



Journal of Copyright in Education and Librarianship

ISSN 2473-8336 | journals.ku.edu/jcel

Volume 8, Issue 1 (2025)

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Owen, V., Kohn, A., & Davidson, L. (2025). The Practitioners' Guide to Using the *Copyright Act* of Canada to Make Accessible Content for People with Print Disabilities. *Journal of Copyright in Education & Librarianship*. 8(1), 1-10

<https://doi.org/10.17161/jcel.v8i1.23510>



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The Practitioners' Guide to Using the *Copyright Act* of Canada to Make Accessible Content for People with Print Disabilities

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Abstract

This article documents the process and guidelines developed to respond to a library practitioner's question as to what constitutes a reasonable search, in the context of section 32 of the Canadian *Copyright Act*. In answering the question, the authors decided that a Canadian guide would be helpful to all practitioners facing the same question, and they undertook a project to create "Accessible Content: A Guide to the Canadian *Copyright Act* on Searching for Accessible Formats and Producing and Distributing Alternate Formats" (Owen et al, 2025). The authors formed a multi-stakeholder coalition and developed a set of guidelines aimed at aiding practitioners in understanding and applying the exceptions in the *Copyright Act* that enable the reproduction of works for persons with perceptual disabilities.

The Practitioners' Guide to Using the *Copyright Act* of Canada to Make Accessible Content for People with Print

Introduction

In 2021, the authors sought to respond to a question from the library community as to what constitutes a reasonable search, as per Section 32 of the Canadian *Copyright Act*. In addressing that question, they embarked on the process of creating *Accessible Content: A Guide to the Canadian Copyright Act on Searching for Accessible Formats and Producing and Distributing Alternate Formats* (Owen et al, 2025). It is a set of guidelines aimed at aiding those organizations and individuals in understanding and applying the exceptions in the *Copyright Act* that enable the reproduction of works for persons with perceptual disabilities. In this paper, we briefly set out the international and Canadian legislative contexts that serve as the basis for the guidelines and provide an overview of the current landscape of commercial accessible publishing and alternate format production in Canada in which the guidelines evolved. We then discuss the process through which the guidelines were created, followed by an outline of the content of the guidelines. We close with some conclusions concerning how the guidelines will be disseminated, the importance of the consultative process by which they were created and the effect that we hope they will have in facilitating and enabling alternate format production.

Legislative Context and Background

The commitment to equity of access is a central tenet for libraries and information organizations, however, in most public and academic libraries and other related non-profit organizations, information is not fully accessible (Jaeger et al, 2017). The path to achieving access to works for people with disabilities, “on an equal basis with others” (United Nations, 2006, art. 9) is a complex undertaking fraught with barriers. One such barrier for Canadian librarians and information professionals is understanding and interpreting the legislative framework related to copyright.

Framing Canadian legislation are international treaties and conventions. Canada is a signatory to the International Covenant on Civil and Political Rights (ICCPR) of 1966, a binding agreement that enshrines the human right of freedom of expression, including the right to seek and receive information in any media of choice (United Nations, 1966). Canada is also a signatory to the Convention on the Rights of People with Disabilities (CRPD) of 2006, obliging it to ensure its national laws and practices apply equally to people with disabilities (United Nations, 2006). Three articles in CRPD refer clearly to access to information: Article 9 – Accessibility, specifically 1(b) and 2(g) and(h), mentions access on an equal basis with others to information and information technologies. Canada was the twentieth signatory to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, (Marrakesh Treaty), causing it to come into force in 2016 (WIPO, 2013). The Marrakesh Treaty recognizes fundamental human rights in the copyright regime, such as the rights to access works, to education, and to cultural participation. The Marrakesh Treaty's preamble states that it complies with the “principles of non-discrimination, equal opportunity, accessibility, and full and effective participation and inclusion in society” as set out in the Convention for the Rights of Persons with Disabilities and the Universal Declaration of Human Rights. The Treaty also states the importance of copyright protection as an incentive and reward for literary and artistic creations, which enhances opportunities for all, including persons with visual impairments or other print disabilities.

Canada amended the exception in the *Copyright Act* (1985) for persons with perceptual disabilities (section 32) in 2016 to comply with the provisions of the Marrakesh Treaty and to complete its ratification process. There are three components to the exceptions for people with perceptual or print disabilities in the *Copyright Act*. This includes: 1) section 32(1), which allows for a non-profit organization to make and distribute alternate format works for people with perceptual disabilities in Canada; 2) section 41.16, which allows for the removal of digital locks on works for use within Canada to make a work more perceptible to the person with a perceptual disability; and 3) 32.01(1), which allows for the export of alternate format works to a non-profit organization, in another country, acting for the benefit of persons with a print disability in that country. Taken together, these exceptions contribute to a human rights approach to the copyright regime in Canada. Section 32(2) dictates that Section 31(1) does not apply if the work or other subject-matter is commercially available in a format specially designed to meet the needs of the person with a perceptual disability referred to in that subsection. Commercially available is defined in the *Copyright Act* in reference to this Section as “available on the Canadian market within a reasonable time and for a reasonable price and may be located with reasonable effort” (*Copyright Act*, 1985, s 2).

In creating the guidelines document, the authors focused on the centrality of the human rights of the beneficiaries of the exception in their interpretation of the statute. In the language of the legislation and in the practices of libraries and information organizations, the authors found evidence of ableism: assumptions that where there is divergence from the mainstream, for example, people with disabilities, there is a ‘fix’ required or a work around, treating people with disabilities as ‘other’, rather than adjusting and broadening the mainstream to be inclusive. Ableism is evident in the language of the *Copyright Act* itself, where the term “alternate format” is used (*Copyright Act*, 1985, s 32). “Alternate format” clearly refers to the ‘other’, separating the mainstream from the non-inclusive path for the creation of a work solely for those with print disabilities.

Developments in born-accessible commercial publishing, where the accessible format is the mainstream format, is the direction and model that will support inclusion. At present, with only an estimated 7% of published material available in accessible formats worldwide, achieving equal access to born-accessible commercial publishing is still a distant goal (WIPO, 2016).

Accessible Publishing in Canada

In a 2023 Statistics Canada study, 5.2 million people in Canada indicated they have difficulties reading print material (McDiarmid, 2023). As a signatory to the ICCPR and other binding treaties, Canada must ensure that people with disabilities have the opportunity to fully participate in society. This includes essential access to information and culture. It is estimated that less than 10% of published works in developed countries and less than 1% in developing countries are ever made into accessible format(s) (The International Agency for the Prevention of Blindness, 2017).

The provisions in the *Copyright Act* for people with perceptual disabilities are critical to ensure that accessible content in Canada can be produced by non-profit organizations when it is not available in the marketplace. While the publishing industry has made progress in creating born-accessible works, for example, leveraging the Accessible Books funding through Canadian Heritage (2019-2024) (Canadian Heritage, 2020) and preparing for the requirement to make all ebooks accessible as mandated by the European Accessibility Act in 2025 (Directive (EU) 2019/882 on the Accessibility Requirements for Products and Services, 2019), it is clear that the publishing industry is not able to address the task of making all published works accessible. The organizations that make alternate

format works will remain essential in providing access to people with print disabilities. The purpose of this guide is to advise non-profit, alternate format producers on an agreed upon interpretation of section 32 of the *Copyright Act* in searching for accessible formats when commercial, born-accessible works cannot be located or do not exist.

The Guide is driven by two overarching principles:

1. “The provisions of the *Copyright Act* are intended to put people with a perceptual disability or print disability in the same position as those without a disability, with the goal of achieving equitable access to works” (---, 2025). Through implementation of the Marrakesh Treaty, legislatures agree to comply with the provisions of the Treaty, including its Preamble, where it refers to CRPD, which requires access to information for people with disabilities “on an equal basis with others” (United Nations, 2006).
2. “An alternate format specially designed for persons with a perceptual disability as specified in the *Act* is intended to include both a) an alternate format that is specific to a person with a perceptual disability (e.g., Braille or DAISY audio) and b) any format, alternate or otherwise (e.g., EPUB), that requires accessibility features and functionality to be added to it to enable use by a person with a perceptual disability. Accessibility features and functionality can include, but are not limited to, full navigation, complete image descriptions, circumvention of digital locks or technological protection measures (TPMs), inclusion of full front and back matter, reflowable content, and tactile graphics” (---, 2025).

The guide has been created with input from a range of stakeholders, including public and academic libraries, educational institutions (both post-secondary and the K-12 sector), and publishers and related organizations. It is critical that the guide be responsive, and accountable to the organizations and the public it will serve. To that effect, the guide has had input from people with lived experience of print disabilities, to ensure it reflects the needs, values and input of the community it will serve.

In Canada, the provisions in the *Copyright Act* help to ensure that all content can be made accessible to the diverse community of people with print disabilities, a group that already faces economic and social barriers (Accessible Canada Act, 2019). Support for multiple formats that meet the needs of the user from both the commercial landscape and the alternate format community is essential to build an equitable reading landscape across the country. Together, this will promote the economic and social inclusion of persons with print disabilities and help to create a barrier-free Canada.

Origin and Process for Guidelines

Provisions of the *Copyright Act* are not always clear to practitioners in the field or users of accessible formats, and the spectre of legal risk has often resulted in onerous, time consuming and unnecessarily restrictive processes and procedures. Practitioners report that their institutions require unnecessary procedures, such as requiring users to buy their own copy of the work in a non-accessible format before providing them with an alternate format, requiring the destruction of a work after use, and prohibitions on sharing the work with other print disabled users.

One author’s discussions with colleagues in her institution working in the unit ensuring access to accessible formats or works for users with disabilities raised a number of questions about what was legally required, what best practices were in this arena, and how the procedures could be streamlined and optimized to make sure that the users received the best possible access to the

works they require for their study and research. The main question was what exactly was required to legally satisfy the reasonable commercial availability checks (reasonable search) required prior to reproduction in alternate format under section 32(2) of the *Copyright Act*.

In order to gain some clarity on what was accepted practice in this field, in October 2021 the author reached out to the ABC Copyright listserv (a listserv comprised mostly of copyright administrators and librarians at post-secondary institutions across Canada) to learn what other institutions were doing in this regard. What emerged from this discussion and subsequent conversations with others working in the field (including the Association of Research Libraries (ARL) and Canadian Association of Research Libraries (CARL) Task Force on Implementing Marrakesh Treaty) was that no standardized parameters or procedures existed for reasonable search in this context (ARL, 2024).

The question from the library practitioners that sparked the creation of the guide arose at a meeting of the Copyright Committee of the Canadian Federation of Library Associations (CFLA). The question was taken on by the Committee’s Accessibility Working Group. Because stakeholder participation was essential for the credibility and applicability of the guide, a broader coalition was assembled to include libraries, publishers, content producers, and provincial and national organizations that serve people with disabilities.

The authors are part of the international network of librarians and libraries serving people with print disabilities. The authors reached out to colleagues in countries with similar legislation, and narrow interpretations of the Marrakesh Treaty, such as Australia, which enacted legislation similar to Canada’s. The Australian Library and Information Association (ALIA) and the Australian Publishers Association, were the drivers behind the creation of “Making Content Accessible: A Guide to Navigating Australian Copyright Law for Disability Access” and the assembling of the Australian Inclusive Publishing Initiative to get broad stakeholder support and to give the requisite authority to the guide (Australian Inclusive Publishing Initiative, 2019; Australian Libraries and Archive Copyright Coalition, n.d.). One of the authors of the Australian guide, Jessica Coates, corresponded with the authors and joined them in virtual discussions about the process and the content of the Australian guide.

The Canadian guide initially used the same framework and similar language as the Australian guide, which was published under a Creative Commons Attribution licence. However, it became apparent during the writing process that differences in the language of legislation, and the Canadian guide’s focus on the principle of access “on an equal basis with others” would result in considerable divergence in content, framework, and guidance.

As with the Australian Inclusive Publishing Initiative, the guide has the imprimatur of the coalition, which confers substantial authority on the guidance provided. The guide documents the approach and practices of a profession; consistent actions by librarians and information professionals shape and influence customs and practices, and can be influential in the courts (Patterson and Lindberg, 10).

Working with the coalition added enormous benefit. It brought together stakeholders from the content industry with library and education practitioners with a unifying focus: making and distributing works to people with print disabilities. Each stakeholder group brought forward the issues that concerned them and the guide was able to provide clear, agreed upon procedures and frameworks. However, while consensus was achieved, the process was not without effort in attempting to balance differing opinions amongst the stakeholders. In particular, the publishing community suggested wording on the definition of reasonable search to align more with a diligent

search, and recommended best practices of the commercial availability check to ensure that the work that Canadian independent publishers are undertaking in the born-accessible publishing space was recognized and considered in the search process. The authors and the publishers group considered a number of revisions until an agreement was reached. The authors' objective was to present a balanced approach in recognizing both rights of the publishers and the users in copyright regime, while acknowledging the human rights lens that applies in interpreting this section of the statute.

In addition, the authors presented the guide at the ABC Copyright Conference in Halifax, Canada, on June 20, 2024, to an audience of over a hundred people, and invited feedback on the guide's description and explanation of reasonable search. The feedback was overwhelmingly supportive, with only one hand raised in dissent.

The authors closely reviewed the comments of the coalition members, especially those of the stakeholders in the elementary and secondary school sector (K-12), who use the statute in their work of making and distributing alternate format works. In particular, these practitioners sought assurances that their liability would be limited when applying the guidelines in good faith. In the interest of ensuring the legal robustness of the guidelines, and the correct interpretation of the statute, the authors identified and contacted a number of Canadian legal scholars to request a legal review. Four fulsome responses were provided. The authors reviewed each response and revised the document in line with the reviewers' comments and suggestions. On the legal points of liability, risk, damages, and relevant case law, the authors queried the legal experts for further clarity, to assure the K-12 sector.

The legal review gives the library community further confidence in the guide's interpretation of the section 32 of the *Copyright Act*, for reasonable search. Libraries and individuals can apply the exception without being inhibited by fear of liability.

Determining the Definition of Reasonable Search

Determining the definition of reasonable search is central to the guide. Commercially available is defined in section 2, definitions, of the *Copyright Act* as "being available on the Canadian market within a reasonable time and for a reasonable price and may be located with reasonable effort". However, there is no further guidance on how the term "reasonable" is to be understood or applied and, as such, what constitutes a reasonable search. The authors were informed by the definition and section 32 of the *Copyright Act*. Section 32 permits the reproduction and supply of a work if it cannot be obtained on the Canadian market in the format the person needs. The principle of access "on an equal basis with others" as outlined in the Article 9 of the CRPD, also influenced the authors' approach to defining reasonable search, by emphasizing that users requiring an accessible format should not encounter delays or incur costs that mainstream users would not. Framed by the legislation and these principles, the guide defines reasonable in this context to mean expending the same effort, cost and time to locate accessible format materials on the Canadian market as would be dedicated to searching for the work for a user without a perceptual disability.

Guidelines in Brief

The Canadian guide took as its starting point the basic structure laid out by the Australian guide; it has been significantly altered and expanded to reflect the Canadian context and the central tenet of access on an equal basis with others. The document begins with an introduction section which lays out the aims, structure and intended audience of the document. This consists of a

summary of the laws, treaties and conventions that apply and govern access to and use of material under copyright for people with a perceptual disability in Canada. The guide discusses how the Canadian law is applied, a checklist of the major requirements of the law, best practices and practical advice for everyday situations, guidance on eliminating past practices that inadvertently add barriers to access, and a glossary of relevant terms that may be unfamiliar to readers.

The guidelines are primarily intended for alternate format producers, libraries, archives, museums, galleries, schools, colleges, universities and similar institutions and non-profit organizations acting for the benefit of people with perceptual disabilities. The document may also serve as a source of information for publishers and other rightsholders on the legislative interpretation applicable to alternate format production for people with perceptual disabilities.

The summary section closes with a statement of two principles that serve as a foundation for the guidelines: 1) the principle of equity underlying the relevant provisions of the *Copyright Act*, which are intended to put people with a perceptual disability or print disability in the same position as those without a disability, with the goal of achieving equitable access to works; 2) an affirmation that an alternate format specially designed for persons with a perceptual disability as specified in the *Copyright Act* is intended to include both a) an alternate format that is specific to a person with a perceptual disability (e.g., Braille or DAISY audio) and b) any format, alternate or otherwise (e.g., EPUB), that requires accessibility features and functionality to be added to it to enable use by a person with a perceptual disability.

A section of the introduction clarifies two important terminological distinctions that are important for the intended audience of the guide. The first is the distinction between persons with a perceptual disability and persons with a print disability and the second is the difference between "alternate format" and "accessible format".

The guide specifies the difference between a 'perceptual disability', which is a term particular to the *Copyright Act*, and a 'print disability' which is the more widely used term internationally and is also the term used with the Marrakesh Treaty itself. Both terms refer broadly to three groups who have difficulty reading print; those with visual disabilities, those with physical disabilities and those with comprehension disabilities. The term perceptual disability however also includes those with hearing disabilities, but this is specific to the *Copyright Act*.

The guide also notes that "alternate format" and "accessible format" have slightly different meanings and are not necessarily interchangeable, depending on the context. The *Copyright Act* uses the term "alternate format" and therefore the guide uses the term "alternate format" when it is specifically referring to the *Copyright Act*. However, because "alternate format" is reflective of an ableist approach to policy language, this guide also uses the more inclusive terms of "accessible format" when possible. The term 'alternate format' is used within the context of "copyright limitations and exceptions [and] elides an ableist tradition centering the interests of copyright holders, rather than those of readers, viewers, listeners, users, and authors with disabilities" (Reid, 2021, p. 2174). Accessible format is a term that can apply to copyright holders and alternate format creators alike, and supports a more inclusive and, hopefully, less ableist approach.

There is a section that consists of a checklist designed to help alternate format producers identify whether they fulfill the major requirements of the laws governing access to copyright material for people with a perceptual disability in Canada. The preamble to the checklist emphasizes that what can be done under the exceptions is primarily governed by the needs of the person wanting to access the work, that there are no limits on the technologies or formats that can be used, or the number of alternate copies that can be created. Attention is drawn to the fact that the exceptions in

Canadian copyright law that allow the production of alternate formats with persons with perceptual disabilities do not apply to cinematographic works.

The checklist itself consists of four main questions that practitioners can ask themselves to ensure that they are in compliance with Canadian copyright law: Is the intended user a 'person with a perceptual disability'? Are there other formats or additional accessibility features or functionality that will allow those users to better read, view, hear or comprehend the material? Are you a qualified person or organization? Have you checked if the material is commercially available in the format the user needs? This last part of the checklist focuses on the parameters of reasonable search.

The guidelines also provide a set of best practices that are intended to provide guidance on the procedures surrounding the implementation of the checklist. This is followed by a section on organization practices to discontinue. These sections of the guide aim to achieve two main goals. First, they provide alternate format producers with confidence in applying copyright law exceptions. By implementing best practice steps, librarians and information professionals can ensure consistent actions and practices, reducing the risk of legal challenges. Second, they seek to harmonize institutional practices, where appropriate, to create a nationally consistent and agreed-upon implementation framework. These practices may also encourage and support the efforts of the publishing industry in moving towards producing born-accessible works.

The best practices outlined consist of the following:

1. Following a commercially available search, check whether the material is already available in the alternate format the person needs from other organizations' collections;
2. When providing the material to a user, include an additional copyright notice related to the alternate format;
3. Request the digital file from the publisher to facilitate the alternate format production process;
4. Properly manage electronic files of works in copyright;
5. Have clear documentation on your policies and practices in applying the exceptions;
6. Always make the use free;
7. Understand what the law allows for alternate format work;
8. Understand the limited liability associated with making an alternate format work.

In the section organizational practices to discontinue, the guidelines ask the audience to assess whether their organization has practices or policies that are unnecessary and not required by law, that may inadvertently create barriers to access for the user. The following suggestions are included in the guide in response are some of the most commonly observed of this type, but there may certainly be others:

1. Do not require the purchase of inaccessible works prior to making the alternate version;
2. Do not destroy the alternate format version of the work;
3. Do not spend excessive amounts of time trying to track down a commercial copy.

The guide closes with a few closing words and a glossary of a glossary of relevant terms that may be unfamiliar to some readers from "ableism" to "technological protection measures".

persons with perceptual disabilities. The Guide provides clear, practical guidance on how these exceptions can be applied and best practices when producing alternate formats. Two aspects in particular of the guidelines should imbue users with confidence in using these guidelines to inform their own individual and institutional practices and workflows. First, these guidelines have achieved consensus through a consultative process with a broad alliance of stakeholder groups including alternate format producers, libraries and library associations and publisher groups. Second, the guidelines have benefitted from thorough review by recognised legal scholars, enhancing their legal robustness.

The Guide is now available in French and English under a Creative Commons NonCommercial license on a variety of relevant websites in order to facilitate access and broad dissemination. The authors believe these guidelines will establish a nationally consistent implementation framework for the reproduction of works to enable equitable access to copyrighted material for people with perceptual disabilities.

Conclusion

The guidelines presented in *Accessible Content: A Guide to the Canadian Copyright Act on Searching for Accessible Formats and Producing and Distributing Alternate Formats* are aimed at clarifying the exceptions in the Canadian Copyright Act that enable the reproduction of works for

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