



ACA2K

Country Report

JULY 2009

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

www.aca2k.org

MOZAMBIQUE

By Fernando dos Santos, Julieta Nhane and Filipe Sitoi



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Abbreviations

ACA2K - African Copyright and Access to Knowledge

ARIPO - African Regional Intellectual Property Organisation

ARPAC - Instituto de Investigação Sócio-Cultural

ICTs - information and communication technologies

INLD - National Institute for Books and Records

LDC – least developed country

SOMAS - Collective Management Society of Mozambique

TRIPs - Agreement on Trade-Related Aspects of Intellectual Property Rights

UEM - Eduardo Mondlane University

WCT - WIPO Copyright Treaty

WIPO - World Intellectual Property Organisation

WPPT – WIPO Performances and Phonograms Treaty

Executive Summary

Statistics show that there are more than 4 million students enrolled in primary schools, whereas only 56 000 are enrolled in university. Considering the rates of poverty in Mozambique, the government undertook to provide books free to primary school students. However, costs for secondary and university education are still borne entirely by students and their families.

There are at present three main obstacles with regard to access to learning materials: the cost of the learning materials, a lack of public libraries combined with limited resources in existing libraries, and a weak publishing industry. This study has found that the copyright legal framework, if not reformed, could become another obstacle to learning materials access.

Mozambique is bound by international obligations for the protection of copyright, and adheres to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organisation (WTO). As a least developed country (LDC), Mozambique was not bound by TRIPs until 2006; this deadline was later extended by the Member States of the WTO with respect to copyright, until 2013, and with respect to patents, until 2016. Nevertheless, the country undertook concrete steps to comply with TRIPs long before the scheduled deadline, voluntarily establishing a legal and institutional framework on copyright. Indeed, as far back as 1997, the government enacted a resolution authorising ratification of the Berne Convention for the Protection of Literary and Artistic Works (hereafter, the Berne Convention) of September 9, 1886 and its subsequent revisions and amendments. Four years later in 2001, Mozambique's first Copyright Law was passed, revoking the previous Copyright Code enacted in 1966, during the colonial era (Mozambique became independent in 1975). Prior to the enactment of the 2001 Copyright Law, the 1966 Copyright Code was simply ignored, though it was still in place.

In terms of the institutional framework, the National Institute for Books and Records – Copyright Office (Instituto Nacional do Livro e do Disco), created in 1975, was converted into the Copyright Office in 2001. Even earlier, in May 2000, the collective management society for Mozambique, Sociedade Moçambicana de Autores (SOMAS), was established.

In order to facilitate access to knowledge, TRIPs allows some flexibilities – such as those of scope and duration, and limitations and exceptions – with regards to copyright law. Adequate use of these flexibilities can create more opportunities for access to knowledge and, especially, to learning materials. In particular, the law may adopt limitations to copyright in order to allow reproduction for private purposes, reproduction for educational and information purposes, reprographic reproduction for libraries and archive services, quotations, and free use of government works and judicial/legal and administrative proceedings.

Other specific elements in a country's copyright law or other laws/policies may also be relevant to access to knowledge, such as measures to facilitate access to knowledge by disabled people and promoting the use of information and communication technologies (ICTs) in the learning/knowledge environment.

Among other things, this research project explored how far the Mozambican copyright legislation has gone in terms of use of the TRIPs flexibilities that have the potential to promote greater access to knowledge.

The research followed the methodology defined in the ACA2K Methodology Guide, which called on country research teams to collect evidence to answer the overarching research question of the study: 'To what extent is copyright fulfilling the objective of facilitating A2K in the study countries?'

In terms of the ACA2K methodology, a doctrinal review was undertaken of legal instruments, both national and international: namely an examination of national statutes, regulations and policies and international instruments ratified by the Mozambican government. Among these legal instruments, the 2001 Copyright Law at the national level, and the TRIPs Agreement and the Berne Convention at the international level, were the most important. Some secondary materials were also reviewed, though books on the Mozambican legal system are scarce. Articles, monographs and papers presented at scientific events were also among the sources under review.

In addition, the ACA2K methodology required the Mozambique research team to attempt to analyse the effects of the copyright legal framework on lived realities – through conducting qualitative impact assessment interviews with relevant stakeholders. The interviews involved 12 people from three different categories, namely: two from the government departments, four people from the rights-holders community and six from the education community.

The interviews were conducted (according to interview guides) in Portuguese, recorded and summarised. All the interviewees signed a consent form; only one interviewee refused to have the interview recorded.

This study provides evidence that the legal framework for copyright in Mozambique is not conducive to access to knowledge. But at the same time there is evidence that the legal framework is largely ignored. Thus, while the Copyright Law does not provide the necessary clear exceptions and limitations for education/learning purposes, the law is at present not implemented, thus ironically allowing a certain measure of access. Indeed, if the set of copyright provisions currently in place were fully applied, they would likely significantly hinder access to knowledge and exclusively benefit rights-holders. But on the ground in everyday reality, people do not view copyright law as denying their access to knowledge, as they appear to behave as if there is no copyright law in force.

The conclusion arrived at through this research is that it is desirable for Mozambique to proceed with a reform of the copyright system in order to introduce, clarify and implement exceptions and limitations and other copyright flexibilities that will promote access to knowledge (and learning materials in particular). In the absence of such reform, a drive towards enforcement by rights-holders and enforcement bodies of the legal framework could threaten access to learning materials in the country.

1. Background

1.1 Country History, Politics, Population and Economics

Bantu speakers migrated to Mozambique in the first millennium, and Arab and Swahili traders settled the region thereafter. It was explored by Vasco da Gama in 1498 and first colonised by Portugal in 1505. By 1510, the Portuguese had control of all of the former Arab sultanates on the east African coast.

Guerrilla activity led by National Front for the Liberation of Mozambique (FRELIMO) began in 1964, and became very effective by 1973. A cease-fire was signed between FRELIMO and Portugal in September 1974, and after having been under Portuguese colonial rule for 470 years, Mozambique became independent on June 25, 1975 and Samora Moises Machel became the first president. He died in a plane crash in 1986, and was succeeded by his foreign minister, Joaquim Chissano.

Soon after independence, the government became locked in a paralysing war with anti-government guerrillas, the Mozambique National Resistance (MNR, or RENAMO), who were backed by the white minority government in South Africa and Southern Rhodesia (now Zimbabwe). A cease-fire agreement signed in October 1992 between the government and RENAMO ended 16 years of civil war.

In 2002, Chissano announced he would not seek a third term. FRELIMO's candidate, independence hero Armando Guebuza, was elected president and sworn in on 2 February 2005.

Mozambique is located in Southern Africa with an area of 790 380 square kilometers. The population of Mozambique was 20 530 714 inhabitants, according to the last Census carried out in 2007.¹ More than 50 per cent of the population was aged 6-24 years and the majority (52 per cent) were women.²

The principal ethnic groups are, in the north, the Yao, Makonde, and Makua; in the centre, the Thonga, Chewa, Nyanja, and Sena; and in the south, the Shona and Tonga. Small numbers of Swahili live along the coast. People of European, mixed African and European, and South Asian descent make up less than 1 per cent of the population.

About 40 per cent of the inhabitants of Mozambique are Christian (Roman Catholic and Zionist Christian), while about 18 per cent follow traditional religious beliefs, and another 18 per cent are Muslims (most of these living in the north). Although Bantu languages are widely spoken, Portuguese is the official language.

¹Instituto Nacional de Estatísticas (2008). Available at www.ine.gov.mz [Accessed 15 March 2009].

²Assembleia da Republica, Resolução nº 16/2005, Aprova o Programa Quinquenal do Governo para 2005- 2009, at 168. Available at http://www.portaldogoverno.gov.mz/docs_gov/programa/Plano_Quinquenal_%20do_Gov_Moc_2005_2009.pdf/view [Accessed 7 June 2009].

In terms of economic performance, Mozambique has had a gross domestic product (GDP) growth rate in the region of 7 per cent in the last 10 years.³ However, Mozambique is considered to be one of the poorest countries in the world with over 60 per cent of the people living below the poverty line, with the per capita income below US\$310 per year,⁴ especially in rural areas where about 70 per cent of the population is concentrated. However, due to heavy public investment in education, health and water provision programmes, the poverty rate was reduced from 69.4 per cent in 1997 to 54.1 per cent in 2003.⁵

The national illiteracy rate in Mozambique is 53.6 per cent, but this rate is higher in rural areas (65.7 per cent) than in urban areas (30.3 per cent). The illiteracy rate among women is 68 per cent. The capital city of Maputo shows lower illiteracy rates, with illiteracy at about 15.1 per cent, while the remote province of Cabo Delgado in the north registers 68.4 per cent.⁶

The government programme for 2005 to 2009 establishes as a goal a reduction of illiteracy rates by 10 per cent in the referred period.⁷ The Strategic Plan for Education and Culture 2006 - 2011⁸ sets as a target 'provision of primary education school to 97 per cent of the population in 2010.'

1.2 Education System

The National Education System in Mozambique was defined in 1992 and provides for three different kinds of education:⁹

- i) Pre-School System – for children below six years;
- ii) School System – which is divided into:
 - General system: primary and secondary school;
 - Technical and professional system;
 - University and equivalent;
- iii) Special System – which consists of:
 - Special education for the disabled;
 - Vocational education for highly talented people in different areas;
 - Adult education;
 - Distance learning;
 - Training for teachers.

³World Bank 'Mozambique at a glance' (2008). Available at http://devdata.worldbank.org/AAG/moz_aag.pdf [Accessed 15 March 2009].

⁴UNICEF 'Moçambique em perspectiva'. Available at <http://www.unicef.org/mozambique/pt/overview.html> [Accessed 7 June 2009].

⁵M Mouzinho and Débora Nandja 'A alfabetização em Moçambique: desafios da educação para todos' background paper prepared for the *Education for all global monitoring report 2006 - literacy for life* (2006) UNESCO. Available at <http://unesdoc.unesco.org/images/0014/001462/146284por.pdf> [Accessed 1 November 2008].

⁶ibid at 6 [Accessed 15 March 2009].

⁷Resolução n° 16/2005, Aprova o Programa Quinquenal do Governo para 2005- 2009 at 68-70. Available at http://www.portaldogoverno.gov.mz/docs_gov/programa/Plano_Quinquenal_%20do_Gov_Moc_2005_2009.pdf/view [Accessed 7 June 2009].

⁸Ministério da Educação e Cultura, Plano Estratégico da Educação e Cultura 2006 – 2011, Junho, 2006. Available at <http://www.mec.gov.mz/img/documentos/20060622060602.pdf> [Accessed 7 June 2009].

⁹Lei n° 6/92 de 6 de Maio que aprova o novo Sistema Nacional de Educação

The tables below show the number of schools at each level and corresponding numbers of students enrolled in 2008:

Table 1: Types of schools

DESIGNATION	SCHOOLS	STUDENTS ENROLLED (*)
Primary School I Level (1-5 grade)	9 649	3 597.392
Primary School II level (6-7 grade)	2 210	490 031
Secondary School I Level (8- 10 grade)	285	257 729
Secondary School II Level (11- 12 grade)	76	35 450
Technical Schools I level	23	N/A
Technical Schools II level	27	N/A
Technical Schools III level	12	N/A
Public Universities	13	44 000
Private Universities	14	12 000

(*) Approximate values

Source: Ministry of Education and Culture (2008)

Table 2: Number of schools by level of education, 1998 - 2008

ANO YEAR	ENSINO GERAL				ENSINO TÉCNICO			FORMAÇÃO DE PROFESSORES		
	GENERAL EDUCATION				TECHNICAL EDUCATION			TEACHER TRAINING		
	EP1	EP2	ESG1	ESG2	ET	ETB	ETM	CFPP	IMAP'S	INSTITUTOS
1998	6 114	381	74	13	3	23	7	13	4	–
1999	6 605	448	82	18	4	23	7	12	4	–
2000	7 072	522	92	20	6	23	7	11	7	–
2001	7 480	685	105	23	7	24	7	11	7	–
2002	7 788	823	116	27	7	25	7	11	7	–
2003	8 077	950	125	29	11	25	7	11	7	–
2004	8 373	1 116	140	30	11	25	7	11	7	–
2005	8 696	1 320	156	35	16	25	7	11	9	–
2006	8 954	1 514	190	49	16	25	8	11	9	–
2007	9 303	1 842	255	58	13	27	8	11	9	–
2008	9 649	2 210	285	76	23	27	12	–	–	21
EP1 -Cicle 1/5; EP2 – Cicle 6/7; ESG1 – Cicle 8/10; ESG2 – Cicle 11/12										
ET - Elementary level; ETB – Basic level; ETM – Medium level										
CFPP/IMAP's -Teacher Training Centres or Institutes for Primary Training Education										

Source: Ministry of Education (Education Statistics)¹⁰

¹⁰Ministry of Education and Culture 'Education statistics' (2008). Available at <http://www.mec.gov.mz/img/documentos/20090224020211.pdf> [Accessed 15 March 2009].

Table 3: Enrolments by gender in EP1, 1998-2008

ANO YEAR	PUBLIC		PRIVATE		GRAND TOTAL		% GIRLS
	TOTAL	GIRLS	TOTAL	GIRLS	TOTAL	GIRLS	
1998	1 876 154	788 049	34 035	15 527	1 910 189	803 576	42.1
1999	2 074 708	886 482	34 081	15 546	2 108 789	902 028	42.8
2000	2 271 265	983 549	37 460	16 868	2 308 725	1 000 417	43.3
2001	2 508 611	1 102 927	47 121	20 866	2 555 732	1 123 793	44.0
2002	2 644 405	1 180 265	60 232	27 522	2 704 637	1 207 787	44.7
2003	2 826 362	1 280 432	57 749	27 401	2 884 111	1 307 833	45,3
2004	3 071 564	1 409 621	71 456	33 931	3 143 020	1 443 552	45.9
2005	3 393 677	1 572 276	77 463	36 709	3 471 140	1 608 985	46.4
2006	3 597 392	1 682 132	61 026	29 447	3 658 418	1 711 579	46.8
2007	3 866 906	1 815 085	65 585	31 790	3 932 491	1 846 875	47.0
2008	4 109 298	1 938 711	67 668	32 727	4 176 966	1 971 438	47.2
EP1 – Primary Education 1st Level (grade 1/5)							

Source: Ministry of Education (Education Statistics)¹¹

As can be seen, primary schools in Mozambique together enrol more than 4 million students. These numbers shrink with regard to higher levels of education. University programmes account for only 56 000 students.

1.2.1 Education System and Access to Knowledge

Mozambican students face three important challenges with regard to access to learning materials:

1.2.1.1 Cost of Learning Materials

Often, learning materials are too expensive for the local students. Indeed, due to the high rates of poverty in Mozambique, the meagre resources of Mozambicans are often devoted to basic needs and survival. This situation is more critical in the rural areas than in the urban areas.

In order to overcome this difficulty the government undertook to produce learning materials through the Ministry of Education and Culture. Learning materials, according to the government, should be free for the seven years of compulsory education in Mozambique.¹²

Learning materials are thus free for the first seven years (the primary years) of school education. For the remaining years, families have to bear the heavy burden of purchasing books for their children.

¹¹Ibid.

¹²Compulsory education was established by the Law 4/83 of 23 March 1983, Article 6.

The Plan of Action of the Strategic Plan for Education and Culture 2006-2011¹³ established as a target the provision of one book per subject for each student by 2011 at primary school level.¹⁴

At university level, students – other than a limited number who benefit from government scholarships – have to purchase books from their own resources. The learning materials used as sources at universities are generally produced by foreign authors, mainly from Portugal and Brazil, and are expensive. The university libraries generally possess only one copy of each book, which is meant to be consulted by all lecturers and students. As a consequence, there is a flourishing reprography industry in the university faculties. There is an average of three photocopy machines in each faculty. In Maputo city alone, there are some 136 small reprography companies with 4 to 6 photocopy machines each, as duly registered in the Ministry of Industry and Trade.¹⁵

The photocopied book has proven to be more accessible to students than the original: each page is priced US\$0,0389 to US\$0,0584. University education is therefore based mainly on photocopied materials.

The reprography industry constitutes an activity legitimately licensed by the competent authorities of Industry and Trade. During the process of licensing, the authorities only take into account the trade activity itself - without due consideration of the 2001 Copyright Law and (ultimately) the piracy implications of the activity.

1.2.1.2 Lack of Public Libraries and Limited Resources in Existing Libraries

Currently, primary and secondary schools lack internal libraries for their students. There is a lack of resources to establish specialised libraries for children.

Universities usually have one library for each faculty, which specialises in the subject matter of that faculty. These libraries are the main resources for university students. However, the catalogue is often outdated and with few books.

The Eduardo Mondlane University – the main and oldest university in Mozambique – has undertaken a profound reform of its library system, integrating the different faculty libraries into one Central Library. The Central Library currently stocks more than 180 000 books and publications, and this is largely as a result of donor funds, as the state has not injected any funds for new books in the last 10 years.

¹³Ministério da Educação e Cultura, *Plano estratégico da educação e cultura 2006–2011* (Junho 2006). Available at <http://www.mec.gov.mz/img/documentos/20060622060602.pdf> [Accessed 7 June 2009].

¹⁴Ibid at 35 .

¹⁵Boaventura Afonso 'Relatório de Moçambique sobre direito de autor e direitos conexos' (2007) Training Program on Copyright, Harare 23-27 April.

1.2.1.3 Weak Publishing Industry

The local publishing industry is extremely weak; fewer than 200 books are published per year, with a typical print run for each book of approximately 1 500 copies, due to the inadequate market for books.

The table below shows the number of books published in Mozambique, and the number of publishing companies, as registered over the period 2000-2006:

Table 4: Number of registered books and publishing companies in Mozambique, 2000-2006

YEAR	REGISTERED BOOKS	PUBLISHING COMPANIES REGISTERED
2006	223	4
2005	216	2
2004	179	3
2003	176	7
2002	134	4
2001	143	3
2000	125	5

Source: National Institute for Books and Records (Copyright Office)

The same trend may be witnessed in the case of other reading materials such as newspapers and magazines. Although Mozambique is characterised by a free press, and has seen a rapid increase in the number of new newspapers and magazines, these numbers still have to be improved in order to justify the development of the publishing industry and in order to truly begin to spread information and knowledge. Almost all the magazines and periodicals in existence deal with general information; scientific and specialised periodicals are still to be developed.

Table 5: Types of publications

TYPE	QUANTITY
Newspapers	77
Magazines	38
Periodic publications	74
Total	189

Source: National Institute for Books and Records (2006)

1.2.2 Education and Gender

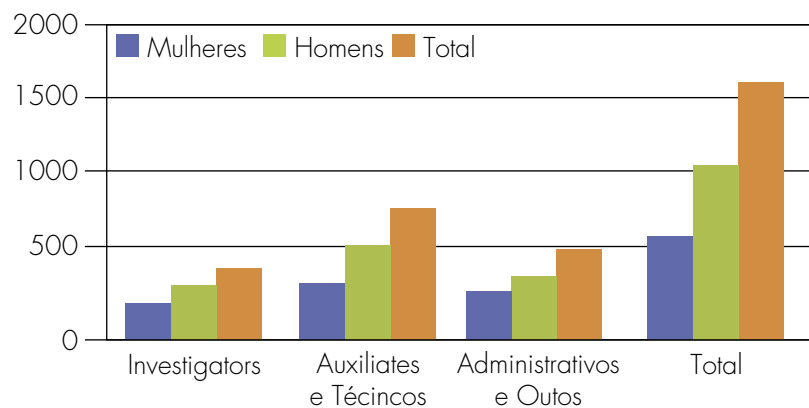
Disparities between men and women remain pronounced in the basic education system in Mozambique. Although 52 per cent of the Mozambican population are females, girls comprised fewer than 45 percent of enrolments in primary schools, and fewer than 40 percent at the second level of the primary school. Girls are more likely to repeat grades than boys, and less likely to complete the full basic education cycle. Only about 25 percent of the teachers in the basic education system are women.

Additionally, girls tend to drop out from school much more than boys and the result is a gender gap, which reaches as much as 35 to 40 percentage points (2000) in Grade 5 in the Northern and Central Regions. The reasons for the disproportionate dropout of girls in these regions are most likely related to: (i) long distance to school and incomplete schools which discourages attendance especially for girls with family obligations; and (ii) the low number of female teachers who can be role models. The gender gap in the primary school (grades 6 to 7) reaches 42 and 30 percentage points in the Northern and Central Regions.

The graphs and the table below¹⁶ show clearly that the number of women engaged in research is lower than that of the men. Specifically, Graph 2 demonstrates that only 34 per cent of Mozambican scientific researchers are women.

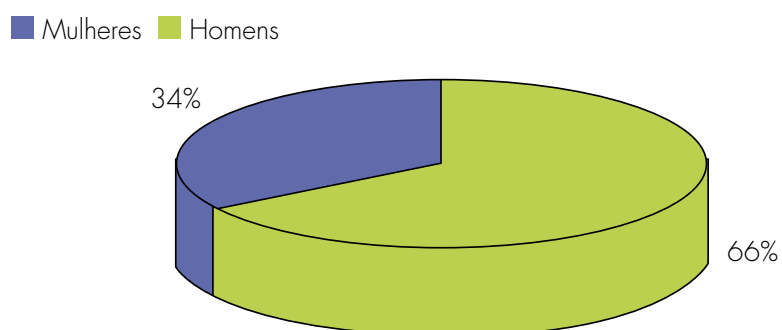
The factors that influence access to education and research will also be a determinant for A2K. Long commuting distances and unavailability of research documentation will inhibit women's access to knowledge as much time is taken up by domestic responsibilities.

Graph 1: Distribution of personnel engaged in research by type of activities and gender



¹⁶The graphs are available in Ministério da Ciência e Tecnologia, *Indicadores de ciência tecnologia e inovação 2008*. Available at http://www.mct.gov.mz/pls/portal/docs/PAGE/NEWS_EVENTS/CONSELHO_COORDENADOR/INDICADORES-08.PDF [Accessed 15 March 2009].

Graph 2: Percentage of personnel engaged in research by type of activities and gender



The table below is interesting as it demonstrates that women researchers are more numerous in agriculture:

Table 6: Number of researchers by scientific area and gender

AREA CIENTIFICA	INVESTIGADORES		TOTAL
	HOMENS	MULHERES	
Ciências naturais	34	22	56
Engenharia & Tecnológica	20	1	21
Medicina	9	6	15
Agricultura	90	51	141
Ciências Sociais & Humanas	67	31	98
Outras	4	2	6
Total	224	113	337

Fonte: MCT. Inquérito 2006.

Nota: OS dados não incluem o Ensino, ONGs e Empresas.

Indeed, the areas where women have a significant presence are agriculture, social and human sciences and natural sciences.

2. Doctrinal Analysis

2.1 Statutes and Regulations: Introduction to Legal Framework

The regulation of intellectual property in Mozambique traces its foundation to the time before independence, through two different instruments: the Industrial Property Code¹⁷ and the Law on Copyright and Related Rights.¹⁸ These two instruments were complemented by the 1966 Civil Code which contained some provisions related to intellectual property.¹⁹ However, the establishment of a legal framework was not accompanied by the establishment of robust institutions to implement the law. Indeed, all industrial property was looked after by a small division under the General Directorate of Industry; this division acted like a mailbox to channel applications related to industrial property rights to the National Institute of Industrial Property located in Lisbon (the capital of Mozambique's colonial rulers, Portugal). No copyright office was set up.

Mozambique gained its independence from Portugal in June 1975, led by FRELIMO (Mozambican Liberation Front) – the movement that directed the liberation struggle with Samora Machel as President. The new regime embraced a centrally-planned economy which placed particular importance on collective ownership of property. Private property was discouraged and intellectual property totally lost its relevance in the new context although no changes were formally made, as the Copyright Code was not revoked expressly. The Copyright Code in force was simply ignored.

Since its independence Mozambique has enacted three constitutions, in 1975, 1990 and 2004. The Constitution of 1975 established a single party, which remained in force until 1990, a period of Civil War, between FRELIMO and the guerrilla Movement, RENAMO (Mozambican National Resistance).²⁰

The first Constitution of Mozambique adopted in 1975, inspired by the ideology of collective ownership, did not include any provision on intellectual property.

In 1986, President Machel was killed in a plane crash and succeeded by President Joaquim Chissano. The Chissano government had begun repudiating Marxism, pledging itself to develop a market-oriented economy.²¹

In 1990, a new Constitution was enacted, in the context of peace negotiations between FRELIMO and RENAMO in order to shift from a single-party regime to a multiparty democracy.

¹⁷Approved by the Decree n°30.679 of 24 August 1940, which became applicable to Mozambique further to enactment of 'Portaria' n°17043, of 20 February 1959.

¹⁸Approved by the Decree n°46.980 of 27 April 1966, which became applicable to Mozambique further to enactment of 'Portaria' n° 679/71, of 7 December.

¹⁹The Civil Code was approved on 25 November 1966 by 'Decreto-Lei' n° 47344 and was extended to Mozambique through 'Portaria' n.º 22869 of 18 December 1967.

²⁰Open Society Initiative for Southern Africa, *Moçambique: o sector da justiça e o estado de direito* (2006) OSISA, London, at 4. Available at www.sarpn.org.za/documents/d0002240/Mozambique_Justica_Sept2006.pdf [Accessed 22 June 2009].

²¹Answers.com. Available at www.answers.com/topic/mozambique [Accessed 22 June 2009].

The 1990 Constitution radically broke up with the past, establishing the transition from the centrally-planned economy to the free market and from the single-party regime to a multiparty democracy and especially placing the citizen at the heart of the State system. Indeed, although the 1975 Constitution included some provisions on individual rights, emphasis was given to collective rather than to individual rights. The new Constitution of 1990 provided more rights and guarantees to the individual and expressly provided for freedom of expression and information (Article 74), the right to education (Article 92) and especially the private ownership of property.²²

In particular, the 1990 Constitution, provided expressly for the first time after independence, for the protection of intellectual property rights in Article 79.²³

In November 2004, a new Constitution was enacted by Parliament. The new Constitution did not bring substantial changes to the former one; however, it improved and better clarified the changes made by the 1990 Constitution.²⁴ Furthermore, the new Constitution recognised some new rights, namely: use of electronic data (Article 71), consumers' rights (Article 92), and cultural heritage (Article 81). In regard to the provision on intellectual property, it was simply shifted from Article 79 to 94, maintaining its content entirely.

Nevertheless, it was not before the implementation of the 1994 WTO TRIPs Agreement that an intellectual property system was put into place in Mozambique.²⁵

As a least developed country, Mozambique was not bound by TRIPs until 2006. Nevertheless, the country undertook concrete steps to comply with TRIPs far ahead of the scheduled deadline. Mozambique did not take advantage of the TRIPs flexibility allowing a delayed implementation of the Agreement until 2006.²⁶

In compliance with the TRIPs provision requiring member states to establish a legal framework for intellectual property, the Mozambican government enacted, in 1999, the Industrial Property Code²⁷ and, in 2001, the Copyright Law.²⁸ As stated before, although the previous laws, enacted during the colonial regime were theoretically still in force, were not enforced due to the communist regime in the country, which ignored their existence.

²²Article 86 of the Constitution of 1990 states: '1. The State shall recognise and guarantee the right to ownership of property'. Available at http://www.southernafricalawcenter.org/files/tbl_s5107SAPublications%5CFileUpload5913%5C12%5CMozambique.pdf [Accessed 22 June 2009].

²³Article 79 states '1. All citizens shall have the right to freedom of scientific, technical, literary and artistic creativity. 2. The State shall protect rights relating to intellectual property, including copyright, and shall promote the practice and dissemination of literature and art.'

²⁴Open Society Initiative for Southern Africa *Moçambique: o sector da justiça e o estado de direito* (2006) at 6.

²⁵Mozambican Government approved accession to WTO by the Resolution nr 31/94 of 20 September.

²⁶This deadline was further extended to 2013, for all the least developed countries. The Doha Declaration on TRIPs and Access to Medicines of 2001, exempt the least developed countries from TRIPs compliance in relation to patents related to medicines until 2016.

²⁷Through the Government Decree nr 18/99 of 4 May 1999. The Code went to a deep reform in 2006: the new Industrial Property Code of Mozambique was enacted on 12 April 2006 by the Government Decree nr 4/2006.

²⁸Law 4/2001 of 27 February 2001.

In further compliance with TRIPs provisions regarding the requirement of Member States to establish an institutional framework, the Mozambican government created a Department for Industrial Property under the Ministry of Industry and Trade in 1995. The industrial property system was further strengthened through establishment of an autonomous entity responsible for administration of patents and trademarks, the Industrial Property Institute, created in 2003.²⁹ The National Institute for Books and Records - Copyright Office (Instituto Nacional do Livro e do Disco) established in 1975, which was originally entrusted with press responsibilities, was converted into the Copyright Office in 2001 by virtue of Government Decree 4/91. In May 2000, the collective management society of Mozambique, Sociedade Moçambicana de Autores (SOMAS) was established.

Concurrently, Mozambique has undertaken to adhere to all relevant international organisations active in the intellectual property system, namely the World Intellectual Property Organisation (WIPO) (agreed to adhere in 1996³⁰) and the African Regional Intellectual Property Organisation (ARIPO) (agreed to adhere in 1999).³¹

The following WIPO-administered instruments have been ratified by Mozambique:

- 1996 – Convention Establishing the World Intellectual Property Organization on 14 July 1967 – Resolution of the Council of Ministers nr 12/96 of 18 June;
- 1997 – Paris Convention for the Protection of Industrial Property of 20 March 1883 – Resolution of the Council of Ministers nr 21/97 of 12 August;
- 1997 – Madrid Agreement Concerning the International Registration of Marks 14 April 1891 – Resolution of the Council of Ministers nr 20/97 of 12 August;
- 1997 – Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of 27 June 1989 – Resolution of the Council of Ministers nr 20/97 of 12 August;
- 1999 – Patent Cooperation Treaty of 19 June 1970 – Resolution of the Council of Ministers nr 35/99 of 16 November;
- 2001 – Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886³² – Resolution of the Council of Ministers nr 13/97 of 13 June;
- 2002 – Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 – Resolution of the Council of Ministers nr 31/2001 of 12 June;

Mozambique has also ratified the Harare Protocol on Patents and Industrial Designs, adopted in Harare on 10 December 1982 by the Member States of ARIPO.

However, the legal framework for protection of copyright in Mozambique (currently provided by the 2001 Copyright Law) has not yet been augmented by detailed regulation, and most of the rights are thus lacking clear and concrete implementation guidelines. This lack of regulation undermines the feasibility of introducing TRIPs flexibilities. As stated above, some of the flexibilities provided for by international instruments have not been adequately adopted by the Mozambican copyright legislation.

²⁹The Industrial Property Office was established by the Government Decree n° 50/03 of 24 December 2003.

³⁰Ratified by the Government Resolution n° 12/96 of 18 June 1996.

³¹Resolution of the Council of Ministers nr 34/99 of 16 November 1999.

³²A Resolution approving the adherence of Mozambique to this instrument was issued by the Government although the instrument was not deposited at the WIPO.

2.1.1 International Obligations

2.1.1.1 WTO TRIPs Agreement

In 1994 Mozambique signed the Marrakesh Agreement, thus joining the World Trade Organisation³³ and through the 'single undertaking' mechanism automatically ratified the annex containing the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).³⁴

The TRIPs Agreement sets the minimum standards for the protection of intellectual property rights. The minimum standards comprise:

- Establishment of a legal framework for the protection of intellectual property rights;
- The administration and enforcement of intellectual property rights through the establishment of intellectual property offices, judicial institutions and border measures against intellectual property rights infringement;
- Definition of the minimum term of protection of intellectual property rights.

The TRIPs Agreement took into consideration existing discrepancies and asymmetries in terms of the development of WTO Member States, and the difficulties that could derive from the uniform enforcement of provisions contained in TRIPs. Certain flexibilities were defined to cater to these asymmetries:

- Time-based flexibilities – phased implementation according to whether the country classified itself as developing or least developed; and
- Substantive flexibilities – for example, compulsory licenses, parallel importation, exceptions and limitations.

For the 32 least developed countries (LDCs) belonging to the WTO, including Mozambique, the time-based flexibilities originally provided considerable lead-time to allow these countries to create basic technological and economic enabling conditions for enforcement of an intellectual property regime. The TRIPs compliance deadline for LDCs was initially 2005, and was subsequently extended until 2013 with respect to copyright, and until 2016 with respect to patents related to medicines. As an LDC, Mozambique thus could have benefited from the extension of time until 2013 in the case of copyright and until 2016 in the case of patents related to medicines. However, Mozambique did not take advantage of this TRIPs flexibility related to delaying implementation of the instrument.

The one TRIPs flexibility Mozambique did make use of in the broad industrial property area was the use of the flexibility related to issuing compulsory licences. In 2004, addressing the country's critical situation with HIV/AIDS, the government issued a compulsory licence on a combination of the anti-retroviral drugs stavudine, lamivudine and nevirapine.³⁵

³³Through Resolution nr 31/94 of 20 September of the Council of Ministers.

³⁴O enquadramento da OMC funciona na base do single undertaking, relativamente aos resultados da Ronda de Uruguai, isto é, ser membro da OMC implica aceitar todos os resultados da Ronda sem excepção, mesmo os Acordos plurilaterais, embora estes não se apliquem fora dos territórios dos seus subscritores', S Namburete *A organização mundial do comércio – uma visão Africana* (2005) Almedina, Coimbra at 19.

³⁵Decision of the Deputy-Minister of Industry and Trade issued on 5 April 2004 (Licença Compulsiva no 01/MIC/04).

In the copyright area, the Mozambican Copyright Law of 2001 served to implement several TRIPs principles, including:

- Protection of the expression of ideas;
- Copyright term of protection of 70 years beyond the author's life (even though the TRIPs minimum is life plus 50 years);
- Protection of computer programmes;
- Protection of performers, phonogram producers and broadcasting organisations.

Thus, Mozambique did not take full advantage of the TRIPs flexibility related to the term of copyright protection for authors' moral and economic rights, for broadcasts and for works of applied art. For all these works, the term of protection specified in Mozambique's 2001 Copyright Law goes beyond the minimum term of protection imposed by TRIPs – without any apparent reasonable justification for the extended term. Adoption of minimum standards on the term of protection (eg, life plus 50 years instead of life plus 70 years for authors' works) would have allowed for the works to fall into the public domain more quickly, thus facilitating greater access to knowledge. (There is more on the Mozambique Copyright Law of 2001 below in sub-section 3.3.4.)

2.1.1.2 The Berne Convention

Further to incorporation of intellectual property provision in the 1990 Constitution and adherence to the World Trade Organisation in 1994, Mozambique expressed in 1997, its willingness to adhere to the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) of 9 September 1886, by enacting the Resolution of the Council of Ministers number 13/97 of 13 June 1997, that approved the ratification of the Berne Convention. Notwithstanding that Resolution, the instrument of ratification was not deposited at WIPO. There are official statements from the government to the effect that the Berne Convention is in force in Mozambique, and WIPO is aware of the fact. Thus, the failure to deposit the instrument of ratification at WIPO seems to be a mere bureaucratic omission that could be easily solved.

In 2001, four years after the enactment of the Resolution to adhere to the Berne Convention, Parliament passed the Copyright Law of 2001. Although Mozambique did not adhere formally to the Berne Convention, it complied fully with its principles, by virtue of the TRIPs provisions.³⁶ Mozambique did not incorporate the Berne Appendix and there is no official position on the matter; to some extent, this could be because the indigenous language publishing is as yet nascent in Mozambique and the market is dominated by the Portuguese-language publishing industry – which would not benefit from the Berne Appendix as Portuguese is a European language and thus not covered.

2.1.1.3 WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)

Mozambique did not sign either of these so-called 'Internet Treaties'. Therefore, the digital issues are not specifically addressed by the laws and regulations. In particular, there are no specific provisions on anti-circumvention measures in place.

³⁶Article 9(1) of TRIPs states: 'Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto.'

2.1.2 National Policies, Statutes and Regulations

2.1.2.1 The Constitution

As stated before, the Mozambican Constitution of 2004 provides, in Article 94, an express statement regarding intellectual property. And interestingly, this article in the Mozambican Constitution focuses on copyright as an instrument for promotion and dissemination of knowledge and arts.³⁷ Particular attention was paid to copyright in the provision, which refers to ‘intellectual property, including copyright’, thus aiming to ensure copyright was clearly incorporated.

The Constitution also provides, in Article 88, for the right to education for all citizens. In this regard it is a duty of the state to promote the extension of education to professional and continuing vocational training, as well as to ensure equal access to the enjoyment of this right by all citizens. Access to knowledge is undoubtedly one way to achieve this provision of the right to education to all citizens.

2.1.2.2 The Civil Code³⁸

The Civil Code contains some provisions with regard to copyright:

- Article 48 – establishes the principle of territoriality of copyright law;
- Article 1303 – states that copyright will be regulated by a special law. It was under this premise that the Portuguese Copyright Code was enacted in 1966.³⁹ The Code was thereafter extended to the colonies including Mozambique in 1971.

2.1.2.3 The Penal Code

The Penal Code enacted in the colonial period is still valid in Mozambique. It contains two relevant provisions regarding copyright, namely: Article 457 dealing with counterfeiting and Article 462 addressing illegal performance of music.

2.1.2.4 The Copyright Law

Copyright protection in Mozambique was first introduced by the Copyright Code in 1966, which entered into force in 1971. However, in practical terms, the use of copyright was limited to a small number of people, mainly the Portuguese colonists, excluding the majority of local people. Furthermore, copyright was administered by Portuguese institutions, which, since they were not represented in the colonies, prevented easy access to its benefits.

The independence of Mozambique in 1975 did not provide important changes in the copyright regime. Indeed, due to the centrally planned orientation of the economy after independence, private property in general was neglected and copyright was not a priority for the government. Although the Copyright Code was not revoked expressly, its existence was basically ignored.

The updated Copyright Law enacted in 2001 revoked the old code and established an enabling copyright environment in the country. The new Copyright Law is a complex law, incorporating 79 articles and an annex with 32 definitions.

³⁷Article 94 nr 2 states: ‘The State shall protect rights relating to intellectual property, including copyright, and shall promote the practice and dissemination of literature and art.’

³⁸‘Código Civil’ aprovado pelo Decreto-Lei n° 47344 de 25 de Novembro de 1966.

³⁹‘Código de Direitos de Autor e os Direitos Conexos’ approved by Decree n° 46980 of 27 Abril 1966, applicable to Mozambique through Portaria n° 679/71 of 7 December 1971.

2.1.2.5 National Intellectual Property Strategy

The Mozambican government approved on 28 August 2007, by resolution, the National Intellectual Property Strategy and its Action Plan.⁴⁰

The approval of the Intellectual Property Strategy was achieved through an inclusive process of consultations between the public and private sectors, academic institutions, rights-holders and civil society. Therefore, the Intellectual Property Strategy represents the vision of all those stakeholders and an adequate intellectual property regime that may serve the national interests in terms of economic, social, technological, scientific and cultural development of the country.

The Intellectual Property Strategy contains a number of recommendations regarding dissemination of intellectual property rights, promotion and protection of creative works, measures against counterfeiting, and piracy.

Indeed, the context in which the Strategy was drafted was characterised by a great concern in terms of protection of intellectual property rights of the creator and to add to, or capture value from, the local products.

The Strategy therefore does not provide measures to safeguard access to knowledge by the users in general.

2.1.2.6 Eduardo Mondlane University Research Policy

The Eduardo Mondlane University adopted in June 2007 a Research Policy⁴¹ which establishes that research activities are governed by internationally accepted ethical principles, which demand respect for intellectual property and the legislation in force in Mozambique concerning intellectual property and authorship rights.

The policy sets out norms related to the ownership of the research results carried out at the university and encourages intellectual property rights acquisitions and protection by the internal competent bodies.

The policy is clear in terms of the need to protect intellectual property. However, it lacks details with regard to ownership of copyright and benefits-sharing for the results of the research. A specific regulation of intellectual property is desirable.

The document also lacks provisions that safeguard access to knowledge by the researchers and students. The document simply sets out an orientation perspective but does not contain detailed provisions on the management of intellectual property. The Eduardo Mondlane university will soon enact its own IP Policy in which such issues will be tackled. The IP policy may provide a good opportunity to address issues of A2K generated in the university for users.

⁴⁰Conselho de Ministros *Estratégia nacional da propriedade intelectual* (2009) Maputo.

⁴¹Eduardo Mondlane University *Eduardo Mondlane University research policy* (2007) University Press, Maputo.

2.1.3 Flexibilities in the Mozambican Copyright Law

2.1.3.1 Kinds of Copyright-Protected Works

The copyright system provides the owners or rights-holders a temporary monopoly for the economic exploitation of their works for a limited period of time. The monopoly allows the creators or owners to benefit from the economic exploitation of their creations through selling or lending.

The Mozambican Copyright Law fully follows Article 9 of TRIPs, which establishes that Members shall comply with the Berne Convention in regard to copyright (Articles 1 through 21). Therefore Article 4 of the Copyright Law establishes the kinds the works that are copyright-protected, namely:

- written works, including computer programmes;
- lectures, addresses, sermons and other works consisting of words and expressed orally;
- musical works, with or without accompanying words;
- dramatic and dramatico-musical works;
- choreographic and mimed works;
- audiovisual works;
- works of fine art, including drawings, paintings, sculptures, engravings and lithographs;
- works of architecture;
- photographic works;
- works of applied art;
- illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science;
- expressions of folklore;
- compilations of works;
- translations, adaptations, arrangements and other transformations of original works.

The Copyright Law provides also for the protection of the related rights in Article 41(1), namely to performances, phonograms, videograms and broadcast programmes.

2.1.3.2 Scope

In Article 7, the Mozambican Copyright Law provides for economic and moral rights. According to Article 7, the economic right comprises reproduction, translation, preparation of adaptations, arrangements and other transformations, making copies of the work available for sale to the public, or any other form of transfer of ownership, for rental and for public lending, presentation or performance of the work in public, import or export of copies of the work, communication to the public for broadcasting by cable or by any other means.

On the other hand, Article 8 encompasses the following as moral rights:

- the right to claim authorship of the work, in particular the right to ensure that, as far as possible, the author's name is mentioned in the usual way on copies of the work in relation to every public use of his or her work;
- the right to remain anonymous or to use a pseudonym;
- the right to object to any distortion, mutilation or other modification of the work, or
- any derogatory action, that might be prejudicial to the honour of the creator, or reputation, or to the authenticity or integrity of the work.

The scope of copyright protection above illustrated was not construed as a result of a clear understanding of each of the rights and balancing these rights with the national interests. On the contrary, it seems to derive simply from a literal adoption of the text of international instruments.

2.1.3.3 Term of Protection

Both the WIPO Berne Convention and the WTO TRIPs Agreement set the minimum period of protection of copyright (economic rights) at 50 years after the life of the author in the case of most works. As mentioned above, in Mozambique, according to Article 22 of the 2001 Copyright Law, protection of copyright lasts for 70 years from the death of the author. (This is what is known as a 'TRIPs-Plus' provision as it goes beyond the minimum terms prescribed by TRIPs.)

The Berne Convention and the TRIPs Agreement also define the minimum period of protection for moral rights to at least the term of economic rights. Mozambique, however, provides eternal protection for the moral rights.

The table below compares the terms of protection of the different rights in the Mozambican Copyright Law with the minimum standards set by the TRIPs Agreement, the Berne Convention and the WIPO Performances and Phonograms Treaty (WPPT) of 1996 (though it must be remembered that Mozambique is not a signatory to the WPPT).

Table 7: Comparison of terms of protection

RIGHT	TRIPs (YEARS)*	BERNE CONVENTION (YEARS)*	WPPT (YEARS)*	COPYRIGHT LAW MZ (YEARS)*
Moral Rights	N/A	50	N/A	Unlimited
Economic Rights	50	50	N/A	70
Cinematographic Work	N/A	50	N/A	N/A
Photographic Work	N/A	25	N/A	N/A
Applied Art	N/A	25	N/A	70
Performances	50	N/A	50	50
Phonograms	50	N/A	50	50
Broadcast	20	N/A	20	25
Anonymous/ Pseudonymous Work	N/A	50	N/A	N/A
Folklore	N/A	N/A	N/A	Unlimited

Source: Report on Copyright and Access to Learning Materials (2009)

(*) After lifetime of the author

Article 7.6 of the Berne Convention provides that the countries of the union may grant terms of protection in excess of those provided by the Convention, and the Mozambican Copyright Law of 2001 has made use of this allowance in the case of moral and economic rights, broadcasts, and works of applied art. But, as stated above, no specific reasons have been offered for these extended terms. Mozambique could have applied the minimum standards in terms of duration of the right in order to allow works to fall in the public domain, thus facilitating access in a shorter period of time.

2.1.3.4 Limitations and Exceptions

The Berne Convention and TRIPs⁴² also include several provisions related to exceptions and limitations, but leave application of these provisions to the discretion of each country. However, the discretion is narrowed by the fact that detailed conditions are defined for limitations and exceptions.⁴³

Those conditions largely consist of the so-called ‘three-step test’, which prescribes that: ⁴⁴

- the exception or limitation is set under certain special cases;
- there is no conflict with normal exploitation of the work; and
- the exception or limitation cannot unreasonably prejudice the author’s interests.

There are three categories of exceptions and limitations:⁴⁵

- Those that safeguard fundamental user rights concerning the individual. Example: the reproduction of public speeches, the right to make quotations, reporting current events, parody, and reproduction for private non-commercial use;
- Those concerning commercial interest, industry practice and competition. Examples: press reviews, ephemeral recordings by broadcasting organisations, museum catalogues, and de-compilation/reverse engineering of computer programmes for interoperability;
- Those concerning society at large and aimed towards the promotion and dissemination of knowledge and information. Examples: provisions for libraries, educators for teaching and research, people with disabilities, reporting of parliamentary and judicial proceedings, and religious celebrations.

Mozambique has followed through the 2001 Copyright Law, the exceptions and limitations established by the Berne Convention.⁴⁶ The Copyright Law provides for exceptions and limitations for the copyright in Articles 9 to 21, and for the related rights in Articles 47 to 49. The exceptions and limitations relevant to access to knowledge are as follows:

a. Reproduction for private purposes (Article 9, paragraph 1)

The monopoly that vests in the author does not encompass prohibition of private use of the work.⁴⁷ Private use excludes any economic exploitation of the work.

The Mozambican Copyright Law allows reproduction of a published work exclusively for the user’s private purposes without authorisation by the author or payment of remuneration.

⁴²TRIPs Article 13 ‘Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.’

⁴³Kenneth Crews *Study on copyright limitations and exceptions for libraries and archives* (2008) Standing Committee on Copyright and Related Rights Geneva, XVII Session, Geneva November 3-7 2008 (WIPO Docs. SCCR/17/2). Available at www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192 [Accessed 15 November 2008].

⁴⁴See Nwauche (2008) at 8: ‘This test found in international intellectual property treaties such as the Berne Convention for the Protection of Literary Works; the Trade Related Aspects of Intellectual property Rights (TRIPS) of the WTO; to mention a few requires that limitations of or exceptions to rights granted to copyright owners must be in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. The cumulative nature of this test ensures that exceptions and limitations and therefore the public interest are severely threatened. It is difficult to imagine which exception and limitation that does not for example impact on the income of an author. If the three step test is pursued to its logical conclusion, copyright will become an exclusive protection for authors.’

⁴⁵Teresa Hackett ‘Exceptions and limitations’ in *Copyright vital for South countries* SUNS #6581, 3 November 2008.

⁴⁶As indicated before, although Mozambique did not adhere formally to the Berne Convention, its 2001 Copyright Law fully follows its principles. This may derive from the fact that Mozambique as member of the WTO is bound by Article 9 of TRIPs, which establishes that Members shall comply with the Berne Convention in regard to copyright.

⁴⁷José de Oliveira *Ascensão Direito civil – direito de autor e direitos conexos* (1992) Coimbra Editora, Coimbra, at 200.

b. Reproduction in the form of quotation (Article 10)

Quotation of a legitimately published work in another work is allowed without authorisation by the author or payment of remuneration, subject to the condition that the source is mentioned, and also the author's name if it appears in the source. However, the quotation has to conform itself to the normal custom and practice and its extent must not exceed what is necessary to achieve its purpose. But what is a normal custom is not indicated; no specific regulations were enacted to clarify the issue. Once again, there is a need for regulations in support of the Copyright Law, clarifying the legislation. In the academic environment there is a belief that normal use probably corresponds to academic practices which limit quotations to the minimum necessary to clarify or highlight a given piece of content. During the interviews some of the academics indicated that they were not aware of the amount of a work that can be copied; however, they were convinced that the prohibition does not impede access to the materials.⁴⁸

c. Reproduction for educational purposes (Article 11)

Article 11 is the most important and direct exception related to access to learning material, and it states that:

It is permitted, without authorisation by the author or payment of remuneration, but without prejudice to the obligation to mention the source and the author's name if it appears in the source: ...b) to reproduce by reprographic means for educational purposes or for examinations within educational establishments whose activities are not directly or indirectly profit-making and to the extent justified by the aim to be achieved, isolated articles lawfully published in a newspaper or magazine or short extracts from a lawfully published work or short work, provided that such use conforms to normal custom and practice.

The exception allows reprography⁴⁹ of isolated articles and brief excerpts of a work. However, the Copyright Law does not specify how short the work or the extract shall be in order to pass as an exception. As said previously, regulations must be generated to indicate precisely the amount that can be reproduced without authorisation. Some of the academics interviewed indicated, informally, that 10 per cent of a work would seem to be a fair amount of reproduction if one looks at normal custom and practices as happens in other countries.

Furthermore, the exception does not exempt the author using the quotation from the obligation to indicate the source and the original author.

d. Reprographic reproduction for libraries and archive services (Article 12)

This generic exception for libraries and archive services in Article 12 allows reproduction of part of or entire works (according to the specific case) through reprography if the activities of the institutions are not directly or indirectly profit-making. It can be deduced from the provision that entire works may be reproduced by those institutions but only in isolated cases, meaning that the library may not put the work at disposal of everybody for free reproduction and at any time they want. In addition, Article 12(2) (b) clarifies that 'if repeated, [that reproduction] occurs on separate, unrelated occasions', meaning that multiple copies cannot be made on a single occasion.

⁴⁸See the interview with one of the lecturers of the Eduardo Mondlane University who stated: '*Tenho consciência de que os direitos de autor não são ilimitados e é possível a sua utilização parcial*' - [Translation: 'I am aware that the copyright is not unlimited and partial use is possible...']. On the other side, one of the students said: '*Não. Sei no entanto que é possível reproduzir materiais para fins académicos. Estou convencido também que a reprodução para fins académicos provoca menos danos do que outros usos. Tenho conhecimento de que é possível fazer um uso parcial de uma obra...*' [Translation: 'I am not aware (of the free use) but I am aware that it is possible to reproduce some materials for educational purposes. I am convinced that the reproduction for educational purposes causes less damage than other uses. I am aware of the fact that partial use of the work is possible...']

⁴⁹Definition 32 set out in the annex of the law states that: 'Reprographic reproduction of a work' means the production of facsimile copies of originals or of copies of the work by means other than painting. The production of reduced or enlarged facsimile copies is also considered 'reprographic reproduction.'

Entire reproduction of the works is also possible, according to Article 12(3), when such a copy is intended to preserve,⁵⁰ or if necessary replace,⁵¹ a work in the permanent collection of a library or archive service, on account of the latter having been lost, destroyed or rendered unusable, as long as the work is not available in reasonable condition or the reproduction is an isolated act or, if repeated, it occurs on separate, unrelated occasions.

Partial reproduction may be allowed to the library/archive where the purpose of the reproduction is to respond to a request from a natural person and the library or archive service ensures that:

- the copy will be solely used for research purposes;
- the reproduction is occasional; and
- a collective licence may not be obtained.

It is worth stating that commercial libraries do not qualify for the exception. The Mozambican context does not offer any example of a commercial library. Indeed, the majority of the libraries are public libraries or connected to a university. Some financial institutions also provide documentation centres that collect important pieces of knowledge, but they generally allow free access. Some diplomatic missions provide cultural centres, including libraries accessible to the public.⁵²

The law also allows libraries/archives to lend a copy of a written work to the public solely for consultation, without authorisation by the author or payment of any remuneration. Considerations made in regard to commercial libraries may apply in the lending, but there is no record in Mozambique of any commercial exploitation of written works in terms of lending. Lending is provided free by the libraries.

e. Visually-impaired people

More than 700 000 people are affected by visual problems in Mozambique. Among them 200 000 are blind, but only around 500 are able to read in Braille and only three hold university degrees.⁵³

The Mozambican Copyright Law is silent regarding exceptions for the benefit of people with disabilities, meaning that any use or adaptation of a work to allow access by disabled people has no protection in the law and therefore needs permission from the author.

⁵⁰Preservation generally involves the making of a copy of a work before it has been lost for any reason, in order to ensure its continued availability', in Crews 'Study on copyright limitations and exceptions for libraries and archives' at 51.

⁵¹'Replacement involves the making of a copy specifically to replace an item that already has been lost from the library collection, or the original is for other reasons no longer suited for general use', *ibid* at 51.

⁵²UK provides for the British Council Library. The US, Portugal, Brazil also provide some important libraries.

⁵³Lusa – Agência de Notícias de Portugal, 'Governo Moçambicano lança edição da Constituição em braile' (14/08/2008) Interview with Mr José Tole, President of the Mozambican Association of blind people. Available at www.agencialusa.com.br/index.php?iden=18318. [Accessed 2 July 2009].

A study presented at the Fifteenth Session of the Standing Committee on Copyright and Related Rights (SCCR) of WIPO in 2006 gave evidence that in some countries, the lack of specific exceptions to copyright for the benefit of visually-impaired people is not seen as a problem as there is very little understanding of the restrictions that might arise because of copyright protection, and often also very little recognition of the needs of visually-impaired people.⁵⁴

A case study looking specifically at Mozambique concluded that:

Libraries in general are very few in Mozambique and there are no libraries at all for visually impaired people. Some material does exist in Braille, but it is unlikely to have a local source. The beginning of a greater recognition of the needs of visually impaired people is, however, emerging. For example, in June 2006 a currency with a change in the face value was launched and it is possible to find information about this in Braille.⁵⁵

At this point in time there is, therefore, no particular concern in Mozambique about any problems due to copyright with the production and dissemination of accessible formats of copyright works for visually impaired people. At some point in the future as recognition of the needs of those with a visual impairment continues to grow it does, however, seem very likely that copyright will become a problem.⁵⁶

Most recently, in August 2008, the Head of State of Mozambique, Armando Guebuza, launched the Braille version of the Mozambican Constitution. As the adaptation was made by the Ministry of Women and Social Activities and the content was a legal document in the public domain, no copyright issues were raised. No other cases of adaptation of Mozambican documents protected by copyright are available.

f. Digital works (Articles 4 and 16)

The Mozambican Copyright Law deals with digital issues, making express reference to computer programmes in Article 4(1)(a).⁵⁷ Article 16 allows the legitimate owner of a copy of a computer programme to make a copy or adaptation of that programme, without authorisation by the author or payment of separate remuneration, provided that the copy or adaptation is: (a) necessary for the use of the computer programme according to the purposes for which it was obtained; and (b) necessary for purposes of archiving, and for replacing the lawfully held copy in the event of its being lost, destroyed or rendered unusable.

Mozambique is not party to the 1996 WIPO 'Internet Treaties' (WCT and WPPT) and thus there are no provisions with regard to other details on digital issues.

Although the issue was not expressly stated in the 2001 Copyright Law, it may be inferred that the authorisation for reproduction, adaptation or performance may be applied both to physical and online works. The problem that could be raised relates to the mechanism of control of authorisation of online works. Indeed, the interviewee from the Central Library of the Eduardo Mondlane University warned of the imminent regulation that will impose the obligation of online deposit of any monograph, thesis and any other dissertation made by students and researchers, with an authorisation for any user to access the work. Therefore, a clear regulation of the issue by the law is once again desirable in this matter.

⁵⁴Judith Sullivan *Study on copyright limitations and exceptions for the visually impaired* (2006) Fifteenth Session of the Standing Committee on Copyright and Related Rights of WIPO (SCCR/15/7) September 11 to 13 2006, Geneva. Available at www.wipo.int [Accessed 15 March 2009].

⁵⁵Lusa – Agência de Notícias de Portugal 2008 Interview with Mr José Tole, *op cit*.

⁵⁶Sullivan *op cit* at 66.

⁵⁷Article 4(1) states: 'This Law shall apply in particular to literary, artistic and scientific works that are original intellectual creations in the literary, artistic and scientific fields, namely: (a) written works, including computer programs.'

g. Judicial and administrative proceedings (Article 13)

The Copyright Law allows reproduction of a work for judicial or administrative proceedings without authorisation by the author or payment of remuneration.

h. Reproduction for information purposes (Article 14)

To encourage freedom of expression the Copyright Law allows reproduction of an article on economics, politics or religion published in newspapers or periodical reviews, or a broadcast work of similar character, without authorisation by the author or payment of any remuneration, but subject to the obligation to mention the source and the author's name if it appears in the source.

An exception related to reporting current events means it is possible to reproduce or make available to the public by means of photography, cinematography or video, or by broadcasting or communication by cable to the public, work seen or heard during the said event, according to Article 14(b).

Article 14(c) provides for an exception whereby speeches, lectures, addresses, sermons and other similar works delivered in public, as well as speeches made during legal proceedings, may also be reproduced in the press, broadcast or communicated to the public for the purposes of news reporting.

The Copyright Law does not provide expressly for the limitation of the amount of a work that a user can use. It is supposed that that specification should be incorporated in the regulations of the Law, which still have not been enacted.

i. Related rights (Article 47)

An important provision for use of limitations and exceptions is set out in Article 47, which allows free use of related rights without authorisation of their owners, namely the performers, producers of phonograms and broadcasting organisations.

Article 47 covers:

- i. private use;
- ii. the reporting of current events, provided that only short extracts from a performance, phonogram or broadcast programme are used;
- iii. use intended exclusively for education and scientific research;
- iv. quotations, in the form of short extracts, from a performance, a phonogram or a broadcast programme, provided that such quotations conform to custom and practice and are justified by their informatory purpose;
- v. any other uses that by virtue of this Law constitute exceptions in relation to works protected by copyright;
- vi. Government works and legal proceedings.

j. Government works

There is no copyright in the official texts of a legislative, administrative or judicial nature, or official translations thereof, according to the exclusion made by Article 5. Those documents fall immediately into the public domain.⁵⁸

⁵⁸Prints of the official government Gazette may be acquired and used freely. However, only one section related to business companies is accessible digitally at <http://www.portaldogoverno.gov.mz/Legisla>. The full text of online official Gazettes is only available against payment in a private database www.atneia.com.

There is no express provision in the Copyright Law regarding other government works or works created by employees or officers, or that are government-funded. However, Article 32 of the law provides for the cases of the works created under a contract of employment. The law states that when a work is created by an author for the account of a natural person or corporate entity under a labour contract in the context of employment, provision of services or piecework, then the primary owner of the economic and non-economic rights is the author. Nevertheless, the economic rights in the work shall be considered transferred to the employer.

The provisions could also apply in the case of the corporate entity that employs the author being the government. The literal interpretation of the provision would indicate that the government would own the economic rights, and thus allow their exclusive exploitation by the government. However, the ownership and moral rights will still vest in the author.

k. Expressions of folklore

The Mozambican Copyright Law provides protection for the expressions of folklore. The ownership of the copyright in works of folklore vests in the State, which exercises its rights through the Council of Ministers. However, the fact that folklore is owned by the State does not prejudice the rights of those who collect, transcribe, arrange or translate the works, provided that the collections, arrangements or translations are original and respect the authenticity of the works.⁵⁹ Copies of works of folklore, as well as transcriptions, translations, arrangements or other transformations thereof reproduced or executed abroad without authorisation by the competent authority may only be imported into or distributed in the national territory with the authority of the government body responsible for culture. However, the Copyright Law does not provide any detailed regulation, including any eventual remuneration to the State or communities from which that folklore derives.

Protection of folklore lasts for an unlimited period of time, according to Article 50 of the Copyright Law.

The Mozambican government has established an entity which is responsible for management of the cultural heritage – Instituto de Investigação Sócio-Cultural – ARPAC (Arquivo do Património Cultural), under the Ministry of Education and Culture.

Discussions regarding folklore have taken place since 1967, during revision of the Berne Convention. African countries raised the issue aiming at the protection of their cultural heritage, which has on occasion been exploited by Western countries without any or adequate compensation to the local communities. Western countries objected that folklore falls out of the scope of copyright, for the Copyright Law only recognises individual creations, while folklore refers to the expression of the people's spirits, of an unidentified and collective source.⁶⁰ Protection of folklore extends to performances, as its expression is made through performance and communication to the public.

⁵⁹Article 31 of the Copyright Law establishes: 'Ownership of the copyright in works of folklore vests in the State, which shall exercise its rights through the Council of Ministers, without prejudice to the rights of those who collect, transcribe, arrange or translate them, provided that the collections, arrangements or translations are original and respect the authenticity of the works.'

⁶⁰Oliveira Ascensão *Direito civil*, op cit at 98.

Folklore embodies a huge body of knowledge and its communication to the public represents an important method of access to knowledge and in return, creation of wealth to the local communities.

Incorporation of the protection of folklore constitutes an important innovative approach of the Copyright Law. However, the incorporation of the provision was not followed by clear regulations and, therefore, no concrete implementation was made. In particular, the law does not clarify whether folklore is covered by traditional copyright or a neighbouring right, as proposed above (performance). The entity responsible for management of folklore – ARPAC – is now involved in assessment of the heritage rather than enforcement of the rights in itself. However, the growing importance of the issue together with more dynamism of the institution may suggest that as soon as the assessment of the heritage is concluded, the enforcement of rights related to folklore will be undertaken.

2.2 Judicial and Administrative Decisions

Mozambique's legal system is civil-law-based and thus legislation is the primary source of law. Courts base their judgements on legislation and there is no binding precedent as understood in common law systems. Therefore Mozambican cases do not have the binding authority as in common law systems and are not considered a source of law. Nonetheless, the 2004 Constitution recognises the existence of legal pluralism, in other words, there are other normative systems that intertwine with the formal civil-law-based system.⁶¹

In practical terms, only two copyright-related cases have come to the attention of the research team, and even with these cases there was no clear indication that allowed their identification in the courts. One case was related to a book by a Mozambican author connected with teaching methodologies that was copied by a local typography company. The case seems to be pending in an unidentified court in Maputo. The second case was related to a South African citizen representing interests of Pearson Publishers and of the authors Paul D. Leedy and Jeanne Ellis Ormrod regarding the book *Practical research: planning and design*, which had been completely reproduced by a Mozambican citizen. It is not clear if the case was handed to the courts.

Therefore it would appear that there are no copyright cases in the courts, and no precedents as such around copyright and access to knowledge. Also, it seems lawyers usually discourage such cases as the courts usually do not make a decision on cases related to intellectual property.

⁶¹Paula Rainha 'Republic of Mozambique – legal system and research' (2008) Globalex. Available at www.nyulawglobal.org/globalex/Mozambique.htm [Accessed 20 November 2008].

2.3 Summary of Doctrinal Analysis

Copyright protection in Mozambique was first introduced before independence by the 1966 Copyright Code. The Code was revoked by a new Code enacted in 2001. The two last Mozambican Constitutions, namely 1994 and 2004, also incorporate provisions on intellectual property.

Mozambique is part of the WTO and thus bound by the TRIPs Agreement but did not adhere formally to the Berne Convention although it complies fully with its principles, by virtue of the provision of Article 9(1) of the TRIPs provisions. There is no notification of the use of the Berne Appendix either, and there is no official position on the matter.

According to the Copyright Law, protection of economic rights lasts for 70 years from the death of the author and forever for the moral rights. The term is unnecessarily long and hinders quick entry into the public domain and the corresponding free access.

Mozambique has followed, through the 2001 Copyright Law, the exceptions and limitations established by the Berne Convention namely: reproduction for private, educational, and information purposes, in the form of quotation, reprographic reproduction for libraries, archive services, and judicial and administrative proceedings. In regard to the exceptions and limitations in favour of the visually impaired people, the law is silent.

Mozambique did not sign the so-called WIPO 'Internet Treaties' (WCT and WPPT) and there are no specific provisions on anti-circumvention measures in place.

There are no copyright cases in the courts, and no precedents as such around copyright and access to knowledge issues, although some controversies seem to occur in practice.

3. Qualitative Analysis

3.1 Secondary Literature

There are not a great number of books dealing specifically with the Mozambican legal system. And when the research focus is narrowed to copyright, it becomes difficult to find references. Indeed, the bibliography incorporated in this research as secondary materials is composed of only four books, among them only two from Mozambican authors, and even those books do not deal directly with copyright.

One of the books is from Salvador Namburete, who wrote on the WTO, making some references with regard to TRIPs Agreement. The second book is a mere compilation of legislation made by José Mazive; the book is already outdated as it was published before the new 2001 Copyright Law.

Three monographs have been written at the graduate level of Eduardo Mondlane University (UEM) by Miguel Chissano, Orlanda Gisela Gonçalves Fernandes de Oliveira Graça and Vânia Francine Sigava de Jesus Xavier, and one at the Polytechnic University in Maputo by Jaime Joel Jaime Guambe. Two of these monographs deal with copyright in general⁶² and the other specifically with the collective management system⁶³ and music reproduction rights.⁶⁴

Important contributions have been made by Boaventura Afonso, the head of the Copyright Office; his works are unpublished papers presented in different seminars organised in Mozambique and abroad, illustrating the Mozambican copyright system.

Two important studies by foreign authors, both available online, focus specifically on the exceptions and limitations with regard to Mozambique. One of those studies was produced by Enyinna Nwauche, whose '*Open access and the public interest in copyright*' makes express reference to the issue of free use in regard to the Mozambican Copyright Law. The second, by Judith Sullivan, '*Study on copyright limitations and exceptions for the visually impaired*,' points out the lack of specific exceptions to copyright in Mozambique for the benefit of visually-impaired people, and highlights the express adoption of the three-step test, in Article 13 of the 2001 Copyright Act, which may threaten the public interest – because logical compliance with the three-step-test has the potential to turn copyright into an exclusive protection system for authors.

⁶²Miguel SA Chissano *Direito de autor em Moçambique: uma reflexão* (1995) TFC - UEM, Maputo; and Orlanda Gisela Gonçalves Fernandes de Oliveira Graça *Direito do autor e direitos conexos na ordem jurídica* (2002) Moçambicana - TFC - UEM, Maputo.

⁶³Vânia Xavier *A gestão colectiva dos direitos de autor* (2005) TFC - UEM, Maputo.

⁶⁴Jaime Joel Jaime Guambe *Protecção dos direitos do autor no ordenamento jurídico Moçambicano: o caso do disco* (2008) TFC – ISPU, Maputo.

3.2 Impact Assessment Interviews

Impact assessment interviews were conducted with different stakeholders with regard to experiences on the ground in relation to implementation of the Mozambican Copyright Law.

These interviews involved the Copyright Office, the collective management society SOMAS, students, lecturers, distance learning centres, documentation centres of the university, publishers, university and public libraries, and a university press.

The findings of the interviews are summarised below in 12 topics. Each interviewee responded to each issue and the most relevant contributions are illustrated under the correspondent topic:

3.2.1 Awareness of the Copyright Law

The interviewees from the Copyright Office and collective management society SOMAS were the most sensitised and informed on copyright, that being their daily activity.

The other stakeholders indicated that they had become aware of copyright in recent years mainly through university courses, or from what they had read and heard. In general, all the stakeholders gave evidence of awareness of existence of the subject, albeit at different levels.

3.2.2 Impact of Copyright on Professional and Academic Activities

The institutions dealing daily with copyright, namely the Copyright Office and the collective management society SOMAS, are the ones who understood the impact and importance of copyright in their institutions including their sustainability. Indeed, those institutions depend on the royalties collected from the exploitation of copyright. In particular, the collective management society depends exclusively on those royalties, while the copyright office depends partly on public funds but part of the amounts paid for the purchase of each copy of copyrighted works is assigned to the Copyright Office.⁶⁵ Indeed, Article 5 of the regulations indicates that, of the amount paid for each stamp placed in each copyright work produced or imported and sold in Mozambique, 80 per cent reverts to the Copyright Office.

The National Library also indicated awareness of the impact of copyright as it receives daily requests to use copyrighted materials. The library indicated that it does not impede copying of the materials but draws attention to the existence of the Copyright Law, which ultimately sets exclusive rights to the owners of works. That exclusivity imposes some limitations for copying on the part of users.

Copyright-holders also showed knowledge of the impact of copyright, indicating that this is the source of their income. Some publishers even stated that the voluntary implementation of copyright obligations that requires that the works be reproduced upon authorisation of the authors through licences allowed them to compensate the authors, thus giving incentives for production of works of better quality.

⁶⁵Decreto no 27/2001 de 11 de Setembro de 2001, aprova o Regulamento de aposição obrigatória do selo nos fonogramas e atribui ao Instituto Nacional do Livro e do Disco a competência de autenticar os fonogramas produzidos no país e os importados, através da aposição de selos.

However, answers given by some participants showed that for them copyright has no relationship with their activities. Some lecturers of the learning institutions, such as from the Faculty of Law and the Distance Learning Centre of the Eduardo Mondlane University, indicated that they have never given thought to the idea that their activities may be influenced by copyright.

In some cases, especially in academic institutions, the interviewees showed that they understood copyright prohibitions. In particular, the lecturers showed that they were aware that some practices related to access to learning materials and their distribution should be curbed by the existing copyright prohibitions. They showed that they knew that their behaviour constituted a violation but explained that there was no alternative. Students interviewed indicated that they have never been affected by the Copyright Law in their learning activities. In some interesting cases, the interviewees were convinced that the use made of the third party's works was not a violation at all.

3.2.3 Type of Learning Materials Used or Produced

The stakeholders unanimously indicated that books, monographs, short articles, MS PowerPoint presentations, magazines, textbook modules, and readings are learning materials produced for and used by the students.

There are clear difficulties in the production of learning materials and therefore foreign learning materials are adopted, especially in the universities. For the primary and secondary schools, the government, through the Ministry of Education and Culture, produces the materials. In the past the copyright was owned by the state but in the last years, private authors and publishers are involved, thus owning the corresponding copyright.

The material used (and of concern to the interviewees) consists also of digital works. In recent years an increasing number of digital materials have been used by students. The digital works are easier to obtain and facilitate access to knowledge. Those materials are cheaper than printed books. However, some interviewees warned against the quality of the materials available online.

In general, the academic system in Mozambique still rates printed books as more important than the digital works, in terms of respectability. The University Library of the Eduardo Mondlane University is now subscribing to 23 000 digital scientific journals and magazines, spending US\$80 000 each year. Those journals from different universities in the world are now freely accessible to students, researchers and lecturers of the university.

The National Library is also preparing to launch a new digital platform to give its users access to some of its collections, including legislation.

Distance learning courses recently adopted by the university will bring in new challenges and will require new and innovative types of materials, namely: online books, online journals and magazines, etc. There will be a process of digitisation of some printed materials for them to be accessible to the enrolled students. This will be a very challenging issue in terms of copyright in the coming years.

3.2.4 Ownership of Copyright Materials

The majority of the reading materials used at the university are produced by foreign authors. Books produced by local researchers or lecturers are still the exception. Due to language limitations, there is a preference for the scientific works produced in Portugal and Brazil. One student indicated that almost 95 per cent of his research is based on Portuguese authors.

The policy adopted informally by the University Press (Eduardo Mondlane University) allows authors to own copyright and commercialise their books. However, due to financial constraints the authors depend on the assistance of the University Press to publish their books. In those cases the University controls the rights of reproduction.

With regard to monographs or theses produced by the students, the University considers the reproduction rights surrendered to it, as the student proceeds to deposit the work in the Central Library. The University is now drafting an internal regulation concerning the deposit of students' final dissertations. According to the new rules, deposit of the final dissertation in the Central Library is compulsory and implies surrender of reproduction rights at least in terms of reprography.

The Distance Learning Centre of UEM adopts, as reading materials, modules produced by lecturers or researchers of the faculties hired especially for this purpose. The authors are compensated for their works and from there on, the copyright in the works are surrendered to the centre.

The National Library contains some 1 50 000 works but only 3 750 of its works were generated by Mozambicans, corresponding to 2.5 per cent of the total.

3.2.5 Obligations and Rights Under the Copyright System

As many stakeholders are unaware of, or have never implemented, the Copyright Law, it seems clear that they do not see direct responsibilities deriving from the law. Many of those interviewed were not able to establish a connection between their lives and professions and copyright, and consequently no rights and obligations have been considered by them. The interviewee from the Central Library of the Eduardo Mondlane University indicated that it is as if the law did not exist at all. The interviewee indicated also that although he is aware of the fact that complete reproduction of a work is a violation, he has never prevented people from making copies. Academics interviewed seemed to know of the protection of copyright and the prohibitions against the use of copyrighted works without authorisation. However, they stated that in many cases they have used illegally-copied materials due to high prices and unavailability in the market.

One lecturer indicated that he knew part of his obligation was to seek authorisation before using the work and to refrain from using the work without authorisation. On the other hand, in some cases the interviewees were aware of the fact that they had some rights for partial access to the works.

Student interviewees did not see any obligation on their side in relation to copyright.

The publishers identified their obligation under the Copyright Law as payment of royalties to the authors.

The librarians viewed their obligations as protection of copyright and prevention of prohibited reproduction of works without authorisation. One of the librarians was also aware that the prohibition was not absolute and that he was entitled to reproduce some works for preservation purposes and for substitution of old works.

The interviewee from the collective management society SOMAS raised the issue of awareness of the users with regard to the exploitation and compensation of the authors. SOMAS has succeeded in persuading the public broadcasting organisations of the need for payment of royalties for the use of music but has failed with regard to private organisations (private radios and TVs). There seems to be no awareness among the private broadcasting organisations of the obligation of payment of royalties to the collective management society SOMAS. This situation seriously undermines sustainability of the collective management system. Although the activities of SOMAS should encompass all copyright areas it is only active in the music sector, collecting solely there the royalties. Therefore there are no royalties collected in relation to exploitation of other kind of materials such as books.

3.2.6 Copyright as an Obstacle to Access to Knowledge

The overall conclusion in this regard is that the Mozambican Copyright Law is not the single obstacle to access to knowledge, for five important reasons:

- the Copyright Law is not implemented in Mozambique;
- there is not much production of knowledge in Mozambique;
- reproduction of books through reprography is also expensive for Mozambicans, and thus copyright infringement itself does not come cheap, though it happens;
- reading culture is low, as people are more concerned with basic needs rather than publications;
- the main obstacle to knowledge is lack of learning materials and their cost.

The majority of stakeholders indicated that the high price of, and lack of, books are the main obstacles to access to knowledge. Photocopies are an alternative. Photocopying is not viewed as a violation but as a unique opportunity to access knowledge. One of the students interviewed indicated that indeed, copyright, in his opinion, does not influence the price of the books, but when the book is not available he is obliged to obtain a photocopy and thus violate copyright, as there is no other alternative.

The Distance Learning Centre, using materials produced under a contract by local teachers, does not see any influence on the price of the materials: the lecturers are paid to produce the materials and immediately surrender their rights.

On the other hand, publishers connect the cost of the books to copyright: the publishers compensate the authors for the works and keep paying a percentage from the sale of the works, and thus the price of the book includes the copyright cost.

Although some lecturers and librarians recognised that in some way copyright had an influence on the price of the books, they were not able to quantify it.

Meanwhile, some learning institution and library interviewees indicated that copyright acts as a limitation on their freedom to provide access to knowledge. Teachers are sometimes compelled to avoid certain materials if they contain a disclaimer forbidding their reproduction. Libraries receive some requests for complete reproduction of works, which they restrain themselves from providing due to the Copyright Law.

3.2.7 Legal Actions Against Copyright Infringements

Although many interviewees acknowledged that violations of copyright occurred frequently, even in a systematic way, they were unanimous in saying that they had never been threatened or prosecuted for those infringements. As stated earlier, many stakeholders act as if there was an absence of copyright law, and the authorities are also silent in the implementation of the law.

Also as mentioned earlier, the researchers were only able to identify two copyright cases. One seems to be pending in an unidentified court in Maputo, and it is not clear whether the second case was taken to court. There is a difficulty in Mozambique in identifying cases pending in the courts.

In general, there are not many cases in the courts, there are no precedents and therefore there are no incentives to bring cases to the courts. No decisions related to intellectual property have been made by the courts until now. And identification of the cases pending in the courts is very difficult.

Lastly, Mozambique follows a civil law regime, thus devaluing the importance of precedent: judges make their decision based on the law and at their own discretion.

3.2.8 Intellectual Property Policies

It was found that there are seldom intellectual property policies in place at institutions, including at academic and research institutions.

Some general uses and practices seem to guide the students, lecturers and researchers, and the institutions, when copyright is seen as an issue, but it should be recalled that copyright is not seen as an issue in most circumstances.

However, the Eduardo Mondlane University has adopted a Research Policy⁶⁶ which deals with intellectual property issues in paragraphs 4.6 and 4.7.

As this recently approved policy lacks regulations, there is still no concrete impact at the University. As indicated before, the University is striving to enact internal provisions for the implementation of the policy.

Paragraph 4.6 states: 'Research activities are governed by internationally accepted ethical principles, which demands: ...d) respect of intellectual property'.

Paragraph 4.7 (Intellectual Property and Authorship Rights):

Scientific research activity at UEM shall respect the application of the legislation in force in Mozambique concerning intellectual property and authorship rights.

⁶⁶Eduardo Mondlane University *Eduardo Mondlane University research policy* (2007) University Press, Maputo.

UEM protects the research that is carried as follows:

- ii) Innovations resulting from research carried out at UEM are the property of the said institution and that of the researcher(s);
- iii) The protection of intellectual property and authorship rights are subject to signed agreement between the UEM and other partners, as well as international tools that regulate the issue and of which Mozambique is signatory; and
- iv) For the effect of intellectual property protection, innovations shall be registered and patented in the competent bodies by the Scientific Directorate of the UEM.

The UEM policy is clear in terms of the need to protect intellectual property. However, it lacks detail in regard to ownership of copyright and benefit sharing for the results of the research. A specific regulation of intellectual property is desirable.

The National Intellectual Property Strategy suggests that all academic and research institutions should adopt internal intellectual property policies. The Eduardo Mondlane University will soon embark on that initiative and should incorporate the A2K vision of intellectual property.⁶⁷

As it stands now this policy is not automatically applicable. Regulation would efficiently extend these provisions to all employees but it does not prevent the faculties including in individual contracts the guiding principles of the policy mentioned above.

3.2.9 Copyright and ICTs

While recognising the importance of the digital environment which allowed the establishment of the Distance Learning Centre, there is a perception that some threats are posed in the materials posted by the centre to its students, for the materials may be accessed and used illegally by others.

ICTs are having a great impact on access to learning materials. Publishers indicated that digital works are important. However, ICTs are still in the initial phases and many students have no access to the Internet or a computer. The Ministry of Education requested that all the materials developed in physical format must be placed on the Internet to allow access to all students. It is difficult to assess the impact of this measure as many students have no access to the Internet, according to the publishers. The publishers also indicated some experiences of the use of ebooks; however, they anticipated once again that the lack of infrastructure will hinder access to ebooks by the majority of the students.

There is a new practice in the universities, whereby lecturers post some materials on the Web, giving easier access to all students. However, not all the materials posted are self-produced, which may raise issues of violation of copyright. Indeed, the material posted may be used illegally by others. The students interviewed indicated that more students are now using documentation taken from Internet. Although the sources of the information are not always reliable, the digital works constitute an important source of knowledge.

ICTs are having a great impact on access to learning materials. Digital works are easier to obtain; they facilitate access to knowledge as they are cheaper than the printed books, including the 23 000 digital scientific journals subscribed to by the University Library of the Eduardo Mondlane University (see in 3.2.3 above), giving free access to its students, researchers and lecturers.

⁶⁷Council of Ministers *National intellectual property strategy* (2007) Maputo.

The National Library is now involved in a project of digitisation of the legislation which should allow full access to Mozambique's legislation in electronic format.

The National System of Education in Mozambique established in 1992 includes distance learning as one of the special education systems. The Distance Learning System currently established encompasses digital means. For example, the Centre for Distance Learning of the Eduardo Mondlane University is a pioneer institution in distance learning education in Mozambique (and in Africa) and uses innovative online instruments such as digitised modules, digitised materials, an E-learning platform, online tutoring, CD-ROMs, an online forum, chat and online conferences, including use of peer-to-peer network applications like Skype.

However, the distance learning system recently adopted by the Eduardo Mondlane University will bring in new challenges in terms of protection of copyright in the coming years.

One of the most debated issues during the process of establishing the centre was the kind of learning materials to be adopted and the mechanism for its production.⁶⁸ The initial idea was to adopt the so-called 'Readers', whereby different materials were compiled and put at the disposal of the students. Issues of copyright would be raised as the centre was not envisaging procedures of request of authorisation from each of the authors incorporated in the 'Readers' materials.

The methodology adopted eventually was to hire lecturers who were responsible for the conception of the modules for the University. The authors surrendered the copyright on the work against compensation. Any future adaptation and modification of the work was the responsibility of the centre without any need for authorisation from the authors.

Any other additional reading materials are scanned from books available and put at the disposal of the students. Obviously, this poses the issue of authorisation from the authors of the scanned works. The centre argues that no copyright objections may be raised as the works are scanned partially, in the allowed proportion. However, as stated before, the Mozambican Copyright Law does not indicate the proportion in which works can be reproduced lawfully.

The Distance Learning Centre considered also the negative impact of the digital environment. It was indeed acknowledged that the modules designed and owned by the centre may be easily disseminated illegally by the students and the authors. Thus, the digital environment is both an opportunity and a threat.

Proposed regulations at the Eduardo Mondlane University provide for compulsory deposit of the students' dissertations, including the electronic format, which will further provide new sources of knowledge (even if unreliable). However, the compulsory surrender of reproduction rights may threaten the content of copyright ownership and control of the work. Copies of those works may be facilitated and violations will be easier.

The legal framework must also tackle the challenges posed by the digital materials that are easily accessible and vulnerable to infringement, in order to find a balance between accessibility, facilitated by the digital environment on the one hand, and on the other hand, the compensation of the authors.

⁶⁸Interview with the Head of the Distance Learning Centre of Eduardo Mondlane University.

Efforts for enabling access to information were also undertaken by the government through the Ministry of Education and Culture. In December 2000, the Government of Mozambique published its National ICT Policy,⁶⁹ which, in part, seeks to achieve national ICT literacy and the development of ICT human resources. Within the frame of ICT policy, the Ministry of Education established the SchoolNet Mozambique programme to promote education through information and communication technologies (ICTs), thereby fulfilling the mandate by the Government of Mozambique in creating a Mozambican Information Society. SchoolNet Mozambique will support schools throughout the country by building access to ICTs, facilitating training of teachers and teacher trainers, and building education content for use by learners and teachers in Mozambican schools.⁷⁰

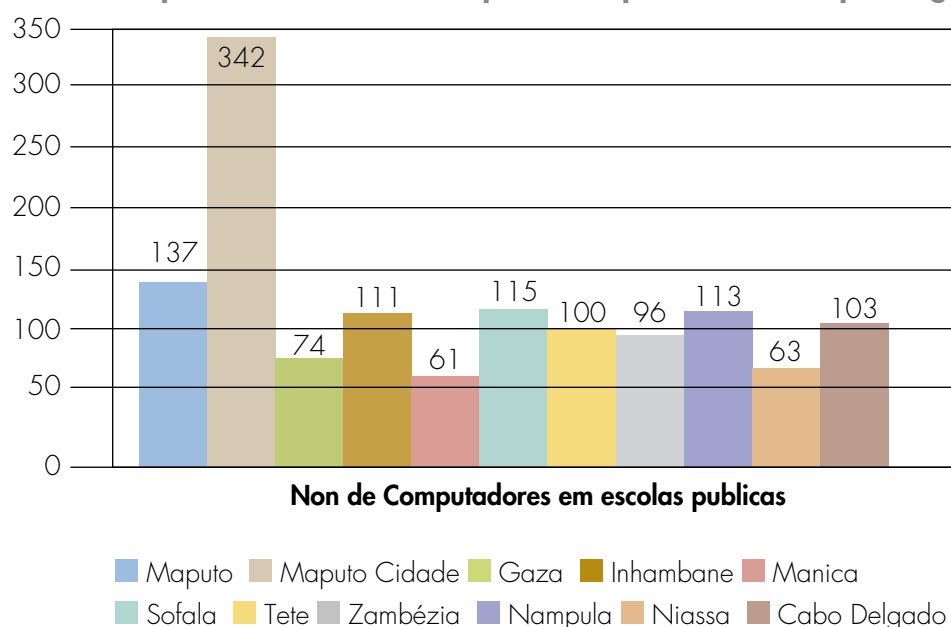
Through those programmes, computers were introduced in some primary and secondary schools, although the numbers are still insignificant, as may be seen in the table below.

Table 8: Percentage of schools with IT infrastructure

TIPO DE ESCOLA	Nº TOTAL DE ESCOLAS PUBLICAS	PERCENTAGEM DE ESCOLAS COM SALA DE INFORMÁTICA
Ensino Geral Primário 1º Nivel	8 700.00	0.02%
Ensino Geral Primário 2º Nivel	1 320.00	1.14%
Ensino Geral Secundário 1º Ciclo	156.00	9.62%
Ensino Geral Secundário 2º Ciclo	35.00	91.43%

Source: Ministry of Education and Culture (2006)

Graph 3: Number of computers in public schools per region



⁶⁹Ministry of Science and Technology *Política de ciência e tecnologia* (2003). Available at www.mct.gov.mz/pls/portal/docs/PAGE/PORTALCIENCIATECNOLOGIA/PUBLICACOES/POLITC_T_0.PDF [Accessed 7 June 2009].

⁷⁰Ministry of Education and Culture *Introducing the use of ICTs in education* (2003). Available at www.mec.gov.mz/img/documentos/brochura.pdf [Accessed 15 March 2009].

The full implementation of the programme will allow more students from primary and secondary school to gain access to digital information. While the mechanism will provide an opportunity for more people to gain access to information, it will pose threats and uncertainties in the acknowledgment and ownership of the documents.

3.2.10 Participation in Drafting or Discussing National Copyright Policies

Apart from the public institutions dealing with copyright, the majority of the public or private entities from which interviewees were drawn have never been consulted in relation to national policies concerning copyrights.

The Faculty of Law of the Eduardo Mondlane University used to be consulted by the government to give advice on some of the legal instruments adopted by the government or the Parliament, but the faculty has never been consulted on the question of copyright.

Multi-stakeholder involvement in the national processes of drafting policies and legislation is instrumental to generating ownership of the legal framework and its implementation by stakeholders. Thus it is not surprising that some interviewees, especially academics, stated that they work 'as though there was no law in copyright'.

Linked to the need for involvement of the national stakeholders in the processes, massive activities of dissemination on the realities of the copyright system should also be undertaken.

3.2.11 Awareness of Limitations and Exceptions

The interviews revealed that many stakeholders believe, correctly, that copyright has limited scope. For example there is a clear understanding that partial photocopies are allowed in some circumstances – but nobody was able to indicate to what extent photocopying is allowed and which were the provisions of the Copyright Law indicating the limitations. (The reality, of course, is that these limitations are vaguely set out in the law.)

The libraries are aware of the fact that as repositories of knowledge they are allowed to store, and to some extent copy, some materials. The senior employees of the libraries were able to locate the exception provided for by Article 12 (Reprographic Reproduction for Libraries and Archive Services) of the Mozambican Copyright Law.

However, the expression 'exceptions and limitations' was unknown to all stakeholders interviewed.

As previously stated, the Copyright Law itself does not implement, fully or clearly, the exceptions and limitations provided for by the international instruments. For instance, with regard to limitations in terms of duration of copyright, the Mozambican Copyright Law of 2001 provided a copyright term of the life of the author plus 70 years, instead of 50 years. In addition, many exceptions and limitations are not provided for, or accompanied by regulations necessary to give them proper clarity.

3.2.12 Actions for Change

It has already been highlighted that many stakeholders have never been involved in any action related to drafting legislative or policy instruments related to copyright. On some occasions, academic institutions have made contributions to the drafts handed to them by the government, Parliament or civil society organisations.

Meanwhile, the government is actively undertaking some steps aiming at the operationalisation of the system in Mozambique. Among others, the following were indicated:

- Approval of some important legal and policy instruments, namely: Intellectual Property National Strategy (August 2007), Copyright Law (February 2001), ('Lei do mecenato')⁷¹ (September 1994);
- Activities in the field: dissemination activities, book fairs and exhibitions around the country;
- Tax exemptions for import of machinery for the industry (including the publishing industry);
- Tax exemptions for imported books ('Lei do mecenato'); and
- Tax exemptions for paper, ink and other materials in the publishing industry.

The copyright stakeholders interviewed indicated that the copyright system could be improved in Mozambique through different initiatives. Among others the interviewees indicated the following:

- Implement the Intellectual Property National Strategy;
- Take advantage of the Appendix of the Berne Convention in order to facilitate translation and certain kinds of reproduction;
- Raise awareness of copyright issues, including implementation of exceptions and limitations;
- Adopt Copyright Regulations to further provide details on the implementation of the copyright system;
- Adopt internal copyright policies, especially in academic and research institutions;
- Create Intellectual Property Units in relevant institutions, especially academic and research institutions;
- Extend the activities and responsibilities of the collective management society (SOMAS) to the other areas of copyright, especially books, currently neglected by the entity;
- Set mechanisms related to licensed use of copyright works, including licensed reprography and payment of royalties by the reprography companies;
- Create a mechanism to compensate authors through governmental funds;
- Promote use of digital works;
- Extend tax exemptions available for printed learning materials to digital materials;
- Devote public investment to public libraries for book acquisitions, subscription for magazines and journals and other learning materials or fund-raising for the same purpose;
- Devote public investment to purchasing learning materials for poor and vulnerable people;
- Set mechanisms to allow compulsory deposit of copies of Mozambican works in the public libraries in general and in the National Library in particular.

⁷¹This law introduces basic principles that allow individuals, private and public institutions to improve their initiatives in favour of the development of arts, culture, science and social activities in Mozambique.

3.3 Summary of Qualitative Analysis

Literature on intellectual property is scarce in Mozambique and when it comes to copyright the number of publications shrinks to almost nothing. In regard to literature on the impact of the Copyright Law on access to learning materials in Mozambique, only online sources are available but also in very restricted numbers.

The interviews undertaken revealed that there was a low awareness of intellectual property in general and specifically of copyright issues. The interviewees, except to the copyright institutions dealing with the administration of intellectual property, revealed lack of knowledge of the Copyright Law and its impact on their activities.

There was also weak production of knowledge and therefore scarce production of local learning materials together with a weak publishing industry. As many stakeholders were unaware of the importance of the copyright system, they did not see direct responsibilities deriving from the Copyright Law.

Although the academics recognised that there may be difficulties in accessing learning materials, they were reluctant to link that difficulty to copyright obligations. Librarians and academics, although aware of the Copyright Law, indicated that they acted as if there was no Copyright Law, and the authorities were inactive in terms of enforcement.

The ICTs are posing new challenges on the copyright system: while on one side the lecturers and students recognised the potential of the ICTs for improving access to learning materials, they also demonstrated some fears related to the protection of their digitised works.

The interviewees suggested massive action on dissemination of intellectual property, including better use of the exceptions and limitations that may improve access to learning materials, enforcement of current policies, legislation and regulations, enactment of internal policies related to intellectual property in some academic institutions, and setting up mechanisms and improved exploitation of copyright, so gaining more advantages for the copyright owners.

4. Information and Communication Technology (ICT) – Specific Findings

The use of ICTs is still in its initial phases in Mozambique: access to the Internet or to a computer is still a mirage for many students. However, the institutionalisation of distance learning education, the use of online sources by researchers and students, and publication of research findings, monographs and dissertations and books in digital formats will certainly enhance the use of ICTs.

Both positive impacts in terms of easier access to learning materials, and negative impacts related to copy and illegal dissemination of learning materials, are expected to happen.

Mozambique did not sign either of these so-called 'Internet Treaties'. Therefore, the digital issues are not specifically addressed by the laws and regulations.

Therefore, the legal framework must, in the near future, tackle the challenges posed by the digital materials that are easily accessible and vulnerable to infringement, in order to find a balance between accessibility on the one hand, facilitated by the digital environment, and on the other hand, the compensation of the authors.

5. Gender-Specific Findings

Although 52 per cent of the Mozambican population is female, girls and women are still at a disadvantage in terms of education and access to knowledge. Social factors such as domestic obligations, premature marriages and pregnancies, and long distances to schools contribute to low rates of enrolment and high numbers of dropouts.

The low rates of women involved in education can also be found in teaching and research activities. Indeed, only 34 per cent of Mozambican scientific researchers are women.

The factors that influence access to education and research will also be a determinant for A2K. Long commuting distances and unavailability of research documentation will inhibit women's access to knowledge as much time is taken up by domestic responsibilities.

6. Conclusions

6.1 Research Hypothesis One

The first of the two ACA2K research hypotheses tested by the ACA2K research team in Mozambique was that:

- The copyright environment in Mozambique does not allow maximal access to learning materials.

Our analysis of the legal framework has confirmed the truth of this hypothesis. The Mozambican copyright legal framework is clearly not one catering to maximal access to learning materials.

The Mozambican legal framework does not facilitate access to knowledge because it has adopted international instruments without any deep analysis of the advantages or disadvantages of these systems for the local reality.

The haphazard nature of copyright law-making is demonstrated by the nature of the country's observance of the Berne Convention. The government approved a Resolution for ratification of the Berne instruments, but this Resolution was never deposited with WIPO. And yet the Copyright Law follows the Berne Convention as if it was in force. Another possible example of the weak copyright policymaking environment is the fact that the government did not make use of the allowance by the WTO for delayed implementation of TRIPs provisions. Instead, Mozambique implemented TRIPs provisions on copyright long before the scheduled deadline.

Even more problematic is that the Copyright Law of 2001 in some cases exceeds the minimum terms set out by TRIPs, for instance through the provision of a copyright term of the life the author plus 70 years when the TRIPs minimum for this kind of protection is life plus 50 years.

If knowledge access had been its priority, the Government of Mozambique could have applied the minimum standards for terms of protection in order to allow works to fall into the public domain more quickly, thus facilitating greater public domain access to learning materials.

Access to knowledge could also have been facilitated further by a Mozambican Copyright Law that applied a wider and more expansive range of exceptions and limitations and was accompanied by Copyright Regulations making exceptions and limitations easier to operationalise.

Contrary to some other systems (but similar to other civil law jurisdictions), the Mozambican Copyright Law does not incorporate a provision that makes express reference to a general fair dealing provision. This choice does not allow flexibility in the defences that can be relied upon for the use of copyright works.

Instead, the Copyright Law defines the exceptions and limitations in great detail, namely: reproduction for private, information, educational purposes, reprographic reproduction for libraries and archive services, judicial and administrative proceedings, government works and legal proceedings. Although the exceptions and limitations aim to be clear, their content in fact lacks clarity, and would require further elaboration (for example, through Copyright Regulations) in order to clearly promote access to knowledge.

In addition, there are some important possible exceptions and limitations – such as those related to disabled people (especially the visually impaired), exhaustion of rights, parallel imports, and provisions for digital works – which were not included in the Copyright Law at all.

Turning to practical implementation of the law, the views are contradictory. In general, there is a perception that copyright does not hinder access to knowledge because the law is never implemented. The practical reality demonstrates that if the law as it exists were implemented, there should be serious concerns in terms of access to knowledge. On the contrary, people act as if there is no copyright law in Mozambique.

In the meantime, in the absence of enforcement of the access-unfriendly Copyright Law, the main obstacles to access to knowledge in Mozambique are related to scarcity of books and their prices. Scarcity and prices are not solely the result of the Copyright Law but are also caused by other factors such as low income of people, low demand for learning materials and a weak publishing industry.

However, if the law was drafted in a way that facilitates A2K it would become an important element that could actually promote A2K.

6.2 Research Hypothesis Two

The second ACA2K research hypothesis tested by the ACA2K research in Mozambique is that:

- The copyright environment in Mozambique can be changed to maximise effective access to learning materials.

This second hypothesis has certainly been confirmed by the research. The copyright environment in Mozambique could indeed be changed in order to maximise effective access to learning materials.

The starting point is the legal framework. Mozambique must ratify the Berne Convention by proceeding to deposit the instrument of ratification with WIPO. The government approved the Resolution for the instrument in 1997.

The other pressing issues with regard to reform concern limitation of the scope of protection, reduction of the term of protection, and improvement of the exceptions and limitations in order for them to be more practical and operational. Also, Copyright Regulations attached to specific areas of copyright are necessary in order to allow better implementation of the law.

The copyright environment also depends on implementation, interpretations and practices. It was found during the research that the main issue preventing copyright implementation is lack of knowledge about the system. Therefore, massive campaigns of dissemination of information on the copyright system and law are fundamental to building an environment conducive to protection of copyright while at the same time facilitating access to knowledge. Dissemination may be achieved through events or the creation of special units that may further exploit the potential of copyright in academic institutions. Academic institutions should also issue internal intellectual property policies that clearly define the mechanisms of benefit-sharing as attractive in order to foster creativity, creativity protection and dissemination of knowledge.

The Intellectual Property Strategy, approved by the government in 2007, contains important recommendations on the improvement of the Intellectual Property environment and exploitation of copyright to serve development, namely:

- establishing efficient mechanisms for remunerating authors;
- technical and legal assistance to authors on negotiation, management and commercialisation of IP related contracts;
- improving the collective management system;
- economic exploitation of folklore;
- establishing anti-piracy measures; and
- developing cultural industries.

Further recommendations on the improvement of the copyright environment include:

- incentives for licensing works;
- action to monitor the sale of potentially infringing materials such as blank CDs, photocopy machines and other infringing machinery;
- improving the mechanisms of compensation of authors through governmental funds;
- incentives to use and circulate digital works; and
- public investment in public libraries for purchasing learning materials.

Finally, with regard to ICTs, the Copyright Law does not recognise the WIPO Internet Treaties (Mozambique has not signed them) and digital issues are not adequately considered in the law. There are only the references made by Article 4(1)(a) that the law applies to computer programmes, and to the right of reproduction of computer programmes indicated in Article 16. The legal framework needs to follow the pace of the society, the business community and international instruments, and comply with digital principles. In practice, the primary school curriculum is already posted on the Internet, university students are increasingly using digital sources, and the main Mozambican university has introduced a distance learning system, based integrally on innovative ICT instruments. All these developments require an adequate legal framework that efficiently addresses the challenges of the digital environment.

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