

CONSTRUCTING COPYRIGHT AND LITERARY CREATIVITY IN KENYA
CULTURAL POLITICS AND THE POLITICAL ECONOMY OF TRANSNATIONAL
INTELLECTUAL PROPERTY

A DISSERTATION
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ABSTRACT

Copyright and the infrastructure for literary creativity in Kenya are suboptimal. I evaluated this through three related hypotheses. First, the public, private and non-profit sectors do not efficiently support training of authors, writing, publishing, distribution and access to literature.

Second, the construction of literary copyright denies (budding) authors, composers, and performers efficient and equitable, recognition, compensation or protection. Free riders exploit creativity and investment of skill, judgment, time, money and labour. This regime covers subject matter, scope, and term of copyright that benefit Western and local corporate copyright holders, especially publishers and cultural entrepreneurs. Thus, under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), software is copyrightable yet moral rights and folklore are excluded. Access by readers, authors, and researchers is also constrained through technologies and laws like the digital anti-circumvention laws enacted under the World Intellectual Property Organisation's (WIPO's) WIPO Copyright Treaty, 1996, and the Kenya Copyright Act, 2001.

Third, because of path dependence, lock-in, and rent-seeking, Kenya has not designed a balanced, equitable, and efficient regime for literary creativity and copyright.

I have proved all the three hypotheses by analysing quantitative and qualitative data from field, library, documentary and web research. The empirical evidence indicates that the textured nature of copyright, creativity, and socio-cultural development requires interdisciplinary approaches among creative writers, comparatists, cultural historians, political economists, and constitutionalists.

Other proposals for reconstructing copyright and the infrastructure include conducting a cost-benefit analysis of the industry for efficient investment; strengthening community libraries; encouraging authors through training, prizes, and commissions; facilitating transnational co-publishing arrangements; registering and documenting Kenyan creativity

and copyright; and ensuring the new Kenya Copyright Board operates efficiently and with integrity.

My findings, conclusions and proposals require further empirical research, using the following conceptual, epistemological and methodological parameters: first, evaluating benchmarks for literary creativity in pre-colonial and (post-)colonial Kenya, including recognition and compensation systems; second, examining the nexus in national and transnational copyright among creativity, originality and copyright; third, assessing the scope and contribution of literary copyright and cultural industries in Kenya in terms of personal, corporate, and national welfare and development.

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