



Country Report

SENEGAL

November 2009

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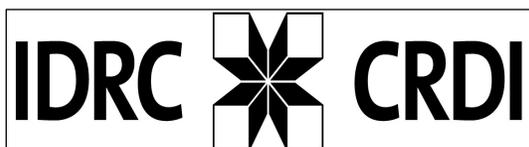
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The ACA2K Project is supported by Canada's International Development Research Centre (IDRC), South Africa's Shuttleworth Foundation and South Africa's LINK Centre at the University of the Witwatersrand.

This work was carried out with the aid of a grant from the International Development Research Centre, Ottawa, Canada.



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Table of Contents

Executive Summary

1. Study Context

1.1 Political and Economic Context

1.2 Social, Educational and ICT Context

1.3 The Copyright Environment in Senegal

2. Doctrinal Analysis

2.1 Evolution of Copyright Law in Senegal

2.1.1 The 1973 Law

2.1.2 The 1986 Amendment Law

2.1.3 The 2008 Law

2.2 The Content of the 2008 Law

2.2.1 Moral Rights

2.2.2 Economic Rights

2.2.3 Transfer of Rights

2.2.4 Term of Protection

2.2.5 Limitations and Exceptions

2.2.6 Technological Protection Measures (TPMs) and Electronic Information

2.2.7 Commercial Use of Public Domain Materials, Including Folklore

2.3 International Conventions and Agreements

2.4 Case Law

2.5 Summary of the Doctrinal Analysis

3. Qualitative Analysis

3.1 Impact Assessment Interviews

3.2 Interviewees

3.3 Interview Findings

3.3.1 Government

3.3.2 Educational Community

4. Conclusions

Bibliography

Executive Summary

The ACA2K Senegal study was composed – as in all ACA2K study countries – of both a doctrinal study, and a qualitative study, of the relationship between copyright and access to learning materials, in the hope that a synthesis of the findings from these two research methods could reveal a picture of the overall ‘copyright environment’ in relation to learning materials in Senegal.

The aim of developing a picture of the copyright environment in relation to learning materials in Senegal was to be able to test the two ACA2K hypotheses, which were:

- that the copyright environment in Senegal is at present not maximising access to learning materials; and
- that the copyright environment can be changed in order to maximise access to learning materials.

Our doctrinal research revealed that the copyright legal framework in Senegal was originally based on French legislation (specifically the 11 March 1957 Law that was extended by France to the colonies), and also the international conventions signed by France, particularly the Berne Convention for the Protection of Literary and Artistic Works, as revised in Rome in 1928. It was not until 1973, 13 years after its independence from France in 1960, that Senegal adopted its first Copyright Law, Law 73-52 of 4 December 1973, which outlined the general conditions for copyright protection and the exercise of rights in relation to copyright. One element of the 1973 Law was the creation a fee-based system for profit-making exploitation of works of folklore in the public domain. The objective of this provision was to curtail the unauthorised exploitation of national folklore. The 1973 Law was then amended in 1986 by Law 86-05, with the objective of the amendments being to provide a stronger environment for protection of author’s rights.

Then, in 2008, a significant overhaul of the copyright framework took place. The 1973 Law was repealed and replaced by the 2008 Law on Copyright and Related Rights (Law 2008-09 of 25 January 2008). This 2008 Law differs from the 1973 Law in several important ways:

- A 70-year term of protection is now in place, instead of the previous 50-year term, for most works;
- Payment of royalties for commercial exploitation now applies not just to works of folklore but to all works in the public domain, and not only profit-making exploitation but to all types of exploitation;
- There is now blanket protection for technological protection measures (TPMs), with no exceptions for TPM circumvention for personal/private use, for teaching, or for format conversion for use by the visually-impaired;
- Neighbouring rights – the rights of performers and producers – are now protected; and
- The Bureau sénégalais du droit d’auteur (BSDA, the Senegalese Copyright Office), until now the sole collective society for royalties, is to be replaced by several collective societies.

Through our qualitative impact assessment interview with stakeholders, we found that the 2008 reform was driven by Senegal’s need to conform to the provisions of the ‘WIPO Internet Treaties’ of 1996 (the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)), which require protection against the circumvention of TPMs. Added to this pressure to meet international obligations was pressure from Senegalese artists, particularly musicians – with the backing of the BSDA – to ensure better protection of

creators, via stronger copyright protection and via inclusion of protection of the neighbouring rights ('related rights').

Thus, the current ACA2K copyright legal environment is one dominated by protectionism, with little regard given in the 2008 reform to the rights and needs of users of copyright-protected materials. Indeed, it can be argued that the extension of the term of protection, the blanket protection of TPMs and the broadening of the scope of public domain materials requiring fee payment for commercial exploitation all present potential impediments to user access. Meanwhile, the 2008 Law is silent on limitations and exceptions for distance education, e-learning, libraries and archives, disabled people, and the possibility of obtaining compulsory and/or statutory licences for educational purposes.

We also found in our interviews that some of the key mechanisms of learning materials access in Senegal – eg, students purchasing photocopies of entire books from copy shops, or 'page-tearing' from library books – are practices that clearly infringe the law. Other practices, such as student photocopying, on a non-commercial basis, of large portions of works or entire works for personal private use, are not clearly illegal, but could be illegal if the provisions around photocopying for private/personal use were to be interpreted in a narrow way by the judiciary. In the meantime, in the absence of judicial interpretation of Article 40, the rights of users to photocopy on a non-commercial basis for personal/private use remain unclear.

Our interviews also revealed that infringing activities in relation to copyright are not at present curtailed to any great extent by the authorities, due to lack of expertise in the judiciary and lack of respect for the notion of intellectual property among many Senegalese. However, it seems clear that if and when prosecutions for copyright violation are more aggressively pursued – and that is one of the goals of the 2008 Law – some of the existing learning materials access channels (both illegal and legal) will likely be narrowed and/or closed.

We thus conclude that both of the ACA2K hypotheses have been confirmed by our research findings in Senegal. The Senegalese copyright environment is not at present maximising (legally permitted) learning materials access; and the environment can be changed in order to maximise (legally permitted) access.

1. Study Context

1.1 Political and Economic Context

Senegal, independent from France since 1960, has a pluralist presidential political structure, with a directly elected president and an elected Parliament. The current President of the Republic, Abdoulaye Wade, was first elected in 2000, and was re-elected in 2007 for a second term. Due to changes to the Constitution, Wade's second term will be limited to five years, meaning the next election will be in 2012. The Parliament consists of a National Assembly and a Senate.

Senegal has the fourth-strongest economy in the West African region, after Nigeria, Côte d'Ivoire and Ghana. It is, however, classified as one of the world's least developed countries (LDCs). Compared with other countries on the African continent, Senegal is poor in natural resources. In addition, given its geographical location and its political stability, Senegal is among the most industrialised African countries, and many multinational corporations, most of them French but also some American, are doing business in the country.

The agricultural sector employs about 70 per cent of the Senegalese population. However, the contribution of this primary sector to the gross domestic product (GDP) is constantly on the decrease. Low rainfall levels and the crisis in the peanut sector – the most profitable crop in the country – have reduced the contribution of agriculture to less than 20 per cent of GDP. Fishing, which remains one of the key sectors for Senegalese household economies, has suffered from the consequences of the degradation in fish stocks through overfishing. Most of the wealth produced in Senegal is concentrated in Dakar and its suburbs.

Financial transfers into Senegal from the Senegalese diaspora (emigrants from Senegal to Europe and the US) represent quite a substantial income. It is estimated that the financial influx generated by the Senegalese emigrants is at least equal to the amount received in international cooperation aid monies (ie, US\$37 per capita per year).¹

1.2 Social, Educational and ICT Context

The population of Senegal was estimated at 11.9 million people in 2008, for an average density of around 61 inhabitants per km². The annual population growth rate is 2.34 per cent and the age structure is as follows: 40.8 per cent aged 0 to 14; 56.1 per cent aged 15 to 64; and 3.1 per cent aged 65 and older. Around 42 per cent of the population lives in urban areas.² More than 30 per cent of the population resides in the region of Dakar, the capital city. The other highly populated area is the centre of the country (the peanut-growing area), which contains more than 35 per cent of the population. The east of the country is sparsely populated.

Senegal has around 20 different ethnic communities, with the most populous being the Wolofs (43 per cent), the Pulaar (24 per cent) and the Serers (15 per cent). Foreigners represent about 2 per cent of the population, and mostly reside in Dakar, where they work in commerce, industry and international organisations. In terms of religious affiliation, the

¹ G.-F. Dumont and S. Kanté 'Le Sénégal : une géopolitique exceptionnelle' 25 *Géostratégiques* (October 2009). Available at http://www.strategicsinternational.com/25_08.pdf [Accessed 1 November 2009].

² Central Intelligence Agency (CIA) 'Senegal: People', in *The World Factbook*. Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sg.html> [Accessed 1 November 2009].

population of Senegal is 96 per cent Muslim, 3 per cent Christian and 1 per cent holding indigenous beliefs.

The official language is French, but Wolof is spoken by 80 per cent of the population.

Because of the ACA2K research project's focus on the state of access to learning materials, it is important to understand the state of education in the country.

The literacy rate of Senegalese young people (aged 15-24) was 59 per cent for males and 44 per cent for females in 2007. The net schooling rate at the primary level in the period 2000-2007 was 71 per cent men and 70 per cent women. At secondary level, the net schooling rate in the period 2000-2007 was 20 per cent men, and 18 per cent women.³

Central to Senegal's drive toward enhancing its education system are its Vision à l'Horizon 2015 (Future Vision 2015) programme and its Programme Décennal de l'Éducation et de la Formation (PDEF, the Ten-Year Education and Training Plan).⁴

Key education objectives include:

- Making sure that all school children complete their elementary cycle and that access is improved at other levels;
- Creating conditions favorable for quality education at all education levels;
- Eradicating illiteracy and promoting national languages;
- Expanding the responsibility of communities in the educational system, eg, school management, monitoring of quality and mobilisation of resources;
- Promoting and orienting vocational training towards the workplace;
- Eliminating the discrepancies between economic groups (rich/poor), between men and women, between regions and within them, between the rural and urban areas at all levels of teaching, and taking into account the needs of handicapped children;
- Promoting education for girls; and
- Opening up regional cooperation on education within the Economic Community of West African States (ECOWAS).

In terms of culture, the state is implementing the Programme National de Développement Culturel (PNDC, National Programme for Cultural Development), with objectives that include:

- Harnessing the economic potential of culture by providing cultural industries and companies with competent human resources in order to enhance performance and generate profit from their investments;
- Training for professions in the cultural sector, via the École nationale des arts (ENA) and other initiatives; and
- Support to cultural stakeholders for events, cultural days and protection of cultural heritage, with an emphasis on cultural heritage in all its diversity, traditional knowledge and folklore.

³ UNICEF *Senegal: statistics – education* (2009). Available at: http://www.unicef.org/infobycountry/senegal_statistics.html#56, [accessed 25 July 2009].

⁴ More information is available at Portail de l'éducation au Sénégal, <http://www.education.gouv.sn>. [Accessed 1 November 2009].

Senegal dedicates 40 per cent of its budget to education, and as has just been outlined, the country has set a number of objectives regarding culture and education,⁵ especially girl-child education and the effort to continue girls' school careers in general. This government emphasis on culture and education make the ACA2K study of access to knowledge in Senegal, and access to learning materials in particular, an important one.

In terms of deployment of information and communication technologies (ICTs), Senegal's focus in recent decades has been on increasing the digitisation, reach and affordability of its telecommunications network, primarily through Sonatel, the main telecommunications provider. More recently, one of the government's priorities has been supporting production of digital content of a cultural and educational nature. For this ambition to be realised, it is certain that Senegal will need to find an appropriate balance between the necessary copyright protection for ICT-based content and the requirements of access to knowledge content carried via ICTs.

1.3 The Copyright Environment in Senegal

It was through France's adoption of its 11 March 1957 Copyright Law that the French colonies in Africa, including Senegal, came into contact with laws protecting of the rights of authors. Due to the special extension procedure⁶ of French national laws, Senegal was able to adopt its first copyright regulation based on the 1957 French Law. It is important to note, however, that Senegal was already playing an important role in the defence and popularisation of copyright in the West African region even before the extension of the French Copyright Law. Senegal was already hosting the Bureau africain du droit d'auteur (BADA, the African Copyright Bureau)⁷ during the Second World War. And through France, the Berne Convention as revised in Rome in 1928 had been applicable to Senegal since 1930, only two years after its adoption in 1928.

However, the socioeconomic and political context that followed the Second World War, which included the rejection of French structures during the independence struggle, led to some degree of marginalisation of the subject of copyright in Senegal. BADA did not survive the end of the colonial era. After they gained their independence, the French-speaking African countries chose national systems of protection for literary and artistic creations.⁸

Upon its independence in 1960, Senegal pursued adherence to the Berne Convention, eventually becoming a fully-fledged Berne Member State. But it was only 13 years after its independence and 12 years after its first copyright-related bill was tabled in 1961,⁹ that Senegal passed its first national Copyright Law, in 1973. This 1973 Law was amended in 1986, and then repealed with the enactment of the Copyright Law of 2008.

⁵ 'Our country dedicates 40% of its budget to education, and has reached a gross rate of schooling of 81.8%, which provides positive perspectives for total schooling by 2015,' said the Minister of Culture and Historical Heritage, Mr. Mame Birame Diouf, before the UNESCO General Assembly in its 34th session in Paris.

⁶ This legal mechanism made internal laws from France applicable to the colonies.

⁷ The Bureau africain du droit d'auteur (BADA, the African Copyright Bureau) was created during the Second World War, and its main objective was to defend creators and authors from the mother country France as well as those of people from the four Senegalese 'communes' of Dakar, Gorée, Rufisque and Saint-Louis.

⁸ As far as industrial property is concerned, the same states have adopted a standard and centralised regional copyright registration system (see the Bangui Law and OAMPI, now OAPI).

⁹ The 1961 Bill was derived from the 1886 Berne Convention, and from the French Law 57/298 of 11 March 1957.

Besides laws that are entirely dedicated to copyright, Senegal has other laws whose application has the potential to impact on the exercise of copyright and the level of access to knowledge. Among others, there is Law 2008-08 (passed by Senate on 15 January 2008) on electronic transactions, and Law 2008-10 (passed by Senate on 15 January 2008) relating to the information society.

As well as these laws related to ICTs, the Law of 2 February 1996 deals with social communication organs, journalists and technicians; Law 2006-04 of 4 January 2006 established the Conseil national de régulation de l'audiovisuel (CNRA, National Audiovisual Regulatory Council) and Law 2002-18 of 15 April 2002 that regulates production, use and promotion of cinematographic and audiovisual works. Among the CNRA's roles is a mandate to ensure pluralism in the audiovisual sector. Issues of media/audiovisual sector diversity have links to access to knowledge, as knowledge access is enhanced if there is a plurality of information sources.

Senegalese law in relation to archives also has the potential to impact on the acquisition of knowledge. Law 2006-19 relating to administrative (public) archives and documents and Decree 2006-596 relating to the organisation and operation of the Directorate of Archives both contain clauses that regulate access to documents.¹⁰ In its Article 7, the Decree stipulates that 'the role of the National Archives Service is to collect, take stock of, classify, keep and communicate all documents derived from the activities of official and non official public institutions from social, political and religious communities, work organisations, private companies and individuals who are or were residing in the territory'. Through its responsibilities, the Services must implement the principles formulated in Articles 16 and 25 of the 2006 Decree, which state that 'the access to public documents is free'. These Articles are, however, limited by Article 29 of the same Decree, which prevents public access for anywhere from 30 to 100 years to archival documents that could undermine national security or personal privacy.

Also relevant to access to knowledge and learning materials are provisions related to the right of freedom of expression, the right to information, and the right to education. Senegal is aware of the importance of such rights, and has therefore ratified the Universal Declaration of Human Rights (UDHR) and such rights into its Constitution. The 1963 Constitution,¹¹ in its Article 8, protected freedom of expression and the right to education. This principle was reiterated in the new 2001 Constitution, which, in Article 8, states:

The Republic of Senegal guarantees to all citizens their individual fundamental freedoms, economic and social rights as well as group rights. These freedoms and rights are: Civil and political liberties, freedom of opinion, freedom of expression, press freedom, freedom of association, freedom to hold meetings, freedom of movement, freedom to protest, cultural freedoms, religious freedoms, philosophical freedoms, union freedoms, freedom of enterprise, the right to education, the right to literacy, the right to property, the right to work, the right to health, the right to a healthy environment, and the right to a variety of information.

¹⁰ Before this law, the archives were managed by Décret n° 81-430 du 15 avril 1981 l (modified by Décret n° 83-341 du 1 avril 1983).

¹¹ Senegal's first Constitution was adopted by referendum on 3 February 1963. This Constitution included in its Preamble clauses of the 1948 UDHR and the 1981 African Charter on Human and Peoples' Rights.

These freedoms and rights shall be exercised under the conditions provided by law.¹²

Many of these freedoms outlined in Article 8 of the 2001 Constitution are relevant to the issues central to the ACA2K research: access to knowledge and access to learning materials.

The 2001 Constitution, in its Preamble, also affirms:

...adherence to the Declaration of Human Rights of 1789 as well as to the international instruments adopted by the United Nations and the Organization of African Unity, in particular the Universal Declaration of Human Rights of 10 December 1948, the Convention on the Elimination of all Forms of Discrimination Against Women of 18 December 1979, the Convention on the Rights of the Child of 20 November 1989 and the African Charter on Human and Peoples' Rights of 27 June 1981.

Article 19 of the Universal Declaration of Human Rights states that 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.' In the same manner, the principle of freedom of expression is included in Article 13 of the African Charter on Human and Peoples' Rights.¹³

In terms of international instruments directly relevant to copyright law in Senegal, the key ones are the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as modified and completed on 24 July 1971 and 28 September 1979 as well as by the Rome Convention of 26 October 1961, and managed by the World Intellectual Property Organisation (WIPO); and the World Trade Organisation (WTO) Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), adopted in 1994. The Berne Convention and the TRIPs Agreement provide the international context for Senegal's national copyright environment.

Senegal is a signatory to both the Berne Convention and TRIPs, and has also signed and ratified the so-called 'WIPO Internet Treaties' of 1996: the WIPO Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT). Among other things, and as shall be discussed in more detail below, the passing of Senegal's 2008 Copyright Law was motivated by the country's desire to meet the requirements of TRIPs, the WPPT and the WCT.

For some, the 2008 Copyright Law, with its extension of copyright term from 50 years to 70 years; its inclusion of neighbouring rights for performers and producers, its rules against circumvention of technological protection measures (TPMs), is positive, because it is aimed at better protecting the rights of creators. But for others, the law is a regression and could prove dangerous for an economy such as Senegal's which requires strong channels for access to knowledge in order to build innovation, education and development.

¹² Constitution of 22 January 2001, as amended.

¹³ The African Charter on Human and Peoples' Rights was signed in Banjul, Gambia in 1981, within the framework of the Organisation of African Unity (OAU). It protects both collective and individual rights.

2. Doctrinal Analysis

2.1. Evolution of Copyright Law in Senegal

There have been three key phases in copyright legislation in Senegal since independence in 1960:

- The 1973 Law (Law 73-52);
- The 1986 Amendment Law (Law 86-05), amending the 1973 Law; and
- The 2008 Law, which replaced the 1973 Law as amended in 1986.

2.1.1 The 1973 Law

That the young Senegalese state was late in adopting a national copyright law (in 1973, 13 years after independence) is surprising, given the interest in this field at the time. Indeed, after the African Seminar in Brazzaville in August 1963, Senegal, Côte d'Ivoire, Cameroon, Congo, Congo-Brazzaville and Togo were inspired by the recommendations produced by the seminar to implement a 'template law' on copyright, but this template law has not yet materialised. Senegal then waited until December 4, 1973 to finally adopt Law 73-52 law on copyright.

This law set the general conditions of copyright protection and its use. One particular feature of the law was its creation of a fee-based public domain, a provision dedicated to safeguarding and developing the nation's cultural heritage and resources, and putting an end to the pillaging of national folklore. Article 9 of the 1973 Law – an Article replicated by Article 157 of the 2008 Law – allows the country to generate profit through the use of national folklore, thanks to a remuneration mechanism.

2.1.2 The 1986 Amendment Law

The 1986 Amendment Law, Law 86-05 of 24 January, replaced clauses 22, 46, 47 and 50 of the 1973 Law. The amendment's objective was to provide a stronger environment for protection and enforcement of rights.

The most important aspect of that reform was the modification of Article 46 to include an offence of counterfeiting (in the way Article 397 in the Penal Code of Senegal defines it). This inclusion considerably broadened the scope of enforcement of copyright.

The 1986 Amendment Law also introduced (in Article 47) the possibility of referring a matter to the examining magistrate who has experience in cases involving counterfeiting or the presiding judge, at any moment where 'there exists a threat of imminent infringement' of copyright, in order to obtain a legal order to implement emergency actions such as the seizure or the order of suspension of any manufacturing or execution – even before the act of counterfeiting has been performed. Such measures could also be solicited in cases of the modification, performance or execution of folklore. These 'preventive' measures allowed for the application of a system similar to that of 'référés' (ie, a quick adjudication) in order to avoid a possible infringement.

In parallel with these emergency measures, other measures were put in place to facilitate evidence management in cases of counterfeiting, in order to broaden the possibilities of evidence production. Indeed, evidence of counterfeiting could now be established by way of certificates of offence from customs agents or economic control agents, according to the new Article 50. In the past, material evidence of copyright infringement could only result from

certificates of offence produced by police agents or officers and members accredited with the Bureau sénégalais du droit d'auteur (BSDA, the Senegalese Copyright Office).

2.1.3 The 2008 Law

The 2008 Law replaced the 1973 Law as amended in 1986. It kept many of the provisions from the 1973 Law but also added some significant new provisions on, for instance, 'neighbouring rights' for performers and producers, an increased term of protection, and provisions related to technological protection measures (TPMs). Thus, the Law complies with the latest developments in the IP sector in general and the field of artistic and literary property in particular. Senegal could not continue ignoring new copyright issues raised by the development of ICTs, and its international commitments under the Berne Convention, the 1961 Rome Convention on Berne relating to copyright protection for performing artists and record producers as well as the modifications introduced by the 1994 TRIPs Agreement and the two 1996 WIPO Internet Treaties.

That is why the 2008 law introduced protection for technological protection measures (TPMs), the devices rights-holders use to control access to copyright-protected content available on digital platforms. However, the 2008 Law went beyond required minimum standards with the introduction of a term of economic rights protection of 70 years for most works, an increase from the previous 50-year term and an example of what is known as a 'Berne-plus', 'TRIPs-plus' provision (a provision that goes beyond the standard minimum (50 years) required by the Berne Convention and the TRIPs Agreement).

The 2008 Law also makes provision for the gradual dissolution of the Bureau sénégalais du droit d'auteur (BSDA, the Senegalese Copyright Office) and the introduction of multiple collective societies to collect royalties on behalf of authors and rights-holders of different types of works (royalty collection has until now been the monopoly of the BSDA).

2.2 The Content of the 2008 Law

While the 2008 Law constitutes a significant evolution for copyright in Senegal and for the rights of performing artists in particular, the Law has kept the same clauses as the 1973 Law regarding the conditions for copyright protection, ie, a work needs to be completed in form and needs to be original in order to benefit from copyright protection. This condition is negatively expressed by the exclusion of 'ideas' from copyright protection; the work to be considered for copyright protection needs to have some kind of material form, whatever its degree of accomplishment.

In addition, the list of works that can be protected is unchanged. According to Article 6 of the 2008 Law, which is the same as the 1973 Law, the following types of formal, intellectual creations, be they artistic or literary, may be protected:

1. Language-based works, whether they are literary, scientific or technical, including computer software. Such works can be either written or oral;
2. Drama and other works destined to be performed on stage;
3. Choreographic works, circus acts and pantomimes;
4. Musical works with or without lyrics;
5. Works consisting in animated image features, with or without sound (also known as audiovisual works);

6. Visual art works, including drawings, paintings, sculpture, architecture, engraving, lithographs, photographs and applied art works such as fashion creations, weaving, ceramics, woodwork, ironwork or jewellery;
7. Geographical maps, plans, drawings and plastic works relating to geography, topography, architecture and sciences;

In terms of the criteria pertaining to originality, the Senegalese law is one of the rare French-speaking systems that has defined such criteria. According to Article 7, paragraph 2 of the 2008 Law, 'originality is understood to be the mark of the author's personality'. This definition is more precise than that contained in the 1973 Law, according to which 'an original work is a work that, in all its features and form, or in its form only, allow for the individualisation of its author'.

The 2008 Law also seeks to modify collective management, by providing for many bodies to conduct collective management, and seemingly providing for the dissolution of the BSDA. Until now, collective management has been the BSDA's monopoly. New clauses in the 2008 Law create technical measures for corporate collective management structures, protection and information. However, even though the Law was adopted in early 2008, at the time of the writing of this report in late 2009, some aspects of the Law (eg, replacement of the BSDA by multiple collection agencies) have not yet been operationalised due to the lack of application clauses, which typically need to be introduced through a Decree.

2.2.1 Moral Rights

Senegal has a civil law system, which grants substantial weight to moral rights. In the French and Senegalese perspectives, moral law occupies a central place in copyright – and more often than not, is the top priority. This emphasis is confirmed in Article 3 of the 2008 Law, which describes moral rights before describing economic rights. The legislator chose to deal with moral right rules before economic rights in the Law.

Moral rights are attached to the author's person and they exist in perpetuity (ie, they never cease). They cannot be transferred, and they cannot be renounced. Article 27 of the 2008 Law indicates that:

1. Moral rights are the expression of the link that exists between the work and its author, and is attached to the latter's person.
2. However, moral rights are transmissible when the author is deceased by virtue of the rules indicated in paragraph 7 in the first part of this Act.
3. Moral rights are inalienable and remains even after property rights have been ceded. Moral law cannot be affected by anticipated relinquishment.
4. Moral rights are perpetual.

This perpetual feature of the author's moral rights is also included in the clauses relating to performing artists (Article 90).

Moral rights are of four types:

- A right to disclosure. Only the author is entitled to distribute his/her work to the public (Article 28);
- A right to 'repent'. The author may ask the assignee to withdraw his/her work even after it has been published. In this case, the author will have to pay the assignee the prejudice s/he will have suffered. In the same manner, when the author decides to publish his/her work another time, s/he has to grant by priority his/her previous assignee with the same conditions that were previously determined (Article 29);
- The right to claim authorship. The author has the right to demand that his/her name be indicated, to the extent and manner compliant with adequate use on all copies of the work and every time it is made accessible to the public (Article 30); and
- The right for the work to be respected. The work should not be modified without the written consent of the author (Article 31).

2.2.2 Economic Rights

The economic rights conferred to the author of a work according to the new 2008 Law belong to two categories: a right to exploitation and a resale right. The right of exploitation includes four types of rights: the right to communication to the public, the right of reproduction, the right of distribution and a rental right. The resale right is recognised only for the authors of graphical and plastic works.

2.2.2.1 The Right of Exploitation

Article 33 of the 2008 Law grants the author an exclusive right of exploitation, which includes the right to communicate the work to the public, the right of reproduction, the right of distribution and a rental right.

The right of communication to the public gives the author the exclusive right to authorise the communication of his/her work through any process, especially broadcasting, cable or satellite, and to make his/her work available on demand so that everyone may access the work from any place at any moment chosen by them individually, and, for graphic and plastic works, by exhibiting the object itself (Article 34).

The right of reproduction allows the author to authorise his/her work to be put in a material format that can help communicate it to the public (Article 35(1)). Also, the legislator has set a special rule for reproduction, and considers that the right of reproduction is transmitted, via the publication of the work, to a collective management company accredited by the Department of Culture, which is the only organ authorized to sign a convention with users (Article 35(3)).

In addition, the legislator added that the right of communication and the right of reproduction will be applied for any type of communication or reproduction, total or partial, of the work, wherever these rights are applied to the work itself or to any work derived from it (ie, translations or adaptations).

Regarding the right of distribution, the author is entitled to authorise the distribution, by sale or any other means, of the physical copies of his/her work (Article 36(1)).

Finally, the author has the exclusive right to authorise the rental of copies of his/her work. Rental means the availability for use of a work, for a limited time and for a direct or indirect

commercial or economic advantage (Article 37(1)). In this rental right provision, the Senegalese legislator has gone beyond the international norms in place. Article 11 of the TRIPs Agreement limits the use of the rental right to certain types of work, ie, computer software and movies, while Senegalese law extends this right to all types of works.

2.2.2.2 The Resale Right

Unlike exploitation rights, resale right is not a monopoly; rather, it is the right to demand a part of the profit in the case of certain transactions. The resale right is described in Article 14^{ter} of the Berne Convention, but it is nevertheless applied only in a small number of countries. According to Senegal's 2008 Law, 'the authors of graphic, plastic works and original manuscripts have, notwithstanding any transfer of the original, an inalienable right of sharing in the profits of any sale of the work or of this manuscript at public auctions or through a vendor, after the first property transfer' (Article 47). It should, however, be said that architectural works and applied art works are excluded from the provision for sharing of resale profits (Article 49).

2.2.3 Transfer of Rights

Finally, it should also be noted that should the author die, the moral and economic rights can be transferred to the heirs and successors of the author (Article 57). When the author is in escheat (ie, dies without a will or heirs), then economic rights belong to the state and are to be managed by an accredited collective management company. The profit from the fees coming from their use will be dedicated to cultural and social objectives (Article 58).

2.2.4 Term of Protection

The principle of Senegalese law is that the author's economic rights last for the author's life and then to the benefit of his/her representatives for a duration of 70 years after his/her death. This is new in the 2008 Law, with the previous 1973 Law calling for 50-year terms in most situations. The extension of the term of protection delays the entry into the public domain of copyright -protected works. The impact on access to knowledge is negative, since it is necessary to wait 70 years after an author's death to see his/her works fall into the public domain.

Regarding collaborative works, economic rights last until the last collaborator passes away and for a duration of 70 years after the latter's death (Article 52). In the case of anonymous works or works written under a pseudonym, the duration of exclusive right is 70 years from the publication of the works. For posthumous works, the protection duration is 70 years from the date the work has been disclosed. These periods expire at the calendar year where they would normally elapse (Article 55).

Regarding performers, the duration of their economic rights is described in Article 90 of the 2008 Law, which indicates that the term of protection is 50 years from the first performance.

2.2.5 Limitations and Exceptions

The following sub-sections of this paper outline the limitations and exceptions to copyright as provided by the 2008 Law.

2.2.5.1 Personal and Private Use

Article 40 of the 2008 Law has kept provisions relating to reproduction for strictly personal and private uses similar to the provisions in Article 10 of the 1973 Law.

Article 40(1) says that ‘the author can not prevent reproduction intended for a strictly personal and private use.’

However, this exception is not absolute, as Article 40(2) says:

The exception described in the first paragraph does not apply to:

- a) The reproduction of architectural works taking the form of buildings and other similar constructions;
- b) The reproduction by reprographic means of limited edition visual art, music sheets and exercise manuals;
- c) The reproduction of an electronic database;
- d) The reproduction of a computer software.

However, the legitimate user of computer software is allowed to make a safeguard copy in order to replace the original copy (Article 41). The exceptions regarding this matter are important, but they still do not represent massive progress for access to knowledge, since the copied work can only be accessible to the legitimate owner of the software.

The 2008 Law also introduced a remuneration system for the private copies of works and performances recorded on phonograms and videograms (Article 103). Remuneration is thus due to the authors, artist-performers and phonogram and videogram producers. The amount, the remuneration conditions and the distribution of such remuneration are described in Articles 105 to 109.

Lastly, it is useful to remember that Senegalese law does not include the rules of the so-called ‘three-step test’ introduced by the Berne Convention.¹⁴ In the absence of the three-step test, Article 40 could allow for very wide reproduction rights.

2.2.5.2 Teaching

Copyright law has a particular perspective on teaching. Thus, according to Article 42, ‘subject to mentioning his/her name and the source, the author cannot forbid the reproduction or the communication of the works if done without aiming at profit-making and in order to illustrate a point in an educational setting’.

This means that a work may be reproduced or used publicly in an educational context without his/her author’s consent, on the condition that such use is free and is used for illustration purposes. It should be noted that online learning (e-learning) is not specifically regulated in Senegal. Although the law does not regulate distance education, the exception concerning education described in Article 42 could presumably be applied to this mode of teaching.

The 2008 Law does not include rules that allow granting compulsory and/or statutory licenses for reproduction for educational purposes.

¹⁴ The three-step test, in Article 9(2) of the Berne Convention, allows Member States to allow the reproduction of works ‘in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author’. The three-step test was extended to all property rights by Article 13 of the WTO TRIPs Agreement and by Article 10 of the WIPO Copyright Treaty.

2.2.5.3 Analysis and Quotation

Senegalese law allows, in Article 44, any individual to use a protected work in order to analyse it or to quote a short portion of it as part of another work, on condition that the name of the author and the title of the work are mentioned, and that the use is 'appropriate'.

2.2.5.4 Use for Information Purposes

For information purposes, reproduction and communication are allowed when dealing with political, social and economic news articles as well as speeches made in political, judicial, administrative or religious assemblies and public, political and official meetings (eg, official ceremonies) (Article 45(1)).

Reproduction and communication are also allowed for works that can be seen or heard during a current public event, to the extent that said reproduction and communication are justified by the objective (Article 45(2)).

2.2.5.5 Use of Official Texts

According to Article 9 of the 2008 Law (a provision not in the 1973 Law), copyright protection does not extend to official texts of a legislative, administrative or judicial nature or to their official translations.

2.2.5.6 Parallel Import

Parallel import is authorised in Senegal, but only partially. It is allowed within the regional West African Economic and Monetary Union (French acronym UEMOA) block of countries. Under economic rights and more precisely the exclusive right of distribution granted to the author, the legislation clearly indicates that the right of distribution is exhausted by the first sale or any other property transfer of the copies of the work by the author, or with his/her consent, within the UEMOA¹⁵ (Article 36(2)). A work protected and legally acquired on the market from one of the member states of UEMOA may be imported into another member state without the permission of the copyright-owner in the second country.

2.2.5.7 Disabled People

The 2008 Law does not contain any provisions specific to disabled people such as the visually-impaired. However, it should be mentioned that Senegal's educational policy takes into account the needs of disabled people in its PDEF programme (as outlined earlier).

2.2.5.8 Libraries and Archives

Here the Senegalese 2008 Copyright Act favors the rights of the author, as the Act contains no exceptions for reproduction of a work by library or archive services accessible to the public.

However, it should be mentioned that in the laws relating not to copyright but to libraries and archives in Senegal, it is possible for libraries and archive services to copy works that are at an advanced stage of degradation so that these may be preserved.

¹⁵ The West African Economic and Monetary Union (UEMOA) was established in 1994 by seven countries: Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal and Togo. In 1997, Guinee-Bissau became the eighth member.

2.2.6 Technological Protection Measures (TPMs) and Electronic Information

Protection of technological protection measures (TPMs) appeared for the first time in the 2008 Law, in Articles 125 and 145. The rights-holder of copyright and related rights obtained the right to implement, as part of their rights, technical measures to prevent or limit acts they did not authorise or acts which are forbidden by the law regarding their works, performances, videograms, phonograms or programmes. In the 2008 Law, prohibited acts of circumvention of such TPMs are outlined in Article 125, and punishments for such prohibited acts are described in Article 145.

Meanwhile, Article 126 broadens rights-holder protection in the digital environment even further, prohibiting unauthorised reproduction of any kind of copyright-protected information in electronic format. Article 126 states that:

1. The information in electronic format concerning the rights relating to a work, a performance, a phonogram, a videogram or a programme is protected in the cases involved in this article when one of the information items, numbers or codes is included in the reproduction or appears to have a relation with the communication of the work, the performance, the phonogram, the videogram or the programme.
2. Information in electronic format is defined as any piece of information supplied by a copyright owner that can help identify a work, a performance, a phonogram, a videogram or a programme or a copyright owner, any information on the conditions of use of a performance, a phonogram, a videogram or a programme as well as any number or code that represents all or a part of these pieces of information.
3. It is illegal to perform any of the following acts without the authorisation of the copyright owner or the owner of a related right, while knowing or having valid reasons to think that such an act would result, allow, facilitate or hide an infringement of copyright or a similar right:
 - a) To suppress or modify any piece of information in electronic format;
 - b) To distribute, import for distribution purposes, communicate to the public in any form, whether the item concerned is a work, a performance, a phonogram, a videogram, a programme of which one piece of information in electronic format has been suppressed or modified.
4. When the author of one of the acts described in paragraph 3 knows that such acts results, allows, facilitates or hides the infringement of copyright or of similar rights, he will be punishable by the sentences described in Article 145.

Article 126 is, in places, identical to a 2006 amendment to the French copyright law.

Regarding the sentences imposed in cases of infringement, Article 145 indicates that:

1. The neutralisation of technical protection measures described in article 125 is punishable by imprisonment of one to three months and a fine of five hundred thousand francs CFA.
2. Infringement relating to copyright law by one of the acts described in article 126.3 knowingly committed is punishable by the same sentences.

The introduction of these types of measures is potentially negative in relation to access to knowledge, because the provisions block certain activities which may be valid in order for a user to exercise an exception for teaching or for personal use.

2.2.7 Commercial Use of Public Domain Materials, Including Folklore

The 2008 Law keeps the provision from the 1973 Law that the use of folklore in the public domain requires payment of royalties, but the 2008 Law broadens the provision so that royalties are now payable for all uses of works in the public domain, not just folklore. Article 9 of the 1973 Law indicates that a royalty was required only when “the public performance” of the work was “for a profit-making purpose”, while the new law indicated more broadly that “exploitation” of folklore or works in the public domain requires a royalty payment. This apparently extends the new law to all sorts of exploitation, and not only profit-making exploitation, to works of folklore as well as works in the public domain.

Use of a public domain work requires notification to a collective management society and payment of a royalty to the society, as per the terms of Articles 157 and 158. The amount of this royalty for use of public domain works are to be set by the Ministry of Culture, but cannot exceed 50 per cent of the revenue earned. The Ministry is then required by the 2008 Law to redirect a portion of the royalties collected on public domain works to social and cultural initiatives.

In Article 159, the 2008 Law specifies that in cases of illegal exploitation of folklore or other works that belong to the public domain, the judicial branch of the state, on request from the Minister of Culture, may follow the counterfeit artifacts seizure procedure described earlier in the law. According to Article 160, illegal use of folklore or works that belong to the public domain is punishable by a CFA500 000 (US\$1 000).

2.3 International Conventions and Agreements

As mentioned above, Senegal is a signatory to, and has ratified:

- The Berne Convention for the Protection of Literary and Artistic Works;
- The WTO TRIPS Agreement;
- The two ‘WIPO Internet Treaties’ of 1996 – the WIPO Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT)

Senegal has also signed and ratified the 1977 Agreement (revised in 1999) establishing the African Intellectual Property Organisation (French acronym OAPI), of which Annex VII deals with copyright.

2.4 Case Law

We were not able to identify any case law related to copyright and access to learning materials in Senegal, Case law on copyright in general is scarce in Senegal – due, it seems to a lack of specialised human resources (eg, the Université de Cheikh Anta Diop does not provide any dedicated course on intellectual property) and a lack of a legal culture in relation to copyright. Therefore, in cases of disputes, the parties involved prefer to choose traditional solutions for settling such disputes (ie, amicable settlement).

2.5 Summary of the Doctrinal Analysis

The main effect of the 2008 Copyright Law is that it further strengthens the protection of authors and extends strong protection to performers/producers, with no focus on increasing/improving the rights of users. The extension of copyright term from 50 years to 70 years and the strict protection of TPMs and other rights information in electronic form, are examples of how non-commercial user access, for education or personal use, is potentially weakened.

As well, the requirement of payment of royalties for exploitation of public domain works, while perhaps justified as protection against unfair exploitation of national heritage in the case of folklore, does not seem to be justifiable in the case of ordinary works in the public domain. And the legislator has gone beyond TRIPs Agreement requirements in defining the scope of rental rights.

Meanwhile, the exceptions in the new law are insufficient. In particular, there are no specific provisions in the Copyright Law for reproduction by libraries and archives, no provisions for people with disabilities, no provisions for translation or adaptation for educational purposes, no provisions for distance education and e-learning, no provisions for granting compulsory and/or statutory licenses to reproduce works for educational purposes, and only limited provision for parallel importing (ie, only within the eight-country UEMOA bloc).

3. Qualitative Analysis

In order to supplement our doctrinal analysis with an understanding of practices and perceptions in relation to copyright – and thus to develop a holistic understanding of the copyright environment in Senegal – we conducted qualitative impact assessment interviews with relevant stakeholders, following the categories and interview guidelines outlined in the *ACA2K methodology guide*. As the *Guide* indicates, the interviews were designed to help us understand more clearly what the potential and actual consequences of copyright law are in our country.

3.1 Impact Assessment Interviews

Our interviews were non-directional. This is a type of interview during which the respondent is invited to answer a general question as exhaustively as possible in his/her own terms and within his/her own frame of reference. The interviewer intervenes as little as possible.

In general, through our interviews, we found a general lack of knowledge regarding Senegal's copyright law and regulations. This lack of knowledge often translates into illegal behaviors and practices. In some cases there is tolerance of illegal practices (such as large-scale photocopying on a commercial basis) or, as in the case of organisations such as libraries, there is a tendency to ignore potentially infringing photocopying behaviour. Library authorities interviewed said that while they favour the application of copyright law, they are cognisant of the information needs of users, the high price of hard-copy materials, and the difficulties in access electronic materials.

3.2 Interviewees

We compiled an interview guide for each category of interviewee, with questions designed to probe understanding of copyright and understanding of the potential impact of copyright on access to knowledge.

We interviewed individuals from the following categories:

- **Government:** an agent of the Bureau sénégalais du droit d'auteur (BSDA, the Senegalese Copyright Office, at the Department of Culture), an employee in the Criminal Affairs section of the Department of Justice, and representatives, in the Office of the Prime Minister, of the National Archives Service and the National Library.
- **Educational community:** the director of the École des bibliothécaires, archivistes et documentalistes (EBAD, the School of Library, Archives and Document Sciences), the director of the Centre de formation judiciaire (Judicial Training College), two university librarians (Université de Cheikh Anta Diop in Dakar and at Université de Bambey in Bambey) and a group of three students (one male and two females).

Interviewing these people enabled us to frame our findings around the stakeholders at the heart of the relationship that exists between access to knowledge and copyright.

3.3 Interview Findings

3.3.1 Government

Involvement in copyright lawmaking is more or less important depending on the department interviewed. The Department of Culture – through the Bureau sénégalais du droit d'auteur (BSDA) -- played a central role in championing the 2008 reform of the law as well as in its

actual drafting. It was the campaign of the BSDA, in association with artists (particularly musicians), which led the most recent drive for copyright reform in Senegal, which was achieved through the passing of the 2008 Copyright Law outlined above. The interview with the BSDA representative revealed, however, that some provisions of the 2008 Law, for instance the introduction of multiple collective societies to replace the BSDA, have not yet been implemented due to a delay of the introduction of the required implementation Decree. There is growing pressure from artists for enactment of this Decree, with the artists for the most part represented by the Association des musiciens du Sénégal (Musicians Association of Senegal). The Decree must come from the Office of the President of the Republic.

From our interview with the archives and library officials in the Office of the Prime Minister, we learned that some of the push for the reforms in the 2008 law came from an urge by political authorities to comply with international commitments (ie, in terms of the WIPO Internet Treaties of 1996, the WPPT and WCT, which Senegal has ratified) to adapt legislation to the development of information and communication technology (ICT), and to satisfy the demands from artists for better protection. ICTs were catered for through tough TPM anti-circumvention provision in the 2008 Law (as required by the 1996 WCT), and artists were catered for through protection of additional neighbouring rights in the 2008 Law (protection of the rights of performers and producers of phonograms).

At the Department of Justice, our interviewee said he believed that the infringement/non-compliance issues arising in relation to copyright law are essentially due to ignorance or even, to some extent, rejection of the concept of artistic and literary property. The interviewee also pointed to obstacles in the way of copyright law enforcement. He told us that until recently, handing down penalties for infringing copyright law was far more complex and difficult for a judge than handing down a sentence for damage to the property of other people. This difficulty was essentially due to the general lack of knowledge on many judges' part regarding intellectual property rights and literary and artistic property in particular (and for that reason, the Department is engaged in capacity-building of judges in terms of intellectual property). This difficulty was also a result of the general ignorance of the public regarding copyright. This ignorance was and still remains the cause for the lack of acceptance of penalties resulting from copyright infringement, hence the people's surprise – and sometimes even the injustice felt – when they are condemned by a judge. In fact, some of the offenders are not even aware they had infringed any law, which is not the case for a thief who, by physically stealing another person's property, is quite aware that he or she has broken the law. The same thief is also aware of the fact that she or he committed an act that is morally and culturally reprehensible.

The Justice Department official said that a large number of copyright cases are settled amicably and out of court through traditional dispute-resolution mechanisms. These cases were mostly mediated by families or close relatives of the parties in disputes. The government people we interviewed showed a desire to better sensitise the public in the field of copyright. The BSDA has undertaken an awareness campaign for the 2008 Law, through seminars, workshops, road shows, radio shows and a general involvement at national, continental and international level in debates about copyright.

Regarding the issue of access to knowledge, the Justice Department official acknowledged the close relationship that exists between access to knowledge and copyright, but he highlighted the complexity of the issue for an underdeveloped or developing country such as Senegal – a country for which access to knowledge and cultural production are both major challenges in

the current globalised context. The interviewee therefore advocated for a better remuneration of authors through copyright in order to stimulate the creation of learning materials and thus to make the copyright environment more favorable to access to knowledge.

At the BSDA and in the Office of the Prime Minister, the people we interviewed acknowledged the problems relating to access to learning materials, but they focused on the protection of works and their authors. The BSDA interviewee pointed to the fact that any citizen, via Article 40 of the 2008 Law, can reproduce any work for private and personal use.

The National Archives Service interviewee in the Prime Minister's office said that people usually consult the resources on the site, and therefore a photocopy service was implemented. This service, he said, strictly complies with the legal obligations concerning copyright and forbids the photocopying of a complete document. This forbidding of copying of an entire work constitutes an interpretation by the National Archives Service of Senegalese law on copyright regarding the photocopying of works, because the 2008 Copyright Law is actually silent on photocopying by libraries and archives, and the extent of photocopying allowed for personal use is not made clear in the Article 40 exception for personal use.

The interviewee said that managers at the National Archives believe that copyright must be enforced, as copyright constitutes, according to them, a motivating factor for literary and artistic production.

Among the government interviewees, there were wide discrepancies in their perspectives on copyright and gender. Some showed indifference to the relationship that may exist between copyright and gender, while others pointed to the increasingly active contribution by women in creation. In the case of writing, for instance, one quickly notices that there are more and more women in the field of literature, in spite of the fact that women came rather late to this field.¹⁶ In other sectors such as music and drama, the majority of creators are women.

We also tackled the question of ICTs, especially the Internet and its negative or positive role in the quest for knowledge. Regarding the Internet, the Justice Department interviewee said he believes that it is the best tool, but also the most dangerous tool, for a person seeking to acquire knowledge. The Internet, he said, makes a wide number of learning materials of variable quality and reliability available to the users while exposing them to various types of risks.

For the BSDA interviewee, the key concern in relation to ICTs was the protection of the rights of creators of works available via ICTs.

3.3.2 Educational Community

3.3.2.1 EBAD

EBAD is a postgraduate school for training of librarians and archivists within Université de Cheikh Anta Diop (UCAD) in Dakar. The mission of its students is directly linked to access to knowledge. Information officers, archivists and librarians use tools¹⁷ and works that are

¹⁶ 'The real explosion started in the decade 1970-1980 explains literary critic Abdoulaye Racine Senghor', in 10 *Les Cahiers de l'Alternance* (December 2006) 187.

¹⁷ Monographs, journals, administrative documents, bibliographical and digital databases and research data published in reports, dissertations and theses.

generally copyrighted. As well, our focus on EBAD was justified by the fact that it has now started to offer distance education.

EBAD produces traditional learning materials, including curricula, classes, and the products of teaching staff and students (doctrinal articles, books, conference/seminar/workshop minutes, dissertations, theses, training reports). These resources are generally in paper format but are increasingly available in electronic form. These resources are mainly the property of the institution and were considered as such until recently.

According to the EBAD interviewee, in 2000 UCAD signed an agreement with French Cooperation Services through the French Embassy in Senegal which saw the implementation of an Adult Training Course in Computerised Network Information (French acronym FORCIIR). Thanks to this project, EBAD received nearly 300 million CFA in subsidies (US\$640 000). With these subsidies, the school was able to diversify its curricula to be able to face increasingly pressing demands from the sector's professionals. EBAD implemented distance education courses which were replicas of the on-campus courses.

In terms of the impact of copyright in the choice of learning materials used, EBAD went through a very unsatisfactory experience, which eventually motivated its directors to use copyright-free learning platforms. At the beginning of the distance education programme, EBAD spent 2 000 Euros in order to put its cataloguing course online via the FADIS learning management system. This investment, however, bore almost no return. Outside the interface installed on the school's website and the class for which these platform was ordered, it was impossible to use the system for any other class or course. The result is that today, the institution's policy is to work with copyright-free platforms or free software. With the help of the Agence universitaire de la francophonie, EBAD will now stop working with FADIS and is adopting MOODLE, a free software package dedicated to distance education. Therefore, in this institution, the strategy currently aims at avoiding the use of any tool that has copyright attached to it and favoring the use of free software. This choice is justified by economic reasons, but also by practicality in terms of use, adaptability and, possibly, improvement of such tools, all features that are offered with the use of free software.

3.3.2.2 The CFJ

The CFJ is an institution that provides first-level training for students who wish to become magistrates or clerks of the court. The CFJ also implements continuous training for practicing magistrates and clerks of the court, as well as for other professions working in the justice sector: customs officers, police, military police, and law enforcement officers.

The CFJ plays an essential role in the legislative progress of Senegal, because it frequently organises meetings on themes relating to the future of the country. Each time weaknesses or gaps are identified by judges, the CFJ suggests reforms of laws or calls for a new legislation where necessary.

As far as the academic activities of the institution are concerned, the electronic format is getting more and more popular (CD-ROM, USB flash drive). Some meetings are even, albeit exceptionally, recorded on film. The CFJ uses learning materials that are mainly basic law books, legal codes, administrative documents and cases that are currently awaiting judgment and spends on average more than 70 per cent of its operating budget¹⁸ on the acquisition of

¹⁸ The CFJ is a public school that is entirely funded by the state.

books. However, the CFJ interviewee expressed the desire for easier access to digital legal resources that are currently inaccessible for economic reasons. In fact, the interviewee believes that the difficulties linked to access to specialised documents is related to copyright and digital protection of copyright-protected online resources, hence the necessity to find a balanced solution that would take into account both the interests of copyright-holders and of users.

The interviewee also indicated that the level of knowledge of copyright in Senegal among learners was very low, although one of the lecturers does teach a course on disputes relating to intellectual property. The issue is of no concern to the rest of the staff.

3.3.2.3 University Libraries

The public university libraries we contacted for our research are at UCAD in Dakar and at Université de Bambey. Their mission is to make documents available for the whole academic community, ie, lecturers and researchers, students, and, to a lesser extent, the administrative staff as well as a few external users.

The UCAD Library (French acronym BUCAD) was created in 1965. It was then the focal point of all documents destined for use in higher education. The library has also enjoyed the status of Central Documentation Service at the University of Dakar since 1992, and has fourteen faculty libraries, which has helped laying the foundation of a future network. The Director of the central library is also the head of the Documentation Council, and a member of the University Board.

The Université de Bambey also has its own academic library. It was opened at the same time at the university in March 2007, with only 292 books received from the French Embassy in Senegal. This collection grew to include 1, 800 books at the end of 2007 thanks to the funds allocated by the university budget.

As is the case for most university libraries in Senegal, these two share the same practices in terms of the acquisition, processing and dissemination of resources.

The university libraries all manage learning materials produced by the academic community (researchers and students) and also produce a few document resources, e.g. tools and research data on various formats. These resources are the property of the universities, and consequently the libraries, that keep them for their dissemination.

It is in this respect that the libraries have more constraints in terms of the compliance with copyright – in fact, more than any author of a literary or artistic work. This is why the compliance with copyright is a recurrent topic in the interviews at management level. The students however indicate that in practice, the enforcement of copyright is not that strong. For instance, the Université de Bambey library produces documents derived from research conducted on the Internet and with the help of free software.

The observation we were able to make with these libraries is that they continue to be confronted with a financial situation that does not allow them to have the document resources (either on paper or digital) necessary for the proper accomplishment of their mission.

In parallel with the increase in the price of producing documents, the budget allocated has systematically been insufficient since the devaluation of the CFA currency in 1994. This

situation adds more stress to the issue, because the size of the academic population¹⁹ has increased exponentially from year to year. UCAD currently has about 70 000 students. University libraries thus have a reduced purchasing power and face, at the same, an increase in the cost of production while having to service a substantially increased number of users. The main consequence of this problem is that in all cases, the library collections become obsolete, to the detriment of the individuals who seek access to knowledge.

3.3.2.4 Students and Lecturers

We elected to restrict our study of users of learning materials to the university setting, and we therefore interviewed lecturers and students in both the institutions we had targeted, UCAD and Université de Bambe.

We found that lecturers display the same behavior in both universities; as do the students.

Through their teaching and research activities, lecturers are the members of the academic community who produce the most learning materials. As creators, they naturally enjoy copyright on their works (articles, books, lectures) even though some productions are owned by several entities (eg, owned in conjunction with laboratories, or research institutions).

Lecturers are not only copyright-owners: they also are often the first users of materials, due to their research activities. Lecturers said they generally comply with copyright – compliance which is aided by the fact that reproduction for non-commercial teaching permissions is allowed without authorisation of the copyright-holder in terms of the exception outlined in Article 42. Regrets were, however, expressed by the lecturers regarding the difficulties of accessing specialty resources. In fact, many of them indicated that they purchase their working materials abroad, as there are not satisfactory amounts of current and diversified materials available in the country, either in hard-copy or electronic form (especially online scientific journals). While the latter may be accessible through the Internet, they remain largely out of reach due to very high prices of access.

The students also represent a substantial user base for learning materials in universities, and in our interviews we found that students generally seek the resources they need in libraries and other document and/or research centre. Students rarely purchase books, and generally these purchases are made at second-hand book dealers. It was found that in general, students rely on photocopying – of entire books sometimes – without any regard for the copyright law. (The law is not clear, in the Article 40 private use exception, as to whether photocopying of an entire work is allowed, but where a person buys a photocopied book from a copy shop, then the person doing the copying would be violating the law, as there is no exception for reproduction for commercial purposes.) The students' reliance on large-scale photocopying was explained by the interviewees as being a product of the insecure financial situation of the many students and the high price of learning materials. The interviewees said they felt that female students make use of photocopies more than men, because they generally enjoy a better financial situation than their fellow students.

Another student practice uncovered in the interviews – one which is clearly a violation of authors' moral right to ensure the integrity of their works – is the practice of 'page-tearing' whereby pages are permanently removed from books. This practice exists at UCAD, to the extent that the UCAD library has put up signs prohibiting such methods. The students

interviewed denounced this behaviour, which is to them an example of the selfishness of their fellow students. Some interviewees, however, while they reject such acts, find that this practice can be explained by the state of poverty of some students who do not receive a state allowance²⁰ and whose parents are unable to assist them financially. These students find themselves forced to tear pages from the books they need when they have no other choice.

²⁰ There is a state allowance system for university students, but the sums provided are low in comparison with the high cost of living in Dakar. This allowance amounts to CFA 36 000 per month (US\$77) for a full bursary, CFA 24 000 (US\$51) per month for a two-thirds bursary and CFA 18 000 (US\$38) per month for a half-bursary.

4. Conclusions

In conclusion, it is our finding that the copyright environment in Senegal is generally oriented toward creation, and protection of the rights of creators. Artists, particularly musicians, were central to the push to improve protection of their rights through copyright, a push that led to the 2008 Copyright Law which extended the term of protection from 50 to 70 years, introduced neighbouring rights for performers and producers, and created strict protection of technological protection measures (TPMs) and other rights-related electronic information. Senegal has a cultural sector that is currently booming, and thus the power of the artists lobby is understandable, as is the state's desire to ensure that creation is encouraged and that the rights of creators are protected.

However, it is our finding that the state's objective of protecting creators and the copyrights of creators is being pursued in a fashion that is not balanced by an appreciation of the need to ensure reasonable levels of free user access to works, particularly learning materials. Protection of creators needs to be balanced by protection of users.

We found that the 2008 Copyright Law goes too far in the direction of protectionism in the following respects:

- The 'Berne-plus' or 'TRIPs-plus' 70-year term of protection in the 2008 Law is excessive, given that the term required by Berne and TRIPs is only 50 years. The longer the term of protection the longer the period of time it takes for works to enter the public domain;
- The requirement in the Law of payment of royalties for exploitation of public domain non-copyright works is unnecessary and is not required by international conventions;
- The scope of rental rights in the Law goes beyond TRIPs requirements;
- The Law lacks provisions for reproduction of works by libraries and archives;
- The Law lacks provisions for translation or adaptation for educational purposes;
- The Law lacks provisions for compulsory/statutory licences for educational purposes;
- Except within the UEMOA bloc of countries, the Law does not provide for parallel importation of works where works are being sold at higher prices in Senegal than elsewhere;
- The Law provides blanket protection for technological protection measures (TPMs), with no exceptions for acts such as TPM circumvention for personal private use, for teaching or for format conversion for use by the visually-impaired;
- The Law contains no specific provisions for visually-impaired people; and
- The Law contains no specific provisions for distance education or e-learning.

Meanwhile, in terms of practice, we found widespread lack of awareness of copyright law, and even where the law is understood or partially understood, there is widespread lack of adherence. For instance, university students routinely purchase photocopies of entire books which, because the reproductions are made for commercial purposes, are in violation of the copyright law. In other cases, university students have been found to engage in illegal 'page-tearing' from library books. The strongest explanations provided for student reliance on illegal commercial photocopies or page-tearing were poverty and the high prices of materials. Other practices, such as student photocopying on a non-commercial basis of large portions of works, or entire works, for personal private use, are not clearly illegal, but could be illegal if the exception for photocopying for private/personal use (in Article 40) were to be interpreted in a narrow way by the judiciary. In the meantime, in the absence of judicial interpretation of Article 40, the rights of users to photocopy on a non-commercial basis for personal/private use remain unclear.

In terms of enforcement and the judiciary, it was found that a lack of expertise, and a lack of a sense of the validity of intellectual property as opposed to more tangible kinds of property, has led to a lack of copyright-related cases, with most copyright cases being settled amicably out of court. Thus, much needs to be done to build awareness of copyright on the part of users and members of the judiciary.

Much also needs to be done to support the local publishing sector, because access to knowledge largely depends on books, and in Senegal most learning materials above primary level come from overseas and are too expensive for many users.

The Internet could, in the years to come, become an important alternative means of knowledge access, particularly for the higher education sector. But very few Senegalese have an Internet connection at home, mainly due to cost. The Université de Cheikh Anta Diop (UCAD) in Dakar, through its EBAD unit, is making progress in offering distance education via ICTs, an important initiative given that UCAD has 70 000 students and, the largest university in Francophone Africa, faces a shortage of lecture rooms (eg, in the UCAD Faculty of Law). But successful implementation of ICT-based distance education/e-learning requires specific copyright exceptions, and, as mentioned above, such exceptions are not present in the 2008 Law.

We thus conclude that both of the ACA2K hypotheses have been confirmed by our research findings. The Senegalese copyright environment is not at present maximising (legally permitted) learning materials access; and the environment can be changed in order to maximise (legally permitted) access.

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