

Submission to the Standing Committee on Industry, Science and Technology, on the 2018 Statutory Review of the Copyright Act

Submitted by concerned members of the Ontario Council of University Libraries (OCUL) Accessibility Community.

Thank you for the opportunity to contribute to the Statutory Review of the Copyright Act. We are members of the Ontario Council of University Libraries (OCUL) Accessibility Community, which provides a forum for information-sharing and discussion on accessibility issues. Its members work at Ontario university libraries in roles that provide support to library users with disabilities. The Accessibility Community also supports OCUL libraries in their efforts to create accessible and inclusive collections, services, research tools, physical spaces and programming for all library users.

This brief concerns the limitations in the Copyright Act that restrict the ability of library staff to provide accessible and inclusive services to users, and which also prevent individuals with disabilities from accessing the educational resources they need in a fair and equitable manner.

Recommendation: Amend section 32(1) of the Copyright Act

The recommendation of the undersigned members of the OCUL Accessibility Community is that Section 32.(1) of the Copyright Act be amended to remove the words “*other than a cinematographic work*” in the following clauses:

- 32 (1) (a)
- 32 (1) (a.1)
- 32 (1) (b)
- 32 (1) (c)

Currently, Section 32 (1) of the Copyright Act does not provide a technologically neutral exception for providing alternate format materials for people with perceptual disabilities. We recommend removing the limitation on reproducing cinematographic works, in order to facilitate captioning, video description, or any other acts required to make a cinematographic work accessible to a person with a perceptual disability. The Act defines “perceptual disability” as “a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format...”

There should be no prohibition on reproduction of cinematographic works in accessible formats by individuals with perceptual disabilities, by persons acting at the request of persons with

perceptual disabilities, or by non-profit organizations acting for the benefit of persons with perceptual disabilities.

Accessibility for Ontarians with Disabilities Act (AODA)

In Ontario, the Accessibility for Ontarians with Disabilities Act (AODA) sets out standards for the provision of services to users with disabilities in public service organizations such as universities. Section 3 (2) of the AODA's Customer Service Standard states:

“Persons with disabilities must be given an opportunity equal to that given to others to obtain, use and benefit from the goods or services.” O. Reg. 429/07, s. 3 (2).

Section 15 of the AODA's Integrated Regulations also specifically obligates educational institutions to, when notification of need is given:

“Provide educational or training resources or materials in an accessible format that takes into account the accessibility needs due to a disability of the person with a disability to whom the material is to be provided”

Furthermore, Section 18 of the Integrated Regulations, which concern Libraries of Educational and Training Institutions, includes the requirement that :

“...the libraries of educational or training institutions that are obligated organizations shall provide, procure, or acquire by other means an accessible or conversion ready format of print, digital or multimedia resources or materials for a person with a disability, upon request.”

As universities and libraries work towards compliance with the AODA standards, one of the foremost challenges is the provision of accessible video (cinematographic) content. Resources used in teaching are increasingly provided in digital and multimedia formats which may be inaccessible to students with perceptual disabilities. This is particularly problematic in subject disciplines such as English, Theatre Studies and Media Studies, in which the majority of the course content may consist of video content. Providing these students with captioned or described video, or even a transcript of the audio track, is made difficult because the accessibility exceptions in Canadian copyright law that apply to other information formats do not apply to video.

Currently, while Section 32 (1) of the Copyright Act contains provisions for the reproduction of works “in a format specially designed for persons with a perceptual disability”, this exception only applies to works “other than a cinematographic work”. In other words, the reproduction of a cinematographic work in an accessible format in order to meet the needs of a person with a perceptual disability is likely to constitute copyright infringement unless the permission of the rightsholder is first obtained. This puts libraries and accessibility support staff in a difficult position: the AODA requires them to provide accessible video content but current federal copyright law hampers their ability to comply with these provincial accessibility standards.

There are numerous obstacles to obtaining permission in order to caption or provide video description for cinematographic works. Unlike other formats, there is no central clearinghouse for audio-visual copyright permissions, nor are versions with captions and/or video description readily commercially available. Determining the rights holder of a cinematographic work is complicated. Even once identified, finding contact information for the rights holder can be difficult, and it may take several contact attempts before a response is received, if one is received at all. In the meantime, students with perceptual disabilities are left without any access to the assigned video resources they require, while their classmates are able to freely access and use these materials. This puts students with disabilities at a disadvantage academically, and causes them much unnecessary stress. It also leaves accessibility support staff unable to comply with the requirements of provincial accessibility legislation.

Story: A third-year university student with perceptual disability needs video description added to a course-related video

The following story illustrates the problem caused by the limitation on the provision of accessible formats for cinematographic works in Section 32 of the Copyright Act.

Kelly is a 3rd year communication student and is taking a class that involves a project about how climate change is represented in Canadian movies. Since her early teens, she has had retinal damage. There are several films that are required viewing for the students in the class, each of which contains essential visual elements that cannot be discerned from the audio track. Therefore, Kelly needs her university to add a video description channel to each of the films.

Video description, or described video (DV) is a narrated description of a program's main visual elements, such as settings, costumes, or body language. The description is added during pauses in dialogue, and enables people, such as Kelly in this example, to form a mental picture of the program. (<https://www.describedvideocanada.com/>)

As some of the assigned films are several years old, there are no commercially available copies that come with video description that could be purchased for Kelly's use. But, under the current Section 32.(1), accessibility support staff at the university would be infringing copyright if they provided Kelly with the videos in the accessible format she requires, even if the reproduction will be stored on a university controlled server that only she can access. The only option is for accessibility support staff to attempt to locate rights holders for all of the films and seek permission to create accessible versions that Kelly will be able to use. As the instructor has assigned a different film for each week of the class, by the time permission is able to be obtained, Kelly will be far behind in her assigned course work. In cases where permission is unavailable, Kelly will not be able to participate in the the classes for which those films were assigned.

Ontario's AODA is intended to level the playing field for Ontarians with disabilities, but in this case, Kelly is at a distinct disadvantage compared to the other students in the class. While she

is able to obtain accessible versions of other types of educational materials, the Copyright Act prevents her from having barrier-free access to cinematographic works.

By adopting our recommended revision, the Parliament of Canada would enable education institutions across Canada to remove a major barrier for Kelly, and other students like her with perceptual disabilities.

The undersigned members of the OCUL Accessibility Community would be happy to provide additional information with respect to the recommendation in this brief.

Submitted by:

Heather Martin

Copyright Officer and Manager, E-Learning and Reserve Services

McLaughlin Library, University of Guelph

Athol Gow

Manager, Library Accessibility Services

McLaughlin Library, University of Guelph

Cecilia Tellis

Chef, Conception et sensibilisation | Head, Design and outreach

Médiathèque | Media Centre | MRT-155

Bibliothèque Morisset Library

Université d'Ottawa | University of Ottawa

Kelly Dermody

Librarian, Accessibility and E-Learning Services

Ryerson University Library

Lisl Schoner-Saunders,

Academic Librarian

Algoma University

Anne Pottier

Associate University Librarian and Chair, McMaster Accessibility Council

McMaster University

Monica S. Fazekas
Student Engagement and Outreach Librarian
Western University

Nancy Waite
TD Coordinator for Library Accessibility Services
McMaster University Libraries

Mark Weiler
Web & User Experience Librarian
Wilfrid Laurier University