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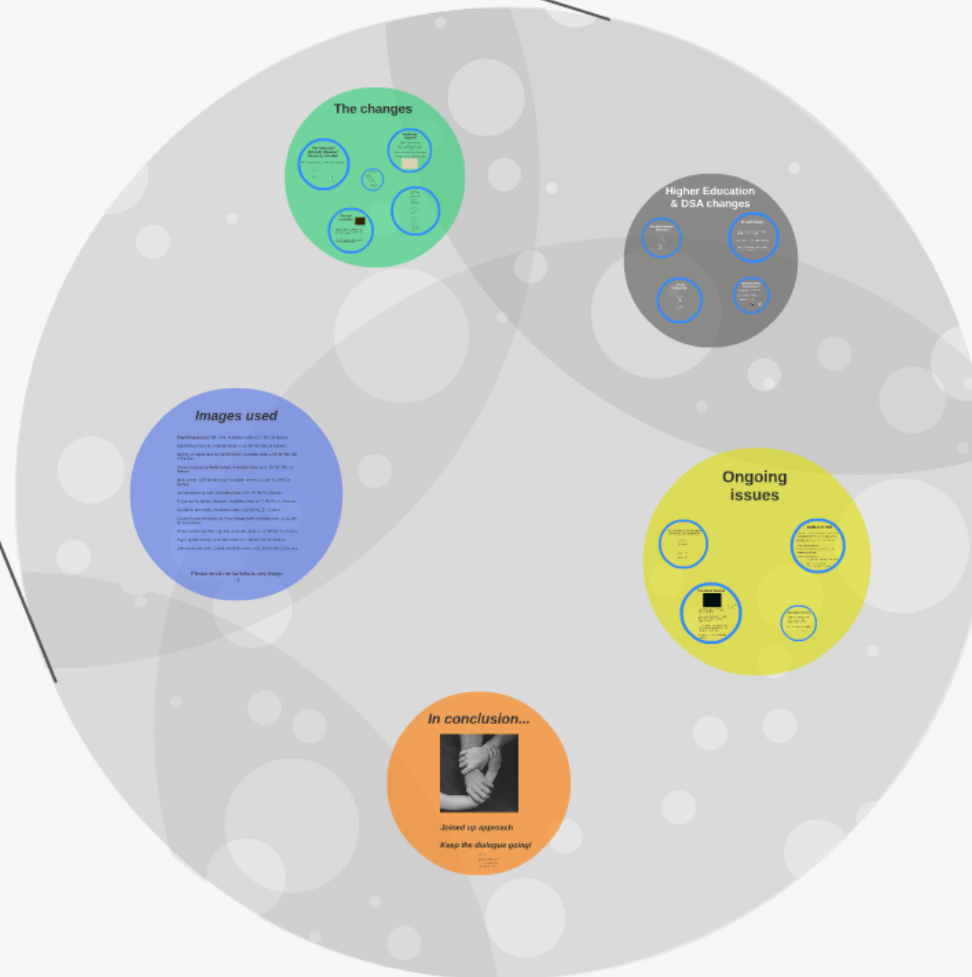
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Thank you for listening!



Beyond the lens to the new disability exceptions: additional needs in Higher Education



Ruth MacMullen

CILIP Copyright Executive Briefing

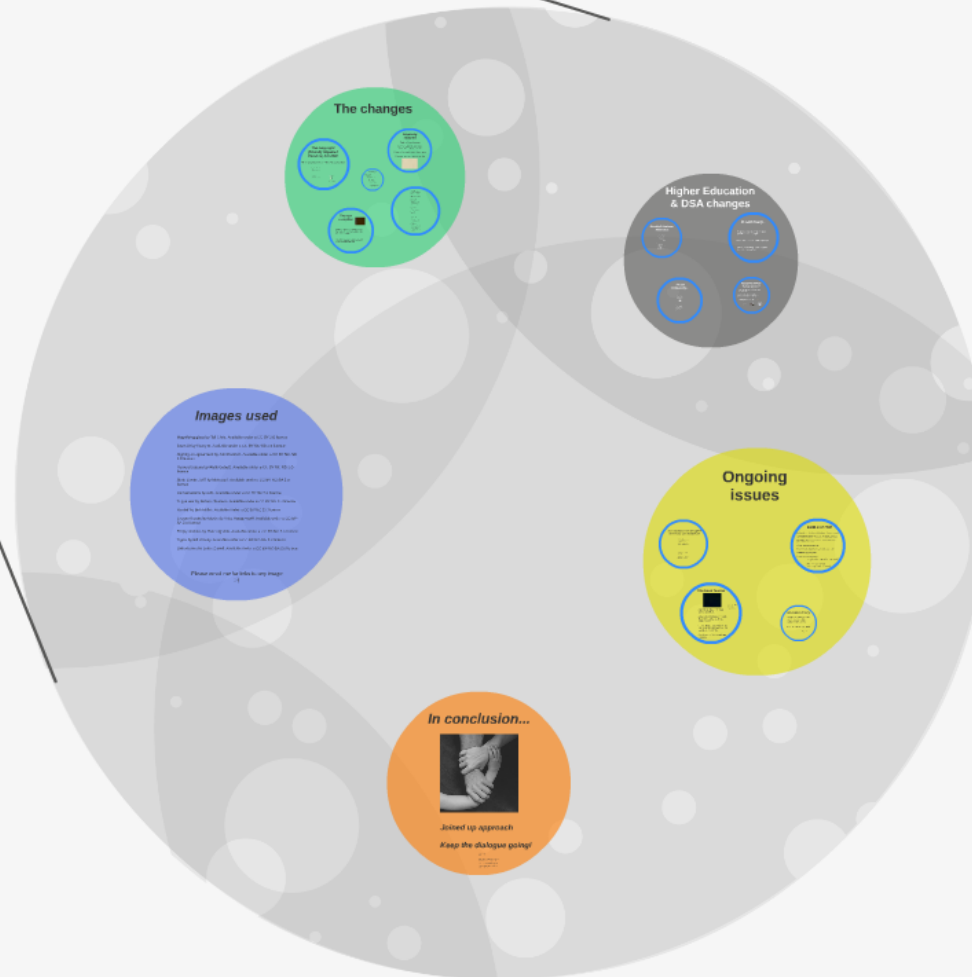
1st April 2015

Three things

The way things were, and how they are now

How an HE institution is responding + changes to DSA

Ongoing + future issues



The changes

The Copyright (Visually Impaired Persons) Act 2002

Big improvement from what we had before

© Health Service Journal, 2002

© Health Service Journal, 2002

© Health Service Journal, 2002

© Health Service Journal, 2002

With thanks to:
Mrs. [Name]
Mrs. [Name]
Mrs. [Name]
Mrs. [Name]

Copyright and other

Summary

Before change:

- 30% only
- Certain works only
- Licences could restrict

After change:

- All works
- All the rights
- No licence override

Still an argument for working with rightsholders

Licensing schemes

Could still have their uses

Communication with publishers
and suppliers about the changes

Protection for rightsholders in the exception

Reporting - can see where demand lies



The new exception



2014 no. 1384: The Copyright and
Rights in Performances (Disability)
Regulations 2014

Section renamed 'Disability' rather
than 'Visual Impairment'

1. The Copyright and Rights in Performances (Disability) Regulations 2014

2. The Copyright and Rights in Performances (Disability) Regulations 2014

3. The Copyright and Rights in Performances (Disability) Regulations 2014

4. The Copyright and Rights in Performances (Disability) Regulations 2014

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7. The Copyright and Rights in Performances (Disability) Regulations 2014

8. The Copyright and Rights in Performances (Disability) Regulations 2014

9. The Copyright and Rights in Performances (Disability) Regulations 2014

10. The Copyright and Rights in Performances (Disability) Regulations 2014

The Copyright (Visually Impaired Persons) Act 2002

Big improvement from what we had before

A 'Visually Impaired Person' - someone who:

- Is blind
- Has a visual impairment that cannot be improved with lenses
- Is unable to hold a book
- Is unable to focus or move eyes to read.

An 'Accessible Copy' - a version which:

- Provides improved access to the work
- Includes facilities for navigating around the work

Works limited to:



Licensing schemes could restrict

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Works limited to:



Literary



Dramatic



Musical



Artistic

Licensing schemes could restrict

The new exception



2014 no. 1384: The Copyright and
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Section renamed 'Disability' rather
than 'Visual Impairment'

31A - Disabled persons: copies of works for personal use

Applies if "the person's disability prevents the person from enjoying the work to the same degree as a person who does not have that disability."

Must have lawful possession or use of the work

Only if "the same kind of accessible copies of the work are not commercially available on **reasonable terms** by or with the authority of the copyright owner."

31B - Making and supply of accessible copies by authorised bodies

"educational establishment" or "a body that is not conducted for profit"

Copies must contain statement of exception, and acknowledgment of copyright owner

Copy-protection must be reinstated

31BA - Making and supply of intermediate copies by authorised bodies

Copy of a work that is necessary to make the accessible copy

Can be shared with other authorised bodies
e.g. Load2Learn service

31BB Accessible and intermediate copies: records and notification

Authorised bodies must keep records of copies made under 31B and 31BA, but not 31A

Copyright owner must be notified "within a reasonable time of making an accessible copy under section 31B"

31F Interpretation and general

"Disabled person" means a person who has a physical or mental impairment which prevents the person from enjoying a copyright work to the same degree as a person who does not have that impairment, and "disability" is to be construed accordingly.

An "accessible copy" means a version of a copyright work which enables the fuller enjoyment of the work.

No contractual override!

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Summary

Before change:

- VIPS only
- Certain works only
- Licences could restrict

After change:

- All works
- All disabilities
- No licence override

Still an argument for
working with rightsholders

Higher Education & DSA changes

Disabled Students' Allowance

DSAs are available to students with a physical or mental health condition, a sensory impairment, a learning difficulty or a specific learning difficulty.

DSAs are available to students who are registered with a disability or have a specific learning difficulty.

At our University...

DSAs are available to students with a physical or mental health condition, a sensory impairment, a learning difficulty or a specific learning difficulty.

DSAs are available to students who are registered with a disability or have a specific learning difficulty.

In summary...

Educational establishments must provide a level playing field

What does 'inclusive' mean, anyway?

DSA changes should draw support departments together...

What are the duties of HE institutions under the Equality Act?

Statutory duty to make 'reasonable adjustments'

s20 (6) - Information must be provided in an accessible format

Anticipatory requirement



Disabled Students' Allowance

Government: Costs going up year on year 

- 2008-9: £91.7 million on 40,600 students
- 2011-12: £125 million on 53,000 students

50% of disabled undergraduates receive DSA

Those who do get better degrees, and are more likely to complete their course

(Numbers from the Equality Challenge Unit)

Changes

Non-medical helper support

Cost of human support e.g. notetakers and interpreters, is very high. Trend is to look to technical solutions and equipment

BUT

Consumables

Books, computers, scanners, printers, software not funded for individuals unless exceptional circumstances



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At our University...

13.3% disabled students

9.6% is national average

*400 students who claim a
disability also claim DSA*



We may see more students...

*Some are nervous of the library as a physical space -
will need an online request form and online materials*

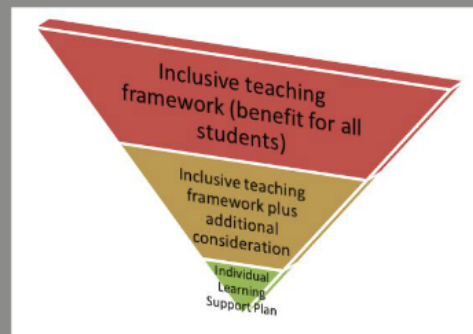
*More support and scanning requests from students
with mobility, visual, hearing, cognitive impairments*

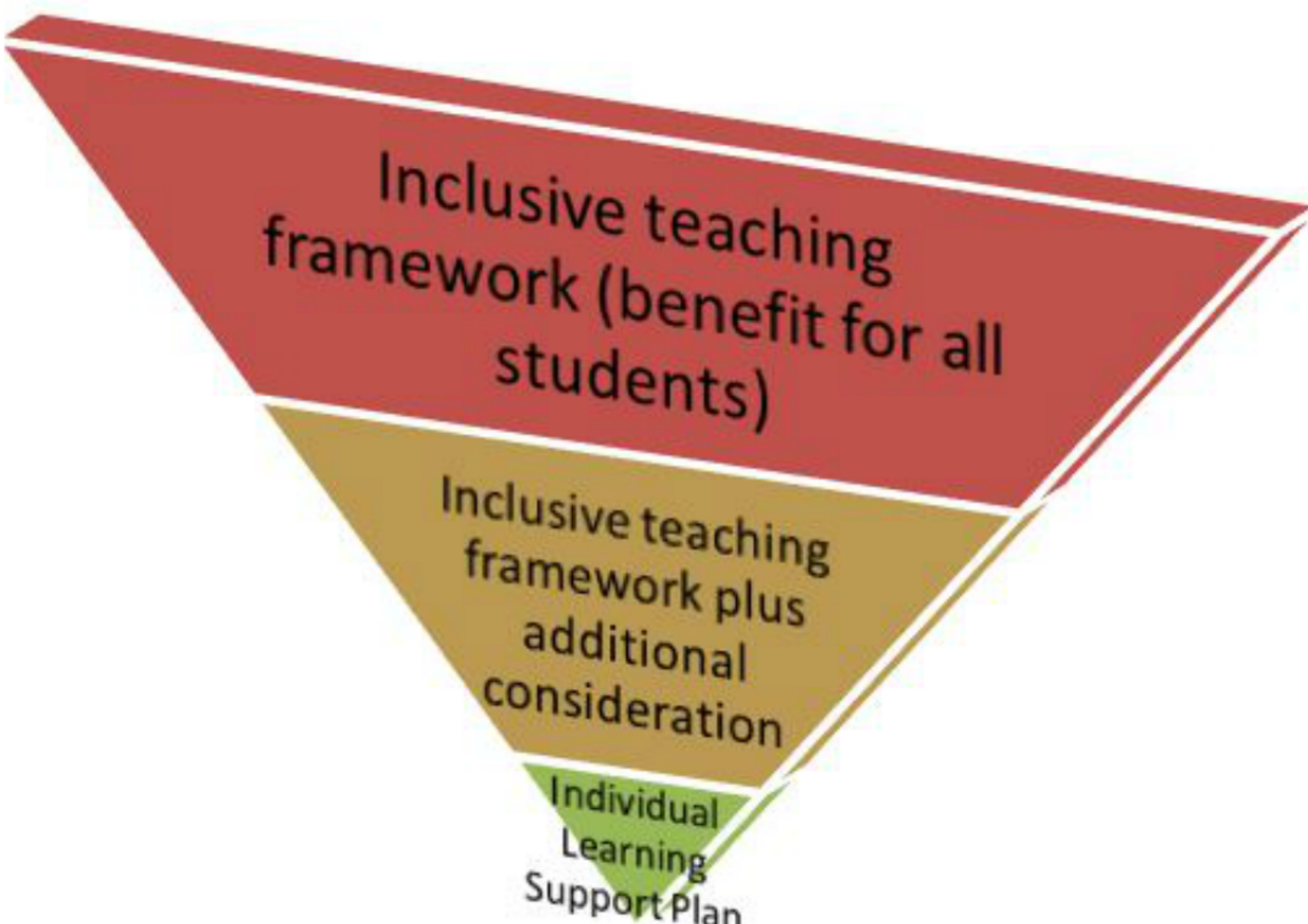
*Health conditions that fluctuate e.g. Chronic Fatigue
Syndrome*

13.3% disabled students

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400 students who claim a disability also claim DSA





Inclusive teaching
framework (benefit for all
students)

Inclusive teaching
framework plus
additional
consideration

Individual
Learning
Support Plan

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Anticipatory requirement

To report or not to report?



Needs of disabled students?

People with disabilities do not come in uniform.
They should be treated as individuals, not as a group.
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1000 1000

NAD v. Harvard
(2:15-cv-30023)

NAD v. MIT
(2:15-cv-30024)



We need to be having these
conversations, inside and outside
of the library, right now



To report or not to report?



Needs of disabled students?

"People with disabilities do not come in templates."

"Each disability is a unique set of circumstances and has unique personal consequences; disability related support needs to be more responsive to individual needs, not subject to stereotyping and categorising, structured in tick boxes."

Respondents to Snowden Survey, 2013

Tensions between Equality law and Copyright law



Tensions between Equality law and Copyright law



*NAD v. Harvard
(3:15-cv-30023)*

*NAD v. MIT
(3:15-cv-30024)*



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BBC textbook had to be digitised by support worker.

DSA changes won't fund this in future.

Now have cause to go back to the lecturer and point out we need an accessible version - the library can help to source e.g. an accessible digital file.

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Ongoing issues

UN Convention on the Rights of Persons with Disabilities

Article 30. Rights to Education

Article 30. Participation in cultural life, recreation, leisure and sport

The book famine



BRITISH LIBRARY

- 285 million visually impaired people worldwide
- 90% of visually impaired people live in developing countries (WHO, 2014)
- 7% of all books published in the UK are available in braille, audio and large print (RNIB)
- This drops to 1% in developing countries

DRM and TPM

- Extent of use - IP address blocked when threshold reached
- Obfuscation/omission - functionality is blocked or hidden
- Decomposition - content is broken down to component parts and harder to save
- Threat - pop-ups and warnings
- Frustration or chunking - very common with e-books
- Restricted copy and paste
- Secure container or wrapper

From Article 17, Copyright Clearance Center (CCC) Library's Rights Management, the Association of American Publishers' Digital Rights Management, the Association of American Publishers' Digital Rights Management

Still have to appeal to Secretary of State (s296ZE)

Marrakesh Treaty

Adopted by WIPO in June 2013... to date, only six countries have ratified

The UK is not one of them!

WIPO

UN Convention on the Rights of Persons with Disabilities

Article 24, Right to Education

'...without discrimination and on the basis of equal opportunity.'

'States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.'

Article 30, Participation in cultural life

"States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities enjoy access to cultural materials in accessible formats"

Article 24, Right to Education

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TIGAR (hosted by Accessible
Books Consortium, WIPO)
Trusted Intermediary Global
Accessible Resources service
300,000 accessible books in 55 languages
Currently need publisher permission for
cross-border exchange of Res...

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Article 2
Effect of the Treaty on Existing Rights

Article 3
Implementation of the Treaty

Article 4
Dispute Settlement

Article 5

Cross-Border Exchange of Accessible Format Copies

"if an accessible format copy is made under a limitation or exception... [it] may be distributed or made available... to a beneficiary person or an authorized entity in another Contracting Party"

Article 6

Importation of Accessible Format Copies

"To the extent that the national law of a Contracting Party would permit a beneficiary person... to make an accessible format copy of a work, the national law... shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder."

Article 7

Obligations Concerning Technological Measures

Contracting Parties shall take appropriate measures... to ensure that when they provide adequate legal protection... against the circumvention of effective technological measures, this... does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.

DRM and TPM

Extent of use - IP address blocked when threshold reached

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From Kristin R. Eschenfelder (2008) *Every Library's Nightmare? Digital Rights Management, Use Restrictions, and Licensed Scholarly Digital Resources*

Still have to appeal to
Secretary of State (s296ZE)

In conclusion...



Joined up approach

Keep the dialogue going!

With thanks...

Little Alexander, Academic Liaison Librarian
Emma Symons, Senior Library Assistant
Margo Davidson, Equality & Diversity Advisor
Mike Wiley, Janet Brisson & Rachel Lammie,
Learning Support Team

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Lottie Alexander, Academic Liaison Librarian

Emma Symons, Senior Library Assistant

Marije Davidson, Equality & Diversity Adviser

Mike Wray, Janet Britton & Rachel Larman,
Learning Support Team

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