Access to knowledge in Africa
The role of copyright

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Dick Kawooya
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Tobias Schonwetter

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ACA2K Project Team

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Foreword

The African Copyright and Access to Knowledge (ACA2K) project’s researchers are not the first to recognise the problem of the lack of evidence for copyright policymaking, or the urgent need for a better understanding of the impacts of copyright and other intellectual property (IP) laws, policies and regulations on everyday life issues, such as on access to educational and learning materials. However, it is no exaggeration to say that the ACA2K project is the first to deploy a sophisticated interdisciplinary collaborative research methodology and to generate on-the-ground empirical evidence on the impact of copyright on a particular sector across a group of countries.

As early as 2002, the UK Commission on Intellectual Property Rights had observed that ‘WIPO ... should give explicit recognition to both the benefits and costs of IP protection and the corresponding need to adjust domestic regimes in developing countries to ensure that the costs do not outweigh the benefits.’¹ In the ensuing debates, including the debates between 2004 and 2007 at the World Intellectual Property Organisation (WIPO) on establishing a ‘development agenda’ for the organisation, new terminology has emerged to describe the optimum IP policy for developing countries. We have increasingly heard or read phrases like: ‘IP is not an end in itself,’ ‘one size does not fit all,’ ‘developing countries need flexibilities and policy space,’ ‘IP rules must take into account the levels of development of each country,’ ‘IP is a cross-cutting issue,’ and so forth. These phrases have become mantras in IP policymaking and scholarship and have had important catalytic effects for international initiatives, such as the WIPO development agenda. But what do these phrases and terminology mean, for example, in the area of copyright?

Copyright laws and policies cover many controversial issues that are linked to different disciplines, in science, culture, technology, economics, law and other fields. The concepts and issues in the field are also approached from different perspectives and with different political and economic agendas, sometimes in a misleading context, and often in an imprecise manner. For this reason, policymaking in the area of copyright, particularly in developing countries, has at best been guesswork and at worst uninformed. At the international level, debates and rule-making on copyright, as with other IP, are punctuated with propaganda, anecdotes and dogma. This is what Nobel Laureate Joseph Stiglitz and others have called ‘faith-based’ policymaking. Evidence to justify particular policies or laws is rare. Evidence of the

real world impact of specific copyright or, for that matter, other IP laws or policies, is almost unheard of. The ACA2K project is unique because the work summarised in this book provides evidence both for policymaking and of the impacts of copyright in the real world.

But this book, and the work of the ACA2K project, is not pioneering only because of the illuminating findings in all the eight study countries. It is pioneering also because of the replicable research methodology developed, and the interdisciplinary collaboration in an area that is usually seen as a preserve of lawyers. The project is also of immense importance because of its focus on education and learning materials in Africa, where copyright is always associated with the positive aspects of promoting African music and culture. This research tells us that while copyright laws and policies might have positive effects in one sector, the same is not necessarily universally true. Other project outcomes, such as building networked research capacity on the areas of IP, knowledge governance and development, and the exploratory work on examining the gender aspects of copyright and access, are also ground-breaking. Finally, the publication of this volume under an innovative open licensing agreement with one of Africa’s largest publishers puts the ACA2K project in a special place – because the researchers are walking the talk of access to knowledge by ensuring that this important work is widely available and accessible across Africa and beyond.

The real measure of the success of the work of the ACA2K project and this book will, however, be the extent to which it challenges researchers, scholars, policymakers, civil society, industry players and other stakeholders in the international copyright system, including international organisations such as WIPO, to work to bring meaning to phrases like ‘IP is not an end in itself’. The various dissemination events on the preliminary research findings of the ACA2K work at the national and international levels have shown that the project’s work is already making a difference. This book promises to amplify the project’s impact. Even those who consider themselves experts on IP will benefit immensely from this book and the broader ACA2K project’s work. The ACA2K work provides many insights, offers many lessons, gives us a methodology to interrogate the question of benefits and costs of IP laws and policies and, above all, this project proves that copyright policy can immensely benefit from interdisciplinary empirical research and impact studies in the field.

The entire ACA2K project team deserves to be congratulated for taking up, and delivering on, such an ambitious and innovative initiative. The vision and foresight of the International Development Research Centre (IDRC) and the Shuttleworth Foundation, who provided the financial support for the project work, including this book, must also be commended.

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Acronyms

A2K: Access to knowledge
A2LM: Access to learning materials
ACA2K: African Copyright and Access to Knowledge project
AMS: Association des musiciens du Sénégal
ANFASA: Academic and Non-Fiction Authors’ Association of South Africa
ANRT: National Telecommunications Regulatory Authority
ARIPO: African Regional Intellectual Property Organisation
ARPAC: Arquivo do Património Cultural
BA: Bibliotheca Alexandrina
BADA: Bureau africain du droit d'auteur
BBBEE: Broad-Based Black Economic Empowerment
BIO-EARN: East African Regional Programme and Research Network for
Biotechnology, Biosafety and Biotechnology Policy Development
BMDA: Bureau marocain du droit d'auteur
BSDA: Bureau sénégalais du droit d'auteur
CAPMAS: Central Agency for Public Mobilisation and Statistics
CARLIGH: Consortium of Academic and Research Libraries in Ghana
CCK: Communication Commission of Kenya
CFI: Canal France International
CFJ: Centre de formation judiciaire
CMO: Collective management organisation
CNRA: Conseil national de régulation de l'audiovisuel
CoL: Commonwealth of Learning
COSGA: Copyright Society of Ghana
DAC: Department of Arts and Culture
DALRO: Dramatic, Artistic and Literary Rights Organisation
DoE: Department of Education
DRM: Digital rights management
dti: Department of Trade and Industry
EAC: East African Community
EBAD: École des bibliothécaires, archivistes et documentalistes
ECOWAS: Economic Community of West African States
ECT Act: Electronic Communications and Transactions Act
EIPRPA: Egyptian Intellectual Property Rights Protection Act
ENA: École nationale des arts
EU: European Union
EULA: End user licensing agreement
FCUBE: Free Compulsory Universal Basic Education
FDI: Foreign direct investment
FHSST: Free High School Science Texts
FORCIIR: Adult Training Course in Computerised Network Information
FOSS: Free and open source software
FTA: Free trade agreement
GAPI: Ghana Association of Phonographic Industries
GATT: General Agreement on Tariffs and Trade
GDP: Gross domestic product
GPI: Gender parity index
HDI: Human Development Index
HELB: Higher Education Loans Board
ICT: Information and communication technology
IDRC: International Development Research Centre
IFRRO: International Federation of Reprographic Rights Organisations
IMF: International Monetary Fund
IP: Intellectual property
IPI: Industrial Property Institute
IPM: Intellectual property management
IPR: Intellectual property rights
ITIDA: Information Technology Industry Development Agency
IUCEA: Inter-University Council for East Africa
JHS: Junior High School
KNLS: Kenya National Library Service
KPA: Kenya Publishers Association
KU: Kenyatta University
LDC: Least developed country
LIASA: Library and Information Association of South Africa
LINK Centre: Learning Information Networking Knowledge Centre
MCSK: Music Copyright Society of Kenya
MU: Moi University
NABOTU: National Book Trust of Uganda
NBDC: National Book Development Council
NIPMO: National Intellectual Property Management Office
OAPI: African Intellectual Property Organisation
OER: Open educational resources
OM: Outcome mapping
P&DM: Public and Development Management
PASA: Publishers’ Association of South Africa
PDEF: Programme décennal de l'éducation et de la formation
PDMs: Print-on-demand machines
PEAP: Poverty Eradication Action Plan
PLRs: Public lending rights
PNDC: Programme national de développement culturel
PNDCL: Provisional National Defence Council Law
PROMAG: Professional Musicians Association of Ghana
RMI: Rights management information
RRO: Reprographic rights organisation
SACU: Southern African Customs Union
SADC: Southern African Development Community
SAJIC: Southern African Journal of Information and Communication
SAP: Structural Adjustment Programme
SCCR: Standing Committee on Copyright and Related Rights
SHS: Senior High School
SOMAS: Sociedade Moçambicana de Autores
TCEs: Traditional cultural expressions
TPMs: Technological protection measures
TRIPs Agreement: Agreement on Trade-Related Aspects of Intellectual Property Rights
UCAD: Université de Cheikh Anta Diop
UCC: Universal Copyright Convention
UCT: University of Cape Town
UDHR: Universal Declaration of Human Rights
UEM: Eduardo Mondlane University
UEMOA: West African Economic and Monetary Union
UK: United Kingdom
ULRC: Uganda Law Reform Commission
UNDP: United Nations Development Programme
UNEB: Uganda National Examination Board
UNESCO: United Nations Educational, Scientific and Cultural Organisation
UNISE: Uganda National Institute of Special Education
UPE: Universal Primary Education
UPPC: Uganda Printing and Publishing Corporation
URTNA: Union of National Radio and Television Organisations of Africa
USE: Universal Secondary Education
WAK: Writers’ Association of Kenya
WCT: WIPO Copyright Treaty
WIPO: World Intellectual Property Organisation
WPPT: WIPO Performances and Phonograms Treaty
WTO: World Trade Organisation