

MAKING CONTENT ACCESSIBLE

**A Guide to Navigating
Australian Copyright Law
for Disability Access**

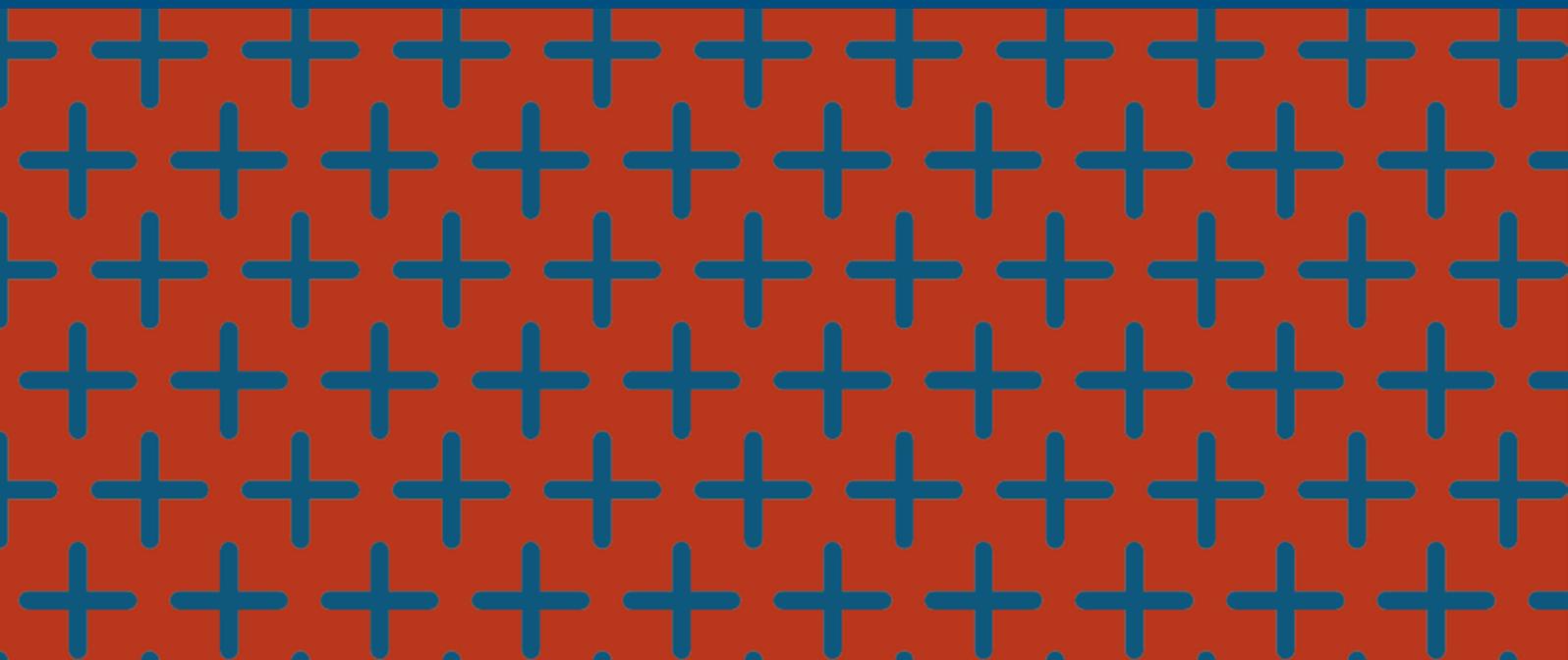


Table of Contents

Introduction	1
Disability access and copyright in Australia	1
The new laws	3
Disability access copyright checklist	4
A. Preliminary questions	4
B. Is your use permitted under the not-for-profit organisations exception (s. 113F)?	8
C. Is your use permitted under the 'fair dealing for disability access' exception (s. 113E)?	11
Best practice impact management steps	15
Highly desirable	15
Optional	17
Some practical issues	19
Checking whether you can buy the content in the format you need	19
Checking whether someone else already has the content in the format you need	20
Obtaining digital files from the creator or publisher	21
Circumventing digital 'locks'	21
Purchasing source material	21
Supplying an accessible version	22
Supplying to someone overseas	23
Charging for the supply	23
Making sure an accessible version isn't used for anything else	23
Storing an accessible version	23
Things you do NOT have to do	25
Require individual students to purchase a copy of the source material	25
Destroy accessible copies after each use and recreate them for future uses	25
Limit access to the material to the original requesters	25
Always make use free	25
Spend excessive amounts of time trying to track down a commercial copy	26

Published May 2019 by the Australian Inclusive Publishing Initiative (AIPI)

www.aipi.com.au

The Australian Inclusive Publishing Initiative (AIPI) was launched in 2016 to foster a collaborative, consultative and consensus-based approach to tackling accessibility problems in Australia. Its members include representatives of the publishing industry, authors, agents, editors, designers, indexers, libraries, copyright organisations, disability associations, government and accessible-format providers. The aim of the AIPI is to increase access to published material for people living with print disabilities in Australia.

This guide was produced collaboratively by members of the AIPI. Primary contributors include Jessica Coates of the [Australian Digital Alliance](#), Libby Baulch of the [Copyright Agency](#), and Fiona Phillips, formerly of the [Australian Copyright Council](#) and now of [Fiona Phillips Law](#).

We would like to thank all those who assisted in the guide's development, especially those representatives of Australians with a disability who provided valuable feedback.

Our thanks also to copy editor Lilla Wendoloski AE and designer Hugh Ford, and to Tarna Cosgrove of the Royal Institute for Deaf and Blind Children for transcribing the text into braille.

This project is supported by the Copyright Agency's Cultural Fund

COPYRIGHT AGENCY
CULTURAL FUND



Making Content Accessible: A Guide to Navigating Australian Copyright Law for Disability Access by the [Australian Inclusive Publishing Initiative](#) is licensed under a [Creative Commons Attribution 4.0 International License](#). You are free to copy, share and adapt it, as long as you credit the Australian Inclusive Publishing Initiative as the original source. For the full licence terms see <https://creativecommons.org/licenses/by/4.0>

<u>FAQs</u>	<u>27</u>
<u>How do I confirm that a client is a person with a disability?</u>	<u>27</u>
<u>Can I charge a fee for providing an accessible version?</u>	<u>27</u>
<u>Do I need to destroy my accessible version once I've provided it to the client?</u>	<u>27</u>
<u>Do I need to report that I've created or supplied an accessible version?</u>	<u>28</u>
<u>Do I need to register to be able to make and supply accessible versions?</u>	<u>28</u>
<u>Disability access copyright – one-page checklist</u>	<u>29</u>

Introduction

This guide aims to provide a simple summary of the laws governing access to copyright material for people with a disability in Australia, a checklist of the major requirements of these laws, and some practical advice for applying them in everyday situations.

It is intended for use by disability organisations, libraries, archives, museums, galleries, schools, TAFEs, universities and similar institutions. For this reason, you will find frequent references to terms such as 'clients', 'students' and 'staff'. However, the information it provides may also be useful to others, including individuals, wishing to make use of the accessibility exceptions in the *Copyright Act 1968* (Cth).

There are two important principles that underlie the recent amendments, and this guide, and should form the starting point for most interpretations:

1. The provisions of the Act are intended to put people with a disability in the same position as those without a disability.
2. Where it is possible to purchase material in a format and with functionality that is appropriate for the person with a disability, this will usually be cheaper, faster and generally preferable, in that it both provides compensation to authors and promotes the production of more accessible material.

Disability access and copyright in Australia

In 2013, after many years of negotiation, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled was officially adopted by the World Intellectual Property Organization (WIPO). It prescribes a minimum global standard for exceptions that allow access to copyright materials for persons with a print disability.

The Australian government has always been a strong supporter of the treaty, and in fact was one of the first countries to introduce dedicated accessibility exceptions in the 1980s. It is also highly involved

in the [Accessible Books Consortium](#), a WIPO-led initiative that aims to increase the number of books worldwide in accessible formats and to make them available to people who are blind, have low vision or are otherwise print disabled.

The government therefore moved quickly to ratify the treaty and introduce legislative changes to move our law to ‘Marrakesh plus’ – that is, going beyond the minimum standards required by the treaty to ensure that Australia led the world in recognising the rights of people with a disability to access copyright material.

These changes, introduced by the *Copyright Amendment (Disability Access and Other Measures) Act 2017* (Cth), are deliberately flexible, so as to encourage creativity, innovation and responsiveness to relevant technological advances. They are intended both to encourage our existing commercial markets to better serve those with a disability, and to provide a working solution to ensure copyright material is still accessible even where it is not commercially available.

Importantly, the Australian changes go beyond the requirements of the treaty by providing solutions not only to those with a print disability, but to those with any disability. There are many different kinds of disability and they can result from accidents, illness, ageing or genetic disorders. A disability may be visible or hidden and may have minimal or substantial impact on a person’s life in the form of activity limitations and participation restrictions. The essential issue in this context is that a person’s disability may cause them difficulty reading, viewing, hearing or comprehending copyright material. If this occurs, Australian law aims to ensure that they can ‘enjoy equitable access to copyright material in the same way as a person without a disability’.¹

1. Explanatory Memorandum, Copyright Amendment (Disability Access and Other Measures) Bill 2017, p. 14. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5832_ems_6286f247-9092-48bd-aac1-d771a2c7ee30/upload_pdf/625196.pdf;fileType=application%2Fpdf

The new laws

Following the 2017 changes, the *Copyright Act 1968* (Cth) now has two exceptions for providing access to a person with a disability:

1. section 113E ‘Fair dealing for purpose of access by persons with a disability’ (referred to in this guide as the ‘fair dealing exception’)
2. section 113F ‘Use of copyright material by organisations assisting persons with a disability’ (referred to in this guide as the ‘organisations exception’).

Both sections allow accessible versions of copyright material to be created and supplied to a person or persons with a disability, if they would otherwise have difficulty reading, viewing, hearing or comprehending the material. Which exception applies to a particular use will depend on the circumstances.

Both exceptions apply equally to:

- all types of material – this includes books, movies, music, computer programs, forms or any other content that is covered by copyright
- all uses – depending on the circumstances, you can copy the material, convert it into different formats, send it electronically, upload it, import or export it, play or display it, or do anything else needed to provide it to the person who needs it
- all persons with a disability – the exceptions can be used by any person with a disability (or any person or organisation assisting a person with a disability) that prevents them from accessing copyright material.

What you can do under the exceptions is primarily governed by the needs of the person wanting to access the material. There are no legal limits on the technologies or formats you can use, or the number of accessible copies you can create. There are also no record-keeping or reporting requirements for these exceptions; however, it is always a good idea to keep track of your reasoning and actions in applying the exceptions.

Disability access copyright checklist

This checklist has been designed to help you identify whether your organisation is meeting the major requirements of the laws governing access to copyright material for people with a disability in Australia.

A. Preliminary questions

The two disability access exemptions will be discussed in Parts B and C of this checklist. Part A contains five threshold questions. It is worth answering these questions before you decide whether your use is permitted under the two exceptions, as they are basic requirements for both exceptions.

1. Is the client a 'person with a disability'?

The definition of 'disability' applied in the Copyright Act is the same as the [definition of disability in s 4 of the Disability Discrimination Act 1992 \(Cth\)](#). In summary, it includes:

- physical, intellectual, sensory, neurological, learning and psychosocial disabilities, diseases or illnesses
- physical disfigurement, medical conditions, mental illness and work-related injuries
- temporary or permanent disability
- disabilities that affect all or only part of a person's bodily or mental functions.

The Australian Human Rights Commission has published a [fact sheet](#) on who qualifies as a person with a disability.

How you establish that a person has a disability will depend on your organisational policies. If your organisation deals primarily with people with a disability (e.g. a dedicated disability organisation) and has a large collection of copyright material, you may want a robust policy that requires potential clients to provide a referee. However if your organisation has only occasional contact with people with a disability

(e.g. a public library), you may simply ask clients to make a declaration confirming that they qualify.

In deciding what information you ask people to provide and how you store and access that information, you should take care to consider [your obligations under privacy law](#).

2. Does the disability cause the person difficulty in reading, viewing, hearing or comprehending copyright material?

The two accessibility exceptions focus specifically on the needs of the individual seeking to access the content. Material is not accessible to the person if they cannot access it in an equitable way consistent with a person without a disability, in the form in which it is currently available to them.

3. Is there another format that will allow that person to better read, view, hear or comprehend the material?

The fact that the material is available in a format that might generally be thought of as 'accessible' does not matter if this form does not suit the needs of the person in question.

For example:

- Content available in braille is not accessible to a person who does not read braille.
- Content available in 18-point text is not accessible to a person who needs it in 36-point text.
- Content available in a locked proprietary ebook format is not accessible to a person who does not have a device capable of opening it.

Similarly, the new exceptions also require that the material have the functionality needed by the client. For example:

- A student writing a paper on a book needs to be able to quote page numbers, search, move back and forth through the text,

and so on. A commercial audiobook that does not provide this functionality does not meet their needs.

- A VHS copy of a film with subtitles does not meet the needs of a person with a hearing impairment if they only have a DVD player available to view it.

4. Have you checked whether the material is already available in the format the person needs?

Although this will not necessarily stop you from making a new accessible version under the two exceptions, generally it will be cheaper and easier to simply use the version that is already available.

The material may be available:

a. In your own collection

If the material is already held in your collection in a form that suits your client's needs, it will generally be okay for you to take whatever steps are necessary to supply it to the client. These may include:

- lending the copy you already have
- making a second copy in that form for the client
- sending it to the client either by post or electronically, including internationally
- uploading it to a cloud server from which the client can download it – in this case, you would usually ensure that it is stored privately, so that only the client in question can access it.

b. In the collection of another organisation

If the material is in another collection, either in Australia or internationally, the exceptions allow you to obtain a copy from that collection for your own client, rather than having to create your own accessible version. You should work with the originating organisation when facilitating the access to ensure you comply with their legal and policy requirements.

c. Commercially

The fact that the material is available commercially in the form your client needs does not necessarily stop you from making an accessible copy, but purchasing the material will usually be preferable to making your own. A commercial availability test must be undertaken before materials are converted under the organisations exception, and your use is less likely to be considered 'fair' under the fair dealing exception if you or the client could have bought a suitable version. Most importantly, if a commercial version is available, it will usually be cheaper and quicker to just buy it than to make your own.

d. On request from the publisher

Sometimes the publisher of the material will be able to provide it to you in the format you need, or as a 'master file' which is more easily convertible into accessible formats. It may be worth checking if this is possible before going to significant expense to try to convert the material yourself. If you do receive a master file from a publisher, you should handle it carefully and not forward it to others without the publisher's permission. You may be asked to agree to certain terms and conditions before it is supplied.

5. Do you have a fair process for identifying and recording client requirements?

It is not your role or responsibility to determine the level of disability and difficulty the person with a disability is experiencing. However, there is a responsibility to have a safe, secure system for recording decisions made under the exceptions, and managing access to any information obtained from clients.

You will usually need to collect minimum necessary details from individual clients to assist them with their request (e.g. the client's

name and preferred formats) and some evidence that they qualify under the relevant exception. For most organisations a personal declaration will suffice; however, some organisations working full-time with persons with a disability may require confirmation by an acceptable professional.

Once you collect this information you should treat it as sensitive personal information, which may be subject to legal obligations, for example under the [Privacy Act 1988 \(Cth\)](#).

If you answered 'yes' to all of the questions in Part A, go to [Parts B and C](#) to determine whether your use is permitted under either of the two accessibility exceptions provided in the Copyright Act.

B. Is your use permitted under the not-for-profit organisations exception (s. 113F)?

This exception applies to a not-for-profit organisation with a principal function of assisting people with a print disability. It allows them to copy, convert and supply material to their clients, to allow them to access the material in the form they need.

1. Are you from a qualified organisation?

This exception is available to:

- educational institutions, and
- not-for-profit organisations with a principal function of providing assistance to persons with a disability (the organisation can have other principal functions as well). This includes not only dedicated disability organisations, but also libraries and other not-for-profits that provide accessible materials to their clients.

2. Is the use for the sole purpose of enabling the client to access the material in the format they need?

The exception cannot be used as an excuse to copy material and then use it for another purpose. For example, you shouldn't copy the material into an accessible format for one client, and then start to sell the material to the general population.

3. Have you checked that the material is not commercially available in the format the client needs?

The organisations exception only allows you to convert and supply the material if it cannot otherwise be obtained in the format the person needs in a reasonable time at an ordinary commercial price.

To determine whether the material is commercially available, you should:

- search your organisation's usual sources of material
- contact the publisher or copyright owner (if possible) to request a copy in the appropriate format.

To count as 'commercially available', the material must be available to purchase:

a. In the format needed by the client

For example:

- Is the text large enough for the client?
- Is the format playable on their device?
- Does the material have subtitles?

b. With the functionality needed by the client

For example, an audiobook might suit a person wishing to enjoy the content recreationally, but a student may need the material to be searchable, have pagination, include a table of contents, and so on.

c. In a reasonable time

What amounts to a 'reasonable time' will depend on the client's need. For example, if you are looking in advance for next semester's course material, a six-week wait might be reasonable; if you are addressing a request by a student trying to complete an assignment, three days might be too long.

d. At an ordinary commercial price

What amounts to an 'ordinary commercial price' will depend on the material. A good rule of thumb is to reference the price that would be paid for a standard format copy of the same material. If the price is substantially in excess of this, it is unlikely to be an 'ordinary commercial price'.

It is also important to note that **material is not commercially available** if it is:

- **second-hand** – second-hand copies do not count for the 'commercial availability' test. If the material cannot be purchased new in the format needed by the client, it can be converted from an existing copy
- **bundled** – the person must be able to purchase the specific material they want separately for it to count as commercially available. For example, if the person only needs one chapter of a book, they do not need to purchase the whole book – if the chapter cannot be purchased separately, you can convert that part into the accessible form and provide it to them. Similarly, a journal article is not commercially available if you need to purchase an entire edition of the journal, or subscribe to a service or database, to access it
- **in a different convertible format** – the material must be able to be purchased in the format required by the person. Being available in another format that can be converted into

an accessible format does not count. For example, a person with a print disability does not need to purchase their own hard-copy book from which to make the accessible copy. The accessible copy can be made from any copy to which they or the organisation has legal access (e.g. a library or school copy, a file in the organisation's collection in a different accessible format, a master file from the publisher, or a copy borrowed from a friend or another organisation).

If you answered 'yes' to all of the questions in Part B, your use can be made – go to **'Best practice impact management steps'**.

If you answered no to any of the questions, your use does not fit within this exception. However, you may still be able to make the material available under the 'fair dealing for disability access' exception – go to **Part C**.

C. Is your use permitted under the 'fair dealing for disability access' exception (s. 113E)?

This exception lets anyone copy, convert or supply material for the purpose of providing access to a person or persons with a disability, as long as the use is fair. The explanatory memorandum which accompanied the legislation explicitly states that this provision is 'deliberately flexible and is intended to encourage creativity, innovation and responsiveness to relevant technological advances'.²

2. Explanatory Memorandum, Copyright Amendment (Disability Access and Other Measures) Bill 2017, p. 14. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5832_ems_6286f247-9092-48bd-aac1-d771a2c7ee30/upload_pdf/625196.pdf;fileType=application%2Fpdf

1. Is the use for the purpose of a person or persons with a disability accessing material?

The purpose of the use must be to provide a person living with a disability with access to the material in a way they would not otherwise be able to access it. The use can be made either by the person wanting to access the material or by someone assisting them. This could include not-for-profit organisations whose particular use doesn't qualify under the organisations exception, organisations who fall outside the exception, or even individuals.

It is important to note that this exception can be used to convert material for more than one person at a time. For example, if a university has more than one student with a disability, it can make multiple accessible copies at once, rather than having to convert the material for each individual student. It can also make the accessible copy in advance, to be ready for when students arrive, rather than having to wait for a particular student to request the material – as long as the primary purpose is still to provide access to students with a disability. Once material has been converted into an accessible form, it can be kept by the university for use by any future students, although their use would also need to pass the fairness test.

2. Is the use fair?

This is the only test needed to qualify for this exception – that overall, the use is fair.

To determine whether your use is fair you should consider all the circumstances, including:

- the purpose and character of the dealing – for example, a non-commercial use is more likely to be fair
- the nature of the material – for example, converting a government fact sheet is more likely to be fair than converting a recently published novel

-
- the effect on the potential market for the material – for example, converting and supplying a local history text is more likely to be fair than doing the same to a bestselling novel
 - the amount and substantiality – for example, copying only a small part of the material is more likely to be fair than copying the whole work. However, the explanatory memorandum which accompanied the legislative changes makes it clear that most of the time this isn't an important factor, and copying the whole work can be fair for accessibility purposes.³

Note that these factors should be weighed against each other and any other circumstances. No single factor will mean a use is definitely fair or unfair.

Some good questions to ask yourself when trying to determine whether your use is fair include:

- Is this use simply replicating the way in which a client, staff member or student without a disability would be able to access the material? If so, it is likely to be fair.
- Is the client able to purchase the material in the format they need? If not, the use is likely to be fair.
- Have I taken steps to minimise the impact on the copyright owner? The less impact on the creator or rightsholder, the more likely your use is to be 'fair'. (See 'Best practice impact management steps')

Uses that will usually be fair include:

- scanning part of a book so it can be read by a screen reader
- enlarging a graph or table in a textbook

3. Explanatory Memorandum, Copyright Amendment (Disability Access and Other Measures) Bill 2017, p. 15. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5832_ems_6286f247-9092-48bd-aac1-d771a2c7ee30/upload_pdf/625196.pdf;fileType=application%2Fpdf

-
- copying a course pack into braille, electronic or audio form for a student with a disability
 - having a text-to-speech system read an electronic work aloud
 - creating subtitles for a film that does not have them so it can be played to a person with a disability.

If you answered 'yes' to both of the questions in Part C, your use can be made – go to '[Best practice impact management steps](#)'.

Best practice impact management steps

These steps are not required by law, and they will not all be appropriate for all projects. However, implementing some of these measures as appropriate, or similar impact management measures developed by your organisation, will help to ensure your use is best practice.

Implementing appropriate impact management steps will also:

- make your use more likely to be 'fair' under the fair dealing provision
- limit the risk that your use will be challenged
- help to ensure the ongoing health of the Australian and international book industry and culture.

Highly desirable

These steps should be the norm, and should be departed from rarely and only if you have a strong reason to do so.

1. Only make the accessible material available to people with a disability

This does not mean you can only provide the converted material to one person with a disability at a time, or that you must destroy copies once you have supplied them. But you should not usually make the material available to people generally (e.g. by publishing it on an open website). Emailing material directly or providing it in a private online space that is only accessible to people who have been determined to have a disability or people assisting them will usually be okay.

2. If there is a commercially available version of the material that suits your need, use this by default

This provides important support for creators, and ensures that they are compensated for their work. It will also generally be cheaper to purchase the commercially available copy than to make your own accessible copy. Further, the [organisations exception](#) cannot be

relied on if the material can be obtained in a suitable format within a reasonable time at an ordinary commercial price. However, if the commercially available version does not suit your need, you can convert the material into a form that does.

3. If the material is already available in an appropriate format from another organisation, use this copy instead of creating your own

Again, this will usually be cheaper than creating your own accessible copy. However, you should coordinate the access with the originating organisation, to ensure you are complying with any other restrictions or legal obligations to which the organisation may be subject.

4. When providing the material to a client, include a standard copyright notice

For example:

This material has been provided for access by persons with a disability, in accordance with s. 113E / s. 113F of the *Copyright Act 1968* (Cth). The material should only be further copied, communicated or otherwise used in accordance with Australian copyright law.

5. Take care in handling master files

If you do receive a master file from a publisher, you should handle it carefully and not forward it to others without the publisher's permission. Master files are 'clean' copies of material without any watermark. They can be easily converted into many different formats, and hence it is particularly important that they not be shared broadly.

Optional

These steps will only be appropriate in some cases, but it can be good to consider including them as best practice.

1. Recheck commercial availability on regular occasions

Under the new provisions you do not have to destroy copies after they are created, and are free to form a library of accessible materials for provision to future clients/students. However, if you are re-using the same material more than once, you should ensure that you reaffirm its commercial non-availability regularly. For example, if you are providing an accessible version of prescribed reading to students undertaking a particular course, you may want to check the commercial availability of the material each time the course is offered. If the material is only re-used occasionally (e.g. once every year or so), it is probably worth checking each time you re-use it.

2. Notify the publisher/author that you plan to make use of the material under the exception and/or plan to provide access to new clients

There is no legal requirement under the Copyright Act to inform or contact the publisher or author when you are making an accessible copy. However, many publishers and/or authors appreciate knowing about re-use of their material, for statistical and informational purposes. It can also be of benefit to you as a user – checking with the publisher is a good thing to do as part of a commercial availability search, and will make your use more likely to be 'fair'. Asking can often result in quicker and cheaper access to the material you need, either in the form you need it or in a more easily convertible form. It also increases the visibility of the accessibility market, and might encourage the publisher to make their materials commercially available in more accessible forms.

You should, of course, use your discretion on this step. If you are providing the material frequently to more than one user, informing the publisher every time may become burdensome to both you and the publisher.

3. Ensure that your organisation has purchased or has legal access to the source material

Again, this is not a strict requirement of the legislation, and may not be appropriate in some circumstances (e.g. if the material isn't commercially available in any format). However, it is good practice, ensures creators are supported, and will make your use more likely to be 'fair' under the fair dealing provisions.

Some practical issues

Checking whether you can buy the content in the format you need

One of the intentions of the new provisions is to provide an incentive for content creators to produce accessible-format versions of their material. For example, the explanatory memorandum which accompanied the legislative changes says:

unless copyright owners make accessible versions of their copyright material available on a commercial basis within a reasonable time, persons with a disability and organisations assisting them would be able to copy and/or change the format of the copyright materials, free of charge.⁴

It is therefore important to check whether you can buy the content in the format you need before producing it yourself. This is a requirement of the organisations exception, and will make your use more likely to be 'fair' for the purpose of the fair dealing exception. In many cases, it will also be cheaper and quicker to buy the material than producing it yourself.

The content could be provided by an Australian or an overseas supplier, but you are only expected to buy it if it is available in a reasonable time and at an ordinary commercial price.

A good place to start when determining whether the material is available in the format you need is the publisher's website. Other places from which you might be able to buy content in accessible formats include the Australian specialist publishers Read How You Want, Bolinda and Wavesound, as well as the usual online stores.

4. Explanatory Memorandum, Copyright Amendment (Disability Access and Other Measures) Bill 2017, p. 7. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5832_ems_6286f247-9092-48bd-aac1-d771a2c7ee30/upload_pdf/625196.pdf;fileType=application%2Fpdf

Checking whether someone else already has the content in the format you need

If the content is not available to buy in the format you need, you may be able to acquire it from a non-commercial source, such as another disability organisation. This will normally be cheaper and quicker than creating the accessible version yourself. You should coordinate the access with the originating organisation, to ensure you are complying with any other restrictions or legal obligations to which the organisation may be subject.

Master copies held by specialist disability organisations and educational institutions are listed in the online [Master Copy Catalogue](#) hosted by the Copyright Agency. Organisations can choose to list new master copies in the catalogue so that other organisations can use existing accessible versions rather than creating their own.

The Accessible Books Consortium has a web page listing [websites offering accessible books](#). It includes libraries and commercial providers from around the world, but makes it clear that it is not a comprehensive list.

The [explanatory memorandum](#) which accompanied the legislative changes makes it clear that international suppliers can rely on representations made by Australian organisations that a required accessible-format version is not commercially available in Australia.⁵ The overseas suppliers are not required to check themselves whether the content is commercially available in Australia.

5. Explanatory Memorandum, Copyright Amendment (Disability Access and Other Measures) Bill 2017, p. 16. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5832_ems_6286f247-9092-48bd-aac1-d771a2c7ee30/upload_pdf/625196.pdf;fileType=application%2Fpdf

Obtaining digital files from the creator or publisher

The Copyright Act does not require content creators or publishers to provide their content in accessible or convertible formats; however, many do so on request. Publishers frequently have a policy of providing digital files to specialist organisations.

Publishers may ask you to agree to certain terms and conditions when they supply a file directly. These terms and conditions are usually about keeping the digital file secure, and making sure it is only used for making the accessible-format version.

Different publishers can have different terms and conditions. The Australian Publishers Association is working with its members on ways to simplify this and create standards for industry best practice.

Circumventing digital ‘locks’

The Copyright Act explicitly allows people to circumvent a digital lock that controls use of content (other than a computer game), to enable an accessible-format version to be made or supplied.

If material is protected by a digital lock (such as copy protection on a commercial DVD or ebook), you can legally ‘break’ the lock for the purpose of creating or supplying an accessible copy, as long as your use is legal under one of the [exceptions](#).

Purchasing source material

The Copyright Act requires access to the content to be legal. It does not expressly require you to purchase a published version of the content before making an accessible version. However, doing so (if that is possible) is likely to make the use more ‘fair’ and reduce harm to the market for the

content. It may also be a requirement under some direct arrangements with creators or publishers in order to obtain a digital copy of a file.

Supplying an accessible version

Once you have identified and/or created an accessible version of material, you can supply it by any means, provided it is just for the person or persons with the disability, and does not result in other people getting access to the content.

The manner in which you provide access to the individual client should be based on your own policy and your client's needs. There are no specific legal limits. Emailing files, creating a hard copy, providing a downloadable copy via a private link online, providing a file or DVD for them to take home – all may be appropriate in different circumstances.

You can also simultaneously supply the same accessible version to several people who require the content in the same format. For example, you could provide each person with the same password to view and/or download the file from the same online location.

In deciding how to provide access you should take into account:

- the needs of the client
- the potential impact on the creator or market for the material
- your standard policies for dealing with materials
- the rule of thumb that clients with a disability should have equitable access in the same way as clients without a disability
- practicalities, such as whether the client is likely to need repeated access to the material, and whether the material is readily available or difficult to track down.

You can keep and re-use 'master copies' of accessible versions once they are created; you do not have to destroy copies once they are made or create new accessible copies for each client.

You can charge to recover the cost of supplying the material, but making a commercial profit from the service will not usually be 'fair'.

Supplying to someone overseas

Accessible versions can be supplied to organisations or people in another country, as long as the use complies with one of the [exceptions](#). You may supply it overseas in the same way that you would to an Australian organisation or person.

Charging for the supply

You can ask for reimbursement of the costs of creating and supplying the version. Those costs may include time as well as materials.

Making sure an accessible version isn't used for anything else

It is a good idea to take steps to make sure that an accessible version is only viewed and accessed by the person or people for whom it was made. These steps include making sure the delivery mechanism is secure, and including information with the accessible version about who it is for and how it can be used. Some suggestions are provided in ['Best practice impact management steps'](#).

Storing an accessible version

Once you have made an accessible version, there are no specific rules in the Copyright Act about what you can do with it, as long as it is only used for providing access to people with a disability.

For example, you can:

- keep a 'master copy' in case the same or another person needs the content in that format in the future
- provide it to another person with similar needs

-
- share it with other organisations seeking to provide access to persons with a disability, including international and overseas organisations
 - list it in your catalogue or another online catalogue as an accessible version.

As already noted, master copies held by specialist disability organisations and educational institutions are listed in the online [Master Copy Catalogue](#) hosted by the Copyright Agency. Organisations can choose to list new master copies in the catalogue so that other organisations can use existing accessible versions rather than creating their own.

Things you do NOT have to do

These are things you are not required to do to comply with the legislation or industry best practice.

Require individual students to purchase a copy of the source material

New purchases in non-accessible formats should only be required if students without a disability are also being asked to purchase the material.

Destroy accessible copies after each use and recreate them for future uses

Once you have created an accessible version of material, you can keep it for future uses. If appropriate, you can also share it with others who would otherwise have the right to convert the material, for efficiency and to minimise duplication.

Limit access to the material to the original requesters

Once an accessible version is created, it can be shared with other people with a disability or with other organisations assisting people with a disability, under the accessibility exceptions.

Always make use free

Cost recovery and a reasonable additional charge (e.g. for staff time and administration) will generally be okay under the law. Charges beyond this are only allowed in limited circumstances and where it is 'fair' (e.g.

when dealing with ‘orphan’ works whose copyright owners cannot be identified in order to obtain a licence).

Spend excessive amounts of time trying to track down a commercial copy

The commercial availability test is supposed to be easily and practically applied. It does not require you to prove a negative (i.e. that the material is definitively not available). If you have eliminated the most obvious sources (e.g. by a search of the usual websites, any services your organisation obtains materials from, the publisher and other organisations), you can usually rely on this to satisfy the requirement. If you are undertaking a higher impact or higher risk use (e.g. making the material available to a large number of users, or charging a fee for the use), you may want to increase the depth of your search.

FAQs

How do I confirm that a client is a person with a disability?

The definition of ‘disability’ applied in the Copyright Act is the same as the definition of disability in s 4 of the *Disability Discrimination Act 1992* (Cth) and covers a large number of different categories. However, it does not set any rules on how to confirm that a client qualifies under the Act. You should establish an organisational policy, and different requirements may be appropriate for different organisations. Don’t forget to take privacy into account in storing and handling the information.

Can I charge a fee for providing an accessible version?

Yes. Cost recovery and a reasonable additional charge (e.g. for staff time and administration) will generally be okay under the law, but making a profit from the service will generally not be allowed.

Do I need to destroy my accessible version once I’ve provided it to the client?

No. You can keep and re-use accessible versions once they are created; you do not have to destroy copies once they are made or create new accessible versions for each client.

Do I need to report that I've created or supplied an accessible version?

No. There are no reporting or record-keeping requirements. However, it is a good idea to establish internal systems for keeping track of your compliance under the exceptions. It also doesn't hurt to tell the publisher and/or author, if this is not burdensome. Many publishers and authors appreciate hearing about re-use of their materials, find the statistics useful and may be able to help by providing access to materials in different formats.

Do I need to register to be able to make and supply accessible versions?

No. Any qualifying organisation can make use of the organisations exception, and any person can make use of the fair dealing exception. There is no registration required.

Disability access copyright One-page checklist

A. Preliminary questions

1. Is the client a 'person with a disability'?
2. Does the disability cause the person difficulty in reading, viewing, hearing or comprehending copyright material?
3. Is there another format that will allow that person to better read, view, hear or comprehend the material?
4. Have you checked whether the material is already available in the format the person needs?
5. Do you have a fair process for identifying and recording client requirements?

If you answered 'yes' to all of the questions in Part A, go to Parts B and C to determine whether your use is permitted under either of the two exceptions provided in the Act.

B. Is your use permitted under the not-for-profit organisations exception (s. 113F)?

1. Are you from a qualified organisation?
2. Is the use for the sole purpose of enabling the client to access the material in the format they need?
3. Have you checked that the material is not commercially available in the format the client needs?

If you answered 'yes' to all of the questions in Part B, your use can be made – go to 'Best practice impact management steps'.

If you answered no to any of the questions, your use does not fit within this exception. However, you may still be able to make the material available under the 'fair dealing for disability access' exception – go to Part C.

C. Is your use permitted under the 'fair dealing for disability access' exception (s. 113E)?

1. Is the use for the purpose of a person or persons with a disability accessing material?
2. Is the use fair?

If you answered 'yes' to both of the questions in Part C, your use can be made – go to 'Best practice impact management steps'.

We are the Australian Inclusive Publishing Initiative

