



ACA2K

Country Report

MAY 2009

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

www.aca2k.org

UGANDA

By Dick Kawooya, Ronald Kakungulu and Jeroline Akubu



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Executive Summary

Due to the relatively short history of copyright in Uganda, this study of the impact of copyright and access to knowledge in Uganda is premised on a copyright environment that is slightly removed from the realities of the average Ugandan. The study involved legal and case analysis, review of secondary literature, and impact assessment interviews. Interviews were conducted to help us understand the intentions of the policymakers who craft laws, as well as the impact of the laws on practices. Interviews were conducted with stakeholders representing government, administrators, professionals, users – including university students and university officials – and rights-holders.

Perhaps expectedly, the study findings point to widespread lack of knowledge of copyright by most Ugandans, educated and uneducated alike. Additionally, findings of the study tend to focus on the wider environment than access specifically, because much of the copyright debate in Uganda is not focused on access to learning materials. Yet the findings also suggest that copyright does in fact play a significant role in the everyday lives of Ugandans. We found that the music industry and the book industry, broadly defined to include electronic and printed learning materials, are the most important domains in Uganda's copyright environment.

While different stakeholders are represented in the interviews, the debate tends to manifest along a divide with rights-holders on one side and users/consumers on the other. Each occupies a unique space in the policy environment. Unique, also, are these two groupings' respective perceptions and approaches to copyright matters. Yet both sides share an awareness and wariness of Uganda's complex socioeconomic, political and cultural contexts, within which copyright law operates.

Piracy was cited by rights-holders as being rampant, uncontrolled and in urgent need of attention. However, not all rights-holders agreed on the importance of mechanisms for dealing with piracy. For some musicians, piracy is considered a necessary evil, a means through which young musicians gain publicity to establish themselves in a very competitive industry. Name recognition is essential in attracting audiences for public performances, the main source of income for most musicians.

In learning environments, piracy (which at times is confused with legitimate copying) is a primary vehicle for accessing highly priced learning materials, or materials that are simply unavailable. High cost and unavailability are both real challenges in a country with a nascent publishing industry. Poverty is so rampant that some users, especially students, find it difficult to afford even the cheap photocopying. Rights-holders in the literary world, while decrying piracy, at the same time acknowledged the high prices of learning materials as fuelling the demand for pirated materials.

The study also probed the role of information and communication technologies (ICTs) in advancing access. ICTs were recognised as increasingly vital to the learning environment. Yet rights-holders and users alike are to some extent critical of the role of ICTs. Rights-holders see ICTs as tools of infringement of copyrighted resources. Meanwhile, users, though they see ICTs as critical to access to, and distribution of, electronic material at tertiary institutions, are also wary of the increasing potential of ICTs to inhibit access through the adoption of technological protection measures (TPMs) that block access to electronic content.

The study also sought to probe possible gender dimensions of the relationship between copyright and access to learning materials. Participants generally agreed that the law was gender neutral but that the practice or interpretation of copyright often created gender biases. Based mostly on anecdotal evidence, participants cited cases where they thought copyright impacted women more than men. For instance, female students at Makerere University reported that the policy prohibiting photocopying or distribution of certain electronic materials in the library impacted their learning because while their male counterparts could use the library for extended hours including at night, women did not want to run the risks associated with travelling at night. In general, this study concluded that properly understanding the degree to which gender dynamics operate at the intersection of copyright and access to learning materials in Uganda would require more extensive investigation than was possible within the scope of the current study.

Looking at all of the evidence gathered, we conclude that Uganda's copyright environment, in spite of the rampant use of piracy and photocopying to facilitate access to learning materials, is still an environment characterised by limited access to knowledge/learning materials. And, given that legally some of the practices on which access currently hinges are questionable, it can be concluded that if the provisions in Ugandan copyright law are fully enforced at some point, the resulting situation will likely be a crackdown on access-enabling piracy, thus further limiting access.

While rights-holders are worried about piracy, they remain aware that legal remedies alone will not solve the problem, given that it is the socioeconomic situation, and a general economic scarcity, that is the motivation behind piracy.

This study has also found that there exists a unique opportunity to engage Ugandan policymakers on how best to reform copyright law to increase access to knowledge. And it must be recognised that any debate on copyright reform requires the participation of not just users but also rights-holders, and requires a nuanced understanding of the rights-holders' value to the system. Some rights-holders are the only publishers of indigenous local content, and an environment that drives them out of business directly threatens the future production and dissemination of such local content. Awareness of the demands of local media industries, especially publishers, is crucial to growing local content – as this niche is likely to be one of the key drivers of future knowledge production and consumption in Uganda.

Thus, the Ugandan copyright policy debate proposed is one which engages all stakeholders.

Finally, it is clear that more awareness of the impact of copyright on access to learning materials/knowledge is needed among all stakeholder groupings.

1. Background

This background to the report covers Uganda's brief history, the country's vision for 2035, and an overview of Uganda's copyright and access to the knowledge environment.

1.1 Uganda: a Brief History

Copyright is a relatively recent development in Uganda; it was first introduced by the British, during their colonial regime. Copyright in Uganda was initially designed to protect British authors and publishers within the Ugandan protectorate. In colonial times, Uganda was a protectorate rather than a colony – a system of indirect rule that granted Uganda some degree of autonomy from the British administration.¹

Uganda is located in East Africa, to the northwest of Lake Victoria, and achieved independence from the British in 1962. Uganda's post-independence experience was marred by political upheavals and internal wars² – an analysis of which exposes the contradictory relationships and tensions between the state and different ethnic groups that existed long before state formation.³

Like many African countries, Uganda experimented first with socialist and then with free market ideologies after gaining independence from the British. In the early years, state corporations produced essential commodities for sale through private businesses mainly owned by the Asian community. Uganda's economic reforms started in the early 1980s, ushering in neo-liberal policies and leading to the dismantling of state corporations. Political turmoil and wars instigated by dictator Idi Amin in the 1970s persisted through the 1980s, leaving a dysfunctional economy and state.⁴ Privatisation and broad economic reforms resumed after 1986 and continue to date. Since 1986, Uganda has registered fast macro-economic growth marked by a growing industrial base and expanding economic activity – except in the northern part of the country, which was subject to civil war until 2008. While Uganda has become a popular location for multinational corporations from within and outside Africa, the country remains a marginal player in the global economy.

¹HF Morris 'Sir Philip Mitchell and "protected rule" in Buganda' (1972) 13 :2 *Journal of African History* 305.

²S Rubaraza Karugire *Roots of instability in Uganda* (1996) Fountain Publishers, Kampala.

³Holger Bernt Hansen and Michael Twaddle (eds) *Uganda now: between decay and development* (1995) James Currey, London.

⁴Henry Kyemba *A state of blood: the inside story of Idi Amin* (1977) Ace Books, New York.

1.2 Uganda: *Vision 2035*

Uganda is in the process of developing a *Vision 2035* document, which is meant to guide the country's socioeconomic and political development while taking into account the cultural diversity of the people of Uganda. *Vision 2035* builds on the *Vision 2025* document launched in 1999 that was never fully implemented. There is no guarantee that *Vision 2035* will be implemented but the document is instructive on the current socioeconomic and political status of the country. Currently, 31 per cent of the population is below the poverty line. The goal is to eliminate poverty by 2035. A significant proportion of the poor (34 per cent) live in rural areas. In 2007/08, Uganda was ranked 154th out of 177 countries on the Human Development Index.⁵ In 2006, income per capita was a dismal US\$300 and it is unlikely to change significantly in the future. Foreign budgetary support by the international donor community stands at 45 per cent of the total budget, rendering the country highly reliant on foreign funds. Literacy remains relatively low with the figure at just 69 per cent of the adult population (defined as 15 years and above). Computer literacy is even lower considering that only 0.2 per cent of all literate adults own a computer.⁶

The Ugandan Government *White paper on education* details the government policy in relation to education in the country. Under this policy, government gives priority to basic/elementary education, i.e. primary education through the Universal Primary Education (UPE) programme and secondary education through Universal Secondary Education (USE), both of which are government-funded and provide free and universal education to all children of school-going age in Uganda. Due to the costs associated with these two programmes, the government has been left with few resources for the tertiary sector beyond the 4 000 scholarships already in place at public universities. The Ugandan Government introduced UPE in 1997 as part of the strategy introduced in the *White paper*. It is reported that UPE led to a dramatic increase in enrolment of over 70 per cent, with the figures rising from 3.4 million in 1996 to 6.9 million students in 2001.⁷ Currently enrolment is estimated at close to 7.2 million pupils. While UPE still experiences challenges including low completion rates, the programme has afforded many poor families the opportunity to send children to school.

Owing to the large number of students graduating from primary school, the government introduced USE in 2007. The Ugandan Government is emphasising vocational training, science and technology, with the goal of delivering job creation. It is also seeking to create an informed society by encouraging a 'reading culture' based on 'positive values and ethics.'⁸ Unfortunately, the tertiary level has not received as much attention as the primary and secondary levels have. As well as the scholarships, the government runs an affirmative action initiative that encourages women to join public universities. Thus far, the initiative has helped equalise the ratio of male to female students in public universities at almost 50:50. The government also set up the Uganda National Institute of Special Education (UNISE) at Kyambogo University, to accommodate individuals with special education needs. In addition to UNISE, all public institutions provide certain services to individuals with special needs such as the visually-impaired or hearing-impaired.

⁵United Nations Development Programme (UNDP) *Human development report 2007/2008: fighting climate change: human solidarity in a divided world* (2008) UNDP, Nairobi, Kenya (as quoted in the UN Human Development Index).

⁶ibid at 3.

⁷ibid at 4.

⁸ibid at 7.

The *Vision 2035* document recognises that Uganda must prepare for and take advantage of the information age, stating that: 'No effort must be spared in the creation of an information-rich Ugandan society. Information and knowledge and their management, therefore, will be cornerstones of national development.'⁹

The government identifies ICTs as 'central in the pursuit of productivity-driven growth.'¹⁰ Uganda's vision of the knowledge economy is one that affords equal opportunities to all groups, especially marginalised groups and women. The *Vision 2035* document defines the kind of knowledge economy the Ugandan Government intends to achieve as characterised by:¹¹

- abundance of resources;
- no location barriers;
- a highly educated labour force;
- high levels of per capita wealth;
- an open cosmopolitan society attractive to global talent;
- good connections to other global knowledge nodes;
- a shift from top-down hierarchical organisational structures to flat, shared structures such as networks of semi-autonomous teams;
- skills and knowledge as key assets; and
- ICTs as pillars of the knowledge-based economy.

In terms of education, specific indicators to show progress towards the knowledge economy include:

- total expenditure on education per capita;
- literacy rates;
- student-teacher ratio (primary);
- student-teacher ratio (secondary);
- secondary enrolment; and
- higher education enrolment.

1.3 Copyright and Access to Knowledge in Uganda

For the vast majority of Ugandans, especially in rural areas, copyright is the least of their concerns. This is not to suggest that the minority segment of the population, living in urban areas and more affected by the copyright system, necessarily appreciates the importance of copyright.

Until August 2007, Uganda operated under the Copyright Act Cap. 215 of 1964 ('the 1964 Copyright Act'), which was succeeded by the Copyright and Neighbouring Rights Act of 2006 ('the 2006 Copyright Act'). The object of this new law was to replace and update the previous law. The repealed 1964 Copyright Act had never been revised in its history, despite the fact that it had existed in nearly the same form in Uganda since 1953, and even though the corresponding British law of 1911 from which it was derived had seen many revisions since inception.¹²

⁹Ibid at 10.

¹⁰Ibid at 12.

¹¹Ibid at 13.

¹²Jeroline Akubu *Balancing features in Uganda's copyright law* (2007) Collaborating on Copyright Balance in Commonwealth Project at 1.

Unlike the repealed 1964 Copyright Act, which primarily held to British tradition, the 2006 Copyright Act is a hybrid of both the British and the American approaches. One salient feature of the hybrid nature of the 2006 Copyright Act is the importation of the concept of 'fair use,' which is primarily an American copyright doctrine.¹³

Several factors led to the repeal of the 1964 Copyright Act. In April 1994, Uganda signed the Marrakesh Agreement establishing the World Trade Organisation (WTO). Article XVI of the Marrakesh Agreement provides that Member States shall ensure that their laws and regulations are brought to conform to the Member States' obligations under the Agreement. Consequently, there were various implementation measures that had to be undertaken by Uganda in order to comply with its membership in the WTO. Uganda is also a member of the East African Community (EAC) alongside Kenya, Tanzania, Rwanda and Burundi. The EAC resolved to update intellectual property laws to protect creative industries in the region. Uganda is also a member of the African Regional Intellectual Property Organisation (ARIPO), and is therefore required to harmonise intellectual property laws with the other regional group members.¹⁴

This environment of external pressure, coupled with some internal demands from recording/performing artists, created a certain kind of copyright policymaking environment in Uganda. This policymaking environment led to a Private Member's Bill in 2004, the Copyright Bill of 2004, which became the 2006 Copyright Act, which, because of its scant focus on teaching and learning exceptions, will have potentially serious consequences for education and research. The Member of Parliament responsible for the Bill was greatly influenced by the perspectives of musicians, and in general, the revised 2006 Copyright Act places great emphasis on enforcement – an emphasis which has the potential to limit access to educational and research materials.¹⁵

Uganda has a relatively vibrant information sector, including a small but fast-growing publishing industry. Furthermore, Uganda has a liberalised telecommunications industry which has contributed tremendously to growth of the country's ICT sector. Given this infrastructure, education and research institutions are making increasing use of digital technology for both instruction and research.¹⁶ Unfortunately, as will be seen in this report, the less-than-favourable copyright environment potentially stands in the way of full exploitation of ICTs and digital resources.

¹³See Section 1.5 of Copyright and Neighbouring Rights Act 19 of 2006.

¹⁴See Akubu *supra* note 12 at 1-2.

¹⁵Arthur Mpeirwe 'Sellers of music and video CDs should mind the law' (22 March 2007) *The New Vision*; James Wasula 'Is it time to rejoice over copyright?' (22 March 2007) *The New Vision*; James Wasula, 'A copyright law was passed in Uganda two years ago' (20 June 2008) *The New Vision* at 19. All available at <http://www.newvision.co.ug> [Accessed 31 May 2009].

¹⁶See Uganda National Information Technology Authority Bill 8 of 2008. Available at <http://www.parliament.go.ug/billtrack/bills/text/2008-008.doc/> [Accessed 31 May 2009].

2. ACA2K Study: Uganda

The aim of the study was to investigate the intersection of the copyright environment and access to knowledge (learning materials in particular) in Uganda. The copyright environment, for the purposes of the study, was broadly defined to include laws, policies, regulations, cases, judicial decisions, practices and effects.

2.1 Research Questions

- *What is the state of Uganda's copyright environment and the state of access to learning materials in that environment?*
- *What are the processes, political, legal, social and/or technical, that could positively impact Uganda's copyright environment in terms of access to learning materials?*
- *What might the country's optimal copyright environment look like?*

2.2 Hypotheses

- *The copyright environment in Uganda does not allow maximal access to learning materials; and*
- *The copyright environment in Uganda can be changed to maximise effective access to learning materials.*

2.3 Methodology

The ACA2K research method followed in this study was comprised of doctrinal and qualitative components. As part of the qualitative research, impact assessment interviews were conducted with individuals and groups.

Permission was sought, and received, from the Uganda National Council of Science and Technology (UNCST) to conduct the study.

3. Doctrinal Analysis

The doctrinal component of this research is concerned, firstly, with understanding what copyright law stipulates in Uganda in relation to access to learning materials; and secondly, with providing a concrete analysis of judicial and administrative decisions around copyright.

3.1 Analysis of Uganda's Copyright Law

3.1.1 Historical Evolution of the Copyright Regime in Uganda

Historically, Uganda's copyright protection is a product of the common law system, owing to the country's British colonial heritage. The Judicature Act Cap. 13 recognises the application of common law principles by Ugandan courts.¹⁷ This fact (common law applicability) is, perhaps, more relevant to the 1964 Copyright Act than the existing 2006 Copyright Act, which is fairly detailed and up to date, and thus perhaps less in need of common law interpretation.

3.1.2 What Is the Scope of Copyright and Which Works Are Protected Under It?

Section 2 of the 2006 Copyright Act provides the scope for copyright protection and defines the different types of works. Section 5 of the Act outlines the specific types of works that are eligible for protection under copyright. Besides economic rights including publication, distribution, broadcasting and communication to the public, which are outlined in detail in Section 9, the law also recognises and protects moral rights under Section 10.¹⁸ These moral rights are non-assignable and include:

- The right to claim authorship of the work;
- The right to have the author's name or pseudonym mentioned or acknowledged each time the work is used;
- The right to object to and seek relief in connection with any unauthorised distortion, mutilation, modification or alteration of the work; and
- The right to withdraw the work from circulation if the author so chooses.

Section 13 of the 2006 Copyright Act assigns moral rights in perpetuity, enforceable by the author or his or her successors after death.

Section 5 names the types of works that will receive protection, and these include literary, scientific and artistic works (including computer programmes, illustrations and traditional folklore and knowledge), as well as derivative works such translations, transformations and collections. Section 6 makes it clear that ideas are not protected by copyright, and Section 7 excludes from copyright protection 'public benefit works' such as laws and government reports.

¹⁷Section 14 of the Judicature Act of 1996 (Cap. 13).

¹⁸Section 10(3) of the Copyright and Neighbouring Rights Act 19 of 2006.

3.1.3 Existing International Obligations

3.1.3.1 Berne Convention for the Protection of Literary and Artistic Works 1886 (Berne Convention)

The Berne Convention was first adopted in Berne, Switzerland, in 1886 and it had 163 signatory countries at the time of writing this report. Uganda is not party to the Berne Convention, but owing to the fact that the Berne Convention is incorporated into the WTO TRIPs Agreement, which Uganda is bound by, the Berne provisions nevertheless apply.

The Appendix to the Berne Convention provides for statutory licences, primarily for translation and certain kinds of reproductions, and while Uganda has not notified use of the Appendix, it has still enacted similar legislation within the 2006 Copyright Act. Section 17 of the 2006 Copyright Act provides for non-exclusive licensing for translation of a work under certain prescribed circumstances – for instance, if the work is unavailable in a local language one year after its initial publication; or unavailable in any form after a set period of years from first publication, depending on the nature of the work.

3.1.3.2 TRIPs

As mentioned above, Uganda signed the Marrakesh Agreement establishing the World Trade Organisation in April 1994. This Agreement came into force on 1 January 1995 with the creation of the WTO. Since then, Uganda has undertaken several legal reforms to comply with WTO rules, though significant work remains to be done.

Uganda, being a least developed country (LDC), was not obliged to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) until 2005, and subsequently, with respect to copyright, not until 2013. The deadline for LDCs to comply with TRIPs was extended in parts, with 2013 being the deadline for implementing copyright protection and 2016 being the deadline for implementing patent protection. As noted, however, Uganda had a copyright law in place long before the formation of the WTO.

The 2006 Copyright Act was largely implemented in order to comply with the copyright provisions in TRIPs.

3.1.3.3 'WIPO Internet Treaties' – WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)

Uganda is not party to either WCT or WPPT and is therefore not bound by the two instruments.

3.1.3.4 Copyright Flexibilities

a. Duration of protection

The 2006 Copyright Act affords copyright protection for 50 years after the lifetime of the author in most cases, with the term of protection being 50 years after first publication in the remaining cases.¹⁹

With reference to audiovisual work, sound recordings and broadcasts, the economic rights of the author are protected until the expiration of 50 years from the date of making the work or from the date the work is made available to the public with the consent of the author.²⁰

In the case of photographic works and computer programmes, the economic rights of the author are protected for 50 years from the date of making the programme available to the public.²¹

In general, the duration of copyright term in Uganda keeps to the minimum requirements laid out in Article 12 of TRIPs.

¹⁹Section 13 of the Copyright and Neighbouring Rights Act 19 of 2006.

²⁰Section 13(5).

²¹Section 13(6).

b. Provisions for teaching and learning

There are no provisions expressly related to teaching and education in the 2006 Copyright Act, yet there are related provisions embodied in the 'fair use' provisions embodied in Section 15 of the Act. In terms of these fair use provisions, it is not an infringement of copyright when a portion of the work is copied and used for teaching purposes, nor is it an infringement when the work is communicated to the public for teaching purposes in schools, colleges and other educational institutions.²²

In Uganda, when relying on fair use for teaching and educational purposes, care has to be taken as to whether the use is a commercial or non-commercial one; the amount and substantiality of the portion of the protected work used; and the effect of the use upon the potential market.²³ Thus, a key question in interpreting fair use in terms of photocopying is the question of what portion of a copyright work can be copied, for non-commercial use, such that the copying would not undermine the commercial market for that work. The Act is, however, silent on distance and e-learning as well as on the number of copies of works or illustrations permitted to be used for the exception of teaching. And the provision on fair use is fairly short, generally making it difficult to predict a priori how the law regulates specific scenarios.

c. Libraries and archives

Libraries and archives are important gateways to accessing knowledge; yet, there are no specific provisions for them under the 2006 Copyright Act – only a brief mention, in the fair use section, of libraries and non-commercial documentation centres. On the positive side, there is no express public lending rights (PLRs) provision under the Act, meaning that there is no provision for libraries to pay fees to rights-holders for the practice of lending out copyright works. In publicly accessible libraries and non-commercial documentation centres, copying of works, and limits on the number of copies permitted, depend on Section 15 of the Act that outlines fair use.

It must be noted here that in practice, regardless of the legal provisions in place, it is commonly possible to copy and utilise substantial portions of works from both publicly accessible libraries and commercial libraries. Thus, though the law seeks to limit what may be photocopied, its enforceability is very limited in Uganda. This aids access to knowledge generally, but in the long run, creators of such works might become more strident about enforcing their rights, thus curtailing access.

d. Disabled persons

There are no detailed provisions for people with a disability under the 2006 Copyright Act. However, there is provision for persons with disabilities under Section 15 of the Act in terms of fair use, where reference is made to Braille and sign language.²⁴ For print-disabled people, under Uganda's fair use section, there is no need to apply for a licence to adapt into Braille, neither is it mandatory to remunerate rights-holders for this adaptation. Further, there are no restrictions on the sharing of such material and export or import of such material.

²²Section 15 of the Copyright and Neighbouring Rights Act 19 of 2006.

²³Section 15(20).

²⁴Section 15(1)(k) states that work transcribed into Braille or sign language for the 'educational purpose of persons with disabilities' will be considered fair use.

e. Freedom of expression

Article 29 of the 1995 Uganda Constitution guarantees the right of every person to freedom of speech and expression, and extends this freedom to the press and other media. However, in Uganda, copyrighted works in the media can only be reviewed and excerpted subject to Section 15 of the 2006 Copyright Act on fair use. Meanwhile, political speeches and public lectures can be construed to be ‘public benefit works’ and hence are not protected by copyright, as per Section 15(1)(h)(i)(iii) of the 2006 Copyright Act.

f. ‘Fair use’

Section 15(1) of the 2006 Copyright Act expressly states that fair use of a protected work (whether in its original language or in translation) shall not be an infringement of the copyright and shall not require the consent of the rights-holder. Fair use exempts the user from seeking consent of the rights-holder for use of a work in the course of research, study, criticism and review, or news reporting, or professional advice and judicial proceedings.

The 2006 Copyright Act does not specify what portion of a work can be used under fair use, but 15(2) provides for consideration of the amount and substantiality of the work for such use to fall in the realm of fair use. The discretion therefore lies with the courts in interpreting such a provision. Although there is no express provision for protection of digital works, it can be argued that Section 15 applies equally to digital and non-digital works.

Under the 1964 Copyright Act, ‘fair dealing’ was specified, not fair use. The old fair dealing provision was concise and stringent; the new fair use provision is arguably more liberal and flexible. The shift from fair dealing to fair use potentially creates a window to widen access, provided that the courts (in case of a dispute) interpret fair use expansively rather than narrowly.

g. Quotation

Quotations are considered under fair use in Section 15(1)(b) of the Act. The only restrictions with regard to quotations that exist are that the quotation must be compatible with fair practice; the extent of the quotation should not exceed what is justified for the purpose of the work in which the quotation is used; and lastly, that acknowledgement be given to the work from which the quotation is made.

h. Government works and legal proceedings

The law exempts ‘public benefit works’ from copyright protection.²⁵ Public benefit works include government works and legal proceedings. Specifically Section 7 of the 2006 Copyright Act provides that enactments, decrees, orders or decisions by a court of law, as well as reports made by committees or commissions of inquiry appointed by government, are not subject to copyright protection. The works specifically provided for in Section 7 are usually publicly accessible. However, when a person creates work under the direction or control of the government, unless otherwise agreed, the copyright in respect of that work vests with the government.²⁶

²⁵Section 7 of the Copyright and Neighbouring Rights Act 19 of 2006.

²⁶Section 8(2).

Court judgments and Hansard (transcripts of Parliamentary proceedings) are freely available online. But government works which are printed by the Uganda Publishing and Printing Corporation (UPPC), such as the *National Gazette*, must be purchased for a fee. The government view is that printed materials cost money to produce and thus cannot be free, as compared to the online materials which can be free. Similarly, printed materials from the Uganda Law Reform Commission (ULRC) and Uganda National Examination Board (UNEB) are also available only on a fee-paying basis. Regardless, even the free online government material is relatively inaccessible in Uganda, due to poor ICT infrastructure and low levels of Internet penetration.

i. Parallel importation

Section 46 of the 2006 Copyright Act lays out how and whether parallel importation of copyrighted works may constitute an infringement of copyright. Section 47 of the Act describes the related offences and penalties in more detail. As per Section 46 (1):

Infringement of copyright or neighbouring right occurs where, without a valid transfer, licence, assignment or other authorisation under this Act a person deals with any work or performance contrary to the permitted free use and in particular where that person does or causes or permits another person to – (a) reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his or her own private use;...

j. Compulsory and statutory licensing

The 2006 Copyright Act does not explicitly provide for compulsory licensing. However, Section 17 provides for the granting of a non-exclusive licence (statutory licence) to translate and make reproductions of a work into English, Kiswahili or any other Ugandan language. The translation provisions enacted into the Act mirror those in the Appendix to the Berne Convention (as previously noted), and loosely follow the same principles and safeguards as expressed there.²⁷

Sections 18(2) and (3) list the grounds under which a licence shall not be issued under Section 17 and describe the circumstances under which a licence issued under Section 17 shall terminate.

k. Digital rights management and technological protection measures

The 2006 Copyright Act makes no mention of digital rights management (DRM) or technological protection measures (TPMs). To date, these concepts are alien to Uganda's copyright regime. This may be explained by the fact that Uganda has not yet ratified the WCT and WPPT which make it mandatory to legislate for digital technology, to recognise TPMs, and to have sanctions against circumvention of TPMs.

l. Miscellaneous

Traditional knowledge and folklore are provided for in the 2006 Copyright Act by being included as works eligible for copyright protection in Section 5(1)(j). However, the Act does not elaborate on how this knowledge and these resources are to be protected. Presumably the regulations under preparation will further clarify how traditional knowledge and folklore will be protected.

Section 2 of the Act defines 'public performance' quite specifically, as an operation by which sounds or images are transmitted to the public by broadcast, performance or other means. In other words, it excludes the domestic setting or a private function.

The author of a work can relinquish his or her rights through assignment of licence or transfer, as provided for by Section 14 of the Act.²⁸

²⁷Sections 17(2) and (3) of the Copyright and Neighbouring Rights Act 19 of 2006.

²⁸Section 14.

3.2 Other Laws and Policies Connected to Copyright

3.2.1 The 1995 Constitution of the Republic of Uganda

The Constitution is the supreme law of the land and all the other laws including the copyright law therefore require adherence to general constitutional principles. The Constitution guarantees several rights and freedoms that have significance for copyright, either by enhancing access to knowledge or by concretising the protection afforded to rights-holders. Some of the relevant provisions for the purpose of this study include the following:

- Article 30 that guarantees the right to education;
- Article 26 on the right to property;
- Article 41 on the right of access to information; and
- Article 29 that guarantees freedom of expression.

3.2.2 The Access to Information Act 6 of 2005

Pursuant to Article 41 of the Constitution, Parliament enacted the Access to Information Act to make meaningful the right to have access to information. The Act mandates accessibility of information to the public, prescribes forms of access, and puts in place procedures, institutions and mechanisms to enable access to information. Linked to the copyright law is the provision in the Information Act that seeks to protect/build the public domain by providing for the public's right of access to information when such information is in possession of the state or any state agencies, and so long as such information does not prejudice national security or sovereignty of the state or the right of privacy of any other person.²⁹

On the other hand, the Act also protects the rights of copyright-holders. For instance, the Act states that when information is requested in a particular form, access in that form may be denied if it amounts to an infringement of copyright.³⁰ Similarly, when a record is made available to any person under the Act, that person may make copies of or transcribe the record using his or her equipment unless doing so amounts to an infringement of copyright. That is in cases where the copyright is not owned by the state or the public body.³¹

3.2.3 Copyright and Neighbouring Rights Regulations of 2008 (Draft)

The 2008 Regulations to the 2006 Copyright Act, once implemented, will primarily serve to provide a process for the registration of copyright and neighbouring rights, or any assignment, licensing or transfer of the copyright or neighbouring rights. It is important to note that registration is optional under Section 43 of the 2006 Copyright Act, since the Act uses the term 'may,' thus implying that registration is not mandatory. However, under Section 43(6) of the Act it is mandated that the Registrar shall issue a certificate as proof of registration. This certificate acts as an incentive to register copyright and neighbouring rights, since such a certificate can be taken as conclusive proof of ownership of the right. At the time of writing this report, the draft Regulations were not publicly available.

²⁹Section 5 of the Access to Information Act 6 of 2005.

³⁰Section 20(3).

³¹Section 20(8)(c).

3.3 Judicial and Administrative Decisions

The law in Uganda obliges parties to a dispute to settle the matter out of court to the extent possible, and only after such efforts have failed may a hearing be fixed to try the matter in court. This has led to many copyright cases being settled out of court and in such cases there is no record of the negotiations and terms of settlement. The law responsible in this case is the Arbitration and Conciliation Act.³²

Uganda's copyright legal environment is still in development. Indeed, litigation in relation to cases involving copyright infringement has until recently been very limited. But the trend now is that the Commercial Court – a branch of the High Court of Uganda – is registering several intellectual property cases, a majority of which are still ongoing.

There are three cases, in particular, from the Commercial Court which are relevant to understanding the general copyright environment; of these, it is only the third (the *John Murray case*, as described further below) that has direct bearing on access to learning materials.

3.3.1 *Attorney-General v Sanyu Television*³³

The Attorney-General, as a representative of Uganda Television, a public television station, filed a suit against the respondent/defendant for infringement of broadcasting rights. It was the plaintiff/applicant's case that by means of an agreement with the Union of National Radio and Television Organisations of Africa (URTNA), and Canal France International (CFI), Uganda Television was granted exclusive rights to broadcast live coverage of the 1998 World Cup football series, and that the respondent had infringed these rights by screening the matches on its television station, Sanyu TV. The applicant made the present application for an injunction restraining the respondent from further broadcasting the matches pending disposal of the main suit. Counsel for the respondent challenged the application arguing that the suit and application had been made against the wrong party, which was a non-legal entity.

Main Issue: Whether Sanyu infringed Uganda Television's broadcasting rights.

Held: (James Ogoola, J.)

- (i) The respondent infringed the plaintiff's copyright. The respondent admitted having infringed the copyright and apologised for the act.
- (ii) Application allowed and an injunction granted.

³²Arbitration and Conciliation Act of 2000 (Cap. 4).

³³High Court Civil Suit No. 614 of 1998, reported in *Uganda Commercial Law Reports 1997-2001*(2005), 184-190 at 185, Blackhall Publishing, Dublin, Ireland.

3.3.2 *Uganda Performing Rights Society Limited v Fred Mukubira*³⁴

The applicant, Uganda Performing Rights Society, as the sole assignee of copyright in the musical works of various local artists in Uganda, filed a suit against the respondent for alleged copyright infringement. The applicant sought a permanent injunction and damages for infringement. Further to the suit, the applicant applied ex parte for a temporary injunction to restrain the respondent from further infringement of copyright. The applicant also prayed for Anton Piller orders against the respondent to search the respondent's premises and seize all material relating to the copyright infringement. The application was filed by notice of motion under Section 33, 38(1) and 39(2) of the Judicature Act (Cap. 13); Sections 22 and 98 of the Civil Procedure Act (Cap. 71); and Order 48 rules 1 and 3 of the Civil Procedure Rules.

The main issues at the hearing of the application were whether the Court had authority to grant the temporary injunction, whether the applicant satisfied the conditions for grant of an Anton Piller order, and whether the suit was properly brought under Section 13 of the 1964 Copyright Act (Cap. 215).

An Anton Piller is a court order which gives the applicant/aggrieved party the right to search premises of the offending/infringing party and seize evidence without prior warning. This order is normally used to prevent the destruction of incriminating evidence in the hands of the offending or infringing party, particularly in cases of alleged copyright infringement. In other jurisdictions such as English common law and that of Wales, its equivalent is called a search order.

Held: (Geoffrey Kiryabwire, J.)

- (i) Sec. 13 of the Copyright Act provides a remedy of direct statutory prohibitory injunction in cases of copyright infringement.
- (ii) In the instant case, where the application was made ex parte for a temporary injunction, pending disposal of the main suit based on Sections 38 and 39(2) of the Judicature Act alone, the Court was not clothed with sufficient legal authority to grant the order.
- (iii) The three conditions for grant of Anton Piller orders are that: there must be an extremely strong prima facie case, the potential or actual damage to the applicant must be serious, and there must be clear evidence that the respondents have in their possession incriminating materials which they may destroy before any application inter parties can be made.
- (iv) The Application satisfied all the conditions for grant of the Anton Piller order. Anton Piller order granted. Application granted.

3.3.3 *John Murray (Publishers) Ltd and Others v George William Senkindu and Another*³⁵

The plaintiffs brought an action against the defendants for infringement of copyright in the book 'Introduction to Biology' alleging, among other things, that the first defendant was selling counterfeit copies of the book in his Kampala Newstyles bookshop, thus causing a decline in the plaintiff's sales.

³⁴Misc. Application 818 of 2003 (Arising from High Court Civil Suit 842 of 2003), reported in *Uganda Commercial Law Reports 2002-2004* (2005), 476-483 at 476, Zebra Graphics Ltd, Kampala, Uganda.

³⁵HCCS 1018 of 1997 (unreported).

Ntabgoba found that the books sold by the first defendant were counterfeit. Relying on Section 2(a) of the 1964 Copyright Act, it was found that the plaintiffs had copyright protection in Uganda and the judge went to great length to explain the significance of the Universal Copyright Convention of 1952 (as amended). Further it was stated that under Section 11(1) of the Copyright Act, the plaintiff did not have to prove 'knowledge' of the infringement by the defendant, and hence, under that Section, strict liability was imposed on the defendant with no burden on the plaintiff to prove the knowledge of infringement on the part of the defendant.

Accordingly, the plaintiffs were awarded UGX10,710,000 (Uganda shillings) in lieu of actual loss incurred by the plaintiffs, considering that each of the 765 copies sold had been sold at UGX14,000. In addition, they were awarded UGX6,000,000 as further damages. Finally, the court granted the plaintiffs a permanent injunction restraining the defendant, his/her agents or servants from committing further infringements against the plaintiff's copyright in the 'Introduction to Biology – Third Tropical Edition.'

The *John Murray* case is very important in that it dealt with the issue of access to learning materials. In this case, from 1997, the award of UGX10,710,000 in general damages could be seen as perhaps too high. Indeed, the book outlet, Kampala Newstyles, which was at the time the biggest bookshop in Uganda, collapsed as a result of this case.

3.4 Summary of Doctrinal Analysis

The 1964 Copyright Act was repealed by the 2006 Copyright Act, which was only introduced in Parliament as a Private Member's Bill; it was therefore not, officially at least, a Cabinet or government decision to amend the copyright law. Whilst the new law addresses many requirements of major international instruments to which Uganda is a signatory, a lot can be done to provide for better protection of legal access to learning materials. As it stands, the Act carries a fair use clause which is not defined clearly enough in terms of stipulating what is permissible and what is not. Uganda's fair use doctrine as a main access mechanism is an improvement from the restrictive fair dealing in the 1964 Act. Nevertheless, fair use is not reliable enough given the vague nature of the four conditions required to find fairness. The ideal situation for a poor country like Uganda would be a list of possible exceptions and limitations for education and research-related copying not constrained by definition of fairness.

Also, considering the increasing use of digital technologies and the Internet, it can be argued there is a constraining lack of provisions in the 2006 Copyright Act to regulate the digital medium. However, at the same time the absence of provisions for DRM in general, and TPMs specifically, provides a window for accessing electronic resources, under fair use, for example, by those at tertiary institutions with good access to ICTs.

The current law also carries no provisions to enable distance learning.

Meanwhile, from the available case law, it would seem that judges are tending to enforce copyright law in a maximal way. In particular, the *John Murray* case could be seen as having serious implications for access to learning materials. Not only did a key node in the book distribution chain go down with the case, the damages awarded sent a strong message to infringers and non-infringers alike.

This doctrinal analysis suggests that Uganda's copyright environment can indeed be improved with regard to access to learning materials. That said, we recognise that Uganda's law is a slight improvement from the 1964 Act and certainly less cumbersome to access given its lack of anti-circumvention provisions, which are increasingly integral to national laws in a number of African countries.

4. Qualitative Analysis

4.1 Secondary Literature

There is a small but growing body of literature on copyright in the Ugandan context. However, literature on the intersection of copyright and access to knowledge is thin. We attribute that to two factors. Firstly, there is a lack of a copyright culture, given the short history of the copyright system in Uganda. Secondly, there is a general lack of awareness of copyright both in the academy as well as in Ugandan society at large.

The literature reviewed here represents the work of a handful of scholars and commentators and is a product of recent years. For the most part, the literature examines the general copyright environment through the lenses of the music and book sectors. Both sectors are of particular importance in Uganda's copyright environment.

A study of the Ugandan copyright law was undertaken in 2001 (eventually published in 2004) by an independent scholar commissioned by the Uganda Law Reform Commission (ULRC). It examined the possible reasons to reform the 1964 Act. According to this study, the move to review the Copyright Act of 1964 was in line with the Constitution and international laws that require regular reviews of national legislation. Among the major reasons for the review revealed by the study was the desire to create access to materials created by educators.³⁶ Another compelling justification for reform was the changing technological scenario in Uganda and elsewhere in the world. The area of works that were to be protected by copyright had to be widened to cover other areas in light of international technological developments.³⁷ As the ULRC report puts it:

For long, Ugandans whose livelihoods depend on copyright laws have wanted a law with both criminal and civil remedies, with minimal interference with the rights that are granted to legitimate users. Ugandan and foreign writers, artists, performers, etc. continue to be robbed, contrary to article 26 of the Constitution of the Republic of Uganda... Further, the reform of the copyright law is geared towards bringing Uganda's legislation in line with her international obligations, including the Trade Related Aspects of Intellectual Property (TRIPs) Agreement. The proposed law also seeks to address the problem of counterfeit and pirated products that are an obstacle to the growth of legitimate businesses that strive to develop a reputation for themselves by ensuring that their products are of the highest quality. The law seeks to strengthen the enforcement mechanisms and provide adequate remedies to the rights-holders for infringement of their copyrights.

Further, the proposed copyrights and neighbouring rights law takes cognisance of the... East African Community Council of Ministers' decision which requires Uganda to expeditiously update its laws on copyrights and to strengthen the institutional framework to ensure that artists benefit from their work.

On the other hand, the traditional problem of balancing private property rights of individuals and the social need for access to information as a precondition for development and social, cultural, technological and industrial transformation must not be forgotten. There is need to protect the right of access to information, especially to ensure that any reform of copyright laws would permit use of 'freely available' material, including that on the Internet, without infringing copyright.³⁸

³⁶Uganda Law Reform Commission (ULRC) *A study report on copyright and neighbouring rights law* (2004) ULRC Publication 9, at 18-19.

³⁷Ibid at 14.

³⁸Ibid at xviii-xix.

In drafting the proposed law, the ULRC was acting on the hypothesis that the proposed law would be used in accordance with Article 26 of the Constitution, which guarantees protection from deprivation of property while also furthering development goals such as those in the Poverty Eradication Action Plan (PEAP), access to information and legal recognition of traditional and group rights.³⁹

It is therefore important to note that the rights to benefit from one's intellectual property, such as copyright and related rights, are taken to be part of the general right to property as seen in Article 26 of the Constitution, since the Constitution does not specifically provide for the protection of intellectual property in Uganda. Unfortunately, findings and recommendations of this ULRC study were not fully integrated into the Private Member's Bill that led to the 2006 Act.

A study by Edgar Tabaro, which is, essentially, a critique of the first draft Bill released in 2004 of the copyright law amendments, is useful in analysing the form of the eventual 2006 Copyright Act.⁴⁰ Tabaro critically analyses the Copyright and Neighbouring Rights Bill 16 of 2004, a Bill introduced by a Private Member (the Hon. Jacob Oulanyah, Member of Parliament for Omoro County, Gulu District, Uganda). The Bill sought to repeal the outdated 1964 Copyright Act, which was a replica of the United Kingdom Copyright Act of 1957, which had since undergone reform on numerous occasions in the United Kingdom. Tabaro analyses the concepts and principles adopted by the Bill in the context of Uganda's national development objectives and policy instruments. He argues that the Bill principally sought to update the 1964 Copyright Act and bring it to international standards at the expense of domestic objectives. According to Tabaro, comprehensive copyright legislation should be based on a more meaningful purpose in the national development process. His primary objective is to show that copyright should primarily serve the instrumentalist function of satisfying social goals and values, namely the creation, spread and sharing of knowledge, and further, that it should facilitate public use and access.

Joseph Kakooza's study is an illuminating one on copyright law in Uganda prior to the enactment of the 2006 Copyright Act.⁴¹ The study was aimed at analysing the state of copyright law in Uganda as of 2000, from the perspectives of what ought to be and what was. One unique weakness with the copyright law at the time, as Kakooza identifies it, was the failure of the law to protect moral rights of the author. Studies like Kakooza's greatly influenced the amendment of copyright law in Uganda to eventually provide for the protection of moral rights for both authors and performers as seen in Sections 10 and 23 of the 2006 Copyright Act.

³⁹Ibid at xx.

⁴⁰Edgar Tabaro 'Copyright law reform in Uganda: addressing international standards at the expense of domestic objectives' (2005) ACODE Policy Briefing Paper.

⁴¹Joseph Kakooza 'Note on the "is" and the "ought" of the Law of copyright in Uganda' (2001) 112 *Makerere Law Journal*.

Ronald Kakungulu-Mayambala's study,⁴² *The impact of new technologies on the protection, exercise and enforcement of copyrights and related rights*, was conducted in late 2006 with an international copyright setting in mind, unlike previous studies that were confined to Uganda alone. It focuses on rights-holders, users and publishers, and takes note of the world's changing technologies and also the growing problem of piracy. New technologies, he concludes, present a great challenge to rights-holders, as digital technology permits the storage, transmission, manipulation of and access to an author's work in ways unforeseen. With new technologies, infringement of copyright is made easy and the usurping of the exclusive rights held by rights-holders is also made easy. He identified a core area of conflict between the rights-holders and copyright users:

Intellectual property is based on the fundamental principle of balance – the balance between the interests and needs of the public and those of creators. This extrapolates to a balance between consumers versus innovators; public versus proprietary rights; *socialism versus capitalism*. When the legal systems that underpin intellectual property no longer maintain the correct balance or, even worse, neglect it, then respect for those systems and intellectual property erodes ... we should address this substitution of the foundations and principles of copyright by rules imposed by mere technical facts ... failing to give an adequate and balanced answer to it would be stealing copyright from the public and giving it to the industry. The public is becoming more and more contemptuous of copyright. This leads to an increasing tendency to infringe copyright...⁴³

A 1998 study by Amir Bakidde-Mubiru examines Uganda's growing problem of copyright infringement.⁴⁴ The purpose of the study is to establish how Uganda is dealing with the problem of copyright infringement, while noting that this is a widespread African problem. He notes that following the introduction of copyright law in Uganda, many changes have taken place in environments regulated by the law. He argues that Uganda's legal infrastructure is insufficient to address the growing problem of copyright infringement. He observes that the problem is not simply the lack of legal infrastructure, but also a lack of awareness of the law by both users and owners of copyrighted materials.⁴⁵

Turning to the book sector, Bakidde-Mubiru finds that illegal photocopying is rampant, as is music copying. He also takes note of ICTs used in sharing copyrighted resources. Academic institutions such as Makerere University allow extensive access to email and the Internet. Sometimes, Makerere responds to requests for e-resources via email. Using email, a student or professor can request a copy of an e-resource, which is then delivered to him or her. The author argues that infringement is possible in such a technologically-enabled environment. Infringement is also common in newspapers where some lift other papers' articles without acknowledgement or attribution. Bakidde-Mubiru observes that it is common for drama groups in Uganda to stage plays that belong to other groups, attributing this to the weaknesses in the law.

⁴²R Kakungulu-Mayambala *The impact of new technologies on the protection, exercise and enforcement of copyrights and related rights* (2006) Unpublished LL.M. dissertation, Lund University.

⁴³Ibid at 11-12.

⁴⁴Amir Bakidde-Mubiru *Copyright infringement, defenses and remedies: the case of Uganda* (1998) Unpublished dissertation for the award of a Bachelor of Laws, Makerere University.

A 2000 study by Moses Kamoga-Matovu focuses on counteracting copyright and patent infringement in Uganda.⁴⁶ Kamoga-Matovu critically analyses Uganda's legal system on intellectual property rights, specifically copyright and patents. Writing about the 1964 Copyright Act, Kamoga-Matovu asserts that Uganda's weak IPR enforcement mechanism was likely to dissuade foreign direct investment since most investors want an environment with a strong IP regime. Kamoga-Matovu fears that without legal reform, development in general will be affected. His primary objective is to establish the importance of copyright and patent law in Uganda. He wants to examine the framework for technology transfer in the context of copyright and its suitability to Uganda's development. In his study, Kamoga-Matovu finds glaring evidence of copyright violation.

A 1998 study by Anthony Wabwire Musana addresses copyright and development.⁴⁷ The study is aimed at 'assessing the utility of intellectual property protection in LDCs and Uganda in particular, as a means of stimulating the development process.'⁴⁸ He finds that:

- The consideration of IP 'assets' in the trade arena has engendered an impression of confrontation between developed and developing countries.
- Uganda's copyright regime is inconsistent with the needs and aspirations of the people and the economy, and the incentive to create is lost at the hands of lax protection systems.⁴⁹

Against that background, Musana argues that for Uganda to attain 'meaningful development,' it has to adopt an 'efficient, relevant and stricter IP protection system'.⁵⁰ He carries out qualitative interviews with individuals across the spectrum of the creative arts in Uganda but relies primarily on a critical legal analysis of Uganda's copyright law vis-à-vis protection of local content.

Musana's approach to education and copyright is one that focuses on creative individuals whose resources are used in the education process. He barely addresses the notion of education as a creative process that largely depends on the extent to which the individuals involved freely access and utilise others' works. Musana argues that the education system can only thrive if locally generated resources are protected in order to attract creative individuals into the development of local resources. That argument is indisputable. Local or indigenous resources are more likely to address local problems. However, over-reliance on protection as the tool for stimulating innovation and creativity is an old-fashioned approach to copyright. Musana also erroneously argues that for individuals in the education system to be creative and motivated, they need a sound legal infrastructure. While we do not dispute that, arguing that legal infrastructure for protection is the only way for individuals to be creative and motivated misrepresents a wide range of reasons why scholars engage in the creative process.

⁴⁶Moses Kamoga-Matovu *Counteracting copyrights and patents infringement in Uganda* (2000), Unpublished dissertation for the award of a Bachelor of Laws, Makerere University.

⁴⁷Anthony Wabwire Musana *Intellectual property: the case for copyright law in the economic development process in Uganda* (1998). Unpublished dissertation for the award of a Bachelor of Laws, Makerere University.

⁴⁸Ibid at 6.

⁴⁹Ibid at 10.

⁵⁰Ibid at 11.

Musana specifically argues that:

The incentive to human creativity is undoubtedly lost, if protection is not accorded. To achieve rapid social and economic change, law enforcement is of necessity. Copyright provides the incentive for the creation of more information, the expression of ideas, and in this regard, local knowledge creation. The advantage is that knowledge so created takes into account the local socioeconomic conditions.⁵¹

Musana claims that 'in recent times, due to the vigorous efforts of publishers such as Femrite Publishers [a local organisation promoting female writers], there has been a slight incentive to Ugandan authors to publish locally.'⁵² He further notes that 'the legal regime remains the most villainous constraint to authors' incentive to publish their works.'⁵³

Agatha Ainebyona's study⁵⁴ on the *Impact of the copyright law on the publishing industry in Uganda: a case study of various publishing houses in Uganda* is a relatively recent report. It focuses on a defined target audience: that of publishers. The study takes note of Uganda's growing publishing industry and also decries the growing problem of piracy. The latter is attributed to a number of factors including lack of awareness of the law, weaknesses in the law, low literacy rates, and other factors. She further identifies the foreign nature of copyright as another dimension of the copyright problem in Uganda. She argues that:

It must be observed, therefore, that this law was ill-conceived from the onset because it did not account [for] Ugandan circumstances. It was not fitting in time and space.⁵⁵

Quoting Henry Chakava, a prominent East African publisher,⁵⁶ she notes that copyright has been used by publishers in the North (multinational publishing entities) to deter their counterparts in Africa from meeting local demand. Consequently, African publishers remain heavily dependant on foreign publishers with copyright acting as a stick.

Against that background, Ainebyona's study sought to examine copyright in the publishing industry and its relationship to the growth of the publishing market. She gathered evidence from publishers and authors in the Ugandan book sector through a simple quantitative survey that featured questions on awareness of the law, availability of information on copyright, copyright-related problems and utilisation or implementation of the law. Her study revealed that the vast majority of publishers are aware of the law, although many have never read the fine print. Consequently, ignorance of the law is as high amongst publishers as it is in the general public. Publishers also observed that there is a lack of government machinery in charge of copyright. On the ever-present issue of piracy, publishers overwhelmingly agreed that piracy was an enigma seriously undercutting their profitability. Ironically, some respondents argued that piracy provided low income groups with affordable textbooks which would otherwise be priced out of range. This affirms the intuitive assertion that piracy fills a gap left by the formal industries (publishing in this case).

⁵¹Ibid at 159.

⁵²Ibid at 161.

⁵³Ibid at 161-2.

⁵⁴Agatha Ainebyona *The impact of the copyright law on the publishing industry in Uganda: a case study of various publishing houses in Uganda* (2006). Unpublished dissertation for the award of a Bachelor of Library and Information Science, Makerere University.

⁵⁵Ibid at 5.

⁵⁶Ibid.

A review of copyright law in Uganda by Ruth Nassolo⁵⁷ is not significantly different from the study by Ainebyona. Nassolo cites the lack of effective administration of the law, weak enforcement and lack of awareness amongst stakeholders (primarily referring to rights-holders) as a recipe for a problematic copyright environment. The study is a survey of different stakeholders in the copyright environment. She also carries out a focus group discussion but does not mention who participated. The target audience that her study is aimed at is a combination of policymakers and rights-holders, with the latter dominating.

Elizabeth Lumu's study⁵⁸ of piracy takes a slightly different approach; she frames her arguments around the *John Murray* case, which remains the most significant Ugandan copyright case involving learning materials. Based on the facts of the case, she frames the piracy problem as stemming not just from the users' quest for cheap copies but also implicates bookshops as their accomplices. Apparently, the *John Murray* case was not the first and only high-profile piracy case. Another one that was settled out of court involved Monitor Publications (owners of the second biggest newspaper in Uganda) and Yellow Pages, printers of a telephone directory. Both published a telephone directory but Yellow Pages accused Monitor of copying its directory. Details of the case are scarce but suffice to note that it marked yet another turn in the piracy debate. Lumu's study is partly a critical analysis of the wider implications of the *John Murray* case (and the Monitor-Yellow Pages case) as well as a survey of publishers and book distributors on issues relating to piracy that played out in the *John Murray* case.

In light of the analysis of the case Lumu notes that piracy is driven in part by the fact that school textbooks for primary and secondary school dominate the book market. The market for textbooks is ever growing, outstripping all other publishing segments. Additionally, foreign textbooks dominate the curriculum due to the British influence. Today, their dominant position remains but also creates a favourable environment for piracy, since the pirates do not feel the presence of the owner.⁵⁹

In the survey part of her study, Lumu interviews stakeholders (publishers, booksellers) about awareness, the impact of piracy, the availability of copyright information, challenges and problems faced by publishers, and possible remedies. The responses were largely predictable. A majority were aware of the law. And piracy and illiteracy were their main problems.

Lumu notes that 'information hungry students, therefore, have no choice but to reproduce any material that will be of use to them for their studies. In any case there is nothing illegal about it.'⁶⁰

⁵⁷Ruth Nassolo *A review of copyright law in Uganda* (2001) Unpublished dissertation for the award of a Bachelor of Library and Information Science, Makerere University.

⁵⁸Elizabeth Lumu *The impact of piracy on Uganda's publishing industry: a case study of Kampala New Styles Bookshop Ltd versus John Murray* (1999) Unpublished dissertation for the award of a Master of Science in Information Science, Makerere University.

⁵⁹The only presence for most is a local agency, mostly book distributors (bookshops), some unreliable as the *John Murray* case revealed.

⁶⁰Ibid.

Lastly, Makerere University's Research and Intellectual Property Management (ipm) Policy was reviewed in the context of relevant literature. Of the more than 20 universities in Uganda, it is only Makerere University – the biggest and oldest public university in the country and even the region – that has an Intellectual Property Management Policy at the time of this study.⁶¹ This policy is relatively new, having been passed in March 2008. The aim of this policy is to stimulate and support innovative thinking among students and staff, and to enable ownership and efficient management of intellectual assets and innovations produced at Makerere University. In addition, implementation of the IPM Policy is designed to increase potential income from research activity.⁶² The policy also provides for ways of sharing the benefits that accrue from intellectual property generated within. The Makerere University IPM Policy is a response to the call by the Inter-University Council for East Africa (IUCEA), which recommended that universities and research institutions in Eastern Africa should develop institutional policies and build capacity to manage IP. The IUCEA argues that without an institutional IP policy, and the capacity required to implement such policies, it is impossible to manage IP, regardless of the sufficiency of existing national IP laws.⁶³

4.2 Impact Assessment Interviews

4.2.1 Introduction

The impact assessment interviews were conducted to deepen our understanding of the copyright environment in Uganda. As envisioned by the *ACA2K Methodology guide*,⁶⁴ impact assessment interviews would reveal the intended and actual consequences of the copyright law in the study countries. This qualitative analysis (composed of the secondary literature review just outlined and the impact assessment interviews outlined below) is meant to supplement the doctrinal analysis in the previous section. Thus, the doctrinal and the practical aspects of the analysis are inextricably linked.

4.2.2 Participants

Qualitative interviews were conducted with judges, IP/copyright lawyers, a musician, a librarian who deals with digital material, a representative of publishers, and a few college students. The *ACA2K Methodology guide* identified five categories from which to draw interviewees:⁶⁵ government department(s); educational communities and users; copyright-holders; intermediaries; and administrators, enforcement agencies or professionals.

⁶¹The policy was approved by the University Council – the top governing body of the University – at its 112th meeting held on Thursday 13 March 2008.

⁶²See Regulation 2.0 of the policy.

⁶³For a more detailed discussion of this topic see the East African Regional Programme and Research Network for Biotechnology, Biosafety and Biotechnology Policy Development – BIO-EARN, Policy Brief 1, of January. Available at www.bio-earn.org [Accessed 25 November 2008].

⁶⁴*ACA2K Methodology guide* (2008). Available at http://www.aca2k.org/attachments/083_ACA2K%20Methodology%20Guide-April%202008.pdf [Accessed 30 October 2008].

⁶⁵*Ibid* at 25.

The largest number of interviews, four, were conducted with judges in the administrators, enforcement agencies or professionals category. The choice of judges as interviewees underscored the importance of the judicial system in Uganda's copyright environment. The few copyright-related cases in Uganda were handled by at least one of the judges interviewed, making their input invaluable to the understanding of the current thinking of the Commercial Court on a wide range of copyright and access issues.

In an environment where copyright remains relatively unknown, the judges represent a significant body of knowledge of copyright in Uganda. One of the judges specialises in copyright in the digital environment including copyright on the Internet and technological protection measures (TPMs). Another interviewee, a retired judge, has worked extensively with the World Intellectual Property Organisation (WIPO) and related international and regional organisations.

Two interviews were conducted with copyright/intellectual property lawyers – one in the administration, enforcement and professional category and another in the government category. One of these lawyers has represented a number of parties in copyright cases. He also doubles as a faculty member at Makerere University, teaching and researching in intellectual property. The second lawyer was instrumental in the drafting of the Bill leading to the 2006 Copyright Act. He worked with the former Member of Parliament who tabled the Private Member's Bill. The interview with the second lawyer helped us understand the rationale behind the amendment of the 1964 Act. To the extent that this lawyer worked closely with the drafter of the 2004 Copyright Bill, the interview was categorised under the government category.

Also in the enforcement category, an informal interview was conducted with an official from the Uganda Registration Services Bureau, an agency in the Ministry of Justice and Constitutional Affairs. The Bureau houses the Intellectual Property desk, which administers a wide range of intellectual property matters including copyright, trademark and patent registrations.

For the educational and user communities, interviews were conducted with students (one group interview and one individual interview), a digital librarian and a university official responsible for research. The group interview with students was conducted with three female students focusing primarily on the nexus of copyright, access and gender. The second interview was conducted with a male law student specialising in intellectual property rights. As mentioned earlier, for a long time IP was not a preferred area of specialisation at law schools and in legal practice in Uganda. For this interview, we were interested not just in his expertise but the motivation for specialising in IP. Given his extensive knowledge of copyright as well as student status, his informed perspectives on the impact of copyright on access to learning materials were instructive on what is happening in universities.

The rights-holders group was represented by an official of the National Book Trust of Uganda (NABOTU). NABOTU represents different actors in the book sector including writers, publishers, distributors and printers. NABOTU was well situated to examine copyright in the publishing industry, the focus of our interview. The second rights-holder interview was conducted with a prominent local musician and award-winning songwriter. This musician is one of the most vocal on copyright matters. He was part of the core group of musicians that lobbied government to amend the 1964 Act, leading to the 2006 Act.

For each interview, the research team systematically went through the interview guide designed for the user category, selecting relevant questions and where possible dropping those considered irrelevant to the interviewee or the institution she or he represented. Judges, for instance, were primarily asked about cases they handled and their assessment of the copyright environment in general. Student interviews focused on copyright and access to learning materials in their learning environments. Often questions were selected to fit the time allotted by the interviewee. On a few occasions the research teams were allowed more interview time than originally assigned.

4.2.3 Interview Findings

4.2.3.1 Government

The one formal interview in this category was conducted with a lawyer who was associated with the amendment of the 1964 Copyright Act. The bulk of findings in this category represent our interaction with this individual. We also share anecdotes from the informal interview with the official from the Uganda Registration Services Bureau.

a. Rationale for reform

This thematic category is probably unique to the lawyer because he took part in the efforts to amend the old law. As mentioned earlier, the lawyer interviewed is not formally part of the government now, but worked closely with the Member of Parliament who authored the Private Member's Bill (Copyright Bill 2004) that led to the 2006 Copyright Act. When asked why the Member of Parliament and the lawyer embarked on the review of the 1964 Copyright Act, the participant cited major inadequacies and weaknesses in the old Act as the reason. He further noted that:

It [the 1964 Act] had been overtaken by modern developments, which rendered the law hapless. The need to eradicate this problem became more urgent with new technologies. This coupled with the fact that the Ministry of Justice was taking an inordinately long time to reform the law, challenged us to work hand in hand with Hon. Oulanyah to cause a reformation of the law.

Notably absent in the revision of the old Act were significant outside influences, such as WIPO and WTO's technical assistance, normally associated with legal reforms in poor countries like Uganda. While there was a need to respond to international and regional obligations highlighted earlier, the review process was largely seen as driven by local artists, notably musicians. As noted earlier, there was tremendous pressure from local groups, especially artists, discontented with the 1964 Copyright Act. Asked whether access to learning materials was of particular concern, the lawyer said that they did not look at specifics but approached the law in general. (The provisions of the 2004 Bill and eventual 2006 Act show that clearly learning materials were but a marginal factor in consideration of amendments to the old Act.)

In this interview, we learnt about the slowness of the government through the Ministry of Justice and Constitutional Affairs to initiate the amendment of the 1964 Copyright Act. While the lawyer did not elaborate as to what caused the delay, one can attribute it to institutional inadequacies. The Ministry of Justice, and the Uganda Law Reform Commission (ULRC), had commissioned a study of the copyright environment early in 2001.⁶⁶ However, technical and administrative glitches delayed the study and issuing of its report until 2004.

b. Access

Access is one of the thematic categories that cuts across all interviewees. Here, and unless otherwise defined, access refers to the impact of copyright on access to learning materials. Other dimensions to access covered elsewhere include access to ICTs and gender-related access issues.

⁶⁶Uganda Law Reform Commission (ULRC) *A study report on copyright and neighbouring rights law* (2004) ULRC Publication 9.

When asked about the copyright environment in relation to access to learning materials, the lawyer's response was blunt. He considered the relationship 'dysfunctional' because users do not understand copyright, and this has led to unabated copying with no regard to the law. He characterised the situation as dire because the practice of copying entire texts 'has come to be accepted and it is widely in use especially in our higher institutions of learning.' This has led to a situation where 'there are more pirated learning materials copies in the market as opposed to the actual copies.' While the relaxed copyright environment seems to favour access to learning materials, in the long-term, it is likely to be detrimental to access. Against that background, this participant preferred that the copyright environment be stricter. Relying on the vaguely defined fair use doctrine, the participant argued that at the doctrinal level, the current law provides for the balance between 'protecting copyright and access to learning material.' This balance, the lawyer argued, would eventually lead to a profitable publishing industry, enticing more authors to write, and eventually to a thriving learning materials environment. That is, if current practices do not undermine the balance provided for in the law.

c. Unintended consequences

The makers of the current law devoted a significant amount of time to collective rights management. It comes as no surprise that collective societies are emerging as key actors in the copyright environment. It also is no surprise that the lawyer took note of these organisations as presenting major problems to the current law. Indeed he characterised some of them as unintended consequences noting that: 'the more established collecting societies are suppressing upcoming societies.' While this is not unique to Uganda, it goes to show the challenges of introducing certain actors in an environment where there is critical lack of institutional infrastructure to manage new actors. Regulating collectives remains a major challenge in the new copyright environment ushered in by the 2006 Act. Notwithstanding the shortfalls already identified in the current law, the participant insisted that the law should be 'implemented in totality,' that is, no amendment is necessary at the moment.

Probably another unintended consequence of the new Act was bringing copyright matters into the ambit of the Uganda Registration Services Bureau, under the Ministry of Justice and Constitutional Affairs. The informal interview with the Uganda Registration Services Bureau representative revealed that copyright matters are competing with other IP areas, many of which are more lucrative to the agency. According to the official, the poorly staffed desk finds itself attending to registration of trademark and patent more than copyright because these two areas bring in more revenue. Personnel are generally not keen to handle copyright, which is the reason why the Bureau has not carried out sufficient awareness efforts beyond the musicians and artists. The official was of the view that the Act should have created a separate entity to handle copyright matters. A copyright board or commission is needed in the fast-growing Ugandan environment. Due to the workload with other IP areas, the best the desk has done is draft Copyright Regulations. These have taken time to finalise due to shortage of manpower and, as expected, competing interests.

d. Gender

The lawyer interviewed did not feel there was a gender dimension to copyright. Copyright law is perceived by the participant as gender neutral. The lawyer suggested that there is insufficient evidence beyond anecdotes to suggest a gender bias.

4.2.3.2 Educational and User Community

The educational category was represented by interviews with students, a librarian who deals with digital material and a university official in charge of research (the Deputy Director of the Graduate School for Research at Makerere University). While the three interviews were all categorised as user interviews, there were slight differences in the focus of the interviews in this category. Students shared their perspectives on availability and affordability of learning materials. The female students specifically explored the gender dimensions to access. The librarian helped us understand the challenges faced by library services, occasioned by copyright and other factors. He specifically addressed copyright and digital resources, gender issues and photocopying in libraries. And finally, the university official concentrated on the university policy on research and intellectual property rights management. A few themes cutting across this category include: awareness, access and photocopying. Other themes that emerged in one or two categories included: institutional policy, innovation, enforcement, and rationale for reform.

a. Awareness

Interviewees stated that a significant section of the Ugandan educational population is ignorant of the law. Several participants in this and other categories identified lack of awareness in the rampant infringement. They strongly encouraged awareness campaigns as a mechanism for curbing infringement. For instance, Makerere's new Policy on Research and Intellectual Property Rights Management calls for sensitisation of the university community in intellectual property matters, including copyright. Makerere's initial efforts targeted Deans and Directors across campus with the hope that the message would filter through to students and other members of the university community. The librarian was cautious, pointing to lack of manpower to undertake such awareness and enforcement activities. One can even question the extent to which poorly resourced institutions can promote awareness in addition to their core business of teaching and research.

b. Access

Participants viewed access differently. Students decried the worsening access situations due to rising costs of essential learning materials in specialised areas. The same students pointed to the increased ease of access to electronic resources. The digital or online resources remain restricted to campus environments, making it difficult for off-campus students to access resources available to on-campus students. The librarian noted that:

We have restricted our work in geographical ranges, but for some sources we have passwords that must be entered before the work can be accessed. In terms of textbooks and other articles in the library, only students with valid IDs are allowed in. As for the work online, we restrict it geographically in that only students in the campus can access the work. Long distance students cannot access the work unless they come to campus.

The librarian informed us that these restrictions were contractual requirements from the database providers. The irony of this situation is more apparent when viewed in terms of the offline or print resources. Generally, there is more laxity with print resources as far as copyright is concerned. Copy-shops have sprung up, often creating businesses around campus. Some are run by the university library itself. Asked whether copyright impacted access to learning materials, a student participant mentioned that it did but only to the extent that the resources are local, notably dissertations and theses. Copying of dissertations and theses is generally prohibited or restricted (to a few pages per copying). Yet other resources are available for copying of even entire documents. The student participant attributed that to a relaxed copyright environment, where the law is not followed to the letter. According to him, in countries where the law is followed, copyright indeed impacts on access to learning materials. In the Ugandan situation the law is either unknown or not followed. According to the student the situation:

is totally a different scenario [in Uganda]...there is no one who will outrightly refuse it [copying] as a wrong thing. I mean the photocopist will receive me with wide arms, I am bringing him business, no one can limit access to learning materials.

According to the librarian, while the library has instituted restrictions on copying of dissertations, theses and entire books, students find a way of copying sections of the resource until they have the entire text. The library has no way of monitoring who is copying what and when. The library, while interested in operating within the law, often strategically places notices reading 'photocopying machines to partly aid in fair use incidents of reasonable coping.' However, 'sometimes the commercial motive [of photocopy operators] overrides fair use in copyright law.' A student participant attributed the situation to lack of awareness noting that people were generally unaware of the law because they do not access official documents (like the *Gazette*) and national laws. Associating such activities with lack of awareness, while true, is a simplistic correlation that does not fully explain the situation. For instance, the student participant had earlier noted the prohibitive cost of law textbooks that rendered photocopying the only option for a student with modest means. He noted that:

Unlike in the United States where almost every student can afford, it is not the case here, for example to access the textbook of Wade on Administrative Law, if you go to one of the prominent bookshop like Aristoc the cheapest it is running at in most bookshops is UGX1 30 000 [Uganda shillings] [USD75]. Tell me if you do not find that out of way for a student?

Certainly poor students struggling to pay tuition fees are unlikely to be able to afford such textbooks.

An important dimension to access addressed by both the librarian and the university official is the access to internally generated scholarship by faculty and staff at universities. At the moment, significant barriers hinder access to such scholarship. For institutions like Makerere, the biggest public institution currently implementing access initiatives such as institutional repositories, copyright presents legal barriers to such initiatives. The librarian noted that 'most owners of copyright are not willing to release their work. They believe copyright belongs to them and hence restricting public access impacts on Makerere access environment. Our repository has a problem.' Along these lines, we probed the director of research about open access to scholarly resources, internal or external. This is particularly important in light of the limited access to internally generated research output. He noted that open access, while debated by faculty, had little support due to the negative perceptions of open access resources as not peer-reviewed. The official was keen to learn more about open access given the problems currently caused by the traditional print avenues. Most of the print journals delay faculty publication and consequently promotions.

ICTs were cited as important in the accessing of content. The librarian informed us that ICTs had made access and use of electronic resources 'less cumbersome', and that attracted a significant student user base. More and more resources, observed the librarian, are used by the 'click' of the button. However, he did not indicate the proportion of resources used electronically. According to the librarian, electronic resources, just like the print resources, are affected by copyright to the extent that ICTs make it easier to 'effectively regulate this access to the work.' The library can effectively restrict access fulfilling contractual obligations with database providers. That notwithstanding, ICTs have had a positive impact on access for they have extended library services to those that prefer to access outside the physical walls of the library.

A key consideration for institutions highlighted by the university official is the likelihood of losing intellectual property that might be disseminated through research findings before institutions have had opportunities to formally register it with relevant government authorities. Although universities would wish to disseminate research findings, they want to do so with care 'because of our weaknesses like abuse of intellectual property by the public.' The institution is considering making publications with potential IP information available only after five years, to avoid being cheated of IP. The merits and demerits of that argument are beyond the scope of this study, but suffice to note that a five-year delay has significant impact on access to Makerere's internal research output. It certainly impacts on the university's stature internationally because Makerere's scholarship is not available sufficiently early.

c. Gender

The female students were asked to address the gender dimension. The three were all law students at different stages of their programmes. Save for the rising costs of photocopying, the three female students did not think copyright affected them simply because they are females. Other connections were more anecdotal than realistically connected to copyright. For instance, these students noted that parts of the university campus were insecure, making it difficult for them to use the library at night. And library regulations on copyright make it difficult for them to copy in the library. Such situations work against one gender more than the other. Other anecdotal evidence came from the male student and librarian. Both admitted that females were less likely to engage in infringing activities than were males. Using the music sectors to explain his point, the male student noted that:

looking at the music industry it is very rare that ladies will go out of their way to burn a CD and then download music on it or movies. Actually to confirm this just look at the owners, or people, who work in movie libraries, they are all men. That points to the fact that men are the most violators of copyright law as compared to women.

In all cases, the participants made it a point to qualify their statements and assessments on gender as being unscientific with no firm basis besides casual observations and perceptions.

d. Other themes

Other themes that emerged from interviews in this category include: institutional policy, innovation, enforcement, and rationale for reform. At the time of the interview with the university official, Makerere had just adopted a policy on research and IPR management. The policy leaned heavily on patenting Makerere's research output with potential industrial application. The motives and justification for Makerere's policy were summed up by the university official:

Of course for long there had been a lot of members of staff particularly concerned by matters of intellectual property and this affected innovation. Some people had innovated certain things and felt that they were not protected and we believe that they were one of the obstacles to people to innovate, because you innovate and your are not assisted. If there is a protection mechanism, it encourages innovation like for music, drama and many other things.

Innovation and rewarding innovation were the overriding goals of the Makerere policy. It also takes note of the dwindling research funds. Tapping and commercialising the University's IP output will generate income to support and further faculty research, and motivate staff to do more research. However, Makerere's policy has implications for access. According to the university official, the policy calls for delaying by up to five years the dissemination of findings until formal registration with government is complete. Students interviewed were unaware of the policy, which is understandable because it was relatively new. Students did not feel it was the university's responsibility to enforce copyright. Similar sentiments were shared by the librarian as far as the library was concerned and the university in general. Participants emphasised awareness as a factor institutions should encourage to avoid litigation and liability. One student pointed out that the photocopying going on unabated was likely to attract a lawsuit because the university was seen as 'aiding abuse of copyright.'

4.2.3.3 Administrators, Enforcement Agencies or Professionals

This category was represented by the judicial system, specifically the Commercial Court. Notwithstanding the fact that the judiciary is separate from the executive branch, which is the policymaking arm of government, interviewing judges gave us the opportunity to understand how laws are interpreted or implemented and also the likely influence of the judicial system in future reforms through case law. In that regard, the position of the judges who handle copyright cases in Uganda is paramount. Also in this category was an IP lawyer responsible for a number of clients in the few copyright-related cases previously discussed. The lawyer worked as a part-time IP lecturer at Makerere Law School. Interviews with both the judges and the lawyer tackled a wide range of issues, but for most part built on the analysis of cases presented in the doctrinal section of the report. Other issues covered included: access, awareness, ICTs and gender.

a. Cases

In this section, we attempt not to discuss cases already analysed in the doctrinal analysis but to focus on the rationale for the judgments and a few out-of-court settlements that were not discussed in the previous section. One such case mentioned by a senior judge involved a local publishing company and some writers (primary school teachers). The publisher hired local writers to write books for primary schools. The publisher used the materials for a tender to supply primary school textbooks under a textbook project of the Ministry of Education and Sports. The project involved the review of titles approved as appropriate for the curriculum; schools across the country were required to purchase these titles, with funding from the government. Publishers that manage to get their books on the curriculum stand to gain a lot given the huge market across the country. The writers objected insisting that mass circulation of their work under the project was not part of the agreement with the publisher. They accused the publisher of infringing on their copyright. The judge believed that as part of the out-of-court settlement, the publisher made additional payments for the books.

First, as already mentioned, this is one of the few cases that involves learning materials. Second, as an out-of-court settlement, the facts are difficult to find. Lastly, the book industry in Uganda is growing fast into a multi-million dollar industry prompting writers to demand reasonable remuneration or reverting to the courts, as in the above-mentioned case. According to the judge, rights-owners, especially those in literary areas, only take action if they feel economic loss. According to him, this explains the seemingly rampant infringement in Uganda such as photocopying, yet only a handful of cases have appeared in courts, and some out-of-court settlements. As an example, he cited a hypothetical instance where a publisher produces 1 000 copies of a text. If the rights holder recoups production fees and makes a profit on the sale of the 1 000 copies, that individual or entity is unlikely to oppose infringing activities because they do not impact the market or undercut profits. That said, in reference to photocopying, another judge pointed out that 'there is still a problem of copyright in light of learning materials.' According to him, there were lots of actionable activities that did not make it to court due to ignorance, or the burden of prosecuting infringing individuals that falls squarely on the rights-owner. He anticipated that copyright-related problems affecting learning would increase as people become aware of the law and the book sector becomes more profitable.

When judges commented on learning materials, invariably the perception was that photocopying of protected materials was greatly out of control. Often calling it piracy, the judges suggested that something had to be done at all levels. They suggested remedial actions ranging from raising awareness to strict interpretation of the law. One judge was of the view that infringing activities involving learning materials need not receive special treatment simply because they are learning materials. One judge spoke about a case he handled relating to textbooks, the *John Murray* case. The judge awarded heavy damages in order to send out a clear signal to all sectors that copyright was alive in Uganda. Another judge argued that 'unless we [the courts] stopped it [piracy], there was a risk of wider pirating, yes it needed to be put to an end.'

For education, judgments like this can have more far-reaching effects than originally intended. For instance, students can assume that any copying is prohibited, yet fair use allows a certain degree of copying for private or research purposes. Some of the consequences are already known, including the case of the Biology textbook (*John Murray case*).⁶⁷ The local bookshop involved in the copying of the text went out of business soon after the high damages were awarded by the judge.

On related matters, the IP lawyer was of the view that photocopying, especially in education settings, is rampant not because students and faculty cannot afford the materials, but because purchasing personal copies is not a priority. Many students prefer spending money on luxury items or entertainment rather than academic resources. He feared that someone will likely bring a lawsuit against one of the institutions if only to send a signal that current photocopying practices and levels in that environment are not permissible.

b. Other themes

Other issues discussed by the judges included access, awareness, ICT and gender. All four are interrelated, hence the reason for presenting them together, and they were addressed in the context of the cases handled by the judges and/or the letter of the law. One judge noted that the poor reporting systems meant that access to cases and the law makes its difficult for law students, practicing lawyers, etc, to keep up with rulings on relevant cases. The judge noted that the:

judge will issue a judgement that is in digital form and hence automatically recorded. However, I am not sure the announcement of judgements is done before it is sent for typing by the secretary. It is better that it is announced before it goes into circulation of the public.

Obviously if the legal fraternity has problems accessing such crucial information, it is likely to be even more problematic for the rest of the population.

One judge spoke of the tension caused by technology on access and protection of content. He noted that the computer 'can let loose all the copyrighted work, hence creating a big loss to the authors of the work.' Another judge expressed same concern for ICTs noting that the 'Internet is like an international notice board.' This judge feared that the Internet was killing aspects of copyright. The same judge expressed concerns about technological protection measures. He noted that the technology that permits access has been used to limit access.

According to another judge, the main problem at the moment is a lack of awareness. He observed that small businesses using different types of technologies for copying music and literary works always plead ignorance. He genuinely believed that some individuals are indeed unaware of the law. Even many artists whose works had been copied for many years were unaware of the law. Interestingly this judge added that the traditional customary systems indicate that 'in our traditional law we had no copyright, everything was shared. Awareness has to be brought about by law. I think the awareness is minimal but that is our society.'

⁶⁷HCCS 1018 of 1997 (unreported).

Another dimension of access probed in these interviews was the gender dimension. We specifically wanted to know whether judges and the lawyer encountered more cases involving one gender group than another. We also wanted to know whether participants felt the law was gender-biased in any way. On the latter, the unanimous response was that copyright law is not gender-biased. One judge was very surprised by the insertion of gender issues into a copyright discussion, and said he had never given thought to the idea of the impact of copyright on gender groups. On further probing, he offered what he clearly indicated to be anecdotes. He mentioned that there were more women plaintiffs in copyright cases he has handled than men and of course more men as alleged offenders. He cited two cases, one of a female musician (Chance Nalubega) whose songs had been misappropriated by a recording studio and another (ongoing) where a female fine artist (Annabel Kiruta) brought a lawsuit against a male artist for appropriation of her designs (the judge showed us exhibits, carefully secured in his cabinet). The last case had been going for one and a half years, demonstrating the problem of lengthy copyright-related litigations that might disenfranchise poor institutions without resources to fight prolonged legal battles. The judge also noted that men who own copyright, especially in music, were more vigilant than women were. While a few women have brought cases before courts, more men have done so especially in the music sector. That said, this judge dismissed the gender dimension to access to learning materials, arguing that 'I think it is neutral so I do not even expect such a question to ever arise. I don't think copyright affects women or men any special way.'

Another judge concurred with his colleague, suggesting that:

although you cannot deny the fact that men are more vigilant [business minded] in many activities and as a result, therefore, [men] are found common in most violations as well as access to learning materials. Most ladies have exhibited signs of compliance with the law. But all in all, people are equal and the question on gender [in] my opinion shouldn't be an issue.

Consistent with the two judges, the IP lawyer was reluctant to make a case for a gender dimension to copyright. Like the judge, he cited anecdotal evidence that men were more risk-taking than women. Men are more inclined to break the law in order to make money. Most of the cases he has handled involved men. He noted that: 'Even at the selling end of CDs there are more men than women. For instance, at the petrol stations there are always some people selling CDs and I have never seen a woman do that.'

To conclude, for these interviewees, amending the laws was not generally felt to be urgent or necessary, especially not in order to facilitate access. There was a sense that as it stands now, access is well facilitated through the fair use provisions. Moreover evidence of massive photocopying means that access is not a problem at the moment. One area that must be considered in the event of amending the current law is the registration requirement. According to the IP lawyer, that requirement burdens the copyright system.

The judges were of the view that the current law should be tested; otherwise we end up with frequent amendments of no consequence to realities.

4.2.3.4 Copyright-Holders

This category was represented by two individuals. The first participant, a prominent musician and songwriter, had been active in the movement to reform copyright in Uganda that led to the amendment of the 1964 Copyright Act. The second representative was a librarian by training but an official with the National Book Trust of Uganda (NABOTU). Both represent different but related industries. While both sectors are thriving at the moment, music is probably more vibrant than the book sector. Yet the interviews with the two participants could not have produced more stark differences. The musician's assessment of his industry was bleak. On the other hand, the publishing representative's take on the book sector was cautious but positive and optimistic.

The state of Uganda's music industry was assessed by the musician as follows:

Based on research carried out, pirates make UGX280 million [Uganda shillings] per month (USD147 500) on pirated music. Duplication has made music so hard to sell. An empty CD is now selling at only UGX500. With the easy computer access everyone almost owns a computer and it is no doubt that someone can duplicate over a hundred songs in a day. We need discipline to end such behaviour.... Stealing music has become a culture; nobody feels guilty that they are stealing music....What happens here, I mean in Uganda, the only way artists can raise the money is through stage performances. That is why you keep seeing musicians soliciting for cheap popularity in order to keep surviving. If I told you that in my latest album of 'Olunaku Luno' I wasn't paid a penny...believe me because you're getting it from the horse's mouth. I must also note that the CD reproduction is too much, and this obviously promotes poor music. A thief is not sorry that he is a thief but he is only sorry that he has been caught.

What is striking about the above assessment is that it comes from one of the more established, respected and legally aware musicians. The sense of helplessness is also striking. It goes to show the extent of illegal copying of music. This assessment is striking in light of the musician's personal efforts in lobbying for and the passing of the 2006 Act which 'makes it more criminal [to engage in illegal activities].' Two years after the new Act came into existence, the musician described a situation far different from what was anticipated by what was considered a strong and good piece of legislation. The musician felt he had lost out, noting that: 'Music is a cultural way people communicate...[but]...People don't believe they can actually buy a song, putting a price tag on the music was very hard.'

According to the musician, in the music sector, some artists:

encourage the pirates to sell around their music so that they can acquire cheap popularity, all this is done so as to attract fans to their [concerts]. It takes, or will rather take, a lot of training for the artists to appreciate the need to respect copyright law.

The publishers' representative, on the other hand, offered a sober yet access-sensitive assessment. When asked about the copyright environment in relation to access, he blamed monopoly rights as responsible for failing to stem illiteracy and failing to improve the poor reading culture in Uganda:

Most of the reading materials are available under exclusive rights making it impossible for wider distribution of works and my organisation cannot easily achieve its goal of universal reading culture without this. Secondly, the prices of books, especially for secondary schools and general readers, are high. Most students and parents cannot afford these books. The price could be lowered if, say, the IP cost was lowered. NABOTU would like many people to read books but this has not been possible.

As a representative of publishers, it's telling that the NABOTU official finds copyright a stumbling block for wider access and distribution of copyrighted works. It is also interesting that he makes an explicit connection between book prices and intellectual property noting that lowering of IP-related costs will likely lead to people-friendly prices. Of course that connection is more anecdotal than empirical. However, by explaining the hurdles in terms of NABOTU's work, it means that these are based on real organisational experiences rather than personal views. Indeed his additional comments reflect that position in the context of school textbooks:

The exclusivity of rights generally means that each school can only use the books that they are able to buy. Given the high enrolment and the high pupil-to-book ratio, even the state is limited in terms of interventions to reproduce the materials for learners without paying for IP.

It seems appropriate to end our impact assessment interview findings with the NABOTU official's thoughts on the state of learning materials in Uganda. Consistent with studies in the literature reviewed, he observes that textbooks dominate the book industry. He also offers a sober but optimistic view of the sector, unlike the musician:

There has been tremendous growth in this publishing segment following the adoption of policies that facilitate fair competition amongst publishers. One of the policy provisions being that for each subject, government allows... five titles to compete in the schools. Also it is the responsibility of the schools to make selections of textbooks to use in their schools. As a result of the open policies in textbook procurements, there has been a number of new publishers entering and extending their market shares in a market, which traditionally was dominated by multinational publishers.

4.2.4 Summary and Conclusions: Secondary Literature and Impact Assessment Interviews

For the most part, this study and the literature reviewed demonstrated lack of appreciation of the broader functions and purposes of copyright by the Ugandan public, especially access to knowledge, which is an integral part of the copyright system. In the literature reviewed, the lack of understanding and appreciation of copyright was consistently reinforced by the choice of study participants or target audiences. Often the studies reviewed examined copyright issues with a narrow audience of rights-holders like publishers and musicians. Studies conducted prior to the amendment of the 1964 Copyright Act consistently blamed the massive infringements on weaknesses in the old law. Today the blame seems to be shifting to users' ignorance. However, some studies rightly pointed to poverty and people's inability to afford certain learning materials because they are priced out of range.

Enforcement was found to be weak thereby creating an environment that permits access that would otherwise be curtailed by the law.

While the interviews, conducted to investigate the practices, generally confirmed the sentiments expressed in the literature, they also further revealed the motives behind infringing activities. We learnt that students simply could not afford to purchase their own learning materials and, from the publishers' representative, that copyright and raw materials were responsible for the high costs of learning materials in Uganda.

For some interviewees, mostly the judges, IP lawyers and publishers, a move towards further legal exceptions for access will likely worsen an already bad situation. Users generally see the situation differently. The current copyright and access environment remains highly restricted by a myriad of hurdles including the copyright law itself. Most notable is the bad economic situation which renders most students and scholars unable to afford learning materials.

5. Information and Communication Technology (ICT)-Specific Findings

Whilst one of the study research questions raised the role of ICTs in furthering or hindering access in the copyright environments of study countries, in the Ugandan context ICTs were not found to play a significant role as far as copyright and access is concerned. This was attributed to the high cost of digital technologies and resources in environments where poverty is very high. ICTs only play a marginal role in terms of learning materials access. Typically students and faculty find print as the preferred means of access. However, ICTs are increasingly part of the access infrastructure, as evidenced by Uganda's small but thriving ICT industry.

Additionally, ICTs are increasingly used heavily in certain contexts such as the university library of major public institutions like Makerere University. The study revealed that the increasing use of ICTs is slowly shaping copyright discourse. For instance, one participant noted that the recent advances in technology motivated the desire to amend the 1964 Act. It was also noted that database restrictions have been instituted in recognition of the increasing use of ICTs and electronic resources rendering such resources inaccessible to distance education students. Of course these are resources available to their on-campus counterparts.

6. Gender-Specific Findings

A direct link between gender and access to learning materials was difficult to establish, but potentially significant anecdotal evidence emerged. For instance, institutional restrictions on amounts of copying mean that female students who cannot use libraries at night find it difficult to enjoy the same level of access as their male counterparts.

Meanwhile, outside academic or scholarly settings, men seemed to commit more copyright related offences than women, a factor perhaps related to the risk-taking nature of male students.

However, beyond these anecdotes, we were unable to establish concrete evidence to make informed conclusions on the intersection of gender, access to knowledge and copyright. This was after taking significant steps to ensure equitable representation of interviewees and in the Ugandan interviewing team, which had two male and two female members.

7. Conclusions

This study set out to examine three central research questions:

- What is the state of Uganda's copyright environment and the state of access to learning materials within that environment?
- What are the processes, political, legal, social and/or technical, that could positively impact Uganda's copyright environment in terms of access to learning materials?
- What might the country's optimal copyright environment look like?

The study was based on two hypotheses reflecting the hypotheses for other ACA2K studies:

- The copyright environment in Uganda does not allow maximal access to learning materials; and
- The copyright environment in Uganda can be changed to maximise effective access to learning materials.

The study attempted to understand what the law allows, on one hand, and what the practices are, on the other.

Findings from the Ugandan study clearly indicate that Uganda's copyright tradition is fairly recent, leading to an environment where copyright is hardly a concern for most Ugandans, save for a handful of scholars, policymakers, artists, and administrators.

Findings also point to stark contrasts between the law and practice. For a long time the law was considered weak and outdated. Most scholars attributed piracy and the rampant infringements to that weak law. In 2006, however, Uganda repealed the 1964 Copyright Act, paving the way for the 2006 Copyright Act, which moved the country closer to meeting international obligations and standards and included measures aimed at stricter enforcement. However, even under the new law, infringing activities appear to be continuing unabated, much to the consternation of rights-holders.

This study has found that poverty, and the high price of learning materials in both electronic and print forms, are to a large degree responsible for the practices that totally disregard the law. This sentiment was shared by interviewees from the educational and user community (ie, students and the librarian), as well as the publishing rights-holders representative interviewed. Some of the literature reviewed also seemed to suggest that there is sufficient evidence to directly link piracy and other infringing activities to poverty and high prices.

It was also found that infringing practices are not the sole preserve of users. The users have found accomplices in distributors as evidenced by the *John Murray* case and the Lumu study. Increasingly, distributors find a very high demand for reasonably priced learning materials, thereby finding it tempting to work with unscrupulous printers. It is clear that photocopy operators are also doing good business through provision of infringing materials.

Rights-holders interviewed called for more crackdowns on illegal activities, as did the judges who participated in the study. And while the judges showed awareness of the needs of learning environments, they felt the main priority needed to be enforcement – in order to send clear signals that indeed copyright in Uganda is working.

The quest by some stakeholders to show, via stricter enforcement, that copyright is functional, has the potential to undermine some of the current primary modes of learning materials access in the country – because, as has already been pointed out, many of the current access practices are illegal.

In addition to the sharp disparities between the law and practice, we also found important gaps in the law itself which could hinder learning materials access. For instance, the law is silent on access for distance learners. The copyright law must not be seen to discriminate based on the remoteness of the learner from the primary learning site, in order for the law not to be found unconstitutional.⁶⁸

The Copyright Act is also silent on digital technologies, which are critical to access in tertiary environments.

Meanwhile, the vagueness of Uganda's fair use provision creates uncertainty as to how reliable a defence fair use would be for libraries and archives and for teaching and learning purposes.

Thus, this study has confirmed the two hypotheses it tested: The copyright environment in Uganda does not allow maximal access to learning materials; and the copyright environment in Uganda can be changed to maximise effective access to learning materials.

While the current practices in Uganda allow a fair amount of learning materials access, many of the practices are illegal, and thus the copyright environment – as broadly defined in this study to include laws, regulations, policies and practices – remains fragile and unfavourable to access to learning materials.

It is our opinion that there is room in the Ugandan copyright environment, specifically the law, to further access. The law can do more to advance access for certain interest groups, to accommodate distance learning, and to enable use of digital formats for lending and archiving.

Additionally, the fair use provision can be better clarified, particularly for users in the education and research contexts.

⁶⁸This point to be further developed and examined. The question remains as to whether the copyright law being silent on groups such as this one is unconstitutional.

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