

**COPYRIGHT: THE CHALLENGES POSED BY
REPRODUCTION RIGHTS ORGANIZATIONS (RROs)
IN THE PROVISION OF INFORMATION TO**

**USERS WITH SPECIAL REFERENCE TO
KENYA**

By

Japhet Otike, PhD

School of Information Sciences

Moi University,

Eldoret, Kenya

A paper presented at the Standing Conference of East, Central and Southern African Librarians (SCECSAL) held in Nairobi, Kenya, June 4 - 8, 2012.

ABSTRACT

Reproduction Rights Organizations (RROs) act as an important or crucial link between copyright owners and users. Without them, copyright owners would be compelled to deal directly with users. This would, indeed, have been a very tedious task. However, despite the important role they play in information and knowledge transfer, RROs have been criticized by information users and librarians for taking advantage of their ignorance of copyright law to exploit them. This is particularly evidenced in developing countries where ignorance of the law is most common. Many users are unaware of the provision on Exceptions and Limitations which entitle them to reproduce a limited amount of copyrighted work without seeking clearance from copyright owners or their agents, the RROs. It is concluded that the only way to overcome the challenges posed by RROs is to be legally literate. That both librarians and information users should keep abreast of the law. An important step in this direction is the establishment of library consortia to speed up the process.

INTRODUCTION

Before an attempt is made to look at the challenges posed by reproduction rights organizations in the provision of information, it is fitting that effort is made to explain what copyright is and why it exists. With this background, it would be easier to understand the main thrust of the presentation.

Copyright

Copyright is an aspect of intellectual property. Intellectual property relates to people's creative and inventive activities. Human beings by nature are creative. Because of this, they are able to come up with products arising from their creative activities. These products are often referred to as their intellectual property. Intellectual property rights (IPRs) are rights that the society awards to the individuals or organizations for their creative works (Rikowski, 2005).

Intellectual property is knowledge, experience, skills, that people have accumulated in a particular area. It is often referred to as the creation of the mind. Intellectual property is intangible. It can not be touched, weighed, felt or seen. The things we see such as books, gramophone records, paintings, drawings, etc. are simply products of intellectual property. Intellectual property is in the brain. Intellectual property law protects people's intellectual efforts. Intellectual property law comprises among others: copyright, patents, trade marks and industrial designs.

Copyright is a legal right that authors, publishers, and other producers of creative works have to protect their work from being reproduced without their permission. It gives producers of creative works monopoly to enjoy the proceeds of their effort for a period of time. After this period has elapsed, the product is placed in the public domain and any person is free to reproduce it without seeking authority from the copyright owner. A study (Harvard University, Berkman Center, 2009) carried out in the US defines copyright as a legal concept that grants authors and artists control over certain uses of their creations for defined periods of time. Copyright limits who may copy, change or share these creations.

What does copyright do?

- Copyright empowers the owners to exclude others from certain uses of their work
- It grants the owner the exclusive right (or monopoly) which cannot be enjoyed by any body else without his/her permission
- It gives the author a say on the issue of reproduction licence. Only the copyright owner or his/her agent can issue reproduction licence.
- It protects the copyright owner from unfair competition, particularly those who have invested a lot of money or effort into the venture.

- It facilitates creativity and innovation. The monopoly the owner obtains motivates him/her to be even more creative. This alone leads to accelerated development.

Works protected by copyright

In Kenya, the following works are eligible for copyright protection:

- Literary works: printed as well as non-printed materials such as books, journals, magazines, newspapers, computer programmes.
- Musical works
- Artistic works; paintings, drawings, engraving, maps, plans, works of sculpture, architectural drawings, etc.
- Audio-visual works
- Sound recording
- Broadcasts

It is important to note that copyright protects only “the expression of an idea” and not the idea itself. It protects the way the information is presented. It does not protect the idea. Doing so would jeopardize sharing of information and that would have a serious effect on development. Development can not simply take place in an information vacuum.

Exemptions from Copyright

Copyright laws in many countries of the world provide exemptions to some copyright restrictions. With these exemptions, people using copyrighted works for certain cases such as non-profit purposes do not need to obtain permission from the copyright owner. These exemptions are often referred to as “exceptions and limitations.” Countries that are signatories to international conventions such as the Berne Convention are required to provide these exemptions in their national copyright laws. Kenya has provision for these exemptions in its copyright legislation.

Importance of Exceptions and Limitations

The above are important because:

- a) Without them, information users including among others, writers, authors, researchers, etc., would be compelled to obtain written permission any time they cite or refer to a work from authors or publishers who not be easy to locate.

- b) Authors and publishers would be flooded with too many requests which they may not be able to cope.
- c) They enable information to be disseminated to a wider audience through controlled reproduction, inter-library lending, etc
- d) Both writers and publishers stand to benefit from exemptions in their official capacity as consumers or users of information.
- e) Without exemptions, authors and writers would be equally handicapped.
- f) They discourage censorship. Without exemptions, censorship would be the order of the day. Copyright owners would restrict dissemination of certain information.
- g) Librarians' work would be hampered because of restriction on dissemination of information, resource sharing, etc
- h) Exceptions and limitations strike a balance between the interests of the authors (or copyright owners; and the interests of users and the public at large. Exceptions recognize the users' right to access information
- i) The creation of new works would be impeded
- j) Exceptions increase the use of information resources, supports research needs of users and enhances education. It is particularly useful to libraries in developing countries where countries are seeking to widen access to tertiary and higher education through e-learning
- k) Libraries globally spend enormous amount of money purchasing published materials and subscribing to electronic information databases from the meager funds available. Libraries have for long played an intermediary role between publishers and information users. In this regard, exceptions appear to be the only way libraries can realize their objective of providing information support to the growing population.

Library Exceptions

In many countries, particularly the western world, national copyright laws allow:

- a) Library patrons to use the library's photocopier or other copy machines to reproduce limited amount of copyrighted works

- b) Making copyrighted works available on the library computer.
- c) Making copies for library patrons. Users, particularly those in special libraries, often request library staff to reproduce copyrighted works for personal or official use. Field staff often opt to reproduce the work rather than borrow the materials from the library for outside use.
- d) Making digital copies for preservation and replacement. In some countries, libraries are permitted to reproduce copies for preservation and replacing lost copies.
- e) Creating course packs for students. In some countries, librarians may be requested to produce “course packs” comprising journal articles, chapters from books, etc to be distributed to students.
- f) Reproducing the materials in Braille for use by the visually challenged. Some countries allow reproduction of copyrighted works for use by the blind. This is however still a debatable issue. Many publishers are still opposed to this issue. A general treaty on this subject is yet to be signed. Library associations and stakeholders have been pressurizing WIPO to come up with one.
- g) Inter-library loans. Some national laws allow libraries to lend out copyrighted materials on inter-library loan basis. This may include reproducing journal articles and chapters from books.
- h) Copying for other libraries. In some countries, a library can copy a work in the library’s collection for another library which has requested it for inclusion in its collection or enable it to supply it to its user for research or study.
- i) Copying to replace stolen, lost or damaged materials. A library can reproduce a copy to replace a library copy which has been lost, stolen, or damaged in the course of use.
- j) Acquiring by copying a material that is either out of stock or out of print from another source to stock its collection.

REPRODUCTION RIGHTS ORGANIZATIONS

Reproduction Rights Organizations (RROs) are organizations or societies appointed by copyright owners to issue reproduction licence or receive reproduction fee on their behalf. This is done because many copyright owners may not have the time and resources to issue licence to each and every person that requests to reproduce

a copyrighted work. RROs are in a better position to do this because they have the expertise for the job. They issue reproduction licence on behalf of the copyright owners, collect the fee from the applicants and pass it to the copyright owners after deducting the administration costs. In so doing, they play a crucial role in the management of copyright in a country. They act as an important link between the copyright owner and the copyright user. RROs exist in many forms and roles. In some countries, their role is confined to literary works and in particular, printed literature. In some countries particularly the developing countries, their role is extended to all aspects of copyright including music and dramatic works. In Mauritius, for instance, the Mauritius Association of Artists (MASA) is obligated by the Copyright Act, 1997 to collect reproduction fee from all categories of copyright users (Hauroo, undated). In Tanzania, the Copyright Society of Tanzania (COSOTA), a government semi-autonomous organization, established by an Act of Parliament (Copyright and Neighbouring Rights Act, No. 7, 1999) collects royalties on behalf of copyright owners in the country. In addition, COSOTA is responsible for the management of copyright in Tanzania. In Kenya, a specific organization exists to collect royalties for owners of literary works. Uganda does not have an agency for literary works. The only body existing in the country caters for performing artistes.

The role of Reproduction Rights Organization in Kenya

In Kenya only one organization exists to collect reproduction fee and issue licence on behalf of copyright owners of literary works. This organization is known as the Reproduction Rights Society of Kenya (KOPIKEN). The other organizations collecting reproduction fee for other categories of copyright owners are officially known as Collective Management Organizations (CMOs). They include:

- a) Music Copyright Society of Kenya (MSCK)
- b) Kenya Association of Music Producers (KAMP)
- c) Performing Rights Association of Kenya (PRSK)

KOPIKEN is a private organization owned by the following stakeholders in the publishing industry:

- a) Kenya Publishers Association (KPA)
- b) Kenya Oral Literature Association (KOLA)
- c) Music copyright society of Kenya (MCSK)
- d) Kenya Non-Fiction Authors Association (KENFAA)
- e) Writers Association of Kenya (WAK)
- f) Kenya Association of Photographers, Illustrators and Designers (KAPIDE)

The organization employs full time staff comprising among others, a General Manager charged with the day to day running of the organization. KOPIKEN, like other such organizations, does not have legal mandate to compel copyright users to pay reproduction fee. They can only persuade the users to pay. The only body that has the legal mandate is the Kenya Copyright Board (KECOBO) established by the Copyright Act, 2001. The activities of collective management organizations are regulated by KECOBO through the Copyright Act, 2001. The Act, among other things, empowers KECOBO to:

- a) administer all matters of copyright and related rights in Kenya
- b) licence and supervise the activities of collective management societies

THE PROBLEM WITH REPRODUCTION RIGHTS ORGANIZATIONS

- a) The RRO in Kenya like those on the African continent is more interested in maximizing fee collection. It is more concerned about being in business. At the end of the day, share holders would be interested to know how much it has raised in the form of royalties. Its continued stay in the office greatly depends on how much it has raised. In this regard, it is likely to use all sorts of tricks, including threats to obtain reproduction fee.
- b) RROs as much as possible avoid educating their clients about copyright. They would never mention about copyright exceptions and limitations that libraries and users are entitled to. Nor would they inform them about materials in the public domain that can freely be reproduced not mentioning unpublished works. They would instead alert them about the consequences of not paying the fee. In developed countries, for instance, users are informed about what they can pay for and what they can not pay. RROs in the in this world are well aware about the exceptions and limitations that users are entitled to.
- c) RROs in developing world capitalize on the users' ignorance of the law to reap huge profits. In Kenya, for instance, there is no legal framework on charging reproduction fee. The RRO takes advantage of this to request for unreasonable amount. The organization does not bother to survey or find out the amount of copyrighted work a particular photocopier is exposed to before deciding on charging the owner. Any photocopier that appears to work is charged even if much of the work it does is not related to copyrighted works. The owner of a photocopier in the end has to part with two payments: one being a business licence fee and two a reproduction licence fee. At the time of writing, KOPIKEN's new licence fee was as follows:

New licence Fee charged by KOPIKEN per Copy shop per year

Categories	Amount
3 in 1 machine	KShs. 1500

1 - 2 machines	KShs 3500
3 - 5 machines	KShs 5000
6 - 10 machines	KShs 7000
11 and above	Kshs 10 000

Source: [http:// www.kopiken.org/licence/index.html](http://www.kopiken.org/licence/index.html) (Accessed on 4/17/2011)

- d) In Kenya, the RRO is more interested in private as opposed to public universities. The reason being that private universities are easier to convince through threats of arrest and prosecution, to pay licence fee. Public universities, on the other hand, are more stubborn in paying. They have fairly bureaucratic payment mechanisms which make it hard for them to part with money that easily. Many of them have lawyers who are more knowledgeable with copyright law. In private universities, payment can be effected in less than an hour!
- e) One area of concern about RROs in developing countries is how they distribute licence fee. Ideally, RROs should collect fee from works whose owners have authorized them to collect royalties. In this world, this rule is not followed. Licence fee is collected from any category of works, including foreign works. The question is this: What do they do with the money collected from works whose owner has not authorized them to collect licence fee? And how does such an owner know that his/her work has attracted payment? The situation in Kenya is that the RRO collects fee blindly without telling whose work has been reproduced. This amount is normally surrendered to the shareholders of the organization. The owner of the work is ignored, yet his/her work contributed to the fee collection.

In a similar study (Otike, 2011) carried out in Kenya, it was found that Reproduction Rights Organizations were essentially:

- a) appointees of copyright owners
- b) exist to collect reproduction fee on behalf of copyright owners
- c) they are not law enforcement agents. They can not compel people to pay fees. The best they can do is to report defaulters to the Kenya Copyright Board.
- d) that only the Board has the legal mandate to enforce the law. The Board has the powers to arrest and charge the offenders

- e) RROs should collect fees only from organizations in the commercial sector that exist to make money.
- f) organizations in the public sector such as libraries, academic institutions, government departments, etc., that do not exist to make profit should not be bothered because they are exempted by sections 26-29 of the Copyright Act, 2001.

THE WAY FORWARD FOR LIBRARIANS

One of the ways librarians in developing countries can avoid being misdirected by personnel from RROs is to be updated on issues relating to the law. This is so because RROs take advantage of librarians' ignorance of the law to compel them to pay licence fee when in real sense, they are covered by Exceptions and Limitations provision in the law. As long as librarians remain ignorant of the law, RROs will continue to exploit them. Librarians need to be legally literate as ignorance of the law is considered in courts of law as no defence at all. On legal literacy, Otike (1997) affirmed that every member of the public needs to be legally informed. The law in every country pre-supposes that every citizen despite his/her age, education is legally literate; that he/she is aware of all codes of legislation enacted in the state. In a related study, it was found that even people staying in the rural areas need to be exposed to the law and that law should not be considered a domain of the legal fraternity alone (Otike, 1996).

Another option of addressing this challenge is to attend copyright awareness programmes organized by NGOs or copyright bodies such as the Kenya Copyright Board in Kenya; and COSOTA in Tanzania. In Kenya, a number of NGOs in the legal field provide free legal advice on issues of legal interest. The International Commission of Jurists - the Kenya chapter has been very helpful in this regard. Kenya Copyright Board conducts copyright awareness programmes directed to, among others, copyright users through workshops and seminars including the print and electronic media.

Librarians need to work together in a form of network. Networking enables them to share ideas and problems pertaining to their work and in particular, issues relating to copyright. The best approach is to form national consortia. A number of countries in Africa have bought this idea and are already reaping the fruits of their endeavour. Uganda is the latest to start one: the Consortium of Uganda University Libraries (CUUL) started early this year. Through this arrangement, librarians have been enlightened on issues relating to copyright and have been able to contain the challenges presented to them by RROs.

In conclusion, it is important to note that a full and comprehensive exchange of information is necessary for the functioning of a healthy nation. A nation that is unable to access accurate and comprehensive information essential for

development will always lag behind. Unrestricted access to copyrighted information materials enhances creativity and leads to production of more work. Fair access to copyrighted work can help to mitigate the digital divide. However, enforcing copyright restriction by imposing payment greatly affects the less privileged who rely on libraries for information support and thus perpetuating poverty.

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