



ACA2K

Executive Policy Brief

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

www.aca2k.org

UGANDA

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1. Introduction: the ACA2K Project and the ACA2K Research

The ACA2K project in Uganda was executed against a backdrop of a changing copyright environment marked by a transition from the colonial copyright regime to a new one geared toward meeting international obligations and local pressure. Until the Copyright and Neighbouring Rights Act of 2006 was adopted, Ugandan copyright law was more or less a remnant of the British law first introduced in 1953 as part of the legal infrastructure of the colonial administration. Access to knowledge was never a serious part of the copyright discourse, and indeed, copyright as a system itself was relatively unknown and ignored.

Like in other ACA2K countries, the Ugandan study was premised on two hypotheses: first, that the current copyright environment does not allow maximum access to learning materials; and second, that the copyright environment could be changed to maximise effective access to the same materials.¹

There are three researchers in the Ugandan study team. Dick Kawooya is a Lecturer in the School of Information Studies, University of Wisconsin and Visiting Researcher at the LINK Centre, Graduate School of Public and Development Management (P&DM), University of Witwatersrand, South Africa. In 2007 he was awarded a fellowship by the Open Society Foundation. Ronald Kakungulu is currently a Doctor of Juridical Science (S.J.D.) Candidate at the University of Arizona, Tucson, prior to which he was a Lecturer at the Human Rights and Peace Centre (HURIPEC) at the Makerere University School of Law in Uganda. Jeroline Akubu is a Principal Legal Officer with the Uganda Law Reform Commission and has worked on several aspects of legal reform, including that of intellectual property.

There are several reasons why this study was necessary in the Ugandan context. Uganda has had a turbulent political and economic past. However, despite its present status amongst the poorest countries in the world, Uganda has taken steps to meet a number of international copyright obligations in a manner that maximises protection of rights-holders – and without necessarily addressing the need for access to knowledge and learning materials.

In 1994 Uganda signed the Marrakesh Agreement for the establishment of the World Trade Organisation (WTO), thus submitting the country to be bound by all relevant WTO trade rules including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Uganda is also a founding member of the East African Community (EAC), which requires Member States to uphold intellectual property laws in order to protect creative industries in the region.

These external obligations, combined with pressure from producers of creative material within the country (primarily musicians), resulted in the repeal of the 1964 Copyright Act and the institution of an updated system of laws relating to copyright. Despite a relatively vibrant copyright environment, access to knowledge and learning materials has not been part of the copyright discourse in Uganda.

¹Hypotheses tested by all ACA2K study countries as set out by the *ACA2K methodology guide*.

2. The Copyright Environment in Uganda

The ACA2K study in Uganda followed the ACA2K methodological approach, encompassing the doctrinal component and then a qualitative component (which involved impact assessment interviews and a review of secondary literature). Nine individual interviews and one group interview were conducted. The group interview was carried out with female students. As required by law, permission to undertake the study was sought from the Government of Uganda through the Uganda National Council of Science and Technology (UNCST).

Interviews were conducted with judges, intellectual property (IP) lawyers, college students, a musician, a digital librarian, and a representative from the publishing industry. Participants did not necessarily constitute a representative sample of individuals and institutions that could be covered by the study, as the goal of the interviews was not to be statistically conclusive. Instead, the Ugandan research team interacted with a core group of participants who would provide an in-depth understanding of the Ugandan copyright environment.

Uganda's new copyright law came into effect in 2006. The ACA2K study reveals that the current law only strengthens the rights of creators and has no significant provisions for users of copyright-protected materials. Access to knowledge is provided for under a general 'fair use' provision (Section 15 of the Copyright and Neighbouring Rights Act of 2006). For instance, it was found that the law does not effectively cater for people with a disability, apart from a provision for persons with a disability under fair use which references Braille and sign language.² As with the provision for people with a disability, other provisions under fair use were found to be less useful than desired, often due to a vagueness of scope and lack of specific, detailed guidelines.

The secondary literature review (of scholarship on copyright and access to knowledge in Uganda) pointed to a lack of appreciation of the function and purpose of copyright on the part of the general public. That access to knowledge is, in no small part, determined by the copyright system, was not widely known. The interviews also found a lack of appreciation of the function and purpose of copyright; most interview respondents considered the protection of rights as the primary (or even sole) purpose of copyright law.

This lack of understanding and appreciation of the purpose of copyright is consistently reinforced in existing scholarship on copyright in Uganda. Most researchers consider copyright issues from the narrow perspective of rights-holders like publishers and musicians. Predictably, such scholarship consistently finds massive infringement or ignorance of the law on the part of users. Ugandan copyright research conducted prior to the amendment of the old copyright law (the 1964 Act) consistently blamed the massive infringement of copyright on weaknesses in the old law. In the context of the new copyright law, the blame seems to have shifted to the ignorance of users, though some studies have correctly pointed to poverty, the high cost of learning materials and weak enforcement as key drivers of infringement.

²Section 15(1)(k) of the Copyright and Neighbouring Rights Act of 2006 states that work transcribed into Braille or sign language for the educational purposes of persons with disabilities will be considered fair use.

The ACA2K study found that the weaknesses in enforcement of copyright generally provide a channel for access to knowledge. There is a perception that the current environment is not favorable to rights-holders because infringement goes unpunished. In the interviews, Ugandan respondents established that generally students cannot afford to purchase their own learning materials. Publishing industry representatives said that the high cost of learning materials in Uganda was to blame.

Illegal photocopying was widely seen as the most prudent mechanism for access to knowledge, due to the critical lack of learning materials and inability of most students, faculties and libraries to afford these resources. Some interview respondents, mostly judges, IP lawyers and publishers, suggested that a move towards further copyright limitations and exceptions for access to knowledge would worsen an already bad situation. Users generally saw the situation differently.

The recommendations below are therefore made against a backdrop of a copyright environment where legal and illegal photocopying are the primary mechanisms for access to knowledge, and a realistic understanding that rights-holders are becoming more vocal about having the law enforced.

3. Legal Recommendations

Based on the findings of the study, the Ugandan ACA2K team makes the following legal recommendations:

- Specific provisions for certain user groups and institutions should be included in the law, notably for:
 - a. people with disabilities; and
 - b. distance learning.
- Broadly, any provisions for these groups must take into account digital formats of knowledge material.
- The provision on fair use should be further clarified to ease access to knowledge in the environments of education, research and the media. Fair use should be sensitive and accommodative of a wide range of on-campus copying aimed at furthering knowledge consumption and production.
- The law should allow parallel importation of learning materials. Allowing parallel importation could open up access to reasonably-priced learning materials produced outside the country.

4. Policy Recommendations

Based on the findings of the study, the Ugandan team makes the following policy recommendations:

- Makerere University recently adopted an Intellectual Property Management Policy. We recommend that specific guidelines be established to facilitate the implementation of Makerere's policy. We further recommend that other universities in Uganda, public and private, adopt institutional IPR policies. Such policies should be sensitive to access needs of students, faculty and researchers
- We further recommend that Uganda puts in place a comprehensive IP policy and strategy that address not just protection of the interests of rights-holders, but also the needs of users of copyright-protected resources. The process for devising such policy and strategy should include input from all stakeholders, including the affected public, especially learners and their facilitators.

5. Action Points for Stakeholders: the Way Forward

The National Book Trust of Uganda (NABOTU) represents a wide range of stakeholders including rights-holders. We recommend that:

- NABOTU be mandated to sensitise publishers and other stakeholders in the book chain to promote flexible mechanisms for access to learning materials in order to increase consumption of books by students in Uganda.

The Uganda Law Reform Commission (ULRC) is the government agency responsible for legal reform. Part of ULRC's mandate is the development of legislative proposals for the relevant government ministry to introduce in Parliament. We recommend that:

- ULRC facilitates the development of a legislative proposal for the review of Uganda's 2006 copyright law to address some of the recommendations highlighted above.

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