

## Trinidad and Tobago: State of the libraries regarding copyright<sup>1</sup>

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### Abstract:

*This paper examines how current library practices fit into the copyright legislative system of Trinidad and Tobago and what is taking place in our institutions. What can we do to ensure that practicing librarians make accurate decisions when using copyrighted works and still continue to provide an accepted level of service to users in this digital age? The Copyright Act 1997 of Trinidad and Tobago in its present form does not address routine library uses of copyrighted works especially with regards to limitations and exceptions for libraries and archives. Eighteen library professionals from*

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<http://www.ifla.org/files/asests/lac/news/project-copyright-ifla-lac-en.pdf>

*special, school, academic, national, public and Archives were interviewed using open-ended questions and a survey instrument to determine their knowledge of the Copyright Act; the services provided in relation to print and digital works and the various challenges and issues faced in providing quality service while still observing the tenets as stated in the Act. Their responses were analyzed to determine the issues involved, the commonalities among the various library types and useful solutions in moving forward. Based on the analysis of the Copyright Act and interviewees' responses, the findings revealed that there was no legislative framework to govern the lending of e-resources especially in relation to e-books and articles (not supplied by a commercial database), making digital copies generally, creating digital images of photographs and texts, and creating access to these via the internet. The results also revealed that at least half of the librarians interviewed were unfamiliar with the rules of the Copyright Act. It was concluded that to build familiarity with the laws, library professionals should engage in educational sessions with the Intellectual Property Office (IPO) and that by working with the IPO, the library's interests would best be represented via the amendments formulated under the current review of the Copyright Act.*

**Keywords:** Trinidad and Tobago, copyright, digitization, limitations and exceptions, intellectual property

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## **Introduction**

With a constantly changing digital environment and the ease of access to and duplication of works in electronic formats, Trinidad and Tobago like many others struggle to stay ahead of the various issues related to copyright infringements which reoccur. For legal bodies entrusted with the responsibility of drafting copyright laws which cater to the vagaries of print and non-print works, the challenges are at times insurmountable. For libraries in particular, keeping abreast of the evolution of digital works and related rights of the copyright holder poses a significant challenge. This paper discusses the limitations and exceptions for libraries in the copyright legislation of Trinidad and Tobago, and addresses the impact of the Copyright Act of Trinidad Tobago on service delivery to users throughout our libraries and archives. It focuses specifically on the digital environment, and addresses the issues now experienced in providing access to information in our communities.

The legislative framework that governs copyright under the laws of Trinidad and Tobago, Chapter 82:80 is The Copyright Act, 1997. This law was amended by Act No.18 of 2000 and Act No. 5 of 2008. Provisions for libraries, archives and educational institutions are outlined in Sections 11 and 12 of the Copyright Act. Section 11 deals with the creation of reproduction for the purpose of teaching while Section 12 refers to Reprographic reproduction by libraries and archives (Copyright Act of Trinidad and Tobago, 1997).

The goal of the exercise is to identify key areas in the copyright legislation which need to be amended to ensure compliance with international copyright legislation, as well as to provide equitable access to information. The Copyright Act 1997 of Trinidad and Tobago in its present form does not address all issues related to the use of copyrighted works in libraries. Specifically, it does not cover inter-library loans of e-books and articles across borders, changing the format of works, and providing access to digital resources online. It also does not cover works which are reproduced for the blind, visually impaired and print disabled.

As a result, Trinidad and Tobago is proposing several amendments to the present Copyright Act. However, the question remains whether these amendments, as well as the current limitations and exceptions, are sufficient to address the needs of libraries and archives

without infringing on the rights of the copyright holder, and ensuring persons' human right of access to information (UNDP, 2015).

Eighteen librarians from various libraries and archives were interviewed to determine their knowledge of the Copyright Act, the services provided in relation to print and digital works, and the various challenges and issues faced in providing quality service, while still observing the tenets as stated in the Act. Interviewees were selected from The University of the West Indies, St. Augustine, The University of the West Indies, Open Campus, special, public and school libraries of the National Library and Information System Authority (NALIS), the University of Trinidad and Tobago (UTT), the University of the Southern Caribbean (USC), the College of Science, Technology and Applied Arts of Trinidad and Tobago (COSTAATT), and the National Archives of Trinidad and Tobago (NATT).

## **Objectives**

In mapping the current situation in Trinidad and Tobago, a meeting was held with the IPO to assess the situation as it relates to legal provisions made for libraries, archives and other heritage institutions. Coming out of this meeting, institutions whose everyday business is very much guided by stipulations in the Copyright Act were identified. A survey which was administered to these institutions revealed that, some of the items in the special collections of the academic and heritage libraries are either orphan or out of print works or the copyright holder can neither be properly identified or contacted (at the time of the study we could not quantify the actual amount). There were also concerns about the reproduction of items for use in a digital environment by individuals and other institutions as well as for the blind, visually impaired and print disabled. Thus, it is imperative that the Copyright Act be amended to protect libraries from possible liability faced in achieving equitable access to information.

According to the IPO, limitations and exceptions under the law as they relate to libraries and archives are currently a work in progress being addressed by the World Intellectual Property Organization (WIPO). Since Trinidad and Tobago through the IPO is a signatory to WIPO, the absence of an amended and approved Limitations and Exceptions framework impacts on the role of local libraries and archives in this matter (IPO, 2016).

In moving forward, to ensure that our interests are served, we would like to see more lobbying by the local and regional library associations and other similar organizations in relation to amendments to Limitations and Exceptions in the Copyright Laws of Trinidad and Tobago.

## **Procedure for data collection**

A team of five librarians from the Library Association of Trinidad and Tobago (LATT) was set up to work on the project and produce the final document. The team met with the staff of the Intellectual Property Office, Trinidad and Tobago (IPO) to:

1. Determine what are the current limitations and exceptions under the present copyright legislation for libraries and archives.
2. Determine the status of Trinidad and Tobago on the Marrakesh Treaty and the signing of the agreement.
3. Garner additional information on IPO proposals for the digital environment and accompanying legislation if any.

4. Receive guidance concerning explanations for specific terms used in the survey instrument and to identify those sections of the law that relate to each question.

The IPO made recommendations on the selected institutions and the persons interviewed. Subsequently, eighteen persons were interviewed via email, telephone and face to face. The interviews were semi-structured and no more than forty-five minutes in length. Interviewers used a combination of open-ended questions based on the survey and made reference to the survey instrument provided only to ensure that all the topics were covered.

Interviews with library staff sought to assess the associated problems and difficulties experienced by librarians and other information professionals in relation to copyright restrictions. Participants were encouraged to give their personal accounts – “stories” of their experiences. In addition, the extent of their knowledge of local copyright bodies and laws when applied to their everyday delivery of service was also examined.

Finally, the interviewees discussed the issues and challenges faced when providing print and digital resource services to users.

### **Data Analysis**

Preliminary findings revealed that the copyright law only addresses “reprographic reproduction for face to face teaching in educational institutions” (Copyright Act of Trinidad and Tobago, 1997) and does not address reproduction of material in digital format. This ultimately impacts on the ability of tertiary level educational institutions like The University of the West Indies, Open Campus to provide digital materials to distance learning students who depend on digital course materials. The reality is that there is no guiding documentation specific to online teaching. Currently, they use multi-user licenses, subscription and authentication from commercial database providers to deter infringement.

Users at The University of the West Indies, Open Campus are spread across the region from Belize in Central America to Barbados in the Eastern Caribbean, from Bermuda in the North Atlantic to Trinidad and Tobago in the Southern Caribbean. It becomes a challenge to establish one standardized cross border policy to govern all of The University of the West Indies, Open Campuses as each country has its own Copyright Laws. Therefore, Cross border issues and requests, including Inter-library loans, are governed by institutional policy. For example, if the material being requested is owned by the university, permission may be granted. When it is not owned by the university, then no more than ten percent is shared. The ten percent implemented is based on the United States’ copyright legislation.

UWISpace is a digital repository for most of the scholarly works produced by The University of the West Indies including research papers, scholarly journals and articles, theses and materials from their West Indiana collection. It provides online access to thousands of items from its print collection to faculty, staff and students. While the librarians recognize the need to provide access to materials to support research, scholarship teaching and learning they are also cognizant of the copyright holders’ rights. Due to the absence of a legal framework to address items such as orphan works, out of print items, unpublished works and those items where the copyright holder cannot be identified, librarians are unable to provide digital access to them.

NALIS allows access to some of its special collections through their online digital library. The organization envisions digital access to its special collections housed at the Heritage Library. These collections represent the cultural, social and economic heritage of Trinidad and Tobago (NALIS, 2015). However, the legal agreements originally made between the library and copyright holders were for digitization of items for preservation only. With the advent of new technology and the library's mandate to provide information to all (NALIS Act, 1998), production of a second copy of the item is necessary to give access online. However, the Copyright Act states that only one copy can be created for preservation purposes or to replace a lost or damaged item (Section 12). As a result, online access is now limited to items owned by NALIS and whose copyright rests with NALIS. Negotiations will have to be held with content creators and copyright holders to establish terms and conditions for use of their materials.

Additionally, at NALIS, it was noted that when contracting photographers, both the rights of persons being photographed as well as the photographer were not always taken into consideration. NALIS ultimately would purchase the digital images and not the exclusive rights to the images. Thus, the permission of the photographer now has to be sought whenever NALIS needs to use the image at an event or in a publication to deter possible copyright infringement.

The staff of the Public libraries which are managed by NALIS indicated that while there is a general knowledge of the Copyright Act, they are aware of the principles of Fair Dealing. They apply these principles where possible when providing patrons with advice on the amount of an item that could be reproduced. They further stated that since their knowledge of the Marrakesh Treaty is very limited, they are unaware of the impact of this treaty on the delivery of service to users. Generally, Public library personnel provide access to print copies of items and limited access to digital items in the collections. The staff indicated that they had very little control over the users' role in capturing images via mobile devices and photocopying in the library. Thus, they could not always advise users of the amount of an item they could copy.

Staff at the National Archives of Trinidad and Tobago said that they were fully aware of the Copyright Act's limitations and exceptions, and ensured that they informed patrons in advance about what type of reproduction if any, of an item was available. Notices are prominently displayed in the reference room advising of copyright policy. Patrons are required to sign a statement of agreement to utilize any reproduction given to them for research purposes or personal use to avoid liability by the Archives. This is done in good faith as the staff is aware that there are no provisions for limitation on liability for libraries, library staff and archives in the Act. The National Archives stated that they did not provide digital content to the public and continue to monitor what other libraries and archives are doing since there is no legislation to govern the provision of this service to the public. Though no interlibrary loans are facilitated by this organization, provisions are available for loans to other Government bodies as the Copyright Act caters to interagency lending.

While most of the institutions surveyed displayed an awareness of the concept of Fair Dealing for educational purposes, in keeping with good copyright practice, one educational establishment, the College of Science, Technology and Applied Arts of Trinidad and Tobago (COSTAATT) advised its lecturers to direct all students to the resources available in the library. Where there was an electronic copy available for an item, lecturers can provide links to the item rather than photocopying materials for students.

In some of the special libraries located in government ministries, they adhere strictly to the limitations and exceptions as outlined in the Copyright Act, since their libraries' collections contain highly sensitive government documents. These documents are also protected by the Data Protection Act.

At the USC Campus Library, through the EZ Print Service provided, users could print, copy, scan directly to email etc. from public access copiers. However, students frequently engaged in other forms of reproduction such as the use cell phone cameras to capture images. They would scan or take pictures of whole copies of texts and e-mail it to themselves. Based on international benchmarks and copyright law, staff noted the following infringements:

- Students were in some instances scanning or taking photographs of more than the accepted ten percent from texts.
- Copies of entire texts were reproduced in electronic format without the required permissions.

Under the terms of "Fair Use" or "Fair Dealing", one is legally allowed to reproduce a copy of an item for educational purposes. However, given that the Act does not provide clear guidance on the issue of scanning, which is another form of reproduction, the principle of "Fair Dealing" was applied. Staff also noted the lack of clarity of the Act especially as it pertains to the digitization of the Library's Newspaper Collection. Once again, in the absence of definite laws to govern use of and access to information, 'Fair Dealing' comes to the 'rescue'.

## **Results**

According to Kenneth Crews' (2015) *Study on Copyright Limitations and Exceptions for Libraries and Archives*, the limitations and exceptions to copyright described in his text correctly represent the current situation in Trinidad and Tobago. Based on the interviews and the results of the survey, as well as an analysis of the Copyright Act, it is apparent that there is no provision for reformatting original documents or objects into a digital copy, and no lending of electronic resources to other organizations. While it provides for qualitative or quantitative limits on reproductions it is not specific (Section 10, 12). Additionally, there are no provisions in the Act for retracted and withdrawn works, orphan works, cross border uses and interlibrary loan. No provision has been made for the reproduction of digital works.

To date, there is no finalized, international treaty for limitations and exceptions for libraries and archives in Trinidad and Tobago as proposed by WIPO. At present, WIPO is working on this. Limitations and exceptions for libraries and educational institutions already exist in the Copyright Act of Trinidad and Tobago. Specifically, Section 11 of the Copyright Act which addresses reproduction for educational purposes, whereby a short reproduction of a short part of a published work can be made for teaching purposes. Section 12 of the Copyright Act addresses reprographic reproduction by libraries and archives. This section states two conditions under which a reprographic reproduction can be made:

1. A single copy of a work can be made by reprographic reproduction for the purpose of study or private research, provided that the reproduction is an isolated case, or repeated on separate and unrelated occasions, or if there is no collective license available under which such copies can be made (Copyright Act of Trinidad and Tobago 1997).

2. A reprographic reproduction can be made for the purposes of preservation, replacement of a lost, destroyed or unusable copy provided that it is impossible to acquire another copy under normal conditions, and provided that the reproduction is an isolated case, or repeated on separate and unrelated occasions. (Copyright Act of Trinidad and Tobago 1997).

There are no other laws related to copyright in Trinidad and Tobago. However, there are two non-governmental organizations that help to facilitate the management and collection of royalties on behalf of rights holders. They are the Trinidad and Tobago Reprographic Rights Organization (TTRRO) and Copyright Music Organization of Trinidad and Tobago (COTT). The TTRRO facilitates “the collective management of licensing activities including collection of fees on behalf of Publishers and Creators of copyright material” (TTRRO, 2010). An organization can purchase a TTRRO license which allows you to photocopy, scan or digitally reproduce material from copyrighted publications to ensure legal compliance (TTRRO, 2010). They operate under The Copyright Act of Trinidad and Tobago and protect Rights holders’ creativity by ensuring that authors, visual creators, and publishers are fairly remunerated for the copying of their intellectual property (TTRRO, 2010).

Copyright Music Organization of Trinidad and Tobago is the other organization which collectively manages licenses and the collection of fees and royalties on behalf of music creators and their publishers as well as international affiliates, the performing and reproduction rights in their copyright music under the Copyright Act 1997 of Trinidad and Tobago (COTT). Their mandate is to act as a link between the creators and users of copyrighted works, to ensure the rights holders and creators receive payments for their works being used by individuals (COTT, 2015).

With regard to knowledge of initiatives related to copyright reform some interviewees were most concerned with the Legal Deposit Act and its enforcement. NALIS is charged with the responsibility of sensitizing stakeholders as to the need for this Act to be amended, passed and adopted.

How can IFLA or other Latin American countries help? They can assist in creating an advocacy plan and providing guidance for the libraries and library associations to approach and treat with the government of Trinidad and Tobago and other stakeholders concerning copyright legislation.

### **Marrakesh Treaty**

The Marrakesh Treaty focuses on the creation of compulsory limitations and exceptions that would enable persons who are blind, visually impaired and otherwise print disabled to access published information (WIPO, 2013). Cooperating countries must introduce and adhere to standardized limitations and exceptions to copyright laws so that the reproduction, distribution and accessibility to published works in formats suitable for blind, visually impaired and print disabled persons can be permitted. In addition, exchange of these published works across borders must be permitted by organizations that serve this group. In summary, the Marrakesh Treaty mandates that one copy of a published work must be made in a format that would be accessible to blind, visually impaired and otherwise print disabled persons (WIPO).

The ability of libraries in Trinidad and Tobago to copy material into accessible formats to serve persons with disabilities is affected by the current status of limitations and exceptions to the laws as it pertains to the Marrakesh Treaty. It was also revealed that local copyright laws do not contain any limitations or exceptions that permit organizations to reproduce or distribute works except for archival preservation or replacement purposes (WIPO).

The study revealed that most interviewees were completely unaware of the terms of the Marrakesh Treaty and its significance to libraries in serving the print disabled. As a result, only a few could comment on Trinidad and Tobago's involvement in the ratification process.

In an effort to identify the role of Trinidad and Tobago in the Marrakesh Treaty, the Intellectual Property Office of Trinidad and Tobago (IPO) was able to provide an update on the country's status regarding this legislation. In discussions with representatives of the IPO, they indicated that Trinidad and Tobago was a signatory to "The Final Act of both the Marrakesh and Beijing Treaties in 2013. A local consultant was appointed by WIPO in 2015 with the task of assisting Trinidad and Tobago with incorporating the Treaties into national copyright legislation" (IPO, 2016). Coming out of this session, sensitization meetings were held with "stakeholders to ascertain their views and collect information regarding incorporation of the Treaties" (IPO, 2016). To date amendments to the Copyright Act have been drafted to incorporate the Marrakesh and Beijing Treaties. As such, while Trinidad and Tobago has signed the Final Act, we have not acceded to the Treaties. This will occur when the Copyright Act has been amended to incorporate the provision of the Treaties. Therefore, Trinidad and Tobago is not at this point in time a member of either of the Treaties (IPO, 2016). Communication with the IPO indicates that with regard to copying to accessible formats, libraries in Trinidad and Tobago cannot create and distribute copies in their institutions.

## **Conclusion**

The results of this study revealed that at least half of the librarians interviewed were familiar with the rules of the Copyright Act in Trinidad and Tobago. Librarians were of the opinion that concepts such as "Fair Dealing" and "Reproduction of works" should be more clearly defined in the Act. Respondents as well as staff at the IPO also noted that there was no legislative framework to govern inter-library loans of e-books and articles across borders, changing the format of works, and providing access to digital resources online. It also does not cover the reproduction of works for the visually and print disabled.

We did encounter some challenges in persons' lack of interest in the topic as well as their reluctance to be involved in the study. This speaks directly to a general lack of understanding of the importance of copyright.

As a result, it was concluded that an advocacy plan should be formulated to address the situation. In the short term:

- The Library Association of Trinidad and Tobago (LATT) should constitute a copyright committee with the members who worked on this project as part of the core advocacy group to spearhead the plan.
- Identify representatives who can lobby on behalf of libraries.
- Expand the survey to reach more of the association's membership. Host focus groups to thrash out the issues concerning copyright legislation.

- Formulate a more comprehensive document with more empirical evidence to support our claims.
- Initiate meetings with the heads of major library institutions to discuss issues of copyright reform and how it will impact on service delivery to their users.

In the medium term:

- Engage the IPO to provide educational sessions for the membership as well as information professionals.
- Meet with the IPO as well as engage a legal representative to seek advice on what is the procedure in terms of constructing and submitting amendments to the law.
- Organize meetings with policymakers and participate in national consultations.

In the long term:

- Solicit the assistance of the media, partners and stakeholders to champion the cause.
- Engage in awareness sessions with the public to inform them about the importance of copyright and related matters.
- Work with NALIS and other stakeholders to have:
  - The Legal Deposit Act amended to include categories of works such as sound recordings, audiovisual works and electronic publications.
  - Legal Deposit Act enforced.
- Initiate talks with the other Caribbean states to address the need for a regional licensing body for copyright legislation. As it stands each state has its own agreement such as the Jamaica Copyright Licensing Agency (JAMCOPY) and Barbados Copyright Agency (B-Copy).

Finally, it is hoped that this study will assist in generating an interest in the importance of copyright at the individual, organizational and community levels in the Caribbean.

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