MANAGEMENT OF NIGERIAN COPYRIGHT LAW AND THE OPEN ACCESS INITIATIVE: A BRIDGE TO ATTAINING INFORMATION FOR ALL IN NIGERIA.

BY

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***ABSTRACT***

*This paper examines the Nigerian copyright law as it affects the open access to knowledge initiative. The researcher analyzed the success of open access to information and knowledge in Asian countries, particularly India, and considered the adoption of same in Nigeria. The paper suggests guidelines to compacting the copyright law and open access initiative towards achieving information for all and enhancing national development of Nigeria.*

*Keywords: Copyright Law, Open Access, Nigeria, India*

**Introduction**

The term “information for all” can also mean “open access to information” or “freedom of information”. Presently in Nigeria, the realization of the latter nomenclature (freedom of information) has been the hope of many concerned citizens. It was conceived in 1993 by Media Rights Agenda (MRA), Civil Liberties Organization (CLO) and the Nigeria Union of Journalists (NUJ). ([www.foicoalition.org](http://www.foicoalition.org)). Arogundade (2003) writes that the objective of the initiative upon becoming an act of the Federal Republic of Nigeria is primarily on access to governance related information kept secret from the masses on the legality of panel code law. Opara (2011a) argues that this act would enrich the collections of libraries, noting that the public documents, which are veritable information resources, would be accessible for librarians. Others say that the expected act has no connection with open access to intellectual knowledge (www.ipcng.org). It is in this light that this paper relates “information for all” to open access to intellectual works. Intellectual works are information emanating from research, which Uhegbu (2007) has discovered to be *sine qua non* for national development. As a result, the concern of this study is on how research and academic libraries, as well as information centres can help in rendering free and far reaching dissemination of research information in Nigeria irrespective of the copyright law.

While it is already a consensus that ICT and Internet connections are the medium of open access workability (Das, 2008; Josiah, 2008; Sinha, 2008; Fernandez, 2006; Suber, 2006; Anderson, 2004 Rajashekar, 2003; Mejiuni, n.d), researchers across the globe have also identified copyright as an obstacle to it (Carroll, 2004; Covey, 2005; Fabunmi, 2007; Suber, 2005). Yet, Asian countries, particularly India, are in the top flight of open access to information, almost equalling Europe and American countries. Hence, this paper attempts to find out how the two variables can help to promote the national development of Nigeria, with reference to India’s experience. And for a logical conclusion, we will first understand the basis for information for all; justify the comparison of India with Nigeria; define a copyright law; ascertain the scope of open access; look at the nuptials of open access with copyright issues; evaluate India’s success; recommend guidelines for Nigeria and finally draw conclusions.

**The Concept of Information for All**

Information is a necessity. It is an indispensable power (NALISS motto), a genuine pathway to knowledge, and the pinnacle for development. The necessity of its adoption has been a point in one of the oldest and ever new books of the Bible (Hosea 4:6). Uhegbu (2007: p14&15) asserts that information is a vehicle of national development; contributing immensely on educational enhancement, science and technology, manpower development, promotion of national objectives, and increasing a nation’s international cooperation. These are the major sectors of a national life. Das (2008) posits that free flow of information is a fundamental principle for bridging the knowledge gaps between privileged and under-privileged communities. Social inclusion and economic empowerment can be achieved in a society where citizens have universal access to information and knowledge, ranging from public information to specialized or customized information related to one’s profession, vocation or culture. Universal access to information and knowledge lies ([www.unesco.org](http://www.unesco.org)) UNESCO's overall mandate to promote the free flow of information by word and by image and thus to place information and knowledge at the doorsteps of communities.

The concept of information for all therefore aims at building a sustainable Information society. Notably, in building this society, where access to information and knowledge is at fingertip through available channels, the World Submit on the Information Society (www.itu.int/wsis/docs) declares that certain principles and actions must come to play. Strengthening libraries, archives, museums, cultural collections and other community-based access points to information and enacting laws that will promote equal opportunity to all scientific knowledge, creation and dissemination through strong avenues like open access publishing are among the principles declared by WSIS (www.itu.int/wsis/docs/geneva/official/dop.html). Some of the action plans listed include ICT adoption, improvement of public domain information and usage, free-of-charge access to information, building strategies and legislation towards developing a global understanding of the need for "hybrid libraries", and fostering worldwide cooperation between libraries.

**A Bird’s Eye View of India: Rationale for Comparison with Nigeria**

India, a south Asian country, is a developing nation like Nigeria. Presently, economists classify India as a third world country, as Nigeria is also grouped. Both countries were colonized by Britain. India is sixty years old in independence and has grown from various forms of education over the centuries to the new economic models of education and institutional structures (James, 2004). India is the second most populous country of the world (Rosenberg, 2010). She has 1.19 billion people, about 17.31% of world’s population, with a literacy rate of 65.38%, improved within the last 9 years (http://www.indiaonlinepages.com).

Sinha (2008) observes that among the third world countries, India is the most prominent partner in respect of its successful open access and digital library initiatives in South Asia Sub-Region which is now in the forefront of the open access movement within developing countries of the world. But, how did she cope with copyright issues?

**Copyright Law: An Overview**

Copyright law is a universal concept and a form of protection for ideas created, which is provided by the laws of any sovereign state. The origin is traced to the Berne Convention in 1886 revised at Paris in 1896, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and amended in 1979, where many countries of the world signed the various treaties of each convention. (Swan and Shan, 2010; Fabunmi, 2007; Onatola and Dina, 2005/2006; U.S. Copyright Office, 2000).

While Sveum (2008) says that the two basic rights belonging to the copyright holder are theright to reproduce an intellectual work and the right to make it accessibleto the public, Hoorn and Graaf (2006) maintain that exploitation rights (returns on sales) and moral rights (the author’s right to be cited and acknowledged as owner of a work) are the gains copyright confers on rights holders. Hence, a comparative view of basic issues in the copyright laws of Nigeria and India is drawn.

**A Comparison of Nigerian and Indian Copyright Laws**

The copyright act of Nigeria, amended 1999 and the Copyright law of India, last amended in 1994 are studied, with attention given to terms like infringement, assignment of license and exceptions of copyright, and it is observed that**:**

* Copyright law of the countries refer to literary, artistic and cinematograph works, and other things that may be categorized under them.
* The copyright law of the countries agrees that copyright in a work is not a protection of the idea, rather is a protection for the labour and skills put in to produce the work.
* The conditions of infringement are the same, wherein every form of substantial coping, aiding copying, publishing, or otherwise, by manual or electronic means, without the permission of the owner, Registrar of copyright or without corresponding exception principles, infringe the law and is punishable by provisos set out in the law.
* The Nigerian and Indian copyright laws allow the assignment of a non-exclusive right to anyone in writing, oral or inferred from conduct, permitting the assignee to own or use a copyrighted work.
* Exceptions to copyrighted works in the two countries basically agree that fair dealing: the purposes of research, private use, criticism or review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its authorship; shall apply. Communication of work to public without fee charged for it; use of work already lawfully made accessible to the public; use of work for judiciary proceedings; and usage of Government owned/licensed documents or that of its establishments, amongst others, are tolerated.

*[More details available at: (http://www.nigeria-law.org/CopyrightAct.htm) & (http://copyright.gov.in/).*

**Open Access Initiative**

Open access to scholarly information has been a topic for debate among librarians, scholars and publishers over the last few years. It is a model adopted by many International and Inter-Governmental organizations, such as World Summit on the Information Society (WSIS), for disseminating full-text contents to online communities (Josiah, 2008). The definition of open access has been viewed differently, but all meaning the same. It is an effort to make research articles in all academic fields freely available on the Internet, allowing reuse: the right of any one to reproduce and redirect the original article without the publisher’s consent (Sinha, 2008; Hoorn and Graaf, 2006; Goodman, 2004).

While Kroski (n.d) posits that open access can be achieved through self archiving (institutional repository) and open access publishing, Willinsky (2003) says that open access to information comes in nine forms, known as the “nine flavours”, and they are: e-print archive (authors self-archive pre- or post-prints); unqualified (immediate and full open access publication of a journal; dual mode (both print subscription and open access versions of a journal are offered); delayed open access (open access is available after a certain period of time); author fee (authors pay a fee to support open access); partial open access (some articles from a journal are available via open access); per-capita (open access is made available to countries based on per-capita income); abstract (open access available to table of contents/abstracts; and co-op (institutional members support open access journals).

Suber (2010), an outstanding promoter of open access, argues that “the legal basis of the initiative is the consent of the copyright holder (for newer literature) or the expiration of copyright (for older literature)”. He notes that since open access uses copyright-holder permission or the expiration of copyright, it does not call for the reform, abolition, or infringement of copyright law.  It is also revealed in his paper that easy, effective, and increasingly common ways for copyright holders to manifest their consent to open access is to use one of the [Creative Commons](http://creativecommons.org/) licenses or any [other open-content licenses](http://pzwart.wdka.hro.nl/mdr/research/lliang/open_content_guide). This depicts that copyright holders could also compose their own licenses or permission statements and attach them to their works, consenting in advance to the unrestricted reading, downloading, copying, sharing, storing, printing, searching, linking, and crawling of the full-text of the work. However, it is advised that copyright holders should not compose license statements without legal advice, owing to plagiarism and commercial reuse - which has made and, on the other hand, cost most authors the right to block the distribution of misattributed copies and commercial re-use of their work.

Nevertheless, removing access barriers to information resources will undoubtedly accelerate research, enrich education, share the learning of the rich with the poor, and lay the foundations for uniting humankind in a common intellectual exchange and quest for knowledge, which would lead to development of the society (Budapest, 2002).

**The Relationship Between Copyright and Open Access**

From the foregoing, it is clear that open access is only realizable through digitization. Digitization is the application of electronic machines in capturing, storing, indexing, preserving and redistributing of content to more than one person may be at different places, within or without a definite geographical location (Sinha, *et al*, 2006).These are primary functions of libraries. So, digitizing a library in focus to make its content freely accessible to the public, serving as a network of links to other digital libraries, not being a mere single-point source for individual libraries rather facilitating maximal resource extraction from partnering institutions and libraries without a barrier (Sood and Chandrasekharan, 2004), is the vehicle of open access.

Generally, researchers around the globe have observed that there is no smooth rapport between copyright law and open access project (ICDL Bulletin, 2010). In Nigeria, top library and information professionals have perceived the hindrance posed by copyright law on open access (<http://www.nulib.net/>) and this discloses how, ordinarily, copyright mitigates open access to information.

**The Situation in India**

The followings are some of the major steps taken by India towards achieving their present height on open access to information:

i). India, from late 90s, conceived an unprecedented interest to develop her society. Thakore’s (2004) investigation, Arunachalam’s (2008) advocacy, amid others, quickly reminded the Government that her development lies in transforming the education and knowledge base of the country. Resultantly, the nation realized her shortage of educational resources and considered the value of her future graduates in the employment market to be a problem that would affect her (Goyal, 2006). Thus, Government became worried to fill the gap.

ii). The Government set up commissions and committees with a mandate to provide modalities to alleviate the problem and fill the gap. Hence, recommendations came up and the Indian Government formulated a lot of policies. And notably, some of the working groups did not ignore the principles and plans of action on access to information and knowledge as given in The World Submit on Information Society. (Das, 2008: pp 3, 130-132).

iii). India adopted a recommendation of one of the commissions set - National Knowledge Commission of India (NKC established in 2005). The Commission’s overarching aim was to transform India into a vibrant knowledge-based society (Press Information Bureau, 2005). Thus, one of the working groups of this Commission recommended open access to all government funded scholarly research through libraries and the Indian Government approved it (Das, 2008:p4). The Government also approved another NKC’s recommendation for the use of Open Educational Resources (OER) in Schools and Institutions ([http://knowledge.commission.gov.in/downloads/documents/wg\_lib.PDF)](http://knowledge.commission.gov.in/downloads/documents/wg_lib.PDF%29)”. OER are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or re- purposing by others. OERs include full courses, course materials, modules, textbooks, streaming videos, texts, software, and any other tools, materials or techniques used to support access to knowledge (William and Flora Hewlett Foundation, [2008](file:///H%3A%5CIndian%20Policies%20for%20open%20access.htm#CIT0008)).

iv). The Government also accepted a recommendation of The Centre for Knowledge Society (CKS) of India, which was to transform all libraries in India to digital in other to link up/provide learning resources to over 70% of her citizen in rural areas attending rural schools that lack the resources their urban counterparts enjoy (Sood and Chandrasekharan, 2004: p4; Das, 2008: p4).

v). To rise above the worries of relevant content creation (Bhatnagar & Schware, 2000), Indian Government passed a policy that all local contents in the country, from cultural to arts, and to all documents generated in Institutions, both of governments, scholarship and of research, must be made available for digitization. James (2004) accounts that imputing of data into CD-ROMs, creating of on-line databases, on-line e-journals, on-line bibliographical databases, on-line indexes contributed to the digitizing of locally generated rare and valuable collection in India. One of the results of this policy is the Creation of Indian National Theses Database (UGC, 2005). The steps to this success are available on their websites (www.ugc.ac.in/new\_initiatives/etd\_hb.pdf).

Furthermore, the Government of India funded the training of librarians (who are the institutional archives and repository managers) on how to use open access software like EPrint, DSpace, and the development of software, meta-data and courseware. The Government, through UGC, provided high speed bandwidth installations in Institutions, Optical Character Readable machines, scanners, et cetera. Ambati, *et al* (2006) and Sood and Chandrasekharan (2004: p5) record that India went further to constitute an Information Library Network (INFLIBNET), a consortium incubated under the rubric of University Grants Commission (UGC), for active automation of libraries, database creation, software development, human resources development, information services and Networking in India.

vi). On copyright hindrances, the website of William W. Fisher III and his team (<http://cyber.law.harvard.edu/media/files/copyrightandeducation.html>) reveal that India’s copyright law is lenient and has allowed significant educational uses of content, especially when it comes to importing educational content from more industrially advanced nations. More so, India is not a signatory to WIPO and therefore refused indorsing the anti-circumvention rules introduced in Digital Management Copyright Act (DMCA), which can hinder Indian scholars and libraries the right over copyrighted works based on principle of fair dealing, first-sale, software re-creation and other educational exception rights (<http://gseis.ucla.edu>). Hence, in India, the clause for human rights to seek, receive and impart information through any media is practiced (<http://www.un.org/en/documents/udhr/index.shtml>). Fair dealing principle is also applicable to works on electronic format ([www.brainleague.com](http://www.brainleague.com)), thereby increasing avenue for access to all library digital collection in the educational environment; even as the copyright law of the country remain legal. Today, both the government and non-profit organizations are promoting the public domain and persuading commercial publishers to grant license to education and research institutions to access their publications in other to enhance OER, through institutional repositories. More so, Indian authors and publishers are using open access licenses like [Creative Commons Attribution 3.0](http://creativecommons.org/licenses/by/3.0/) and the likes on their works. This has led to the digitization of over 450,000 books in India, of which 22,000 are now web-accessible (Kumar, 2009).

vii). India went further to mandate all her institutions to set up local policies and requirements towards sustaining open access, digital repositories and archives (<http://www.ias.ac.in/currsci/june242004/1589.pdf>). For example, institutions’ staffs were able to make their manuscripts, pre-print or post-print of their peer-reviewed publications, available for upload on their institutional repositories even after the papers are published by journals (commercial or open access journals). A policy that conferred copyright on authors, called “authors addendum” (Arunachalam, 2008), rather than to publishers was established. Where journal publishers request that authors should pay a certain fee so as to allow their papers go open access, government approved research fund were made available annually through modalities set by institutions.

viii). Indian scholars and authors agreed to forfeit their exploitation rights (returns on sales) for moral rights (the author’s right to be cited and acknowledged as owner of a work). Their desire was to have their freely written papers receive wider dissemination through open access (by retaining and sharing the copyright through open access licenses) rather than allow publishers who, through copyright laws defend their own interest, on the cost of access and visibility of research publications.

 In summarizing some of these things Indians did to achieve open access to information, Arunachalam (2008) reveals that the vehicles of open access in India are OA Journals, OA Repositories and Open Courseware. It is observed that various Indian institutions, societies and organizations were, beforehand, signatories to various open access declarations. Today in India, free access to intellectual information of all kinds is common. Researchers within and outside India, with Internet connection, can access many Indian interoperable digital libraries. There are many open archives and repositories, hundreds of open access journals and databases, Meta-data harvesting and many interoperable digital libraries in India. Up to 60% of about four hundred institutions (universities and research institutes) in India either have a functional digital repository or are developing one (Sinha, *et al*, 2006). In the world’s registry of countries with increasing number of open access repositories, India is 11th with 46 institutional repositories (http://www.opendoar.org/find.php?cID=99&title=India). Das (2008) has a comprehensive list of open access and digital library projects, both in Asia at large and India in particular.

**Overview of Open Access in Nigeria**

First and foremost, the level of open access initiative in Nigeria can be said to be at conception. Gbaje’s (2009) survey reveals that Nigerian scholarly publications suffer low visibility. Utulu and Bolarinwa (2009) studied Nigerian academics adoption of open access and reveal that there is insignificant use of open access and that few academics who adopted open access are more from the science faculty than from the humanities. Their paper reveals academics' perception, publishing culture, and unawareness, as factors hindering the adoption of open access initiatives in Nigeria. Victoria Okojie, former president of the Nigerian Library Association, in a workshop in Zaria in 2008 (http://plip.eifl.net:8080/eifl-oa/oa-news/2008\_05\_18\_strategic-approach-to) agrees that open access success lies on digital archives and repositories. While she encouraged Nigerian institutions to adopt open access, she declared open access for all Library and Information Science (LIS) publications. Her declaration has not yielded results, except if the present enlisting of three Nigerian Universities on the world’s repository list is the product of her advocacy. These universities are: Covenant University, University of Jos and University of Nigeria Nsukka (<http://www.opendoar.org/countrylist.php>).

However, Mejiuni (n.d) sees such a disappointment as not a failure on the part of librarians but of universities and government. He narrates that universities in Nigeria rather than be producers of the technology required for open access are consumers and do not provide infrastructure to support the technology that they consume. He concludes that the unwillingness of government to fund higher education, including caring for the transformation of libraries to digital, will continue to hinder the possibility of open access to knowledge and subsequently to development in Nigeria, since the former is a catalyst for the later. Meanwhile, John (2011) writes that Nigeria spends a paltry 0.1% on research and development. His article reveals that federal universities spend only 1.3% of their budgets on research. Lamenting that no Nigerian university is on the list of the top 1,000 schools around the world in terms of publication of research output, he declares that the panacea is for institutions to begin to develop websites and migrate their research reports online for the world to see. These relate to the findings of Shina (2010) that research fund in Nigeria, provided for academics from the National University Commission (NUC) dictated 5 percent recurrent grants, is little, irregular, inadequate and to make it worse, difficult to access. This is to say that if academics publications in Nigeria were not to count for their promotion, waiting on government fund to carry out research, towards increasing the knowledge base of the nation would be difficult. However, this papers’ concern is on how the available and increasing research findings emanating from 668 academic and research institutions in Nigeria (NBS, 2008), can be digitally accessible in and outside Nigeria, without the imposition of fee and other forms of barriers.

**Recommendations**

For higher institutions of learning and research institutes in Nigeria to migrate into an applaudable level of open access to knowledge through creating freely accessible and interoperable digital repositories and archives, this paper recommends that:

i) The apex bodies of Library and Information Science in Nigeria should agree unanimously on open access publishing of all research information and the creation of institutional repositories in Nigerian educational and research institution. The NLA online forum can be one of the good platforms to collate librarian’s view.

ii) The unanimous agreement should lead to the formation of a strong committee. Librarians and committee members should note that open access licenses (creative commons attribution and other author/publisher licenses), fair dealing, library’s right for preservation by digitizing three copies of copyrighted works to use, re-use and loan to other nonprofit libraries in the institutions of learning and research (<http://www.copyright.gov/legislation/dmca.pdf> [i.e. DMCA, section 108]), the first sale principle (using a copy of what you have bought the way you want it, even if it means given it out to other persons) and the would-be government policies are legal grounds for open access projection in Nigeria. Of course, publishers need not to lament since scientific investigations have revealed that open access to published works does not decrease the sales of the work in the commercial market (Swan, 2005; Antelman, 2004; Harnad and Brody, 2004; Lawrence, 2001; Pope, 1999).

iii) A united statement of advocacy should be written. The demand for creation of digital repositories and archives in all higher institutions of learning and research institutes in Nigeria should be the prime demand. The benefits of the projects should be carefully presented to represent the interest of the nation and not librarians.

iv) The interest of NUC and the Minister of Education should be gotten by all good means. There should be a request for intellectual property rights policy for academic and research institutions. This will enable libraries share copyright with authors in their institutions and grant open access to their works (student’s theses, lecturers accepted papers for publications, etc.).

v) A letter to all chief Executives of higher institutions and research establishment in Nigeria should proceed. This letter is expected to serve as a boost to the proposals of institutional librarians.

 vi) A careful approach to attract the interest of the national media (Journalists, daily newspapers, news broadcast, etc.) should be employed. Opara (2011b) observes that civil societies like: Academic Staff Union of Universities (ASUU), Nigerian Union of Teachers (NUT), Nigerian Union of Journalists (NUJ), Nigerian Labour Congress (NLC) and others; would be of good support to librarians in this kind of pursuit, if there voice is one.

vii) Non-governmental and non-profit organizations should be alerted. There are multi- million foundations and societies in Nigeria today. For instance, T.Y. Danjuma’s foundation (http://www.tydanjumafoundation.org/), ready to spend about 60million naira on poverty alleviation, could be made to realize that open access to knowledge is one of the steps to eradicate poverty. MTN, SHELL, Google, and other multi-billion companies can render their community development services by creating repository centres for one or two universities. They only need to be informed. Okojie (2011) reminds us of the exploits Google is making in Africa and narrates how $500,000 grant is given to Nigerian ICT Forum (a joint meeting of the Vice-Chancellors and ICT Coordinators) to improve internet availability in tertiary institutions in Nigeria. Who knows if projects like library digitization or repositories would gain from this fund? Librarians need to demand for funds for these projects and they will get it.

viii) Although Okoye and Ejikeme (2011) discover that Nigerian librarians are aware of open access channels, their failure to utilize the medium in publishing suggests that they should get acquainted with the initiative and also disseminate it by organizing workshops/seminars and inviting foreign advocates and experts in the project.

**Summary and Conclusion**

Copyright legality is still alive globally. In this work, the dust raised in mentioning open access to copyright is basically on intellectual works of which majority are contained in scholarly journals and some supervised academic researches like theses and dissertations, which are ingredients needed for all kinds of development. The library, as the engine house of information dissemination, is playing a vital role in India to ensure that peer reviewed research findings are accessible and visible. The likes of Subbiah Arunachalam, T. B. Rajashekar, and few others, remarkably started the agitation in India, drawing the attention of the entire learning and research community on the need for academics to retain, share (with creative commons licenses) or transfer partly the rights of their works rather than allowing the publishers control the copyright. The sense that academic authors would want to maximize the impact of their publications and see their works read and cited globally contributed to the adoption of open access, which is today supported by the Indian government through policies. Some of the policies are summarized to mean that libraries in India, digital or not, can disseminate information freely to all, aiming at balancing authors/publishers’ right with public interest/right to receive or access information. And authors are now using the slogan: “some rights reserved” rather than “all rights reserved”.

It is therefore notable to say that Nigeria, which is rapidly overcoming Information and Technology availability and hoping to be among the developed nations by 2020, can migrate to open access to information. Librarians and information professionals in the institutions of learning and research will play a vital role in this mission. This paper has presented a picture of the project, with few guides on how they will overcome the fear of copyright. The researcher invites Nigerian librarians to carry out more research on open access and to project the initiative in the scholarly community by educating and drawing the support of other discipline’s scholars. In conclusion, this paper holds that the use and reuse of scholarly or research information (the basics of open access) by all in Nigeria would promote new research, avoid duplication of effort, make research findings visible and accessible, and consequently lead to development.

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  ***AUTHOR’S ADDENDUM***

*Sir/Ma,*

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