



ACA2K

Executive Policy Brief

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**African Copyright and Access to
Knowledge (ACA2K) Project**

www.aca2k.org

GHANA

By Poku Adusei, Kwame Anyimadu-Antwi and Naana Halm



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1. Introduction: the ACA2K Project and the ACA2K Research

This African Copyright and Access to Knowledge (ACA2K) project seeks to investigate the relationship between copyright and access to knowledge in eight African countries. The eight networked countries comprise Ghana, Egypt, Mozambique, Kenya, Morocco, Uganda, Senegal and South Africa. The overarching belief is that copyright has the capacity to either promote or hinder access to knowledge. Therefore, a study was carried out, with the aid of a grant from the International Development Research Centre (IDRC) in Ottawa, Canada and South Africa's Shuttleworth Foundation, to better understand the interaction between access to knowledge and the copyright environment in Ghana.

Since 2008, the ACA2K network has gathered research evidence and engaged (and will continue to engage) with stakeholders in efforts to increase access to learning materials in the study countries. Access to both digital and hard-copy resources has been probed, with particular emphasis on the tertiary education sector.

1.1 Ghana Research Team

The Ghana research team comprises three copyright experts: Poku Adusei, Kwame Anyimadu-Antwi and Naana Halm.

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1.2 Purpose of Study

The objective of this study was to undertake an independent and comprehensive assessment of the impact of the copyright environment on access to learning materials in Ghana. It was aimed at highlighting the constraints placed on access to knowledge by developing evidence-based research needed to influence copyright policymaking and practice in Ghana.

Supporting the above objective is the opinion that 'knowledge underpins everything, including economies.'¹ This resonates with the aphorism that 'knowledge is power.'

The emergence of the Internet and the digital world has changed the way people access, produce and share information and knowledge. In theory, these revolutionary factors should have facilitated access by Ghanaians to knowledge and knowledge-based products. Yet people in Ghana face fundamental challenges in accessing scholarly publications, journals and learning materials in general. Understanding the commercial, legal and normative constraints on access to knowledge in Ghana and identifying relevant lessons, best policies and practices that would broaden and deepen this access, have therefore become essential to the development of the country.

¹P. Drahos 'Access to knowledge: time for a treaty?' (April 2005) *Bridges* 9(4) ICTSD. Available at <http://www.ictsd.org/monthly/bridges/BRIDGES9-4.pdf> [Accessed April 2008].

This study is particularly important given that there are also frequent reports of disagreements among copyright stakeholders on matters pertaining to access to knowledge in Ghana. The differences among rights-holders and educational institutions stem from multiple factors that include, but are not limited to, photocopying activities, royalty payments, copyright education and enforcement, and collective administration. Moreover, the high incidence of poverty in Ghana makes the question of affordability/accessibility to copyright-protected materials crucial in order for any meaningful research and teaching to take place in educational institutions. In addition, the fact that Ghana was ranked 135th out of 177 countries in a recent UNDP global education index, raises serious concerns as to 'knowledge sufficiency' for human and economic development – hence the study.²

1.3 Use of Study Outcome

The outcomes of this study will form the basis for awareness-raising in support of the institutionalisation of systems that facilitate easy access to learning materials in Ghana and other countries. In the context of Ghana in particular, this study could play a role in making a case for the re-conceptualisation of copyright administration to address and do away with possible 'rigidities' and 'inadequacies' existing under the current Copyright Act. The situation could improve through copyright reforms and the passing of comprehensive subsidiary legislation – or a legislative instrument (L.I.) as it is also called – that is currently (as this report is being written in mid-2009) being debated in Ghana. The subsidiary legislation is aimed at fleshing out the framework provisions contained in the parent Act.

Also, the findings in this report are designed to serve as reference material for the main stakeholders identified, and in some cases interviewed, during the course of the study. Thus, it is hoped that this study will contribute to the development of a legal, regulatory and practical environment that serves to increase the scope of access to teaching and learning materials in Ghana. Further, it is hoped that this study will assist in the development of an enabling environment for positive interactions between copyright-users, such as educational institutions, on the one hand, and private collective societies on the other hand.

The reformulation of copyright laws and policies can be expected to lead to better educational outcomes. This will in turn lead to better social and economic conditions in Ghana.

²UNDP 'UNDP human development index' in *Human development report 2007* (2007). Available at <http://hdrstats.undp.org/indicators/7.html> [Accessed April 2008].

2. The Copyright Environment in Ghana

The regulatory scope of the copyright system in Ghana has increased considerably since independence. A wide range of materials, such as literary works, artistic works, musical works, sound recordings, audiovisual works, choreographic works, derivative works, computer software or programmes, and folklore, are all protectable subject matter in Ghana. The increase in the scope of copyright materials was not unexpected, as Ghana has strived to follow its international treaty obligations. However, Ghana has now gone beyond international standards; for example, in relation to the duration of copyright protection. Copyright protection in Ghana now lasts for a term of the life of the author plus 70 years for literary works, instead of the standard term of life plus 50 years. This potentially delays public accessibility of works for 20 years.

It is said by some that the incremental expansion in the scope and duration of copyright in Ghana is intended to promote the creative talents of the citizenry. The reality, however, is that the current copyright environment in Ghana makes it difficult for copyright's main objectives to be realised: rewarding creativity and at the same time ensuring access to teaching/learning material. The problems are threefold. First, there is a general lack of public awareness of the existence or the content of the Copyright Act, which means that people are not really motivated by copyright protection to be creative. Second, those who are aware of the content of the Copyright Act seem to use it primarily to promote their parochial interests. Indeed, it is common to find the issuance of 'anti-copyright-violation' orders in the media without any corresponding counter-campaign to enlighten the public about access-enabling flexibilities under the same Act. The effect then is that the public is not encouraged/enabled to take advantage of the exceptions or the permitted use that falls outside the scope of copyright protection. Finally, the scope of permitted use has not been advanced or clarified in any policy document. This has made the scope of permitted use murky – thereby making both the enforcement of the law and legitimate access by users difficult.

The practice is that photocopying for any purpose, including personal use and study, is done with little concern on the part of those who do the photocopying. The scope of legitimate access to knowledge under the copyright environment is unclear and, in some respects, unfavourable to researchers; however, it can be changed to maximise effective access to learning materials in Ghana.

Thus, Ghana finds itself in the situation – also present in other ACA2K study countries – where the existing laws and practices potentially undermine access to knowledge by jeopardising the sustainability of the entire copyright system. This situation is unfavourable for effective and, for that matter, legitimate access to copyright materials in Ghana.

2.1 Methodology

The study involved a critical overview of the copyright regulatory framework in relation to public access to copyright materials for the purposes of teaching, learning and research in Ghana. As well as a doctrinal analysis of the legal regime, which included an analysis of the relevant statute and case law, the researchers looked at the relevant secondary literature and interviewed key stakeholders to obtain practical evidence related to the research questions.

The key stakeholders among government bodies were identified as the Ministry of Justice (Copyright Office, Legislative Drafting Section and the Law Reform Commission) and the Ghana Education Service. Stakeholders representing educational communities were identified as the University of Ghana (Balme Library, Faculty of Law Library, administrators and students) and the Kwame Nkrumah University of Science and Technology (KNUST) (university library, administrators, lecturers and students). Stakeholders identified in the rights-holders community were the Ghana Book Publishers Association, the Ghana Association of Writers, CopyGhana and Ghana Universities Press. The empirical evidence obtained from the field research interviews with these stakeholders assisted in answering the central research question of the project: whether the current copyright environment in Ghana impedes or promotes access to learning materials.

2.2 Key Findings

This research found that, although Ghana is over 50 years old, copyright jurisprudence is still in its infant stage. Judges are still grappling with the basic concepts of copyright; lawyers practice copyright law under the general rubric of traditional legal practice, rather than as a specialised field of law; and academics have not completely positioned the development of academic literature on the subject as a key aspect of the promotion copyright jurisprudence in Ghana.

The study found that it would be misleading to assess the impact of copyright law on access solely from the perspectives of formal law (statutes and case law) and academic writings. An appreciation of the practice on the ground is crucial to understanding the impact of copyright legislation on access. This is because, as the probe found, the practice on the ground is different from stipulations under formal law: even though the scope of permitted uses under Ghana's Copyright Act of 2005 is restrictive, people do not comply with the strict requirements of the law when photocopying or engaging in other pro-access activities. Put differently, there is no strict enforcement of copyright law in relation to the activities of students and researchers. As a result, people do not feel the impact of the strict legislation on their lives.

On the other hand, strict enforcement of the law would, if begun before any legislative/regulatory reform, undermine some of the key objectives of any progressive copyright system. It would stifle access to teaching and learning, which, in turn, would slow down 'creativity' in Ghana. Therefore, enforcement mechanisms must be balanced against policies to improve the lot of students and researchers in Ghana.

The study further found that, in the universities, photocopying activities exceed the limits allowed under formal copyright law, the justification being that there are inadequate textbooks in the university libraries to support the large student population. Also, students generally cannot afford to buy the textbooks that are available for sale, especially those published by foreign companies.

It needs to be mentioned, however, that the situation is different in the primary and secondary schools due to the government's policy of supplying books for free. Under the book policy, the government contracts one or two private publishers (who win the bid) to publish books for the basic and secondary schools. This free book policy has, however, put many local book publishers (who fail to win government contracts) and sellers out of business.

The study also found that contacts/negotiations between universities and private collective societies are now developing. There is, however, a lack of confidence in some of the collection societies, due to a lack of clarity as to which collective society truly represents authors and book publishers. This distrust hampers the progress of negotiations for payment of royalties by students to publishers via collection societies.

The probe found that the scope of permitted use under the copyright law has not been advanced or clarified in any policy document. This has made the scope of permitted use murky – making both the enforcement of the law and legitimate access by users difficult. Also, there is a general lack of copyright and access policies in the universities. This lack of policies creates uncertainty among users as to the scope of permitted use under the formal law.

Further, although the universities are primary users of copyright-protected works, they are not involved in the formulation of national copyright policy/law/regulation that impacts on access; hence their intransigence, to some extent, in helping the collective societies collect royalties from students.

Finally, the probe found that concerns relating to people with disabilities are not taken into account in the formulation of copyright policies in Ghana. This tends to hamper access by people with disabilities.

3. Legal, Regulatory and Policy Recommendations

First, as a practical matter, the research team recommends the creation of channels of communication among copyright stakeholders (especially those identified in this study) in order to address concerns about the lack of involvement of certain key stakeholders in copyright decision-making in Ghana. Through such channels of communication, copyright administration could be improved. This would also build trust among private owners and public users of copyright materials so as to make copyright administration more effective.

The media should also take responsibility for the task of educating the public about the details of copyright protection in Ghana. This education, unlike the campaigns promoted by some influential parties thus far, should not be skewed in favour of private rights-holders. It should also promote the public interest in terms of access to teaching and learning materials in Ghana.

Local publishing companies, such as the Ghana Universities Press, should be promoted, in order to achieve a sustainable local book industry. Furthermore, reducing taxes on materials used for publishing books locally could reduce the price of books in Ghana. This would make the local book industry become more competitive.

Universities and private rights-holders should collaboratively begin to develop 'access guides' in the research institutions in order to regulate photocopying activities in ways that take full advantage of the copyright exceptions and limitations under the law and also in order to educate students and researchers about copyright restrictions. The universities should disclaim liability, via the guide, for non-permitted photocopying activities on their campuses.

The Attorney-General's Department should start fresh and open dialogue on copyright to solicit views from all stakeholders before passing the Copyright L.I. The outcome of such a dialogue should influence the content of the L.I. on copyright administration in Ghana. Also the L.I. must flesh out the scope of free use, including the meaning of the term 'substantial' in Section 19 of the Copyright Act, so that the public will know the limits of free use.

Subject-based collective societies should be established in Ghana. Subject-based copyright administration would avoid the confusion currently surrounding the collective management system and would enable educational institutions and researchers to know where to seek permission when they want to exceed the limits of permitted use under the Act. Ensuring accountability in those collective societies will also serve as a morale booster for the public when paying for use beyond what is free under the law.

The universities, as primary users of learning materials, should participate in policy decisions on copyright. There should be recognition that the universities play an important role in the copyright system. In order to contribute to policy debates, the universities may need internal legal offices as part of the library systems, which would advise on copyright issues. Indeed, it is erroneous for any academic or research institution to assume that it cannot be held liable for excess photocopying by students and unofficial photocopier operators on their campuses. The private universities could also join the public universities' library consortium (CARLIGH) in order to procure learning and research materials at a cheaper cost.

The government's policy on free textbooks should be extended to private primary and private secondary schools, and to public and private tertiary institutions. This must, however, be undertaken in a progressive manner due to the huge financial outlay involved. Also, the libraries in private academic and research institutions should be supported financially by the Ministry of Education.

It is recommended that taxes imposed on materials used by local book publishers should be reduced to bring down the cost of books in Ghana. In addition, the government must heed the recent calls from the heads of private universities to reduce corporate tax on private universities. This would bring down the cost of higher education at private universities.

The term of protection of copyright – at least 70 years in Ghana – is too long. The net effect of such long-term protection is that it restricts the public domain. It should be reduced to a minimum period of 50 years, as required by international law.

Policies to implement the Disability Act should include pro-access mechanisms for disabled students and researchers. Such pro-access policies should be included in the subsidiary legislation to implement the Copyright Act and the Disability Act.

Finally, and most importantly, the thin scope of permitted use under Ghana's copyright law deserves rethinking to include more exceptions and relax existing stringent exceptions in order to promote access to knowledge in Ghana. In this regard, experiences relating to copyright exceptions in other jurisdictions should serve as a guide.

4. Action Points for Stakeholders: the Way Forward

The way forward is to ensure that before there is an enforcement crackdown (in particular, against students and researchers) there is clarification/refinement of the thorny areas of the copyright regulatory environment so as to create better protection for learners who access copyright materials for legitimate, non-commercial purposes.

Indeed, if begun before legislative/regulatory reform, strict enforcement of the law would undermine some of the key objectives of any progressive copyright system. It would stifle access to teaching and learning, which, in turn, would slow down 'creativity' in Ghana. Therefore, enforcement mechanisms must be balanced against policies to improve the lot of students and researchers in Ghana.

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