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Copyright and E-Resources in Africa's Institutions of Higher Learning: the case of selected Ugandan Institutions

Issue Paper
(Draft)

Background and justification

The research project takes interest in critically analyzing public interests in the copyright system vis-à-vis access to e-resources in selected Ugandan universities and research institutions. In addition to access, the study tackles the question of knowledge representation in relation to copyright protection to deconstruct the notion of Africa as a knowledge consumer and not producer. This study is grounded in the intellectual tradition that advocates for bringing back the public good in the contemporary copyright discourse.

The contemporary copyright system is heavily inclined towards protecting private than public interests in knowledge goods and services. Access to knowledge goods and services is increasingly controlled by private entities often in ways never originally intended by crafters of the copyright system. The pro-restrictive approach is premised on a rather illusionary assumption that wide and restrictive exclusive rights spur innovation and creativity insofar as knowledge creators recoup investments in creativity. Consequently copyright is more of an economic control mechanism that enables private control of goods and services but at the same time undermines broader public interests in the same good and services. Exclusive rights granted to private entities by the copyright system guarantee access controls to knowledge goods and services for a limited period. Granted, ideas or information, the precursors to knowledge goods are *nonrivalrous* and *nonexcludable* in nature. *Nonrivalrous* meaning that use by one person doesn't diminish use by another and *nonexcludable* because once information is 'out there', one cannot prevent others from utilizing it.¹ However, fronting restrictive mechanisms as the only means of stimulating innovation and creativity, as portrayed in the contemporary

copyright system, is conceptually and historically flawed. Even more disturbing is the insufficient treatment of public interest arguments in the contemporary copyright discourse. The public interests are at odds with accumulation-motivated private entities contributing to the shrinking public domain and restrictions in delivery and access to knowledge. For instance rights holders in literary artifacts such as books determine who accesses and under what terms. Cast from that angle, copyright can have serious impact on access to knowledge particularly in public interest sectors like education, research and training whose economic contributions are neither short-term nor self-evident. However, controls are not restricted to access but also how and which knowledge is represented in the global knowledge flows. Copyright is predicated on the written or tangible forms thereby discriminating against and distorting representation of knowledge from predominantly oral traditions.ⁱⁱ Of interests to this paper is extent to which copyright-dependent electronic databases account and represent knowledge output from predominantly oral African traditions.

Adding the oral dimension to the copyright debate copyright brings out Africa's disparate situation in the contemporary discourse on copyright in the electronic environments. For Africa, copyright in electronic environment best illustrates the 'politics of information' which increasingly impacts accessibility but also distorts Africa's knowledge production and position in the global knowledge flows.ⁱⁱⁱ Firstly, as an economic control mechanism copyright limits, or hinders, content availability and accessibility. In the Africa context, copyright then marginalizes the poor majority. Secondly, copyright with its western ideological slant and attendant constructs, when applied to Africa's historically oral and communal context, distorts culturally embedded systems of knowledge ownership and control leaving Africa disempowered and marginalized in the global knowledge flows.

Knowledge in Africa's educational and research settings is not simply a question of availability and accessibility but also availability and accessibility of African knowledge and scholarship. In approaching access to electronic resources and impact of copyright on access in specific institutional frameworks, there is need to acknowledge and attempt to account for the disproportional representation of African knowledge in the global knowledge flows and how contemporary copyright discourse contributes to that inequality. There is need to revisit the copyright debate in the attempt to carve out an 'African' niche in a seemingly settled debate. The notion of Africa as a net consumer rather than producer of knowledge is questioned. Likewise there is need to tackle the daunting task of examining ways in which western knowledge systems such as electronic databases are venues for distorting rather than advancing Africa's knowledge potential.

The study is located in educational and research contexts to leverage institutional potential for policy change at national and international levels. African universities remain important venues and test beds for Information and Communication Technology (ICT) initiatives and Internet-related policy debates, content inclusive. Institutions of higher learning are therefore important venues for examining and understanding the question of copyright and access to knowledge.

The main research problem tackled by the study is that of copyright as an access control mechanism distorting representation of Africa's scholarship in the global knowledge flows. In addition, copyright increasingly hinders access to general knowledge (non-African) within Africa's scholarly and research environments. In absence of well analyzed interventions born out of empirical evidence, the likelihood of Africa falling short of required human capacity building potential is more eminent than publicly discussed. As a result, the continent will remain a marginal player in the global knowledge appropriation.

Research Questions

The project focuses on three central research questions:

- 1) How does copyright as a control mechanism mediate to hinder or promote access to electronic knowledge in Uganda's education and research settings?
- 2) How does copyright distort representation of Africa's scholarship in the global knowledge flows evidenced through electronic database?
- 3) How should Africa's educational and research institutions leverage internal copyright practices and knowledge to formulate institutional policies but also participate and influence national and international information policy spaces and dialogs?

Objectives

Specific objectives for the study include:

- 1) Understanding how copyright factors into access and use of electronic resources by academics, students and researchers on and off campus using both proprietary and non-proprietary electronic resources,
- 2) Exploring from the perspective of academic, students and researchers, how African scholarship is represented in the e-resources they use, and
- 3) Determining how internal practices and empirical findings can be utilized by university and research institutions to develop not only own institutional policies on copyright but also influence national and international policy dialogs and spaces.

Methodology

Data will be collected through literature reviews and Focus Group Discussions (FGDs) covering various user groups representing academics, students, researchers, digital librarians, administrators/policy makers, and institutional stakeholders such as nongovernmental organizations. The first phase of the research project focuses on review of relevant literature exploring issues ranging from knowledge representation to access

and the role of African university and research institutions in public policy at all levels. To the extent possible, a review of the South Africa's policy landscape will be undertaken to understand South Africa's approach to access to knowledge and representation.

Based on the comprehensive review of literature and preliminary consultations, FGDs will be conducted in the second phase in three participating institutions: Makerere University (public), Nkumba University (private) and Centre for Basic Research (research) all in Uganda. FGDs will enlist participants' deep understanding of access and representation issues in copyright contexts based on their use of electronic resources.

Proposed Outcomes

Beyond participating institutions, other institutions of higher learning in Uganda will be targets of specific policy recommendations from the study. Government institutions directly involved in copyright and related policy areas, particularly ministries and departments, will be targets for policy recommendations as well.^{iv} The goal is addressing access and representation issues in a variety of forums of consequence to policy making in Uganda—and Africa in general.^v

Policy recommendations will be contained in a series of publications notably the culminating policy paper based on research findings of the research paper. Given time a few short working papers and articles will be prepared for different audiences focusing on specific aspects of the study such as institutional analysis and policy making at national levels. A detailed advocacy campaign will be developed to advance the goals of this study based on findings. Notably, two to three conference presentations will be made. An information dissemination public dialog is planned as one of the culminating activities to bring together education and research institutions, policy makers, civil society organizations and other stakeholders in access to knowledge campaigns.

End Notes

ⁱ Maskus Keith (2000). *Intellectual Property Rights in the Global Economy*. Washington: Institute For International Economics.

ⁱⁱ Madian, Azza (2005). *The Protection and Promotion of Egypt's Musical Heritage*. Available from: http://www.iprsonline.org/unctadictsd/docs/Madian_ArabRD_music.pdf Madian looks at copyright in music contexts but the basic arguments apply to literary domain.

ⁱⁱⁱ Thanks to Lawrence Liag for pointing me in this direction.

^{iv} Especially the Uganda Legal Reform Commission (ULRC) which is responsible for consulting on and drafting copyright laws, and the Parliamentary Committee on Legal and Parliamentary Affairs, currently considering the draft Copyright Bill 2004.

^v African forums will likely be covered beyond the Fellowship year