



ACA2K

Executive Policy Brief

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**African Copyright and Access to
Knowledge (ACA2K) Project**

www.aca2k.org

MOROCCO

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1. Introduction – the ACA2K Project and Research

The African Copyright and Access to Knowledge (ACA2K) project seeks to examine the impact of national copyright environments on access to knowledge in general and access to learning material in particular. The project includes experts from eight African countries – Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda – in order to provide a broad range of African contexts in terms of both researcher experience and legal/cultural traditions. The ACA2K project is supported by Canada's International Development Research Centre (IDRC) and the Shuttleworth Foundation in South Africa, and it is managed by the LINK Centre, Graduate School of Public and Development Management (P&DM), University of the Witwatersrand, Johannesburg.

The Moroccan team is comprised of Prof. Saïd Aghrib, who holds a PhD in Law and lectures at Université Cadi Ayyad in Marrakech; Prof. Noufissa El Moujaddidi, who holds a PhD in Economics and lectures at Université Mohamed V Souissi in Rabat; and Prof. Abdelmalek El Ouazzani, a Professor of Political Science in the Law Faculty of Université Cadi Ayyad, Marrakech. The composition of the Moroccan ACA2K research team takes into consideration the multidisciplinary and multidimensional nature of the project. In fact, the contribution of an expert in economics and one in politics combined with the input of a legal expert has proven to be necessary.

Access to knowledge constitutes an important – even determining – factor for a society aiming to reach a more advanced development stage. Morocco, like many other developing countries, is striving to achieve balanced development, which should guarantee for all citizens a dignified and prosperous life. However, Morocco's access to knowledge legal framework – especially the framework regarding copyright – reveals that the notion of access to knowledge is far from being considered as a basis or an objective for legal/policy/regulatory standards.

The overwhelming presence of the concern for protection of the interests of copyright-holders has negative effects on access to knowledge perspectives. Such a state of affairs requires a critique of preconceived ideas regarding copyright, in order to suggest possible alternatives. The copyright legal framework in Morocco has evolved on the basis of the development of international norms and the pressure applied by developed countries. This situation has widened the gap between the legal reality and the social and economic realities. It is therefore necessary to propose new policies or legal reforms that could address the issues in a manner relevant to development constraints.

2. The Copyright Environment in Morocco

The *ACA2K Methodology guide* outlines two phases that are deeply intertwined: the research phase and the dissemination phase.

The research phase is about describing the current situation in terms of copyright in the country studied: doctrinal analysis of legal data (legislation, case law) and qualitative analysis of practices by various stakeholders through interviews. The aim of this initial phase was to study the copyright environment and to measure the impact of exclusive rights granted to authors on access to knowledge and learning materials.

The second phase, of which this document is part, focuses on distribution and sharing of research results and participation in activities related to issues of copyright and access to knowledge.

The main results from the research phase can be summarised as follows:

- the national legal arsenal is very well-structured in terms of the protection of copyright-holder rights and is sufficient to ensure efficient copyright protection
- the perceptions of interviewed stakeholders (eg, government and university professors) are characterised by the absence of the sense of the access to knowledge dimension and the impact of copyright on it, due to the widespread lack of knowledge among the users regarding the potential legal hurdles created by copyright regulations;
- there is a lack of in-depth research on copyright and, more precisely, on limitations and exceptions to the exclusive rights authors/rights-holders enjoy;
- there is a scarcity of judicial decisions regarding copyright;
- there is a paradoxical discrepancy between law and reality: there is a certain legislative dynamic in terms of copyright, but the reality shows that there is also widespread ignorance of, and infringement of, the copyright rules;
- there is a divergence in the development of Morocco's economic reality in terms of knowledge resources, with an on-the-ground reality of poverty and difficulty in accessing knowledge resources) on the one hand, and on the other hand a legal reality dominated by concerns over protection of rights-holders' ability to derive maximum economic benefit from ownership of knowledge resources;
- there is a lack of participation by stakeholders who are supposed to be leading in terms of copyright, such as higher education institutions and universities. They are not represented or consulted at any level of decision-making;
- there are legal provisions (such as the 70-year copyright term) that do not match the economic and social assets of Morocco as a developing country;
- the agreements signed by Morocco with foreign countries reflect the needs of those other countries more than the interests and needs of Morocco in terms of protection and access to knowledge. (The Morocco free trade agreement (FTA) with the United States, signed in 2004 and in force since 2006, is a good example. That agreement forced an increase, in the Copyright Law, of the term of copyright protection from 50 years to 70 years, and strengthened provisions in the Law against circumvention of technological protection measures (TPMs). Both of these changes to the Copyright Law are primarily to the benefit not of Morocco but rather of the US and other developed countries.)

3. Legal and Regulatory Recommendations

The Moroccan Copyright Law has passed through two important recent reviews, in 2000 and in 2006. The first review was in response to the signing onto the TRIPs Agreement by Morocco, and the second was the modification of the national legal system to cover the needs of the FTA between Morocco and the United States. The two revisions essentially focused on strengthening copyright protection and enforcement.

The results we observed from our research have enabled us to suggest recommendations regarding the legislation that the team feels are realistic and necessary.

The Copyright Law must be reviewed in order to take into account the rights of users, and not only the rights of producers of knowledge. The Law must maintain the balance of interests between copyright-holders and users in the following ways:

- expansion of the scope of exceptions and limitations related to education, in order to include the objectives of distance education and the use of protected works for e-learning, as well as to give the possibility of obtaining compulsory and statutory licences for educational purposes. (The role of compulsory and statutory licensing often appears when protected works in question are not available or are not affordable. When such a licence is issued by a government, the copyright-holder is obliged to attribute its rights to another entity, such as the state or an individual publisher);
- introduction of exceptions and limitations regarding groups with specific needs such as persons with disabilities;
- granting libraries more flexibility in terms of their photocopying of protected works for the benefit of students and researchers.
- re-adopting the international standards regarding the duration of the protection of works, which require a period of 50 years after the author's death, as the current 70-year term in the Law is excessive; and
- introducing into the Copyright Law exceptions and limitations relating to parallel importation to allow for the free importation of works that are already distributed abroad by the rights-holder (allowing parallel importation would allow Morocco to have a range of protected works with lower prices affordable for a larger part of the population).

The 1965 Decree constituting the BMDA should be reviewed in order:

- to ensure total control by the state over the Bureau's budget in order to avoid the latter's dependence on contributions from knowledge producers; and
- to allow for collective management of copyright royalties, by repealing Article 3 in the Decree which states that the BMDA 'alone is tasked with collecting and distributing the royalties derived from copyright in all its forms current or future....'

4. Policy Recommendations

In terms of policies, the team suggests the following:

4.1 Libraries

Libraries, which are sources of knowledge and key facilitators of access, must be allowed to contribute to copyright policymaking.

4.2 Educational Institutions

Universities and schools are currently excluded from any involvement in copyright policymaking. This negatively impacts access to knowledge. In order for universities and schools to play their part in this regard, it is necessary:

- to acknowledge that universities and schools should enjoy political freedom to determine their own internal copyright policies; and
- to integrate universities and schools into decision-making around copyright law.

4.3 Public Policies in General

In terms of public policies in general, generating a healthy access to knowledge environment requires the following:

- a massive state and local government intervention for the implementation of increased public access to knowledge spaces such as libraries;
- promotion of the objectives of access to knowledge and informing users about the copyright limitations and exceptions that they can make use of;
- review of policies that inform the publication of school books to ensure avoidance of market-based strategies and favour access to knowledge principles; and
- the making available of budgets for educational institutions (junior and senior high schools, universities) specifically aimed at promoting the use of new technologies in teaching and learning.

5. Action Points for Stakeholders – the Way Forward

The ACA2K Morocco team's action plan is based on the research results and observations of practices in the copyright environment. The team would like to:

- establish a national network of researchers, stakeholders and practitioners in the field of copyright;
- intensify contact and information campaigns with the government, the community of researchers and teachers, in open days and round-table discussions, in order to create synergy between the various stakeholders for the same purposes;
- publish articles and extensively disseminate the results of the ACA2K project;
- organise relevant colloquia and seminars, with the assistance of the government; and
- organise regular work meetings, to provide consultation services and to support the stakeholders in order to maximise access to knowledge.

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