

Jamaica: State of the Libraries Regarding Copyright

Jollette Russell

GC Foster College of Physical Education and Sport Library, St Catherine, Jamaica
Jollettep@gmail.com

Rosemarie Heath

Department of Library and Information Studies, University of the West Indies Mona,
Kingston, Jamaica
rosanto_67@hotmail.com

Ruth Baker-Gardner

Department of Library and Information Studies, The University of the West Indies
Mona, Kingston, Jamaica
ruth.bakergardner@yahoo.com

Tricia Lawrence

Records and Information Department, Heineken Jamaica, Kingston, Jamaica.
triciaklawrence12@gmail.com

Winsome Hudson

The National Library of Jamaica, Kingston, Jamaica
winsomehudson@gmail.com



Copyright © 2016 by Jollette Russell, Rosemarie Heath, Ruth Baker-Gardner, Tricia Lawrence and Winsome Hudson. This work is made available under the terms of the Creative Commons Attribution 4.0 International License: <http://creativecommons.org/licenses/by/4.0>

Abstract:

This paper was prepared by The Library and Information Association of Jamaica (LIAJA) as part of the project: "Impact of the copyright legislation on libraries in Latin America and the Caribbean." This project seeks to identify and record the main issues that libraries are facing, as they seek to offer quality service in the digital age. The paper looks at the role of the Library and Information Association of Jamaica (LIAJA) in engaging stakeholders regarding the role that their libraries play in contributing to a creative knowledge economy and society and ensuring correct interpretation of the copyright act and its potential impact on libraries in fulfilling this role. The researchers employed a blended approach, utilizing both surveys and interviews. Purposive sampling was used for both the survey and interviews. The findings include a general lack of the specifics of the copyright legislation among some categories of library professionals.

One recommendation is for measures to be taken to educate library and information professionals of the importance of copyright limitations and exceptions and instil an appreciation for the role that their libraries play in contributing to a creative knowledge economy and society.

Keywords: Copyright, Laws, Legislation, Jamaican Libraries, Knowledge Economy, Latin American Libraries, Caribbean Libraries, Library and Information Association of Jamaica.

1 Introduction

Jamaica, like other countries is concerned with keeping intellectual property and copyright laws current for the benefit of creators and users of intellectual property. The Jamaica Copyright Act was passed in 1993 as a result of bilateral and multilateral obligations and a national consensus to create a legal position to benefit all contending parties. Its purpose is to protect Intellectual Property (IP), Copyright and Related Rights. The Jamaican government in 2001 created an authority, The Jamaica Intellectual Property Office (JIPO), with a mandate to administer intellectual property systems in Jamaica in the areas of Trademarks, Industrial Designs and Geographical Indications, Copyright and Related Rights, Patent, New Plant Varieties and Layout-Designs (Topographies).

The Jamaican Copyright Licensing Agency (JAMCOPY), is the national rights management organisation regarding texts and images. This agency was set up by creators and publishers of materials published in printed form to, “Manage the reproduction rights of creators and publishers whose works are published in print (JAMCOPY, 2016). The agency deems itself a bridge between the creators and users by providing “Seamless access to copyrighted content” (JAMCOPY, 2016). Under the Jamaica copyright act, all creators have sole and exclusive right to publish and reproduce their work in any form.

The Jamaican copyright landscape has witnessed intermittent efforts at enforcement aimed at protecting IP rights. The most recent activity was a June 30, 2015 amendment to the copyright act. This amendment is welcomed by the library sector on one hand as it brings needed support for library services in the digital era. One example is that it gives libraries permission to circumvent for preservation and to facilitate persons who are visually impaired. On the other hand, it raises other issues regarding the extension of the copyright terms from fifty (50) years to ninety-five (95) years after the death of the creator.

Furthermore, the library sector had not been consulted since 2005 regarding proposed amendments to the copyright act of 1993. On the eve of the most recent amendment (2015), The National Library of Jamaica (NLJ) and the Library and Information Association of Jamaica (LIAJA) convened a library community consultation aimed at providing a response to the Bill, entitled: *An Act to Amend the Copyright Act* of 1993. This move was a last ditch effort to influence the amendments (to no avail) and was a strategic attempt to establish a position that the library sector should be a key stakeholder in consultations regarding copyright legislation and policy positions. The position of these two entities was predicated on the International Federation of Library Association’s (IFLA) statement (2004) that, “Libraries are major purchasers of information in print, analogue and digital formats and wish to ensure lawful, equitable access to knowledge contained in such works.”

2. Overview of the Jamaica Library and Information Landscape

The Jamaica Library Service (JLS), the public library system was established in 1948 under the Ministry of Education Jamaica to provide free Library Service to public and school libraries island-wide. Though its administrative headquarters is in Kingston, JLS manages a network of 513 public library service points. The Jamaica Library Service through the Schools Library Network provides technical services and resources to 923 institutions at the early childhood, primary and secondary level, however there are other schools at the secondary level which have responsibility for their own library service. Approximately two out of every three school libraries are active (JLS, 2014).

There are over fifty academic libraries currently operating in Jamaica. These libraries can be found in universities, teachers' and community colleges, private colleges and in the agencies of training institutions such as The Human Employment and Resource Training (HEART). Academic libraries are also located in theological colleges. In addition, there are private/ corporate special libraries. All collaborate through sector networks for information sharing and acquisition.

Special libraries can be found in private corporations in Jamaica and in the ministries, departments and agencies of government. These collaborate through sector networks for information sharing and acquisition. The Special Library Section forms part of the Library and Information Association of Jamaica. It was established in 1982 to promote continuing education activities for the benefits of special librarians within government and the private sector. It is through this medium that both sectors collaborate; sharing issues, challenges and ideas to further their development and the organization in which they serve.

The National Library of Jamaica (NLJ) is the library mandated to acquire, preserve and make available for research and study the national collection of print and audio-visual resources and to provide some coordinating and development services to the library network, Jamaica Library and Information Network, JAMLIN. The NLJ was made the legal depository for national publications in 2002. However, its existence and collections date back to the late 19th century and so it has extensive special collections of manuscripts, newspapers, photographs, estate maps and ephemera particularly in the social sciences and humanities.

Professionals from the various types of libraries are gathered under the professional umbrella of the Library and Information Association of Jamaica (LIAJA), formerly The Jamaica Library Association. It was founded in 1949 to provide opportunities for networking and cooperation between library and information professionals as well as promote the active development and maintenance of library and Information units and services throughout Jamaica. LIAJA, promotes a high standard of education and training among library and information professionals with the aim of improving the status of its members. One of its goals is to create a wider knowledge of library and information work in Jamaica in order to form a positive public opinion of libraries and other information units and their personnel.

3. Objectives:

The objectives that guided this research are as follows:

1. To map the position of Jamaican libraries as it regards the observance of copyright in the digital environment.
2. To examine the impact of the restrictions in the copyright laws of **Jamaica** on the effective functioning of Jamaican libraries.

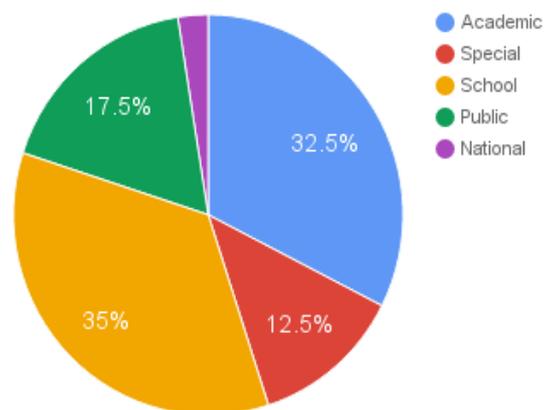
4. Procedure for data collection

Data were gathered mainly through the use of the integrated project IFLA LAC 2016 questionnaire which utilized 15 large areas of problems or difficulties that may exist in libraries as a result of the virtual environment. The same questionnaire was modified and used as an interview schedule for five key stakeholder groups in the Jamaican library sector. Interviewees were purposively sampled and represented national, special, public, school and academic libraries. The duration of these interviews ranged from forty-five minutes to one hour.

5. Data analysis

The research was conducted from March – June, 2016. The following is the analysis of data from the project. Quantitative data are summarized using charts and graphs while qualitative data regarding the overall state of libraries in Jamaica are discussed in section 5.

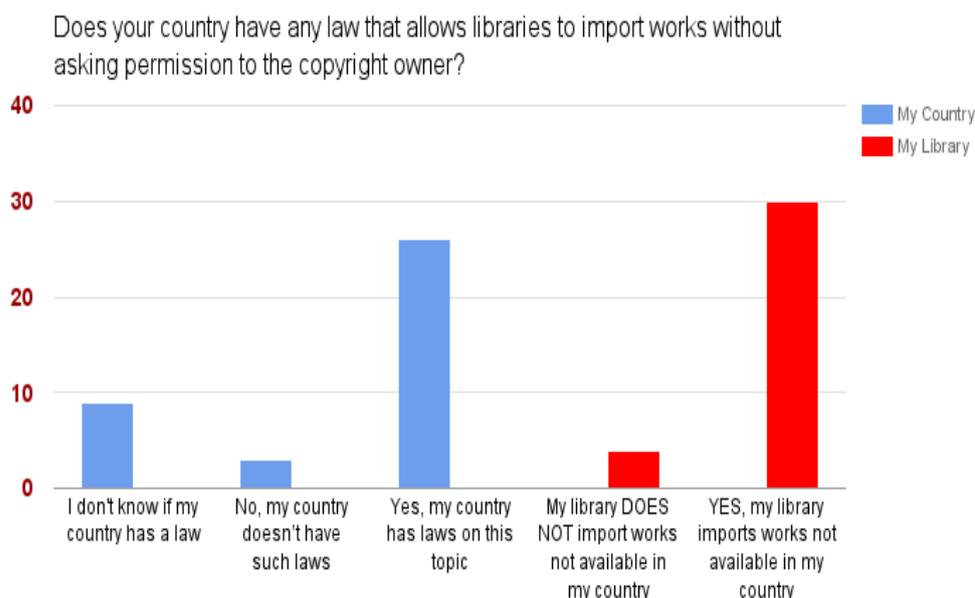
5.1 Library Types Represented



Forty one (41) participants from five types of libraries island-wide participated in the survey. The distribution is shown in figure 1 above.

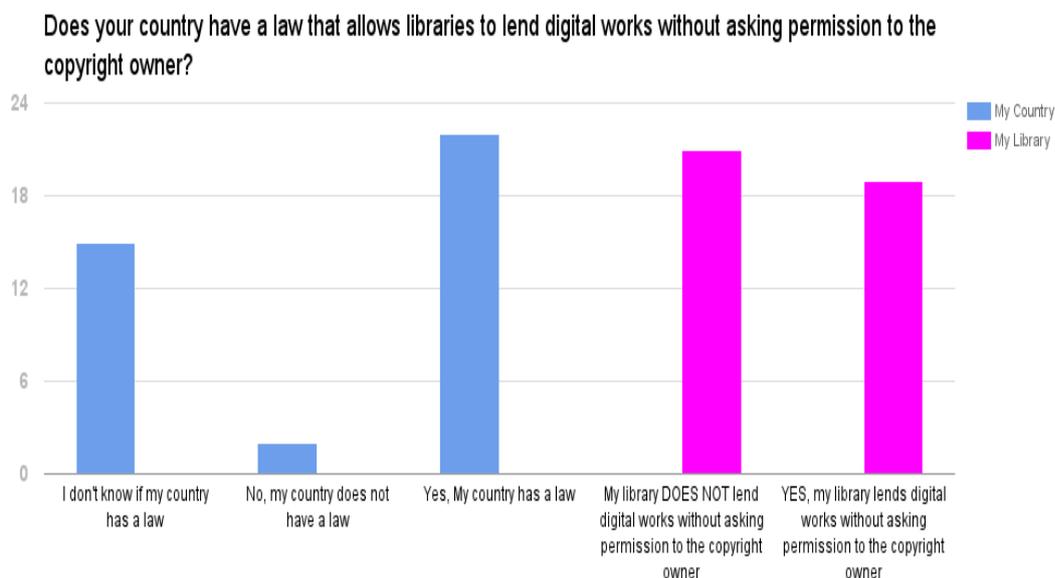
Five (5) key library and Information professionals participated in the interview. The outcome is discussed in section five (5)

5.1. Parallel Importation



Thirty Libraries (30) report that they import works without seeking permission of the copyright holder while four (4) libraries reported the opposite. Nine (9) of the respondents do not know if the country has a law regarding parallel importation. There is no set law regarding parallel importation and three (3) respondent have knowledge of that. However, on further investigation, it was found that the use of word “importation” may have been interpreted as: ‘a commercial entity in the business of importing books.’

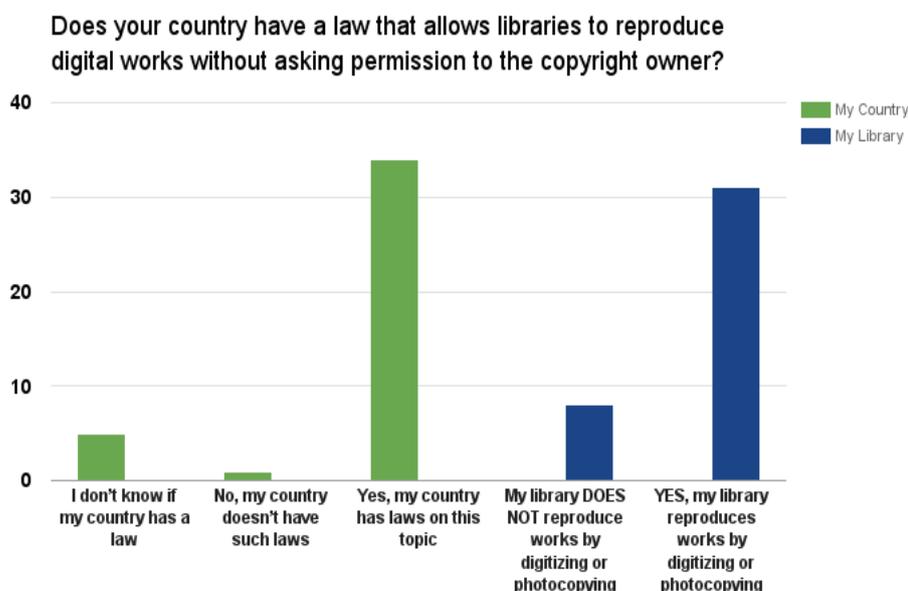
5.2. Lending of Digital Works



Twenty-one (21) respondents said that their libraries lend digital works without seeking permission of the copyright holder while nineteen (19) admitted that their libraries do not lend digital works. Fifteen respondents do not know of the country’s copyright law regarding digital works, while the other two responded that the country does not have a law. The relatively high number of respondents who have indicated that they do not know whether their country has a law is an indication of the need for a country-wide copyright information drive amongst practitioners in the library and

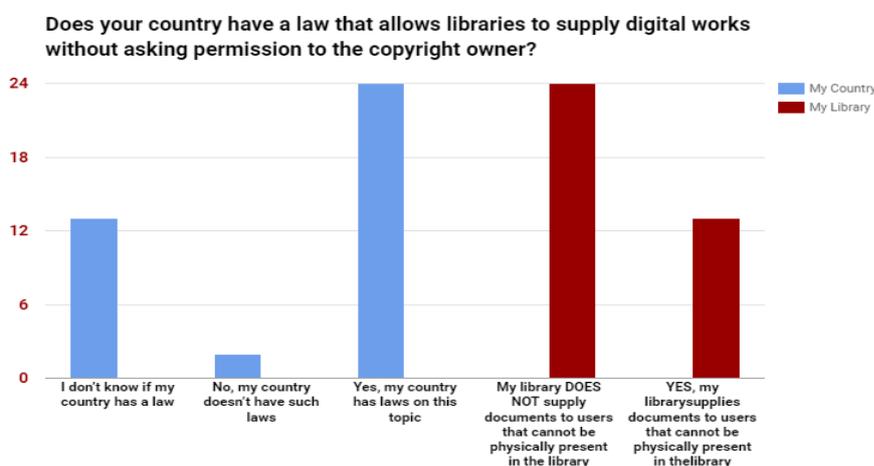
information field. The knowledge gap between those who say the country has a law and those who say the country does not, points to the need for inclusion of copyright courses in the programmes offered in library schools, and also presents the possibility for LIAJA to provide Continuing Professional Development (CPD) opportunities in copyright training for librarians, through conferences, symposia, workshops, etc.

5.4. Reproduction



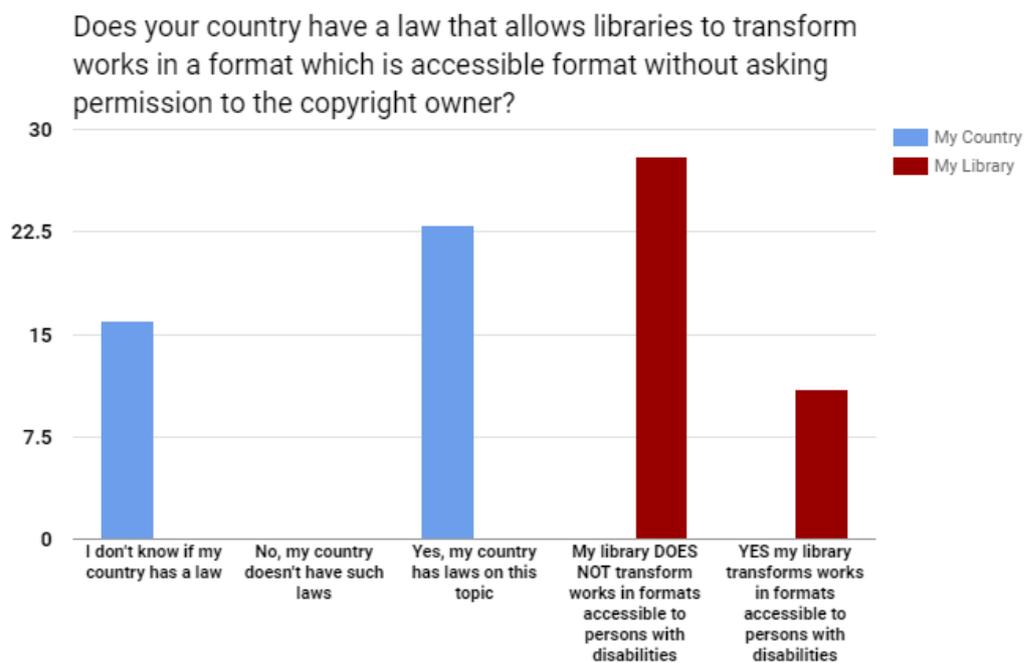
The Jamaican copyright law allows authorized bodies to reproduce digital works without asking permission to the copyright owner for preservation or making the work accessible. One library, the National Library of Jamaica is named as an authorized body in the act. Thirty-four (34) libraries reported having knowledge of the law on this topic, five (5) were not aware of such a law. Thirty-one (31) libraries reproduce works by digitizing or photocopying. Of this figure all academic libraries (13), ten (10) school, five (5) public, two (2) special and the National Library are engaged in some form of digitization or have photocopying services. The eight (8) libraries that reported an absence of reproduction are special, public and school libraries.

5.5. Supply



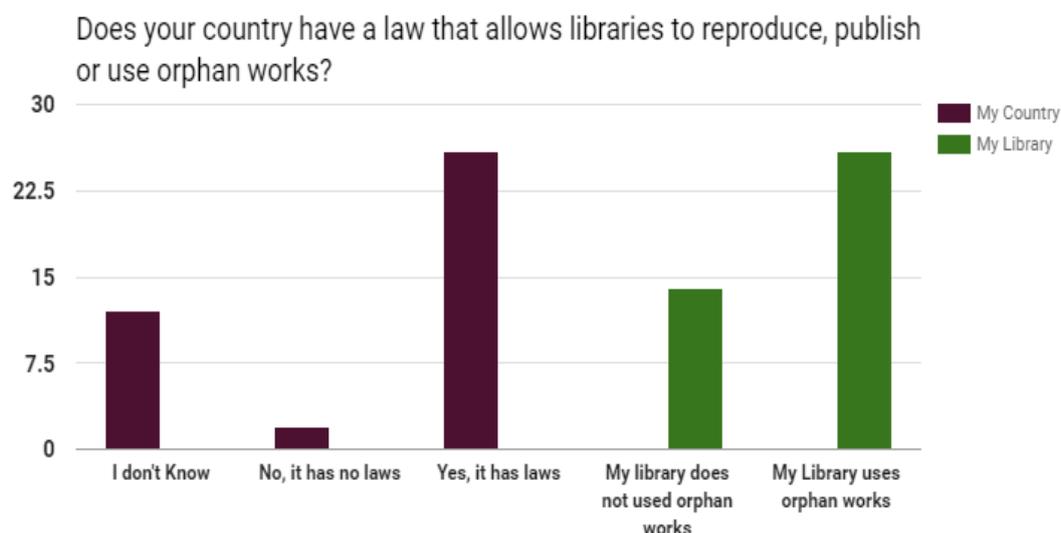
Twenty-four (24) libraries do not supply documents to users who are not physically present while thirteen (13) responded that they provide the service. Regarding the existence of such a law in Jamaica, twenty-four respondents believe the country has laws on the topic, two believe there are no such laws while the remaining thirteen do not know whether or not the country has a law. Section 65a of the copyright act, allows authorized bodies to make a supply copy for persons who have print and hearing disabilities. This data reveal that there is hesitation on the part of some librarians regarding the supply of digital works and some light was shed on this through data from interviews which highlight certain limitations (see 6.2).

5.6 Accessible Formats



Sixteen (16) respondents have no knowledge of a law that allows libraries to transform works in an accessible format while twenty three (23) acknowledged that the country has laws on the topic. In terms of such activity in libraries, twenty-eight (28) libraries do not transform works into accessible format while eleven (11) admit to transforming works. Section 65a and 65b in the 2015 amended act specifically states that only named authorized bodies may copy protected works into accessible formats with the National Library of Jamaica being one such body, and the only library authorized. This raises serious concerns for all other types of library and information units. (See 6.1)

5.7. Orphan works



Twenty-six (26) librarians responded that the country had laws that allow libraries to reproduce publish and use orphan works and that same number of librarians indicated that they used orphan works. There was also an 80% correlation rate between those librarians who had knowledge of the existence of the law and the use of orphan works. 13 librarians indicated that they do not use orphan works while 12 indicated a lack of knowledge of such a law. Again there is a correlation between the two figures which indicates that knowledge of the law affects use. The 2015 amendment to the principal act makes provisions regarding the use of the orphan works. However there are 'prescribed conditions' under which libraries must adhere, to avoid violation of copyright.

6 Results

6.1. Copyright at the National and International levels

The exceptions and limitations to copyright, as described in Crews (2008), do not correctly represent in some areas the current situation in Jamaica. The Crews document was prepared using the act of 1993 as the context document. However, the Act was amended in 2015. Section 55 of the copyright act focuses on the conditions and terms under which a library may make copies of a work for a user's private study, and copies for preservation or replacement of lost or damaged works in the library collections. Incidentally, these are the laws that information professionals who participated in the research are most familiar with. In the case of Jamaica, many librarians believe that finite issues need greater interpretation for librarians. With regard to reproduction of digital works, there does not seem to be a clear understanding of the extent of the copyright in this area as some clauses have been recently added in the 2015 amendment to the act, hence hesitation on the part of the librarian to reproduce digital works. Section 55 of the act makes provision for reproduction for the purpose of restoring or preserving the work. One academic librarian states, *"My library does not do this to benefit financially in any way, but rather, for the sake of preservation especially of materials that are very old but precious. This is permitted under the law"*

The Jamaican copyright act is against circumvention of DRM and Section 46 of the principal act speaks extensively on the topic. However, Sections 65a and 65b deal generously with transforming works into accessible formats for persons with print and hearing disabilities. Under the new amendment, circumvention of a technological protection measure for archival and preservation purposes (Section 55) shall not be a copyright offense.

Not all libraries in Jamaica are aware of the initiatives related to the copyright reform. This is evidenced by the wide cross-section of librarians who admitted on the questionnaire that they were not aware of one law or another (see section 4). IFLA as an internationally recognized body can work with Latin America and Caribbean Library Associations to enforce its Treaty Proposal on Copyright Limitations and Exceptions for Libraries and Archives in order to gain support for strengthening exceptions to libraries in national copyright acts in order for libraries to fulfil their mandates in the preservation and access of materials.

6.2. Obstacles to the provision of services that libraries in Jamaica are facing as a result of your copyright law.

Many libraries face challenges in navigating the Jamaican copyright landscape. While some of the issues are clear, others present subtle forms especially in the current digital environment digital environment. Some of these challenges are discussed below.

a) Circumvention, supply and accessible formats

Section 55 of the Copyright Act makes provision for certain exceptions for libraries or archives to fulfil their missions of preservation of content and making content accessible. Under these exceptions, libraries and archives may make limited copies of content in their collections for purposes of preservation or to replace damaged or lost copies of works. Section 61-65 also permit limited copying of certain works by patrons for their personal use. These provisions however, do not fully meet the needs of librarians and archivists who work with digital content. As more of these content becomes laden with technological measures to prevent copying, increasingly this exception constrains the effectiveness of the entire provision in the academic setting as it strips away the protection of the library/classroom use exception.

b) The Application for Registration to Enter Particulars in Register

The Legal Deposit Act Jamaica (2004) makes certain provisions for works to be deposited with the National Library which is designated the Principal Legal Depository. However, the 2015 copyright act amendment uses the word “deposited” at numbers 14 and 15 when referring to voluntary registration. In the library sector response to the amendment, the following concern was registered:

Whereas there is value to a voluntary registration system there is overlap and the potential for further confusion on the public’s part between Legal Deposit and Voluntary Registration and so recommend that the words “deposit or deposited” not be used in any section related to Voluntary Registration (LIAJA; National Library of Jamaica 2015)

c) Holding of copyright works by the Jamaica Intellectual Property Office (JIPO)

There is concern on both the part of the National Library of Jamaica as well as The Library and Information Association of Jamaica that section 9A of the amended act which stipulates that a copyright register be maintained by the Jamaica Intellectual Property Office (JIPO) is a

duplication of effort and scarce resources and confusing to the public who for the most part equate legal deposit with copyright registration. The National Library of Jamaica and LIAJA purport that:

Such consideration should take into account an institution's capacity to manage, enable access, preserve and curate registered materials. Historically, the National Library of Jamaica has functioned as the nation's curator of intellectual output and is mandated under section 5 of The National Library Act (2010) to ensure the proper management of deposited works for dissemination and preservation. Consideration should also be given to the fact that the NLJ is ahead of JIPO in managing and curating digital as well as print resources. It might be more economical and effective to place voluntary registration with the entity that manages Legal Deposit. (LIAJA; National Library of Jamaica 2015).

Furthermore, the copyright act provision regarding registration is voluntary while the Legal Deposit Act provisions are mandatory.

6.3 Examples of services that are unavailable because of the copyright law.

While the copyright act provides generously for libraries through fair use, educational exceptions as well as libraries and archive exceptions, there are still some services that are unavailable especially since the 2015 amendment to The Act which sees a shift more favourably in the direction of the copyright holder, thus unearthing new access issues. The following are some of these issues.

a) The national library re-publishing programme (print and digital) of heritage publications in the public domain items in their collection is stalled by the extension of copyright from fifty to ninety-five years as material which had moved into the public domain in 2012 are now back under copyright protection as the copyright extension was made retroactive to 2012.

b) While Jamaica's copyright law allows libraries to copy out-of-print works for purposes (the entire material could be copied) only without asking permission to the copyright owner, there is a major restriction. One librarian points out that this section of the law is, *"Still restrictive as if still under copyright the entire material could not be copied"* and that, *"Out of print does not mean out of copyright"*

c) Section 56 - 60 of the Jamaica copyright act makes extensive provisions for educational use of copyrighted materials while section 61-65 covers exceptions affecting Libraries and Archives. Despite these provisions and exceptions, academic and special librarians are concerned with the lack of clarity surrounding copyright as it relates to data mining. Jamaica does not have a law that allows libraries to mine data from digital works without asking permission to the copyright owner. In the case of academic libraries, there is much investment in the preservation of content that are born-digital. For the National Library, the digitization of cultural heritage has been an ongoing concern as facilitating sharing of such data could prove cumbersome especially in light of the extension of the copyright term from fifty to ninety years. One academic librarian posited that

Researchers are greatly impeded by a lack of clarity surrounding copyright and ownership of derived works, as well as the complexity of negotiating licences. A copyright exception written in the act, would allow them to utilize data mining techniques to speed the process of their research as they would have a vast amount of data at their fingertips.

Similarly, parent institutions in corporations and government agencies in Jamaica rely heavily on their libraries to mine data for management decisions. One special librarian pointed out that:

While the copying of some content may be covered under some of the exceptions for libraries and archives as well as educational use exception, librarians transforming works into digital format may find themselves liable under the current copyright act.

6.4. Jamaica's Position Regarding the Marrakesh Treaty

Jamaica is not a signatory to the Marrakesh Treaty and many libraries are unaware of the treaty. However, aspects of the treaty were taken into consideration in the amendments as a set of provisions were made for the, visually and hearing impaired: "the provisions which enable access to copyrighted works by the print and hearing disabled; the provisions regarding orphan works as well as the extension of existing rights to libraries and archives regarding materials in digital format."

6.5. Regarding copying to accessible formats

Libraries in Jamaica can create and distribute copies in their respective institutions. The copyright amendment act of 2015 sets parameters as to what can be copied into an accessible format. To this end, a wider range of content, including films and broadcasts, can be reproduced in an accessible format for the visually and hearing impaired. The law allows for the making of Braille, audio or large-print copies of books, newspapers or magazines and the adding of audio-description to films or broadcasts for people who are visually-impaired. It also allows the making of sub-titled films or broadcasts for the hearing impaired. However, the act makes it only legal to reproduce material if suitable accessible copies are not available commercially and makes no provision for cross border sharing of the accessible produced materials. Another key obstacle cited by academic, school and special librarians, is the overall process of the law regarding providing materials to the visual and hearing impaired accessible format. Librarians believe that because section 65a only grants authorized bodies permission to convert work to an accessible format, the immediate needs of the visual and hearing impaired who use their libraries may not be met as getting permission from such bodies may take some time to process, hence frustrating users of information.

6. Conclusion

The Jamaica copyright act provides protection to authors/creators of intellectual property. This is essential for authors or creators, who are the main part of the development of a society, through education or entertainment. The ability to create gives rise to research in all fields through writing, performance, and use of electronic resources. The Copyright law in Jamaica is extending into the area of electronic resources by making provisions regarding circumvention of electronic resources for preservation and access for the visual and hearing impaired. Users of information resources in Jamaica are benefiting somewhat from copyright laws but in some ways can be disadvantaged and shackled by existing copyright legislations. The library and information community in Jamaica needs to:

1. Continue to engage all information industry partners (policy makers, Jamaica Intellectual Property Office, Jamaica Copyright Agency, governmental bodies and bring to their attention need for librarians full participation in the debate on copyright legislation reform.

2. Make recommendations for additional authorized bodies within the library sector and rescinding the retroactivity to 1962 clause within the current act.
3. Raise awareness among library and information professionals regarding the copyright law and how these affect libraries and their role in contributing to a creative knowledge economy and society
4. Lobby for specific copyright exception for data mining that will allow Jamaican libraries and their users to contribute to an innovative society.

References

- Crews, K. (2008). Estudios sobre las limitaciones y excepciones al derecho de autor en beneficio de bibliotecas y archivos. Recuperado 27 de enero de 2016, a partir de http://www.wipo.int/edocs/mdocs/copyright/es/sccr_17/sccr_17_2.pdf
- IFLA. (2015). Declaración «Motores para el cambio: Primer Encuentro Iberoamericano sobre Derecho de Autor y Tratado de Marrakech». Recuperado a partir de <http://www.ifla.org/ES/node/9968>
- IFLA. (2012). Borrador Tratado sobre Limitaciones y Excepciones para las Bibliotecas y archivos. Recuperado a partir de <http://www.ifla.org/node/5858>
- Jamaica Library Service (2013). Jamaica Library Service Annual Report April 2012 – March 2013 http://jls.gov.jm/sites/default/files/annualreport_2012-2013.pdf.
- Library and Information Association of Jamaica & National Library of Jamaica (2015). *Response to the Bill Entitled: An Act to Amend the Copyright Act of 1993*. Kingston.
- Pérez-Salmerón, G. (s. f.). Las bibliotecas y su necesidad de protección ante los derechos de autor. En *Anuario ThinkEPI* (2014, Vol. 8, pp. 126 - 131). Recuperado a partir de <http://a.nomono.co/33>
- Villarreal, L. (2011). Creando derecho: Guía para comprender el derecho de autor. Recuperado a partir de www.innovarte.cl/creandoDerecho/wp-content/uploads/
- The Copyright Act (1993) Retrieved from the Ministry of Justice Jamaica Website <http://moj.gov.jm/laws/copyright-act>
- The Copyright (Amendment) Act (2015) Retrieved from the Ministry of Justice Jamaica Website <http://moj.gov.jm/laws/copyright-act>