

# Chapter 1

## Introduction

*Chris Armstrong, Jeremy de Beer, Dick Kawooya, Achal Prabhala  
and Tobias Schonwetter*

### 1.1 The importance of improving African education systems

Education is integral to development. It is a catalyst for poverty reduction and economic growth, a pillar of public health and community building. Beyond its social and economic utility, education betters people's lives by increasing their scope for individual choice and helping to fulfill human potential. The Universal Declaration of Human Rights states unambiguously, 'Everyone has the right to education'.<sup>1</sup> It is a basic human right.

The statistics about education in Africa at all levels—primary, secondary and tertiary—are alarming.<sup>2</sup> Compared to other regions of the world, fewer African children and young adults are in school. Women are less well educated than men in many African countries. A disproportionate number of African students are forced to go abroad for their studies.

Given their profound importance to national and individual development, education systems in Africa must be improved. An 'education index' provided by the United Nations Development Programme (UNDP) provides a sense of where selected African educational systems stand relative to those of the rest of the world and in the context of human development generally.

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1 Article 26(1). Available at <http://www.un.org/en/documents/udhr/> [Accessed 1 December 2009].

2 See, generally, UNESCO *Education for all global monitoring report 2009* (2009). Available at <http://unesdoc.unesco.org/images/0017/001776/177609e.pdf> [Accessed 1 December 2009]; UNESCO Institute for Statistics *Global education digest 2009: comparing education statistics across the world*. Available at [http://www.uis.unesco.org/template/pdf/ged/2009/GED\\_2009\\_EN.pdf](http://www.uis.unesco.org/template/pdf/ged/2009/GED_2009_EN.pdf) [Accessed 1 December 2009]; UNESCO Institute for Statistics *Trends in tertiary education in Sub-Saharan Africa* (2009). Available at [http://www.uis.unesco.org/template/pdf/ged/2009/Fact\\_Sheet\\_2009\\_SSA.pdf](http://www.uis.unesco.org/template/pdf/ged/2009/Fact_Sheet_2009_SSA.pdf) [Accessed 1 December 2009].

**Table 1: UNDP Human Development Index and Education Rankings**

Country	Human Development Index (out of 177 countries)	Education Ranking (out of 177 countries)
Egypt	123	136
South Africa	129	103
Morocco	130	154
Kenya	147	137
Ghana	152	149
Uganda	157	135
Senegal	166	174
Mozambique	172	169

Source: Analysis of UNDP data for 2007, <http://hdrstats.undp.org/en/indicators/93.html>

Achieving the goal of education for all in Africa and interdependent Millennium Development Goals, requires work to be done on many urgent issues: addressing links between education planning and health provision, supporting equity for girls and women and strengthening anti-poverty commitments are examples.<sup>3</sup> Also among the key challenges, according to the United Nations Educational, Scientific and Cultural Organisation (UNESCO), is increasing textbook supply and quality.<sup>4</sup>

The link between education and the availability of adequate learning materials such as textbooks is undeniable: It is difficult to imagine effective learning independent of learning materials, both inside and outside of classrooms.

Learning materials take many forms. Hard-copy books are still the basis of education systems worldwide and are especially so in Africa. Digital materials are, however, quickly becoming learning tools of choice. As information and communication technologies (ICTs) proliferate, the shift from hard-copy to digital learning materials should accelerate. Technology can have a transformative effect on entire systems of education and on individual teachers and learners within those systems. ICTs are potentially democratising, facilitating provision of education to people and communities that are currently marginalised, whether due to gender, ethnicity, socioeconomic class, remoteness or other factors. They can help to overcome physical infrastructure challenges that pose barriers to the acquisition of learning tools and can open access to knowledge that was previously unobtainable.

3 UNESCO *Education for all global monitoring report 2009* (2009) at 6. Available at <http://unesdoc.unesco.org/images/0017/001776/177609e.pdf> [Accessed 1 December 2009].

4 Ibid.

There is reason to worry, however, that as some barriers to education fall, others may remain, or new barriers may arise. Specifically, it is essential to ensure that legal and policy frameworks are well suited to capitalise on, indeed catalyse, opportunities to improve the future of education in Africa. In this respect, copyright environments—consisting of laws, policies and practices—are one significant determinant of access to learning materials and therefore a key component of education systems as a whole.

## **1.2 Connecting education with perspectives on copyright**

Copyright is relevant to learning materials in several important ways. One school of thought about copyright, the utilitarian perspective, conceives of it as a necessary incentive for authors to invest time, intellectual effort and money into producing works of creative expression, including learning materials, to benefit the public at large. Publishers and other intermediaries that acquire assignments or licences from authors can also exploit copyright protection to support business models that generate financial returns, some of which are retained as profit and some of which are reinvested to support the production of additional works. Put simply, it is arguable that copyright protection itself facilitates the production and distribution of learning materials. Without copyright, so the argument goes, fewer learning materials would exist and those that would exist would be lower quality.

Another important school of thought conceives of copyright as a natural right of authors to control their creative outputs. This point of view captures many people's sense of natural justice and is reflected, for example, in scholarly norms surrounding attribution of credit and prohibitions on plagiarism. This school of thought is unable to adequately justify marketable rights acquired by legal entities such as publishing companies, but its force is nonetheless powerful in the movement to extend the boundaries of copyright protection.

Both utilitarian and natural rights-based conceptions of copyright are relevant to African education systems and, more specifically, the availability of learning materials. That is because on either or both grounds, copyright provides exclusive legal rights over protected works, including reproduction and dissemination rights. As a result, copyright-owners have the right to control how learning materials are produced, disseminated and used. From the perspective of the owners' ability to control such works, copyright is clearly beneficial.

There is, however, a growing movement of national and international policymakers, private sector industry leaders, researchers and members of civil society who view copyright from a different perspective. Their focus is not only on protecting copyright-owners, for the reasons discussed above. They also pay attention to the externalities of copyright systems; specifically copyright's

implications for enabling or restricting access to knowledge. The term 'access to knowledge' or 'A2K' has been used to characterise diverse groups of actors' shared vision for reshaping the contours of existing intellectual property systems.<sup>5</sup>

Framing the interfaces between copyright and education through the lens of access to knowledge does not seek to diminish the value of appropriately designed copyright systems. On the contrary, it recognises copyright's integral role in the production and dissemination of knowledge. But the ultimate objective of copyright cannot be the protection of creative works for its own sake; copyright serves a nobler role in furthering broad public policy objectives, such as the advancement of learning.

It appears that 20th-century intellectual property policymaking, including copyright policymaking, was dominated by the belief that, because some protection is good, more protection is better. This belief manifested itself in a century's worth of international treaties, national laws and local practices that continuously raised levels of copyright protection. Harmonisation was the ostensible justification, but it only occurred in one direction: upwards. The result has been criticised as a one size (extra-large) fits all mode of protection.<sup>6</sup>

The beginning of the 21<sup>st</sup> century foreshadows a new phase in global intellectual property governance, characterised neither by universal expansion nor reduction of standards, but rather by contextual 'calibration'.<sup>7</sup> And systemic calibration is taking place, based on a cognisance of the positive *and* negative implications of intellectual property for broad areas of public policy.

In essence, a newly emerging intellectual property paradigm is based on a richer understanding of the concept of development. While development was once defined as mainly an issue of economic growth, there is now a more nuanced view, a view that emphasises the connections between development and human freedom.<sup>8</sup> A Director-General of the World Intellectual Property Organisation (WIPO) once

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5 A. Kapczynski 'The access to knowledge mobilization and the new politics of intellectual property' (2008) 117 *The Yale Law Journal* 804.

6 J. Boyle 'A manifesto on WIPO and the future of intellectual property' (2004) *Duke Law and Technology Review* 9. Available at <http://www.law.duke.edu/journals/dltr/articles/2004dltr0009.html> [Accessed 1 November 2009].

7 D. Gervais 'TRIPS and Development' in D. Gervais (ed) *Intellectual property, trade and development* (2007) Oxford University Press, Oxford.

8 A. Sen *Development as freedom* (1999) Oxford University Press, New York; and M. Nussbaum *Women and human development: the capabilities approach* (2000) Cambridge University Press, Cambridge.

described intellectual property simply as a ‘power tool for economic growth.’<sup>9</sup> WIPO’s new ‘development agenda’, formally adopted in 2007, is premised on promoting a more holistic appreciation of the real relationships among intellectual property and economic, social, cultural and human development.<sup>10</sup>

### 1.3 Existing research on copyright and education

Underlying the fundamental normative shift in intellectual property discourse that is beginning to occur is a growing body of empirical research. Copyright policies have historically been crafted on the basis of assumptions, rhetoric or political compromise. There is, however, a small but growing body of interrogatory research and evidence-based analysis able to inform policymakers about the probable consequences of their decisions.<sup>11</sup> Researchers’ work in this regard has only just begun.

In the past decade WIPO has commissioned, with increasing frequency, studies describing various aspects of copyright limitations and exceptions.<sup>12</sup> Some of these deal specifically with the education sector and one even deals with the education sector specifically in Africa.

A smaller body of critical, normative scholarship complements the primarily descriptive reports on copyright limitations and exceptions. Research output from Consumers International,<sup>13</sup> for example, includes not only detailed analysis of copyright flexibilities but also recommendations for policy improvements. Chon has properly placed the issue of copyright, education and access to learning materials within a human development framework, which prioritises the development of healthy and literate populations.<sup>14</sup> Other scholars have also broadened their focus

9 K. Idris *Intellectual property: a power tool for economic growth*, (2003) 2ed WIPO, Geneva.

10 J. de Beer ‘Defining the development agenda’ in J. de Beer (ed) *Implementing the World Intellectual Property Organization’s development agenda* (2009) Wilfred Laurier University Press, Waterloo, ON, Centre for International Governance Innovation, and IDRC; WIPO ‘*The forty-five adopted recommendations under the WIPO development agenda*’ (2007) WIPO, Geneva. Available at <http://www.wipo.int/ip-development/en/agenda/recommendations.html> [Accessed 1 November 2009].

11 Ibid, de Beer citing Fink and Maskus 2005 and Commission on Intellectual Property Rights 2002 as examples.

12 See WIPO-commissioned studies on copyright limitations and exceptions in this chapter’s bibliography by K. Crews (2008), J. Fometeu (2009), N. Garnett (2006), V. Nabhan (2009), J.C. Monroy Rodríguez (2009), S. Ricketson (2003), D. Seng (2009), P. Sirinelli (1999), J. Sullivan (2007) and R. Xalabarder (2009).

13 Consumers International Asia Pacific *Copyright and access to knowledge: policy recommendations on flexibilities in copyright laws* (2006) Consumers International, Kuala Lumpur. Available at [http://www.consumersinternational.org/Shared\\_ASP\\_Files/UploadedFiles/C50257F3-A4A3-4C41-86D9-74CABA4CBCB1\\_COPYRIGHTFinal16.02.06.pdf](http://www.consumersinternational.org/Shared_ASP_Files/UploadedFiles/C50257F3-A4A3-4C41-86D9-74CABA4CBCB1_COPYRIGHTFinal16.02.06.pdf) [Accessed 1 November 2009].

14 M. Chon ‘Intellectual property from below: copyright and capability for education’ (2007) 40 *UC Davis Law Review* 803. Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=971294](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=971294) [Accessed 1 November 2009].

beyond copyright limitations and exceptions, looking at the legal and practical implications of copyright systems as a whole.<sup>15</sup>

The literature that exists in this field demonstrates the need for and value of further empirical research. Conducting such research is an integral part of implementing the recommendations for WIPO's development agenda.<sup>16</sup> It is also the means to building broader research capacity in the area of intellectual property, knowledge governance and development. In that context, Canada's International Development Research Centre (IDRC) partnered with the Shuttleworth Foundation, based in South Africa, to support an ambitious research project designed to objectively investigate the relationships between copyright, education and access to learning materials: the African Copyright and Access to Knowledge project, or ACA2K. For IDRC, ACA2K was to build on more than a decade of supporting policy research and research network development in the area of ICT and access in Africa. ACA2K and several other research projects represented recognition that basic ICT infrastructure and policy frameworks, though inadequate, were available in most African countries. And the Shuttleworth Foundation generally supports initiatives that deepen understanding of the appropriate design of intellectual property systems.

#### 1.4 The ACA2K research project

Moving from conception to launch of the project took nearly 18 months of work, carried out during 2006 and 2007. Initially the vision for the project was to conduct a baseline study aimed at understanding the copyright legal frameworks in Africa with a focus on South Africa. However, the demand for and opportunity to conduct, more comprehensive research in more African countries, to build modestly upon research that had already been done analysing copyright and education elsewhere in the world (especially the Asia-Pacific region), became clear. The project evolved into a pan-continental, comparative analysis of not only copyright legal doctrines but also real-world practices. Designing a suitable research methodology and establishing dispersed but networked teams of researchers were, consequently, major challenges to overcome.<sup>17</sup>

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15 A. Rens, A. Prabhala and D. Kawooya *Intellectual Property, Education and Access to Knowledge in Southern Africa* (2006) TRALAC, UNCTAD and ICTSD. Available at <http://www.iprsonline.org/unctadictsd/docs/06%2005%2031%20tralac%20amended-pdf.pdf> [Accessed 1 November 2009].

16 J. de Beer *supra* note 10; WIPO *supra* note 10.

17 The authors acknowledge Andrew Rens of the Shuttleworth Foundation and Khaled Fourati of the IDRC for their work on the conceptual development of the project.

Network nodes were first established with teams of researchers based in five countries: Egypt, Ghana, Senegal, South Africa and Uganda. The number of country research nodes eventually grew to eight, including Morocco, Kenya and Mozambique. The study countries represent Africa's geographic diversity, as well as its economic, linguistic, religious, cultural and legal differences. The project encompasses some of Africa's most advanced economies, like South Africa, Morocco, Egypt and Kenya, as well as some of its least developed, such as Senegal and Mozambique. There are former colonies of and therefore copyright laws based on systems from, England (Egypt, Ghana, Kenya, South Africa and Uganda), France (Egypt, Morocco and Senegal), Spain (parts of Morocco) and Portugal (Mozambique). The legal systems in the study countries reflect common law and civil law traditions and also the Sharia in some cases. Dominant languages in study countries include a wide variety of indigenous languages as well as English, French, Portuguese and Arabic.

Building a research network to execute the project was possible because of the calibre of the individuals involved. Network researchers come from diverse backgrounds: full-time academics, librarians, graduate students, practising lawyers, consultants, civil servants, judges and parliamentarians. Almost all of the more than 30 people participating are from or based in Africa. The LINK Centre (Learning Information Networking Knowledge Centre) at the Graduate School of Public and Development Management (P&DM), University of the Witwatersrand, Johannesburg, has served as the hub of network management and administration.

Most of the previous scholarly outputs addressing copyright and education are framed exclusively from a legal perspective, such as the aforementioned commissioned reports on copyright exceptions and limitations. ACA2K research goes beyond this body of work by also investigating actual practices pertaining to copyright 'on the ground'. To gather that kind of empirical evidence, researchers adopted methodologies borrowed from non-legal social sciences and humanities, such as impact assessment interviews and focus groups.

But before explaining *how* the research was conducted, it is worthwhile explaining in more detail *why* it was conducted.

## **1.5 Research objectives**

The starting point for the project was a long-term vision for copyright regimes in African education systems. Researchers imagined a copyright environment throughout the continent that maximises access to the knowledge contained in learning materials. The mission, therefore, was to create a network of African researchers empowered to assess copyright's impact on access to learning materials and to use the evidence generated to enable copyright stakeholders in Africa to contribute to copyright policymaking.

A series of concrete objectives that would contribute to achieving the project's vision were established. These included:

- building and networking the research capacity of African researchers to investigate copyright environments and access to learning materials (across all formats) within and across countries;
- developing methodological best practices around the relationship between copyright environments and access to learning materials;
- increasing the amount of published scholarship, such as technical reports and peer-reviewed publications, addressing this topic;
- raising awareness of the interface between copyright and access to learning materials and supporting copyright reform processes in relation to access to learning materials and access to knowledge in Africa; and
- building capacity for copyright policy engagement regarding the impact of copyright on scholarly and research environments in universities and related institutions of higher learning.

The project's objectives demonstrate that the intention was not to conduct abstract or theoretical research into copyright. The ACA2K project was, from the outset, geared towards practical, applied research. All project activities were conducted with a specific purpose in mind: to provide empirical evidence that could contribute positively towards copyright reform processes throughout the continent and internationally. The focus on capacity-building recognises that this project is merely the beginning of a long-term engagement.

## **1.6 Research methods, project design, monitoring**

Implementing an ambitious, multinational and multi-disciplinary research project in a relatively understudied area required the use of a strong methodological framework. A custom-designed set of methodologies, therefore, was constructed using tools and systems that the IDRC and other organisations have been working with for several decades.

### **1.6.1 *The three research methods***

The research itself relied on three inter-related techniques: legal doctrinal review, qualitative data gathering and comparative analysis. Underpinning these techniques were a set of research questions to be investigated and hypotheses to be tested. Some of the key research questions are listed in Box 1.

**Box 1: Key ACA2K research questions**

- To what extent does copyright facilitate access to knowledge in the study countries?
- What is the state of study countries' copyright environments and access to learning materials within those environments?
- What exceptions, limitations or other legal means for learning and research are included in study countries' copyright laws?
- How are the relevant stakeholders in study countries using and interpreting exceptions, limitations or other legal means to increase access to learning materials?
- Is there any case law in the context of copyright and learning?
- Who are the key copyright stakeholder groups in study countries and how do they affect (or get affected by) the copyright environment?
- What are the actual experiences of stakeholders in terms of accessing learning materials?
- What is the copyright-related role of information communication technologies (ICTs) in promoting or hindering access? Which materials are affected and how?
- Are there gender dynamics in the interpretation or application of copyright in study countries and if so, how do the gendered aspects of copyright affect access to learning materials?
- What political, legal, social or technical processes could positively affect study countries' copyright environments in terms of access to learning materials?
- What might study countries' optimal copyright environments look like?

The project's two main hypotheses were that 1) study countries' copyright environments do not currently maximise access to the knowledge contained in learning materials and 2) that improvements can be made to the countries' copyright environments in order to increase access. Research methods were designed to respond to the research questions and test the hypotheses using the empirical data collected.

The first of the three research methods, a legal/doctrinal review of copyright law in each of the eight study countries, was at the heart of the research project. The state of the law in any particular jurisdiction is determined by a combination of legislative rules and their judicial or quasi-judicial application. Consequently, the first element of the research was to conduct a review of relevant statutes and decisions and interpreting/applying them in each study country. Copyright laws were of primary relevance to this enquiry but other laws, or even constitutional principles, were also relevant in many countries to the issue of access to learning materials. To guide reviews in each country, an illustrative checklist of legal questions worth considering was adapted from an earlier study prepared for the Commonwealth of Learning (CoL).<sup>18</sup>

Teams of researchers in each study country examined and reported on a variety of aspects of national laws. In addition to basic information, such as the titles and

18 A. Prabhala and T. Schonwetter *Commonwealth of Learning copyright audit* (2006) Commonwealth of Learning (CoL), Vancouver. Available at <http://www.col.org/SiteCollectionDocuments/COLCopyrightAudit.pdf> [Accessed 1 November 2009].

dates of relevant statutes, researchers situated national laws within the international copyright context of various treaties and agreements. Researchers investigated the criteria for obtaining copyright; the nature, scope and duration of protection; and exceptions and limitations of various sorts. Given the nature of the research topic, copyright exceptions and limitations were particularly important to gauge. Researchers examined national laws for 'fair dealing' or 'fair use' clauses generally, as well as for specific provisions pertaining to teachers, learners, researchers, libraries/archives and persons with perceptual or other disabilities. Non-copyright laws were considered where relevant to the issue of access to learning materials. Researchers also located, catalogued and reported on relevant cases interpreted or applying the statutory provisions.

However, laws do not operate in a vacuum. Understanding what copyright law permits or prohibits *in theory* does not shed much light on what actually happens *in practice*. Investigating copyright's real-world application is especially important in the African context, where anecdotal evidence surveyed prior to commencing the project supported the intuition that there is a tremendous gap between copyright law and practice. The most innovative and arguably most important contribution of the ACA2K project was to utilise a robust research method to gather empirical evidence of copyright's pragmatic effects. This was the project's second research method: qualitative impact assessment interviews with stakeholders, supported by a literature review.

Empirical research into the practical effects of copyright law has seldom been done. One reason for the lacuna may be that such research is difficult, time-consuming and expensive to conduct. Finding financial and human resources to implement the project were manageable challenges thanks to the generous financial support from IDRC and the Shuttleworth Foundation and extensive time commitments from the entire research team.

The third and final research method chosen by the project was a comparative review, through which the results of the eight sets of country research could be brought together and compared and contrasted and learned from.

To familiarise the research teams with a draft set of research methods that were new to many, a multi-day workshop was held at the outset of the project in January 2008 at the LINK Centre, University of Witwatersrand, Johannesburg. The January 2008 methodology workshop consolidated the three research methods and introduced network members to the 'outcome mapping' (OM) technique chosen for the ACA2K project's design and monitoring.

The OM technique focuses a project's efforts on making and monitoring contributions to behavioural change among individuals and institutions that the project comes into contact with. Thus, one of the first steps for researchers in early 2008 at the methodology workshop was identifying stakeholders ('boundary

partners' in the OM lexicon) who were able to affect copyright and access to learning materials at the local, national or international level. Research teams in each study country selected various key boundary partners to be the focus of their research, dissemination and policy engagement work. Also, the boundary partners of the network as a whole were documented by the project management. By tentatively identifying in early 2008 who the boundary partners were for country teams, for the network as a whole and for the project management, ACA2K members were both designing the project (figuring out who to interview for the research and who to reach with the research results) and at the same time developing the monitoring framework (these same boundary partners would be the people/institutions whose behaviour could be later documented to gauge the success of the project in achieving its intended outcomes).

At national level, the boundary partner selections varied from country to country, but most research teams decided to engage with representatives of:

- government departments responsible for copyright law/policymaking;
- government departments responsible for education/arts and culture;
- administrative or enforcement agencies and professionals;
- authors, copyright-owners, collecting societies and industry associations;
- educators, including administrators, teachers and librarians;
- students and researchers; and
- intermediaries such as content distributors or telecommunications providers.

Generally, most constituencies concerned about copyright and access to learning materials could be classified within one of three broad stakeholder groups: 1) policymaking/government/enforcement entities, 2) educational communities and 3) rights-holders. During the research phase of the project, from mid-2008 to early 2009, each national research team supplemented its doctrinal analysis with qualitative 'impact assessment interviews' with members of each of these three boundary partner groupings. Some research teams concentrated engagement with multiple representatives from one category of stakeholders; all research teams engaged with at least one representative of each category. In some cases, discussions took place in focus groups, involving several interviewees simultaneously, to discuss practical issues related to copyright and access to learning materials.

A broad investigation into copyright and access to learning materials through all levels of a country's education system risked becoming conceptually unfocused, logistically unmanageable and practically ineffective. So, while research teams were free to consider all aspects of their country's education system if it was deemed necessary to do so, emphasis throughout the project was placed on tertiary

education. There were three main justifications for this focus. First, studying the tertiary education sector allowed investigation of not only classroom learning but also advanced scholarly research. Second, tertiary education is primarily obtained in urban settings and in contexts where non-copyright barriers (such as the lack of physical infrastructure or extreme poverty) will typically be lower. Third, anecdotal evidence available prior to the commencement of the project pointed to increasing support for access to learning materials and education in general at lower education levels (pre-tertiary) in most African countries, with students, researchers and faculty at tertiary institutions typically not benefiting from government interventions aimed at improving materials access.

To ensure a degree of consistency in data-gathering across study countries, research teams structured their impact assessment interviews using guidelines that were custom-designed for this research project. Interview questions were designed to elicit data regarding two general issues. First, what was/is the *intended* effect of copyright on access to learning materials? And second, what was/is the *actual* effect of the copyright environment on access to learning materials? Research teams were particularly encouraged to focus, where possible, on two more specific topics: the interfaces among copyright, access to knowledge and a) gender and b) ICTs.

Questions were posed and responded to orally, rather than through written surveys, so that teams could engage appropriately with interviewees as the specific circumstances required. Teams kept meticulous records of the interviews, including notes, audio recordings and often transcripts, so that data collected could be organised, reviewed, archived and, if necessary, verified. All researchers followed codes of ethical conduct, with clear guidelines about obtaining informed consent, guaranteeing confidentiality, avoiding undue influence and sharing the benefits of the research with participants. (Avoiding research on children and minors was another reason for investigating tertiary rather than primary or secondary education systems.)

The impact assessment interviews were complemented in every study country by a thorough review of relevant literature. Research teams located, catalogued and synthesised books, academic articles, student dissertations, policy papers, newspaper reports, public relations materials and online information. In combination, these data sources gave researchers an impression of how the law is being discussed in study countries and how the law is being perceived and applied.

Then, by bringing together the findings of the doctrinal research with the findings of the qualitative interviews, each country team was able to develop a picture of the 'copyright environment' in its country. Teams then described and analysed that environment in a published report in each country and later made regulatory and policy recommendations outlined in an executive policy brief.

Finally, using their country reports and executive policy briefs as dissemination tools, teams held national policy dialogue seminars to bring together stakeholders (boundary partners) and engage them in a discussion of ACA2K's findings and recommendations for that country. Between May 2009 and March 2010, nine ACA2K national policy seminars were convened, in Nairobi, Accra, Kampala, Maputo, Marrakech, Cape Town, Johannesburg, Cairo and Dakar.

Meanwhile, as the national research teams were conducting their dissemination and policy engagement, the four ACA2K Principal Investigators operationalised the third ACA2K research method: the comparative review. This comparative review, the results of which are documented in Chapter 10 of this book, was an attempt to draw out the similarities and differences and lessons learned, across the eight study countries and to offer some possible ways forward.

### **1.6.2 Outcome mapping (OM)<sup>19</sup>**

As mentioned above, the project adopted the OM framework for its intentional design and monitoring.

Outcome mapping focuses on 'outcomes' rather than 'impacts'. The term 'impact' suggests a causal relation between interventions and results which is in fact impossible to conclusively establish when interventions take place in a complex developmental context and where the interventions have complex objectives related to policy change and developmental goals. Relations between policy interventions and economic, cultural, social and human development are highly complex and typically non-linear. The technique of outcome mapping consciously avoids claiming credit for results that are in truth attributable to a combination of interrelated variables, only some of which, if any, can be linked back to a particular project's activities. Consequently, the technique of outcome mapping focuses on monitoring gradual, incremental change in behaviour by individuals and institutions and on monitoring a particular project's small or large contributions to such change. Assessments map dynamic 'outcomes', rather than more static 'outputs'. Moreover, because the changes that matter most in a development context are those that better people's daily lives, take a long time to happen and depend on human behaviour, outcome mapping is most concerned with assessing changes in behaviour, rather than focusing on possible changes in state.<sup>20</sup>

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19 The authors acknowledge Chris Morris of Results and Outcomes Consulting for his role in the development and execution of the ACA2K outcome mapping framework.

20 S. Earl, F. Carden and T. Smutylo *Outcome mapping: building learning and reflection into development programs* (2001) IDRC, Ottawa. Available at [http://www.idrc.ca/en/ev-9330-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-9330-201-1-DO_TOPIC.html) [Accessed 1 November 2009].

The ACA2K project deployed outcome mapping in two ways. First, outcome mapping was used by the network members to help identify the stakeholders whose behaviour the project wanted to change in order to achieve the project's objectives.

Second, outcome mapping was used to develop a framework to help them monitor the project — that is, to document the behaviour changes, expected and unexpected, among the stakeholders they had identified at the beginning of the project as being possible points of project influence. In particular, the behaviour changes monitored were:

- behaviour changes among stakeholders in the eight study countries (to be monitored by country teams);
- behaviour changes among international stakeholders (to be monitored by the project management, with inputs from the Principal Investigators and country team members active in international fora); and
- behaviour changes among the project members themselves (the Principal Investigators and the country team members), to be monitored by the Research Manager.

At the most general level, the design of ACA2K's research methodology and dissemination/policy engagement plan and the focus of its outcome mapping work, reflected its vision and strategic objective of generating objective, empirical evidence and making the evidence available to policymakers and other actors seeking to craft copyright environments that maximise access to knowledge.

## **1.7 ACA2K and gender**

The ACA2K team became aware early on in the project's life that, given the centrality of gender dynamics to the path of educational development in African countries (and all countries for that matter), a research and policy engagement project such as ACA2K, with a clear educational development orientation, must attempt to interrogate and report on gender issues.

ACA2K accordingly sought to mainstream gender in the project in three ways:

- by building network members' awareness of and capacity to interrogate, gender dynamics in the context of copyright and learning materials;
- by building gender into the design of the project's research data collection and reporting; and
- by trying to monitor gender elements as part of the project's outcome mapping monitoring framework (that is, monitoring stakeholder behaviour change in relation to gender).

The first facet of the ACA2K gender strategy — building awareness and capacity among network members — began during the methodology workshop in Johannesburg in January 2008, where all project members were encouraged to be mindful of and explore, the ways in which gender dynamics might be relevant to the research. These network/researcher empowerment efforts carried on through the finalisation of the *ACA2K Methodology guide* in mid-2008,<sup>21</sup> the Principal Investigators' feedback on draft country reports in late 2008, the Cairo mid-project workshop in 2009, the feedback on the final country reports in mid-2009 and the writing up of outcome mapping project monitoring journals at the end of 2009.

The second facet of the strategy — seeking to capture gender elements within the design and implementation of the research — was concretised in the final draft of the *ACA2K Methodology guide*, which included interview questions about the possible intersection between copyright, gender and learning materials access. The guide also urged research teams to be mindful of and account for, gender diversity or lack of it among their interview subjects. In mid-2008, however, while the interviews were underway, the Principal Investigators realised that little specific data on gender was being uncovered through the interviews. A gender consultant was recruited to advise on how to improve results,<sup>22</sup> and one of the network members, Marisella Ouma of the Kenyan research team, agreed to liaise with the gender consultant to deepen the gender-related ACA2K data collection in Kenya.

The third facet of the ACA2K gender approach — building gender elements into the project monitoring framework — was concretised at the January 2009 mid-project workshop in Cairo, where country teams were urged to include criteria ('progress markers') related to gender when finalising their outcome mapping project monitoring frameworks. A key progress marker for teams monitoring their stakeholders would be stakeholder awareness of the possibility of gender dynamics at the intersection of copyright and access to learning materials. It was expected that some of the people and institutions with whom the research teams made contact in their research and dissemination efforts would come away with an increased or newfound awareness of the possible links between gender, learning materials access and copyright. Meanwhile, the Research Manager decided to monitor the degree to which network members showed recognition of the importance of interrogating

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21 *ACA2K Methodology guide* (2008) African Copyright and Access to Knowledge (ACA2K) project, Shuttleworth Foundation, Wits University LINK Centre and IDRC. Available at [http://www.aca2k.org/index.php?option=com\\_content&view=article&id=179&Itemid=61&lang=en](http://www.aca2k.org/index.php?option=com_content&view=article&id=179&Itemid=61&lang=en) [Accessed 24 September 2009].

22 The authors acknowledge the inputs of gender research expert Salome Omamo of Own and Associates in Nairobi, Kenya, who served as gender consultant to the ACA2K project from late 2008 to early 2010 and advised the Kenya ACA2K research team.

gender dynamics as possible elements of influence on the intersection between copyright and learning materials access.

In order to operationalise gender strategies, it was necessary for ACA2K to adopt theoretical frameworks for understanding gender and the possible intersection between gender, copyright and access to knowledge.

The project adopted a concept of gender as referring to social/cultural constructs that assign different behaviours and characteristics to men than to women, often resulting in inequalities. Gender differences are thus intertwined with social structures, which often devalue women and provide men with greater access to resources and power.<sup>23</sup>

But where might gender come into play vis-à-vis copyright and access to knowledge?

Gender issues are an integral part of access to knowledge, given that access to learning materials, as with access to any resource, will be characterised by gender differences in a particular society or context. Accordingly, the gender-related hypothesis developed was that:

- gender influences the intersection between copyright and access to knowledge and specifically access to learning materials.

This hypothesis was grounded in the work of Ann Bartow, who highlights the importance of interrogating the potentially gendered aspects of creating and exploiting copyright works; of intermediary activities such as publishing; and of consumption of copyright materials.<sup>24</sup> Bartow writes, 'Copyright laws are written and enforced to help certain groups of people assert and retain control over the resources generated by creative productivity' and 'those people are predominantly male [...]'. Thus, she continues, the 'copyright infrastructure plays a role [...] in helping to sustain the material and economic inequality between women and men.'<sup>25</sup> Based on Bartow's ideas and the hypothesis above, it was decided that research questions for investigation would relate to:

- differentials between men and women in terms of access to copyright content in a particular country/context; and
- the extent to which such gender differentials could be attributed to the prevailing copyright environment (laws and practices) in that country/context.

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23 Association for Progressive Communications (APC) '*Understanding gender evaluation methodology (GEM)*' (2009). Available at [http://www.apcwomen.org/gemkit/en/understanding\\_gem/genderanalysis.htm](http://www.apcwomen.org/gemkit/en/understanding_gem/genderanalysis.htm) [Accessed 21 December 2009]; and S. Omamo and M. Ouma *ACA2K and gender guidelines* (2009) unpublished document, ACA2K project, March 2009.

24 A. Bartow 'Fair use and the fairer sex: gender, feminism and copyright law' (2006) *American University Journal of Gender, Social Policy and Law*. Available at <http://papers.ssrn.com/abstract=902632> [Accessed 1 May 2009]; Omamo and Ouma supra note 23.

25 A. Bartow Supra note 24.

Chapter 4 of this book — the chapter on the Kenyan research — outlines the results of follow-up interviews in that country. The concluding Chapter 10 outlines some of the gender-related findings in other countries. The ACA2K project cannot claim to have proven the intersection between copyright, learning materials access and gender. But apparent links between gender and learning materials access were uncovered by several of the teams and some initial hints of a possible and empirically verifiable intersection between gender, copyright and access became apparent. More and better designed, focused and implemented research is required in this area before meaningful conclusions can be drawn. Chapter 10 offers some ideas that future researchers interested in this area may follow.

## 1.8 Research results

The ACA2K's research into copyright and access to learning materials conducted in and across the eight study countries has yielded hundreds of pages reporting on statutory and doctrinal data and literature reviews and dozens of hours of recorded engagement documenting the actual experiences of people and institutions. Translating the data into meaningful conclusions and reporting those conclusions in a manner capable of achieving the project's overall objective of facilitating evidence-based policymaking, were challenging tasks.

Written research outputs have included:

- a detailed *Methodology guide* to enable future research on this topic;
- comprehensive country reports documenting doctrinal and practical research results in each study country;
- executive policy briefs for each country, summarising findings and making recommendations for legal reforms and pragmatic steps for improvement;
- briefing papers targeting official representatives, negotiators and copyright policymakers at WIPO and at key organisations working on international copyright policy issues;
- statements about ACA2K findings read to official sittings of WIPO committees (two statements at sittings of the WIPO Standing Committee on Copyright and Related Rights (SCCR) and one statement to a sitting of the WIPO Committee on Development and Intellectual Property (CDIP));
- a peer-reviewed journal article analysing key findings across the eight countries;
- media coverage of the project and its practical importance to contemporary issues and mainstream policy debates; and
- a multilingual website reporting on ACA2K activities and findings.

The project's outputs are all being made openly available online, using Creative Commons licences.<sup>26</sup>

Project researchers have presented their research methods and findings at dozens of conferences, workshops and symposia around the world, including the aforementioned national ACA2K policy seminars in each of the eight African study countries and fora in locations outside Africa including Quebec City, Ottawa, Milwaukee, London, Geneva and Milan. Audiences at the national ACA2K seminars have included key representatives from international organisations, such as WIPO and the African Union, national governments, rights-holders associations and educational communities.<sup>27</sup>

This book represents an attempt to highlight some of the most significant findings from the research project as a whole. There are 10 chapters, including this introduction. Eight chapters that follow report findings from each of the eight study countries: Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda. The tenth and concluding chapter combines, compares and contrasts findings across the eight study countries, reflects on the project as a whole and offers recommendations.

The result, hopefully, is both a concrete contribution to the understanding of copyright's legal and practical effects on access to learning materials in Africa, as well as a possible model for future empirical research contributing to greater emphasis on evidence-based policymaking in this area.

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26 See <http://creativecommons.org/> [Accessed 1 November 2009].

27 The authors acknowledge the work of Wits University Copyright Services Librarian Denise Nicholson, who, as ACA2K Policy & Dissemination Advisor, has been at the forefront of the project's dissemination efforts and has supported policy engagement activities by country teams.

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