



ACA2K

Executive Policy Brief

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

www.aca2k.org

MOZAMBIQUE

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1. Introduction: the ACA2K Project and the ACA2K Research

The Mozambican ACA2K research team is based at the Faculty of Law at Eduardo Mondlane University (UEM) in Maputo. The team consists of three members, namely:

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The ACA2K research investigation into access to knowledge in relation to the copyright environment in Mozambique comes at an opportune time, as the country is beginning to face challenges from the intersection of copyright and access to learning materials.

The Strategic Plan for Education and Culture 2006-2011 established, as a target, the provision of one book per subject per each student by 2011. Learning materials, according to government policies, should be free for the first seven years of compulsory education in Mozambique. However, the free distribution of learning materials covers only the 1st and 2nd grades of primary school. For the rest of the grades, families face the heavy burden of purchasing books for their school-going children.

A decision made in 2007 changed the rules for the awarding of contracts for the production of school books to the private sector.¹ The decision separated the conception of the books from their editing, creating the possibility of having the copyrighted content published by a third party. This decision resulted in a request from publishers and authors for the payment of copyright royalties in cases where the conceivers of the content were not awarded the right to print the school book.

Additionally, there is a growing concern with regard to copyright issues in the distance learning system, especially where digital formats are concerned. This is one area, given its enormous potential for serving students in Mozambique, that requires careful and immediate government intervention.

It is clear that the relationship between copyright and access to knowledge has to be adequately addressed in order for the country to achieve education for all, and to meet the UN Millennium Development Goals in the education sector.

¹See Diploma Ministerial no 20/2002 of 27 February from the Minister of Education for the rules on editing, publishing, approving and distributing school books.

2. The Copyright Environment in Mozambique

The ACA2K research in Mozambique consisted of a few key components, beginning with a review of the national legal instruments on copyright – namely statutes, regulations, policies and the international instruments ratified by the Mozambican government, especially the WTO TRIPs Agreement and the Berne Convention administered by WIPO.

Secondary literature on the ACA2K themes – copyright, access to learning materials – was also reviewed, particularly articles, monographs and papers presented at conferences/seminars.

Lastly, the research attempted to analyse the actual impact of the copyright legal framework in practical terms on access to learning materials – through impact assessment interviews. Interviews were conducted with 12 people from three different categories: 1) government, 2) rights-holders (publishers and authors) and 3) the educational community.

The ACA2K research has found that Mozambique has established a comprehensive legal framework that protects copyright. However, the implementation of the framework is still limited. The law is not well known and rarely enforced. Furthermore, issues related to access to knowledge are not adequately addressed by the legal framework. Although the law does provide for some exceptions and limitations to copyright, these exceptions and limitations are not adequate facilitators of access.

3. Legal and Regulatory Recommendations

The findings of the ACA2K study reinforce the fact that legal and regulatory frameworks should be reviewed in terms of the following:

3.1 Accession to International Instruments

The Mozambican government has undertaken to adhere to international obligations such as the TRIPs Agreement and the Berne Convention. However, with regard to the latter, although a Resolution of the Council of Ministers nr 13/97 of June 13 was enacted approving ratification of the Berne Convention, the resolution was never deposited with WIPO. Thus, it is recommended that the competent authorities should notify WIPO about Mozambique's decision to join the Berne Convention.

The Mozambican government should also consider notifying WIPO of use of the Appendix to the Berne Convention to allow for compulsory licensing of translations of Portuguese-language copyright works into indigenous Mozambican languages. This could boost the local publishing industry, as there are more than 40 indigenous languages spoken in Mozambique.²

As regards the 'WIPO Internet Treaties' (WCT and WPPT), caution is suggested, given that adherence to these treaties calls for national copyright law to include anti-circumvention provisions which make the circumvention of technological protection measures (TPMs) illegal. The problem is compounded by the fact that the dominant interpretation of these treaties into national law (such as in the US) has been in a manner that does not recognise circumvention of TPMs for purposes legitimated by national copyright law, such as exercising fair dealing/ fair use, for example, by a student conducting research or a sensory-disabled person adapting the format of a copyright-protected work from text to audio. An in-depth analysis of the advantages and disadvantages of the treaties is needed, in light of national circumstances and interests, before a decision is made.

3.2 Correcting Excessive Copyright Terms

Both the Berne Convention and the TRIPs Agreement set the minimum period of protection of copyright (economic rights) at 50 years after the lifetime of the author. However, in Mozambique, and according to Article 22 of the Copyright Law, protection of copyright lasts for 70 years after the life of the author.

The Berne Convention and the TRIPs Agreement also define the minimum period of protection for moral rights to at least the term of economic rights. However, Mozambican copyright law provides eternal protection for the moral rights.

The duration of the term of protection for moral and economic rights with regards to broadcasts and works of applied art was also extended beyond the minimum term of protection imposed by TRIPs, without reasonable justification.

Mozambique, therefore, did not take advantage of the flexibilities allowed in relation to term/duration of copyright rights.

Thus, there is a need to reduce the terms of protection to the minimum standards set by the international instruments (TRIPs and Berne) in order to allow works to fall into the public domain sooner, thus facilitating access to these works in a shorter period of time.

²'Languages of Mozambique' in M. Paul Lewis (ed) *Ethnologue: languages of the world*, 16th ed (2009) Dallas, TX. Available at <http://www.ethnologue.com> [Accessed 31 March 2009].

3.3 Limitation of the Scope of Copyright

The Mozambican Copyright Law provides in Article 7 for economic and moral rights in great detail, following the guidelines established by international instruments. However, the scope of copyright protection outlined in Article 7 was not construed as a result of a clear understanding of each of the rights in light of national interests. For example, a contract between an author and publisher for publishing of written works is one of the ways of exploiting the reproduction right. However, this contract is not regulated in Mozambique. Therefore, issues such as the number of copies allowed, percentage of royalties, and length of the contract are defined by the parties, thus sometimes creating imbalances that prejudice the authors.

For that reason, an in-depth analysis should be undertaken in order to assess the seeming need for limitation of the scope of copyright protection.

3.4 Improving Limitations and Exceptions

Mozambican copyright law does not incorporate a general 'fair dealing' provision but instead lays out exceptions and limitations in great detail. A disadvantage of this system is a limitation of the margin of manoeuvre for the courts in determining permitted uses.

At the same time, the exceptions and limitations that are specified in the Copyright Law – such as reproduction for private purposes, reproduction in the form of quotation, reproduction for educational purposes, reproduction for information purposes, reproduction of judicial and administrative proceedings and reprographic reproduction for libraries and archives – need to be improved/clarified in order to better serve access to knowledge. For example, the exception that allows reproduction for educational purposes does not clearly answer some crucial questions such as: What portion of a work can be reproduced?

Finally, important exceptions and limitations such as those related to disabled people (especially the visually-impaired), exhaustion of rights, parallel imports and digital works are not included in the law. Such exceptions and limitations are needed in order to better facilitate access to knowledge.

4. Policy Recommendations

In the Mozambican context it became clear from the ACA2K research that there are no clear policies dealing with access to knowledge (A2K), in either general or specific terms. Therefore, some steps should be undertaken in order to address A2K issues. Three levels deserve special attention:

4.1 Policy and Legislative Level

The Mozambican government, in collaboration with the academic institutions, civil society and copyright-owners, drafted the National Intellectual Property Strategy with the assistance of WIPO. The strategy was approved by government in July 2007. The strategy envisages defining a national common vision on intellectual property that may serve the best interests of the country. Unfortunately, the strategy does not take into account the access to knowledge dimension. The incorporation of an access to knowledge vision is necessary to inspire all future policies, laws and regulations in the area of intellectual property.

Meanwhile, another policy instrument currently under discussion is the 'Books Policy' drafted by the Ministry of Education and Culture. Again, it is crucial that an access to knowledge dimension is incorporated in this policy in order to guide all the actions aiming at promoting book production and dissemination, and facilitation of book access by the majority of the population.

4.2 Access to Knowledge at Academic and Research Institutions

Another important finding of the ACA2K study in Mozambique is that there are no internal policies dealing with copyright in the academic and research institutions, except for the Eduardo Mondlane University (UEM), which has a Research Policy which provides some guidance on intellectual property (IP). UEM is now busy drafting its own stand-alone IP Policy, driven by the Faculty of Engineering. A positive outcome of this initiative is crucial in order to influence all other academic and research institutions to adopt similar policies. However, it is worth stating that if proper precautions are not taken immediately, the UEM policy may end up focussing too much on the protection of the rights of the creators and researchers and leaving aside the interests of the people wanting/needing to access the created knowledge.

Regarding the implementation of IP policies at academic and research institutions, it is advisable to set up some IP units for management and dissemination of IP. Those units could act as catalytic instruments both for rights protection and for enabling access to knowledge.

4.3 Management of IP Rights and Implementation of Flexibilities

Of crucial importance is how the implementation of policy and laws can impact intellectual property rights (IPRs). The fundamental instrument is the Copyright Law of 2001, which sets the basic rules on the implementation of the flexibilities that may allow an A2K-enabling environment.

As indicated previously, although the Mozambican Copyright Law encompasses a wide range of issues, the A2K vision is not adequately addressed. In particular, although the law does provide for some exceptions and limitations, these exceptions and limitations were not conceived as being aimed at enabling A2K, and they are not implemented at all in that sense.

The 2001 Copyright Law needs to be subjected to policy interventions that could promote the law's revision in order to address the interests of the private citizens who wish to effect reproduction for private purposes and quotation, the interests of people reproducing for educational or information purposes, and to promote reproduction of judicial and administrative proceedings and reproduction for libraries and archives. The corresponding provisions in the 2001 Copyright Law must be revised in order to meet A2K objectives.

For example, Article 11 of the 2001 Copyright Law establishes that it is lawful

to reproduce by reprographic means for educational purposes or for examinations within educational establishments ... isolated articles lawfully published in a newspaper or magazine or short extracts from a lawfully published work or short work provided that such use conforms to normal custom and practice.

However, the law does not indicate specifically what is intended by the words 'normal custom and practice'. If the Copyright law aims to effectively promote A2K, the provision needs to be changed in order to define this exception more clearly. And a clear policy needs to be defined to underpin such a change to the law.

Concerning disabled people (especially the visually-impaired), exhaustion of rights, parallel imports and digital works – which impact on many people and many areas – it has already been stated that provisions catering to these areas were not included in the law. The concrete action needed in this regard is to call for policies that may promote the change of the law by introducing provisions that address those categories, all potentially A2K-enabling.

5. Action Points for Stakeholders: the Way Forward

As has been illustrated in detail in the previous sections, the reform of the Mozambican copyright system may be achieved by targeting the following instruments:

- The National Intellectual Property Strategy, under the responsibility of the government as a whole, although its adoption was driven by the Ministry of Science and Technology;
- The 'Books Policy' under the responsibility of the Ministry of Education and Culture;
- The 2001 Copyright Law – enacted by Parliament following the proposal tabled by the government through the initiative of the Ministry of Education and Culture; and
- Access-friendly IP policies of the academic and research institutions.

As may be noticed, the key entity for the issues related to copyright is the Ministry of Education and Culture, and specifically the Ministry's Copyright Office (The National Institute for Books and Records).

Influence for change needs to be directed towards the revision of the relevant provisions of the Copyright Law as detailed in this paper and supported by the ACA2K research. In addition, intervention in the current discussion on the 'Books Policy' will be fundamental to ensuring incorporation of an access to knowledge vision in the discussions and the policy's conclusion.

The National Intellectual Property Strategy can be made to incorporate an access to knowledge vision via lobbying either for the strategy's revision or for inclusion of an A2K perspective in the strategy's Action Plan.

Finally, with regard to IP policies at academic and research institutions, given that none of these institutions has yet enacted any such policy, it is therefore the right moment to intervene in the future process of these policies' elaboration in order to incorporate from the very beginning the access to knowledge vision.

A first step towards achievement of the above-mentioned goals will be dissemination of information about the ACA2K initiative, about the ACA2K findings, and about the access to knowledge (specifically learning materials) dimension that is the focus of ACA2K work in Mozambique. Such dissemination work will include direct contact by the ACA2K team with stakeholders relevant to copyright system reform.

