

Copyright changes, disability exceptions & library practice

To be read in conjunction with “**New Copyright Exceptions for Print Impaired People: Who Can, and Should, Do What - A Briefing Paper for Publishers and Users**” – Publishers Association.

Purpose of this guidance

Publishers regularly get requests for digital copies of their titles, for use by learners who can't read standard print books because of sight loss, dyslexia or a disability which makes it difficult to hold a book or turn a page. Learning providers need to supply accessible titles to print disabled students in a timely way.

What: This guidance will (i) help you understand the importance of copyright exceptions to learning providers and (ii) clarify the way they use copyright exceptions to support print disabled learners.

Why: To help you avoid (i) conflict if your licenses haven't been updated and contradict the new legislation and (ii) confusion around the concept of “intermediate copies”.

Who: This guidance has been shaped by the Publishers Association Accessibility Action Group and a range of publishers who have kindly given constructive feedback.

The Copyright and Rights in Performances (Disability) Regulations 2014 recognise the time and money “authorised bodies” like universities or colleges spend in creating accessible digital books **or other resources** from print books or inaccessible digital files. Authorised bodies can **make** accessible versions (“alternative formats”) of materials to which they have legitimate access. They can also **share** “intermediate copies” - see below - with other authorised bodies who are entitled to make accessible copies.

This document and its **appendices** will help unpack the implications of these changes and answer some of the common **questions publishers ask**.

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Developing a shared understanding with customers

Accessibility

Accessible formats are nuanced, depending on context of delivery and the needs of the end user. What is accessible to one person may not be to another. Readers might need, for example, to adapt font size, colour and contrast; use screen readers, text to speech or electronic braille. However there are some common features of accessible documents. The pointers below act as a guide to accessibility levels as experienced by an end user:

Moderate – text is selectable, presented in a logical reading order and reflowable; font / background colours can be modified; navigable structural headings exist. Text works with assistive technology tools like text to speech. Accessibility is specified in workflow design.

High – all “Moderate” features plus good descriptions and correct mark-up for non-text elements like images and tables. Symbols / formulae provided as MathML. Accessibility features in the workflow design. Products are tested with assistive technologies.

Without accessibility features, students with print disabilities may be disadvantaged.

Intermediate copies

A key concept in the legislation is the **intermediate copy** – any copy of the work necessarily created as part of the process of making the accessible copy. Examples of intermediate copies are where:

- **The authorised body is obliged to add accessibility features** - If the authorised body has to scan the book or OCR a digital file and mark it up for accessibility there will be several intermediate copies (pre OCR, pre mark-up and different stages of accessibility mark-up). It is not an infringement of copyright for the authorised body to make these, retain them or share with other authorised bodies for the sole purpose of enabling those other bodies to make accessible copies of the work for the personal use of disabled learners with legitimate entitlement to the book.
- **the processed file is adaptable to other access needs** - Once the authorised body adds a critical mass of accessibility (eg reflow, structural mark-up) the file is capable of further adaptation to Braille, DAISY format etc and is hence an “intermediate” copy.

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Key tips for good customer relations and efficient practice

1. **Prioritise accessibility.** The best way of maintaining full control is to supply accessible versions which require no adaptation by the authorised body. See the **Charter of Accessible Publishing** for more information.
2. **Review your workflows** - embrace the accessibility features of EPUB3.
3. **Check your licensing terms and conditions** reflect the 2014 legislation. Many licences supplied by publishers still contain out of date clauses.
4. **Take advantage of centralised services** like **Load2Learn**, **AccessTextNetwork**, **BookShare** and the **TIGAR** service.
5. **Boast about your benefits:** advertise the accessibility features of your files.
6. **Work with supply chain partners** to ensure your accessibility practices aren't undermined further down the supply chain. An accessible file may lose accessibility if the distributor hasn't incorporated accessibility into their platform eg many reading systems do not yet support MathML so it may be helpful to assess the platform in advance.
7. **Make your accessibility discoverable** by using ONIX accessibility metadata (codelist 196).
8. **Ensure in-house processes and policies** support accessibility

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Please note: This guidance does not constitute legal advice.

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Appendix

1. Common questions asked by publishers

- **What is print disability?**

Those entitled to benefit from copyright exceptions generally include blind and visually impaired people; people with dyslexia; those with other disabilities limiting the ability to read or access published works to the same extent as people without these disabilities.

- **I can supply an accessible digital file – can I impose conditions on its use and distribution?**

Yes. If the authorised body has no requirement to adapt the file in order to create an accessible version it remains fully under your licensing control.

- **I can supply a digital file but it is unstructured text (or an image of text). Can I still impose conditions on its use and distribution?**

Yes you can impose licence conditions on the use of the **supplied** file but use of any derived intermediate copy created under the copyright exceptions is governed by the terms of the exception. Authorised bodies are aware of this. Check the wording of your licences does not cause you problems by trying to impose unenforceable conditions.

- **My digital files are not accessible but I want to maintain control. Can I refuse to supply them?**

The customer can still scan the hard copy and distribute under the terms of the copyright exemptions but the cost of this may encourage them to drop your titles.

- **Are there other options that give the publisher some control and security without inconveniencing customers?**

The copyright exceptions at 31A to 31BB of the Copyright Designs and Patents Act 1988 set strict limits on what authorised bodies are permitted to do when making/supplying accessible copies. These include requiring (i) lawful possession, (ii) that accessible copies are not commercially available, (iii) the use of a lawful validity statement, acknowledgement and detailed record keeping by the authorised body. The Publishers Association recommend publishers work with centralised services specialising in accessible files (see Key Tip 4 above).

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- **Does this apply to materials published outside the UK (eg by our US division) and purchased by a UK learning provider?**
The right created by the legislation to make an accessible copy in the UK has the effect of stopping anyone who would try to prevent a lawful accessible copy being made by trying to enforce their copyright in the UK. That applies to anyone who is a rights holder in the UK. A US rights holder would usually enforce their rights in the UK by taking an action in the UK. The right to make an accessible copy would therefore withstand this action.
- **In addition to learning providers, do individual disabled people or other people acting for them (e.g. parents of minors) also have these rights?**
Yes, they have these rights for personal use. In terms of the intermediate copy this is only referred to in s.31BA of the regulations, ie the making and supply of intermediate copies by authorised bodies.
- **The file we are providing for an accessible copy contains text and images which we have used under licence. Do we need to re-clear licenses with rights-holders?**
No, you do not need to re-clear them. The right to make an accessible copy passes up the line to all rights-owners in a work including where third party content has been licensed into another work. Consider routinely letting authors and third party rights-owners know that the legislation allows for works being published to be copied in order to make a lawful accessible copy.
- **Where can I go for more information?**
The UK Government provides a useful [general summary of the legislation](#).

2. Intermediate copy creation: typical workflows in an educational setting

The digital workflow that generates intermediate copies goes from an inaccessible/semi accessible publisher file through appropriate accessibility additions to the print disabled reader. Accessibility additions created by the authorised body define the Intermediate Copies. This is illustrated in the model below and the accompanying tables. The “added accessibility” versions can be stored or shared between authorised bodies **within the affordances of the legislation**.

Note that more accessible publisher files are less likely to generate intermediate copies.

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Figure 1 (below) shows how publishers (left hand side, green shading) supply a range of file types and authorised bodies (middle and right) add the required accessibility. This can vary enormously depending on the reader's disability. In the process of adding accessibility, intermediate copies are created (light blue rectangle).

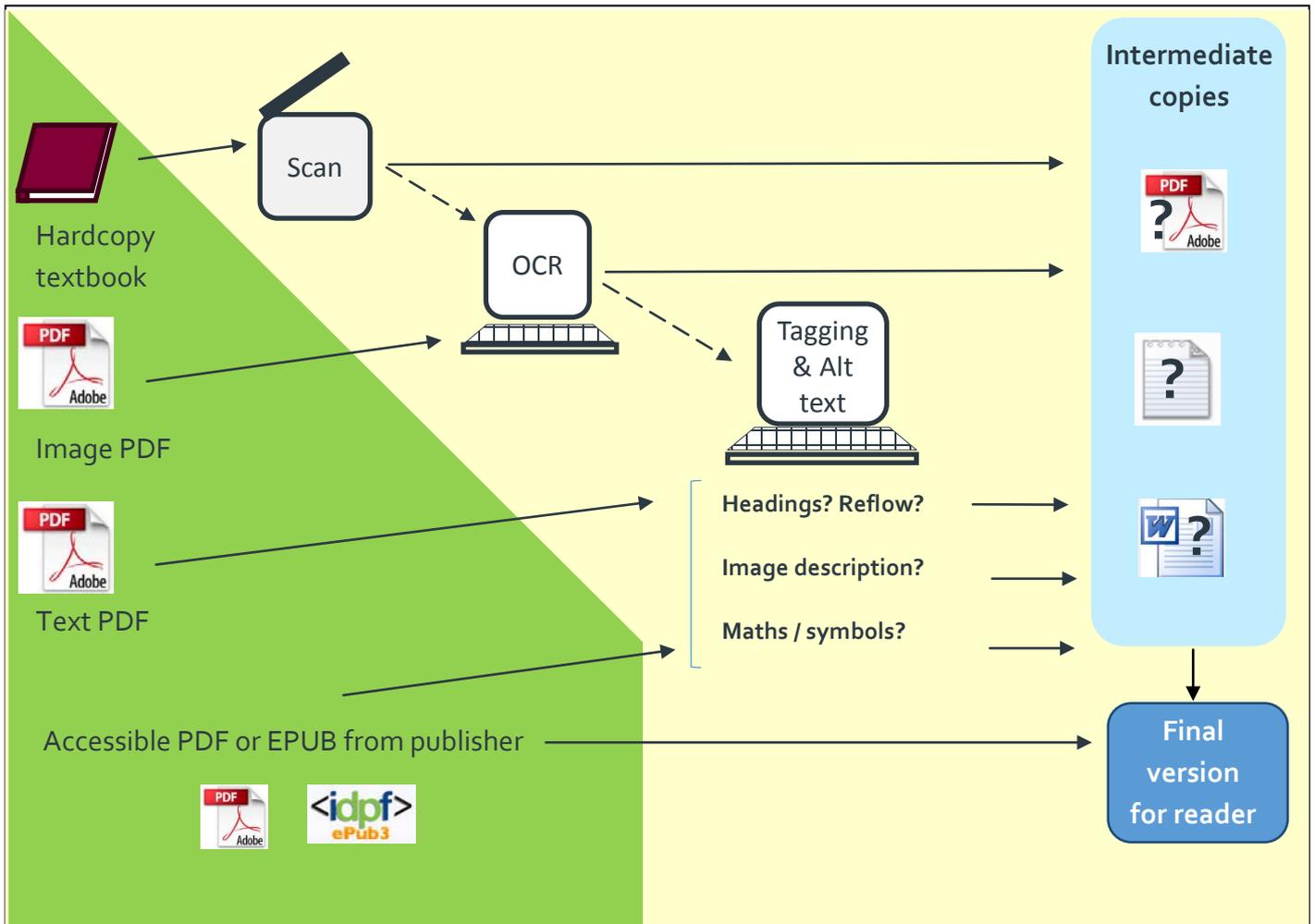


Figure 1: typical institutional workflows that create an intermediate copy. Read in conjunction with tables below.

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3) How do authorised bodies add accessibility to your product?

The tables below exemplify how the different stages illustrated above may benefit disabled readers.

Table 1: Creating an accessible mainstream file from inaccessible or semi accessible products supplied by a publisher.

Product supplied	How an authorised body adds accessibility to your product. <i>(Potential "Intermediate Copies")</i>	At this stage the file will help readers if they have
Digital file not available, only hard copy	Scanning print book to create a digital image file. This can then be used to create a text file- see below.	Difficulties in holding books; modest magnification needs or colour/contrast requirements.
Digital file available as image PDF	Using optical character recognition (OCR) software to turn image to editable text.	Difficulties in holding books; higher magnification needs; colour/contrast requirements or text to speech requirements.
Digital file available as untagged text – for example text PDF	Ensuring reflow works when text is magnified	All of the above plus sight difficulties requiring more significant magnification.
	Adding structural headings	Dyslexia (difficulties skimming text, organising or remembering information) or visual impairment (requiring screenreader access).
	Describing non text elements eg images.	Visual impairment or difficulties interpreting graphs and images.
An accessible mainstream file that will suit the vast majority of disabled readers is created from the "intermediate copies" above. The result will be an accessible Word, PDF, HTML or EPUB file depending on reader need /authorised body's workflows.		

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Table 2: **Creating specialist formats from accessible files.** These specialist files need an accessible mainstream file as their starting point. The starting file may be sourced directly from an accessible publisher or created from the Intermediate Copies shown in table 1 above.

Specialist format	This helps readers if they have
Maths/symbol description	Visual impairment. Emerging tools also support those who can see but find it harder to interpret – for example some dyslexics.
DAISY files.	A requirement to personalise text appearance, use text to speech or navigate by sight or by audio.
Braille (print or electronic)	Severe visual impairment. Although a demographically small group, independent access to text is vital.

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