

Institutional Policy on Copyright as a Tool for Copyright Reform in Uganda

by

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Introduction

At the September meeting of the Vice Chancellors' Forum in Fort Portal, it was resolved that "copyright reform and the evolution of open institutional IP policies should be on the agenda for their next meeting in December at Uganda Christian University." The Consortium of Ugandan University Libraries (CUUL) was asked to develop a concept paper to guide the discussion. At that meeting, CUUL and other partners highlighted key copyright issues affecting the teaching and research missions of universities in Uganda. The presentation specifically highlighted the ever narrowing policy space in Uganda's copyright law. It was noted that the copyright law is increasingly pressing more burdens on teaching and research institutions. This trend is already negatively affecting the proper functioning of universities especially with regard to access and utilization of information for research and teaching. Therefore, the need for proactive legal reform is more urgent today than ever before and the involvement of universities and institutions of higher learning can't be overstated.

While copyright law reform at the national level is a noble objective and universities need to take a proactive role in national copyright policy debates. At this point, it is equally important that institutional experiences with the current Copyright law can have a profound impact on the legal reform at the national level. Such experiences can inform and be the basis for copyright reforms to the extent that they provide practical evidence of burdens imposed on universities by the existing Copyright law. The government in and of itself cannot introduce reforms without taking into considerations the experiences of the parties affected by the copyright law.

There are different ways for universities to demonstrate institutional experiences with the Copyright law. One of the best ways is adopting and implementing institutional policies on copyright. As noted below, such policies should foster the creation, preservation and wide dissemination of knowledge for teaching and research. Given the ever increasing presence and use of information and communication technology, as a practical matter the universities can ensure the creation, preservation and wide dissemination of knowledge created internally by establishing institutional repositories as part or extension of the university copyright policy. Both issues are briefly discussed further below.

¹ Concept note was prepared for CUUL by Dr. Dick Kawooya, Assistant Professor, School of Library and Information Science University of South Carolina USA. Email: kawooya@mailbox.sc.edu. Dr. Kawooya has written extensively on the nexus between copyright, education and research in Africa.

Institutional Copyright Policies:

An institutional copyright policy like other institutional policies offers a set of guidelines on how members of the institution are to deal with copyright issues vis-à-vis protected content. While most institutional copyright policies are part of broad intellectual property policies as the case is with Makerere University², some institutions have stand alone policies on copyright.³

Broadly, a copyright policy stipulates how information generated internally and externally is to be treated pursuant to Uganda's copyright law.⁴ As creators of expressive forms in its various manifestations, universities or individual faculty or researchers at those institutions enjoy the exclusive rights granted by the law. However, since the primary functions of universities is the production or generation and dissemination of knowledge, arguably, exercising the exclusive rights more so for profit making shouldn't be the main objective of universities in establishing institutional copyright policies and systems. Instead, the overarching goal of the university policies should be the fostering the creation, preservation, dissemination or communication of information to support teaching, research and service to the public. Section 15(1) of the Uganda's Copyright Act provides a list of permitted use of protected work without recourse to the owner or holder of the rights in a work. As such, the copyright law acknowledges the need for free or flexible exchange of idea in non-commercial scholarly environments. Therefore, while university policies should allow individual faculty or researchers to own and commercially exploit copyright in works they create, the overarching objective of the university in relation to works it owns, should be dissemination of knowledge as opposed to its control and restriction using copyright or other legal means. As such, the university policy on copyright should emphasize the need for the university holding copyright in trust or on behalf of the general user publics. Generally, the copyright policy should require that the institution owns copyright in works created using significant university and/or public resources defined broadly.

Section 14 of the Copyright Act provides for licensing and transfer of rights to third parties. Consistent with the spirit of wide dissemination of knowledge, the university copyright policy should require that works owned by the university be issued under some kind of flexible licensing regime such as Creative Commons. University works can be issued under any of the creative commons licenses.⁵ Additionally, faculty and researchers affiliated with the university should be encouraged but not required to use the same for their works.

² Makerere's policy on Research and Intellectual Property Rights Management that was approved by the University Council in 2008 is available at:

http://policies.mak.ac.ug/old/downloads/MAKERERE_UNIVERSITY_IPM_POLICY.pdf

³ See Columbia University Copyright Policy at: <http://www.columbia.edu/cu/provost/docs/copyright.html>

⁴ The Copyright and Neighbouring Rights Act, No.19/2006

⁵ Creative Commons license available at this site have been ported to Ugandan Copyright law: <http://creativecommons.org/licenses/>

Institutional Repositories:

An institutional repository (IR) is one way of ensuring the long term preservation and dissemination of the university research output especially that in digital forms. The IR is also a key project to which the university policy can be applied or tested.

Clifford Lynch one of the foremost researchers and advocates for IRs defined IRs as "a set of services that a university offers to the members of its community for the management and dissemination of digital materials created by the institution and its community members. It is most essentially an organizational commitment to the stewardship of these digital materials, including long-term preservation where appropriate, as well as organization and access or distribution."⁶ Makerere's Digital Repository⁷ formerly Uganda Scholarly Digital Library (USDL)⁸ while still in formative stages, is an excellent example of an IR. IRs have different access privileges with the most effective being open access IRs. Some limit access to only members of the university community.

IRs generally collect and preserve intellectual outputs of faculty, researchers and students at a particular university. They also collect and preserve documentation relating to the management and administration of the university which are not confidential or private in nature. A good example of student output typically collected in an IR or special kind of IR are electronic theses and dissertations (ETDs). Put briefly, they serve as institutional memories.

Vice-Chancellors and other members of this Forum will be most useful and effective at the national stage if they can point to specific cases where copyright constrains what they do at the institutional level, specifically implementation of institutional copyright policies and preservation of knowledge through IRs. To do that, they must adopt institutional copyright policies. If the policies exist, they should be consistent with the university missions of creating, preserving and dissemination of knowledge through teaching and research. A good example of an inconsistent policy is Makerere's research and IP policy.⁹ They also need to establish IRs where institutional policies on copyright can be tested.

⁶ See article at: <http://www.arl.org/resources/pubs/br/br226/br226ir.shtml>

⁷ New site at: <http://dspace3.mak.ac.ug/xmlui>

⁸ Available at: <http://dspace.mak.ac.ug/>

⁹ For a detailed critique of Makerere's Research and IP Policy, see: Kawooya, Dick (2008). An Examination of Institutional Policy on Copyright and Access to Research Resources in Uganda. *The International Information and Library Review*. 40, 226-235.