

# Chapter 3

## Ghana

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### 3.1 Background

#### 3.1.1 Country history, economics and politics

The West African country of Ghana (formerly the Gold Coast) is bounded on the north by Burkina Faso, on the east by Togo and on the west by Ivory Coast (Côte d'Ivoire). The southern boundary is the Gulf of Guinea. Ghana's territory covers about 240 000 km<sup>2</sup> and has an estimated population of 22 million. Men constitute 49.5 per cent of the population, whereas women constitute 50.5 per cent. A sizeable proportion of the population (42.1 per cent of those above 15 years of age) is illiterate and the average life expectancy is 58.5 years.<sup>1</sup> In terms of gender, the literacy rate among women is 49.8 per cent and among men is 66.4 per cent.<sup>2</sup> Ghana consists of several tribal groups distinguished largely by their vernacular languages, but the official language is English. As of 2007, the proportion of the population living below the poverty line stood at 28.5 per cent.<sup>3</sup> Recent statistics have confirmed that about half the population lives on less than US\$1 a day and the annual per capita income is estimated at US\$600.<sup>4</sup> The current GDP (purchasing power parity) is estimated at US\$31.33 billion and the GDP growth rate for the 2007 fiscal year stood at 6.3 per cent.<sup>5</sup>

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1 Ghana Statistical Service 'Population data analysis report Vol.1 August 2005' in *Women and men in Ghana: a statistical compendium* (2006). Estimated total population figure in 2005 was 21 134 501. This consisted of 10 670 817 women and 10 463 684 men.

2 Encyclopedia of Earth 'Ghana' (2009). Available at <http://www.eoearth.org/article/Ghana> [Accessed 31 May 2009].

3 Ibid; Ghana News Agency 'Economic growth decline in 2007' (12 November 2008). Available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=152940> [Accessed 31 May 2009].

4 *Ghanaian Chronicle* 'Ghana near \$1,000 per capita income – Baah-Wiredu' (12 August 2005). Available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=87871> [Accessed 31 May 2009].

5 Supra note 2; Government of Ghana *Ghana budget highlights* (2008) Available at [http://www.ghana.gov.gh/ghana/budget\\_highlights\\_year\\_2008.jsp](http://www.ghana.gov.gh/ghana/budget_highlights_year_2008.jsp) [Accessed 31 May 2009].

Ghana gained independence from Britain on 6 March 1957; it was the first overthrow of colonial power in a black African country south of the Sahara. Ghana became a republic on 1 July 1960. During the colonial period, Britain exercised control over the then-Gold Coast territory and the laws of the coloniser (Britain) prevailed. Since independence, English common law has remained part of the laws of Ghana, unless otherwise modified by statute. Ghana has experienced five military regimes and five civilian regimes. Presently, Ghana has a functioning democracy based on constitutional rule. After many turbulent years of military intervention, constitutional rule has been in force since 1993.

### 3.1.2 Education

Ghana's educational system can be divided into roughly five sectors. First is the basic level, which encompasses primary and Junior High School (JHS) education. Normally, pupils spend nine years at the basic level, excluding kindergarten. The basic level is free and compulsory. Second, there is the secondary Senior High School (SHS) level, where students spend four years and receive general education, vocational, technical or agricultural training. At the basic and secondary school levels, the government of Ghana provides free textbooks to students. Third, Ghana has 38 Teacher Training Colleges where qualified SHS graduates may receive three years of formal training to become teachers at the basic schools (upon completion of their training). Fourth are the polytechnic institutions. These institutions run various programmes, spanning between one and three years. There are nine of these polytechnics in Ghana. Fifth, there are the universities. Ghana has six public universities and 13 private universities.<sup>6</sup> The universities run diploma programmes (usually for two years) and degree programmes (for four years).

Ghana has a 10-year strategic education plan. The total funding requirement for this plan is estimated at over US\$12 billion.<sup>7</sup> The government, however, has been falling short of its annual financial target for education. Indeed, in 2009, the government's budget allocation to education was about US\$1 billion.<sup>8</sup>

Although there are more women than men in Ghana, a 2005 report on enrolment at various levels of learning indicates an average of 36.5 per cent female

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6 Information for this paragraph was obtained from the official website of the Ministry of Education, Science and Sports. Available at <http://www.moess.gov.gh> [Accessed 31 May 2009].

7 Ministry of Education, Science and Sports *Report on the education sector annual review (ESAR) (2006)* Government of Ghana.

8 Ministry of Finance and Economic Planning *Ghana's budget statement for 2009 (2009)* Government of Ghana. Available at <http://www.mofep.gov.gh/budget2009.cfm> [Accessed 31 May 2009].

enrolment, compared to an average 63.5 per cent male enrolment. At the basic level, male enrolment is 52.3 per cent and female enrolment is 47.7 per cent. At the secondary SHS level, males constitute 55.8 per cent of the enrolment and females make up 44.2 per cent. At the Teacher Training Colleges, males constitute 57.3 per cent and females constitute 42.7 per cent of enrolment. Enrolment in the polytechnics and universities is no different: males form 66.2 per cent, compared to 33.8 per cent enrolment by females.<sup>9</sup>

Efforts are being made to bridge the gap between male and female enrolment in schools and to improve literacy rates. At the JHS level, the government has adopted a Free Compulsory Universal Basic Education (FCUBE) programme in pursuance of the constitutional mandate to make basic education free and accessible to all.<sup>10</sup> The government is also taking progressive steps to comply with its constitutional obligation to introduce free high school education.<sup>11</sup> As an added incentive, the government has introduced free school-feeding programmes for pupils at junior high schools. Additionally, an affirmative action campaign in support of girl-child education is being vigorously pursued to bridge the male-female enrolment gap.

### **3.1.3 Laws of Ghana**

The laws of Ghana consist of the 1992 Constitution, statutes enacted by Parliament, rules and regulations, the 'existing law' and the common law, including rules of equity and customary law. The existing law comprises all the laws that existed before 7 January 1993 when the Constitution came into force. The common law and rules of equity are 'received laws' based on judicial decisions of the courts in England and other common law jurisdictions. The common law rules serve as persuasive precedents for adjudication in Ghana. It is, however, important to indicate that the validity of all the laws is traced to the Constitution. This means that any law, action or omission can be challenged in court if considered unconstitutional. Thus, important judicial decisions from the High Court, the Court of Appeal and the Supreme Court of Ghana partially shape the dynamics of the copyright regime in Ghana.

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9 Ghana Statistical Service 'Enrolment in institutions of learning 2005' in *Women and men in Ghana: a statistical compendium* (2006).

10 Articles 25 and 38 of the Constitution of the Republic of Ghana of 1992.

11 Ibid.

## 3.2 Doctrinal analysis

### 3.2.1 *Statutes and regulations*

#### *Copyright history*

On attaining independence, Ghana inherited a copyright system based on the British Copyright Act of 1911. This use of the British law was reflected in Ghana's Copyright Ordinance of 1914 (Cap. 126) with its enabling Copyright Regulation of 1918. The Ordinance applied the British Copyright Act of 1911 within the colony of the Gold Coast (now Ghana). Protection under the Ordinance focused on literary, dramatic, musical and artistic works. The law made it an offence to sell, make for sale, hire, exhibit or distribute copyright-infringing works in the then-colony. Under the Ordinance, no express mention was made of public exceptions or free uses, but the British Act from which the Ordinance derived its authority permitted 'fair dealing' with any work for the purpose of private study, research, criticism, review or newspaper summary. In addition, no civil remedies were expressly provided for under the Ordinance, but since it implemented the British law in the colony, remedies such as injunctions, damages and accounts were available. There were also provisions that criminalised acts of making hard copies of protected works with the aid of industrial printing machines.<sup>12</sup> The term of protection, as based on the British Copyright Act, was for the life of the author plus 50 years after the author's death.

#### *Copyright Act 85 of 1961*

The Ordinance and its subsidiary legislation were replaced with the Copyright Act 85 of 1961 and the Copyright (Fee) Regulation of 1969 (Legislative Instrument 174) respectively. Act 85 and its L.I. 174 were the first post-independence pieces of copyright legislation in Ghana. The new 1961 Act added more materials as protectable subject matter of copyright. These additional protectable materials included cinematograph films, gramophone recordings and broadcasts.<sup>13</sup> The works were protected if sufficient effort had been expended on the work to give them an original character.<sup>14</sup> For some works, the Copyright Act of 1961 contained relatively shorter terms of protection. In the case of published literary works, copyright protection lasted only until the end of the year in which the author died *or* 25 years (instead of 50 years under the earlier Ordinance) after the end of the year in which the work was first published, whichever was later in time.<sup>15</sup> For unpublished literary works, the 1961 Act offered a term of protection of 25 years *after* the end of the

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12 Section 3(1) of the Copyright Ordinance of 1914.

13 Section 1(1) of the Copyright Act 85 of 1961.

14 Section 1(2) of the Copyright Act 85 of 1961.

15 Section 14 of the Copyright Act 85 of 1961.

year in which the author died.<sup>16</sup> This made the protection granted to unpublished literary works longer than published ones.

Civil remedies, in the form of damages and injunctions, were also provided for in the 1961 Act, in addition to possible criminal sanctions under the law. However, the focus on criminal consequences (as prevailed under the Ordinance) was reduced.

Fair dealing provisions were expressly articulated in the 1961 Act. There was provision for fair dealing for purposes of review or criticism. There was also provision for compiling a collection of portions of literary or musical works for use in educational institutions, if the author was acknowledged in any public use of the work.<sup>17</sup>

One problem with the 1961 Act was that it made writing a prerequisite for protection of works such as musical works, which was counter to the interests of illiterate Ghanaian composers.<sup>18</sup> The writing requirement was changed by the Copyright Law of 1985.

### *Copyright Law of 1985 (PNDCL 110)*

In 1985, a new copyright law, the Provisional National Defence Council Law (PNDCL) 110, was passed to replace the 1961 Act. Under this law, protection for works was extended to cover foreign-made works, in compliance with the international Berne Convention for the Protection of Literary and Artistic Works. The 1985 law contained, in comparison with the 1961 Act, extended terms of protection: the general duration of protection for most works became the life of the author plus 50 years. In the case of other kinds of works owned by a body corporate, protection lasted for 50 years from the date on which the work was made public.

This 1985 law (PNDCL 110) also changed the strict requirement of writing that had existed under the 1961 Act and adopted a more flexible requirement of fixation.

The PNDCL 110 of 1985 also added new materials to the category of protectable subject matter. The newly added protectable materials included works such as sound recordings, choreographic works, derivative works and programme-carrying signals. In addition to the continued protection of economic rights, PNDCL 110 introduced perpetual moral rights (of attribution and of integrity) protection.<sup>19</sup> To some degree, the 1985 law allowed free use for purposes of private research, teaching and inclusion in other works.<sup>20</sup> Under the 1985 PNDCL

16 Section 14 of the Copyright Act 85 of 1961.

17 Section 1(2) of the Copyright Act 85 of 1961.

18 *CFAO v Archibold* [1964] GLR 718; *Archibold v CFAO* [1966] GLR 79.

19 Section 6(2) of the Provisional National Defence Council Law 110 (PNDCL 110) of 1985.

20 Section 18 of PNDCL 110 of 1985.

110, a new legislative instrument (L.I. 1527) was passed, which served to create the Copyright Society of Ghana (COSGA) as an umbrella collective society for copyright-holders.

### *Copyright Act 690 of 2005*

The current substantive copyright legislation in Ghana is the Copyright Act 690 of 2005. It came into force on 17 May 2005. The Act seeks to bring Ghana's copyright regime in line with its assumed international obligations under the WTO TRIPs Agreement. Indeed, the Act introduced a globally oriented system, which incorporates universal copyright standards like those that exist under the statutes of most developed countries. The Act provides protection to works such as computer programs and folklore that were, until then, not expressly protected.

The new Act extends the general term of protection from the life of the author plus 50 years after the author's death to life plus 70 years after death. In the case of anonymous or pseudonymous works, economic rights are protected for 70 years from the date on which the work was made public or published, whichever date is later. If the copyright in a work is vested in a corporate body, protection is, in general, offered for 70 years. For works of folklore, protection is vested in the state and the term of protection is perpetual. The terms of protection for works in Ghana thus exceed the standard duration of copyright protection required under the TRIPs Agreement. These provisions are, therefore, examples of what are known as 'TRIPs-plus' provisions.

### **Requirements and scope of protection**

In Ghana, for a work to be eligible for copyright protection it must be original, in the sense of the work being the independent creation of the author. Under the 2005 Copyright Act, protection is granted to original literary works, artistic works, musical works, sound recording, audiovisual works, choreographic works, derivative works, folklore and computer software or programs. The Act also protects the rights of performers and broadcasting organisations in their programme-carrying signals by granting the exclusive rights to reproduce, translate, adapt, transform, rent, distribute or perform the work in public. It also grants authors perpetual protection of moral rights.

In following the global copyright regime, the Act increases penalties for copyright infringement by adding to the civil remedies provided for under the Act. In addition to civil remedies such as damages, injunction, seizure and destruction of infringing materials, accounting and Anton Piller relief (a court order for search and seizure), the infringer could face a fine or imprisonment of up to three years, or both a fine

and imprisonment.<sup>21</sup> This is different to the PNDCL 110 of 1985, under which the term of imprisonment could not exceed two years.

### Copyright exceptions and limitations

The 2005 Act also contains provisions respecting exceptions and/or permitted uses of copyright works. These provisions include, but are not limited to, Section 19 (permitted use for personal purposes, quotation, teaching, media use), Section 20 (reproduction of a single copy of a computer program as a back-up) and Section 21 (permitted use of copyright materials by a library or archive). It needs to be stressed that the 'permitted use' provisions in the Ghanaian statute bear some relation to the notions of fair use or fair dealing in Anglo-Saxon copyright jurisprudence and in certain instances the Ghanaian statute specifies that a 'permitted use' is subject to the use being 'compatible with fair practice'.

Section 19 makes it a non-infringing act to translate, reproduce, adapt or transform the work for exclusive personal use if the user is an individual and the work has been made public. According to Section 19, copying for personal use does not, however, permit the reproduction of a whole or a 'substantial' part of a book. The restrictions provided under Section 19 apply to the copying of all literary and artistic works, which includes textbooks, articles, dictionaries, paintings, photographs, sculptures, maps and virtually all other learning materials used in educational institutions. No formula has as yet been developed in Ghanaian law to serve as a guide on what constitutes 'substantial' copying. It is likely that what constitutes substantial copying will be determined on a case-by-case basis, depending on both the quantity and the nature of the copying in question.

At present, no special mention is made of copyright exceptions for people with disabilities. (But the practice, as the impact assessment interviews uncovered, is that the universities nonetheless convert some of their learning materials into Braille form for the visually impaired.) In addition, no specific exceptions exist for distance learning. Access for purposes of distance learning is covered only by the general exceptions under the Copyright Act.

Fair dealing for purposes of review and criticism, which was explicit under the 1961 Act, is not mentioned in the Copyright Act of 2005. However, according to Section 19, it is not an infringement to include portions of another's work in one's own work, provided the individual user acknowledges the source and the quotations are in accordance with 'permitted use'. The use of a copyright-protected literary or artistic work is also permitted without authorisation in terms of Section 19 where it is used for teaching or broadcast in educational institutions. Besides acknowledging the source, this must also be in line with 'permitted use'. Section 19 also allows for

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21 Section 43 of the Copyright Act 690 of 2005.

reproduction in the media or communication to the public of political speeches, legal proceedings and lectures for purposes of reporting fresh events. Again, this must be consistent with permitted use in the media and the source must be acknowledged. But the issue of what constitutes permitted use remains undefined. In making a determination on this matter, the practices of a particular industry will likely be a key factor. For instance, academic rules against plagiarism and the rules on incorporation of another person's work into one's own for purposes of scholarship would aid in interpreting its meaning.

Under Section 21, non-commercial libraries and archives are permitted to make a single copy of 'a published article, other short work or short extract of a work' for an individual, as long as they ensure that the individual uses the copy for purposes of study, research or scholarship. However, the manner in which such a supervisory role could be exercised remains unclear. Also, a library or archive may make a single copy of a copyright-protected work to replace or preserve a book that may be lost or destroyed. Copying library books in order to preserve them is a potentially useful strategy to address the issue of vandalism, including tearing of pages, sections or entire chapters of books. When the reproduction is not an isolated instance, however, then a licence for that purpose is required from the copyright owner or collective society of owners.

### *The Constitution and other statutes*

The Constitution of Ghana includes provisions that may concern access to learning materials. Articles 25 and 38 oblige the government to make basic education free and compulsory. The provisions also mandate the government to take progressive steps to make high school education free and accessible. Higher education must also be as accessible as possible.

There is also provision for the passing of a right to information law in order to promote access to information. This law, which is to promote access to public information and documents, has not yet been passed, though discussions on the need for such a law have taken place at several fora. Recently, the Attorney General invited memoranda from the public about the passing of the Right to Information Bill into law. At the time of writing this chapter in mid-2009, the Bill is before Parliament and expected to be passed soon.

The Constitution also makes provision for the protection of academic freedom.<sup>22</sup> It is, however, not known whether a defendant may use a constitutionally guaranteed right to information or academic freedom as a defence in a copyright suit in Ghana. Freedoms related to expression are occasionally invoked as defences to copyright

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22 Articles 21(1)(b), 21(1)(f), 25 and 38 of the Constitution of 1992.

infringement in the United States, but may be less successful in jurisdictions that follow the British tradition, including Ghana.

Interestingly, statutes in Ghana that establish educational institutions do not explicitly talk about policies relating to access to learning materials. It is left to the universities as knowledge-producing and knowledge-consuming institutions to take steps to develop their own copyright policies and research guidelines.

### *International obligations*

Ghana is a member of the Berne Convention, the Universal Copyright Convention (UCC) and the TRIPs Agreement. Ghana has also signed the World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT) of 1996 and the WIPO Performances and Phonograms Treaty (WPPT) of 1996. Among other things, both the WCT and WPPT deal with the protection of digital works by requiring member states to outlaw the circumvention of technological protection measures (TPMs), which are used to control the distribution and copying of digital content. Despite Ghana's accession to the two treaties, no express domestic legislation has been enacted to fully implement *all* of their provisions and there is no debate regarding implementation. It is, however, important to stress that the Copyright Act of 2005 contains some provisions that are called for by the WCT and WPPT. Most importantly, Section 42 contains a TPM anti-circumvention provision, making it an offence to alter any electronic rights management information, or to circumvent any technological measure applied by the rights-holder to protect his/her work. Also, devices to facilitate circumvention are prohibited. Upon conviction, a circumventer or facilitator could face a term of imprisonment of up to three years, a fine, or both, as per Section 43. These provisions on anti-circumvention measures do not allow for any exceptions. The implications of anti-circumvention provisions are discussed in Section 4 below.

### **3.2.2 Judicial decisions**

There is a dearth of relevant judicial decisions on the subject of copyright vis-à-vis access to teaching and learning materials in Ghana. A reading of reported cases in the Ghana Law Reports (1959 to 2000) does not reveal any significant judicial pronouncements on the development of the law of copyright and access. In fact, it may be of interest to note that there have been only seven reported copyright cases in the Law Reports since independence. The reported cases between 1959 and 2000 are: *CFAO v Archibold*;<sup>23</sup> *Archibold v CFAO*;<sup>24</sup> *Ransome-Kuti v Phonogram*

23 [1964] GLR 718.

24 [1966] GLR 79.

*Ltd*;<sup>25</sup> *Ransome-Kuti v Phonogram Ltd*;<sup>26</sup> *Musicians Union of Ghana v Abraham & Another*;<sup>27</sup> *Ellis v Donkor & Another*;<sup>28</sup> and *Copyright Society of Ghana v Afreh*.<sup>29</sup> All these cases concerned musical works. Moreover, some of the principles established in cases such as the *Archibold* case (dealing with the strict requirement of writing as a prior condition for protection) have been changed by subsequent legislation. Since law reporting is running almost a decade behind in Ghana, the research team also searched for unreported cases from the courts for further analysis. One such unreported case is: *The Republic v Ministry of Education & Sports & Others: Ex parte Ghana Book Publishers Association*.<sup>30</sup>

In the *Book Publishers Association* case, the applicants filed an ex parte application with the High Court to challenge the decision of the Education Ministry and the Procurement Board to award a contract for the printing of basic school books to the foreign publisher Macmillan on the grounds of unfairness of opportunity and the lack of open procedure. The High Court accepted the applicant's position that Macmillan had been given an unfair advantage over local producers and therefore revoked the contract. As at the time of writing this chapter, the case was pending on appeal at the Court of Appeal. The appeal notwithstanding, the *Book Publishers Association* case exemplifies the concerns voiced by local book publishers during the field research carried out for this report that their industry is collapsing due to unfair practices by giant international publishers such as Macmillan and not because of inadequate copyright law or enforcement.

### *Explaining the 'lack' of copyright cases*

The paucity of judicial decisions on the subject of copyright is partly due to the preoccupation of most Ghanaians with litigating to protect their *tangible* property rights, rather than their *intangible* property rights, through the courts.<sup>31</sup> Moreover, inordinate delays in the judicial system make it unattractive to spend time over a seemingly less important intangible property right matter such as copyright.

Another factor that has contributed to the dearth of copyright cases was the existence of an arbitration provision under the copyright law of 1985, to which most people resorted in preference to litigation. Thus, once parties involved in a

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25 [1976] 1 GLR 220.

26 [1978] GLR 316.

27 [1982-83] GLR 337.

28 [1993-94] 2 GLR 17.

29 [1999-2000] 1 GLR 135.

30 [Suit No. AP11/2006] (the *Book Publishers Association* case).

31 Reported cases prove that land-related cases constitute the bulk of litigation in Ghana. On this point see P. Adusei 'Burden of proof in land cases: an analysis of some recent decisions of the Court of Appeal and the Supreme Court of Ghana' (2000-2002) 22 *University of Ghana Law Journal* 223.

copyright dispute agreed to submit their disagreement to arbitration, the matter was taken over by the Copyright Administrator and the award bound the parties. This arbitration arrangement has, however, been discontinued under the 2005 Copyright Act. During the course of field research conducted by the researchers, copyright stakeholders made no calls for re-introduction of the arbitration system. It is apparently believed that the court system can better resolve copyright disputes, despite the delays and even though the Copyright Office believes that the arbitration processes previously used were effective in resolving disputes.

Recently, judicial procedures have improved. The coming into force of the new High Court Rules (C.I. 47) on 3 January 2005<sup>32</sup> and the establishment of the Commercial Division of the High Court under its Order 58, with specialised rules of enforcement of IP rights, ensure a speedy trial and/or disposal of cases.<sup>33</sup> The Commercial High Court is now staffed by judges who have considerable insight into the dynamics of IP law and the judges are occasionally trained by the Judicial Training Institute. Most straightforward IP-related cases can now be disposed of within a year of initiation. This contrasts sharply with what prevailed prior to 2005, when IP disputes could drag on for several years in the 'regular' high courts in Ghana. A major drawback here is that the Commercial High Court is located only in the Ghanaian capital, Accra. Despite progressive steps being taken, the other nine regional capitals do not yet have a Commercial High Court. Further, although the Commercial High Court now deals with copyright cases more speedily, the long-standing issue of delay in case reporting is still a major concern. This makes it difficult to do any meaningful assessment of the trends, if any, from the courts.

### *Judicial reliance on foreign cases*

Ghanaian courts are often persuaded by cases from other jurisdictions, such as the United States, Canada and the United Kingdom. The Canadian case of *CCH Canadian Ltd v Law Society of Upper Canada*,<sup>34</sup> for example, deals with photocopying activities in a library and by analogy, an educational institution. The defendant (a professional law society) maintained and operated a request-based photocopy service for its members and the judiciary at the Great Library in Toronto, Canada. In 1993, the plaintiffs, publishers of legal materials, commenced a copyright infringement action, claiming that the Law Society had infringed the plaintiff's copyright in terms of the law reports and other legal materials it had published. The Supreme Court of Canada had to decide, inter alia, whether copyright was infringed

32 The High Court (Civil Procedure) Rules 2004 (C.I. 47).

33 Order 63 of C.I. 47.

34 *CCH Canadian Ltd v Law Society of Upper Canada*, 2004 SCC 13, 2004 S.C.R. 339.

when a single copy of a case report, statute, book or other work was copied for purposes of research. In holding that the defendant did not infringe copyright, the court took account of the library's 'access policy', which had been displayed where the photocopying was done. Indeed, that access policy described the limits of the reproduction that a person may undertake at one time. The access policy proved critical when the Supreme Court of Canada held that the Law Society was not even contributorily liable for the violations of other persons who exceeded the prescribed limit.

If the *CCH* case were cited in a Ghanaian court in a dispute involving photocopying activities on a university campus, it might weigh heavily on the judge's mind. Indeed, the authors of this study have also relied on this case in providing an advisory opinion to the University of Ghana about photocopying activities. More specifically, the lesson for Ghanaian universities is that having access guidelines which disclaim university liability in respect of unauthorised photocopying could save an educational institution from copyright liability.

### **3.2.3 Summary of doctrinal analysis**

Ghana's copyright regime has gone through several major changes since independence from Britain. The copyright system now meets or exceeds the TRIPs Agreement's minimum standards by granting protection to literary, artistic and musical works, computer programs and folklore. Between 1961 and 1985, the term of copyright protection lasted for 25 years; protection increased to at least 50 years in 1985. Since 2005, Ghana has adopted a TRIPs-plus approach, granting protection for the life of the author plus 70 years after the author's death. Moral rights, as well as state-owned copyright in folkloric works, never expire.

Ghanaian copyright protects owners against unauthorised reproduction, public performance, adaptation and distribution. Ghana has also signed the WCT and the WPPT treaties, but has yet to implement either treaty fully in domestic legislation, with the notable exception of the key TPM anti-circumvention provisions included in the 2005 Act. There are no exceptions to permit circumvention for lawful purposes. Other exceptions to infringement exist, but are available only if the category of dealing falls within a narrowly circumscribed purpose and constitutes permitted use.

The few judicial decisions on copyright that exist concern musical works. These cases do not articulate the copyright law of Ghana very well. The establishment of the Commercial High Court, staffed by judges with insight into IP law and regular training of these judges by the Judicial Training Institute, should ameliorate the situation somewhat, at least in Accra. The net effect of these statutory provisions and the rare judicial interpretation of them is that the scope of the public domain

is shrinking and there are minimal flexibilities permitting access to learning materials.

### 3.3 Qualitative analysis

#### 3.3.1 *Secondary literature*

In Ghana, the subject of copyright has received relatively little attention in academic literature. A primer on the Ghana law of copyright is a commentary by Andrew Ofoe Amegatcher entitled *Ghanaian law of copyright* (1993). This publication is based on the now-defunct PNDCL 110 of 1985. The book has not yet been revised to take account of new developments under the Copyright Act of 2005 and there are no signals that the author will be revising the book in the near future. Paul Kuruk's brief overview of the IP framework of Ghana, published in 1999,<sup>35</sup> is also based on the old PNDCL 110.

There are several journal articles directly addressing Ghanaian copyright law. One is Josephine Asmah's 'Historical threads: intellectual property protection of traditional textile designs: the Ghanaian experience and African perspectives' published in the *International Journal of Cultural Property* (2008). Here, Asmah makes a case for folklore protection in Ghana and urges international cooperation to strengthen the protection of folklore. There are also two recent journal articles on copyright written by Poku Adusei, the leader of the Ghana ACA2K country research team. In 'Cyberspace and the dilemma of traditional copyright law',<sup>36</sup> Adusei articulates the view that digital technologies have upset the social policy objective of copyright law and have further rendered traditional copyright issues, such as jurisdiction, choice of law and enforcement, immaterial. The author rejects the modern approach of locking down online materials with technological protection measures, due to this approach's negative impact on public access. Adusei's second article<sup>37</sup> traces the evolutionary trajectory of Ghana's copyright regime since independence. It posits that the copyright system moved from a purely territorial legal framework to an international system of limited harmonisation of copyright norms, then to the current global system whereby IP issues are considered international trade policies. Throughout this evolution, three substantive copyright statutes have been enacted to establish Ghana's domestic copyright system. However, judicial responses in shaping the law in Ghana have not been encouraging, Adusei argues.

35 P. Kuruk 'Trends in the protection of IPRs: a case study from Ghana' in M. Simensky et al (eds) *Intellectual property in the marketplace* (1999) John Wiley & Sons, Inc, New York, Chapter 18.

36 P. Adusei 'Cyberspace and the dilemma of traditional copyright law: an assessment of the impact on the legal community' (2002-2004) 22 *University of Ghana Law Journal* 202.

37 P. Adusei 'The evolution of Ghana's copyright regime since independence: a critical appraisal' in Mensa-Bonsu et al (eds) *Ghana law since independence: history, development and prospects* (2007) Black Mask Publication, Accra, at 11.

Currently, there is a University of Ghana MPhil research project that relates to copyright and access. It is being undertaken by Emmanuel Darkey, the Librarian of the Law Faculty of the University of Ghana (he is one of the interviewees for this study). Darkey's research examines, among other things, access to (and impacts of) the work of librarians in Ghana. Darkey notes in his unpublished dissertation that his research 'attempts to look at copyright [as to whether it is] as a barrier to access to knowledge and information provision' in Ghana.

### **3.3.2 Impact assessment interviews**

The Ghana research team interviewed 17 individuals or organisations about the Ghanaian copyright environment. The interviewees came from the main stakeholder bodies identified for the research. Those stakeholders are:

- government: the Ministry of Justice (Copyright Office, Legislative Drafting Section and the Law Reform Commission) and the Ghana Education Service;
- educational communities/users: University of Ghana (Balme Library, Faculty of Law Library, administrators and students), KNUST (university library, administrators, lecturers and students); and
- copyright-holders: Ghana Book Publishers Association, Ghana Association of Writers, CopyGhana and Ghana Universities Press.

The following sub-sections present the findings from the interviews and an analysis of the results.

#### *General resource constraints in Ghana*

Interviews reaffirmed that the Government of Ghana has a book policy for the basic and secondary education levels, but not the tertiary education level. Pursuant to this policy, publishers are invited to write textbooks according to the syllabuses of the basic and secondary schools. These manuscripts are then submitted for evaluation and eventual selection. Upon selection, the government negotiates a price and places an order for the quantity to be produced and distributed to the basic and secondary schools.

Concerns were expressed that local publishers sometimes are disadvantaged when big foreign companies like Macmillan participate in the bid for government publishing jobs. As shown by the *Book Publishers Association* case, this perceived lack of fair play prompted the Ghana Publishers Association to take the Ghana Education Service to court over its grievances. That aside, the study found that the book policy has reduced the control of the private textbook publishers (ie, publishers not supplying to government) in the country. Students at the basic and secondary levels buy textbooks published by private publishers in Ghana only if they need

personal copies or if they need to replace lost copies. This, in part, has caused many bookshops to close.

The policy of supplying free books at the basic and secondary levels does not take the specific learning materials needs of the disabled into account. However, it is likely that, with the passing of the disability law in 2007, efforts will be made to ameliorate the situation. The Disability Act seeks to promote policies that will provide fair opportunities for the disabled. Therefore, progressive implementation of both the Disability Act and the Copyright Act should allow issues relating to access to teaching and learning materials for the disabled to be addressed in legislative instruments that implement both Acts.

Mainly as a result of the government's book policy, photocopying of books is not an issue of concern at the basic and secondary levels. However, photocopying is a major issue in the universities and other tertiary institutions.

Interviewees from universities reported that there are insufficient numbers of textbooks to support the large student population. Photocopying is the only way to obtain meaningful access to teaching and learning materials. For instance, in the library at the Faculty of Law at the University of Ghana, two textbooks on a particular subject may serve approximately 130 students. The situation is even worse in the Arts and Humanities departments. Here, 800 to 1 000 students may be sharing two or three copies of a book for a particular course. The probe found that the University of Ghana commits 10 per cent of its academic facility user fees towards the acquisition of books and other materials for the libraries every year. KNUST's total financial allocation to the libraries in 2008 was GH¢300 000 (roughly equivalent to US\$300 000). This sum must cover all administrative overheads in addition to book procurement.

There are particular difficulties procuring electronic materials. The Law Faculty at the University of Ghana paid an undisclosed sum to procure the Digital Attorney (an electronic database for Ghana cases and statutes) and also pays US\$1 500 every year in service fees. However, there are restrictions on the use of this database: technological protection measures make it impossible to copy its contents. Should a student attempt to copy information, the database becomes corrupt and servicing of the database, though covered by the US\$1 500 service fee, is not prompt. As a matter of law, circumventing technological protection measures constitutes an offence under Section 42 of the Copyright Act. There are no exceptions to allow circumvention of technological protection measures for non-infringing purposes. In effect, legally permitted uses of the legal materials in the database become technologically impossible. This is a concrete, real-world example of digital access difficulties. Besides the fact that the Digital Attorney is expensive, encryption makes it difficult for students and researchers to fully use its contents. This restrictive condition, coupled with bad service delivery, impedes access to knowledge.

Books published locally are cheaper than those that are imported. For instance, one librarian suggested that if AKP Kludze's books on equity and succession, published by Kluwer, were published by the Universities Press, they would have been much cheaper. 'The price of a copy published by Kluwer sells at US\$180. It would have cost about US\$60 if published here.' Import duties and taxes are partly to blame. Even though a locally manufactured book may be cheaper, publishers in Ghana who were interviewed expressed concern over taxes on materials used in publishing books. They believe prices of locally produced books would be even lower if taxes were waived on some of the materials, such as printing paper and equipment.

### *Copyright law amid resource constraints*

The librarians interviewed were aware of the copyright law and though they welcomed the copyright system as a mechanism for rewarding creators for their intellectual efforts, they expressed reservations about the narrow scope of uses permitted without the copyright owner's authorisation under Ghana law. The librarian at the Faculty of Law, Legon, expressed his concerns in the following words:

The law says that we can photocopy a single copy of a book for use in the library, and I think that will not work when we have over a hundred students in need of that book. Also, lawyers are coming to use the books. When the books are getting torn, we photocopy and allow students to photocopy as well. So that section of the copyright law dealing with libraries and archives does not favour a librarian, students and researchers.... If we insist on it, we cannot work. Another section of the law that is unworkable is the seeking of permission from authors before we can exceed the limit of copying. We don't know where the authors are so we cannot get to the author.

While the scope of permitted use under the copyright law is legally restrictive, there is no strict enforcement mechanism in place. Because copyright is not enforced, students and researchers do not always feel its full impact. One interviewee reported: 'The law is not strictly enforced and that helps us. If the law enforcement agencies come hard on us there will be a public outcry and that will force the government to take a second look at the copyright system.'

### *Universities and access policies*

Research interviews revealed that the universities in Ghana do not have copyright and access policies. There are also no notices displayed at places where photocopying activities are undertaken — notices that would inform students and other users of the implications of violating copyright law and the quantity of materials that may legally be photocopied. Universities have, however, adopted a convention to guide

staff operating the university-owned photocopiers. The practice is that students are allowed to photocopy a maximum of one chapter out of a book. In the case of journals, a student may photocopy one article. However, students beat the system by showing up at different times and locations until they have what they need. This is only one aspect of the story. Apart from the official university photocopiers, there are many unofficial photocopy machines on university campuses. These unofficial ones are not effectively regulated and they are used for commercial purposes.

Although the universities and their librarians are key players in the copyright industry, they do not play any role in the formulation of copyright policies at the national level. Librarians and university administrators interviewed confirmed that they have never been invited to participate in copyright stakeholder meetings. They expressed their willingness to make a significant contribution if given the opportunity. Most of the private rights-holders interviewed, on the other hand, said that they have participated in copyright policy discussions.

### *Collective societies, CopyGhana and public use*

Copyright law requires that a user obtain permission from the copyright owner or an authorised collective society of owners before photocopying beyond a certain amount. The difficulty in seeking approval from owners brings to the fore questions about collective administration in Ghana.

The new copyright law of 2005 allows for multiple collective societies. This changes the previous system that made COSGA the dominant body. The Copyright Administrator of Ghana, when interviewed, said he sees this as an unfortunate provision, however. In his view, the copyright industry is too small to have multiple collective societies. The Executive Director of the Ghana Universities Press reinforced this sentiment. Other interviewees argued, however, that forcing one collective society on copyright-owners, as was previously the case, infringed freedom of association, which is constitutionally guaranteed in Ghana.

Generally, this research determined that private collective administration is in disarray in Ghana. New collective societies are formed almost every year, especially as splinter groups emerge in the music sector. The dominant society is COSGA, which previously oversaw the activities of all other collective societies. COSGA's monopoly position was criticised as being undesirable and consequently they no longer oversee many societies. Concerns about transparency and alleged financial irregularities resulted in the Attorney General requesting that COSGA's account be investigated for the period commencing June 2008.

There is also the Professional Musicians Association of Ghana (PROMAG) and the Ghana Association of Phonographic Industries (GAPI), among others. The CopyGhana collective society represents literary writers. For purposes of access to teaching and research materials, therefore, CopyGhana is the most important

collective society. CopyGhana is a private collective society of authors, but it works cooperatively with the Copyright Office in matters of administration. Indeed, its office space is shared with (and provided by) the Copyright Office of Ghana. CopyGhana also receives financial and administrative support from Kopinor (Norway's reprographic rights organisation) and from the International Federation of Reprographic Rights Organisations (IFRRO).

Contracts between the universities and private collective societies are still developing. CopyGhana has managed to convince three private universities to charge GH¢2 (almost US\$2) per annum per student as a fee for a blanket royalty scheme. In the case of the public universities, CopyGhana is yet to sign an agreement with any of them. The Executive Secretary of CopyGhana has indicated the society's preparedness to sue students and the universities for infringement of copyright law 'at the appropriate time'. Sections 51 to 53 of the 2005 Copyright Act provide for a Copyright Tribunal to be established to resolve disputes involving royalty rates and licensing schemes when an application is brought before such a body. However, the proposed Copyright Tribunal is yet to be established.

Research revealed that CopyGhana's standard form licensing contracts are nearly exact replicas of the agreements used by societies in Europe and other developed countries. There is almost no customisation to adapt the agreements to the very distinct context of the Ghanaian education system. For example, the study found that in addition to CopyGhana's decision to charge GH¢2 per student each year, CopyGhana wants to limit the extent of copying to 15 per cent of a book. Such a licence would likely be more of a restriction than a benefit since the copyright law of Ghana (especially Section 19) could be interpreted to allow photocopying beyond 15 per cent for private study or research purposes in Ghana. Universities might, therefore, question the 15 per cent restriction in future negotiations with CopyGhana; instead they might argue for an extended per cent (ie, beyond an amount already permitted under copyright law) if they are to accept the requirement to collect the GH¢2 annual payment from each student. Otherwise, there is a risk of liability not only for copyright infringement but also for a breach of the royalty-payment contract. After paying blanket licence fees, photocopying should be free from further substantial restrictions in order to reflect the reality of students' practices. The Executive Secretary of CopyGhana seems to have accepted this principle, though formal institutional arrangements are required to avoid future disputes. Also, if the universities accept having to collect the monies from students on behalf of CopyGhana, they will have to factor in their administrative overhead costs.

At the time of writing this report in mid-2009, there were no established royalty distribution formulae in place among the collective societies. It was thus found that

while CopyGhana has collected some royalties, so far no distributions have been made to rights-holders. This is also the case with COSGA.

### *Pro-access library consortium*

The universities' libraries operate under an association called CARLIGH (Consortium of Academic and Research Libraries in Ghana). Through CARLIGH, they operate an inter-library lending system, allowing students to borrow books from libraries in other universities in Ghana. Also under CARLIGH, the universities pool resources to procure materials such as electronic journals. One interviewee stated: 'The reason for starting with the electronic journals is that they are very expensive. It is only in contributing and sharing that we have been able to do our work well.' This policy, if well implemented, can be used to procure expensive materials which one institution cannot afford alone. After pooling resources to procure the materials, these can be shared by making more copies or through the inter-library lending system.

Based on the doctrinal analysis presented above, however, there are serious concerns about the legality of various modes of collaboration in order to improve access to learning materials. This is particularly true in the context of digital technologies, which may involve electronic reproduction and telecommunication of materials in order to facilitate access.

### *Copyright Office*

The Copyright Administrator is the head of the Copyright Office in Accra. The Copyright Office is statutorily mandated to execute the Copyright Act. The Office registers copyright works, but registration is optional in Ghana. The study found that the Office takes its anti-piracy activities seriously; it is not uncommon to find public notices from the Copyright Office warning people about piracy. The Office has an anti-piracy committee that tracks down alleged copyright violators and prosecutes them. The new law of 2005 envisages a body called the 'copyright monitoring team' doing this anti-piracy work. This monitoring team has not formally been established, however and the Copyright Administrator stated that his Office is still doing the anti-piracy work. The Office's anti-piracy activities have so far focused on the film and music industry, where copyright infringement is rampant. These prosecutions take place in the lower courts and proper records are not kept. The Office does not (yet) define infringing photocopying activities on university campuses as 'piracy'.

On the issue of public education, the Copyright Administrator said that his Office is not required to educate the public on the law, his Office is required to enforce it. The Ministry of Education, he said, must do public education. He added that, in the process of enforcing the law, the Office educates the public indirectly. The Administrator defended the TRIPs-plus requirement (a term of protection of

life plus 70 years) in Ghanaian law on the grounds that Ghanaians are creative and granting protection for a longer period serves 'our' interest. The interview with the Copyright Office also confirmed that 'technical assistance' from WIPO has played a key role in the push for TRIPs-plus obligations in Ghana.

There is some interaction between the Ghana Book Publishers Association, the Ministry of Education and the Copyright Office. These institutions confirmed their involvement in ongoing discussions regarding passing a new copyright legislative instrument. But because the universities are not involved in policy decisions that affect the education sector, it has been difficult to engage them in royalty collection from students for photocopying activities.

When questioned as to whether gender plays any role in copyright administration, the Copyright Administrator answered in the negative, saying that the law is gender-neutral and does not deal with specific gender issues. There was no willingness to consider the possibility of a relationship between the gender gap in enrolment across all levels of education, adequate access to learning materials and the role that copyright might play in exacerbating or ameliorating the gender inequities acknowledged to exist in Ghana's education system.

### **3.3.3 *Summary of qualitative analysis***

There is little up-to-date secondary literature on the copyright law of Ghana in general and no literature on the impact of copyright law on access to learning materials. Generally, academics have not shown interest in writing about IP in Ghana.

Photocopying books is a common phenomenon on university campuses. The extent of such copying can sometimes be the entire book and such copying is, except in very particular circumstances, clearly beyond the scope of permitted use under Sections 19 and 21 of the copyright law of Ghana.

The cost of procuring both electronic and printed materials is a challenge for the universities. The inadequate supply of textbooks results in widespread and often illegal photocopying of materials for study purposes. Librarians and lecturers interviewed say that enforcing copyright to restrict photocopying would undermine teaching and research in the universities.

Although the scope of permitted uses under the copyright law is potentially restrictive, some of the restrictions have not been interpreted in policy, regulation or case law and there is no regime of strict enforcement in place yet (at least not against universities and students). Rights-holders have, however, expressly threatened to commence litigation to enforce copyright 'at the appropriate time'. When that occurs, access to teaching and learning materials could be seriously and adversely impacted.

Though universities are primary users of copyright materials, they have been unable to participate in policy decisions on copyright matters. On the other hand, private rights-holders interviewed said that they had participated copyright law and policymaking discussions.

The research found that the bulk of materials used by educational institutions at all levels in Ghana are printed books. At the basic and secondary levels, electronic materials are not usually relied upon and it is only now that steps are being taken to include ICT in education at these levels. The situation is, however, different at the universities and other tertiary institutions. At the tertiary level, some institutions have limited access to electronic materials in the form of CD-ROMs, databases of literature searches and electronic journals. It was found that while hard-copy books are the most important resource for students, university researchers and faculty members prefer electronic journals and see electronic materials as a supplement to printed books. With respect to copyright infringement of electronic materials, this is not of much interest to private rights-holders since CopyGhana is currently focusing on photocopying activities of hard-copy materials on university campuses.

Sections 42 and 43 of Ghana's Copyright Act, which deal, among other things, with TPM anti-circumvention and penalties for offences, have far-reaching implications. Adusei has argued that the use of technological protection measures to lock up online materials is the newest threat to permitted uses under copyright law.<sup>38</sup> This new approach, of using encryption-based technology to protect copyright materials on the Internet, is considered by Dratler to be a gamble. There are two reasons for this: first, the private sector cannot continue to develop and maintain effective protective technologies to ward off potential infringers; and second, the adoption of technological measures to protect copyright works may obliterate uses that traditionally qualified as non-infringing.<sup>39</sup>

### 3.4 Conclusions and recommendations

This study has shown that, over time, the scope of subject matter eligible for copyright protection in Ghana has increased considerably. The increase has not been unexpected, as Ghana has been striving to follow its international treaty obligations. Also, copyright protection in Ghana reveals a pattern of incremental expansion in the duration of term of copyright protection, to the extent that Ghana has now adopted a TRIPs-plus approach, ie, the life of the author plus 70 years for literary works, instead of the TRIPs standard of life plus 50 years.

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38 Supra note 36 at 224.

39 J. Dratler Jr. *Cyberspace: intellectual property in the digital millennium* (2000) Law Journal Press, New York, at 2-6.

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

In attempting to answer the core ACA2K research question (is the copyright environment in Ghana maximising learning materials access?) the study confirms that it would be misleading to assess the impact of the copyright law on access solely from the perspective of formal law (statutes, case law) and academic writing. An appreciation of the practice on the ground is crucial to understanding the impact of the copyright regime. This is because, as the probe found, the practice on the ground is much different from the stipulations provided in formal law. Even though the scope of permitted use under the Copyright Act of Ghana is seemingly restrictive, people do not concern themselves with the requirements of the law when making photocopies or engaging in other pro-access activities. Thus Ghana finds itself in the situation of other ACA2K study countries, which is that both the existing laws and the practices potentially undermine access to knowledge by jeopardising the legitimacy of the entire copyright system. This situation is unfavourable for an effective system of access to copyright-protected materials in Ghana.

The way forward is to ensure that, before there is an enforcement crackdown, there is creation of better protection for learners who access copyright materials for legitimate, non-commercial purposes. Stricter enforcement of the law would, if begun before protection of user rights, undermine some of the key objectives of any progressive copyright system. It would stifle access to teaching and learning, which, in turn, would slow 'creativity' in Ghana. Enforcement mechanisms must be balanced against policies to improve the lot of students and researchers in Ghana.

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

Channels of communication must be created among copyright stakeholders, in order to widen copyright decision-making in Ghana. This would build trust among private owners and public users of copyright materials so as to make copyright administration more effective. The universities, as primary users of learning materials, should participate in policy decisions on copyright.

In order to contribute to policy debates and to manage their interests, the universities may need internal legal offices as part of the library systems, which would advise on copyright issues. It is erroneous for any academic or research institution to assume that it cannot potentially be held liable for excess photocopying by students and unofficial photocopy operators on their campuses. Universities and private rights-holders should collaboratively begin to develop 'access guides' in the tertiary institutions in order to regulate photocopying activities in ways that take full advantage of the copyright exceptions and limitations under the law and to educate students and researchers about copyright restrictions. The universities should disclaim liability, via the guides, for non-permitted photocopying activities on their campuses.

It is a positive development that the private universities have now also joined the public universities' library consortium CARLIGH in order to procure access to learning and research materials at a cheaper cost.

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

The government's policy on free textbooks should be extended to private primary and private secondary schools and to all tertiary institutions (private and public). Also, the libraries in private academic and research institutions should be supported financially by the Ministry of Education. At the same time, the government should heed the recent calls from the heads of private universities to reduce corporate tax on private universities. This would bring down the cost of higher education at private universities. Local publishing companies, such as the Ghana Universities Press, should be promoted, in order to achieve a sustainable local book industry. Furthermore, reducing taxes on materials used for publishing books locally could reduce the price of books in Ghana, making the local book industry more competitive.

The unnecessarily long term of copyright protection in Ghana restricts the public domain. The term should be reduced to a period of 50 years, the standard required by international law. The Attorney General's Justice Department could, among other things, flesh out the scope of free use, so that the public will know the limits of free use. Policies to implement the Disability Act should include pro-access mechanisms for disabled students and researchers. Such pro-access policies should be included in the subsidiary legislation (the LI) to implement the Copyright Act and the Disability Act. More generally and most importantly, the thin scope of permitted use under Ghana's copyright law deserves re-thinking to include more exceptions and to relax existing stringent exceptions in order to promote access to knowledge in Ghana. In this regard, experiences relating to copyright exceptions in other jurisdictions should serve as a guide.

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