

An Act to amend the Copyright Act (access to copyrighted works or other subject-matter for persons with perceptual disabilities)

S.C. 2016, c. 4

Assented to 2016-06-22

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SUMMARY

This enactment amends provisions of the [Copyright Act](#) on access for persons with perceptual disabilities to copyrighted materials and, in doing so, implements the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. The amendments facilitate access for such persons to copyrighted materials while ensuring that the interests of copyright owners are safeguarded.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. C-42

[Copyright Act](#)

2012, c. 20, s. 36

1 (1) The portion of subsection 32(1) of the French version of the [Copyright Act](#) before paragraph (a) is replaced by the following:

Production d'un exemplaire sur un autre support

- **32 (1)** Ne constitue pas une violation du droit d'auteur le fait, pour une personne ayant une déficience perceptuelle, une personne agissant à sa demande ou un organisme sans but lucratif agissant dans son intérêt, d'accomplir l'un des actes suivants :

1997, c. 24, s. 19

(2) Paragraph 32(1)(a) of the Act is replaced by the following:

- **(a)** reproduce a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;
- **(a.1)** fix a performer's performance of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;

- **(a.2)** reproduce a sound recording, or a fixation of a performer’s performance referred to in paragraph (a.1), in a format specially designed for persons with a perceptual disability;

(3) Subsection 32(1) of the Act is amended by striking out “or” at the end of paragraph (b) and by adding the following after that paragraph:

- **(b.1)** provide a person with a perceptual disability with, or provide such a person with access to, a work or other subject-matter to which any of paragraphs (a) to (b) applies, in a format specially designed for persons with a perceptual disability, and do any other act that is necessary for that purpose; or

1997, c. 24, s. 19

(4) Paragraph 32(1)(c) of the French version of the Act is replaced by the following:

- **c)** l’exécution en public en langage gestuel d’une oeuvre littéraire ou dramatique — sauf cinématographique — soit en direct soit sur un support pouvant servir aux personnes ayant une déficience perceptuelle.

1997, c. 24, s. 19

(5) Subsections 32(2) and (3) of the Act are replaced by the following:

- **Limitation**

(2) Subsection (1) does not apply if the work or other subject-matter is commercially available, within the meaning of paragraph (a) of the definition *commercially available* in section 2, in a format specially designed to meet the needs of the person with a perceptual disability referred to in that subsection.

2012, c. 20, s. 37

2 (1) Subsections 32.01(1) to (4) of the Act are replaced by the following:

Print disability — outside Canada

- **32.01 (1)** Subject to this section, it is not an infringement of copyright for a non-profit organization acting for the benefit of persons with a print disability to do any of the following:
 - **(a)** for the purpose of doing any of the acts set out in paragraph (b),
 - **(i)** reproduce a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a print disability,
 - **(ii)** fix a performer’s performance of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a print disability, or
 - **(iii)** reproduce a sound recording, or a fixation of a performer’s performance referred to in subparagraph (ii), in a format specially designed for persons with a print disability;
 - **(b)** provide either of the following with, or provide either of the following with access to, a work or other subject-matter to which any of subparagraphs (a)(i) to (iii) applies, in a format

specially designed for persons with a print disability, and do any other act that is necessary for that purpose:

- (i) a non-profit organization, in a country other than Canada, acting for the benefit of persons with a print disability in that country, or
- (ii) a person with a print disability, in a country other than Canada, who has made a request to be provided with, or provided with access to, the work or other subject-matter through a non-profit organization acting for the benefit of persons with a print disability in that country.

○ **Available in other country**

(2) Paragraph (1)(b) does not apply if the work or other subject-matter, in the format specially designed for persons with a print disability, is available in the other country within a reasonable time and for a reasonable price and may be located in that country with reasonable effort.

○ **Marrakesh Treaty country**

(3) An injunction is the only remedy that the owner of the copyright in the work or other subject-matter has against a non-profit organization relying on the exception set out in paragraph (1)(b) if

- (a) the other country referred to in that paragraph is a Marrakesh Treaty country; and
- (b) the non-profit organization infringes copyright by reason only that the work or other subject-matter, in the format described in subsection (2), is available, and may be located, as described in that subsection.

The owner of the copyright bears the burden of demonstrating that the work or other subject-matter, in the format described in subsection (2), is available, and may be located, as described in that subsection.

○ **Marrakesh Treaty country**

(3.1) An injunction is the only remedy that the owner of the copyright in the work or other subject-matter has against a non-profit organization relying on the exception set out in paragraph (1)(b) if

- (a) the other country referred to in that paragraph is not a Marrakesh Treaty country;
- (b) the non-profit organization infringes copyright by reason only that the work or other subject-matter, in the format described in subsection (2), is available, and may be located, as described in that subsection; and
- (c) the non-profit organization demonstrates that it had reasonable grounds to believe that the work or other subject-matter, in the format described in subsection (2), was not available, and could not be located, as described in that subsection.

- **Royalty**

(4) A non-profit organization relying on the exception set out in subsection (1) shall pay, in accordance with the regulations, any royalty established under the regulations to the copyright owner.

2012, c. 20, s. 37

(2) Subsection 32.01(6) of the Act is replaced by the following:

- **Reports**

(6) A non-profit organization relying on the exception set out in subsection (1) shall submit reports to an authority, in accordance with the regulations, on the organization's activities under this section.

2012, c. 20, s. 37

(3) Paragraph 32.01(7)(a) of the Act is replaced by the following:

- (a) requiring that, before a non-profit organization provides, or provides access to, a work or other subject-matter under paragraph (1)(b), the organization enter into a contract with respect to the use of the work or other subject-matter with, as the case may be, the recipient non-profit organization or the non-profit organization through which the request was made;

2012, c. 20, s. 37

(4) Paragraph 32.01(7)(d) of the Act is replaced by the following:

- (d) respecting to which collective society a royalty is payable in relation to works or other subject-matter, or classes of works or other subject-matter, for the purposes of subsection (5);

2012, c. 20, s. 37

(5) Subsection 32.01(8) of the Act is replaced by the following:

- **Definitions**

(8) The following definitions apply in this section.

Marrakesh Treaty country means a country that is a party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh on June 27, 2013. (*pays partie au Traité de Marrakech*)

print disability means a disability that prevents or inhibits a person from reading a literary, musical, artistic or dramatic work in its original format and includes such a disability resulting from

- (a) severe or total impairment of sight or the inability to focus or move one's eyes;
- (b) the inability to hold or manipulate a book; or
- (c) an impairment relating to comprehension. (*déficiences de lecture des imprimés*)

3 The Act is amended by adding the following after section 32.01:

Definition of *non-profit organization*

32.02 In sections 32 and 32.01, *non-profit organization* includes a department, agency or other portion of any order of government, including a municipal or local government, when it is acting on a non-profit basis.

2012, c. 20, s. 47

4 Section 41.16 of the Act is replaced by the following:

Persons with perceptual disabilities

41.16 (1) Paragraph 41.1(1)(a) does not apply to a person with a perceptual disability, to another person acting at their request or to a non-profit organization, as defined in section 32.02, acting for their benefit, if that person or organization circumvents a technological protection measure solely for one or more of the following purposes:

- (a) to make a work, a performer's performance fixed in a sound recording or a sound recording perceptible to the person with a perceptual disability;
- (b) to permit a person, or a non-profit organization referred to in subsection 32(1), to benefit from the exception set out in section 32;
- (c) to permit a non-profit organization referred to in subsection 32.01(1) to benefit from the exception set out in section 32.01.

Services, technology, device or component

(2) Paragraphs 41.1(1)(b) and (c) do not apply to a person who offers or provides services to persons or non-profit organizations referred to in subsection (1) or who manufactures, imports or provides a technology, device or component, for the sole purpose of enabling those persons or non-profit organizations to circumvent a technological protection measure in accordance with that subsection.