a person, at the request of a person with a perceptual disability, or for a non-profit organization acting for his or her benefit, to
- (a) make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;
 - (b) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or
 - (c) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

Limitation (2)

Subsection (1) does not authorize the making of a large print book.

Limitation (3)

Subsection (1) does not apply where the work or sound recording is commercially available in a format specially designed to meet the needs of any person referred to in that subsection, within the meaning of paragraph (a) of the definition "commercially available".

Further, the Canadian Copyright Act defines "perceptual disability" to mean a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format, and includes such a disability resulting from

- (a) severe or total impairment of sight or hearing or the inability to focus or move one's eyes,
- (b) the inability to hold or manipulate a book, or
- (c) an impairment relating to comprehension.

This critical addition to the Canadian Copyright Act was brought about through a revision of the draft legislation. The rare and wondrous event was achieved through intense lobbying by Canadians who were blind, to include in the act what had essentially been in existence in ninety years of practice. There was well-funded and powerful opposition. The Canadian copyright collective was firmly opposed to any exception. A nationwide campaign was established to inform members of parliament and the members of the Parliamentary Standing Committee. CNIB staff met with the Chair of the Committee. Every Committee member was met by blind people in local ridings and at copyright hearings. Blind people filled the audiences. Blind people targeted the most influential Members of Parliament in their own ridings.

WLIC Session 129 "Balance of Copyright and Licensing: Access to Information for Print Handicapped People"

CNIB's presentation to the Standing Committee articulated very solid technical and legal arguments, based on Canada's Charter of Rights and Freedoms¹ and a statement that true equality would only exist when people can pay for their copy of the book at the same price. The best alternative is fully accessible, commercially available publications at the same time and at the same price as print.

The copyright exemption changed the way CNIB Library conducted its business. Prior to the change in the Canadian Copyright Act, CNIB cleared all of its permissions for material published in Canada through the collective, CanCopy (now Access Copyright). Internationally produced material, purchased by CNIB from other alternate format producers (Royal National Institute for the Blind in the United Kingdom, Library of Congress in the United States, etc.) all required copyright clearance. This was accomplished through permissions from publishers. In the United States, the Library of Congress cleared copyright for alternate production in both Canada and the United States. CNIB purchased approximately 60% of its collection from the Library of Congress and the elimination of this step for CNIB was a significant advantage.

However, once the Chafee Amendment (1996) was passed in the United States, eliminating the requirement of copyright clearance for alternate format production in the United States, CNIB had to clear copyright for each title that it planned to purchase. One year later, changes to the Canadian Copyright Act were enacted and CNIB was no longer required to clear copyright for Canadian materials. With national restrictions removed, all copyright clearance for internationally sourced material was managed through the purchasing organization. All coordinated clearances came to a halt.

The effect of the amendment to the Canadian Copyright Act 1997 for CNIB was that alternate format copies of material available in Canada could be produced without any copyright infringement.

According to David Vaver in Copyright Law (Essentials of Canadian law) copies may be made in any format, including digital², and can be made for profit or for free, at the disabled person's request.³ Copyright clearance would be required if the work was commercially available in a format specially designed to meet the person's needs.⁴

To take full advantage of the opportunity to produce more content in alternate format through sourcing of digital content, by removing the digitizing step from CNIB's production, CNIB developed a contract in 1999, to propose to Canadian publishers a streamlined process of acquiring Canadian content in digital format, directly from the publisher. CNIB proposed to purchase publisher files, thus eliminating the scanning of print books to create the electronic source file for braille, audio and e-text production. CNIB Library carefully selected publishers to approach.

¹ David Vaver, Copyright law (Toronto, Ontario: Irwin Law Inc., 2000 p. 134

² Ibid p. 185

³ Ibid p. 183

⁴ Ibid p. 184

WLIC Session 129 "Balance of Copyright and Licensing: Access to Information for Print Handicapped People"

CNIB has an established a profile in Canada, as the sole significant alternate format library and over the years the Library developed relationships with publishers and authors through annual audio book awards and other events. The greatest success involved publishers with whom CNIB had a relationship. Contracts and more informal arrangements were made with five Canadian publishers.

In the course of creating the arrangements for publisher file acquisition, CNIB determined was that no two publishers handles rights, permissions in same way. Each publisher relationship tailored the contract or arrangement to fit their requirements. All contracts are unique. Fees per title vary from a significant fee to no charge. Print copies, necessary for the production process, also range from no charge to regular library purchase rates (40% discount). Electronic publisher files are sent through E-mail, by FTP server and on CD. CNIB preferred file format was HTML, however no publisher had files in HTML and sent Quark and PDF files. Some publishers bundled the print copies with the files. For others, print copies were purchased through a separate process, in some cases from a separate vendor. The delivery of the files was coordinated to the book publishing year, featuring the spring and fall seasons. The world's foremost romance publisher provides files on a monthly basis, confirming the love's seasonlessness.

CNIB also found that publishers were unaware of Canadian Copyright Act exception for "perceptual disability" and they demonstrated a tendency to establish restrictions beyond the limit Canadian Copyright Act. No format restrictions limit the use of the material to users qualified in Canadian Copyright Act, however, one publisher disallowed the production of Braille from the electronic file. One publisher provided worldwide production rights to libraries for the blind. CNIB has arrangements with five Canadian publishers and the digital sourcing of material has indeed improved access to new Canadian content and the speed of production.

CNIB has stated to publishers that it will protect digital content through adherence to legal requirements, implement non-interfering rights management protection and, in future, apply platform level rights management. This standard is generally followed among libraries for the blind.

CNIB practices are informed by the seven point DRM pyramid developed by the American Association of Publishers, which provides a template for the levels of protection available. At the base of the pyramid is copyright. This specifies legislative rights and exceptions. The second level is contract, which defines terms of use. Next, password protection provides a basic security. Watermarking, the fourth level identifies an asset, marking it as CNIB property. The fifth level is encryption, using an algorithm to scramble content. This level introduces interference with access technology (speech readers). The sixth level is fingerprinting and employs personal user information to identify the legitimate user. The seventh and final level of protection is end use rights specifying what the user can do (read, copy, etc.).

CNIB is three steps up on the DRM pyramid. Its content and user groups are in compliance with the Canadian Copyright Act. All users must agree to abide by the terms of use before logging in. CNIB online content is password protected.

WLIC Session 129 "Balance of Copyright and Licensing: Access to Information for Print Handicapped People"

Market maturation of further protection will be implemented unless it interferes with access. Encryption negates format choices and requires significant end user intervention, which may be difficult for client profile of the user community. In future, CNIB plans to watermark content, use fingerprinting, and define end use rights.

Further, CNIB will participate in the Trusted Computing Platform Alliance Protocol. This set of rules confirms four levels of security: the desktop is legitimate (not a hacker); the user is authenticated; the server is recognized as legitimate; and the content use is defined. Once acceptable level of compliance with non-interfering rights management solution in place, international resource sharing becomes achievable.

CNIB's initiative with Canadian publishers established a model of access to digital content, based on a relationship of trust and of concern for the end user's access to books and information. CNIB is a well-known national organization and has always acted in compliance with copyright legislation. It has earned its way as a principle participant in Canada in the provision of alternate format library service. CNIB is one of the most significant participants in a new pilot project, proposed by Canada's national library, Library and Archives Canada.

The pilot project had its origin in the 2000 report of the Task Force on Access to Information for Print-Disabled Canadians⁵ where it recommended that the Government of Canada establish and fund a clearinghouse for e-text to which Canadian publishers make their works available. In 2003, the Council on Access to Information for Print-Disabled Canadians commissioned and endorsed the implementation plan for a clearinghouse for print disabled Canadians⁶.

The stated objective of the pilot project is to address the inequity borne by three million Canadians who have a print disability and require alternate formats to gain access to information. Less than 5% of published material is available in alternate formats. Access to leisure reading and educational material as well as material for lifelong learners is limited and frequently seriously delayed.

The viability of the project was made possible through partnerships that were cultivated among the various stakeholder groups. The Canadian Publisher's Council, working with the Association of Canadian Publishers, l'Association nationale des éditeurs de livres and Access Copyright will provide liaison with the publishing community. The alternate format producer organizations (Library for the blind, School for the blind, provincial departments of education, post secondary institutions) and Library and Archives Canada represent the user community.

The plan is simple and sets out procedures for the request of a title:

1. Identify a specific title
2. Search the National Union Catalogue of Alternate format material (AMICUS)

⁵ www.collectionscanada.ca/accessinfo/s36-200-e.html

⁶ www.collectionscanada.ca/accessinfo/s36-205-e.html

WLIC Session 129 "Balance of Copyright and Licensing: Access to Information for Print Handicapped People"

3. If located in an authorized Clearinghouse repository, the copy is acquired through interlibrary loan/document delivery protocols.
4. If not located AMICUS, a bona fide producer requests Access Copyright (the Canadian copyright collective) to contact the publisher and requests that the file be sent to the alternate format producer.
5. Upon receipt of the publisher's file, the producer reports the acquisition to AMICUS to update the location information.
6. Once alternate format production is complete AMICUS is again updated with the specific format information and the alternate format producer undertakes to provide secure storage for all files and make the files available to other bona fide producers.

The advantages are clear:

Access to electronic master from publisher

Publishers will be approached only once for a title

Union database will show all holdings in available formats

Elimination of unnecessary duplication of production

Most importantly, enhanced access to the client, student, and lifelong learner by reducing the delay for provision of alternate formats and to improve availability.

The 12-month pilot project will be evaluated according the following criteria:

- The number of titles requested and converted;
- Ease of use of publishers' files, issues of conversion, requirements for standardized formats;
- Effectiveness of work flow;
- Benefits/risks of decentralized storage and centralized reporting of the original and converted files;
- Time lines, (turnaround time for request to Access Copyright to delivery of e-file, turnaround time for original request to delivery of alternate format;
- Cost to each participant and cost/benefit analysis;
- New requirements for bibliographic reporting and maintenance;
- Issues related to "for-profit" producers.⁷

A full report of the pilot project will be available on the Council on Access to Information for Print-Disabled Canadians web site at www.collectionscanada.ca/accessinfo/index-e.html upon completion in March 2005.

This pilot project is an ideal situation in the making. While CNIB's original work with Canadian publishers for access to their digital files was groundbreaking and productive for CNIB, a national program including all alternate format producers in Canada steps beyond a one-on-one situation. All Canadian stakeholders are participants in the clearinghouse pilot project. Publishers are included, the Canadian copyright collective, Access Copyright is present, as are

⁷ Ralph Manning, Electronic Clearinghouse For Alternate Format Production, Pilot Proposal Project, 2004 p. 4

WLIC Session 129 "Balance of Copyright and Licensing: Access to Information for Print Handicapped People"

the organizations for print disabled Canadians. The beneficiaries are all Canadians who benefit from an informed and educated citizenry.

Canada has taken its next step towards the ideal. As more national programs develop and as rights management becomes more sophisticated, the next step is to implement an international program built on this model. Under the auspices of the International Publishers Association, facilitated by WIPO (World Intellectual Property Organization) guidelines for national copyright exemptions for people who are print disabled, all bona fide alternate format producers, with a specified level of rights management procedures, could be registered for authorized transfer of publisher files from member publishers worldwide. This is the ideal that libraries must strive to reach. It is with our collective grasp.

References

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