Bibliotheca Alexandria
Access to Knowledge
Toolkit II

The Access to knowledge movement:
Opportunities, Challenges and the Road Ahead

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Acknowledgement

Contents

- A2K: a Brazilian Experience

Introduction

"Knowledge is non-rival, non-excludable".

The Access to Knowledge (A2K) movement emerged about five years ago with the mission of disseminating knowledge and making it accessible to all people everywhere.

This toolkit is a chance for us to stop and reflect on the achievements accomplished by the A2K activists through the last 5 years. They have managed to bring about an international discussion about "Exceptions and Limitations". The WIPO, now, has a proposal for E&L treaty for disabled reading persons, and there are also requests for the classification and protection of the public domain to be classified and protected. Thanks to the A2K activists endeavours, it is said that the intellectual property scene in Geneva has greatly changed.

However, we still need to ask whether users have actually benefited from the difference, and whether the "Access" is now better than it was five years ago. There is also the question of whether the trend to expand the term of intellectual property protection has slowed down worldwide.

This second BA A2K toolkit is intended to showcase the achievements of the A2k movement up till now; highlight the barriers hindering its progress; envisage its future; and suggest the steps that need to be taken.

In this toolkit, experts from the four corners of the globe have volunteered to share with us their experience, views, and expectations for the A2K movement. They also discuss the challenges, opportunities and future prospects.

Hala Essalmawi
October, 2009.

Demand, Take and Supply: The Ecology of Access

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Full biography p.15

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Demand, Take and Supply: The Ecology of Access

James Love, Knowledge Ecology International[1]

Access to knowledge is important in many different dimensions; including but not limited to personal, social and economic development, the advancement of science, health, freedom and the exercise of political power. The freedom to use inventions and new knowledge is also important for technological innovation.

A key dilemma for society can be described as follows. In general, knowledge is non-rival in consumption, and knowledge goods in general benefit from increasing returns. These characteristics present the possibility of an economy of abundance, particularly when the marginal costs of sharing knowledge approach zero.[2] However, a price of zero does not itself provide a sustainable market for the supply of knowledge goods. This tension is at the core of many of the thorny disputes over access to knowledge. How does one reconcile the public interest in expanding access to knowledge, and realize the benefits of marginal cost pricing of knowledge goods, when those prices do not cover the costs of creating the goods in the first place?[3]

One common approach to the supply of knowledge is to create temporary ownership regimes such as patents, copyrights or other intellectual property rights, and to enable or encourage right-owners to engage in price discrimination, typically under a set of exclusive rights. During the period of monopoly, prices may vary according to a perceived capacity to pay. There are many cases where this approach works well enough, but also cases where its failures are large. The flaws are many, including but not limited to (1) the frequent persistence of high transaction costs and asymmetric information among buyers and sellers, including the failures of right-owners to assess the consumer/user willingness and ability to pay, the difficult task for consumers of evaluating the true value of a

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[1]Judit Rius and Hala Essalmawi provided helpful comments on an earlier draft.

[2]Dominique Foray, **The Economics of Knowledge** (n.p.: The MIT Press, 2004); "No Patent on Ideas", **Public Works Productions**. From The Letters of Thomas Jefferson, (13August 1813), http://pwp.detritus.net/works/writings/no_patent_on_ideas.html.

[3]Joseph Stiglitz, "Public policy for a knowledge Economy", **Remarks at the Department for Trade and Industry and Center for Economic Policy Research,** London, UK (27 January 1999): 1999; J. F. Duffy, "Marginal Cost Controversy in Intellectual Property", **The University of Chicago Law Review** 71, no. 1 (2004): 37-56.

knowledge good, (2) the high costs and sometimes impossible nature of enforcing differential pricing within and between countries, and (3) the harmful consequences of monopolistic control over important knowledge resources, in terms of high prices and other restrictions on the uses of knowledge.

In efforts to expand access to knowledge goods, there are many options, and in recent years, interest has accelerated in finding alternatives to systems of strong exclusive rights. At the risk of over simplifying, these can be thought of as three basic approaches, include two that fit within official legal structures, and one that operates outside of legal systems. The first focuses primarily on expanding legal access without addressing directly the systems of supply. The second focuses on new systems of legal supply that enhance access, while the third focuses on the cases where laws are ignored or rights are infringed.

These will be described here as the **demand-access, supply-access,** and **take-access** approaches. All three are important.

The demand-access approaches include (1) measures to weaken or scale back intellectual property rights in certain areas, such as through exceptions to patentability or copyright protection[4], or limitations or exceptions to the exercise of those rights, including both non-remunerative and remunerative options, or (2) voluntary licensing or concessionary pricing to expand access.[5] These have in common an effort to lower prices, in some cases to zero, for works, data or inventions that may or may not have been costly to create in the first place.

The success of the **demand-access** strategies depends upon many factors, including the political will to enact and use exceptions and limitations to exclusive rights and the willingness of private parties to voluntary license or offer concessionary prices.

The **demand-access** approaches have been most successful in areas where at least one of the following four conditions apply: (1) It is not costly to create goods in the first place, (2) the knowledge good is produced as a byproduct of another activity that is itself sustainable, (3) there is clear evidence of an abuse, or (4) there is consensus that exclusive rights are

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[4]Such as excluding software or business method patents in Europe, not extending copyright or related rights to facts or ideas, etc.
[5]Examples include the Creative Commons, the various free software licenses including the GNU GPL, the proposed UNITAID patent pool, elements of the WHO Global Strategy on Public Health, Innovation and Intellectual Property (WHA61.21), the Open Innovation and Eco-commons Patent Pools.

potentially harmful in a particular context *and* the consequences of the weakened IP regime or the concessionary prices have a second-order impact on the market for knowledge goods.[6]

There are limits to the role of demand-access strategies Compulsory licensing remains an infrequently used tool in both the copyright and patent area, and price regulation in knowledge good markets is not common outside of pharmaceuticals. Even in areas of considerable success, such as the concessionary pricing of academic journals in developing countries,[7] the reach is only partial. For example, the WHO HINARI Access to Research Initiative provides free or low cost online access to thousands of journals in biomedical and related social sciences to local, not-for-profit institutions in developing countries, but only in countries with per capita incomes under $3,500. HINARI does not currently reach "middle income" countries such as Argentina, Botswana, Brazil, Chile, Egypt, Malaysia, Mexico, Russia, South Africa or Thailand, and even where it does operate, it does not extend access outside of the participating non-profit institution.

The **supply-access** approaches offer the possibly of transformative and sustainable changes in the ways knowledge goods are produced. There are many motivations for creating new systems of producing and distributing knowledge goods. Governments may decide that the benefits of expanded access to certain types of types of knowledge goods are important enough to justify public provision of goods, such as the many scientific databases and research reports funded by government agencies with requirement or plans for open access. There are also areas where private actors take the initiative to expand access. We are all familiar with the vast areas where audio visual material and texts are published for free, in platforms that generate income through advertising. This includes radio, television, some free or nominally priced newspapers, numerous specialty publications, and literally billions of web pages. There are private standard organizations funded by corporations that have as their central mission the production of "open" standards, involving technology that can be used by anyone without permission or payment of royalties. Software companies like MySQL release free copies of the source code of a very popular database product, in the expectation that its leadership role and expertise in the development of code will be rewarded in the complementary service industry. Some commercial open access scientific journals try to support themselves through fees paid by authors,

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[6]Barriers to access are sometimes criticized on the grounds of human rights.

[7] "Developing Nations Initiatives", **Licensing Digital Information**, http://www.library.yale.edu/~llicense/develop.shtml

using the rationale that the expanded access to the work is a good investment for the donors that funded the scientific research in the first place. Pharmaceutical companies have in some cases financially supported collaborative "pre-competitive" scientific projects, such as the SNPS project, in the hope that the new knowledge would provide a boost to sterile drug development pipelines. The proposals for medical innovation prize funds would create a novel model of creating a market for medical innovation that is de-linked from the market for the products themselves, which would then be free of intellectual property rights, and available as cheap generic commodities.[8] Similar proposals have been made in other areas of the economy, as diverse as climate change or agricultural innovation. Proposals for new competitive intermediaries to resource knowledge as public goods,[9] or to crowd source the funding of knowledge goods, are attracting considerable attention.[10]

The **supply-access** models are quite diverse in terms of the approach, aims, motivations and results. Some supply-access models are government led, seeking to stimulate economic development or to achieve other public interest objectives. Some initiatives are driven by for-profit businesses, acting in their own self interest either to sell advertising or as potential suppliers of complementary services. Some corporate supported public goods projects, like the Apache, Mozilla or OpenOffice free/open source software projects, are in part efforts to avoid the negative consequences of anticompetitive conduct from software monopolies, or to have more voice over the future development of important technical platforms. Less developed but potentially quite important are efforts by consumer interests to shape markets in ways that better serve their interests, such as the medical innovation prize fund proposal. In theory, libraries or educational institutions could collectively transform the private journal and textbook markets, to supply more open access works, if they were better organized, and used their considerable purchasing power more effectively.

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[8]Burton Weisbrod, "Solving the Drug Dilemma", **Washington Post** (22 August 2003); Bruce G. Charlton, "Mega-Prizes in Medicine: Big Cash Awards May Stimulate Useful and Rapid Therapeutic Innovation", **Medical Hypotheses** 68 (2007): 1-3; Joseph E. Stiglitz, "Scrooge and Intellectual Property Rights: A Medical Prize Fund Could Improve the Financing of Drug Innovations", **British Medical Journal** 333 (23 December 2006): 1279-1280; James Love and Tim Hubbard, "The Big Idea: Prizes to Stimulate R&D for New Medicines", **Chicago-Kent Law Review** 82, no. 3 (2007): 1521-54.

[9]James Love and Tim Hubbard, "Paying for Public Goods", in **Code: Collaborative Ownership and the Digital Economy** (n.p.: MIT Press, 2005).

[10]Sarah Kershaw, "A Different Way to Pay for the News You Want", **The New York Times** (24 August 2008), sec. Week in Review, http://www.nytimes.com/2008/08/24/weekinreview/24kershaw.html?ex=1377316800&en=a5332cdac1db0 f18&ei=5124&partner=permalink&exprod=permalink.

Governments could radically transform software markets by being smart about the use of purchasing power to require more open source code and the wider use of open (and more competitive) standards.

Although attracting increasing attention, it seems as though the supply-access models have not yet attracted as much attention in the access to knowledge scholarship field as have the demand-access approaches. Particularly underdeveloped in the literature are the unifying theories or taxonomies regarding the types of approaches that are feasible and effective, or useful insights into new opportunities, including those that are driven by consumer interests, or those that are relevant and feasible in developing countries, by both producers and users of knowledge goods.

The final model to be discussed is the **take-access** model that exists outside of legal frameworks. Although not well quantified, it is clear that legal models for access are often ignored. People frequently ignore patents and copyrights. The results can be harmful to right-owners, but they can also be quite positive for society. No large institution can actually operate without routinely infringing copyrights and illegally sharing protected works by electronic mail, fax and photocopying. Go into any government or corporate office, any educational institution, and any law enforcement agency, and do an audit of anyone's computer or desk, and you will find many documents that were photo copied, faxed, emailed or otherwise copied from co-workers or professional colleagues, providing information that is quite important for performing day to day core functions of their jobs. Every day Internet listserves distribute countless copies of copyrighted articles to millions of persons. Teachers, scholars and scientists share information with students and each other outside of formal licensing agreements.[11] Intelligence agencies scan foreign broadcasts and newspapers and redistribute works throughout governments and agencies. Individuals download millions of recorded songs, and feature films. Photographs are routinely copied and used on web pages. There is no research exception for patents in the United States, but university and corporate researchers routinely infringe patents in their quest to expand scientific and technology understanding.[12] Infringement is the most effective instrument to control the excessive pricing of copyrighted goods, and without infringement, much of the world's

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[11]Elizabeth R. Horan, "Technically Outside the Law: Who Permits, Who Profits, and Why", **The Emily Dickinson Journal** 10, no. 1 (Spring 2001): 34-54.

[12]Cristina Weschler, "Informal Experimental Use Exception: University Research after Madey v. Duke University, The", **New York University Law Review** 79, no. 4 (2004); Horan, "Technically Outside the Law: Who Permits, Who Profits, and Why".

population would not be able to afford access to many software, entertainment, or educational works.

The **take-access** approach works in the areas where the **demand-access** and **supply-access** models fail. Policy makers give considerable lip service to the notion that infringement should not be tolerated, but given the limited success of the current demand-access and supply-access approaches, a zero tolerance for infringement would make society far worse off. Search engines like Google would not exist.[13] No software company, including Microsoft, could publish complicated operating systems or applications without infringing patents. It is doubtful that any modern mobile telephone and computing devices avoid infringements of some patents. Pharmaceutical and biotechnology research scientists would not be reading everything they needed to read. Government officials would be ignorant of current affairs and enormous bodies of research and policy analysis. Universities would suffer.[14] Works for persons with reading disabilities would be less available.[15] People with low incomes would be excluded from the cultural life of the community, and not be able to engage in many learning opportunities, both in and outside of formal educational systems.

The challenge for policy makers is to address the access issues in a more realistic and thoughtful way, beginning with the assumption that access to knowledge is important, and that the entire ecosystem of knowledge production, dissemination, use and re-use needs to address important access needs. Rather than focus on punitive fines and damage awards, more intrusive surveillance methods, and access destroying technical protection measures, policy makers should examine the opportunities to bring more of the knowledge ecosystem into the legal regimes of demand-access and supply-access.

The supply-access approach perhaps offers the most transformation and sustainable opportunities to expand access. As the means to share knowledge have been transformed by new information technologies, the benefits of more openness have skyrocketed. However, there are many

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[13]R. H. Stern, "Challenging Search Engines under Copyright Law: Part 1", **Micro, IEEE** 22, no. 3 (2002): 6-7; Holger M. Kienle, et al., "Intellectual Property Aspects of Web Publishing", in **Proceedings of the 22nd Anual International Conference on Design of Communication: The Engineering of Quality Documentation** (Memphis, Tennessee, USA: ACM, 2004):136-144, http://portal.acm.org/citation.cfm?id=1026533.1026569.
[14]Siva Vaidhyanathan, **The Anarchist in the Library: How the Clash between Freedom and Control is Hacking the Real World and Crashing the System** (New York: Basic Books, 2005).
[15]Judit Sanjuan, "Survey on Accessible Books in Spanish-Speaking Countries", **Knowledge Ecology International (KEI)**, http://www.keionline.org/blogs/2009/04/28/accessible-spanish/

elements of the production of knowledge goods that are costly, including not only the salaries and expenses of persons who devote time to research, data collection or writing, but also those who edit, manage, distribute, and develop knowledge goods so they are more useful and used. With the technology-driven enhancements in access to knowledge goods, there is an argument that we should collectively be paying more for the production of knowledge goods, including goods supplied by talented persons living in developing countries. However, we are only taking small steps towards creating economic modes of production of knowledge that reconcile the need to address both access and producer incomes.

The need to look closer at the supply-access models is particularly important in developing countries for the following reasons. First, developing countries are experiencing political resistance from Europe and the United States to the expanded use of demand-access strategies, such as the use of compulsory licenses or curbs of excessive pricing of copyrighted works.[16] Second, developing countries are under increasing pressure from Europe and the United States to infringe less, raising questions about the future viability of some take-access strategies.[17] Among the strategic objectives of EU and US trade negotiators are ones that curb copyright infringement in developing country schools, universities and government offices. Third, as developing countries develop better Internet access, through improved new mobile devices, and distance education services improve, the benefits from open access publishing platforms become more useful and relevant. Fourth, prices are a larger barrier to access in developing countries. Fifth, and perhaps most important to emphasize, developing countries have dual interests in access and production of knowledge goods. It will be rational for a poor country to push for lower prices to expand access to knowledge goods; but for a country to become less poor, it will need a work force that produces knowledge goods.[18] For this reason, it is important to focus on the types of supply-access models that provide a role for developing countries to benefit as suppliers of knowledge

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[16]Carlos M. Correa, "Investment Protection in Bilateral and Free Trade Agreements: Implications for the Granting of Compulsory Licenses", **Michigan Journal of International Law** 26 (2004): 331; Peter Drahos and J. Braithwaite, **Information Feudalism: Who Owns the knowledge Economy?** (n.p.: Earthscan, 2002); Bruce A. Lehman, "Intellectual Property: America's Competitive Advantage in the 21st Century", **Columbia Journal of World Business** 31, no. 1 (1996): 6-16; Michael P. Ryan, **Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property** (n.p.: Brookings Institution Press, 1998).

[17]Susan K. Sell, "The Global IP Upward Ratchet, Anti-Counterfeiting and Piracy Enforcement Efforts: The State of Play", **Institute for Global and International Studies, George Washington University** (2008).

[18]Erik Reinert, **How Rich Countries Got Rich . . . and Why Poor Countries Stay Poor** (n.p.: PublicAffairs, 2008).

goods, not simply by embracing strong IPR exclusive rights models as a "power-tool for development," [19] but by embracing new modes of the production of knowledge goods that do not depend upon knowledge enclosures or high prices to consumers.

Governments should consider the development of strategic plans to strengthen the role of supply-access initiatives. These would include a more nuanced discussion of the specific areas where state action could be important to expand access to knowledge, and also to better the opportunities to promote employment in the demand-access modes of production for knowledge goods.

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[19]An uncritical view of strong exclusive rights in a developing country context: Kamil Idris, **Intellectual Property: A Power Tool for Economic Growth** (n.p.: World Intellectual Property Organization, 2002).

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A2K Quinquennium – Now We Are Five

The Library Perspective

Barbara Stratton*

*Copyright and information society consultant and trainer both nationally and internationally.

Full biography p.27

Origins of A2K - the Geneva Declaration and the WIPO [20] Development Agenda

The September 2004 *Geneva Declaration on the Future of WIPO* confirmed the core role that Access to Knowledge and technology plays in human development, and addressed concerns about monopolies and anti-competitive practices in the knowledge economy which unnecessarily increase costs for consumers and inhibit new forms of innovation in the Internet age: in particular patents and access to affordable essential medicine, copyright and licensing and equality of access to education, knowledge and technology (in which libraries, archives and other educational and cultural institutions play an important role), and the impact of such inequalities on economies, democracy and social cohesion. It called on WIPO to acknowledge and address the global problems concerning the governance of information, technology and culture and the advancement of knowledge, particularly with developing countries in mind.[21]

The international library community were early signatories led by eIFL.net: Electronic Information for Libraries, and IFLA, the International Federation of Library Associations and Institutions.[22] They were motivated by the belief that people need equal, fair and universal access to the ideas and data conveyed by information or works of the imagination and that such access promotes social, democratic, economic, educational and cultural well-being. Furthermore, the library profession needed to assume responsibility, both to the creators of intellectual property and to the users of information, to ensure the growth of knowledge by safeguarding access to creative output, information and data.

The *Declaration* was the first public manifesto, giving shape and cohesion to the burgeoning *Access to Knowledge* or *A2K* movement. It launched a process in which civil society, including IFLA, eIFL.net, and latterly the US Library Copyright Alliance (LCA),[23] have worked in partnership with other public interest NGOs under the umbrella name of A2K, alongside developing country governments at WIPO which were

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[20] World Intellectual Property Organization (a UN agency)

[21] "Geneva Declaration on the Future of the World Intellectual Property Organization", **Consumer Project on Technology (CPT),** http://www.cptech.org/ip/wipo/genevadeclaration.html

[22] eIFL.net is an NGO that supports and advocates for the wide availability of electronic resources by library users in developing and transition countries. **EIFL,** http://www.eifl.net; IFLA is the leading international body representing the interests of library and information services and their users and is the global voice of the library and information profession. **IFLA,** http://www.ifla.org

[23] "Committee on Copyright and other Legal Matters (CLM)", **IFLA, http://www.ifla.org/en/clm**; "eIFL-IP Program", **IFLA, http://www.eifl.net/cps/sections/services/eifl-ip; Library Copyright Alliance (LCA) http://www.librarycopyrightalliance.org/**

concurrently proposing that WIPO adopt and then implement a *Development Agenda* to bring about change to achieve fairer Access to Knowledge in the Digital Age. This official governmental track for access to knowledge began as a Proposal,[24] also in September 2004, by Argentina and Brazil on behalf of the *Friends of Development* group of 14 Member States (Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Islamic Republic of Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela). The Proposal manifested the *Friends'* deep concern about the application of the international IP framework that is causing the public domain to shrink and which largely ignored the flexibilities developing countries need to provide the space for them to achieve public policy goals. The aim was to re-focus WIPO towards a more balanced approach to development and to Access to Knowledge for the benefit of all countries, both developed and developing, since trade in information and knowledge ties them all together.

The achievements of the first five years

A2K has become an established global movement, though without structure or formal membership. Like the beginnings of the environmental movement half a century ago, A2K has united a variety of groups and individuals in a common cause–in this case librarians, consumer and disability organizations, academics, the free software community and public health activists. They are brought together by the belief that fair Access to Knowledge is a vital component of an open and democratic society, encouraging creativity and fostering innovation, culture and economic development.

By raising awareness and focussing opinion, A2K has grown in strength and has given confidence and direction to activists seeking a reformed legal framework to deliver Access to Knowledge.

- A2K is supported by prominent figures such as Laurence Lessig (founder of Creative Commons); Joseph Stiglitz, 2001 Nobel prize winner in Economics; and Sir John Sulston, 2002 Nobel prize winner for Medicine, and many others.
- The *Adelphi Charter on Creativity, Innovation and Intellectual Property* was launched in October 2005 by the London based Royal Society for the Encouragement of Arts, Manufactures and Commerce

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[24] "Proposal by Argentina and Brazil for the Establishment of a Development Agenda for WIPO", **World Intellectual Property Organization (WIPO),**
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=32266

(RSA):[25] its international commission included Lynne Brindley, Chief Executive of the British Library; and Gilberto Gil, renowned popular musician and then Brazilian Minister of Culture, alongside prominent academics and civil society campaigners, many of whom helped launch the *Geneva Declaration*.[26]

- A2K has held annual conferences[27] in collaboration with Yale Law School's Information Society Project,[28] which has also set up the *A2K Global Academy*.[29]
- A2K is a topic for phD theses, and a book is planned.[30]
- An *A2K Network* portal, and an online *A2K Handbook* is being developed by Consumers International.[31]
- A2K's public mailing list, which anyone can join, bonds the movement and provides an essential forum for discussion and information exchange.[32]
- the term "Access to Knowledge" has now become common parlance in WIPO and outside it.

The large number of policy issues that have arisen in the digital environment surrounding copyright, privacy, data protection, filtering and preservation have made it necessary for librarians to become vocal advocates for fair access. A2K has provided the network and encouragement for library organizations around the world to join forces with like-minded supporters from the wider civil society community. An important spin-off for libraries in Africa is the *ACA2K* (*African Copyright and Access to Knowledge*) Project which has brought together librarians and lawyers from eight African nations (Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda) to investigate the relationship between national copyright environments and Access to Knowledge in their countries alongside developments in digital commons (such as Creative Commons licensing and iCommons) and to monitor those countries' participation in WIPO.[33]

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[25] "The Adelphi Charter - Criteria for Copyright, patents, trademarks and other Intellectual Property", The Adelphi Charter, http://sitoc.biz/adelphicharter/adelphi_charter.asp.htm

[26] "Who are We?" **The Adelphi Charter,** http://sitoc.biz/adelphicharter/group.asp.htm **for a full list of Adelphi Charter Commission members.**

[27] "Yale A2K2", **Research.yale.edu**, http://research.yale.edu/isp/a2k/wiki/index.php/Yale_A2K2; **Access to   knowledge 2008**, http://a2k3.org/

[28] "Information Society Project", **Yale Law School**, http://www.law.yale.edu/intellectuallife/informationsocietyproject.htm

[29] "A2K Academy Launch", **Access to   knowledge 2008,** http://a2k3.org/2008/09/a2k-academy-launch/#more-143; "A2K Research", **Yale Law School**, http://www.law.yale.edu/intellectuallife/7787.htm

[30] Gaelle Krikorian and Amy Kapczynski, eds., **From Intellectual Property Rights to Access to knowledge**. Zone Books (forthcoming). http://www.zonebooks.org/index.html

[31] **A2K Network.org**, www.a2knetwork.org

[32] "A2K", **lists.essential.org Mailing Lists,** http://lists.essential.org/mailman/listinfo/a2k

[33] The African Copyright & Access to Knowledge Project (ACA2K)**,** http://www.aca2k.org/

IFLA, eIFL.net and the LCA have invested considerable resources to ensure regular attendance at some 25 WIPO committee and general assembly meetings covering copyright, the *Development Agenda* and traditional knowledge, not to mention additional information meetings, seminars and side events. The library delegations have included developing and transition country librarians from Moldova, Slovakia, South Africa, Uganda and Ukraine. They have issued more than 30 statements and papers to inform Member State delegations about library copyright issues and the important role of libraries in economic and social development. Five years ago delegates had little understanding of the role of libraries in the digital knowledge society, now they are all very much more aware of the library position being built, although regrettably there is less overt support coming from the industrialized countries. The library lobby has been successful in ensuring that the library issues remain at the fore and now they even arise spontaneously in delegations' interventions.

It took three years for WIPO Member States to negotiate and agree the 45 proposal *Development Agenda*[34] in 2007 to permeate throughout all WIPO activity and be overseen by a permanent Committee[35] meeting biannually. The particularly contentious issues between the developing countries and the industrialized rich countries were the inclusion of access to knowledge, copyright exceptions and limitations and preservation of the public domain within its scope–all the issues that affect libraries. If the library lobby had not been there alongside the rest of the A2K movement, in person in the meeting room; and in the corridors, putting forward the library case throughout the process, these issues may well have fallen.

Copyright exceptions and limitations now on the agenda

The change of mood brought about by the *Development Agenda* and the lobbying by A2K NGOs also spilled over into the WIPO Standing Committee on Copyright and Related Rights (SCCR). One outcome that may be reflective of this new mood was the Committee's decision to remove webcasting from the proposed broadcasting signals treaty and to not proceed to final treaty negotiation at this stage. Another is that at the request of

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[34] "The 45 Adopted Recommendations under the WIPO Development Agenda", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/ip-development/en/agenda/recommendations.html; "Report of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA)", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=85452

[35] "Committee on Development and Intellectual Property (CDIP)", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/details.jsp?meeting_id=17382

Chile,[36] subsequently supported by Brazil, Nicaragua and Uruguay,[37] the SCCR has since 2008 started to discuss general exceptions and limitations after having commissioned two studies to be made on copyright exceptions and limitations for the visually impaired and for libraries and archives. These reports, plus earlier studies on the digital environment and automated rights management systems, were presented to SCCR in November 2008.[38] A further study on exceptions for education is due to report in late 2009.

The landmark library and archive study by Professor Kenneth Crews of Columbia University examines the distribution and scope of library copyright exceptions in the national laws of 149 countries and analyse the relevant copyright law. It reveals the origins of the library exceptions within national political contexts and shows that, in spite of the international copyright framework, national laws are strongly influenced by regional geography and national history and culture, resulting in wide disparities in provisions for libraries and users. The report compares the distribution of exceptions for uses such as copying for the purposes of study or research (74 countries), copying for replacement (67 countries) or preservation (72 countries), copying for interlibrary document supply (17 countries) and appeal mechanisms for exceptions for circumvention of technological protection measures (26 countries). Twenty-Seven countries have only a general exception for libraries and 21 (20 of which are developing countries) have no library copyright exceptions at all. There are data tables of national copyright law provisions and case studies. The provisions for libraries can now be compared for the first time on a global basis and the report provides the evidence needed to initiate discussions within WIPO or to support arguments to improve national laws and achieve equal treatment.

The findings of these reports led SCCR to confirm that copyright exceptions and limitations shall remain in its work program and it is

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[36] "Proposal by Chile on the Subject "Exceptions and Limitations to Copyright and Related Rights", **World Intellectual Property Organization (WIPO)**,
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=34747;
"Proposal by Chile on the Analysis of Exceptions and Limitations", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=53350
[37] "Proposal by Brazil, Chile, Nicaragua and Uruguay for Work Related to Exceptions and Limitations", **World Intellectual Property Organization (WIPO)**,
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=107712
[38] Sam Ricketson (2003). WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment (SCCR/9/7); Nic Garnett (2006). Automated Rights Management Systems and Copyright Limitations and Exceptions (SCCR/14/5); Judith Sullivan (2007). WIPO Study on Copyright Limitations and Exceptions for the Visually Impaired (SCCR/15/7), Kenneth Crews (2008). WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives (SCCR/17/2). All four studies and their authors' accompanying presentations, given in November 2008, are accessible via: "Informative Sessions on Limitations and Exceptions and on Audiovisual Performances", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_inf_3.html

circulating a questionnaire to Member States to "include limitations and exceptions for educational activities, activities of libraries and archives, provisions for disabled persons, as well as the implications of digital technology in the field of copyright, including as they relate to social, cultural and religious limitations and exceptions" (Conclusions SCCR 18th Session).[39] The World Blind Union (WBU) made an unofficial proposal for a treaty on exceptions and limitations for reading-disabled people[40] that were well received in principle by many delegations at the 17th session of SCCR in November 2008. At the 18th session in May 2009, Brazil, Ecuador and Paraguay put forward the WBU draft as a formal treaty Proposal[41] which, in spite of opposition from the EU and some other industrialized countries, the Committee agreed will remain on the agenda for discussion.

Other challenges

Lack of space prevents further detail here but two further issues are looming. IFLA and LCA are following the WIPO discussions on traditional knowledge protection but to a lesser degree due to resourcing issues. Currently there is a lack of consensus within WIPO about how to progress work on traditional knowledge and the matter is being referred to the 2009 WIPO General Assembly. Should these talks continue, unless there is library and cultural sector policy development in this area achieved through discussions with indigenous peoples and other stakeholders, and greater input by libraries to the WIPO discussions, the issues surrounding traditional cultural expressions could become a time bomb for cultural heritage institutions everywhere.[42] Another concern is ACTA, the multilateral *Anti-Counterfeiting Trade Agreement* currently being negotiated in secret by a number of industrialized countries (including the USA, Canada, Japan and EU), reportedly with the intention to extend it to developing countries. ACTA may grow beyond enforcement issues and become a competitor that undermines WIPO.[43]

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[39] "SCCR/17 Conclusions", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=112533 ; "SCCR/18 Conclusions", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=123192

[40] "WBU Proposal for a Treaty for Blind, Visually Impaired and other Reading Disabled Persons", **Knowledge Ecology International (KEI)**, http://www.keionline.org/content/view/206/

[41] "Conferences, Meetings and Seminars", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/details.jsp?meeting_id=17458

[42] "Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/tk/en/ ; "Traditional Cultural Expression and Libraries", **ALA**, http://wo.ala.org/tce/

[43] **Trans Atlantic Consumer Dialogue (TACD)**, http://tacd.org/

Carpe diem - Librarians must seize the day

In spite of the successes and progress made above, the barriers of five years ago that thwart the mission of library and information services are still extant. End-users and libraries are still more restricted in the digital environment than in the print world, since many statutory exceptions and limitations do not apply to digital works because they are often undermined by licence terms.[44] These constraints, experienced by libraries and archives in all countries, are exacerbated in developing countries which, in spite of the work of organizations such as eiFL.net,[45] have fewer resources for access to electronic materials due to poor technological infrastructure and lack of bandwidth capacity, and fewer knowledge sharing and training opportunities for librarians and archivists.

IFLA, eIFL.net and the LCA published a joint *Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives* at the SCCR-18 meeting in May 2009. This important document is the precursor to further action and sets out the library community's position on the barriers to the delivery of library and information services for access to knowledge in the 21st century digital age. At its heart, it identifies the 12 issues below that WIPO needs to address.[46]

- *Preservation: A library should be permitted to make copies of published and unpublished works in its collections for purposes of preservation, including migrating content to different formats.*

- *Legal deposit: Legal deposit laws and systems should be broadened to include works published in all formats and to allow for preservation of those works.*

- *Interlibrary loan and document supply: Libraries should be able to supply documents to the user directly or through the intermediary library irrespective of the format and the means of communication.*

- *Education and classroom teaching: It should be permissible for works*

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[44] e.g. The British Library estimates that more than 90% of contracts offered to it undermine copyright law. See "Intellectual Property: The British Library's perspective", **THE BRITISH LIBRARY:The world's knowledge**, http://www.bl.uk/ip (BL 100 contracts analysis matrix http://www.bl.uk/ip/pdf/ipmatrix.pdf)

[45] eIFL.net negotiates licences for e-resources, builds professional capacity through training and mentoring, and coordinates support networks such as the eIFL-IP Project's international network of copyright librarians.

[46] "Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives", **IFLA**, http://www.ifla.org/files/clm/statements/StatementofPrinciplesSCCR20.pdf

that have been lawfully acquired by a library or other educational institution to be made available in support of classroom teaching or distance education in a manner that does not unreasonably prejudice the rights holder. A library or educational institution should be permitted to make copies of a work in support of classroom teaching.

- ***Reproduction for research or private purposes:*** *Copying individual itemsm for or by individual users, should be permitted for research and study and for other private purposes.*

- ***Provision for persons with disabilities:*** *A library should be permitted to convert material from one format to another to make it accessible to persons with disabilities. The exception should apply to all formats to accommodate user needs and technological advances. To avoid costly duplication of alternative format production, cross-border transfer should be permitted.*

- ***General free use exceptions applicable to libraries:*** *A general free use exception consistent with fair practice helps ensure the effective delivery of library services.*

- ***Orphan works:*** *An exception is needed to resolve the problem of orphan works, where the rights holder cannot be identified or located.*

- ***Copyright term:*** *Consistent with the Berne Convention, the general term of copyright should be the life of the author plus 50 years.*

- ***Technological protection measures that prevent lawful uses:*** *It should be permissible for libraries and their users to circumvent a technological protection measure for the purpose of making a non-infringing use of a work. Implementation of anti-circumvention legislation in many nations exceeds the requirements of Article 11 of the WIPO Copyright Treaty, effectively eliminating existing exceptions in copyright law.*

- ***Contracts and statutory exceptions:*** *Contracts should not be permitted to override exceptions and limitations. The goals and policies providing for exceptions are important statements of national and international principle and should not be varied by contract.*

- ***Limitation on liability:*** *There should be a limitation on liability for libraries and library staff who act in good faith, believing or having*

reasonable grounds to believe, that they have acted in accordance with copyright law.

Although the atmosphere has changed within WIPO, the library lobby is still working towards securing actual improvement in the international copyright regime in accordance with the library *Principles* outlined above. Diplomacy and advocacy are slow processes and with patience and diligence the library team at WIPO is forging the personal working relationships with Member State delegations that are necessary to achieve change. To support this, greater participation by the library and archive community on the home front is now needed, working in coordination and collaboration with the international lobby, to advocate the library *Principles* to their national governments and secure their support.

Up to now, the law has tended to react largely in response to rightholders, in fear of technology rather than by embracing it. Yet, society, including libraries and creators of works, is finding new ways to exploit technology and is steadily abandoning analogue forms of distribution information and culture in favour of digital. Sustained coordinated library engagement and advocacy is thus all the more urgent as the law is lagging behind both technology and the changes in social attitudes which it brings. The policy issues at stake, those of access to knowledge and social development, are at the core of the library mission to provide access to the world's cultural and scientific heritage both now and in the future, so librarians need to up their game with the rule-makers and the rightholders to change attitudes.

If libraries want to be a significant part of the future information and knowledge society, doing nothing or doing too little is simply not an option. As librarians, we cannot afford not to be involved in the current debates in the forums where decisions are actually made and must not, as a profession, be deterred by the financial cost of ensuring we have the people and resources in place to accomplish our task at WIPO. Failure to invest now in our digital future is likely to bring greater costs to society and to the library mission, which will be more than merely financial in nature. These issues need to occupy centre stage in essential policy-making by the library and information professions for the future of library and information services. We have a unique opportunity before us, but our advocacy needs to become significantly better organized, better networked and better resourced to seize the day, or we will miss the boat.

The Author

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Access to Influence In WIPO's Development Agenda

William New*

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Full biography p.35

One could say the concept of Access to Knowledge is thousands of years old, if one looks at Egypt, and only a few years old, if one looks at the World Intellectual Property Organization in Geneva. In the early 2000s at the United Nations body, it was considered almost scandalous to suggest

open source or open access as a subject of discussion or negotiation. The reaction, at least among leading developed-nation member governments, was that the organization's mandate was intellectual property rights, and these "open" topics were the antithesis of such rights.

Not so today. Although strong resistance remains among developed countries to any perceived attempt to weaken the existing intellectual property system, the general concept of and specific references to open source and access to knowledge have made their way into the lexicon of the organization.

The organization is, however, still a long way from becoming a leading force on the issue, especially as a resurgence of rights holder interests may be at hand under the new leadership of the organization. The first two-year strategic plan (for 2010-2011)[47]
proposed by WIPO Director General Francis Gurry after taking office in October 2008 did not show increased direct attention to access to knowledge.[48] In fact, it sought to elevate IP rights enforcement under the name of "building respect for IP". But the plan did propose an increase in the organization's focus on facilitating global consideration on A2K catchwords like "balance" in copyright and related rights, and limitations and exceptions. So it might be concluded the WIPO leadership is trying to take a hands-off, facilitation role on these issues.

And there may be signs of change with the current WIPO administration. Gurry's historic focus has been stronger on patents, domain names and trademarks than on copyright. In the naming of his cabinet for the next 5 years starting in late 2009, Gurry has elevated "global" issues like climate change or public health, and demoted copyright. Copyright was an area under the responsibility of one of the four deputy directors general, but now is under an assistant director general, one level lower. WIPO officials insist, of course, that there is no lessening of focus on the issue.

Meanwhile, Gurry's team has endeavoured to be seen as showing openness to discussing limitations and exceptions to copyright, especially a possible treaty on access to material for the reading impaired. That issue has become a key focal point for some A2K activists who believe the effort will

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[47] "Conferences, Meetings and Seminars", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/details.jsp?meeting_id=17453
[48] "Draft Proposed Program and Budget for the 2010/11 Biennium", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/edocs/mdocs/govbody/en/wo_pbc_im_1_09/wo_pbc_im_1_09_4.pdf

be difficult to oppose because of the combination of human rights and market failure in providing equal access.

But some developing countries are concerned that a move to a reading impaired treaty first rather than as part of a package may jeopardize other limitations and exceptions issues they see as also ripe for progress at WIPO. The African Group, for instance, views broad support for libraries and access for all types of readers as essential. And publishers like the International Publishers Association in Geneva are working behind the scenes and in plenary meetings to prevent a treaty as they fear harm to their markets from the spread of new technologies for the reading impaired.

Activists and technology industry representatives were among those who contributed to the defeat of proposed treaty on broadcasters' rights in 2007[49], which opened the way for new agenda items at the WIPO Committee on Copyright and Related Rights, like limitations and exceptions.[50]

Some WIPO copyright officials now publicly discuss open access issues, albeit with a bit of dismissiveness, saying the technologies have long been there and were never ignored by the organization. Whatever the attitude, the effect is the same, the secretariat does what its members demand, and enough members insisted on some elements of access to knowledge that it now has a place at WIPO.

Probably the main place that access to knowledge has appeared is in the 2007 WIPO Development Agenda, a list of 45 agreed recommendations [51] for ensuring WIPO activities fully take into account developing country interests.[52] These agreed recommendations are still being implemented under intensive debate, and it is understood that more recommendations will follow in the future.

Recent discussions on implementation of the Development Agenda have addressed open source; Creative Commons licenses; the public domain and IP; and competition. Open source and Creative Commons are seen as

[49] William New, "WIPO Broadcasting Treaty Talks Break Down", **Intellectual Property Watch**, http://www.ip-watch.org/weblog/2007/06/22/wipo-broadcasting-treaty-talks-break-down-over-differences/
[50] Ibid.
[51] "The 45 Adopted Recommendations under the WIPO Development Agenda", **World Intellectual Property Organization (WIPO),** http://www.wipo.int/ip-development/en/agenda/recommendations.html
[52] Ibid.

licensing matters, and developed countries like the United States in 2008 characterised it in WIPO as a "pro-competitive" licensing issue.[53]

The Development Agenda proposal, introduced at the September 2004 WIPO General Assemblies by Argentina and Brazil and later cosponsored by 12 other countries such as Egypt, Kenya and South Africa, opened the door to discussions of access to knowledge. The original proposal had several references to issues related to access to knowledge, which were maintained and expanded through the ensuing three-year negotiation that led to the agenda's adoption in September 2007.[54] The 2004 assemblies agreed to address the proposed agenda in a high-level "intersessional" meeting in mid-2005. In following years, the agenda remained at a high level, under several committee names, despite efforts by some developed countries to sideline it.

Public interest groups and others like libraries and those working on digital rights helped lead the way in building awareness and support for the agenda, which was aimed at ensuring that WIPO's activities equally reflect the interests of developing countries. They faced hurdles such as difficulty in distributing their information at meetings, and getting speaking time in plenary sessions — assuming they were first accredited as WIPO observers at all. Around that time, the WIPO secretariat adopted the habit of saying it had about as many NGOs as member governments (there are 183 members currently). But it failed to clarify that the vast majority of the NGOs represented business interests rather than the public interest.

At the April 2005 WIPO meeting on the Development Agenda, developing countries expanded on their proposal for a Development Agenda, and under the rubric of "promoting development and access to knowledge for all", the cosponsors offered concrete recommendations on four aspects of their original proposal.

First, they argued that reform of WIPO's governance structure is a necessary prerequisite for promoting development in its work. They proposed amending the WIPO Convention to make it more consistent with WIPO's mandate as a UN specialised agency, strengthening the role of Member States in guiding WIPO's work, establishing an independent

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[53] William New, "Development Committee Makes Careful Progress On Implementation", **Intellectual Property Watch**, http://www.ip-watch.org/weblog/2008/07/11/wipo-development-committee-makes-careful-progress-on-implementation/

[8] "Proposal by Argentina and Brazil for the Establishment of a Development Agenda for WIPO", **World Intellectual Property Organization (WIPO),**
http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_31/wo_ga_31_11.pdf

Evaluation and Research Office, and ensuring wider participation by civil society and public interest groups in WIPO discussions and activities.

Second, the Friends of Development proposed principles to ensure that development objectives are central to all processes and outcomes of WIPO norm-setting activities. They recommended independent, evidence-based "Development Impact Assessments," the incorporation of provisions to recognise the difference between developed and developing WIPO member states, and greater public consultation prior to any norm-setting discussion in WIPO.

Third, they proposed mechanisms to ensure WIPO's technical assistance and capacity building responds to the development goals of developing countries. And fourth, the submission argued that WIPO should contribute to international discussion of what developed countries can do to facilitate the transfer and dissemination of technology to developing countries and recommended several new initiatives at the multilateral level."[55] By May 2005, WIPO held a seminar on IP and development that included several presentations on knowledge and IP rights,[56] including a paper by an academic at the American University in Cairo entitled, "Copyright and Related Rights in the Digital Environment: On the Merits of the Open Source Model."[57]

At the seminar, James Love of the Consumer Project on Technology (now named Knowledge Ecology International) presented proposals for new treaties at WIPO including one on access to knowledge and one on medical research and development aimed at promoting public goods. Love said the aim of granting IP rights or keeping open access should be the same — to promote social welfare and protect human rights. He urged governments to buy open source products and called the internet the "most important example of creating value through open standards."

The Development Agenda proposal came to a head at the third of three intersessional meetings between April and July 2005, as Brazil took the lead in thwarting a United States effort to waylay the agenda. But the US rejected a Brazilian proposal that WIPO negotiate an access to knowledge

[55] "WIPO Development Agenda: Developing Countries Submit New Proposals", **Intellectual Property Watch**, http://www.ip-watch.org/weblog/2005/04/06/wipo-development-agenda-developing-countries-submit-new-proposals/
[56] "Conferences, Meetings and Seminars", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/details.jsp?meeting_id=7523
[57] Sherif El-Kassas, "On the Merits of the Open Source Model", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/edocs/mdocs/mdocs/en/isipd_05/isipd_05_www_103981.pdf

treaty. Brazil called for the treaty in part because of the appropriation of publicly funded basic science and research by private companies which it said has the effect of removing the knowledge from the public domain. "The A2K treaty would ensure this information remains public, feeding science and research," Brazil said.

The United States said it could support the A2K treaty proposal, and that it "strongly disagrees" with the principles underlying it and viewed it as "unnecessary". "Intellectual property has been a strong driver of innovation rather than an impediment," the US said.[58]
The A2K treaty has not moved forward significantly since 2005 but remains a prospect at WIPO and there is talk in some circles of reviving focus on it.

During these years, tensions were high at WIPO on policy and administration matters, and members were distracted by internal dissension at the organization that ultimately led to the stepping down one year early of former Director General Kamil Idris. At a February 2006 meeting on the Development Agenda, meeting Chairman Rigoberto Gauto Vielman of Paraguay cut off several NGOs who were speaking on the Development Agenda, even asserting that one group's intervention was "propaganda." He later apologised for his actions.

The US and other developed countries continually sought to bring discussion of the Development Agenda to a rapid close, and to change as little as possible about WIPO or the IP system. Along the way, the number of proposals related to the Development Agenda grew substantially, from a variety of parties, until a process was agreed for handling them. They were gradually consolidated and whittled down, with the differences narrowed through compromise on both sides.

In the months prior to the 2007 General Assembly's agreement on a Development Agenda, the Friends of Development made substantive modifications to their proposals in order to gain acceptance.[59] On A2K issues, they considered ways to preserve and boost access to material in the public domain; and a way within WIPO to discuss new ideas to promote innovation, including open collaborative projects that might lead to public

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[58] "US, Brazil Duel On WIPO Development Agenda", **Intellectual Property Watch**, http://www.ip-watch.org/weblog/2005/07/21/us-brazil-dual-on-wipo-development-agenda/

[59] William New, "Friends of Development May Narrow WIPO Development Agenda Proposals", **Intellectual Property Watch**, http://www.ip-watch.org/weblog/2007/05/28/friends-of-development-may-narrow-wipo-development-agenda-proposals/

goods. Other possibilities were to address exceptions and limitations to international IP rules, which have emerged as a key focus for WIPO, alongside the ongoing implementation of the Development Agenda.

What also has emerged since then is the negotiation by developed nations of an Anti-Counterfeiting Trade Agreement (ACTA), outside of WIPO. This arose after they tried unsuccessfully to get enforcement and protection issues into the Development Agenda, and numerous other venues in Geneva institutions.

Meanwhile, implementation of the agenda continues, and some of the old differences are still underlying the discussions. But after two years, some items are already being implemented, and a structure has been tentatively agreed on how to proceed on all. Time will tell whether WIPO has been fundamentally changed.

The Author

William New joined Intellectual Property Watch in Geneva as Director and Editor-in-Chief in January 2005. Prior to that, he was a senior writer and editor for Technology Daily and other publications of the National Journal Group in Washington (where he continues to contribute occasional articles), and a senior reporter at Washington-based Inside U.S. Trade and managing editor of Americas Trade. Earlier in his career, William worked at the Georgetown University School of Foreign Service. William frequently chairs or speaks on panels, and expert appearances on television and radio programs on CNBC, National Public Radio, and C-SPAN's Washington Journal. William holds a Masters in Latin American Economics and Political Science and an international MBA from the University of New Mexico, as well as a B.A. in Literature from Oberlin College.

Limitations and Exceptions for Reading Disabled Persons: A New Paradigm at the WIPO Standing Committee on Copyright and Related Rights

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Full biography p.51

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Introduction

For over a decade now, there has been a steady increase in rights of copyright and related rights holders with regards to term, scope and enforcement.[60] Limitations and exceptions to rights are the "balancing" provisions necessary to provide access to works but they have not been evaluated in any norm setting exercise at the international level. For the first time in the history of copyright, there are now discussions regarding possible mandatory minimum exceptions. These discussions are taking place at the World Intellectual Property Organization, in Geneva, Switzerland.

The World Intellectual Property Organization (WIPO)

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations. It is supposed to be "dedicated to developing a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.[61]" The four standing committees established by a decision of the General Assembly to determine the need or otherwise for new treaty provisions are the Standing Committee on the Law of Patents (SCP); the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT); the Standing Committee on Copyright and Related Rights (SCCR); and the Standing Committee on Information Technologies (SCIT).

The WIPO Standing Committee on Copyright and Related Rights (SCCR)

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60 See for example TRIPS, WCT, WPPT and FTAs.

61 Established by the WIPO Convention in 1967 with a mandate from its Member States to promote the protection of IP throughout the world through cooperation among states and in collaboration with other international organizations, it has now 184 Member States, which represents over 90 percent of the countries of the world. The highest decision-making bodies of WIPO are the WIPO General Assembly (for composition and functions see article 6 of the WIPO Convention); the WIPO Conference (see article 7) and the WIPO Coordination Committee (see article 8). More at: "What is WIPO?" **World Intellectual Property Organization (WIPO)**, **http://www.wipo.int/about-wipo/en/what_is_wipo.html**

This short essay will focus on the evolving work program of one of the WIPO committees, the Standing Committee on Copyright and Related Rights (SCCR) and its impact on access to knowledge for vulnerable populations such as blind, visually impaired and reading disabled persons.

The first SCCR met in 1998 as the emergence of new digital information technologies, such as the Internet, were making a significant impact on copyright and related rights, as well as copyright industries such as music, film and software throughout the world. The previous copyright committee ("the Committees of Experts") had already created and updated instruments for the digital age such as the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), collectively known as the "WIPO Internet Treaties."

Since 1998, the work program of the SCCR has included a possible non-original database treaty and a treaty for the protection of broadcasting, cable casting and web casting organizations. The committee put aside discussion on a possible database treaty in 2003 when the EU and the US tabled different proposals for the protection of broadcasting organizations. From 2003 to 2007, member states, led by the elected chair Jukka Liedes, tried to reach a consensus on what kind of protection should be given to broadcasting, cable casting and (for a small group of countries) web casting organizations. But, despite many draft treaty proposals, the failure of this entire negotiation became evident at the end of the Second Special Session of the SCCR,[62] when plans to schedule a diplomatic conference were cancelled.

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62 "Conferences, Meetings and Seminars", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/details.jsp?meeting_id=12744

The Limitations and Exceptions Agenda

During the two SCCR meetings in 2005, the Delegate of Chile proposed that the SCCR prioritize and set aside "working time to strengthen international understanding of the need to have adequate limitations, learning from existing models and moving towards agreement on exceptions and limitations for public interest purposes which, like minimum standards, were to be envisaged in all legislations for the benefit of the international community."[63] Chile elaborated its proposal and proposed three areas of work to be undertaken in the SCCR:

1. Identification, from the national intellectual property systems of member states, of national models and practices concerning exceptions and limitations;

2. Analysis of the exceptions and limitations needed to promote creation and innovation and the dissemination of developments stemming there from;

3. Establishment of agreement on exceptions and limitations for purposes of public interest that must be envisaged as a minimum in all national legislations for the benefit of the community; especially to give access to the most vulnerable or socially prioritized sectors.[64]

At the 16th session of the WIPO SCCR, the delegations of Brazil, Chile, Nicaragua and Uruguay formally endorsed a broad work program for Limitations and exceptions (L&E).[65] This broad agenda supported by all of

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63 "Standing Committee on Copyright and Related Rights", **World Intellectual Property Organization (WIPO**), http://www.wipo.int/edocs/mdocs/copyright/en/sccr_13/sccr_13_5.pdf
64 "Proposal by Chile on the Analysis of Exceptions and Limitations", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=53350
65 "Proposal by Brazil, Chile, Nicaragua and Uruguay for Work Related to Exceptions and Limitations", **World Intellectual Property Organization (WIPO),**
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=107712

the public interest/civil society NGOs (including KEI[66]), highlighted L&E addressing education, libraries, archives, innovative services and persons with disabilities, without prejudice to other possible areas.

The WIPO report stated in its summary of the deliberations that "the Committee noted with approval the forthcoming study on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect thereof, in particular for developing and least developed countries. The Committee acknowledged the special needs of visually impaired persons and stressed the importance of dealing, without delay and with appropriate deliberation, with those needs of the blind, visually impaired, and other reading-disabled persons, including discussions at the national and international level on possible ways and means facilitating and enhancing access to protected works. This should include analysis of limitations and exceptions."[67]

Since, as a practical matter, not every area of limitations and exceptions is as mature (in terms of consensual asks and clear stakeholder proposals) as those expressed by the blind and reading disabled communities, the committee was asked by Brazil, Chile, Nicaragua and Uruguay to set out a process providing different stages of work beginning with the collection of information on state practices and analysis, and ending with norm setting.

For some sectors, there is still a need to gather information on existing practices, but this has already been partly done in some other sectors, such as

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66 Knowledge Ecology International (KEI) is a non-profit organization that focuses on the governance of knowledge resources, including access to knowledge. Http://www.keionline.
67 "Conferences, Meetings and Seminars", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/details.jsp?meeting_id=16828

for Libraries and Archives (SCCR/17/2) and for visually impaired persons (SCCR/15/7).

The World Blind Union

For many years, the World Blind Union (WBU),[68] working with other NGOs, including the International Federation of Library Associations and Institutions (IFLA), has petitioned WIPO for global norm setting. One effort took place in 1982, in an experts meeting hosted by WIPO and UNESCO.[69] Since 2002, the WBU has repeatedly asked the WIPO SCCR to address the need for harmonization and norm setting in the area of copyright limitations and exceptions in order to make it easier to publish and distribute copyrighted works that are accessible to people who are blind or have other disabilities. Among other important issues, the WBU seeks to address the existing barriers to exporting and importing works published in accessible formats.

Today, despite the emergence of new publishing and distribution technologies, enormous barriers in accessing copyrighted works confront persons who are blind or otherwise reading disabled. If this were an ideal world, all publishers would make all works available in formats accessible to blind, visually impaired and reading disabled persons from the point of publication. However, in practice, this happens only rarely. What blind organizations refer to as a "book famine" is global. Even in the wealthiest markets and countries with exceptions in place, less than 5 percent of published books are accessible to persons who are blind. In developing countries, access is often more limited.

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68 The World Blind Union (WBU) is an organization of blind and partially sighted persons, representing 180 million blind and visually impaired persons from about 600 different organizations in 158 countries.
69 James Love, "The 1982 WIPO and UNESCO Working Group on Exceptions for Access to Protected Works for Visually and Auditory Handicapped Persons", **Knowledge Ecology International** (**KEI),** http://www.keionline.org/blogs/2009/05/30/1982-wipo-unesco-meeting/

For decades now, blind, visually impaired and reading disabled persons have relied upon cumbersome-to-use audio works, expensive (and fragile) raised paper Braille editions of works, and large type books printed on paper. Since the late 90s, innovations in information technology have created opportunities to expand access, particularly for works that can be distributed digitally over the Internet and mobile phone networks. For example, using standards like the Digital Accessible Information SYstem (DAISY), it is now possible to publish works with highly usable indexes and searching technologies that can be used in many formats such as audio, refreshable raised Braille, or large type readers. Many new digital reading devices are becoming relatively more affordable, even in developing countries (where mobile phone is almost omnipresent).

Today, it is possible to envision a world where reading disabled persons have access to a variety of documents at the same time as sighted people—but the outdated legal environment is still a barrier.

While some countries have limitations and exceptions in their copyright laws to allow authorized entities to make works accessible for persons with reading disabilities without prior permission of copyright owners, there is no legal certainty. Exceptions vary from country to country, and are often either restrictive or focused only on a single older technology, such as raised paper Braille. The consequences of the lack of harmonization are that the importation and exportation of accessible works is difficult because it is legally ambiguous at best. The result is that the total number of accessible works is very low, particularly in smaller market countries where the economy of scale does not exist.

The WBU Treaty proposal for facilitating access to blind, visually impaired and other reading disabled persons

In July 2008, the WBU and KEI convened an expert group to work out the details of a possible treaty. The meeting participants included WIPO negotiators, copyright academic experts, library and public interest groups, and persons representing the broader reading disabilities community. The participants were from different continents and had various perspectives and immediate goals. However, the expert meeting resulted in a concrete draft treaty proposal that, in the fall of 2008, was circulated in English, French and Spanish by the WBU.[70] The Treaty was later translated into Arabic and will soon be in Chinese.

The WBU and its many allies are seeking to expand access to works through a global platform for distributing accessible works. To achieve this goal, it is necessary to create a harmonized global minimum standard for copyright limitations and exceptions for blind, visually impaired and reading disabled persons that would allow exports and imports of works in accessible formats.

The goal is to facilitate greater access to works under copyright limitations and exceptions, and also motivate publishers to publish works in accessible formats. The basic structure of the proposal is a two- tiered set of limitations and exceptions to the rights of copyright owners. According to the WBU, non-profit institutions would have the right to publish and distribute works in accessible formats if four conditions were met:

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70 See meeting report here:"Working Group on Access by the Visually and Auditory Handicap to Material Reproducing Works Protected by Copyright", **Knowledge Ecology International** (**KEI),** http://www.keionline.org/misc-docs/tvi/1982_report.pdfs

1. The person or organization wishing to undertake any activity under this provision has lawful access to that work or a copy of that work;

2. the work is converted to an accessible format, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to a visually impaired person;

3. Copies of the work are supplied exclusively to be used by visually impaired persons; and

4. The activity is undertaken on a non-profit basis.

The Treaty proposal also provides for more limited exceptions for commercial publishers to make works available to the visually impaired when "the work or copy of the work that is to be made into an accessible format is not reasonably available in an identical or largely equivalent format enabling access for the visually impaired, and the entity providing this accessible format gives notice to the owner of copyright of such use and adequate remuneration to copyright owners is available."

If adopted in a form similar to that proposed by the World Blind Union,[71] the biggest beneficiaries of the treaty will be blind and visually impaired persons living in developing countries,[72] as they will have far greater access to works currently only available in high-income countries. However, developed countries will also benefit enormously from both the liberalization of access to foreign collections of accessible works, and the expansion of the rights for the visually impaired, including in areas such as technological protection measures or restrictive contracts. Moreover, given

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[71] The benefits of the treaty could be limited if publishers are able to obtain changes in the text that would limit the beneficiaries, introduce burdensome and unwieldy procedures, or costly remuneration schemes.
[72] The World Blind Union is committed to a campaign to implement a treaty through cooperation with WIPO to provide technical assistance to implement the treaty provisions, and education of librarians and persons living with reading disabilities in developing countries.

the importance of economies of scale, everyone will benefit from the larger global market for accessible works.

The treaty focuses in particular on measures that are needed to publish and distribute works in formats that are accessible for persons who are blind, have low vision, or have other disabilities in reading text, in order to support their full and effective participation in society on an equal basis with others. It would ensure the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

At the eve of the latest SCCR (18th session, May 24-29, 2009), Brazil, Ecuador and Paraguay tabled a proposal that included the WBU treaty proposal.[73] The WBU proposal was introduced by a call to WIPO: "By undertaking such an initiative, the World Intellectual Property Organization (WIPO) would act in accordance with the efforts undertaken by the United Nations to address the need for enhancing, as foreseen in document SCCR/16/2, access to knowledge for the most vulnerable or socially prioritized sectors. Brazil, Ecuador and Paraguay also consider that the establishment of formal negotiations on limitations and exceptions would contribute to the broader aims of the Development Agenda, particularly the ones related to norm setting, as foreseen in document SCCR/16/2."

Political Process

On the last day of the dramatic SCCR 18th session, the conclusions were negotiated behind closed doors and with difficulties but, at the end, the Committee reconfirmed its commitment to work on the issues of the

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73 "Proposal by Brazil, Ecuador and Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU)", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=122732

limitations and exceptions and reaffirmed its commitment to continue without delay "its work in a global and inclusive approach, including the multifaceted issues affecting access of the blind, visually impaired and other reading-disabled persons to protected works."[74] However, the views expressed during the deliberations were varied and sometimes conflicting: a large group comprising all members of the GRULAC[75] countries, the ASIAN Group, China and Russia were supporting the proposal for a binding instrument; some countries expressed the wish for more time to analyze the proposal; and others such as the AFRICAN Group expressed the desire to continue the work on the basis of a broad, global and inclusive framework. The Group B countries (which includes the US, the European countries and the EC, Australia, New Zealand, the Vatican, Japan and Canada) stated that deliberations regarding "any instrument would be premature."

Three issues politically divided countries:

1. Some countries came out in favour of a paradigm shift at the SCCR through work on global mandatory exceptions and limitations, while others favoured the status quo (i.e. continuing work on providing more intellectual property rights to broadcasters or other industries).

2. These two groups took opposing positions on possible work on a binding instrument versus voluntary licensing schemes.

3. Finally, some countries envisioned a broader agenda that would include all access to knowledge issues.

The Non Governmental Organizations (NGOs) representing the public interest (including library organizations) were all strongly supportive of a paradigm shift and the work on a binding instrument to facilitate access and

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74 Conclusions of the 18th session of the SCCR available at: "Conferences, Meetings and Seminars", **World Intellectual Property Organization (WIPO)**, http://www.wipo.int/meetings/en/details.jsp?meeting_id=17458
75Latin America and the Caribbean countries

cross border exchange for the reading disabled persons. They were also supportive of the broader agenda and expressed their commitment to continue working on issues affecting libraries, educational institutions and innovative services[76].

The Rights Holders NGO representatives quickly rallied behind the support for voluntary licensing schemes and expressed openly their fear that the treaty for the blind and other reading disabled persons was an L&E "Trojan horse" and could be the beginning of a "slippery slope" for the SCCR.

There were in fact very few discussions on the substance or the technical issues presented by the Treaty proposal and the process remained essentially political. Sadly, many discussions were representative of the old and traditional divide between intellectual property maximalists and the public interest.

On July 13, 2009, WIPO convened a public meeting "Meeting the Needs of the Visually Impaired Persons: What Challenges for IP" which provided broader platform for proponents and opponents of the Treaty to share their views with a broader audience. Panellists included representatives from the World Blind Union, the DAISY Consortium, International Publishers Association, the Chilean Ambassador to the WTO, the Senegalese Ambassador to the UN in Geneva and a senior official from Canada's Department of Foreign Affairs and International Trade.
Dipendra Manocha (DAISY Consortium) described DAISY's experience making materials accessible to print disabled persons in developing

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76 "The A2k 2009-May Archive by Date", **Lists.essential.org,** http://lists.essential.org/pipermail/a2k/2009-May/date.html

countries. Mr. Manocha emphasized that existing copyright rules restricted scaling up library services and compelled DAISY to waste scarce resources on rendering works accessible in multiple jurisdictions. Chris Friend (WBU) made a compelling speech in favour of the Brazil, Ecuador and Paraguay Treaty proposal which he argued would "specifically facilitate a number of situations enhancing accessibility, such as the cross-border exchange" and sharing of accessible collections legally made under copyright exceptions. Friend underscored to the WIPO conference that it would be an "act of gross inhumanity" if governments looked on complacent with business as usual "whilst 314 million visually impaired readers are incarcerated in a world without books". Ambassador Matus of Chile endorsed the Treaty for the Reading Disabled noting that reading disabled persons' efforts to access culture have been unjustly undermined.

Mr. Herman Spruijt of the International Publishers Association struck a discordant note when he asserted that marketplace solutions and technological developments were all that was needed to solve the problems of print disabled. Responding to a question from the floor on Amazon' Kindle technology, Mr. Spruijt suggested that the Kindle was "premature" as Amazon did not seek permission from the publishers and authors.

It is our hope that the next SCCR (December 14-18, 2009) will be more about evaluating the treaty proposal on its merit: how does it facilitate access to copyright work for reading disabled persons? How will it increase the amount of books in accessible formats that would end the current book famine affecting millions of blind, visually impaired and other reading disabled persons?

For many participants of the WIPO SCCR 18th Session, these questions must be at the centre of the next SCCR meeting and this already indicates a new direction for the Committee and for WIPO.

Key to any progress on the Treaty will be the advocacy of the disability communities in countries, including direct dialogues with national WIPO negotiators, as well as support from the broader access to knowledge community. One difficult area to navigate concerns the relationship between the Treaty for reading disabilities and the broader agenda for access to knowledge. Many publishers and access to knowledge proponents believe a treaty for people with reading disabilities will set an important precedent that can be extended to other areas, such as education or innovative services. This motivates the publishers to block the treaty.

On the other hand, some access to knowledge proponents believe a treaty for people with reading disabilities is a limited deliverable that should be part of a much broader treaty, and they may want to block progress on a stand-alone treaty. Our own view is that the Treaty for reading disabilities is a mature and indeed overdue proposal that should be acted on now, without prejudice or linkage to other limitations and exceptions discussions. It is doubtful that the entire range of limitations and exceptions issues can be considered as part of a norm setting exercise in the near term, and even priority areas like education or libraries are not yet ready for norm setting activity. The Treaty on reading disabilities is important in its own right, and will improve the lives of millions of persons. It will also provide an opportunity for WIPO to demonstrate it can address an important social issue in a balanced and fair way.

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See: http://www.keionline.org/content/view/53/42/

Access to Knowledge, Education, and Intellectual Property Protection in the Arab World:

The Challenges of Development

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Full biography p.63 – 64

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The need for the creation, dissemination, and transfer of knowledge has never been more important than in our present time. The emergence of modern knowledge-affiliated terminologies into our vocabulary is reflective of such a trend. Expressions such as; knowledge gap; knowledge divide; weightless economy; knowledge village…etc. are some examples.[78] In today's world, the production of knowledge represents one of the most important determinants of any country's level of progress and development.[79] It is not unrealistic then to widely claim that 'Knowledge underpins everything, including economies'.[80]

The dilemma for developing countries –including Arab countries – lies in the fact that in the majority of cases these countries are net importers of knowledge and technology. This has increasingly set the alarm bells about the importance and need for reforming the underperforming educational regimes prevailing in these countries, whereby the cycle of knowledge production and development often commences.[81] Notably, the production of knowledge in today's environment is mainly governed and codified by legal rules referred to "asIntellectual Property Rights" (IPRs).

For centuries, the Arab World was the leading unrivalled producer of knowledge in fields ranging from mathematics, to astronomy, philosophy, , chemistry, medicine, and research. Today this is history. Reflective of this are the following indicators. It is strongly believed that for the Arab World to emerge from this gloomy position and attain a more developed position

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[78] Stiglitz J., **Making Globalization Work** (London: Allen Lane, 2006); Rifkin J., **The Age of Access** (New York: Tarcher/Putman, 2006).

[79] Some classify access to knowledge as a human right. See, Vadi V., "Sapere Aude, Access to Knowledge as a Human Right and a Key Instrument of Development", **International Journal of Communications Law and Policy** 12 (2008): 15.

[80] Drahos P., "Access to Knowledge: Time for a Treaty?" **Bridges** 9, no. 4 (April 2005).
 e-article, http://ictsd.net/downloads/bridges/bridges9-4.pdf.

[81] The creation of knowledge is an ongoing process which borrows from existing knowledge and available information. As Hettiger explains" 'invention, writing and thought in general do not operate in a vacuum; intellectual activity is not a creation ex nihilo. Given this vital dependence of a person's thoughts on the ideas of those who came before her, intellectual products are fundamentally social products". Hettiger E., "Justifying Intellectual Property", **Philosophy and Public Affairs** 18, no. 31(1989): 38. Further, the World Bank views development "as less like the construction of business and more like education in the broad and comprehensive sense that covers knowledge, institutions, and culture". World Bank, **The Quality of Growth**. Washington, 2000: XXIII.

capable of creating a sustainable environment for learning and creativity, the following issues must be addressed with urgency.

To start with, there is a greater need to reform the educational regime in the Arab World. In a recent World Bank Report citing the relation between education and economic development, the report found that the quality of education in the Arab World is falling far behind other regions.[82] The lack of funding, financial resources,[83] qualified personnel, government intervention, and political agendas transformed Arab universities from being engines of technological and human capital production into governmental bureaucratic institutions lacking clear vision and goals. Indicative of this is the fact that in the 2008 annual ranking list conducted by the Institute of Higher Education at the Chinese Shanghai Jiao Tong University which assesses the quality of education, no Arab university featured in the top 500 list of universities in the world.[84]

Although Arab expenditure levels on Research and Development (R&D) have been rising in recent years, little impact has been felt in as a result of such expenditure. This may partly explain the Arab world's weak participation and ownership of any major competitive high technology products or influential participation during intellectual property discussions abroad. In fact, the available statistical data is supportive of this. For example, in 1997, high technology exports from the Arab Mediterranean countries to Europe and the rest of the world ranged between 0.7-17 %and 0.8-22 % of all exports respectively; this is lower than the comparable percentage of two countries, Malta and Israel which were around 66 per cent and 32—35 % respectively.[85]

Further, according to the figures published by the United States Patent and Trademarks Office (USPTO), between the periods of 1977—2004, shows that only 507 registrations were granted to patents originating from Arab states, while there were 135 trade mark registrations granted to trade

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[82] The World Bank, **The Road Not Travelled: Education Reform in the Middle East and North Africa** (Washington, DC, 2008).

[83] For example, the majority of Arab universities cannot afford the budget to subscribe to reasonable selections of top tier international academic journals due to lack of resources. See, The IPRs Commission Report, **Integrating Intellectual Property Rights and Development Policy**, (London: Commission on Intellectual Property Rights, 2002).

[84] "Academic Ranking of World Universities", **Institute of Higher Education**, http://ed.sjtu.edu.cn/ARWU-FIELD2008.htm

[85] Nour S., **Science and Technology Development Indicators in the Arab Region: A Comparative Study of Gulf and Mediterranean Arab Countries**, Discussion paper Series (n.p.: United Nations University, 2005): 28.

marks originating from Arab states between the periods of 2000–2004.[86] In addition, a recent World Bank Report states that:[87]

> During the 1990s, European or American patents registration by the Arab scientists were zero percent of the world total. High-technology achievements are also fairly rare—activities such as micro-processing in Morocco or Arab language software production in Egypt are quite unusual. If a significant and positive education–growth relation is mainly the product of the development or adaptation of new technologies, the absence of innovation and the low level of foreign direct investment (FDI) in the MENA region are not good signs for a positive impact of investment in education on current and future economic growth.

More important is the fact that the Arab world is also falling behind the rest of the world in innovation and global technology attainment. A recent Report titled the *Global Information Technology Report 2006—2007* explains this.[88] The report focuses on Information and Communication Technologies (ICT) particularly on four areas (1) networks and changes in everyday life, (2) generation networks in telecommunications, (3) cities' e-government and global competition, and (4) filtered Internet and the moral dilemma for multinational corporations. Out of the 122 countries surveyed in the report, only four Arab states feature in the top 50 countries. These are the United Arab Emirates (UAE) ranked twenty-ninth, Tunisia ranked thirty-fifth, Qatar ranked thirty-sixth, and Bahrain ranked fiftieth.

Illiteracy levels in the Arab World are also on the rise. Recent estimates suggest that illiteracy in the Arab World stands at about 70 million out of its 300 million population, thus making it one of the highest illiteracy rates in the world.[89]

Furthermore, access to knowledge via internet connectivity and access in general within the Arab world remains low. Although there are signs of improvement through recording higher growth rates of internet access during the past few years, the region still lags behind many others in its

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[86] **United States Patent and Trademark Office,** www.uspto.gov

[87] The World Bank, **Supra** 6 at 50.

[88] Dutta S. and Mia I., **Global Information Technology Report: Connecting to the Networked Economy** (n.p.: 2006–7). The report issued jointly with INSEAD since 2002 – aimed at gauging countries' capacity to leverage ICT for growth and development.

[89] Another study carried out in January 2008 by the Tunis-based Arab League Educational Cultural and Scientific Organisation found that 30% of the approximately 300 million people in the Arab World were illiterate. See, "The program's guidelines in Education", ALECSO, http://www.alecso.org.tn/lng/index.php?option=com_content&task=view&id=39&Itemid=41.

development in this particular area.[90]. It is important to focus on this issue because of the great potentials of internet access and digital technology have in the area of education and research. This is particularly if we take into consideration the enormous amount of scholarly literature and academic data available online these days.[91]

These shortfalls have resulted in a low research output contribution at the global level and a lack of notable scientific concentration in the Arab world. In a survey conducted by the World Health Organization (WHO) and the Eastern Mediterranean Regional Office (EMRO) analyzing the status of medical journal publishing in the Arab world, out of 200 surveyed journals, the survey found that only 52 journals in the region have an International Standard Serial Number (ISSN). Moreover, the survey showed that up to 60 % of the journals surveyed have no manuscript selection criteria, as they publish 'what they receive' and that only 2 % of indexed scientific publications come from these parts of the developing world.[92] Moreover, Arab countries collectively produce less than 1 % of world publication citations and contribute less than 0.5 % of papers appearing in the 200 leading medical journals. In addition, efforts to undertake technical translation into Arabic language of the up-to-date international research and findings remain minimal.[93]

One must state that the idea of explaining the above is not to criticize the current status quo in the Arab World but rather to alert policy makers to the weaknesses and priorities where focus, attention, and resources must urgently be directed.

In facing the above challenges, the Arab World should utilize the intellectual property regime by enabling it to play a more vital role in the development and progress of the region. This would, however, prerequisites an organized national effort, were planned cooperation; collaboration; and shared vision between all stakeholders is present. More importantly, Arab countries need to focus on activating and enabling the link between intellectual property, development, and sustainable learning, but at the same

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[90] It has been reported that only Sub-Saharan Africa posts lower average ICT access and performance standards than the Arab World. See, Dutta S., Shalhoub Z., and Samuels G, "Promoting Technology and Innovation: Recommendations to Improve Arab ICT Competitiveness", in **The Arab World Competitiveness Report 2007** (n.p.: INSEAD, 2007): 81-82.

[91] On how to maximize access to information see, Tellez V., "Open Access Models for Increased Access to Education and Research", in **How Developing Countries Can Manage Intellectual Property Rights To Maximize Access To Knowledge**, edited by Xuan Li and Carlos Correa (n.p.: The South Centre, 2009).

[92] "Medical Journals in the WHO Eastern Mediterranean Regio" (Cairo, Egypt Conference Report, 7–9 October 2003).

[93] UNDP, "Arab Human Development Report 2002: Creating Opportunities For Human Generations", in **Arab Fund for Economic and Social Development** (New York: UNDP, 2002).

time refrain from viewing and treating intellectual property protection from a legal perspective in isolation from other economic, social, and cultural disciplines. This should take place in a number of ways.

First, Arab WTO-member countries need to take a broader look at their obligations under the TRIPS Agreement, particularly those obligations that link intellectual property protection with development and access to knowledge. For example, the Preamble of the TRIPS Agreement states its objectives to include:

> Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives.

In addition, Article 7 of the TRIPS Agreement states:

> The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.[94]

It is needless to say that the above Articles should form an integral ingredient of any Arab country's national agenda which aims towards utilizing the intellectual property protection regime and the creation of knowledge, sustainable development, and innovation.

Second, the Arab countries need to make use of the flexibilities available under the international intellectual property protection regime and the TRIPS Agreement, particularly those related to the creation, promotion, sustainability, and diffusion of knowledge and creativity. As known, these flexibilities do not apply in an automatic manner but rather require a

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[94] Article 8 of the TRIPS Agreement states:
1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.
2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.
Article 66 of the TRIPS Agreement states:
2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base.

substantial and educated effort to include them under the national intellectual property protection regime. Examples of these flexibilities are those ones available under copyright law which relate to fair use, in addition to educational, research, translation, learning, and personal use exceptions. In fact, it is recommended that Arab countries incorporate as many of these flexibilities under their national copyright legislations as possible in order to be able to fully utilize and capture the benefits of such exceptions.

In the area of patent protection, Arab countries should also incorporate those flexibilities which would facilitate access to knowledge and transfer of technology under their national protection regimes. Exceptions such as the Bolar exemption, the research and development exceptions, and exceptions related to educational, learning, and personal use are vital to the knowledge-creation process which would also play a positive impact upon the development efforts of these countries. Notably, incorporating these exceptions nationally conforms to Arab states' commitments under the TRIPS Agreement.

It must be made clear that it is not enough for Arab states to merely incorporate these flexibilities within their national legislations. What is of equal importance is the need for the concerned national bodies and authorities to heavily invest in educating and raising public awareness about the existence of these flexibilities. it is useless to incorporate these exceptions under the national law if individuals and the public are unaware of their existence and lack the necessary legal and administrative means and tools to activate them. This may be undertaken through intensive media campaigns, nationwide educational, and expert-led workshops and seminars for both public and private sector representatives and personnel; in addition to the diffusion of information through national networks and concerned stakeholders. Universities, researchers, think tanks, national libraries, non-governmental organizations (NGOs), research centers and concerned institutions (public and private), and even individuals from the public should be aware of the existence of these flexibilities and the manner by which they are applied and utilized.

Third, Arab countries should resist the temptation of incorporating under their national legislations higher levels of intellectual property protection than those available under the TRIPS Agreement. This applies to both Arab WTO members and those which are in the process of acceding to the Organization. It has been realized that as a result in the increase in numbers of bilateral free trade (FTAs), Bilateral Investment Treaties (BITs), and association agreements (AAs) globally, the international standards of

intellectual property protection have risen to new levels exceeding those projected under the TRIPS Agreement, hence resulting in the so called TRIPS-Plus effect.[95] It is believed that this would have a negative impact on the access to knowledge and educational capacities of developing countries on both the short and long terms. Prolonging the protection terms of copyrights and patents, limiting the use of flexibilities, and circumventing the available policy space of developing countries are some common features of these agreements.[96] In fact, in the case of the Arab world, the impact of these agreements on education, access to knowledge and technology might be more severe due to the above discussed shortfalls.

Although some Arab states have already signed similar bilateral deals,[97] these countries must invest heavily in the 'creative implementation' of these agreements. They should use the remaining policy space available to them to balance the negative impact of strengthened intellectual property protection, and to preserve the interest of the society as a whole.

Fourth, Arab countries should focus on building and strengthening the necessary checks and balances surrounding the intellectual property protection regime. As stated, intellectual property protection should not be viewed in isolation from other legal, economic, cultural, and social factors. It is vital for this process to nationally ensure the right to education, subsidizing activities and initiatives related to learning, research and development, and the proper diffusion of attained knowledge and technology. Also, there is the pressing need to adopt_modern competition laws which would curb the abuses of intellectual property rights. Needless to say that adequate medical insurance schemes, social security arrangements, and proper pension programs must also be in place. When the basic needs of the public are provided, there would be a higher chance and desire in investing more in education, learning, and research hence higher outcomes of creativity and innovation.

Finally, the Arab Islamic history is full of success stories which may form the basis for a global philosophical approach of intellectual property protection and knowledge transfer and diffusion.[98] In fact, the prohibition of knowledge monopolization, the treatment of knowledge as a public good,

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[95] P. Drahos,"Developing Countries and International Intellectual Property Standard-Setting", **Journal of World Intellectual Property** 5, no. 5 (2002); M. El Said, "The Road From TRIPS-Minus to TRIPS to TRIPS-Plus: Implications of IPRs for the Arab World", **Journal of World Intellectual Property** 8, no.1 (2005).

[96] The IPRs Commission Report, **Supra**: 7.

[97] For example US-Oman FTA, US-Jordan FTA, US-Bahrain FTA, and US-Morocco FTA.

[98] M. El Said, **The Development of Intellectual Property Protection in the Arab World** (New York: Edwin Mellen Press, 2008).

and the unselfishness of Arab and Muslim physicians, astronomers, and thinkers were essential factors in the transformation and emergence of the West from its dark ages to today's standing as a superpower.[99] This historical evidence suggests that when knowledge and information were freely available, the benefits would extend beyond geographical borders. At a time when theories linking free trade to peace and prosperity are flourishing, the Islamic teachings and principles related to encouragement of science and education may truly contribute to global peace and sustainable development. The above reiterates what has been said in this regard; information wants to be free!

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El Said has several books and publications in the area of intellectual property rights. Including:

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The Development of Intellectual Property Protection in the Arab World, Edwin Mellen Press, New York: 2008. Link available at http://www.mellenpress.com/mellenpress.cfm?bookid=7465&pc=9

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Addressing Access to Knowledge Issues in Africa

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Introduction

The Universal Declaration of Human Rights states that

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". (The Universal Declaration of human Rights 1948, 19)

Indeed this is a noble statement, but unfortunately the practical application of these ideals is not always visible to, or experienced by consumers of information in Africa.

Abrahams et al (2008, 7) state that

Many of the restrictions on access to knowledge in Africa, but particularly in the Southern Africa Region, 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.

Some African countries, under pressure from developed countries and strong lobbying from rights-holders particularly in the entertainment industries, have adopted stricter copyright regimes with extended copyright terms, which far exceed the minimum requirements of international intellectual property agreements, for example, Berne Convention and the Trade Related Aspects of Intellectual Property Rights ("TRIPS") Agreement. This has resulted in restricted access to information and knowledge and the sharing of resources across borders has been negatively affected.

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 not 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." (*Independent Commission Finds Intellectual Property Rights Impose Costs on Most Developing Countries and Do Not Help to Reduce Poverty. Press Release.* Commission on Intellectual Property Rights, 2002.)

The Western concept of copyright is also foreign to many African countries, since collective ownership has been their tradition. The approach to copyright in Francophone Africa differs quite considerably from Anglophone Africa. Francophone countries give more emphasis on moral rights or 'droit d'auteur', whilst Anglophone countries focus more on economic rights and less on moral rights of authors. Copyright laws imposed under colonial rule have either not been updated, or have been updated without including appropriate limitations and exceptions ("legal flexibilities") allowed in international intellectual property agreements. Most African countries have very few appropriate limitations and exceptions for education, libraries, research and for persons with sensory-disabilities. Instead of facilitating access, their copyright laws restrict or prohibit access to knowledge and cross-border exchange, thus affecting developmental and economic transformation on the continent.

Internationally, copyright regimes are becoming stricter and far exceed the minimum requirements of international intellectual property agreements. The use of digital rights management systems (DRMs) with technological protection measures (TPMs) and restrictive digital licences effectively 'lock up' digital content and give rights holders full control over access and use of digital content, at a high fee. This restrictive scenario has led to the Open Access Movement supported by the Open Society Institute and other international organizations and has mushroomed into Access to Knowledge (A2K) initiatives around the world. African researchers, educators and librarians have seen the benefits of openness and the sharing of resources and are therefore adopting the open access route too.

Although the process has been slow, due to lack of resources, sustainability and other problems, there are various institutional repository projects and digitization projects currently underway in African countries. Although conventional publishing methods for scholarly communication still continue for a host of reasons, African authors are being encouraged to publish on an open access platform for the benefit of other Africans and so that their works reach a global audience.

The standard practice for African researchers has been to publish papers and research results in international journals, which are only

accessible to their fellow-researchers if they have access to these expensive journals or library users if their libraries can afford them. Many libraries in Africa cannot afford to subscribe to these expensive journals, so very few Africans get to benefit from those articles or papers. By engaging in open access publishing, African research and other communications are becoming visible on the global stage. Organizations and projects addressing access to knowledge in the international arena have made huge inroads and have influenced organizations, libraries and authors in Africa to join the Access to Knowledge (A2K) movement. A2K has become a 'buzz word' and many conferences and workshops have been held in Africa in recent years to promote open scholarly communication and open learning.

Kotecha states

The tipping point for African research and innovation will not be merely the ability to fully access and use the new abundance of global knowledge and ideas but to make an active and significant contribution to its creation. (Abrahams et al. 2008, 7)

This indeed should be the goal of open access to the knowledge output in Africa.

Through projects initiated by the Southern African Regional Universities Association (SARUA), Southern African universities are exploring the best ways to improve access to knowledge for students and researchers.

Removing constraints in accessing published knowledge for research and teaching, whether in print or digital forms, is essential for the effective participation of universities in the knowledge economy and for the development of research centres in Africa.(*Access to Knowledge Southern Africa: Universities, Open Research and Open Science in the Internet Age,* 2007)

Given the adoption by the World Intellectual Property Organization (WIPO) of the Development Agenda, access to knowledge educators and researchers are also looking at human rights norms and principles as an appropriate basis for the future development of copyright policy and legislation, (Wong 2008). Copyright limitations and exceptions are now a key agenda item for WIPO's Standing Committee on Copyright and Other Related Rights (SCCR). The Africa Group is a strong supporter of the WIPO Development Agenda.[100]

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[100]Available at: http://www.wipo.int/ip-development/en/agenda

In recent years, WIPO commissioned the following studies:

- Study of Limitations & Exceptions for the Visually-Impaired.[101]
- Study on Copyright Limitations and Exceptions for Libraries & Archives.[102]
- Study on Limitations & Exceptions of Copyright and Related Rights in the Digital Environment.[103]

In 2009, WIPO commissioned a further Study on Limitations and Exceptions. Researchers in five different regions (including Africa) have been appointed to do this important research.
Pro-Access to Knowledge organizations, such as the International Federation of Library Associations and Institutions (IFLA), the Electronic Information for Libraries (eIFL), the Commonwealth of Learning (COL) (Canada), Consumers International, IQSensato and many other non-government organizations are strongly campaigning at the international level for more appropriate copyright regimes in the digital environment, and in particular, to assist developing countries in the process.

eIFL supports and advocates for the wide availability of digital resources by library users in transitional and developing countries, including several countries in Africa. Its core activities are to negotiate affordable subscriptions with publishers on a multi-country consortial basis, to support national library consortia and to maintain a global knowledge sharing and capacity building network in related areas, such as open access publishing, copyright and related intellectual property rights, open source software for libraries and the creation of institutional repositories of local content. The author is a member of eIFL's intellectual property project (eIFL-IP).

In 2009, based on the WIPO Model Copyright Law, eIFL published its Draft Model Copyright Law, recommending fourteen limitations and exceptions or 'free' uses for users of information. This document sets out useful guidelines for countries seeking to amend their copyright laws, particularly in Africa and other developing countries.

For years, copyright has been a barrier to accessing knowledge in Africa but no empirical research had been done to substantiate these claims. To address this issue and to establish what the exact position is in relation to

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[101]Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696
[102] Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192
[103] Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=16805

copyright laws, principles and practices in Africa, the International Development Research Centre (Canada) and the Shuttleworth Foundation (South Africa) have sponsored the African Copyright and Access to Knowledge Project (ACA2K).[104] It is managed by the Link Centre at the University of the Witwatersrand, Johannesburg's Graduate School of Public and Development Management (P & DM) in Parktown, Johannesburg, South Africa. The author is the Policy and Dissemination Advisor for the ACA2K Project.

Extracts from the ACA2K Research Briefing Reports:

The primary objective of the project is to probe the nexus between national copyright environment and access to knowledge using learning materials as a proxy for knowledge. The project engages a network of over thirty experts from law, economics, information sciences and gender studies, based almost exclusively in Africa. It has research nodes in eight African countries; namely, Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda. ACA2K study countries were selected to represent differences in legal, socio-economic, political, cultural and linguistic contexts. (ACA2K May 2009, 2)

The fundamental conceptual premise underlying the ACA2K research project is that knowledge is essential to human development. Access to knowledge is thus an essential human right, as it is a component of economic progress, cultural growth and individual fulfilment. And thus, according to the ACA2K framework, a just copyright system will be one that enables access to knowledge (A2K). The ACA2K Network therefore approaches A2K as a critical developmental and human rights issue and an issue that requires a multi-disciplinary research methodology. (ACA2K May 2009, 2)
While different countries in Africa may exhibit different A2K problems, the ACA2K project assumes that it is generally evident across Africa that national educational systems are failing to meet the needs of the vast majority of their constituents. (ACA2K May 2009, 2)

The ACA2K project hypothesised that one such cause is inadequate access to learning materials. The predominant legislative mechanism used to facilitate the creation and dissemination of learning materials

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[104] Available at: http://www.aca2k.org

is copyright. Paradoxically, copyright law may also be a constraint on access to learning materials. (ACA2K May 2009, 2)

Copyright has the capacity to both promote and hinder access to knowledge, particularly learning materials. The ACA2K project therefore adopted a two-pronged research methodology, namely, a doctrinal analysis of the legal elements of the country's copyright and access framework; and qualitative investigation of the practical perceptions of, interpretations of, and/or interactions with the law. (ACA2K May 2009, 4). By combining the findings from these two research components, ACA2K researchers are generating a picture of each study country's copyright environment (i.e. the interaction between laws and practice). (ACA2K [Website])

The ACA2K Methodology Guide was launched internationally, via media releases and the ACA2K website, on World Intellectual Property Day in late April 2008. It is available for other researchers to use and is downloadable from the ACA2K website in four languages (English, French, Portuguese and Arabic).

In general, ACA2K research indicates that creative works are strongly protected by national copyright laws in all the African countries studied. In fact, contrary to public belief and reputations, copyright laws in all eight study countries are compliant with or exceed international standards. At the same time, there is little awareness and implementation of copyright flexibilities that could facilitate access to knowledge. Indeed, the term 'access to knowledge' has little salience within the corridors of copyright lawmaking and policymaking in most study countries. (ACA2K April 2009, 1)

ACA2K research also indicates that in all eight ACA2K study countries, copyright laws exceed the minimum standards required in international agreements. Copyright limitations and exceptions are too narrowly and/or vaguely defined and restrict rather than facilitate access in a balanced and effective manner. The research from most study countries indicates that

Rights holders are systematically beginning to enforce sanctions against perceived copyright violation and infringement. It becomes increasingly obvious that national copyright laws as they are currently formulated, when enforced, will create significant barrier to accessing knowledge. (ACA2K April 2009, 1)

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In general, ACA2K research indicates that the state of access to knowledge (and learning materials in particular) in Africa is precarious. In all cases, a pro-access copyright law, with appropriate and clear exceptions and limitations (legal flexibilities) which would support access to learning materials, would go a long way in facilitating access to knowledge. In some cases, however, the effects of a pro-access copyright law might be most visible not in the present time, but in the near future. Given the enormous opportunity that ICTs and the Internet provide to learning in Africa, it is imperative that national copyright laws duly and speedily reflect this opportunity, and act to promote learning through these new and effective means. (ACA2A May 2009, 9)

Limitations and exceptions in Africa need to be grounded in practical realities and in the context of countries' developmental states. In its address to the WIPO Standing Committee on Copyright and Related Matters (SCCR) in Geneva in May 2009, the ACA2K Project team recommended that the international copyright and A2K communities, and the WIPO SCCR in particular, need to focus on both law and practices as they proceed with their discussions on copyright limitations and exceptions. Researchers stressed that WIPO's technical assistance to developing countries should be based on cognisance of the gaps that exist in the implementation of copyright flexibilities permitted by international instruments. (ACA2K May 2009, 9)

It is notable that the ACA2K research findings also highlight that there are various other factors, apart from copyright law, that inhibit or restrict access to knowledge. These include unaffordability, unavailability, and in some cases, low literacy levels and the lack of a reading culture. The research also shows that in all the study countries except for South Africa, the effects of copyright law on the ground, however restrictive the law may be, are minimal, due to weak enforcement. In practical terms, this means that unpunished copyright infringement, with regard to learning materials, is the main channel for A2K in the ACA2K study countries. The stricter the copyright law, the higher the levels of non-compliance! Consequently, access is primarily obtained through, arguably, copyright infringement. So it is generally infringing activities and not copyright law that is facilitating access to knowledge in most of the study countries, and possibly other African countries at the moment. This is not appropriate, acceptable nor sustainable. The copyright environments (laws and practices) are not adequately facilitating access to learning materials, and need to be modified in order to increase access. (ACA2K May 2009, 1)

Copyright holders are systematically beginning to enforce sanctions against perceived copyright violations and infringement. It can be expected that national copyright laws as they are currently formulated, when increasingly enforced, will create significant barriers to learning materials in the ACA2K countries. ACA2K research suggests that if copyright laws were better aligned with practical realities in the study countries, some developing and others least-developed, the system could be more effective for all stakeholders. (ACA2K May 2009, 1)

Before the completion of the ACA2K Project in January 2010, a comparative analysis of the eight study countries will be completed. During the course of 2009, National Dialogue Workshops will be held in each study country to present country reports and research findings to all stakeholders, with a view to sensitizing them on these key issues and to promote a review of national copyright legislation. The Annexure to this chapter lists a number of other African A2K initiatives.

Conclusion

To ensure balanced and appropriate copyright laws in African countries, educators, researchers, librarians and archivists need to be involved in the legislative process. To date, only rights-holders have steered the process. The research done by ACA2K is 'ground-breaking' in Africa and it is hoped that its Methodology and Research Findings will encourage other African countries to engage in similar research and to implement meaningful change in their copyright legal frameworks to ensure maximum access to knowledge. Other related research and new A2K projects are likely to develop from the ACA2K Project's work in Africa.

It is imperative that African research becomes more visible globally and that Africans contribute more to global research. Even though research is being done in Africa, it is not very accessible to other researchers and educators around the world. 'Research obscurity' is generally predominant. To expedite matters, African libraries and tertiary institutions need to adopt open access policies to populate institutional repositories and to encourage researchers to publish in open access, peer-reviewed journals. African Governments need to promote and adopt A2K strategies nationally and regionally and lead the way in producing high quality, easily accessible research in the digital environment.

(As Policy and Dissemination Advisor of the ACA2K Project, the author has included several quotations from ACA2K Project documents in terms of the CC licence. Acknowledgement is hereby given to the project (http://www.aca2k.org), as well as to IDRC (http://ww.idrc.ca) and the Shuttleworth Foundation (http://shuttleworthfoundation.org)).

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2. Ibid. *Foreword by Kotecha, Piyushi.* http://www.sarua.org/files/publications/OpeningAccess/Opening_Access _Knowledge_2008.pdf (access July 26, 2009).

3. *Access to Knowledge Southern Africa: Universities, Open Research and Open Science in the Internet Age.* 2007. http://www.crdi.ca/en/ev-117087-201-1-DO_TOPIC.html (accessed July 26, 2009).

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5. Ibid. 2009. *Research Findings from Africa in Relation to WIPO Development Agenda Priorities. Briefing Paper 1 – April 2009* (http://link.wits.ac.za/papers/ACA2K-WIPO-briefing-execsumm.pdf (accessed July 26, 2009).Ibid. *Research Outputs. Research Methodology* [Website]. http://www.aca2k.org (accessed July 26, 2009).*Independent Commission Finds Intellectual Property Rights Impose Costs on Most Developing Countries and Do Not Help to Reduce Poverty. Press Release. Commission on Intellectual Property Rights*. September 12, 2002. http://www.biotech-info.net/independent_commission.html (accessed July 26, 2009)

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Select List of Other Access to Knowledge (A2K) Initiatives in Africa

In the past ten years there has been a host of access to knowledge (A2K) initiatives in Africa. Some have ceased their activities, whilst others are pursuing the mission to improve access to knowledge in African countries. Since there are too many initiatives to mention, the author has selected the following list of A2K initiatives/projects in view of her involvement in them or because of her interest in their goals and objectives.

1. Database of African Theses and Dissertations (DATAD)

In 2000, the Database of African Theses and Dissertations (DATAD) Pilot Project was funded through grants to the Association of African Universities (AAU) by the Ford and Rockefeller Foundations. The DATAD Program held a number of workshops to set objectives and a way forward. These included the building and maintenance of a regional database of theses and dissertations and contributing towards, providing capacity for and supporting an environment in which research and publication can be fostered in tertiary institutions in Africa. It aimed to provide visibility and accessibility to African scholarly works inside Africa and abroad. Part of its mandate was to develop a Methodology Guide[105] and an Intellectual Property Policy to assist member institutions. More recently, in March 2009, the DATAD Program organized an International Institutional Repository Advocacy Seminar in collaboration with the Academic Research Libraries in Ghana (CARLIGH) and the Royal Tropical Institute of the Netherlands. The seminar resolved that all academic and research institutions in Africa should have Institutional Repositories (IRs) and that this should feature in their strategic plans to ensure that IRs were established.[106]

2. The Access to Learning Materials of Southern Africa (A2LM)

This was a collaborative A2K project between the Consumers Institute of South Africa and tertiary sector represented by the South African Vice-Chancellors Association (SAUVCA) and the Committee of Technikon Principals (CTP) during 2004-2005. The project's conference, funded by the Open Society Institute (OSI) was held in January 2005, to explore barriers to access to learning materials in the SADC region and to find appropriate solutions. Two of the members of

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[105] Available at: http://www.aau.org/datad/reports/datadmanual.pdf
[106] Available at: http://irs.aau.org/outcomes.pdf

the project's Steering Committee are involved in the African Copyright and Access to Knowledge Project (ACA2K).

3. Commons-Sense Project[107]

"Commons-sense: Towards an African Digital Information Commons Conference" was hosted by the Link Centre, Wits University Public and Development Management School, Johannesburg from 25-27 May 2005. This international event, funded by the International Development Research Centre (IDRC) provided a platform for discussion on alternative approaches to copyright and content-sharing, enabled by digital technologies and electronic networks, to enhance education and innovation in developing countries.

"*The African Digital Commons: A Participant's Guide 2005*", was a collaborative output of the Commons-sense Project (accessible in French and English).[108]

4. African Access to Knowledge Alliance (AAKA)

To start a process of copyright harmonization and debate in Africa, the African Copyright Forum was convened from 28-30 November 2005 in Kampala, Uganda. This international Forum was co-organized by Dick Kawooya (a Ugandan doctoral student at the University of Tennessee, USA, at the time) and the author. It was sponsored by the Commonwealth of Learning in Canada and IFLA Africa Section, through the Ugandan Library Association and National Library of Uganda. At this Forum, the African Copyright and Access to Information Alliance (ACAIA) was established.[109]
This Alliance was registered as a Chapter in Uganda in 2006 and the name was changed to African Access to Knowledge Alliance (AAKA). With assistance from the Commonwealth of Learning and contacts at the Botswana Open and Distance Learning College, the Alliance was registered as a Continental Trust with an Interim Executive Board in 2007. Although the Alliance itself is still in its infancy and has not had the resources to expand its membership at this stage, it has been involved in two open access/A2K projects in Africa, namely, the SARUA Open Access Leadership Summit and Research Project (see no. 6 below) and the ACA2K Project, as discussed above.

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[107] Available at: http://www.commons-sense.org
[108]Available at: http://icommons.org/resources/the-african-digital-commons-a-participants-guide
[109] Available at: http://www.col.org/SiteCollectionDocuments/Copyright_Alliance_article.pdf

5. The African Commons Project [110]

This project commenced in 2006 and is based in Johannesburg, South Africa. It previously hosted iCommons,[111] which held iSummits in Brazil, Croatia and Japan. The project's goals are to turn communities into active participants in the digital economy and to defend, protect, support and encourage the freedom of South African societies to create, build upon and share knowledge. It aims to promote the highest levels of open access to intellectual products for organizations and individuals, especially those with a public mandate.

6. SARUA Open Access Leadership Summit and Research Project

From 20-21 November 2007, members of the AAKA participated in the Southern African Regional Universities' Association (SARUA) Open Access Leadership Summit in Gaborone, Botswana.[112] Key A2K speakers from various developed countries presented at this Summit, as well as from African countries. This Summit was mainly to sensitize Vice-Chancellors or Provosts of tertiary institutions in the SADC region to the benefits of Open Access for their institutions and for the whole region. As a result of this Summit, SARUA[113] has been engaging in a number of A2K research projects. The most relevant for this chapter is the Report on "Opening Access to Knowledge in Southern African Universities."[114]

7. Publishing and Alternative Licensing Model of Africa (PALM)[115]

The Publishing and Alternative Licensing Model of Africa (PALM Africa) is a project funded by Canada's International Development Research Centre (IDRC) and commenced in South Africa and Uganda in 2007. PALM seeks to improve access to educational material through flexible licensing and alternative publishing business models to take into account the digital environment. Organizations involved in this Project are the National Book Trust of Uganda, the African Commons Project (South Africa), the Association for Creative Research and Development (South Africa) and the Knowledge Pipeline Limited (United Kingdom).

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[110] Available at: http://www.africa.commons.org
[111] Available at: http://www.icommons.org
[112] Available at: http://www.sarua.org/?q=content/open-access-leadership-summit-gaborone-botswana-20-21-november-   2007
[113] Available at: http://www.sarua.org
[114] Available at:
http://www.sarua.org/files/publications/OpeningAccess/Opening_Access_Knowledge_2008.pdf
[115] Available at: http://www.idrc.ca/acacia/ev-117012-201-1-DO_TOPIC.html

8. The Open Review of the South African Copyright Act[116]

The Open Review of the South African Copyright Act is an A2K project driven by the Shuttleworth Foundation and the Trade Law Centre for Southern Africa (tralac)[117]in partnership with the Open Society Institute (OSI). The project commenced in 2008 to provide stakeholders with an open platform to critique and review the provisions of the current South African Copyright Act with particular focus on sections which impact on access to knowledge, especially access to learning materials.

9. Sivulile Open Access Project[118]

"Sivulile" in one of the South African indigenous languages, isiXhosa, means "We are Open" and expresses South African support for the global Open Access movement. Sivulile is a loosely-defined group of individuals in South Africa who actively participate in work on advocacy, support, policy, training, technology and research as part of their core work functions in various organizations and institutions. They work closely with other A2K initiatives in Africa and with the Electronic Information for Libraries (eIFL)[119] to promote Open Access in member countries of eIFL.

10. CSIR Research Space[120]

This database provides access to some of the research outputs generated by CSIR scientists. The CSIR is one of the leading scientific and technology research, development and implementation organizations in Africa. It undertakes directed research and development for socio-economic growth. It is a partner in the WorldWideScience Open Access initiative.[121]

11. Human Sciences Research Council (South Africa)[122]

The HSRC, the open access publishing arm of the Human Sciences Research Council (HSRC) in South Africa publishes high quality, social science research-based publications, in print and electronic forms. HSRC

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[116] Available at: http://www.shuttleworthfoundation.org/.../open-review-sa-copyright-act
[117] Available at: http://www.tralac.org/cgi-bin/giga.cgi?c=1694
[118] Available at: http://www.sivulile.org/
[119] Available at: http://www.eifl.net
[120] Available at: http://researchspace.csir.co.za/dspace/
[121] Available at: http://www.worldwidescience.org
[122] Available at: http://www.hsrc.ac.za

Press publishes the research output of the HSRC as well as externally authored works. A formal peer-review process guarantees the highest academic quality and the Press has a very active local and international marketing program, in addition to collaborating with foreign publishers on specific titles. Since making their research and other publications available on an open access platform, the sales of their hard-copy publications have increased considerably.

12. Academy of Science of South Africa[123]

Based on the results of its research on Scholarly Publishing in South Africa[124], the Academy of Science of South Africa (ASSAf) has implemented a national A2K project, involving open access publishing initiatives. A Committee on Scholarly Publishing in South Africa has been constituted, together with a Scholarly Publishing Unit and National Scholarly Editors' Forum to promote the publishing of scientific research on an open access platform. The SCIELO-Brazil Open Access Publishing model has inspired ASSAf to introduce its own SCIELO-SA model. Publishing on this platform will be funded by the South African Department of Science and Technology.

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[123] Available at: http://www.assaf.co.za
[124] Available at: http://www.assaf.org.za/images/assaf_strategic_research_publishing.pdf

National Research Foundation of South Africa[125]

The National Research Foundation of South Africa (NRF) has an important advocacy role to play in the promotion of open research in South Africa. It is sponsoring the National Electronic and Theses and Dissertations (ETD) Project, involving the tertiary institutions in South Africa. This project is being driven by the Committee of Higher Education Librarians of South Africa (CHELSA). Individual tertiary institutions are involved in this national project. As part of the NRF's activities, a publication entitled "Managing Digital Collections: A South African Framework" is currently being written by various experts in South Africa to assist libraries and archives with digitization projects. In South Africa, a National ETD Project is driven by the Committee of Higher Education Librarians of South Africa (CHELSA) and sponsored by the National Research Foundation (NRF).

13. Institutional Repositories in South African Tertiary Sector

Several academic institutions in South Africa have set up institutional repositories or research archives to 'showcase' their institution's research outputs and publications. Some institutions are fairly advanced in the process, whilst others are just at the beginning stages. Here is a list of active institutional repositories in South Africa, as at the date of publication of this chapter:

- Cape Peninsula University of Technology Libraries - http://dk.cput.ac.za/
- Durban University of Technology - http://ir.dut.ac.za:8080/dspace
- Rhodes University – http://www.ru.ac.za/library/theses/collection.html
- Stellenbosch University - http://ir.sun.ac.za
- University of Cape Town's Computer Science Dept – http://pubs.cs.uct.ac.za
- University of Cape Town's Law Faculty – http://www.lawspace.law.uct.ac.za
- University of Fort Hare – http://ufh.netd.ac.za/jspui
- University of Johannesburg – http://ujdigispace.uj.ac.za:8080/dspace/
- University of Pretoria – http://repository.up.ac.za

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[125] Available at: http://www.nrf.org.za

- University of South Africa – http://etd.unisa.ac.za and http://uir.unisa.ac.za/
- University of the Free State – http://lourie.uovs.ac.za
- University of the North-West - http://143.160.38.130:8080/jspui/
- University of the Western Cape - http://ahero.uwc.ac.za/ and http://etd.uwc.ac.za/
- University of the Witwatesrand, Johannesburg – ETDs- http://web.wits.ac.za/Library/electronicthesesdissertations.htm
- University of the Witwatersrand, Johannesburg – IR - http://witsetd.wits.ac.za:8080/dspace/
- Vaal University of Technology - http://vut.netd.ac.za/jspui/
- Databases for Theses - http://library.ukzn.ac.za/DatabasesforTheses655.aspx

14. Institutional Repositories in SADC Region

Of the 66 public universities in the SADC region, only 20 (30.30%) have established institutional repositories (IRs), and 15 of these are South African. Repositories are mostly managed by the Library. Of the 15 member states of the SADC region, only three, Namibia, South Africa and Zimbabwe, have discoverable institutional repositories. This confirms the observation that Southern African research is not readily accessible to institutions in the region. (Ubogu, 2009)

The expansion of A2K initiatives in Southern Africa is therefore crucial.

15. African Virtual Open Initiatives and Resources (AVOIR)[126]

To facilitate access to knowledge and open access dissemination of knowledge, AVOIR builds capacity in software engineering in Africa using Free Software (Open Source) as the vehicle. A partnership of 16 African Universities in an alliance that includes partners in North America, Europe, and Kabul, Afghanistan, AVOIR is a network with a node in each member institution. Each node participates in the development, deployment and support of software, seeks business and partnership opportunities that lead to sustainability, implements software in support of their institutional requirements, participates actively in communication and collaboration activities, and helps to market the network, and its products and services.

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[126]Available at: http://avoir.uwc.ac.za/

16. Bibliotheca Alexandrina A2K Project[127]

In fulfilment of its mission as a centre of excellence for the dissemination of knowledge and for dialogue, learning and understanding between cultures and people, the Bibliotheca Alexandrina (BA) has developed a growing interest in issues relating to access to knowledge, promotion of innovation and creativity and intellectual property.

The BA has initiated several activities to spread the philosophy of access to knowledge (A2K) and build local capacity of researchers, librarians and practitioners to effectively implement new and emerging A2K tools and practices. In September 2006, the BA has organized the first A2K seminar in the region entitled: " new tools to disseminate knowledge and to promotion of innovation and creativity in the Arab world and the region."

To realize the recommendations of the seminar, the BA has launched an A2K platform where you can find its A2K-IP activities, publications, translated materials, useful links, suggested readings, and a virtual forum. Please check it here: www.bibalex.org/a2k

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[127] Available at: http://www.oneworldsee.org/node/16721

The Author

Denise Rosemary Nicholson has a BA and Higher Diploma in Library Science from the University of South Africa (UNISA). She has also passed two WIPO/UNISA Copyright modules on "Essential Copyright Law" and "Internet Aspects of Copyright and Trademarks". She is currently the Copyright Services Librarian at the University of the Witwatersrand, Johannesburg, where she has been employed in various positions since March 1983. She is a member of the Wits Plagiarism Committee and the Subject Portal and Institutional Repository Workgroups. She is part of the National Research Foundation's Digitization Workgroup and has recently written a chapter for its Manual on Managing Digital Collections.

Denise has been very active in South Africa and in other parts of Africa in addressing copyright and issues affecting access to knowledge (A2K) in the analogue and digital environments. She received the LIASA/SABINET Online Academic Librarian of the Year Award in 2001, for her efforts as Convenor of two Copyright Task Teams representing the tertiary sector, which successfully challenged two sets of restrictive copyright amendments proposed by the Department of Trade & Industry in 1998 and 2000.

She is a member of the IFLA Committee on Copyright and Other Legal Matters, the Commonwealth of Learning's Copyright Group and the Electronic Information for Libraries Network (eIFL) IP Project. She is a member of the Library Association of South Africa (LIASA) and a member of its FAIFE committee. For the past few years, she was a member of the Ministry of Arts & Culture's Legal Deposit Committee where she contributed to discussions and workshops on copyright and digitization issues. She has recently been nominated for a further term of office. She spearheaded the establishment of the African Access to Knowledge Alliance, which is currently involved in the African Copyright and Access to Knowledge Project (ACA2K). She is the Policy and Dissemination Advisor for this project. She has provided advice and information to various regional and local digitization projects.

She has presented at many international and regional conferences and co-organized a number of conferences in Africa. She has published various articles and book chapters. She has also contributed to various international and local research reports, position papers and policy documents on copyright and access to knowledge issues, the most recent being the WIPO Study on Limitations and Exceptions for Libraries & Archives and the eIFL Model Copyright Law.

The A2K Movement in Australia (2006 – 2009)

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Full biographies p.94 – 95

The A2K movement in Australia has expanded rapidly in the last three years. In 2006, the Australian Government funded the establishment of a novel project in Australia – the Open Access to Knowledge (OAK) Law Project at the Queensland University of Technology (QUT) (http://www.oaklaw.qut.edu.au). The OAK Law Project had the aim of facilitating open access to a range of publicly funded materials, such as academic publications and research data, by improving knowledge about and management of the legal rights in these materials. The initial project publication, *OAK Law Project Report No. 1: Creating a legal framework for copyright management of open access within the Australian academic and research sectors* (2006)*, set out the Project's objectives for the 3-year funded period.

Access to academic publications

The initial focus of the OAK Law Project was managing the legal rights in academic publications, including journal articles and research theses, in order to provide open access to these works. The Project examined the publishing agreements and copyright policies of more than 100 publishers based in Australia and overseas to determine their position on the deposit of academic works in institutionally-based open access repositories. These findings were published in the report, *OAK Law Project Report – A Review and Analysis of Academic Publishing Agreements and Open Access Policies (Version 1, February 2008).* The findings of this study were then used to develop the OAK List – an online, searchable database of publishers' agreements and open access policies (http://www.oaklist.qut.edu.au). The OAK List was developed to assist anyone trying to deposit into, create or manage an open access repository to ensure that they are in compliance with the law. The database is accessible to authors, copyright administrators and repository managers, both in Australia and overseas and was designed to be fully interoperable with the RoMEO/SHERPA database in the UK (http://www.sherpa.ac.uk/romeo/).

In 2007, the OAK Law Project conducted a nationwide survey of the attitudes and practices of Australian academic authors towards the publication and dissemination of their research. The survey obtained evidence of authors' experiences with publishing agreements, their perceptions of open access and commercial publishing, their understanding of copyright ownership in their research and their involvement with online repositories and open access journals. The results of the survey were published in the report, *Academic authorship, publishing agreements and open access: Survey Results* (2008). Additionally throughout 2006-2008,

the Project engaged in education initiatives to teach academics, researchers and students about copyright in their works and to assist university librarians in setting up and managing institutional repositories. In furtherance of these endeavours, the OAK Law Project published a range of guides: *A Guide to Developing Open Access Through Your Digital Repository* (2007) (for repository managers), *Copyright Guide for Research Students: What you need to know about copyright before depositing your electronic thesis in an online repository* (2007) and *Understanding Open Access in the Academic Environment: A Guide for Authors* (2008). These and other OAK Law publications can be downloaded from http://www.oaklaw.qut.edu.au/reports.

Access to research data

Building on its work on open access to research publications, the OAK Law Project also focused on the development of legal protocols to enable open access to datasets and databases. Although there is no copyright in mere facts, data is literally surrounded by law. Compilations and arrangements of data in datasets and databases will often attract copyright protection in Australia and an array of other laws comes into play, including information privacy, confidentiality and specific constraints imposed by legislation. These legal issues, and how they can be managed in practice to enable data access and sharing are considered in the OAK Law report: *Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context* (2007) and the accompanying guide, *Practical Data Management: A Legal and Policy Guide* (2008). These publications have been of assistance to numerous individuals and projects involved with data management, including the Australian government funded Australian National Data Service (ANDS) – a large scale project which aims to develop policy and capability in the area of data management in the Australian research community (http://www.ands.org.au). They have also guided the movement for access to public sector information (PSI) and the open licensing of government-owned data.

Access to public sector information (PSI)

"Public sector information" (PSI) includes information and data produced by the public sector as well as materials that result from publicly funded cultural, educational and scientific activities. Generally, the situation with respect to PSI access and use in Australia has been fragmented and lacks a coherent policy foundation, whether viewed in terms of interactions within or among the different levels of government at the local,

State/Territory and Federal levels, or between the government or the academic and private sectors.

There have been some outstanding examples within the Australian government of how PSI can be made easily and freely available for reuse, though these are not the norm. In November 2005, the Australian Bureau of Statistics (ABS) abandoned the restrictive licensing practices it had previously applied in licensing its datasets, which had involved charging fees for access to data and the restriction or prohibition of commercial downstream use by the licensee and/or others. Since late 2008, ABS has made all content on the ABS website (other than logos and other trade marked content) available under Creative Commons Attribution (CC-BY) licences – including all census data, economy data, fact sheets, analysis and press releases. The Australian Bureau of Meteorology (BoM) is moving in the same direction, making water data available through the Australian Water Resources Information System (AWRIS) under Creative Commons licences. Geoscience Australia also offers free downloads of geospatial data from its website.

One of the most influential projects in Australia in recent years has been the Government Information Licensing Framework (GILF) Project (http://www.gilf.gov.au). The focus of the GILF project was the development of a licensing model to be applied to PSI, the objective being new standardised information licensing arrangements which could be recommended for use with all kinds of Queensland government information to enable enhanced, on-demand access to PSI. Importantly, the GILF project did not directly address information policy per se. However, by focusing attention on removing impediments to accessing PSI caused by inadequate or inappropriate licensing practices, its findings and recommendations about the use of Creative Commons licences on PSI directly influenced the reviews of information access policies by the federal government, other State governments and the New Zealand Government.

The situation in Australia with respect to PSI is beginning to change, due to the need for a comprehensive national information policy framework to be developed having been recognised in the Review of the National Innovation System in 2008. The *Venturous Australia – Building Strength in Innovation* ("Venturous Australia") report produced by the National Innovation System review panel recommended that a National Information Strategy should be established, to optimise the flow of information in the Australian economy. It further recommended that, "to the maximum extent practicable, information, research and content funded by Australian

governments should be made freely available over the internet as part of the global public commons", that "Australian governments should adopt international standards of open publishing as far as possible" and that PSI "should be released under a creative commons licence".

The federal government's response to the *Venturous Australia* recommendations, contained in the White Paper, *Powering Ideas: An Innovation Agenda for the 21st Century,* is generally supportive of its recommendations on access to PSI. *Powering Ideas* accepted the need to build on initiatives already commenced by agencies including the Australian Bureau of Statistics, the Bureau of Meteorology and Geoscience Australia and "to develop a more coordinated approach to Commonwealth information management, innovation and engagement". A similar approach was taken by the Victorian Parliament's Economic Development and Infrastructure Committee on the *Inquiry into Improving Access to Victorian Public Sector Information and Data,* tabled in Parliament on 24 June 2009.

In another important development, the *Digital Economy, Future Directions* consultation paper released by the Department of Broadband, Communications and the Digital Economy in December 2008 raised "Open Access to Public Sector Information" as a key issue for discussion, observing that there is increasing support for "the notion that the Australian Government should provide access to public sector information on terms that clearly permit the use and re-use of that information." The final report; *Australia's Digital Economy: Future Directions* expressly recognised "the digital economy and innovation benefits generated by open access to PSI, subject to issues such as privacy, national security and confidentiality". Enabling open access to PSI is seen not only as a way of promoting public sector innovation but also as a means by which government can facilitate private sector innovation. To advance work in these areas, in June 2009, the federal government appointed the Government 2.0 Taskforce to work with it to identify policies and frameworks to make PSI more readily accessible and usable and to encourage online engagement between government and citizens (http://gov2.net.au/).

Opening up Australia's Archives

Digital technologies have drastically changed the landscape of creating, collecting and providing access to cultural materials. As linear models of knowledge and cultural production are supplanted by more distributed, collaborative networking models, Australia's cultural institutions are increasingly seeking to engage with their audiences in ways that capitalise on these new capabilities. In this environment, traditional

copyright management models can present a significant barrier to realising the full economic and social value of a collection. As a result, Australian archives are exploring the potential of open access distribution models. Examples include the Australian Broadcasting Corporation's (ABC) Gene Pool project (http://www.pool.org.au/genepool), under which select audiovisual material from the ABC archives has been cleared and released for remixing under a Creative Commons Attribution Noncommercial licence, and the Powerhouse Museum in Sydney (http://www.powerhousemuseum.com/), which has released hundreds of public domain photos from its collection as part of the Flickr Commons (http://www.flickr.com/commons/) and made available all of its online collection documentation under a mix of Creative Commons licences.

Recent and future developments in Australia

Access to PSI

A significant move forward in the A2K movement in Australia is likely to be in the area of open access to PSI. Australia does not yet have a national policy framework addressing access to and use of PSI, an important point of difference with the United States, the United Kingdom and European countries. The most advanced data access and reuse policy developed in Australia to date – and only one ever intended to apply Australia-wide at the federal level – is the *Spatial Data Access and Pricing Policy* (known as the OSDM Policy) adopted by the Commonwealth government in 2001. Yet, since 2001, there has been little policy movement in this area. This is beginning to change, however, with the recommendations in the Venturous Australia report and the *Australia's Digital Economy: Future Directions* paper which highlights the need for a coherent national information strategy that promotes wide sharing of PSI. A national information policy will foster innovation and will be an important move forward for Australia.

Recent developments in Australia in relation to access to PSI include:

- The Victorian Parliament's Economic Development and Infrastructure Committee released a report on the *Inquiry into Improving Access to Victorian Public Sector Information and Data* (http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/final_report.html);
- The Australian Government released its innovation policy to agenda to 2020, *Powering Ideas: An Innovation Agenda for the 21st Century* (http://www.innovation.gov.au/innovationreview/Pages/home.aspx);

- The Australian Government released the *Australia's Digital Economy: Future Directions* paper (http://www.dbcde.gov.au/digital_economy/future_directions_of_the_digital_economy/australias_digital_economy_future_directions);
- The Government 2.0 Taskforce was established (http://gov2.net.au/);
- The access to and use of PSI (auPSI) research team at QUT is keeping track of developments in this area (http://www.aupsi.org/) ;
- Professor Anne Fitzgerald has released a comprehensive literature review: *A Review of the Literature on the Legal Aspects of Open Access Policy, Practices and Licensing in Australia and Selected Jurisdictions* (http://www.aupsi.org/publications/reports.jsp).

Open access to research data and publications

A recent development that is likely to warrant careful consideration in the coming years is the decision of the High Court of Australia in *IceTV Pty Limited v Nine Network Pty Limited* ('IceTV'), handed down in April this year. In IceTV, the High Court held that where the expression of information is essentially dictated by the nature of that information (for example the chronological arrangement of times at which television programmes will be broadcast is the 'obvious' arrangement), then the expression may lack the requisite originality for a part taken to constitute a substantial part sufficient to give rise to a copyright infringement claim. In the short term, the decision of the High Court may generate some questions from database managers about how their data may be protected, accessed and used under copyright law. There will be need for guidance from legal research groups such as the OAK Law Project about the operation of copyright law in this area.

Recent developments in Australia in relation to open access to research data and publications include:

- The establishment of the Australian Government funded project, the Australian National Data Service (ANDS) (http://ands.org.au/) – the OAK Law Project at QUT will be contributing two guides to ANDS – 'Copyright and Data' and 'Creative Commons and Data';
- The primary funding bodies in Australia, the Australian Research Council (ARC) and the National Health and Medical Research Council (NHMRC), have included statements in their funding rules that strongly encourage the results of funded research (including publications and data) to be deposited into open access repositories: see http://www.arc.gov.au/ncgp/dp/dp_fundingrules.htm and http://www.nhmrc.gov.au/grants/apply/projects/_files/Project%20Gra

nt%20Funding%20Policy%20for%20funding%20commencing%20in%202010.pdf ;

- The amount of universities that have institutional repositories and open access policies has grown significantly in recent years. When the OAK Law Project 'Guide to Developing Open Access Through Your Digital Repository' was released in September 2007, there were 20 universities with repositories and associated policies. In August 2009, according to the OpenDoar database (http://www.opendoar.org/), there are 32 Australian universities with repositories and open access policies;

- Australian institutional repository managers are beginning to investigate how items other than publications (usually in PDF format) can be deposited into their repositories. These items may include data, images and other multimedia objects. Additionally, the QUT ePrints Repository will be trialing the use of a 'Creative Commons licence embeddor' which will embed the relevant copyright licensing details associated with a particular item both into that item's metadata and directly into the item itself, so that if for some reason the metadata is stripped from the item, the licence information will not be lost;

- The OAK Law Project will be releasing a copyright and open access guide for publishers, which will form part of the OAK Law Project's guide series that already includes guides for repository managers, researcher students, academic authors, researchers and database managers.

Relevant OAK Law Project publications include: (all available from http://www.oaklaw.qut.edu.au/reports)

- OAK Law Project Report No 1: Creating a legal framework for copyright management of open access within the Australian academic and research sectors (2006) (http://eprints.qut.edu.au/6099/1/Printed_Oak_Law_Project_Report.pdf)
- Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context (2007) (http://eprints.qut.edu.au/8865/1/8865.pdf)
- OAK Law Project Report – A Review and Analysis of Academic Publishing Agreements and Open Access Policies (2008) (http://www.oaklist.qut.edu.au/files/OAK_Law_Review_and_Analysis_v1_20080212.pdf);
- A Guide to Developing Open Access Through Your Digital Repository (2007) (http://eprints.qut.edu.au/9671/1/9671.pdf);

- Copyright Guide for Research Students: What you need to know about copyright before depositing your electronic thesis in an online repository (2007) (http://www.oaklaw.qut.edu.au/files/Copyright%20Guide%20for%20Research%20Students.pdf);
- Understanding Open Access in the Academic Environment: A Guide for Authors (2008) (http://eprints.qut.edu.au/13935/2/13935.pdf);
- Practical Data Management: A Legal and Policy Guide (2008) (http://eprints.qut.edu.au/14923/1/Microsoft_Word_-_Practical_Data_Management_-_A_Legal_and_Policy_Guide_doc.pdf);
- Academic authorship, publishing agreements and open access: Survey Results (2008) (http://eprints.qut.edu.au/13623/1/13623_3.pdf);
- Legal and project agreement issues in collaboration and e-Research: Survey Results (2007) (http://eprints.qut.edu.au/9112/1/9112.pdf);
- Legal Framework for e-Research: Realising the Potential (2008) (http://eprints.qut.edu.au/14439/1/14439.pdf);
- Legal Strategies for Streamlining Collaboration in an e-Research World (2008) (http://eprints.qut.edu.au/17149/1/c17149.pdf).

The Authors

Professor Brian Fitzgerald studied law at the Queensland University of Technology graduating as University Medallist in Law and holds postgraduate degrees in law from Oxford University and Harvard University. He is a well-known Intellectual Property and Information Technology/Internet lawyer who has pioneered the teaching of Internet/Cyber Law in Australia. He has published articles on Intellectual Property and Internet Law in Australia, the United States, Europe, Nepal, India, Canada and Japan and his latest (coauthored) books are *Cyberlaw: Cases and Materials on the Internet, Digital Intellectual Property and E Commerce* (2002); *Jurisdiction and the Internet* (2004) and *Intellectual Property in Principle* (2004*)* and *Internet and Ecommerce Law* (2007). Brian is a Chief Investigator and Program Leader for Law in the ARC Centre of Excellence on Creative Industries and Innovation and Project Leader for the Australian Government funded Open Access to Knowledge Law Project (OAK Law) Project looking at legal protocols for open access to the Australian research sector and the Australian Government funded Legal Framework for e-Research examining the legal framework needed to enhance e-Research. From 1998-2002 Brian was Head of the School of Law and Justice at Southern Cross University in New South Wales, Australia and from January 2002 –January 2007 was Head of the School of Law at QUT in Brisbane. He is currently a specialist Research Professor in Intellectual Property and Innovation at QUT.
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Professor Anne Fitzgerald is a Brisbane-based intellectual property and e-commerce lawyer. She is a Professor of Law Research at QUT Law School where she works as a principal researcher in the OAK Law project and the Cooperative Research Centre for Spatial Information. Anne has been teaching, researching and writing in the fields of intellectual property, internet and e-commerce law since the early 1990s. Recent publications include: *Intellectual Property Nutshell* (3rd ed, Thomson, 2008), *Internet and E-Commerce Law and Policy,* (with B Fitzgerald et al, Lawbook Co/Thomson, 2007) and *Intellectual Property Law: In Principle* (with B Fitzgerald, Lawbook Co/Thomson, 2004). In 2002 Anne was awarded the JSD degree (Doctor of the Science of Law) by Columbia University New York and also has a LLM from London University (University College). She graduated in law (LLB(Hons) and welfare law (Grad. Dip. Welfare

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Kylie Pappalardo is a research officer for the Open Access to Knowledge (OAK) Law Project, based at Queensland University of Technology (QUT) and led by Professor Brian Fitzgerald. She holds a Bachelor of Laws (Hons.) degree and a Bachelor of Creative Industries (Creative Writing) degree from QUT. She has also completed a Graduate Diploma of Legal Practice and is currently undertaking a Masters in Law. Kylie has taught Creative Industries Legal Issues to journalism students and Jurisprudence to undergraduate law students at QUT. From 2004 to 2008 she provided legal and administrative assistance to the Arts Law Centre of Queensland (ALCQ). Kylie is a co-author, along with Professor Anne Fitzgerald, of *Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context* (2007, OAK Law Project) and she has also authored the publication, *Understanding Open Access in the Academic Environment: A Guide for Authors* (2008, OAK Law Project).

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A2K to Change Society

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Full biography p.103

The views expressed herein are solely those of the author and do not necessarily reflect the views of the Bibliotheca Alexandrina.

I sometimes use my own experience to explain how participation in the A2K movement often comes as a logical evolution of an involvement in other political issues, as it is the case with many A2K advocates who have been or still are active on other social fronts. At some point, someone joined mobilizations to end discrimination against HIV-positive people. This initial effort turned into a campaign for access to drugs in developing countries. Such a campaign, as a matter of course, lead her or him to denounce the negative impact of "intellectual property" protections, which bar access to such medicines. As the activist deepened his or her critique of the effect such a system has on the creation of medical innovation, key critiques surrounding access to knowledge issues began to be formulated. Finally, the activist soon realized that, perhaps even almost unwittingly, he or she had joined the A2K mobilization.

The deconstruction of the mechanisms at the heart of the problems of access to medicines is what led me, at the end of the day, to describe inequalities in terms of access to knowledge. The parallels that can be drawn with so many other fields of technology and social issues convinced me of the interest of a transversal movement that could have the power to question the current "intellectual property" system, give visibility to the underlying structural reasons for so many dysfunctions in our societies and promote political and social changes. With friends and colleagues, activists, experts, academics and political representatives, we launched a working group on Access to Knowledge within the political network of Europe Ecology. Our goal is to develop a transversal approach of A2K issues, to facilitate cross-issue political action at the national, European or international level, and provide the introduction and use of new frameworks of understanding and ideas in

political spheres. What is at stake is not only the urgent need to oppose extremist policies on intellectual property, imposed non-democratically to citizens, but to generate alternative models really serving the interest of society and of the people.

In 2004, "Access to Knowledge (A2K)" emerged as a common umbrella under which individuals and organizations could denounce inequalities and injustices related to "intellectual property". It is in particular in the context of the mobilization on the Development agenda at WIPO (World Intellectual Property Organization) that A2K, as a global movement, started to be visible. Diving in the breach opened by the movement for access to medicines, other players and social mobilizations started to rally behind a claim for "access". I am convinced that the use for this prism to look at social injustices and dysfunctions and to organize mobilizations is what can make this movement a powerful tool for social changes.[128]

This mobilization includes AIDS activists fighting multinational pharmaceutical companies to permit generic versions of the medicines to be sold in poor countries around the world, software programmers who took to the streets to defeat software patents in Europe, librarians mobilized for access to essential learning tools and more globally for open access to knowledge, subsistence farmers defending their rights to food security, claiming access to agricultural biotechnology or fighting genetically modified crops, and college students who have created a new "free culture" movement to "defend the digital commons"–to name just a few. Each of these mobilizations has its own history and origin, however, they converged

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[128] Eds Gaëlle Krikorian and Amy Kapczynski. **Access to Knowledge in the Age of Intellectual Property**, Zone Books, NYC, November 2010.
 Available at http://mitpress.mit.edu/catalog/item/default.asp?ttype=2&tid=12358 [accessed 23 Feb 2011]

toward each other as being opposed to the same logic, an extension of "intellectual property" rights, and started to take over jointly political forums.

"Intellectual property" rights affect and encompass a variety of issues, which are diverse and separate in nature. Paradoxically, the reification of "intellectual property" rights as one coherent concept (that embraces copyrights, patents, trademarks) enabled the emergence of an extremely diverse A2K front. Each A2K actor not only addresses a specific effect of the strengthening of "intellectual property" rights, but, as a collective, they embrace multiple issues, become sensitive to the echo and similarities between their causes, and take into consideration the broader logic and structure manifested in the specific legal provisions they oppose. The nature of the enemy determines the organization of the resistance mobilized against it, forcing this resistance to become more systemic.

Thus, by identifying themselves as A2K constituencies, individuals and groups show interest in defining themselves and in being perceived not simply as contradictors of or opponents to the intellectual property system, but as promoters of a positive and cohesive agenda something bigger than mere opposition. Though they have originally been brought together by objections to a common enemy, a conscious strategic move was made by many A2K advocates for the purpose of allowing them to reframe the issues outside of the logic of the "intellectual property" rights system. Whether they invoke notions of the public domain, or knowledge goods and knowledge spaces as commons, A2K actors are trying to formulate a debate outside of a dialectic of opposition, in which *they* can set at least part of the

terms and in which "intellectual property" represents only one amongst several options, one tool amongst others.

Tensions and conflicts concerning the effects of and the justifications for "intellectual property" rights have taken the form of negotiations and contentious relations between states within international organizations such as the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO), the UN Educational, Scientific and Cultural Organization (UNESCO), or recently the United Nations Framework Convention on Climate Change (UNFCCC). Within bilateral negotiations, first mostly with the US, social mobilizations raised, to the point in some cases where the issue of the Free Trade Agreements became a polarizing issue in national political debates, including during presidential elections (Costa Rica, Peru, Ecuador). Demonstrations, massive in some cases, were organized in many countries (Costa Rica, Peru, El Salvador, Guatemala, Bolivia, Colombia, Ecuador, Honduras). Mobilizations even led to popular referendum in some countries (Colombia, Ecuador, Costa Rica). Tensions around "intellectual property" also emerged noticeably in Europe recently with the constitution and election at the European Parliament of a Swedish pirate party.[129]

But besides raising problems and legitimate oppositions, A2K advocates are also, in the context of international or national debates, promoting alternative options to the current governments' choices. They

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[129] With 7.1 percent of the votes in its country, the Swedish Piratpartiet won two seats in the European Parliament during the European election on June 7, 2009. The party, which was created three years earlier, claimed around fifty thousand members and emerged as a new political force—it was ranked third during the election in Sweden. A pirate party emerged in France recently and is running for regional election this year.

encourage the development and implementation of mechanisms supplementary to the current use made of the "intellectual property" system (compulsory licensing, patent pools) or alternative to it (prize funds for innovation, and open source models) in order to foster a research adapted to social needs, in the field of health or environment for example. And despite hindrance set by the "intellectual property" owners or institutions supporting them[130], A2K advocates succeed opening a debate on the matters that spread in academic and political circles.

However, it is noteworthy that political spheres in some countries remain deeply hermetic to this abundance of thinking and options and continue, under the influence of "intellectual property" right owners and in collaboration with them, to follow old schemes. In countries such as France, where, as in many other places, the cost of health is a serious issue and is used as a motive to reduce universal medical coverage, discussions on new financing mechanisms for research and development that de-link R&D incentives from product prices are not even on the table – in the best case scenario, policy makers believe that such discussions are relevant for developing countries. Why do you see the speck in your brother's eye but fail to notice the beam in your own eye?

Meanwhile, in fields in which "intellectual property" issues are no part of the debate so far (at least in a public way) actors seem to have a hard time perceiving the issue at stake. Developing countries raised the problem of the effects of "intellectual property" rights and their expansion on innovation and technological transfer in the field of green technologies. However, their efforts significantly lack support from social movements and

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[130] See for example the current scandal about the report of the Expert Working Group on R&D Financing at the WHO and the fact that it was directly influenced by views of the pharmaceutical industries.

other political actors who are usually rather progressive on social issues. On the contrary, the old-framed rhetoric prevailed. As was the case at the end of 1990 when the industry denied the impact of "intellectual property" on access to medicines, the slogan took up again in political spheres: "the problem is not intellectual property". It is… always something else. Meanwhile, how can rich countries reasonably ask developing countries to give up polluting industrial activities when at the same time they refuse to let them take part in the information economy, not only as potential clients, if they can pay for access, but as full players developing through it and involved in the creation of cleaner technologies?

Developing a transversal way of considering problems with "intellectual property" rules is the goal the A2K movement must serve to rally social forces in order to allow problems to be identified, tricks to be eluded and real changes to emerge. This is particularly necessary as we are at a time of crucial battles.

Attempts to maintain the current "intellectual property" model by criminalizing and forbidding human activities more and more appear obsolete and poorly adapted to the current reality of our informational societies. The aggressiveness of their efforts most probably reflects the desperateness of their attempt to fight social and economical changes. Meanwhile, initiatives to reinforce the current intellectual property system and strengthen its power are neither less numerous nor less aggressive than before. In Europe, rights holders hope that discussions on the Criminal measures to enforce intellectual property rights (IPRED-2) will be relaunched, and measures will be adopted under the Spanish presidency of the Council. At the same time, the ongoing negotiation for the Anti-

Counterfeiting Trade Agreement (ACTA) is certainly one of the most undemocratic and extremist attempts made by the promoters of the expansion of intellectual property rights. Increasingly, it is encouraged that public, social, and legal resources be mobilized to enforce "intellectual property" protections and to limit exchanges of protected material. These tools are resources that often seem particularly unreasonable to deploy in many developing countries in comparison to the national budget of such countries, and their essential, but unmet local needs. This new wave of enforcement provisions endangers the balance of citizens' rights, obligations and basic principles of justice, land it can also be found in the new generation of bilateral agreements that the European commission is currently negotiating with developing countries (with Andean countries, with India, in Central America or East Asia).

However, paradoxically, enemies such as ACTA can, to some extend, also represent an opportunity for social mobilizations. Such agreements illustrate a type of governance, which is free from any democratic control, and which expands in the context of the neoliberal globalization. As such, they trigger a coordinated reaction from social actors. In France Act Up-Paris[131] and the Quadrature du Net[132] built a common front to face both French decision makers and European institutions. Surely, in such a context, the capacity of A2K to cement a multitude of actions, to allow a composite form of mobilization, and offer people a renewed political horizon is the most adapted way to confront the undemocratic form of governance exercised by bureaucrats and their allies in the industry.

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[131] Available at : http://www.actupparis.org/ [accessed 23 Feb 2011]
[132] Available at : http://www.laquadrature.net/ [accessed 23 Feb 2011]

The A2K movement encourages alternatives models of social and economic organization of creation and innovation. But, the claim of 'access' also raises the issue of egalitarian participation of individuals not only to technological and cultural production but to political life and democracy. The issue is raised, in different ways, by ACTA and by wikileaks, and it is a central one in the current context as well.

The Author

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A2K: a Brazilian Experience

Pedro Paranaguá *

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Full biography p.125

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A2K: a Brazilian Experience

Pedro Paranaguá[133]

One of the first institutions in Brazil to work with access to knowledge issues was Fundação Getulio Vargas (FGV) in Rio de Janeiro, less than a decade ago. A group of young, yet competent, lawyers began their work on copyright law and the Internet. The small group soon augmented to nearly a dozen in-house researches and professors, all ignited by Brazil's growing market. The potential generated by intellectual property -related issues in Brazil, allied to the focused work undertaken by FGV's Centre for Technology and Society, and yet due to FGV's strong brand as a respected educational and consulting institution, has successfully attracted national and foreign funders. Funding was crucial. Despite FGV being a relatively rich institution, it was not willing to substantially invest in the young new group.

The years have passed, and Brazil's market has demanded more labour force, i.e. applied research and technical knowledge, within several fields of knowledge-based goods and services. Other research institutions and non-governmental organizations (NGOs) have then initiated to develop or

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expanded their respective researches on copyright, patents, technology, health, education, and so on.

Amongst them we should mention at least seven organizations:

(i) São Paulo University's (USP) GPOPAI (*Grupo de Pesquisa em Políticas Públicas para o Acesso à Informação* or Research Group on Public Policy for Access to Information).

(ii) Santa Catarina Federal University's (UFSC) GEDAI (*Grupo de Estudos sobre Direitos Autorais e Informação* or Study Group on Copyright and Information).

(iii) ABIA (*Associação Brasileira Interdisciplinar de AIDS* or AIDS Interdisciplinary Brazilian Association).

(iv) PSL-Brasil (*Projeto Software Livre Brasil* or Free Software Project – Brazil);

(iv) RITS (*Rede de Informação para o Terceiro Setor* or Information Network for the Third Sector).

(vi) INTERVOZES (*Coletivo Brasil de Comunicação Social* or Collective Brazil of Social Communication). All of them have being crucial in building criticism and providing analysis for the government and to society as a whole.

I will focus on FGV's CTS for I have worked there for nearly five years, and thus am more comfortable in describing their work with more property. I should mention that all the other organizations mentioned above collaborate to a greater or lesser degree with CTS – and vice-versa.

FGV – Fundação Getulio Vargas

Within Fundação Getulio Vargas (FGV)[134], the Schools of Law in Rio de Janeiro and in São Paulo are relatively young, having been created in 2002. FGV's Law Schools seek to promote reform in legal thinking in Brazil. The goal of the reform is to promote sustainable development and democracy. Although the Law Schools in Rio de Janeiro and São Paulo follow the same principles and are part of the same educational institution, they work under the leadership of different deans. FGV's School of Law in Rio de Janeiro has chosen two areas of focus: (1) reform of the judiciary system; and (2) reform of the traditional IP institutions.

CTS – Centre for Technology and Society

FGV's Centre for Technology and Society (CTS)[135] seeks to develop research lines with concrete outcomes in terms of national policy making.

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[134] Fundação Getulio Vargas (FGV) is an educational institution established in 1944, offering graduate, masters and doctoral degrees. Originally publicly funded, FGV is now a private academic institution. Its headquarters are located in Rio de Janeiro, with branches in São Paulo, Brazil's financial and economic heart, and in Brasília, the capital. It also has partner educational institutions in all of ther other Brazil's twenty-four states. FGV comprises several schools: schools of business and public administration (in Rio and São Paulo), schools of economics (both in Rio and São Paulo), schools of social science, as well as schools of law (both in Rio and in São Paulo). Furthermore, FGV houses the renowned Brazilian Institute of Economics (IBRE), which calculates Brazil's gross domestic product. The IBRE is responsible for collecting economic data to calculate the most used price indexes in Brazil – the nationally famous IGP-M or general price index-market. State governors, presidents of the Republic, and members of Congress, tribunals, and the Central Bank, as well as many high-level business people have studied and/or taught at FGV.

135The CTS in the School of Law at the FGV in Rio, which was founded in 2003, currently is Brazil's leading academic institution dealing with the interplay of law, technology, and society. The CTS manages extensive research and educational programs, employing an inter-disciplinary approach.

To this end, the CTS members have developed a number of activities. They have split their time between researching, teaching, and advocacy activities. Apart from the director, the vice-director, and two researchers, who are hired by FGV as professors or area coordinators, external project grants fund most of the activities and the research staff of the center. CTS coordinates graduate and post-graduate programs at FGV's School of Law in Rio de Janeiro, including the IP courses. CTS provides advanced training to federal and state court judges, under the invitation of the Brazilian Association of Judges and offers an annual course to high-ranking military officers. The center coordinates twenty distance-learning continuing education Law courses, in which more than 4,000 students have enrolled from all Brazil and other parts of the world in the past four years.

Creative Commons Brazil Project

The term "Creative Commons" has become a media phenomenon in Brazil. It is a type of license that not only maintains the copyright protection of a work, but also gives some permission for use to third parties. Instead of "all rights reserved", it uses the model of "some rights reserved". The author chooses what may be done with her/his work, allowing for the copying, distribution, and execution (or use) of the work. Thus, it usually makes copyrighted works more widely known, fostering access to knowledge, while maintaining copyright protection.

The CC project was extremely well-received and has been enthusiastically embraced by a huge community of artists, starting with former (composer and singer) Minister of Culture, Gilberto Gil. And artists are not the only users. Alongside them stand many members of the civil society, including a number of public interest NGOs, academics, and so on.

One of the most renowned IP scholars in Brazil (Denis Barbosa) licenses his entire website under a CC license[136]. Even more interestingly, the government itself has adopted several initiatives using the CC model. The Ministry of Culture website is entirely CC-licensed. Another important example include a portal named "publicdomain.gov", created by the Ministry of Education, which was inspired by, and uses, the CC licenses.

The largest supporter of arts in Brazil — the oil company "Petrobras" — included in its yearly call for proposals a clause stating that works licensed under the CC would achieve a better result in the selection process. This call for proposals represents grants whose total amount is approximately US$20 million. The *Financiadora de Estudos e Projetos* (FINEP), a state-owned granting agency, recently announced that their newly-launched book, detailing the best innovation programs in Brazil, is licensed under one of the CC licenses.

These CC successes were the result of CTS' work with these partners as well as articles published on the Internet, in magazines and newspapers, and seminars, interviews, and lectures around the country. The CTS has never received any funds from CC International. The CTS represents CC because it believes in broadening public access.[137]

CTS' Partnerships and Collaboration

The CTS has built several national and international partnerships. At the national level, the CTS has been successful in developing partnerships, owing in part to the reputation of FGV as a successful academic institution.

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136 Available at: http://denisbarbosa.addr.com/ [accessed 23 Feb 2011]

137The Brazilian Portuguese version of the website, hosted and managed by CTS is located at: http://www.creativecommons.org.br [accessed 23 Feb 2011]

Such a reputation, however, was not a precondition for success, as will be discussed later in this article. On the international level, specifically in the IP field, FGV was not known at all. Having undertaken studies abroad, the CTS members have had the chance to meet top academics, government officials, and activists from the main public interest NGOs working on access to knowledge and IP reform. These partnerships have been truly invaluable.

The CTS has formed official and unofficial partnerships, and worked collaboratively with the following academic institutions, public interest NGOs, and government entities, amongst others:

- Brazilian Ministry of Culture;
- Brazilian Institute for Consumer Defense (IDEC);
- Brazilian Patent and Trademark Office (INPI);
- Yale University's Information Society Project;
- Electronic Frontier Foundation (EFF – USA);
- International Centre for Trade and Sustainable Development (ICTSD – Switzerland);
- South Centre (Switzerland);
- Derechos Digitales (Chile);
- IP Justice (USA);
- ISA - Socio Environmental Institute (Brazil); and
- West Virginia University (United States).[138]

138In addition, the CTS has had extensive communication with the following Brazilian institutions: the Free Software Project – PSL-Brasil (Brazil); the National Institute of Information Technology, which is linked to the presidency of the Republic; Coletivo Intervozes; the International Network for the Third Sector (RITS); the AIDS Interdisciplinary Brazilian Association; Doctors Without Borders in Brazil; the Brazilian Network for Peoples Integration; the Brazilian Ministry of Foreign Affairs; as well as with the following foreign institutions: the US-based Knowledge Ecology International; the Centre for International Environmental Law; the Malaysian Third World Network; and the India-based Alternative Law Forum.

The CTS is the only academic organization in the southern hemisphere with permanent accreditation before the World Intellectual Property Organization (WIPO). Additionally, the CTS also actively participates in the UN-supported Internet Governance Forum. The CTS is a founding member of COMMUNIA, the European Thematic Network on the Digital Public Domain, a project that covers all countries in the European Union. The project, funded by the European Union, also includes organizations based in other strategic countries.

Advising on policy matters is another expertise that the CTS has worked to cultivate. The center has partnered with several branches of the Brazilian government (including the National Institute of Information Technology, the Brazilian Internet Steering Committee, and the Ministry of Culture) on projects ranging from drafting legislation to project implementation.

Since the CTS was founded, it has been active in shaping the A2K movement in Brazil and abroad. This experience places the CTS in a particularly strong position to share best practices. Accordingly, the CTS has been chosen to be part of the launching of the A2K Global Academy together with other members from China, Egypt, South Africa, and the United States.

Other CTS Activities

Together with its partners, the CTS has been able to actively influence the policy-making process with respect to IP rights at the national and international levels. The CTS work also includes other more traditional

"academic" activities including publishing academic books; doing applied research; teaching graduate and post-graduate level courses; delivering training to patent and trademark examiners; writing easy-to-understand articles for magazines, newspapers, and Internet blogs; giving interviews to radio and TV channels; training judges and military officials; and delivering lectures to a variety of stakeholders, including the Supreme Court of Brazil. The CTS understands that informing all Sections of the Brazilian society is necessary to ensure a fulsome debate on IP issues.

A2K Brasil Programme

The main goal of the "A2K Brasil Programme" is to develop policy proposals and to build a constructive debate on access to knowledge. In order to do so, the A2K Brasil Programme collaborates with other projects created by civil society groups to develop the best practices in the area of open access. The project works with the private sector and the Brazilian government in order to develop a balanced approach to the IP rights system.

The A2K Brasil Programme is also intended to influence the IP debate in Brazil via educational outreach and media coverage. At the regional level, the A2K Brasil Programme collaborates with sister organizations, such as Derechos Digitales, a NGO in Chile. And on the international level, the A2K Brasil Programme translates WIPO meetings and documents into Portuguese and attempts to educate the public on relevant development measures including the WIPO Development Agenda, as well as WIPO's Committee on Copyrights, and negotiations on the Anti-Counterfeiting Trade Agreement (ACTA).

The A2K Internet Page

The A2K Brasil Programme website (http://www.a2kbrasil.org.br/wordpress/lang/en/) has become an influential reference for the Brazilian government (e.g. the Ministry of Culture and, to some extent, the Ministry of Foreign Affairs), public interest NGOs (such as the IDEC), and the private sector (such as Globo television). The website is constantly updated and receives more than 41,000 hits per month. Thus far, the blog/website has received more than 770,000 single visits.

The webpage is based on Wordpress and is licensed under the GNU/GPL[139] license. The whole content of the A2K Brasil Programme website is licensed under the Attribution-Non-Commercial-Share Alike 2.5 Creative Commons license. The CTS's blog/website has a Portuguese version, as well as an English version, although the content is not identical.

Research Activities

The Brazilian Ministry of Culture initiated some five years ago a nationwide process to reform the Brazilian Copyright Law. Accordingly, the A2K Brasil Programme has been deeply engaged in reviewing the Brazilian copyright law and supporting the Brazilian Ministry of Culture. One of the results of this focus is a study regarding the Brazilian Copyright Law, which focuses primarily on exceptions and limitations to copyrights. The work of the CTS is related to the reform of Brazil's Copyright Law in certain sectors.

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139 Gnu is not Unix / General Public License.

The CTS has also worked on a draft bill concerning Internet Service Providers (ISPs). The bill aims to avoid the "chilling effect" caused by some recent court decisions in Brazil, repudiate Internet filtering, and provide necessary safe harbours for ISPs. These providers have come under heavy pressure from industries benefiting from strong IP protection. The IDEC, supported by the CTS, has released a paper that deals with abusive pricing in educational materials attributable to the copyright law. The CTS has also worked in the area of technological protection measures, including the closed-circuit infrastructure in Brazilian digital television. This work has managed to prevent the implementation of a regulation that would have transformed the Brazilian public spectrum into a pay-per-view infrastructure.

A2K Brasil Programme Seminars

The A2K Brasil Programme has organized and/or participated in a number of seminars with governmental and non-governmental partners. Some of the more notable seminars include:

- a joint seminar held with the Brazilian Ministry of Culture on copyrights and access to knowledge. Participants include academics, students, a Minister of the Superior Court of Justice, the executive-secretary of the Ministry of Justice, and the Minister of Culture, among others[140].

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140 More information may be found at:
http://www.a2kbrasil.org.br/wordpress/lang/en/2006/12/highlights-from-the-seminar-resulting-from-partnership-between-brazilian-ministry-of-culture-and-centre-for-technology-and-society
[accessed 2 March 2011]
The complete project in Brazilian Portuguese is available at:
http://www.idec.org.br/emacao.asp?id=1282 [accessed 2 March 2011]
Also see http://www.idec.org.br/restricoestecnologicas/, the first Brazilian Portuguese website with information on technological protection measures. [accessed 2 March 2011]

- the first Economy for Development International Forum, which was held in Rio de Janeiro and organized by the United Nations Development Programme. CTS professors Ronaldo Lemos and Pedro Paranaguá spoke at the event.

- a joint IDEC/CTS seminar held in 2007 in São Paulo. The CTS launched an official partnership between the CTS and the IDEC, which is the largest Brazilian consumers group. The event gathered participants from the Brazilian Ministry of Culture, representatives of the Brazilian Association of Reprographic Rights (ABDR), students, and academics from other institutions. On this occasion, the CTS and IDEC also launched a campaign called "Technological Restrictions: You Get Less and Pay for It." This campaign focuses on technological protection measures (TPMs) related to digital television, e-books, and compact discs/digital video devices.

Early in 2007, Sergio Branco and Pedro Paranaguá were invited by the Brazilian Ministry of Culture to give a training program on copyrights, music, and access to knowledge during the first Brazilian Music Fair in Recife, northeastern Brazil. During the three-day fair, CTS members discussed issues related to the A2K Brasil Programme with several artists, businessmen, and government officials.

In February 2007, Pedro Paranaguá was invited on behalf by the Supreme Court of Brazil to speak at the first Seminar on Juridical Information Management for Digital Environments. With an audience of 400 persons, including several supreme court judges, librarians, legal practitioners, and academics from Brazil and abroad, the discussions included issues related to technological protection measures, copyright in the digital environment, and access to knowledge.

CTS Collaborative Projects

The CTS has been effective in building collaborative projects with other NGOs. As noted earlier, the CTS has entered into a number of projects with IDEC, Brazil's leading consumer rights organization. This partnership has produced a lengthy study on the implications of IP on consumers´ rights. This document has been broadly distributed among the Brazilian[141] society at large and has been very influential in fostering the IP debate within the public sphere in Brazil. IDEC publicly supports amendments to Brazilian Copyright Law.

The A2K Brasil Programme has also collaborated with the National Industrial Property Institute (INPI). This partnership has resulted in three members of the A2K Brasil Programme, Carlos Affonso Pereira de Souza, Sergio Branco, and Pedro Paranaguá, being appointed as lecturers to the INPI staff. More than 250 newly-hired patent and trademark examiners have enrolled in the course offered by the CTS under the A2K Brasil Programme. This capacity-building project took place in May and August 2006. Moreover, it is important to point out that the INPI has launched its National Academy of Innovation and Intellectual Property, which offers a Masters degree in IP. Members of the A2K Brasil Programme, such as the author of this article, have been invited to be lecturers at the Academy as a result of the cooperation with the INPI.

Moreover, The CTS has another successful collaboration with the Brazilian Ministry of Culture. A national workshop on copyright, focusing

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141 For more information:
http://www.a2kbrasil.org.br/wordpress/lang/en/2006/12/brazilian-institute-for-consumer-defense-supports-modification-on-brazilian-copyright-law/. [accessed 2 March 2011]
http://www.a2kbrasil.org.br/wordpress/lang/en/2007/03/seminar-on-juridical-information-management-for-digital-environments-s-brazilian-federal-supreme-court-invites-the-center-for-technology-and-society-of-fgv-school-of-law/ [accessed 2 March 2011]

on limitation, and exceptions, was organized on 12 and 13 December 2006. In connection with this workshop, a study was commissioned on matters discussed during the workshop. This document was distributed extensively within the Brazilian Ministry of Culture and during the November 2006 meeting of the International Network on Cultural Policy that took place in Brazil.

International Engagements of the CTS

Engagement with international projects, especially in Latin America, is also an essential part of the scope of the A2K Brasil Programme. As mentioned earlier, the CTS has been actively involved as an accredited NGO at WIPO. The CTS has focused on ensuring that developments at WIPO are made known within Brazil. Regionally, on behalf of the program, the author has written a paper on exceptions and limitations to Copyright Law for the NGO Derechos Digitales, a partner organization in Chile. The A2K Brasil Programme keeps close contact with Derechos Digitales, which is also the CC representative in Chile.

Education, Information, and Media Activism

Another goal of the A2K Brasil Programme is media activism and responding to the stakeholders in Brazil who have a vested interest in strengthening IP rights protections. One of the goals is to discuss knowledge-based goods (IP rights) on a more balanced and fair approach, so that not only lawyers, but also journalists, students, artists, public-interest NGOs, the government[142], consumers, and civil society, have access to

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142 Availabe at:

complete and correct information concerning the flexibilities pursuant to international treaties and conventions, so as to enable these stakeholders to better participate in the discussions. In this sense, the A2K Brasil Programme continues to have a vast presence in the Brazilian public sphere, through articles and interviews on these issues. Interviews have also been given on television and radio channels within Brazil, as well as abroad, to explain issues such as the importance of the open collaborative CC licenses, access to education and its interplay with copyrights, Internet filtering, and technological anti-copying mechanisms.

In January 2007, the A2K Brazil Programme played an important role in a controversial case in Brazil. The case concerned the filtering of a YouTube video owing to a court action filed by model Daniela Cicarelli, who claimed a violation of her privacy. In addition to the privacy issues, the A2K Brasil Programme played a significant role in reversing a court order that sought to adopt filtering as a method of blocking YouTube.[143] The position that the CTS/FGV held was in support of Internet neutrality, and its public statement on the case can be found on the A2K Brasil Programme's website. This involvement led to additional media exposure for the A2K Brasil Programme. In addition to all the media work, CTS members also regularly teach at graduate and post-graduate courses at the FGV School of Law in Rio de Janeiro as well as at other institutions.

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http://www.cultura.gov.br/site/wp-content/uploads/2008/02/estudo-minc-ripc-port.pdf [accessed 2 March 2011]

http://www.cultura.gov.br/site/wp-content/uploads/2008/09/estudo_fgv_minc_final_jun_2008.pdf [accessed 2 March 2011]

143 A2K Brasil Programme available at:
http://www.a2kbrasil.org.br/wordpress/lang/en/2007/01/understanding-the-cicarelli-vs-youtube-case-in-brazil-part-i/ and http://www.a2kbrasil.org.br/wordpress/lang/en/2007/01/understanding-the-cicarelli-vs-youtube-case-part-ii/ [accessed 2 March 2011]

Public Law Projects

- Another goal is to prepare legal proposals for the amendment of the Brazilian Copyright Law which focus on limitations and exceptions to copyright in order to implement flexibilities pursuant to international treaties and conventions and to promote better access to material related to knowledge, education, science, and research. During Minister Gil's mandate (and also during Minister Juca Ferreira's), there was a close collaboration with the Brazilian Ministry of Culture on this issue. During the past Ministry's mandate the CTS used to hold regular telephone calls and periodical meetings with the Directorate of Copyright Issues at the Brazilian Ministry of Culture in order to further develop this important and complex policy project.[144]

Distance Learning Activities

Another scope of the A2K Brasil Programme is the launching of a distance-learning course on Intellectual Property and Development, in partnership with the South Centre, a Geneva-based inter-governmental organization. The course deals with the balancing of IP rights, and targets the public at large, especially public interest NGOs, including government officials. The course is to be delivered in English and offered globally. This two-month course was unofficially launched on 28 April 2008. FGV Online, the FGV distance-

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144 From January 1st 2011 a new Minister (Ana de Hollanda) is in power. It is being said that she will not give the same priorities as the former Ministers have given towards a more balanced approach towards protecting copyrights on the one hand, and promoting access to knowledge, on the other. Cf. http://www.ip-watch.org/weblog/2011/02/08/inside-views-brazils-copyright-reform-schizophrenia/
[accessed 2 March 2011]

learning branch, has used its expertise to implement the course on the Moodle platform, a distance-learning tool based on free software.[145] The course has been prepared by Carlos Correa, a professor at Buenos Aires University.

The A2K Brasil Programme has also launched another distance-learning two-month course (Thirty hours) which deals with access to knowledge issues, including: (1) copyright and related rights; (2) patent law; and (3) Web 2.0. These courses targets lawyers and civil society from an "access to knowledge" perspective.

Recommendations

So what can be learned from the CTS' experience to date? What follows are some recommendations aimed at those grassroots movements that want to get more involved in the area of IP rights, particularly by having a balanced approach to IP and development. A legal background is not strictly required. Indeed, an inter-disciplinary approach has served the CTS extremely well since its foundation. These recommendations are not exhaustive or mandatory as developing NGOs or other grassroots movements require sensitivity to local conditions. Thus, the recommendations are suggestions to guide potentially interested players.

- **English is essential**
  No one can deny that English is currently an international language. Being fluent or at least being able to communicate in English will facilitate engaging on the international level. Documents and materials in

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145For more information: http://www5.fgv.br/fgvonline/intellectual/ [accessed 23 Feb 2011]

English dominate many areas, including IP. Where materials are available in other languages, they are often of a reduced quality. In addition, having direct contact with persons from other countries and being able to understand and participate in international debates is crucial.

- **Study abroad**

  Ironic as it may seem at first glance, some developed countries have excellent academic institutions developing ideas connected to IP rights that are very development-friendly. This will depend at any given moment on the scholars at a particular institution. Attention should be paid to adopting (and further adapting) foreign knowledge to national needs. What is certain is that studying abroad opens one to a wider array of perspectives and views and can help in forming relationships that could be useful in the future.

- **Communication**

  Active communication is essential to building a successful grassroots organization. The Internet offers exciting possibilities in terms of reaching out to a broad audience. The Internet is also a low-cost option to communication. Find communication involves becoming active in writing for magazines and newspapers. It is important to spread one's message as widely as possible. Give interviews, lectures, and speeches to all types of audiences but do not forget to communicate with your audience – be didactic and use their language. Write in a simple language, and publish in hard and electronic format. Use some type of open collaborative license, such as the CC, so that others may pass your ideas forward or even rewrite and improve them. Spread your message and multiply your ideas.

- **Participate in access to knowledge discussions**

  Engage in access to knowledge discussions either passively, if one is a newcomer; or actively, if one has more experience or views the issue with a critical eye. There are several access to knowledge discussion lists open to the public, such as the a2k@lists.essential.org (mainly in English). There are some other lists on specific topics such as health, free software, and technology.

- **Apply for funding**

  There are quite a few international institutions that currently grant funds on IP-related areas such as health, trade, technology, education, environment, and software. Among the better known granting institutions are the Ford Foundation, the Open Society Institute, the MacArthur Foundation, the International Development Research Centre, and the Social Science Research Council. All of these organizations grant funds on IP, education, and sustainable development projects. These institutions are great partners and form an essential resource. Moreover, many countries have national agencies and/or companies that also grant funds for these types of activities.

- **Apply for scholarships**

  There are also a great number of scholarships available for research programs, including courses abroad at the post-graduate and doctoral levels. This is a viable way of funding one's living expenses and tuition fees abroad. Some may think that scholarships are out of reach or impossible to obtain, but this is not the case. Receiving a scholarship is an important step to expanding one's learning and meeting key people.

- **Collaborate**

  Collaboration is a strategic element for developing a deeper engagement on any subject and can facilitate efforts at promoting awareness. Building

formal or informal coalitions with sister institutions, be it academia, public interest NGOs, intergovernmental organizations (IGOs), government, or with consumers is a key movement for optimizing one's action. This could begin on a personal level and develop at an institutional level.

- **Be multidisciplinary**

  Having persons from diverse fields of expertise usually enhances understanding and helps one spread a message to a broader segment of society. Economists, sociologists, anthropologists, political scientists, musicians, artists, chemists, physicians, journalists, technologists, biologists, and lawyers, among others, are essential for discussions involving IP rights. Despite IP rights being a very specific field, they have various ramifications that converge with several areas of knowledge. Several perspectives should be brought to the discussion.

- **Engage in research**

  Research is essential to effectively advocate and advance policy ideas. It allows one to build credibility in a particular field.

- **Be pro-active**

  Do not wait for a collaborative project, a scholarship, or a fund to arrive at your door. Take
  the first step. Show interest. Show one's potential and work.

The recommendations outlined earlier have served the CTS well. Understandably, several other variables may considerably influence success at the local level. However, these basic suggestions have broad applicability. What is most important, however, is bringing forward an IP-related sustainable development approach at the national and/or regional level, in cooperation with other development-friendly NGOs, IGOs, consumer groups, academia, and governments, both from the North and the South.

The Author

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