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Rationale of copyright exemption and limitation in teaching and learning in Universities: A comparative study of Kenyan and Ghanaian copyright act

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Abstract

Kenyan copyright Act was passed by Parliament in 2001. It came into force in February 2003. In addition to the minimum standards of protection required by international conventions, the new law sets out stronger administrative structures and enforcement mechanisms. The implementing Regulations were passed in 2005.Conversely; copyright legislation in Ghana is the Copyright Act 690 of 2005. It came into force on 17 May 2005. The Act seeks to bring Ghana's copyright regime in line with its assumed international obligations under the WTO TRIPs Agreement. Subsequently, important role of exceptions and limitations to improve the welfare of society, which matters not only for uses but for creators as well, by encouraging creativity and promoting dissemination, are recognized by the international copyright system. The need for balance between rights and access within the international context is paramount. The exceptions pertaining to educational activities exists in various forms ranging from the generic fair use or fair dealing exceptions or even residual exceptions based on the three-step test. Kenya .This paper seek compare copyright Exemptions and Limitations in the Kenya copyright Act, 2001 and the Ghana Copyright Act 2005, with aim of highlight the extent to which they support teaching, learning and research in universities. Its main research methodology is predominantly reliance on secondary data to portray a clear picture of copyrights acts in these two countries.

I. INTRODUCTION

Copyright law has a relatively long history. Its roots can be traced back to the time when Gutenberg began using moveable type in 1455, and when Caxton developed the printing

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Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

press and published Chaucer's Canterbury tales in 1478, (the first "best seller" in England). At that time, the government in England was eager to control the printing of religious and political books. To do this, it established a system of privileges, as well as founded the Stationers' Company, a craft guild that was given the sole right to print books. Members of the Stationers' Company had broad powers over the early printing and publishing world. They were given the right to print their books in perpetuity and this right became known as copyright, or, the right to make copies (Bainbridge, 1992)

This system of privileges continued until it finally collapsed for about two hundred years when it finally collapsed in 1675. After a brief period when piracy of books thrived, the Statute of Anne was enacted in 1709. It is widely regarded to be the first true copyright act in the world. The effect of wide scale piracy of books was described in the statute as being very great Detriment and too often to the Ruin of them and their Families (Darkey & Akussah, 2009)

WIPO website revealed that over the next couple hundred years, the body of copyright law grew and expanded. It was becoming widely understood that copyright was important in an international context. Accordingly, the Berne Copyright Convention was formulated in 1886 with the purpose of promoting greater uniformity in copyright law and giving copyright owners full protection in all member states (as cited by Darkey & Akussah,2009).

Henderson (1998), wittingly observes that copyright law also provides authors the jurisdiction to transfer their rights to publishers in order to bring their works to the market. In effect, there are really three groups in the copyright phenomenon:

1. creators who have legal rights under the copyright law,
2. publishers who have legal rights by transfer, and
3. Users (or institutions such as schools and libraries) who have legal rights through exceptions and limitations to creators' rights.

II. THREE STEP TEST

In essence, the three-step test determines the circumstances under which domestic legislation can limit the exclusive rights of the rights holders. More precisely, the test allows exceptions and limitations to exclusive rights only:

i. In certain special cases;
ii. That do not conflict with the normal exploitation of the work; and
iii. Do not unreasonably prejudice the legitimate interests of the author/rights holder.

While each of the steps remains imprecise, the test can perhaps best be summarized and clarified as follows: copyright exceptions and limitations are permissible if they are not unduly vague, do not deprive the rights holders of tangible income in areas in which rights holders normally obtain such income from copyright, and do not harm the interests of the rights holders in a disproportional way. Regardless of the international requirements for copyright exceptions and limitations, developmental considerations

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Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

should always play a significant role when it comes to a country's approach to copyright exceptions and limitations. In developing countries, where educational deficiencies are often a main cause for many of the most pressing socio-economic problems, copyright exceptions and limitations can operate as a crucial national policy tool to overcome developmental shortfalls. For it is by way of such exceptions and limitations that access to educational material can be facilitated since copyright protection would otherwise bar considerable amounts of knowledge material from being reproduced and disseminated freely (Ncube 2011).

- **The Fair Use/ Permitted Use Principle/Limitations and Exemptions**

The fair use or permitted use principle, also known as exceptions to the rights of copyright owners, is an important part of copyright laws. The fair use principle is a privilege for someone other than the copyright owner to use a copyrighted work without seeking permission from the copyright owner or sometimes paying a fee (Story,Darch & Halbert, 2006). According to Amegatcher (1993), copyright is not an absolute right; therefore, the principle of "permitted use" enables people, within limits to use freely the works of others. Litman (1997) argues that, no newly created copyrighted work can be truly original. All authors are consciously or unconsciously, directly or indirectly exposed to, informed and inspired by the earlier works and thoughts.

- **Importance of fair use/exceptions and limitations in copyright law**

Guilbault (2002) quips that in this knowledge based environment it important to satisfy the various interests regarding copyright law, proper balancing between the parties may be achieved through the integration of exceptions and limitations which is an integral part of copyright law. Okediji (2006) argues that in the past , the exceptions and limitations to copyright law have not been emphasized because countries enjoy total freedom to make exceptions and limitations based on their national interests, and any binding regulation on the matter would presumably weaken the copyright system rather than promote public welfare. Nevertheless, in the era of digitization and globalization, access to knowledge goods is indispensable, especially for developing countries. This would specifically underline the importance of utilizing information as a foundation for economic growth, for expansion of creativity and for the development of science for the benefit of all (Wahid, 2011). The important role of exceptions and limitations to improve the welfare of society, which matters not only for uses but for creators as well, by encouraging creativity and promoting dissemination, are recognized by the international copyright system; important proposals have been made with respect to facilitating a more explicit balance between rights and access within the international context (Okediji, 2006).

Wahid (2011) observes that several studies have been conducted on the issue of exceptions and limitations to copyright law within the international copyright system. For instance; A study outlining the international framework of exceptions and limitations to copyright protection was undertaken, setting broad parameters in which policy makers and legislators at the national level have to work on (Ricketson,

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

1999). Studies circumscribing the main exceptions and limitations existing under several international conventions as well as national approaches to their application particularly relating to the digital environment has also been conducted by WIPO (Ricketson, 2003) and UNESCO emphasizing its impact to transmission of knowledge (Guibault, 2003). A specific study on the role of copyright exceptions in empowering digitally integrated scientific research has emphasized the responsibility of governments to facilitate and promote the production and dissemination of scientific research (Reichman & Okediji, 2009). Other studies on exceptions and limitations to copyright law have also discussed its theoretical and historical context and developments (Davies, 2002; Mendis, 2003), importance (Burrell & Coleman, 2005), changing scope (Jehoram, 2005), possible realms for improvement and reform for the benefit of the public interest (Ricketson & Monotti, 2003). A global approach to limitations and exceptions (that better balances the exclusive rights conferred through copyright) with the public interest considerations of developing countries is also planned within the confines of the present international copyright system (Okediji, 2006).

Studies by the Commonwealth of Learning Copyright further emphasized that there is a great deal of flexibility provided by the international treaties as to how copyright may be legislated, given national goals such as literacy and education, but this is not adequately known by member countries (Prabhala & Schonwetter, 2006). It was urged that the flexibilities in the TRIPs Agreement should be explored by countries when designing an IP regime that best suits the country's economic, social and cultural needs (Loon, 2009). It was viewed, however, that there is also the possibility that the domain of exceptions and limitations is shrinking as countries invariably strike bargains when in the process of negotiation (Hugenholtz & Okediji, 2008: 36-37). Thought is also being given to harmonizing exceptions and limitations at the international and regional levels (Ginsburg, 2000; Perlmutter, 2001) but there had been concern on the drawbacks of harmonization (Peukert, 2005; Dutfield & Suthersanen, 2004) and some suggested that it is more appropriate to leave the matter to be determined at the national level (Ginsburg, 2000). Through re-establishing the balance between the different interests, it is hoped that solutions can be found, especially for developing countries, to deal with the issue of access to copyright works (Geiger, 2006a). Okediji (2006) suggests that more emphasis on the importance of exceptions and limitations especially for developing countries since it indispensable strategic and doctrinal tools to facilitate economic development by proving citizens with the basic means to engage in intellectual endeavors and to participate in the global knowledge economy.

III. EXCEPTIONS FOR THE PURPOSE OF TEACHING, LEARNING AND RESEARCH

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

The worldwide reviews on national legislation have fundamental issues on the fact that, while all copyright legislations recognize exceptions for the benefit of educational activities, there is no single standard approach adopted in formulating the exceptions (Wahid 2011). However, it is perceived that the extent and conditions of copyright exceptions between different countries varies sometimes widely and a statutory licensing scheme is proposed as a remunerated copyright exception, to cover all teaching uses over the Internet (Xalabarder, 2004). A comparative study was conducted on European countries looking at the implementation of exclusive rights, limitations and the legal protection of technological protection measures, portraying areas where states have significantly deviated from the European Directive and problem areas that may have a detrimental effect within the internal market (Westkamp, 2007). WIPO has conducted several studies describing the state of the law, particularly on the issue of copyright exceptions for educational activities in the Asia-Pacific region (Seng, 2009b), North America, Europe, Caucasus, Central Asia and Israel (Xalabarder, 2009) .

The exceptions pertaining to educational activities (for the benefit primarily of educational institutions) exists in various forms ranging from the generic fair use or fair dealing exceptions or even residual exceptions based on the three-step test set out in Article 9(2) of the Berne Convention and Article 13 of TRIPs, specific exceptions pertaining to quotations, criticism and review to allows taking extracts of works or by way of implementing statutory, voluntary or compulsory licensing arrangements to enable the use of multiple reproductions of works in educational institutions (Seng, 2009). Studies on the specific exceptions relating to ―illustration for teaching‖ under Article 10(2) of the Berne Convention have also been conducted, viewing that such provisions provide a potential policy space for member countries to mandate access to educational materials for development needs (Chon, 2007: 806). Unfortunately, the domestic legislations of some countries have significantly narrowed the scope of this Berne exception (Okediji, 2006).

Despite the flexibilities provided within copyright law, there seems to have been certain negative impacts of copyright law on education, especially in developing countries (Nicholson, 2006). There has been an incorrect balance between the copyright owner‘s interests and the interests of education and scholarship, especially where the educator and the copyright author reside in a single individual (Suthersanen, 2003).

Copyright has also denied access to digital information, contributed to the price of books, course packs, academic journals and literary materials, and caused difficulties for librarians as well as slowly stifling public interest (Goburdhun, 2006). Groups of prominent legal scholars, artists, scientists and experts from around the world similarly challenge and asserted that copyright laws are simply inhibiting innovation (Gil, Sulston & Boyle, 2005). These happen when the available limitations and exceptions for educational use, that should have opened up access to knowledge, are not fully

utilized (Guibault, 2003; Hong Xue, 2008) despite the need for access to education. Some countries have even expanded the scope of copyright protection beyond what is required by the international copyright treaties (Consumer International Asia Pacific Office, 2006; Wilkinson, 2005).

Some courts seem to apply the exceptions in a restrictive manner (Cahir, 2004). The coming of the Internet age has further complicated copyright law, rendering copyright policies to be theoretically and practically deficient, putting much reliance on economic justifications rather than stressing the original values of copyright (Ganley, 2004). This has been said to be due to ambiguities and uncertainties (Crews, 1993) surrounding the three step test, which have misled some countries deterring them from setting out appropriate exceptions and limitations for educational purposes as well as the linkage between national IP regulation and trade law under the TRIPs Agreement (Hong Xue, 2008), which has resulted in the creation of relatively low levels of exceptions and limitations, particularly in developing countries' national copyright laws (Hinze, 2008).

It has also been claimed that the flexibilities provided by the international treaties are not working efficiently in developing countries due to problems such as lack of resources to integrate them into their domestic laws (Nicholson, 2006). Moreover, the optional character of the teaching exception provided by the international and European provisions led to major differences, uncertainties in national laws and very few national legislators took advantage of this possibility (Papadopoulou, 2010).

Burrell & Coleman, (2005) found out that the research and private study exception suffers from a number of serious defects such as failing to distinguish between different stages of research and gives no clear guidance as to the quantity of material that can be copied in reliance on this exception thereby causing difficulties for students, researchers and institutional users . Wallace (2006), in his investigation realised that copyright protection posing as a barrier to the widespread development of e-learning practices within further education colleges .

Specific case studies on copyright law in relation to developing countries have also been conducted. It has been found that, despite the trend of governments to strengthen intellectual property protection at the expense of public access to new knowledge, apparently, the cultural acceptance of intellectual property differs between countries (Marlin-Bennett, 2004). Some argued for reformation and a global approach to limitations and exceptions that better balance the exclusive rights conferred through copyright with public interest considerations for developing countries (Okediji, 2006).

Despite all this debate on the ineffectiveness of the flexibilities provided in international copyright law, Drahos (2002), interestingly, viewed that the developing countries' interests will only ever be given minimal consideration vis-à-vis the developed countries' economic interests, and therefore they will have to look to

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

self-help in dealing with intellectual property issues. More focus on information or cultural resources and how we nurture and allocate them for the social and economic good (Fitzgerald, 2008).

Most universities are overly conservative in their interpretation of copyright law, and often neglect their own interests, adding unnecessary costs and obstacles to the lawful dissemination of information (Crews, 1993). Here, there is some dilemma, since higher educational and research institutions are not only users of copyrighted material, but also producers of new works (Wagner, 1998). Although both educational and research institutions as well as copyright owners have a similar objective, that is to disseminate knowledge, it is difficult to protect the interests of the private owner and to address the public's need to access information at the same time (Ricketson & Monotti, 2003).

IV. COPYRIGHT ISSUES IN KENYA

Olaka and Adkins (2012), observed that liberalization of higher education in Kenya since the late 1990s has created new challenges in copyright enforcement among Kenyan academic librarians. This policy has been instrumental in the growth of the higher education sector that has been characterized by a rapid increase of student population and number of higher education institutions. In the year 2000, there were 59,200 students in Kenyan universities, and by 2005 enrollments had reached 91,541 students (Republic of Kenya, Commission for Higher Education, 2006). Enrollments are projected to increase to 160,000 students by the year 2015. Despite the rapid expansion, library infrastructure has not expanded fast enough to cater sufficiently for the increased demand placed on available information resources (Odero and Mutula, 2007). At the same time, copyright infringement has become endemic, and Kenyan universities and their libraries are frequently accused of not doing much to curb copyright infringement (Amani, 2011). In the year 2000, the Kenyan textbook industry lost KSH8 million (US$114,285) due to book piracy (Wa Micheni, 2008).

Government of Kenya Report (March 1988) observes that the introduction of IMF Structural Adjustment policies in Kenya resulted in limited funding for Kenya's public universities. This has had an impact on the development of library and information services in universities. Public university libraries are not equipped to deal with the rising student enrolment numbers. As a result, academics in Kenya and in particular senior faculty members, have increasingly adopted strategies other than using the university library to obtain information. These strategies include: using personal contacts in the developed world to obtain reports, journal articles and reprints; purchasing books during travel outside the country; and the personal purchase of, or personal subscriptions to, journals. Among the academics at Kenyatta University (KU) and Moi University (MU), 50 per cent and 75 per cent, respectively, reportedly never enter the library (Muema, 2004).With university students, there is increasing

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

dependence on lecture notes and handouts as well as photocopying of textbooks methods that are felt to be more reliable than depending on the university library.

The challenge of balancing the need to safeguard interests of rights owners with facilitating access to information by the university library user community has been left to the library, yet this balancing act is not mandated by law except that it is a role that both librarians and users assume is the librarian's obligation (Graveline, 2010). This obligation is normally based on moral grounds due to the nature of librarians' work, which includes processing, storage, repackaging and disseminating of information (Pressman, 2008). At the same time, fear of having their universities dragged into copyright lawsuits and the cost of such lawsuits is pushing more librarians to play the role of protectors of rights' holders (Albanese, 2008). However, due to complexities and intricacies of copyright, obliging librarians to be copyright enforcers continues to be vehemently opposed by scholars such as MacLean (2006).

V. KENYAN STATUTES AND REGULATIONS

The new Copyright Act was passed by Parliament in 2001. It came into force in February 2003. In addition to the minimum standards of protection required by international conventions, the new law sets out stronger administrative structures and enforcement mechanisms.The implementing Regulations were passed in 2005.

Otike (2011), in a paper presented to KLISC observed that In 2001, the Copyright Act, 2001 was enacted to replace the 1966 Act and the Act, among other things, establishes the Kenya Copyright Board (Kecobo) as an official body responsible for overseeing all issues pertaining to copyright in Kenya. It is charged with the following functions:

- ✓ To ensure compliance of laws and international treaties and conventions to which Kenya is a signatory which relate to copyright and other rights recognized by this Act.
- ✓ To license and supervise the activities of collective management societies (also known as the Reprographic Rights Organisations) provided for under this Act.
- ✓ To devise promotions, introduction and training programmes on copyright and related rights.
- ✓ To organize legislation on copyright and related rights and propose other arrangements that will ensure its constant improvement and continuing effectiveness.
- ✓ To enlighten and inform the public on matters relating to copyright and related rights
- ✓ To maintain an effective data bank of authors and their works
- ✓ To administer all matters of copyright and related rights in Kenya as provided for in under the Act

5.1 Works protected by Kenyan copyright

Section 22 of the Copyright Act provides for works that are eligible for copyright protection. These are:

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

i. Literary works (including computer programs);
ii. Musical works;
iii. Artistic works;
iv. Audiovisual works;
v. Sound recordings;
vi. Performances; and
vii. Broadcasts.

5.2 Nature of copyright in kenya

According to Ouma and Shihanya (2011), the nature of copyright is clearly laid out in Sections 26 to 29 of the Copyright Act. Section 30 addresses performances, while Section 49(d) deals with folklore. The Act grants both economic and, in Section 32, moral rights. Before looking at the precise scope of protection for the different kinds of works, it is noteworthy that the Act contains the following definition of 'copy'**:**

> *'[C]opy' means a reproduction of a work in any manner or form and includes any sound*
> *or visual recording of a work and any permanent or transient storage of a work in any*
> *medium, by computer technology or any other electronic means***.**

This definition covers 'any transient storage of a work in any medium'. This is intended to cover new reproduction and transmission technologies relating to the production and distribution of literary and other copyrightable works. The Act recognises non-material and non-tangible forms of reproduction as well. This definition is significant in that the protection of non-tangible forms of reproduction may negatively impact access to digital teaching and learning materials. Section 26(1) of the Copyright Act indicates that the owner of a literary, artistic, musical or audiovisual work has the exclusive right to control the reproduction, in any material form, of the work, or its translation, its adaptation, its distribution to the public by way of sale, rental, lease, hire or loan, as well to control the importation or communication to the public and broadcasting of the works. Additionally, section 2 of the Copyright Act stipulates that the term 'work' includes translations, adaptations, arrangements or other transformations of a work and public performance of the work.

The right of making a work available is not yet expressly provided for by the Act, but this is likely to be included in the forthcoming amendments to the law. This right of making available is an extension of the right of communication to the public in the digital environment, which is provided for under the WIPO Copyright Treaty. This right grants the rights-holder greater control of the work when it is distributed over a digital network (Ouma & Shihanya, 2011).

Section 29 of the Copyright Act grants the broadcasting organisations the right to control the fixation, broadcast and communication to the public of the whole or part of their broadcast. Section 30 of the Copyright Act also grants performers exclusive rights to ix and reproduces the fixation of their performances and to broadcast or communicate

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

their fixed performances to the public. Section 28 of the Copyright Act gives the rights-holder in a sound recording the exclusive right to:

- ✓ Reproduce the sound recording in any manner or form;
- ✓ Distribute it to the public by way of sale, hire, rental, lease or any similar arrangements;
- ✓ Import it into Kenya; and
- ✓ Broadcast and communicate the material to the public.

According to Section 33 of the Copyright Act, economic rights are transmissible as movable property by assignment, by license, by testamentary disposition or by operation of law. Moral rights apply to authors of literary, artistic and musical works as well as performers. Under Section 32 of the Copyright Act, the moral rights are limited to the right to be named or to claim authorship and the right to object to any mutilation or derogatory treatment that affects the honor or reputation of the author or performer.

Section 31 of the Copyright Act stipulates that works that are created by employees of the government are deemed to be the copyright of the government. Section 25 of the copyright Act and section 2 of the Act under the definition of "*literary work*" emphasizes that that those work created by government employees do not automatically fall into the public domain, except for statutes and judicial decisions.

Section 45 of the Copyright Act gives the provisions for other works that automatically fall into the public domain are: works whose terms of protection have expired; works in respect of which authors have renounced their rights; and foreign works which do not enjoy protection in Kenya.

While most government works are protected by copyright, many are accessible to the public for free over the Internet. Some hard-copy government documents, however, have to be purchased from the Government Printer, even though they may be accessed free of charge online.

5.3 Copyright Limitations and exceptions in Kenya

The Copyright Act contains several general exceptions and limitations to the exclusive rights granted. In particular, in an attempt to balance rights-holders' rights with the interests of users, Section 26(1) of the Copyright Act provides, inter alia, that copyright in literary, musical, artistic works or audiovisual works does not include the right to control:

a. 'fair dealing' for purposes of criticism, review, scientific research, private use and reporting of current events for as long as the author is acknowledged as such;
b. the inclusion of not more than two short passages of a copyright-protected work *f*in a collection of literary or musical works that is for use by an educational institution;
c. the broadcasting of a work, or reproduction of a broadcast, for educational purposes in an educational institution; or

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

d. Reproduction under the direction or control of the government or by public libraries, non-commercial documentation centres and research institutions, 'in the public interest' and where no income is derived from the reproduction.

Ouma and Shikava (2011) believes that the Kenyan doctrine of fair dealing is problematic, particularly because no definition exists for the requirement of fairness. Furthermore, for teachers and learners generally, the law does not permit the reproduction of whole works for teaching purposes. Rather, permitted reproductions are limited to the inclusion of only two short passages in collections to be used for instructional purposes. If enforced, this provision would affect the preparation of course packs for use by educational institutions. Any use beyond the two short passages allowed by law requires users to obtain express authority from the right-holders. The only entire works that are available for teaching purposes under the exceptions are broadcasts. This provides access to teaching and learning materials by way of broadcast. Shihanya (2008), quips that there are no specific provisions for exceptions in relation to distance learning and e-learning.

Regarding the exception listed above for public libraries and archives, the two main issues to be considered are how one defines the 'public interest' and how one defines non-commercial institutions. Private libraries, research institutions and documentation centres would not benefit from this exception as they are normally deemed to be commercial. The issue of public interest can also be subjective (Ouma & Shihanya, 2011).

Ouma and Shihanya (2011), further observes that the exceptions and limitations contained in the Kenyan Copyright Act also do not specifically address people with disabilities, including the visually impaired. Instead, the law makes it clear that the right to control the adaptation and translation of any work vests in the right-holders. This means that before any person translates a work into Braille format, for instance, such a person must obtain permission to do so from the right-holders. The use of copyright works for purposes of reporting by the media is allowed under fair dealing. Public lectures and speeches can therefore be quoted freely by the media and included in news reports. The exceptions and limitations as drafted under the current law are vague and, at the same time, quite narrowly construed. This gives the rights-holder more control over the use of their works and at the same time limits the dissemination of information without the rights-holder's authority. The law, however, makes provision for licensing agreements under Section 33 of the Copyright Act. This licensing may also be through collective management organisations (CMOs) such as the reprographic rights organisations (RROs). Libraries and educational institutions are expected to take out licences in order to reproduce copyright-protected works if the use is not covered by the exceptions and limitations. Some licensors, however, seek royalties and related payments for works already in the public domain or works in which copyright never subsisted in the first place. Other licences simply provide what is already permitted by the Act through copyright exceptions and limitations (Ouma & Shakava 2011).

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

VI. COPYRIGHT ISSUES IN GHANA

Ghana's educational system can be divided into roughly five sectors. First is the basic level, which encompasses primary and Junior High School (JHS) education. Normally, pupils spend nine years at the basic level, excluding kindergarten. The basic level is free and compulsory. Second, there is the secondary Senior High School (SHS) level, where students spend four years and receive general education, vocational, technical or agricultural training. At the basic and secondary school levels, the government of Ghana provides free textbooks to students. Third, Ghana has 38 Teacher Training Colleges where qualified SHS graduates may receive three years of formal training to become teachers at the basic schools (upon completion of their training). Fourth are the polytechnic institutions. These institutions run various programmes, spanning between one and three years. There are nine of these polytechnics in Ghana. Fifth, there are the universities. Ghana has six public universities and 13 private universities (Adusei, Antwi & Halm 2011).

Darkey and Akussah (2009) observed that the educational reforms of the late 1980's in Ghana have led to vast increases in the number of students entering Ghana's Universities. Even so, these increases are not matched with the necessary funding to sustain this surge in student population. As a result, there is an inadequate supply of textbooks, journals and other teaching and learning materials. This situation has resulted in students, lecturers and librarians feeling obliged to photocopy complete books and journals that are actually needed for courses, but are no longer in print or are too expensive for students or the budgets of most libraries. These photocopying activities have, however, attracted the attention of a local Reproduction Rights Organisation (RRO) pressure group Copy Ghana, who views the practice as copyright infringement. Copy Ghana calls for a "blanket licence" for library-related photocopying activities (Daily Graphics , 2005).

Notwithstanding the issue of violations of the copyright law, photocopying activities are crucial to the survival and functioning of Institutes of Higher Learning in Ghana. In the estimation of the authors, photocopying keeps Ghana's higher education system functioning and ensures that vital educational standards are maintained.

In 2007, there were more than 100 photocopying facilities operating on the University of Ghana Campus. Thus, it was not a surprise when the University of Ghana Library Board,sent a proposal to the Faculty Boards, which stated, among other matters, that the university should close down all photocopying enterprises that are

1. a) Not covered by explicit agreement/contract with the University, and
   b) Not properly authorized.
2. The University should have a legal advisor on matters of copyright. (Darkey and Akussah, 2009)

6.1 Ghanaian Copyright Act 690 of 2005

The current substantive copyright legislation in Ghana is the Copyright Act 690 of 2005. It came into force on 17 May 2005. The Act seeks to bring Ghana's copyright regime in

ISSN: 2347-1697
International Journal of Informative & Futuristic Research (IJIFR)
Volume - 4, Issue -9, May 2017
Continuous 45th Edition, Page No.: 7594-7610

line with its assumed international obligations under the WTO TRIPs Agreement. Indeed, the Act introduced a globally oriented system, which incorporates universal copyright standards like those that exist under the statutes of most developed countries. The Act provides protection to works such as computer programs and folklore that were, until then, not expressly protected. The new Act extends the general term of protection from the life of the author plus 50 years after the author's death to life plus 70 years after death. In the case of anonymous or pseudonymous works, economic rights are protected for 70 years from the date on which the work was made public or published, whichever date is later. If the copyright in a work is vested in a corporate body, protection is, in general, offered for 70 years. For works of folklore, protection is vested in the state and the term of protection is perpetual. The terms of protection for works in Ghana thus exceed the standard duration of copyright protection required under the TRIPs Agreement. These provisions are, therefore, examples of what are known as 'TRIPs-plus' provisions.

6.2 Ghana Copyright exceptions and limitations

The 2005 Act also contains provisions respecting exceptions and/or permitted uses of copyright works. These provisions include, but are not limited to, Section 19 (*Permitted use for personal purposes, quotation, teaching, media use*), Section 20 (*Reproduction of a single copy of a computer program as a back-up*) and Section 21 (*Permitted use of copyright materials by a library or archive*). It needs to be stressed that the 'permitted use' provisions in the Ghanaian statute bear some relation to the notions of fair use or fair dealing in Anglo-Saxon copyright jurisprudence and in certain instances the Ghanaian statute specifies that a 'permitted use' is subject to the use being 'compatible with fair practice'(Darkey and Akussah,2009).

Section 19 makes it a non-infringing act to translate, reproduce, adapt or transform the work for exclusive personal use if the user is an individual and the work has been made public. According to Section 19, copying for personal use does not, however, permit the reproduction of a whole or a 'substantial' part of a book. he restrictions provided under Section 19 apply to the copying of all literary and artistic works, which includes textbooks, articles, dictionaries, paintings, photographs, sculptures, maps and virtually all other learning materials used in educational institutions. No formula has as yet been developed in Ghanaian law to serve as a guide on what constitutes 'substantial' copying. It is likely that what constitutes substantial copying will be determined on a case-by-case basis, depending on both the quantity and the nature of the copying in question.

At present, no special mention is made of copyright exceptions for people with disabilities. However, the practice, as the impact assessment interviews uncovered, is that the universities nonetheless convert some of their learning materials into Braille form for the visually impaired (Darkey and Akussah,2009). In addition, no specific exceptions exist for distance learning. Access for purposes of distance learning is covered only by the general exceptions under the Copyright Act.

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Fair dealing for purposes of review and criticism, which was explicit under the 1961 Act, is not mentioned in the Copyright Act of 2005. However, according to Section 19, it is not an infringement to include portions of another's work in one's own work, provided the individual user acknowledges the source and the quotations are in accordance with 'permitted use'.

The use of a copyright-protected literary or artistic work is also permitted without authorisation in terms of Section 19 where it is used for teaching or broadcast in educational institutions. Besides acknowledging the source, this must also be in line with 'permitted use'. Section 19 also allows for reproduction in the media or communication to the public of political speeches, legal proceedings and lectures for purposes of reporting fresh events. Again, this must be consistent with permitted use in the media and the source must be acknowledged. But the issue of what constitutes permitted use remains undefined.

In making a determination on this matter, the practices of a particular industry will likely be a key factor. For instance, academic rules against plagiarism and the rules on incorporation of another person's work into one's own for purposes of scholarship would aid in interpreting its meaning (Darkey and Akussah,2009).

Under Section 21, non-commercial libraries and archives are permitted to make a single copy of 'a published article, other short work or short extract of a work' for an individual, as long as they ensure that the individual uses the copy for purposes of study, research or scholarship. However, the manner in which such a supervisory role could be exercised remains unclear. Also, a library or archive may make a single copy of a copyright-protected work to replace or preserve a book that may be lost or destroyed. Copying library books in order to preserve them is a potentially useful strategy to address the issue of vandalism, including tearing of pages, sections or entire chapters of books. When the reproduction is not an isolated instance, however, then a licence for that purpose is required from the copyright owner or collective society of owners.

VII. CONCLUSION

Copyright does not protect originality. All creations are based to some extent on what came before and no creation is completely original. Ideas come from reading or viewing or listening to other creations, and imagination is stirred in the same way. Copying broadens the horizon of access. The more a work is copied, the more likely it is to be seen. All creators naturally want their work to have the widest audience, yet copyright acts to restrict the widening of the audience, contrary to the notion of free and wide access to information. However, the limitations and exemptions is a privilege for someone other than the copyright owner to use a copyrighted work without seeking permission from the copyright owner or sometimes paying a fee. Kenya and Ghana on larger extend have a relative convergent perception on the copyright exceptions and limitation. Although, Ghana copyright act is not clear on the fair dealing for the

purposes of criticism, review and scientific research but as indicated, provided the work is acknowledged there isn't any possible call alarm.

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