

# Copyright and Access to Knowledge in Malawi

## An Information Session for MALICO

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EIFL Copyright and Libraries Programme Manager

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- Copyright basics
- What can libraries do under Malawi Copyright Act?
- Nigeria's new copyright law: a model?

Dr. Desmond Oriakhogba, University of Western Cape, South Africa



## Copyright basics

**Purpose of copyright  
is to encourage creativity  
and learning**

- Grants **legal protection** to authors and creators to exploit their works

**and**

- Provides reasonable **access to protected works** to encourage innovation, research and further creativity

**Balance between protection and access**

*Role of libraries to provide access to knowledge*



# Copyright basics

## Legal protection is a bundle of exclusive rights

(“rightsholder rights”)

### Economic rights

- Right of **reproduction** (photocopy/scan)
- Right of **distribution** (sell/lend)
- Right of **communication to the public** (make available online)
- Right of **translation**
- Right of **public performance** (play/musical work)
- Right of **adaptation** (make a book into a film)

### Moral rights

- Right of **attribution** (identify as the author)
- Right of **integrity** (not to have work distorted)
- Right of **disclosure** (withdraw work)

# Copyright basics

## Who gets a copyright?

(rightsholders)

By default:

- Author is the copyright owner
- Heirs

By copyright transfer or licence to:

- Employer
- State
- Publisher
- Collective management organization (CMO)

# Copyright basics

## Access to protected works enabled by limitations and exceptions (L&Es)

(“user rights”)

### For example:

- **Limitation on term of protection** – life of author plus 50 years (S.35 Malawi Copyright Act)
- **Limited by type of work** - facts, procedures, written laws, court decisions, broadcast news not protected (S.28 Malawi Copyright Act)

### Exceptions for public interest purposes\*

- Education and research
- Libraries, museums, archives
- People with disabilities
- Quotation
- Press and political speeches
- Competition e.g. reverse engineering

\* Defined conditions, such as non-commercial uses, set out in the law

## Copyright basics

### L&Es critical to the core functions of libraries

For example, L&Es can allow\*:

- Making of digital copies for preservation and replacement
- Course packs for students
- Research copies for researchers
- Accessible format copies for people with disabilities
- Facilitate inter-library loans
- Enable storytime sessions for children

\* Defined conditions, such non-commercial uses, set out in the law

# Copyright basics

## In sum...

- Strong L&Es that enable reasonable access combined with exclusive rights make for a **well functioning copyright system**
- Balances private interests of rightsholders and the public interest of society **for education, research and further creativity**

*Purpose of copyright*





# What can libraries in Malawi do under the Copyright Act (2016)?

COMMENTARY AND FACTUAL GUIDE

## Main provisions that affect libraries

- **Section 48 Permitted free uses of works** sets out what libraries, archives, museums, scientific and educational institutions may copy and for what purposes
- **Section 49** People with disabilities
- **Section 86** Use of works subject to technological protection measures (TPMs)
- **Section 29** Economic rights



What can libraries in Malawi do under the Copyright Act (2016)?

**EIFL's analysis shows...**

**A good range of uses**

**but complex conditions**

**and missed opportunities**



## What can libraries in Malawi do under the Copyright Act (2016)?

✓ **Good range of uses allowed...**

### For example:

- Preservation and research copies (S.48)
- Use of works in virtual learning environments (S.48)
- Public lending by libraries (S.48)
- Making of accessible format copies, implements Marrakesh Treaty for persons with print disabilities (S.49)
- Enables access to works with digital locks or technological protection measures (S.86)



What can libraries in Malawi do under the Copyright Act (2016)?

...but **complex conditions** restrict uses



**For example:**

- digitization of print material for preservation and backup is not allowed, unless special permission is obtained from the Minister
- the making of digital copies for researchers is expressly barred, and is limited to published works
- before an accessible format copy can be made, the library must do a commercial availability check (delays or prevents right to read altogether)



## What can libraries in Malawi do under the Copyright Act (2016)?

### ...and missed opportunities



Credit: rawpixel.com

### For example, missing issues:

- **Orphan works**, where the copyright owner cannot be identified or found - works of high social and cultural value in library collections will remain undiscovered
- **Text and data mining**, described as the new frontier for science and research - researchers in Malawi cannot benefit from use of digital research tools, unless permitted under a publisher licence
- **Web archiving**, preservation of websites - public online media depicting national heritage, popular culture or important events in Malawi might not be preserved, depriving researchers in Malawi and around the world, of an important future resource



What can libraries in Malawi do under the Copyright Act (2016)?

## EIFL Recommendations

- **Remove commercial availability check** on making of accessible format copies (S.49) – in line with most Marrakesh countries
- **Iron out complexities, especially on use of works in the digital environment** (S.48) – help libraries to support modern education and research
- **Address missed opportunities:** orphan works, text and data mining, web archiving
- **Re-introduce general, flexible provision:** keep the law relevant for longer - fair dealing was removed in the 1989 Copyright Act
- **Ensure implementation of new Public Lending payment system does not burden public libraries** or impact library budgets directly or indirectly (Part XIII The Copyright Fund)



# What Can Libraries in Nigeria Do Under the 2022 Copyright Act?

**One of the most progressive copyright laws in the world with respect to libraries**

## Objectives of the Act

- Protect the rights of authors to ensure just rewards and recognition for their intellectual efforts;
- Provide appropriate limitations and exceptions to guarantee access to creative works; and
- Facilitate Nigeria's compliance with international treaty obligations.



# What Can Libraries in Nigeria Do Under the 2022 Copyright Act?

## What is so good about the Copyright Act?

### New exceptions permit libraries to:

- make and distribute copies for preservation, replacement, and ordinary activities (S.25)
- make and distribute accessible format copies for people with print disabilities (S.26)
- engage in activities that don't fall within the scope of specific exceptions e.g. text and data mining - flexibility of existing fair dealing provision increased (S.20(1))
- avail of the exceptions even when the content is protected by a digital lock or a licence term ((S.50(7) and 20(3))
- pre-existing exceptions retained



# EIFL Checklist

Malawi scores 30% (11/36)

Nigeria scores 94% (34/36)

**eifl** Rate my copyright law

How does your copyright law support activities and services in your library? This scorecard is a handy way to rate your national law for core library provisions. Check how the law performs, and compare with other countries. Identify any gaps, or see where it's doing well. The questions on the scorecard should be read together with the EIFL Core Library Exceptions Checklist. The Library activities and services may be permitted through specific exceptions, a flexible exception such as fair dealing, loan law, or related law. If it is not, please tick 'no'.

**COLLECTION DEVELOPMENT**

- May a library buy lawfully produced books and other materials from another country for inclusion in its collection?
- May a library buy lawfully produced books and other materials from another country for inclusion in its collection?
- May a library lend a physical book/CD/DVD to a library user, or to another library?
- May a library lend an e-book to a library user?

**SUPPORT FOR EDUCATION AND RESEARCH**

- May a library supply a copy of a work, such as a journal article or book chapter, either in hard copy or electronically, to a person for research or private use, or to another library?
- May a library send and receive such copies across borders?
- May a library create databases of collection materials, including e-resources managed by the library, or electronically, to a person for research or private use, or to another library?
- May a library create databases of collection materials, including e-resources managed by the library, or electronically, to a person for research or private use, or to another library?
- May a library provide copies of collection materials for use in virtual learning environments to facilitate distance learning?
- May a library digitize orphan works in its collection, and make them available online?

**PRESERVATION AND REPLACEMENT**

- May a library make copies of works in its collection in any format for preservation purposes or back-up, and provide access to these copies?
- May a library procure from another library the missing parts of any works in its collection?
- May a library web archive, i.e. preserve publicly accessible websites?

**PERSONS WITH DISABILITIES**

- May a library make an accessible format copy of a work and provide it to a person with a disability?
- May a library send and receive accessible format copies to and from other countries?

**FAIR DEALING**

- Where legal protection is granted to technological protection measures (TPM), may a library circumvent the TPM to avail itself of an exception to copyright?

**LIMITATION ON LIABILITY**

- Does the law protect librarians from being sued in the course of their duties?

**A FLEXIBLE EXCEPTION**

- In addition to any specific library exceptions, are library activities also supported by a flexible exception such as fair use or fair dealing?

Does your law measure up?

TOTAL SCORE: 11/36

COUNTRY: Malawi

TYPE OF LIBRARY: [ ]

DATE: 27 July 2017

LIBRARIES DESIGNATED BY THE MINISTER: [ ]

LAW: Copyright Act No. 26 of 2016, 2 Sept.

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- May a library create databases of collection materials, including e-resources managed by the library, or electronically, to a person for research or private use, or to another library?
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**A FLEXIBLE EXCEPTION**

- In addition to any specific library exceptions, are library activities also supported by a flexible exception such as fair use or fair dealing?

Does your law measure up?

TOTAL SCORE: 34

COUNTRY: Nigeria

TYPE OF LIBRARY: [ ]

DATE: 17 March 2023

LIBRARIES DESIGNATED BY THE MINISTER: Any e.g. public, research, academic

LAW: Copyright Act, 1977

Dr. Desmond Oriakhogba,  
University of Western Cape,  
South Africa



**Video clip** (10 mins)

<https://www.youtube.com/watch?v=hjXQ6FtLqXg&t=1914s>

**Nigeria – the best copyright law in the world?**

**EIFL webinar** organized with Nigerian Copyright Commission (NCC),  
15 May 2024

**More information:**

[www.eifl.net/news/setting-bar-nigerias-new-copyright-law](http://www.eifl.net/news/setting-bar-nigerias-new-copyright-law)

# Resources

**What can libraries do under the Malawi Copyright Act (2016)? An EIFL assessment**

[www.eifl.net/resources/what-can-libraries-do-under-malawi-copyright-act-2016-eifl-assessment](http://www.eifl.net/resources/what-can-libraries-do-under-malawi-copyright-act-2016-eifl-assessment)

**Malawi Copyright Act, 2016 (Act No. 26 of 2016)**

[www.wipo.int/wipolex/en/legislation/details/17267](http://www.wipo.int/wipolex/en/legislation/details/17267)

**What Can Libraries in Nigeria Do Under the 2022 Copyright Act?**

<https://www.eifl.net/resources/what-can-libraries-nigeria-do-under-2022-copyright-act>

Contact

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