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The African Copyright & Access to Knowledge (ACA2K) Project: a brief overview

[Droit d'auteur et Accès au Savoir en Afrique (D2ASA): aperçus]

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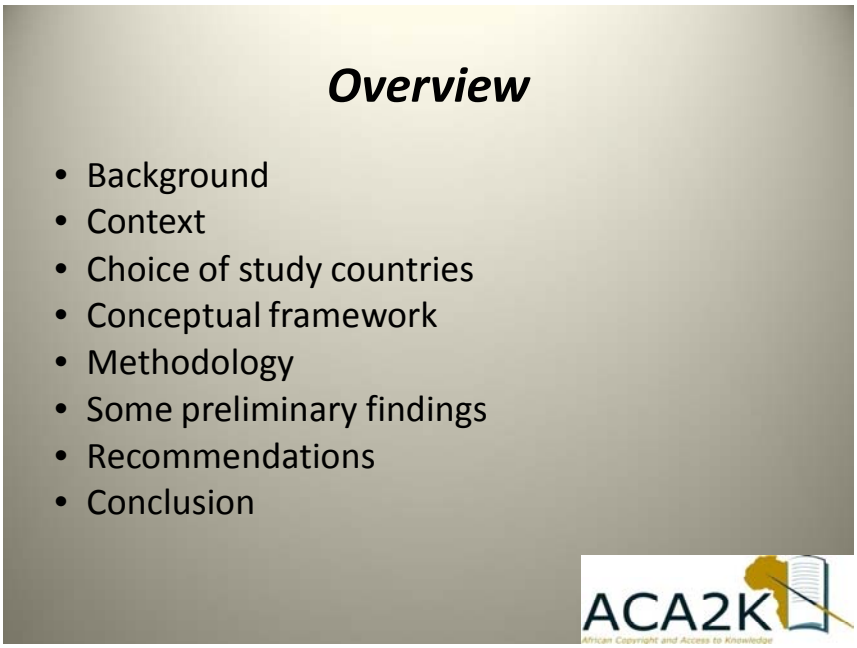
ABSTRACT:

This paper provides a brief overview of the African Copyright & Access to Knowledge Project (ACA2K) which was established in 2007 and which is funded by the International Development Centre (IDRC) in Canada and the Shuttleworth Foundation in South Africa. This project is probing the relationship between national copyright environments and access to knowledge in eight African countries. The paper describes the background and context of the project; why those countries were selected; the conceptual framework within which the project is conducting its research, and the methodology applied. It discusses some preliminary research findings and provides some recommendations of future activities of the ACA2K project.

Aperçus préliminaires du projet « Droit d'Auteur et Accès au Savoir en Afrique (D2ASA) », projet d'études établi en 2007 avec le soutien canadien du Centre de recherches pour le développement international (CRDI) et le soutien africain de la fondation Shuttleworth en Afrique du Sud. Ce projet d'études analyse la connexion entre la politique nationale en ce qui concerne le droit d'auteur et le libre accès aux connaissances dans huit pays africains. La communication décrira la toile de fond et le contexte du projet D2ASA, indiquera les critères de sélection des huit pays étudiés, puis expliquera le cadre intellectuel de la recherche et sa méthodologie. On discutera également de certaines trouvées préliminaires de la recherche et on soumettra des recommandations pour la conduite future du projet.

Good day, Mr. Chair, Ladies and Gentlemen,

I want to thank IFLA for giving me the opportunity to speak to you today about the "African Copyright & Access to Knowledge Project".



I will cover:-

- The background and context of this project
- Choice of study countries
- The conceptual framework and the Methodology used
- Some preliminary findings
- Some Recommendations
- Conclusion



I will give some background as to why the African Copyright & Access to Knowledge Project was established.

Many of the restrictions on access to knowledge in Africa, ... , revolve around restrictive copyright practices and regulations, a lack of access to Internet-based technologies, out-dated paradigms for knowledge collection and dissemination, and the lack of creative and effective government-supported enabling environments within higher education to match the vision of African leaders for knowledge and innovation in Africa in the 21st century." (http://www.sarua.org/?q=content/opening-access-knowledge-southern-african-universities)

Also, African countries are under constant pressure from developed countries to adopt TRIPS-Plus copyright regimes, either through multilateral or bilateral agreements.

Copyright has long been suspected of being a barrier to access to knowledge in Africa, particularly learning materials, but no empirical research has been done before to confirm this.



A number of international studies have been done to investigate the complexities and interrelationship between copyright law and access to knowledge in developing countries. Two of which I was involved in were the Commission on Intellectual Property Rights in the UK in 2002 (*www.iprcommission.org/graphic/documents/final_report.htm),* and the Copy South Dossier in 2006. (http://www.copysouth.org/en/index.htm).

In its Final Report, the Commission on Intellectual Property Rights stated that "Developed countries often proceed on the assumption, that what is good for them, is likely to be good for *developing* countries, but in the case of developing countries, more *and* stronger protection, is *no*t necessarily better". "Developing countries should not be encouraged or coerced into adopting stronger IP rights, without regard to the impact this has on their development, and poor people. They should be allowed to adopt appropriate rights regimes - not necessarily the most protective ones." (http://www.biotech-info.net/independent_commission.html)

The Copy South Dossier says "It is hard to disagree with the UK's Chancellor Gordon Brown on his visit to Mozambique in 2006, when he said that "it is one of the world's greatest scandals that today … two-thirds of Africa's children never complete a primary education … (and are) denied one of the most basic rights of all, the right to an education. Yet children and young people going to school at all levels, including university, require good reading and library materials. They will need to be both affordable and plentiful, which raises the **copyright question**." (http://www.guardian.co.uk/society/2006/apr/10/internationalaidanddevelopment.politics)

In 2006, the Consumers International did a study of 11 developing countries that had received technical assistance from WIPO, using its model law as the copyright framework. This Study

revealed that public access to knowledge was being curtailed more than was necessary, and that WIPO had not promoted limitations and exceptions to those countries. In fact all of them had adopted stricter copyright laws, which exceeded the minimum requirements of international copyright agreements.



There have also been a few regional initiatives to investigate the impact of copyright on access to knowledge, particularly learning materials. In 2005, the tertiary sector and Consumer Institute of South Africa co-organized the Conference on Access to Learning Materials in Southern Africa in Johannesburg. Later that year, the African Copyright Forum was held in Kampala, Uganda, when the African Access to Knowledge Alliance was established. At both conferences, it was very clear that copyright was a major barrier to information and knowledge.

In 2006, the UN Conference on Trade and Development (UNCTAD) and the International Centre for Trade and Sustainable Development's report entitled "Intellectual Property, Education and Access to Knowledge" highlighted many concerns around access issues. (http://www.iprsonline.org/unctadictsd/docs/06%2005%2031%20tralac%20amended-pdf.pdf). The authors of this report are all members of the ACA2K Project.

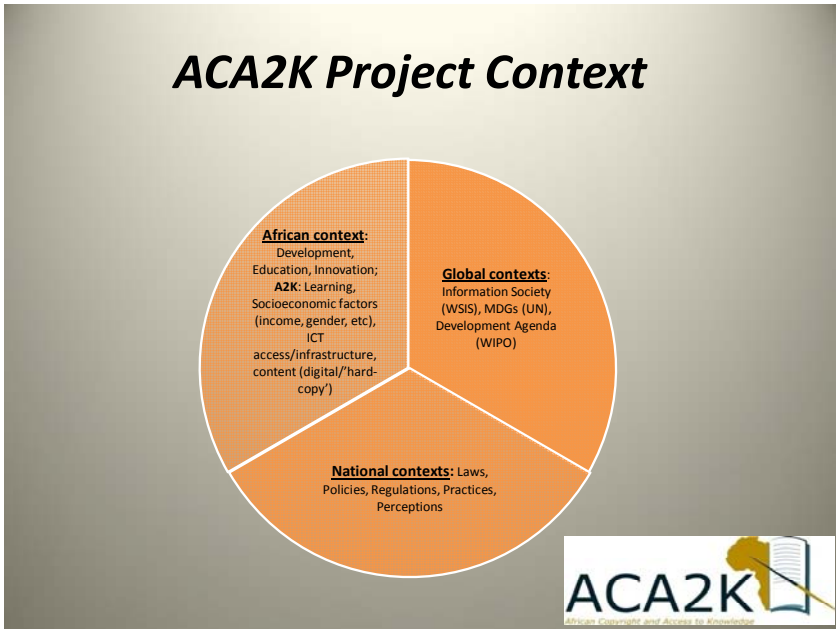
There are other relevant studies at: http://www.iprsonline.org/resources/education.htm).

In 2007, the Southern African Regional Universities Association (SARUA), together with the African Access to Knowledge Alliance, co-organized the "Open Access Leadership Summit" in Botswana, which concluded that copyright was a major problem to access to knowledge in Southern African countries.



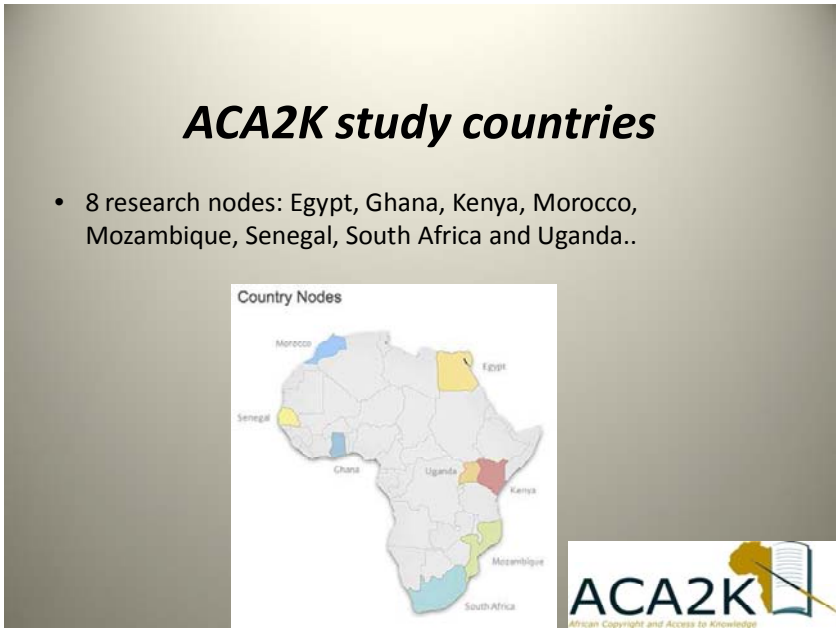
In late 2007, the African Access to Knowledge Alliance, Wits LINK Centre and various African tertiary institutions came together to form a research network called the "African Copyright and Access to Knowledge (ACA2K) Project". Its aim was to engage in research to provide empirical evidence on the relationship between national copyright environments and A2K in African countries. Also, to support the conclusions reached in the aforementioned initiatives.

This project is funded by Canada's International Development Research Centre (IDRC) & the Shuttleworth Foundation in South Africa. It is managed by the LINK Centre at my institution, Wits University in Johannesburg.



This Project is working within the context of international, regional and national intellectual property frameworks, agreements, laws and practices, and in support of the Millennium Goals and in line with the WIPO's Development Agenda.

(*The above slide has been adapted from one of D. Kawooya's slides in his PPT presentation entitled "Copyright and Access to Knowledge (A2K) in Africa: An Empirical Study, Geneva, May 2009)*

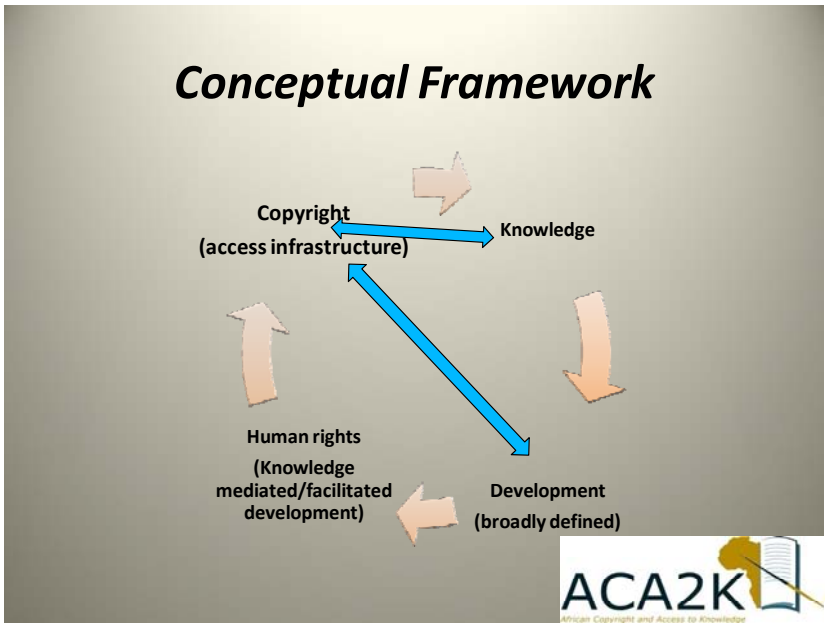


The research project involves eight African countries - Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda. The choice of countries was based on a

number of criteria in order to represent different legal, socio-economic, political, cultural and linguistic contexts. The differences between copyright in Anglophone Africa and the 'droit d'auteur' approach in Francophone Africa were also taken into account.

After my presentation, Assane Faye will be presenting the research findings from one of the Francophone study countries, Senegal.

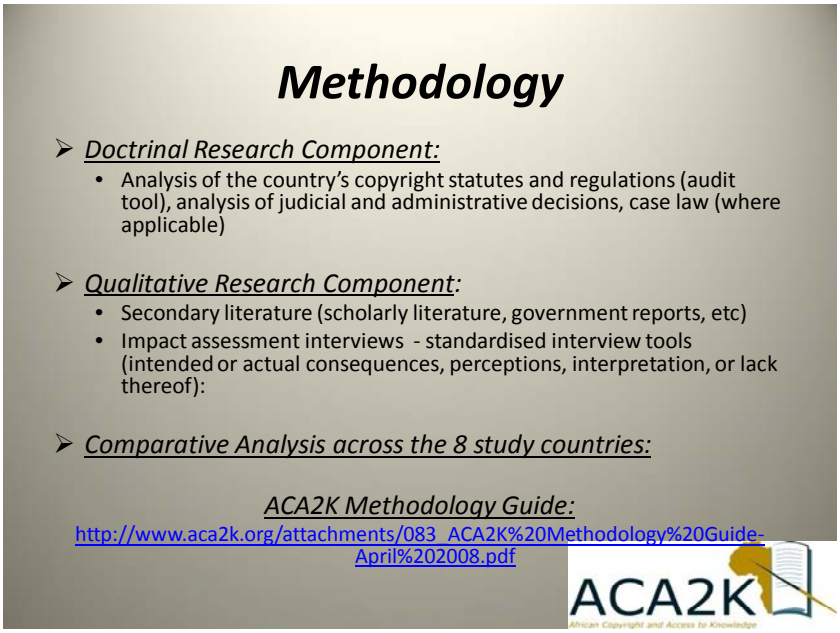
(Source of above image: www.aca2k.org)



"The fundamental conceptual premise underlying the ACA2K research project is that knowledge is essential to human development. Access to knowledge is an essential component of economic progress, cultural growth and individual fulfilment. A just copyright system would, therefore, enable access to knowledge."

"Access to knowledge must be understood in the context of a country's prevailing socioeconomic conditions, physical infrastructure and information and communications technology (ICT) infrastructure. There is, also, a significant relationship between legal environments and access to knowledge … . The ACA2K network thus approaches access to knowledge as a critical developmental and human rights issue that requires a multidisciplinary research methodology." http://www.aca2k.org/attachments/083_ACA2K%20Methodology%20Guide-April%202008.pdf (Section 1.3)

(The above slide has been adapted from one of D. Kawooya's slides in his PPT presentation entitled "Copyright and Access to Knowledge (A2K) in Africa: An Empirical Study, Geneva, May 2009)



The Project's Methodology approach is 2-pronged, namely:

1. **A Doctrinal Research Component** - to analyse countries' copyright laws, regulations, case law and legal decisions;
2. **A Qualitative Research Component**, which analyses secondary literature (government documents, scholarly research and other literature, impact assessment interviews, perceptions, interpretations, etc. by various stakeholders, e.g. Government departments, educational institutions, rights-holders, IP professionals, booksellers, etc.

A **Comparative Analysis** across the 8 study countries will be done.

The **Methodology Gui**de is available for other researchers to use and can be found on the Project's website at: http://www.aca2k.org/attachments/083_ACA2K%20Methodology%20Guide-April%202008.pdf

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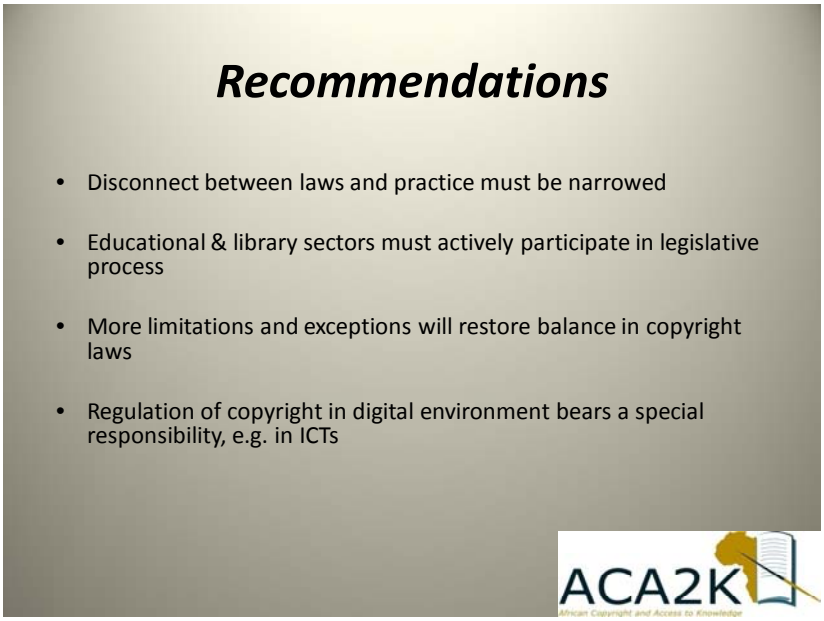


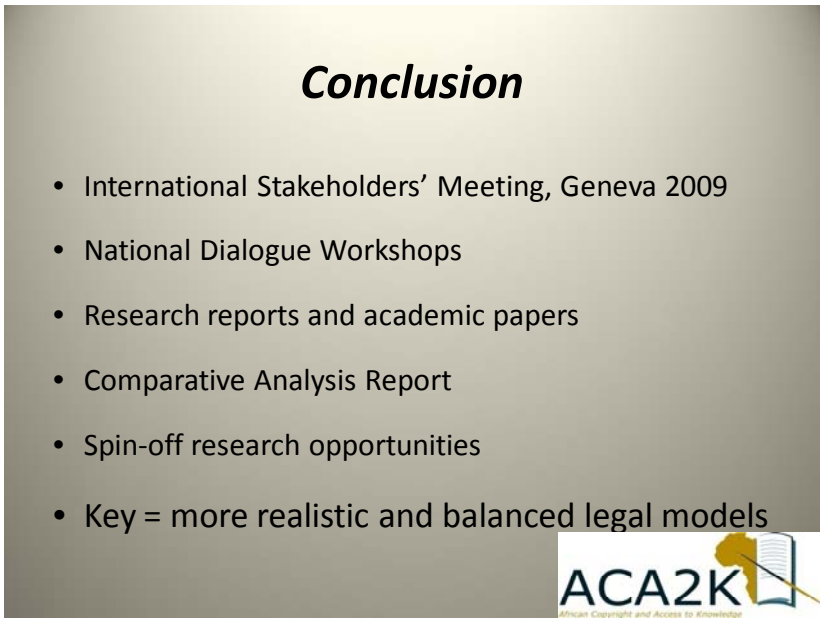
To address this problem and narrow the gap between law and practice, the disconnect between copyright laws and practical realities in these countries must be narrowed in order to sustain or build respect for the concept of copyright.

Copyright holders tend to steer the copyright legislative process. The educational and library sectors, excluded up to now, need to actively participate in the process. The study countries have limited exceptions for education and libraries, and no exceptions for distance learning and literacy programmes. There are also few, if any, provisions for the sensory-disabled. Digitization and digital curation are not provided for either. The need for appropriate limitations and exceptions is crucial to facilitate access to knowledge.

Further strengthening of copyright laws by expanding the scope of protection is likely to exacerbate the enforcement challenges in these countries, by widening the gap between laws and practices.

Softening copyright law by increasing flexibilities (i.e. with more limitations and exceptions), *will more closely align laws and practices.* This will bring stakeholders whose behaviours currently fall completely outside of the copyright licensing, administration or enforcement frameworks, into constructive engagements with rights-holders.

Also, the advent of the Internet and ICTs in general has created significant opportunity for greater access to knowledge. Regulation of copyright in the digital environment, therefore, bears a special responsibility. Applied judiciously, it has the potential to further learning through ICTs, but applied over-zealously, it has the potential to restrict access to knowledge.
http://www.aca2k.org/attachments/180_ACA2K%20Briefing%20Paper1_WIPODevtAgenda-042009.pdf



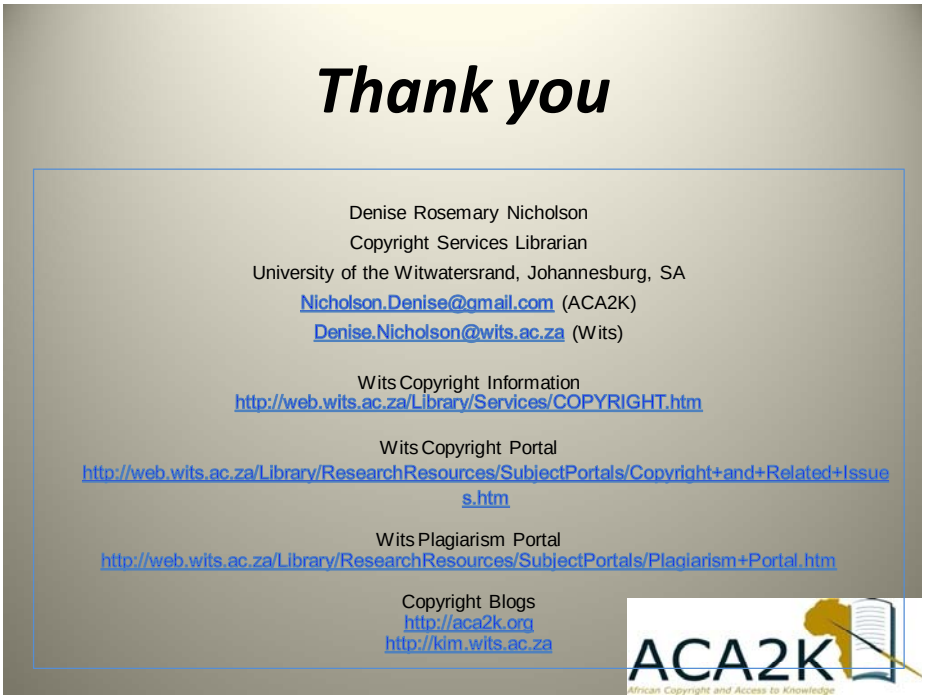
In conclusion:

On 20 May 2009, the Project presented its preliminary findings at an international Stakeholders' meeting held in Geneva. National Dialogue Workshops are being organized by study countries to present their country's findings to all stakeholders. Ghana, Kenya, Uganda and Mozambique have already held their workshops.

Various research reports, academic papers, briefing reports and blog articles are available on the Project's website, and others will be published in due course.

The Core Project Team is currently drafting the Comparative Analysis across the 8 study countries and its Final Report will be made available on open access and in book form, before the Project completion date, which is 31 January 2010. It is likely that spin-off research opportunities will arise from this Project on its completion.

The ACA2K research suggests that the **keys** to effective copyright enforcement and greater access to learning materials are neither stronger rights - nor copyright abolition - but **more realistic and balanced legal models.**



Thanks for listening to me.

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