

# ACA2K

## Methodology Guide

African Copyright and Access to  
Knowledge (ACA2K) Project  
[www.aca2k.org](http://www.aca2k.org)

APRIL 2008



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# Foreword

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The African Copyright and Access to Knowledge (ACA2K) project *Methodology guide* is a collaborative work by ACA2K network members from Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa, Uganda, Canada and India. It is the first output of the ACA2K team, which will be engaged in several research, dissemination and policy engagement activities over the next 24 months.

The International Development Research Centre (IDRC), through its Acacia programme, and the Shuttleworth Foundation, through its Intellectual Property Rights programme, are supporting this emerging ACA2K network, which brings together a diverse team from several countries in Africa to better understand the interaction between access to knowledge (A2K) and the copyright environment. The ACA2K network builds on previous studies and initiatives in this area by various actors – studies aimed at developing the evidence-based research needed to influence copyright policymaking and practice across the continent, in order to reduce the constraints on open access to knowledge.

The emergence of the Internet and the digital world has changed the way people access, produce and share information and knowledge. In theory, these factors should have facilitated the access by Africans to knowledge and knowledge-based products. Yet people in Africa face important challenges to access scholarly publications, journals, and learning materials in general. Understanding the commercial, legal and normative constraints on access to knowledge in Africa, and identifying relevant lessons, best policies and practices that would broaden and deepen this access, have therefore become essential to the development of the continent.

The ACA2K Methodology Guide presents the overall framework of the research and the project activities. It is intended to be used not only by the project members but also by other projects pertaining to copyright and access to knowledge issues in Africa and other parts of the world. We encourage engagement with the ACA2K team over the next few months on this *Guide*, and we welcome comments and thoughts on the project from those sharing an interest in this field of study.

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# 1. Overview

## 1.1 Access to Knowledge in Africa

Of the various social movements to have emerged globally in the last decade, the access to knowledge movement – a loose grouping of allied individuals and organisations concerned with learning and unrestrained cultural opportunity – is perhaps singularly suited to the times, given that we live in what is undeniably, and increasingly, a knowledge economy. In Peter Drahos' words, 'Knowledge underpins everything, including economies.'<sup>1</sup>

As elaborated further on in this document, the idea of access to knowledge – in the manner that the term has come to be synonymous with – concerns itself to no small extent with the examination of copyright law. How did this come about, and why should it be so? As has been noted, 'The motivation for investigating industry-led copyright regimes comes from anecdotal observation and empirical documentation of restrictions on access to knowledge....The motivation for studying access to knowledge lies within the challenge to sustain an environment of learning, creativity and social and economic growth...the study of access to knowledge as a *development* goal, in the context of the state, closely relates to the challenges of literacy and education in the global south.'<sup>2</sup>

It is important here, perhaps, to underscore that access to knowledge is not intrinsic to any particular geographical territory; it is squarely a global issue. However, particularly acute challenges in the context of the developing world – Africa included – suggest that an examination of the subject is pertinent and urgent. It is the socioeconomic reality that gives a study of access to knowledge in Africa a present basis, as well as the challenge to forge a better future. The scale of the knowledge access challenges in the ACA2K study countries is revealed in their UNDP Education Index rankings, as provided in Table 1 below:

**Table 1: UNDP Education Index Rank (2007)**

COUNTRY	UNDP EDUCATION RANK (OUT OF 177)
Egypt	112
South Africa	121
Morocco	126
Ghana	135
Kenya	148
Uganda	154
Senegal	156
Mozambique	172

**Source:** UNDP 2007<sup>3</sup>

Many clearly rank near the bottom of the global education index, a situation that must be addressed urgently.

<sup>1</sup>P Drahos 'Access to knowledge: time for a treaty?' *Bridges* 9(4) (April 2005) ICTSD. Available at <http://www.ictsd.org/monthly/bridges/BRIDGES9-4.pdf> [Accessed 1 April 2008].

<sup>2</sup>A Rens, A Prabhala and D Kawooya *Intellectual property, education and access to knowledge in Southern Africa* (2006) TRALAC Working Paper No 13, ICTSD, UNCTAD and TRALAC. Available at [http://www.tralac.org/pdf/20061002\\_Rens\\_IntellectualProperty.pdf](http://www.tralac.org/pdf/20061002_Rens_IntellectualProperty.pdf) [Accessed 1 April 2008].

<sup>3</sup>UNDP 'UNDP human development index' in *Human development report 2007* (2007). Available at <http://hdrstats.undp.org/indicators/7.html> [Accessed 1 April 2008].

## 1.2 Introduction to the ACA2K Project

Studying copyright and access to learning materials in Africa requires a conceptual framework for dealing with Africa's socioeconomic, cultural and political realities. Firstly, research questions on copyright and access pose unique ideological and conceptual difficulties in general; as a result copyright scholars are likely to differ in their approaches to such a project. Secondly, African countries are socioeconomically, culturally, politically and linguistically distinct. This reality calls for paying particular attention to unique local dynamics that shape the environment in which copyright affects access to learning materials and access to knowledge (A2K).<sup>4</sup>

The African Copyright and Access to Knowledge (ACA2K) project spans several African countries and brings together a diverse team of copyright scholars; it is thus deeply embedded in the lived realities of the environments covered. ACA2K study countries were selected to represent differences in socioeconomic, political, cultural and linguistic contexts, and differences in access dynamics. The ACA2K project considers the understanding of specific country dynamics as critical to achieving real local impact. At the same time, for one to understand copyright-related access challenges across countries, empirical data generated from the different study countries must be of comparable quality and have comparable elements.

It is precisely these factors that necessitate a common methodological framework for undertaking ACA2K project work in the study countries. We also hope that, while providing a project-specific research outline, this *Methodology guide* may also serve other (similar) projects as they emerge in other African countries and other parts of the world.

This *Methodology guide* (henceforth referred to as the 'Guide') sets out a framework that allows flexibility and encourages creativity by country research teams, but at the same time is clear on expectations and procedures in order to avoid incoherent research outputs and/or results that are not easily compared across countries.

The *Guide* draws from and builds on previous studies and copyright review exercises conducted in Africa and elsewhere in the world, including work by and for India's Alternative Law Forum, the Commonwealth of Learning (CoL), Copy/South, Consumers International Asia-Pacific, the Center for Social Media and UNCTAD/TRALAC.<sup>5</sup>

Section 1 provides an overview of the project, including the conceptual framework, vision, mission and objectives. Section 2 discusses the study methodology and data collection procedures. This *Guide* is the product of a consultative process held with the ACA2K research and programme team.

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<sup>4</sup>In general, following the name of the project, we use the term A2K (access to knowledge) as an overarching concern. However, in several specific instances we use the term access to learning materials as a precise goal. The project sees access to learning materials as a crucial component of access to knowledge.

<sup>5</sup>See Alternative Law Forum (ALF) 'Review of the proposed amendment to the Indian Copyright' (2006). Available at [http://www.altlawforum.org/copyright\\_amdt](http://www.altlawforum.org/copyright_amdt) [Accessed April 2008]; A Prabhala and T Schonwetter *Commonwealth of Learning copyright audit* (2006). Available at <http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/COLCopyrightAudit.pdf> [Accessed 1 April 2008]; Copy/South Research Group *The Copy/South dossier* (2006). Available at <http://www.copysouth.org/> [Accessed April 2008]; Center for Social Media *The cost of copyright confusion for media literacy* (2007). School of Communications, American University Available at <http://mediaeducationlab.com/pdf/Final%20CSM%20copyright%20report.pdf> [Accessed 1 April 2008]; Consumers International Asia-Pacific *Copyright and access to knowledge: policy recommendations on flexibilities in copyright laws* (2006). Available at [http://www.soros.org/initiatives/information/focus/access/articles\\_publications/publications/copyright\\_20060602/copyright\\_access.pdf](http://www.soros.org/initiatives/information/focus/access/articles_publications/publications/copyright_20060602/copyright_access.pdf) <[http://www.soros.org/initiatives/information/focus/access/articles\\_publications/publications/copyright\\_20060602/copyright\\_access.pdf](http://www.soros.org/initiatives/information/focus/access/articles_publications/publications/copyright_20060602/copyright_access.pdf)> [Accessed 1 April 2008]; and Rens et al supra note 2.

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## 1.3 The Conceptual Framework

The fundamental conceptual premise underlying the ACA2K research project is that knowledge is essential to human development. Access to knowledge is an essential component of economic progress, cultural growth and individual fulfilment. A just copyright system would, therefore, enable access to knowledge.

Access to knowledge must be understood in the context of a country's prevailing socioeconomic conditions, physical infrastructure and information and communications technology (ICT) infrastructure. There is, also, a significant relationship between legal environments and access to knowledge, as has been noted by a range of scholars and commentators. The ACA2K network thus approaches A2K as a critical developmental and human rights issue that requires a multi-disciplinary research methodology.

A2K is integrally linked to education and concerned with the availability of learning materials. Access to learning materials is not only a prerequisite to building knowledge within a society; gauging levels of access to learning materials can also serve as a useful proxy for gauging A2K more generally.

While different countries may exhibit different A2K problems, we assume, with empirical basis, that it is generally evident across Africa that national education systems are failing to meet the needs of the vast majority of their constituents. This is a complex problem with multiple causes. The ACA2K project believes that one such cause is inadequate access to learning materials.

The predominant legislative mechanism used to facilitate the creation and dissemination of learning materials is copyright. Paradoxically, copyright law is usually also one of the primary constraints to access to learning materials. Thus, copyright has the capacity to both promote and hinder access to learning materials, as A2K in general.

Of course, legislation on its own does not determine the relationship between copyright and access to learning materials. Legislation must be viewed as part of an overall copyright environment consisting of, among other things:

- A country's copyright statutes and regulations in relation to digital and non-digital learning materials;
- A country's copyright case law (in common law countries) and judicial attitudes/decisions in relation to digital and non-digital learning materials;
- Perceptions of the copyright framework;
- Actual interpretations of, and practices in relation to, a country's legal copyright framework; and
- Norms, social conditions and market dynamics that affect how people access and use learning materials.

**Figure 1: Constituent parts of the Copyright Environment & Access to Learning Materials**



A nation's copyright environment is a key determinant of access to learning materials. And given that learners in many African countries experience restricted access to learning materials (and low levels of educational attainment), it can be argued that copyright law, as a primary public policy tool for increasing access to learning materials, is not fulfilling its primary objective, that of maximising access to learning materials.

A number of justifications may be advanced for conferring exclusive rights to producers and publishers, broadly taken. This project does not attempt to resolve the debate regarding these justifications. To the contrary, this project recognises that the copyright environments in various study countries will reflect a range of attitudes towards copyright, based on local circumstances. Researchers will thus, in part, investigate the extent to which the various justifications offered for the prevailing copyright environment in a country affect access to learning materials in that country.

Thus, the conceptual framework underpinning this research project is a pragmatic one. The research will focus on the actual impact of countries' copyright environments on access to learning materials, and the possibilities for maximising that access.

## 1.4 Vision, Mission & Objectives

As noted above, ACA2K is looking at A2K through the somewhat narrower lens of access to learning materials. For the purposes of this project, access to learning materials serves as a proxy for examining the impact of national copyright environments on A2K in general. Thus, whereas ACA2K's vision and mission are within a broad A2K context, the specific objectives and research methodologies mostly focus on access to learning materials.

### ACA2K **envisions**:

*People in Africa maximising access to knowledge by influencing changes in copyright environments nationally and across the continent.*

### ACA2K's **mission** is:

*To create a network of African researchers empowered to study the impact of copyright environments on access to learning materials, and to use the evidence generated to enable copyright stakeholders to participate in and engage in evidence-based copyright policymaking aimed at increasing access to knowledge.*

### ACA2K's overall **objective** is:

*To document the evidence around the interaction between copyright environments and access to learning materials and to enable stakeholders in study countries to pursue the attainment of copyright environments that maximise access to knowledge for all.*

### ACA2K's **specific objectives** are:

- *to build and network the research capacity of African scholars to examine copyright environments and access to learning materials (across all formats) within and across countries;*
- *to build research and methodological best practices in African countries around the relationship between copyright environments and access to learning materials;*
- *to increase the corpus of published evidence – both research reports and academic peer-reviewed publications – on the relationship between copyright environments and access to learning materials;*
- *to build awareness and conduct policy advocacy around copyright in relation to access to learning materials and access to knowledge in Africa. Targeted stakeholders include (but are not limited to): government officials, legislators, policy advisors, civil society actors, libraries, publishers, schools, educators; and*
- *to build awareness and policy advocacy capacity in universities and related institutions of higher learning on the impact of copyright on scholarly and research environments in their institutions, with specific reference to access to learning materials and access to knowledge.*

## 1.5 Research Questions & Hypotheses

The purpose of this *Guide* is to translate the ACA2K project vision, mission and objectives into a set of tools for probing the overarching research question of the study:

*To what extent is copyright fulfilling the objective of facilitating A2K in the study countries?*

With access to learning materials used as a proxy for A2K, the specific research questions are:

- *What is the state of a country's copyright environment and the state of access to learning materials within, and as impacted by, that environment?*
  - *What are the exceptions, limitations or other legal means provided for by the national copyright laws for learning and research?*
  - *How are the relevant stakeholders in the country using and interpreting exceptions, limitations or other legal means to increase access to learning materials?*
  - *Are there gender dynamics at play in the interpretation of copyright exceptions, limitations and other legal instruments/dynamics in a country? If there are gender dynamics, how do they play out in the copyright environment, specifically in terms of access to learning materials?*
  - *What are the actual experiences of learning stakeholders in terms of accessing learning materials?*
  - *Is there any case law in the context of copyright and learning?*
  - *Which are the key stakeholder groupings in the country's copyright context, and to what extent do they affect (or get affected by) the copyright environment?*
  - *What role does access to information and communication technologies (ICTs) play, as part of the copyright environment, in promoting or hindering access? Which materials are affected and how?*
- *What are the processes, political, legal, social and/or technical, that could positively impact a country's copyright environment in terms of access to learning materials?*
- *What might the country's optimal copyright environment look like?*

The research will need to examine how particular provisions of a country's copyright legislation have the potential to limit or prohibit access to learning materials, and to examine the potential inadequacies of existing exceptions and limitations. However, it must be kept in mind that ensuring adequate access to learning materials is never just a question of having appropriate exceptions, limitations and other flexibilities, but also a question of the actual deployment of these flexibilities. In addition, it is also a question of whether, or not, the exclusive rights granted to copyright-holders are being effectively balanced through the deployment of those flexibilities.

Every objective research project must begin with a set of hypotheses. The purpose is not to prejudge the outcome of the research, but to objectively test the validity of particular statements or positions.

ACA2K's **hypotheses** are:

- *Copyright environments in the study countries do not allow maximal access to learning materials; and*
- *Copyright environments in the study countries can be changed to maximise effective access to learning materials.*

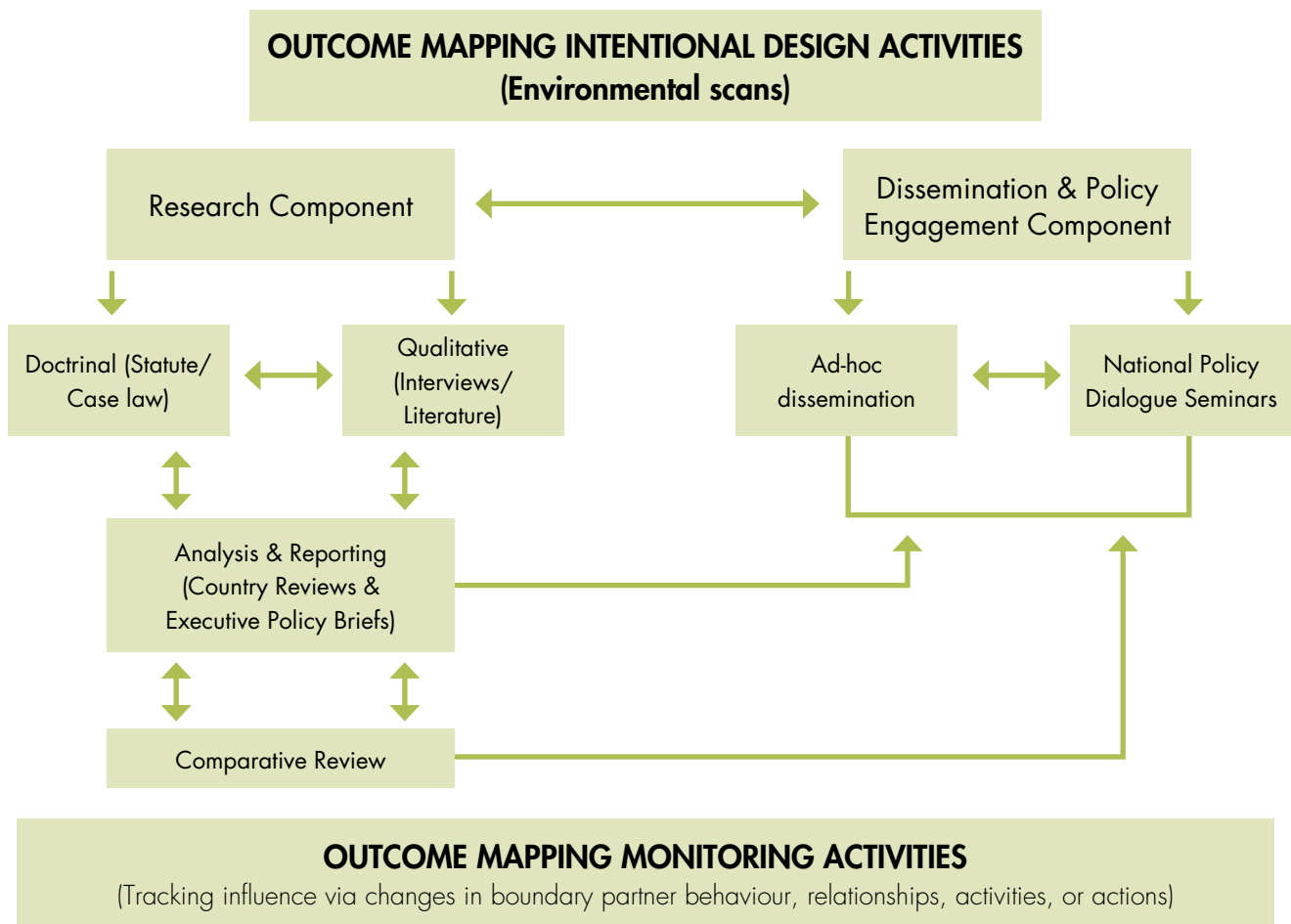
## 1.6 Project Components

The ACA2K project involves two inextricably linked components:

- Research
- Dissemination & Policy Engagement

Prior to embarking upon the Research Component, research teams will undertake an environmental scan designed to provide a broad overview of potential dimensions of the copyright environment and to identify stakeholders (boundary partners) in the copyright policy space in each study country. This initial environmental scan is part of the Outcome Mapping (OM) intentional design and monitoring method, which is described in greater detail further on in this document.

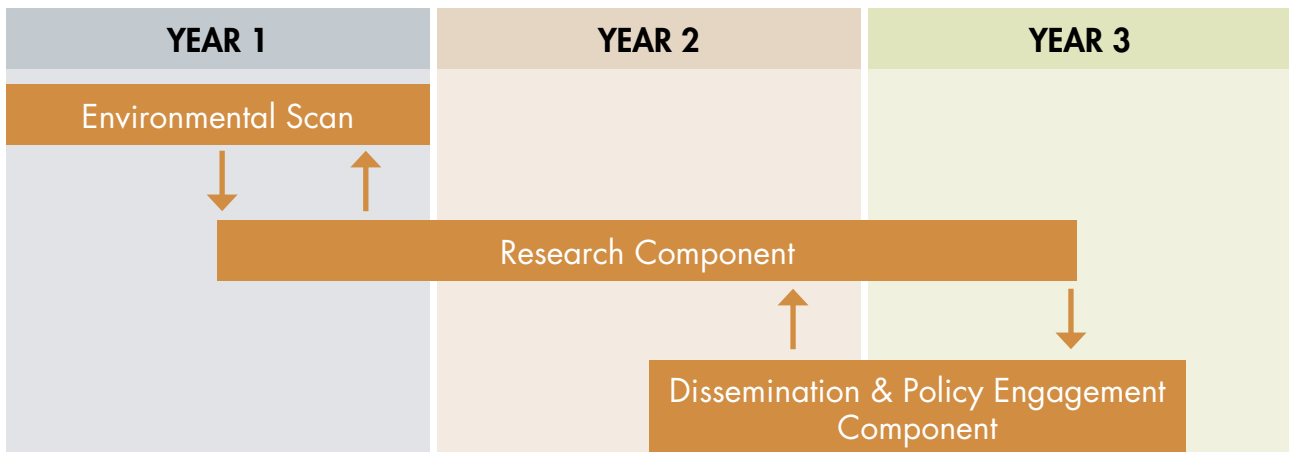
**Figure 2: Conceptual Map of the ACA2K Project**



The Research Component involves collection of doctrinal data (via a legal review) and practical data (via impact assessment interviews), followed by analysis at the local and regional level. The Dissemination & Policy Engagement Component involves sharing of research findings and active involvement of the ACA2K teams in the copyright policy space at national, regional and international levels.

These two project components, while linear, are not strictly so; in the sense that they overlap into each other. (However, for ethical reasons, it is necessary for researchers not to attempt to exert undue policy influence before or during the data collection phase, so as not to prejudice research results.) The environmental scan forms the starting point for planning country research and for planning the eventual policy engagement. However, even the Research Component will create opportunities to map boundary partners, cement alliances and solidify advocacy alliances/strategies to be fully deployed via the Dissemination & Policy Engagement Component. The permutations and combinations of the ensuing overlap between the two components are naturally unpredictable, thus the specific overlaps are largely to be decisions of the country research teams. However, over a 2.5-year period, for instance, the components could intersect thus:

**Figure 3: ACA2K Project Components**



## 2. Research Component

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As described earlier, ACA2K's research objective is to understand and eventually impact how a country's copyright environment, including its copyright legislation, case law, policies and practices, affects access to learning materials. Questions to investigate pertain to the role that copyright plays in facilitating and/or impeding access to learning materials. The hypotheses are that a copyright environment has a significant impact on access to learning materials, and that the copyright environment in each study country could be improved to increase access. The methodology is designed to respond to the research questions and test the hypotheses.

The ACA2K project is divided into two distinct components: the Research Component, and the Dissemination & Policy Engagement Component. The Research Component of the project consists of three related sub-components: the doctrinal, practical and analytical sub-components. The doctrinal component is designed to determine the state of the law in each study country. Researchers will identify, analyse and report on all relevant statutes, regulations and case law (as applicable). The practical (qualitative) sub-component of the research will assess the impact that the law in each country is intended to have, and has in practice. Researchers will review secondary materials and conduct in-person interviews to gather objective data about how the law actually operates in each study country. The analytical sub-component of the research will enable an understanding of which aspects of a country's copyright environment most affect access to learning materials, and how this could be changed. Comparisons will be drawn among study countries in order to identify similarities, differences, themes and trends.

Researchers will use the data gathered and analysed during the Research Component to achieve the project's desired impact during and beyond the Dissemination & Policy Engagement Component of the project. Research results will determine precisely which strategies will best accomplish the goal of increasing access to learning materials in Africa. Based on objective conclusions drawn from the Research Component, project team members will be able to identify boundary partners, that is, determine whose behaviour must be influenced in order to achieve change (particularly policy change), and determine how to influence most efficiently and effectively.

### 2.1 Doctrinal Research Sub-Component

Doctrinal research – broadly taken – forms a fundamental empirical basis of the ACA2K project. At the core of ACA2K's conceptualisation of access to learning materials, and A2K in general, lies copyright law, layered by other aspects of law, the whole of which is covered by practice and context.

The doctrinal component of the research is concerned, first, with understanding what copyright law stipulates, in relation to access to learning materials. We call this the legal review. Second, it is concerned with judicial and administrative decisions or case law analysis. When thinking of judicial decisions, it is important to keep in mind not only permissible legal possibilities that further access to learning materials/knowledge, but also the 'effects' of law on learning materials/knowledge access.

#### 2.1.1 Statute & Regulations

To understand what effects the law has, and what the effects may be, we begin by outlining what the law *is*. However, it may be the case that for a particular access issue:

- It is not clarified in statute, but is decided by case-law; or that
- It is clarified in statute, and further elaborated on by case-law; or that
- Direction on the issue is absent in both statute and case law.

A last possibility is that there is an overriding legal principle, such as a constitutionally guaranteed right that impacts the access issue in question.

It is important, therefore, that country doctrinal studies are guided by all elements of the legal environment in relation to access to learning materials – that is, legal reviews should be guided by an exhaustive understanding of every element of the copyright law (and beyond, as relevant) in relation to learning materials. Below, questions are provided to guide this review of the responsiveness of the copyright statutes to access to learning materials.

Whether these questions are answered by statute, or case law, or policy and regulations accompanying statute – or, indeed, left unanswered – is to be illuminated by the doctrinal legal review. Beyond a ‘yes’ or ‘no’ answer to the question is issue of how the law responds to the access element in question. Some aspects of the analysis might be outside copyright: for instance, constitutional provisions around education that have already provided, or that have the capacity to provide, guidance on access.

The ACA2K doctrinal review, like other aspects of the project, rests on the premise that copyright must reflect a balance of private and public interests. It must create adequate incentive to the producer while enabling (and not hampering) access by consumers. Particularly when applied within a developing country context, it is crucial to remember that while the ACA2K project is concerned with A2K, it is also concerned with the equitable production and distribution of knowledge. The ACA2K project relies on a fundamental principle: *access to knowledge in turn creates producers of knowledge*.

To that end, it is useful to consider a set of base questions to begin with. Circumscribing ‘knowledge’ is a necessarily fraught task, and the list of questions that follow does not necessarily cover every issue at stake. However, the questions have been articulated with an attempt at completeness, adapted from an earlier study undertaken for the Commonwealth of Learning.<sup>6</sup>

Research teams working on particular countries should, however, perform their own audit of these sample questions, and leave out what is irrelevant or unnecessary – with perhaps some notes as to why – and similarly include those issues and questions as may be outside this sample.

It is important to keep in mind that except under exceptional circumstances, each question in this sample list bears examination. It is generally expected that the list of questions will expand, not shrink, through the process of the legal review.

### 2.1.1.1 Basic Questions

Background information:

- 1) *Year in which copyright was legislated*
- 2) *The title of the law(s) which currently regulate(s) copyright*
- 3) *Does copyright protection exist in terms of the common law (as applicable)?*
- 4) *What kinds of works are currently copyright-protected?*
- 5) *What is the exact nature of copyright in the different works?*
- 6) *Are moral rights protected, and if so, to what extent?*

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<sup>6</sup>Prabhala and Schonwetter supra note 5.

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### 2.1.1.2 International Obligations

The next step is to assess existing (and historically incumbent) international obligations relating to copyright:

- The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) is an international treaty on copyright, first adopted in Berne, Switzerland in 1886. As of writing, 163 countries are party to the Berne Convention.
  - 7) *Is the country a signatory to the Berne Convention, and if so, to what Act?*
- For developing countries joining the Berne Convention, access to copyrighted goods from developed countries was considered a problem. In response to this concern, the Appendix to the Berne Convention was formulated. In a nutshell, the Appendix provides under certain circumstances – and subject to the compensation of the right-holder – for a system of non-exclusive and non-transferable, non-voluntary (or statutory) licences in developing countries regarding (a) the translation of works for the purposes of teaching, scholarship or research, and for use in connection with systematic instructional activities (Article II of the Appendix to the Berne Convention), and (b) the reproduction of works protected under the Berne Convention (Article III of the Appendix to the Berne Convention). The actual terms of the Appendix remain controversial, since any use of the Appendix is heavily regulated and requires strict procedures to be followed. Moreover, translation into any major European language is not allowed, even though such languages are used in many developing countries. As of writing, the majority of developing countries who are Member States of the Berne Convention have not availed themselves of the Appendix to the Berne Convention.
  - 8) *Has the country availed itself of the Appendix to the Berne Convention?*
  - 9) *And/or are there provisions in the national copyright law that follow the procedures laid out in the Appendix to the Berne Convention with respect to translation?*
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) is an agreement that automatically applies to all members of the World Trade Organisation (WTO). As of writing, the WTO has 151 members, encompassing the bulk of sovereign entities around the world. TRIPs deals extensively with copyright-related matters, including the issue of enforcement. Most notably, TRIPs incorporates, to a great extent, the provisions of the Berne Convention.
  - 10) *Is the country bound by TRIPs by virtue of membership of the WTO?*
  - 11) *If the country is bound by TRIPs, then are its obligations suspended by virtue of LDC (least developed country) status?*
- The so-called WIPO ‘Internet Treaties’ of 1996 (the WCT and WPPT) were signed in Geneva, Switzerland with the intention of updating and supplementing the existing international treaties on copyright (in the case of the WCT) and neighbouring rights (in the case of the WPPT) in order to give an adequate response on the level of international copyright legislation to the challenges raised for copyright by digitising and the Internet. As of writing, 64 countries are contracting parties to the WCT, and 62 are contracting parties to the WPPT.
  - 12) *Is the country a signatory to WCT and/or WPPT?*
- Lastly, to complete the review of the country’s international obligations:
  - 13) *Is the country party to any other multilateral copyright or copyright-related treaty (eg, the Universal Copyright Convention (UCC) of 1952)?*

### 2.1.1.3 Copyright Flexibilities

Having established the basic information and parameters, the doctrinal review must then focus on the specifics. Within the copyright system, and cognisant of international obligations that a country may be bound to, a wide variety of flexibilities are allowed in the legislation of copyright. Usually, the phrase ‘copyright flexibilities’ pertains to (a) the scope of copyright protection, (b) the copyright protection term, and (c) copyright exceptions and limitations. While the scope of copyright protection was inquired into in the preceding sections, the following questions concern the duration of copyright protection as well as the issue of copyright exceptions and limitations.

- An important flexibility that countries have is to set the copyright term for works, using the minimum permissible terms set out in international treaties. To consciously extend a copyright term beyond the minimum a country is obligated to requires careful consideration, of, for instance, the effects of delaying the depositing of such works in the public domain, and the consequent delay in wide access to such works.
  - 14) *How long are the different kinds of copyrighted works protected for and how does this compare to TRIPs minimums?*
- Generally speaking, copyright limitations and exceptions curtail the exclusive rights assigned by copyright law to the copyright holder, in order to promote public interest as well as to respect users' legitimate interest in making unauthorised reproductions (among other acts) in certain circumstances. The phrase 'exception and limitation' is used here in the widest possible manner and includes non-voluntary (compulsory and statutory) licences.
  - **Teachers and learners:** Recognising the central role that learning plays in the economic, political and social life of nations, several countries around the world have adopted a specific set of copyright provisions for teaching and learning. Such provisions recognise that teaching and learning might often be conducted under sub-optimal conditions with scarce resources, and seek to provide flexibility in the classroom and outside to facilitate this essential process.
    - 15) *Are there any provisions specifically for teaching/education? In answering this question, the following set of sub-questions should, inter alia, be considered:*
      - a) *Can a whole work be utilised in any way, for education?*
      - b) *Are there any restrictions on how a work can be used in education?*
      - c) *Are there any restrictions on where the work can be used (eg, at home)?*
      - d) *Is distance learning considered in the law?*
      - e) *Is e-learning considered in the law?*
      - f) *Are there any limits on number of copies of works or illustrations permitted?*
  - **Libraries and archives:** Taken together, libraries and archives are perhaps the most commonly-accessed knowledge gateways. The functioning of publicly-accessible libraries and archives (including those not necessarily connected to an academic institution) crucially depends upon flexibilities in the copyright system – in order to enable, expand and sustain public access.
    - 16) *Are there specific provisions to address libraries/archives?*
    - 17) *Are there 'public lending rights' or equivalent clauses?*
    - 18) *For publicly accessible libraries/archives:*
      - a) *Is the copying of whole works permitted?*
      - b) *Are there limits on the number of copies possible of whole works?*
      - c) *Do all publicly-accessible libraries/archives qualify?*
      - d) *Do commercial libraries/archives qualify?*
      - e) *Are there limits on copying by format (eg, digital/print)?*
      - f) *Are there provisions for the sharing of out-of-print works?*
      - g) *Are there provisions for format adaptation of works? (eg, from print to digital)*
      - h) *Are there restrictions on the delivery of digital works to users?*

- **Disabled people:** People with a sensory disability (such as, but not only, those who are partially or wholly blind or deaf) face unusually high constraints in accessing knowledge. To some extent, new technologies create access opportunities – provided that they are regulated with foresight. A responsive system of copyright, which recognizes the knowledge needs of sensory disabled people (such as format adaptation) can create the requisite access, particularly when framed within flexible, expansive and simple procedures.
  - 19) *Are there any specific provisions for people with a disability? If yes, the following set of sub-questions should be considered:*
    - a) *Do provisions cover both organisations and individuals?*
    - b) *Is format adaptation (eg, text to audio) permitted?*
    - c) *Are there restrictions on format adaptation? (eg, are only some formats such as Braille allowed?)*
    - d) *Do permissions for format adaptation have to be applied for?*
    - e) *Is remuneration of rights-holders required for such adaptation?*
    - f) *Do the provisions extend to all users with sensory disability?*
    - g) *Are there restrictions on sharing of such adapted material?*
    - h) *Are there restrictions on export/import of such adapted material?*
- **Freedom of expression:** Copyright also plays a role in stimulating a free and fair media, which is an important point to consider given the increased use of audiovisual technology in teaching, the diverse ways in which learning takes place, and the proliferation of media outlets and consumers caused in part by recent advances in technology.
  - 20) *Is review of copyrighted works in media permitted?*
  - 21) *Can political speeches be reproduced in media?*
  - 22) *Can public lectures/speeches be reproduced in media?*
  - 23) *Is file-sharing from peer-to-peer networks permitted?*
  - 24) *Can copyrighted work be excerpted in news reporting?*
  - 25) *Is there a provision for the 'remixing' of sound recordings?*
  - 26) *Does the 'remixing' of sound recordings require permission?*
- **Other:** Doubtless, there are several, country-specific provisions that may articulate an exception and limitation not unlike those already covered:
  - 27) *Are there any other specific exceptions and limitations which enable/increase A2K material?*
- **Fair dealing/fair use:** Fair dealing, or fair use, constitutes a set of defenses against an action for infringement of copyright. In other words, fair dealing/fair use – as a collective set of clauses – enables everyday, ordinary use and sharing of copyrighted material to be legally permissible.
  - 28) *Is the principle of fair use/fair dealing provisioned for? If yes, the following set of sub-questions should be considered:*
    - a) *To what extent does the fair use/fair dealing provision encompass research and study?*
    - b) *Does the fair use/fair dealing provision encompass criticism and/or review?*
    - c) *Does the fair use/fair dealing provision encompass news reporting and/or reporting current events?*
    - d) *Does the fair use/fair dealing provision encompass professional advice?*
    - e) *Does the fair use/fair dealing provision encompass judicial proceedings?*
    - f) *Does the law specifically determine what amount of a work a user can use under fair use/fair dealing (eg, 10 pages, 10 per cent, one chapter)?*
    - g) *Is the private copying of non-digital works permitted?*
    - h) *Is the private copying of digital works permitted?*

- **Quotations:** The freedom to quote is an integral part of not only scholarship, but also free expression.
  - 29) *To what extent are quotations permitted? In answering this question the following set of sub-questions should, inter alia, be considered:*
    - a) *Are there any restrictions on quotations?*
    - b) *Are there restrictions on what types of works can be quoted?*
    - c) *Are there restrictions on the 'public' nature of work quoted from?*
    - d) *Are there restrictions on the length of the quotation?*
    - e) *Are there restrictions on the purpose of a quotation?*
- **Government works and legal proceedings:** Typically, governments are large producers of knowledge: from reports, surveys and statistics to funded projects in every academic discipline. Government-funded work may apply to individuals, academics and institutions. Government resources should be public resources: and it follows that any work thus carried out should be in the public domain – meaning, regardless of some application of copyright, that such works should be freely and easily accessible, and adaptable as necessary.
  - 30) *Government works:*
    - a) *Are all government works (ie, works prepared by an officer or employee of the government as part of that person's official duties) in the public domain?*
    - b) *Are all government-funded works in the public domain?*
    - c) *Are there any restrictions on the use/adaptation of government works? (adaptations here include translations)*
  - 31) *Are judicial proceedings in the public domain?*
- **Parallel importation:** A parallel import refers to a copyrighted product legally acquired on the market in one country, which is subsequently imported into a second country without the permission of the copyright holder in the second country. It is a system by which, for instance, anomalous price differentials (as they may exist between similar copyrighted goods across two countries) can be corrected in the public interest, especially when the copyrighted good in question is an essential good, such as a textbook.
  - 32) *Is parallel import of copyright material permitted? If yes, do restrictions exist?*
- **Compulsory and statutory licences:** A non-voluntary (compulsory) copyright licence is an exception to copyright law that is typically explained as a safeguard for governments by which they might correct market failure. The issuance of such a licence usually suggests that the copyright holder has to grant rights over the material to another or others – either to the state or individual producer/s. Usually, the copyright holder does receive some remuneration, either set by law or determined through arbitration. Compulsory licences are widely considered to be a crucial mechanism for creating access where the copyrighted work in question is unavailable or unaffordable, among other circumstances.
  - 33) *Is compulsory (non-voluntary) licensing provisioned for? If yes, under what circumstances?*
- **DRM and TPM:** An issue that is of tremendous significance – now and for the future – is digital rights management (DRM), a term used for technologies that define and enforce parameters of access to digital media or software. Consequently, rights that are conferred by the law, under DRM, are enforced by the copyright holder through technological protection measures (TPM) which prevent access to digital media or software in a manner that would infringe the rights of the copyright holder. In most cases, DRM/TPM provisions are introduced in the law as a consequence of obligations under the WIPO Internet Treaties (WCT and WPPT). However, there are several instances where countries yet to sign these treaties have introduced DRM/TPM provisions into national legislation. DRM systems and TPM remain controversial, since they have the potential to threaten the innovative possibilities opened up by the digitising of material and the advent of the Internet – by allowing copyright-holders to restrict access to digital media or software under terms which would be currently permissible under copyright law. DRM and TPM thus have implications not only for legal, personal use but also for future innovation. Of particular concern are anti-circumvention provisions – that is, clauses in a law that make it illegal to circumvent technological protection mechanisms – even while, for instance, a user is exercising the right of fair dealing of a work.

- 34) *Does the law contain provisions regarding DRM and/or TPM? If yes, what do these provisions stipulate?*
- 35) *Do copyright holders have the exclusive right to control dissemination (distribution and/or rental and/or communication/making available)?*
- 36) *Does the law contain provisions regarding anti-circumvention? If yes, what do these provisions stipulate?*
- 37) *Is circumvention allowed when exercising permitted uses such as fair dealing, quotation, etc?*

#### 2.1.1.4 Incentives for the Commons

While copyright law has traditionally followed a pattern laid out by international conventions relating to it, there remain several aspects of copyright that are relatively un-mandated. For instance, as well as taking advantage of flexibilities offered under the copyright system, countries have the option to encourage the production, usage and growth of tools such as free and open source software (FOSS) and open content material such as open access textbooks – thereby, providing official support to self-determined initiatives that spur access to learning materials and knowledge. Free and open source software is software which can be used, copied, studied, modified and redistributed without restriction.

Open access usually refers to material which is freely available (eg, online) and which can be also be freely reproduced, adapted and distributed, potentially even for commercial gain (depending on the nature of the licence chosen by the creator). An open content license is the legal tool which facilitates the deployment of open access content.

- 38) *Are there incentives for the use, production and dissemination of free and open source software within copyright law or elsewhere in national law/policy?*
- 39) *Are there incentives for the use, production and dissemination of open access and/or open content material (eg, textbooks) within copyright law or elsewhere in national law/policy?*

#### 2.1.1.5 Miscellaneous

And lastly, researchers should consider questions that are miscellaneous, straddling contemporary and historical issues connected to copyright and global trade rules:

- 40) *Does copyright law contain provisions regarding traditional knowledge/folklore? If yes, what kind of provisions?*
- 41) *Are there existing trade agreements (with, for example, the US or EU) that have implications for copyright law – either presently, or in the future?*
- 42) *Does 'communication to the public' (or an equivalent term, as defined) exclude private, non-commercial and/or educational communication?*
- 43) *Does 'commercial rental' (or an equivalent term, as defined) exclude non-profit lending or circulation of works, including the use of works in education?*
- 44) *Is relinquishment by the rights-holder/owner, of all or certain rights granted under copyright, legally recognised through any public communication?*
- 45) *Is there any distinction anywhere in the law between domestic (national) works and foreign (international) works?*
- 46) *How does the law hold telecommunications service providers (eg, Internet Service Providers) responsible for copyright violation, and what kind of liability ensues for such entities?*

### 2.1.1.6 Laws Outside Copyright

In many cases, it is likely that laws outside copyright will have some bearing on how copyright statutes are to be interpreted in a country. In the case of education, for instance, there might be constitutional rights around education and development that have bearing on how a particular copyright statute is read. In other cases, there might be legal precedents from court cases and decisions, either involving a constitutional right (eg, to education) or another right, that have legal significance for the application of copyright law.

Other examples of non-copyright laws that might have relevance are those pertaining to:

- Censorship and media freedom
- Internet Service Provider liability
- Competition and monopolies

Country researchers should cast the net wide as far as related laws are concerned, in order to capture the full picture of the country's statutory environment in relation to copyright and learning materials access.

## 2.1.2 Judicial & Administrative Decisions

Case law, which refers to the judgements and outcomes resulting out of court cases, is invaluable to the understanding, interpreting and analysis of statute. Where applicable, country teams will be expected to search and analyse relevant cases to better understand a country's copyright environment. It is likely that in many countries the body of cases involving copyright is either thin or non-existent. Where no case law exists around copyright matters, researchers should establish potential reasons for this lack.

Cases will be retrieved from electronic and print databases and publications. It is desirable that all relevant cases are recorded, along with notes that attest to their relevance. Research teams are asked to:

- Identify the exact source of the case used, including the institutional source of records (whether from courts, libraries, etc);
- Document the exact search queries used, clearly showing the process for constructing the searches;
- Outline the search history;
- Develop a full bibliographic record of documents retrieved;
- Prepare case briefs or annotation; and
- Prepare a descriptive legal analysis of the entire body of case law found.

Research teams should post documentation of procedure and search queries on the ACA2K project website. Researchers should note that only case law search procedures and findings are to be posted online, and *not* data from the impact assessment interviews in the qualitative research sub-component outlined in the next section. Interview data is subject to strict confidentiality and privacy requirements in each of the study countries, as well as by University of the Witwatersrand and IDRC policies, as outlined later.

Country teams will decide on the depth and breadth of cases they wish to consider as being at the intersection of copyright and access to learning materials, guided by ACA2K's vision, mission, objectives, research questions and hypotheses.

## 2.2 Qualitative Research Sub-Component

There are two steps to be taken in assessing the practical impact that laws are having on a country's copyright environment. The first is to consult secondary materials, such as scholarly articles, policy documents, government reports and others. The second is to conduct formal interviews (impact assessment interviews) with people who have knowledge of the intended or actual effects of copyright law on access to learning materials.

### 2.2.1 Secondary Materials

Consultation of secondary materials is intended to provide a bridge between the legal and practical aspects of a country's copyright environment. Researchers will consult a variety of sources containing commentary on the effects that copyright laws were intended to have, or actually are having, on access to learning materials within a study country. Relevant materials could include books, academic articles, government reports, pamphlets, guidelines and others. These documents may originate from academic experts, local practitioners, copyright-holders, industry associations, libraries, educational institutions, government departments or any other commentators on copyright law and practice.

It is important in carrying out this part of the research methodology to be aware of materials from any and all disciplines. Researchers should not focus solely, or even primarily, on legal materials. Useful information might be found in literature from disciplines such as education, library and information sciences, business, arts, literature or others.

Researchers should, however, mainly contain their focus to domestic rather than foreign or international materials. (Note that the team conducting the final cross-country comparative review (the third research sub-component, described below in Section 2.4) will thoroughly search for and report on international materials and relevant materials from outside Africa.) An exception for a local country researcher might be if there were particularly influential materials from outside of the study country, which country researchers may then choose to include in their review. Also, if no domestic secondary scholarship exists, that in itself would be a significant finding to report.

In this context, it will be the researchers' task in each study country to locate, compile, synthesise and report findings from their review of secondary materials. Researchers should search both commercial and open-access databases to ensure a thorough review of possible sources of relevant literature. It is essential for researchers to meticulously document searches for secondary materials. Records should be kept of which key words were used to search for materials in which databases. These records should be preserved and appended to the final Country Review research reports when delivered.

Researchers will then compile a bibliographical listing all relevant secondary materials in their study country. This bibliography should also be included in the final Country Review report. To ensure consistency, researchers should use the ACA2K Publications Style Guide citation format to present their bibliographies.

Country Review reports will each include a section describing the results of the review of domestic secondary materials. Researchers should synthesise the materials, insofar as that is possible, in order to identify themes and trends. The overall goal is to obtain a sense of how various commentators in each study country perceive copyright law to function in practice. This information gathered from secondary documentary materials will be a useful complement to the formal impact assessment interviews in ascertaining the real impact of a country's law and practice on access to learning materials.

## 2.2.2 Impact Assessment Interviews

The bulk of the qualitative research component consists of carrying out formal impact assessment interviews with persons likely to have information about the intended and actual effects of the country's copyright environment on access to learning materials. The fundamental objective of this component is to understand how, if at all, the law is working 'on the ground' in each study country. It is not expected that the interviews will yield data for statistical analysis. Rather, the interviews are intended to produce anecdotal yet objective, documented evidence as to the effect of copyright law on access to learning materials in practice. This information will facilitate comparisons between and among study countries, and enable the project team to properly tailor strategies for impacting boundary partners during the Dissemination & Policy Engagement Component of the project.

In order to allow for a useful comparative review based on the country studies, researchers from each country must conduct similar, or at least comparable, interviews. Yet there are key differences between and among study countries that prevent research teams from conducting identical interviews in all circumstances. Therefore, a balance must be struck between consistency and flexibility across study countries. This requires careful selection and coordination of both interview subjects and questions.

### 2.2.2.1 Selecting Interview Subjects

Researchers will begin to prepare for the formal interviews by identifying possible interview subjects from whom data might be gathered. The overarching goal is to select subjects who can provide data about both the intended and actual effects of copyright law. Therefore, researchers should aim to select subjects with intimate knowledge of the formal copyright law/policymaking process as well as, likely separately, subjects with intimate knowledge of the practicalities of access to learning materials. An example of a subject belonging to the former group is a person from a government department responsible for copyright issues. An example from the latter group is an administrator responsible for copyright issues at a post-secondary educational institution.

Consultation with country research team members has already revealed general similarities regarding desirable interview subjects, and, guided by the goals of the interview component of the research, it is anticipated that researchers will interview subjects belonging to some or most of the following groups. Note that these categories are not mutually exclusive.

- The *government department(s)* responsible for setting national copyright policies and/or drafting copyright legislation. In different countries, this might be a department of industry, trade, culture or justice, or another organisation such as the office of an attorney general. Multiple departments might share responsibility for copyright, requiring multiple interviews to obtain sufficient data.
- *Educational communities and users* (we recognise the fact that education communities can be creators and/or holders of copyright). These are affected by copyright law and policy regarding access to learning materials. This group of interview subjects is potentially diverse. It could include federal or state/provincial ministries of education. Educational administrators at central, faculty or departmental levels could be valuable sources of data. Researchers might consult with persons in university reprography departments, libraries and/or information technology units, all of whom might have knowledge of the relationship between copyright and access to learning materials. It would also be appropriate to interview students and teachers. For reasons of convenience and efficiency, researchers might wish to focus their efforts on associations of ministries, schools, teachers or students.
- *Copyright holders*, including possibly creators of learning materials, publishers, collective management organisations, guilds and professional bodies and/or industry associations. Researchers should take special care to recognise and avoid the false dichotomy between 'users' and 'creators,' given that, especially in an educational context, many actors play multiple roles.

- *Intermediaries* who distribute learning materials. Booksellers, including bricks-and-mortar shops, online retailers and campus bookstores would fall within this group. So too might ‘copy shops’ that reproduce learning materials at or near educational institutions. Internet access providers in the private sector or at educational institutions could also be seen as delivering access to digital learning materials, and might be an appropriate group from which to collect data.
- *Copyright administrators, enforcement agencies or professionals.* Some countries may have administrative bodies that directly affect access to learning materials. A copyright board or tribunal with the power to approve tariffs of fees for reproducing materials at educational institutions would be an example of such a body. Enforcement agencies such as the police, customs official or similar entities might also play a role in access to learning materials, as might judges, lawyers or other professionals engaged in the day-to-day practice of copyright law.

In selecting interview subjects from whom to gather data, researchers should be aware not only of the need to ensure relative consistency with researchers in other countries, but also of the limited time and resources available to conduct interviews. Researchers should, therefore, take special care to ensure that the data they gather pertains specifically to copyright and access to learning materials, not to a country’s copyright system in general.

Researchers will need to prioritise interview subjects. At a minimum, however, it is expected that researchers will achieve depth in their interviewing of actors from two key groupings –government and the educational community – by ensuring several interviews in each of these categories. As well, it shall be required that each team interviews at least one actor considered a ‘copyright holder.’ Beyond that, each team of researchers will have discretion, within its time and budgetary constraints, to carry out as many interviews as appropriate to obtain a reliable understanding of how copyright law is functioning in practice to affect access to learning materials in the country.

In making decisions about interviews outside the three key groupings (government, educational community, copyright holders), it will be up to each research team to decide upon the appropriate balance between the breadth and diversity of groups to which interview subjects belong and the depth of investigations within each group. For example, researchers in some countries may decide to interview one actor from as many groups as possible, while researchers in other countries may need to consult multiple actors from the same category in order to obtain useful data. In either case, researchers should specify in their Country Review reports how and why they chose to conduct the interviews that they did.

Also, in order to gather a reliable and reasonably manageable data set, the focus of the interviews should be on the post-secondary educational community. That does not require researchers to ignore data or refrain from making observations about learning materials for primary and secondary educational communities. To the contrary, if information about primary and secondary educational communities is readily forthcoming, researchers can and should report it. To the extent that time and resources are limited, however, it is essential that each country’s research team gather data pertaining to access to learning materials at least in the post-secondary context (eg, universities).

Researchers should be particularly aware of issues pertaining to age, gender, ethnicity and class in choosing interview subjects from whom to gather data about the practical impact of the copyright environment on access to learning materials.

Regarding age concerns, note that researchers are subject to strict legal and ethical constraints. As specified in the ACA2K research contracts, children are only to be involved in the research if absolutely necessary. Where possible, alternative means of gathering data should be employed. For example, rather than interviewing young students to obtain information about access to learning materials in primary schools, researchers might consult current or former primary school teachers now working in an education faculty or government ministry. Note that such strategies might also be employed to minimise logistical problems associated with conducting ‘on-site’ interviews. If children must be involved in the research, researchers are obligated to follow special guidelines for obtaining parental consent, as detailed in the ACA2K research contracts.

Gender issues are also a key concern of the ACA2K project. Researchers should strive to interview a balanced proportion of men and women. If there are few or no women occupying positions of influence over copyright and access to learning materials, researchers should determine why that might be so. In such cases, researchers should also consider whether and how the data that is gathered might be different if there were more women in the relevant positions. Similar considerations apply regarding the race, ethnicity and socioeconomic class of interview subjects. (More is written on these topics in the section below describing ethical issues.)

Finally, researchers should note the ACA2K project's emphasis on ICTs in selecting interview subjects. Care should be taken to ensure that researchers obtain as much information as possible about the relevance of ICT to the research questions. Where possible, interview subjects should be chosen to provide data on the intersection between technology, copyright and access to learning materials. As one example, in educational communities, researchers should attempt to interview representatives of ICT departments and/or distance learning centres.

### 2.2.2.2 Logistical & Substantive Issues

Once researchers have determined which subjects will be interviewed, it will be necessary to plan for, conduct, and report on the interviews. This section of the *Guide* describes the procedures for doing so. As much background information as possible should be gathered from available sources in order to reduce the time spent obtaining such information during the interviews.

In planning logistical issues, such as the timing and location of interviews, researchers should balance several competing objectives. On the one hand, interviewees should experience as little inconvenience as possible. This may necessitate researchers travelling to locations where interviewees live or work. On the other hand, budgetary constraints require researchers to conduct interviews as efficiently as possible. If feasible, researchers should structure interviews to minimise the time and expenses incurred. Thorough planning of logistical and substantive matters will be helpful in that regard.

Also, prior to each interview, it is mandatory that researchers deal expressly with issues of consent and confidentiality. Researchers must document, in their reports, how they complied with all applicable contractual and ethical requirements described below.

Researchers must obtain the informed consent of interview subjects to participate in the research. Researchers will, therefore, be provided with documents to be shared with interview subjects in advance of any interview. The documents will include background information on the aims, methods, benefits and potential hazards of the research. Interview subjects will be informed through these documents of their right to withdraw from the research at any time. Under contractual and ethical requirements, researchers must not use pressure or an inducement of any kind whatsoever to encourage persons to become subjects of this research project.

Researchers will also give to interview subjects an undertaking of confidentiality, which promises that personally identifying information will not be included in any report or publication flowing from the project, and that all personally identifying information will be destroyed at the conclusion of the research. Researchers will also clearly indicate that their interactions with the interviewee will be recorded using audio digital recorders. Resultant data will be transcribed and the original audio recording stored for no more than three years in a secure location only accessible to the research team. (If the interviewee objects to audio recording, researchers should proceed without it and rely on taking notes.)

It is a contractual and ethical obligation of researchers in each country to verify whether there are limits on interview subjects' confidentiality imposed by local laws or regulations. For instance, if there is a provision that the researcher would have to disclose to authorities any information obtained around illegal activities, interviewees should be warned not to disclose the identity of individuals involved in illegal activities of which they are aware or think they are aware.

By signing the consent form – or verbally giving informed consent (which is, preferably, recorded on tape) in cases where an interviewee refuses to sign a consent form – interviewees will have agreed to participate in the study.

Once issues of consent and confidentiality have been dealt with, researchers have considerable leeway in terms of substantive questions to be asked and issues to be probed during interviews. It is within the discretion of each research team to determine how best to obtain the data necessary to draw conclusions about the relationship between the copyright environment and access to learning materials in practice.

Interview questions should be designed to elicit data regarding two principal issues: (a) what was/is the intended effect of copyright on access to learning materials? and (b) what was/is the actual effect of the copyright environment on access to learning materials? Different interview subjects are likely to have more or less information pertaining to these different issues. In fact, questions posed to interview subjects with expertise in copyright law and policymaking will likely differ greatly from questions posed to subjects in the educational community, and both will differ from questions asked to copyright holders.

Suggested questions and areas for investigation during interviews with law and policymakers include the following:

- *Background information and context.* If applicable, what is the function of the organisation to which the interview subject belongs? How is the organisation structured? What is the subject's role within the organisation?
- *Perceived or targeted stakeholders.* Which groups or individuals are viewed as the most important stakeholders in copyright law-making and policymaking? How is information about the needs and opinions of those stakeholders solicited, evaluated and responded to? How could consultation mechanisms be designed or, if they already exist, improved?
- *Access to learning materials.* What is the relationship between copyright and access to learning materials? Is enabling or increasing access to learning materials an objective of copyright, and if so, how is that objective being pursued? What, if anything, could be done by law and policy makers regarding this topic?

Interview subjects from the educational community might be asked about issues pertaining to:

- *Background information and context.* If applicable, what is the function of the organisation to which the interview subject belongs? How is the organisation structured? What is the subject's role within the organisation?
- *Production and/or consumption of learning materials.* How does the subject and his/her organisation create or use learning materials? What types of learning materials are most important to have access to, from the subject's perspective (eg, digital or hard copy, general or specialised, introductory or advanced, etc)?
- *Familiarity with copyright.* What, if anything, does the subject know about copyright? Is the subject aware of rights, possible liabilities, available exceptions, and so on? If applicable, where did the subject acquire his/her knowledge of copyright? How and where is information about copyright made available by or to the interview subject and his/her organisation?
- *Impact of copyright.* How does copyright law affect the subject and his/her organisation? Does the subject or his/her organisation have an official policy toward copyright, and if so, what is that policy? If no policy exists, how are copyright issues typically handled by the subject or his/her organisation?
- *Influence on copyright law-making and policymaking.* What, if anything, does the subject or his/her organisation do to participate in the copyright law-making and policymaking process? If applicable, how successful or unsuccessful have previous attempts to influence law-making and policymaking been? Which strategies were most and least successful? Whether or not there have been previous attempts to participate in copyright law-making and policymaking, does the interview subject or his/her organisation intend to do so in the future, and if so, how? What types of external or internal supports would be most useful in this regard?

Copyright-holders, who may or may not be affiliated with an educational institution or otherwise part of the educational community, could be asked about topics such as:

- *Background information and context.* If applicable, what is the function of the organisation to which the interview subject belongs? How is the organisation structured? What is the subject's role within the organisation?
- *Relationship with educational communities.* How does the interview subject or his/her organisation relate to educational communities? Is or does the subject perceive him/herself to be a member of the educational community? If the subject is not a member of the educational community, is the relationship with the educational community positive or negative, collegial or adversarial? What can be done to strengthen or improve the relationship between the educational community and the subject or his/her organisation?
- *Production and/or consumption of learning materials.* How does the subject and his/her organisation create or use learning materials? What types of learning materials are most important to the subject and his/her organisation (eg, digital or hard copy, general or specialised, introductory or advanced, etc)?
- *Influence on copyright law-making and policymaking.* What, if anything, does the subject or his/her organisation do to participate in the copyright law-making and policymaking process? If applicable, how successful or unsuccessful have previous attempts to influence law-making and policymaking been? Which strategies were most and least successful? Whether or not there have been previous attempts to participate in copyright law-making and policymaking, does the interview subject or his/her organisation intend to do so in the future, and if so, how?

### 2.2.2.3 Ethical Considerations

Because in-person interviews are part of the research methodology, the ACA2K project involves research on human subjects. Reference was made above to the ethical and contractual obligations governing ACA2K researchers. This section emphasises and elaborates upon those obligations. Ethical research guidelines governing ACA2K researchers are drawn primarily from four sources.

First, most generally, there are the international standards promulgated under the United Nations Educational, Scientific and Cultural Organisation's (UNESCO) *Ethical guidelines for international comparative social science research* in the framework of Management of Social Transformations. These guidelines are available online at: <http://www.unesco.org/most/ethical.htm>. All researchers should carefully read these guidelines. In brief, the UNESCO guidelines serve as signposts of ethical behaviour by laying out a series of principles that researchers should follow in conducting their research. Particularly important principles relate to the following issues:

- Researchers must have respect for the dignity of research subjects as human beings, not just as means to achieving the project's research and policy objectives. This requires balancing the benefits and harms of research to the individuals and groups among whom researchers conduct fieldwork, as well as society as a whole.
- Awareness of, compliance with and respect for local laws and customs is essential.
- Researchers must ensure they have obtained subjects' fully informed consent without coercion or inducement.
- Subjects' rights of confidentiality and privacy must be respected.
- Also, researchers must commit to sharing the benefits of the research with the communities involved as research subjects. Ensuring open and meaningful access to the results of the research is a particularly important ethical imperative given the nature of the ACA2K project.

Secondly, researchers are both contractually and morally obligated to comply with the ethical guidelines established by one of the principal funders of this research, the International Development Research Centre (IDRC). As indicated above, the IDRC guidelines outline the importance of obtaining informed consent, guaranteeing confidentiality and according special protection to vulnerable groups such as children. The IDRC guidelines are reproduced fully in each researcher's contract, as point A4 in the Memorandum of Grant Conditions, Attachment A: Additional Terms and Conditions. Perhaps most importantly, it is an express condition of research funding that researchers specify in their final reports how the IDRC ethical guidelines were complied with.

Third, the University of the Witwatersrand, through which the ACA2K project is managed and administered, also imposes a code of ethics on researchers. Specific details are available at: <http://web.wits.ac.za/Academic/Research/Ethics.htm#code>. The University of the Witwatersrand policy adds an important point to the discussion of research ethics by noting a distinction between research subjects and mere informants: 'In those areas of research where the individual, qua individual, (the "subject"), is the object of study, the potential problem of invasive techniques, invasion of privacy, and so on, is clear. ... On the face of it, the case of 'mere' informants seems to present little problem, especially as it tends to involve voluntary interaction and informants can choose to withhold co-operation. In fact, however, there are more subtle ways of exerting coercion, often unintentionally. It is essential that all researchers in the humanities and social sciences who have occasion to use informants should be aware of the ethical problems this can pose.' In that context, the University of the Witwatersrand guidelines are similar in principle to those discussed above.

Fourth and finally, researchers should search for and comply with ethical standards promulgated by reputable agencies or organisations within their study countries. Compliance with local laws, standards, customs and practices is essential, and the best way to ensure such compliance is to adhere to local guidelines. It is foreseeable that country researchers may encounter conflicts among several of the guiding principles, or ethical uncertainty in particular circumstances. Such dilemmas should be reported to and resolved in collaboration with the ACA2K Lead Researcher and ACA2K Research Manager.

## 2.3 Analysis & Reporting

Several layers of analysis and reporting will round-off the formal research and data collection engaged with in previous components of this project. First, there will be analysis and reporting at the country level, and second, comparative analysis across countries (discussed in the next section, Section 2.4).

At the national level, country research teams will analyse doctrinal and interview data to provide an understanding of the copyright environment in relation to access to learning materials, as also how it could change. The domestic analysis is intended as a comprehensive, participatory exercise that provides a layered understanding of the situation. Country researchers are asked to analyse the relationship between the law, as determined by the doctrinal component of the research, and practice, as determined by the qualitative component. That is, the domestic analysis provides the opportunity to synthesise the legal and qualitative data. The resulting Country Review report should display a comprehensive understanding of the impact of copyright on access to learning materials in both theory and practice.

Generally, country researchers should frame their analysis in broad terms. The domestic analysis will involve consideration of questions along a number of lines. Perhaps the most basic question to investigate is whether the law is having any effect on people's practices in respect of access to learning materials. If so, in what ways and to what degree? If not, why not? Does the country's copyright environment have a discernible positive or negative impact on access to learning materials?

Flowing from that analysis should be an exploration of the most effective way to create changes in a country's copyright environment. What is the current status of, and future potential for, copyright to spur access to learning materials? Are prospects for change greatest in the physical or digital context? What is the role of ICT in this context?

Similarly, the analysis should be able to tell researchers which stakeholders' behaviour must be influenced in order to increase access to learning materials. Must policymakers, rights holders, educational stakeholders or some or all of the above be convinced to alter their behaviour in order to bring about desired changes? What are the gender dynamics in this context? How is gender relevant to access to learning materials?

The analysis and reporting at the country level is of great importance to the comparative analysis across all study countries. Against that background, it is suggested that the analysis is done, structured and presented (in the Country Reviews) along the broad categories outlined in Section 2.1. For instance an examination and analysis of the country findings on issues relating to international obligations should be reported as such. Consequently, the analysis and reporting will proceed from the doctrinal (existing law and environment on international matters) to practice (drawing anecdotes from qualitative data) to explain how compliance with international obligations, or lack thereof, impacts or translates into, practice.

At the comparative level, across countries, the intention is then to identify and compare best and worst practices as far as copyright and access to learning materials are concerned. Having identified best practices (and benchmarks), the comparative review report, along with the individual Country Reviews, will enable researchers to make concrete recommendations to policymakers, copyright holders and stakeholders on how best to reform copyright policy/law to best serve the interests of educational communities. This process of making recommendations will be undertaken during the Dissemination & Policy Engagement Component in each country.

To summarise, country teams will prepare and submit two reports based on their research:

- a) A Country Review – the detailed research report covering what was done, how it was done and findings; and
- b) An Executive Policy Brief – a policy paper making specific policy recommendations based on the findings of the country team (this may also, in some cases, draw from findings of other study countries).

## 2.4 Comparative Review Sub-Component

Once country researchers have submitted their first draft Country Reviews and Executive Policy Briefs, researchers across the ACA2K project, led by the Lead Researcher and Consultants, will conduct a comparative review across the countries. The comparative analysis will investigate similarities and differences among the study countries.

Comparisons will be made on multiple levels, ranging from the general to the specific. For instance, the comparative review might reveal, hypothetically, that copyright laws in Uganda and South Africa are similar, while practices in each of the two countries are different. Or, hypothetically, it could show that copyright laws in Senegal and Morocco are different while practices are the same. Such insights, which can only be generated through a comparative analysis, will provide objective evidence of possible determinants of improved or decreased access to learning materials in African countries.

A key goal of the comparative review will be to identify model laws and best practices from among study countries. Country researchers will be able to draw on examples from other countries to identify what might be possible in respect of copyright and access to learning materials in their study countries. Such comparative benchmarking has the potential to encourage countries within Africa to communicate with each other regarding the impact of copyright environments on access to learning materials, leading to dialogue around the most efficient and effective ways to work towards the vision of copyright environments that maximise access to learning materials.

The comparative review may also help determine the most effective strategies to be implemented in the Dissemination & Policy Engagement Component of the ACA2K project. Project members may be able to use the results of the comparative review to determine which boundary partners must be influenced in order to achieve the project's objectives, and to best generate changes in the behaviour of those partners. The comparative analysis will facilitate an evidence-based approach to policy engagement.

## 3. Dissemination & Policy Engagement Component

The ACA2K project aims for its research outputs to reach relevant policymakers and encourage incremental policy changes. Hannay et al have outlined the incrementalist model as one of the key ways to conceive of policy change.<sup>7</sup> Following this incrementalist view, the ACA2K project sees policy change as non-linear, having fits and starts, and the project realises that the outcomes of the project's efforts in the policymaking space can only be expected to have effect many years after the completion of project work.

It is this view of policymaking change that has informed the project's choice of the Outcome Mapping (OM) approach to project intentional design and monitoring. OM, outlined in greater detail below, focuses on the importance of generating behaviour change (even subtle change) among targeted stakeholders (boundary partners), with the idea that subtle changes in the present can lead to more profound changes in the future.

In terms of research communication approaches, the ACA2K Project aims to utilise the five approaches outlined in Barnard et al, which are:

- Academic/scholarly communication channels
- Involving stakeholders directly
- Translating research into more accessible formats
- Electronic communication channels
- Communicating via knowledge multipliers<sup>8</sup>

The project has tried to develop its policy influence strategy in its early stages and to make it an integral component of the research process, as opposed to the strategy being an 'end-of-project activity.'<sup>9</sup>

### 3.1 ACA2K & Influence

The project aims to ensure that the research evidence it generates finds its way to relevant policymaking stakeholders, and to record/monitor behaviour changes among these stakeholders. Where behaviour change is detected, it is possible that 'influence' can be claimed, even with the understanding that behaviour changes among policymaking stakeholders are the result of a wide range of factors.

#### 3.1.1 International Influence

Every effort will be made to ensure that the ACA2K research findings find their way, via civil society actors and government missions in Geneva, into the World Intellectual Property Organisation (WIPO) Development Agenda talks aimed at fostering a more development-oriented approach to copyright and other intellectual property rights (IPRs). As well, ACA2K research findings will be fed into international publications, and into the international online arena via the project website, [www.aca2k.org](http://www.aca2k.org).

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<sup>7</sup>S Hannay et al (2002) cited in G Barnard, L Carlile and DB Ray *Maximising the impact of development research: how can funders encourage more effective research communication?* (January 2007) Institute of Development Studies (IDS), DFID and IDRC, University of Sussex, Brighton, UK. Available at <http://www.ids.ac.uk/ids/bookshop/outputs/MaxDevResearch.pdf> [Accessed 1 April 2008].

<sup>8</sup>Barnard et al supra note 7 at 11.

<sup>9</sup>Ibid at 6.

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All ACA2K research outputs shall be made available online on an open-access, open-content basis under Creative Commons BY-SA (Attribution-ShareAlike) licences, encouraging wide distribution, copying, use and even adaptation of the materials.

### 3.1.2 National & Regional Influence in Africa

At national level, the researchers in each of the study countries shall, upon completion of their research reports in mid-2009, engage, through the hosting of National Policy Dialogue Seminars, with those stakeholders that are expected to have the most impact on the policy processes and are in need of capacity-building – including those institutions which Olowu lists as higher educational institutions, local government, the judiciary, higher civil service and parliaments (while noting that the mix may differ from country to country)<sup>10</sup> – to ensure the findings inform policy management, including policy change, when possible.

## 3.2 Monitoring Policy Influence – the Outcome Mapping (OM) Approach

To achieve its vision, mission and objectives, the ACA2K project has adopted the Outcome Mapping (OM) method of project intentional design and monitoring. OM is geared towards documenting behaviour change (outcomes) among project partners.<sup>11</sup> As articulated by OM developers Earl, Carden and Smutylo, outcomes relate to ‘changes in the behaviour, relationships, activities, or actions of the people, groups, and organisations with whom a program works directly.’<sup>12</sup>

To the extent that ACA2K’s overall objective is to influence copyright policymaking through empowering relevant stakeholders, OM is a valuable tool for maximising influence on relevant stakeholders and policy processes. OM also enables ACA2K to develop project monitoring systems capable of capturing behaviour change among stakeholders (also referred to as ‘boundary partners’ in OM lexicology). ACA2K’s boundary partners include all stakeholders that ACA2K researchers will interact with during field activity, research dissemination and policy engagement. Preliminary activities (country environmental scans) in each country will involve reflecting on the copyright policy environment and developing an inventory of all boundary partners. Country teams will align country activities to outcomes and boundary partners agreed upon as a team.

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<sup>10</sup>D Olowu ‘Governance, institutional reforms and policy processes in Africa: research and capacity-building implications’ in D Olowu and S Sako (eds) *Better governance and public policy: capacity-building for democratic renewal in Africa* (2002) Kumarian Press, Bloomfield, CT at 67.

<sup>11</sup>For an overview, see S Earl, F Carden and T Smutylo *Outcome Mapping: building learning and reflection into development programs* (2001) IDRC. Available at [http://www.idrc.ca/uploads/user-S/10905196191om\\_pamplet\\_final.ppt](http://www.idrc.ca/uploads/user-S/10905196191om_pamplet_final.ppt) [Accessed April 2008].

<sup>12</sup>*Ibid.*

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The environmental scan will involve the initial identification of boundary partners, creation of a boundary partner inventory (or list of boundary partners) and planning specific outcomes in relation to the boundary partners. Environmental scan information (and Outcome Mapping information in general) is not the primary empirical data set for this study but rather, should be thought of as essential background information to be used in supporting field activities. For instance, where applicable and necessary, the inventory of boundary partners will serve as a sampling frame for identifying and selecting key subjects for the interviews. Part of the impact assessment interviews to be conducted in each country, as outlined earlier, will focus on one learning institution (university or institution of higher learning). If the identified institution does not wish to participate, the OM exercise will examine reasons why and possible strategies for getting the institution engaged. The stakeholders identified and interviewed in the impact assessment interview are likely to be (but don't have to be) the key boundary partners, to use OM terminology, whose behaviour will need to be monitored by researchers in terms of desired outcomes and agreed OM progress markers. In the ACA2K project contexts, OM activities will run through the two components but will be more pronounced in the Dissemination & Policy Engagement Component. The list of boundary partners will be the primary target for the policy engagement activities.

Based on findings of the research and lessons from engaging with the key boundary partners, other boundary partners would ideally be involved in post-research engagements, especially the National Policy Dialogue Seminar to be conducted in each study country. ACA2K will also monitor partners during the Dissemination & Policy Engagement Component (in the final months of this component) with the goal of influencing the broader copyright environment in favour of A2K across all formats.

### 3.3 Building the Knowledge Commons

It is evident that information related to A2K and copyright is scarce, particularly in the developing world. While the scholarship that emerges from the ACA2K project will be available publicly, it is highly specialised knowledge. The opportunity exists to contribute to the knowledge commons *both* the details of the specialised knowledge, as well as summaries of the review and analysis in a format suitable for general consumption.

Creating various forms of public knowledge is an essential output of the ACA2K project; indeed it is a key factor in encouraging future work in this area. To that extent, all scholarship and documents generated as outputs will be open-content licensed, as described earlier. As well, all secondary materials researched during the course of this project (such as case law) will be available publicly through the ACA2K website.

Furthermore, even as the ACA2K project furthers scholarship and builds the specialised knowledge commons on this subject, it is indisputable that very little is known at present to the general public on the crucial intersection between copyright and access to knowledge. Researchers are therefore encouraged to create pages that reference their country's copyright laws, with analysis and the empirical basis thereof, on public knowledge platforms such as Wikipedia ([www.wikipedia.org](http://www.wikipedia.org)). Articles with bibliographic entries for electronic references, even references to the ACA2K project's own scholarly and research outputs, will contribute significantly to growing the general public's awareness of access to knowledge in relation to copyright. At the minimum, it is suggested that one country page per research country is thus created, and populated with facts, links, statistics and analytical highlights.

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