

	<p style="text-align: right;">Date : 11/10/2007</p> <p>Libraries and COSOMA: is the marriage stable?</p> <p>Diston Chiweza¹, Kondwani Wella² and Martin Thawani³</p>
<p>Meeting:</p>	<p>153 Copyright and other Legal Matters</p>
<p>Simultaneous Interpretation:</p>	<p>Yes</p>
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Introduction

Malawi is a small developing country in Central Southern Africa. It has an area of 120,000 square kilometers of which about 25,000 is water. It lies in the Great East African rift valley which also contains the 360 mile long Lake Malawi to the East of the country (See figure 1 for Map of Malawi). Malawi has a population of about 11 million people. 58 percent of these are illiterate and 80 percent live in rural areas. Only about 2.5 percent of Malawians have had the privilege to complete university education (<http://www.nso.malawi.net>) and (Williams, 1996).

Economy

Malawi's Gross National Product (GNP) per capita is \$160 (World Bank, 2006). With this GNP per capita, Malawi is amongst the seven least privileged countries

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in the World. Agriculture is the backbone of Malawi's economy. It forms about 37% of the Gross Domestic Product (GDP) and 87% of the export revenues. Nine in every ten people in Malawi live in the rural areas and are engaged in agriculture, largely on a subsistence and smallholder basis. Very few people undertake large-scale commercial farming. The most important commercial crops are tobacco, tea, peanuts, sugar, and cotton. There are no exploitable mineral resources in Malawi. This has caused the government to focus on integrated rural production, diversification in light industry, particularly agro-processing and import substitution, and improved transportation facilities, states Williams.

National Economy, Tertiary Education

The national economic hardships directly affect the University of Malawi and other tertiary institutions, which as statutory bodies, required to submit annual budgets to the Government. For instance, as economic growth declined, cuts were made to the University of Malawi's operating budget and such a trend is common in all parent institutions of libraries in Malawi. The corrective measures that had been introduced by the IMF and the World Bank Structural Adjustment Programmes, while ensuring growth in the mid 1990s, also meant that government institutions had to severely cut their spending. Among the additional economic measures that were introduced were a reduction in government expenditure and successive devaluation of the Malawi currency, the Kwacha. Presently, the Kwacha is still on the downward trend although it has stabilised at MK140 to 1 USD. Twenty years ago, 1 USD was worth MK2.

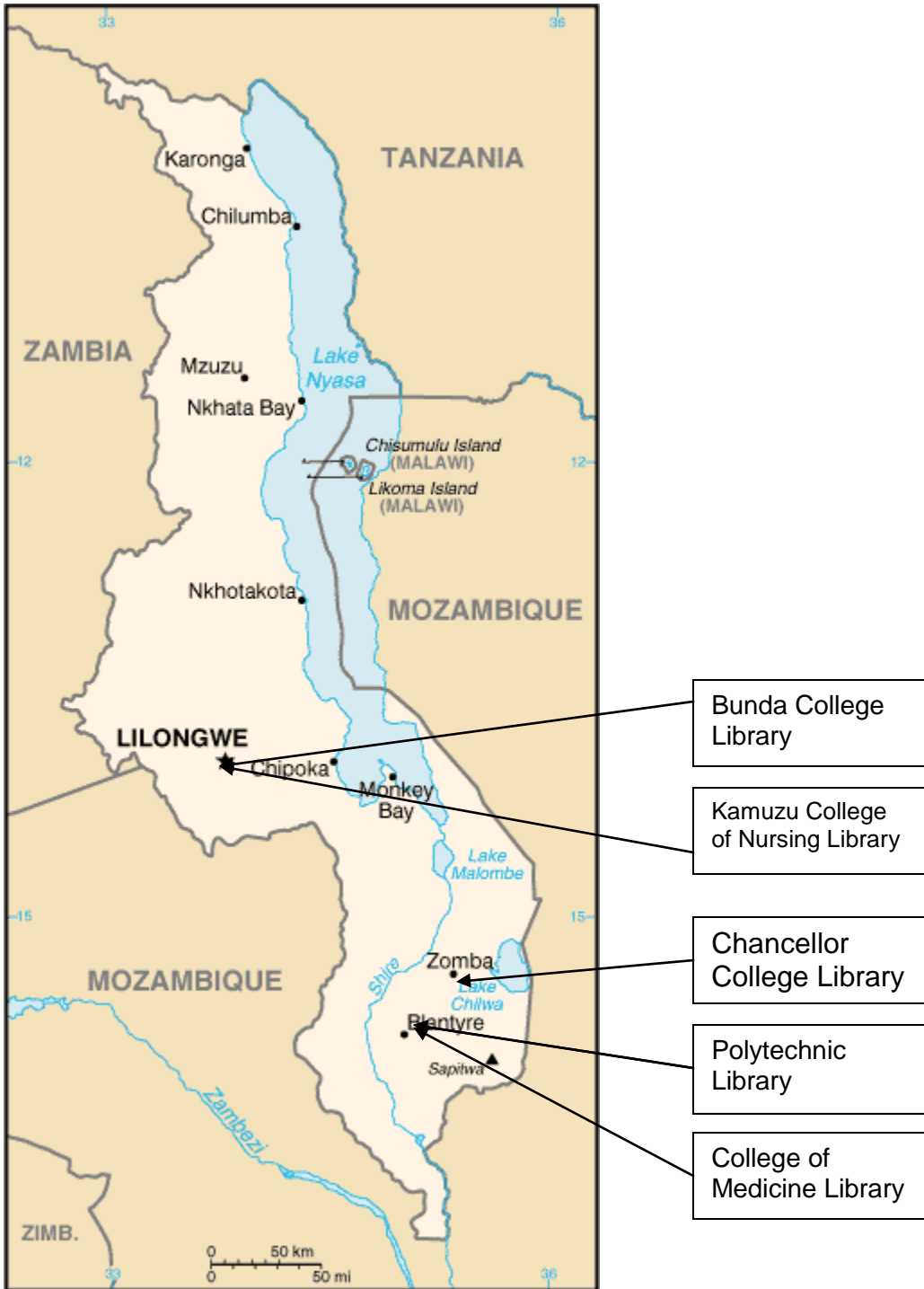
Scarcity of books and journals

The currency devaluations directly affected the ability of the University of Malawi Library System and other libraries in the country to maintain journal subscriptions and purchase new books from abroad using the main budget. Foreign suppliers of books and journals to the University of Malawi and other libraries quote their prices in strong and stable currencies like the British Pound Sterling and the United States Dollar. The situation was made worse for the University in the mid 90s when the government further introduced the cash budget system besides prioritising its spending on social services. This has had adverse effects on teaching, learning, and research in the University since current information sources were no longer made available in the University of Malawi Libraries for example. The University of Malawi Libraries actually failed to buy periodicals from their budget between 1994 and 1999. They also failed to pay for services to their traditional document suppliers, the British Library Lending Division (Chiweza, 2000).

Scarcity of items and reproduction

These economic hardships however, meant the ratio of information items to users in libraries was getting smaller inevitably inducing reliance on reproduction of sections of published copyrighted and non-copyrighted information items. Despite reproduction of items, professional librarians in Malawi have often regarded themselves as copyright stakeholders, intuitively and out of professional ethics. Even before the birth of the Copyright Society of Malawi, librarians felt obliged to control the extent of photocopying or reproduction of copyrighted materials in their individual libraries. Libraries were established in Malawi from as early as early as 1865 as shown in table 1 below while COSOMA was only established in 1992. Dr Robert Laws, a Scottish missionary established the first library in Malawi in 1865 (Plumbe, 1987). From that year to the present, many libraries have been established in Malawi under the auspices of the missionaries and colonial government, the Malawi government through the National Library and the universities in the country. The Malawi Library Association is yet to conduct a survey on how many libraries there are in Malawi today.

Figure 1: Map of Malawi and University of Malawi Libraries



Source: <http://www.odci.gov/cia/publications/factbook/geos/mi.html>

Political history and its impact on Libraries and reprography

Malawi was once a one party autocratic state between 1963 and 1993 under the Malawi Congress Party. This period had a negative impact on information in Malawi. The government had so much control that freedom of access to information was literary absent. This was being done to curb what the government considered as subversive elements. Although the Malawi Library Association was established in this political epoch, one would argue that this era saw so much control of information items that there used to be little to photocopy. People used to be afraid to photocopy even the rare items that were politically banned through the censorship board. Other organs which were used to control publications of information items and the reproduction of information items were the Police and Secret Service Agents and the Paramilitary wing of the party. The tight control had a negative effect on creativity of individual Malawi authors and publishing. Those who dared publish anything that was deemed to be subversive, ended up in prisons and a good example in this regard is Professor Jack Mapanje. Libraries were amongst the institutions that suffered greatly in this era as secret service agents used to monitor the type of library stock from time to time. This, sometimes happened without the knowledge of the librarians. Thus librarians lived in constant fear out of which they were forced to engage in constant weeding of items they deemed to be subversive even before they were pronounced so by the government (Mtewa, 1986).

Table 1: Evolution of Libraries in Malawi (Formerly British Central Africa and Nyasaland)

Name of the Library	Year established	Established by
Church of Scotland Mission	1865(?)	Scottish Missionaries
Zomba Administration Library	1895	British Govt
Zomba Agricultural Library	1899	British Govt
Forestry and Game Library	1924	British Govt
The Secretariat Library	1930	British Govt
Kachebere Seminary Library	1939	Catholic Missionaries
Blantyre Secondary School Library	1940	Scottish Missionaries
Zomba Catholic Sec. Sch. Library	1942	Catholic Missionaries
Nyasaland Society Library	1946	British Govt
The National Archives Library	1947	British Govt
Dedza Sec Sch Library	1951	British Govt
British Council Library	1951	British Council
American Library	1961	American Govt
British Council Library	1964	British Council
University of Malawi Libraries	1965	Malawi Govt
National Libraries	1967	The National Library

Redeveloped from Msiska (2001) and Plumbe (1987).

Effect of lack of freedom of information

Stochham, (1968) observed that whatever the type of library or information centre, there can hardly be found a case in which a librarian or an information officer or specialist is in complete control. He further observed that almost without exception the librarian or the information officer is the servant of a higher authority. The Librarian may be very powerful, with considerable freedom, but they act as employees of a governing body. Stochham's observation was true not only for library and information services staff in the University of Malawi, but also for both the academic and administrative staff of the University of Malawi and all library institutions during the one party autocratic rule of the Malawi Congress Party. Fear of the political authorities often limited the freedom and potential of information centres. It is often argued that it is difficult to assess how much reproduction of copyright materials was done in this era. However the observed trend was that there was little reproduction of items done partly because people had fear but also partly because this was the era when the motto 'libraries for development' was popular and many institutions had good funding.

Multipartyism and free flow of information

In 1993 a national referendum was held in Malawi at which people voted as to whether they wanted to continue with the single party government or move to a multi party democracy. This referendum was influenced by global changes taking place because of the end of the cold war, the emergence of multiparty democracies in Eastern Europe and other African nations, and the 'donor fatigue' that resulted in stringing international development aid to good governance in developing countries. This donor fatigue was significant in Malawi in 1992 which apparently was also the year that the Copyright Society of Malawi was established. Malawians voted for a multiparty political system in the referendum in 1993. In 1994, multiparty general elections were held and a new party came to power. The advent of multi party democracy was the start of a new chapter for information services in Malawi. It entailed freedom of information. On the brink of multiparty democracy, the country was flooded with underground circulations of 'subversive' news paper articles often reproduced from both within and without. This was to be the new culture of freedom of information for a people who had been on the dark side of information for a long time. Landmarks developments that would promote information access were; the new republican constitution, the new Communications Act, the new role of the Censorship Board and even the birth of the Copyright Act. The challenging task of all these organs was to ensure that Malawians had freedom of information and freedom of access to information with responsibility. However, they would have to ensure that Malawians had responsibility without such organs themselves acting as hindrances to the freedom of the people. It is from this point of view that the next paragraphs will analyze the relationship between COSOMA and libraries in Malawi.

The role of COSOMA

The reproduction rights organisation of Malawi is called The Copyright Society of Malawi, known as COSOMA, a statutory body established in 1992 by an Act of Parliament (Copyright Act, 1989). The Copyright Society of Malawi (COSOMA) as provided for in Section 41 of the Act came into existence in July, 1992 with initial funding from the Government of Malawi.

COSOMA acts both as an RRO and as the national copyright office, under the ministry of justice. We wonder how the interests of all stakeholders, including **users** of copyright material; can be represented when its mandate is clearly stated as the protection and promotion of the interests of rights holders. COSOMA is a member of IFRRO. It has received funding from the Norwegian RRO, Kopinor.

[http://wipo.int/meetings/en/html.jsp?url=http://www.wipo.int/edocs/mdocs/mdocs/en/pcipd_4/pcipd_4_3.doc]

According to the official website of COSOMA, COSOMA has been administering members' broadcasting and public performance rights in musical works since its inception, it has been all embracing in its approach. Besides composer and songwriters, fiction and non-fiction writers, fine artists and photographers as members, COSOMA also serves the needs of these latter categories of rights holders. This body has been aware of the need to look into the affairs of writers and other creators as well as publishers who could be suffering from the unlicensed photocopying of their works and publications.

The major functions of the Society as stipulated in section 42 of the Act are:

- a. To promote and protect the interest of authors, performers, translators, producers of sound recordings, broadcasters, publishers and, in particular, to collect and distribute any royalties or other remuneration accruing to them in respect of their rights provided for in this Act;
- b. To maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters and publishers;
- c. To publicize the rights of owners and give evidence of ownership of these where there is a dispute or an infringement;
- d. To print, publish, issue or circulate any information, report, periodical, book, pamphlet, leaflet or any other material relating to copyright, expression of folklore, rights of broadcasters, performers and producers of sound recordings; and
- e. To advise the Minister on all matters under the Copyright Act.

COSOMA, their website further reports, has licence agreements with 8 institutions in Malawi and these are Malawi College of Accountancy, University of Malawi, Mzuzu University, Zin School of Computing, Lilongwe Academy,

University of Livingstonia, Natural Resources College and Corporate Governance College. The feeling of librarians is that there was not enough awareness campaign among the stakeholders to make them understand the implications of the licences agreements that they had been signed as will be demonstrated later.

Libraries experience working with COSOMA

Libraries in Malawi are aware of copyright issues that regulate access to information. Through Malawi Library and Information Consortium (MALICO) the library community in Malawi participated in eIFL's IP and copyright capacity and expertise building programmes.

In principle, the library fraternity in Malawi and the Copyright Society acknowledge each other as stakeholders of copyright. The two organizations became bedfellows right from the inception of COSOMA. For example, in its early days COSOMA held meetings throughout the Malawi briefing interested parties on copyright and neighbouring rights. At these meetings librarians were briefed along with writers, artists, actors and other rights holders. On the other hand, barely 3 years after COSOMA's formation, the Malawi Library Association (MALA) organized a workshop where COSOMA was invited to enlighten librarians about its activities in 1995. That was before the current licensing agreements and the understanding then was that the two organizations are partners and needed to work together. Despite such invitations it has always been the feeling of librarians that the relationship between the two organizations should go beyond policing each other to a level where they are seen as partners. Another seminar was organized by MALA on Copyright in 2005 again with a view to enable the organizations understand each other's roles as stakeholders. Hence COSOMA was asked to present papers that would enlighten the librarians about its activities in Malawi in relation to libraries. At the end of that seminar most librarians felt that COSOMA had not adequately answered the questions they had raised although they appreciated that there was need for subsequent meetings of that nature. The library fraternity through MALA and MALICO has always felt that if COSOMA was seen to engage in policing activities without proper collaboration with librarians, then that could act as a threat to freedom of access to information Malawians had fought for. Much as COSOMA has the duty to protect the right of creators or authors of works, it has also a constitutional duty to protect freedom of access to information. In protecting the rights of creators, COSOMA needs to partner with libraries while monitoring their activities in order to make sure that responsible reproduction is being done. Both MALA and MALICO feel obliged to monitor the activities of COSOMA in order to make sure that freedom of information and fair use should be at play. The relationship between COSOMA and MALA/MALICO thus depends on how often these organizations collaborate with each other.

Cosoma and reproduction survey

Since its establishment Copyright Society of Malawi concentrated on protection of fine and performing arts. During the past two years COSOMA has moved on

to venture into protection of author rights. To establish the facts on the ground, COSOMA did a survey to determine the average cost of publishing one page of a book. They also did a pilot study to establish the extent of photocopying in education institutions. It is expected that using the lessons learnt from the pilot study COSOMA will conduct a full study. The aim of these studies is to collect empirical information that would assist COSOMA license photocopying of copyright protected materials, determine fees for copyright reproduction of copyright protected materials and also distribute remuneration to copyright holders (COSOMA, 2005). However, COSOMA has not yet started distributing the money they collect for reproduction licenses to publishers and authors. The findings of the survey COSOMA conducted are summarized in Table 1.

Table 2: Cost of Reproduced Page

	Price per reproduced page
Primary schools	
Pupils:	MK 0.74
Teachers:	MK 1.48
Secondary schools	
Pupils:	MK 0.95
Teachers:	MK 1.48
Universities & colleges	
Students:	MK 1.48
Teachers:	MK 1.48

Source: COSOMA (2005)

Although the full study has not yet taken place, COSOMA is currently using the findings of the pilot study to determine fees for reproducing copyright protected materials. In addition, the report of the pilot study indicated that over 90% of photocopying is done outside college campuses.

To date librarians are not sure if they are paying for what they are supposed to. For instance, Librarians have always contended that, as a rule, the fair use applies where the use of copyright protected material is non-commercial, and where it would have little effect on the profits of the copyright owner, say, copies used for educational or research purposes (Howse, 2005). This is contrary to the COSOMA's understanding. Going by the agreements signed between COSOMA and educational institutions any reproduction of copyright protected materials needs to be licensed and paid for. The agreements are for all reproductions regardless of the nature of material.

Although librarians never expected invoices from COSOMA and tried to contest, it was not possible as it transpired that legally binding license agreements had already been signed by institution managers without the knowledge the librarians themselves. From the communications from librarians to their heads of institution, it is clear that librarians have reservations on the approach taken by COSOMA. Librarians expected the introduction of reproduction licensing to be a consultative process. In the case of University of Malawi management has listened to Librarians and plans to review the agreement with COSOMA in light of suggestions made by librarians.

Conclusion

The mistrust between the Copyright Society of Malawi and Librarians is growing because of lack of open and sincere interaction. Now that management of institutions of higher learning such as University of Malawi are listening to the Librarians the only way forward is for COSOMA to adopt a consultative approach to their work. However, the librarians in Malawi have an opportunity to influence changes in the copyright act in order to make it more accommodative to issues of fair use. MALA feels that it has done all the running with COSOMA, which must develop a working relationship with the library community. We call on IFRRO, as the international body representing RROs, to instruct its members to engage in full and open consultations with librarians, a major stakeholder.

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