



Electronic Clearinghouse  
For Alternative Format Production  
Pilot Project

# Final Report

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## 1. Participants

The pilot project was conducted by the Canadian Library Association, with the active participation of Library and Archives Canada's Council on Access to Information for Print-Disabled Canadians, the Canadian Publishers' Council, the Association of Canadian Publishers, l'Association nationale des Éditeurs de Livres, and leading Canadian alternative format Producers, with funding from Social Development Canada.

Members of the planning, implementation and evaluation phases of the pilot were:

- Andrew Martin, Legal Counsel
- Andy Oates, Project Manager
- Bob Minnery, W. Ross Macdonald School
- Don Butcher, Canadian Library Association
- Donna Pletz Passey, Manitoba Dept. of Education
- Emilie Lowenberg, Library and Archives Canada
- Jacqueline Hushion, Canadian Publishers' Council
- Margaret McGrory, CNIB Library for the Blind
- Mary Anne Epp, Langara College
- Mary Frances Laughton, Industry Canada
- Ralph W. Manning, Library and Archives Canada
- Ryan Klomp, University of Ottawa
- Trisha Lucy, Library and Archives Canada

Publishers who signed the pilot project Standard Agreement (and thus became members of the active phase of the pilot) were:

- Hushion House
- John Wiley and Sons Canada, Ltd
- McGraw-Hill Ryerson
- Oxford University Press Canada
- Pearson Education Canada
- Thomson Nelson
- University of Ottawa Press
- Winding Trail Press

Alternative format Producers who signed the pilot project Standard Agreement (and thus became members of the active phase of the pilot) were:

- CNIB Library for the Blind
- Langara College
- Manitoba Department of Education
- University of Ottawa
- W. Ross Macdonald School

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with the input and assistance of the pilot project steering group and the pilot project participants.

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## 2. Introduction

Access to information is a fundamental right of Canadians. Approximately three million Canadians are print disabled and require alternative formats to gain access to information. Yet less than 5% of published material is available in alternative formats. This is a serious inequity that further marginalizes an already disadvantaged group. Access to leisure reading material and educational material as well as material for lifelong learning is limited and frequently seriously delayed. An electronic Clearinghouse for alternative format production would significantly reduce the time delay for provision of alternative formats and will help to increase its availability. This will be accomplished by creating a mechanism whereby Publishers can make their electronic files quickly and securely available to alternative format Producers. The development of a Clearinghouse will also be a cornerstone to establishing a [National Network for Equitable Library Service](#), another Canadian Library Association (CLA) initiative.

## 3. Background

The development of a vision for a Clearinghouse began in 1998 with the [Report to the Book and Periodical Council on options for making published materials more accessible to the visually impaired](#). In 2000, the Task Force on Access to Information for Print-Disabled Canadians recommended that the Government of Canada establish and fund a Clearinghouse for e-files to which Canadian Publishers make their works available. In 2003, the Council on Access to Information for Print-Disabled Canadians (the Council), created by Library and Archives Canada (LAC),

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commissioned and endorsed the [Vision and Implementation Plan for a Clearinghouse for Print-Disabled Canadians](#). In 2005, a partnership between CLA, the Council who is acting as a Steering Committee, five other national non-profit organizations, and three regional educational bodies was formed to test the Clearinghouse model.

## 4. Objectives

The purpose of this pilot project was to test the Clearinghouse Vision concepts, determine the viability and sustainability of the network, examine issues of conversion and format standards, measure the costs and benefits to all participants, and formulate recommendations for next steps. The key objectives were:

- Developing a Standard license Agreement between Publishers and alternative format Producers to streamline rights management.
- Safeguarding of electronic files within the Clearinghouse and reporting on their authorized use.
- Simplifying the provision of electronic files for alternative format production (Publishers should only be asked to provide any title once.)
- Eliminating the delays, costs and potential inaccuracies caused by the text scanning methods now used in the production of some alternative formats.
- Providing final delivery of alternative formats to qualified Canadians with print disabilities through existing and proven service channels.
- Working closely with participants to monitor issues and progress.

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## 5. Pilot Structure

The active phase of the Clearinghouse pilot was planned to run from approximately June through December 2005, allowing enough time for Producers to make a significant number of requests through the Clearinghouse and for the resolutions of those requests to be measured objectively. Producers and Publishers would have enough time to fully experience the Clearinghouse mechanisms, to adapt their internal procedures to them as necessary, to evaluate them, and for these objective and subjective evaluations of the pilot to be gathered. In fact the active phase could not begin until mid-September because a number of the preparatory project activities necessary for the active phase took longer than anticipated. (The major reasons for delay are outlined below in the “Problems Identified” section.) The Clearinghouse became operational in mid-September but a significant number of requests were not made until mid-November. Given the length of the request resolution and production processes, it was decided that requests made through the end of 2005 would be measured in detail. The request resolutions would be analyzed and Producer and Publisher feedback would be gathered during late January and February of 2006.

The production workflow originally envisioned for the pilot involved the participation of Access Copyright, who would broker the requests for alternative format production rights at the same time they brokered requests for a Publisher’s e-files. As planning for the pilot progressed it was determined that requests for e-files could more efficiently be sent directly from a Clearinghouse website to Publishers, and that rights to produce alternative formats need not be requested for each title because of the Copyright Act section 32 exception. A workflow that does not involve Access Copyright was

developed and used, as described below in the “Production Workflow” section.

Objective measurement of improvements in the time required to obtain rights, to obtain source material and to produce alternative format books could not be done as originally envisioned. Because the entire Pilot project was conducted in one year, year-over-year comparisons were not possible; because of the highly seasonal demand for textbook production, month-over-month comparisons were not useful. Instead Producers were asked to record metrics for each request they made, to compare Clearinghouse requests to those made to non-participating Publishers, and to subjectively evaluate the effect of the Clearinghouse processes.

## **6. Pilot Activities**

Following are the major project activities conducted during the pilot.

### **Planning and Preparation Activities:**

- Consultations were conducted with Producers and with Publishers in order to better understand the present system for alternative format production, the problems with it, and the improvements expected from a Clearinghouse system.
- A questionnaire was sent to Publishers (in April, 2005) to gather information about the file formats they use now, the formats they intend to use in the future, their abilities to convert file formats, their processes and problems in responding to alternative format Producer requests, and a range of other relevant questions.

- A questionnaire was sent to Producers (in April, 2005) to gather information about the formats they produce, the quantities of each format, the technical systems capabilities they have in place, their current problems with alternative format book sharing, how long various stages of rights procurement take, and a range of other relevant questions. Results of the questionnaire were used to further develop the pilot mechanisms, including options to be made available on the request website and the details of measurements to be made during the active phase.
- A teleconference meeting was held to discuss AMICUS reporting requirements for the Clearinghouse Pilot. Cataloguing staff agreed to catalog each e-file in AMICUS (as an ECH Master) when it was requested. The e-file would then be searchable by other Producers. A CANIWIP record would also be created if the Producer requests one when making a request on the Clearinghouse website.
- A spreadsheet was developed and distributed to Producers to facilitate their recording and reporting of request/response metrics that can't be gathered or inferred automatically. Information tracked included:
  - The request number;
  - The request resolution (file received, request denied, request cancelled);
  - The date of the request resolution;
  - File delivery method;
  - File format;
  - Usefulness of the file, and whether it needed to be “cleaned up” prior to use;
  - The date of the original client request for the book, if applicable;

- The date the alternative format was made available to the client;
- The number of clients who received the alternative format.

**Standard Agreement Development Activities:**

- Extensive consultation on the Clearinghouse Standard Agreement was conducted with Publishers' associations and individual Publishers and Producers, and debates on several Standard Agreement issues were worked through. Several draft versions of the Standard Agreement principles were circulated for comment and approval.
- Once these principles, or business rules, were agreed upon the Standard Agreement wording was crafted. In some cases the business rules and/or Standard Agreement needed to be further explained and reviewed with Publishers' international legal counsel. A summary of the comments received about the provisions of the Standard Agreement was published.
- A key requirement in developing the Standard Agreement was, while facilitating the exchange of e-files, to avoid the introduction of any new restrictions or liabilities that are not supported by law or current practice.
- The finalized Standard Agreement was distributed in English and in French.
- Numerous questions about the legal interpretation of the Standard Agreement and about the operation of the pilot mechanisms were answered as they arose throughout the pilot.

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### **Pilot Facilitation Activities:**

- A Clearinghouse private discussion list, or listserv, called CLEARINGHOUSE-L was established to facilitate communication amongst pilot project participants.
- A secure website was designed and built on the Library and Archives Canada (LAC) servers to allow participating Producers to make requests to participating Publisher and Producers. The design and implementation of the website was kept simple so it could be operational as soon as possible, and to avoid a large investment in a system that might need substantial revision depending on the findings of the project.
- Two request forms were developed on the website, one for requests to Publishers and a second for requests to other Producers. Each form, when completed, triggers an email to the target of the request, which is also copied to several pilot project participants for tracking purposes. Both forms were provided in French and English.
- Website requests also trigger processes at LAC to create an Electronic Clearing House (ECH) Master record for the e-file and, optionally, a Canadian Works in Progress (CANWIP) record for the alternative format to be produced. These records are added to the AMICUS catalogue, Canada's national union catalogue, which lists the holdings of libraries across Canada including alternative format materials. The ECH Master record indicates that a Producer has requested a Publisher's e-file for a particular book. The CANWIP record indicates that production of a particular alternative format is in progress.
- A description of the website process and examples of the email messages generated were sent to Publishers

and Producers. Each Producer was given a unique website login and password once they had signed the Standard Agreement. The Producer workflow for finding existing alternative format books, finding existing Publisher e-files, and making Publisher or Producer requests was described.

### **Publisher Recruitment Activities:**

- Information about the Clearinghouse Pilot Project, and encouragement to participate in it, were sent to Publishers via the Publishers' associations.
- The project was further described in a brief article published in the Quill & Quire online edition.
- A further communication to Publishers, outlining the project background, the pilot project features, the Standard Agreement, and encouraging Publishers to participate was prepared for distribution in late September, soon after the active phase of the pilot was underway.
- Several special attempts were made to encourage the participation of French language Publishers.

### **Pilot Evaluation Activities:**

- Producers were asked to provide their objective measurements, by the end of January, for all requests made through the end of December. (They were also asked to continue using the Clearinghouse, and to continue tracking requests made through it on an ongoing basis.)
- A project steering meeting was held in Ottawa on December 16<sup>th</sup>, at which progress was reviewed and planning was done for the remaining pilot project activities.

- An interim report on the pilot project was produced at the end of December to formally document progress to date and plans for the remainder of the pilot activities.
- Publisher and Producer participants were interviewed during February and March to gather their feedback on their overall Pilot Project experience, the Standard Agreement, the Clearinghouse mechanics, their subjective assessment of whether service was improved, and their suggestions for changes.
- A preliminary report and discussion of the Pilot project feedback, findings and recommendations was presented to the Council on Access to Information for Print-Disabled Canadians meeting held February 20, 2006 in Ottawa.
- Objective request and response metrics gathered from Producers were correlated with information automatically gathered by the Clearinghouse request process. The combined information was analyzed and key findings appear in the “Request Statistics” section of this report.
- This final Clearinghouse Pilot Project report was prepared during March and April 2006.
- Participating Publishers will be sent a summary of the requests made to them through the Clearinghouse (to the end of December) and the disposition of e-files they sent in response.
- The Pilot Project will be independently evaluated.

## 7. Production Workflow

Authorized Producers who participated in the pilot used the following workflow:

1. A need for a specific title in an alternative format for a person with a print disability is identified, generally as a result of a direct request from that person.
2. A search of AMICUS is undertaken:
  - 2.1 If the title is available in the required format use standard borrowing or document delivery procedures. Go to 9.
  - 2.2 If the title has an ECH Master record, indicating that another Producer holds the Publisher's e-file for the title. Go to 3.
  - 2.3 If the title is not available in the required format and there is no ECH Master record for the title, Go to 4.
3. The Clearinghouse website is used to submit a Producer-to-Producer request for the Publisher's e-file. Go to 5.
4. The Clearinghouse website is used to determine whether the title's Publisher is a Clearinghouse participant:
  - 4.1 If the Publisher is listed on the website, a Producer-to-Publisher request is submitted for the e-file. Go to 5.
  - 4.2 If the Publisher is not participating in the Pilot project, other means must be used to request an e-file or to produce the alternative format from hardcopy. Go to 6.

5. When the requested e-file is received, record the date, format, delivery method and other tracking information needed for evaluating the pilot. Go to 6.
6. Ensure that CANWIP information for the alternative format in production is reported to AMICUS. Go to 7.
7. Produce and deliver the alternative format title to the person with a print disability. Go to 8.
8. Ensure that all Publisher's e-files and alternative format files are stored securely. Go to 9.
9. End of Workflow.

## **8. Issues and Problems Identified**

A number of problems were experienced or identified through the pilot activities. The major issues are noted below.

### **Standard Agreement and Publisher Issues:**

- It took longer than expected to arrive at the final version of the Standard Agreement. It took nearly to the end of June to develop the basic document, and slight further tinkering was necessary through July.
- It took longer than expected for some Publishers and Producers to sign the Standard Agreement once it had been finalized. In some cases the Standard Agreement had to undergo a fairly lengthy internal approval process involving a central office.
- Few Publishers signed the Standard Agreement and participated in the pilot. By the end of the pilot there

were eight Publisher participants; several of those that participated are quite small and did not receive any requests through the Clearinghouse.

- No French language Publishers participated in the Clearinghouse Pilot. While there is no reason to suppose that French language Publishers would have concerns that varied greatly from those of English language Publishers, this has not been verified.
- Some Publishers have misunderstood the purpose of the pilot and view its objective as facilitating theft of their intellectual property. This even after careful response to their concerns and careful explanations of the Copyright Act and the Clearinghouse vision. A rather negative refusal-to-participate letter from one Publisher was apparently distributed to members of both the Association of Canadian Publishers and The Writers' Union of Canada.
- As noted in the "Pilot Activities" section above, a key requirement in developing the Standard Agreement was to avoid the introduction of any new restrictions or liabilities that are not supported by law or current practice. Some Publishers took the view that, while the Copyright Act section 32 exception allows Producers to make an alternative format copy of a printed book, Publishers are in no way obligated to help them do so. Since Publishers were now being asked to help by providing e-files, and within 15 business days, they felt it would be fair to get something in return from Producers. Hence their desire to restrict the use of alternative formats produced from the e-files, to require Producers to provide information about the users of the alternative formats, and to require Producers to actively protect against unauthorized distribution of the e-files and the alternative format books produced from them.

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These are among the considerations that had to be carefully balanced in developing the Clearinghouse Agreement.

- In a number of cases the issue of US or foreign control of the requested Publishers' e-file has arisen. In some cases the Publishers have asked Producers to deal directly with foreign offices, even though the Agreement (section 2.7) stipulates that the Publishers ought to try to do this dealing on behalf of the Producers. In some cases the US or foreign entity would require the Canadian Producer to enter into a separate contract, with additional obligations and restrictions, in order to receive the e-file. Such Publishers were reminded of the Agreement stipulation, but they are also bound to follow their corporate processes. In at least one case the Publisher would simply forward the Clearinghouse request email to the associated company.
- Some Publishers with “global rights” websites, have asked Producers to enter their requests there as well as via the Clearinghouse request form. This would require extra work on the part of the Producers, and would usually require that extra information be provided to the Publisher.
- Aside from “global rights” websites, some Publishers have asked Producers for additional information beyond that stipulated in the Agreement, such as the date the original format book was purchased (which may not be known and in any case is irrelevant unless the request is granted) and the price paid for the book.

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### **Pilot Facilitation Issues:**

- There is no mechanism, except email to the Publisher contact, to follow up on errant requests and/or late deliveries; it is up to the Producers to track late responses to requests.
- Several requests have been withdrawn for one reason or another; there is no mechanism for withdrawing a request except by emailing a message to the Publisher contact, and there is no mechanism for automatically tracking withdrawals.
- The secure Clearinghouse website was designed to be implemented quickly, in order to meet the necessary project timelines. It was not designed to be flexible, so it is difficult to make changes. New contact information must be hard-coded into the website (rather than externalized in a database) so each time an email address is added or altered there is the potential to disrupt existing information and the website/email linkage needs to be carefully tested. After go-live, the first few requests failed to be delivered in a timely way because of glitches in the website-email interface.
- A single contact per Publisher was used to simplify both the Producer's interactions with the Publisher and the website email interface implementation; this has the serious drawback that if the Publisher contact is ill or away then the request may not be addressed in a timely way.
- For some Publishers with global rights websites the Clearinghouse requests had to be received via email (by the single Publisher contact) then entered into their own website system by Publisher staff.
- The same single contact issue applies to Producers, both in the case of Publishers needing to contact the

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requester and in the case where a Producer request is being sent.

**Other Issues:**

- There has been very little overlap among the titles needed by different Producers in this small pilot; hence there has been no real test of Producer-to-Producer requests yet. Publishers did not see the reduction in requests that the Clearinghouse was meant provide by eliminating duplicate requests for the same e-file from different Producers.
- Once the active phase of the pilot began it was apparent that several Publisher and Producer contacts were at the wrong level and had to be altered to avoid delays. For example, several Publishers initially listed their corporate president as the contact, since that person had signed the Standard Agreement, yet the contact for requests ought to have been an operational staff member.
- In the view of some Producers the sharing of alternative format files, CAER network, cataloguing in AMICUS, etc. all worked well before the Clearinghouse so, the only thing they hoped to gain from this project was faster and more reliable access to the Publishers' files they already get most of the time. To them the Standard Agreement was the most valuable aspect of the project. Other Producers, however, pointed out that streamlining the sharing of alternative format files by providing self-serve from a central repository would be beneficial. Instead of requesting the file from another Producer they would prefer simply to go to a secure website and download it directly.
- The Publisher's original file is of little value unless it is in a structured form. It is not expected that most

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Publishers will be able to provide reliably structured formats soon, and those Publishers that attempt to translate their original e-files to a requested format are not always competent to do so correctly. A Producer often adds value to a Publisher's original file by cleaning up its structure prior to creating their alternative format version. A second Producer who wished to create a second alternative format would likely prefer to begin with this cleaned up file rather than with the Publisher's original file. The question of who ought to pay for the cleaning up process was not addressed by the pilot project.

- There are already commercial arrangements in place, with some alternative format Producers such as the CNIB working under contract to other Producers. Also, the sharing of alternative format titles is not always free of charge. If the Clearinghouse is shown to make production simpler and cheaper there is concern that the savings be shared equitably.
- North-south sharing with the US is more important to some regions (e.g., British Columbia) than sharing within Canada. Current copyright restrictions limit them to analogue tape files from the US, no digital. The Clearinghouse pilot Standard Agreement does not allow sharing Publishers' e-files, or the alternative format books produced from them, with institutions or individuals outside Canada.
- The above-mentioned issues of Publishers re-directing requests to foreign branches and of a single point of contact for Publisher requests contributed to an apparent increase in the uncertainty of when an alternative format book could be produced and provided to a client. In some cases Publisher's seemed to promise delivery dates that fit the terms of the

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Agreement, but that they had no way of meeting. Producers relying on that information were sometimes misled into waiting for an e-file when the client would have been better served by proceeding with an alternative production method such as scanning.

- The workflow step of cataloguing an e-file in AMICUS when a Producer requested it implicitly assumed that most requests would be fulfilled, and fulfilled in a timely way. No mechanism (other than sending an email request) was in place to remove cataloguing if the e-file was never delivered.
- The single Producer-to-Producer request made during the Pilot period failed because the Producer that originally requested the e-file had not yet received it and in fact never did. This situation had not been foreseen when planning the Clearinghouse workflows.

## 9. Recommendations for the Future

The strong consensus among Pilot participants was that the Pilot Project was beneficial and shed light on a number of important issues that need to be dealt with to expedite the efficient production of alternative format books. As built for the Pilot, the Clearinghouse is an important first step that ought to continue to operate after the end of the project period in March 2006, but incorporating the following changes if possible.

### **Suggested changes to the Standard Agreement:**

- Address the issue of foreign intellectual property in the Standard Agreement. For example, it may be possible to extend the Agreement to expedite the acquisition of

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e-files from U.S. Publishers whose title has been published by a Canadian affiliate.

- Review making the Standard Agreement modular so Publishers can opt out of certain provisions without opting out of the Clearinghouse altogether. For example, some Publishers might not be able to agree to portions of the Agreement that address foreign intellectual property.
- Review the Standard Agreement limitations on what can be done with alternative format books produced from Publishers' e-files, including international lending, to see if these special limitations could be relaxed or removed.
- Make minor adjustments to the Standard Agreement to make it a permanent or ongoing agreement rather than solely for the duration of the pilot; this would involve simple changes to the Standard Agreement wording with no changes to the Clearinghouse principles.
- Make changes to the wording or the presentation of the Standard Agreement to make it more easily understood and accepted by small Publishers.

**Suggested changes to the Clearinghouse website:**

- Make changes to the Clearinghouse website so that Publisher and Producer contact information can more easily be added, modified or removed, and so that multiple email addresses can be associated with a contact.
- For Publishers with automated rights management systems, consider ways that Clearinghouse requests could be routed directly into those systems rather than sent via email to a human.
- Include Publisher "profile" information that would help requesters to determine information such as the file

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formats the Publisher uses natively, their ability to transform to different formats, the ISBN ranges that indicate foreign-held e-files, etc.

- Provide a mechanism by which Producers can send follow-up queries for outstanding requests.

### **Suggested Changes to AMICUS Cataloguing:**

- Discontinue the automatic cataloguing of e-files (as ECH Masters) when they are requested. This catalogue record is misleading when the Producer is still waiting for a response or never receives the e-file as requested.
- Extend the CANWIP cataloguing process, which is intended to indicate that an alternative format book is being produced, to allow another record to indicate that a cleaned up or otherwise useful Publisher's e-file is available from the Producer.
- Develop conventions for describing electronic file formats that provide more detail than those currently in use and defined by the MARC 21 standard. Conventions for describing file quality should also be included when not implicit in the format description.

### **Development of a central repository:**

- A national repository of alternative format books that could be downloaded directly by Producers and service providers would be useful. The development of such a repository should be pursued as another project, possibly in conjunction with CLA's [National Network for Equitable Library Service](#) initiative.
- There is no value in putting original Publishers' e-files into a repository if they need production work to be useful. Publishers also prefer that their original e-files not be put into a central repository; some prefer to maintain their own repository of e-files.

- Any “cleaned up” e-files made by Producers as part of their production processes should be stored in the repository along with the completed alternative format books.
- If a central repository is developed it should operate under the aegis of Library and Archives Canada, and should address the needs of all Producers alike.

**Persuade more Publishers to participate:**

- Make changes to simplify and clarify the Clearinghouse Agreement as noted above.
- More clearly communicate to Publishers the circumstances under which copies of the printed book are purchased, and the number of copies purchased, when producing an alternative format for a client.
- Work to better educate Publishers about the relatively small numbers of Canadians with print disabilities, and of the critical value of alternative format books to them.
- Work to better educate Publishers about the legal framework for equal access to information, including provisions of the Canadian Charter of Rights and Freedoms, and how alternative format Producers have the expertise and resources to help Publishers comply with accessibility requirements efficiently.
- Producers should continue their advocacy, lobbying and personal relationships with the Publishers they deal with, as a formal system can never replace the value of those in expediting production.

### **Invite more Producers to participate:**

- The benefits to Producers of sharing e-files, and the benefits to Publishers of eliminating duplicate requests will only increase as more authorized Producers participate in the Clearinghouse.

## **10. Conclusion**

Standard print publishers and information providers do not satisfactorily meet the information and reading needs of the growing numbers of Canadians with print disabilities. Alternative format Producers provide essential expertise and services that address the shortfall between what standard Publishers can provide and what persons with print disabilities require. Technological evolution has opened new avenues by which their performance in this role might be improved.

There is no question that quicker, simpler and more reliable access to Publishers' e-files can help Producers to provide more and better access to information for persons with print disabilities. The Electronic Clearinghouse for Alternative Format Production Pilot Project fulfilled its purpose in identifying problems and issues, and in finding recommendations for how the process might be improved in the future. The strong consensus among Pilot participants, including both Producers and Publishers, was that the Clearinghouse ought to continue to operate and to be further extended and improved to realize its full potential to expedite the production of alternative format books and information.

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## Appendix A: Request Statistics

Following is a summary of the requests made from the beginning of the pilot to the end of December 2005.

Of the 63 requests generated on the Clearinghouse website:

- 2 were tests requests sent to new Publishers
- 1 was lost due to a website error
- 2 were duplicate requests from a Producer for the same book from the same Publisher
- 2 were cancelled by the requestor
- 1 was a request to a Producer
- 55 were requests to Publishers

Requests sent to Publishers:

• CNIB	9
• Langara College	29
• Manitoba	4
• U of Ottawa	8
• W. Ross Macdonald	5
Total	55

Requests received from Producers:

• McGraw Hill	7
• Oxford University Press	6
• Pearson	15
• Thomson-Nelson	25
• Wiley	2
• Other pilot Publishers	0
Total	55

Request resolutions:

• Request never resolved:	11	20%
• E-file unavailable:	14	25%
• E-file received and useful:	24	44%
• E-file received and not useful:	6	11%
Total	55	

*Note:*

- *“received and useful” includes 2 e-files whose usefulness was not reported;*
- *“not useful” includes e-files that arrived too late, were in an unusable format or, in one case, that was not the requested edition.*

For the e-files that were eventually received, the elapsed time in working days was:

- Overall average: 15.4  
(varying from 1 to 39)
- Average for e-files received by email or ftp: 7.3
- Average for e-files received on CD: 17.4  
*(in almost all cases the e-files received on CD had originally been requested via email or, in about half the cases, by ftp or email)*

Of the 30 e-files that were eventually received:

- Format was 1<sup>st</sup> requested choice: 16 53%
- Format was 1<sup>st</sup> or 2<sup>nd</sup> choice: 20 67%
- Delivery method was as requested: 9 30%

Of the useful e-files that were received & reported:

• 1 client benefited:	18 times	= 18
• 2 clients benefited:	3 times	= 6
• 3 clients benefited:	1 time	= 3
Total		27

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## Appendix B: The Standard Agreement

Following is the Standard Agreement signed by Producers and Publishers who participated in the project.

### AGREEMENT

This agreement is intended to facilitate the making of copies of literary works in formats specially designed for persons with perceptual disabilities as defined by section 32.(1) of the Copyright Act.

The parties to this agreement are publishers (“publisher” or “publishers”) of literary works (“materials”) and non-profit organizations (“producer” or “producers”) that make copies of materials in such formats on behalf of persons with such perceptual disabilities.

Nothing in this agreement limits, abridges or in any way qualifies any rights that exist or may exist in the future by virtue of the Copyright Act, any other legislation or at common law.

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#### 1 Definitions

##### (a) Producer

For the purposes of this agreement, a producer must be one of the following:

- A Ministry of Education of a Canadian province or territory;
- A division, department or agency of such a Ministry of Education;
- A Canadian provincial or territorial school board, district or like entity;
- Any educational institution operating, licensed or accredited by a Ministry of Education, school board, district or like entity as defined above;
- Any educational institution operating, licensed or accredited by the Government of Canada;
- Library and Archives Canada;
- The Canadian National Institute for the Blind (CNIB)
- The Montreal Association for the Blind

and must make copies under this agreement only for eligible users as defined below.

Nothing in this agreement precludes the establishment of a central repository for files supplied by publishers, provided that unless otherwise agreed by all publisher signatories to this agreement, such repository must be under the control of Library and Archives Canada, and all of the obligations binding on a producer will be equally binding in respect of such repository.

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(b) User

For the purposes of this agreement, a user is a person lawfully resident in Canada and with a perceptual disability within the meaning of section 32.(1) of the Copyright Act.

(c) Perceptual disability

For the purposes of this agreement, perceptual disability includes one or more of the following range of difficulties:

- a visual acuity of 20/70 or less in the better eye after correction;
- a visual field of 20 degrees or less;
- any progressive eye disease with a prognosis of becoming one of the above within five years;
- a visual problem or related visual stamina that is not correctable and that results in the user functioning as if his or her visual acuity is limited to 20/70 or less;
- for educational purposes, a student whose visual acuity is not sufficient for the student to participate in everyday educational activities without the accommodation of instructional and related materials in alternate formats;
- an inability to hold or manipulate printed materials;
- any other impairment (including but not limited to dyslexia and brain injury) such that user cannot use print publications other than in formats not available from publisher.

## **2 Obligations of publisher**

2.1 Publisher will, on receipt of a request in the prescribed format, deliver or cause to be delivered to producer a file of the requested materials:

- in not more than 15 working days;
- in Portable Document Format (PDF).

2.2 Delivery for these purposes means delivery by:

- mail
- courier
- e-mail
- file transfer protocol (ftp)

and the fifteenth working day is the last day on which the materials leave the physical control of publisher or are uploaded for ftp delivery.

2.3 If delivery cannot be assured within the period specified above, publisher will advise producer accordingly within 10 days of receipt of the request.

Producer may request and Publisher will use reasonable efforts but will not be obliged to supply materials in any of the following formats:

- extensible mark-up language (XML)
- hypertext mark-up language (HTML)
- Microsoft Word (WORD)
- American Standard Code for Information Interchange (ASCII)

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- 2.5 If delivery in any of these formats will exceed 10 working days, publisher will advise producer accordingly as soon as practicable.
- 2.6 For materials supplied in accessible PDF, publisher will not charge in excess of \$50 for requests made under this agreement. For other formats, charges if any will be negotiated between publisher and producer.
- 2.7 If publisher does not have lawful authority to supply materials requested by producer, publisher will use reasonable efforts to secure such authority if the materials are published by an associated company, failing which publisher will forward the request to the entity possessing such authority, and will advise producer accordingly.
- 2.8 Publisher will provide to Library and Archives Canada the name or names and e-mail addresses of all personnel authorized to process requests received under this agreement, and will ensure that such information is kept current.
- 2.9 Publisher grants producer a non-exclusive licence to make copies under this agreement, and producer does not acquire and cannot grant to user any title or other rights in any part of the materials.
- 2.10 These obligations do not apply if a publication is out-of-print, and any assistance provided by publisher in respect of such publications is done outside this Agreement.

### **3 Requests to publishers**

- 3.1 Producer will submit requests to publisher by completing the request form on the Library and Archives Canada website, using password access to verify eligibility as a producer signatory to this agreement, and submitting said form to the addressee(s) as indicated by publisher.
- 3.2 Requests submitted in any other manner may require verification, and publisher makes no commitments as to delivery.

### **4 Obligations of producer**

- 4.1 Producer undertakes to make copies using files supplied by publisher only for users as defined in this agreement.
- 4.2 Producer will take all steps needed to ensure that files supplied under this agreement, and copies made using these files, are used only for the purposes specified in this agreement, and that no producer not party to this agreement can use or copy any of these files or materials.
- 4.3 Producer undertakes not to make any textual changes to materials manufactured using files supplied by publisher without prior written consent of publisher. However, this prohibition does not extend to changes in format, pagination, layout, structure or to the inclusion or exclusion of non-textual material that may be required for reasons of technology or to meet the specific perceptual or instructional needs of the user.
- 4.4 Producer must ensure that any third party contracted to manufacture or assist in the manufacturing of materials under this agreement is under the same obligations as producer, and further that any agreement between producer and such third party states specifically that said third party acquires no intellectual property rights in any materials manufactured using files supplied by publisher and can make no use of any materials supplied by publisher except as requested by producer for the purposes set out in this agreement.

- 4.5 Producer must ensure that before being supplied with a copy made under this agreement in a format not specifically and exclusively for use by user with a perceptual disability as defined in this agreement, user signs an agreement in a prescribed form stating:
- that user will use the materials only in such manner as required to accommodate user's disability;
  - that publisher will not be liable to user for any loss or damage arising out of or relating to this agreement, howsoever caused, and that user is aware of and acknowledges that publisher makes no warranties or representations, express or implied, with respect to the materials, including their quality, accuracy, performance or fitness for any purpose;
  - that user may not and will not revise, convert, disassemble or otherwise modify any text files supplied;
  - that user may not and will not sell, license, rent, loan or otherwise distribute or network any text files supplied.
- 4.6 For all other formats, producer must attach a notice stating that further copying of the work may infringe copyright.
- 4.7 Producer must take all appropriate and reasonable steps to protect the copyright and all other rights of publisher, including but not limited to enforcing agreements between producer and user(s).
- 4.8 If producer makes copies available to users through a website, then access to said website must require acceptance of terms of use that include prohibitions on unlawful copying and distribution, and be controlled by unique passwords assigned to each user, and producer must withdraw such access if user is in breach of said prohibitions.
- 4.9 Producer must use reasonable efforts to ensure that:
- each user has purchased a copy of the print edition of the work; or
  - in the case of a work for use by a student at an institution for which publications are purchased in bulk by the institution or by a school board or district or Ministry of Education on behalf of said school, that said work was adopted for use by the institution for the period for which the alternate format copy is required.

However, the requirement to purchase a print edition does not apply if the work is held in the library of the institution attended by the student and is not a required text for the student.

- 4.10 Notwithstanding the above, the CNIB:
- may make multiple copies or copies for multiple use, and the number of copies required to be purchased will be determined by the production requirement of the CNIB and not by the number of copies made or the number of users of copies; and
  - may on a cost-recovery basis supply copies (but not files) to non-profit libraries for patrons with perceptual disabilities as defined in this agreement.
- 4.11 Producer must on request supply to other producers:
- any files supplied by publisher, within five working days, and without charge; or
  - as soon as practicable, any masters or copies made from files supplied by publisher.

Producer receiving such files, masters or copies is bound by the same terms as producer that supplied them.

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- 4.12 Except with the prior written permission of publisher, producer cannot supply any file supplied by publisher to a producer not party to this agreement unless said producer agrees in writing to be bound by all of the terms and conditions of this agreement as they pertain to the file in question.
- 4.13 No file or material produced from a file supplied under this agreement can be supplied to any person or entity outside Canada without the prior permission of the publisher that supplied the file.
- 4.14 Upon receiving a request for a copy in a format specially designed for a person with a perceptual disability within the meaning of this agreement, producer will search the National Union Catalogue (AMICUS) maintained by Library and Archives Canada to determine if publisher has supplied a file of the materials requested in that format to another producer, and will not make a request of the publisher if the file in that format has previously been so supplied.
- 4.15 Producer will report promptly all relevant activity to AMICUS, in the prescribed format, including receipt of files, and copies made from same. However, If producer is an entity or part of an entity that has a licensing agreement with Access Copyright, and that agreement includes the right to make copies in large print formats, then if a file supplied by publisher is used to create materials in such formats, these will in all respects be governed solely by the applicable provisions of the agreement with Access Copyright.

## **5 Proof of perceptual disability**

- 5.1 Producer must require users to establish perceptual disability as defined in this agreement through diagnosis by a professional qualified to diagnose visual impairment or other perceptual disability, and provide producer with written documentation from such diagnostic professional.

## **6 Publisher warranties**

- 6.1 Publisher warrants that it has all necessary rights to meet its obligations under this agreement.
- 6.2 Publisher makes no warranty or representation, express or implied, with respect to the materials, including their quality, accuracy, performance or fitness for any purpose.

## **7. Liability**

- 7.1 Publisher will not be liable to producer in any circumstances whatsoever, and producer will hold publisher harmless from all liability, loss and damage from any party arising out of producer's use of any file or copies made from any file supplied by publisher.

## **8 Termination**

- 8.1 This agreement will be binding on signatory for an initial term of one year, and thereafter will renew for subsequent terms of one year unless notice of non-renewal is delivered in writing to Library and Archives Canada not less than ninety (90) days prior to the expiry of said term. However:
- in the event of changes to the Copyright Act applicable to this agreement, notice of termination can be given at any time and will become effective within thirty (30) days;
  - publisher will be entitled to terminate this agreement immediately on written notice if producer is in material breach of this agreement and has failed to remedy such breach within thirty (30) days of written notice requiring it do so.

- 8.2 A material breach of this agreement is any breach of clauses 4.1-4.6; 4.8; 4.12-4.13; 5.1
- 8.3 On termination of this agreement by publisher, producers will from the date of termination ensure that no copies are made from files supplied by publisher, and that all such files are destroyed, deleted or otherwise made permanently unusable.
- 8.4 On termination of this agreement by producer, producer will from the date of termination ensure that no copies are made from files supplied under this agreement by any publisher, and that all such files are destroyed, deleted or otherwise made permanently unusable.
- 8.5 Except as provided above, termination of this agreement by any party and for any reason will not affect any rights or obligations that have accrued up to the date of termination.

**9 Other**

- 9.1 Publisher may to refuse to supply files pursuant to a request from a producer if the provisions of section 32.(3) of the Copyright Act apply.
- 9.2 Library and Archives Canada will report to publishers once each quarter on the reported activity specific to publisher.
- 9.3 Assignment: Any successor entity to any signatory to this agreement must execute the agreement in its own right.
- 9.4 Governing law: This Agreement will be governed by the laws of the Province of [ ] and the laws of Canada.
- 9.5 Notices: All notices required to be given may be personally delivered, sent by registered mail or by fax to Library and Archives Canada in respect of non-renewal and to any producer in respect of whom the Agreement is being terminated, at the address(es) listed on the Library and Archives Canada website.
- 9.6 Entire agreement: This Agreement constitutes the entire agreement between the parties with respect to its subject matter.

Signed

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For

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Date .....