Copyright and Access to Knowledge in Malawi

An Information Session for MALICO

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• Copyright basics

• What can libraries do under Malawi Copyright Act?

• Nigeria’s new copyright law: a model?

  Dr. Desmond Oriakhogba, University of Western Cape, South Africa
Copyright basics

Purpose of copyright is to encourage creativity and learning

- Grants legal protection to authors and creators to exploit their works
- Provides reasonable access to protected works to encourage innovation, research and further creativity

Balance between protection and access

Role of libraries to provide access to knowledge
Copyright basics

Legal protection is a bundle of exclusive rights

(“rightsholder rights”)

Economic rights
- Right of reproduction (photocopy/scan)
- Right of distribution (sell/lend)
- Right of communication to the public (make available online)
- Right of translation
- Right of public performance (play/musical work)
- Right of adaptation (make a book into a film)

Moral rights
- Right of attribution (identify as the author)
- Right of integrity (not to have work distorted)
- Right of disclosure (withdraw work)
Copyright basics

Who gets a copyright?
(rightsholders)

By default:
• Author is the copyright owner
• Heirs

By copyright transfer or licence to:
• Employer
• State
• Publisher
• Collective management organization (CMO)
Copyright basics

Access to protected works enabled by limitations and exceptions (L&Es)

(“user rights”)

For example:

• Limitation on term of protection – life of author plus 50 years (S.35 Malawi Copyright Act)
• Limited by type of work - facts, procedures, written laws, court decisions, broadcast news not protected (S.28 Malawi Copyright Act)

Exceptions for public interest purposes*

• Education and research
• Libraries, museums, archives
• People with disabilities
• Quotation
• Press and political speeches
• Competiton e.g. reverse engineering

* Defined conditions, such non-commercial uses, set out in the law
Copyright basics

L&Es critical to the core functions of libraries

For example, L&Es can allow*:

- Making of digital copies for preservation and replacement
- Course packs for students
- Research copies for researchers
- Accessible format copies for people with disabilities
- Facilitate inter-library loans
- Enable storytime sessions for children

* Defined conditions, such non-commercial uses, set out in the law
Copyright basics

In sum...

• Strong L&Es that enable reasonable access combined with exclusive rights make for a well functioning copyright system

• Balances private interests of rightsholders and the public interest of society for education, research and further creativity
Main provisions that affect libraries

- **Section 48** Permitted free uses of works sets out what libraries, archives, museums, scientific and educational institutions may copy and for what purposes.

- **Section 49** People with disabilities

- **Section 86** Use of works subject to technological protection measures (TPMs)

- **Section 29** Economic rights
What can libraries in Malawi do under the Copyright Act (2016)?

EIFL’s analysis shows...

A good range of uses

but complex conditions

and missed opportunities
What can libraries in Malawi do under the Copyright Act (2016)?

Good range of uses allowed...

- Preservation and research copies (S.48)
- Use of works in virtual learning environments (S.48)
- Public lending by libraries (S.48)
- Making of accessible format copies, implements Marrakesh Treaty for persons with print disabilities (S.49)
- Enables access to works with digital locks or technological protection measures (S.86)
What can libraries in Malawi do under the Copyright Act (2016)?

...but complex conditions restrict uses

For example:

- digitization of print material for preservation and backup is **not** allowed, unless special permission is obtained from the Minister

- the making of digital copies for researchers is **expressly** barred, and is limited to published works

- **before** an accessible format copy can be made, the library must do a commercial availability check (delays or prevents right to read altogether)
What can libraries in Malawi do under the Copyright Act (2016)?

...and missed opportunities

For example, missing issues:

- **Orphan works**, where the copyright owner cannot be identified or found - works of high social and cultural value in library collections will remain undiscovered.

- **Text and data mining**, described as the new frontier for science and research - researchers in Malawi cannot benefit from use of digital research tools, unless permitted under a publisher licence.

- **Web archiving**, preservation of websites - public online media depicting national heritage, popular culture or important events in Malawi might not be preserved, depriving researchers in Malawi and around the world, of an important future resource.
What can libraries in Malawi do under the Copyright Act (2016)?

EIFL Recommendations

- **Remove commercial availability check** on making of accessible format copies (S.49) – in line with most Marrakesh countries

- **Iron out complexities, especially on use of works in the digital environment** (S.48) – help libraries to support modern education and research

- **Address missed opportunities**: orphan works, text and data mining, web archiving

- **Re-introduce general, flexible provision**: keep the law relevant for longer - fair dealing was removed in the 1989 Copyright Act

- **Ensure implementation of new Public Lending payment system does not burden public libraries** or impact library budgets directly or indirectly (Part XIII The Copyright Fund)
What Can Libraries in Nigeria Do Under the 2022 Copyright Act?

One of the **most progressive copyright laws in the world with respect to libraries**

**Objectives of the Act**

- Protect the rights of authors to ensure just rewards and recognition for their intellectual efforts;

- Provide appropriate limitations and exceptions to guarantee access to creative works; and

- Facilitate Nigeria’s compliance with international treaty obligations.
What Can Libraries in Nigeria Do Under the 2022 Copyright Act?

What is so good about the Copyright Act?

New exceptions permit libraries to:

- make and distribute copies for preservation, replacement, and ordinary activities (S.25)
- make and distribute accessible format copies for people with print disabilities (S.26)
- engage in activities that don’t fall within the scope of specific exceptions e.g. text and data mining - flexibility of existing fair dealing provision increased (S.20(1))
- avail of the exceptions even when the content is protected by a digital lock or a licence term (S.50(7) and 20(3))
- pre-existing exceptions retained
Malawi scores 30% (11/36)

Nigeria scores 94% (34/36)
Dr. Desmond Oriakhogba, University of Western Cape, South Africa

**Video clip** (10 mins)
https://www.youtube.com/watch?v=hjXQ6FtLqXg&t=1914s

**Nigeria – the best copyright law in the world?**

**EIFL webinar** organized with Nigerian Copyright Commission (NCC), 15 May 2024

**More information:**
www.eifl.net/news/setting-bar-nigerias-new-copyright-law
Resources

What can libraries do under the Malawi Copyright Act (2016)? An EIFL assessment
www.eifl.net/resources/what-can-libraries-do-under-malawi-copyright-act-2016-eifl-assessment

Malawi Copyright Act, 2016 (Act No. 26 of 2016)

What Can Libraries in Nigeria Do Under the 2022 Copyright Act?

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