IMPLEMENTATION OF COPYRIGHT LAW IN
LIBRARIES IN KENYA: A STUDY OF
SELECTED LIBRARIES

BY

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DECLARATION

THIS RESEARCH REPORT IS MY OWN ORIGINAL WORK AND HAS NOT BEEN PRESENTED FOR A DEGREE IN ANY OTHER UNIVERSITY.

JOSEPHAT MUTHEMBWA DAVID

THIS RESEARCH REPORT HAS BEEN SUBMITTED FOR EXAMINATION WITH MY APPROVAL AS A UNIVERSITY SUPERVISOR.

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DEDICATION

With great affection to my parents, David and Wanza, who did for me what none else could do.
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This study aimed at finding out the state of copyright law implementation in libraries in Kenya with specific reference to reproduction of informational materials. The study aimed at specifically establishing the rules, regulations and procedures of reproduction of informational materials used in the libraries.

The survey also aimed at finding out the level of copyright law awareness by the library staff and library users and the methods used in creating the awareness. The other objective of the survey was to establish the views of librarians and publishers on Copyright Law in Kenya and its application in libraries.

The study covered five libraries, the Kenya National Archives and five publishing firms. The libraries included: British Council Library, American Cultural Centre Library, ICIPE Library, Kenyatta University Moi Library and Jomo Kenyatta Memorial Library University of Nairobi. The publishing firms comprised the Oxford University Press, Longman, Evangel, Phoenix and Kenya Literature Bureau.
Questionnaires, formal interviews and observation methods were employed in collection of data for this study.

The study revealed that the rules, regulations and procedures of copying in libraries are not clear. It was also found out that the copyright law is inadequate and does not meet the needs of the libraries. The copyright law awareness among the library users and library staff was found to be low.

Recommendations aimed at rectifying the state of reproduction of materials both inside and outside libraries were offered. Suggestions were offered with the view of amending some areas in the copyright law that are pertinent to reproduction of informational materials.
CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE PROBLEM

Historical studies of man show that property has been part and parcel of his life. Jurisprudence has classified property in several forms: industrial property, real property, intellectual property and spiritual property. Three essential elements have been identified in the concept of property: labour, utility and use value. Labour signifies ownership of property while utility refers to the purpose of the acquisition of the property, that is, the drive for the acquisition. Use value is the gauge or the parameter (criteria) of the physical qualities in the property on which utility is determined (Chege 1978).

As far as historicity of 'real property' is concerned, acquisition of real property is seen in the use of tools by the early man from Stone Age, iron age, through to bronze age. Other development stages show that tools used by man had been improved with time for better exploitation of his environment which had been characterised by the dearth of resources and population increase.
Ploman and Hamilton (1980, p.177) further asserts that:

Property exists in order to provide against the evils of natural scarcity.

As mentioned earlier, labour is a prerequisite in acquisition of property. Hence property is a product of labour.

Mandel (1968, p.698) concurs with the above assertion and contends that:

everything that constitutes acquisition and funds (of goods) and wealth proceeds only from man's labour... without labour these occupations (crafts, agriculture, mining) would yield no profit or advantage.

The above argument has further been buttressed by the Christian Bible where God is quoted to have told man that:

by the sweat of your brow you will eat food. (Genesis 3:19)

Since it is a general consensus that property is a product of individual(s) labour, there is need to
Every human society has laws which safeguard individual property, and collective or state property. However, there has been a tendency among the communities or countries to steal from each other. For example in pre-colonial epoch, we had communities such as Zulu and Xhosa raiding each other's cattle, (South Africa), Kamba and Maasai raiding each other's cattle (Kenya), Mirambo, King of Nyamwezi using rungarunga (dogs of war) to invade and steal from his neighbouring communities (Tanzania), Portuguese invading the East African Coast and stealing huge amounts of gold (1500 A.D.) and colonialists in 19th century invading most of the developing countries - colonising them and looting invaluable goods. Today, this stealing by former colonialists may be seen under the camouflage of neo-colonialism.

In modern era, we have national and international laws which protect people's properties and they are further strengthened by bilateral and multi-lateral agreements between different nations. Just like the real property, intellectual property requires the same protection.
1.1.1 Intellectual Property

For the purpose of this study intellectual property will be used to refer to works protected by copyright law. Excluded from this discussion is the design copyright law and other related laws such as patents, trademarks, passing off, law of confidence and public lending rights (PLR).

Intellectual property differs from other forms of property in two ways: first and foremost, it is abstract and second, once it has been produced in tangible format, it becomes vulnerable to easy exploitation particularly since the development of modern reproduction technology. Other 'non-intellectual' property may require a lot of investment and possibly special skills for their reproduction (Thorn, 1989).

The modern copyright law is a creation of 18th century. However, some scholars claim that practices akin to modern copyright law existed hundreds of years ago. For example Hazan (1970) asserts that the ancient Jewish law reveals that piracy among the prophets was not encouraged. He (Hazan) must have most likely based his argument on the Old Testament (Jeremiah Chapter 23:30) which states that:
Therefore declares the lord I am against the prophets who steal from one another words supposedly from me.

He goes further to argue that this concept was later expanded in Jewish religious law to the principle of reporting a thing in the name of him who said it. Thus, the originality of principle was emphasised.

Similar practices to modern copyright existed in Roman Empire. The Roman Empire is said to have developed a flourishing publishing industry and commerce. Of more interest in Roman Empire, were the contracts between authors and publishers. Their rights were clearly distinguishable. Plagiarism was regarded as morally wrong (Ploman and Hamilton, 1980).

Some scholars argue further that the foundation of modern copyright can be traced back to the invention of printing machine by Gutenberg in 1436. For example it is claimed that Venetian Senate granted John of Speyer rights to print or sell for a period of five years, and in 1498 the senate granted a monopoly of twenty five years to Democrito Terracina.
Beard (1974) contends that what has been termed as the first known author's copyright was granted by Venice in 1436 to a famous historian to the Republic known as Antonio Sabellico to publish "decade of Venetian affairs for unlimited length of time".

In France the oldest privileges are said to date back to 1507 and 2508 and more important in 1529 when the first law to regulate publishing (the right of publishing) was passed.

History on development of writing and publishing shows that 17th and 18th centuries were witnessed by much emphasis on the concept of the intellectual property formal rights of authors.

England is recognized as the first country to adopt the modern copyright statute better known as '1709 Statute of Anne'.

The 1709 statute was passed as a result of pressure exerted on the state by many people including the authors. According to Chege (1978 p.16), some of the criticisms which the people levelled against the state were:
the law subjects all learning and true information to the arbitrary will and pleasure of mercenary and perhaps ignorant licensor, destroys the property of authors in their copies and sets up many monopolies.

The 1709 statute of Anne could be regarded as the foundation of the modern copyright law.

1.1.2 The Concept of Copyright

The term copyright is today a misnomer. It refers to the first statute of 1709 which concerned itself solely with the right to copy. In other words the protection afforded was against piracy of printed works.

The 1709 statute was essentially concerned with the making of copies because before 1709, the right to print was controlled by the Star Chamber and subsequently by the stationers company. The law was merely limited to the right of printing or making of copies. Although many acts have been passed since then that have greatly broadened the range of author's rights, the term copyright has stuck.

In modern sense of the word, the term copyright is broad. So broad is the term that Dworkin et al., (1959, p.1) has referred to it as a 'bundle of rights'
Mawrey (1988, p. 174) has defined copyright as a right to stop other people from making an unauthorised use of original material. He goes on to say that a copyright is not a right to do anything, but to stop others from doing something.

Mawrey's definition of copyright is right but becomes vague where he points out that it is not a right to do anything. According to Chege's definition (1978, p.2), he shows that it is a right to do something:

First it is a legal right of the ownership of original work of art or literature through creation, assignment, trust, bequest etc. and secondly the legal right to reproduce the same work by various means ....

Bambridge's (1990, p.7) definition of copyright is fairly general. He states that copyright protects works from being copied without permission. However, it goes beyond mere copying and extends to other activities such as making an adaptation of the work in question, performing or showing the work in public and broadcasting the work dealing with copies of the work.
The Library Association (1990, p.1) has given a precise definition of copyright as:

Copyright gives legal protection to the creators of certain kinds of materials so that they can control the way their work may be exploited.

In a nutshell, copyright could be defined first, as the legal protection of creators' works from unauthorised exploitation. Second, legal right which empowers the creators to reproduce their works in any form and third, legal right to control how their works are going to be used.

Copyright covers a great deal of things. It is concerned with what we read, look at, or listen. It protects works as seen in form of books, magazines, journals, maps, illustrations, paintings, sculptures, phono discs, tapes and music in general. It also covers radio and television broadcasts, theatrical productions, computer programs and databases and so on.

Copyright law is a negative right which prevents copying of physical material existing in the fields of literature and arts. The fundamental principle of
Copyright law is to protect the creator of original work from unlawful reproduction of his work.

Flint (1978) contends that intellectual property is a product of labour just like the 'real property'. For the work to be covered by copyright law, it should have originality and this does not refer to the originality of the ideas which the work is based on but on the way those ideas have been covered into material form. Since intellectual property is a product of labour of an individual(s), it should not be appropriated by other people. Reproduction of intellectual property without the permission of the owner is theft or piracy.

Unlike industrial property such as patent which enables the investor to have a monopoly and right to exploit his invention before anybody else, copyright owner has no such monopoly and other people can come up with similar product (work) as long as they work independently of each other. On the whole, copyright law must be observed because it not only ensures that the author or the artist gets a fair reward for his work but also promotes flourishing of literature and culture in general.
1.1.3 The Development of Copyright Law

After the introduction of 1709 statute in Britain other Acts followed. The subsequent Acts broadened the range of authors' rights. For example, the 1734 Act (Engraving Act), 1933 dramatic Copyright Act which sought to amend Copyright Act of 1814 and many others.

On the other hand, other countries of Europe and America adopted the modern copyright law, for example U.S.A. in 1970, Denmark in 1741, France in 1793, Germany in 1838, Italy, Belgium, and Holland in 1783 (Chege, 1978).

By 19th century, copyright law had been established in many countries of the world. It becomes clear that an international copyright law was imperative to protect works of foreigners in each country. One of the most important factors which precipitated the need for international copyright law was industrial revolution in 17th and 18th centuries which led to invention of machines capable of faster and easier reproduction of intellectual property than before.
As far as most of the developing countries are concerned, copyright law was introduced during the colonial era.

1.1.4 The International Scene

The term international copyright law is a misnomer because copyright law differs from one country to another. However, the essence of international copyright law is protection of each other country's works.

The first and most important international copyright conventions are Berne and Geneva. The former which is also referred to as International Convention for the protection of literary and artistic works took place in 1886 and involved mostly European countries spearheaded by Britain. The latter convention also known as the Universal Copyright Convention (UCC) took place in 1952 dominated by U.S.A. which did not participate in Berne Convention. The UCC has been referred to by some scholars as a bridge between America and Europe.

The main difference between the UCC and Berne International Convention is the length of Copyright Protection that each provides. Berne provides
fifty years of protection after the author's death while UCC provides only twenty five years after the death of the author (Ouma, 1985).

Most of the developing countries became signatory to one or both conventions as a result of their colonial history. These international conventions have been followed by a series of other international conventions to revise them. Through these conventions the copyright laws have been broadened to accommodate the fast technological changes.

One of the most important factors about these international conventions is that they have been flexed to meet, to some extent, the needs of developing countries. For example, the introduction of the clause which provides the right for compulsory licences to reprint (reproduce) materials which are in demand for educational or cultural purposes.

The most important clause in both UCC and Berne conventions which is the focus of this study is the 'fair use' or 'fair dealing'. The 'fair use' or 'fair dealing' clause or provision allows reproduction of literary or artistic work in a reasonable amount without the permission of the
owner of the work as long as the work is for the purpose of:

(i) research
(ii) criticism
(iii) private study
(iv) review
(i) reportage of current events.

Such use should be aimed at advancing education, judiciary and culture and not at profit-making. Fair dealing is allowed in institutions which are not profit-making such as schools, colleges, university, libraries, courts and so on.

The copyright law remains one of the most problematic issues in legal circles for example in developed countries. Altbach (1989, p.94) asserts that:

It is estimated that $1 billion worth of books and another $1 billion of tapes and cassettes are printed annually.

Although the problem of effective implementation of copyright exists in the developed countries, the situation is not worse than in developing countries. Attempts have been made to solve this problem in
some of the developed countries. Measures such as charging users for the materials they reproduce have been introduced.

In support of the clearing house in U.S.A. the following comment was made by the students of the College of Library and Information Services, University of Maryland:

Without support for ownership much of the incentive for disclosing discoveries, incorporating knowledge in texts, writing literature, producing works of art and articles of beauty would, under our system of free enterprise, disappear somehow, we must maintain a fair return for this effort, the benefits of which many however take freely (College of Library and Information Services, University of Maryland, 1977, p.iv).

Many other attempts such as setting up corporations to collect royalties for authors and publishers have been made. Procedures of copying are well-outlined and notices to keep users aware of copyright law are better than in developing countries.

On the other hand, violation of copyright law in developing countries is rife and little has been done to curb this habit. Altbach (1989, p.94) has
given examples of some of the developing countries which were regarded as notorious or significant violators of copyright law in 1980 as: Taiwan, Korea, and the Philippines (as the three largest), China, Hong Kong, Malaysia, Peru and others.

China today remains one of the most fast developing countries which have not joined the international copyright conventions.

As concerns libraries, very little has been reported but this does not indicate that libraries are not violating copyright law. Fair dealing has been a controversial issue and many people prefer to ignore it rather than try to understand it.

Some of the factors which have contributed to high rate of violation of copyright law in developing countries include: escalating costs for exporters and shortages of hard currency for importers, fluctuating exchange rates, inflation, devaluation, transportation, and ever increasing chains of dealers also widen the gap between the prices for literary materials and the ability to pay. On the other hand copyright law violation in developed countries as
opposed to developing countries may be attributed to: the establishment of copyright laws in Britain (1709); America (U.S.A.) 1990; and U.S.S.R. 1928, just to mention a few. In those countries, there is high level of literacy, high income and availability of most of the informational materials at affordable prices. There is also a strong machinery system to enforce copyright law and also capability of changing the copyright law to accommodate the fast technological changes. While it is difficult, if not impossible, to achieve water tight proof implementations of copyright law, attempts should be made to strengthen national copyright laws of each country for this is the only sure way of effective international copyright law.

1.1.5 The Kenyan Scene

Like many other developing countries, copyright law was introduced in Kenya in colonial era. According to Chege (1978), Kenya became a dumping ground of western literature; indeed a ready market for the European finished products (intellectual property).

Introduction of copyright law in Kenya during colonial era was one of the exploitation manouvres of the imperialists. Kenya had no indigenous
publishing firms and as a result the copyright law ensured the protection of the imperialist's interests.

In independent Kenya, 1966 marked the first Copyright Act modelled on the British copyright law. The Copyright Act was amended in 1975, revised in 1983 and again amended in 1989. In spite of these revisions and amendments, Kenya's copyright law remains inadequate and does not reflect the needs of the Kenyan society. The government of Kenya has made some efforts to implement the copyright law especially in the field of music. For example the 1989 Copyright Amendment Act increased the period of copyright from 25 to 50 years after the death of a composer. Through the same efforts the music copyright society of Kenya has been formed. The Music copyright Society of Kenya is entrusted with responsibility of collecting royalties for the composers. To deter infringement of the copyright law, the fine has been increased to Ksh.200,000 or a jail term of up to five years.

Speaking about the situation of the copyright law in Kenya as relates to record industry the legal adviser of the International Federation of Producers
of Phonograms and Videograms, Funkazi Koroya had the following to say:

The Kenyan situation... has its set of problems but the record industry enjoys the advantage of having a copyright law and all is left is its enforcement. (Standard, 3rd March, 1991, p.4 Col.3).

On the other side of the fence, several cases on plagiarism and reprinting have been settled in legal courts. A good example is the Mwalimu Publications who paid Ksh.230,000 to Macmillan Publishers for plagiarising one of their books entitled "Geography of Kenya and East Africa - Region". (Daily Nation, 5th May 1990, p.19 cols. 5-6). Very little, if at all, has been reported on infringement of copyright law through photocopying both inside and outside libraries and other educational establishments. However, this does not imply that libraries and other institutions do not infringe upon the copyright law.

1.2. STATEMENT OF THE PROBLEM

Copyright is expected to strike a balance between two fundamental premises stipulated by the universal declaration of human rights that:
(i) everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(ii) everyone has right to the protection of moral and material interests resulting from any scientific literary or artistic production of which he is the author (UNESCO, 1973).

In connection with the above premises, copyright law allows what has been referred to as the 'fair dealing' or 'fair use', that is, reproduction of reasonable amounts of work without consulting the author or the creator for the purpose of research, criticism, private study, review or reportage.

The problem which has prompted this study can be seen in the light of the following:

(i) Observation that our Libraries lack clear procedures for reproduction of information materials.

(ii) Lack of uniformity of the procedures for reproduction of information materials in different libraries.

(iii) Lack of specificity of the Kenya Copyright Law as regards library - copying.

(iv) Rampant copying of information materials both in libraries and outside libraries.

By definition, Library is an organization, a system designed to preserve and facilitate the use of
graphic records. It is a social instrument created to form a link in the communication system that is essential to any society or culture (ALA World Encyclopaedia of Library and Information Science, 1986, p.455).

From the above definition it is quite clear that the library must get input from the creators of works in order to play its role as an effective link in communication. Ineffective copyright law can have adverse effects on the very existence of the library – which can in turn affect tremendously the growth of creativity and culture.

In view of the relation between the copyright law and the library, the purpose of this study is to appraise the problems or abuse of the copyright law in the libraries and the potent role of the libraries in the implementation of the copyright law in Kenya.

1.3 OBJECTIVES OF THE STUDY

The objectives of this study are to:

(i) establish the reasons for widespread copying of both printed media and audio-visual materials.

(ii) find out the materials commonly copied.
(iii) establish the procedures followed in copying these materials.

(iv) investigate the rate of copying in each library.

(v) investigate the copyright laws followed in carrying out the above exercise.

(vi) note the problems libraries are facing concerning the copyright law.

(vii) find out attempts the libraries have made to solve the above problems.

(viii) find out the views of the libraries, publishers and users about the relevance of copyright law in libraries.

(ix) recommend possible solutions to the problems.

1.4 SIGNIFICANCE OF THE STUDY

The choice of this study was prompted by the researcher's observation of reproduction of materials in different libraries in the country. It is the hope of the researcher that the findings of this study will make both librarians and users of the literary and artistic works more conscious of the importance of implementation of the copyright law not only in the libraries but also in the country as a whole.

This study would also provide useful information to librarians about the procedures they can adopt in dealing with copyright law in libraries. The findings of this study would be of great use to the national policy-makers especially those dealing with copyright
law to assess where the copyright law in the country needs to be strengthened.

The findings of this study would lead to significant improvement in implementation of the copyright law in the libraries in particular and Kenya in general.

Finally the researcher hopes that the study would be an immense contribution to the discipline and development of the Library Science in the country.

This study may not provide conclusive answers to the problems of the copyright law in the libraries but the researcher hopes that it will form a basis or framework for further studies in this area.

1.5 SCOPE AND LIMITATIONS OF THE STUDY

This study will focus on copyright law in libraries in Kenya. Further, it will be a study of selected libraries in Nairobi.

This study will be limited to six libraries and five publishing firms. The libraries will comprise Jomo Kenyatta Memorial Library in Nairobi University, Moi Library Kenyatta University, Kenya
National archives, British Council, American Cultural Centre and ICIPE Library and Documentation Centre. The choice of the libraries was dictated by availability of photocopying and audio-visual facilities. The other factors influencing the choice of the libraries was their accessibility to the researcher.

The publishing firms to be covered will be limited to Evangel Publishing House, Longman Publishers (K), Oxford University press, Kenya Literature Bureau and Phoenix Publishers. Attempt was made to have a sample comprising all types of publishing firms found in the country but again the sample size was restricted to locations of the publishing firms and time factor which was one of the serious limitations of the study. It was a serious limitation because both data collection and writing up of the project work were done simultaneously with the coursework in the second year. In view of this, the sample size had to be restricted.

Travelling expenses coupled with high cost of stationery, reproduction of printed media and audio-visual materials also limited the study. The rest of non-book materials and computer programmes and databases have been left out.
1.6 DEFINITION OF TERMS

ARTISTIC WORKS

These include: graphic works such as paintings, drawings, diagrams, maps, charts and plans, engravings, etchings, lithographs, woodcuts; sculpture, collage, photographs (not comprising a cinematographic films), architectural works (in the form of buildings or models) and works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art.

AUDIO VISUAL

These are non-book materials such as gramophone, records, tapes, slides, film-strips and video tapes.

DRAMATIC WORKS

Non-spoken part of the presentation and includes dance and mime. The words of a dramatic work are protected as literary work.

FAIR DEALING/FAIR USE

'Fair dealing' or 'Fair use' is a concept which has never been defined. However, it seems to imply that copying is allowed as long as it does not harm the individual or society. Fair dealing/Fair use is
allowed in non-profit making institutions such as non-profit making libraries etc. Fair dealing is a British term while Fair use is an American term with the same meaning and implications.

**INTELLECTUAL WORK**

Intellectual work is a creation resulting from intellectual activity covering all forms of expression, and possessing the characteristics of novelty or originality e.g. theses, written books, phonograms etc.

**LAW OF CONFIDENCE**

It is a law that protects information, the scope of this branch of intellectual property is considerable and it protects trade secrets, business know-how and information such as lists of clients and contracts, information of a personal nature and even ideas which have not been expressed in a tangible form i.e. idea for a new computer program.

**LICENSING SCHEMES**

It is a scheme which allows someone who is not the copyright owner, to use copyright material beyond the limits of the copyright law. Blanket licences are offered to cover a given period of time.
LITERARY WORKS

The term literary work includes anything that is printed or written such as books, journals, technical reports and manuscripts and also covers any works that are spoken or sung. It also includes tables (statistical, timetables etc) as well as computer programs and text stored electronically.

MUSICAL WORKS

Musical work means the music and excludes the words which go with the music because they are dramatic works.

MULTIPLE COPIES

It means more than one copy of the same article or portion of work copied from a book or journal.

PATENT

A specification concerning the designs or manufacture of something which is protected by letters patent and secured for exclusive profit or the designer or inventor for a limited number of years which varies in different countries.
PHOTOCOPY

Photocopy is reproduction of the information on a sheet of paper or the page of a book etc. by various types of photographic process.

PIRACY

It is an appropriation or reproduction (of the work or invention of another) without the authority, for one's profit.

PUBLIC LENDING RIGHT

It is a term which refers to a legislature which has been passed in some developed countries. The essence of the scheme is that authors are compensated for use of their works by library users.

REPROGRAPHY

It is a reproduction in facsimile of documents of all kinds by any process using light, hand or electronic radiation - photocopies, microcopies blue prints, electro-copies, thermo-copies, etc. also reproduction by methods of duplicating and office printing.
SYSTEMATIC COPYING

It occurs when a library or institution makes copies of a particular material (e.g. book or journal) available to other libraries or institutions or to groups of users under formal or informal arrangements whose purpose or effect is to have the reproducing library serve as their source of such material.

TRADE MARKS

Are often in form of a name or badge. The main purpose of trademark is to protect business good will reputation but this has a secondary effect of protecting the buyer from being deceived.

LIST OF ABBREVIATIONS

BLDS® - British Library Document Supply Centre
BLLD - British Lending Library Division

® - the idea of the symbol is to indicate the work was protected by copyright in the country of origin and had been registered for copyright protection. This is important under UCC as publications without the symbol are not regarded as protected. As the U.S.A. has now joined the Berne
Convention, under which no formality is required for registering a copyright document, the symbol is chiefly important on publications from those countries which belong to the UCC but not Berne. It also protects publications in the same UCC countries, so it is important for publishers to include it on their works even if it is not required in the country of origin as it should protect them when exported to UCC countries.

- for the purpose of international protection of sound recording, often known internationally as a phonogram, all formalities are to be considered as fulfilled if all the copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol P, accompanied by the date of first publication.

UCC - Universal Copyright Convention.
2.1 INTRODUCTION

There is scarce literature on copyright law in Kenya. The same observation was made by Chege (1978, publishers blurb) about fourteen years ago.

Little, if at all, has been written about Copyright Law and Publishing in Kenya. This book seeks to break, this virgin ground....

The researcher will rely heavily on literature on copyright law in relation to libraries in developed countries because most of the developing countries just like Kenya are characterised by dearth of this vital literature.

2.2. THE PURPOSE OF THE COPYRIGHT LAW

Implementation of the copyright law is very important because it facilitates growth of creativity and culture. Ineffective copyright law can have adverse effects on national development in particular and international development in general.

According to UNESCO (1981, p.5), there are three hypothetical factors which lead to discourage-
ment of national creativity:

(i) first and foremost, there is saturation of national works. This low price of printed products facilitates their sale.

(ii) the limited demand for national works confines it to the point of strangulation, without some remuneration, it becomes impossible to have new works such as performance or recordings in recent works.

(iii) even if a demand exists for new works the danger exists, that is, poor remuneration or lack of it.

The above factors have negative effects on the artist or the author in the sense that he will give up a non-paid activity. This in turn discourages the national creativity.

Hasan (1982, p.10) further buttresses the above argument by saying:

A favourable climate for national Intellectual Production can be created only when a country has an effective copyright law. In absence of adequate copyright protection, local creativity is curled.

Oakeshott (1987), Dworkin (1989), UNESCO (1981) and Hasan (1982) all concur that the author being the owner of his work should like the owner of any property have the right to decide when and in what
form his work is to be used. The sale of illegally produced works, which involves piracy 'bootlegging' constitutes a violation of the rights of authors, actors, record producers, publishers and other creators. They further argue that pirated products are more often than not of a quality inferior to that of the original. They therefore prejudice the reputation of the author.

Associated with the foregoing point is the argument that the author is entitled to a reward for his creative endeavour. Oakeshott (1987, p.4) has emphasised this point by saying that the overwhelming need for copyright protection is economic. She emphasises that publishers spend a lot of money on market research paying commissioning editors, paying for publicity, promotion and repping and to fund for international distribution and storage. More costs are incurred on design, typesetting, printing, binding, ink, paper and so on. Their investment should thus be rewarding but not a loss.

The other argument advanced in favour of the implementation of copyright law is that piracy has negative effects on the people in the sense that it erodes their culture. Pirates narrow the taste of the people to the same level by flooding the market
with what may be internationally attractive. They thus impose uniform cultural model to be followed. This has effect on national creators who may be tempted to deform their works, adapting them to the average taste (UNESCO, 1981).

Ploman and Hamilton (1978) add that it is the desire of every nation to export its works, either for reasons of spreading knowledge of its culture and to influence the cultural development in other areas or for economic development. They further argue that it is a desire of every nation to have access to the works of other nations in order to improve its own cultural development. This would not be possible without effective copyright law.

While all these authors agree on the importance of implementation of copyright law, UNESCO (1981) is quick to point out that piracy does not always have negative effects on the taste of the people. Pirates always attempt to choose works of good quality because they are interested in the sale. At the same time pirates bring to people or the public clandestine market of prohibited works absent from official market.
Watkins (1989) in an attempt to show the effects of piracy has quoted Kanu Offonry of Nigeria who contends that book piracy has traditionally been defended as a type of revenge (by the poor nations) against the developed world for imposing slavery and colonialism. However, he asserts that this argument is losing appeal. Quoting Kanu Offonry he says:

Book pirates are not nationalistic they steal from transnational and local publishers alike ... by undermining local publishing, pirates leave potential readership of 100 million Nigerians open to foreign interests

Commenting about the deplorable situation of piracy in Kenya and other African countries D'jivetti (1991p.3) had the following to say:

Piracy (it) also kills creativity, the main thing we teach students in school and, the basis on which our future development lies we cannot develop by pirating other people's property

On the-whole all the scholars in the foregoing discussion conclude that piracy has catastrophic impact on the creators of works.
2.3 PROBLEMS OF COPYRIGHT LAW

It is evident that along with the plethora of literature dealing with the problems of copyright, there is a dearth of literature dealing with the solutions to the problem.

According to ALA World Encyclopaedia (1986), there are two schools of thought as regards copyright. One group considers copyright as alienable property such as real stock and goods. This school advocates unlimited perpetual rights to the owner of the copyright. The other school views copyright as a monopoly and since monopoly in any form has a bad economic and social implications, the author or the artist should be given as little protection as possible.

Altbach (1989) points out some of the monopolistic characteristics of copyright which give publisher and other producers of copyright material monopolistic advantage of their exclusive position. For example, the practice of publishing hard back editions before paperbacks, showing films at expensive inner city cinemas before allowing suburban release and television showing. Copyright law has been criticised for limiting free expression.
O'Neill (1977) asserts that protection for free expression and for intellectual property are two bodies of law which are not concurrent. For example, copyright is an obstruction to the works which come within the freedom of speech such as excerpts from government publications and even the works which lack degree of originality required for copyright protection such as graphs, schedules, charts and so on.

Herbert (1982) argues that one of the problems of the copyright is that it hinders smooth dissemination of information. He claims that there are normally long delays in getting permission to convert some works from one form to the other for the handicapped people.

Teague's (1985) argument is in agreement with Herbert's as cited above. He points out some of the problems of copyright law as getting rights and licences from authors of the copyright. The problem of getting rights and licences become even worse in cases where some works involve several authors of copyrights.

Ploman and Hamilton (1978) argue that one of the problems of copyright law is the technical and
complex language used. They have noted that the complexity of the language has made the implementation of the copyright law difficult because few people understand it.

Mcfarlane's (1989) argument concurs with the above and adds that over the years a fair amount of criticism has been voiced about the imprecision of a number of terms used such as the 'fair dealing'. Whether or not a particular dealing is fair depends on circumstances. Inevitably this leads to a difficulty, since it is unlikely that a user and copyright owner will have common view as to what is fair.

Rinzler (1987) agrees with McFarlane (1989) that 'fair use' is one of the most troublesome or problematic doctrines of the copyright law.

Most of the terminologies used in 'fair dealing' have not been explicitly defined. Commenting on the British Copyright Law, de Freitas (1983, p.435) has pointed out that the Act does not define 'fair dealing' and there is little clear judicial guidance provided. He has given an example of the term 'substantial' which he argues that the question of
whether the part of work copied is substantial or not is a difficult one because it does not relate so much to quantity as to quality or the importance of the part copied to the work as a whole.

Crawford (1983) has also asserted that 'fair dealing' is a pain in the neck and it is very difficult to determine what is fair. He, however, contends that the actual determination of what is 'fair use' will only become more certain as a body of case law develop.

Technological development is cited by Altbach (1989) as one of the problems facing copyright. With development of modern technology it has become extremely difficult to control unauthorised copying. Looking at the copyright from a critical point of view Altbach (1989) asserts that it works to the advantage of 'haves' over the 'have-nots'. Altbach's argument is correct because developing countries (have nots') export very little printed materials to the developed countries - because the former's publishing firms are small and still developing. Due to unbalanced development of publishing in developing and developed countries the principle of reciprocity clause embedded in Berne and UCC conventions works to the advantage of the latter countries.
Commenting on Kenya's Copyright Law, Irura (1991) referred to the reciprocity clause as illusory because Kenya exports very little from her publishing industry to the developed countries. He has gone further to suggest that foreign publishers should be ready to licence national publishers in order to cut down costs of books which have become expensive.

Copyright law seems to be submerged in a sea of problems and Teague (1979) argues that the computer and computer output microform pose additional copyright problems to those present before their advent. Cheap duplication of complete microfiche will begin to extend the problem.

New (1975) has pointed out enforcement of the law as one of the problems of copyright. He contends that even if the top administrators and reprographic managers do everything they can to secure compliance with the law, there is little hope that all those who use freely available push button copiers will do.

The problems and criticisms of copyright are many and varied - and cannot be exhausted in the scope of this report. Some of the problems facing librarians today are to establish the honesty of the
users when they request for reproduction of more copies of the materials which they have been supplied with. However, there is very little a librarian can do. Librarians cannot also ensure that the materials they lend out to users are not reproduced.

2.4 JUSTIFICATION FOR LIBRARY COPYING

Copying or reproduction of materials is a very essential activity of library services. Various scholars have attempted to give reasons why libraries copy or reproduce materials and also why copying in general takes place.

One of the most resourceful studies on reasons for library copying was carried out by Verner (1968) and outlines these reasons as:

(i) Furnishing of copying services as an essential of the libraries seems not to have been challenged with the introduction of modern copying.

(ii) The original source documents (books, periodicals, manuscripts) which are consulted in the course of library based research cannot be assembled, held together for indefinite periods, studied, compared, marked up and so on.

(iii) The modern investigator needs more copies, more quickly and cheaply.
(iv) Improvement of copying services contributes to timeliness, thoroughness, accuracy, and economy of library based research.

(v) Inter-library exchange of materials have for thousands of years been dependent upon copying services.

(vi) Copying services are for public interest if libraries are indispensable to society, it follows that the furnishing of copying services by libraries is similarly indispensable.

(vii) Copying service does not significantly damage copyright proprietors.

(viii) Copying is not prohibited by the law. If copying were clearly permitted or clearly forbidden by the law much confusion would be saved.

Verner's study is quite resourceful, however, it cannot be claimed to be exhaustive. The (American) Joint Libraries Committee on Fair Use in photocopying Report of 1961 reported in Teague's book entitled "Microform Librarianship" (1979, p.69) concurred with reasons given by Verner. It outlined the reasons as:

(i) The making of a single copy by a library is a direct and natural extension of traditional services.

(ii) Such services, employing modern copying methods, have become essential.

(iii) The present demand can be satisfied without inflicting measurable damage on publishers and copyright owners.

(iv) Improved process will not materially affect the demand for single copy library duplication for research purpose.
Other reasons for library and archives copying or reproduction of materials have been given by Crawford (1983) and Cornish (1990). The former stated that United States Copyright Law Section 108 allows copying by libraries and archives for preservation and security. The archivist may duplicate in facsimile form, unpublished works for preservation and security. The latter also states that United Kingdom Copyright Act allows copying of literary, dramatic and musical works for preservation purpose by libraries and archives.

Herbert (1982) supports copying by library of copyrighted material. He asserts that some of the materials for the handicapped users need to be converted to another form. For example, books converted to brailles.

Lundberg (1979) contends that copying by libraries is very important because the original work or copy is available for local users faster and at less expensive service, the copy need not be returned.

In a Joint NCET/ASLIB Audio-visual Group Conference, Leslie Gilbert gave the following reasons:
(i) The need to follow up an idea immediately in a teaching situation.

(ii) Need to transfer material from one medium to another, for photographs and diagrams to be transferred to slides or to overhead transparencies and so on.

(iii) Copies help in promoting individual study.

(iv) Record some of the radio and television broadcasts which are relevant to their work.

The reasons given above justify library reproduction of materials. In spite of this justification, there has been no consensus on whether library copying has effect or not on creator's works.

2.5 EFFECTS OF COPYING/REPRODUCTION OF INFORMATIONAL MATERIALS

Several studies have been carried out to determine whether copying or reproduction of material by libraries, educational institutions and individuals have effects on the creators of these works.

Henry (1975) in his book, Copyright information Technology Public Policy, has specified the effects of photocopying on authors and publishers in U.S.A. From this study, he concluded that journal publishers appear to be the most affected by photocopying. He concurs with the Library of Congress that photo-
copying may diminish the circulation of some periodicals. According to the Library of Congress, three new journals are born and one dies everyday. Henry (1975, p.63) also reports that according to survey conducted by Gilbert Youth Research, Inc., for the College Division of the Association of American Publishers and the National Association of College Stores, indicated that photocopying has very little effects on textbook sales.

Wood (1983) in his argument based on studies carried out in the United Kingdom asserts that no one has really established how much and what sort of copying is carried out in U.K. He further argues that the amount of copying involving inter-library loan service is not very serious and even if the publishers were to be given royalties, it would unlikely lead to huge incomes or persuade libraries to buy journals rather than acquire copies from elsewhere. Wood has disagreed with the publishers' argument that the inter-library loan service (ILL) scheme leads to fewer and fewer titles being published. Wood (1983; p.462) has cited expenditure evidence from the academic sector to show that photocopying does not influence budgeting. He argues that not only have libraries not been constrained because of resource sharing opportunities but they have also actually
increased their budgets at the expense of their activities. For example:

In 1950, the library expenditure accounted for 3.7 per cent of total U.K. University expenditure. In 1979 - 1980 it was 4.2 per cent.

Wood's argument may not be easy to validate considering other factors which influence the library budgets.

The ASLIB report by Woodward (1978) produced under the guidance from BL/STM working party looked for some positive correlation between falling periodical subscriptions and increasing use of British Library Lending Division (BLLD) but failed to find any.

Coleman's (1977: p.259) argument differs sharply from that of Wood and Woodward. He feels that photocopying has serious effects on authors and publishers. He has criticised photocopying in the following words:

Unbridled photocopying ... will lead to the imminent demise of already developed communication skills...... we find that this subject has been most often dealt
with by technicians (rather than philosophers) driven by their own egos and dreams of power, or by an overweening brashness that assumes that technology can, of course, supply solutions to all our problems.

Coleman does not show how copying will affect scholarly publishing. Further, his argument that the question of photocopying has been dealt with by technicians may not hold water because librarians, publishers and other professionals have been involved.

Lundberg (1979) joins the bandwagon of Wood and Woodward to buttress the argument that copying does not have significant effects on authors and publishers. To make his argument more factual, he claims that 50 per cent of orders of BLLD concerned articles from volumes which were more than three years old and thus no longer available in stocks. He goes further to say that it is the tight purchasing budgets of libraries and the increased number of periodicals and the increased costs which are the reasons for difficulties experienced by the publishers.

Talking about the effects of photocopying in United Kingdom, Pinnock (1983) contends that the framers of 1956 Act could not envisage that the vast
copying service of the British Lending Library Division would come into existence when they embodied section 7 of the Act which deals with the 'fair dealing'. He asserts that the British Library produces about 20 million prepaid copy/pages a year in response to between 1 and 2 million individual requests which the publishers approximate to 400 scholarly journals of average circulation. Undoubtedly, this affects the circulation of journals.

The (American) Joint Libraries on 'fair use' Photocopying Report of 1961 quoted by Verner (1968) does not agree with the publishers that photocopying by libraries has serious effects on the publishers. The committee stated that:

(i) the present demand can be satisfied without afflicting measurable damage to publishers and copyright owner.

(ii) improved copying process will not materially affect the demand for single copy library duplication for research purpose.

Verner (1968) strongly disagrees with the publishers' argument that photocopying affects the sale of their journals. He contends that the fact that the work is available in the library can be argued (but hardly proved) to reduce the demand and thus results in a
loss of sales. The same thing could happen if any individual buys a work and shares it with other people.

Discussing about the issue of the impact of the Copyright Act of U.S.A. on music libraries, Hunter (1983) points out that the publishers opposed the 'fair use' – on music because it would lead to a great loss of profit. On the other hand the music librarians maintained that they saw no monetary disadvantage of composers and publishers and argued that fair use would ensure promotion of music which the publisher may not have been able to bring to the light.

Many countries do not include sound recording in fair dealing. However, according to UNESCO (1980) some of the countries which include sound recording in the 'fair use' include: Australia, Cuba, Tanzania, Cyprus, Sweden, Iceland, Malta, Malaysia etc.

It has been difficult for publishers to prove exactly and beyond doubts how photocopying affects their sales. Taylor (1980) has cited one famous court case in which Williams and Wilkins publishers of medical journals sued the United States Government
for infringement of their copyright through the National Institutes of Health and the National Library of Medicine. The defendants won the case under the umbrella of 'fair use'. The plaintiff could not prove the actual damages caused by photocopying.

No proofs have been brought forward by publishers on effects of photocopying on their journals and books but they are still convinced that the Free Library Services or at low cost are having a seriously limiting effect on their sales (Taylor, 1980, p.84).

Lack of consensus on the issue of library photocopying on whether it has effects on the sale of books and journals has best been explained by Henry (1975) who contended that some of the people who have attempted to tackle this subject are either pro-users or pro-owners.

2.6. ATTEMPTS MADE TO IMPLEMENT COPYRIGHT IN LIBRARIES

Today copyright law remains one of the most complex laws to implement. So many are its loopholes that it would be impossible for any country to boast
of its 100% effective implementation. The U.S.A. is among some of the countries which have been in the forefront on implementation of copyright law. A study carried out in the U.S.A. by the University of Maryland (1977) entitled "Copyright and Photocopying Papers - on problems and solutions: design for a clearing and bibliography" proposed excise tax as an alternative to photocopying problem. A federal excise tax was to be imposed on sales of all apparatus capable of reproducing copyrighted materials. The money was to be used for the ultimate distribution to creators and performing artists through the media of the existing authors and performing organizations.

The above study seems to have been based on Germany copyright Act of 1965 which imposed a levy on a wide range of recording equipment in return for a blanket licence to make recordings of protected works for private use. The levy is collected by society (ZPU) formed by three existing collecting societies representatives between the composers, lyric writers, performers, record makers and other interested parties.

According to Taylor (1980) a U.S.A. Copyright Clearance Centre (CCC) came to be formed in 1977 as
an attempt to solve the problem of photocopying. Billings (1983) adds that the Association of American Publishers (AAP) sponsored the non-profit Copyright Clearing Centre (CCC) with the authority to grant photocopying privileges to libraries and others in return for per page royalty payment.

In a study by Wood (1983) entitled 'Reprography and Copyright', it is stated that the British government seems to be against the idea of national collective centres such as the Copyright Centre set up in the United States. He criticised the United States 'CCC' for being complex to manage and added that any successful system of licensing/collectively must be simple to use and easy to police. He further argued that the imposition of tax on reprographic equipment may not be fair to users although this seems to be the only solution in some countries.

In an attempt to implement copyright law in Britain, Lundberg (1979) points out that the British Whitford Committee of March 1977 recommended a licence system (general agreement) which would be concluded between the users and copyright holders, the latter being represented by the central collecting societies, about the utilization of protected material against
compensation paid annually as a lumpsum.

According to Marks (1981), most of the Nordic countries have applied voluntary blanket licensing system operating within the existing copyright laws. He, however, notes that Australia has not proposed or adopted voluntary blanket licensing system. The Australian system is considered far more comprehensive in relation to a wider range of 'public interests' usages in schools, universities and libraries. Marks (1981) argues that contrary to the other copyright systems Australia's copyright system allows reproduction of multiple copies in libraries but under strict observation. Australia's copyright law on fair dealing is based on Frank's report.

Taylor (1980) contends that shortage of internally produced literature in Australia may have contributed to the overall impression given by the Frank's report that the user is by far the more important of the two parties to be considered (User versus author/publisher).

A study carried out by Whitford committee in an attempt to find solutions for the copyright law in United Kingdom, showed that Germany and most of the Nordic countries used blanket licensing systems.
One of the most important revelations of this study was that in Sweden, libraries do not pay royalties in respect to photocopying. The government pays through the Swedish Fund for Authors Organization. The Swedish Method of catering for blanket licensing system differs sharply from systems used in other countries where users meet their own cost of copying.

Karp (1978) has argued that for effective copyright law in libraries there should be good or clear guidelines. The language should be clear and the materials to be reproduced should not only be clearly specified but also the procedure for reproducing them should be in black and white.

Wood (1983), O'neill (1977) and Crews (1991) have concurred that there are four main criteria for assessing 'fair use' or 'fair dealing' namely:

(i) The purpose and character of use, including whether it is commercial or non-profit purpose.

(ii) The nature of the copyright work itself.

(iii) The amount and substantiality of the portion used in relation to the copyright work as a whole.

(iv) The effect of the use upon the potential market for, or the value of, the copyrighted work.
The above guidelines help the users to be within the requirements of the law.

To make copyright law more viable in libraries, Marks (1981), Wood (1983) and Brennan (1977) all agree that photocopying machines should bear notice to alert the users about the limits of copying.

For effective implementation of Copyright Law, all the necessary ways or methods should be applied.

2.7 COPYRIGHT LAW LITERATURE ON KENYA

Chege (1978) has analysed the introduction and development of copyright law in Kenya very well. He has expounded the copyright law in Kenya in both colonial and post-colonial era. In this important study, he has outlined clearly the works which are allowed to be reproduced in 'fair dealing'. He however does not give guidelines to be followed in libraries and other educational establishments. His work deals with the copyright law in Kenya in general and does not address itself to the library issues.

The Copyright Act of Kenya Chap. 130, Sec. 7 states that:
copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Kenya of any of the following acts, namely the reproduction in any material form, the communication to the public and the broadcasting, of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original: but copyright in any such work shall not include the right to control -

(a) the doing of any of those acts by way of fair dealing for the purposes of scientific research, private use, criticism or review, or the reporting of current events....

First and foremost the term 'fair dealing' remains undefined in Kenyan copyright law. The 'fair dealing' is even made more vague by the fact that the law has not stated clearly the amount to be reproduced from a particular material. Further the law lacks a clear-cut procedure of the reproduction of materials in the library under fair dealing.

The Kenya Copyright Law is silent on unpublished materials. On the whole the Kenya Copyright Law is too general and inadequate to the needs of the libraries.

Irura (1991, p.35) has pointed out some of the
loopholes of Kenya Copyright Law. In his seminar paper entitled "The Copyright Law: legal position in Kenya", he pointed out that the Kenya's copyright law lacks a provision for a central collecting authority on behalf of authors. He states that:

there is a need for legislation to be made to enable a collecting authority to introduce levying of charges on photocopying, blank tapes and libraries.

Irura's suggestion of levying charges on photocopying blank tapes and libraries is good but it falls short of explaining how this is going to be carried out or done.

Another problem facing copyright law in Kenya is lack of awareness. This point was emphasised by Ron Andrews, an official of the International Federation of Producers of Phonograms and Videograms (IFLPI) in the following words:

There are some complications we are having to deal with where even those expected to enforce the law are not fully aware of it (Standard, 3rd March, 1991, p.4 col.3)
Philip Kilonzo, Commissioner of Police, in an article entitled "Artistes to be Protected" pointed out that investigators, authors and producers of copyright materials were not aware of their protection under the Act (Nation, 20th April 1990, p.4 col.3)

Muthembwa (1991) in a seminar paper entitled "The Role of Libraries and Information Services in the Implementation of Copyright Law in Kenya", stressed the need for the librarians and other information workers to be educated on copyright law.

The foregoing discussion on state of copyright law in Kenya shows that there is an urgent need to implement the copyright law in libraries and in the country as a whole. This study aims at bridging these glaring gaps.
CHAPTER THREE

METHODOLOGY

3.1 INTRODUCTION

The study intended to examine the present state of copyright law in selected libraries in Nairobi area with specific reference to reproduction of information materials. The study covered six libraries and five publishing firms as shown below:-

LIBRARIES

(i) Kenyatta University Moi Library
(ii) Jomo Kenyatta Memorial Library (University of Nairobi)
(iii) Kenya National Archives and Library and Documentation Centre.
(iv) International Centre of Insect Physiology and Ecology Library and Documentation Centre (ICIPE).
(v) British Council Library.
(vi) American Cultural Centre.

PUBLISHING FIRMS

(i) Longman Publishers (K).
(ii) Oxford University Press.
(iii) Kenya Literature Bureau.
(iv) Phoenix Publishers
(v) Evangel Publishing House
The choice of Nairobi area was influenced by the following factors: availability of many libraries, well equipped, in terms of informational materials and reprographic facilities, inter-library loan service which involves photocopying is more intensive than in many other parts of the country and lastly the research is taken together with the coursework and Nairobi area affords this convenience. Factors influencing the choice of libraries have been outlined in limitations of the study.

3.2 THE SAMPLE

The population of the study included:

(i) One librarian from each library.

(ii) One photocopist from each library. A total of five photocopists because British Council Library does not have a photocopist. Photocopying is self-service.

(iii) Five officers in charge of audio-visual facilities. This was because out of six libraries only one does not have audio-visual facilities (University of Nairobi).

(iv) Ten library users (all cadres) from each library.

(v) One publisher from each publishing firm. A total of five publishers comprising two managing directors, two chief editors and one publication manager.

The total number of all the respondents was eighty (80). All the respondents filled the questionnaires.
3.3 THE SAMPLING PROCEDURE

3.3.1 The Library Staff and Publishers' Sample

The above sample of library staff who included the librarians, photocopists and officers in charge of audio-visual facilities and that of the publishers' was obtained by virtue of offices in the libraries and publishing firms used in the study.

3.3.2 Library Users' Sample

A random sampling technique was used in which users in each library were given questionnaire randomly and requested to fill in. The researcher collected the questionnaires and went through them sorting out the ones in which the users indicated that they had used the library reprographic and audio-visual recording facilities. The first ten questionnaires were picked.

3.4 DESCRIPTION OF RESEARCH INSTRUMENTS

The data for this study were collected by use of questionnaire, formal interview and observation methods.

The researcher used three different types of questionnaires for the library staff (who comprised the librarians, photocopists and officer in charge...
of audio-visual facilities), the publishers and the library users.

3.4.1 The Library Staff Questionnaire

The questionnaire for library staff was divided into three parts. Part I for librarians, Part II for photocopists and Part III for officers in charge of audio-visual facilities.

Part I of the questionnaire aimed at finding out the librarians' views about reproduction of informational materials in the libraries and Kenya Copyright Law in general.

Part II of the questionnaire was aimed at finding out the procedures followed by photocopists in photocopying of materials, the problems they face in photocopying and their awareness of copyright law. It also aimed at investigating the materials mostly copied.

Part III of the questionnaire aimed at finding out whether the officers in charge of audio-visual facilities copied or reproduced library materials, the procedures they followed in reproduction of the materials and the materials they reproduced most.
In addition to the above, the questionnaire also was designed to elicit information related to their awareness of the copyright law and their views on the Kenya Copyright Law.

3.4.2 The Library Users' Questionnaire

The questionnaire for the library users was aimed at finding out the following: awareness of the copyright law and its application, reasons for reproduction of informational materials, types of the materials they copied, procedures they followed in reproduction of the library materials and other places they used in reproduction of informational materials.

3.4.3 The Questionnaire for Publishers

The publisher's questionnaire was aimed at finding out the materials they produced and their prices, whether library copying had any effects on their sales and their views on Kenya Copyright Law. This questionnaire was also intended at finding out the role the publishers have played in the implementation of the copyright law in the country.
3.4.4 The Formal Interview

The formal interview was used when the researcher was collecting the filled up questionnaire from the library staff and the publishers. The formal interview was aimed at clarifying some of the information not clear to the respondents and also aimed at obtaining any other information not fully covered by the questionnaire but deemed to be useful for this study.

3.4.5 Direct Observation

The investigator used direct observation to ascertain the following: existence of the rules and regulations of reproduction of informational materials, existence of the registers or pre-designed for filling in the details of the material to be reproduced, materials mostly copied or reproduced, and whether the copyright law is observed in copying these materials.

3.4.6 Administration of the Questionnaire

The questionnaire for library staff and publishers was distributed by the researcher in person. The researcher held a brief informal discussion with the respondents in which he emphasised the importance of the information they would supply.
He made appointments on when to collect the questionnaire. The questionnaire for library users was distributed to the users in the library with the help of the library staff. The completed questionnaires were personally collected by the researcher.

3.5 DATA ANALYSIS

Since this study was intended to examine the state of copyright law in libraries, the researcher used survey method. Descriptive statistics, i.e. cross tabulations and percentages were used to analyse the collected data.

3.6 CODING OF DATA

Coding of data was undertaken with an aim of making its presentation convenient. The following codes were used:

- KNA - Kenya National Archives
- ICP - ICIPE Library
- BC - British Council Library
- KU - Kenyatta University Moi Library
- UON - Jomo Kenyatta Momorial Library
- Nairobi University
- ACC - American Cultural Centre
- EVA - Evangel Publishers
KLB  -  Kenya Literature Bureau
PHO  -  Phoenix Publishers
OUP  -  Oxford University Press
Longm  -  Longman Publishers.

N  -  Total number of respondents in any group or sub-group.
CHAPTER FOUR

DATA ANALYSIS AND PRESENTATION

4.1 INTRODUCTION

This chapter basically presents field responses whose primary purpose was to establish the state of implementation of Copyright Law in libraries with specific reference to reproduction of informational materials. To achieve this goal, the following factors were investigated:

(i) The reasons for widespread reproduction of library materials.

(ii) The materials mostly reproduced or copied.

(iii) Rules, regulations and procedures followed in the reproduction of informational materials and awareness of these rules and regulations (Copyright Law) by library users.

(iv) The role of publishers and librarians in the implementation of Copyright Law.

(v) Views of the publishers and librarians on Kenya Copyright Law.

4.2 REASONS FOR COPYING OF LIBRARY INFORMATIONAL MATERIALS

From Table 1, the main reasons given by the library users for copying or reproduction of library materials included the following:
(a) for future reference.

(b) high demand of the material

(c) unavailability of the materials locally for sale.

(d) high costs of the materials.

**TABLE 1: Responses of the Users to Reasons for Photocopying**

<table>
<thead>
<tr>
<th>REASONS</th>
<th>ICIPE</th>
<th>UON</th>
<th>KNA</th>
<th>BC</th>
<th>ACC</th>
<th>KU</th>
<th>TOTAL</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
</tr>
<tr>
<td>1. For future reference</td>
<td>5 50</td>
<td>2 20</td>
<td>3 30</td>
<td>3 30</td>
<td>2 20</td>
<td>1 10</td>
<td>16 26.7</td>
<td></td>
</tr>
<tr>
<td>2. The material is in high demand</td>
<td>0 0</td>
<td>2 20</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>2 20</td>
<td>4  6.7</td>
<td></td>
</tr>
<tr>
<td>3. The material is not locally available for sale</td>
<td>0 0</td>
<td>2 20</td>
<td>7 70</td>
<td>4 40</td>
<td>4 40</td>
<td>3 30</td>
<td>20 33.3</td>
<td></td>
</tr>
<tr>
<td>4. The material is expensive to purchase</td>
<td>0 20</td>
<td>1 10</td>
<td>0 0</td>
<td>0 30</td>
<td>4 40</td>
<td>4 40</td>
<td>14 23.3</td>
<td></td>
</tr>
<tr>
<td>1, 2 &amp; 3</td>
<td>0 0</td>
<td>3 30</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>3  5</td>
<td></td>
</tr>
<tr>
<td>1 &amp; 3</td>
<td>3 30</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>3  5</td>
<td></td>
</tr>
<tr>
<td>TOTALS</td>
<td>100 100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>60 100</td>
<td></td>
</tr>
</tbody>
</table>

N = 60 Source: Field survey
While there may be many reasons for copying, the above were given as the main reasons. Table 1 has exhibited the unavailability of informational materials locally for sale as one of the most pressing reasons with about 33.3 per cent of users in all the libraries.

The users who said that they copied materials for future reference were 26.7 per cent while those who copied because the materials were expensive to purchase were 23.3 per cent. Only a mere 6.7 per cent of the total users in all libraries copied the material because it was in high demand. About 10 per cent of the users in all libraries gave all the four reasons: 5 per cent of them gave the following reasons: for future reference, the high demand of the material and unavailability of the material locally for sale. The other 5 per cent gave future reference and high cost of the material as their main reasons for copying.

In connection with the above question, the researcher asked the librarians in all the libraries whether they approved copying and all of them answered in the affirmative. The librarians were further asked to state their reasons for approving
copying. The reasons given by the librarians included the following: Some of the materials were not in adequate supply, if the information is in books which can't be taken out of the library and if the teacher wanted to distribute copies to his students/trainees.

Still on the same question the researcher sought the views of the librarians and publishers on whether photocopying has affected sales of the publications of the latter. If photocopying has no effect on their sales then there would be no good reason to object photocopying.

TABLE 2: Librarians and Publishers' Responses on Effects of Photocopying

<table>
<thead>
<tr>
<th>Librarians and Publishers' Responses</th>
<th>ICIPE</th>
<th>KU</th>
<th>UON</th>
<th>KNA</th>
<th>ACC</th>
<th>BC</th>
<th>OUP</th>
<th>LOAM</th>
<th>PHO</th>
<th>KLB</th>
<th>EVA</th>
<th>NO</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>8</td>
<td>72.7</td>
</tr>
<tr>
<td>Yes</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>27.3</td>
</tr>
</tbody>
</table>

N = 1  Source = Field Survey  TOTAL 11 100
According to the results in Table 2, 72.7 per cent of both publishers and librarians felt that photocopying has no effects on the sales of publishers. On the other hand 27.3 per cent of all the respondents expressed fear that photocopying has effects on the sales of publishers. Out of six libraries, only two namely: Jomo Kenyatta Memorial Library Nairobi University and Kenya National Archives felt that photocopying has no effects on the publishers' sales. Only one publisher out of five felt that photocopying has effects on their sales.

4.1.1 Reproduction of Audio-Visual Materials

Library users in all the libraries were asked whether they reproduced audio-visual materials inside or outside library and 50 (83.3%) of them answered in the affirmative. Only 10 (16.6%) said that they did not reproduce audio-visual materials.

Asked to give reasons for copying, all the library users who had conceded copying cited the high cost of audio-visual materials as the main cause. A few of them however cited both the high cost of materials and the scarcity of some of the audio-visual materials as the main reasons for copying.
The same questions were directed to the officers in charge of audio-visual materials in all the libraries except Jomo Kenyatta Memorial Library Nairobi University which does not have audio-visual section. All of them except British Council Library said that they reproduced audio-visual materials. The reasons given were:

(i) for preservation purposes  
(ii) for security purposes  
(iii) for circulation

The other reason given by only Kenyatta University Moi Library was reproduction of most of the materials into brailles and sound tapes for the disadvantaged users ("print handicaps")

4.2 MATERIALS MOSTLY REPRODUCED/COPIED

4.2.1 Print Media

The respondents were asked to indicate the materials they photocopied most. Responses obtained in Table 3a show that a total of 50 per cent of the users in all the libraries photocopied journals. The second biggest group of users (25%) photocopied books. About 10 per cent of the users photocopied
mostly books and journals while another 10 per cent copied mostly archives records.

**TABLE 3a: Printed Materials mostly Photocopied by Library Users**

<table>
<thead>
<tr>
<th>Materials</th>
<th>ICIPE</th>
<th>KU</th>
<th>ACC</th>
<th>BC</th>
<th>KNA</th>
<th>UON</th>
<th>GRAND TOTAL NO</th>
<th>TOTAL %</th>
</tr>
</thead>
<tbody>
<tr>
<td>News Papers</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1.6</td>
</tr>
<tr>
<td>Journals/Periodicals</td>
<td>8</td>
<td>89</td>
<td>60</td>
<td>8</td>
<td>80</td>
<td>3</td>
<td>30</td>
<td>50</td>
</tr>
<tr>
<td>Books</td>
<td>1</td>
<td>10</td>
<td>30</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>20</td>
<td>15</td>
</tr>
<tr>
<td>Books and Journals</td>
<td>1</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Books and Newspapers</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>30</td>
<td>3.3</td>
</tr>
<tr>
<td>Archives Records</td>
<td>0</td>
<td>0</td>
<td>60</td>
<td>0</td>
<td>0</td>
<td>6</td>
<td>60</td>
<td>10</td>
</tr>
<tr>
<td>TOTALS</td>
<td>10</td>
<td>100</td>
<td>100</td>
<td>10</td>
<td>100</td>
<td>10</td>
<td>100</td>
<td>60</td>
</tr>
</tbody>
</table>

*N = 60  Source: Field Survey*
About 3.3 per cent of all the users photocopied mostly books and newspapers. The users who indicated that they photocopied mostly newspapers were only 1.6 per cent. ICIPE library and American Cultural Centre recorded each 80 per cent of their users who indicated that they mostly photocopied journals. Following ICIPE and American Cultural Centre was the Kenyatta University Moi Library whose users (60%) indicated that they photocopied mostly journals.

Table 3a also shows that 60 per cent of the Kenya National Archives users copied mostly records or reports and other old documents.

British Council Library recorded 50 per cent of the users who indicated that they copied mostly books. About 40 per cent of the Jomo Kenyatta Memorial Library Nairobi University users also photocopied mostly books. The least copied materials in ICIPE Library are the books mentioned by only 10 per cent while in American Cultural Centre books and newspapers are least copied by only 20 per cent of the users. Kenyatta University Moi Library has indicated books and newspapers to be some of the least copied by about 10 per cent. In Jomo Kenyatta Memorial Library, there is almost a balance of the books and journals.
mostly photocopied albeit many users seem to photocopy mostly books.

The journals are the mostly copied materials by users in all libraries followed by books. Most of the users who go to archives indicated that they copy mostly archival materials.

In order to establish the authenticity of the users' responses, the photocopists were asked the same questions. Unfortunately only five photocopists were able to respond. There was no response from British Council Library as it lacks photocopist. Photocopying here is a self-service. About 66.6 per cent of the photocopists confirmed that the journals were mostly copied followed by books. The Kenya National Archives photocopist confirmed that records were the mostly copied materials in the library. The observations made by the researcher also confirmed the above findings to be true.

4.2.1 The mostly Reproduced Audio-Visual Materials

As stated earlier, 83.3 per cent library users in all libraries indicated that they reproduced audio-visual materials. Asked which audio-visual materials they reproduced mostly, 70 per cent of the users
indicated that they reproduced cassette tapes, 5 per cent said that they reproduced video-tapes while the other 5 per cent said that they reproduced both video tapes and cassette tapes.

**TABLE 3b: Audio Visual Materials mostly Copied inside or outside Libraries by Users**

<table>
<thead>
<tr>
<th>MATERIALS</th>
<th>ICIPE</th>
<th>KU</th>
<th>ACC</th>
<th>BC</th>
<th>KNA</th>
<th>UON</th>
<th>GRAND TOTAL</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cassette tapes</td>
<td>8 80</td>
<td>10</td>
<td>3 30</td>
<td>7 70</td>
<td>4 40</td>
<td>10</td>
<td>42 70</td>
<td></td>
</tr>
<tr>
<td>Video tapes</td>
<td>0 0</td>
<td>0</td>
<td>1 10</td>
<td>2 20</td>
<td></td>
<td></td>
<td>3 5</td>
<td></td>
</tr>
<tr>
<td>Both Cassette tapes &amp; video tapes</td>
<td>0 2</td>
<td>20</td>
<td>1 10</td>
<td></td>
<td></td>
<td></td>
<td>3 5</td>
<td></td>
</tr>
<tr>
<td>Phono-discs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did not copy audio-visual material</td>
<td>2 20</td>
<td>5 50</td>
<td>1 10</td>
<td>4 40</td>
<td>-</td>
<td>12</td>
<td>12 20</td>
<td></td>
</tr>
<tr>
<td>TOTALS</td>
<td>10 10</td>
<td>10 10</td>
<td>10 10</td>
<td>10 10</td>
<td>10 10</td>
<td>60 100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NO = 60**

**Source: field survey**
When the above question was put to the officers in charge of audio-visual materials in all the libraries, their responses were as follows: British Council Library stated that it does not reproduce audio-visual materials; American Cultural Centre stated that they reproduced audio-visual materials only when an extra copy was necessary. ICIPE Library, Kenyatta University Moi Library and Kenya National Archives indicated the audio-visual material they mostly reproduced as shown below:

- Kenyatta University Moi Library — Cassette tapes
- ICIPE Library — Cassette tapes and video-tapes
- Kenya National Archives — Films

As shown above, cassette tapes (sound tapes) seem to be the mostly copied audio-visual material. The observation carried out by the researcher revealed that the reproduction of audio-visual materials involved sometimes changing them from one format to another. For example, the Kenya National Archives changes films into video tapes for preservation purpose. Kenyatta University Moi Library changes books into sound tapes (talking books) for the visually handicapped users or from phono-discs to sound tapes. Reproduction of video tapes and cassette tapes in ICIPE is done to cater for the needs of the researchers.
4.3 RULES, REGULATIONS AND PROCEDURES FOLLOWED IN 
REPRODUCTION OF MATERIALS AND USERS' AWARENESS

4.3.1 Users' Awareness of Existence of Rules and 
Regulations of Copying Printed Media

According to the responses exhibited by Table 4a, majority of the users (51.6%) in all the libraries did not know about the existence of the rules and regulations of reproduction in their libraries.

TABLE 4a: Users' Responses on Existence of Rules and 
Regulations of Photocopying

<table>
<thead>
<tr>
<th>RESPONSES</th>
<th>ICIPE</th>
<th>UON</th>
<th>KU</th>
<th>ACC</th>
<th>BC</th>
<th>KNA</th>
<th>TOTAL</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NO %</td>
<td>NO %</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO %</td>
<td>NO</td>
</tr>
<tr>
<td>NO IDEA</td>
<td>1 10</td>
<td>2 20</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>2 20</td>
<td>5 8.4</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td>6 60</td>
<td>4 40</td>
<td>2 20</td>
<td>4 40</td>
<td>6 60</td>
<td>60 40</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTALS</td>
<td>10 100</td>
<td>10 100</td>
<td>10 100</td>
<td>10 100</td>
<td>10 100</td>
<td>10 100</td>
<td>60 100</td>
<td></td>
</tr>
</tbody>
</table>

N = 60 
Source: Field Survey
About 8.4 per cent indicated that their libraries did not have rules and regulations of copying. About 40 per cent said that their libraries had rules and regulations of copying.

To ensure that the conclusions drawn from the users were not biased, the photocopists were asked whether they had rules and regulations of copying in their libraries and all of them except British Council Library which lacks a photocopist indicated that they had them. Through observation the researcher found out that British Council had only one rule of photocopying in its general rules and regulations of the library. The photocopying rule stated that "only a reasonable portion of a book may be copied. This may not exceed 10% of the whole work".

All the other libraries lacked written rules and regulations of copying. The "unwritten inhouse rules" which they communicated to users verbally were based on either the Kenyan Copyright Law or British Copyright Law or American Copyright Law. For example, the Jomo Kenyatta Memorial Library University of Nairobi does not allow photocopying of the theses and dissertations without the permission of the author. ICIPE Library does not also allow photo-
copying of theses, dissertations and textbooks. The photocopists of Kenyatta University Moi Library also commented that they do not allow photocopying of the proscribed materials.

The Kenya National Archives just like the British Council Library has one rule of photocopying in its general rules and regulations of the Archives. The rule states that the users are allowed to photocopy a 'reasonable portion' of a record.

4.3.2 Users' Awareness of Existence of the rules and Regulations for Copying Audio-Visual Materials

About 46 per cent of the users in all the libraries indicated that they were not aware whether the rules and regulations for copying of audio-visual materials existed as shown by Table 4b. About 30 per cent of the users replied in the negative while 24 per cent answered in the affirmative.
Table 4b: Users' Responses on Existence of Rules and Regulations of Copying Audio-Visual Materials

<table>
<thead>
<tr>
<th>RESPONSES</th>
<th>ICIPE</th>
<th>KU</th>
<th>ACC</th>
<th>BC</th>
<th>KNA</th>
<th>TOTAL NO</th>
<th>TOTAL %</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO</td>
<td>10</td>
<td>80</td>
<td>70</td>
<td>0</td>
<td>0</td>
<td>15</td>
<td>30</td>
</tr>
<tr>
<td>NO IDEA</td>
<td>10</td>
<td>0</td>
<td>50</td>
<td>8</td>
<td>90</td>
<td>23</td>
<td>46</td>
</tr>
<tr>
<td>TOTALS</td>
<td>10</td>
<td>100</td>
<td>100</td>
<td>10</td>
<td>100</td>
<td>50</td>
<td>100</td>
</tr>
</tbody>
</table>

When the officers in charge of audio-visual materials were asked whether they had rules and regulations for copying audio-visual materials only two answered in the affirmative. These were Kenyatta University Moi Library and British Council Library. When asked about the written rules and regulations, the British Council Library respondent said that they followed British Copyright Law and it does not allow copying of audio-visual materials. The Kenyatta Moi Library respondent said that he used Kenya Copyright Law. Both respondents conceded that they lacked
restatement (or rules and regulations based on the Copyright Law) for users.

4.3.3 Methods used to Create Awareness of Rules and Regulations of Reproduction of Materials

**TABLE 5: Methods used to Create Awareness of Rules and Regulations of Copying in Libraries**

<table>
<thead>
<tr>
<th>METHODS</th>
<th>KU</th>
<th>ICIPE</th>
<th>ACC</th>
<th>UON</th>
<th>KNA</th>
<th>BC</th>
<th>TOTAL NO</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal Communication</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>5</td>
<td>83.3</td>
</tr>
<tr>
<td>Pre-designed forms filled before photocopying</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>33.3</td>
</tr>
<tr>
<td>In general rules and regulations of the library books</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>16.7</td>
</tr>
<tr>
<td>Notices put in the library</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>User education</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>16.7</td>
</tr>
</tbody>
</table>

N = 60

Table 5 shows that 83.3 per cent of all the libraries except the British Council Library used informal communication (verbal communication) to
alert the users on copyright law provision governing copying of materials. This was in most times done when the users' request went beyond the law.

Two libraries namely: Kenyatta university Moi Library and ICIPE Library indicated that they used pre-designed forms which users fill when they are requesting for materials to be photocopied to alert them on copyright law.

Only 16.6 per cent (ICIPE Library) indicated that they made users aware of the copyright law in user education.

No single library indicated that it had notices bearing the rules and regulations of copying within the library.

The above findings show that ways of creating awareness of copyright law in the libraries are not efficient or effective.
4.3.1 Limitations on Reproduction of Materials

4.3.3.1 Printed Media

The library users were asked to state whether there were limitations imposed on the amount of work to be photocopied. The data in Table 6 shows that the percentage of the users in all libraries who said that there were no limitations in reproduction of materials in their library is the highest (53.3%).

**TABLE 6: User's Responses on Limitations on Photocopying**

<table>
<thead>
<tr>
<th>RESPONSES</th>
<th>ICIPE</th>
<th>UON</th>
<th>KU</th>
<th>ACC</th>
<th>BC</th>
<th>KNA</th>
<th>TOTAL</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
<td>NO %</td>
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<td>NO %</td>
</tr>
<tr>
<td>YES</td>
<td>1 10</td>
<td>1 10</td>
<td>1 10</td>
<td>5 50</td>
<td>5 50</td>
<td>4 40</td>
<td>17 28.3</td>
<td></td>
</tr>
<tr>
<td>NO</td>
<td>7 70</td>
<td>6 60</td>
<td>7 70</td>
<td>3 30</td>
<td>3 30</td>
<td>6 60</td>
<td>32 53.3</td>
<td></td>
</tr>
<tr>
<td>NO IDEA</td>
<td>2 20</td>
<td>3 30</td>
<td>2 20</td>
<td>2 20</td>
<td>2 20</td>
<td>0 0</td>
<td>11 18.3</td>
<td></td>
</tr>
<tr>
<td>TOTALS</td>
<td>10 100</td>
<td>10 100</td>
<td>10 100</td>
<td>10 100</td>
<td>10 100</td>
<td>10 100</td>
<td>60 100</td>
<td></td>
</tr>
</tbody>
</table>

N = 60  
Source: Field survey
The percentage of the respondents who indicated that there were limitations on reproduction of materials in their libraries were 28.4 per cent. The respondents who indicated that they had no idea of whether limitations on amount to be photocopied existed or not were 18.3 per cent. ICIPE Library and Kenyatta University Library recorded 70 per cent of the users who indicated that there were no limitations in copying. Jomo Kenyatta Memorial Library Nairobi University and Kenya National Archives each recorded 60 per cent of the users who answered in the negative. British Council Library and American Cultural Centre recorded least number (each 30%) of the users who answered in the negative.

To validate the information given by the users, the same questions were asked photocopists and three (3) out of five (5), said that they were flexible in copying. American Cultural Centre said that they only limited their amount of work to be reproduced to 20 pages while Kenya National Archives said that they allowed 'reasonable amount' to be copied which is vague.
4.3.3.2 Audio-Visual Materials

Asked about whether there were limitations imposed on the reproduction of audio-visual materials in their libraries, very few users responded to this question. The users of British Council Library and the American Cultural Centre did not respond because their libraries do not allow reproduction of audio-visual materials for the users. There was also no response from the National Archives on the same issue although the officer in charge of audio-visual had indicated that reproduction is done for the users. The two libraries whose users responded were Kenyatta University Moi Library and ICIPE Library. From Kenyatta University Moi Library, 10 per cent of the users interviewed said that they copied audio-visual materials mostly cassette tapes. Asked whether there were limitations on the amount to be copied, they answered in the negative.

The ICIPE respondents who responded to the question on whether they copied answered in the negative (10%) but said that there were no limitations imposed on the amount to be copied. Asked why they did not reproduce audio-visual materials, most of them said they did not see any need of doing so because the works were accessible to them.
4.3.3.3 Charging and Recording of Reproduced Works

The library users in all the libraries were asked whether they were charged for photocopying and all of them except users of ICIPE Library and the American Cultural Centre answered in the affirmative. The charges per page in the following libraries were:

- British Council Library - 2/= 
- Kenyatta University Moi Library - 1/= 
- Jomo Kenyatta Memorial Library (UON) - 1/= 
- Kenya National Archives - 5/= 

The users in all these libraries except British Council Library recorded in a register their names, date and the amount photocopied. All the above information was gathered through users of the library, photocopists and observations by the researcher.

The users of ICIPE Library and Kenyatta University Moi Library were asked if their libraries charged for reproduction of audio-visual materials. The Kenyatta University Moi Library users answered in the affirmative and indicated Ksh.10/= to be the charges for one copy of cassette tape which they mostly copied. They also indicated that they were given official receipt. ICIPE Library users indicated that reproduction of audio-visual material was free.
To verify the above information, the officers in charge of audio-visual materials were asked the same questions and they answered in the affirmative.

4.4 THE ROLE PLAYED BY LIBRARIANS AND PUBLISHERS IN IMPLEMENTATION OF COPYRIGHT LAW

The researcher sought to know the role the librarians and publishers have played in the implementation of the copyright law in Kenya. In this connection the librarians were asked whether they discussed issues on copyright law in their seminars. All of them answered in the negative.

The librarians were asked to state whether they participate or are consulted during the revision of the copyright law. Again all the respondents stated clearly that they neither participated nor were they consulted.

The publishers were asked related questions and the first question being whether each one of them was a member of Kenya Publishers Association. Two out of five publishers said that they were not members. The publishers who said that they are members were Oxford University Press, Longman Publishers and Phoenix Publishers.
Asked whether they discussed issues on copyright in their seminars, only Oxford University Press and Longman Publishers said they did. When asked what issues they discussed, one of them pointed out illegal printing and over-printing of copies by printers as one of the issues they discussed.

Just like the librarians, all the publishers said that they did not participate nor consulted during the revision of the copyright law.

The researcher also sought to know the problems libraries were facing in reproduction of informational materials. The photocopists and the officers in charge of audio-visual materials were asked about the problems they faced in reproduction of informational materials. All of them except Kenyatta University Moi Library officer in charge of audio-visual materials did not mention any problem. The problem pointed out by the Kenyatta University Moi Library respondent was delays in getting permission from creators of works to convert their works into other formats suitable for visually handicapped users.
4.5 VIEWS OF LIBRARIANS AND PUBLISHERS ON KENYA COPYRIGHT LAW AND ITS APPLICATION IN LIBRARIES

The librarians in all the libraries were asked to state whether in their view the Kenya Copyright Law is adequate or not in its provision for libraries. Table 7a exhibits that 16.6 per cent of the librarians interviewed said that the copyright law is adequate.

TABLE 7a: Librarians Response on Adequacy/Inadequacy of Kenya Copyright Law

<table>
<thead>
<tr>
<th>RESPONSES</th>
<th>ICIPE</th>
<th>KU</th>
<th>UON</th>
<th>KNA</th>
<th>ACC</th>
<th>BC</th>
<th>NO.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copyright law is inadequate</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>50</td>
</tr>
<tr>
<td>Copyright law is adequate</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>16.6</td>
</tr>
<tr>
<td>No idea</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>33.4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

N = 6
The librarians who said that the law was inadequate were 50 per cent of the total respondents. About 33.4 per cent of the respondents said that they had no idea or not sure whether the law was adequate or not.

The librarians (respondents) who said that Kenya Copyright Law was inadequate were asked to point out the areas that need to be amended. Their responses were as follows:-

(i) the law is too general and as such lacks specificity.
(ii) the term 'fair dealing' needs to be defined.
(iii) the law should be flexed to respond to new developments in the field of modern technology e.g. full text, digital electronic data and so on.

One of the respondents who felt that the law is adequate gave his reason as "the law is general and as such gives room for photocopying without much restrictions. This is important for a country like Kenya which is characterised by low economic income, poor communication and low level of education".

The views of the publishers were sought by asking them the same questions and their responses were shown in Table 7b. The respondents who said that the copyright law is inadequate were 60 per
cent. While those who answered in the affirmative were 40 per cent.


<table>
<thead>
<tr>
<th>RESPONSES</th>
<th>OUP</th>
<th>LOGMN</th>
<th>PHO</th>
<th>KLB</th>
<th>EVA</th>
<th>TOTAL NO</th>
<th>TOTAL %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copyright law is inadequate</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>60</td>
</tr>
<tr>
<td>Copyright law is adequate</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td>No idea</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>5</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

N = 6  
Source: Field survey
Asked to point out the areas which were inadequate the responses of publishers were as follows:

(i) the law does not serve the needs of the Kenyans.

(ii) the law is too general and inadequate in detail and hence difficult to administer.

One of the respondents stated that the Copyright Law is adequate in its provision but needs to be more widely understood in the area of photocopying and other unauthorised reproduction. The other respondent who also answered in the affirmative confessed that he was not conversant with the Kenya Copyright Law but he felt that it was meeting their needs adequately as publishers.

The researcher also attempted to establish the clarity of the language used in Copyright Act. The librarians were asked whether the language used in Copyright Act is clear and five out of six librarians said that the language used is not clear. The other respondent from British Council Library answered that she was not conversant with the Kenya Copyright Law.

When the publishers were asked the same question, they all replied in the affirmative. When
asked whether terms such as 'fair dealing', 'substantial amount', etc. were clear to them, most of them replied that they do not pose a problem in Kenya at present.

4.5.1 Views of Librarians on Enforcement of the Copyright Law in Libraries

The librarians were asked to give suggestions on how the copyright law can be enforced in the libraries. Their suggestions were as follows:

(i) Users should be explained about the consequences of flouting the law.

(ii) Culprits of infringement of the law should be apprehended.

(iii) Users should be educated on copyright as it applies to libraries.

(iv) Librarians should understand the law.

(v) Government should enforce the law outside the libraries.

(vi) Librarians to organise seminars to discuss copyright law issues.

(vii) Machine Operators (photocopier and sound recording machines) should be trained.

All the above suggestions show that implementation of the copyright law in libraries is ineffective.
CHAPTER FIVE

DATA INTERPRETATION, DISCUSSION, CONCLUSIONS
AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter addresses itself to interpretation and discussion of the data presented in Chapter Four. Conclusions based on the discussion of findings of the study are offered. The interpretation and discussion revolve around the following areas:

(a) Reasons behind widespread reproduction of informational materials in libraries.

(b) Informational materials mostly copied.

(c) Rules, regulations and procedures followed in reproduction of informational materials.

(d) Role of publishers and librarians in implementation of Copyright Law.

(e) Views of librarians and publishers on Kenya Copyright Law.

Appropriate recommendations based on the findings of the research are given.

5.2 REASONS BEHIND WIDESPREAD REPRODUCTION OF
INFORMATIONAL MATERIALS IN LIBRARIES

5.2.1 Printed Media

The results summarised in Table 1 show that majority of users copied because the materials were
not locally available for sale or within their reach. The other two important factors leading to widespread copying are shown as need for future reference and the high cost of materials.

The unavailability of the materials locally for sale or within the users' reach is plausible because most of our local libraries' informational materials are imported directly from overseas. It is very difficult to get some of these materials in our local bookshops for sale. The Kenya National Archives records are not available elsewhere and hence the main reasons for copying by 70 per cent of its users.

The need for future reference also holds water because many people and especially researchers want all the scattered relevant information put together as reference material for the work they intend to do. It may also be safely argued that many people want to copy some materials to store the same information for future use. A big proportion of the users who said that they copied for future reference were from ICIPE Library which is mainly for scientific researchers. The other big group were the Kenya National Archives users, majority of whom are researchers.
British Council Library gave the same impression as the Kenya National Archives. The respondents of British Council who gave this reason were researchers. It could be inferred from this findings that copying especially by researchers is vital.

The users who indicated that they copied some material because they were in high demand were only 6.6 per cent and all of them were from Kenyatta University Moi Library and Nairobi University Jomo Kenyatta Memorial Library. The inference which could be drawn from this finding is that academic libraries have high population of users pursuing same or related course. This leads to high competition on some of the informational materials which are not in sufficient supply.

About 23.3 per cent of the users in all libraries commented that some of the informational materials are expensive to purchase. This is true when we consider that the big percentage of informational materials in our country is imported. For example journals such as: "Earthquake Engineering and Structural Dynamics is $695, Networks: an international journal $395.50 and Handbook of Molecular Sieves $65.50.
When the same questions were directed to the librarians, their responses concurred with those of the users. They commented that reproduction of materials was important because some of the materials were inadequate in libraries and could not be lent out. The reasons given by users justify library copying as an important activity for effective library services.

Table 2 presents responses made by librarians and publishers on whether photocopying had any effect on publishers' sales. About 72.2 per cent of both librarians and publishers felt that photocopying in libraries had no effect on the sales while 33.4 per cent felt that photocopying affected publishers' sales.

Albeit majority of the librarians and publishers said that photocopying by libraries does not have effects on the latter's sales - it should be noted that the publishers' responses may have been due to ignorance on the amount of photocopying carried out by libraries.

Two out of the six librarians said that photocopying has effects on publishers' sales. Librarians'
views could be more reliable because they are conversant with photocopying practices in their libraries. While we could not dismiss views of the local publishers who answered in the affirmative, it should be noted that their responses may have been influenced by the fact that their materials may not be widely photocopied as compared to imported materials whose authors or publishers are not aware of reproduction of their materials in Kenya. Only one publisher out of a total of five publishers answered in the negative. There has been no research in Kenya carried out to determine the effects of photocopying on publishers' sales. The researcher of this study was not able to determine this due to time factor and lack of proper recording of materials photocopied by many libraries.

5.2.2 Audio-Visual Materials

Most of the respondents (83.3 per cent) said that they copied audio-visual materials inside or outside the library. The reasons which were given by most of the users were that these materials are expensive to purchase and also that some of the materials are rare, while these reasons may be genuine, they are an indication of widespread violation of copyright law.
The responses made by officers in charge of audio-visual materials showed that most of them reproduced materials for preservation, security and circulation. Kenyatta University Moi Library also reproduces for visually handicapped users. All these reasons are justified by lack of clear guidelines in the Kenya Copyright Law on this issue.

5.3 MATERIALS MOSTLY REPRODUCED/COPIED

5.3.1 Print Media

Table 3a showed that 50 per cent of the users in all the libraries photocopied journals, 25 per cent books, 10 per cent both books and journals and 10 per cent photocopied archives records. About 1.6 per cent photocopied newspapers and 3.3 per cent newspapers and books.

It is clear from the above results that journals are the most photocopied print media owing to the fact that they contain current information. The high number of the users who copy journals are mostly from ICIPE Library and American Cultural Centre. Both libraries normally have very current journals. While one would expect British Council Library to have a high number of journals photocopied, it should be borne in mind that the users who responded to the
questionnaire may not necessarily have been researchers. The results of this could probably have been different if a bigger sample of users could have been used. Nairobi University Jomo Kenyatta Memorial Library and Kenyatta University Moi Library users seem to photocopy mostly books and journals and this may be due to the nature of the respondents interviewed who comprised a big number of undergraduates and few postgraduates. The former group relies on books mostly while the latter use both media.

Most of the Kenya National Archives users photocopy records because they are after historical information. Most of the users of the British Council Library seem to show bias towards books and this may be due to the fact that some of the most current books are available.

Only few users in all libraries indicated that they photocopied newspapers mostly. This may be due to the fact that information in the newspapers is not usually detailed and can easily be remembered. Newspapers are also cheap and easily available.

On the whole it can be argued that journals and books are the main sources of research and study
information and hence their importance to researchers, students, lecturers etc.

5.3.2 Audio-Visual Materials

About 83.3 per cent of the library users said that they copied audio-visual materials. Majority of the users said that they reproduced cassette tapes and a few of them indicated that they reproduced video tapes and phono-discs. Cassette tapes are mostly copied possibly due to their convenient formats and the availability of the recording facilities to most users. Reproduction of tape cassettes is also easy. Video tapes are copied by a small number of users because the recording facilities are not readily accessible to many users due to their high cost. Copying of phono-discs required one to have both the record player and cassette tape recorder. Many users may not have access to both facilities.

The response of officers in charge of audio-visual materials showed that cassette tapes were copied most. The reproduction of cassette tapes (sound tape) for example in Kenyatta University Moi Library is to cater for the needs of the visually handicapped users. Cassette tapes and video-tapes are mostly used in ICIPE as information sources as well as teaching aids for researchers.
5.4 RULES, REGULATIONS AND PROCEDURES FOLLOWED IN
REPRODUCTION OF MATERIALS AND USERS' AWARENESS

5.4.1 Library Users' Awareness of Existence of Rules and Regulations for copying Printed Media

It is apparent from Table 4a, that majority (51.6%) of library users did not know about the existence of the rules and regulations of copying in their libraries. According to the photocopists' responses, libraries are not making users aware of the rules and regulations of copying. About 8.4 per cent of respondents said that there were no rules and regulations of copying. This is an indication of the inefficiency and ineffectiveness of the existing rules and regulations of copying in our libraries. Lack of rules and regulations implies violation of Copyright Law.

In Table 4b, majority (46%) of the users in all the libraries indicated that they were not aware whether the rules and regulations for copying audio-visual materials existed and only 30 per cent were aware. The latter contradict the responses of the officers in charge of audio-visual materials who said that their libraries had no rules and regulations of copying. It may be concluded here that some of the
users do not understand at all what is meant by the rules and regulations of copying. The responses of the two officers in charge of audio-visual materials show that there is lack of uniformity of rules and regulations followed in our libraries. There is also lack of rules and regulations for copying audio-visual materials.

Table 5 summarizes the results of methods used to create awareness of the copyright law by the libraries. It can be inferred that ways used by libraries to create awareness of the copying of materials are ineffective.

In Table 6, it is clear that the highest percentage (53.3%) of all the users interviewed indicated that there were limitations on the amount of work to be photocopied. The inference here is that there are no rules governing photocopying and if they exist, are not followed. Three out of six photocopists said that the rules for photocopying are flexible. American Cultural Centre informed the researcher that they limited reproduction of printed media to 20 pages but this was not because of copyright law but on economic basis. It could be concluded from these findings that copyright law is
not taken seriously in most of the libraries.

The responses on imposition of limitation on reproduction of audio-visual materials by library users showed that two libraries namely Kenyatta University Moi Library and ICIPE library did not have limitations probably due to the fact that the Kenya Copyright Law does not provide guidelines on reproduction of audio-visual materials. It only states in general terms that copyright in a literary, musical or artistic ... or in a cinematograph film (which has been changed by 1989 amendment to audio-visual works) can be copied under fair dealing. Since the 'fair dealing' is also vague, infringement of the law is easy.

Library users from the other libraries indicated that reproduction of audio-visual materials was not allowed. The conclusion which can be drawn here is that there is lack of uniformity of the copyright law followed by libraries. This is because British Council follows British Copyright Law, American Cultural Centre follows American Copyright Law and the other libraries follow Kenya Copyright Law.
The response by the users and photocopists on whether their libraries charged for photocopying of materials showed that only two libraries namely: ICIPE Library and American Cultural Centre Library, did not charge their users. The charges on photocopying has no implications on copyright law. The same case applied to copying of audio-visual materials.

5.5 THE ROLE PLAYED BY LIBRARIANS AND PUBLISHERS IN IMPLEMENTATION OF COPYRIGHT LAW

The responses of librarians to the question of whether they discussed issues on copyright law in the seminars they attended showed that such issues were not discussed. This finding could imply that copyright law has not been taken seriously in the libraries. It also shows that librarians have not been affected by problems of copyright law. This low consciousness may also have been contributed by the passiveness of publishers, authors and other creators of intellectual works in the country.

The responses of librarians on whether they photocopied or were consulted during the revision and amendment of copyright law also shows that the Office Attorney General does not seek views of the pertinent or concerned persons or institutions. This is perhaps
why the copyright law does not cater for the needs of the libraries.

Publishers' responses showed that two of the five publishers interviewed were not members of the Kenya Publishers Association. This may be an indication of the weakness of the Association.

Asked about whether they addressed themselves to the issues of copyright law in their meetings, one of the three publishers answered in the negative. Only two members from Longman and Oxford Publishers - said that they discussed some issues on copyright law. When asked to specify the issues they discussed, one of them could not remember anything while the other one gave issues on illegal printing. From these findings it can be concluded that the publishers have not been able to address themselves seriously to issues of copyright law and especially the reproduction of informational materials.

The publishers, just like the librarians, indicated that they do not participate or consulted during the revision and amendment of the copyright law. The implication of this response is that Kenya Copyright Law does not cater effectively for the needs of the publishers.
The researcher also sought to know the problems libraries were facing in reproduction of informational materials. The questions were addressed to all the officers in charge of photocopying and audio-visual facilities. Only Kenyatta University Moi Library replied and it indicated that it experienced long delays when they applied for permission to convert some of the materials into formats suitable for visually handicapped users. The conclusion which can be made from this finding is that copyright law inconveniences the visually handicapped users more than the sighted users.

5.6 VIEWS OF LIBRARIANS AND PUBLISHERS

Table 7b revealed that 50 per cent of the librarians said that the Kenya Copyright Law is inadequate. Only a mere 16.6 per cent of the librarians indicated that the law is adequate. About 33.4 per cent were unsure whether the copyright law was adequate or not. From these views we can safely conclude that the Kenya Copyright Law is not adequate.

The reason given by one of the librarians that the law is adequate shows that some librarians do not understand full implications of the copyright law and the effects of its violation.
Table 7b shows that 60 per cent of the publishers concurred with the librarians who expressed the view that the Kenya Copyright Law is inadequate. The reasons given by publishers who answered in the negative show that the law is inadequate yet the publishers have not been addressing themselves to these issues. The two publishers who felt that the law was adequate contradicted themselves when told to state why they thought it was adequate. It could be concluded here that some of the publishers do not understand the copyright law.

The librarians were asked whether the language used in copyright law was clear and all of them except British council respondent answered in the negative. The latter claimed that they followed British Copyright Law and were not conversant with Kenya Copyright Law. The inference here is that there is no uniformity of the copyright law followed. It can also be concluded that the language used in the copyright law is technical.

All the publishers interviewed said that the language used in copyright law was clear. However, when asked further the full implications of terms such as 'fair dealing', 'reasonable portion' etc.
most of them could not explain. The inference here is that the publishers have not been able to address themselves seriously to the implications of the copyright law. The other possible explanation is that most of the materials photocopied are mainly imported journals and books and since the local publishers may not be affected they have not felt the need to address themselves to the copyright law aggressively.

5.7 RECOMMENDATIONS

In view of the foregoing discussion the following recommendations will be germane to the libraries in Kenya:

5.7.1 Copying Materials

One of the reasons given by library users for copying of print media (i.e. books and journals etc.) was because most of these materials are expensive to purchase. Kenyan local publishing firms are small and have been subjected to a very high competition by big and powerful foreign publishing companies which have doubtlessly gained supremacy through Kenya Copyright Law which extends protection to authors and publishers whose countries are signatories to the Berne and Geneva conventions. This protection is based on the copyright principle of recipro-
city. This principle is unfair or illusory because Kenya exports very little. It would be more desirable if foreign publishers would be more willing to licence national publishers (to publish their material) in order to cut down the high costs of books and other materials. This would ensure that there is adequate supply of materials and hence reduce the need of unnecessary copying. To minimise copying of audio-visual materials, libraries should start lending out their materials to users. Inter-library loan service should also include audio-visual materials. Most of the audio-visual materials are vulnerable to damage. In view of this the fines imposed on damaged material should be very high to ensure that users take utmost care of the materials they borrow from the library. American Cultural Centre Library lends some of its audio-visual materials i.e. video-tapes to its users and the other libraries can follow suit. This measure may reduce to some extent temptations of copying materials which most users complained are very expensive and sometimes rare to get. This may also make users responsible for the materials under their custody.

Reproduction of audio-visual materials by libraries is necessary for preservation, security and circulation. The copyright law should come out
clearly and state in black and white not only that libraries should reproduce materials for such purpose but also the procedure to be followed.

Kenyatta University Moi Library complained of problem of delays when they apply to publishers and producers especially the overseas ones for permission to reproduce their works for the visually handicapped users. The Kenyan Copyright Law should be amended to include a clause which will ensure that materials for the disadvantaged are reproduced without applying for permissions from the owners. Alternatively a centre should be created by the government with the sole purpose of storing all the materials for the disadvantaged users. Such a central point from which libraries could borrow materials for their disadvantaged users would be a sure way of easing the existing problem.

5.7.2 Rules and Regulations of Reproduction

Section 7 of the Kenya Copyright Law should be amended to be not only comprehensive but also clear enough in the amount of materials to be photocopied and the procedures to be followed. Putting into consideration that Kenya is a developing country experiencing scarcity of resources, it would be
worthwhile to borrow a leaf from Australian Copyright Law which allows reproduction of multiple copies but under strict observation. Such a clause would ensure that information needs of the users are met adequately without breaking the law. This would also minimise excessive copying outside the libraries.

Levy charges should be imposed on photocopying machines in profit-making organizations. This would ensure that the users who want to copy in excess are not limited by the law as long as they pay. In view of this then the Kenya Copyright Law should make a provision for a central collecting authority on behalf of authors. Likewise a levy should also be imposed on blank tapes - to control the problem of illegal reproduction.

It would be naive to consider the implementation of copyright law in libraries without looking at the practices outside libraries. In this regard the above suggestion should be put into consideration.

Each library should have rules and regulations of reproduction of materials based on the Kenya Copyright Law. These rules and regulations should be uniform in all the libraries.
5.7.3 Proposal: for Amendment of some Parts of Section 7(1) of Kenya Copyright Law

Photocopies may be made only within the terms of the Kenya Copyright Act (Year). The main provisions are:

(i) Complete works may be copied by libraries for preservation and security purposes.

(ii) Complete works may not be copied by users without the permission of the copyright owner except that:

- one copy of a journal article may be made for the purposes of research or private study.
- short extracts (10% of the work, up to a maximum of 4,000 words) may be copied.

(iii) More than one article per journal may be copied from foreign works whose permission if sought may cause delay - but only with permission from a librarian.

(iv) One article only per journal issue may be copied from local works.

(v) Extracts exceeding 10% of work may only be copied with permission from the librarian.

(vi) Multiple copies may not exceed six in number. Multiple copies exceeding 6 copies may only be copied with permission of the copyright owner.

5.7.3.1 Audio-Visual Materials

(vii) Libraries may reproduce audio-visual materials for preservation, circulation and security purposes.

(viii) Complete works in whatever form may be reproduced or changed into another format.
for the visually handicapped users without the permission of the copyright owner.

(ix) Reproduction of audio-visual materials may not be undertaken without the permission of the copyright owner. However, (viii) above shall apply Mutatis Mutandis to the copyright in audio-visual materials.

Libraries should consult office of the Attorney General while drawing rules and regulations of copying incase of any doubts.

5.7.4 **Awareness**

All library staff should be educated on copyright law and its application to reproduction of copyrighted materials. The formal training of library staff should include learning all pertinent forms of intellectual property. The informal training through workshops, seminars conferences, etc. should be emphasised - because they bring to the attention of members contemporary issues in the field of copyright law.

User education in libraries should include issues on copyright law such as reproduction of materials and the procedures followed.
Rules and regulations of copying should be put in the library and they should be conspicuous enough to users.

Predesigned forms should include the details of the material requested by the user and a declaration by the user that he has not been supplied with the same copy before. This makes the users more conscious of the law than a mere recording in a register.

In places where photocopying is self-service, rules and regulations for photocopying should be stuck on the machine or in a place where a user could easily consult them.

Education on importance of intellectual property should be included in the school syllabi. This would create awareness and appreciation of intellectual works. Children should be taught to be honest and to have respect for intellectual works. There is need to make the public aware of the copyright law. In this regard copyright law should be publicised more aggressively.

Just like the librarians, the publishers should be educated on copyright law. Likewise
all creators of intellectual works as noted in the study need education on copyright law to understand their rights and contribute in the implementation of the copyright law not only in libraries but also nationally.

Law enforcers mainly the lawyers and the police also need to be educated on copyright law. This can be done through seminars organised country-wide.

There is need for strengthening publishers and Authors Associations. These could be good forums for advocating radical changes in the existing copyright law which does not reflect the needs of Kenyans.

There is also need for publishers to liaise with the librarians for mutual benefit. Meetings comprising creators of works and librarians should be seen as a vehicle for implementation of copyright law.

Librarians and creators of intellectual works should be involved in the revision and amendment of the copyright law which is currently an activity limited to few policy-makers.
Technical terms such as 'fair dealing', 'substantial amount of work', 'reasonable amount of work' etc. need to be redefined. The above terms are controversial and need to be clarified to avoid future problems.

In conclusion, should the above recommendations be applied, the implementation of copyright law not only in libraries but also in Kenya will be successful.


Copyright and design law: report of committee to consider the law on copyright and designs. London: Her Majesty's Stationery Office, 1977.


Muthembwa, J. The role of libraries and information services in the implementation of copyright law in Kenya". Kenyatta University, Education Unit, 1991 (unpublished).

New, P.G., Reprography-what it is. 1975 (unpublished)


Wood, D.N., "Reprography and Copyright with particular reference to inter-library lending activities: a view from from the BLLD" in: ASLIB proceedings vol. 35 nos. 11/12, June 1983

To the Librarian/Archivist;

Kenyatta University Moi Library
Jomo Kenyatta Memorial Library
Kenya National Archives
British Council Library
American Cultural Centre
ICIPE Library and Documentation Centre

Dear Sir/Madam,

REF: REQUEST TO CONDUCT RESEARCH IN YOUR LIBRARY/
ARCHIVES

I am currently pursuing a course at Kenyatta University leading to Masters Degree in Education (Library Science). As a partial fulfilment of the course I am required to carry out research. My research project is concerned with copyright law issues in libraries in Kenya.

I hereby request to interview the librarian and officers in charge of photocopying and audio-visual facilities.

The information provided shall be treated confidentially. I am looking forward to your cooperation and assistance.

Thank you in advance.

Yours faithfully,

JOSEPHAT MUTHEMBWIA DAVID
QUESTIONNAIRE FOR LIBRARY STAFF: LIBRARIAN - AND OFFICERS IN CHARGE OF PHOTOCOPYING AND AUDIO-VISUAL FACILITIES

This questionnaire is aimed at eliciting information which will be useful in implementation of copyright law in libraries in Kenya. The information you supply will be treated confidentially. Feel free to give the answers you feel most appropriate.
Thank you.

PART I - LIBRARIANS

Put a tick (✓) against the choice(s) applicable to you or fill in the blanks where applicable.

1. Designation of the respondent .................................
   ........................................................................

2. Name of the library ..................................................
   ........................................................................

3. Are you aware of the Kenya Copyright Law?
   Yes (  )
   No (  )

4. Do users express need to reproduce library materials?
   Yes (  )
   No (  )
5. If yes to number 4, do you advise them on the rules and regulations of copying or reproducing library materials?
   Yes ( )
   No ( )

6. (a) In your view would you approve copying or reproducing of library materials?
   Yes ( )
   No ( )

   (b) If yes why? ...........................................................
   ...........................................................
   ...........................................................

   (c) If no why? ...........................................................
   ...........................................................
   ...........................................................

7. (a) Do you feel that there is need to enforce the copyright law in libraries in Kenya?
   Yes ( )
   No ( )

   (b) If yes how can librarians ensure that the copyright law is fully enforced?
   ...........................................................
   ...........................................................
   ...........................................................
8. (a) In your view is the Kenya Copyright Law adequate or does it need some amendments?

(i) not adequate ( )
(ii) is adequate ( )
(iii) any other specify ..............................................................
........................................................................................................

(b) If inadequate please point out the areas that need to be amended. ..............................................................
........................................................................................................
........................................................................................................
........................................................................................................
........................................................................................................

9. Have you ever discussed issues on copyright law in any of the seminars you have attended?

Yes ( )
No ( )

10. If yes to number 9, what issues were discussed?
........................................................................................................
........................................................................................................
........................................................................................................
........................................................................................................

11. Do you participate or consulted during the revision of the copyright law?

Yes ( )
No ( )

12. Is the law clear as relates to 'fair dealing'?

Yes ( )
No ( )
13. Do you feel that copying or reproduction of materials in libraries has any effects on the authors/publishers/producer's sales?

Yes ( )
No ( )

14. (a) Have you ever received any complaints from authors/publishers on reproduction of their works?

Yes ( )
No ( )

(b) If yes state when and the details and outcome of the complaint ..........................................................

..........................................................

..........................................................

..........................................................

15. What problems do you face in reproduction of the copyrighted materials?

..........................................................

..........................................................

..........................................................

16. What would you say are the main weaknesses of the copyright law in Kenya?

..........................................................

..........................................................

..........................................................
17. How can the above loopholes be rectified?

PART II

OFFICER IN CHARGE OF PHOTOCOPYING MACHINES

18. Designation of the respondent .................

19. Educational level of the respondent
   (a) Certificate (  )
   (b) Diploma (  )
   (c) Degree (  )
   (d) Others (specify) ................................

21. What procedures do you follow in photocopying of materials?
   (a) Users fill predesigned forms (  )
   (b) Users record in a register (  )
   (c) No recording (  )
   (d) Others (specify) ............................

22. Which materials do you photocopy mostly?
   (a) Local materials (  )
   (b) Imported materials (  )
23. Which category of materials do you photocopy mostly?
   (a) Newspapers  
   (b) Journals/Periodicals  
   (c) Books  
   (d) Others (specify)  

24. (a) Are there materials which are strictly not allowed to be photocopied?
   Yes  
   No  
   (b) If yes please specify them  

25. What are the reasons for not allowing these materials (number 24 [b]) to be photocopied?  

26. (a) Are there limitations on the number of pages to be photocopied from a particular item?
   Yes  
   No  
   (b) If yes, then how many pages?
27. Do you allow photocopying of two or more copies of the same article?

Yes ( )
No ( )

28. (a) If no to number 27, how do you cater for the users who need more than one copy of the same article?
- we don't cater for them ( )
- we cater for some ( )
- Other (specify) ..........................

(b) If you cater for some, specify ................

29. (a) Have you had any formal or informal training concerning copyright law?

Yes ( )
No ( )

(b) If yes, specify some of the issues discussed ..........................................

30. (a) Do you charge users for photocopying?

Yes ( )
No ( )

(b) If yes, how much do you charge per page?

..................................................
31. How is the money charged for photocopying used?

(a) Sent to authors and publishers of the materials (  )

(b) For maintenance of the photocopying facilities (  )

(c) Others (specify) .................................

32. Which laws do you follow in photocopying?

(a) Inhouse rules (  )

(b) Kenya Copyright Law (  )

(c) British Copyright Law (  )

(d) American Copyright Law (  )

(e) Others (specify) .................................

33. How do you educate users on the rules and regulations of photocopying?

(a) Verbally (  )

(b) In the rules and regulations of the library (  )

(c) On the forms filled before photocopying (  )

(d) Others (specify) .................................

34. (a) Does your library offer user education to users?

Yes (  )

No (  )
(b) If yes, does it include issues on copyright law?
Yes ( )
No ( )

35. Are there forms that users sign to declare that they have not been supplied with the same material before photocopying?
Yes ( )
No ( )

36. Do you have notices in the photocopying room or within the library to alert the users about the copyright law?
Yes ( )
No ( )

37. What can you say are the main problems you face in photocopying of materials? .................................................................
...........................................................................................................
...........................................................................................................
...........................................................................................................

38. How have you tried to solve these problems?
...........................................................................................................
...........................................................................................................
...........................................................................................................
...........................................................................................................
...........................................................................................................

39. Are you conversant with the Kenya Copyright Law?
...........................................................................................................
PART III

OFFICER IN CHARGE OF AUDIO-VISUAL MATERIALS

40. Designation of the respondent ........................................
......................................................................................

41. Name of the library ......................................................
......................................................................................

42. (a) Do you reproduce audio-visual materials?

   Yes (  )

   No (  )

   (b) If yes, which formats do you reproduce mostly?

       - cassette tapes (  )
       - video tapes (  )
       - phono discs (  )
       - Others (specify) ..............................................
       ........................................................................

43. (a) Do you change materials from one format to another? for example: books to brailles, phonodiscs to cassettes, books to cassette tapes etc.

   Yes (  )

   No (  )

   (b) From which to which format do you change mostly? ..........................
   ........................................................................
44. Why do you reproduce these materials?
(a) For preservation ( )
(b) for security ( )
(c) Circulation ( )
(d) For disadvantaged users ( )
(e) Others (specify) ........................................

45. Which procedures do you follow in reproducing these materials?
(a) Seek permission from artists/producers ( )
(b) No permission is sought ( )
(c) Others (specify) ........................................

46. Do you reproduce materials for users?
Yes ( )
No ( )

47. Are there rules and regulations that govern the reproduction of these materials in the library?
Yes ( )
No ( )
(b) If yes, are there restrictions imposed on the reproduction of these materials?
Yes ( )
No ( )
48. (a) If yes, to number 47 (b) are there some of the materials you are not allowed to produce?
Yes (  )
No (  )

(b) If yes, please specify ..............................................................
..............................................................
..............................................................

(c) Why are these materials not allowed to be reproduced? ...................
..............................................................................
..............................................................................
..............................................................................

49. (a) Do you charge users for the reproduction of materials?
Yes (  )
No (  )

(b) If yes, how much do you charge per page?
..............................................................................

(c) How is the money charged for the reproduction of materials used?
- sent to artists/producers (  )
- for maintenance of the equipment (  )
- others (specify) ................................................
..............................................................................
(d) Do you give receipts for the materials reproduced?

Yes ( )

No ( )

50. How do you make users aware of the rules and regulations of reproduction of materials?

(a) through notices pinned in the audio-visual room or within the library ( )

(b) in the rules and regulations of the library guide-book ( )

(c) in user education ( )

(d) Others (specify) ..................................................

51. What problems would you say you are facing in reproduction of materials? .........................

.................................................................

.................................................................

52. What is your view on Kenya Copyright Law?

.................................................................

.................................................................

.................................................................
QUESTIONNAIRE FOR LIBRARY USERS

This questionnaire is aimed at eliciting information which will be useful in implementation of copyright law in libraries in Kenya. The information you supply will be treated confidentially. Feel free to give the answers you feel most appropriate.
Thank you.

PART I

Put a tick (✓) against the choice(s) applicable to you or fill in the blanks where applicable.

1. Designation of the respondent ..............................................
   ......................................................................................

2. Educational level of the respondent
   (a) Certificate ( )
   (b) Diploma ( )
   (c) First Degree ( )
   (d) Second Degree and above ( )
   (e) Other (specify) .........................................................
   ......................................................................................

3. Name of the Library .........................................................
   ......................................................................................
4. Why do you photocopy some library materials?

(a) for future reference ( )
(b) the material is in high demand ( )
(c) the material is not available for sale ( )
(d) the material is expensive to purchase ( )
(e) Others (specify) .............................................. ....................................................

5. Which library materials do you photocopy mostly?

(a) local materials ( )
(b) imported materials ( )
(c) Others (specify) ...................... .................................................................

6. Which library materials do you photocopy mostly?

(a) Newspapers ( )
(b) Journals ( )
(c) Books ( )
(d) Others (specify) .................. .................................................................

7. Are there rules and regulations for photocopying in your library?

Yes ( )
No ( )

8. (a) Are there limitations imposed on number of pages to be photocopied?

Yes ( )
No ( )
No idea ( )
(b) If yes then specify the maximum number of pages you are allowed to photocopy ..........  

9. Are you allowed to photocopy two or more copies of the same article?  
Yes ( )  
No ( )  

10. What procedures do you follow in photocopying in the library?  
(a) filling predesigned forms ( )  
(b) recording in a register ( )  
(c) No recording ( )  
(d) Others (specify) ......................  

11. (a) Are you charged for photocopying in the library?  
Yes ( )  
No ( )  
(b) If yes how much are you charged per page?  
..................................................  

12. Are there forms you sign to declare that you have not been supplied with the same material before photocopying?  
Yes ( )  
No ( )  

13. (a) Does your library give user education (education or instructions on how to use the library)? 
Yes ( )
No ( )

(b) If yes does the user education include issues on copyright law?
Yes ( )
No ( )

14. (a) Where else do you photocopy materials apart from the library?
(a) In other departments in the institution ( )
(b) In business premises ( )
(c) Others (specify) ......................
...........................................

(b) Are there restrictions imposed on the number of pages to be photocopied from a particular material?
Yes ( )
No ( )

(c) Are there materials you are not allowed to photocopy?
Yes ( )
No ( )

(d) If yes please specify the materials ..........
.............................................
PART II

15. Do you reproduce audio-visual material (Phono-discs, cassette tapes, video tapes etc)?
   Yes (  )
   No (  )

16. If yes, to number 15 why do you reproduce the materials?
   (a) the material cannot be lent out of the library (  )
   (b) the material is rare or the only copy available (  )
   (c) the material is expensive (  )
   (d) the material is in high demand (  )
   (e) Others (specify) .......................................... ........................................................

17. If your answer is no to number 16 why would you not reproduce materials? ......................
                                            .........................................................................................

18. If you reproduce materials which ones do you reproduce mostly?
   (a) cassette tapes (  )
   (b) video tapes (  )
   (c) phono discs (  )
   (d) Others (specify) ...........................................
19. Are there rules and regulations governing reproduction of materials in the library?
   Yes ( )
   No ( )

20 (a) Are there some audio-visual material you are not allowed to reproduce in the library?
   Yes ( )
   No ( )

   (b) If yes specify them
       ........................................
       ........................................

21. What procedures do you follow in reproducing audio-visual materials?
   (a) filling predesigned forms ( )
   (b) recording in a register ( )
   (c) no recording ( )
   (d) Others (specify) ....................... 
       ........................................
       ........................................

22. (a) Are you charged for the reproduction of these materials?
   Yes ( )
   No ( )

   (b) If yes then how much per copy? .............
       ........................................
       ........................................
(c) Are you given official receipt after paying?
   Yes (  )
   No (  )

23. Where else do you reproduce audio-visual apart from the library?
   (a) At home (  )
   (b) Business premises (  )
   (c) Non-business institutions (  )
   (d) Others (specify) ........................................
       .........................................................

24. Are there restrictions in the places mentioned in number 23?
   Yes (  )
   No (  )
To the Chief Editor/Managing Director

Longman (K) Publishers
Oxford University Press
Jomo Kenyatta Foundation
Kenya Literature Bureau
Phoenix Publishers
Evangel Publishing House

Dear Sir/Madam,

REF: REQUEST TO INTERVIEW THE CHIEF EDITOR/MANAGING DIRECTOR

I am a post graduate student, currently taking Masters of Education (Library Science) at Kenyatta University. As a partial fulfilment of the course, I am required to carry out a research project.

The topic of my study is "Implementation of Copyright Law in Libraries in Kenya."

I am writing to seek permission to interview you on issues of Copyright Law in Kenya.

The information collected will be treated with utmost confidentiality.

Thanking you in advance.

Yours faithfully,

JOSPHAT MUTHEMBWA DAVID
APPENDIX III

QUESTIONNAIRE FOR PUBLISHERS: CHIEF EDITOR/MANAGING DIRECTOR

This questionnaire is aimed at eliciting information which will be useful in implementation of copyright law in libraries in Kenya. The information you supply will be treated confidentially. Feel free to give the answers you feel most appropriate. Thank you.

Put a tick (✓) against the choice(s) applicable to you or fill in the blanks where applicable.

1. Designation of the respondent .....................

2. Name of the publishing firm ......................

3. Date of establishment .........................

4. Which materials do you publish?
   (a) Journals/Periodicals (   )
   (b) Books (   )
   (c) Both (a) and (b) (   )
   (d) Other (specify) .............................

....................................................
....................................................
....................................................
5. What types of materials do you publish?
   (a) Textbooks ...........................................
   (b) Educational Journals and textbooks ..............
   (c) Novels/story books ................................
   (d) All of the above ...................................
   (e) Others (specify) ...................................

6. What category of users are your books aimed at?
   (a) Primary schools ...................................
   (b) Secondary schools ................................
   (c) Tertiary ...........................................
   (d) Adult education ...................................
   (e) General Public ...................................
   (f) Others (specify) ...................................

7. What is the approximate number of books and journals you produce annually?
   (a) Books ..............................................
   (b) Journals ...........................................

8. Please specify some of your bestseller books and journals.
   (a) Books ..............................................
   (b) Journals ............................................
9. What are the highest and lowest prices of your books and journals?
   (a) Books highest price range between .......... and ................. and the lowest price range between .......... and .................
   (b) Journals highest price range between .......... .......... and ................. and the lowest price range between .......... and .................
   10. Do buyers complain of the prices of your books? 
       Yes ( )
       No ( )
   11. In your view would you say photocopying of journals/book has been affecting your sales? 
       Yes ( )
       No ( )
   12. (a) Has there been infringement of copyright by users through unlimited photocopying of your materials in the libraries or outside libraries? 
       Yes ( )
       No ( )
       (b) If yes what steps did you take to arrest the situation? 
           (a) No step taken ( )
           (b) Sued the culprit ( )
           (c) Warned the culprit ( )
           (d) Others (specify) ..........................
13. In your view what is the most common infringement of the copyright law in Kenya?
   (a) Reprinting of materials (    )
   (b) Photocopying of materials (    )
   (c) Reproduction of audio-visual materials (    )
   (d) Others (specify) ...........................................

14. (a) Has there been meetings or seminars organised in the country on copyright law in Kenya?
   Yes (    )
   No (    )
   (b) If yes what issues have been discussed?
       ........................................................................
       ........................................................................
       ........................................................................

15. (a) Are you a member of Kenya Publishers Association?
   Yes (    )
   No (    )
   (b) If yes do you discuss issues pertaining to copyright law in Kenya?
       Yes (    )
       No (    )
   (c) If yes highlight the issues you have discussed or planning to discuss .....................
       ........................................................................
       ........................................................................
16. (a) Do you participate or consulted during the revision and amendment of the copyright law of Kenya?
   Yes ( )
   No ( )

   (b) If no do you feel you should be involved?
   Yes ( )
   No ( )

   (c) Why do you feel you should be involved or not involved? .................................................................
   .................................................................
   .................................................................
   .................................................................

17. Does the Kenya Copyright Law meet your needs adequately?
   Yes ( )
   No ( )

18. Is the language used in the Kenya Copyright Law clear to understand?
   Yes ( )
   No ( )

19. What is your view on Kenya copyright Law?
   .................................................................
   .................................................................
   .................................................................
   .................................................................