

Copyright^x

February – April 2016



UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD



UCT Law @ work
Professional Development Project



[http://www.salon.com/2016/04/17/
led_zeppelin_are_not_thieves_stairway_to_heaven_fight_rests_on_a_nearly_impossible_copyright_standard/](http://www.salon.com/2016/04/17/led_zeppelin_are_not_thieves_stairway_to_heaven_fight_rests_on_a_nearly_impossible_copyright_standard/)



“Substantial similarity”

“Immature poets imitate; mature poets steal; bad poets deface what they take, and good poets make it into something better, or at least something different.”

T.S. Eliot





<https://blog.creativecommons.org/2016/04/22/vice-president-biden-taxpayer-funded-cancer-research-shouldnt-sit-behind-walls/>



Is online piracy really steal x Tobias

mybroadband.co.za/news/internet/124146-is-online-piracy-really-stealing.html

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Avast 2015 is here

Is online piracy really stealing?

Legally speaking, what online pirates are doing is a violation of intellectual property rights. But are they doing anything morally wrong?

By The Conversation - April 19, 2015 22 Comments Tweet 14 Share 19



19 14 13 0

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<http://mybroadband.co.za/news/internet/124146-is-online-piracy-really-stealing.html>



UCT Course Evaluation

(5 minutes at the end)



Seminar 9: Copyright, Innovation and Development

25 April 2016



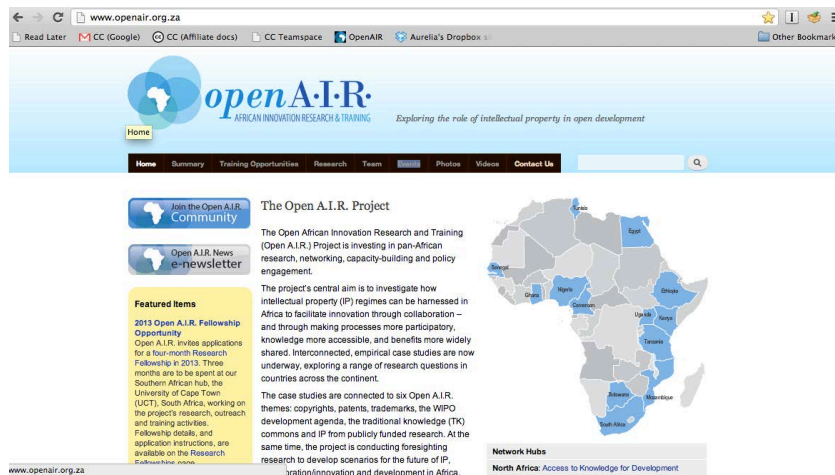
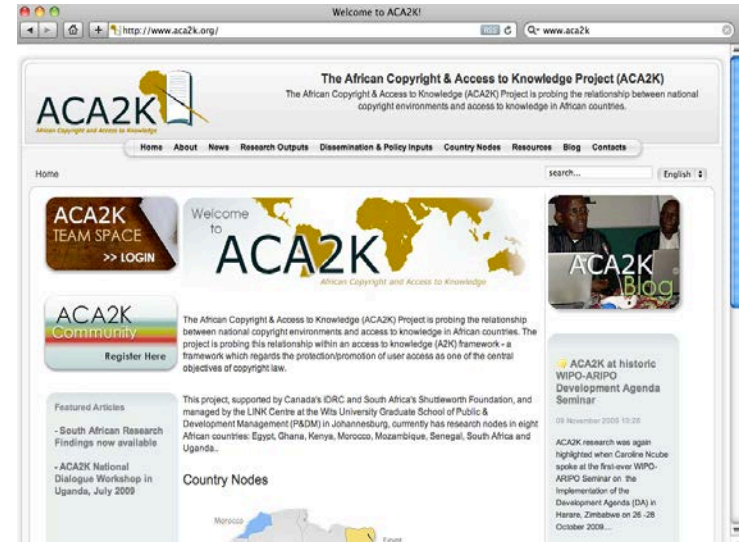
Syllabus

- Foundations of Copyright / **Fairness & Personality Theories** (17 February 2016)
- Subject Matter of Copyright (24 February 2016)
- Authorship / **Welfare Theory** (02 March 2016 – Bram)
- <<break>>
- Mechanics of Copyright (16 March 2016)
- Economic and Moral rights (23 March 2016)
- Copyright Exceptions and Limitations (30 March 2016)
- <<break>>
- Copyright infringement/ **Cultural Theory** (13 April 2016)
- Remedies (20 April 2016)
- **Copyright, Innovation & Development (25 April 2016)**

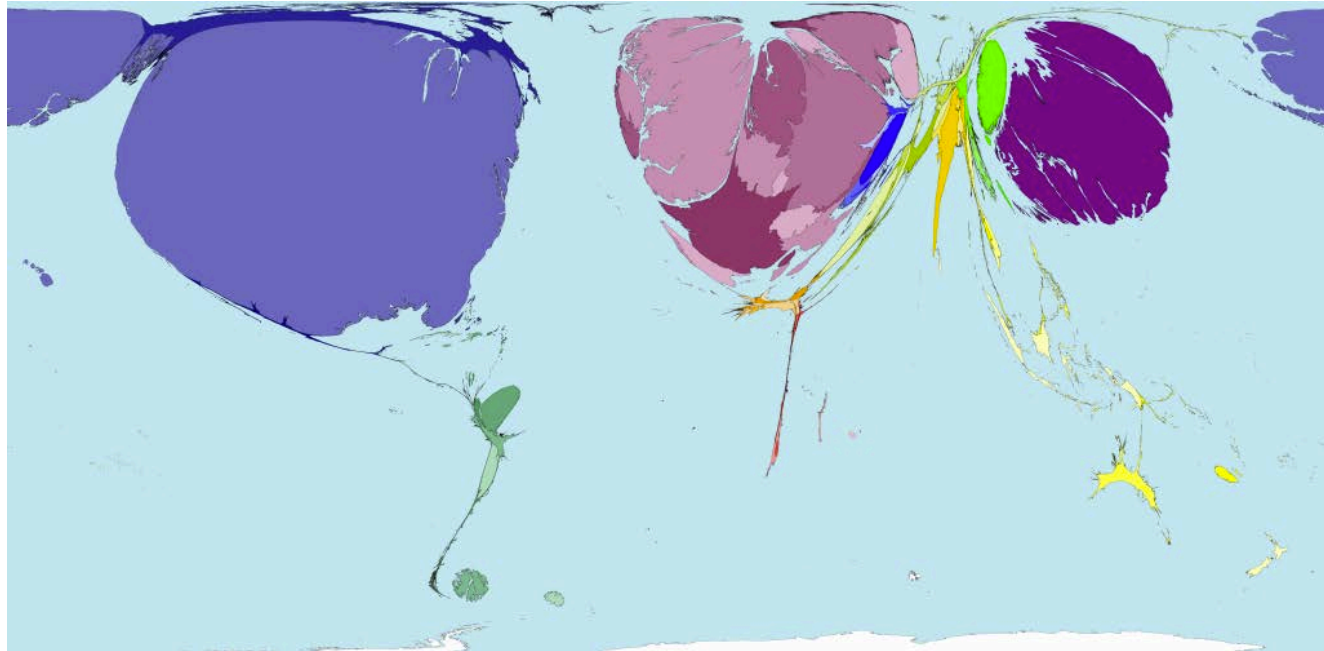


Overview

- ACA2K
- Open AIR
- Round-up and Q&A



- Relationship between © & A2K
- Role IP plays for Innovation & Development





3 year project, ended in 2010

ACA2K probed **the relationship between national copyright environments and access to knowledge/ learning materials** in 8 study countries in Africa





- Survey of relevant **legislation, policies and case law**
- Review of relevant **secondary literature and impact assessment interviews with stakeholders**
- **Research output included:**
 - ◆ Stand-alone country reports & executive policy briefs
 - ◆ ACA2K book published by JUTA in 2010



Final statement



“[T]he copyright environment in South Africa does not maximise effective access to [copyrighted works] and can be changed in order to maximise effective access to learning materials.”

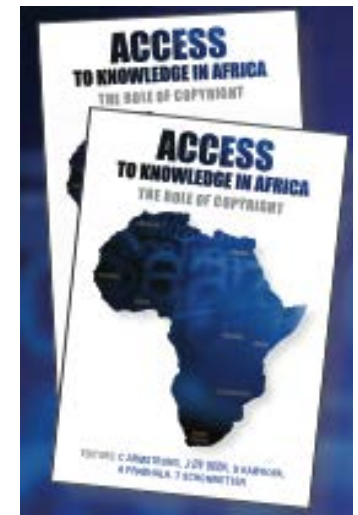




Legal Recommendations included

- Retain the current duration of copyright protection
- Address orphan works
- Provide for promotion of access to knowledge for the (sensory) disabled
- Address the conflict between Copyright Act and the ECT Act
- Review, amend and expand copyright e&l
- Examine scope of copyright protection to promote public domain

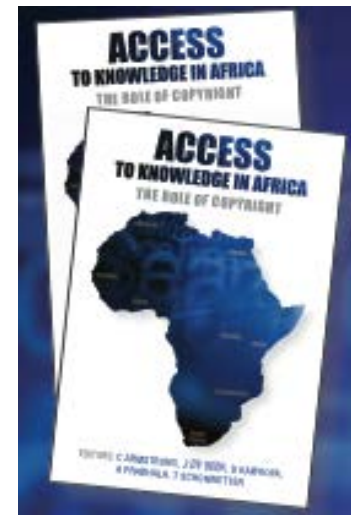




Some interesting findings

- **Different philosophical approaches** to copyright protection in study countries (natural rights / necessary incentives / just reward) – often as a result of the colonial history of a country
- All eight ACA2K study countries afford **copyright protection** that **complies with**, and in many cases exceeds the standards imposed by the relevant international treaties and agreements such as TRIPS and the Berne Convention
- Often **weak or emerging institutional frameworks and processes**

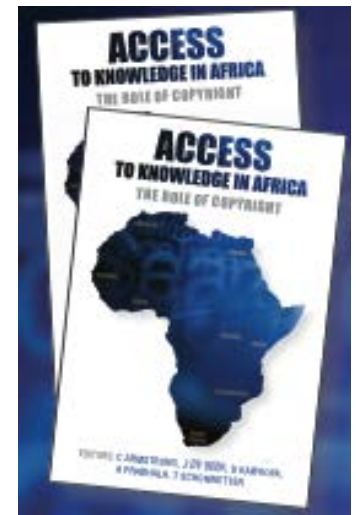




Some interesting findings

- **Contemporary issues are often not or inadequately addressed** (distance & e-learning; orphan works; public lending rights; digitisation by libraries and archives, access of the disabled, parallel importation)
- In the majority of ACA2K study countries, **case law with respect to copyright** in general and access to learning materials in particular **is thin**
- **Disconnect between legal frameworks and realities/practices.**





“Often, the scope of **(educational) exceptions** and exceptions for **libraries and archives** is unclear, particular in the **digital environment.**”

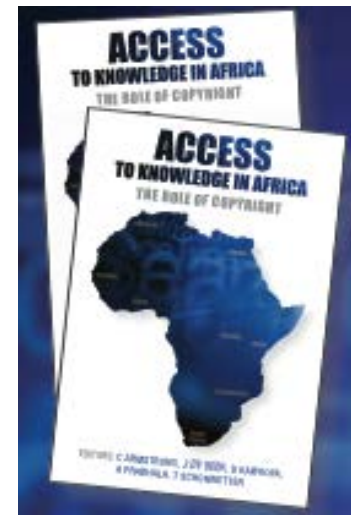
“reasonable portion”

“no conflict with normal exploitation”

“not unreasonable prejudice the legitimate interests of the rights holder”

“no direct or indirect commercial advantage”





One Overarching Conclusion

(Legal) **access** to copyrighted works **in a precarious state**





Exploring the role of intellectual property in open development

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2013 Open A.I.R. Fellowship Opportunity

Open A.I.R. invites applications for a four-month Research Fellowship in 2013. Three months are to be spent at our Southern African hub, the University of Cape Town (UCT), South Africa, working on the project's research, outreach and training activities. Fellowship details, and application instructions, are available on the Research Fellowships page.

The Open A.I.R. Project

The Open African Innovation Research and Training (Open A.I.R.) Project is investing in pan-African research, networking, capacity-building and policy engagement.

The project's central aim is to investigate how intellectual property (IP) regimes can be harnessed in Africa to facilitate innovation through collaboration – and through making processes more participatory, knowledge more accessible, and benefits more widely shared. Interconnected, empirical case studies are now underway, exploring a range of research questions in countries across the continent.

The case studies are connected to six Open A.I.R. themes: copyrights, patents, trademarks, the WIPO development agenda, the traditional knowledge (TK) commons and IP from publicly funded research. At the same time, the project is conducting foresighting research to develop scenarios for the future of IP, collaboration/innovation and development in Africa.



Network Hubs

North Africa: Access to Knowledge for Development

Open A.I.R. project

How can **IP systems** respond to the **African context** and serve as effective tools that facilitate innovation and creativity?



Thematic case study areas

- **Copyright**
- Patents
- Trade marks
- The Traditional Knowledge Commons
- IP from publicly funded research



Conclusions

- The African context seems to be predisposed **towards *innovation of necessity*** (or '**accidental**' innovation) rather than oriented towards so-called “frontier” or “high” technologies
- **Orthodox categories of IP** are often **ill-equipped** to appropriately deal with innovation originating in Africa, incl. TK
- **Institutional infrastructure** for IP management is often **poor**

The above 3 points lead outsiders to believe that the continent is producing little innovation

Conclusions

- The **impact of existing IP laws** remains minimal
- **IP policy context is divorced from actual innovation practices** on the ground.
- **IP policymaking** in many countries in Africa is still **in its infancy** stage – this presents both **opportunity** (clean slate) and **risk** (foreign-driven, top-down, hasty, inadequate)

Key observations

In some sectors, there is a significant **disconnect between the law** in the books and consumption **and distribution practices on the ground**, e.g. **copyright** and the **independent music industry sector in Egypt**.

From *De Facto* Commons to Digital Commons? The case of Egypt's Independent Music Industry



Explored perceptions on matters of copyright, musician remuneration and consumption / delivery practices in the **Egyptian independent music sector.**



From *De Facto* Commons to Digital Commons? The case of Egypt's Independent Music Industry



And this is what our researchers in Egypt found...



From *De Facto* Commons to Digital Commons? The case of Egypt's Independent Music Industry



Almost no money is spent on online music, little money is spent on CDs or cassettes – majority of money goes towards attending concerts.



From *De Facto* Commons to Digital Commons? The case of Egypt's Independent Music Industry



General lack of awareness regarding copyright protection, especially
i.r.o. intangible digital music content (consumer expectation is
that online music is free of charge)



From *De Facto* Commons to Digital Commons? The case of Egypt's Independent Music Industry



Musicians surveyed expressed that copyright protection is irrelevant to their practices; it is also not enforced properly.



From *De Facto* Commons to Digital Commons? The case of Egypt's Independent Music Industry



Given the prevalent consumption patterns and perceptions towards copyright, bundling **free (promotional) music content with paid access to live performances** – and optional contributions to the band and / or purchase of CDs – appears to be the **preferable business model for independent musicians in Egypt.**



<why do I tell you all this?>

- One common element resulting from both these research projects is that there seems to be a **disconnect** of what the law, including copyright law, prescribes and what is really happening on the ground
- Also, it appears that **varying degrees of openness** can be a crucial engine for innovation and – by extension - development in many African settings – “selective inclusion” or “collaborative IP”

Currently, even though the law often doesn't cater well for such openness (ACA2K: "*legal access to copyrighted works in a precarious state*") it perhaps doesn't matter so much because copyrights and other IP rights are often **not enforced**

But this, of course, isn't a future-proof approach –
what happens if those rights get enforced better (SA)?

Ideally, our findings will play a role **in future law and policy making** here and elsewhere so that we move away from the **(Western) rhetoric that more IP protection is always better** in terms of stimulation innovation and creativity

We also need to consider that **African cultures** are arguably less individualistic and capitalistic (two core features underpinning copyright) but instead **put more emphasis on sharing and communal ownership**

















Good example: **Traditional Knowledge** –

it appears protection against **misappropriation** is more important to indigenous peoples than all these economic exploitation rights that IP laws provide for

In the meantime: **Creative Commons licensing**, imo, is a great tool of introducing **some flexibility** into the current copyright environment (“selective inclusion” or “collaborative IP”), thus enabling **new exciting new business models** (musicians in Egypt, Siyavula (freemium))



6 licences to choose from, by combining 4 key licence terms

| LICENSES | TERMS |
|---|--|
|  |  Attribution Others can copy, distribute, display, perform and remix your work if they credit your name as requested by you |
|  |  BY |
|  |  No Derivative Works Others can only copy, distribute, display or perform verbatim copies of your work |
|  |  ND |
|  |  Share Alike Others can distribute your work only under a license identical to the one you have chosen for your work |
|  |  SA |
|  |  Non-Commercial Others can copy, distribute, display, perform or remix your work but for non-commercial purposes only. |
|  |  NC |

But:

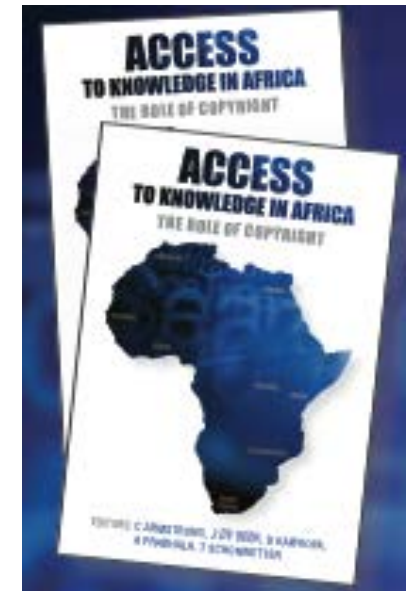
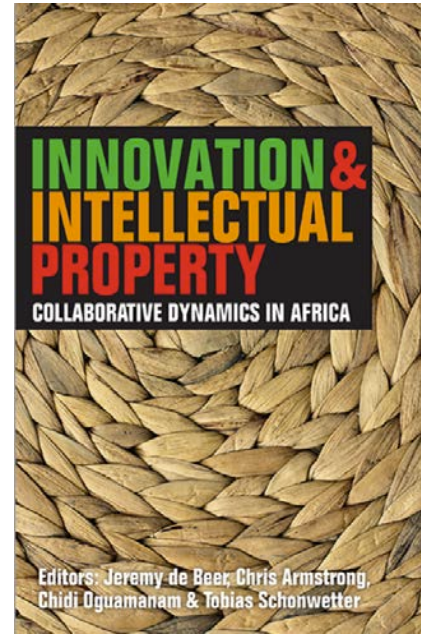
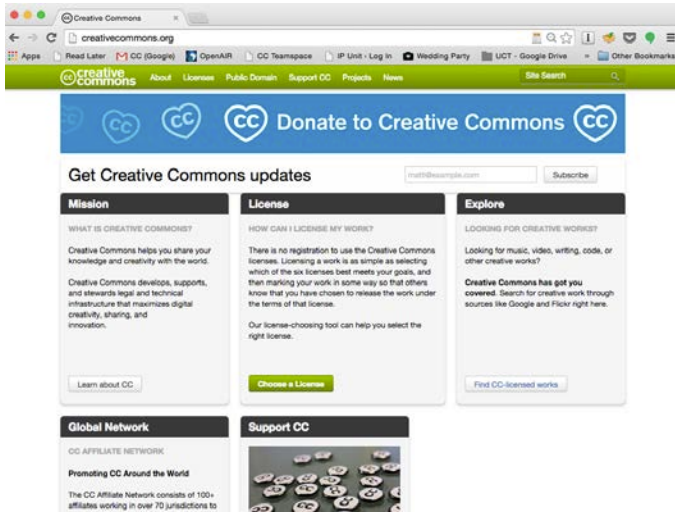
Existence of CC licences does not mean that we don't need **copyright reform** to deal with new technologies, introduce more openness and access opportunities & consider African values



CC is just a **patch or quick-fix** – and patches only cover up
(and somewhat mitigate) an underlying problem ... but it can
never fix it completely



Want to know more?



- www.openair.org.za
- www.aca2k.org
- www.creativecommons.org
- <http://ip-unit.org/wp-content/uploads/2015/02/CC-Guidelines.pdf>



Exam

- Available on H2O on 27 April between 15h00 and 16h00 as pdf
- 96 hours
- Latest submission: 1 May, 14h59, in word format
- To email address mentioned on the exam question document


- Tentative format: 4 questions
 - 1 US-focused question
 - 1 question requiring a comparison between US and SA law
 - 1 theory-related question
 - 1 SA-focused question

- Pass / fail marking
- UCT marking: 2 weeks
- +/- 4 weeks: grade review by Prof. Terry Fisher
- mid June: Notification of students; those who pass will receive certificates of completion



End-of-course survey

- Harvard: please complete it!!!
- UCT...

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Professional Development Project

COURSE EVALUATION FORM
CopyrightXUCT
February – May 2015

1. Did the course live up to your expectations? YES / NO
If not, what were you expecting?

2. Rate the lecturer: (Circle the comment you think most appropriate)

| Dr. Tobias Schwaninger | excellent | good | poor |
|---------------------------------------|-----------|------|------|
| Preparation | excellent | good | poor |
| Success in imparting information | excellent | good | poor |
| Handling of questions and discussions | excellent | good | poor |

3. Rate the administration for the course: excellent good poor

4. Generally, how was the venue? excellent good poor

5. Do you have any suggestions for how the course could have been structured differently?

6. Running a free course is expensive. Please share with us your ideas of how we could make this course more sustainable in order to run it in the future.

7. Much emphasis of CopyrightX is on U.S. law. Do you feel that this is appropriate or would it be better to create a course that exclusively deals with the situation in South Africa.

1



Thank you very much for participating in

Copyright^X: UCT

Good luck with the exam !

