Canadian Copyright Laws Have Been Amended to Make Works More Accessible to People with Print Disabilities

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In Canada, more than 800,000 people live with a visual impairment and approximately 3 million Canadians have an impairment related to comprehension (e.g. autism) or the inability to hold or manipulate a book (e.g. Parkinson’s disease). On June 22, 2016, Canada took a significant step towards helping such people with print disabilities. Bill C-11 An Act to amend the Copyright Act (access to copyrighted works or other subject-matter for persons with perceptual disabilities) received royal assent, officially implementing the Marrakesh Treaty into Canadian law. The amendments to the Copyright Act enable Canada to be among the first countries in the world to accede to the Treaty, whose full-title is the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The Treaty was adopted in 2013. The Treaty is intended to modify existing copyright laws internationally to create exceptions for reproduction, distribution and making available to the public of materials in alternate formats for those with print disabilities.

The Bill had broad support across party-lines and numerous stakeholders wrote to the government in support of the Treaty, including the Canadian Association of Research Libraries; the Canadian Association of University Teachers; the Canadian Council of the Blind; the Canadian Federation of the Blind; the Canadian Library Association; the Canadian Urban Libraries Council; CNIB; and the Copyright Consortium of the Council of Ministers of Education, Canada.

With the changes to the Act, it is no longer an infringement for not-for-profit organizations, including governments, to make a copy specifically designed for persons with a print disability provided that the work is not commercially available in a similar format, or circumvent a technological protection measure to do so in certain circumstances. In combination with the provisions which provide an exception to infringement, the Act now allows a person with a perceptual disability to make, or access, a work or other subject-matter, in a format specially designed for them, and to do any act necessary for that purpose, including circumventing a technological protection measure, if necessary.

The Act defines a print disability broadly as a disability that prevents or inhibits a person from reading a work in its original format. It applies to literary, musical, artistic or dramatic works, and not cinematographic works. Print disabilities include those resulting from (a) impairment of sight or inability to focus or move one’s eyes, (b) inability to hold or manipulate a book, or (c) an impairment relating to comprehension. The definition is intentionally broad to allow for a variety of different types of copying, including making sound recordings, sign language, and braille reproductions, to meet the needs of individuals with different disabilities.

Not-for-profit organizations in Canada may also now provide these works to foreign not-for-profit organizations that are acting for the benefit of persons with a print disability, or through such organizations to people with print disabilities, provided that the work is not available in a similar format within a reasonable time, for a reasonable price, and with reasonable effort.

The Act now requires that not-for-profit organizations relying on the exceptions of the Act submit reports to an authority to be named in the Regulations regarding their copying activities and pay any royalty established via the regulations. In addition, only an injunction will be available against not-for-profits for copyright infringement related to works created for people with print disabilities, provided the not-for-profit acted in good faith when creating the work.

Canada is the 20th country to ratify the Treaty, the milestone for international accession, and the Treaty will now come into
Effect September 30, 2016.

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