

DISCRIMINATION, COPYRIGHT AND EQUALITY

Opening the E-Book for the Print-Disabled

While equality laws operate to enable access to information, these laws have limited power over the overriding impact of market forces and copyright laws that focus on restricting access to information. Technology now creates opportunities for everyone in the world, regardless of their abilities or disabilities, to access the written word – yet the print-disabled are denied reading equality, and have their access to information limited by laws protecting the mainstream use and consumption of information. The *Convention on the Rights of Persons with Disabilities* and the World Intellectual Property Organization's *Marrakesh Treaty* have swept in a new legal paradigm. This book contributes to disability rights scholarship and builds on ideas of digital equality and rights to access in its analysis of domestic disability anti-discrimination, civil rights, human rights, constitutional rights, copyright and other equality measures that promote and hinder reading equality.

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The Disability Law and Policy Series examines these topics in interdisciplinary and comparative terms. The books in the series reflect the diversity of definitions, causes and consequences of discrimination against persons with disabilities while illuminating fundamental themes that unite countries in their pursuit of human rights laws and policies to improve the social and economic status of persons with disabilities. The series contains historical, contemporary and comparative scholarship crucial to identifying individual, organisational, cultural, attitudinal and legal themes necessary for the advancement of disability law and policy.

The book topics covered in the series are also reflective of the new moral and political commitment by countries throughout the world toward equal opportunity for persons with disabilities in such areas as employment, housing, transportation, rehabilitation and individual human rights. The series will thus play a significant role in informing policy makers, researchers and citizens of issues central to disability rights and disability anti-discrimination policies. The series grounds the future of disability law and policy as a vehicle for ensuring that those living with disabilities participate as equal citizens of the world.

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Discrimination, Copyright and Equality

OPENING THE E-BOOK FOR
THE PRINT-DISABLED

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Contents

<i>Foreword</i>	
<i>by Gerard Goggin</i>	<i>page</i> xiii
<i>Acknowledgements</i>	xviii
Introduction	1
1 How Technology Has Created the Possibility of Opening the Book: From Hard Copy to E-Books	8
Introduction	8
Section I The Written Form: Independent Reading beyond the Print-Disabled	9
Section II Print-Disabled Reading in an Age Where E-Books Are the Norm	20
Section III Corporations as Gate-Keepers to the Book Famine	25
Conclusion	30
2 Access to Information Communication Technologies, Universal Design and the New Disability Human Rights Paradigm Introduced by the <i>Convention on the Rights of Persons with Disabilities</i>	32
Introduction	32
Section I Theorising Disability	33
Section II Introducing the Right to Read in the <i>Convention on the Rights of Persons with Disabilities</i>	44
Section III Analysing How the Right to Read Impacts on Rights in the <i>Convention on the Rights of Persons with Disabilities</i>	50
Conclusion	62

3	The Weakening of the Exception Paradigm: The World Intellectual Property Organization Changes Path with the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled	64
	Introduction	64
	Section I Copyright under the <i>Berne Convention</i> : Facilitating the Perpetuation of Disabling Barriers and Constructing Disability Access as a Limited Exception	65
	Section II Paradigm Shifts in International Copyright Law: The Import and Impact of the <i>Marrakesh Treaty</i>	77
	Conclusion	91
4	The Role of Copyright Laws in Restricting Access to Information and Contributing to the Book Famine	93
	Introduction	93
	Section I What Does Copyright Protect?	95
	Section II Obtaining Accessible Copies within the Copyright Regime: Licence to Exploit Works	99
	Section III How Digital Measures Can Reduce Disability Access	106
	Conclusion	121
5	Exceptions to Rights-Holders' Exclusivity Provides Limited Relief from the Disabling Impact of Copyright	123
	Introduction	123
	Section I The Right to Convert Works into an Accessible Format: A Statutory Licence that Tolerates Limited Unauthorised Use to Assist the Print-Disabled	124
	Section II The Emergence of the Largest Lawful Commercial E-Book Library Collections in the World: Google Books and HathiTrust	135
	Section III The Google Books Settlement and its Rejection	139
	Section IV Fairness in Copyright as an Enabler	142
	Conclusion	150
6	Anti-Discrimination Laws Help Protect Persons with Disabilities against Digital Disablement, but Who Qualifies for Protection?	153
	Introduction	153
	Section I Introducing Anti-Discrimination Laws	155

Section II Representations of Difference: How Does Society Draw the Line between Temporary Able-Bodied and Disabled?	158
Section III How Do Laws Determine When a Person Is Sufficiently Disabled to Qualify for Protection?	164
Conclusion	178
7 Causing Digital Disablement Is Not a Trigger for Regulation by Anti-Discrimination Laws: Ignoring Capacity in Favour of Prescribed Relationships	179
Introduction	179
Section I The Relationships Selected for Regulation: The Adoption of a Limited Social Model Approach	181
Section II Regulating by Defined Relationships	183
Section III E-Book Libraries as Online Relationships that Attract Anti-Discrimination Duties in Australia and the United Kingdom	186
Section IV Uncertain Coverage over E-Books and E-Libraries: Circuit Split in the United States	189
Conclusion	203
8 The Prohibition against Discrimination: Regulating for Equality through Retrofitting Inaccessible Systems	204
Introduction	204
Section I Introduction to the Bifurcated Approach to Prohibiting Discrimination	205
Section II The Imposition of Equal Treatment	214
Section III Impact of the Requirement or Condition: The Treatment Impacts on the Plaintiff's Group Less Favourably than People without the Prescribed Attribute	218
Section IV There Must Be Unfavourable Treatment that Is Detrimental: What Level of Disadvantage Enlivens Indirect Discrimination and Disparate Treatment?	220
Section V The Disparate Impact Cannot Be Justified: The Business Case for Exclusion	228
Conclusion	231
9 Introducing Positive Duties in Promoting Equality Outcomes for Persons with Disabilities: The United Kingdom Public Sector Equality Duty Reducing Digital Disablement	233
Introduction	233

	Section I Introducing the Concept of Positive Duties	235
	Section II Positive Duties in Action: The Public Sector Equality Duty in the <i>Equality Act 2010</i> (UK)	241
	Conclusion	253
10	The Right to Digital Equality in Action: Protections under the <i>Canadian Charter of Human Rights and Freedoms</i> and Human Rights Acts	256
	Introduction	256
	Section I The Right to Equality under the <i>Charter of Human Rights and Freedoms</i>	258
	Section II Canadian Anti-Discrimination Laws Leading the Way to Equality	265
	Conclusion	271
11	United States Regulatory Interventions Targeting Disability-Inclusive Digital Environments	274
	Introduction	274
	Section I Information Communication Technology Standards and Rules	275
	Section II The Right to Education Being Used to Promote the Right to Read Educational Materials: The <i>Individuals with Disabilities Education Act</i> and the National Instructional Materials Access Center	278
	Section III Targeting Digital Disablement at its Source: The <i>Twenty-First Century Communications and Video Accessibility Act</i>	283
	Conclusion	291
12	The Enforcement of Legal Duties: Protecting Copyright or Promoting Reading Equality?	292
	Introduction	292
	Section I Motivating Corporate Compliance: The Enforcement Pyramid	293
	Section II Enforcing Anti-Discrimination Duties to Combat the Book Famine	295
	Section III Practical Examples of How Enforcing ADA Has Combatted the Book Famine	303
	Section IV Enforcing Laws Which Seek Equality Rather than Just Prohibit Discrimination	310

<i>Contents</i>	xi
Section v Strong Copyright Enforcement Obstructs the Development of Universal and Disability-Accessible E-Libraries	315
Conclusion	319
Closing Thoughts and New Options to Reduce Digital Disablement	321
APPENDIX: <i>List of Anti-Discrimination and Civil Rights Laws and Tribunals/Commissions Impacting on Disability in the Federal and State/Province Jurisdictions in Australia, Canada, the United Kingdom and the United States</i>	324
<i>Index</i>	335

Foreword

‘No Excuses: Reading for All, Including People with Disabilities’

In the twenty-first century, the world’s leaders have repeatedly acknowledged the importance of everyone possessing the right to education, enabled by the right to read and write. Recall that Goal 4 of the United Nation’s Sustainable Development Goals enjoins us to: ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’. Among the targets to be achieved by 2030 is ensuring that ‘all girls and boys complete free, equitable and quality primary and secondary education’. This global aspiration is one expression of a widely held belief across societies around the world: namely, that every person should be able to read and write.

Reading is at the heart of many ancient and most modern societies. Reading interacts with, and underpins, many elements of everyday and public life: education and work; travel and leisure; access to health care, social services and justice; social and political participation; and cultural belonging. Reading is also closely related to gaining access to information, media and communication. A substantial number of the world’s population cannot read, have not been afforded the opportunity to learn to read, face significant barriers or challenges with reading (and literacy generally), or read in different ways. Hence the many policies and practices adopted to address such issues, and to ensure that reading is something extended as an opportunity to all.

Against the backdrop of these commonly held views that reading is central to social life, and the prospects of individuals and their communities, what are we to make of the disturbing situation in which the right to read is systematically denied to a large and diverse group of humanity: the ‘print-disabled’?

The print-disabled include blind people and those with visual impairments (an estimated 300 million worldwide), but also a wide range of others,

including those with other sensory disabilities who are not able to hold or manipulate a book or other printed material, not to mention those with cognitive and other disabilities which preclude or interfere with reading (such as dyslexia, autism, intellectual disability, acquired and traumatic brain injury). Through the history of print culture and the book, since the invention of writing, commemorated in various milestones, especially the advent of the printing press, it has been recognised that many people are not able to read. ‘Work-arounds’ have been devised, such as providing assistance with people reading to those with print disabilities. Particular media have developed to make books and printed material accessible, including Braille, radio for ‘print-handicapped’ people; ‘talking books’ and formats such as DAISY. These efforts to make books accessible to the print-disabled are typically regarded as ‘specialised’, though most people would have some awareness of their existence.

With the digital age, there has been great excitement generally about the prospects of digital technologies, multimedia, the internet, mobile devices, and the pervasiveness of voice synthesiser and recognition technologies to create new ways for reading to occur – and for many people hitherto denied easy access to finally be able to fully participate in cultures of reading. After all, when mobile phone and tablet computer technology and associated computer operating systems and software support ‘reading out aloud’ of digital material, including books, are we not on the cusp of book stores, libraries, archives, schools and universities of the world – great repositories of knowledge and educational institutions – supporting a genuine revolution in reading? As we know, digital formats, widely used for electronic reading, can have capabilities and features that greatly extend accessibility, especially for print-disabled people. On the very threshold of the world of letters undergoing a transformative leap forward, there is a real danger than these great but very concrete and feasible hopes will be dashed.

This is the extraordinary story told in full for the first time by Dr Paul Harpur in his luminous book, *Discrimination, Copyright and Equality: Opening the E-Book for the Print-Disabled*. In a distinctive, powerful voice, underpinned by outstanding legal scholarship and analysis, Harpur provides a systematic account of how international and national copyright law has been the principal agent of oppression for people with print disabilities when it comes to their access to books and printed material. Publishers have rarely created and distributed works in accessible formats. One of the most scandalous examples in the world of digital books is the decision by Amazon to quail in the face of copyright advocates such as the American Authors Guild, and enable

publishers to turn off accessibility features – so that the Kindle (the most famous name in E-Books) is effectively not accessible for the print-disabled.

When publishers large and small, traditional and digitally in the vanguard, have chosen not to make their books accessible to the print-disabled, the task has fallen to other intermediaries. For decades, there have been ways for organisations (typically charities and disability organisations) and, more recently, individuals (through optical character recognition software, scanners and screen readers) to take inaccessible books and make copies in alternative formats so print-disabled readers can read them. Fair enough, one might think; other people putting in the labour and funds to make books accessible, where the publishers have failed to do so. Enter the central doctrine of copyright when it comes to print disability: the emergence of an exception to copyright to allow such copying of books to make them accessible for the print-disabled. Bizarrely enough, this minor exception has been fiercely resisted by copyright holders and a range of vested interests, including societies of authors. For their part, governments have been reluctant to take action, until recently.

As Harpur lays out, there are two ‘game changers’ that mean it can no longer be (disabling) business as usual for those denying books to print-disabled people. The more recent is the 2013 *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*, which makes it mandatory for the states who have signed the Treaty to adopt copyright exceptions for the creation and distribution of accessible versions of work for those with print disabilities. This is an epochal step forward, yet it has two major flaws. It does not include people with non-sensory disabilities, and, more troubling still, it also mandates exceptions for the *non-profit* accessible version of works. As Harpur discusses, this latter stipulation means that commercial publishers and organisations are prevented from creating accessible works. Moreover, instead of gaining the benefits of ‘universal design’, the exception still revolves around converted works into accessible formats only for those with print disabilities. So, why this ban on the harnessing of commerce, when this could otherwise see accessibility become a ‘normal’, unexceptional part of all books? Harpur provides an elaborated and convincing explanation of why this parlous situation still obtains, as the dominant, ‘taken for granted’ approach in books and disability – even in the digital age, when accessibility is being taken mainstream in all kinds of other technology.

To understand this situation, Harpur gives a comprehensive account of the other game changer, the 2006 *Convention on the Rights of Persons with Disabilities* (CRPD). As Harpur’s analysis shows, extending the work of

many other scholars, the *CRPD* greatly advances the rights and obligations governments and other actors now shoulder when it comes to matters of information, communication, media and technology. The right to read can be seen as part of the web of human rights that there is now no doubt are the patrimony of people with disabilities, as of all humanity. There are many complexities to the body of international law, fortified by the *CRPD*, but, especially, there is the overarching question of how such laws, and new dimensions of rights, are conceived, implemented and safeguarded in national contexts. This is laid out by Harpur with careful analysis and argumentation, and impeccable documentation, as he dissects the shortcomings of existing anti-discrimination, equality of opportunity and human rights law across a number of leading Anglophone jurisdictions. It makes for depressing reading, to absorb and be puzzled by the many ways in which narrow concepts of ability, normalcy and justice underpin the framing, interpretation and enacting of law and justice when it comes to laws whose manifest purpose is to remove discrimination against people with disabilities, or to give effect to human rights. Displaying commendable optimism of the spirit as well as pessimism of the intellect, Harpur offers a creative and rigorous set of arguments, based on the resources of actual existing law and legal practice on how we could, and indeed, should, construe and enact copyright, anti-discrimination and human rights law differently – to finally make accessibility of books, especially E-Books, the general condition of culture, no longer an ‘exception’ to culture (that is, a patronising, charity-based apology that needs to be made amidst the courts and tribunals of copyright law, in order to make a mere fraction of books accessible to print-disabled people).

Harpur lucidly explains the absurd, unjust, disabled dispensation that still prevails, despite the twin peaks of the *CRPD* and *Marrakesh Treaty*, whereby print-disabled people have access only to a fraction of the world’s books. Given that copyright is one of the most widely debated, researched and legislated public concerns in digital culture – as evidenced in the Commons debates, the furious arguments about illegal downloading, or the affirmative policy in favour of open-access publishing – it is astounding that the issues of copyright and the print-disabled are not widely known. Why are these issues not routinely raised, in the mainstream, when we talk about the opportunities and discontents of digital technology for society and culture? The continuing oppression of print-disabled readers, and their exclusion from the world of books, can no longer continue – and it is something that should be an integral part of our university courses, research, public debates and public policy discussion on digital technology. A very important addition to this indispensable Cambridge University Press series, this is a book that must be widely read.

Harpur's study deserves an engaged reception across a range of disciplines, not just law and policy studies – but also disability studies, sociology, media and communication studies, literary studies and elsewhere in the humanities and social sciences, as well as engineering and technology sciences. Equipped with Dr Harpur's fine book, we are armed with the resources to take these issues mainstream and secure proper action, so that everyone in the world, by 2030, or sooner, can indeed be a reader.

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I would like to dedicate this monograph to my parents, Barry and Joan Harpur, who made my career and education possible. I lost my eyesight at the age of 14 in a commuter train accident. Suddenly the written word was a closed book to me. I could not read Braille and copyright concerns meant instructional materials were not provided in formats that I could use. In the first few years, my parents spent tens of hours each week reading material to me and scanning book content. As technology improved, the burden on them reduced substantially, but even now, as an accomplished academic, they provide me with support. For their lifelong support, I want to dedicate this book to them.

I also want to dedicate this book to my wife, who has provided me much support in more recent times, and to my son, Hayden Harpur, who, at one, is amazing and does not understand the significance of the thousands of E-Books contained in the E-Reader he is holding as I type.

I would also like to acknowledge two academics who have had a profound influence on my development as a lawyer and an academic. The transition from able-bodiedness to blindness in a train accident helped me understand how the world treats people with ability differences, but also led me to wonder about my place in this world. Professor Ron McCallum AO, who has been blind since birth, and who was and remains one of the world's finest legal and academic minds, gave me substantial hope and inspired me to reach for success. Ron made me believe anything was possible and encouraged my dreams of entering law school.

Once in law school, I was privileged to come under the wing of Professor Des Butler. Professor Butler uses an electric wheelchair and made an awkward first-year law student believe it was possible to graduate. He inspired and encouraged me to learn, and ultimately became my PhD supervisor and a man I have the greatest respect and appreciation for.

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