



ACA2K

Executive Policy Brief

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

www.aca2k.org

EGYPT

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1. Introduction: the ACA2K Project and the ACA2K Research

The African Copyright and Access to Knowledge (ACA2K) project seeks to probe the relationship between national copyright environments and access to knowledge, particularly access to learning materials, in selected African countries. It examines this relationship from an access to knowledge (A2K) perspective that perceives the protection and promotion of user access as one of the central objectives of copyright law. The ACA2K network is supported by Canada's International Development Research Centre (IDRC) and South Africa's Shuttleworth Foundation, and is managed by the LINK Centre at the Wits University Graduate School of Public and Development Management (P&DM) in Johannesburg.

The ACA2K study team in Egypt comprises three researchers: Dr. Bassem Awad, a Chief Judge at the Egyptian Ministry of Justice, a Lecturer in Intellectual Property Law at the Regional Centre of Intellectual Property, University of Helwan, Cairo, and Lecturer in Intellectual Property for the postgraduate programmes at the Faculty of Law, University of Alexandria; Dr. Moatasem El-Gheriani, an Assistant Professor of Commercial and Maritime Law, Faculty of Law, Alexandria University, and a Faculty Coordinator, in Alexandria, of the Egypt LL.M programme, Indiana University School of Law, Indianapolis; and Dr. Perihan Abou Zeid, a private attorney, a Senior Lecturer at the Faculty of Legal Studies and International Relations, Pharos University in Alexandria, and a postdoctorate fellow at the International Economic Law and Governance Institute, Vrije Universiteit, Brussels.

The ACA2K project in Egypt was conducted to test the hypothesis that the existing copyright environment does not allow maximum access to learning materials and that the environment should be changed to maximise effective access to these materials.

This study in Egypt is highly significant from several perspectives. First, Egypt is a member of the World Trade Organisation (WTO) and issued Egypt's Intellectual Property Rights Protection Act (EIPRPA) of 2002 in compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Second, despite the fact that Egypt is a developing country that experiences substantial difficulties in accessing knowledge, the EIPRPA did not merely apply TRIPs and other binding international agreements such as the Berne Convention for the Protection of Literary and Artistic Works as a maximum threshold for copyright protection. In some cases the EIPRPA adopted provisions that are considered 'TRIPs-plus' and 'Berne-plus' provisions (ie, exceeding the protections required by the TRIPs Agreement and Berne Convention) and were not compulsory or binding on Egypt. In addition, the EIPRPA did not apply other possible exceptions and limitations that exist within other national copyright laws in other countries. Third, while the pro-intellectual property rights protection movement in general, and the pro-copyright movement in particular (represented by major music producers and broadcasting enterprises), are very vocal in Egypt, the access to knowledge movement is still not influential in the country.

Moreover, it is important to highlight that the access to learning materials hurdles in Egypt do not lie only in the adoption of a strict copyright law. Other factors that impede access to knowledge exist, such as: the lack of users' awareness of the existing exceptions and limitations within the EIPRPA, the weak economic situation of learners, and the adoption of restrictive access policies within libraries, eg, the prohibiting of lending schemes.

2. The Copyright Environment in Egypt

The findings of Egypt's report are the result of more than one year of research work. The research attempted to discern the relationship between the Egyptian copyright environment (including statutes, policies, court cases and practices) and access to knowledge, especially access to learning materials. It was conducted through two parallel avenues: an examination of the current legal/regulatory framework protecting copyright and/or promoting access to knowledge, and a qualitative analysis which included a review of relevant secondary literature as well as conducting interviews with selected stakeholders from different stakeholder groups.

We divided our interview subjects into three groups: government (Information Technology Industry Development Agency (ITIDA) and Ministry of Justice); users (graduate students, librarians from public libraries, professors and researchers from different life science fields and university e-learning projects); and rights-holders (publishers and the Publishers' Association).

Our research findings concern (a) access to knowledge, (b) copyright law, and (c) the relationship between copyright protection and access to knowledge in Egypt. The key findings are as follows:

- Difficulties exist in Egypt with regard to accessing learning material.
- The EIPRPA of 2002 is compliant with all international treaties to which Egypt is a signatory, yet in some instances it deviates from the international treaties – both to the benefit and to the harm of access to knowledge.
- The EIPRPA lacks sufficient provisions that address access to knowledge per se.
- Despite the fact that information and communication technologies (ICTs) are a very important tool for facilitating access to, and dissemination of, knowledge, the EIPRPA does not provide exceptions and limitation that accommodate the distinctive nature of ICTs. Moreover, the EIPRPA does not refer to ICT applications for e-learning despite e-learning's increasing importance in Egypt.
- On the practical level our research did not find a direct and tangible effect of the current law on access to knowledge, whether positive or negative. This could be related to the lack of knowledge about the law and its lack of enforcement.

3. Legal and Regulatory Recommendations

The EIPRPA of 2002 abides by all international treaties to which Egypt is a signatory. However, its provisions deviate from such obligations both to increase and to hinder access to knowledge. Our research showed that the EIPRPA needs amendments that would be guided by the objective of increasing access to knowledge. Suggested reforms and amendments are as follows:

3.1 Reversing Excessive Copyright Protection

3.1.1 Article 147 of the EIPRPA

It is recommended that there be amendment of Article 147 of the EIPRPA, which currently states that:

The author and his universal successor shall have the exclusive right to authorize or prevent any form of exploitation of his work, particularly through reproduction, broadcasting, re-broadcasting, public performance, public communication, translation, adaptation, rental, lending or making the work available to the public in any manner, including through computers, internet, information networks, communication networks and other means.... The author and his successor shall also have the right to control any disposal of the original copy of the work, and shall consequently be entitled to a certain percentage of not more than 10% of the proceedings resulting from every disposal of that copy.

Proposed amendments to Article 147 include the following:

- Article 147 of the EIPRPA has unjustifiably stretched authors' rights as it allows him/her to prevent third parties from the rental of all kinds of copyrighted materials and for all types of rentals (commercial or non-commercial). Such protection of authors' rights can be considered TRIPs-plus since the TRIPs Agreement restricts the rental rights to the commercial use of computer programmes and cinematographic works only. We therefore suggest that rental rights should be restricted only to the commercial use of computer programmes and cinematographic works.
- In addition, Article 147 of the EIPRPA has allowed the author to prevent third parties from lending the copyright material. Any legitimate owner of the copyrighted material has to seek the authorisation of the author before lending the work to third parties. This right is also considered a TRIPs-plus/Berne-plus right and, accordingly, we suggest amending the Article by omitting this right from the Article since it has adverse impact on access to knowledge. This right may effectively prevent students, for example, who legitimately bought a copyright-protected textbook, from lending this book to their colleagues who may be in need of the book but cannot afford to buy it. Moreover, providing rights-holders with such a right could have negative consequences on access to knowledge by inhibiting the work of libraries.
- The third proposed amendment pertains to the author's right to control any disposal of original copies of all types of copyrighted works. Here again, the right is a Berne-plus provision since Article 14(3) of the Berne Convention gives Member States the discretion to provide authors with the right to control any disposal of the original copy only for works of art and original manuscripts. Therefore, we suggest restricting the right of controlling the disposal of original works to that required by Berne Convention, ie, works of art and original manuscripts.

3.1.2 Article 183 of the EIPRPA

It is recommended that Article 183 of the EIPRPA be omitted. This Article states that:

The competent ministry shall grant license for the commercial or professional exploitation of works, sound recordings, performance or broadcast programs that fall into the public domain, against payment of fees, as prescribed by the Regulations, and not exceeding 1,000 pounds.

Obtaining a licence and paying fees for exploitation, even commercial exploitation, of public domain works is certainly not required by any international agreement and indeed has adverse impacts on access to knowledge. Thus, our research recommends omitting this article completely and allowing the public domain to be accessed freely even for commercial or professional purposes.

3.2 Improving Provisions for Personal Use

Like other jurisdictions, Egyptian copyright law does attempt to provide kinds of exceptions for private research and study. Article 171(2) of the EIPRPA grants an exception for photocopying for personal use. The article, however, includes several conditions: (a) making a single copy; (b) for one's exclusive personal use; and (c) that such action may 'not hamper the normal exploitation of the work nor cause undue prejudice to the legitimate interests of the author or copyright holders'.

In some other national copyright laws, photocopying for personal use, especially for private purposes, is not subject to detailed restrictions. Therefore, we suggest that the legislator in Egypt amend subsection 2 within Article 171 to minimise restrictions for personal use.

3.3 Provisions for Distance and E-Learning

The EIPRPA does not contain any specific exceptions related to distance or e-learning despite their increasing importance, and therefore we suggest the inclusion of specific provisions with regard to distance and e-learning mechanisms.

3.4 Provisions for People with Disabilities

The EIPRPA does not include any specific provisions for people with a disability, which would be of particular relevance in the context of library and archive use of copyright-protected material. Therefore, we suggest adopting specific provisions related to disabled people in order to maximise their access to knowledge and educational materials.

4. Policy Recommendations

4.1 Libraries

While conducting our research on libraries in Egypt we came across specific impediments and policies that hamper access to knowledge. Those impediments and policies are as follows:

4.1.1 People with Disabilities

Facilitating the use of a library's available materials for visually-disabled users is very important in order to maximise access to knowledge by this category of library users.

In the libraries we examined we found special sections for the blind where special software is installed to help them in accessing learning materials, and the Bibliotheca Alexandrina (BA) even provides courses to train people to use such facilities. However, disabled people whom we interviewed said that not all libraries are provided with such facilities, and that they still encounter many difficulties in accessing learning materials. Those difficulties pertain to financial, technical and logistical aspects. For example, new information and communication technologies (ICTs) that are designed specifically to support disabled users are overly protected with technological protection measures (TPMs), on top of being unaffordable.

Thus, we recommend that libraries in Egypt should focus more on facilitating the access by disabled users to available materials through hiring qualified human resources to assist them in accessing such materials, ensuring that disabled-compatible materials are available, and adopting new ICTs that are specifically addressing this category of users.

4.1.2 Borrowing Schemes

Borrowing schemes within libraries are of undeniable importance since they help users to have full access to the borrowed material for long periods.

However, both libraries we interviewed adopt policies that ban borrowing of books. And in the BA the use of the audiovisual material is considerably restricted as a user may access audiovisual materials in equipped study rooms but only a librarian is allowed to install and prepare the material for the user. The main purpose of these policies is not to enforce copyright laws. Rather, the policies' main objective is to prevent destructive behaviour by users.

Accordingly, we recommend that libraries should reconsider their borrowing restriction policies and adopt other measures that may prevent such destructive behaviours by users, such as requiring a copy of their personal ID or imposing fines in cases where borrowed books are damaged or not returned by their due dates.

4.1.3 Photocopying for Personal Use

Photocopying copyrighted educational materials for personal use is very important for maximising access to knowledge. The EIPRPA allows photocopying material for personal use provided it is a single copy; it is for one's exclusive personal use; and it does 'not hamper the normal exploitation of the work nor cause undue prejudice to the legitimate interests of the author or copyright holders'.

Both libraries interviewed allow photocopying for personal use. However, they vary in the policies applied in this regard, and in both cases the policies do not seem to be connected to the EIPRPA. For example, Bibliotheca Alexandrina has a photocopying restriction of 20 per cent of a work per day for personal use, regardless of the size of the book, while the public university library interviewed has a restriction of 10 per cent, though it usually does not strictly enforce its rule.

Libraries should refrain from adopting restricting, stringent policies that do not stem from the law itself, and libraries should be aware of how to maximise utilisation of limitations and exceptions provided within the law.

4.1.4 Listing Materials within the Public Domain

The public domain is a very important element in promoting creativity and innovation. However, given the previously-mentioned challenge (libraries' photocopying quotas) it seems certain that libraries are imposing photocopying quotas on materials within the public domain.

Here it is advisable that libraries should embark on a mechanism for listing public domain materials. Such a mechanism would allow users to know that the material at hand is not protected with copyrights and accordingly they have more freedom to rely on it within their learning and research.

Moreover, the BA might explore the possibility of developing a policy to use print-on-demand machines to make available public domain materials. This may require licences pursuant to Article 183, which may prove to be a useful test (or demonstration of the burden) of public domain materials licensing.

4.1.5 Library Codes of Ethics

Library codes of ethics have a very important role to play, not only in guiding users' behaviour but in ensuring that librarians and users understand well the applicable laws that govern using resources and materials within a particular library.

Therefore, we suggest that libraries' codes of ethics include a comprehensive guide on legitimate library exceptions and user rights.

In particular, these codes of ethics should allow photocopying for personal use beyond the narrow limits in place at the libraries interviewed for this research (eg, the 20 percent limit at BA and the 10 percent limit at the public university). Copying of proportions greater than 20 percent should be allowed.

Libraries need to develop clear guides regarding the exceptions and limitations that the libraries view as being compliant with the EIPRPA.

4.1.6 Internet Access

Internet and Internet-based databases are very important tools for access to knowledge. They ensure swift access to recent and updated educational and learning materials. Librarians at investigated libraries reported that these databases, when available, are very attractive to users, especially postgraduates, since they usually include current issues of journals whereas hard-copy versions of journals are usually only available for older issues.

Although access to Internet-based databases was available in the libraries interviewed, it was found that some libraries have more extensive database access than others because such access is dependent on a number of economic factors, such as the availability of adequate numbers of personal computers (PCs) in the library and the money available for subscription services.

Therefore, we recommend that more funds should be allocated to maximising Internet facilities, given their supreme importance in accessing up-to-date learning materials.

4.2 Universities Adopting E-Learning Schemes

E-learning schemes are gaining more popularity and application in some Egyptian universities. In fact, Egypt started its e-learning project almost five years ago by establishing the National Centre for Electronic Learning. In 2008, the Centre launched its National Project for Electronic Learning. The project gathered funds from the World Bank, the Centre and each Egyptian university collaborating in it. The project's objective is to support and develop e-learning in Egyptian universities by establishing a centre for that purpose in each university. Professors who are willing to provide their learning materials electronically usually sign an agreement for that purpose, hand their material to the centre, and obtain compensation for their contribution. The intention is for the material to be exhaustive to the extent that a student can rely on it without needing to purchase other textbooks.

However, despite the fact that the project is still in its early phase, we noticed that accessing the materials requires enrolment keys, ie, is restricted to students who are enrolled in those courses. Accordingly, students who are not registered in such courses are deprived of accessing them despite how useful they may be to them. Moreover, electronic learning materials are mostly protected with passwords and other technological protection measures (TPMs) which do not allow free access. Unfortunately, those TPMs are implemented due to the requests of professors preparing those materials.

Therefore, we recommend that such materials should be available on an open access basis to other Internet users, and not restricted to students enrolled in the programmes. Such courses and materials are very good tools for access to education materials. Open access will not adversely affect authoring professors since the authors are already paid good compensation in return for their contributions.

Another important policy recommendation is the importance of encouraging the development of free and open source software (FOSS) as an important tool for maximising access to software.

Also, it is essential that authoring professors be informed of the importance of the access to knowledge cause in the developing world, including Egypt. It is important to introduce authors to, and inform them of, the existence of flexible copyright protection schemes – such as Creative Commons licensing – which protect the rights to the work but also help in its dissemination.

5. Action Points for Stakeholders: the Way Forward

The way forward is to ensure that the copyright environment in Egypt maximises effective access to knowledge and learning materials.

On one hand, legislative amendments to the EIPRPA should be undertaken to ensure that the law reflects Egypt's interests as a developing country, ie, by allowing far-reaching exceptions and limitations including those applicable to e-learning and ICTs.

On the other hand, non-legislative hurdles to access to learning materials, such as restrictive library lending policies, should be eliminated in order to maximise access to learning and educational materials.

Increasing awareness of access to knowledge initiatives and movements among different stakeholders in general also remains an extremely crucial objective, since it will ensure that related future steps are inclusive of efforts towards greater access to knowledge as a means towards development.

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