

THE LAW OF COPYRIGHT AND LIBRARIES IN UGANDA

Influencing copyright law reform and promoting creative commons initiatives among library societies in Uganda



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The law of copyright is in dire need of reform because in its current form it could eliminate the limited access to education materials in the country. The situation will be made worse if the World Trade Organisation's Trade Related Aspects of Intellectual Property Agreement is to come into force on 1st July 2013.

Until August 2007, Uganda operated under the Copyright Act Chapter 215 of laws of Uganda of 1964. This was succeeded by the Copyright and Neighbouring Rights Act No.19 of 2006. The object of this new law was to replace and update the previous law to line up with the WTO TRIPS Agreement.

Because Uganda In April 1994 signed the Marrakesh Agreement establishing the World Trade Organisation (WTO), Uganda is required to ensure that her laws and regulations are brought to conform to the Member States' obligations under the Agreement. Uganda is also a member of the East African Community (EAC) alongside Kenya, Tanzania, Rwanda and Burundi. The EAC resolved to update intellectual property laws to protect creative industries in the region. Uganda is also a member of the African Regional Intellectual Property Organisation (ARIPO), and is therefore required to harmonise intellectual property laws with the other regional group members.

This environment of external pressure, coupled with some internal demands from recording/performing artists, created a certain kind of copyright policymaking environment in Uganda. This policymaking environment led to a Private Member's Bill in 2004, the Copyright Bill of 2004, which became the 2006 Copyright Act, which, because of its scant focus on teaching and learning exceptions, will have potentially serious consequences for education and research.

The Member of Parliament responsible for the Bill was greatly influenced by the perspectives of musicians, and in general, the revised 2006 Copyright Act places great emphasis on enforcement – an emphasis which has the potential to limit access to educational and research materials.

It is therefore important that affected parties are given an improved understanding of the use of Creative Commons initiatives to mediate the copyright law bottle necks and start discussions to influence the Copyright law reform process now.

What is a copyright?

A Copyright refers to legal protection given to creators of "works of the mind". The legal Protection infers an exclusive right to a creator to control production and use of the work by others. The creator has the right to control the reproduction (making copies), distribution of copies, public performance, broadcast and translation of their work.



Section 5 of the 2006 Copyright Act lists works eligible for Protection as Including;

- a) articles, books, pamphlets, lectures, addresses, sermons and other works of a similar nature;
- b) dramatic, dramatic-musical and musical works;
- c) audio-visual works and sound recording, including cinematographic works and other work of a similar nature;
- d) choreographic works and pantomimes;
- e) computer programmes and electronic data banks and other accompanying materials;
- f) works of drawing, painting, photography, typography, mosaic, architecture, sculpture, engraving, lithography and tapestry;
- g) works of applied art, whether handicraft or produced on industrial scale, and works of all types of designing;
- h) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science;
- i) derivative work which by selection and arrangement of its content, constitute original work; etc

To qualify for copyright protection, the work must be original and “fixed” in some tangible or material form e.g. written down or recorded. Copyright law protects the expression of ideas, not the ideas themselves. Under Section 6 of Uganda’s Copyright Act of 2006, Ideas, concepts, procedures, methods or other things of a similar nature shall not be protected.

Why are people/companies given copyrights?

Copyrights are given to enable creators and entrepreneurs to receive financial reward for their works or for the works of others. This acts as an incentive to encourage further creativity and innovation and a thriving artistic and cultural environment which in turn benefits society.

How do Copyrights affect Prices of Education Materials?

When more than one company makes a product the price of that product drops because of competition. However, when a product is under Copyright, there is no competition and the price stays high. In fact, the company who holds the copyright can charge whatever they want for the 50 year Copyright period. The prices of books especially for secondary and higher education are comparatively higher when taken from the perspective of Uganda’s GDP, such materials are highly priced compared to the high income countries where they originate, a factor partly attributed to copyright protection and territorial licensing.

How are Libraries affected by Copyright?

Librarians have the professional responsibility to inform their parent institution and clients of copyright law provisions. In addition to informing the institution of the general provisions of the law, each library must establish clear written policies describing the steps taken to comply with copyright law.

Librarians should become knowledgeable about the subtleties of copyright law to serve as a resource for users and to negotiate quality electronic licensing contracts to serve user needs.

Issues for Librarians’ Concern in the 2006 Copyright Law

- The 2006 Copyright Act makes no mention of digital rights management (DRM) or technological protection measures (TPMs). The law as it is does not facilitate this for students, teachers, a teaching institution or a library yet it enhances their potential to access textbooks, provided the necessary computer hardware and networks are available.
- Parallel importation of copyrighted textbooks as provided for in Section 32(1)(a) of the 2006 Copyright Act qualifies any imports into Uganda as copyright infringements, without specifying that no infringement will take place if the copyrighted work before being imported into Uganda has already been marketed in a foreign country by the copyright holder or with his consent.

- **The 2006 Copyright Act (section 15)** is vague in its definition of what amounts to fair use of a protected work. It does not clearly tell how much one should copy a book for education purposes and to what extent the borders of infringement would arise.
- The 2006 Copyright Act does not explicitly provide for compulsory licensing of text books too. This would enable government licence national publishers in days when the country is in urgent need of particular texts.

Policy Issues for Libraries

- The library should ensure that it gets the best deal for its users in terms of access and use and for its funders in terms of price.

CREATIVE COMMONS “OPEN CONTENT” LICENCES

CEHURD in partnership with the National Book Trust of Uganda, and the Consortium of Uganda University Libraries with support of EIFL and the Open Society Foundations’ Information Program drafted and launched (on December 21/2012) Creative commons Licences that will be applicable in Uganda.

What are Creative Commons licences?

Creative Commons licences are not a substitute to copyright but offer an easy way for authors, artists, musicians and other creators to choose how to make their works available and under what conditions, and for users to identify the conditions under which a work may be used.

Creative Commons uses easy-to-understand licences and a logo to help users identify Creative Commons licensed material. An electronic version of the licence contains machine-readable metadata that describes the licence and indicates the copyright status, enabling CC-licensed material to be found by search engines and other online discovery tools.

Creative Commons covers a wide range of creative content. This includes audio e.g. music, sounds, speeches; images e.g. photos, illustrations, designs; video e.g. movies, animations, footage; text e.g. books, websites, blogs, essays; educational material e.g. lesson plans, course packs, textbooks, presentations.

Practice – how Creative Commons licences work

Creative Commons offers a voluntary, flexible set of licence options chosen according to the level of protection and freedom that an author or artist wishes to have. The licences build upon the “all rights reserved” concept of traditional copyright to use across a spectrum from “some rights reserved” to dedication to the public domain known as “no rights reserved”.

Each licence contains certain baseline rights and a number of options chosen by the creator, depending on how they want their work to be used. The options are:

Attributions: this lets others copy, distribute, display and perform a copyrighted work including derivative works, but only if they give credit (attribution);

Non-commercial: this lets others copy, distribute, display and perform a work including derivative works, but only for non-commercial purposes;

No derivative works: this lets others copy, distribute, display and perform only verbatim copies of the work, and not derivative works based upon it.

Share alike: this allows others to distribute derivative works but only under a licence identical to the licence that governs the original work.

This results in six main types of licence plus a few others for specialised applications e.g. sampling licences. Each licence type has three versions:

a “**Commons Deed**” that explains in simple terms what is permitted under the licence and uses easy to recognise symbols;

a “**Legal Code**” aimed at lawyers which is the full text of the licence; a machine-readable version containing RDF/XML metadata that describes the licence enabling CC-licensed works to be located by search engines on the web.

Science Commons, an offshoot of Creative Commons, aims to remove unnecessary legal and technical barriers to scientific collaboration and innovation. Their long term vision is to provide more than just useful contracts, but to also combine publishing, data and licensing approaches into an integrated and streamlined research process.

Before deciding to assign a Creative Commons licence to a work, there are a number of other factors to consider;

- The work should fall within a Creative Commons licence,
- the licensor must have the rights i.e. they must own the copyright in the work and they must understand how Creative Commons licences operate.

One important point is that Creative Commons licences are non-revocable; this means that a creator cannot stop someone who has obtained the work under a Creative Commons licence from using the work according to that licence. Of course, they can stop distributing the work at any time they wish, but this will not withdraw from circulation any copies of the work that already exist under a CC licence.

Creative Commons licences hold two aspects for libraries.

Firstly, there is the creator aspect. By and large, libraries are users rather than creators of protected content. However, routine library activities may generate content protected by copyright which the library may wish to share with others e.g. conference presentations, library building photos on the website, the library blog, etc. (It is important to remember that the library must own the copyright in the work in order to license it. In this context, it may be necessary to check the terms of employment contracts with regard to ownership of work products).

Then there is the user aspect. Libraries can avail of the millions of items of CC content when producing their own documents. For example, finding a cool new logo for the library brochure, using extracts from a recent travel guide as local visitor information for the website or including book reviews in the library acquisitions bulletin.

As information professionals, librarians should be informed about such developments and should be able to advise library clients on issues relating to the access and use of digital content. It is important that all institutional librarians attain an expertise in legal issues in the digital environment so as to play a role in keeping colleagues abreast of fast-moving developments in this increasingly complex area.

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