

**THE LEGAL IMPLICATIONS OF PROVIDING INFORMATION
SERVICES IN PUBLIC UNIVERSITY LIBRARIES IN
KENYA**

BY

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SCIENCES**

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DECLARATION

DECLARATION BY THE CANDIDATE

This thesis is my original work and has not been presented for a degree or diploma in any other university.

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DEDICATION

Dedicated to my grandchildren Jayden, Neome and Wangari, who were all born during the period that this effort was going on; to the memory of our beloved Elizabeth Wakiuru whose spirit continued to encourage me along even after her premature departure; and also to the memory of my late parents Winfred Wakiuru and William Mathangani who instilled in me the virtues of hard work, perseverance, and persistence.

ABSTRACT

This study set out to investigate the legal implications of providing information services in public university libraries (PUL) in Kenya. Information and its contribution is recognized and supported by a number of legal instruments including the Universal Declaration on Human Rights and the Constitution of Kenya. However, there are also laws that inhibit and limit access to information, for example the Copyright law and the Official Secrets Act. This contradictory stance in law and its implications for the library's provision of information was the main concern for this study. The study was guided by specific objectives that endeavored to examine the organizational structure within which PULs in Kenya provide information services; explore the information services provided by public university libraries within the context of the influencing laws; Examine the acquisition of information materials in public university libraries in Kenya against the background of the relevant laws; examine the laws and declarations that have an influence on the provision of information services in public university libraries in Kenya; establish the knowledge of aspects of law required by librarians in public university libraries to enable them provide information services to their clientele; and propose appropriate and relevant recommendations to improve provision of information services in public university libraries in Kenya. The study was principally informed by both the organization theory and the social systems theory. The study adopted a qualitative research paradigm and collected data from 54 librarians using interviews based on semi-structured questionnaires. Data from the field was complemented by information from documentary sources. The study found that there were legal implications. The study established that librarians in public universities were not fully equipped with the skills and knowledge needed to fully function in the challenging area of information and law. The study recommended that librarians in PULs needed to extend their knowledge and understanding to cover relevant provisions in law that can be appropriated to strengthen their work of providing information to their clientele.

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ABBREVIATIONS AND ACRONYMS

| | |
|-------|--|
| AACR | Anglo American Cataloguing Rules |
| ALA | American Library |
| ARL | Association of Research Libraries |
| BPO | Business Process Outsourcing |
| CAS | Current Awareness Services |
| CDF | Constituencies Development Fund |
| CHE | Commission for Higher Education |
| CILIP | Code of Professional Practice for Library and Information Professional |
| CK | Constitution of Kenya |
| CONFU | Conference on Fair Use |
| CONTU | Commission on New Technological Uses of Copyrighted Works |
| CPD | Continuous Professional Development |
| CUE | Commission for University Education |
| DRM | Digital Rights Management |
| EFA | Education for All |
| ERS | Economic Recovery Strategy |
| FAIFE | Free Access to Information and Freedom of Expression |
| FOI | Freedom of Information |
| FPE | Free Primary Education |

| | |
|----------|---|
| HIV/AIDS | Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome |
| IBEA | Imperial British East Africa Company |
| ICJK | International Court of Justice- Kenya |
| ICOLC | International Coalition of Library Consortia |
| ICT | Information Communication Technology |
| IFLA | International Federation of Library Associations |
| ILL | Interlibrary Loan |
| INASP | International Network for the Availability of Scientific Publications |
| IP | Intellectual Property |
| IRRO | International Reprographic Rights Organization |
| ISBD | International Standards Bibliographic Description |
| KECOBO | Kenya Copyright Board |
| KENET | Kenya Education Network |
| KFUPM | King Fahd University for Petroleum and Minerals |
| KLISC | Kenya Library and Information Services Consortium |
| KOPIKEN | Reproduction Rights Society of Kenya |
| LIS | Library Information Science |
| MDG | Millennium Development Goals |
| MDGR | Millennium Development Goals Reports |
| MIT | Massachusetts Institute of Technology |

| | |
|------------|--|
| OPAC | Online Public Access catalogue |
| PUL | Public University Library |
| RUSA | Reference and Users Services Association |
| SCANUL-ECS | The Standing Conference of African National and University Libraries in Eastern, Central and Southern Africa |
| SDI | Selective Dissemination of Information |
| TOC | Table of Contents |
| TPM | Technological Protection Measures |
| UDHR | Universal Declaration on Human Rights |
| UNCHR | United Nations Commission on Human Rights |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| VMO | Vision mission and Objectives |
| WEF | World Education Forum |
| WIPO | World Intellectual Property Organization |
| WTO | World Trade Organization |
| WSIS | World Summit on Information Society |

CHAPTER ONE

INTRODUCTION

1.1 Background Information

1.1.1 University Education in Kenya

Discourse on education in Kenya in general and university education in particular, continuously highlights two factors that have had impacts on the developments in the subsector and also influenced the implementation process. First, there has been an increase in the enrollment of students at all the levels, as well as increases in the number of institutions. This growth has been due to a social desire for education among Kenyans, as well as national and international policies including the education for all and the free primary education initiatives. At the time that this study was carried out there was a total of 28 universities. Seven of them were public, while the other 21 were private (Table 1.1). While the growth of education is a desirable aspect of social development, it can present challenges to educational institutions especially where the growth has not been matched by an increase in financial resourcing.

The second notable feature with influence especially at the university level is concern over, and the need to ensure quality and relevance of education with regard to national development. In this connection, the Commission for University Education (CUE) is charged with this responsibility and works with individual universities to ensure that the desired quality and relevance are maintained. The CUE has issued guidelines in form of standards that are meant to ascertain that Kenya's university education attains both the level and focus that addresses the country's development concerns.

Table 1.1: Number and Type of Universities in Kenya

| Public Universities | Private Universities | | | Total No. of Universities |
|----------------------------|-----------------------------|------------------------------------|------------------------------------|----------------------------------|
| | Chartered | Letter of Interim Authority | Certificate of registration | |
| | 11 | 6 | 4 | |
| 7 | 21 | | | |
| Total | | | | 28 |

(N.B: Public universities also had between them a total of 9 Constituent Colleges.)

1.1.2 University Libraries in Kenya

As a constituent part of the university whose operations are aimed at advancing the institution's vision and mission, the university library is also directly affected by the above issues. In effect university libraries have to plan their information services to accommodate and cater for huge numbers of users. They are also required to make sure that the information materials are relevant and that they adequately meet the information needs of the academic programmes on offer and research. The library does this through a design plan that expounds the philosophy of the library contained in its vision and mission. The stated goals and objectives in turn guide the implementation strategy through activities that are also outlined in the plan adopted by the library. The ultimate

outcome of this plan and the accompanying strategies is to provide information services that meet the users' learning, teaching and research needs for information.

A common theme in the discourse on libraries and the provision of information is the rapid change of the information environment. Information Communication Technology (ICT) has been universally identified as a major driver of this change. Consequent to this change, libraries are providing access to global information through online searches and systems. Secondly, libraries are also creating their own digital content and availing it for use through Online Public Access Catalog (OPAC) in form of Institutional Repository (I.R). During the last fifteen to twenty years, public university libraries in Kenya have gone through this transformational process. It started with the retrospective conversion of the bibliographic records leading to the availability and access of this data on-line. For example, the University of Nairobi library digitized its massive public catalogue in the late 1990's. Connectivity issues for the universities are addressed jointly by the individual university and the Kenya Education Network (KENET). These developments and facilitation have made it possible for university libraries to offer access to e-books and e-journals and also to develop Institutional Repositories (I.R.) which contain information resources from within the university including theses, conference and seminar papers and others. Digital services have generally been viewed as having raised the library's profile within the university by demonstrating their capacity to deliver high quality and current information that is required for study and research purposes in the university. By applying ICT in their operations, libraries have been able to maintain and

further enhance the symbolic manifestation of the values enshrined in academy and scholarship.

1.1.3 The Kenya Legal Framework Relevant to the Provision of Information Services in PULs

The following overview is a discussion of the legal framework within which information services are provided by public university libraries. The overall Kenyan legal system is made up of the Constitution and written laws legislated mainly by Parliament. International laws, protocols and treaties also become part of the country's law once ratified by Parliament.

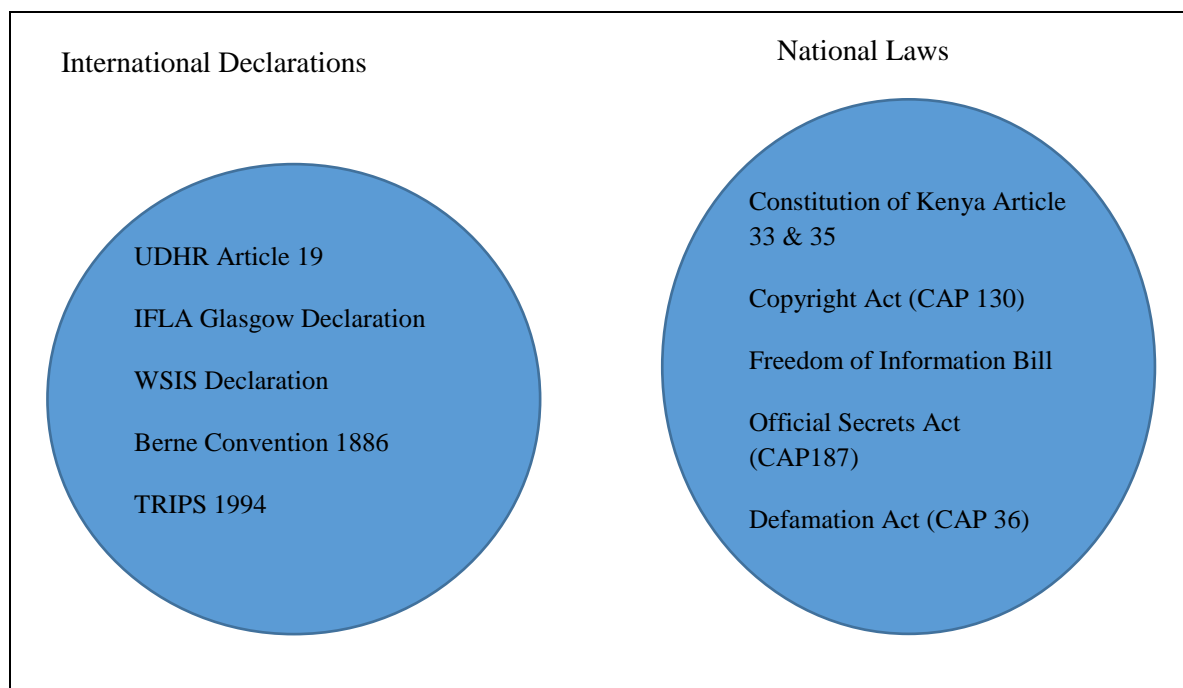


Figure 1.1: The Kenya Legal framework Relevant to the Provision of Information Services in PULs

1.1.3.1 The Constitution of Kenya

A constitution has been defined as the state's primary source of legal authority. The constitution makes provision for the three arms of the state namely, the legislature, the executive and the judiciary, and lays out the power for these organs to make law, govern and administrate and adjudicate (De Smith, 1971). The constitution is accorded a higher status than all the other laws, and it includes explicit guarantees of the rights and freedoms of the individual in what is referred to as the Bill of Rights. A scholar on constitutionalism defines constitution as "the scheme of organization of public responsibilities which must be performed in any community. It identifies or prescribes the public organs of the community and rests in them particular roles which are to be performed in the interest of the people as a whole" (Ojwang, 1990). In line with the reference to the supremacy of the constitution, sections (1) and (2) of Article 2 of the Constitution of Kenya state as follows:

"This Constitution is the supreme law of the Republic and binds all persons and all State at both levels of Government. Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid." (Constitution of Kenya, 2010).

This provision has direct significance for information due to the fact that the highest law in the land gives recognition to information. Chapter four of the Constitution contains the Bill of Rights. Part 2 of this chapter lists twenty six different types of rights and

freedoms. The following section presents a short overview of the support the Constitution provides for information.

The right to information is provided under Article 33 which states that

“Every citizen has the right of expression which includes freedom to seek, receive or impart information or ideas, freedom of artistic creativity, academic freedom and freedom of scientific research” (Constitution of Kenya, 2010).

Further to the impart function mentioned in the Article 33 above, the Constitution gives added significance to the dissemination of information through Article 35 which provides on the citizens’ right to information held by the state. According to this Article, every citizen has the right to information held by the state while the state is also required to publish and publicize any important information affecting the nation.

1.1.3.2 Acts of Parliament

The next source of law in Kenya are the Acts of Parliament. These are the laws that have been passed over time by the successive assemblies starting with the colonial legislative assembly as well as the assemblies constituted when the country became a republic. They also include laws that were inherited from England at the time that Kenya was a British colony. For example both the Copyright Act (CAP 12) which is based on the intellectual property, and the Official Secrets Act (CAP 187) which uses state security to restrict the dissemination of information have a history that demonstrates this development of inherited laws. Thus is described by the following statement on the copyright law:

“Generally, Kenya’s copyright law and practice have deep roots in the colonial and neocolonial experience. Copyright law is largely a 20th and 21st century phenomenon, beginning with the declaration of Kenya as a British protectorate from 1895 and a colony in 1920.” (Sihanya, 2009).

Other laws with similar effects on the provision of information are the Penal Code (CAP 63) whose sections 52- 54 are on the prohibition of certain publications, and the Defamation Act (CAP 36) which restricts information dissemination on grounds of libel or injury to a person’s character. At the time that this research was carried out, Kenya did not have a law on Freedom of Information, but the FOI Bill of 2012 had been through Parliament and was waiting for the necessary assent from the President for it to become law.

1.1.3.3 International Laws

International laws and treaties become part of the country’s legal system once they go through the ratification process by Parliament. Relevant examples of such international treaties are those contained in the international legal framework on intellectual property and copyright, namely, the Berne Convention (1886); the Universal Copyright Convention (1952); the Rome Convention (1961); the WIPO Copyright Treaty (2002); the WIPO Performance and phonographs Treaty (1996); and the Agreement on Trade Related Aspects of Intellectual Property (1994).

International declarations can also be considered under the country’s legal system in that while they do not form actual laws, they nevertheless influence the legislation of specific

laws. The United Nations Declaration of Human Rights (UDHR), for example, does not have the force of law. However, the provisions of the declaration have been domesticated in the Constitution as part of the Bill of Rights. Article 19 of the Universal Declaration of Human Rights provides that

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (General Assembly of the United Nations, 1948).

It can be observed that the above provision and others in the declarations had some influence in the drafting of the rights and freedoms in Chapter four of the Constitution. In particular the provisions in Article 33 of the Kenya Constitution are closely aligned to the provisions in Article 19 of the UDHR. The key words with regard to provision of information services, namely, seek, receive and impart information are used by the two articles.

Over and above its influence on the Constitution, the Universal Declaration of Human Rights also provided the conceptual basis upon which other international statements on information have been founded. For example as shown in the following figure, the Millennium Development Goals (MDGs) which had a clearly expounded section on the role of information in attaining the goals, was founded on the human rights as initially framed in the UDHR, and both were efforts that attempted to ensure that individual's human dignity was upheld. The Millennium Development Goals component on states that

the role of information within the MDGs was to: raise public awareness; promote study, scholarship and debate; to inform the process of creating partnerships; help focus national debate on specific development priorities; to provoke deeper analysis at country level; and to give the necessary direction and guidance for policy reform, institutional change and resource allocation.

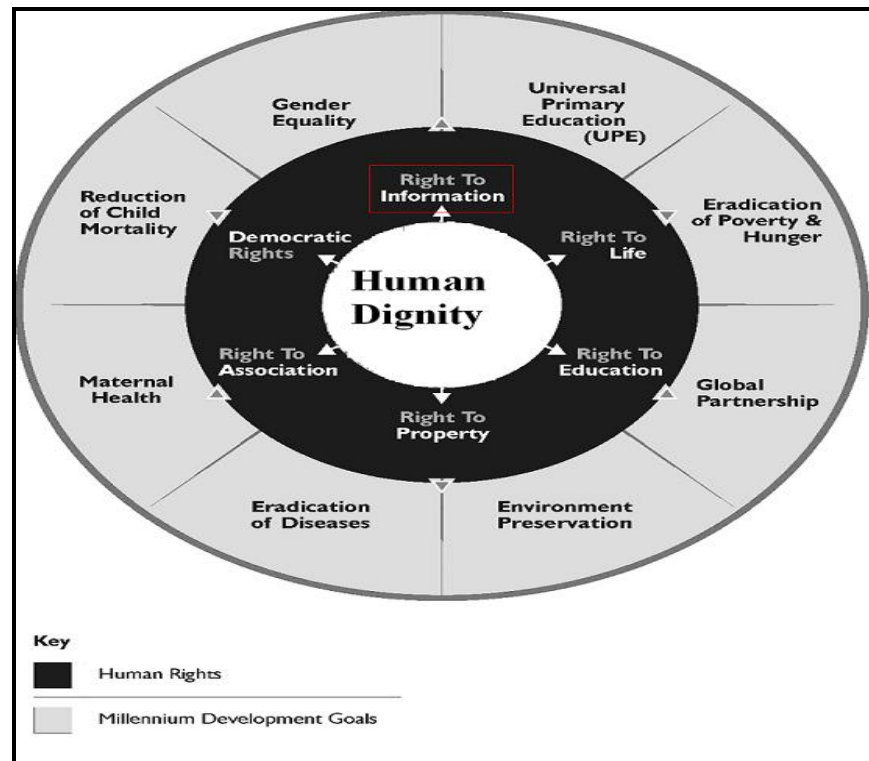


Figure. 1.2: UDHR Right to Information and the MDGs

The study also took note of the declarations made by professional bodies as well as the United Nations on the basis of their impact on the provision of information services. It is more the work of the International Federation of Library Associations (IFLA) than that of any other organization that has been most specific and directed at stating the role of

information in study and research. The following discussion is a brief of IFLA's role in articulating access to information.

According to IFLA, the main functions of the organization revolve around three key areas, namely, the role and impact of library and information services in society, the established core activities of professional practice, and the provision of beneficial services to members (IFLA, 2001). In 2002, IFLA issued the Glasgow Declaration which aimed at providing guidance and the direction necessary in the provision of information services. The declaration was prepared by a special committee of IFLA, Free Access to Information and Freedom of Expression (FAIFE). This Committee is charged with the responsibility of defending and promoting the basic human rights defined in Article 19 of the United Nations Universal Declaration of Human Rights. The Committee's responsibility is described as an initiative that:

“furthers free access to information and freedom of expression in all aspects, directly or indirectly, related to libraries and librarianship. IFLA/FAIFE monitors the state of intellectual freedom within the library community world-wide, supports IFLA policy development and co-operation with other international human rights organizations, and responds to violations of free access to information and freedom of expression.” (IFLA, 2002).

IFLA affirms that:

- Libraries and information services provide access to information, ideas and works of imagination in any medium and regardless of frontiers. They serve as gateways to knowledge, thought and culture, offering essential support for independent decision-making, cultural development, research and lifelong learning by both individuals and groups.
- Libraries and information services contribute to the development and maintenance of intellectual freedom and help to safeguard democratic values and universal civil rights. Consequently, they are committed to offering their clients access to relevant resources and services without restriction and to opposing any form of censorship.
- Libraries and information services shall acquire, preserve and make available the widest variety of materials, reflecting the plurality and diversity of society. The selection and availability of library materials and services shall be governed by professional considerations and not by political, moral and religious views.
- Libraries and information services shall make materials, facilities and services equally accessible to all users. There shall be no discrimination for any reason including race, national or ethnic origin, gender or sexual preference, age, disability, religion, or political beliefs.
- Libraries and information services shall protect each user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted.

IFLA therefore calls upon libraries and information services and their staff to uphold and promote the principles of intellectual freedom and to provide uninhibited access to information.

Figure 1.3: IFLA's Statement on Right to Information

The importance attached to the responsibility of looking after free access to information and freedom of expression as charged to the FAIFE Committee is illustrated by the above figure (Fig 1.3). This study identified the following three key issues from the above excerpt:

- a) Libraries have a principal role to play in ensuring that the right of access to information is achieved by facilitating processes prompt the development of the individual and the society;
- b) Information has capacity that is instrumental to the development and maintenance of intellectual freedom;
- c) Libraries and information services should aspire to ensure and ascertain the provision of full and equal access to information.

The United Nation's World Summit on Information Society (WSIS) was an international initiative whose declaration drew attention to the role of governments and other stakeholders in creating an all-inclusive information society. Among the aspects addressed by the WSIS declaration were: the role of governments and all stakeholders in the promotion of ICTs for development; information and communication infrastructure as an essential foundation for an inclusive information society; access to information and knowledge.

1.2 Study Rationale

This following section set out to explain and justify the thinking that gave rise to this study by looking at both information and law.

The first part of this section seeks to establish the rationale for this study by justifying the concepts and approaches that argue the importance of information. This is followed by an

analysis that attempts to bring out the significance of law in society and specifically within the area of information.

1.2.1 The Role of Information

Information has been viewed as an important social factor that is closely associated to knowledge, learning, research and wisdom. The contribution of information to the academic processes of learning, study and research has been widely acknowledged. This is evidenced by the existence of relatively well established libraries and information centres in academic institutions such as universities, and in research organizations. In recent times, an awareness of the role of information in contemporary issues of democracy, social development and its enhancement, and the overall condition of human wellbeing among others has emerged. As a result, information is increasingly being recognized as one of the main resources making contribution to the development process. The United Nation's World Summit on Information Society (WSIS) clearly brought out this view. In the two conferences that took place in Geneva in 2003, and in Tunis in 2005, information was presented as providing an environment where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life (ITU, 2005). The importance of information had been acknowledged much earlier in America, as illustrated by remarks attributed to James Madison, the fourth president of that country. Madison saw ignorance as a threat to democracy, which ended up weakening the uneducated and uninformed by making them incapable of exercising positive influence in politics. According to Madison, this

contribution by information justifiably qualifies it as a “fourth right of citizenship” (after food, shelter and work) since it is the prerequisite of understanding and involvement in public affairs (Haywood, 1989). However, this contribution has become more accentuated as people’s participation in the government through the democratic process is continuously acknowledged and information becomes the facilitator of this critical process.

This study adopted the above views, among others, which see information as having an enabling capacity that ultimately works for the good of the society. This research was thus rationalized on a philosophy that saw information as a critical factor of social development.

The Freedom of Information (FOI) presents another view of the importance of information. The concept focuses on the right to access information that is held by public authorities and in some cases by private bodies that perform activities that affect the public in general. According to FOI and its principles, access to information leads to better public policies, facilitates participatory development, and promotes meaningful democracy (Mutula, 2006).

Information has also been acknowledged as making a difference in the business sector principally by providing and facilitating a competitive edge. This fact was confirmed through a research that identified information management as being especially critical to improving business performance, supporting strategic development and maintaining competitive advantage. The study concluded by observing that it was essential for small

businesses in the competitive environment to take a strategic approach to their information needs if they wished to develop and remain competitive. The study recommended that where the required information expertise was unavailable, it was advisable for the company to invest in that expertise through recruitment, training, partnership, or outsourcing (Sen & Taylor, 2007).

The above discussion on the wider role of information was further exemplified by perspectives from within the market place (Evan-Wong, 1996; Martin, Davies, & Titterington, 1991). These views recognize information as a product similar to any other product in the market. According to the authors in question, information has a value that can either decrease or increase depending on the following factors: the process within which that information is generated; the extent and ease with which the information can be accessed; the method used to communicate or deliver information; and the time within which the information is communicated or delivered. These conditions indicate that although information makes an important contribution in society, the value of that contribution cannot be assumed or taken for granted. Issues of access to the information by the users, mode of delivery among others, are crucial and must be assured for that contribution to be realized. In line with this understanding, a major consideration that justified this study was whether or not the application of law to information adds or takes away value from information services for users.

1.2.2 The Role of Law

Law plays various roles in society among them the fundamental function of regulating and governing society. Due to the controlling and governing functions attributed to law,

as well as its inherent capacity to coerce, it becomes a powerful tool that can be used to set up systems that end up being inhibitive and constraining. As a result, law attains a pervasive relationship with the other sectors and institutions in society. Consequently, as societies develop and advance through social economic activities and other forms of human endeavor, law becomes an increasingly significant aspect of that development. This position is easy to appreciate since a country's laws ultimately form the norms or standards that guide, control and provide the impetus to the totality of the social and economic activities, and also the conduct of the respective society.

Writing on the purpose of library legislation, (Rout, 1991) states that for the library, the reasons behind the legislative function include the creating of library agencies, providing the guarantee for the establishment of library networks, ensuring a stable financial base, setting up library authorities responsible for staffing, administration and management, and ensuring permanent, uniform, efficient, expanding and coordinated library services. This is the more obvious and ideal function of law. For example, the Kenya National Library Service Act (CAP 225) provides for the establishment and running of public libraries in Kenya. However, there are instances where law has been applied to control and restrict access to information due to issues of secrecy, security, privacy, property ownership and morality. Copyright law which is based on the concept of the right of ownership is an example of such a law since it ends up putting limits on the free flow of information as envisaged in the Universal Declaration of Human Rights and the Constitution of Kenya. These elements of law and its influence on information are examples that according to this researcher made the case for the present study.

Further to the above overview relating to the social significance of both information and law and the justification for the study, this researcher recognized a trend in society where human endeavor and activities were moving in directions that highlighted the relationships between different phenomena. This trend is supported by the argument that humans do not exist in compartments that are mutually exclusive, but they have their existence in form of a continuum with parts that are intertwined and linked together. Thus specializations that have previously tended to concentrate and focus on their specified disciplines are now adopting interdisciplinary approaches that go beyond the existing subject boundaries. This approach is becoming increasingly popular and it is supported by such theoretical approaches as the social systems theory. The approach is aimed at attempting to determine the extent to which different disciplines act together and thus affect and influence a given outcome in society.

In this connection, it is widely acknowledged that the definition of law, what it does and how it does it, are some of the questions that have been the subject for discourse and debate in the area of law. However, sociological theories are tending to abandon this theoretical grounding of the study of law preferring instead, an interdisciplinary orientation that selectively draws from a plurality of intellectual tradition (Deflem, 2008). Kenyan legal scholars have also argued the case or rationale for an interdisciplinary approach on the basis that the essence, content and functions of law are properly understood when one looks at law as a social phenomenon. In this context the character of law is viewed as being molded according to the relationships it forms with the other social phenomena (Okech-Owiti, 1994). This researcher applied the above broader view

of the sociology of law and saw it as it functions within certain areas of society, in this case with reference to information. This approach which has been adopted by the sociological theorists of law provided further rationale to the particular choice for the current study.

1.3 Statement of the Problem

The above discussion advanced an argument that brought out the importance of information in most of the aspects of human life. This view has been given legal recognition at the highest level by both the United Nations which has accentuated information as a human right in Article 19 of the Universal Declaration of Human Rights, and the Constitution of Kenya under Article 33.

The above provisions form a vitally important background that provides support to libraries and information services. They both give national and international legal backing to information and elevate it to the level of human rights which are taken as entitlements or claims that are due to every person by the virtue of the fact that they are human beings. Despite this elevated status of information, this desired situation is contradicted by other laws that for various reasons inhibit freedom of information and end up limiting access to information. This study considers the situation described in the foregoing, and which is introduced by the legal provisions in some of the laws as a problem brought about by the laws in question which create obstacles and restrictions on information services. The act of denying access to certain types of information is seen as going contrary to the goals of library and information services as summed up by the

International Federation of Library Associations (IFLA) in their declaration on full access to information (IFLA, 2002) .

A second problem identified in the area of law and information refers to the apparent conflict existing between certain legal provisions. In such cases librarians find themselves in a dilemma where certain legal provisions represent values and rights that are sometimes contradictory. For example, on one hand, the Constitution is emphatic on the individual's right to information and its dissemination. This provision is at the core of librarians' work on information and is rationalized on the belief that information is crucial to finding solutions to the challenges of development and life in general. However, a position that contradicts the right to information is given by the copyright law which governs the use of copyrighted works. Copyright law is founded on the right to property which is strictly protected by law. Effectively the right to own property makes legal provision where a property owner can use his property as he wishes and nobody can lawfully use it without his authorization. In essence the application of copyright law inhibits, to some extent, the work of librarians and creates obstacles especially in the area of lending and reproduction of copyrighted works. Similarly, the provisions on prohibited publications under the Penal Code (CAP 63), the Official Secrets Act (CAP 187), and the Defamation Act (CAP 36) all restrict and limit access to information and its dissemination, thus affecting the work of librarians in the provision of information services.

A situation is therefore created where, on one hand, law makes provisions that support and give acclamation to information as a right, while on the other hand, other legal

provisions put control on information and limit access to it. The uncertainty and confusion likely to occur under such circumstances will evidently have some effect on libraries and information services. Given this outcome from the conflicting legal provisions cited above, there is need to investigate how these laws influence the provision of information by university libraries.

A further problem is introduced by the capacity required of librarians in as far as having the necessary working expertise and knowledge of law is concerned. In this regard, librarians function in an environment that presents them with challenges that are peculiar and which may end up exposing them to criminal and civil charges. Basing on the provisions in the UDHR and the Constitution of Kenya, librarians have an obligation to provide their clients with information within the widest scope and definition of the term. On the other hand, they are strictly bound by law not to infringe on the rights of copyright owners or to break the laws on prohibited publications among others. This situation is complicated even further, for example by the emergence of e-resources which introduce technicalities and complex legal terms and interpretation. Despite these conditions and the uncertainty presented by conflicting laws as presented in the foregoing, librarians are generally not well equipped with the basic expertise and knowledge required to give information services in a society where the application of law is on the increase (Nasri, 1987). This lack of expertise and knowledge in an important area affecting their work, means that librarians cannot have any dialogue or discourse with policy makers as a way of resolving issues that may introduce handles to their work.

Developments and advances in Information Communication Technologies (ICTs) are presenting new legal challenges for information workers. For example, electronic formats are now accessed online in form of e-books and e-journals. This new development has introduced a vast and new dimension that has greatly changed the access to information and the provision of information services. First, there are the views that look upon the potential and opportunity availed by ICTs in the access and use of information as a step towards a realization of what International Federation of Library Associations (IFLA) declared as the widest access to information for all people. Such views, for example, hold that the law of copyright unjustifiably stifles the ability to make full use of these new developments. Secondly, the procurement of the electronic materials deviates from the regular and established methods of purchase that are familiar to librarians. Instead, electronic materials are procured through contractual agreements and licenses that require some understanding of the processes of contracting and licensing. This study, therefore, recognizes as a problem the challenge presented by the ICTs initiatives and developments and especially so when viewed in the light of their overwhelming effect on information services. In this case, the librarian needs some expertise and knowledge including guidelines on the use of and access to electronic materials, as well as their procurement which involves processes. This suggests some understanding of contractual agreements, licensing and the negotiations involved.

1.4 Aim of the Study

The aim of this study was to investigate the legal implications of providing information services in public university libraries in Kenya, with a view to proposing a model that would improve information service delivery to the university community.

1.5 Objectives

Specifically, the study endeavored to:

- 1) Examine the organizational structure upon which public university libraries in Kenya base their provision of information services;
- 2) Explore the information services provided by public university libraries in Kenya within the context of the influencing laws;
- 3) Examine the acquisition of information materials in public university libraries in Kenya against the background of the relevant laws;
- 4) Examine the laws and declarations in Kenya that have an influence on the provision of information services in public university libraries in the country;
- 5) Establish the knowledge of aspects of law required by librarians in public university libraries to enable them provide information services to their clientele ;
- 6) Propose appropriate and relevant recommendations to improve the provision of information services in public university libraries in Kenya;

1.6 Research questions

In carrying out this study, the researcher attempted to seek answers to the following research questions:

- 1) What is the organizational structure upon which public university libraries base the provision of information services?
- 2) To what extent are the information services offered by public university libraries in Kenya subjected to the influence of the relevant laws?
- 3) How is the acquisition of information materials in public university libraries in Kenya influenced by law?
- 4) What laws support or limit the provision of information services in public university libraries?
- 5) What knowledge of aspects of law do librarians require to assist with the provision of information services?
- 6) What recommendations in the area of information and law would help improve the provision of information services in the PULs?

1.7 Assumptions of the Study

This study was based on the following assumptions:

- 1) Law and public university libraries have a relationship that has important implications for the provision of information services to library users. This is a one way relationship where the PULs are subject to the influence of

law without any reciprocity that would make the relationship more beneficial to both;

- 2) Law has a capacity to influence and can be both supportive and inhibitive to the provision of information services. Librarians need to have an understanding of both these laws in order to fully appropriate those that provide support, and establish strategies for dealing with those that create limits to the provision of information services;
- 3) Librarians lack the prerequisite knowledge and skills in critical aspects of law and its role in information services. Lack of the necessary knowledge and skills can lead to the ineffective provision of information services to library users. An infringement off the law by librarians may lead to punishment or civil liability, regardless of the fact that this may be due to ignorance on the part of the librarians.
- 4) The training of librarians with a view to providing them with the legal knowledge required by their work has not received proper attention. Although library and information science (LIS) training institutions have included aspects of law and information as part of their curriculum, more still needs to be done in order to give librarians both the knowledge, skills and also the confidence with which to make optimum use of law, and also to address the challenges arising the limits that law imposes.

1.8 Significance of the Study

This research investigated the implications of legal aspects on the provision of information services in public university libraries in Kenya. This is a significant issue because of the manner in which law controls and regulates certain aspects of information. Despite this importance, this was the first study to look at the implications of legal aspect on the provision of information, a fact that points to its significance in opening up and giving some direction in this critical area.

A more specific contribution was the study's contribution to the emerging area of contemporary issues in librarianship. In particular, the study addressed the following aspects that were considered important as scholarship evolved and made advances in new areas:

- (i) The existing gap where the effect of law on the provision of information services was not well understood or appreciated;
- (ii) The formulation of guidelines that gave general direction to librarians in public university libraries with regard to legal aspects and their implications on information and its provision;
- (iii) Providing new knowledge through investigations and research in a relatively new area of study;
- (iv) Establishing other related aspects requiring further study.

Finally, it was anticipated that the study would come up with facts and data that would be useful to policy makers, managers and researchers in the area of library and information work. In particular, the study would provide a model of library management based on organization theory giving library managers a holistic approach to library operations. Such an approach would mean that the total system got equal focus thus avoiding situations where certain areas received too much attention while other areas were overlooked.

1.9 Study Scope

The scope of a study forms the boundaries that mark the extent of the research carried out. It can also be used to specifically highlight a particular aspect of the study that the researcher wishes to emphasize. For the present study, the researcher adopted a scope that encompassed public university libraries in Kenya. In Kenya private universities have greatly increased in the last ten or fifteen years. However, this study did not include private universities libraries in its scope on the understanding that they have borrowed most of their operations and methods from public university libraries. The findings from the public university libraries would therefore also have general application in the private university libraries.

Among the library functions, the study had a particular focus on the acquisition function. This was rationalized on the basis of the increased significance attached to Information Communication Technology (ICT), and in particular the impact of electronic resources on the provision of information services. In the area of law and its influence on the

provision of information services, there are laws that focus on the human resource aspects of library management (Arundale, 2002; Nasri, 1987). The researcher considered such laws to be outside the scope of the current study as these were more within the management of libraries rather than the provision of information services.

This study considered the various areas in which law can influence the provision of information services, namely, copyright, prohibited publications, official secrets, information as a human right, freedom of information, defamation, and data protection. Other related areas include those covered by the Films and Stage Plays Act (CAP 222), the Books and Newspapers Act (CAP 111). Taken together the laws referred to cover a considerably wide area of study. Consequently, in order to carry out a meaningful investigation, the researcher opted to give in-depth treatment to laws that addressed the following areas; copyright, prohibited publications, official secrets, information as a human right, freedom of information, and defamation. The areas selected were supported by the pilot study which was used to suggest areas of law that would be of greater interest to librarians.

1.10 Limitations

In this study, the term “limitations” was taken to refer to the challenges that the researchers encounter while carrying out their research. After indicating the challenges encountered, the researcher then explains the options they took in order to overcome the challenges in question. In this connection, the first problem that the researcher encountered came from the lack of previous studies in this area. At the time that this

study was done, a number of doctoral studies on libraries in Kenya had been carried both in the School of Information Sciences, Moi and elsewhere. A large number of these had been done in areas that are specific to the library (Kingori, 2013; Muthee, 2011). A few others took a multidisciplinary approach that sought to link the library to other areas of development (Kwatch, 2011; Njoroge, 2010). These previous studies assisted the researcher in the general area of methodology, principles and approaches of information investigations. With regard to the interdisciplinary link between law and the library with the exception of a few studies on copyright (Olaka, 2010; Wasike, 2014), the researcher did not find any previous work and had to rely on coverage from literature including journals, and books on the subject.

The present study had law as one of its variables. This presented a particular challenge where librarians perceived law as a complex subject. There was also the impression that law did not have direct significance to library operations. The problem had previously been articulated in a work that attempted to point out aspects of laws that were of importance to librarians (Arundale, 2002). In the present study, this challenge was addressed in part during the formulation of the interview questions. The researcher deliberately used concepts that were relatively clear and took time to explain them out during the interview.

During the time that the study was being carried out, various changes took place in the country. A new Constitution was promulgated in August 2010, and over twenty new public universities were established. The researcher was able to accommodate the more pertinent changes in the Constitution, as for example the contents of the new Article 33

that replaced Section 77 in the old constitution. The researcher considered that the newly established public universities were previously constituent colleges of the older public universities. Consequently it was deduced that the functions and operations of the new institutions would generally follow the pattern set up by the older university libraries.

1.11 Definitions of Terms Used in the Study

Constitution – The supreme law of a state that makes provision for the functioning of the three arms of the state namely, the legislature, the executive and the judiciary (Constitution of Kenya, 19).

Copyright - The protection that law gives to the owners of artistic creations including books and other print materials, music recordings, photographs, paintings, films, technological-based works like computer programs and software (Albitz (2008.

Censorship – The suppression of ideas and information that certain persons or groups or government officials find objectionable for various reasons ((Oppenheim & Smith, 2004).

Information – Knowledge acquired through study or experience; knowledge of specific events or situations (Floridi, 2010).

Intellectual freedom - The right of every individual to both seek and receive information from all points of view without restriction. It provides for free access to all expressions and ideas (Ristarp & Frederiksen, 2000).

Fair use - A term that denotes the exemption or right permitted by law for the user of an information material to take a portion of that material without first seeking permission from the copyright owner (Albitz (2008).

Freedom of Information – A concept that refers to the right to information held by public bodies (Darch & Underwood, 2010).

Human rights - Claims which every individual should have upon the society in which he lives (Garner and Black 1999).

Jurisprudence – Philosophy of law (Garner and Black , 1999)

Law – A set of rules legally or constitutionally instituted in order to punish those who offend the conventions of society (Garner and Black,1999).

License - The permission granted by competent authority to exercise a certain privilege that, without such authorization, would constitute an illegal act (Albitz (2008)

Natural law – Defined as that law that was inspired by a higher deity and should therefore be obeyed on that basis (Garner and Black,1999).

Organization – Social construct created by groups in society to achieve specific purposes by means of planned and coordinated activities (Dorcherty, 2009).

Social systems - A philosophical viewpoint on the relationship of persons with their social environment (Parsons, 1951).

Systemic thinking - Ways of thinking that seek to understand and appreciate the coherence and connectedness of all life ((Bausch, 2001).

1.12 Organization of the Thesis

The study is organized in five chapters. The first chapter is introductory and consists of background information to the study. It also includes the study's rationale, statement of the problem, and the aim of the study. The objectives and research questions that guided the study are covered in this chapter, as well as the assumptions of the study and its significance, study scope and limitations. Chapter two presents both the theoretical framework and the literature review. The section on the theoretical framework covers organizational theory, the social systems theory, and also presents the legal theoretical framework. The literature review adopts a thematic approach that covers the areas relevant to the study including organizational elements of the university library, licenses and the procuring of information materials, information services, information as a human right, copyright and its effects on the libraries, censorship, and the librarians' capacity to deal with legal issues. In chapter three the study deals with the issues of research methodology and research design. Chapter four analyzes and presents data from the seven public universities in the sample following the sequence set out by the study's objectives. Chapter five discusses the study's findings again according to the order of the study objectives.

The final chapter provides a summary of the study findings and conclusions. Recommendations provided target various players including the government, librarians

and schools and departments that are running library information science programmes. Finally, the researcher proposes a model for the study of legal aspects and their implications on information and its provision in the public university libraries.

1.13 Summary

In this chapter the researcher covered several areas that formed the introduction to the study. The first part dealt with the background to the study consisting of the two areas. The part on university education in Kenya gave an overview of the universities in the country and highlighted the issues of growth in number of students, and the need for quality and relevance in university education. An outline of the country's legal system was included as part of the background information. The study rationale reviewed the two variables of the study, namely, information and its role in society, as well as law and its significance in society. The statement of the problem was an explanation of the problem or challenge that prompted the researcher to carry out an investigation in the area of the study, while both the aim of the study and the specific objectives, and research questions were used to give further clarification, direction and focus to the research. Other aspects that were included in this chapter were the assumptions of the study, significance of the study, and the study's scope and limitations.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The aim of this study was to investigate the legal implications of providing information services in public university libraries in Kenya, with a view to proposing a model that would improve information service delivery to the university community. To do this the researcher examined a number of theories whose principles were relevant to the study. In the first part of the following chapter, the researcher discusses a number of theories that were consulted and indicates those that were used and also how they supported the study. The discussion on the theoretical framework covered theories in the two broad areas of library and law both of which formed the main components of the study.

In the second section, the researcher reviewed previous literature written in the area. Literature review forms a key part of a dissertation and provides the background to the research and its justification. According to (Afolabi, 1993), it is imperative for a researcher to review what others have observed or written on the particular topic in order to affirm and validate the findings. Through an analysis of the existing literature on the subject, a researcher reveals the contributions, weaknesses and gaps in earlier related works. In this way, literature review is an acknowledgement and a demonstration of the researcher's breadth and depth of knowledge within the area that the study is being done (Bourner, 1996). During this process, a researcher develops a well woven piece that combines the intellectual output and knowledge of others with that of one's own. The

section on literature review accordingly analyzes some of the literature that was used to give the broad context of this study. The area under study fell into clear and related themes. Consequently, the method adopted applied a thematic approach to the literature review with the aim of highlighting the coverage of the topic under study along the specified themes.

2.2 Theoretical framework

2.2.1 Organization Theory

Organization theory has a long and varied history. According to (Docherty, Kira, & Shani, 2009), interest in the study of organizations can be traced back to the Industrial Revolution when Adam Smith studied the practices of a pin factory and came up with the concept of division of labor. A more comprehensive discourse on organization theory came from Simon who characterized the term and promoted the concept in the 1950s. Simon's approach envisaged organization theory as a broad category that included scientific management, industrial psychology, the psychology of small groups, human resource management and strategy. Simon's conceptualization of organization theory was prompted by presentations at a conference that focused on intra-organizational behavior, morale, leadership, the effects of organizations on their members and their decision making.

Greenwood develops the concept of organization theory further by identifying some of the institutional attributes that describe the organization's internal and external

environment. The following summary looks at these attributes and relates them to the operations in the library.

- (i) Organizations are influenced and directed by their institutional and network contexts. University libraries are aligned to, and operate within the consigns and under the direction of the parent institution. They are also connected to other institutions, for example, the government and its agencies.
- (ii) Institutional pressures affect all organizations but more so those whose output is difficult to evaluate. University libraries' obligation to deliver quality and relevant information for academic and research purposes puts pressure on the organization, and its achievement is not easily quantified.
- (iii) Institutional practices are typically taken for granted, widely accepted and resistant to change. The detail and involving nature of library work and operations is generally not appreciated by those outside the institution. For example, challenges occur where university management assumes that the library will offer effective services, but they may not readily see the need to provide adequate resources. Within the library many dynamic changes take place and some of the staff take time to adapt.
- (iv) Organizations converge upon the same response to their institutional environment. This attribute identifies with the library's cooperation and resource sharing to meet user needs, for example, through interlibrary loans. More recently libraries are working together through consortia with those in

Kenya setting up the Kenya Libraries and Information Services Consortium (KLISC).

The above discussion presented views of the organization theory from a perspective of the attributes of the institution. Other theorists approached their discourse by defining the term organization. For example, (Farnham & Horton, 1996) defined an organization as a social construction created in society to achieve specific purposes by means of planned and coordinated activities. Elsewhere, Watson saw the organization as a dynamic and active set-up and referred to it as the planned co-ordination of the activities of a number of people having the aim of achieving some common, explicit purpose or goal. According to Watson (2002), other structural details of the formal organization include rules, regulations, policy manuals and standing orders. (Docherty et al., 2009) shed more light on the definition of organization which, according to him, has changed and evolved as the understanding of the components operating within the organization has developed. He synthesized different examples that exemplified the meaning of the term organization as including a system of division of labor based on specialized activities, the outcome of the blending of collective skills, and a team with complementary skills and a commitment to a common purpose, performance goals and approach. The definitions of an organization given in the foregoing are consistent with the principal elements and features used to describe a library. The researcher interpreted the above views within the library context as represented by the following:

- i) The planned setting up of the library through the formulation of strategic goals, aims and objectives;

- ii) Carrying out and performing functions through teamwork;
- iii) Employing procedures that make use of rules, set out standards, and formulate policies that guide operations and ensure that the activities are coordinated;
- iv) Establishing cooperation and setting up networks or consortia for purposes of resource sharing;
- v) Applying public relations approaches as a way of seeking support from the external environment.

Finally a major principle of the organization theory with relevance to this study postulates that organizations do not exist in isolation. Rather, they exist within the social structure of the larger society with which they have various relationships. This principle further explains that the activities and functions that take place in an organization are influenced and determined by internal forces, and also by other forces that are in the surrounding external environment. In line with this, an attempt that seeks to understand the nature of an organization should also investigate the social context within which that organization operates. Such an approach would guide institution's in plans of adapting to the changes and challenges imposed by the environment. Several writers have used this rationale to support the inclusion of legal aspects as part of the curriculum for Library Information Science in order to attain the disciplinary competencies needed for new professional profiles (Arundale, 2002; Canelloppoulou- Bottis, 2004; Nasri, 1987).

The researcher borrowed from the above principle's view on the importance of the external environment, to highlight the external elements and bring out their influence on the public university library. The following section discusses the three that were identified in this category including the parent university, the library users, and the Government.

a) External influences on the University Library as an Organization

i) Parent University's Influence on the University Library

The university as the parent organization provides for the library the overall philosophy that guides the library and to which the library's own vision and mission are aligned (Commission for University Education, 2012). Since university libraries do not generate funds that can give support to the services they provide, they largely depend on the parent institution to provide them with the budgetary requirements that cover staff salaries and other allowances, the cost of information materials, as well as the costs involved in the provision of physical facilities and setting up the necessary infrastructure. As the main financier the university will influence all the major activities and functions of the library. This influence will be directed towards ensuring that the library is meeting the intended objective which should be basically to strengthen and support the university's core activities of teaching, learning and doing research by acquiring, organizing and disseminating quality and relevant information to the academic community.

ii) University Library Users

University library users, consisting of students, lecturers and researchers, also exert influences on the library as an organization. This brings in the contrast that has been introduced by the shift from traditional view of the university library to the one currently adopted in many institutions. The traditional view of the libraries looks at them as institutions that were more concerned with the aspects of the preservation of library materials. Such perspectives also held that library users had the onus of coming to the library if and when they needed the services (Cavill, 2006). However, modern approaches have shifted from that tradition and librarians are increasingly applying marketing principles and approaches that look upon users as clients with needs that the library should endeavor to meet and satisfy (Saint Clair, 1999). This new emphasis on the library users has been appropriately summed up by an observation that notes that it does not matter how well other areas of the library are working, since in cases where the connection to the customer is not made successfully, the library has not served its purpose (Fourie & Dowell, 2002). The outcome is such that today academic libraries are increasingly defined by their ability to collect, provide information and to offer instructions in information skills or research techniques. In other words recognition is pegged more on those functions that put the user first.

The emergence of ICTs has drastically changed the manner in which libraries offer services to the users. ICTs have undoubtedly introduced many benefits into information services and library operations in general. However, they have also put demands on librarians requiring them not only to acquire new skills in order to serve their users better,

but also to impart these skills to the users so that they can have fully exploit the wide information availed through the electronic resources. There is also the increased challenge presented by a growing population of young users who are digitally competent and have therefore high expectations.

iii) The Government

The laws and policies from the government have the most enduring influence and effect on libraries in general. As far as the laws are concerned, their influence on the libraries as they provide information services occurs because the laws are commands with legal authority that is enforceable and must therefore be obeyed. As a social organization the library is subject to the scope of laws that impact on the wider society in general. This category includes the laws that control and govern the various aspects of the economy in general, issues of employment, environment, education and the other sectors of development within the country. The influence from the policy framework and related strategies refers more to the government's administrative and implementation procedures. Libraries will be affected by the government's policies and strategies that relate to development in general, for example the Vision 2030 policy that touches on issues of economy, politics and social development. As a social service organization dealing with information and knowledge, the library will also be particularly affected by policies that are within the area of education. Consequently the policies that have addressed the issue of the quality and relevance of education, the expansion of education, the issue of computers in learning all have influence on libraries. Examples of such policies are those from the Mackay Report on Education, Universal Primary Education Policy, the

Information Communications Technology Policy, policy on Open and Distance learning, among others.

However, this study was focusing on legal aspects that have an influence on the provision of information services. As a result only those laws that were considered to fall within the specified scope of information were included as part of the study. Among such laws were the Constitution of Kenya, Copyright Law, Defamation Law, as well as some of the international declarations.

2.2.2 The Social Systems Theory

The above discussion of the organization theory was used to bring out the nature of the founding of organizations. In this connection the theory and its principles provided a good base for discussion on the design of the library and its basic internal functions. However, although the theory touched on the relationships between disparate organizations, it did not provide a holistic approach with interdisciplinary elements suitable for the focus of the present study. On this basis the social systems theory offered a better alternative since it proposed an approach that was interdisciplinary thus making it possible to analyze the ensuing combined outcome.

The social systems theory has its genesis in the mid-20th century when a number of scholars, among them, Von Bertalanffy, Boulding, Weiss, and Talbott, variously advanced the thinking that went contrary to the then prevailing view of the world as a chaotic sphere where even life was viewed an accidental product of physical processes. The new thinking introduced a paradigmatic shift from the concept of a chaotic world of

the 19th century, to a new focus that considered more the attributes of an organization that was whole and orderly, but nonetheless, complex. From their subject background as biologists, Von Bertalanffy and Weiss based their work in biology hence the theory's scientific origin.

As a reaction to the then prevailing fragmentation that classified the world in specialized, isolated entities, Von Bertalanffy sought to establish a general tendency towards the integration of various sciences centered on General Theory of Systems. His first presentation on the concept of General Systems Theory took place in 1939 at a seminar in Chicago under the title "unifying principles running vertically through the universe of the individual sciences thus getting nearer the goal of unity in the science". Von Bertalanffy's contention for a trans-disciplinary approach was essentially premised on the basic idea that phenomena in the natural world, and also in the manmade world do not exist in separate neat disciplinary packages. They rather will be found in combinations that are interconnected. According to Weiss, the resulting situations and their complexity require a holistic approach to arrive at possible solutions. (Boulding, 1956), an economist, took up Bertalanffy's concept on the trans-disciplinary approach and confirmed that indeed it was possible to have such integration within the social sciences (Laszlo & Krippner, 1998).

Since the inception of the social systems theory, its principles have been widely applied to social studies because they provide a systems framework that is viewed by researchers as fundamental to the study of interrelated phenomena. Authors (Boulding, 1956; Laszlo & Krippner, 1998) on the characteristics of the social systems theory, suggest that it is

comprehensive and offers potential for description and integration of disparate theories into a single framework. It also provides suggestive leads for empirical studies through its systemic model of analysis. These attributes are well suited to this study in which the researcher was attempting to work with theories from two subject areas namely, libraries within their social organizational setting, and law within its control regulatory capacity.

2.2.2.1 The Social Equilibrium Model

Based on earlier work on the theory of systems, Parsons advanced new principles that are closely linked to present day social investigations and studies. One such principle states that the social system is challenged by two major problems. The first is an external problem whose main indication is the production of scarce resources. The second comes in form of the internal challenge of achieving social order or integration. Further to this, according to Parsons, the equilibrium of a social system depends on the complex exchanges between four main sub-systems or clusters that consist of the economy, polity, goal attainment and latency. Parsons model goes on to explain that the sub-systems in question are in turn interconnected by exchanges, or in-puts and out-puts, that are in form of money, power, influence and commitments (Fig. 2). The following discussion incorporates the above four subsystems into the public university library and highlights the aspects that formed the background upon which information services were provided.

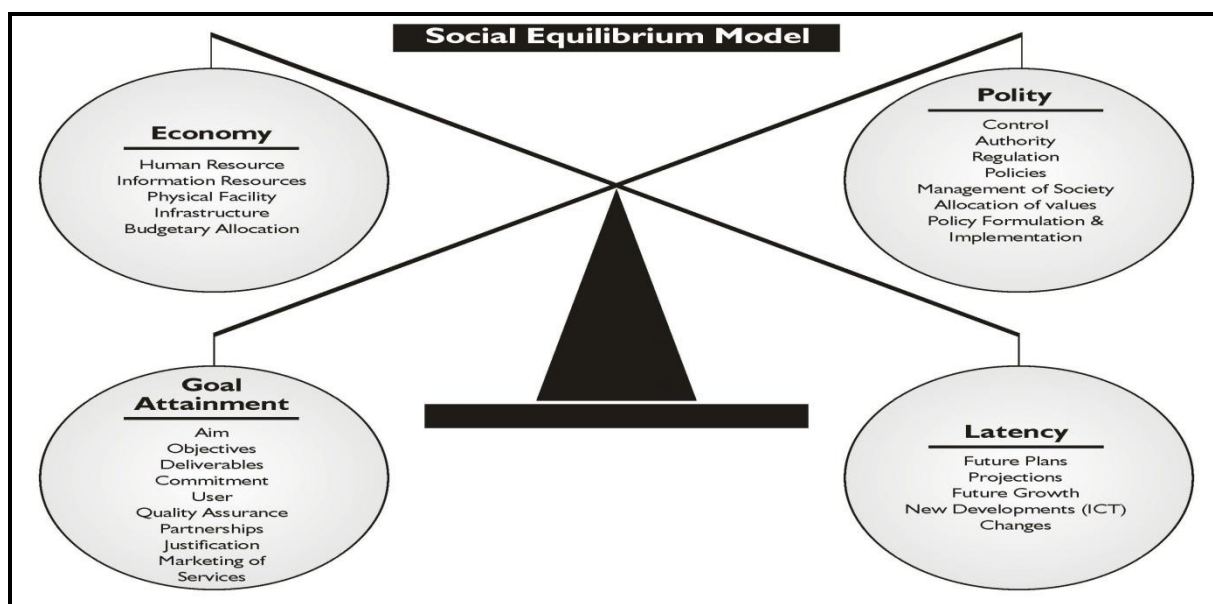


Figure 2.1: Application of the Social Equilibrium Model to the Library Adapted from Tarsons Model

i) The Economy Sub System

A principle of the social systems theory identifies challenge as an aspect of the social system. Within the provision of information services by the library, the reality of this challenge comes in various forms, in particular that which is associated with financial resourcing. The provision of information services demands a heavy allocation of finances. According to the Commission for University Education's (CUE) standards and guidelines, as well as the Acts, Charter and statutes governing these universities, each of the institution must establish a library whose aim will be to serve the university's academic needs of learning, research, study and teaching (Commission for University Education, 2012; University of Nairobi Statutes, 1991). Consequently, each of the universities has a library whose aims and objectives are aligned to those of the parent

university. The value of a university library is demonstrated by its success in meeting its guiding objectives consisting of the provision of information services to users, building of library collections through the acquisition process, organizing of the library materials for access by users, among others. In performing the functions through which the set objectives will be realized, the library incurs costs that are both recurrent and non-recurrent. Library operations with recurrent budgetary requirements are under two main areas. The procurement of current information resources forms the main area of expenditure with the library regularly using in huge capital outlays in an effort to meet the ever changing information needs of scholarship and research. A direct financial challenge for the library is how to establish a viable financial base to provide the required capital,. The library itself cannot raise the required funds. The university, as the financier is external to the library. This introduces implications where the library is expected to justify the expenditure.

ii) The Polity Sub System

This study put both the legislation process and the role of policy under the polity subsystem in the equilibrium model. This was interpreted as the authority and control that ensure the existing of properly regulated operations in order to avoid unnecessary conflicts. In this study, the laws and concepts included under the polity subsystem include the right to information, copyright, censorship, freedom of information among others. Right to information is embraced under both the Universal Declaration on Human Rights (UDHR) under Article 19, the Constitution of Kenya in Article 33. Other aspects of the right to information falling under this subsystem are those that according to the

International Federation of Library Associations (IFLA) identify access to information with intellectual freedom. The study also identified the copyright concept and its two theories on fairness and welfare as falling under the polity subsystem.

iii) The Goal Attainment Sub System

In any institution an organization base for the operations and functions of the institution is formed through a complex process. In the case of university libraries, this process starts with the conceptualization and formulation of the aim, objectives and activities. This is then followed by the implementation where appropriate strategies are applied to ensure that the institution's goals are achieved.

In the library the above process translates into plans and the formulation and implementation of strategic goals, aims and objectives, carrying out and performing various activities and functions through teamwork, employing procedures that apply rules, standards, and formulate policies that guide operations and ensure that the activities are coordinated. Other activities include cooperation formed through networks or consortia for purposes of resource sharing through interlibrary loans and the procurement of e-resources.

iv) The Latency Sub System

In the equilibrium model the latency subsystem suggests an unintended activity that was not part of the original plan. Nevertheless the activity still takes place as a by product of influences of changes and actually ends up meeting a need that was not initially conceptualized. Regardless of the origin of developments included under the latency

subsystem, these activities are credited with change and transformation in the traditional thinking. In the present study the implications of legal aspects on the provision of information services in public university libraries, was not a central focus in the planning of university libraries. Yet these implications present challenges and contain potential benefits with effects on the information services. This is illustrated by the following statement on the photocopying service one university library:

“Libraries provide this service (photocopying) to facilitate users getting their required information copied within the library premises. KFUPM library has provided a good number of photocopiers for this purpose. A nominal charge is made for this service. The extensive use of this service can be gauged from the number of copies (992,091) made during one year” (Chaudhry, 1994).

The above statement describes the photocopying service as offered in many academic libraries and gives the reason and significance behind the heavy photocopying that occurs in such libraries. An aspect that is overlooked in offering this service is that of the copyright issue. The article makes no reference to checking whether the extensive copying would infringe the country’s copyright law, neither does it refer to any information given to the users on the conditions of copying from copyrighted items.

Another area of the library where the latency principle applies is in the implementation and use of Information Communication Technology. Developments and advances in ICTs have presented challenges to libraries as illustrated by an initial apprehension to adopting ICT in their operations. For example, the University of Nairobi Library only

fully embraced the use of computers in the late nineties after more than a decade of protracted efforts, and with heavy reliance on the Institute of Computer Studies. Although the staff from the Institute were well equipped in the area of technical knowledge and skills, they however lacked the bibliographic and user backgrounds that are crucial in all aspects of information work, and librarians had to gradually get involved. At the time of this study, Information and Library Science programmes included aspects of ICT in their training and library staff were in charge of digital issues in the library.

When this study was carried out, electronic resources had been newly introduced into the library, and e-books and e-journals were accessible on-line. This development introduced a vastly new environment that greatly changed the meaning and perception of copyright and its application. Through this change the potential and opportunity availed by ICTs in the access and use of information was a realization of what (IFLA) declared as the widest access to information. Secondly, the procurement of the electronic materials deviated from the regular and established methods of purchase that were familiar to librarians. Instead, electronic materials were procured through contractual agreements and licenses that required some understanding of the processes of contracting and licensing. This study identified the procurement of these information resources as an element of the latency principle where librarians did not directly address the challenge presented. The librarians realized they needed some legal expertise and knowledge including guidelines on the use of and access to electronic materials, as well as their procurement. This suggested some understanding of contractual agreements, licensing and the negotiations involved. The Kenya Library and Information Services Consortium (KLISC) undertook

to deal with the licensing of electronic resources on behalf of members, with assistance from the International Network for the Availability of Scientific Publications (INASP).

2.2.2.2 The Systemic Model and its Application to Library Studies

The systemic model was developed from the systems theory that was discussed in the above section. As earlier presented, a systematic view of the organization offers an intra-disciplinary and integrative perspective that brings together individual disciplines on the basis of a common or shared identity. This argument was exemplified by (Bausch, 2001) who pointed out that new properties and features of a system will be revealed of the dynamic interrelationships among disciplines. The systemic approach was developed as part of the social systems theory, as a way of establishing the existing relationships between disciplines. The approach also provided techniques or studying systems a holistic and comprehensive manner, which differed from approaches focused on an individual part of the system. According to the approach provides a “dynamic and coherent model of a self-organizing world” proposes a creative and comprehensive method of decision-making based on a synthesized analytical methodology.

Studies on the social aspects of systemic thinking view it in form of the following five broad thematic modules, namely, the designing of social systems; the structure of the social world; communication; cognition; and epistemology. The modules form the foundation for a theoretical and systemic synthesis with practical orientations (Fig 2.2). Systemic synthesis provides a framework which this study recognized as having the capacity to comprehensively accommodate the main aspects of a library’s operations. The

following discussion gives an outline of the modules as they apply to the public university library.

i) Designing of Social Systems and the Structure of the Social World

For the library, the two themes of designing social systems and the structure of the social world have roles that are complementary. Designing of the social systems translates into the defining and setting up the conceptual foundation for the library. This occurs through the drawing up of the vision and mission statements, formulating the objectives that will guide and direct library activities and functions. Libraries systems are further defined by activities and functions that use standardized approaches. Examples of such approaches are those related to bibliographic control and its use of established library codes such as the International Standards Bibliographic Description (ISBD) and the Anglo American Cataloging Rules (AACR).

The structure of the social world, on the other hand, focuses on the complementary issues of staff support relationships including team work, group decision making and group performance as well as attaining the goals and objectives of the organization (Lundgren, 1974; Mullins, 2004). Other aspects of the organization include specialization, forming partnerships and linkages with other organizations as well as benchmarking. The following description of the library fits within this model, the alignment of the library's vision, mission and objectives with those of the parent university; establishing an organizational structure for the library; the use of function based work practices; and establishing partnerships, linkages and networks. In Kenya the establishing of partnerships led to the forming of the local consortium, Kenya Library and

Information Services Consortium (KLISC) in 2004. The Consortium's objectives included aspects that formed a part of this study, for example, cooperative acquisition of information resources, the creation of partnerships, and the enhancement of the provision of learning materials. However, despite the significant contribution of the foundational activities of setting up of the library and its systems as discussed above, it has become clear that for a library to succeed, greater attention must be paid to the customer (Hernon & Matthews, 2013) This means that all the factors involved in the designing of the library systems and structures will ultimately be meaningful, when they are focused on the delivery of information to the users.

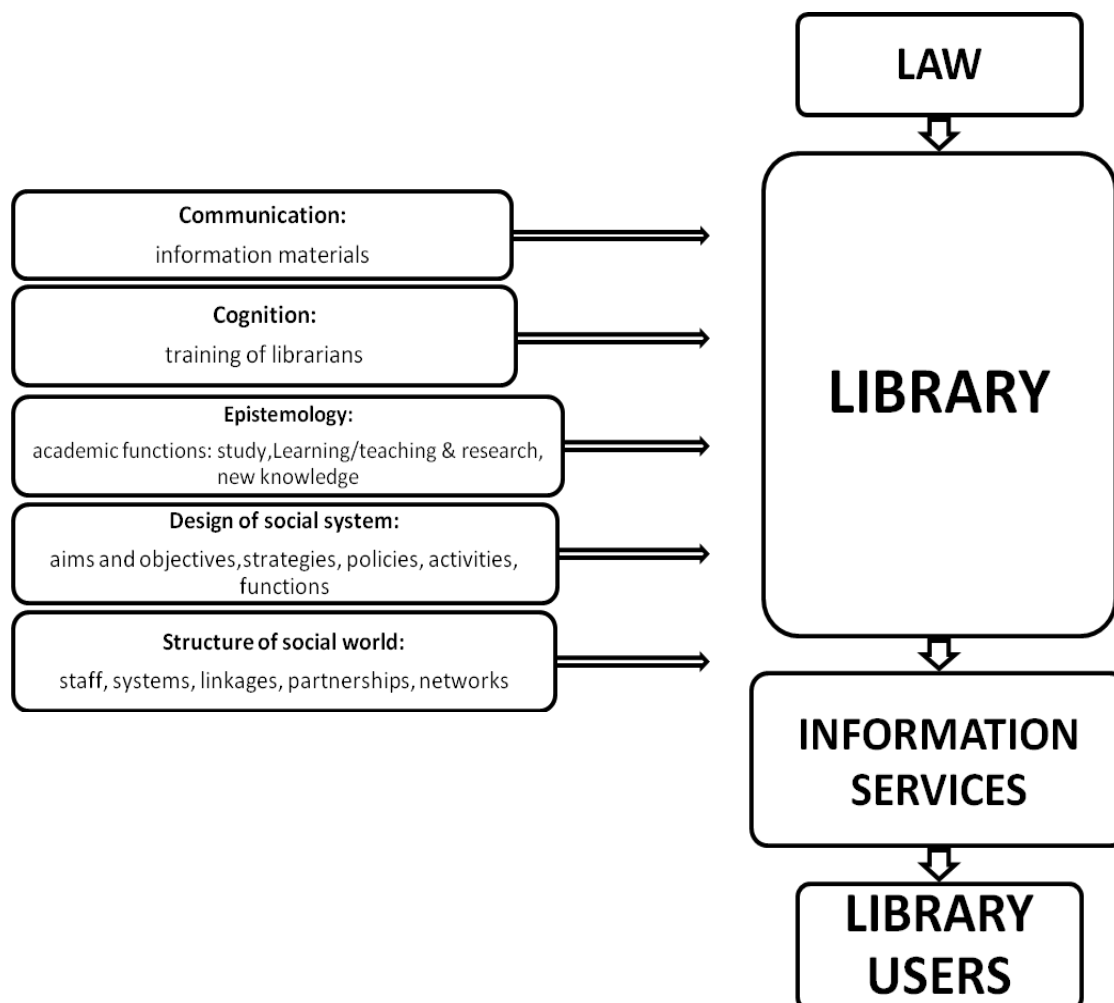


Figure 2.2: A Systemic Study Model Within the Library Environment

ii) Epistemology and Communication

From a library perspective, the two themes of epistemology and communication are closely related. Within the term epistemology are incorporated the elements of knowledge, the process of creating new knowledge, study, learning, teaching and research. These elements form the base for the universities' core activities of research and learning. The university library's provision of information services is specifically meant

to address the needs of information for learning and research. It is therefore important for the library to fully comprehend the analytical nature and constitution of these elements. Another view of the theoretical analysis of the social aspects of the systemic approach, argues that the process of epistemology assists in providing a general understanding of how the social world moves into an uncertain future. According to this researcher, this translates to the contribution of new information and knowledge, and their role in social and scientific development.

The term communication is defined as the transmission and receiving of information using verbal and non-verbal methods. It includes thoughts, ideas, messages, or information, whether by speech, signals, symbols, writing, body language, or behavior. Communication takes place from one individual to another without changing its original meaning as sent by the sender or originator and results in exchange of understanding in a given context (Anderson, 1996). Going by this definition, communication takes place in the library through the dissemination of information from various types of media such as printed books and journals, multimedia including electronic records, video and audiovisual materials. The manner in which these materials are acquired by libraries, and accessed by users form an important aspect of the librarians' work of providing information to the users.

iii) Cognition

A definition of the term cognition says that it is an act of knowing or knowledge. This research applied this to the training of librarians which gives them capacity to function in the complex area of information. At the time when this study was carried out, the training

of librarians was faced with challenges that pointed to the need for curricular versatile enough to prepare students and give them the capacity to provide information services that were in line with the developments in the subject, and also in the wider sector of social development, (Feather & Sturges, 2003). The study established that most of the Library and Information Science (LIS) schools in Kenya included aspects of the legal aspects of information as part of their curriculum. However, there were still some gaps as for example in the largely important area of procurement through licensed agreements.

2.2.3 Legal Theoretical Framework

There are many theories of law that depict the origin and purpose of law in society. However, this research looked at three main theories, namely the natural law theory, the positivist law theory and the sociological law theory. This choice was due to the fact that the three theories are viewed giving anchorage to the development of law and its application in general. Secondly, this study was looking at the legal aspects and their implications on the provision information services. For this reason, the researcher limited the scope of legal theories to the laws that either give support or put limits to information and its access. The three theories are discussed in the following sections. The theories behind the copyright concept, namely, the fairness and welfare theories fall into their own category and they are discussed at the end of the section.

2.2.3.1 The Natural Law Theory

There has been many different opinions regarding what really constitutes law. At the same time, attempts to define law and its role in society have a long history that goes

back to the ancient times of the Greek and Roman civilizations. Greeks were the first to seriously examine the role of law in society. They raised questions that addressed issues such as, who made law? What purpose should laws serve in society? Their approach led to the establishing of a society that was structured along class relations that differentiated amongst the categories of masters and slaves; nobles and artisans; and kings and subjects. Philosophers of the time, among whom were Plato and Aristotle, believed that the perception of high principles, including justice and insight, was the preserve of a selected few. Natural law theory was premised upon this line of thinking that also held that law was used to maintain the status quo. Accordingly, the Greeks held the view that men did not have an option to obeying the law since laws were prescribed by God and therefore had a divine origin.

The Roman's view of natural law was somewhat similar saying that it is an indication of the ideal of the social status quo. Their theorists advanced the views of their predecessors, the Greeks, and further believed that new rules were to be framed but in accordance with the natural law. The Romans, therefore, restricted the empire's laws on the basis of natural law which they saw as having the capacity to act as the base for all the laws in terms of quality, scope and coverage. Current legal systems borrow from the foundation set up by the natural law theory. For example, the United Nations Universal Declaration on Human Rights, and the Bill of Rights include as part of many national constitutions, including the Kenyan one, made use of natural law to develop the rights and freedoms of the individual. Earlier on, political thinkers including John Locke interpreted to natural law as something that meant that man has got certain natural rights to life, liberty,

equality and property. He also made the observation that the power of the legislature was never supposed to extend further than the attainment of the common good (Lord Lloyd, 1979). The right to information as contained in the UDHR Article 19, and the Constitution of Kenya Article 33 falls under the natural law theory.

2.2.3.2 The Positivist Theory

The natural theory of law summarized above played an important role in later developments through which other theories emerged. The positivist theory, for example, emerged towards the end of the nineteenth century during which time there was a general dissatisfaction with the unverifiable hypothesis of natural law. At that time advances in scientific thought and the development of the social science methodology urged and widely acknowledged the need for a more scientific and analytical approach. Earlier on in the sixteenth century, Machiavelli had introduced the concept of a strong and powerful monarchy which guaranteed safety, stability and contentment. In return for these guarantees, the subjects were to give obedience to the sovereign. This was the beginning of what was to eventually evolve to the sovereign as the source of commands which were to be enforceable and obeyed by the subjects. Positivist law emerged as the commands created by the ruler or his representative. Among the proponents of positivist law was John Austin who termed law as “simply and strictly so called”. He further advocated the view that conversely to the position supported by the natural law theory, law was a value free system that is neither divine nor natural but sovereign. In other words, John Austin saw law as consisting of “commands of a sovereign addressed to political inferiors” (Encyclopaedia Britannica, 1984). Laws that are passed by Parliament for example the

Official Secrets Act (CAP 187) and the prohibited publications provisions in the Penal Code (CAP 63) are within the category that falls under the positivist theory.

2.2.3.3 The Sociological Law Theory

The positivist theory was followed by a sociological movement in law which rejected positivism and termed it a theory of conceptions that did not take account of the different human interests involved in legal rules. The socialists' views looked at law as the sum of the condition of social life in the widest sense of the term. Thinkers along these lines argued that though the state was indispensable, it should not use its power to enhance its existence, but to promote social solidarity, harmony and understanding in society. This particular theory of law has been credited to the efforts of Roscoe Pound. Pound likened the practice of law to the science of social engineering which could be achieved by the ordering of human relations through the actions of a politically organized society. Pound's contribution to the discourse on law described law as a functionality in society where it played the role of creating satisfaction through reconciliation, harmony, adjusting conflicting claims through compromises in order to achieve the greatest total interest (Pound, 1924). An example of a relevant law to this study that falls under this category is the copyright law which attempts to balance the interest of the authors with those of the wider society.

2.2.3.4 Copyright Theory

Copyright law played an important role in this study. The researcher was therefore guided by the theories behind the copyright concept. There are about four sub-theories

that are contained within the general copyright theory. However, this study considered two of these as having more relevance to this study. The two theories, the fairness theory and the welfare theory are discussed in the following section.

i) The Fairness Theory

The above theory is founded on a principle based on natural law. This principle argues that an individual's hard work should be rewarded. It is also supported by Locke's theory on the ownership of land. However, there are views that hold that the applying values are even more applicable to intellectual property. This view is explained by the following statement:

“The raw material used to generate a novel, namely paper and a few pencils, has little values: by far the most important input is the novelist's intellectual labour. The novelist's moral right to control the novel is thus even stronger than the moral right of the farmer to the land he has cultivated.” (Berkman Center for Internet and Society & eIFL, 2012).

The fairness principle is also grounded on the equity theory. Equity theory's approach argues that those contributing in a joint venture have individual entitlement to the benefits accruing. The copyright theory of fairness will be used by legislators and courts to justify the securing of exclusive rights of authors and inventors.

ii) The Welfare Theory

The welfare theory is also based on a natural law principle that states that the law should work for the good of the whole of humanity. This particular principle views the products of Intellectual Property (I.P.) as common public goods that should be accessible to all. This research identified this principle as the one behind the view that copyright must not be so restrictive as to deny users the right to information which is a fundamental human right. This theory, for example, supports the position advocated by the International Federation of Library Associations (IFLA), the United Nations and other organizations that argue for the wide access to information.

2.3 Literature Review

The following literature review adopts a thematic approach in order to attain consistency and continuity of the subjects covered by this research.

2.3.1 Introduction

An organization is defined as system with a commitment to a common purpose and approach, performance goals and a blending of collective skills (Dorcherty, 2009). Library management, on the other hand, is described as being made up “of all those administrative and supervisory activities in which goals and policies are formulated for the organization or its subdivisions, and organization plans made” (Edwards, 1975). The two definitions describe the organizational and operational base upon which the provision of information services is founded. As already stated, this organizational set-up attracts

the law to the library and its operations, one of which is the provision of information services.

2.3.2 Fundamental Organization Elements of the University Library

The theoretical basis for the library's organization setting was exhaustively discussed in a previous section on theoretical framework. The discussion covered aspects of organizational theory and other related theories like the social systems theory and the systemic approach. The following discussion will review the literature on relevant issues of the university library including the organizational structure, planning, policy formulation, and operations. The aim is to establish an understanding of the conceptual context within which public university libraries provide information services.

2.3.2.1 Library Vision, Mission and Objectives

Various authors define the vision, mission and objectives of an organization differently. However, they generally agree on the fact that it forms an overarching, comprehensive concept or principle intended to guide the organization in establishing goals and developing strategies to achieve those goals. (Stueart & Moran, 2007) advance this view of the vision and mission whose role they interpret as directing and driving the planning process by applying inspiration and foresight in a manner that projects the institution into a futuristic context. In his definition, (Badu, 2009) introduces a broader conceptualization where he includes the need for the organization to have an awareness of the surrounding environment including the external forces and their likely effect on the organization, as well as clear knowledge of its offerings to its various stakeholders. For academic libraries in Kenya, the concept of vision and mission borrows from that of the parent university to

which they must be aligned (Commission for University Education, 2012). Howard enumerates six factors that have a role in determining the nature of library's objectives, namely: financial support; government and legal conditions; ideals and philosophy of the librarian; the parent organization; other institutions and the relationship they have with the library; and the nature of the clientele.

2.3.2.2 Library Policies

Library management and operations are based on formulated policies that are used to guide the various functions. Given this important role of policies in the library, a number of authors have written with different views on the subject. The International Federation of Library Associations (IFLA, 2001) pointed out the importance of an acquisition policy pointing out that beyond being a tool for selection of materials, it also assists with budgeting, serves as communication channel within the library and between the library and outside constituents, supports cooperative collection development, prevents censorship, and assists in overall collection management activities. Jones (1999) posited that the starting point for these policies should be information access, library cooperation among others. He also held the opinion that once in place, as well as guiding operation in the library, the policies would have the added benefit of helping librarians to further enhance their professional ideals and expertise. Horava (2005) advanced further the idea of the role of policies and presented a view that argued that access policies should reflect the basic objective of providing widest possible access and demonstrate an understanding of what is not permitted. According to Horava, policy formulation may not be an easy undertaking, but it affords librarians the opportunity to gain the benefits of acquired new

knowledge on legal aspects, and also contributes to the developing of the partnership between library the faculty, students and administration.

The emerging of electronic resources into the library, has brought a divergence of views on whether libraries should have the same policies for both print and digital resources. On one hand IFLA advises that because of the complex management of e-resources, it would be advisable to develop a supplementary policy for them. According to IFLA the important thing was to ensure that the policy covered functionality and reliability, vendor support, supply, licensing, currency, accuracy and completeness. Lee & Boyle (2004), however, were not keen on the separate policies approach preferring that there should instead be one comprehensive policy catering for all the formats acquired by the library. The advanced the argument that there was one budget to support the acquisition of the materials, and the same expertise consisting of subject specialists, users, and technical expert, consequently the way forward would be to have one digital policy as part of the overall strategy for the acquisition department.

2.3.3 Licenses and the Acquisition of Information Materials

Information materials are important due to their crucial contribution to the provision of information services. Libraries use of a variety of media including print, audio, visual and computer based materials to provide information to their clients. The acquisition of some of these materials, in particular both the electronic journals and books, introduced the legal issues of copyright and contractual licensing into the library.

The development of licenses and their use in the library has attracted attention from various authors. Due to the challenges and complexities that librarians have had to deal with working with licenses, several authors have taken it upon themselves to both define and state the place of licenses in the library (Albitz, 2008; Nixon & MSLS, 2003; Upshall, 2009). Albitz (2008) gives a simple definition of a license as the permission granted by competent authority to exercise a certain privilege that, without such authorization, would constitute an illegal act. To give a better grasp of the e-resources and their emergence into the library, Lee and Boyle (2004), took an approach that outlined the factors that led to the use of e-resources including, remote full-time access, collaborative team based learning, rise of web-based learning technologies, and the increasing collaborative nature of research. Further elucidation was to come from Cox who indicated the three main issues that a license should address, namely: the identity of the parties to the agreement and their authority to make agreements on behalf of the organization that they represent, clear definition of the terms used in the agreement, the nature of the copyrighted work being licensed should be clear indicating whether it is an abstract, index or full article (Cox, 2000).

Other than the above summary on writing on the general aspects of a license, there has been debate on the usefulness of the license. Those writing from the viewpoint of copyright owners among them, publishers and authors, tend to want to justify the existence and the use of the licenses. In this connection Upshall (2009) noted that licenses were necessary to offer a harmonious meeting point of interests between copyright owners and librarians in order to enable all involved to benefit, and hence

increase the chances of them working together. However authors with interest of promoting open access to information by libraries had a different view. Nixon (2003) portrayed a perspective that indicated that the license approach was not particularly favorable to the library as that their charges were made on the basis of the number of students in an institution regardless of whether all of the population would use the resource, while they also prohibited libraries from providing offsite access. What Nixon described as “major problems with these licensing agreements” was validated by an author who claimed that the framing of the licenses was targeted on aspects at the heart of the library service including leading, photocopying, interlibrary loans as well as the extended service to open distance learners who were part of the university community though not located in the immediate premises. The particular author objected to any restrictions on the interlibrary loan as a conflict to the library’s beliefs in interlibrary cooperation a process that widens collections by sharing with others (Croft, 2001).

Model licenses which developed as a refinement of the licensing process, are mainly used by those libraries and small organizations that may not be able to hire a lawyer to draft contractual agreements for them. (Jones, 2009) has documented the effort by John Cox in developing standard model licenses that could be used in various contexts. Jones assessed the model licenses and recorded the following achievements, defining of legal and library terms, introducing flexibility into the process, defining the client site in a manner that ensured access to walk-in users, and defining a library’s community’s interest so as to support the widest possible access.

The Creative Commons licenses are a type of license developed to support publishing on the web. Since their inception in 2001, Creative Commons are in use in 52 countries (Kenya is not among these) and aim at providing authors with a convenient way to authorize specific uses of their work as they retain control over other uses. One author's assessment of the Creative Commons positively describes them as a project that promotes information flow as opposed to other initiatives which generate excessive censorship and unnecessary control (Araya & Vidotti, 2011). This view is supported by Casey who also outlines the general conditions that govern the use of Creative Commons. According to Casey the conditions which are much more flexible and simpler than conditions in copyright laws, include a requirement to make attribution to the author, that is, to give credit to the copyright holder, not using the licensed work for commercial purposes and avoiding excessive duplication by ensuring that the work was non-derivative, (Casey, 2012).

On the negative side, Casey notes that despite their usefulness, Creative Commons have been criticized of weakening the copyright law. According to him, this is wrong since the licenses are a part of the copyright law. The author adds that the use of the Creative Commons should be accompanied by some basic legal awareness raising as well as institutional policy reviews. Wasike agrees with the views that support use of the Creative Commons and makes the recommendations that librarians should consider establishing Creative Commons as one way of increasing use of information materials (Wasike, 2014). This would follow a practice in the Massachusetts Institute of

Technology where the Common Creative license is used to release material such as lecture notes and details of student assignments.

While the Creative Commons discussed above are applied as a means of extending the flow of information, Technological Protective Measures (TPM) are used for the opposite reason, that is, to limit access to information. Writing on e-journals access and management Jones (1999) refers to ways used by publishers to introduced new strategies of protecting copyright by putting more controls in the use of copyrighted materials. The Technological Protection Measures (TPM) are one such approach which involves the use of software and hardware to limit the use of digital material. A commonly applied term for such methods is the Digital Rights Management (DRM). According to the literature, by applying these restrictive technological measures, a publisher is able to stop the user from printing, copying or pasting selections from the work in question. It has been observed that these technological developments can have an negative impact of putting further limits to the access to information even where copyright exemptions had allowed access. Both Croft (2001) and Cox (2000) indicate that it is good for librarians to be aware of the extent to which the DRM and other related technologies can be used. In this regard it has been observed that publishers have been able to enforce access policies that also prevent lawful fair use of copyrighted materials including works on public domain open-license e-books.

Upshall's book on content licensing has a detailed account of the use of DRM systems. However the author is from a background from where he assists publishers and information owners with content licensing among other things. His contribution will

therefore have a pro-publishers orientation. He puts forth the argument that content owners are understandably wary of unauthorized copying of content, and several methods exist either to prevent copying or to enable copying to be monitored for rights purposes (Upshall, 2009). Findings from the study agreed with the fairness principle with a respondent reporting that “it is only fair that an author’s interest be considered, their effort acknowledged and rewarded. A library should not make copies of titles and put them up on the shelves. In the library, we do not make copies of whole books and lend them out.”

2.3.4 Information Services

The introduction of electronic resources into the library has raised issues related to the comparative use of both the print and digital resources and their respective impact on information services. There have been opinions to the effect that the remote full access enabled by digital resources would lead to a reduction of circulation services as currently offered by the library. Authors reacted to this supposition as for example in the U.S.A. it was noted that although there had been a rise in the use of e-resources, this did not necessarily point to a decline in the use of print materials. The authors explained that the increased use of e-resources was not happening at the expense of printed library collections, but it did so in parallel with an increase in the use of printed collections. They argued that where library circulation figures were in decline, there was some evidence of correlation with the amount of digitization of print originals taking place in those libraries (Mirza & Mahmood, 2012). This view was upheld by a writer from the U.K. who noted that reading habits were consistent in nature across print and non-print media, and that

the switch from print to e-resources had been directly linked to issues of copyright and the flexibility with which they are applied (Joint, 2008).

The photocopying service which has been the subject of attention from copyright owners and rights owner's organizations was described as the first technological innovation in libraries that revolutionized the way libraries offered access to information. (Bernfeld, 2006). This statement was an affirmation that photocopying was in great demand. This was confirmed by a research paper which confirmed that the libraries user services in the King Fahd University provided a good number of photocopying machines where in one year they made just under one million copies (Chaudhry, 1994). In Kenya libraries have resorted to photocopying as a response to challenges presented by rising student enrolments against diminishing funding that has serious strain on the scarce information resources available in the libraries leading to loss and mutilation of materials (Otiye, 2012a). A similar situation exists in Nigeria where an author observed that the unavailability of relevant books in the chosen disciplines for use by students, and the consistent decline in the votes for books and journals, as well as the inability of the students to purchase books were some of the factors that led to the popularity of photocopying services (Okiy, 2005).

Research done on copyright in universities in Kenya has presented views that signal some uncertainty in the photocopying services. In his research Alake pointed out that libraries had been harassed by KOPIKEN, the reprographic services organization that collected royalties on behalf of authors when their materials are photocopied. He further stated that KOPIKEN employees had been visiting libraries and disguising themselves as library

users or researchers only to adversely make a report about the library in relation to copyright infringement (Olaka, 2010). Olaka's claims were validated later by Wasike (2014) who indicated that in connection to KOPIKEN librarians seemed to unanimously agree that they did not understand the magnitude of the current diversion of user funds designated for education which are paid to copyright collecting societies. A paper on the challenges posed by reproduction rights organizations had also observed that these organizations avoided educating their clients about copyright and instead issuing threats on the consequences of not paying (Otike, 2012a).

A number of authors have noted the emergence of the teaching of information skills as an area representing a new interest in libraries in Kenya (Kingori, 2013; Rosenberg, 2005). According to Rosenberg although the Information Literacy concept made its appearance in the mid-1970s as an entity different from library orientation and bibliographic instruction, it has however made its mark in many academic libraries in the world including those in Kenya (Rosenberg, 2005). A survey of user information literacy in the SCANUL-ECS region confirmed this and further revealed that the introduction of IL programmes in the libraries in the region was triggered by, among others, the application of computers, the introduction of library strategic plans, the expansion of student enrolment, as well as research done on the use of library resources (Kiondo & Msuya, 2005). Kingori gives further insights on I.L. indicating that information explosion has been one of the factors that inhibit the effective access to information as contemplated by the laws and declarations that support information as a human right, the other factor being ignorance of existing information resources as well as lacking in the capacity and

skills to access the information. It is as a response to these challenges that academic libraries introduced and incorporated into the curriculum a component through which they teach information skills to the students (Kingori, 2013).

At the time that libraries were introducing information literacy in public universities in Kenya, legal issues had not been recognized as posing challenges to the provision of information services. They were not therefore among the factors that prompted the teaching of information skills. However, in the current environment where certain issues with legal implications have emerged and are increasing, the opportunity is availed to bring to the attention of library users the benefits introduced by law and also the limitations that might apply. Recent studies on copyright in particular have pointed out that through Information Literacy librarians had been able to impart the knowledge on copyright use to library users. (Wasike, 2014; Olaka 2010). In his detailed study on information literacy in university libraries, Kingori enumerates the benefits accruing from the implementation of information literacy programmes. These include among others, an opportunity for librarians to demonstrate their skills and expertise in the management of information, and also to further integrate the library and its information services into the academic programmes. The author however notes that implementing I.L. has posed challenges. He cites one such challenge where students in some of the programmes are reluctant to attend I.L. classes not being fully convinced of the real benefits of the course.

This is in contrast with the experience in a university in the U.S.A. where writers on the collaborative approach to the I.L., states that the effort has realized reasonable success. They describe, information literacy programme in University of New York as a general

education requirement for all students, in which faculty and librarians work together on program planning, course development, course approval, and teaching (Mackey & Jacobson, 2005).

2.3.5 Information as a Human Right

2.3.5.1 Universal Declaration on Human Rights (UDHR)

Article 19 of the Universal Declaration on Human Rights (UDHR) on the right to information, must be understood in the light of the general movement where the United Nations set out to capture and giving meaning to the elusive concept of human dignity. Such an understanding is critical to the proper appreciation of the value attached to the 30 Articles part of which provides for information as a right. Some writers have criticized the Declaration on the basis that it was not legally binding and as such it was not enforceable. Another critic of the Declaration felt that it emphasized the views of the then developed world at the expense of the other countries (Darch & Underwood, 2010; Samek, 2007). These views were contrary to those from Robinson who argued that the Declaration was not in the first place intended to be a binding to countries. Rather, she went on to state, the more important challenge at the time was to capture already existing concepts on the meaning of human dignity and the related implications. According to her, these would then serve the equally important task of guiding individual states in drafting the necessary laws. Other elements on the Declaration as presented by Robinson indicated that the U.N. was concerned with defining the fundamental rights at the root of human nature, identifying specific areas, and to enumerate and establish standards to be observed (Robinson, 1998). It has been noted that the Declaration's aim of guiding states

in drafting their laws has largely been achieved. The Kenya the Constitution borrows heavily from the UDHR where the Bill of rights under Chapter four illustrates this influence. Along the same line, Article 33 of the Kenya Constitution on the right to information uses similar words to those used in the UDHR Article 19 (Constitution of Kenya, 2010).

In an exercise that set out to expound the right to information, (Branscomb, 1985) generated a list of information rights that included the right: to know, to collect information, to acquire information, to withhold information about ourselves, co control the release of information, to receive compensation for information, to protect information, to destroy or expunge information, to correct or alter information, and to publish or disseminate information. An analysis of the above rights was done by (Cornelius, 2010) who suggested that the list could be used as a working base for an information policy.

Writing on the topic of librarianship and Human Rights, (Samek, 2007) relates the Universal Declaration on Human Rights to what he refers to as core library values, information ethics and global information justice. According to the author his aim is to raise awareness about existing and proposed elements of the Declaration, and also to encourage librarians to participate in information discourse at both national and international levels. As an alternative to the UDHR which he views as being alien to developing countries Samek suggested a Coalition for Library Human Rights. Among the aspects included were the inclusiveness of information, interdisciplinary research, and preservation. The aspects the author was highlighting had earlier been the focus of

another U.N. initiative that took place in form of two conferences in 2003 and 2005. The Declaration by the World Summit on Information Society (WSIS) recommended the establishment of a people-centred, inclusive and development-oriented Information Society, where everyone could create, access, utilize and share information and knowledge. (World Summit on Information Society, 2003/2005). An author, who wrote on the WSIS and the library, gave more pertinent detail of the forum. He pointed out that although there were many stakeholders participating at the WSIS, libraries were recognized as cutting out a place for themselves within the development process. According to that writer, this happened through the libraries' contribution to the operation of the inclusive information society, facilitation of intellectual freedom by providing access to information, and building capacity by promoting information literacy and providing support and training for effective use of information resources (Berry, 2006).

The International Federation for Library associations (IFLA) has given support and promoted UDHR's right to information by basically interpreting the right within the context of libraries and information service provision. IFLA's activity on freedom of information has adopted two main approaches, namely issuing of declarations, and appointing committees. An example of the declaration approach was the Glasgow Declaration of 2002 whose main focus was a proclamation of human beings to access and express information without hindrance (IFLA, 2002). An author, who had worked closely with IFLA, wrote an expose on Article 19 of the UDHR. In his article (Sturges, 2009) argued the view that the Declaration was not just a specification of rights. Rather,

according to the author, librarians needed to acknowledge the fact that UDHR put upon them obligations that they were required to fulfil. He went on to identify the main ones of these obligations as being represented by the terms “to seek”, “to receive” and “to impart” which were from the right to information statement.

In the second approach IFLA set up the Free Access to Information and the freedom of Expression (FAIFE) and charged it with providing clarification, and raise awareness on access to information and intellectual freedom as constituents of the right to information, and also to point out the correlation between the library and intellectual freedom (Sturges, 2005). Further views on the commitment expected of librarians by the right to information, are implied by (Ristarp & Frederiksen, 2000) who point out that the IFLA/FAIFE initiative on intellectual freedom is an indication of the core responsibility held by librarians. According to the two authors, the initiative represents the correlation between the concept of libraries, the ethics of the library profession and the fundamental principles of democracy and human rights.

The right to information as it relates to other human rights has been an area of concern especially as the rights have been known to sometimes conflict with each other. In this connection (Fourie & Dowell, 2002) refer to the challenge presented by the right to know, right to privacy, right to property and right to protect children. In such a case, the authors argue that the librarian should look at such cases from a perspective that considers whether or not there is impediment to the access to information. Referring to the connection between information and democracy, they point out what they consider to be the librarian’s role in this regard. They state that the mission of the library is to create

and maintain an informed clientele. Furthermore, according to them, access to information and the right to know are both basic premises upon which democracy and library work are founded.

2.3.5.2 Freedom of Information

Freedom of information (FOI) has been defined by various authors (Darch & Underwood, 2010; Kuunifaa, 2012; Mendel, 2008; Millet, 2008). Cornelius refers to FOI as the improving of public access to government information, and emphasizes the need to be clear when using terms to avoid confusing freedom of information and freedom of speech and expression. A more analytical meaning of FOI defines it as a concept aimed at reconfiguring the relationship between state and citizen by specifying how and under what terms politicized knowledge is shared. Authors of this definition go further to argue that this reconfiguration of the relationship between knowledge and power explains the stubborn resistance of governments to the concept (Darch & Underwood, 2010). This is an aspect that has been validated by Mutula (2006) who observed that FOI has not caught up in the developing countries of Africa and elsewhere. The International Commission of Jurists Kenya Section (ICJ/KS) gave a definition that incorporated the following three elements: the right to public to access information from public bodies and government on request; the obligation of the public bodies to publish, even in the absence of a request, key information, for example about how they operate, their policies, opportunities for public participation in their work and the procedures for making a request for information; and positive obligations on the state to ensure citizens have access to

information about human rights violations (International Commission of Jurists & Kenya Section, 2006).

Freedom of Information is based on principles that, as the above definitions point out, basically expound the right of information especially as it relates to the government and the information held by public institutions. These principles have been widely covered in literature as including areas relating to maximum disclosure, obligation to publish, limited scope of exceptions, establishing of open and accessible systems, and providing simple, easy and inexpensive access. It has been pointed out that these particular principles go beyond the formulation of standards and suggest actual strategies that would translate into organizational procedures and processes geared towards access to information. Freedom of Information also recommends the establishment of request driven systems, the proactive publication and dissemination of information (Millet, 2008).

The benefits realized by countries that have legislated and implemented freedom of information laws have been widely captured with Mutula, Millet, and Mendel among others identifying such benefits as going further than the general values that are attached to information. Along this line advocates of FOI and its implementation argue that over and above the general benefits of access to information, FOI more specifically leads to the public sector becoming accountable and transparent while at the same time providing a foundation for democratic governance, poverty eradication, elimination of corruption, ensuring efficient use of public resources while facilitating the participatory development through the involvement of an informed citizenry.

However, two authors present a dissenting view arguing that there has not been enough evidence to prove that availability of information is an essential condition to the effective functioning of a democratic system (Darch & Underwood 2010). A research article gave the hurdles that impeded the effective implementation of FOI law in Jamaica. In the article, Kuunifaa (2012) argued that the intended aims of that country's FOI law were not achievable due to what turned out to an operation handicapped by bureaucracy, with access having become too expensive, retrieval procedures that were cumbersome coupled by delays that ended up making the process inefficient and too expensive.

Another author listed the concerns posed by those involved with the task of formulating and implementing the FOI concept. The following questions were posed; What would be the extent of obligation to publish and disseminate information?; How would the obligation to publish grow in line with technological developments?; What procedures of requesting can be put in place so as address the issue of timely and cost effective access?; What mechanisms would be employed to inform the public about this right? (Mendel, 2008).

The above concerns were partly address by Millet (2008) looked at the challenges facing governments wishing to incorporate information within the development process, and recommended the following approaches:

- i) Providing adequate training that will give civil servants the skills needed for responding to information requests;

- ii) Developing promotional measures including communicating to citizens on how they may use right to information laws;
- iii) Making information consumer friendly;
- iv) Establishing the information need of the poor in order to ensure that the right to information has a more direct impact on their lives;
- v) Putting emphasis on the collection, organization and provision of information;
- vi) Addressing the lack of management of information and the related problems of collection building, preservation and the use of the information.

Despite the cautious approach implied in some of the above the statements, there is general consensus among the authors that FOI as a concept has created sufficient enthusiasm around the world to be legislated in around 80 jurisdictions.

2.3.6 Copyright and its Effect on Library Services

The meaning and origin of 'copyright' has elicited wide interest and coverage by literature. A definition by Crews refers to copyright as a branch of intellectual property that results from an activity covering literary, audio-visual, computer programs, musical compositions, artistic and related works (Burrell & Coleman, 2009; Crews, 2001). Copyright originated from Europe along with other developments during the industrial revolution. With the increased production of reading materials and other creative works, governments were petitioned to protect the creators of these works. Later copyright was rationalized as a way of promoting the progress of science and useful arts, by securing to

authors and inventors the exclusive right to their respective writings and discoveries (Ploman & Hamilton, 1980). The argument was that by rewarding the creators of creative works, copyright encouraged further creativity by allowing the owners of the works in question to profit from their work. This act, it was further stated, ended up promoting science and encouraging the creating of new knowledge and learning. On the other hand there was an appreciation of the fact that science needed ready access to public scientific information and any obstacle to such access was to be removed. It was further claimed that the production of extra copies, by or on behalf of scientists was necessary for scientific practice (Mackenzie, 2003). This led to a situation within which required a balance between these two claims as representing on the one hand the intellectual property rights of authors, and on the other, the needs of users. IFLA recognizes the importance of the interests represented by both arguments and plays an active role with other organizations such as WIPO and UNESCO in the drafting of appropriate treaties and legislative models which recognize the dichotomy between the rights of authors and the needs of users (IFLA, 2014). An author acknowledged the role of copyright in the ability of people to have access to information. The same author went on to claim that copyright attempts to balance the author's interests of the author with those of the society by granting exclusive rights to the copyright owner, but limited those rights with a series of exceptions that serve as opportunities for the public to use copyright protected works without committing copyright infringement (Crews, 2001). This view is however contradicted by a writer who states that despite such claims, copyright law ultimately ends up restricting rather than enabling access to information (Canelloppoulou- Bottis, 2004).

Kenya Copyright Law is a part of the above development in that it has its roots in the colonial experience, and it also incorporates aspects of the international legal framework consisting of the Berne Convention of 1886 and the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) of 1994 (Chege, 1978; Sihanya, 2009).

Nixon (2003) introduces an interesting dimension that focuses on the complexity of the exceptions in copyright law. According to her the ambiguity in these exceptions is illustrated by the fact that in the U.S.A., while drafting the copyright law, the American Congress declined to define the term 'fair use' or to give specific instances or what would qualify. Instead, she says, they provided broad categories of situations that would be likely to fall under fair use. Albitz (2008) is of a similar opinion regarding the use of limitations by librarians. Decrying what she refers to as the least understood limitation to a copyright holder's rights, Albitz delineates the following as the factors to consider in deciding whether a case falls under the fair use category:

- i) The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- ii) The nature of the copyrighted work;
- iii) The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- iv) The effect of the use upon the potential market for or value of the copyrighted work. (Albitz, 2008).

In Kenya, a study on copyright exceptions and the use of educational materials in universities, confirmed findings from elsewhere that pointed out that balancing the educational need for materials that may be protected, with the right of authors remained problematic. The author further observed that it was not clear whether or not the copying done in these institutions was within the fair dealing exception (Ayamunda, 2015). Elsewhere, in England an author referred to these challenges and their implications for libraries (Gadd & Gaston, 2001). The author went on to suggest that a central higher education body be established to act as an authority on the interpretation of copyright law and licenses as they pertain to higher education. According to this author, such a body would provide advice and indemnify the institutions taking the advice on common areas of confusion in copyright law. (Ferullo & Ryan, 2011) wrote on implications resulting from the complications imposed by copyright law on the library leading to the establishment of a university copyright office. The author cited the reasons behind this move as a response to copyright challenges. These required an interpretation of existing copyright guidelines, including fair use, and other issues involving digital collections, institutional repositories, consortia agreements, as well as authors' rights that required copyright awareness and support.

The challenges faced by librarians on copyright as discussed above are further compounded by what has been reported as a lack of awareness of copyright issues by the librarians. In his research on knowledge of copyright issues among academic librarians in Kenya, (Olaka, 2010) noted a low level or lack of knowledge not just in Kenya, but it also in Zimbabwe, Nigeria, Uganda as well as in the United States. Olaka's view was

validated by another study that found that there were low levels of copyright awareness amongst librarians in university libraries in Kenya. The same study also established that the librarians' levels of awareness of exceptions and limitations were similarly low as the majority librarians had not had any copyright training (Wasike, 2014).

Efforts to redress the effects of the challenge of copyright to libraries have been in form of guidelines issued to direct librarians once faced by difficult situations that could lead to infringement. In the United States of America Section 108 of copyright law is an attempt to guide libraries in that country on copying for purposes of preservation and for research, and for interlibrary loans. It was noted by the American Library (ALA) and the Association of Research Libraries (ARL) through their joint statement that Section 108 contained the flexibility that permitted libraries to effectively provide needed services to their users (ALA and ARL). Furthermore according to a study by WIPO, section 108 is distinctive in that its provisions on ILL are one of the few such provisions in the copyright environment and that the Section makes provision for the copying of digital material which is not the case with copyright law in the majority of the other countries (Crews, 2008). The following are the provisions given under Section 108:

- i) Libraries are allowed to make and distribute or archive single copies of works with a few exceptions;
- ii) Library reproduction or distribution of a copyright protected work must not be done for direct or indirect commercial benefit;

- iii) To qualify under these exemptions, a library must open its collections or archives to the public or make them available to researchers beyond those affiliated with the library;
- iv) The reproduced work should include the notice of copyright;
- v) A library may make a copy to replace a work that is lost or damaged;
- vi) A library that posts warning notices on copying machines will not be liable.

A further development in the legislative history of copyright law in the United States was the formulation of the CONTU guidelines. This development came about through the appointing by Congress of the National Commission on New Technological Uses of Copyrighted Works. CONTU was charged with the responsibility of formulating and submitting to the House guidelines for interlibrary loan copying under the Act's section 108. A summary of the CONTU guidelines, considered by critics as suggesting severe restrictions to ILL copying (Nixon & MSLS, 2003) is as follows:

- i) The recommendation that a specific ILL request be limited to five copies per year, per library from recent journal and monograph titles.
- ii) A requirement that the borrowing library posts a warning in the area where the library fills ILL requests concerning copyright protection;
- iii) The lending library must provide the borrower with only one copy;

- iv) The borrowing library should state to the lending library in writing that its request is in compliance to the CONFU guidelines;
- v) The lending library should only fill the ILL requests for libraries that have provided the proper statement of guideline compliance;
- vi) The borrowing library should keep records of ILL requests it makes for a period of three years.

Studies have established that infringement of the copyright is widely common and particularly so among libraries (Ngunjiri, 2010; Wachira, 2008; Williamson, 1992). At the same time it has been noted that copyright is complex and that infringement of the copyright law can result to liability (Gitonga & Kieyah, 2011; Otike, 2011). In an article on copyright and interlibrary loan rights, (Nixon & MSLS, 2003) gave a list of suggestions that librarians should observe to promote their work and avoid infringement. These suggestions were drawn for the American audience, but they nevertheless make an important contribution in an area where locally and internationally there is limited guidelines to show librarians the way to go. According to the article, library professionals need to:

- i) Educate themselves about current and pending laws affecting library abilities to give patrons access to materials. Professional organizations and their regional affiliates frequently provide symposia, teleconference, email, print and website tutorials, discussions and information on copyright, licensing and other issues affecting libraries;
- ii) Make sure they and their staff have guidelines and training in how to avoid infringement and how to avoid committing onerous licensing terms;
- iii) Get involved in the committees and organizations that decide these issues;
- iv) Study the methods of groups that have successfully implemented library-friendly legislation or defeated harmful legislation;
- v) Lobby legislators and use their influence as voters and as members of strong organizations and groups to encourage legislators to consider more library-friendly legislation and to defeat harmful legislation;
- vi) Join with library users to form groups specifically dedicated to combating detrimental laws;
- vii) Inform patrons about the services the library provides and about threats to that service. Library newsletters can inform patrons of services and librarians activism on their behalf. Even better librarians can keep an eye out for various forums at which they can address some of their patrons groups, for example faculty meetings, subject related symposia;
- viii) Retain experienced data base contract negotiators to work on their library or consortia behalf

Figure 2.3: Copyright: Needed Actions by Librarians

Adapted from Copyright and interlibrary loan rights, by Nixon and MSLS, (2003).

2.3.7 Censorship

Censorship takes place in situations where an official with the power suppresses parts of books, films, letters, news among others, on the grounds of obscenity, risk to security and others. According to (Oppenheim & Smith, 2004) the word ‘censorship’ can be traced to its Latin origin ‘censere’ meaning to estimate or assess. The author points out that since then, the meaning of censorship has changed from a word whose meaning lay in that of duty and obligation to one which is currently associated with restrictions and morality. An article by (Hannabus, 2001) gives more details on the history of censorship. The authors refer to societies especially those with institutionalized power like the state, church and military setting out to control the creation and dissemination of ideas. The authors give examples where the Catholic Church issued an index of prohibited books in 1564, while Stalin’s Russia and apartheid South Africa, among others, individually set up systematic control of ideas as part of a wider ideological social control.

According to literature, censorship can come from three main sources, namely, government, religion and institutional or self-censorship (Jones, 2009; McMenemy, 2009; Oppenheim & Smith, 2004). Government related censorship is generally justified on issues related to public order, and national or state security. Religion based censorship on the other hand is more likely to be focused on issues of morality as for example obscene literature such as pornography. An author describes self-censoring from an academic library dimension (Jones, 2009). The author lists sources and conditions that may introduce censorship as including, among others, the Board of Trustees whose members may have conflicting ideological stances, students whose information literacy skills may

be wanting, and financial conditions where available resources may be insufficient to meet the future strategic objectives of the library.

To appreciate the meaning of the term censorship within a perspective of the academic library, this researcher adopted an approach from IFLA which relates the concept to term intellectual freedom. Intellectual freedom is defined as the right of every individual to both seek and receive information from all points of view without restriction. The International Federation of Library Associations and Institutions (IFLA) expounds this definition further in the statement on libraries and intellectual freedom. They link intellectual freedom to right to information and say that “the right to know is a requirement for freedom of thought and conscience; freedom of thought and freedom of expression are necessary conditions for freedom of access to information” (IFLA, 2014).

In Kenya the type of the censorship that has taken place has been mainly from the Government. A paper by Article 19 (1995), an organization that promotes right to information, gives wide range coverage of incidents of censorship that took place in the country in 1994/95. The article mostly cited examples of attacks on freedom of expression on the media and individuals through what they interpreted as a way of suppressing dissent. A doctoral study by Ligaga’s (2008) examined official censorship in the social and political relevance of radio drama. The work explored the use of Section 57 of the Penal Code on subversive literature, now repealed, to arrest and detain intellectuals. However, the prohibition of publications is still retained under sections 52 and 54.

The Official Secrets Act which limits access to information on basis of state security was inherited from the British Act by the same name. According to (Oppenheim, 2004), the British Official Secrets Act is the strongest and the most silent of the U.K.'s censorship laws. He gives as an example, the U.K. Government's attempt under Prime Minister Margaret Thatcher, to suppress the publication of a book authored by Peter Wright on the basis that the book would lead to a loss of confidence in M15's ability to protect classified information, damage national security and violate secrecy oaths taken by intelligence officers. This view of the British Government illustrates an existing conflict between national security and right to information. A definition of national security is defined as the critical requirement for the state to maintain its survival by the use of economic power, diplomacy, power projection and political power. In an effort to try to resolve the above conflict, the (Open Society Foundations, 2013) issued the Global Principles on National Security and the Right to Information. They claimed that this was an attempt to protect the right to information and to ensure public access to information held by governments, without jeopardizing legitimate efforts to protect people from security threats. In the introduction to the principles, it was observed that in order to protect the full exercise of human rights, in certain circumstances it may be necessary to keep information secret to protect legitimate national security interests. The Global Principles were to provide guidance to those drafting, revising or implementing laws on provisions relating to the state's authority to withhold information on national security grounds. However, in a study of the Maltese Official Secrets Act, (Aquilina, 2013) was more critical and viewed national security as an excuse to keep away information from the citizens, and a cover-up for controversial policy decisions.

Various suggestions and efforts have been made to counter censorship. Jones (2009) whose approach was from a perspective based on intellectual freedom, proposed that to counter censorship in the university, library staff should take time to understand the culture in the institution as one way of upholding professional principles on intellectual freedom. According to Jones, library staff should have awareness and an appreciation of the fact that not all the components of the campus are going to support the principles of intellectual freedom because they have equally compelling and conflicting agendas. More concerted efforts came from two organizations, namely, the American Library Association (ALA) and the Code of Professional Practice for Library and Information Professional (CILIP) of Britain. The two organizations have formulated guidelines to assist librarians in dealing with the problematic issues of censorship. The American Library Association's (ALA) mandate is to provide leadership for the development, promotion, and improvement of library and information services and the profession of librarianship in order to enhance learning and ensure access to information for all. In this capacity, the ALA (1996) drafted the following guidelines that are an affirmation that all libraries are forums for information and ideas:

- i) Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be included because of the origin, background or fields of those contributing to their creation.

- ii) Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.
- iii) Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.
- iv) Libraries should cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas.
- v) A person's right to use a library should not be denied or abridged because of origin, age, background or views.
- vi) Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

The above Bill of Rights has been criticized on the basis that it is not backed by law and is not therefore enforceable. In particular it is claimed that the Bill of Rights has statements that do not represent legal principles and as such it clashes with reality (Wiegand, 1996). Despite this criticism it is noted that the principles articulated in the Bill of Rights have continued to guide librarians for over 70 years when the first draft was adopted.

Code of Professional Practice for Library and Information Professional (CILIP, 2004) guidelines are a more recent development. This notwithstanding, they have also issued a

statement on intellectual freedom, access to information and censorship pointing out their commitment to promoting a society where intellectual activity and creativity, freedom of expression and debate, and access to information are encouraged and nurtured as vital elements underpinning individual and community fulfillment in all aspects of human life. Theirs has been acknowledged as part of the developments that have impacted in a huge way on the provision and standard of information services to higher education.

2.3.8 Librarians and the Capacity to Deal with Legal Issues

To address the above topic, the following section reviews literature on various aspects of training in Library Information Science. This is done in the following order: Lis education in general, Lis education in Kenya, challenges, and capacity of librarians to deal with legal issues of information provision.

A number of authors have contributed various articles on Library Information Science training. These articles have covered a wide range of topics giving a comprehensive coverage of the subject at both the international and local scene (Otiye, 2012c; Wilkinson & Lewis, 2003). The varied coverage by the above writers leads to a wealth of background with useful information on many aspects of the training of librarians. Among these are curricular design (Okello-Obura & Kigongo-Bukenya, 2011); continuous training in LIS (Wilkinson and Lewis, (2006); partnership with industry and employers; and training needs assessment (Kavulya, 2004).

The growth and development of LIS training institutions has received considerable coverage as part of the above background. The proliferation of LIS schools in Uganda

was raised as a subject of concern (Kigongo-Bukenya & Musoke, 2011). At the time this study was carried out, it was reported that Kenya had perhaps the highest number of LIS schools in the region in the following universities: Kenya Polytechnic University College; Egerton University; Kisii University College; Laikipia University College; Kenyatta University; Moi University; Inorero University; Kenya Methodist University; and Mount Kenya University (Otike, 2012b).

Change was a specific topic of interest to this study due to the influences introduced in the library scene through change, for example through the emerging of electronic resources. In this connection (Odini & Amoth, 2007) state that the new information environment requires new attitudes and new instruments. They also advise librarians to further enhancing their core competencies in order to deal with the changing information environment. Ocholla (2001) had earlier referred to the need for change, but he saw it in terms of a responsive curriculum using theoretical and methodological paradigms on the review and revision. Another aspect of this change was given by Lewis and Wilkinson (2006) who specified the challenge presented by shifting focus in the academic departments and their information needs. In their contribution the above authors also noted some of the challenges that faced developers of the new programmer as consisting of, among others, lack of appreciation of information services by various governments, lack of curriculum specialists and shortage of information materials.

Several authors wrote highlighting an existing gap where librarians lacked basic knowledge on relevant aspects of law. Nasri (1987) was concerned that despite the fact that the legal issues involved were complicated and entailed liability, librarians were not

trained to foresee legal consequences of their decisions or to safeguard against them. Other authors were to later uphold the same position with Albitz (2008) pointing out aspects in which librarians required to be knowledgeable including having the ability to read and negotiate legal contracts, the skill to maneuver within the world of publishers and information providers, and the technical knowledge to troubleshoot access problems. She went on to note that the opportunities to learn the skills and information necessary to perform the work implied were not readily available. In The U.S.A. a study on the training of academic library directors' understanding of copyright law to better formulate policies on risk management and encouraging access to information found that these were addressed only briefly. The study further established that most library schools did not include legal education as part of their requirement to graduate (Eye, 2013). While most of the foregoing information is from the U.S.A, the same sentiments have been noted closer here. Although in Okello-obura's article, legal training is only implied, the author advised that Uganda needed to develop human capacity broadly to manage information for democratic governance, transparency, accountability, and full observance of human rights, freedom of association, and political consciousness among others, so as to transform the society. In Kenya it was claimed that the librarians' ignorance of relevant aspects of law, placed them at a disadvantaged position with the Reprographic Rights Organizations and their demands on license fees (Otike, 2012a).

Experience indicates that efforts have been made to address the above gaps. However not much has been recorded to capture these efforts. However, in the University of Pittsburg, a course on Legal Issues in Information Handling, the first such course, was introduced

into the curriculum in 1976 (Nasri, 1987), where the author refers to his background in law leading to his interest in the legal aspects in management in general, and in decision making in particular. Other than the training through academic programmes, seminars and workshops have been used to offer relevant skills to librarians through Continuous Professional Development initiatives. In Kenya this type of training has been offered by the International Network for the Availability of Scientific Publications (INASP). INASP's mandate has been given as the provision of international development work in collaboration with a network of partners to improve access, production and uptake of research, information and knowledge, in order to equip countries to solve their development challenges (Powell, Farrow, & Burnett, 2014). It is further said that INASP who have trained librarians on ICT management and also on e-resources licensing, adopted an approach that applied in-service training and capacity building geared towards new innovative and transformative practices. Open learning initiatives also offer training on aspects of law and information. Such an online course was launched in 2010 at the Berkman Center for Internet and Society at Harvard University with the aim of informing librarians about copyright law in general, as well as the aspects of copyright law that most affect libraries, especially those in developing and transition countries (Berkman Center for Internet and Society and Eifl, 2010). The objectives of the online course are to inform the librarian regarding:

- i) Copyright law in general;
- ii) The aspects of copyright law that most affect libraries;

- iii) How libraries in future could most effectively participate in the processes by which copyright law is interpreted and shaped.

2.4 Summary

In this chapter the researcher consulted theories in two main areas, namely, theories that form a base for the study of the university library as an organization, and theories of law. The organization theory had elements that were highlighted as being relevant to this study in including elements that characterized an organization as a social set up created to achieve specific performance goals, with a methodical approach through which these goals are attained. The theory also specified the role of outside influences on the organization. For this study the outside influences were identified as the Government which issued the laws and the policies that controlled and guided the library, the parent university with its demands for the provision of information for the primary function of teaching, learning and research, and finally the library's clientele and their specific needs for information materials. The social systems theory provided the study with an approach for a holistic analysis of the various aspects with converge on the university library. The study borrowed the systemic model from this theory, and applied it to the library environment in a manner that brought out the relationships between the various elements. The legal theories that were consulted in this chapter included the theories that discuss the origin and purpose of law, namely the natural law theory, the positivist theory, the sociological theory and the copyright law theory.

In the second part of the chapter, the researcher carried out a literature review of sources of information with relevance to the study. The materials reviewed included books, journal articles, research papers as well as theses. The review adopted a thematic approach that covered the following areas; organizational elements of the university library, licenses and the procuring of information materials, information services, information as a human right, copyright and its effects on the libraries, censorship, and the librarians' capacity to deal with legal issues.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

The aim of this study was to investigate the legal implications of providing information services in public university libraries in Kenya, with a view to proposing a model that would improve information service delivery to the university community. The following chapter presents the research methodology that was used for the study. The first section of the chapter looks at the research philosophy upon which the study was premised. The research design is then presented, followed by details of the study area, study population and distribution of the respondents. Other topics discussed in the chapter include data collection methods, data collection procedures, pilot study, reliability and validity, and data analysis and interpretation.

3.2 Research Philosophy

In research an understanding of research paradigm or philosophy is threefold; first the philosophical setting guides the researcher by defining his role in the overall research operation. Secondly research philosophy gives an explanation and justification why a particular methodology was preferred over others, and finally it assists the researcher to confidently appreciate the strengths and the weaknesses of their chosen techniques (Rubin & Rubin, 2012). According to literature several types of research philosophies exist including the positivist, the naturalist or pragmatic type, the post-positivist, and the feminist type. The discipline area of the researcher, the beliefs of advisers, and past

research experiences are some of the factors that influence the respective researcher's choice of the philosophy to adopt for their study (Creswell, 2009).

Among the various types of philosophies available, two types of these, namely, the positivist and the natural philosophies influenced this study. These two are discussed in the following sections. The two schools of thought have led to a dichotomous development in research where quantitative and qualitative approaches are studied and applied separately. However, although the present study adopted a qualitative approach, the researcher used a limited amount of quantified data to establish differentiating aspects among the study population. In this connection the study applied close-ended questions, (for example, Have you acquired any type of legal training? Are you aware of the Constitution of Kenya Article 33 and its provision on information as a right for Kenyans?), to collect quantifiable data that was suitable for quantitative analysis.

3.2.1 Positivist Philosophy

A number of definitions of the term positivism exist. A simple and straightforward definition by (Kelly, 2007) refers to the term as a natural science method for establishing knowledge. For (Babbie, 2010) positivism is a philosophical system based on the rational proof or disproof of scientific claims or assertions that have an objective reality. A definition more relevant to the present study, is given by (Corbetta, 2003) who includes more descriptive and identifiable details that relate positivism to social studies by referring to it as the study of social reality that uses the conceptual framework, measurement instruments, mathematical analysis, and the procedures originally associated with natural sciences. The sum total of these definitions is a common theme

that addresses the question whether a natural science approach can supply legitimate knowledge of the social world (Bryman, 2012). Further information on the positivist approach identifies it with objectivity that is independent of the individual researcher, the existence of established rules and order, and a methodology that is detached from the observer and which starts with the particular and moves to the general. In summary, positivism was a movement that sought to validate research in the social sciences by adopting methodologies that reflected the practices that applied in the natural sciences. These efforts ultimately led to the quantitative approach and the allied analysis that mainly rely on quantified data.

As implied in the above section, positivism was based on the belief that the only true knowledge is scientific. The historical development of this philosophy is credited to mid-19th century thinkers including Simon Laplace, Auguste Comte, and Emile Durkheim. Laplace and Comte advanced the initial thinking that looked at research methods in the social sciences in general and associated them with what was being applied such subjects as mathematics, astronomy, physics, chemistry, and biology. The next development came through Durkheim whose declared aim was to extend the scientific approach from objects to human behavior by applying it to the study of sociology (Bhattacharjee, 2012).

According to the literature cited above, a positivist researcher's approach is identified by a keen focus on establishing the existence of the truth through the testing of hypotheses within conditions that are clearly specified. A key feature of the approach that differentiates it from other orientations is the assumption that seeks to separate the truth sought from the human perception. Attaining the truth is a major goal of the researcher,

which is arrived at by ensuring that any possible biases are eliminated. In accordance with these specifications, this researcher used quantitative approaches as necessary to collect standardized and common data from the respondents. Although the main research instrument was semi-structured, it contained in part some structured questions. During the interview the researcher put out these structured questions to the respondents as they were written as they were straightforward and needed no clarification. Authors have pointed out that this is an advantage due to the fact that complex situations are simplified through the process which picks key factors for analysis (Rubin and Rubin, 2012). The research instruments illustrate the manner in which the principle of structured questions was applied in this research (appendix ii and iii).

3.2.2 Interpretivist Philosophy

This researcher opted to apply the interpretivist philosophy as the base for this study. Use of the interpretivist philosophy was justified on its attributes which had more relevance to the qualitative orientation, and put emphasis on the views and values held by the participants. Literature defines interpretivism as a position that requires the social scientist to grasp the subjective meaning of social action (Bryman, 2012). Further perspectives associate this particular philosophy with the construction of knowledge through meanings obtained from individuals. Interpretive paradigm evolved as an alternative to the positivist philosophy and raised objections to the characteristic rigidity of the earlier philosophy. The new thinking on the methodology for the social sciences was led by Max Weber whose stance conflicted with that previously advanced by the positivists. Other thinkers who followed Weber in advancing the interpretivist philosophy

included Susan Haack, John Dewey and William James. In contrast to their predecessors, the interpretivists held that it was naïve to expect that knowledge could be obtained from reality by simple observation, rather it was also necessary to interpret this observation by seeking the understanding of those within the environment to take part in the construction of that knowledge (Corbetta, 2003; Guba, 1990; Neuman, 2000; Rubin & Rubin, 2012). The researcher's interpretation of the contributions and views from individuals in this manner runs the risk of giving the approach a subjective orientation. However, the researcher is consistently aware of this possibility and avoids it through a principle introduced by Weber where objectivity is retained by avoiding value judgement and instead relying wholly on the contribution and meaning attributed to the research objects or respondents. In the present study, the researcher was aware of these challenges, and to overcome them she ensured that responses from respondents were recorded as stated. Any paraphrasing was limited to extraneous aspects that would not affect or change the meaning of the statement from the respondent.

This researcher chose to apply this method as a way of getting new insights from the respondents. To realize this goal, as many views as possible were sought and recorded from the respondents using semi-structured questions. This was consistent with the interpretivism approach where the researcher's objective is to construct new knowledge from the objects of his study, and he therefore opts for a methodology that encourages many contributors' views. During the interview, the researcher used terms and approaches that allowed respondents the flexibility to express their views and opinions.

The following examples illustrate this flexibility and the wide scope of the anticipated responses:

- IFLA 's declaration calls for ensuring the widest access to information for all people. State how your library implements this declaration.
- Briefly state how the library deals with the legal issues involved in the acquisitions of electronic resources as indicated above.
- If yes to question 41 above, what is the significance of the section with regard to the library's provision of information services?

Similarly, data analysis for this research, adopted the interpretivist approach and reflected the same flexibility by accommodating different views, wide ranging descriptions and a variety of interpretations. Basically this approach which has come to be widely known as the narrative or qualitative methodology demonstrates the thinking that individuals are not stereotypes and they understand the world in different ways.

3.3 Research Design

The research process is a multi-step process made of three cycles identified as the research design cycle, the ethnographic or observation cycle, and the analytic cycle (Hennink, Hutter, & Bailey, 2011). Being the first among the identified cycles, the research design cycle plays the critical role of guiding the researcher in the collection of data, its analysis and interpretation. The research design is further described as the guiding program, conceptual structure within which research is conducted, and the

blueprint for formulating solutions to fundamental questions that ultimately determine the type of investigation to be carried out (Bryman, 2012; Corbetta, 2003; Frankfort-Nachmias & Nachmias, 1996). (Kothari, 2004) specifies research design as an arrangement for the collection and analysis of data, whose components consist of the research problem, the procedures or techniques that are applied, the population that forms the objects of the study, and the methods of processing and analyzing data. A researcher selects the research design to apply basing on the philosophy they have adopted for their research. In the previous section, the justification and choice of interpretivism as the main philosophical threshold that the researcher adopted for this study, was explained.

Consistent with the above discussion, this study was based on a research design that incorporated various components of the research process. Each individual component played its own role and contributed in providing the necessary direction and scope for the study. The first step involved the formulation of the topic; namely, investigating the legal implications of providing information services in public university libraries in Kenya, with a view to proposing a model that would improve information service delivery to the university community. The researcher used this initial step to set the stage and indicated the two variables to be investigated, and also making reference to the eventual contribution of the study. Further expounding and clarification was made through statements of the study problem, its aim, objectives and research questions. These statements provided more specific guidance and direction to the study. A review of both relevant literature and theories provided a deductive approach that assisted the researcher to further refine the research questions, justify the study by identifying existing gaps, as

well as informing the final step, namely the data collection and methodology. The above processes as adopted for this research, brought out the definition and attributes of the research design and its role in guiding and giving direction to this study.

3.4 Grounded Theory

The second significant feature in the design of a research investigation is the theoretical framework that is applied to the study. The researcher used the Grounded Theory which is discussed in this section. Grounded theory is considered as one of the most commonly applied theoretical approach in social science research. It is defined as an inductive methodology of qualitative research which aims to generate social theory through the analysis of data. Methods based on this approach attempt to derive theories from the analysis of patterns, themes and common categories that are discovered through observation, as opposed to the hypothesis testing adopted by quantitative researchers (Babbie, 2010). The introduction and development of the Grounded Theory is credited to Anselm Strauss and Juliet Corbin who observed that the approach was able to apply the scientific method while at the same time maintaining creativity in a manner that precludes the rigidity associated with the scientific methodology. According to the two thinkers objectivity and flexibility would be ensured by:

- Adopting a comparative approach in order to identify different conceptual categories;
- Obtaining a variety of viewpoints;
- Following accepted general research procedures;

- Maintaining an attitude skepticism that tested interpretations before conformation.

The present research applied the above guidelines through the phases of data collection, analysis and write up. Further relevance to the current study is the claim that Grounded Theory offers a methodology that is applicable to the study of library and information science. This researcher validated this claim by using Grounded Theory in the application of two theoretical models, namely the social equilibrium model, and the systemic model. In the social equilibrium model whose proponent was Talcott Parsons, the organization is represented by self-regulating subsystems that cluster around four main themes, namely, the economy, polity, goal attainment and latency. These subsystems are interlinked by exchanges that bind the clusters into one organization or system (Parsons, 1951). In line with the subsystems suggested by Parson's model, this study identified the following four categories as existing in the public university library:

- The university's financial investments in information materials;
- The regulating and controlling authority;
- The goals and objectives of the public university library;
and
- Change and transformation developments in library operations and information services.

The categories identified in the second model, the systemic model, fall into five groupings consisting of epistemology, communications, cognition, design of social system and the structure of the social world. Using the two models and in consistence with the Ground Theory characteristic feature of identifying conceptual categories, the researcher applied this approach to the study of public university libraries in the provision of information services and the involved legal implications. The application was in the investigating of the problem through data collection and analysis with the view to arriving at a meaningful conclusion and giving applicable and relevant recommendations. The study identified the following conceptual categories as falling within the application of the systemic model in the public university library:

- Defining of the conceptual foundation of the public university library through the vision, mission and objectives;
- Public university library's role and contribution in the creating of new knowledge through teaching, learning and research;
- Building capacity for librarians through training.

There is general agreement of the fact that the Grounded Theory and its application at times present challenges for the researcher (Marshall & Rossman, 2006). The risk posed by subjectivity has been identified as a challenge requiring that the researcher consciously designs ways to ensure that his personal views do not introduce unnecessary

bias at any stage in the research process. In adopting this principle, this researcher applied extra caution and care during the interviews and during the analysis, and especially in the interpretation and reporting of the narratives from the respondents. Further control of this problem that was adopted for this research was suggested by Cresswell (2009) who advises researchers as follows:

“Use rich, thick description to convey the findings. This description may transport readers to the setting and give the discussion an element of shared experiences. When qualitative researchers provide detailed descriptions of the setting, for example or provide many perspectives about a theme, the results become more realistic and richer. The procedure can add to the validity of the findings”.

3.5 The Survey Research Method

This study used the survey research method which is described as a data collection method under the cross-sectional design category. The method uses observation, interviews, or semi-structured questionnaires to collect data (Bryman, 2012). In line with the aim of this study which was to investigate the legal implications of providing information services in public university libraries in Kenya, the researcher was interested in, and looking out for outcomes or developing trends that were evident in the relationship between law and the provision of information services by the public university libraries. Secondly, this study had a feature that is characteristic of social science research as based on a focus on descriptions, the recording, and interpretation of the existing conditions, as well as the developing trends in the public university libraries in Kenya. According to Kothari (2004) the named features form part of the criteria that

apply to the survey research method. A further feature that qualified the study as a survey was its design and the selection and application of the sample method to pick the respondents consisting of university librarians, deputy university librarians, senior librarians and librarians, and administering a questionnaire to each one of them individually (Babbie, 2010). The survey research mainly applies the constructionist qualitative approach. As discussed in an earlier section, the departure of this approach from the positivist method as well as its development were premised on the subjective position that advocated for own procedures, own techniques and own ways of analysis. Corbetta (2003) notes that this flexibility and freedom allows the researcher to choose methods, techniques and procedures aimed at meeting their needs and specifications. However, he cautions that where not carefully handled, this flexibility and freedom of choice could easily lead to manipulation by the researcher and ultimately end up eroding the validity of the research. This researcher was careful to avoid such an outcome by ensuring that during the interview, for example, the respondents were free to give their own narrative, and also present their true views and attitudes. The pilot study assisted in addressing this challenge further by reviewing and rewording the questionnaires with a view to ensuring that the words and the concepts were within the context of the respondents so as to avoid unnecessary interference from the researcher. The researcher applied similar care in recording the statements from the respondents as they were given, and only used paraphrasing where there was the need to summarize.

3.6 Quantitative and Qualitative Methods

As discussed earlier, philosophical considerations led to the development of the two differentiated methodologies of social science research. The initial move came from positivist philosophers who were keen to adapt the natural science philosophy to the social sciences on the basis that meaningful objectivity in social science research would only be achieved through the use of the rules and approaches applied in the natural sciences. The positivists in question including Simon Laplace, Auguste Comte and Emile Durkheim, held a position that essentially advocated for the application of methods that were more readily amenable to the natural sciences. This was the origin of the quantitative methodology as an approach in the social science research. Conflicting propositioning followed this initial effort to introduce natural science methods into social science research with objections coming from, among others, Max Weber, Susan Haack and John Dewey. This new thinking led to the qualitative methodology. Since the development of these two methodologies, common practice has tended to deal with quantitative and qualitative approaches separately. However, there has been an increased willingness to use both the strategies together in form of a mixed methods approach. The two relevant approaches, quantitative and qualitative methods, and their application in the present study are discussed in the following sections.

3.6.1 The Quantitative Approach

The quantitative approach, which is also referred to as the positivist method, is defined by Bryman (2008) as a research methodology that emphasizes quantification in the collection and analysis of data. The same author notes that as a research strategy, this

approach is deductivist and incorporates a natural science of the research process, but researchers do not necessarily subscribe to all the attributes contained in this methodology. The approach is founded on the fundamentally positivist belief that there is an objective external world that exists independent of human perception, and which is amenable to mathematical or quantitative measurement. Accordingly, and in contrast to its counterpart, the interpretive approach, the quantitative method is distinguished by the following general characteristics:

- ii) The approach explains its findings in form of cause-effect relationships;
- iii) In the approach, all the unique aspects of the context are eliminated;
- iiii) The method seeks to apply the findings to the largest possible number of subjects;
- ivi) The approach views relationships in mechanical forms that can be represented by formats that include tables and flow charts.

The table below brings out other descriptive elements that further distinguish the quantitative methodology.

Table 3.1: Features of the Quantitative Approach

| | |
|-------------------|------------------------------------|
| Assumptions | Objective reality of social facts |
| | Primacy of method |
| | Possible to identify variables |
| | Possible to measure variables |
| Purpose | Generalization |
| | Prediction |
| | Causal explanation |
| Approach | Hypothesis based |
| | Manipulation and control |
| | Uses formal instruments |
| | Experimentation |
| | Deductive |
| | Seeking norms and consensus |
| | Reducing data to numerical indices |
| | |
| Researcher's role | Detachment and impartiality |
| | Objective portrayal |

According to the above table, some of the more significant features of the quantitative methodology which differentiate the approach from the qualitative approach may be summed as follows:

- i) Quantitative research has intent to collect data that fits in with an existing theory;

- ii) The approach makes multiple use of literature review to establish the importance of the research purpose, establish the research problem, and identify a theory to test;
- iii) The methodology makes use of research instruments that are focused, with close-ended questions that directly relate variables to each other;
- iv) The approach uses research instruments as a way of seeking answers through the testing of theories;
- v) The methodology uses the theories broadly to see how they apply to many people at as many sites as possible; and
- vi) The approach applies numeric analysis on scores from research instruments through the use of statistical procedures.

The noted qualifier that researchers do not necessarily subscribe to all the attributes contained in this methodology as listed above, resonated well with this study where aspects of the quantitative approach were applied in the following examples to illustrate the common features in:

- i) Respondents' attributes including a) distribution among the seven public university libraries that were in the sample; b) distribution by job title, and c) distribution by level of education;
- ii) The existence of acquisition policies;
- iii) The challenges encountered when procuring government publication;

- iv) The training of librarians in aspects of information and law; and
- v) The awareness of laws and declarations with implications in the provision of information services.

The collection of the data as above was demonstrative of another noted feature of the quantitative approach reflected by close-ended questions that are posed exactly as they are written, require no clarification, and do not leave any room for additional questions (Berg & Lune, 2014). In line with the quantitative approach, the data collected was presented in form of tables, charts and graphs.

3.6.2 The Qualitative Approach

Various definitions attempt to give the meaning of the qualitative approach in social science research. (Gorman & Clayton, 1997) define the qualitative approach as a process that is applied in research where data is drawn from the context within which events occur. The authors go on to say that the qualitative process is an attempt to describe occurrences as a means of understanding or determining the manner in which the events are embedded with the views of the participants. Qualitative research is viewed as an approach that puts emphasis on words rather than the numerical values or quantification in the collection and analysis of data with an inductive strategy. This translates to the use of Ground Theory approach as opposed to the quantitative methodology which is hypotheses based (Bryman, 2012). In the qualitative approach, the researcher upholds the view that the meaning of events, occurrences and relationships are best understood from

the perspective of the participants within their contextual bearing. Further characteristics of the qualitative approach are summarized in the following table.

Table 3.2: Characteristics of the Qualitative Approach.

| | |
|-------------------|---|
| Assumptions | Social construction of reality Primacy of subject matter Complexity of variables Difficulty in measuring variables |
| Purpose | Contextualization Interpretation Understanding participants' perspectives |
| Approach | Theory generating Emergence and portrayal Researcher as instrument Naturalistic Inductive Pattern seeking Looking for pluralism and complexity Descriptive |
| Researcher's role | Personal involvement and partiality Empathetic understanding |

According to the philosophy behind the qualitative method whose basic features are summarized in the above table, the reality of the social world is such that the truth is an elusive concept. Thus human beings create their own version of reality through an interpretive framework by employing the use of language and the interrelationships that they form. Another feature of the interpretive method that contrasts with the quantitative approach is offered by (Shekedi, 2005).

The study affirmed the author's assumption that the grasp of the contextual environment of an issue or occurrence assists in its understanding. In this regard to implement this assumption in the present study the researcher applied measures that:

- i) Recognized the conditions within which public university libraries provided information services;
- ii) Noted that the implications of legal aspects on the provision of information services would best be appreciated within a relationship that existed between the two;
- iii) Appreciated the uniqueness of individual cases and contexts as represented by respondents, and their critical role in constructing the reality from their experiences; and
- iv) Held a view of relationships and experience as sources of meaning and new information.

In choosing which of the two approaches to apply, the researcher was guided by their characteristic features as described in the above sections, and their adaptability to the present research. Further to this, research in information science which was originally categorized within the positivist approach (Gorman and Clayton, 1997) has in recent years gone through a shift that tends more towards the interpretive method on the basis that organizational settings, such as the library, do not always meet the requirements of quantitative research in terms of sample size and representativeness. The service nature of library work is also such that the social realities involved have rich contextual meanings that will only be fully appreciated through the qualitative method. This principle was confirmed through the interview process where the researcher applied questions that sought to get respondents' views, observations, comments, descriptions, assessment, perception and understanding of various issues, situations as well as relations between certain aspects.

The above approach coupled with the study's aim and objectives suggested a research environment that afforded the researcher the opportunity to do and highlight the following:

- Study real situations and contexts in the library where various aspects of law apply;
- Gain insights from conversations with librarians on the process of providing the information service to the users;

- Receive descriptive narratives of events and occurrences from librarians as they may have accumulated through their experience and understanding; and
- Collect data through the process of open ended interviews.

The above tasks were consisted with the earlier description of the qualitative method. Consequently, the method was considered and selected as the most suitable for the major part of this study.

3.7 Study Population

A study population or target population is defined as the aggregate of all cases that conform to some designated set of specifications (Frankfort-Nachmias & Nachmias, 1996). It is recommended that the researcher needs to have knowledge about the subject of his study in order to give a clear, accurate and correct explanation about it. In particular, the researcher is required to have adequate knowledge of the subjects under study. This is one way of ensuring that the researcher has adequate background information, detail and understanding all of which come in handy in choosing the population to be studied. In the case of the present study, this particular requirement was appropriately met in that the researcher had worked in a public university library over a long period of time.

3.7.1 Population Sampling

Available literature on study population observes that a researcher will apply population sampling to get a sample that will be used for drawing inferences on all the units, from the partial information obtained from the subset (Hart, 2005). Sampling is done using specified procedures with a view to identifying sufficient sources of data for both the study of the phenomena, and the analysis of that data thereafter. Both the two basic types of sampling approaches namely, probability and non-probability sampling, refer to the extent to which the researcher tries to secure a representative sample. Where the researcher is able to specify the probability for each sampling unit of the population being included in the sample, then the probability sampling occurs and it will be the sampling approach to apply. Probability sample designs include simple random samples, systematic samples, stratified samples and cluster samples.

3.7.1.1 Non-Probability Sampling

In line with most qualitative studies, this study used non-probability sampling which describes situations where, in contrast with quantitative research, it is not possible to specify the probability of individual unit's inclusion in the sample (Frankfort-Nachmias & Nachmias, 1996). Among the different sampling strategies contained in the non-probability sampling approach, including convenience samples, purposive samples and quota samples, this researcher opted for the purposive sample. The purposive sample approach was selected for this research due to its assurance that the sampled population consisting of university, librarians, deputy university librarians, senior librarians and librarians, was relevant to the research questions formulated by the researcher. As

mentioned earlier, in this case the researcher was informed by her prior knowledge of the study population (Babbie, 2010). The relatively long period of existence for the public university libraries, their well-established work procedures and functions were some of the factors that made them the best placed among their counterparts to provide the data that the researcher needed to solve the problem under investigation. Basing on the foregoing qualifying factors, purposive approach was applied to select public university libraries as the focus of this research. Furthermore, at the time that the research was carried, the libraries' parent institutions, namely, public universities, formed the country's focal points for teaching, learning and research. Secondly, the choice was also justified on the fact of the researcher's knowledge and experience in this particular area.

Public university libraries

At the time of the study, there were seven (7) public university libraries in Kenya based in the respective public universities. The study based its research on these seven public universities libraries, namely:

- 1) University of Nairobi Library
- 2) Kenyatta University Library
- 3) Moi University Library
- 4) Jomo Kenyatta University of Agriculture and Technology Library
- 5) Egerton University Library
- 6) Masinde Muliro University library
- 7) Maseno University Library

According to writers on university libraries a notable attribute of these institutions is that they get their character and definition by the extent to which they assist their parent organizations in realizing one of their primary objectives, namely, the creating of new knowledge (Fourie & Dowell, 2002). University libraries align themselves to that institutional primary objective and integrate themselves into the academic activities of the university by providing the students, lecturers and researchers with the information needed for study, teaching and research. It was therefore rational that the researcher studied the libraries within the context of the parent institutions.

3.7.2 The study's Sample Population

Using the purposive sampling strategy, the researcher was able to arrive at a sample population of 77 respondents who were in the following four categories:

- University librarians;
- Deputy university librarians;
- Senior university librarians; and
- Librarians.

The following table shows the distribution of the study sample population among the seven public university libraries in the two categories, namely, the administrative level category made up of Senior Librarians and Librarians; and the management level category consisting of University Librarians and Deputy University Librarians.

Table 3.3: Presentation of the Study's Population by University Library and Level of Responsibility

| # | Name of Library | Administrative Level (Senior Librarians and Librarians) | Management level (University Librarians and Deputy University Librarian s) | Total |
|--------------|-----------------|--|--|-----------|
| 1 | UoNBI | 16 | 3 | 19 |
| 2 | KU | 11 | 2 | 13 |
| 3 | Moi | 12 | 3 | 15 |
| 4 | JKUAT | 12 | 2 | 14 |
| 5 | Egerton | 6 | 2 | 8 |
| 6 | M.Muliro | 2 | 2 | 4 |
| 7 | Maseno | 2 | 2 | 4 |
| Total | | 61 | 16 | 77 |

A distinguishing feature among librarians is the nature and type of responsibility they undertake as part of their work. In this study this fact was illustrated by the job descriptions given for the respective levels. The responsibilities allocated to the university librarians and deputy university librarian pointed to activities and tasks that required their involvement in various roles that included giving advice to the university management including the Vice-Chancellor, decision making, strategic planning, and

policy formulation, among others. Senior librarians and librarians were similarly engaged in policy formulation, but on the whole most of their responsibilities entailed carrying out activities that were concerned with the implementation of the policies. Among these were the work processes and procedures, as well as staff administration and supervision. These responsibilities and their allocation are illustrated in the following table. While the categories of the core responsibilities listed in the table were not necessarily exclusive, they provided an analytical foundation that accommodated the separation of tasks performed in the library. The schedule of core responsibilities was also a reflection of the scope within which the implications of legal aspects of law influenced the work of providing information to the library users.

Table 3.4: Responsibilities of Librarians in a Public University Library by Category

| Level/category | Position/Title | Core Responsibilities |
|----------------------|--|--|
| Managerial level | University Librarian and Deputy University Librarian | Advising the VC and academic community; participating in univ. policy formulation; lib. policy formulation/ implementation; attaining of lib vision and mission; overall lib management; networking/partnerships; overall lib development/representation; general administration Policy development/formulation; |
| Administrative level | Senior Librarian and Librarian | Implementation of policies and procedures; General supervision/administration; Staff development/recruitment; User-education/ information skills; |

3. 8 Data Collection Instruments

There are various methods of collecting research data and a researcher has to decide which of those methods are the most appropriate to their study. According to Kothari, when deciding the method to apply, it is essential to have in mind the two types of data that a researcher uses, namely, primary and secondary data (Kothari, 2004). Kothari defines primary data as those that are collected afresh and for the first time, and thus happen to be original in character. Secondary data is differentiated from primary data in that it consists of data already collected by someone else and has been passed through the statistical process (Kothari, 2004). Methods of data collection will accordingly vary depending on whether the data being collected is of the primary or secondary type. The following section presents some of the data collection methods that were applied in the present study.

3.8.1 The Questionnaire Method

Questionnaires are made up of a series of constructed questions which address a specific topic or issue and are used as the basis of the survey approach. A researcher uses a questionnaire to find out, what, how much, how many, and how often. Questionnaires can be administered personally, sent through the post or e-mail. A questionnaire can be used as an operational instrument to measure a number of variables by the sampling respondent from a large population in order to make generalization about that population. The questionnaire method can also be used to measure attitudes. A researcher may also use the questionnaire to focus on numeric attributes, making the data thereby collected generally amenable to approaches that use the quantitative-based research methodology.

According to Bryman (2012), questionnaires have disadvantages that limit their effectiveness during data collection. These include lack of interviewer help in case of questions respondents may find difficult, while the researcher will never be fully sure whether the right person answered the questionnaire. Basing on this shortcoming on the part of questionnaires, the researcher considered the questionnaire not useful for this study, opting instead to use the interview approach.

3.8.2 Interviews

The interview method involves talking to selected respondents on a topic with the aim of finding answers specific research questions. During the interview, the researcher was able to realize the following important benefits that according to Gorman and Clayton (1997) are associated with this process:

- i) It was possible to receive immediate responses to the questions posed as compared to where postal questionnaires are applied;
- ii) The research and the respondent were able to engage and explore the questions to establish clearer understanding and remove any remaining ambiguities;
- iii) As the questions were open-ended, respondents were free and had the flexibility to provide useful insights.
- iv) The researcher had the opportunity to do further probe and get more details and explanations on issues.

A number of ways exist through which the interview method of collecting research data can be applied. This research used two of these, namely, the semi-structured interview and the interview. The two types are discussed in the following sections.

i) Semi-Structured Interviews

The researcher used semi-structured interviews (App. ii and iii) to collect data from university librarians, deputy university librarians, senior librarians and librarians in public university libraries. Semi-structured interviews were considered appropriate for this study because of the flexibility that allowed for the checking and clearing of possible misunderstandings in the research instrument. Furthermore, as stated earlier, the method provided the researcher with the opportunity to probe, follow up, and to have firsthand and personal assessment of the situation and also make any necessary observation. This feature of the semi-structured interview proved especially appropriate for this research whose legal concepts and topics were not particularly familiar to the respondents. The researcher was also able to take another important advantage of the semi-structured interview as a data gathering method through which the researcher was able to stick to the stated objects of the study. Finally, through the use of the semi-structured interview method, the researcher used its flexibility in scheduling for interviews with the busy library staff. The interview schedule approach had previously been successfully used by researchers with studies similar to the current one (Olaka, 2010; Kingori, 2014).

ii) Interviews

Besides interviewing university librarians, deputy university librarians, senior librarians and librarians as described above, the researcher sought to have interviews with key informants. These included the following:

- i) Chairpersons of Library Information Science departments in the following institutions: Moi University, Kenya Methodist University, Technical University of Kenya, Inoorero University, Kenyatta University and the Karatina University College;
- ii) Staff from INASP which is an organization that has mounted Continuous Professional Development (CPD) training through workshops/seminars on law and information for university library staff.

The interviews were applied on the above key informants were in line with what literature recognizes as a useful application on very specialized topics with limited information coverage. The purpose of these interviews was to provide the researcher with a chance to learn about the key informants' views, and judgments on the specialized training of librarians' in aspects of law. In this regard and in conformity with literature on the topic, the key respondents in question were individuals who were well informed and who were also believed to have adequate knowledge on the topic (Njiro, 1994).

3.8.3 Documentary Sources

Kothari (20004) refers to documentary data which can provide a wealth of information which must however, be used with caution. He adds that a researcher should use this data only when they are reliable, suitable and relevant. On the other hand, Corbetta (2003) emphasizes the importance of documentary sources in providing the researcher with data which is independent from his activity. The author further supports use of documentary sources on the basis that they present a historical perspective that enriches the study's findings. Guided by the above views, the researcher used documentary sources to collect information and data to fill in identified research gaps in the area under investigation. As explained in the previous sections, the researcher was able to collect data from a cross section of informants as sampled. The documentary approach particularly focused on relevant laws and declarations as for example, Acts of Parliament including the Copyright Act (CAP 12 of 2012), Official Secrets Act (CAP 187), among others. These were studied and analyzed within the context of the stated aim and objectives of the study. Other documented sources that the researcher consulted were the strategic plans and policy documents of the seven public university libraries. These strategic plans supplied critical data on the important detail of the libraries 'organization, in particular their vision, mission, objectives and strategies. The researcher also studied and analyzed numerous published print and electronic sources which provided secondary data and information on various aspects of the study. The researcher referred to doctorate theses from the Moi University's School of Information Science for insights on the methodology and structure of the research report.

3.9 Reliability and Validity

The above two related concepts have implications that are significant to the research process a fact that makes the testing of both reliability and validity an essential activity in research, as articulated by Winter (2000). Writing on the two concepts, (Patton, 2001)) postulates their importance and states that the two are aspects of research that a researcher should be concerned with especially at the stage where he/she is designing the study, collecting data, and analyzing results. This means that reliability and validity have elements that apply throughout the essential stages of the research process.

Reliability is defined as the extent to which a measuring instrument or procedure yields the same result upon repeated trials (Gorman and Clayton, 1997). The concept is therefore applied through repeated trials to evaluate or assess the reliability of a research instrument and help determine whether the results are replicable. Once a measure is repeated severally and on the same subject at a later date, stability reliability, which is the agreement of measuring instruments overtime, is ascertained. According to Gorman and Clayton, without the ability to use research tools and procedures that yield constant measurements, researchers will find it difficult to draw conclusions or make claims about the generalization of their research. When properly applied as a procedure in research activities, reliability helps in the establishing of internal consistency, interpreting data and predicting the value of scores.

The researcher applied the retest method (Cresswell and Miller 2000) as a way of assessing the reliability of the data collection instruments. This involved a procedure where a study was done on the same people and the results accordingly assessed.

Validity in research refers to the degree to which a study accurately assesses or reflects the specific concept that the researcher is attempting to measure (Golafshani, 2003). As such, it is concerned with the study's success at measuring what the researcher set out to measure. Within the research environment this translates to the important aspect of the application of the external validity concept which refers to the extent to which the results of a study are generalizable or transferable.

Internal validity is another important aspect of research. It is used to describe the rigor with which a study is conducted. This researcher ensured internal validity through the following procedures:

- i) Undertaking to formulate a research design that was efficient and appropriate;
- ii) Giving particular attention and special care with the data collection exercise;
- iii) Applying well considered decisions to the issue of what aspects to be measured;
- iv) Conducting a pilot study to ascertain the effectiveness of the research instruments.

3.10 Pilot Study

A pilot study is a process that is carried out before the main research takes place. The main purpose of the pilot study is to ensure that data collection will achieve the desired results. Hennink, Hutter and Bailey (2012) support the use of a pilot study on the basis that it is difficult to predict how interviewees will interpret the questions in the interview guide. The researcher therefore opted to carry out a pilot survey for this study. Additionally the pilot study would assist the researcher to:

- ii) Assess the potential outcomes of the research;
- iii) Check if the questions met the overall requirement of the study;
- iiii) Improve the design of the research by availing the opportunity to apply the principles of reliability and validity of the research instruments.

The pilot study carried out involved six respondents and was done before the main data collection took place. In this regard, the researcher followed the view that holds that it is best to find a small set of respondents who are comparable to members of the population from which the sample for the full study will be taken (Bryman, 2012). The six respondents were selected as shown in the following:

Table 3.5 Respondents in Pilot Study

| No. | Title | Number of respondents |
|--------------|-----------------------------|------------------------------|
| 1) | University Librarian | 1 |
| 2) | Deputy University Librarian | 1 |
| 3) | Senior Librarians | 2 |
| 4) | Librarian | 1 |
| 5) | Senior Library Assistant | 1 |
| Total | | 6 |

Since the main study was to be based in public university libraries, respondents for the pilot were selected from two private university libraries. The selection of private university libraries for the pilot study, ensured that respondents from PULs were not exposed to the research instruments beforehand as this would most likely introduce some bias into the research process.

The following procedures were followed to ensure consistency and also to maximize on the benefits of the pilot study:

- i) The researcher administered the interview schedule in the same manner as it was to be done in the main study;
- ii) The time taken for each interview was recorded;
- iii) It was ensured that all the questions were answered;
- iv) The researcher asked for feedback on seemingly unclear and ambiguous terms or questions;
- v) The researcher probed further as necessary so as to determine whether any of the terms were superfluous;
- vi) The questions were assessed for adequacy of relevance of responses;
- vii) It was established that the responses could be interpreted in the context of information required.

An analysis of the results of the pilot study was carried out and changes and modifications were done on the research instruments.

Modifications on Research Instruments after Pilot Study

The pilot study aroused an interest and keenness among respondents which for the researcher assisted in reaffirming the usefulness and relevance of the study. The researcher was also able to design the rest of the study as indicated in the following section:

- i) It was possible for the researcher to identify the set of respondents to include in the study to represent two levels, namely, a) Management consisting of university librarians and deputy university librarian; and b) operational level consisting of senior librarian and librarian. Senior library assistants were dropped from the research as the pilot study indicated a limited scope of appreciation of the research theme;
- ii) Useful insights were gained in reference to the research approaches adopted. The qualitative approach emerged as giving allowance to the respondents by giving them the opportunity to give their views on and perceptions of the influence of law on information services;
- iii) The research instruments effectiveness was enhanced. The questionnaires proved to be too long with the interviews lasting up to over four hours. The respondents are busy people with tight work schedules and a duration of over four hours was considered too long. On the other hand the questionnaires had over 50 questions

each. The pilot study presented the rationale and opportunity to reduce the time taken to do the interview. This was achieved through reducing the number of questions by consolidating those that were found to be similar. A number were also found not to have direct relevance and were dropped from the questionnaires;

- iv) Finally the pilot study assisted the researcher by increasing her knowledge base on the relationship between the library and other institutions and organizations.

3.11 Data analysis and Interpretation

Once the researcher had completed the data collection exercise, the collected data was further prepared through the processes of editing, coding, classifying and tabulating in a manner that would allow the researcher to proceed with the analysis and the final presentation of the research findings.

i) Data Editing

Editing of data is a process through which the researcher examines the collected raw data to detect errors and omissions, and to correct these as necessary (Kothari, 2004). Accordingly, for this study data editing was used to put the collected data through a process that involved proof reading, checking for errors and omissions, and ensuring that there was consistency. Data editing was important for this research where a large amount of the results were presented in a narrative perspective. In this case there was need to ensure that important key words as used by the respondents were included in the interview extracts and not lost during the editing.

ii) **Data Coding**

The data collecting exercise where the researcher used the semi-structured interview, interviews as well as documentary sources produced huge amounts of data that had to be managed in a manner that would allow for its analysis. The method adopted in this study was data coding which has been described as a data reduction method of breaking data into manageable component parts which are appropriately labelled for ease of identity (Bryman, 2012). Through coding the researcher was able to assign symbols to core concepts contained in the answers from the responses so as to have a limited number of categories that related to the objectives of the study. The responses from the respondents provided data that was coded according to stated categories, themes or concepts. In line with this approach, core concepts of the study were identified on the basis of the study's objectives which in the coding exercise formed the stated categories. These were further sorted out on the basis of the themes contained in the major category. The following example illustrates how the coding of major category and theme category was applied in this research: "Information services" formed a major coding category, while "circulation loans, interlibrary loans and short/special collection loans"; "photocopying services"; "Internet browsing and electronic resources"; "Information literacy"; "Selective Dissemination of Information and Current Awareness Services " formed the coding themes. By adopting the coding method the researcher gained an added advantage through which she was able to get more familiarity with the data and the relationships between the various aspects in readiness for analysis and presentation.

iii) Data Classification

Writers on research recognize classification of data as a process that arranges data in groups or classes on the basis of their common characteristics or themes (Kothari, 2014; Cresswell, 2013). The researcher applied the classification of data method as a further approach to reducing the amount of data to proportions that were manageable. Through this method, data with common characteristics or attributes were put together. For example the researcher recorded over 50 different responses on the item “principal elements of the acquisitions policy”. These were contained in a reduced classified list of the following five broad classifications: selection criteria; cooperation with faculty; acquisition methods and procedures; types of materials; and budgetary allocation.

iv) Data Presentation and Analysis

As previously stated, this research was based on a philosophy and methodology that adopted a qualitative approach. However, some of the data collected in the study was quantitative in nature. This included among others, respondents’ bio-data on their capacity and training in the legal aspects of information, their distribution, their awareness of various laws and how they learned about these. The data which fell within the category of descriptive data was presented in form of tables which were particularly useful in facilitating comparisons, percentages, bar graphs and pie chart these all being formats that apply the quantitative approach. Qualitative or narrative presentation of responses from respondents was largely applied in the study. Such data was presented in form of quotations from different respondents. The use of open ended questions as a follow-up to yes/no answers allowed for responses with the insights required in social

research as well as in-depth data and information. The narrative method was used to present such data in form of quotations from different respondents which also complemented and qualified further the quantitative data. Creswell (2013) writing on narrative research analysis and representation provides the researcher with various options on narrative data analysis. This researcher selected the analysis of what is written or spoken during the data collection.

3.12 Ethical Considerations of the Study

Authors on the topic of ethical issues in research are emphatic that thinking about research should run through the entire process. Although opinions vary as to the aspects of research where ethical considerations should be paramount, there is general agreement of the fact that the topic should not be treated as an add-on or an afterthought (Hennink, Hutter and Bailey, 2012; Bryman, 2012; Babbie, 2010). In agreeing with these sentiments, this researcher incorporated ethical issues through the various stages of the study as shown in the figure below (Fig. 3.1). The researcher followed guidelines issued by various research institutions and identified the method of incorporating ethical issues into the research process in the manner presented in the figure shown. According to the method adopted on ethical issues, their incorporation was worked into four main components, namely the research design, literature review, sampling and during the interviews. The following discussion explains the manner in which ethical issues applied at each of the four main areas identified.

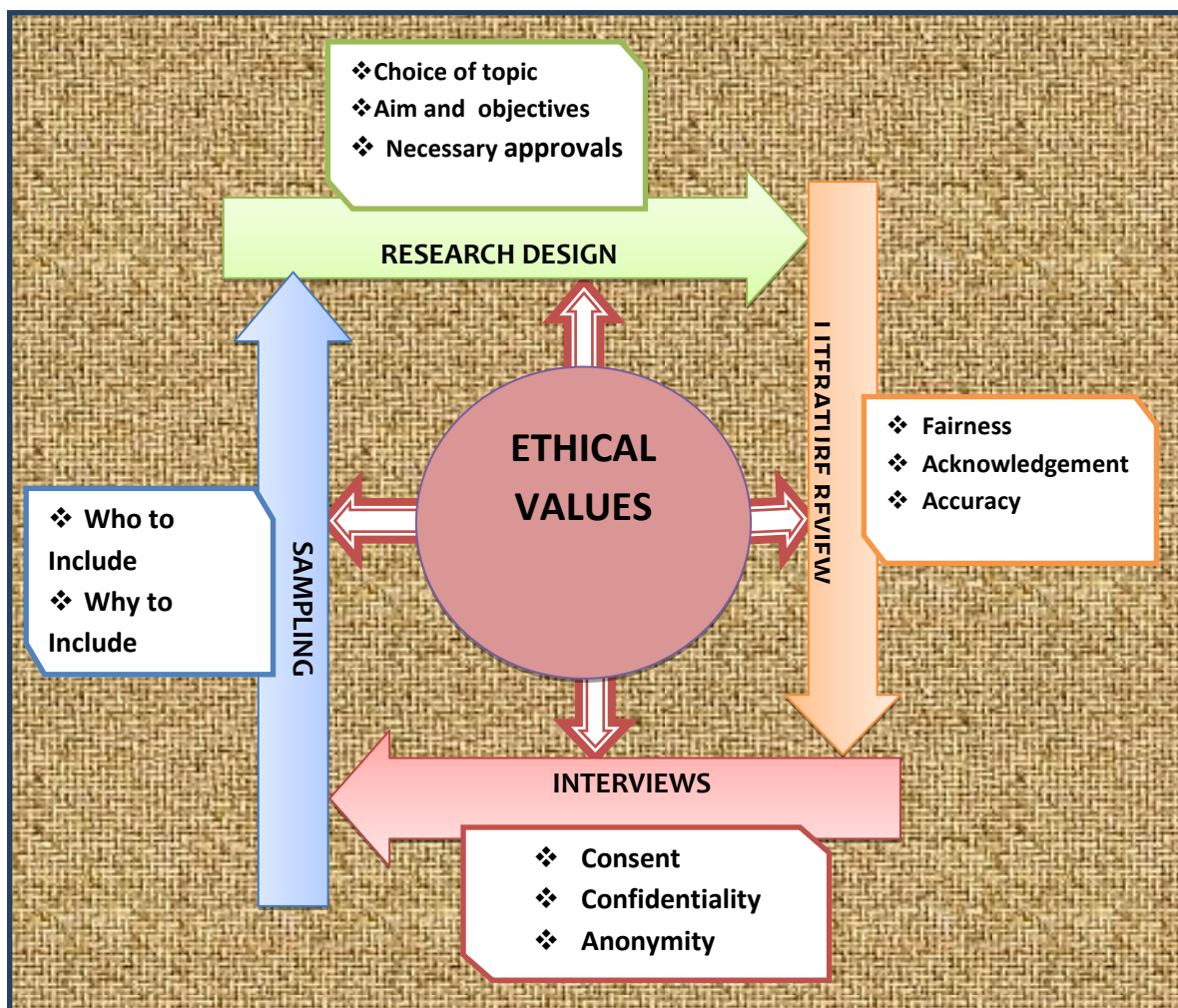


Figure 3.1: Incorporation of Ethical Issues into Research

Research Design

During the research design, the researcher ensured compliance with the standard practice by obtaining the necessary academic approval from the University, while on the regulatory and social side, the Ministry of Education through the National Council for Science and Technology approved the research. Secondly during the early planning stages, the choice of the study topic, the aim as well as the objectives was specifically

conceptualized in consideration of the promotion of scholarship by creating new knowledge in the area under investigation. This was in agreement with guidelines that suggest that a researcher should consider and indicate who will benefit from their research and what the research would be giving back to society (Hennik, Hutter and Bailey, 2012).

Literature Review

Kothari (2004) notes the sensitivity associated with a study's literature review. He refers to its role in establishing inconsistencies or gaps in existing theories, and other writers' works. With this in mind, the researcher made sure that the works cited and reviewed were carefully selected and scrutinized for relevance, and also in order to make provision for accurate analysis. The review was careful to maintain a balanced perspective regarding the strengths or weaknesses of works analyzed. Here as in the rest of the study, the works cited were duly acknowledged.

Sampling

According to the ERCs Ethics Guidebook, during sampling who of the study population to involve as respondents and who to leave out raises concerns related to the rational and justification for such inclusion and exclusion. For this research this was reflected in the library environment where duties and responsibilities overlap. The decision therefore to focus on University Librarian, Deputy University Librarian, Senior Librarian and Librarian, and leave out Senior Library Assistant even if they had responsibilities similar to those of those in the selected group, required expert knowledge and skillful understanding.

Interviews

The interview stage and process are particularly sensitive as they involve other people's views and opinions, and according to writers on the subject it is possible to have misrepresentations as well as loss of confidentiality (Bryman, 2012; Berg and Lune, 2011). Ethical considerations under this head range from willingness for the respondents to participate, to the clarity with which the questions are worded thus allowing for understanding and avoiding of embarrassment for the respondent. This researcher did the interviewing of both the respondents and key informants for the study. This allowed for the establishing of trust and confidence with the interviewees who were also assured that their anonymity would be maintained throughout the study. The researcher also obtained consent for the interviewees participation without pressure or persuasion. The researcher took time before starting on the interview to inform the respondents about the purpose of the study, the methods applied and what their participation would entail.

3.13 Chapter Summary

This chapter has presented the research methodology adopted for this study. The researcher started with a look at the research philosophies that formed the background to the approach that was applied in the study. The two philosophies that were discussed basing on their relevance were the positivist and the interpretivist philosophies. After that introductory background, the next section of the chapter looked at the research design which outlined the plan adopted for the study. The Grounded Theory and its role in library research was presented to give an overview of the inductive approach that was applied within the research methodology.

A discussion of both the quantitative and qualitative methods was given covering their characteristic features, as well as an explanation of the application of the two methods in the study. A detailed coverage of the study population was given including the sampling process and the sample population. The following data collection instruments were presented and their role in the study discussed; semi-structured questionnaires, interviews, and documentary sources. The study discussed the related concepts of reliability, validity and pilot survey and their contribution to this study explained. The processes of data analysis and presentation were discussed, and finally the ethical considerations that guided the study were presented.

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.1 Introduction

The aim of this study was to investigate the legal implications of providing information services in public university libraries in Kenya, with a view to proposing a model that would improve information service delivery to the university community. Data used for the analysis was collected by interviewing 54 respondents in seven public university libraries (PULs). The interviews were based on semi-structured questions that had been previously prepared and tested (Appendix. ii and iii). The specific objectives that guided the study were to:

- 1) Examine the organizational structure upon which public university libraries in Kenya base their provision of information services;
- 2) Explore the information services provided by public university libraries in Kenya within the context of the influencing laws;
- 3) Examine the acquisition of information materials in public university libraries in Kenya against the background of the relevant laws;
- 4) Examine the laws and declarations in Kenya that have an influence on the provision of information services in public university libraries in the country;
- 5) Establish the knowledge of aspects of law required by librarians in public university libraries to enable them provide information services to their clientele ;

- 6) Propose appropriate and relevant recommendations to improve the provision of information services in public university libraries in Kenya;

The current chapter starts with a presentation of general information on the respondents. This includes the respondents' distribution by library and by job title, their academic qualifications as well as their educational qualifications. The study largely used the qualitative method. However where the study collected statistical data, the presentation for each topic starts with the quantitative analysis which is then followed by the qualitative analysis which clarifies and complements the quantitative data.

4.2 General Information

The following section focuses on the details of the respondents including their distribution across the seven public university libraries, their qualifications and their designation at work. The section is also an attempt to ensure that the study attains the required measure of validity and reliability that would qualify it for replication in other research.

4.2.1 Respondents' Distribution

The researcher interviewed fifty four (54) respondents in an exercise that covered the seven public university libraries in the study sample. The representation of the distribution of the respondents is shown in table 4.1 and also in figure 4.1. The University of Nairobi library had the highest number of respondents accounting for 17 (31%) of the total number of respondents. Moi University library followed with 10 (18%) of the respondents, while both Egerton and Kenyatta University libraries each had 8 (15%) of

the respondents. Jomo Kenyatta University (JKUAT) library accounted for 6 (11%) of the respondents, while Maseno and Masinde Muliro University libraries both had 3 (6%) and 2 (4%) of the respondents respectively. As expected, the distribution of respondents was reflective of the sequential establishment and development of public university libraries in the country with most of the respondents coming from the older university libraries while the least number of respondents came from the newly established libraries. The distribution was also an indication of the size of the library.

Table 4.1 Respondents Distribution by Library (n = 54)

| PUL | Frequency | Percentage |
|---|------------------|-------------------|
| University of Nairobi Library | 17 | 31 |
| Moi University Library | 10 | 18 |
| Kenyatta University Library | 8 | 15 |
| Jomo Kenyatta University of Agriculture and Technology Library | 8 | 15 |
| Egerton University Library | 6 | 11 |
| Maseno University Library | 3 | 6 |
| Masinde Muliro Library | 2 | 4 |
| Total | 54 | 100 |

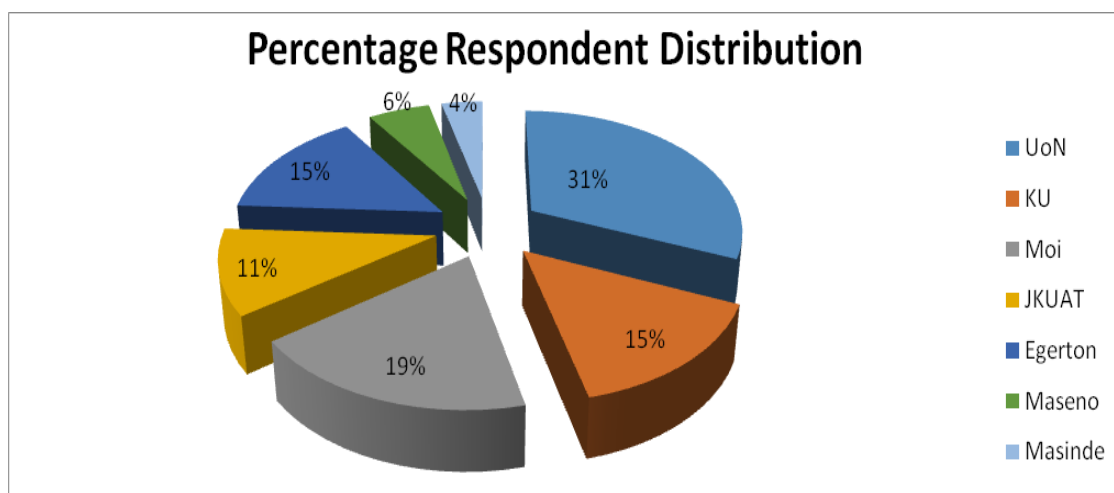


Figure 4.1: Respondents' Distribution by Library

The distribution among the respondents by job title was in two main categories as shown in table 4.2. Category one consisted of 12 (22%) respondents that included university librarians and deputy university librarians. This category was made up of the university librarian and the deputy university librarian. The two formed the libraries' management that generally takes overall charge of the provision of information services as well as the wider management of the library. Responsibilities of the university librarians' and the deputy university librarians' included guiding and directing the formulation of key policies their implementation and representing the library within the university and beyond. They also had responsibility of conceptualizing the challenge introduced by changes in the systems within which the libraries were operating and proposing and recommending possible solutions.

The remaining 42 (78%) respondents comprised of the senior librarians and librarians in the libraries in the sample. This level of staff was in charge of the actual implementation of library policies and operations as well as supervision of the activities involved in the provision of information services. Each of the staff involved was in charge of a section which gave them a good opportunity to get firsthand experience of various aspects and perspectives of information service provision.

Table 4.2. Respondents' Distribution by Job Title (n = 54)

| Job category | | Frequency | Percentage |
|-----------------------------|--|-----------|------------|
| University Librarian/Deputy | | 12 | 22 |
| University Librarian | | 42 | 78 |
| Senior Librarian/Librarian | | | |
| Total | | 54 | 100 |

4.2.2 Respondents' Academic Qualifications

It is generally assumed that an individual with higher academic qualifications will perform their work better than they would do if they were only minimally qualified. In general, library work deals with information and knowledge and requires individuals who are adequately prepared to deal with the conceptual challenges involved. For academic libraries more challenge is presented by the need to be at a level where they will have an

understanding of their counterparts in the teaching faculty. The importance of higher qualifications in university libraries is supported by a relevant standard of the Commission for University Education that requires that a university librarian be a holder of a doctorate. Against this background, the researcher wanted to find out the academic qualifications of the respondents.

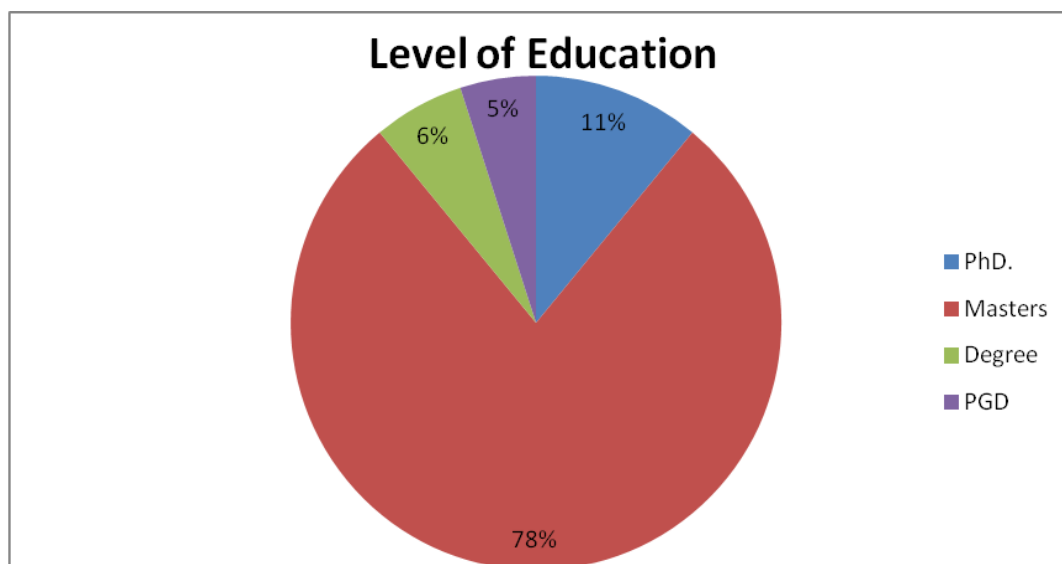


Figure 4.2: Respondents' Academic Qualifications

The relevant question asked them to give the highest level of academic qualification they had attained. Figure 4.2 and table 4.3 present the academic qualifications held by the librarians that were interviewed for this research. These ranged from the lowest at Bachelor's Degree represented by 3 (6%) respondents, through the Postgraduate Diploma holders consisting of 3 (6%) of the respondents, the Master's Degree had 42 (78%) of the respondents, to the highest qualification at the Doctorate level with 6 (11%) respondents.

Table 4.3. Respondents' Academic Qualifications (n = 54).

| Education level | Frequency | Percentage |
|------------------------|------------------|-------------------|
| Doctorate | 6 | 11 |
| Masters degree | 42 | 78 |
| Bachelors degree | 3 | 6 |
| Post graduate diploma | 3 | 5 |
| Total | 54 | 100 |

4.3 The Organizational Structure within which Public University Libraries Provide Information Services

The first objective of this study was to examine the organizational structure within which public university libraries provide information services. This study borrowed two principles from the organization theory. The first principle states that an organization's aim is founded on that organization's structure. Accordingly for this study, the provision of information services, which is the goal of public university libraries, is founded on the vision, mission and objectives of the respective library. The second principle that the study applied, argues that an organization is linked to other organizations through established networks. An existing relationship was thus recognized between public university libraries and the Government with laws forming the link between the two. In

connection to the above, this researcher assumed that the networked organizational system within which the public university functioned, provided an enabling environment for the analytical study of the legal implications on the provision of information services.

The following section presents an analysis of the vision, mission and objectives of the respective public university libraries using common themes of information service provision. This is followed by an analysis of the topical themes of information service provision deduced from the vision, mission and objectives of the libraries.

4.3.1 The Vision, Mission and Objectives of the PULs

In an institution the vision gives direction to the planning process. It has been described as an act of foresight that is inspiration in setting the organization's future. On the other hand, a mission focuses on the purpose of the organization, its reason for existence and what it hopes to accomplish. Both the vision and mission guide the organization in establishing goals and developing the strategies to achieve the goals that have been set. Goals and objectives form the interface that links the ideals of the vision and mission to the reality of services for the users.

Table 4.4 lists the vision, mission and objectives of the seven public university libraries that formed the study sample for this research. These were obtained from the responses from university librarians and the deputy university librarians in the sample, and further enhanced with information from the libraries' web sites.

Table 4.4 An Analytical Summary of the Vision, Mission and Objectives of the Public University Libraries

| | Vision | Mission | Objectives |
|----|---|--|---|
| 1 | An excellent and world class information centre for the provision, dissemination and preservation of knowledge. | Provision of quality information services for University's core activities of teaching, learning, research, community service, and consultancy. | Efficient management of information resources; enhance teaching, learning, research and consultancy; improved information delivery; security of users, library materials and staff. |
| .2 | A user-centered, and competitive library service | Satisfaction of user needs via the provision of information resources and services. | Facilitate teaching, learning and research, and extension; acquire and manage information; provide information services; facilitate dissemination and preservation of knowledge; train users on information literacy skills; provide adequate and conducive environment for users. |
| 3 | Innovative, focused, competitive user-centered library. | Providing a dynamic and quality user-centered service for teaching, and inculcating life-long learning skills for human development; | Acquisition, organizing and dissemination of information; providing access; providing information services for the academic programmes; teaching information literacy; staff recruiting and developing ; adopting and using ICT ; maintaining and preserving local knowledge. |
| 4 | An excellent academic information centre. | Supporting University's teaching, learning and research by providing access to information resources; disseminating research information and giving information through' ICT | Select and acquire information resources; facilitate teaching and research; provide information access; preserve information resources; information literacy; Application of ICT to provide access; disseminate information and knowledge |
| 5 | To create an information system to promote scholarship. | Providing information services for teaching, learning and research | Acquisitions; provide access to information; support teaching, learning, research and innovation; preserve and conserve information resources; user education; manage information resources and services; provide a secure and conducive environment for library resources and users; strengthen collaborations and partnerships. |
| 6 | To acquire and provide information for education and research. | Providing information services through acquisition, processing, dissemination. | Identify user needs; offer library services; maintain and sustain library resources; provide information and relevant data for curriculum at the University; provide reading space for library users; acquire and conserve library research materials. |
| 7 | Strive for excellent service provision. | Supporting teaching, learning, innovation and research by providing access to knowledge through acquisition, organization, preservation and dissemination. | To support teaching, learning and research; acquisitions, organization and dissemination of information resources; promote use of ICT ; provide teaching, reference and research assistance; |

4.3.2 A Framework of Information Services Provision

The public university libraries' vision, mission and objectives presented in table 4.4 were in line with the earlier observation that they gave the overall direction to the ultimate aim of the libraries namely, meeting the information needs of the universities' community for learning, teaching and research. To carry out more specific and detailed analysis of the elements incorporated in the VMO, the researcher deduced a list of seven common and topical themes to form a framework of information services provision. The seven topical themes represented different facets of the provision of information service as follows:

- 1) Active engagement in teaching, learning and research;
- 2) Acquisition of information materials;
- 3) Providing access to information;
- 4) Dissemination of information;
- 5) Teaching information skills;
- 6) Applying Information Communication Technology, and
- 7) Building of staff capacity.

The following is an analytical graphic presentation of the above topical themes and their respective linkages to the parent university, and library users (Fig. 4.3)

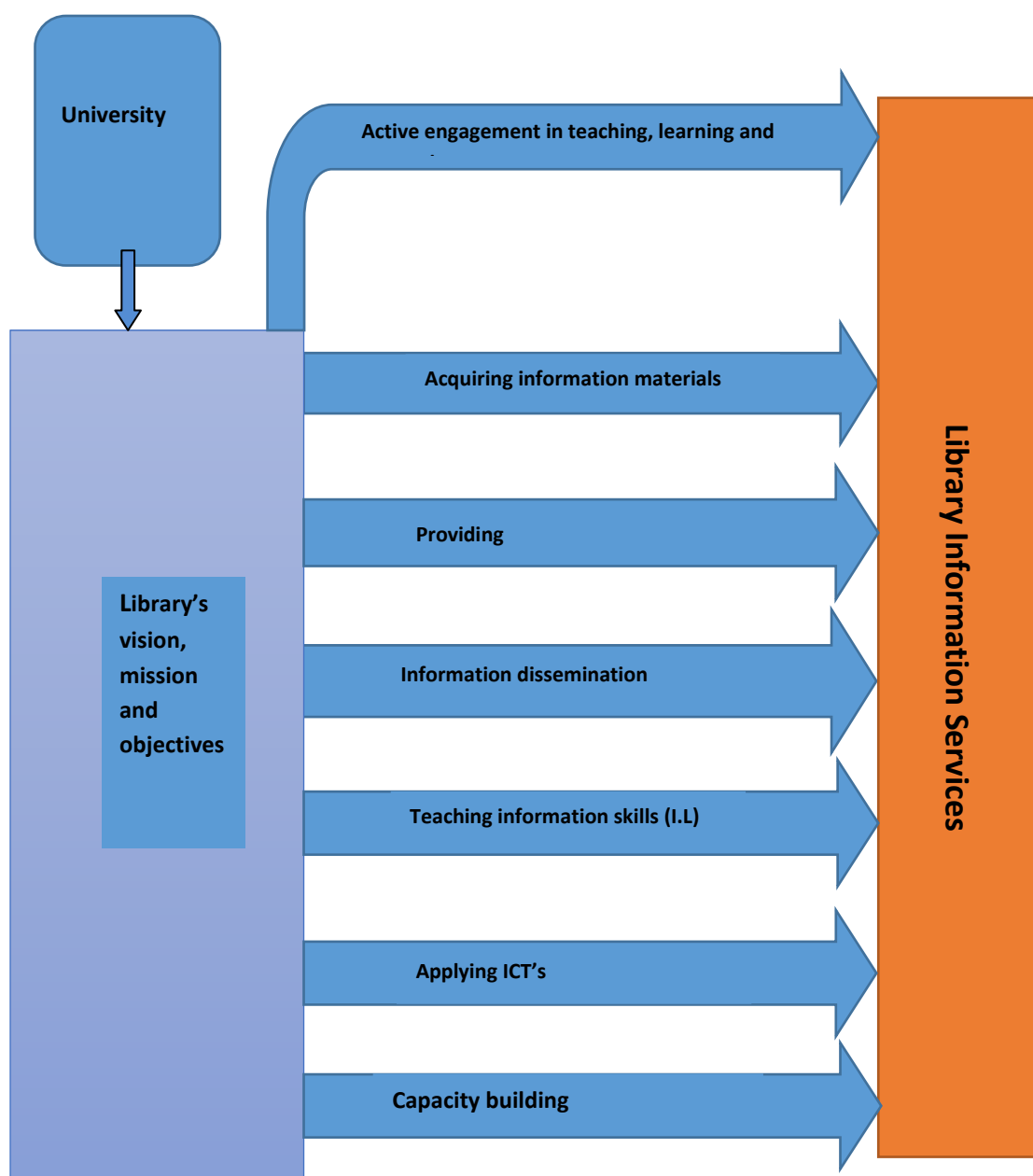


Figure 4.3: A Contextualized Representation of the Information Services Framework as Deduced from the Vision, Mission and Objectives of the Public University Libraries

In the following section, each of the above themes is analyzed with a view to establish an understanding of the manner in which the aspects that constitute the organizational structure of the library translate into elements of information service provision.

4.3.2.1 Active Engagement in Teaching, Learning and Research

The overarching role of the library in the learning, teaching and research activities contributes to the realization of the objectives and goals of the parent university. This takes place through an evolving partnership where the librarians and members of the teaching faculty share the common goal of making maximum use of the learning opportunities and in assisting the students to attain their desired ends (CUE, 2012). The partnership in question emphasizes the integration of the academic library into the centre of the university's core activities as a way of ensuring full use and access to information resources in the library. The collaboration between librarians and the teaching faculty would be implemented, for example, through the discussion curriculum development issues.

- Information collected through the study from respondents was consistent with the above observations. One respondent was emphatic about the role of the library in the academic process and linked it to the academic status accorded to professional staff in the library. He stated as follows:

“Librarians have academic status because of the critical role they play in the university, which points to information's value in education and research. Librarians' participation in the academic process takes place through membership

to different forums of the university including the Board of Postgraduate Studies, Deans Committee and Senate among others. Here librarians have an opportunity to demonstrate their skills and expertise in all the area of information management and its use, and if necessary offer the necessary leadership”.

- Another respondent credited the library with helping the individual in their self-actualization and intellectual achievement. This was put as follows:

“As the intellectual heart of the university, the library helps individual users by providing a conducive environment for the interaction of scholarly minds thus assisting them and the university in the pursuit of its vision of molding graduates who are well prepared to meet the challenges at work and in life in general.”

4.3.2.2 The Acquisition of Information Materials

Traditionally, libraries placed high premium on the technical aspects of managing information. But focus has gradually shifted to bring user services more to the center of library operations. However, the importance that right to information attaches to the key element identified under ‘freedom to receive’ has been sustained although the change in the formats of information materials introduced a dimension with new developments and challenges. Libraries have found it necessary to use collaborative interventions to address these issues.

- The above was described by a respondent as follows:

“It is true that the automated systems and digitization have reduced the significance of some of the technical activities in the library. The acquisition activity has however remained with E-resources presenting challenges that have been addressed by INASP and KLISC.”

The study noted that the acquisition function forms one of the areas in which librarians have established unchallenged skills and expertise in the management of information and information resources.

- A respondent commented on the above aspects and observed that this presented an opportunity for librarians to further increase their skills. His comments were as follows:

“In the acquisition of information materials, librarians have worked with faculty and given leadership through procedures that apply policies and guidelines to ensure quality and relevance of the information resources procured. Although currently problematic, the acquisition of electronic resources will eventually increase the skills and knowledge of the librarians in information management.”

4.3.2.3 Providing Access to Information

Respondents viewed access to information in two ways. One view was consistent with the importance attached to the provision of physical facilities for the accommodation of users, materials, as well as the library equipment. A respondent considered that it was important to provide students and others with reading space, and a conducive environment for collaborative research and study.

The second way of providing access to information is by ensuring by opposing and objecting to the various forms of information censorship. Internationally, awareness on the issue of this kind of access has been continuously promoted by the International Federation of Library Associations (IFLA) through the Freedom of Access to Information and Freedom of Expression (FAIFE). In the United States, the American Library Association (ALA), issued the “Bill of Rights” to guide libraries in their effort to offer full access to information.

- When asked to comment on the manner in which the library related the right to information to providing full access to information, vis a vis the threat from censorship, a respondent said the following:

“We are aware of the arguments in support of full access to information, such as IFLA’s declaration on access and intellectual freedom. Censorship is also likely to occur through, for example, the Official Secrets Act. Unfortunately we lack local guidelines on this or active forum where we can compare experiences.”

4.3.2.4 Information Dissemination

Information dissemination is a proactive information service designed to educate and inform an identified group of users on issues of interest to them. This study noted that freedom of information statements highlight information dissemination, or imparting information, as a major element of the information right.

The study noted a general view from the respondents recognizing information dissemination as the final stage in an involved process of information work, which ultimately linked the library with the users. They had a wide awareness of its importance.

- When asked to make a comment on the dissemination of information, a respondent said as follows:

“Library work in information dissemination consists of a wide range of services that has been enhanced through the use of e-resources. Information dissemination is a factor associated with the success that students will attain at the end of their studies and also in their life in the world.”

- Another respondent gave more specific details of the impact by the ICTs. He offered the following information:

“It is now possible for the library’s information dissemination services to keep up with developments in the country. For example, for distance learning which a major focus in national development, the library has established a library portal to serve remote users. The library has been able to address the information needs of distance learners quite adequately by using the OPAC and those e-resources under subscription as well as the others that are available through open access. Previously the library could only meet the needs of remote users by physically setting up information centres in the nearest town.”

4.3.2.5 Information Literacy

Information literacy is the ability for an information user to realize the need for information, phrase questions through which information will be gathered, evaluated and then applied. Another dimension of information literacy includes aspects of understanding the economic, legal and social issues of information. For librarians, information literacy involves a practical element which affords them an opportunity to expound and explain in an orderly manner an understanding of legal issues and their effect on information services.

- The researcher wished to establish the respondents' views on information literacy and its role in furthering the aims of the library. A general view of the I.L focused on the aims and objectives, its evolution and development, as well as the challenges encountered in the implementation process. One respondent stated as follows:

“The library has a policy which gives the aims and objectives of I.L. One objective seeks to enhance information access and to make sure that the information resources are effectively and efficiently used by students. Information literacy works well when done as part of an academic course where the librarian will team up with the lecturer to make I.L more meaningful and relevant.”

- The next respondent spoke of the challenges involved in implementing an Information literacy and said the following:

“The problem with I.L. is that students are largely focused on exams and where information literacy is not part of the exam system, they do not see its benefits. Programmes on offer are also heavily loaded and it has been difficult to get extra time for teaching information literacy classes. I think the teaching faculty has actually not given the library the necessary support to implement information literacy. I would say that it has not been a very successful undertaking”.

The above remarks appeared to fall short of the expectations of the library standards on the role of information literacy and its contribution to the learning process. Experiences elsewhere consistently point to the information literacy programmes offering the opportunity where the librarian and the lecturer worked together to assist students to maximize their learning and attain lifelong learning skills.

4.3.2.6 Information Communication Technology

The United Nations planned and organized the World Summit on Information Society in 2003. The purpose two conferences involved had the view that ICTs and provided an opportunity to address and put a stop to the widening of the digital divide. This researcher this interpreted this as referring to ICTs contribution to enhancing the right of access to information for all. Information Communication Technology (ICT) is the application of computers and other technologies to the acquisition, organization, storage, retrieval and dissemination of information. The computers are used to process and store data, while telecommunications technology provides information communication tools which make it possible for users to access databases and link them to other computer networks in different locations. For the library, this view of ICT incorporates the dual application of

ICTs, namely, the management of the housekeeping activities of acquisitions, organization and storage, as well as the service delivery through retrieval and dissemination of information. By applying ICTs to these activities, librarians introduced vast changes with added benefits for the academic library in particular where the teaching and research functions heavily depended on the availability of fast and current information. According to data collected by this study, the application of ICTs was a major aspect of the libraries' planned operations. This research sought to establish how libraries interpreted the role of ICTs and their overall impact.

- Respondents' were asked for their views and gave comments that touched on the benefits of reducing work backlogs, increased and fast access to information. There was also mention was also made of ICTs bringing about a growing expectation from a more enlightened user population, and an accompanying change of the learning environment and delivery mode and the need for the library to keep up with these related developments. Respondents also talked about the challenges faced by libraries in the process of implementing ICTs in the library. A respondent gave information on the strategy they adopted for the initial introduction of ICTs into the library. She noted the following:

“Our approach in implementing ICTs into the library was planned by both the library and the university's I.T. Division. This was to our advantage because it aligned our plan with that of the wider institution. It also gave the university, at this early stage, an overview of the accrued benefits of applying ICTs in the

library. As a result, the library had institutional support when it came to allocating the financial resource required for the hardware and library software needed.”

- Another respondent noted that:

“By applying ICT, the library increased access through digitization of some of our collection within the library, and also beyond the library through the Internet from the library website. The Online Public Access Catalogue (OPAC) can be accessed both within the library and also from remote computers.”

- A respondent noted the challenges associated with ICTs including cost implications. She made the following observation:

“While ICTs have brought many benefits to the library and its work of information dissemination, there has also been for library staff as well as users who have to keep by continuously acquiring new skills and new knowledge in order to manage and use the resources. Equipping the library with the hardware and software was an expense that had to be sustained. Fortunately the university is a member of the Kenya Education Network (KENET) whose provision of bandwidth at cost-effective rates is an incentive for the library. Finally in the library we are yet to take charge of the licensing of electronic resources currently done by the consortium with assistance from INASP.”

4.3.2.7 Staff Recruitment and Development

Capacity building and training in the library is in consisting of the pre service or initial level for persons undergoing training for the first time, and the in-service level for persons already working and requiring new skills. Currently the initial level of training is readily available and staff working in the library, are able to join and undertake their studies on part-time basis. For purposes of acquiring information and knowledge in the areas of copyright, licensing, negotiations, information censorship and others, respondents appeared to focused on training through offered through workshops or seminars. This is in line with developments elsewhere which connects with continued professional development (CPD). This has been described as the systematic maintenance, improvement and broadening of knowledge and skill and the development of personal qualities necessary for the execution of professional duties throughout the individual's working life. It can be acquired through various methods including distance learning, involvement in professional associations, attending and making presentation in conferences, seminars and workshops.

- In this connection with the above, a respondent made the following comment:

“Library staff are well equipped with the general skills and knowledge required by their work. Undergraduate LIS programmes offering courses on general aspects of the profession are readily available and therefore those joining the library have already acquired that level of qualification. However the challenge facing libraries comes through the changes taking place. For example, issues presented by electronic

resources require librarians to consistently upgrade their skills through workshops and seminars.”

4.4 The Information Services Provided by Public University Libraries in Kenya within the Context of the Influencing Laws

4.4.1 Introduction

The second objective for this study was to explore the information services provided by public university libraries in Kenya within the context of the influencing laws. The provision of information services formed a key aspect for this study. Consequently information services and their provision provided the framework upon which the analysis of aspects of law and their implications were based. It was also through the provision of information services to its university clientele that the library was viewed as an integral part of the university. The following section consists of an analysis of the findings from various aspects of information services in the seven public university libraries in the study sample.

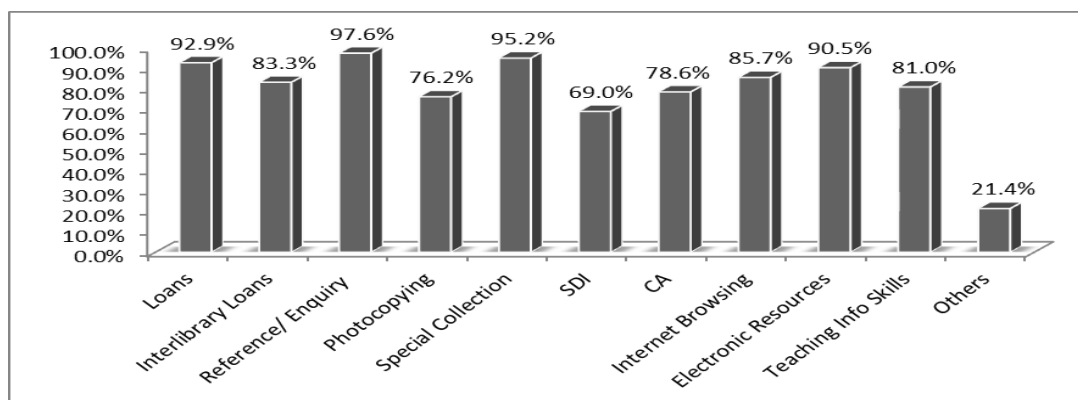


Figure 4.4: Information Services Commonly Offered in Public University Libraries

4.4.2 Information Services Provided by Public University Libraries

Data from respondents showed that the most frequently used information service in PUL is the reference/enquiry (97.6%), followed by the special/short loan service (95.2%). Other information services were ranked as shown in Fig. 4.4 above. The research revealed that the traditional information services consisting of loaning out of information materials continue to top the list of services offered by PUL (special/short loans – 95.2%; normal loans – 92.9%; interlibrary loans- 83.3%). Photocopying service was ranked at position number eight with a score of 76.2%. The use of electronic materials was ranked fourth with a score of 90.5%, while Internet browsing came next with a score of 85.7%. The teaching of information literacy revealed an interesting finding. The information literacy, a unit within the common courses offered in public universities taught by librarians attained position number eight in the service ranking and scored 81%. The two personalized services labeled as Selective Dissemination of Information (SDI) and Current Awareness (CA) apparently did not indicate high prominence at number nine and

seven with respective scores of 69% and 78.6%. Respondents were asked to give comments on each of the services offered in the library. The following section gives an analysis of their comments.

4.4.2.1 Circulation Loans, Interlibrary Loans and Short/Special Collection Loans

Information received contrasted with situations in university libraries elsewhere, as for example in the U.S.A., where it has been observed that circulation transactions have reflected a downward trend. This has however, been attributed to advanced projects of digitization of print monographs more commonly observed in universities that are particularly strong on research and postgraduate studies.

- In connection with the borrowing service in public university libraries, a respondent made the following observation:

“Book loans account for a very high percentage of our circulation services particularly among the students. My opinion is that this will continue despite the availability and use of electronic resources.”

Regarding specific details of book loans, the researcher was informed of restrictions that were meant to ensure that materials available circulated among users. On the face of it, the library may appear to be working against the principle of increased access. It was however explained as the only way of sharing resources that were limited.

- This issue was explained by a respondent as follows:

“With over 30000 registered users, the library has to limit the number of materials borrowed as well as the loan period for circulation books. We allow students a maximum of six books for 14 days, and 10 books for one month for lecturers and postgraduate students, both renewable once. This is admittedly restrictive especially when viewed against the scope of the number of courses for the undergraduate student but it is the library’s way of ensuring that the limited information resources are equally.”

There has been some debate among librarians regarding the role and continued value of interlibrary loans. Those who consider that interlibrary loans are no longer that relevant, argue that in the current environment of advances in the digitalization of information resources, and the onset of electronic resources, the role of interlibrary loans has been considerably reduced. Those supporting the concept say that despite the changed circumstances with regard to digitalization, no library can be self-sufficient in meeting their users’ needs for information. They see digitalization as an enhancement of interlibrary loans rather than a limiting factor. Furthermore, they say, interdisciplinary research will grow, leading to the need for the continued sharing of information among all information institutions including the library. At the same time it is considered that it will not be possible to digitalize all the print material in a library due to the legal and financial implications involved. A main objective of public university libraries is resource sharing and included in this is the interlibrary loan concept. In the study interlibrary loans were ranked fifth among the services offered in the libraries under review. This gave some credibility to the view that the interlibrary service is on the decline.

- Another perspective from a respondent on the issue of interlibrary loans held that the demand for material from the individual library's clientele was so overwhelming as to leave no room for lending to other libraries. According to this respondent:

“The reason why interlibrary is on the decline I think is because we attend to our users' needs first. This leaves us little room to lend to other libraries. Moreover, libraries are now members of KLISC and a substantial number of their resources acquired and availed through common subscription to all the libraries.”

Loans from the special collection and the short loan collection are offered to library users for short periods ranging from as short as one hour to about one working day. As their name implies the materials in question are special and rare, or they are in great demand where probably only one copy is available in the library. This type of materials included copies of theses done in the university as well as personal copies belonging to lecturers who placed them in the library for use by their students during the semester when a certain course is on offer.

- A respondent observed that the pressure associated with the use of the short loan materials cited above would ease off with the increased digitization of these resources. This respondent gave the following information:

“There is a plan to digitize the theses and the conference papers from lectures as part of the Institutional Repositories (I.R.) initiative which we hope will ease off the pressure on the short/special collection.”

4.4.2.2 Photocopying Services

In the above circumstances where information materials are loaned out for short periods, photocopying becomes inevitable. These conditions have led libraries to using reprographic services including photocopying to facilitate their lending services. Observers have attributed widespread photocopying among libraries in developing countries to the scarcity of books with most of the books being imported at relatively high costs.

Quantitative data from this research (Fig. 4.4), as well as views from the respondents agreed with the above statements showing that photocopying of library materials was done in large numbers.

- A respondent described the practice and also referred to copying outside the library in the following statement:

“Photocopying services are in very heavy demand partly due to the restrictions of the loan policy particularly for books on reserve. It is possible for a user to photocopying a whole text book which is cheaper than buying a copy of the title. Library staff are aware of the implications for the copyright law and inform users on the same. Much more copying takes place outside the library with private

vendors. With no understanding of the copyright law provisions by those vendors, it is very likely that some infringement of the law will take place.”

4.4.2.3 Internet Browsing and Electronic Resources

Advances in information technology have globally made positive changes on the information scene. Libraries in Kenya have been part of this transformational shift that has resulted in the adoption of I.C.T. into the management of information as well as the provision of information services. Two benefits have been realized through this process, namely, the fast retrieval of information ensuring the necessary currency required for research and learning. The second benefit is in form of vast sources of information accessed through the Internet thus providing expansive sources of information and knowledge. At the time this research was undertaken, all the libraries in the sample were procuring electronic resources through KLISC, the local consortium. Electronic services were on offer to users with Internet browsing provided via cable network or wifi connectivity.

- Respondents were asked for comments on use of the Internet and the electronic resources. Their responses referred to the benefits realized through the introduction of the new resources, and also the infrastructure that the university had set up to make sure that the services were available for library users. One respondent explained this as follows:

“This library has made a lot of progress in the adoption and use of ICT.

We started with limited use of the Internet, while the digitization in the

library led to the implementation of the OPAC. Currently the library website links users to relevant and useful sites.”

- Another respondent referred more specifically to the implementation of e-resources saying that:

“Information services in the library had a major boost through the introduction of e-resources. The library started by introducing users to journals from open sources, for example, the Education Resources Information Centre (ERIC) and the Africa Journals Online (AJOL). Since joining KLISC the library now acquires both electronic journals and electronic books through the licensing method.”

- With regard to the related issue of skills required to use e-resources, the researcher was informed as follows:

“Library staff had to upgrade their knowledge in line with the new developments, and acquire the new skills required by the use of the Internet and e-resources. The need to address the challenge of licensing conditions is ongoing but INASP has offered useful training in this area.”

4.4.2.4 Information Literacy

Academic libraries have traditionally offered forums through which they provide users with skills or knowledge on the use of library resources. Initially the methods applied were unstructured and consisted of library tours during orientation. In time these

gradually evolved to course specific workshops or lectures given on demand by course lecturers.

- According to respondents, using e-resources was posed problems for new users. This and the need to educate users on the conditions imposed by the licensing approach, introduced a new dimension to information skills. A respondent described his library's approach to resolving the issue as follows:

“The library offers training to users on request. Additionally scheduled training sessions are held on regular basis twice a week. Library staff are continuously acquiring the skills we require in order to impart the same to the users.”

4.4.2.5 Selective Dissemination of Information and Current Awareness Services

According to figure 4.7 above, the Selective Dissemination of Information (SDI) and Current Awareness (CA) services were not heavily used at 69% and 78.6% respectively. This seemed to fit in with the description of the two services that are more commonly found in specialized research institutions. Respondents indicated that SDI and CA are offered to researchers and postgraduate students who would be seeking for specialized and current information mainly published in journals. Noting that the SDI and CA methods had many benefits for the users and also for the library, a respondent however cautioned that it might require that library staff acquire specialized knowledge on the subject in question.

- The following responses expounded the above sentiments, the first response referred to the benefit contained in SDI and CA services, while the second pointed out that the involved challenge in connection with subject specialization:

“As a College Library with users specializing in a specific subject area, we offer SDI and CA to our clientele. We get some of this from automated systems that are on-line having previously identified those researchers and lecturers with interests in the specified topic or area.”

“I think offering SDI and CA in a technical area like Engineering and Medicine may be challenging as it may require having some knowledge in that area. While it is visible to have librarians with knowledge in the social science, it may not be possible to have the same in the areas referred to earlier.”

With the possibility of offering SDI and CA services in mind, the researcher asked respondents to indicate their libraries’ strongest area by subject coverage. The subjects cited were as follows:

- Education;
- Pure and applied science;
- Engineering;
- Business studies;

- Agriculture and development;
- Humanities and Social science;
- Environmental studies; Medical sciences;
- Biological and Physical Sciences.

4.4.3 PULs Success in Providing Information

To complement the above discourse on information services that libraries offered to their clients, respondents were asked to indicate whether or not they were able to meet all their users' requests for information. Among the responses received, 31 (57%) answered in the affirmative, while 23 (43%) said that they were not able to do so. Table 4.5 below is a representation of the responses.

Table 4:5: Provision of Information Services On Request (n = 54)

| Whether always provided info | | |
|-------------------------------------|------------------|-------------------|
| upon user request | Frequency | Percentage |
| Yes | 31 | 57 |
| No | 23 | 43 |
| Total | 54 | 100 |

Those respondents who reported that they were not always able to meet the information needs of their users were asked to give reasons why they were unable to meet the information needs of their users. The following were the reasons cited as leading to failure to meet the information needs of users:

- Insufficient funds and limited budgets;
- Staff handicaps including lack of knowledge, skills and experience;
- Inadequate information resources;
- Lack of rapport between library and teaching departments;
- Delays in acquisition of information materials caused by lengthy procurement procedures;
- Bandwidth challenges causing slow Internet speeds; and
- Copyright limitations and licensing conditions on the use of e-resources.

4.5 The Acquisition of Information Materials in Public University Libraries in Kenya Against The Background of the Relevant Laws

The third objective for this study set out to examine acquisition of information materials by public university libraries in Kenya against the background of the relevant laws. The following section presents and analyses data on various aspects of the acquisition

process, and interprets these data and relates them to the provision of information services and relevant aspects of law.

In the academic library as well as in other types of libraries, the acquisition function has for a long time been accorded relatively high importance. This is due the role played by acquisition as a backbone to the provision of information services. It is also carries the responsibility of assuring relevance of the materials, and setting standards in the methods applied to select them. Further significance of the acquisition of information materials in the library has a financial perspective. In this regard, acquisition of information materials is a recurrent expenditure with the highest budgetary allocation compared to other votes in the library. Finally, new developments based on the shift from print to digital materials, and in particular electronic resources, have impacted on this traditional acquisitions' environment, necessitating new orientations and concerns. The new practice that has emerged in the acquisitions process involving buying of content as opposed to the procurement of a physical item, is proving to be a challenge for librarians. This has been part of the new environment associated with issues of contracts, licenses, and copyright among others. These have come with conditions that require, among other things, that the library defines the user, and how the user community accesses the information material. For the acquisitions librarian, these conditions introduce elements of law that require a certain amount of understanding, and also involve negotiations with the vendor, aimed at getting the best conditions for use.

4.5.1 Acquisitions Function in Public University Libraries: an Overview

To form a general background of acquisition activity, the researcher asked respondents to give general comments on the same. Three general views emerged touching on the established traditional acquisitions system, policy for electronic resources, and the skills needed for the acquisition of digital resources. To explain these views further, respondents referred to the fact that libraries had in place a traditional acquisitions system established over the years, made up of the collection development procedures of identifying, selecting and procuring processes. The key elements involved were given as the relevance of materials as well as the number of the volumes procured. Secondly, although respondents had an awareness of the shift to electronic materials, they were not clear on the need for a new policy for these.

- They stated as follows: “The library has a policy on the acquisitions of print materials, but we are yet to develop one to guide the acquisitions of electronic materials. Currently this is done through KLISC with the assistance from INASP”.

They also talked about an anticipation of challenges especially with reference to the knowledge and skills demanded by the acquisition of electronic resources.

- This was put as follows: “The library has embraced digital resources. The acquisition system is one of the most developed in the library. This forms a good base to continue with acquisition of e-resources. However, there are new procedure to adopt for dealing with the acquisition of electronic resources in terms of licenses

and the negotiations with vendors. We are yet to acquire the necessary skills and expertise”.

4.5.2 Acquisition of Electronic Materials in Public University Libraries

The study found that public university libraries acquired information materials in all formats including both print and digital. They were all members of the local consortium, the Kenya Library and Information Services Consortium (KLISC), which had the collaborative acquisition of materials as one of its objectives. Accordingly, the consortium had principally taken over the bulk of the responsibility involved with the acquisition of e-resources. Nevertheless respondents noted that there were challenges associated with the procurement of electronic resources.

- A respondent referred to: “Lengthy consultations with detailed documentation, legal processes in licensing, negotiations and aspects of contractual agreement. The effectiveness of an acquisitions system is ultimately judged by the extent and rate of access to information as well as the ease with which this information is retrieved. The adoption of electronic resources and their acquisition has introduced and imposed strict and complicated conditions for use that required the library to teach users and explain to them the application of user name and password. The new ownership models are restricting in that failure to renew a license will lead to loss of access.”

Further insights into the challenges presented by the acquisition of e-resources referred to the fact that access to e-resources was governed by the terms of license

negotiated with the provider which, it was observed, could end up effectively limiting the type, use and location of the information in question through use of passwords or IP address which restricts users to logging in from computers within a given range. Respondents also pointed out that the use of Digital Rights Management (DRM), a technological method that controls the use of content, as a way of setting limits to what users can do with content had serious implications for the use and convenience with which clients were able to use the resources. For example, it precluded systematic downloading or printing of documents by users.

On the positive side, respondents observed that the acquisitions of electronic resources had led to approaches that have given new meaning to resource sharing leading to the formation of the consortium (KLISC), and that there was preference to e-resources over print because of their currency and multiple use.

4.5.3 Acquisition Policies in Public University Libraries

Formulation of guiding policies in the various sections and activities of the library has had a long tradition. There have been observations on the positive attribute of this practice where it is claimed that it has given the profession a leading edge in the area of knowledge management. The acquisition policy that guided this study was defined as a formal written statement of the principles guiding a library's selection of books and other materials, including the criteria used in selection, de-selection, and acceptance of gifts. In public university libraries, this definition extends to include other aspects with special interest, for example, intellectual freedom.

Policy formulation is a critical aspect of the acquisition process. It is also important for those formulating acquisition policies to remember that their aim targets the user and the ease with which the user can access information. This is particularly relevant in the licensing of resources, and the related conditions of use. In this regard, the new developments and shift to electronic resources, their acquisitions and the legal implications have put more emphasis on the role of policies in the acquisitions activity.

In line with the foregoing, this researcher considered the issue of policy as also significant for this research and went ahead to ask respondents whether or not their libraries had an acquisitions policy. Among the respondents, 47 (87%) answered in the affirmative, while 7 (13%) said that their libraries did not have an acquisitions policy in place. Table 4.6 below illustrates this outcome.

Table 4.6 Acquisition Policy in PUL (n = 54)

| Whether has acquisitions policy | Frequency | Percentage |
|--|------------------|-------------------|
| Yes | 47 | 87 |
| No | 7 | 13 |
| Total | 54 | 100 |

When asked why their libraries did not have an acquisitions policy, the seven respondents who answered this question in the negative said that this was due to the fact that their library was just getting established and they were yet to develop policies to guide their operations including acquisitions. They however, were following practices that they were yet to document in form of a written policy document.

To establish the coverage or content of the policies available in the public university libraries in the research sample, respondents whose libraries had acquisition policies were asked to indicate the policy's principal elements. The responses were synthesized into three thematic areas as shown below:

i) General guiding principles

Purpose and role of the policy; university's procurement procedures; selection criteria and responsibilities; supplies and sources of materials; methods and modes of acquisition; types of material acquired.

ii) Scope/coverage:

Acquisition's budget; programmes offered; acquisition of materials in all formats; maximum number of copies to be procured.

iii) Relevance and currency

Done in consultation with teaching staff; focused on users' needs; local publications given priority; resources procured to relate to curriculum; to acquire latest edition; weeding done in consultation with teaching staff.

4.5.4 Electronic Materials and the Acquisition Policies of PUL

The changing information environment has challenged librarians to do things differently. One area where this need has been is in the acquisition of electronic resources. For example, in the area of acquisition policies, over and above the guidelines that apply in the print environment, electronic materials require that policy contents reflect on added aspects focusing on the digital resources. Suggestions of new additions will include, among others, guidelines and procedures for dealing with licensing issues, information on protection sanctioned by the University for Library Staff in case of infringement of the law, as well as the collaborative aspects of working within a consortium. From the description given on the acquisition policy as summarized above, and the situation that this research encountered on the ground, it would appear that little emphasis was given to the electronic resources by public university libraries in Kenya. This may be due to the fact that at the time that the research was taking place, libraries in the country had used electronic resources for a period of less than ten years. Secondly both KLISC and INASP were addressing the emerging issues on electronic resources on behalf of the individual libraries which were members of the consortium. In this connection, the researcher sought to obtain more specific information regarding the acquisitions of electronic materials. Table 4.7 gives information regarding the inclusion of e-materials in the acquisitions policy. Among respondents from the libraries with acquisitions policy, 72% included e-journals in their policies, while 37% included e-books. Conversely only 28% of the policies did not include e-journals while a high 63% did not include e-books in their policies.

Table 4.7 Electronic Materials and the Acquisition Policies of PUL

| Whether included e-materials | | |
|-------------------------------------|----------------------------|--------------------------------|
| in acquisitions policy | Percentage included | Percentage not included |
| e-journal | 72% | 28% |
| e-books | 37% | 63% |

Two Aspects are noted from the information contained in the above table. The first is the high percentage of aspects on electronic journals included in the policy as compared to the percentage of aspects on books. This was largely due to the fact that the electronic journals had been introduced into the library several years before electronic books followed later. The second point had been noted earlier, with reference to the fact that although libraries did not have specific policies on electronic materials, they, nevertheless, had some sort of guidelines. The seeming ambiguity of whether or not to have a policy that specifically addressed the acquisition of e-resources is a demonstration of positions associated with transiting from one system to another. It is also not peculiar to libraries in Kenya, as an initial reluctance to develop written policies for electronic resources has been noted elsewhere. Inspire of this reluctance, it has been generally admitted that the new environment requires some kind of policy statement that addresses, for example, the issue of what information was lost by replacing print materials with electronic products. The latter statement was consistent with the findings of this research as discussed in the foregoing. This research made it clear that the more the libraries

became familiar, and involved with the acquisition of electronic resources, the more obvious was the need for policies to guide the function. There were also concerns that the licensing of electronic materials had implications that would most likely end up limiting access to information.

4.6 Laws and Declarations that Influence the Provision of Information Services

The fourth objective of the study set out to explore the laws and declarations that had an effect on the provision of information services by the public university libraries in Kenya. The data on these laws and declaration is presented in the following section which is in two parts, namely a) laws that support the provision of information, and b) laws that put limits to information and its provision.

a) Laws that Give Support to the Provision of Library Services

The first part of the following section presents an analysis of the laws and declarations that support information provision and its access. The following are discussing in this sequence:

- Universal Declaration of Human Rights: Article 19;
- Constitution of Kenya: Article 33;
- Freedom of Information (FOI);
- International Federation of Library Associations (IFLA) Declaration; and
- World Summit on Information Society (WSIS) Declaration.

4.6.1 Universal Declaration of Human Rights (UDHR): Article 19

The Universal Declaration of Human Rights is an international instrument made up of 30 Articles with provisions for various entitlements that are aimed at ensuring the maintenance of human dignity for the individual. Among the 30 Articles is Article 19 which provides for right to information as follows:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (UDHR, 1948). The importance of Article 19 within the whole of the UDHR is based on its capacity to facilitate the rights represented by the other 29 Articles whose attainment is dependent on information and its access. For this reason, Article 19, on the right to information has been referred to as the bedrock of all the other rights. The researcher wished to seek out the respondents' awareness of the UDHR and asked them whether or not they were aware of the declaration's Article 19. The responses are represented in the table below.

Table 4.8: Awareness of the Universal Declaration on Human Right Article 19 (n=54)

| Awareness of UDHR Article 19 | Frequency | Percentage |
|------------------------------|-----------|------------|
| Yes | 44 | 81.5 |
| No | 10 | 18.5 |
| Total | 54 | 100 |

As shown in table 4.8 above, 44 (81.5%) respondents said that they were aware of the Universal Declaration of Human Rights' Article 19. The remaining 10 (18.5 %) respondents reported that they were not aware of Article 19 of the UDHR.

It is possible for information to be communicated and shared in various ways. Theories of communication and research done in this area indicate that the manner in which information is communicated has an influence on the retention of the message conveyed. It has been argued that a message may not reach the intended destination, or it may have a different meaning depending on the way in which it has been communicated. With this in mind, the researcher did further probing to find out how those who were aware of UDHR Article 19, came to know about it. Table 4.9 below shows the methods through which respondents learned about UDHR Article 19.

Table 4.9: How Respondents Learned About UDHR Article 19 (n = 49)

| Sources of information | Frequency | Percentage |
|-------------------------------|------------------|-------------------|
| Colleagues | 11 | 22 |
| Media | 22 | 45 |
| Seminar/Workshops | 9 | 19 |
| Others | 7 | 14 |
| Total | 49 | 100 |

According to the data shown in the above table, media played the highest role of informing respondents about UDHR Article 19. Twenty two (45%) respondents learned about Article 19 from the media, while 11 (22%) of them knew about it from fellow colleagues, nine (19%) respondents learned about the Article from a seminar/workshop, while seven (14%) respondents learned about the Article from other sources which included a Library Information Science (LIS) academic course.

As a way of determining respondents views of the UDHR, those respondents who said they were aware of the declaration were asked to state the significance of its provisions to the information services. The responses received indicated that UDHR argued the case for non-discrimination, equality, fairness in the library providing access to all but each library had to interpret this in the context of its budgetary provision and limit access accordingly.

- A respondent referred to the above in the following words:

“Our library recognizes information as a basic requirement that should be available to all. Accordingly we provide information services widely and try to go beyond the immediate university community to serve researchers and scholars outside the university. We also donate books and other university materials to schools around the university. Within the university, the library has designed special services for disadvantaged users and has implemented a system to serve the blind users. Unfortunately our services are, however, restricted by the availability of resources.”

Other responses referred to the support and encouragement that the Article provided to the libraries in the provision of information services. The following discussion brings out this aspect.

- One respondent saw the UDHR as presenting an opportunity for the library to be accorded better treatment, for example, in budgetary allocation. He thought that the critical role of information as articulated by the UDHR was important for the library and it could be used as a base for an advocacy that presented the case to university management and the government for the better recognition of information within learning and beyond. He put this in the following terms:

“The inclusion of Article 19 on information in the UDHR is an important fact of recognition for libraries. It is an illustration of the critical contribution of information in research and learning, and also in other aspects of human life. University libraries can use the Article to argue for a better appreciation of its contribution to the core activities of the institution, namely, learning, teaching and research. It can be used to advocate for increased financial allocation from the university.”

- Another respondent highlighted the universal nature of the UDHR. According to him this was a reflection of the fact that information and information services had wide international appeal. This implied further support for libraries and information services in the country since Kenya had an obligation to also adopt

what was in practice in other countries. He put his observation in the following words:

“It is a positive sign that UDHR Article 19 is internationally recognized. Kenya is a member of the United Nations and the Government and other institutions including universities need to adopt what others in the international community have endorsed.”

4.6.2 Constitution of Kenya: Article 33

According to Article 2 of the Constitution, the Constitution of Kenya is the country’s supreme law. As a way of preserving the dignity of individuals and also to promote the realization of their potential, the Constitution undertakes to recognize and protect human rights and fundamental freedoms. Among the rights thus recognized by the Constitution is the right to information. Article 33 of the Constitution states that: “Every person has the right to freedom of expression, which includes freedom to seek, receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.” (Constitution of Kenya, 19).

In consideration of the high regard accorded to information in the Constitution as shown above, the researcher wished to establish respondents’ awareness of the Constitution of Kenya and its provision on information. Respondents were asked to indicate whether or not they were aware of the Constitution and its provision on information. The responses received were as shown in table 4.10 below. Among the respondents, 38 (70%) of them

said they were aware of the CK's provision on information under Article 33. The remaining 16 (30%) respondents were not aware of this provision.

Table 4.10: Respondents' Awareness of Article 33 of the Constitution of Kenya (n=54)

| Whether aware of CK Article 33 | Frequency | Percentage |
|--------------------------------|-----------|------------|
| Yes | 38 | 70 |
| No | 16 | 30 |
| Total | 54 | 100 |

Basing on the principle of retention of a message in relation to the channel that has been used to communicate, the researcher wished to establish the means through which the respondents got to know about Article 33 of the Constitution. The researcher posed a question that asked respondents to state how they came to learn about the Constitution of Kenya Article 33. The responses to this question are as shown in table 4.11.

Table 4.11: How Respondents came to Learn About CK Article 33 (n = 42)

| Learned about CK Article 33 from | Frequency | Percent |
|----------------------------------|-----------|------------|
| Colleagues | 13 | 31 |
| Media | 17 | 40 |
| Seminar/Workshops | 4 | 10 |
| Others | 8 | 19 |
| Total | 42 | 100 |

As the above table shows, 13 (40%) respondents of those who claimed to be familiar with the Constitution of Kenya Article 33 had heard about it from the media, while information from colleagues accounted for 13 (31%) of the respondents. Only 4 (10%) of the respondents learned about the Constitution of Kenya Article 33 in seminars or workshops, while 8 (19%) learned about it from other sources.

As a way of qualifying and complementing the data on the awareness of the Constitution, the research set out to obtain respondents' views and comments on the Constitution of Kenya Article 33. The respondents were asked to state the significance of the Constitution of Kenya Article 33 in the provision of information services. Respondents' views on the Constitution of Kenya are presented below.

- One of the respondents associated Article 33 as introducing a benefit for the library and said as follows:

“Article 33 provides further high level acknowledgment of libraries and their work. It is crucial for libraries to seize the opportunity availed by the Article and use it in their strategies to convince their sponsors to allocate more financial support for the procuring, organization and dissemination activities which the Constitution recognizes and supports.”

- A respondent presented an interesting view of Article 33 where it implied that research and scholarship were processes that were essential for the country's development. According to her information gains further prominence this way because of its central role in these two processes. Her statement went as follows:

“The article is also a reflection of the importance and recognition attached to research and scholarship. Since information is at a key element in research, it acquires added value through its contribution to the two activities. Library’s work of providing information for study and research makes it stand out as national output in the development process.”

- A respondent had a perspective that acknowledged that the Constitution expected librarians to deliver on the aspects identified by the Article. His view was reflective of the assumption that the implementation of a right has a side that has requirements and related obligations which librarians had to first interpret and then implement. He commented as follows:

“The Constitution recognizes and provides support for librarians and their work of providing information services. I think it also presents them with the challenge of interpreting this and designing practical ways of implementation.”

4.6.3 Freedom Of Information (FOI)

The Freedom of Information concept has generally evolved to specifically refer to the citizen’s rights to access information held by the state. The specific benefits of FOI consist of a list of social improvements that include a less corrupt society; a society that is free from hunger and healthier; a society with respect for the environment, fundamental human rights and privacy; better security; a more efficient government and better decision making. In the following section, the study presents an overview of the principles of FOI and follows this with an analysis of the respondents’ awareness of the concept. The study then goes on to present a review of government publications which

are the main focus of FOI. A clearer understanding of the term Freedom of Information can be obtained from the principles which give more details that would assist in giving a better interpretation of the concept. The principles of FOI that relate to the library and the access to information, and its provision are shown in figure 4.5.

- 1) Maximum disclosure-Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. This principle implies the introduction of effective mechanisms through which the public can access information, including request driven systems, proactive publication and dissemination of key material.
- 2) Obligation to publish-Implies that public bodies widely publish and disseminate documents with public information.
- 3) Promotion of open government-The law of freedom of information should make provision for public education and dissemination of information regarding the right to access information;
- 4) All public bodies should be required to establish open and accessible internal systems for ensuring the public's right to receive information.
- 5) Simple easy and inexpensive access-the cost of gaining access to public information should not be so high as to deter potential applicants and negate the intent of the law itself.
- 6) Disclosure takes precedence-The law should require that other legislation be interpreted in a manner consistent with its provisions i.e. Laws that are inconsistent with the principle of **maximum disclosure** should be amended or repealed.

Figure 4.5: Principles of FOI with Relevance to the PUL

At the time that this research was carried out, Kenya did not have a Freedom of Information Act. However, a Freedom of Information Bill had gone through Parliament and was waiting for the President to give his assent. Article 35 of the Constitution on right to access to information captures the essence of the Freedom of Information concept

saying that that every citizen has the right of access to information held by the State; and that the State shall publish and publicize any important information affecting the nation. (Constitution of Kenya, 2010).

Against the above background on FOI, this researcher wanted to find out if Freedom of Information as a concept was familiar with the respondents despite Kenya not having a FOI law in place. The responses were as shown in the following table:

Table 4.12: Familiarity with Freedom of Information Concept (n = 54)

| Whether familiar with FOI | Frequency | Percentage |
|---------------------------|-----------|------------|
| Yes | 44 | 81 |
| No | 10 | 19 |
| Total | 54 | 100 |

Among those interviewed, 44 (82%) respondents were familiar with the Freedom of Information concept while the remaining 10 (19%) said they were not familiar with the FOI concept (Table 4.12).

The researcher probed the method through which respondents got to know about the FOI concept. The answers given are as shown in the following table. (Table 4.13).

Table 4.13: How respondents came to learn about the Freedom of Information (FOI) Concept (n= 49)

| Learned about FOI from | Frequency | Percentage |
|-------------------------------|------------------|-------------------|
| Colleagues | 11 | 23 |
| Media | 18 | 37 |
| Seminar/workshops | 10 | 20 |
| Conferences | 2 | 4 |
| Others | 8 | 16 |
| Total | 49 | 100 |

As shown in the above table, among the respondents who indicated that the FOI concept was familiar, 18 (37%) of them learned about the concept from the media, 11 (23%) of the respondents learned about the concept from both colleagues and seminar/workshop, while 10 (20%) of the respondents learned from seminars/workshops. respectively. Two (4%) respondents and 8 (16%) respondents respectively learned about FOI from conferences, and other sources, as for example LIS training.

4.6.3.1 Government Publications

Government publications are a key source of information for research and scholarship. This importance relates to first the volume of information that is in the custody of the

state, and secondly, to that information's relevance to the pertinent issues of development within the country. The Freedom of Information concept and its principles give credence to this fact and go further to justify the argument for access to information held by the state on the basis of their contribution to research and scholarship. Within this background of the contribution of information held by the state to research and scholarship, the researcher sought to find out the status of government publications and their place in the provision of information services in public university libraries.

The following section presents the analysis of pertinent aspects of information service provision based on government publications.

Table 4.14: Special Government Collection (n =54)

| Whether has special Govt collection | Frequency | Percentage |
|-------------------------------------|-----------|------------|
| Yes | 25 | 46 |
| No | 29 | 54 |
| Total | 54 | 100 |

When asked whether their libraries had a special government collection, 25 (46%) of the respondents answered in the positive. The remaining 29 (54%) of the respondents said that they did not have a special government collection (Table 4.14). With more than half the libraries saying that they did not have a designated government collection, the researcher

wished to establish the reasons behind the none-existence of such a collection in the libraries in question. The reasons cited suggested a library's choice to locate government publications in another part of the library. Other situations indicated that although the library had some government publications in their collection, their acquisition was not systematic or consistent enough to warrant setting up a special collection. Other reasons given indicated that the library had only been established in 2008, and it was still in the process of being set up and plans were underway to start a government collection; a respondent claimed that the library was not systematic in the procurement and necessary follow up of the acquisition of such reading materials which resulted to the situation where the library ended up not getting all publications published by the Government of Kenya; another one stated that demand for government publications in the library was not high and did not therefore justify setting up a special government publications collection.

Those respondents whose libraries had government publications were asked to state the type of government publications that were in demand by users. A list of various types of materials was given and included the following:

- Annual reports;
- Laws of Kenya and Acts of Parliament;
- Official Presidential speeches; Research reports;
- Statistical reports;
- Policy/sessional papers;
- Economic plans;

- Census reports;
- Kenya Gazette;
- District and national development plans;
- Economic surveys; Commission reports ;
- Government procedures and regulations.

Table 4.15: Use of Government Publications in Public University Libraries (n = 42)

| Level of use | Frequency | Percentage |
|--------------|-----------|------------|
| Very heavy | 5 | 12 |
| Heavy | 10 | 24 |
| Average | 16 | 38 |
| Low | 9 | 21 |
| Very low | 2 | 5 |
| Total | 42 | 100 |

The researcher wanted to make a follow up on the existence or otherwise of a special a government collection in the libraries in the sample, and also to establish whether usage of government publications was in agreement with the stand advanced by the Freedom of Information. The researcher therefore sought to obtain the respondents' views on the use of the government publications. When asked to state how the government publications were used, only 15 (36%) respondents said that usage was above average. Among the remaining respondents, 16 (38%) said that the usage was average, nine (21%)

respondents indicated that the usage was low, while two respondents (5%) said that use of government publications was very low. (Table 4.15).

Table 4.16: Procurement of Government Publications (n = 12)

| Whether able to procure government publication | | Frequency | Percentage |
|---|-----|------------------|-------------------|
| Valid | Yes | 7 | 58 |
| | No | 5 | 42 |
| Total | | 12 | 100 |

The researcher wished to obtain information on the procurement of government publications. Respondents at the level of the library management namely, the University librarian and the Deputy University Librarian, were asked to indicate whether they had been able to purchase government publications. The responses showed that seven (58%) of the respondents, stated that they had been able to purchase, while the other five (42%) answered in the negative (Table 4.16).

The researcher probed further by asking respondents to give the reasons why they were unable to acquire government publications. As earlier pointed out, government publications are an important source of information which is critical for scholarship and

research. The following section therefore, discusses individually the reasons why respondents were unable to acquire publications from the government printer.

- The required publications were out of print at the time that the library wished to acquire copies. Commercial publishers also have challenges of publications going out of print. However the issue is contained through reprints or new editions. For government publications, the Government is the only supplier of the material in question, therefore not having in print leads to the researcher missing access to data or information that they will not get from anywhere else. The government printer should be equipped to assess the demand for publications so as to provide reprints where there is the demand.
- The library did not have a way through which to ascertain or have an awareness of the availability of publications as there apparently was no current catalogue to facilitate selection. A current catalogue is used to give information on publications including their cost, availability and it may even have a summary of the subject covered. The usefulness of a catalogue is contained in one of the principles of the Freedom of Information which puts an obligation on the state to widely publish and disseminate documents with public information. At the time when this research was carried out, Kenya's FOI law had not yet received assent from the President. However, indications were that this was to happen soon. At the same time, the Constitution of Kenya provides for Freedom of Information under Article 35. These conditions imply the need for the Government Printer to run as a professional institution by adopting some of the practices applied by other information organizations including the library.

- A respondent referred to official restriction or official prohibition when trying to acquire what was said to be classified publications. This may be remotely linked to the Official Secrets Act. However, where prohibition is due to the provision in the Act, this is clearly explained in order to avoid situations where a respondent had expressed the fear that the Act could be misused to cover up inefficiency or similar shortcomings that could be avoided.
- It was observed that the university was not always ready to supply the library with the necessary funds at the time required. Respondents had recorded an encouraging finding that said that Government publications were not expensive even suggesting that it was possible they were subsidized. This was an endorsement of another FOI principle that required that the costs of accessing information, if any, be not prohibitive. The challenge referred to here was due to the bureaucracy involved in the library accessing the funds needed to pay for the publications which the Government Printer require to be paid in cash.
- Bureaucratic procedures and processes created delays and ended up having a negative impact on the procurement of these publications. The problem stated here was the subject of a study whose author established that although Jamaica had legislated a FOI law, the implementation of the law was impeded and handicapped by a bureaucracy leading to a situation where access became too expensive, and retrieval procedures that were cumbersome and slow. As a result a process that was meant to be fast and affordable, ended up becoming inefficient and too expensive.

Table 4.17: Challenges Encountered During the Procurement of Government Publications

| Challenges | Frequency | Percentage |
|--------------------------------|------------------|-------------------|
| Lack of awareness | 42 | 32 |
| Unavailability | 38 | 29 |
| Government restrictions | 26 | 20 |
| Cost | 14 | 10 |
| Others | 12 | 9 |
| TOTAL | 132 | 100 |

In order to establish the exact problems or hindrances that interfered with the procurement of government publications, the researcher asked the respondents to indicate the challenges that they encountered during the process. Table 4.17 illustrates the responses received. The figures presented in the table also show how the challenges ranged according to the frequencies that were attached to each type of challenge. As shown in the table, the responses ranged from lack of awareness which was the highest with a frequency of 42 (32%), unavailability 38 (29%), government restrictions 26 (20%). Cost considerations were quite low at 14 (10%), while other challenges accounted for 12 (9%)

he following pie chart represents the above figures in a graphic presentation.

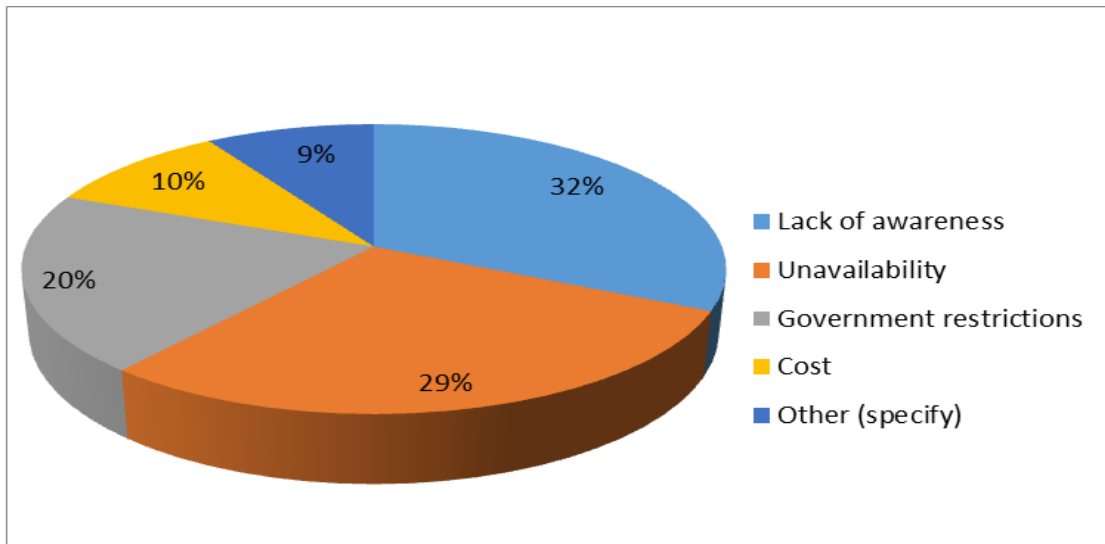


Figure 4.6: Pie Chart Illustrating Challenges Encountered During the Procurement of Government Publications

- A respondent revealed more specific challenges with regard to procuring government publications and made the following observation:

“Official publications presented challenges basically because of their huge numbers. The Government Printer functions like an official bureaucracy lacking in professional practices common in book trade. Although they have huge amounts of materials, they do not publish subject guides or issue lists of newly published materials. On many occasions, they will not have what you are looking for”.

A respondent who said their library had been procuring government publications on a regular basis had a positive view regarding the cost of these observing that they did not

find them expensive. According to him they were reasonably priced or heavily subsidized.

4.6.4 International Federation of Library Associations (IFLA) Declaration

The International Federation of Library Association (IFLA) has a well renowned stand on access to information using Article 19 of the Universal Declaration of Human Rights as the rationale for this. Since its inception in 1927, IFLA has worked with library associations all over the world to argue for widest access to information and has specifically linked it to intellectual freedom, a fact that should be of keen interest for academic libraries. The organization has used various approaches to advocate for access to information including conferences, issuing of declarations and guidelines as well as training forums to create awareness and give capacity to librarians. In 1984 IFLA held its annual conference in Nairobi. Although the conference proceedings are now in the archives, the fact that the Kenya Library Association hosted IFLA remains a momentous event that brought the knowledge and awareness of the Association to the mind of many librarians in Kenya. The theme of the conference “The basis of information for national development” was appropriately chosen to reflect a topic of concern at the time.

For librarians in Kenya, the above background implied among a keen awareness of IFLA and in particular its endorsement of the principles of right to information interpreted as ensuring wide access to information. The researcher asked respondents how they implemented IFLA’s declaration on wide access to information, and obtained the following insights:

- According to one respondent, the library's facilitated access by applying standardized methods of retrieval. His statement was as follows:

“The library's finding tools whether manual or digital, ensure that users are adequately aided in accessing the information relevant to their need.”

- Another respondent referred first to the access they provided to the university community, and also extended this to others. This was put in the following words:

“The library's lending policies form one way of extending access to information. Different categories of users are allowed to borrow the material for durations specified by the library. Secondly, the library's membership includes users that are not necessary part of the university community. In the above two cases, the library applies restrictions based on the limits imposed by the shortage of resources.”

- The initiative introduced through ICTs, namely the use of e-resources, and the implementation of Institutional Repositories (I.R.) were cited by a respondent as their library's new approach to increasing access to information.

4.6.5 World Summit on Information Society (WSIS) Declaration

The World Summit on Information Society was an international initiative sponsored by the United Nations. It took place in form of two conferences held in Geneva in 2003 and in Tunis in 2005. According to the preamble to the WSIS declaration, the Summit envisaged an environment composed of development oriented Information Society

allowing for the creating, accessing, and utilization and sharing of information. The ultimate goal was for the individual and wider society to achieve their full potential in promoting development and improving the quality of life.

The above statement implies the World Summit on Information Society is an articulation and restatement of information's contribution to development. Within this context, the researcher wanted to ascertain from the respondents how in their view, PUL's information services contributed to the development anticipated by the WSIS. The responses received are given below.

- One respondent saw the library in a catalytic role of providing information to researchers who in turn used the information to produce results that were directly applied to development projects. The respondent's statement went as follows:

“The library plays the role of stimulating the intellectual capacity of researchers. It makes indirect contribution to development by providing researchers with the required information. They in turn use the information to produce results that are applied in developmental projects.”

- A second view came from a respondent who highlighted the library's implementation and use of ICTs which was also a major focus of WSIS. He reported as follows:

“The library has played a leading role in the implementation and use of ICTs within the university and beyond. ICTs have been used in the provision of

information services including electronic resources, and also in the management of library functions.”

- In the area of cooperation among institutions, another of the aspects that received attention from WSIS, was information that confirmed that this was practiced among libraries. The respondent mentioned that his library had always collaborated with other libraries and gave an example of interlibrary loans. This had now been formalized through Kenya Library Information Services Consortium (KLISC).

b) Laws that Limit Access to Information and the Provision of Information Services

During the drafting of the Universal Declaration of Human Rights in 1948 there was a general acceptance of the fact that there was no right without a limit. However it was also resolved that while a certain level of limitation was conceivable, this would only be effected by the application of laws enacted by Parliament. Accordingly, in Kenya, laws that have been enacted for the purpose of setting legal limit to the right to information include the following:

- Copyright Act (CAP 12);
- Kenya Penal Code (CAP 63): Sections 52 to 54 on prohibited publications;
- Official Secrets Act (CAP 187); and
- Defamation Act (CAP 36).

The following section presents and analyses data on the above laws.

4.6.6 The Copyright Act No. 12 of 2001

Copyright is a universal concept that seeks to promote intellectual creativity by giving encouragement to authors of literary works such as textbooks, reference books, journal articles, novels and computer packages among others. As part of intellectual property law, copyright law grants to the author economic rights which allow him or her to, among other things, reproduce, translate, adapt, sell, lease out a part or all of his work. The copyright law also incorporates conditions, in form of exemptions, which allow people other than the copyright owner to use protected works without seeking permission from the author for the benefit of the wider society. Despite the widely held claim that copyright law tries to balance the interest of the author and those of the society, there are views that strongly hold that ultimately copyright law ends up restricting rather than enabling access to information. Basing on their driving objective to provide access to and disseminate information, libraries tend to more readily identify with the restricting nature of copyright.

Based on the above universal understanding, the Copyright Act of Kenya (Cap 12 of 2001) regulates copyright and other related rights in the country. To establish a clearer understanding of copyright law in Kenya within the context of public university libraries, the researcher asked the respondents whether they were aware of Kenya's law on copyright. The responses were as given in the table 4.18.

Table 4.18: Awareness of Copyright Act (Cap 12 of 2001) (n = 54)

| Whether aware of Copyright Act | Frequency | Percentage |
|---------------------------------------|------------------|-------------------|
| Yes | 51 | 94.4 |
| No | 3 | 5.6 |
| Total | 54 | 100 |

The results confirmed the assumption that a big majority of the respondents at 51 (94.4%) were aware of the Copyright Act (CAP 12 of 2001) and only three (5.6%) respondents were not aware of Kenya's Copyright Act.

The researcher recognized the fact that the respondents' source of the information on Copyright Act would be a factor in determining their enhanced understanding or otherwise of the same. They were therefore asked to indicate how the 51 respondents who knew about the Act came to learn about it. The answers that they gave are shown below in table 4.19.

Table 4.19: How respondents came to learn about the Copyright Act (n= 51)

| Method | Frequency | Percentage |
|------------------|------------------|-------------------|
| Media | 8 | 16 |
| Seminar/Workshop | 24 | 47 |
| Colleague | 7 | 14 |
| Other | 12 | 23 |
| Total | 51 | 100 |

The answers received seemed to reinforce the thinking that copyright was of great concern to librarians and that there had been some organized effort to provide them with information on the Copyright Act. The data received revealed that 24 (47%) of the respondents had heard about the Copyright Act from a seminar/workshop, while 7 (14%) of them learned about the Act from colleagues, with 8 (16%) of the respondents and 12 (23%) learning about the Act from the media and other sources respectively.

- The researcher wanted to get more specific detail on the respondents' awareness to copyright in order to ascertain the nature and relevance of that awareness. The respondents were therefore asked to give comments on their awareness of copyright. Their responses are shown below. Among the respondents who heard about copyright from a seminar/workshop (47%), one indicated that the workshop gave him an awareness of copyright although at an introductory level. Below are two responses on this:

“I learned about copyright in a workshop on the Licensing and Negotiation Skills (LNS) for librarians organized by INASP and KLISC on electronic resources. Copyright law was included as a background to the licensing process.”

A second respondent gave the following response:

“I attended a workshop where participants were told about copyright law and its realities for the library. However, I think that each situation would be handled differently and it might not be possible at that level, which was introductory, to get a method of handling the many complexities of copyright.”

- One of the respondents who gave further views was among the 16% who learned about copyright from the media. His response seemed to indicate that there was a challenge where librarians lacked an opportunity to give a user's view and therefore counter that from the media which had a specific business orientation. The respondent made the following observation:

“I read about copyright in a feature article in the newspaper. Although the article was detailed, it was not written with the librarian or information user in mind. It was more focused on the publishing business and spoke more on the economic rights of authors and their infringement by users including libraries. In these circumstances, I'm not clear how to respond to such a situation and I do not know of an existing library policy on this. I have also not heard of the University's stand on this.”

- A respondent who heard about copyright from her colleagues spoke about this in a way that illustrated a concern over infringement and the consequences this had for librarians. In her response she said the following:

“I heard about the copyright law from my colleagues. The discussion centred on library staff getting into problems through the infringement of copyright provisions. From that discussion I understood that there was a likelihood of committing a crime during the course of our work through infringement.”

The researcher sought to find out from the respondents the details of the manner in which copyright law put limits to information, and the implications that this had for the

information services. To do this the researcher asked respondents to give their views on the subject of copyrighted materials and their use in the library. Responses received touched on the following: a confirmation that copyright law limits information access, the need to allow the library to reproduce copyrighted materials for noncommercial purposes including research and teaching, copyright owners to be compensated for their work, library staff were fearful about the implications of infringement, and the university's responsibility on copyright. A sample of the responses is given below:

- A respondent working in the circulation department of her library appeared to be more conversant with copyright law and even indicated that she informed users about copyright conditions. She shared an opinion that understood the reason behind the photocopying of materials. Her views were expressed as follows:

“I am aware of the Copyright Act. I think the Act puts limits to information and its access by targeting activities that form the core of information services such as photocopying and the use of e-resources. We sensitize library users on what the law says as necessary.”

Another respondent was opposed to copyright law because according to him,

“It would be extremely difficult for an academic library to offer information services without some form of reproduction service like photocopying especially given the environment where students and even lecturers rarely buy books.”

- Another respondent has a positive view regarding the author's right as shown below:

“It is only fair that an author's interests should be considered, their effort acknowledged and rewarded. A library should not make copies of titles and put them up on the shelves. In the library we do not make copies of whole books and lend them out.”

There were responses indicating that there was uncertainty and near-frustration leading to apprehension especially where there were no guidelines or policies to refer to. For one respondent this was made worse by a feeling that the university's legal officer did not fully understand the implications of copyright in the library, while there were also reports of the presence of Reproduction Rights Society of Kenya (KOPIKEN) about whose mission the respondent was not quite clear.

- The respondent was of the view that:

“With copyright and its possible infringement, library staff are on the frontline, and they are not even aware of the available protection if any, in case infringement does occur in the course of their work. In this connection, the legal officer takes a technical and matter-of-fact approach that does not fully appreciate or acknowledge the value of such activities as photocopying, interlibrary loan and others in library work. There are reports that KOPIKEN are watching libraries on behalf of copyright owners and that they will be issuing licenses for the

photocopying and printing of published literary works, but to date this has not yet happened.”

- With regard to the university’s responsibility over the library staff and issues of copyright, a respondent observed as follows:

“University terms of service for library staff do not include any statement or cover for the infringement of copyright by librarians in the course of their work. Yet this is clearly possible. If infringement occurs, leading to a fine or jail term, I do not think staff have any cover as there is no policy regarding this.”

4.6.7 The Kenya Penal Code (CAP 63) Sections 52 to 54: Prohibited Publications

In the above Code, Section 52 gives the Minister power to prohibit the importation of any publication and also to declare any publication a prohibited publication in the interests of public order, health or morals, and the country’s security. There are also provisions that give the punishment for a person who commits the offence of supplying, publishing, importing, distributing or having possession of a prohibited publication as imprisonment for a period of three years.

The study noted that the probation of publications was a limit to the principle of open access to information which forms the base for library work. The researcher sought to probe the respondents’ awareness of the provisions on prohibited publications. The responses are presented below in table 4.20.

Table 4.20: Awareness of Prohibited Publications (n = 54)

| Whether aware of prohibited | | |
|------------------------------------|------------------|----------------|
| publications | Frequency | Percent |
| Yes | 27 | 50 |
| No | 27 | 50 |
| Total | 54 | 100 |

Responses from the respondents showed that half of them (50%) were aware of the provisions on prohibited publications contained while the remaining 50% were not aware of these provisions.

The researcher wanted to obtain from the respondents, information on the effects of the prohibited publications on the library's information service. The respondents who had awareness as shown above were asked for their views on the prohibited publications and the effects this had on the provision of information services by PULs. The responses given gave the following as the effects of the prohibited publication:

- The prohibition of publications was associated with censorship;
- There was skepticism on the genuine implementation of the prohibition;
- The prohibition presented risks for library staff;

- Prohibition was an interference of the principles of freedom of access to information as provided by the right to information and protected by the Constitution;
- Prohibition was contrary to the librarians' professional ethics and principles. The responses are shown in the following section.
- The provision on prohibited publications was associated with censorship which according to the respondent in question was against librarians' work ethics. In his response this respondent stated as follows:

“The prohibition of publications contains elements that are closely associated with censorship by the state. Censorship is a practice that is outdated and has been identified as unethical and contrary to the aspirations of intellectual freedom for the university.”

- A respondent who was a university librarian wondered about the criteria applied to put a publication in the prohibited list. He also referred to the library's selection process which determined that an information item was appropriate for use. He said as follows:

“While the Government may have reasons that justify the prohibition of certain publications, one wonders about the thoroughness with which this is done and the views that are represented. A library selects and acquires information materials through a rigorous process that is based on the materials' usefulness and

contribution to scholarship and research. Librarians or their representative should be involved to bring in a more rationalized approach and better understanding into the prohibition process.”

- One of the respondents, a senior librarian in one of the PULs, brought up the view that it was possible that librarians might unintentionally commit a crime especially in view of the wide scope of the interests listed in the section, the nature of the librarians’ work and lack of either policy or guidelines to follow. His response brought out the same uncertainty and fear that respondents had associated with the infringement of the copyright law. However, there were more indications of fear probably influenced by memories of the repealed section 57 of the Penal Code that was associated with the infamous Mwakenya arrests of the 1980s. His response was as follows:

“Librarians’ operations revolve around the activities identified in the provision, namely, the importation and distribution of publications through dissemination of information. They also work with a huge number of publications and information materials and it would be difficult to ascertain whether any of these materials may contain prohibited elements. The provision places a lot of unnecessary risk on librarians who have neither policy nor guidelines to go by.”

4.6.8 Official Secrets Acts (CAP 187)

The above Act is based on state security which is defined as the requirement of a country to maintain the survival of the state through the strategic use of economic and political,

and diplomacy, among others. Basing on this definition, Kenya’s Official Secrets Act (CAP187) regulates access to information on the grounds of state security. The relevant provision of the Act says as follows “Any person who obtains, collects records or communicates any article, document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person shall be guilty of an offence.” (CAP 187, Sec 3 (1) (c)).

On the basis of the implications of the above law on the right to information in general, the researcher wished to find out whether respondents were aware of the Official Secrets Act (CAP 187). Respondents were therefore asked whether they were aware of the provisions of the Act and its restrictions to the disclosure of official information. The answers received are shown in table 4.21 below.

Table 4.21: Awareness of the Official Secrets Act (CAP 187) (n = 54)

| Whether aware of Secret Act | | Frequency | Percentage |
|-----------------------------|-----|-----------|------------|
| Valid | Yes | 31 | 57 |
| | No | 23 | 43 |
| Total | | 54 | 100 |

The Responses indicated that 31 (57%) of the respondents were aware of the existence of the Official Secrets Act. The remaining 23 respondents (43%) were not aware of the Act.

The researcher wanted to obtain information on the effects of this provision on library services, and asked respondents to give comments on that aspect, and the manner in which this was a restriction to the library's provision of information services. The comments received are given below.

- A respondent pointed out the seemingly close association between the provision and the operations carried out in the library. According to him the words used in the provision were an indication of the extent to which the work of librarians' put them in the limelight with regard to the provisions. He made the following observation:

“This provision and others, for example the one on prohibited publications, are closely associated to the work of the librarian in that the choice of words they use, namely in this case, to obtain, collect, communicate. For me it means that what librarians do is the focus of government surveillance. Librarians have to be aware and be appropriately briefed and prepared.”

- The provision was summarized by a respondent as conflicting with the right to information and its access, thus effectively negating the concept of intellectual freedom as excised in the university. The following were this respondent's remarks:

“The library and the university’s work flourishes on information to which both the scholars and researchers must have uninterrupted access. Regardless of the Government’s justification of the provision, it puts barriers to information and so it becomes a handicap to the scholarly pursuit for research and generation of knowledge.”

- The open ended nature of the provision worried a respondent who saw this as providing an opportunity for the possible misuse of the provision to deny access to all manner of information whether or not it had any security implications. The respondent commented as follows:

“The biggest area of concern here is where the Government may wish to cover its actions so as to avoid scrutiny and criticism, and uses the provision as an excuse to deny access to information which is not necessarily a threat to security.”

- The provision was linked to the availability of official publications by a respondent. The respondent referred to the already bureaucratic tendency involved in getting access to Government publications and saw the Act’s provisions as making this even more complicated. According to this respondent:

“Official publications are critically vital to study and research. I think the provision of the Act can be used by Government bureaucrats to cover their inability to avail required publications. As it is the library has a hard time trying to access these and acquire official publications largely due to the inefficiencies that

exist in the Government Printer where the procurement of publications is a big challenge.”

4.6.9 Defamation Act (CAP 36)

According to its preamble Kenya’s Defamation Act is specifically focused on “libel, slander and other malicious falsehoods.” The Act does not directly refer to the holding or disseminating any publication with libelous or slanderous information. However, a basic rule in defamation states that everyone involved in anyway in the production or dissemination of defamatory material is liable to having published it. On this ground this study categorized the Defamation Act with the laws that limit or restrict access to information.

Respondents were asked if they were aware of the Defamation Act. The responses received are shown in table 4.22 below. The results indicated that 45 (83%) had were aware of the Defamation Act, and only 9 (17 %) did not have awareness of the Act.

Table 4.22: Awareness of the Defamation Act (CAP 36) (n=54)

| Whether aware of defamation | | | |
|------------------------------------|-----|------------------|-------------------|
| Act | | Frequency | Percentage |
| Valid | Yes | 45 | 83 |
| | No | 9 | 17 |
| Total | | 54 | 100 |

When respondents were asked to give their views on the Defamation Act CAP 36, they appeared unsure and uncertain. The responses are shown below.

- A respondent erroneously assumed that defamation was a problem that involved publishers, newspapers editors and journalists, but not librarians. She said the following:

“As a librarian I may not be affected by the Defamation Act which I think relates more to publishers and may not be of direct concern for librarians.”

- Another respondent reported that she had never heard of an issue dealing with defamation and the library. She was not sure if defamation had any effect on the library services. According to her, if there was an issue, the library would refer such a case to the university management through the legal officer.

4.7 University Library Staff and Their Knowledge of Legal Aspects of Information

4.7.1 Librarians' Training on Legal Aspects

The fifth objective for this study was to establish the knowledge of legal aspects of information held by public university librarians. It has been observed that relevant aspects of law have been included as a part of various disciplines including business, medicine, engineering and information science. The justification behind this inclusion argues that law has an enabling capacity and students and professionals in the respective disciplines require some knowledge of law that will assist in the facilitation of the systems existing at the work place. For librarians to have meaningful participation in their

work, they will require some legal knowledge that will provide them with specific understanding of not only how law facilitates information access, but also the manner in which it restricts this access. More recently, the rise of the contractual licensing of electronic resources, their costing and method of acquisition have legal implications that introduce a new and important economic dimension.

Librarians in Kenya have had the benefit of the necessary training for the acquisition of skills and knowledge in the profession for several decades. Currently training programs are offered in a range of academic institutions. Moi University's School of Information Studies was the first to start a full-fledged programme on Information Science in 1988. Prior to this, librarians in Kenya received their training in either the United Kingdom or in the United States. Despite this relatively long period during which the country has been training librarians and other information professionals, the inclusion of aspects of law is a more recent development. The implication here is that those who received their training more than ten years ago may not have been exposed to a course covering legal aspects of information.

- Commenting on the issue of the training of librarians in legal aspects of information and how this should be done, a respondent emphatically observed as follows:

“I think matters of the law and the provision of information services by libraries are not fully comprehended by library staff and especially by the management. Many times staff are under the assumption that they know and understand the

implications involved and then they find themselves caught in serious legal matters. To address this issue, senior management should be promptly inducted and trained on what to expect. The induction should include all matters pertaining to copyright, governance, and censorship among others. No senior staff should be entrusted to the office without such an induction because it is, in my view, a very important matter that underlies all library work. Relying on what is learned in school or in seminars and workshops is not enough.”

4.7.2 Legal Issues and Electronic Resources

Respondents were asked whether or not they came across legal related issues when working with e-resources. The answers that were received are shown in the following table.

Table 4.23: Legal issues in Electronic Resources (n = 42)

| Whether come across legal issues in e-resources | | Frequency | Percentage |
|--|--------|-----------|------------|
| | Yes | 21 | 50.0 |
| | No | 20 | 47.6 |
| | Total | 41 | 97.6 |
| Missing | System | 1 | 2.4 |
| Total | | 42 | 100 |

More than half of the respondents (51.2%) said that they had come across legal issues in connection with the use of e-materials. Only 48.8% said that they had not come across legal issues.

4.7.3 Possibility of Legal Infringement by Librarians

A key area that should be the concern of librarians and their work is that of infringement. Infringement of the law by a librarian may occur, for example, where there is reproduction of copyrighted material through photocopying or other means, thus exposing the librarian to law suits that could lead to court cases and civil liabilities. Another example with implications for the librarian is the violation of the provisions contained in the Penal Code Sections 52 – 54 through the importation or distribution of prohibited publication. In the latter case the librarian will have committed a criminal offence that is punishable by imprisonment.

With the existing environment in mind, the researcher sought to establish the views of the respondents on the possibility of the librarians' infringement of the law during the course of their work. According to information collected as shown in table 4.24, 30 (71%) of the respondents stated that it was possible for infringement to take place. Only 12 (29%) of the respondents thought that infringement was not possible.

Table 4.24: Possible Infringement of Existing Laws (n = 42)

| Whether possible to infringe the law | | Frequency | Percent |
|--------------------------------------|-----|-----------|------------|
| Valid | Yes | 30 | 71.4 |
| | No | 12 | 28.6 |
| Total | | 42 | 100 |

These findings imply an underlying uneasiness and uncertainty among librarians. Views on why respondents considered infringement possible referred to lack of guiding principles or policies from either the respective university or the Kenya Library Association. This is in contrast with the situation in other countries. For example in the United States, the American Library Association (ALA) has issued a code of ethics as a way of guiding librarians who have to make decisions regarding the issues of intellectual property. Similarly in the United Kingdom, the Chartered Institute of Library and Information Professionals (CILIP) also published a code of ethics for their professionals.

4.7.4 Library Staff and Training in Legal Aspects of Information

The researcher wanted to obtain information on how the training of librarians assisted in preparing them to deal with issues of law. Respondents' views on training indicated that on the whole, staff in public university libraries were trained in a wide range of areas with the aim of supporting the libraries' objectives. This covered the following core areas:

- Technical functions;
- User services;
- Management of libraries;
- Data management;
- Internet and digital resources;

They said that training had been carried out through academic LIS programmes as well as workshops that addressed the issue of continuous professional development. The training offered was said to cover the acquisition, access and use of electronic resources, information literacy and other new and emerging areas in library development. However, respondents were of the opinion that existing modes of training tended to downplay aspects of law and ended up omitting them altogether or leaving gaps. As a consequence, learners were left without the understanding and confidence necessary for making decisions on matters of law and information, or advising library users on the same. This sidelining of aspects of law in the curriculum resulted to respondents either having no awareness of the existing of such courses, or concluding that such a course was not a priority and would add no value to their work. Respondents noted that training workshops addressed issues of licensing and negotiation skills adequately. This notwithstanding, they made the observation that such training did not take the existing local conditions into consideration. They noted that such facts as the publishing industry, for example, not being fully developed, and Kenyans not having a culture of buying books had implications that should be addressed and fully understood. These views resonate with what has been referred as relevant training which rightly takes into account cultural values and norms. Against the above general background, respondents were specifically asked whether they had received any training related to issues of law and information. The answers given by the respondents are contained in the following table.

Table 4.25: Training Acquired on Legal Aspects of Information (n = 54)

| Whether acquired training | | |
|----------------------------------|------------------|-------------------|
| on legal aspects | Frequency | Percentage |
| Yes | 31 | 57 |
| No | 23 | 43 |
| Total | 54 | 100 |

The responses showed that 31 (57%) of the respondents had had training on legal aspects that related to information, while 23 (43%) of the respondents had not received such training.

Table 4.26: Training Acquired in Relevant Aspects Oo Law

| | Copyright and intellectual property | Information Censorship | Licensing | Legal provisions and ICT | Other |
|--------------|--|-----------------------------------|------------------|-------------------------------------|--------------|
| YES | 54% | 41% | 22% | 15% | 7% |
| NO | 46% | 59% | 78% | 85% | 93% |
| Total | 100% | 100% | 100% | 100% | 100% |

To get an idea of the aspects of law that respondents had been trained in, those respondents who had had training, were asked to indicate the areas in which they had been trained. From the respondents' answers, a sequential rating of the areas of training that had taken place featured copyright and intellectual property, information censorship, licensing, legal provisions and ICT in that order. Specific details are given in table 4.26 above. The data received revealed that in the area of copyright and intellectual property, 54% had received training, while the other 46% had not. For censorship 41% of the respondents had received training while the remaining 59% had not. Licensing had been offered as a topic for training to only 22%, while the remaining 78% had had no training in licensing. The topic of legal provisions and ICT had been offered as a topic for training to only 15% while the remaining 85% had had no training on this particular aspect.

Table 4.27: Method Applied in the Training on Aspects of Law

| Method of Training | Frequency | Percentage |
|---------------------------|------------------|-------------------|
| Seminar/Workshop | 18 | 49 |
| Online Training | 3 | 8 |
| LIS Academic Course | 14 | 38 |
| Other | 2 | 5 |
| Total | 37 | 100 |

The respondents who had been trained were asked to indicate the method through which they received the training. Most of the respondents 18, (49%) trained through seminars/workshop, 14 (38%) respondents received training from a LIS academic course, 3 (8%) respondents trained online, while 2 (5%) respondents received training through other non-mentioned methods.

4.7.5 LIS Schools and the Training in Legal Aspects Of Information

Data collected from faculty members of LIS departments interviewed indicated that the basic objectives of their curricula collectively revolved around the following: training professionals who were all-rounded in regard to information and knowledge management; preparing students to be effective players in the local, regional and global markets, providing a wide range of skills and knowledge in the core professional areas while allowing for necessary specialization; and developing quality information professionals and managers, prepared for a life of purpose, service and leadership in society. The areas cited were broad enough leading to the interpretation that legal aspects of information would be comfortably accommodated within the programmes on offer. To confirm this fact all the six faculty members interviewed from different university departments stated that they had a course on law and information. One of the respondents explained that including the course on information and law as part of their curriculum was prompted by the need for new competencies for LIS professionals, as well as a realization of the fact that law's effect on the social scene was being increasingly acknowledged. This however was a reasonably recent development judging by the presentation of studies done a little earlier on the training needs for LIS professionals

and the training challenges posed by shifting information landscape which did not refer to legal aspects of information. This situation was comparable to what existed in the United States about forty years earlier until 1976 when a new course on “Legal Issues in Information Handling” was introduced at the School of Library and Information Science in Pittsburg.

4.7. 6 LIS Academic Curricula on Information and Law

Scholars of curriculum development have noted that when designing a new curriculum, one faces the challenge of formulating a projected anticipation of the knowledge and skills that will be needed for the development of a society. The challenge is further heightened by the complexities of a multidisciplinary curriculum such as the one on information and law. Nevertheless several departments offering LIS programmes have introduced units on law and information. As a way of establishing the specifics of the training that LIS students were receiving, the researcher investigated the programmes for six departments. The information collected gave title of the course and its description as presented below.

Table 4.28: A Summary of Courses on Law and Information Offered by LIS Departments

| Course Title | Course aim and description |
|--|--|
| Legal and Ethical Aspects Of Information | <p>Aim: To equip information science learners' with basic legal knowledge to enable them carry out their work within the confines of the law.</p> <p>Course Description: Introduction: definitions of legal terms and concepts. The legal system in Kenya: sources of Kenya law, and the judicial structure. Kenya Constitution with specific reference to the Bill of Rights. United Nations Declaration on Human Rights, 1948.</p> <p>Classification of law. Intellectual property law. Information censorship. Data protection; legal deposit. Freedom of access to information. Computer and the law. Analysis of information related legislations in Kenya: Public Archives Act and Kenya National Library Services Board Act. Kenya Communications Act. Museums Act.</p> |
| Information, Law and Policy | <p>Aim: To provide appropriate knowledge and skills of law and its relationship with and impact on information.</p> <p>Course description: Definition of terms; legal concepts: Right to information, Freedom of Information, Censorship, Intellectual property and Copyright;; International Declarations on Information; Kenya's legal system; Information related laws in Kenya; Legal issues in Records and Archives; Policy: Role of policy, different types of policies .</p> |
| Information and law | <p>Aim: To equip the student with basic knowledge of the law and how it applies to the information resources.</p> <p>Course description: Introduction to law: sources, legal system in Kenya. Intellectual property laws; copyright law. Legislation relating to information systems. Censorship. Information policy. Standards in information management. Emerging trends. Professional ethics in information management</p> |

| | |
|------------------------------|--|
| Legal aspects of Information | <p>Aim: To equip LIS students with the knowledge of relevant aspects of law.</p> |
| | <p>Course description: Legal system in Kenya; legal agreements; law of defamation; copyright law; intellectual property law; censorship of information; privacy; freedom of access to information; data protection; trans-border data flow; legal deposit law; computer and the law; analysis of information related legislation in Kenya;</p> |
| Legal and Ethical Aspects of | <p>Aim: To provide students with the relevant knowledge of law and the skills needed in the management of information.</p> |
| Information | <p>Course description: Introduction: definitions, legal sources and systems: legislation relating to information; censorship; information policy; Standards in information management, Professional ethics; Legal systems of law both documentary and computerized; laws relating to publishing; Computerization of legal sources; legal expert systems and litigation; legal deposit laws; copyright laws; media law; emerging issues.</p> |
| Information | <p>Aim: To provide students with the knowledge and background necessary for managing legal aspects that impacts the provision of information services.</p> |
| Ethics and Legal Issues | <p>Course description: Law and society. Legal systems in Kenya. Judicial Structure. Law libraries. Types, aims and objectives. User profile and needs. Sources of legal literature: Online databases. Selection and Acquisition. Planning, equipping and stocking. Bibliographic Control. Staffing. Information organization and retrieval. Abstracting and Indexing. Computerized legal Information Systems. International legal information communication networks; Legal profession. Legal requirements in the provision of library and information services.</p> |

The aim and description of nearly all the departments analyzed revealed coverage with reasonable grounding of various key aspects of law and information. Concepts and aspects such as right to information, intellectual property and copyright, censorship as

well as the local legal system were substantively covered. One exception was noted where the course described appeared to address law libraries and their management.

When asked to give their views on the programs offered in the area of Law and information respondents gave the following comments:

- “The course on information and Law was useful in introducing students to legal aspects of information. Areas of intellectual property, copyright, right to information, and Freedom of Information (FOI) were adequately covered. It was interesting that one or two colleagues went on to study Law after their degree in Library Information Science.”
- “The unit on Law and Information was an interesting addition to the usual Library and Records Management coverage. It helped in introducing students to the emerging reality in the information world.”
- “The course was interesting and informative. However it did not fully prepare one for the intricate detail involving, for example, the acquisition of e-resources.”

The researcher wished to establish whether there was any link between LIS departments and their students once they completed their studies. Respondents were asked to indicate their anticipation for their graduating students upon the completion of their studies. Responses given indicated that they anticipated that their graduates would continue to advance their knowledge and skills by attending seminars, workshops and conferences. One respondent talked about the role of on-job training in the institutions where the graduates would end up working, but qualified this by saying that this would

only be effective where such training was well planned and structured rather than being assumed and open ended.

4.7.7 International Network for the Availability of Scientific Publications (INASP)

The International Network for the Availability of Scientific Publications (INASP) has worked in Kenya for a period of about twenty years. Part of their mandate involves working with international publishers to ensure researchers have affordable access to the latest scholarly literature in their discipline, and supporting library consortia to negotiate successfully with publishers for the purchase of journals and books. The two activities relate to the objectives of this study in that they focus on the access to information which is at the centre of library's provision of information services. Discussions with INASP personnel revealed that they applied the Continuous Professional Development (CPD) approach to mount training workshops. It was further indicated that INASP assumed an already existing level of knowledge in the area in which they were training and that their effort was aimed at maintaining and broadening knowledge and skills as a way of complementing that which had previously been acquired.

To get more details on the kind of training INASP offered at their workshops, the researcher asked for an outline for one of the workshops. The following information on the content outline for a training workshop on licensing and negotiation skills for librarians was received:

- i)** Introduction: definition of the applying legal terms including contract, license; parties to the agreement namely licensee and licensor;
- ii)** Parts of the contract: parties to the agreement; authorized users; authorized and prohibited uses; payment; term and termination; commitments and obligations; penalties for breach;
- iii)** Licensing Principles: licenses and the law; access and use; end users; perpetual use addressing long term use and archiving; pricing including incentives, consortium pricing; discounts; Interlibrary loans: to cover libraries without the contract;
- iv)** License Models: example – John Cox model as developed for academic library consortia.
 - The respondent further said that the organization offered training as part of a Library Development component which :

“aims to a) help equip librarians with appropriate skills to support scholarly research and communication, recognizing that the changing environment demands constant re-skilling of staff, and b) help librarians develop the infrastructure to enable them to deliver sustainable services in the digital library environment and provide integrated management of digital resources, the goal of which is to support research, teaching and scholarly communication.”

4. 8 Summary

This chapter analyzed and presented data from the seven public university libraries in the sample, on the legal implications for the provision of information services. The findings showed that public university libraries had an organizational structure which formed the base for the provision of information services to the university community. The library vision, mission, objectives and activities aimed at the provision of the information services thus making the library an integral part of the university's core business. The emergence of electronic resources has introduced new methods of acquisitions with legal implications. Librarians interviewed seemed not to have adequate skills to comfortably manage the acquisition of e-resources. The findings also established that public university libraries were part of the wider social structure within which they were linked to other organizations. In the case under study, public university libraries were connected to the Government mainly through the laws enacted by Parliament. According to the study's findings, the laws had provisions that either gave support, or imposed limitations to information. The study found that librarians were not very well versed with the legal implications for information provision, whether these were giving support or putting limits to their work.

CHAPTER FIVE

DISCUSSION OF FINDINGS

5.1 Introduction

The aim of this study was to investigate the legal implications of providing information services in public university libraries in Kenya, with a view to proposing a model that would improve information service delivery to the university community. Data used for the analysis was collected through interviews of 54 respondents in the seven public university libraries (PULs). The interviews were based on semi-structured questionnaires that had been previously prepared and tested (appendix. I and II). The specific objectives that guided the study were to:

- 1) Examine the organizational structure upon which public university libraries in Kenya base their provision of information services;
- 2) Explore the information services provided by public university libraries in Kenya within the context of the influencing laws;
- 3) Examine the acquisition of information materials in public university libraries in Kenya against the background of the relevant laws;
- 4) Examine the laws and declarations in Kenya that have an influence on the provision of information services in public university libraries in the country;
- 5) Establish the knowledge of aspects of law required by librarians in public university libraries to enable them provide information services to their clientele ;

- 6) Propose appropriate and relevant recommendations to improve the provision of information services in public university libraries in Kenya;

5.2 The Organizational Structure within which Public University Libraries in Kenya Provide Information Services;

In the following section, the study discusses elements of the organizational structure of the public university libraries, namely, the vision, mission, objectives and the resultant information provision aspects. This is done with a view to attaining the first objective of this study which was examine the organizational structure within which public university libraries in Kenya provide information services. The discussion borrows from the theoretical framework that explains the nature of the structure of an organization and which was adopted by the study. This choice of the vision, mission and objectives was further affirmed by statements that were obtained from the responses from university librarians and the deputy university librarians in the sample, and further enhanced with information from the libraries' web sites as analyzed and summarized in the previous chapter.

A principle of the organization theory states that an organization's aim is grounded on the respective organization's philosophy. The philosophy is in turn articulated through the vision and mission, as well as the objectives formulated to guide the implementation process. For this study, this principle is as an endorsement of the fact that the provision of information services, which is the goal of public university libraries, is founded on the vision, mission and objectives of the respective library. Secondly, organization theory

also postulates that an organization's existence and its functions take place within an environment where it has relationships with other organizations to which they are linked through established networks. This researcher contextualized this principle into this study identifying an existing relationship between public university libraries and the government with laws from the government acting as the link between the two. On the basis of the above two key elements, namely, the foundational base of the public university library and the networked environment in which it existed and operated, the researcher was able to have a focused discussion of aspects of law and their implications for the provision of information services in these institutions.

5.2.1 The Vision, Mission, Objectives and Goals of the PULs

The important role played by the vision, mission and objectives in all organizations in general has been well documented. In the library this role has been viewed as giving guidance and direction to the activities and operations in an area where there would otherwise be enormous challenges of translating the university ideals and objectives into information services for the university community. This important role of the vision, mission and objectives for the university library is demonstrated by the fact that the Commission for University Education (CUE) highlighted them as part of the standards and guidelines for university libraries that were meant to ensure that needs of the library clients are met. (CUE, 2012). Stuart and Moran, have the following conceptualization of a vision: "When visioning focuses on generating a thoughtful vision statement, a process engaging people in the exploration of possibilities, it can be energizing and enlightening for an organization. It can help distant a library from a constrained view of

the future and is a particularly powerful way of laying values of action.” According to this statement, the vision takes on the role of directing and driving the planning process by applying both inspiration and foresight that project the institution into a futuristic context. For the public university library, the broad guidance and general direction given by the vision, mission and objectives, introduce a dimension that allows the institution to accommodate the innovations necessitated by the changes introduced by the new initiatives and developments in the parent institution, as well as those applying in the general social scene.

(Badu, 2009) defines a mission as a broad conceptualization of an organization’s operations and its offerings to various stakeholders. He further refers to the importance of an organization’s mission in providing the focus required for policy formulation and decision making at all the levels of the institution. A mission is also said to reflect an awareness of the surrounding environment including the external forces and their likely effect on the organization. For purposes of this study, the researcher translated this understanding of the mission to imply the potential of the existence in the public university library of a level of awareness regarding the legal implications on the provision of information services. Another definition of the mission brings out its vital role in laying down the goals and strategies of the institution. This particular definition describes the mission of an institution as “A short, succinct statement focusing on the purpose of the organization, its reason for existence and what it hopes to accomplish. This overarching, comprehensive concept or principle is intended to guide the

organization in establishing goals and developing strategies to achieve those goals” (Stueart & Moran, 2007).

For the academic library, the concept of a mission statement subsumes a non-exhaustive list of the wide spectrum of the operations, functions, services, linkages and networks that form part of the strategic activities that these institutions carry out. Thus developing a mission statement for the library is evidently a challenge basing on the holistic and broad nature of its operations. Available discourse on the developing of a university library’s mission statement reflects on this anticipated challenge as a manifestation of the wide and divergent goals and objectives that are involved. Moreover the fact that the goals are to be attained in a dynamic environment with expectations from stake holders, among them the parent university as well as the government, complicate the process even further (Badu, 2009; Lewis, 2007). Writers on strategic management identify key characteristics of strategic goals as possessing qualities that are realistic while at the same time reflecting measures of flexibility, relatedness, and accountability. For this study therefore, in the rapidly changing information environment, public university library goals must be flexible enough to accommodate new trends introduced by I.C.T., as well as the capacity required by the staff to form an understanding of legal implications on the provision of information services.

5.2.2 A Framework of Information Services Provision

The above discussion outlined the important role of the elements that form the foundation of information services in the public university library. This role was also highlighted through responses from the library management, namely, the University librarian and he

Deputy University librarian. They respectively outlined their libraries' guiding philosophy in terms of the vision and mission and also in their objectives. The various components of the vision, mission and objectives of the public university libraries as received from the respondents, were synthesized into a framework consisting of the following seven common aspects of the provision of information services:

- i) Active engagement in teaching, learning and research;
- ii) Acquisition of information materials;
- iii) Providing access to information;
- iv) Dissemination of information;
- v) Teaching information skills;
- vi) Applying Information Communication Technology; and
- vii) Staff recruitment and development

The following discussion focuses on these aspects of information provision. At the same time the discussion also attempts to link these aspects to relevant legal provisions as a manifestation of the implications that law has on each aspect of information provision. The following figure is a diagrammatic representation that illustrates the links in question.

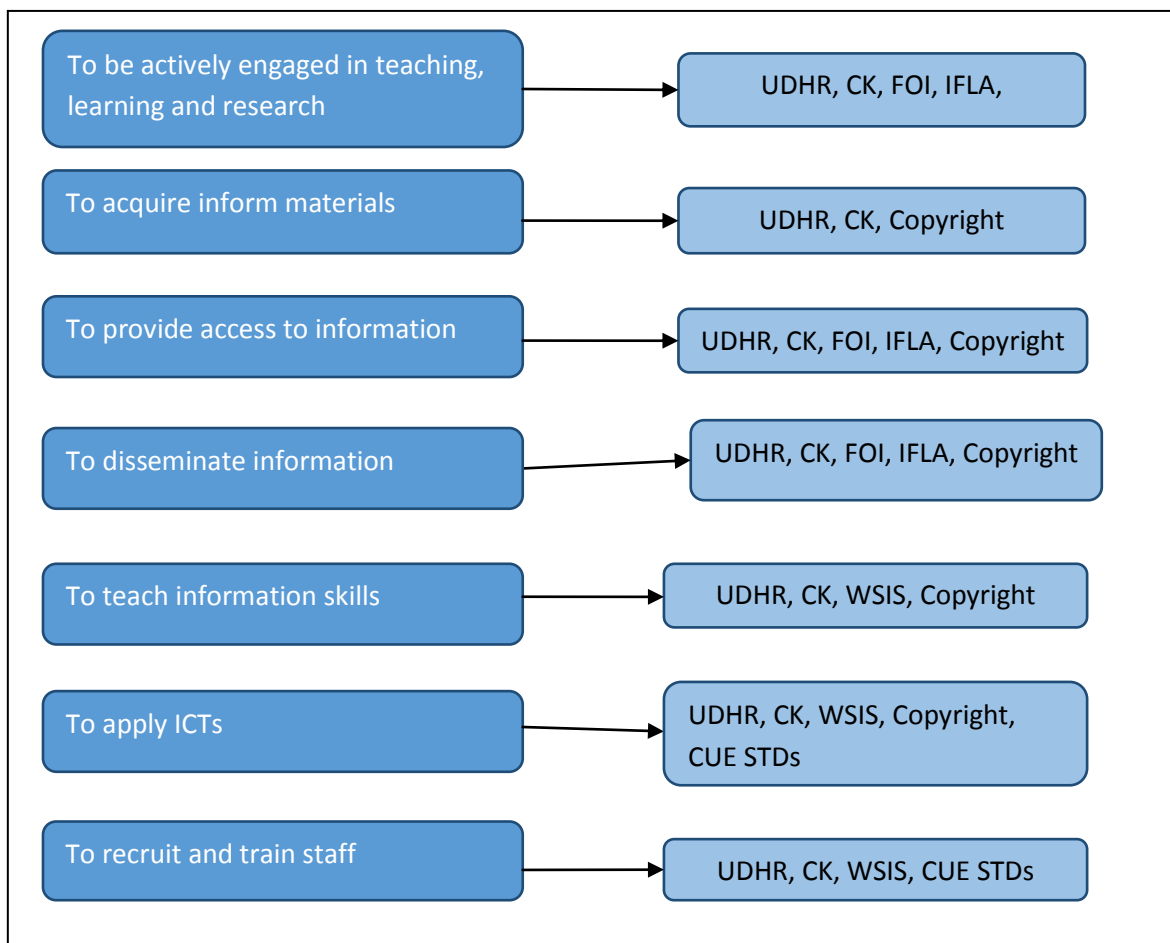


Figure 5.1: Aspects of Information Provision and the Corresponding Legal Provisions

5.2.2.1 The Public University Library's Active Engagement in Teaching, Learning and Research

From data that this study obtained from the respondents and also from the information contained in the libraries' web pages, this research established that the active engagement in the core business of the university, namely, teaching, learning and research, is a key aspect of the provision of information services. In this regard the study, for example, noted that respondents continuously identified with the objective aimed at enhancing the teaching, learning and research activities in their respective universities. In their

affirmation of this fact, respondents referred to the library as “the intellectual heart of the university”. Respondents also noted that librarians’ engagement in the core business of the university was beneficial to the library as expressed in the following statement, “Librarians have academic status because of the critical role they play in the university, which points to information’s value in education and research. Librarians’ participation in the academic process takes place through membership to different forums of the university including the Board of Postgraduate Studies, Deans Committee and Senate among others. Here librarians have an opportunity to demonstrate their skills and expertise in all the area of information management and its use, and if necessary offer the necessary leadership”. Through this engagement in teaching, learning and research, respondents viewed themselves as an integral part of the provision of “quality education and training and promoting scholarship”.

The above findings are supported by scholars writing on the library’s contribution in the overall quality of education. In this connection, a relevant observation noted that students who had been denied proper library provision during their studies were deficient in written communication and technical proficiency. They were subsequently judged as not fit for the labor market (Gudo, Olel, & Oanda, 2011).

The Library’s contribution to the overarching responsibility of the academic function is stated in the Fifth schedule of the standards and guidelines for university libraries which provides as follows “ A university library shall provide, for all academic programmes, varied, authoritative and up-to-date information resources, which facilitate teaching, learning, and research and community service for all categories of its users.” (CUE,

2012). In connection with the library's contribution to learning and research, ("The Glasgow Declaration on Libraries, Information Services and Intellectual Freedom," n.d.) described the library as the gateway to information and knowledge, and identified access to information as provided by UDHR Article 19 as a component of the intellectual freedom concept.

Authors writing on the future of academic and public libraries interpreted further the role of the library in research. They saw the library as an active research partner taking part in knowledge creation. Within this activity, librarians apply the expertise they have accumulated over time in preserving research data and research findings, and making the same widely available and accessible, as for example, through institutional repositories (Hernon & Matthews, 2013).

In a study on the availability, access and use of academic information by researchers in eastern and southern Africa, (Harle, 2010) observed that there was a requirement for the fostering of a greater understanding of specific needs and interests through building stronger relationships between the library, departments, individual researchers, and the central research support infrastructure of the university. The research noted that such relationships were not as strong as they might ideally be one reason for this being that engaging academics was not always easy.

Provisions from law and the interpretation from relevant concepts, provide opportunities for librarians to further enhance the engagement with faculty. For example, advocates for the implementation of the Freedom for Information (FOI) concept and the related laws,

rationalize their argument in part on the basis of the benefit associated with readily availing data and information for research and study. The state, they argue, has custody of large amounts of data and information that is critically relevant to research and study, and which might not be available anywhere else (Darch & Underwood, 2010). Basing on the support from the Universal Declaration on Human Rights Article 19, and the Constitution of Kenya Articles 33 and 35, librarians have the responsibility to work with others in advocating for the voluminous data from the government to be made readily available for research and teaching.

5.2.2.2 The Acquisitions of Information Materials

The goal of any collection development, the wider process within which acquisition function is embraced, is to provide the library with a collection that meets the appropriate needs of its clients within the limits of its financial resources. Additionally, the acquisition of information materials in all types of libraries has a significance that attaches to the background it forms to the information service. This importance is reflected by the provisions in both the Universal Declaration on Human Rights (UDHR) and the Constitution of Kenya. The UDHR in Article 19 refers to the individual's right to "seek" and "receive" ideas (UN, 1948). Seeking and receiving ideas are regarded as forming, with others, the right to information. The Constitution of Kenya in Article 33 uses words similar to those used in the UDHR and puts "seeking" and "receiving" on top of the list of the components of freedom of expression. (GK, 2010). According to Sturges, (2009), the freedom to seek and receive ideas imposes an obligation or a duty on librarians to interpret this right and integrate it into their operational framework. Among

the operations included within the acquisitions function are identifying, selecting and procuring of information materials. Also involved is the task of ensuring that at the budgetary level, the financial resources available are appropriately shared out amongst the various teaching departments, while also catering for the needs of any new programmes that the university may have introduced.

Johnson (2014) has documented the historical process of the collection development where initially faculty members were responsible for collection development. This is reported to have changed with librarians taking over in the 1960s largely due to increased professionalism among librarians, the vast growth in number of publications, as well as a growing number of librarians with extensive subject training. This study revealed that librarians in public university libraries had made remarkable progress within the context of the situation described in the foregoing. The librarians interviewed confidently spoke of being instrumental to advances made in the acquisitions function where they had given leadership particularly through the formulation and application of policies and guidelines that ensured quality and relevance. This was partly attributed to librarians' familiarity and competence in working with information materials, suppliers, as well as their wide knowledge of bibliographic tools.

They also pointed out that as part of their work, they had over the years been able to carry out the challenge of building collections that consisted of books, journals, e-materials among other information materials that adequately met the academic standards demanded by scholarship within the different disciplines. Despite the fact that the acquisition of electronic materials was found to have presented public university librarians with

challenges associated with copyright law and the licensing of electronic resources, for this researcher the information obtained as given above is an indication of the fact that librarians had proved that they had the potential to ultimately overcome these problems. The following comment from a respondent supports this view, “In the acquisition of information materials, librarians have worked with faculty and given leadership through procedures that apply policies and guidelines to ensure quality and relevance of the information resources procured. Although currently problematic, the acquisition of electronic resources will eventually increase the skills and knowledge of the librarians in information management.”

5.2.2.3 Providing Access to Information

Providing of access to information may be viewed as a sequential activity. At one level this starts by making available, adequate physical space for the accommodation of library users, information materials, library equipment and staff. Library standards require that a library building and its furnishings should create an ambience appropriate for scholarship and conducive to learning, access to information and the delivery of high quality services (CUE, 2012). Statements from the respondents referred to the library as providing an “environment conducive to the interaction of scholarly minds”.

At the next level, access is provided through the classification, indexing and cataloging processes that facilitate the retrieval of information. Developments in ICT have led to the digitization of these processes leading to the widely used Online Public Access Catalog (OPAC). Some of the advantages associated with the introduction of OPAC include faster and efficient search and retrieval of information resources that can be used outside

the library. The emergence of electronic resources has also extended access in the sense that resources can be accessed away from the physical library and an item can be used by more than one person.

Providing access to information as a right has been highlighted in several legal instruments. According to the UDHR, for example, freedom of opinion and expression includes freedom to impart information and ideas. Similarly the Constitution of Kenya includes freedom to impart information or ideas as part of the freedom of expression. For the library, the right to information has been further interpreted by the International Federation of Library Associations (IFLA) whose advocacy is rationalized on the basis of the concept of intellectual freedom. In their declaration on access to information, IFLA calls for the uninhibited access to information and refers to libraries as providing access to information, ideas, and works of imagination regardless of frontiers. According to IFLA, access to scholarly literature and research documentation is vital to the understanding of our world and to the identification of solutions to global challenges and particularly the reduction of information inequality. (IFLA, 2014). The United Nations Education and Scientific Organization (UNESCO) took a more practical step in ensuring access to information by bringing in Information Communication Technology (ICT). In 2001 UNESCO put into action a process to facilitate access to information and knowledge by establishing an initiative known as the Information for all Programme (IFAP). A main objective of IFAP sought “to promote and widen access to information in the public domain through the organization and digitization and preservation of information” (UNESCO, 2007). Findings from the study showed that respondents were

aware of the above recommendations on access to information and worked towards attaining the level of access possible. However it was noted that there were challenges presented by specific laws, for example, the Official Secrets Act. It was further indicated that there was a lack of local guideline on these limitations and there was also no active forum through which experiences could be shared.

5.2.2.4 The Dissemination of Information

Dissemination of information is part of the right to information in that it completes the tasks assigned and implied by the term “impart”. Thus the UDHR Article 19, and Constitution of Kenya Article 33 both of which apply the term “impart” assume that dissemination of information is one way through which the right to information will be implemented. The Freedom of Information (FOI) concept focuses on establishing a proactive dissemination as opposed to request based systems. FOI puts an obligation on the state to publish the information in their possession, to ensure the information is properly organized with a view to allowing for access and ensuring that the costs of accessing information, if any, are not prohibitive. Two of the FOI’s principles that make direct reference to dissemination of information put an obligation on the state to publish implying that public bodies are to widely publish and disseminate documents with public information, and also to provide public education and dissemination of information regarding the right to access information.

All types of libraries, including public university libraries, disseminate information to their users through a variety of methods. This research confirmed that for the public

university library loaning out materials dominated the methods applied to disseminate information. However there was a range of other methods including those making use of ICT. This was described by respondents as follows: “In the library information dissemination has been done through a variety of information services. We have noted an expansion that has moved from the basic loans of books to the electronic services that make use of the digital resources and the Internet. The new developments have made it possible for the library to disseminate information beyond its physical limits which was not previously possible. But this development has brought with it more stringent restrictions associated with the copyright law”.

5.2.2.5 Teaching of Information Skills

Laws and declarations that advocate for both freedom of information and wide access presume an environment where information users have the capacity to access and use the information. The UDHR and the Constitution of Kenya, for example, expect that the individual has the capacity to “seek” for information. Yet this has been found not to be always the case. Information explosion has been cited as one of the factors that inhibit effective access to information as contemplated by the laws and declarations that support information as a human right, the other factor being ignorance of existing information resources as well as lacking in the capacity and skills to access the information. (Kingori, 2013). In responding to these challenges academic libraries introduced and incorporated into the curriculum a component through which they teach information skills to the students. Commonly referred to as Information Literacy (IL), the term information skills has various definitions. However, most of the definitions generally agree that the concept

involves the ability to access, evaluate and use information (Kingori, 2013). In the United States where relative advances in the area of IL and its implementation have taken place, the American Library Association (ALA) created in 1989 a framework for establishing a clearer understanding of IL. The framework emphasized two main aspects that give further definition to the concept of IL, as a process of lifelong learning whose accomplishment was dependent on the consistent cooperation between the faculty and librarians. (Mackey and Jacobson, 2005).

The Information Literacy concept is a relatively new development having first made its appearance in the mid-1970s as an entity different from library orientation and bibliographic instruction (Rosenberg, 2005). However, the initiative has made its mark in many academic libraries in the world including those in Kenya. A survey of user information literacy in the SCANUL-ECS region, revealed the introduction of IL programmes in the libraries in the region, was triggered by certain happenings including the application of computers, the introduction of library strategic plans, the expansion of student enrolment as well as research done on the use of library resources (Kiondo & Msuya, 2005). Although legal issues were not at the time among the factors that prompted the teaching of information skills, the opportunity is now available to bring to the attention of library users the benefits introduced by law and also the limitations that might apply. Available studies on copyright in particular have pointed out that through Information Literacy librarians had been able to impart the knowledge on copyright use to library users (Wasike, 2014; Olaka, 2010).

The above discussion presents a view that focuses on the role of Information Literacy in furthering the aims and objectives of the library. The study established that public university libraries were variously involved in the implementation of I.L. in their respective universities. However, there were challenges that limited the effectiveness of these initiatives as expressed, for example, by the following statement, “The problem with I.L. is that students are largely focused on exams and where information literacy is not part of the exam system, they do not see its benefits. Programmes on offer are also heavily loaded and it has been difficult to get extra time for teaching information literacy classes. I think the teaching faculty has actually not given the library the necessary support to implement information literacy. I would say that it has not been a very successful undertaking”.

5.2.2.6 The Application of ICTs in the Public University Library

The application of Information Communication Technology in nearly all aspects of development and its operations has been widely recognized. Computers became popular in organizations because they introduced benefits that were identified with aspects of speed, reliability, consistency, the storage and preservation of information (Shelly & Vermaat, 2012). All these aspects are central to library activities a fact that saw libraries embrace the use of computers in the functions of retrieval, organization and dissemination relatively early following their initial introduction. (Egunjobi & Awoyemi, 2012) note that library automation enables easy access to library materials, and allows staff to better serve users and facilitate a multitude of tasks such as acquisitions, cataloging, circulation, and dissemination. Despite the advantages associated with the

use of computers in the library, libraries had to overcome certain challenges before they could fully attain the benefits attached to automation. According to Mutula (2012), the factors that inhibited the use of computers in libraries included budgetary constraints, high cost of ICT facilities, inadequate ICT skills, inefficient electricity/telecommunication infrastructure, and the lack of ICT strategies/policies.

Access to information happens to be one of the areas that have been positively affected by the introduction of ICT into the library. The World Summit for Information Society (WSIS) in its declaration viewed ICT as one of the means of achieving development in society. WSIS directly linked their own declaration to the provisions in the UDHR's Article 19. They advocated for a society "where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration on Human Rights" (ITU, 2005). For this to happen, the declaration went on to point out that it was necessary to develop and widen ICT applications, build capacity, and increase confidence and security in the use of ICTs. It may be interpreted that Kenya readily adopted the WSIS ideals because the national ICT strategic policy whose formulation took place soon after the summit declaration undertook to "modernize Kenya's educational system using ICTs to improve and expand access to education, training and research resources and facilities, as well as to improve the quality of education and training and make the educational system responsive to the needs and requirements of the economy and society with

specific reference to the development of the information and knowledge based economy and society. The aim of this is to transform Kenya into an ICT or information knowledge nation” (Ministry of Information and Communications, 2006).

While the WSIS was general and may not have specifically targeted academic institutions including libraries the ICT national policy was more categorical and made educational institutions that include libraries the direct focus of the national strategy. For university libraries the Commission for University Education (CUE) gave further specification of ICTs in the academic libraries through the relevant standard which states that “a university library shall adopt and maintain Information Communication Technologies in information management and its operations” (CUE, 2012). The Commission considered the incorporation of ICTs important enough for them to provide the specific guidelines that would direct the university libraries in the exercise through:

- i) Establishing ICT policies to guide adoption and maintenance;
- ii) Establishing library ICT infrastructure and systems that integrate with the university-wide
- iii) ICT environment;
- iv) Installing Library Systems that support data exchange using standard protocols and formats;
- v) Establishing disaster recovery and business continuity plans;

- vi) Providing ICT hardware and software that adequately facilitate the information management needs of the library;
- vii) Providing appropriate levels of internet bandwidth to facilitate downs and uploads;
- (viii) Providing for the digitization of information resources;
- (ix) Providing a competent library professional dedicated to the management of library ICT infrastructure

Libraries experienced a major transformation in form of the introduction and use of digitalization and e-resources which came through the emergence of ICTs. The benefits that the change brought to the library include the fast and wide access to information. Findings from the study validated this where it was established that “By applying ICT, the library increased access through digitization of some of the collection within the library, and also beyond the library through the Internet from the library website. The Online Public Access Catalogue (OPAC) can be accessed both within the library and also from remote computers.”

However this also came with drastic changes in the methods used to acquire these materials a fact that added further complications to the already existing copyright issues for the library to address. Relevant findings indicated that both the librarians and the users had to continuously update their skills and knowledge in order to manage and use these resources.

5.2.2.7 The Recruitment and Development of Staff

For academic libraries the need to have experienced and skilled staff forms a key organizational issue. The knowledge and skills required by librarians are a reflection of the responsibilities that they carry and the activities they perform, and an aspect that the library and the parent university must address starting at the time of recruitment and continuing throughout the working life of the individual. During recruitment, the appointing authority will need to ensure that the candidate is in possession of the required and preferred qualifications that address their education, experience and competence. Applying professional standards go further in a bid to reiterate the need to make sure that library services are of the highest quality possible. They stipulate that the appointment of librarians shall follow the same procedures that are established for appointing all institutional faculty members (ACRL, 2010) and also that Librarians shall have academic status and be on the same terms and conditions of service as teaching staff (CUE, 2012). The implication here is that the librarians' delivery of service will be judged on the same level as that of their counterparts in the teaching faculty.

For example, the right to information contains benefits and obligations that librarians must be able to conceptualize and interpret in the context of their information work. Similarly laws like the copyright law put limits to information and its provision in a manner that must also be understood, and their implications to the information service appropriately addressed. These conditions assume librarians have the capacity to appreciate and apply the relevant provisions in their work. This may sound challenging but it offers librarians new areas of expertise that come with new opportunities to provide

innovative, value added services to the academic community. In this connection, IFLA, for example, sees Article 19 of the Universal Declaration on Human Rights (UDHR), as putting on librarians the challenge to get involved in the development of a principled critique of relevant law and where necessary to advise or advocate for the improvement of the substance and administration of laws (IFLA, 2014).

Findings from this research confirmed that staff in public university libraries had the capacity as recommended by available standards as presented in the foregoing. There was evidence of the existence of adequate academic training programmes as well as opportunity for individuals to have the benefit of further advancement through Continuous Professional Development (CPD) initiatives. According to the study, most of the librarians who had received training on aspects of law and information had done so through seminars and workshops both which are a part of CPD.

5.3. The Information Services Provided by Public University Libraries in Kenya within the Context of the Influencing Laws

The following section will discuss the information services offered by public university libraries, as one way of achieving the second objective of this study which was to explore the information services provided by public university libraries in Kenya within the context of the influencing laws.

This study interprets information services on the basis of the provision of access to a broad range of information resources in the furtherance of the library's vision, mission and objectives. Secondly the provision of information services is also viewed as the

means of fulfilling the obligation to “impart ideas” as set out in the Article 19 and Article 33 of the Universal Declaration on Human Rights and Constitution of Kenya respectively. For the public university libraries, this obligation is specified by the Commission for University Education which requires a university library to establish, promote and sustain quality services that will facilitate teaching, learning and research. Among the services identified by the Commission’s statement are reference, circulation, current awareness, Inter library loans and reprographic services (CUE. 2012). Along the same lines the American Library Association through the Reference and Users Services Association (RUSA) describes the academic library as an institution that possesses, organizes for use by its community concentration of information resources within an obligation to develop information services appropriate to its community (ALA, 2000).

5.3.1 Circulation, Loans, Interlibrary Loans

Library work ultimately translates into the function of providing a service for the user community. The circulation and lending service operates on the assumption that the materials are appropriately classified and processed in a manner that will allow for their retrieval. However a key aspect to keep in mind is that this is a method of ensuring that the information materials are put to use by the users as opposed to a situation where they remain within the library or on the shelves without being used. The circulation and lending service is also a method of making sure that the librarian has control over the information materials. The conditions under which the service works includes having a record of the borrower, his privileges as for example, the number of items he is allowed to borrow, whether he has loans that are overdue, if the item to be borrowed has been

reserved by another user, and what lending period is allowed for the specific borrower (Chaudhry, 1994). Most of these conditions apply for the print formats, and are admittedly restricting. On the face of it, they may be interpreted as going contrary to the open access ideals. They reflect the reality of the librarians' work as dictated by budgetary constraints. The existence of this challenge was confirmed by the librarians in the study. They however gave it a positive view and said that it was a way for facilitating the equal sharing of available resources. They explained this as follows: "Lending policies for circulation books allow students a maximum of six books for 14 days, and 10 books for one month for lecturers and postgraduate students, both renewable once. This may appear a bit restrictive especially when viewed against the scope of the number of courses for the undergraduate student. However, it is the library's way of ensuring that the limited information resources are equally shared by all as part of our effort to provide wide access to information".

The study received information to the effect that book loans accounted for a very high percentage of their circulation services especially among the students. Those librarians who were interviewed thought that the heavy borrowing from the library would continue. This finding was in contrast to the situation in the developed world where discourse on this item has been non-conclusive. Opinion from some authors in the U.S.A. and elsewhere argues that although there had been a rise in the use of e-resources, this did not necessarily point to a decline in the use of print materials as shown by the following, "Certainly, the appetite for electronic information is increasing exponentially, but this is not happening at the expense of printed library collections. It is happening in parallel

with an increase in the use of printed collections and with an increasing use of digital materials derived from print originals. Where library circulation figures are in decline, there is some evidence of correlation with the amount of digitization of print originals taking place in those libraries.”(Mirza and Khalid Mahmood, 2012). And regarding the United Kingdom the switch from print to e-resources has been directly linked to issues of copyright and the flexibility with which they are applied. This is expressed in the following statement: “As far as the UK is concerned, the great constraint placed on a wholesale migration of student reading from print to digital formats remains copyright law, especially constraints on digital reproduction. Thus, if the fall in ARL and ACRL library print usage is due to liberal US laws on copyright allowing digital reserve collections to flourish, then intellectual property law is the most significant factor in allowing scholarly reading to move from print to digital media. If publishers do not start producing their own commercial e-books on a scale comparable to their e-journals and UK restrictions on digital reproduction remain as they are now, with tight license restrictions and no concept of “fair dealing” equivalent to the US concept of “fair use”, then the primacy of the print collection for undergraduate teaching will remain unchallenged. If UK copyright is liberalized, then it is conceivable that a new wave of digitization could lead to a fall in circulation levels for print library collections. However, the educational reading experience that such digital teaching collections support is likely to be as intelligent and considered as it always has been, conforming to Long’s view of public library reading habits which appear to be consistent in nature across print and non-print media.”(Joint, 2008). Either way, these statements on the shift in the use of information resources ultimately point to the increased use of digital materials in the

library. For this study this introduces issues with wide legal implications from the intellectual property and copyright aspects referred to in the above quote, to the increased access associated to e-resources among others.

The interlibrary loan service has been perceived by librarians as a highly specialized method of cooperation leading to the sharing of limited information resources among libraries, as the following clearly says: “ILL is not only a practical way to access certain locally unavailable information, it remains symbolically important as a way to at least potentially access the entire world of information. Even if open access publishing is the future, right now people need library resource sharing” (Posner, 2014). This statement describes conditions widely encountered among libraries in the developed countries. However, this researcher found a slightly different situation among the public university libraries studied, where there were suggestions to the effect that the interlibrary loan service was on the decline, or at least that it was not at the same level as it was in their counterparts elsewhere in the world. One view on this outcome held that the demand for material from the individual library’s clientele was so overwhelming as to leave no room for lending to other libraries. Moreover, it was claimed that members of KLISC libraries were now acquiring a lot of their resources in electronic format and these were availed through common subscription to all the libraries. Assuming that regardless of the outcome from the study, ILL would continue given their long history and proven benefits, libraries will have to contend with the issues of copyright law especially in the new environment introduced by electronic resources where conditions of use have been known to be more stringent.

5.3.2 Photocopying Service

Writing on the issue of photocopying, an author noted that the photocopying machine was one of the first technological innovations in libraries that revolutionized the way libraries offered access to information. (Bernfeld, 2006). This statement applied to the present study which confirmed that photocopying was in great demand with over 76% of the libraries indicating that it formed part of their services. This was partly attributed to the restrictions of the loan policy particularly for books on reserve, and also on the highly inflated cost of books. This finding is a demonstration where in extending access to information for their clients, libraries were struggling to provide increased number of users with information in an environment with restrictions emanating from limited budgetary resources among others. Consistent with this finding, this study established that photocopying services were in very heavy demand partly due to the restrictions of the loan policy particularly for books on reserve. It was reported that it was possible for a user to photocopying a whole text book as this was cheaper than buying a copy of the title. A further and related dimension to this finding pointing out a number of implications was added by an author writing on photocopying in Nigeria. She noted that “quality of education requires the availability of relevant books in the chosen disciplines for use by students. It is therefore disheartening that book availability in Nigerian tertiary institutions is poor. The Nigerian Book Sector study of 1990 revealed that only 5 per cent of undergraduates can afford to purchase their own copies of textbooks even if these are available. Most books required for research and scholarship at tertiary level are being imported at very high cost. Votes for books and journals in our tertiary institutions have

been consistently on the decline since the mid-1990s due to the economic downturn being experienced in Nigeria. These factors have further aggravated the problem of book scarcity” (Okiy, 2005).

However, despite the above positive initiatives where the photocopying service emerged as a way of ensuring access to information, it was noted that it carried with it the risk of infringing copyright laws. This may be viewed as a venture that works for the limitation of access to information. In Kenya the registration in 2005 of KOPIKEN, the Reproduction Rights Society of Kenya, under the Copyright Act (CAP 12 of 2012) pointed to a universal tendency where reprographic organizations are playing an implementing role of copyright law by levying charges on libraries and their users. As a result of the conflict between availing information access to users and observing provisions of copyright, librarians are faced with the ensuing dilemma where they want to be able to act within the law and to provide reasonable service to library users.

5.3.3 Current Awareness Services

According to literature, current awareness was first described in 1958 by Luhn who referred to it as a system which would identify known information, find who needs to know it and disseminate it efficiently (Hughes & Glueckert, 2014). Since then different methods and approaches have been applied to offer current awareness services in the library including the circulation of table of contents (TOC), printouts of abstracts, order slips, and issuing alerts for newly acquired titles. The reason behind the introduction and continued use of current awareness services was due to the information explosion experience in the last century and further increased by the rapid evolution of the Internet

leading to scholars having the challenge of keeping current in their area of specialization, and eventually ending up with frustrations of overload of information. As partly denoted by their name, current awareness services have three notable characteristics, namely, speed, ease of use and relevance. The two most commonly used and more formalized current awareness services are the Selective Dissemination of Information (SDI) and the Current Awareness Services (CAS). A review of literature revealed that both services have gone through an evolution that has seen them move from manually operated services to automated alerting systems now provide current awareness providing information through e-mail or the Online Public Access Catalog (OPAC).

For this study both the SDI and the CAS were identified as a method that libraries were using to enhance the provision of information. However, the study established that both services though available were not frequently used. This finding was in line with the available literature which described these services as being offered to individual users upon specific demands (Hossain & Islam, 2012). According to the findings from the study, the two services were more likely to be offered in libraries with stated subject specialization including education, pure and applied science, engineering, business studies, agriculture and development, environmental studies, and medical sciences. Despite the challenges presented by the large number of users, where libraries were able to offer SDI and CAS services, librarians got the opportunity to effectively address the obligation to impart information by enhancing the individual user's access to information. The study confirmed that SDI and CAS services were the preserve of those researchers

and postgraduate students seeking for specialized and current information mainly published in journals.

5.3.4. Information Literacy

Academic libraries have traditionally offered forums through which they provide users with skills or knowledge on the use of library resources. Initially the methods applied were unstructured and consisted of library tours during orientation. In time these gradually evolved to course specific workshops or lectures given on demand by course lecturers. Two emerging issues introduced a new appreciation of information skills and their contribution among the university community, and going beyond the institutional establishment to positively impact on individuals and the wider society in general. Respondents made reference to these two developments where information literacy was needed to educate library users on the requirements imposed by the use of electronic resources, while at the same time it played the role of imparting long life learning skills to the individual. Other sentiments from the respondents were given as follows: “The library has been offering information skills to users for a long time mainly through talks and tours during the orientation for new students. Calls to add more meaning and relevance led to the introduction of the information skills course in the early 1990s. Currently the library is following the guidelines from the Commission for University Education. In my view, information literacy offers an opportunity for the library to get integrated into the academic programmes of the university and to contribute more directly to the learning process.”

Laws and declarations that advocate for both Freedom of Information (FOI) and wide access presume an environment where information users have the capacity to access and use the information. The UDHR and the Constitution of Kenya, for example, expect that the individual has the capacity to “seek” for information. Yet this has been found not to be always the case. Information explosion has been cited as one of the factors that inhibit the effective access to information as contemplated by the laws and declarations that support information as a human right, the other factor being ignorance of existing information resources as well as lacking in the capacity and skills to access the information. (Kingori, 2013). In responding to these challenges academic libraries introduced and incorporated into the curriculum a component through which they teach information skills to the students. Commonly referred to as Information Literacy (IL), the term information skills has various definitions. However, most of the definitions generally agree that the concept involves the ability to access, evaluate and use information.

The Information Literacy concept is a relatively new development having first made its appearance in the mid-1970s as an entity different from library orientation and bibliographic instruction (Rosenberg, 2005). However, the initiative has made its mark in many academic libraries in the world including those in Kenya. A survey of user information literacy in the SCANUL-ECS region, revealed the introduction of IL programmes in the libraries in the region, was triggered by certain happenings including the application of computers, the introduction of library strategic plans, the expansion of student enrolment as well as research done on the use of library resources (Kiondo &

Msuya, 2005). Although legal issues were not at the time among the factors that prompted the teaching of information skills, the opportunity is now available to bring to the attention of library users the benefits introduced by law and also the limitations that might apply. Available studies on copyright in particular have pointed out that through Information Literacy librarians had been able to impart the knowledge on copyright use to library users. (Wasike, 2014; Olaka, 2010).

Unlike the other services that are generally based on the library, the information literacy service assumes a classroom based approach whose success has universally been linked to the level of the existence of cooperation between the faculty and the librarians. According to Kingori (2013) establishing the approach suggested here has been a major challenge for the library with students in the different programmes not convinced about the real benefits of the course. This researcher confirmed the same as the following comment indicates: “The main problem is that students are largely focused on exams and where information literacy is not part of the exam system they do not see its benefits. Programmes on offer are also heavily loaded and it has been difficult to get extra time for teaching information literacy classes. I think the teaching faculty has actually not given the library the necessary support to implement information literacy. I would say that it has not been a very successful undertaking”. These remarks confirm the need to have the I.L. plan worked out as a partnership between the library and the faculty rather than leaving it to the library which has been the case in the local public university libraries. The following excerpt is an illustration from a university in the U.S.A. where the collaborative approach to the offering of the I.L. programme has worked and recorded

reasonable success: “At the University at Albany, State University of New York, information literacy is a general education requirement for all students. Faculty and librarians work together on program planning, course development, course approval, and teaching. Students can choose either a one-credit quarter course taught by librarians or a three-credit discipline-specific course from departments as diverse as Women’s Studies, Geography, East Asian Studies, Communication, Information Science and Policy, and linguistics”(Mackey and Jacobson, 2005).

5.4 The Acquisition of Information Materials in Public University Libraries in Kenya against the Background of the Relevant Laws

5.4.1 Background

The third objective of this study sought to explore acquisition of information materials in the public university libraries as influenced by the relevant laws. The decision to study the acquisition of information materials was based on two considerations. The first consideration, which has been highlighted by authors (Evans & Saponaro, 2012; S. D. Lee & Boyle, 2004; Wilkinson & Lewis, 2003) had the view that the acquisitions function formed the critical foundation for the provision of information services. Secondly, the acquisitions function represents an area of the library that has been dramatically affected by the transformation introduced by electronic resources. Because of the electronic resources’ mode of acquisition, which revolves around licensing through contractual negotiations, the acquisition function becomes a clear demonstration of the legal implications involved.

According to (Johnson, 2013), the acquisition of library materials, or collection development, is “the thoughtful process of developing or building a library collection in response to institutional priorities and community or user needs and interest. It covers several activities related to the development of library collections, including selection, the determination and coordination of selection policy, assessment of the needs of users and potential users, budget management, identification of collection needs, community and user outreach and liaison, planning for resource sharing, and e-resources contract review and negotiation”. In the public university library the named tasks form part of the processes that have been at the centre of the shift from print resources to electronic resources.

5.4. 2 Evolution of the Acquisition Function in Public University Libraries

A notable factor in the acquisitions function is the development of processes and procedures that have led to a well-established base for the provision of information services. The importance of establishing an understanding of the development of the acquisition process is adequately captured by Johnson (2013) in the following statement: “A brief look at the history of collection work, the libraries in which collections were developed, and external forces influencing collections is useful because contemporary practice builds on that of the past. Today’s librarians work with library collections that have been created over time in accordance with earlier practices and conventions. In addition, many challenges faced by librarians have remained constant over time”. Further to these sentiments, this study noted that this development led to the establishment of expansive knowledge on information resources that are indispensable to the future

growth and advancement of the acquisition process. The librarian work and responsibility extend over the various aspects involved in the acquisition of information materials including their production, availability, as well as the procurement either through direct purchase, tendering or the more recent licensing method. In the selection of materials, for example, the criteria developed for use by libraries has gone through a process of evaluating the content of the material, its coverage, intended audience and quality. This is done so as to ensure reliability, accuracy and currency of the information, the source of the information, the authority of the author and publisher, the cost of the resource the format and other features that add value to the title.

The aim behind the efforts described above, has been to achieve the main goal of the university library, namely, providing information resources for the learning, teaching and research needs of the parent institution. With this in mind, librarians found themselves in situations where the existing number of volumes in a library's collection was perceived as the primary indication of that library's role in achieving their basic objective of meeting the information needs of their community. Writing about this an author referred to what she described as an impression of a tonnage model applying a warehousing approach that was focused on "Collection size and scope, as determined by holdings counts, particular strengths, and unique materials, which were understood in relation to institutional mission and programs" (Horava, 2011). Similar thinking was reflected from the study where for example in connection with number of volumes held by the library information received was as follows: "The collection does not grow as we would like as we are constrained by budgetary allocations. It is also true that the figures we have given

are for print materials and do not include e-journals and e-books acquired through KLISC and are available to users through the Internet. The fact, however, is we are not sure about the eventual ownership of these resources.” This conceptualization has been the subject of the shift introduced in the acquisition function. The emergence and use of electronic resources has effectively removed focus from number of volumes, ownership and the processes through which these are acquired. The above quote from one of the study’s respondents who observed that they were not sure about the ownership of the electronic resources, is an indication that the new thinking introduced by the shift presented challenges for librarians. An apparent reference confirming that this is not peculiar to academic librarians in Kenya says that “tangibility, physical collocation, format, and ownership are no longer adequate for conceptualizing a collection. Unfortunately, they have deep roots in the traditional thinking, and will take some effort on our part to get rid of them in developing and broadening collections” (H.-L. Lee, 2000).

5.4.3 Organizational Details of the Acquisition Function

Wilkinson and Lewis (2013) summarize the responsibility of acquisition as follows: “Acquisition departments are responsible for getting the materials needed by the libraries users, in the most appropriate format and in the most efficient manner. Formats and methods change, but the responsibility and functions of acquiring library materials remain at the core of the acquisitions department.” In the study this responsibility was referred to in terms of putting in place a traditional acquisitions system established over the years, made up of the collection development procedures of identifying, selecting and

procuring processes. The key elements involved were given as the relevance of materials as well as the number of the volumes procured.

A functional definition of collection development, which is a term that is used interchangeably with acquisition, highlights two key aspects of that responsibility, namely, meeting the user needs and interests, and managing the budget. The first is a reflection of the relevance of the acquired information resources in the activities of learning and research. The second is an indication of the amounts of money that the university allocates to the acquisition of the information materials. In planning and implementing the management of acquisition work, librarians have established an organizational framework with practices and procedures that take the two aspects into account. In this regard the responsibility to cater for the needs and interests of the user has been shared with the teaching faculty where representatives of the teaching departments participate in the selection process. The financial details of the acquisitions activity are subjected to the scrutiny of the finance officer or their representative before being submitted to the tender committee for final approval. Information from the study confirmed this as follows: “In the area of collection building, librarians have worked with faculty and given leadership by use of formulated policies and guidelines to ensure quality and relevance of information resources procured. Because of the vast amounts of money in question, the office of the Finance Controller is also involved for purposes of accountability.”

The above forms a set-up that was configured for print formats. According to Stewart there are inherent differences between print and electronic resources that one would need

to consider while making a decision on the format to acquire. For example print materials are marked out by their physical nature which limits them to a specific location and further determines the manner in which they can be used. Electronic resources on the other hand, can be available to many libraries at the same time can therefore be accessed by many people at once. Unlike their print counterparts which are acquired through outright purchasing, electronic resources are leased through licenses. Consequently instead of ownership, librarians describe the possession of these electronic resources in terms of access and use. Despite the differences mentioned, the organizational framework set up for print resources would appropriately be applied in the acquisition of e-resources. However, the latter will introduce additional considerations over and above those involved in the acquisition of print formats. Some of the added issues to consider are listed by IFLA and include licensing, access and method of access, authorized users and sites, interlibrary loan (ILL) , as well as vendor support (IFLA, 2012).

The choice of whether or not to acquire print or electronic resources has been the subject of debate with those in support of electronic resources citing the advantages they have over the print in terms of ease of use, currency, reduced space requirement, cannot be mutilated, stolen, multiple access because they can accommodate more people at a time, and capacity for preservation of materials for long periods (Stewart, 2008). While accepting that there were benefits that are realized through the acquisition of e-resources, librarians interviewed said the following: “the adoption of electronic resources and their acquisition has introduced and imposed strict and complicated conditions for use that required the library to teach users and explain to them the application of user name and

password.” Despite the two schools of thought libraries are developing hybrid libraries as suggested by an author who argued that “Print and e-formats each have exclusive values, and until those values can be replicated in other media, both formats must be collected, maintained, and supported by libraries. The American Bar Association’s Standards for Approval of Law Schools clearly recognizes the importance of multi-format libraries by requiring that academic law library collections provide access to both tangible materials and electronic information. Libraries serve as gateways, and librarians as experienced and knowledgeable guides in the use of emerging and existing media in the pursuit of information. Neither print nor digital information can be ignored or avoided, as both play critical roles in the academic law library’s survival” (Wu, 2005). Consistent with this suggestion all the libraries in the sample were reported to acquire information materials in all formats including both print and digital.

5.4.4 Acquisition Policies

Library work has been based on different types of policies that guide performance and explain the decisions that form a regular feature of that work. These policies give guidance in many areas of the library’s operations, including the organizing of library materials, conducting of information skills, user services and the acquisition of information materials. IFLA (2001) pointed out the importance of an acquisition policy and said that “It serves many functions beyond being merely a tool for selection of materials. In addition to describing current collections, it forces the staff involved to consider the aims and objectives of the organization, both long and short term, and the priorities to be attached to different activities. It assists with budgeting, serves as

communication channel within a library and between the library and outside constituents, supports cooperative collection development, prevents censorship, and assists in overall collection management activities, including the handling of gifts.” According to the information collected by this research, public university libraries indicated an endorsement of IFLA’s view on acquisitions policy since most of them (87%) had written acquisition policies. Even the few who did not have written acquisition policies reported that this was due to the fact that their library was just getting established and they were yet to develop policies to guide their operations including acquisitions. They, however, were following practices that they were planning to eventually document in form of a written policy document.

Literature on policy has pointed out that the relevance of acquisition policy has been accentuated by the emergence of digital resources and more so the electronic resources. For example, writing on access and intellectual freedom Jones (1999), interprets the new developments as providing an opportunity through which librarians would benefit from the enhancement of legal and professional education based on the requirement that they now must be able to write relevant and good guiding policies. According to the author, the baseline for such policies would be set on pertinent issues including, among others, information access, intellectual freedom and its values. These would serve the added purpose of helping librarians make their professional ideals a reality with the implication that, despite the challenges that are associated with the environment and demands presented by electronic resources, they also have a positive contribution where librarians are acquiring new knowledge that will enhance their role in information management.

Commenting on the same issue of formulating and implementing policy, Horava (2005) observes the added benefit for the librarian within the institutional environment. He notes that “All of these factors can be invaluable in developing the partnership role of the library with the faculty, students and administration. A growing awareness of the library’s role in managing knowledge to meet the goals of the institution can only be to our advantage”.

With particular reference to electronic resources, it has been noted that they represent an increasingly important component of the collection building activities in libraries. As such it would be expected that this importance would also be represented in the policies that guide acquisition work. The question that libraries have had to address with the increased significance of e-resources in connection with the formulation of policy is whether the e-resources policies should be separate from the ones already developed for print materials.

While developing a guide on Key Issues for e-Resource Collection, IFLA suggested that a library should develop a separate policy for the acquisition of e-resources. Referring to the complexities commonly associated with the acquisitions of e-formats, IFLA (2014) justified the proposal for a separate policy as follows “While traditional collection development criteria, such as subject, level and target audience apply to the selection of most electronic titles, the management of this format is more complex and as such, it is good practice to develop a supplementary policy which addresses specific format related issues. Such a policy should be used in conjunction with the more traditional collection development policy and not in isolation”. The contents of the proposed policy would

cover the following items among others: functionality and reliability, vendor support, supply, licensing, currency, accuracy and completeness. The second opinion has not been keen on the separate policies approach preferring that there should instead be one comprehensive policy catering for all the formats acquired by the library. Arguing on the grounds that there is one budget to support the acquisition of the materials, and the shared expertise consisting of subject specialists, users, and technical experts the way forward would be to have a digital policy as part of the overall strategy for the acquisition department (Lee and Boyle, 2004). This apparent ambiguity on the issue of policies was also reflected in this study by the situation on the ground. With regard to policies on electronic resources, the study found what was interpreted as a reluctance to develop written policies for electronic resources. This was similar to what had earlier been noted in other environments as reported above. For libraries in the study this could be a reflection of the fact that all the issues on electronic resources were handled at a distance either by INASP or KLISC thus removing direct responsibility from the libraries. The situation may also have been a demonstration of elements related to the transitioning from one system to another. However, regardless of whether a library opts to address the implications embodied in electronic resources as a part of the existing policy, or as a separate new policy, the new environment requires that the various issues stated in the foregoing discourse are attended. This research made it clear that the more the libraries became familiar with, and involved with the acquisition of electronic resources, the more obvious was the need for policies to guide the function.

5.4.5 Acquisition of E-Resources through Licensing

An issue that has brought into the library challenges with monumental legal implications is the one dealing with the licensing of electronic resources. These challenges were real on the local scene where this research revealed that both e-journals and e-books were among the information materials acquired by the public university libraries. It was also revealed that although the licensing aspect was done by INASP and KLISC, respondents were still aware of the challenges presented in form of lengthy consultations, detailed documentation, involvement of legal processes, complex ownership models, and complicated user conditions. These concerns described a universal situation that was introduced by the shift from print to e-formats and changed the way to acquire information materials.

The following section will look at the acquisition of electronic information resources through the licensing method with the aim of bringing out the manner in which the process introduces legal implications into the library and its information service provision. The latter happens within an environment where it is generally observed that the issues are not as clear as they are in print media.

Simply defined, the term license means the permission granted by a competent authority to exercise a certain privilege that, without such authorization, would constitute an illegal act (Albitz, 2008). In other words a license is a legal and binding agreement or contract between the parties involved. Black's law dictionary (Garner & Black, 1999) defines a contract as an agreement between two or more parties creating obligations that are enforceable by law. A further look at the term license reveals that a license should clearly

specify three main issues, namely, parties to the agreement, well defined terms that will be used in the agreement, and a clear statement describing the information materials being licensed (Cox, 2000).

Developments in Information Communication Technology were a major factor in prompting the licensing of electronic resources essentially by making them widely available for learning and research processes. According to Jones (1999), advances in the learning and research environment have also led to the increased use of electronic resources. Some of the more obvious of the advances include, remote full-time access, collaborative team-based learning, web-based learning technologies, and the increasing collaborative nature of research.

The above impact by ICT on the processes of learning and research has evidently had an effect upon libraries whose primary mandate is to serve the information needs of the two processes. This effect has been demonstrated through, among others, the widespread acquisition of databases, e-journals and other digital materials, for example, the case where expenditure for e-resources shot up by about 400% in the period of five years.

Certain other happenings further influenced the introduction and wide use of licenses. With the increased growth and use of electronic resources, there were concerns mainly from publishers and content owners who felt that copyright law did not adequately address the intricate detail of e-resources. The fact that ICTs also greatly increased the speed with which content could be copied and transmitted, caused further restlessness among the copyright holders. Within this environment publishers developed license

agreements with the aim of defining acceptable uses of their content. A marked feature of license agreements with implications for the library, is that legally they fall under the law of contract where the outcome is strictly determined through negotiations between the parties. Applying this method to the acquisition of information resources meant that even those terms that were favorable to the library and the users through copyright law exemptions, could be reversed through the negotiations. It was also observed that there were other issues of concern for librarians regarding the conditions introduced by the license especially when viewed against the uses that were permitted by copyright where fair use balanced the needs of copyright holders with those of the users.

Initially these general restricting conditions of the license included tightly controlled lending of materials, prohibitions against copying, prohibition against distribution outside the institution, and non-transmission through electronic means (Jones, 1999). Further comments referred to what was viewed as “major problems with these licensing agreements” indicating that the license approach was not particularly favorable to the library as that their charges were made on the basis of the number of students in an institution regardless of whether all of the population will use the resource, use of non-disclosure clauses to avoid libraries comparing the service they receive, prohibiting libraries from providing offsite access (Nixon, 2003). An examination of the manner in which these conditions were framed indicated that they were targeted on aspects that were at the heart of the library service including leading, photocopying, interlibrary loans as well as the extended service to open distance learners who were part of the university community though not located in the immediate premises. With this evolving

environment there was a clear implication that librarians needed to have a keen awareness of the limitations of contractual licenses that ended up being less generous than the conditions of copyright law. The table below shows a comparison between conditions of copyright law and license, and indicates areas where the license takes away what copyright law provides.

Table 5.1 Comparison between Copyright Law Provisions and Licensing Conditions

| | Copyright law provisions | Licensing conditions |
|---|--|--|
| 1 | Right to lend to public. | “Lending” of materials may be tightly controlled- only users as defined in the license may use them. |
| 2 | Right to quote and excerpt for commentary and criticism. | Prohibitions against copying and / or non-disclosure requirements may require permission before quoting or excerpting. |
| 3 | Right to make and distribute copies under fair use and for local and remote libraries via interlibrary loan. | License may prohibit distribution outside institution, may eliminate public loans, disclosure and interlibrary loans. |
| 4 | Character for use governed by fair use principles. | Type of use may be restricted to e.g. academic or non-commercial use only. |
| 5 | Right to display work in face to face teaching. | No right to transmit electronically and therefore no use to DLMode. |

The general feeling of dissatisfaction among librarians against restrictions on interlibrary loans and other limitations was expressed as follows: “Not being able to lend something from our collections to another library conflicts with our deeply held beliefs in interlibrary cooperation and patron service. We feel we have a responsibility to serve our patrons better by building sharing relationships with other libraries. We gain access to wider collections by sharing our own.” (Croft, 2005).

(Gillies & Horava, 2009) state that in 1999/2000 certain publishers among them EBSOC and Swets-Blackwell made an effort to find a way forward by hiring a consultant, John Cox Associates, to develop a model license for use in various contexts. This led to a generic license model which provided templates that applied to most environments and contexts thus supposedly easing their use by libraries. The effort managed to achieve the following three things: giving definitions of relevant legal and library terms, introducing flexibility through alternative options to contentious issues, and defining the library’s interest by supporting the broadest possible access to information. The model license was aimed at saving individual library the arduous task of crafting and negotiation own license.

Despite the above effort, it was observed that the fact that publishers seemed to be solely in charge of developments and initiatives in the licensing of e-resources was still not satisfactory. The ensuing main concern was that librarians lacked the capacity needed to negotiate contractual licenses and they were at the mercy of the publishers and content owners. There were also fears that this would have negative implications on the financing of the resources as well as the actual provision of the information services. In the

meantime stakeholders and organizations, whose objectives included the promotion of access to information, came in and presented a number of approaches designed to help address challenges posed by the drafting of e-licenses and their application. These approaches included the formulating of guidelines widely referred to as licensing principles, developing of model licenses, and capacity building aimed at providing librarians with the skills needed for drawing of e-licenses. A number of organizations including the International Coalition of Library Consortia (ICOLC, 2004) the American Association of Law Libraries (AALL, 1997), as well as the International Federation of Library Associations (IFLA, 2001) issued statements with the objective of guiding librarians involved in the negotiation of e-licenses. This was also seen as a way of creating the necessary rapport between librarians on the one hand, and vendors and publishers on the other, a fact aptly captured by Upshall (2009) who noted that “reaching a harmonious meeting point of interests between the partners enables all involved to benefit, and hence increases the chances of them working together again.”

Although this research did not find any evidence on the use of the above principles and guidelines in Kenya, they continue to direct libraries in other parts of the world even in those institutions where there has been established the position of “copyright librarians.” In this connection the study’s findings also revealed that only a somewhat low percentage (22%) had received training on licensing. This emerges as an issue of concern especially as it was reported that all the libraries in the sample acquired materials in e-formats. This researcher’s view of the guidelines provided for the libraries noted that IFLA’s principles present an international outlook, and they have also been described as using language that

reflects a better understanding of the economics of publishing than the others (Alford, 2002). Authors writing on licensing agree that the basic user rights that an e-license will incorporate will vary from license to license depending on amount of fees paid, number of users and number of pages downloaded. On the one hand general, basic user rights granted by an e-license are said to include some or all of the following, searching and browsing, viewing and downloading, forwarding articles to others, printing and placing material on e-reserve or display. On the other hand, licensor's obligations include providing the following: twenty four hour access, back-up copy, the necessary technical support, audit of use report to give licensee details on use and a warranty.

Other licensing models developed thereafter included the Creative Commons model and the more library friendly Open access model. Further initiatives by the intellectual rights owners led to the use of technologic devices as a way of controlling access to e-resources. Through the Digital Rights Movement (DRM) the rights owners introduced the Technical Protection Measure (TPM). This effectively limited the copying or printing of the materials in question.

5.5 The Laws and Declarations in Kenya that have an Influence on the Provision of Information Services in Public University Libraries in the Country

The fourth objective of this study was to explore the laws and declarations in Kenya that have an influence on the provision of information services in public university libraries in the country. The section starts with a discussion of the librarians' awareness of the laws and declarations that have implications on the provision of information. In the section

that follows, the study focuses on the laws and declarations that support information and its access, while thereafter the discussion looks at the laws that put limits to information access.

5.5.1 Librarians' Awareness of the Laws and Declarations with Implications on the Provision of Information

A discourse on the legal implications on the provision of information services assumes an existing level of awareness of the relevant laws and declarations. A general but relevant definition of the term awareness refers to it as the knowledge or understanding that creates an individual's ability to monitor or picture and interpret the environment around them. Both theories of communication as well as research in this area indicate that the method used to communicate has an influence on the retention of the message conveyed. The implication is that a message may not reach the intended destination, or it may have a different meaning depending on the way in which it has been communicated (Mattelart & Mattelart, 1998). The study findings revealed that reasonably high percentages of the respondents had an awareness of most of the laws and declarations on information. The findings were validated by and in line with other research done earlier. For example, in his doctoral research on the knowledge of copyright issues in Kenya, Olaka (2010) cites earlier studies in the United States which found that among three groups studied, namely teachers, principals and librarians, librarians were found to be the ones with most awareness and knowledgeable on copyright issues. These findings may be viewed as representing conditions in the U.S. where matters of copyright are a common occurrence.

However, a local study also found that over 83% of the librarians in the sample, were aware of the Copyright Act and the related issues (Wasike, 2014).

Further findings on the librarians' awareness of laws and declarations on information revealed that majority of the librarians got the awareness presented above from the media, with the exception of copyright where the information came mostly from colleagues. The seminar/workshop played a surprisingly minor role in providing librarians with awareness on the issues of law and the provision of information services. However, this outcome is consistent with a finding from an earlier research that had observed that people generally received information through a method that is close to them (Ocholla, 1998). In his research on copyright in Kenya, while noting the need for more copyright awareness, Wasike suggested that this could be achieved through several ways including intensive education, extra training, seminars, conferences, workshops and media communication (Wasike, 2014). Nevertheless, this researcher is of the opinion that the media, though a common source of information, will not give focus to the areas of importance and interest to the librarians. The seminar/workshop though not highly presented in the research findings as a method of producing awareness on the relevant laws and declarations would be more appropriate as this would give the depth and coverage expected to realize more benefits for the librarians.

5.5.2 Laws that Support Information and its Access

The laws and declarations presented in this section illustrate a recognition of the importance of information and its contribution in the life of the individual person and that of the society as a whole. It was with the aim of promoting this contribution that the

United Nations Commission on Human Rights (UNCHR) included right to information as one of the 30 Articles in the UDHR. It thus elevated the status of the right to information to the same plane with such other rights, as for example, the right to life, right to education and right to property. The Constitution of Kenya elevates right to information in a similar manner in the Bill of Rights in Chapter four.

5.5.2.1 Universal Declaration on Human Rights (Article 19) and the Constitution of Kenya (Article 33)

The Universal Declaration on Human Rights (UDHR) was the first legal instrument to give support to the human rights concept. The United Nations Commission on Human Rights (UNCHR) was established to define, enumerate and set up standards for human rights. The Commission produced a declaration that achieved the following: provision of guidelines for raising standards of living, putting an obligation on U.N. member countries to explore ways and means of realizing the objects of human rights, establishing principles that form part of the constitutional law in various countries, and forming the foundation later adopted by other instruments and strategies.

Details contained in the UDHR consisted of 30 Articles that incorporate a wide range of rights and freedoms. Some of the Articles that had relevance to this study include the following: right to information (Article 19); right to property, which incorporates intellectual property (Article 17); right to education, includes university education (Article 26); right to share in the scientific advancement and its benefits, relates to dissemination of information, (Article 27); right to privacy, creates limits to right to information (Article 12).

Article 19 expressly focuses on the right to information as follows: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of the frontiers” (UDHR, 1948).

A national constitution has two characteristic features that are relevant to this study. The first is the feature that identifies the supremacy of the constitution in reference to other laws. In effect this supremacy means that the constitution has the capacity to act as the base for the respective state’s laws and policies. In the case of information, which is expressly provided for in the Constitution of Kenya (Article 33), any laws or policies will fall under the Article to which they must be aligned. While the resulting relationship may be interpreted as providing needed protection and direction in information based activities, it can also be assumed to similarly put responsibilities and duties upon organizations and individuals. The second feature that is relevant to the present study, reflects the balance between the interest of the state on one hand, and those of the individuals and their rights and freedoms on the other. In the context of this research this feature is reflected through the provisions contained in the freedom of information concept where the government is obliged to provide information to the citizens.

The Constitution of Kenya was adopted on 27th. August, 2010. The Constitution’s supremacy is stated early in the document under section (2) (1) which provides that “The Constitution is the supreme law of the Republic of Kenya and binds all persons and all state organs” (Constitution of Kenya, 2010). Chapter 4, the Bill of Rights, of the Constitution outlines the rights and freedoms of people in Kenya. A main purpose for

recognizing the rights and freedoms of the individual is to act as a means to promote the realization of the individual's full potential. The right to information was initially recognized by the Universal Declaration on Human Rights (UDHR) in 1948. The Constitution of Kenya has codified the right under Article 33 as follows, "Every person has the right to freedom of information, which includes freedom to seek, receive or impart information or ideas; freedom of artistic creativity, and academic freedom and freedom of scientific research" (Constitution of Kenya, 2010). The elements represented by the terms to seek, receive and impart pointedly refer to the work carried out by university librarians in support of the university's core activities of teaching, learning and research. The force of the Constitution has been directed to the protection and promotion of the library's functions of acquisitions, organizing or processing, and the dissemination of information. An important rider to constitutional rights and freedoms observes that they imply some form of obligation on some person or institution. For the library this translates to a responsibility both to guarantee and to facilitate access to expressions of knowledge and intellectual activity. To this end, libraries shall acquire, preserve and make available the widest variety of materials, reflecting the plurality and diversity of society ("The Glasgow Declaration on Libraries, Information Services and Intellectual Freedom," n.d.). Furthermore, the implied constitutional responsibility assumes that information services will lead to the individual's realization of their full potential. The three responsibilities that the Constitution puts on university libraries are analyzed in the following section.

Both the UDHR Article 19 and the CK Article 33 provide for right to information in closely related terms. This explains the fact that that the UDHR has had an influence in the drafting of the Bill of Rights in various constitutions. Because of the related treatment of the right to information, the UDHR Article 19 and the CK Article 33 are discussed together in the following section. The UDHR was not intended to be legally binding. However, it acted as a moral obligation for various countries as demonstrated by the inclusion of the essential elements into their constitutions.

In their comments respondents stated that the UDHR Article 19 highlighted the importance of information in transforming the life of the individual. One respondent mentioned the usefulness of the Article for purposes of advocacy and noted as follows: “It can be used as a base to argue the case for the University management to recognize the role of information in education and especially where the library is given low priority during budgetary allocations”.

5.5.2.1.1 Significance of UDHR Article 19 and CK Article 33

Findings from this research revealed that librarians acknowledged the fact that both the UDHR Article 19, and the Constitution of Kenya Article 33 viewed information as having a transformational capacity on human beings, a fact that meant that information ultimately made a key contribution to efforts that addressed socio economic challenges in the society. This researcher identified the significance attached to information as forming a critical foundation for the justification and advocacy for information at both the national and institutional level. This was confirmed by the respondents in this study who reported that the UDHR’s Article 19 and the Constitution for Kenya Article 33 presented

an opportunity for the library to be accorded better treatment specifically in budgetary allocation. They also considered that the critical role of information as articulated by the UDHR and the Constitution of Kenya was important for the library and it could be used as a base for an advocacy that presented the case to university management and the government for the better recognition of information within learning and beyond. The argument advanced by the respondents on information's overall contribution to society was recognized by the United General Assembly (UNGA) in 1946 when adopting the UDHR report from the drafting committee. In explaining the place of Article 19 of the UDHR in relation to the other Articles, the UNGA expressly stated that "Freedom of information is a fundamental human right, the touchstone of all freedoms to which the United Nations is consecrated" (Mendel, 2008)

Further interpretation to this original view of information has highlighted its contribution to different levels of social development as for example the underpinning of democracy, ensuring that governments are transparent and accountable, as well as giving citizen's the ability to participate in the development of public life. In their medium plan for 1981-1989, plan UNESCO, for example, identifies the free flow of information as having added value to human experience and progress by promoting human rights, openness and enhanced livelihoods as well as sustainable development (UNESCO, 2007). An interesting finding from the study was the specific recognition of the universality of the UDHR. In this regard, a respondent acknowledged this as a reflection of the fact that information had wide international appeal, a fact that Kenyan institutions also needed to adopt. This was brought out as follows; "It is a positive sign that UDHR Article 19 is

internationally recognized. Kenya is a member of the United Nations and the Government and other institutions including universities need to adopt what others in the international community have endorsed.”

This study established that over and above giving support to information and its provision, both the UDHR and the Constitution of Kenya also put certain obligations on librarians by expecting them to deliver on the aspects identified by the relevant articles. This is in line with the assumption that the implementation of a right has a side that imposes responsibilities and obligations. In line with this a respondent referred to the librarians’ challenge of the Constitution’s provision and designing practical ways of implementing the same.

An interpretation of the right to information in relation to the library as contained in the UDHR and the Constitution of Kenya was advanced by Paul Sturges who singled out the terms “to seek”, “to receive” and “to impart” from the right to information statement. He further argued that the three terms can be identified as obligations that the right to information puts on the libraries as part of their responsibility in the provision of information services (Sturges, 2009). The following section discusses, in the context of this study, the three responsibilities that both the UDHR article 19 and the CK Article 33 implicitly put on libraries.

5.5.2.1.2 The Obligation to Seek

This study interpreted the term to “seek” within the library environment as an incorporation of two functional principles, namely, the establishing of user needs, and the

identification and selection of relevant information materials to meet the information needs. For university libraries, an important issue lies in the need to ascertain that the materials are matched against the users' needs in order to ensure relevance. In the university identifying and selection of information materials is done in conjunction with the teaching faculty. Further responsibility entails the locating of the materials selected. Findings from this study confirmed that librarians possessed useful bibliographic skills and book trade knowledge and experience which they appropriately applied to benefit the process. Challenges encountered at this level were identified as the need to ensure relevance, the huge volumes of materials involved as well as acquiring the skills necessary for the function.

5.5.2.1.3 The Obligation to Receive

The above obligation assumes the availability of adequate financial resources. Public university libraries get most of their funding from the parent university. The university is in turn funded by the Government. Experience indicates that inadequate funding is a prevalent feature of public institutions including libraries which are known to be capital intensive (Gudo et al., 2011; Sifuna, 2010). Under this responsibility the university library is charged with designing innovative and meaningful ways and means of meeting the financial gap. Those interviewed for this research stated that for their libraries, donations had provided an avenue for supplying extra information materials. They however had reservations in cases where donations were in form of information materials, where there was an underlying challenge of their relevance to the needs of the library clientele.

Donations to the library may be in form of cash. For example in 1992/1993 the World Bank gave funds to the public university libraries to buy information materials in specified subject areas. The question to be addressed here is whether this type of donation with the accompanying conditions eventually addresses the identified library needs as given priority by the library.

Resource sharing amongst libraries offers an approach that addresses, to an extent, the problem presented by inadequacy of funds. The study established that for the public university libraries, the Kenya Library and Information Services Consortium (KLISC) availed an approach that provided an effective resource sharing mechanism especially in the area of electronic resources. Although not of a direct nature, stringent procurement procedures were presented as challenges in that they interfered with, or created delays in the acquisition of information materials for the library. A respondent suggested a way to overcome this problem was to establish a working relationship with the university management, in particular the procurement section, as well as acquiring a familiarization and working knowledge of the Public Procurement and Disposal Act, 2005.

5.5.2.1.4 The Obligation to Impart

University libraries offer information services through which they aspire to meet the information needs of the users. This research confirmed that library loans, reference services, short loans, and interlibrary loans were among the traditional services that public university libraries used to offer services to university library users. The introduction of Information Communications Technology was identified as having s

brought in other services based on Internet and digital resources, as for example the Open Public Access catalogue (OPAC).

However, this researcher recognizes that the term “impart” has an abstract nature that encompasses the wider elements of communication, interpretation, evaluation, understanding and contextualization. A new challenge is thus introduced by the need for a more developed information capacity to contextualize and interpret information.

5.5.2.2 The International Federation of Libraries Association (IFLA)

The International Federation of Library Associations and Institutions was set up in 1927. The Association’s core value is adopted from an endorsement of the principles of freedom of expression as enunciated in the Universal Declaration on Human Rights (UDHR) as well as in the constitutions of various countries including Kenya. In furtherance to their core value, as well as in supporting and promoting UDHR’s right to information, much of IFLA’s work has gone into interpreting the right within the context of libraries and information service provision. Part of IFLA’s activity on freedom of information has been in the form of issuing of declarations. The Glasgow Declaration of 2002 was a proclamation of human beings to access and express information without hindrance. In 2012 the Moscow Declaration on Media and Information Literacy, appealed to individuals, communities and nations to obtain a critical set of competencies to be able to seek, critically evaluate and create new information and knowledge in different forms. The latter Declaration also pointed to the need to address such barriers and challenges as lack of capacity, resources and infrastructure as well as legal barriers to accessing, distributing and owning information (IFLA, 2012). In 1998 IFLA set up the

Free Access to Information and the freedom of Expression (FAIFE). The Committee was basically charged with the responsibility of raising awareness of the correlation between the library and intellectual freedom. FAIFE interprets intellectual freedom to refer to elements contained in the freedom to access principle. The Committee argues that intellectual freedom contributes to the development of a resourceful and independent individual. The Committee's further adopts approaches that apply education, advocacy and interventions (FAIFE 2012). Giving more highlights of IFLA/FAIFE initiative on intellectual freedom, Ristarp and Frederiksen (2000) point out its role in bringing out a commitment that is core to the responsibility for the library and the information profession. According to the two authors, the initiative represents the correlation between the concept of libraries, the ethics of the library profession and the fundamental principles of democracy and human rights.

IFLA's beliefs that belie its work as presented above may be summarized in the following figure:

- 1) Libraries and information services provide access to information, ideas and works of imagination in any medium and regardless of frontiers. They serve as gateways to knowledge, thought and culture, offering essential support for independent decision making, cultural development, research and lifelong learning by both individuals and groups;
- 2) Libraries and information services contribute to the development and maintenance of intellectual freedom and help to safeguard democratic values and universal civil rights. Subsequently, they are committed to offering their clients access to relevant resources and services without restrictions and to opposing any form of censorship.
- 3) Libraries and information services shall acquire, preserve and make available the widest variety of materials, reflecting the plurality and diversity of society. Selection and availability of library materials and services shall be governed by professional considerations and not by political, moral and religious views;
- 4) Libraries and information services shall make materials, facilities and services equally accessible to all users. There shall be no discrimination for any reason including race, national or ethnic origin, gender or sexual reference, age, disability, religion, or political beliefs;
- 5) Libraries and information services shall protect each users' right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed or acquired.

Figure 5.2: IFLA's Declaration on Libraries, Information Services and Intellectual Freedom (Adapted From Glasgow Declaration 2002)

From the above declaration the following aspects may be accentuated as having relevance to the present research: access to information; intellectual freedom; and the acquisition of information materials and their preservation. The public university libraries alignment to the views advanced by IFLA is first of all demonstrated by the institutions' objectives which this research found to have incorporated all the aspects included in IFLA's declaration. Furthermore the research confirmed, for example, that the public university libraries put great premium to ensuring information access essentially to their respective university clientele, but went beyond this whenever possible depending on the availability of resources. The following summary illustrates the manner in which the libraries in the sample addressed the aspect of availing access to information within the context of IFLA's declaration: the library had a philosophy focused on access attained through systems and methods of retrieval and standardized organizational processes of information; although primary users were largely composed of the university community, in addition to this the library had a policy of extending its services to approved national scholars, researchers, government employees among others; some of the users borrowed materials for stated periods while others were allowed to read in the library. It was also reported that in a bid to attain the goal of availing equal access to information, one of the libraries went beyond the regular university clientele consisting of learners and researchers, and had planned services that targeted those with special needs particularly the blind. Two further developments were reported as having been introduced as a way of extending access. First the implementation of information Communication Technology (ICT) and the electronic resources which made it possible for library users to access library resources anytime anywhere, while at the same time enabling the preservation of

rare materials through digitization. Secondly the establishment of Institutional Repositories (I.R.) of research done within the respective university meant that information access had been increased at almost no cost as the resources in question were within the university. However the libraries in the study acknowledged the fact that their efforts as listed above were restricted by copyright law provisions. This predicament has been noted by IFLA in their call for balancing the intellectual property rights of authors with the needs of users. In this connection IFLA recommended that the safeguarding of the various rights be done through the involvement of both the owners of intellectual property and its users through a collaboration among authors, publishers and librarians (IFLA Internet manifesto, 2014) With regard to the acquisition of materials the study established that the libraries had created advanced working systems consisting of policies, coordination within the respective university officials as well as collaboration with others. According to the information obtained, the public university libraries went along with IFLA's mandate of information access and information freedom unless they were constrained by limited resources, or by copyright related restrictions. The predicament of restriction to the provision of information services was not peculiar to libraries in Kenya. In line with this thinking, while writing on the freedom of access to information and freedom of expression, (Hamilton & Pors, 2003) noted that there were two levels to this discussion, namely the idealistic and the realistic. In their view "The theory helps us understand how the individual's right to information should work in the ideal world. Libraries, however, live in the real world. They have traditionally attempted to provide access to as wide a range of resources as possible but they have often had to accept the restrictions imposed by budget, selector bias or by legislation imposed from

government above. Consequently there has always been restrictions on the amount of information resources that can be provided."

5.5.2.3 World Summit on Information Society (WSIS)

The World Summit on Information Society was a United Nations initiative. The initiative was in form of two conferences that deliberated on information, communication and, the information society. The conferences were held in Geneva and in Tunis in 2003 and 2005 respectively. The theme of the conferences was to build an information society where everyone can create, access, utilize and share information and knowledge in order to achieve their full potential. The Summit's Declaration consisted of principles that, among other things, advocated for the removal of barriers to equitable access to information for economic, social, political, health, cultural, educational and scientific activities, and the use of assistive technologies. Another principle called for easy access to information in the public domain with a view to providing support for the Information Society. Through the above principles and others included in the WSIS declaration, the Summit took the issue of right to information much further than had been previously the case by directly linking it to development. It also identified the use of ICTs as a way of ensuring the contribution of information was universally applied.

The WSIS involved various types of stakeholders and professionals. In all this the unique role of libraries was given recognition and emphasized. (Berry, 2006) pointed out the particular attributes of the library that cut out a place for them within the development process as follows: "Libraries and information services contribute to the sound operation of the inclusive Information Society. They enable intellectual freedom by providing

access to information, ideas and works of imagination in any medium. They help to safeguard democratic values and universal civil rights impartially and by opposing any form of censorship. The unique role of libraries and information services is that they respond to the particular questions and needs of individuals. They also build capacity by promoting information literacy and providing support and training for effective use of information resources, including Information and Communication Technologies. This is especially critical in promoting the development agenda because human resources are central to economic progress.” Over and above the aspects mentioned in the quoted article, this researcher identified WSIS’s plan of action as having included the following that directly related to the work of public university libraries: the role of partnerships; the need to promote access, use and sharing of information and knowledge; ensuring I.C.T. connectivity for academic institutions; and providing capacity building in particular the skills needed for the use of ICTs. All the above was to be done within an environment that focused on the attainment of the wider society’s development goals. On the basis of the libraries’ contribution to development coupled with minimized costs, the Summit named libraries as one of the institutions that were to be strengthened so as to promote the preservation of documentary records and free and equitable access to information.

According to the findings of this study, information services in the PULs fitted in with the WSIS declaration outlined above in several ways starting with the adoption and intensive use of ICTs in the intellectual advancement of the individual and the society. The responses received centered on the following that the study considered as approximating the perspectives that guided the WSIS: the library was viewed as a

catalyst of providing information to researchers who in turn used the information to produce results that were directly applied to development projects; for the individual the library acted as a stimulus by stirring their intellectual capacity by providing them with information. In this manner the library ended up playing a role in the development of the individual and also that of the nation; a respondent highlighted WSIS's comment on the collaborative practices where libraries increased access to information through the principle of sharing as facilitated by the consortium and other forums. They also pointed out the fact that basing on the recognition of their contribution, they were given prominence in the country's ICT connectivity through the Kenya National education Network. The libraries were also suitably accommodated within WSIS's understanding of institutions engaged in development activity through their contribution to learning and research and more specifically through their efforts at teaching information literacy.

5.5.2.4 Freedom of Information (FOI)

Freedom of Information (FOI) is a concept that has emerged with reference to information or records that are held by government bodies. The spirit behind the principles that Freedom of Information stands for, is founded on the right of information as conceptualized by, for example, the Universal Declaration on Human Rights and the World Summit on Information Society. The first identifies information as a right, while the second looks at it as a tool for development. The two approaches are rationalized in the FOI concepts and principles. The general principles contained in the FOI cover areas relating to maximum disclosure, obligation to publish, limited scope of exceptions, establishing of open and accessible systems, and providing simple, easy and inexpensive

access (Darch & Underwood, 2010). The principles go beyond the formulation of standards and suggest actual strategies that would translate into organizational procedures and processes geared towards access to information. Freedom of Information also recommends the proactive publication and dissemination of information. For university libraries, the Freedom of Information and its principles form an important foundation for the provision of information services. This is in view of the amount of information that is generated by the government and its various agencies, and its contribution and direct relevance to study and research. The importance of FOI is evidenced by the fact that over 70 countries in the world have enacted some form of FOI law.

The benefits realized by countries that have legislated and implemented freedom of information laws have been widely captured (Darch & Underwood, 2010; Kuunifaa, 2012; Mendel, 2008; Millet, 2008; Mutula, 2006). The benefits as discussed by the different authors relate closely to the general values that are attached to information. Along this line advocates of FOI and its implementation argue that over and above the general benefits of access to information, FOI more specifically leads to the public sector becoming accountable and transparent while at the same time providing a foundation for democratic governance, poverty eradication, elimination of corruption, ensuring efficient use of public resources while facilitating the participatory development through the involvement of an informed citizenry.

The establishment and implementation of the Freedom of Information concept has had a relatively long history. Sweden was the first country to enact a FOI legislation in 1776. In spite of this long history and the benefits and rationale attached to FOI as earlier

discussed, there has not been the resounding success that would have been expected including from the countries that have enacted the relevant laws. For example it has been noted that in many countries freedom of information has been the object of political struggle, has often been realized only in the enfeeble fashion, and has continued to come under attack even after implementation. (Darch & Underwood, 2005). In a research article by Kuunifaa (2012) the challenges that impeded the effective implementation of FOI law in Jamaica led to an operation handicapped by bureaucracy, with access having become too expensive, retrieval procedures that were cumbersome coupled by delays that ended up making the process inefficient and too expensive.

Kenya is among those countries that do not currently have a FOI law in place. This may be seen as a confirmation of the observations to the effect that FOI has not caught up in the developing countries of Africa and elsewhere (Darch & Underwood, 2010; Mutula, 2006). However, there is a Bill in Parliament for a proposed Freedom of Information Act, and the Constitution also provides for Freedom of Information under Article 35 (GK, 2010). The main aim of the proposed Act is to promote open government and to facilitate the right of persons to have access to information.

This study found that there was a close link between the Freedom of Information principles and the public university library and its work. For example, the principles had a focus on access to information an aspect that also formed part of the library's objective; they highlighted the important contribution of official publications to research and learning which was core to the work of the academic library; while the principle of maximum access was viewed as referring to the attributes of intellectual freedom which

in the academic environment was stimulated by the wide access and exposure to information materials; Respondents identified with the principle of request driven mechanisms of ensuring access to information as contained in the practices of information organization, retrieval and dissemination. Some of the respondents cited lack of awareness to Freedom of Information as a handicap that restricted the extent to which librarians could apply the concept in their work.

5.5.2.4.1 Government Publications as a Source of information

Freedom of Information is a concept that primarily addresses issues of information held by the government. Public university libraries are well acquainted with government publications which form a major source of information for study and research. The following section therefore discusses pertinent aspects of government publications, namely, their use, availability and the challenges that PULs experience while acquiring them. This discussion will give some insights into the reality of the environment and context within which FOI is expected to operate.

According to the study's findings, over 74% of public university library users are above average in their usage of government publications. This finding justifies the argument advanced by those calling for the legislation of Freedom of Information laws. Their argument emanates from the understanding that the state has custody of huge amounts of data and information on all the people in their country and their activities. Despite the significance attached to government publications, more than half of the respondents (58%) reported that they were at times unable to purchase them. Furthermore some of

the respondents stated that they did not have a designated government publications section as would have been expected. This outcome was attributed to the fact that the purchase of these materials is not systematically followed where all the publications from the government would be included.

The following challenges hindered PULs in their efforts of acquiring government publications lack of awareness, unavailability, government restrictions, and cost considerations. A respondent singled out the challenge of the huge volumes of official publications. These findings reflect the concerns highlighted by the Freedom of Information principles which call for the state to ensure adequate organization of public publications for accessibility, avoiding exorbitant prices, and ensuring a proactive dissemination approach. This researcher found it paradoxical that on the one hand the Government held huge amounts of information and data, but at the same time they were not able to effectively disseminate or avail these materials to those who needed to use them. Among the problems cited for the non-availability of government in public university libraries was lack of current catalogue to facilitate selection, official restrictions, and bureaucratic procedures and delays. As already mentioned, Kenya does not have a FOI law in place a fact that undoubtedly aggravated the above challenges even further.

5.5.3 Laws that Provide for Limitations to Information

The following section discusses the laws that put limits to information and its access as a way of recognizing that no right is complete. These laws include the Copyright Act, the Penal Code, the Official Secrets act and the Defamation Act.

5.5.3.1 Copyright Act (CAP 12)

Copyright falls within the intellectual property legal rights for the creations of the mind. Some of the other creations included under intellectual property are patents, trademarks and industrial design. Copyright is specifically defined as a legal concept that allows the creator of an intellectual original work the exclusive rights to use and distribute that work. The copyright concept falls within what is viewed by rights declarations and laws as creating necessary limitations that are intended to avoid and reduce possible conflict between rights. The aspect which has implications for librarians and the provision of information services is that the limitations are restricted and must be regulated through legislation. In this connection, Article 19 (2) of the Universal Declaration on Human Rights makes it clear that “ In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others“ (UDHR, 1948). It is through this statement, for example, that the interests of the copyright owners are thus incorporated into the copyright concept.

Copyright as a concept originated in Europe where the international legal regime was first conceived in form of the Berne Convention of 1886. However it is in the United States of America that work done by the parliament, librarians, publishers and other stakeholders has turned into an accelerated process with huge implications for information and its provision. Internationally this interest and the resulting development have been illustrated by the fact that 128 countries have legislated copyright laws with sections that specifically permit libraries to make copies of copyrighted material. In this

regard, Crews (2001) expressly links information services to copyright and makes the observation that “Copyright law has an important relationship to libraries and plays an important role in the performance of library services focusing on making copies of works for purposes of preserving copies to individuals for purposes of their research and study. The fact that statutes tend to center on such pursuits also suggests that copyright law has an important role in the ability of citizens to have access to the rich variety of materials held in our libraries.” The important role of copyright for libraries, as well as the implied connection between the two was supported by findings from the research through the wide awareness of the concept reported (94%) by respondents.

The relationship between libraries and copyright is based on a balance founded upon two principles of the copyright theory, namely the fairness theory on the one hand, and the welfare theory on the other. The welfare principle views the products of Intellectual Property (I.P.) as common public goods that should be accessible to all. A research done on the topic identified with this view of copyright and stated that public interest will be served by the widest dissemination of information especially so if progress in the sciences is to be achieved (Mackenzie, 2003). The author further argued that in order to promote the objectives of scholarship and research, there was need to limit a copyright holder’s right. The same author goes further to intimate that this was the reasoning behind the construction of the United States’ constitution that provides in part that Congress will have power “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries” According to Mackenzie, actual developments of the copyright

laws reflect sentiments similar to the ones stated above as shown by the view adopted by the Royal Society which stated as follows with reference to the review that preceded the United Kingdom Copyright Act of 1956: "Science rests upon its published record, and ready access to public scientific information is a fundamental need of scientists everywhere. All bars which prevent access to scientific and technical publications hinder the progress of science and should be removed. Making of single copies of extracts from books or periodicals is essential to research works, and the production of extra copies, by or on behalf of scientists, is necessary for scientific practice." For librarians this is a widely held perspective starting with IFLA's statement on intellectual freedom which focuses on the belief that people, communities and organizations need free access to information, ideas, and works of imagination for their physical, mental, democratic and economic well-being. Evidence from the study showed that librarians understood the positive implications of the welfare principle to the provision of information services. When asked to remark on copyrighted material and their use they tended to lean more towards allowing the reproduction of such material for noncommercial purposes including research and teaching.

The fairness principle advances the thinking based on the philosophy that an individual's hard work should be rewarded. Advocacy for the fairness principle has been spearheaded by owners of copyright including authors, publishers and book others. With the developments in digitization and electronic resources, copyright owners' concerns are said to have been accentuated by the extent and speed at which copying has been enable (Upshall, 2009). Findings from the study concurred with this principle where an

observation was made as follows: “It is only fair that an author’s interests should be considered, their effort acknowledged and rewarded. A library should not make copies of titles and put them up on the shelves. In the library we do not make copies of whole books and lend them out.”

A balance between the two principles has been rationalized by an argument to the effect that by rewarding the creators of creative works, copyright laws encourage further creativity by allowing the owners of the works in question to profit from their work. This act, it is argued, ends up promoting science and encouraging the creating of new knowledge and learning. IFLA talks about balancing the intellectual property rights of authors with the needs of users by playing an active role with organization such as WIPO and UNESCO in the drafting of appropriate treaties and legislative models which recognize the dichotomy between the rights of authors and the needs of users. (IFLA Internet Manifesto, 2014). The balanced approach on copyright was also presented by librarians in the study who however also saw the negative implication of a stand that was too fixed against copying. This was captured as follows: “The library is aware of the Copyright Act provisions especially with regard to the interest of the owners. We sensitize users on what the law says. However, it will be extremely difficult for an academic library to offer information services without some form of reproduction services like photocopying especially given the environment where students and even lecturers rarely buy books.”

Literature on copyright law uses the terms library exemption, library exceptions and library limitations interchangeably. These terms are collectively defined as the means

that are provided by law to enable librarians to use copyrighted materials in the provision of information services (Nixon 2003; Cox 2000; Crews 2001). In other words, library exemptions are used to ensure that the copyright's objective of service for the public good is attained. For librarians exemptions are particularly important because they provide a way through which information work can be carried out without one finding that they are going against the law. Crews (2001) confirms this view and he states as follows with regard to exemptions: "Copyright grants exclusive rights to the copyright owner, but tampers those rights with a series of limitations or exceptions. These exceptions explicitly serve as opportunities for segments of the public to use copyright protected works without committing copyright infringement." A fact that can be deduced from the above discourse points to the fact that finding a balance between the fairness and welfare principles is not an easy task. Drafters of copyright laws have struggled to do this by providing exemptions referred to as fair use or fair dealing. The two terms are used to refer to the right permitted by law for the user of an information material to take a portion of that material without first seeking permission from the copyright owner (Mackenzie, 2010). In an effort to bring out the challenge of interpreting fair use exemptions in the library context, one author observed that in America "Congress refused to define the term 'fair use' or to give specific instances or what would qualify. Instead, it provided broad categories of situations that would be likely to fall under fair use. Those categories are: criticism of the work; comment upon the work; news reporting; teaching; scholarship and research. Nevertheless, none of these categories is a guarantee of exemption," (Nixon, 2003).

Decrying what she refers to as the least understood limitation to a copyright holder's rights, Albitz (2008) delineates the following as the factors to consider in deciding whether a case falls under the fair use category: the purpose and character of the use, including whether such use is of commercial nature or it is for nonprofit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work.

Those interviewed for this research agreed with the above views regarding the uncertainty in applying copyright law in the library. They indicated that in the circumstances where the librarian was not sure of what defense was available should an infringement occur, the university should take responsibility and issue the necessary guidelines so that the librarians did not work in an environment dominated by fear. These concerns were also reflected in the United States where they led to two separate developments. The first one was in form of Section 108 of the American Copyright Act. It was earlier observed that the Congress did not give a clear meaning of the meaning of the exemption terms used in the American Act. Section 108 was meant to somehow ameliorate this situation addressing more the issue of library copying for purposes of preservation and for research. This study noted that that Section 108 had implications that presented a significant contribution to the provision of information services. Similar sentiments were expressed by the American Library (ALA) and the Association of Research Libraries (ARL) through their joint statement that noted that Section 108 contained the flexibility permitting libraries and archives to effectively provide needed

services to their users (ALA and ARL, 2010). WIPO have also highlighted the importance of Section 108 as distinctive, first, in its provisions on ILL which were one of the few such provisions in the copyright environment. Secondly, Section 108 made provision for the copying of digital material which is not the case with copyright law in the majority of the other countries (Crews, 2008) The provisions given under Section 108 are as follows: Libraries are allowed to make and distribute or archive single copies of works with a few exceptions; Library reproduction or distribution of a copyright protected work must not be done for direct or indirect commercial benefit; to qualify under these exemptions, a library must open its collections or archives to the public or make them available to researchers beyond those affiliated with the library; the reproduced work should include the notice of copyright; a library may make a copy to replace a work that is lost or damaged; and a library that posts warning notices on copying machines will not be liable

The second development was in form of guidelines commonly referred to as CONFU. These guidelines came about through the appointing by Congress of the National Commission on New Technological Uses of Copyrighted Works. The Commission formulated and submitted to the House guidelines for interlibrary loan copying under the Act's section 108. The following is a summary of the CONTU guidelines, considered by critics as suggesting severe restrictions to ILL copying as follows: the recommendation that a specific ILL request be limited to five copies per year, per library from recent journal and monograph titles; requirement that the borrowing library posts a warning in the area where the library fills ILL requests concerning copyright protection; the lending

library must provide the borrower with only one copy; the borrowing library should state to the lending library in writing that its request is in compliance to the CONFU guidelines; the lending library should only fill the ILL requests for libraries that have provided the proper statement of guideline compliance; the borrowing library's records of ILL requests it makes for a period of three years (Nixon, 2003).

As indicated earlier, the study revealed that librarians were uncertain and apprehensive with regard to infringement of copyright. The presence of Reproduction Rights Society of Kenya (KOPIKEN) was alarming and made the situation worse. Librarians found themselves in the unenviable situation as the following comment shows "With copyright and its possible infringement, library staff are on the frontline, and they are not even aware of the available protection if any, in case infringement does occur in the course of their work. The legal officer takes a technical and matter-of-fact approach that does not fully appreciate or acknowledge the value of such activities as photocopying, interlibrary loan and others in library work. There are reports that KOPIKEN are watching libraries on behalf of copyright owners and that they will be issuing licenses for the photocopying and printing of published literary works, but to date this has not yet happened." There was concern over the fact that the university's stand on issues was copyright and infringement was noncommittal.

One may ask the reason behind the apprehension by librarians about infringement of copyright for there to be such an expressed need for guidelines or for the parent university to take some other action that would make librarians feel less exposed to the law. This is partly explained by the information presented below. In Kenya, for example

the following table on offences and penalties is an illustration of the penalties that a person would be subjected to if they were committed the offence of infringement.

Table 5.2: Offences and Penalties for Copyright Infringement in Kenya

| Offence | Penalty |
|--|--|
| 1 A person who sells, lets, or trades, or is in possession of any infringing copy for purposes other than domestic or private use | Fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding two years or both. |
| 2 A person who makes for sale or hire, or distributes or imports other than for private use, any infringing copy, or makes or has in possession any contrivance used or intended to make infringing copies | Fine not exceeding four hundred thousand shillings, or imprisonment for a term not exceeding four years or both. |
| 3 A person who causes a literary or musical work, audio-visual or a sound recording to be performed in where such performance is an infringement of that copyright | Fine not exceeding five hundred thousand, or imprisonment for a term not exceeding four years of both. |

Adapted from Gitonga and Kieyah: Overview of intellectual property rights: the case of Kenya.

Writing on the issue of the uncertainty in copyright provisions, and its implications for libraries in England, Gadd (2000) suggested that a central higher education body be established to act as an authority on the interpretation of copyright law and licenses as they pertain to higher education. She went on to state that such a body would provide advice and indemnify the institutions taking the advice on common areas of confusion in copyright law. Other implications resulting from the complications imposed by copyright law on the library have led to the establishment of a university copyright office in some institutions. In 2000 Purdue University realized that the university's infrastructure did not support an effective and efficient way of responding to copyright challenges. This led to the hiring of a copyright officer as a result of what was described as follows: "As the landscape of information creation and delivery continues to change, interpretation of existing copyright guidelines, including fair use, have become less clear, and new laws have been passed. Scholarly communication issues, involving digital collections, institutional repositories, and consortia agreements are among the many evolving areas, along with authors' rights that require copyright awareness and support." (Ferullo, 2011)

In Kenya challenges on copyright in the library have not yet reached the level experienced in the developed countries. However recent developments indicate that the library environment is heading in that direction. Some of the evidence pointing at this outcome came from the setting up of the consortium, and the increased role of digitization and electronic resources in the provision of information services. The study also noted the 1999 establishment of a rights owner's organization, KOPIKEN, the Reproduction Rights Society of Kenya. KOPIKEN was registered in 2005 under the

copyright Act (CAP 12 of 2012). Information on KOPIKEN indicated that the organization was affiliated to the International Reprographic Rights Organization (IRRO) and got its mandate as a collecting organization from the Act. The only information reported by librarians indicated that staff were sensitized to put up copyright notices on fair use, while any encounter would be reported to the legal officer which reinforced the observation noted earlier in connection with the uncertainty demonstrated by librarians while dealing with copyright issues.

Writing on copyright law changes in the United Kingdom, (Graham, 2009) noted that the changes in question brought major benefits to libraries and their users by expanding the types of material available and simplifying the management procedures required for document delivery. He added that this had the practical implications with libraries being able to offer a much wider range of services. According to Sihanya (2009) Kenya's Copyright Act has historical origins going back to the colonial times. For Kenya the implication here is that for the Act to be of assistance to librarians it may need to again borrow from its predecessor.

Another notable aspect with regard to the Kenyan Act is the composition of the Kenya Copyright Board which has 17 members. The members are mostly drawn from copyright owners' organizations, namely, publishers, authors and writers; the music industry, software associations, filming associations, performing artistes association, associations of producers of sound recordings, associations broadcasting stations, and the distributors of audio-visual works. This implies a very strong representation of the copyright goal that seeks to ensure that creators should benefit from their work and that these works are

protected from being used without the creator's permission. This study noted earlier that copyright has an added duty that relates to the promotion of access to knowledge. This is identified as one of the areas that require some intervention for there to be a balanced representation of interests in the Board.

5.5.3.2 Penal Code (CAP 63)

The Penal Code is a law that makes provisions on crimes, offences and their punishment.

Recent history of Penal Code in Kenya is illustrative of oppressive tendencies in the 1980s when intellectuals were harassed with arrests, detained without trial, and sentenced to long jail terms for allegedly being in possession of banned publications (Ligaga, 2008). Although most of the sections used during the above period have been repealed, there are provisions that still affect librarians and their work. Section 52 of the Code gives the Minister power to prohibit the importation of publications in the interests of public order, health or morals, or the country's security, and allows for the seizure and disposal of prohibited publications in Section 54. The researcher wished to establish whether the librarians in the study were aware of the provisions contained in the above sections and the implications these would have for their work. With regard to their work, there were implications where the Penal Code was viewed as a form of interference on the principles of freedom of access to information as provided by the right to information and protected by the Constitution. The Code was considered as contrary to the librarians' professional ethics and principles which ended up hampering the provision of information services to library users. A respondent made the following insightful comment "While the Government may have reasons that justify the prohibition of certain publications, one

wonders about the criteria that are used to select the publications that are prohibited as well as the background, orientation and interest of the persons who develop them.”

There was also the implication of the involved risk to which librarians were exposed. This is with particular reference Section 53 of the Code which provides the penalty for a person who among other things imported, published, distributed, reproduced or had in his possession or under his control any prohibited publication was guilty of an offence and liable to imprisonment for three years. The study also noted that library work involves the importation, holding and distribution of publication, and they also disseminate information from these publications. With the provision on the sentence liable for offenders, as well as recollections of the negative history associated with the Penal Code mentioned earlier, it would not be farfetched to expect that librarians would have some apprehension regarding the issue of prohibited publications. To confirm this, respondents referred to the Code’s prohibitive tendencies that ended up creating fear in the library. Further confirmation of the state of fear created was given as follows: “Over and above the limitations and restrictions that the Penal Code sets on the provision of information, it also has implications for the library staff. There is a possibility of the staff performing acts that may end up being viewed as criminal offences. For the librarian, the fear of importing, distributing or having in possession a prohibited publication is quite real”. The reality presented by the librarians revealed what an author referred to as the many evolving areas requiring further awareness and support for the librarian (Ferullo, 2011).

Finally the Code makes provision for the formation of the Prohibited Publications Review Board. The Board’s charges include reviewing the publications prohibited and

advising the Minister on whether or not a prohibition on a publication should be lifted, and also on the Minister's exercise of the powers given by the Act. The Board presents a forum that would give an opportunity for establishing a common understanding with regard to concerns and matters relating to information and its role and the negative implications that the Code has for information services. Unfortunately, as in the case with the KECOBO, the Kenya Copyright Board, the membership of the Prohibited Publications Review Board too does not include representation of stakeholders from information and related areas.

5.5.3.3 Official Secrets Act (CAP 187)

The term official secrets is used to refer to the withholding of information by the state on grounds of state security. A discourse on the official secrets and its implications on the provision of information services would need to first state the importance attached to information held by the government for purposes of research and scholarship. The Freedom of Information (FOI) concept has evolved to represent the responsibility that a state holds towards ensuring that the citizens have access to the information in its entire system. Various authors have written about FOI and pointed out the benefits that access to information held by the state would bring about (Darch & Underwood, 2010; Mendel, 2008; Mutula, 2006). It is claimed that over and above the importance of this information for research and study, a country that has implemented the freedom of Information law has further benefits such as increased accountability and transparency in the public sector, providing a foundation for democratic governance, poverty eradication, elimination of corruption, ensuring efficient use of public resources, and the actualization

of participatory development through the involvement of an informed citizenry. This stance is also supported by the Constitution which states as follows: Every citizen has the right of access to information held by the State”(CK, Article 35).

The Official Secrets Act (CAP 187) is set against the above background with the relevant provision of the Act providing as follows “Any person who obtains, collects records or communicates any article, document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person shall be guilty of an offence.” (CAP 187, Sec 3 (1) (c)). Although Kenya currently does not have a freedom of information law, the Secrets Act would appear to present a conflicting perspective from that adopted by the Constitution. However, it is noted that the Act is premised on national security which refers to the critical requirement for the state to maintain the survival of the state through the use of economic power, diplomacy, power projection and political power. The apparent conflict between national security and right to information was the subject of concern for stakeholders who came together to formulate the Global Principles on National Security and the Right to Information. In the introduction to the principles, it was observed that in order to protect the full exercise of human rights, in certain circumstances it may be necessary to keep information secret to protect legitimate national security interests. The Global Principles were to provide guidance to those drafting, revising or implementing laws on provisions relating to the state’s authority to withhold information on national security grounds.

Nevertheless there were those opinions that held the view that national security was used as an excuse to simply keep away information from the citizens. One such view

explained this as follows: “National security is thus a nebulous and ambiguous term. Reasons of national security have been often used to cover-up for controversial policy decisions which – many thought – were prejudicial to the national security of a state and that it would have been better for national security had they been revealed.”(Aquilina, 560). Responses recorded in the study went along similar lines and agreed that it was possible to misuse the Act to deny access to all manner of information whether or not it had any security implications. Other views pointed to the fact that the Act complicated even further the bureaucracy known to exist in the Government Printer where the procurement of publications was a challenge. The Act was summarized as conflicting with the right to information, having a negative effect on the concept of intellectual freedom excised in the university, and a handicap to the scholarly pursuit for research and generation of knowledge for development.

5.5.3.4 Defamation Act (CAP 36)

The term is defamation defined as any intentional false communication, either written or spoken, that harms a person's reputation, decreases the respect, regard, or confidence in which a person is held or induces disparaging, hostile, or disagreeable opinions or feelings against a person (Free dictionary, 2011). Defamation has its origin and rationale in English customs that attached high importance to an individual's reputation on the basis that it took time and effort to build one's reputation, while it was also relatively easy to destroy it. The defamation concept is rationalized on provisions in both the Universal Declaration on Human Rights and Constitution of Kenya. For example, the UDHR recognizes the general need to respect the rights and freedom of others.

Furthermore in Article 12 the Declaration provides for the protection of an individual's privacy, and also states that no person should be subjected to attacks upon his honor and reputation. The Constitution of Kenya (2010) limits the right to information as follows: "In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others." For librarians defamation becomes relevant because its implementation introduces issues of concern with respect to the freedom of speech with which it is frequently in conflict.

Defamation raises two concerns of importance to librarians. First, as stated in the foregoing, defamation as a concept is rationalized as a right within the general scope of human rights as a way of protecting an individual's honor and reputation. However, even if defamation is technically justifiable, it ends up restricting and limiting access to information. This raises the question that librarians would have to address in making a decision as to how to balance between the freedom of information and the limiting effects embodied in the defamation concept. Secondly, the basic rule in defamation provides that everyone involved in any way in the production or dissemination of defamatory material is liable of having published it. An author writing on the impact of defamation law in Nigeria observed that in defamation responsibility is shared amongst three individuals namely, the author who has charge over the intellectual content, the publisher and bookseller both of whom are concerned with the marketing of the item, and the librarian who disseminates the information (Agaja, 1992). In effect this means that dissemination of material that is defamatory by the librarian through loans or other ways exposes the librarian to civil action against libel.

This study noted that holding or disseminating of any publication with libelous or slanderous intention is not directly referred to by laws on defamation including the Kenyan law. Since library work involves acquiring and disseminating information, this may lead to the thinking that librarians are therefore within the scope of these laws. However, a basic rule used in the interpretation and application in defamation cases states that everyone involved in any way in the production or dissemination of defamatory material is liable to having published it. On these grounds defamation acquires a dimension that has implications for the library. The implication became a reality through a defamation case in which a library was sued for providing for circulation a publication that was defamatory. Although the library in question was declared innocent due to the fact that they were not aware of the libel, the case served as an illustration of the practical implication of defamation for the library (*Vizetelly vs. Mudie's Select Library*).

In Kenya defamation is regulated under the Defamation Act, (CAP 36) which stipulates the publications through which defamation can occur (Defamation Act, 2012). According to its preamble, Kenya's Defamation Act is specifically focused on "libel, slander and other malicious falsehoods." When respondents were asked to give their views on the Defamation Act (CAP 36) they appeared unsure and uncertain. One of them said as follows: "Defamation relates more to publishers and may not be of direct concern for librarians. We have not been exposed to issues of defamatory materials in the library. If the library got caught up in defamatory action, then the matter would be forwarded to university management through the legal officer." These findings point to a situation

where once again and as with other issues presented earlier in this study, implications of defamation were not within what librarians considered to be the scope of their operations.

5.6 Knowledge of Aspects of Law Required by Librarians in Public University Libraries for the Provision of Information Services

The following section discusses the capacity and the training of librarians with a view to attaining the fifth objective of the study which was to establish the knowledge of aspects of law required by librarians in public university libraries for the provision of information services. The section starts with an overview which gives a general background of library information science training in the country. The second part of the section looks at the possibility of infringement of the law that might occur as librarians performed their work. This is done with the aim of providing the justification for the training necessary for the librarians in order to get the understanding that would minimize the involved risks of infringement of the law. The rest of the section discusses related aspects of training including the curricula currently in place.

5.6.1 Background of Library Information Science Training

Among the features that define library work is its knowledge-base and the related nature that imposes continuous change. These two have an underlying implication that places specific and demanding responsibilities upon library staff. As changes take place in the work place and within the organizational environment of which the library is a part, librarians find that they need to acquire new skills or to upgrade those that they already have. Writing on the changing work situation in the library (Odini & Amoth, 2007)

stated that the new information society environment requires new attitudes and new instruments. They went on to note the need for librarians to keep on updating the knowledge they acquired in library school and advised that “Library and information professionals will be better off, if they pay serious attention to developing and enhancing their core competencies. The unique competencies of information professionals include in-depth knowledge of print and electronic information in the management of information services that meet the strategic information needs of the individual or group being served.”. In line with these and other similar sentiments, this study had the perspective of training as an essential prerequisite as evidenced by the emerging aspects introduced by law, as well as the accompanying changes in ICT. Writing on the disciplinary competencies needed for new professional profiles, Canelloupoulou notes that aspects of law have, for example, been taught in various other disciplines such as medicine and business. She goes on to argue that some form of legal training for librarians would provide them with a rounding knowledge in the relevant aspects, and enable them to confidently handle issues related to law and which are increasingly part of the librarian’s work environment.

Training is done at various levels to meet different needs for skills including academic professional courses, seminars, workshops as well as training on the job. Professional training of university staff in Kenya has evolved over the years. Initially training was mostly done in Britain and the United States of America. Moi University established the department of Information Science in 1984. Later this became the school of Information Science. Other institutions have since then established Information Science courses at

both undergraduate and post-graduate levels. Short courses, seminars and workshops have been used to fill apparent gaps in skills and knowledge.

5.6.2 Possibility of Legal Infringement by Librarians

From this study's discussion on laws that provide for limitations to information it emerged that various laws among them the Copyright Act, the Penal Code, the Official Secrets Act, and the Defamation Act have provisions which prohibit the performing of certain acts. This researcher considered that a highlight of the implications of infringement of law by librarians would be an appropriate justification forming the rationale for training in the relevant aspects of law. Information from respondents confirmed that it was possible for librarians to infringe the law in the course of their work. The apprehension that was revealed earlier in the discussion on the laws cited above was revisited with a focus on the consequences or implications and respondents offering views that agreed that training would enlighten librarians and especially if such training was backed up by guiding principles and policies.

5. 6.3 Librarians and the Capacity to deal with Legal Aspects of Information

Librarians' capacity for handling legal aspects of information has been the subject of attention by some authors. To set the level needed for the training in legal aspects of information, it was given a meaning that saw it not just as providing an understanding to the system the librarians work with, but it should go a notch higher and provide them with the thinking that would enable them to contribute to a discourse that would lead to necessary change in the system (Canelloppoulou- Bottis, 2004). In the current research it

was reported that librarians were receiving training on aspects of legal issues of information including intellectual property, censorship and licensing. Going by the above statement, such training would be expected to get to the level where librarians were equipped with an understanding of the environment within which they functioned. However the study also revealed that despite the availability of this training, there were challenges that ultimately limited the confidence that librarians applied in making decisions and handling matters of law and information. In what would be a demonstration of a lack of capacity or a limitation of this, it was observed throughout the study that it was frequently preferred that issues concerned with law were forwarded to the legal officer. More evidence that pointed to existing gaps in the capacity of librarians with regard to aspects of law was put as follows: “I think matters of the law and the provision of information services by libraries are not fully comprehended by library staff and especially by the management. Many times staff are under the assumption that they know and understand the implications involved and then they find themselves caught in serious legal matters. To address this issue, senior management should be promptly inducted and trained on what to expect. The induction should include all matters pertaining to copyright, governance, and censorship among others. No senior staff should be entrusted to the office without such an induction because it is, in my view, a very important matter that underlies all library work. Relying on what is learned in school or in seminars and workshops is not enough.” With expectations that any necessary change in the legal system as it relates to information and its provision would be initiated by librarians, a situation where the required capacity may not be in place has implications that put the reality of the changes into doubt.

When launching a programme on legal issues in information handling, Nasri observed that librarians especially those in positions of management do not have the capacity to deal with legal issues although through no fault of their own. He wrote as follows: “Information managers are not trained specifically to foresee legal consequences of their decisions or to safeguard against them. Nevertheless, managers are responsible for all decisions made within the scope of their position as supervisory staff, middle management or chief executive. Regardless of the fact that ignorance is not an acceptance excuse, the legal issues involved in management are numerous, complicated and entail liability.” (Nasri, 1987). Similar sentiments were more centred on copyright for the reason that researchers have tended to focus on this aspect of information and law. In this connection Olaka wrote that low level or lack of knowledge was not just an issue with librarians in Kenya, but it was the same in other countries including Zimbabwe, Nigeria, Uganda and the United States. The situation in the United States was confirmed through an observation that noted as follows: “Given the importance of copyright issues in daily professional librarianship and library advocacy, it speaks poorly for our profession that so many librarians enter the workforce without proper grounding in copyright, the legal construct that governs the creation, reproduction, distribution, and repurposing of information. Copyright knowledge is as integral a part of the contemporary information science education as cataloging or reference. Failing to provide that training for today’s library science students is akin to having students pay money for an incomplete degree” (Dames, 2006). Further observations on the capacity of librarians with regard to legal issues of information noted that “The legal and ethical use of intellectual property is

addressed only briefly, if at all, in most library school curriculum with no American library Association (ALA) accredited library school requiring any legal education in order to graduate, and there are also no known studies that have investigated the capability of academic library deans and directors in the understanding of copyright law to better formulate policies that manage risk and encourage access to information. By examining how well academic library deans and directors understand copyright law and their perception of how their training has positioned them to better manage resources, limit risk, and encourage access to information, this study identifies possible areas for improvement in the education and training provided at library schools and also affirms the need for ongoing professional development for librarians and library leaders.” (Eye, 2013).

The foregoing references are a bit historical and describe situations that are not necessarily current. Since then there have been changes and schools of information science are now a global feature. Similarly in Kenya, as discussed in the following section, there is also not a shortage of information science courses.

5. 6. 4 Training on Legal Aspects of Information

The training and capacity building envisaged in this study may be categorized into pre-service training which is meant for persons undergoing training for the first time, and in-service training which is the type that targets persons already working and requiring new skills. The first category involves training through academic programmes, while in-service training takes place through seminars and workshops. The research findings established that the two categories applied to the respondents with the majority of those

who had received training on aspects of law having got it through a seminar or workshop (49%), while another 38% had got it from a LIS academic course.

5.6.4.1 Training through Seminar/Workshop

Training through the seminar and workshop has evolved as an important method of Continuous Professional Development (CPD) which is defined as the systematic maintenance, improvement and broadening of knowledge and skill and the development of personal qualities necessary for the execution of professional duties throughout the individual's working life (UK Engineering Council 1994). In line with that definition, CPD aims at maintaining, improving and extending the knowledge of participants as a way of keeping up with new developments in the profession as well as in society in general. This fits in well with the training of librarians on the legal aspects of information which are an emerging and developing area that would not have been part of the curriculum earlier on.

Information from the field indicated that the seminar/workshop approach was applied to give training on copyright and intellectual property, aspects of information censorship, the licensing of electronic resources and legal provisions and ICT. Further confirmation of the role played by seminars and workshops in the continuous training of librarian came from chairs of the respective departments that were offering LIS training. When asked to indicate their anticipation for their graduating students upon the completion of their studies, they indicated that they hoped that their graduates would continue to advance their knowledge and skills by attending seminars, workshops and conferences. The International Network for the Availability of Scientific Publications (INASP) has largely been involved in the running of the seminars that

have addressed issues of information provision. The organization's mandate is to work in partnership with the host country to improve access, production and uptake of research, information and knowledge, with the aim of equipping these countries for solving their development challenges. The topics covered during the workshops with an interest to this study include the successful negotiations with publishers for the purchase of journals and books, promoting the widest possible availability of local research through Open Access, allowing for easy access to digital resources and the management and effective use of digital technologies. Information from the field indicated that the workshops gave adequate treatment to issues of open access and licensing and negotiations. However, there were also feelings that the local conditions were not always taken into consideration. For example the paucity of production of information materials by local authors and the resulting weak book industry had implications for the provision of information services that required to be understood and appreciated.

5.6.4.2 Training through LIS Academic Course

The second method by which librarians learned about legal aspects of information provision was through the LIS academic course. Institutions offering training in Library and Information Science have increased in number not just in Kenya but also in the neighboring countries making training in the area readily available. At the time this research was being done there were almost ten schools or departments offering one form or another of training in information science. While this is an indication of growth and development in the profession, it comes with challenges that may impact on the outcome of the training. For example in Uganda where a similar growth in LIS programmes has taken place, Kigongo-Bukenya wrote that some of the challenges encountered in the

planning and implementation of the programmes were a lack of LIS curriculum specialists, the non-existence of active library professional associations, a paucity of information materials as well as the possibility that the programmes did not maintain the desired quality standards (Kigongo-Bukenya and Musoke, 2011). Within such prevailing conditions there will ultimately be outcomes with implications on the capacity of the graduates coming from these institutions.

5.6.5 LIS Schools and the Training in Legal Aspects of Information

Formulating a projected anticipation of the knowledge and skills that will be needed for the development of a society has been a general challenge for curriculum developers. If the curriculum happens to have a multidisciplinary approach such as the one on information and law, the challenge becomes even more complex. Consequently, it is therefore a difficult task for anyone to prescribe what the contents of a LIS programme should include. In this connection it has been observed that “while it is possible to identify certain knowledge and skill components as being appropriate for the core library and/or information science curriculum for a first-level LIS qualification, it is difficult to be precise about what exactly constitutes or should constitute the core in library and/or information science education and training. This core is continuously evolving, as the information environment to which LIS education and training programmes need to respond is also in a state of flux” (Raju, 2003). Despite this handicap, there are views that consider introducing information and law in the LIS course inevitable in the current environment, as implied by Okello-Obura’s observation while writing on LIS education in Uganda. He advised as follows: “It is prudent that Uganda looks at the development of

human capacity broadly to manage information for democratic governance, transparency, accountability, and full observance of human rights, freedom of association, and political consciousness among others, so as to transform the society. This will be in line with Uganda's aspiration towards developing a society that recognizes information as a national resource" (Okello-Obura & Kigongo-Bukenya, 2011).

Consistent with Okello-Obura's sentiments, several departments offering LIS programmes have introduced units on law and information into their curriculum. Information from the schools indicated that the basic objectives of their curricula collectively revolved around the training of professionals who were all-rounded in regard to information and knowledge management; preparing students to be effective players in the local, regional and global markets, providing a wide range of skills and knowledge in the core professional areas while allowing for necessary specialization; and developing quality information professionals and managers, prepared for a life of purpose, service and leadership in society. As with all curricular objectives, the ones presented were broad and general a fact that made it possible for them to comfortably accommodate relevant aspects of law within the programmes on offer. This was confirmed by the fact all the six faculty members interviewed from different university departments stated that they had a course on law and information. The inclusion of information and law as part of their curriculum was prompted by the need for new competencies for LIS professionals, as well as a realization of the fact that implications of law in information as in other areas in the society are being increasingly acknowledged. It was however noted that this was a reasonably recent development as indicated by those who went through training about ten

years earlier who said that their studies did not include aspects of law. This situation was comparable to what existed in the United States about forty years earlier until 1976 when a new course on “Legal Issues in Information Handling” was introduced at the School of Library and Information Science in Pittsburg (Nasri, 1987).

An analysis of the course aim and description for each course on information and law offered by the various departments revealed a coverage with reasonable grounding of various key aspects of law and information. Key concepts and aspects such as right to information, intellectual property and copyright, censorship as well as the local legal system were substantively covered. One exception was noted where the course described appeared to address law libraries and their management.

5.6.6 International Network for the Availability of Scientific Publications (INASP)

During the twenty years that the International Network for the Availability of Scientific Publications (INASP) has worked in Kenya, the organization has been running seminars and workshops for library staff aimed at giving skills that address key aspects of library work and its management. A concern that informs the content of their training is that related to the financial implications of acquiring information materials in an environment where library budgets are being increasingly reduced, while the cost of the materials has been rising. To address these concerns INASP’s training uses two approaches. The first approach imparts librarians with negotiation skills that are aimed at ensuring that in the negotiations for contractual agreements, libraries get the best value for money. In the second approach INASP set up training sessions for the library staff in which they were exposed to the organizational detail of establishing consortia through which the libraries

would subscribe to e-resources collectively thus cutting down on the involved costs if they were to do this on individual basis.

One of the areas of training that got attention from INASP dealt with licensing principles. The emerging of electronic resources in the information market introduced responsibilities that were unique within the profession. To carry out the new responsibilities required what Albitz has summed up as “A knowledge of library services, the ability to read and negotiate legal contracts, the skill to maneuver within the world of publishers and information providers, and the technical knowledge to troubleshoot access problems. These positions merge elements of both library and business worlds, and require knowledge taught in library science, masters of masters administration and law school programmes.” (Albitz, 2008). She goes on to note that the opportunities to learn the skills and information necessary to perform the work implied by these conditions are not readily available. The result was new prevailing circumstances where on the one hand the now widely used e-resources were defined by contractual agreements between the provider and the purchaser, while on the other hand librarians lacked the necessary capacity to function in the ensuing environment. It was inevitable that librarians, who were largely new to this way of procurement, would require guidelines that would help them in dealing with the new market reality. At the global level, the critical significance attached to the new approach to procuring information materials was evidenced by efforts to counter this challenge by the issuing of licensing principles by several organizations that included IFLA (2001), the Joint Information Systems Committee (JISC) (2011), and six American library organizations among them the ALA and the Association of

Research Libraries (ARL) (1997). In spite of these general guidelines the licensing process remained unclear with individual libraries guiding their staff through policies. In Kenya the role was taken up by INASP who filled the gap by offering workshops with participants from among staff members from those libraries that made up the consortium. INASP's training included the definition of terms used in the contractual-agreement process, parts of the contract, and the licensing principles, and examples of license models.

5.7 Chapter Summary

This chapter has presented a discussion of findings from the study. The discussion followed the sequence adopted by the study objectives and consisted of a synthesis of data collected through the research process, information from relevant literature and details from the researcher's knowledge and experience. From the analysis done in the last chapter on the organizational aspects contained in the vision, mission and objectives of the public university libraries in the sample, the researcher had deduced common aspects that formed framework of information services provision. The framework approach made it possible to have a focused discussion of the organizational aspects of the service, while also linking the same to the legal aspects with relevance to information and its provision. The study also presented a discussion of the various types of information services on offer in public university libraries and indicated the manner in which they incorporated aspects of law. A detailed treatment was given to the acquisitions function against the background of the relevant laws. The discussion looked at the major shift from print to e-resources and the legal implications this transformation

had introduced into the acquisition process and the information services in general. The chapter has a detailed discussion of the actual laws, declarations and concepts with an impact on the information services in the public university libraries. The section on the laws was presented in two parts that discussed first those laws and declarations that supported information and its access, for example, the Universal Declaration on Human Rights (UDHR), the Constitution of Kenya (CK), and the Freedom of Information (FOI). The second part discussed the laws that put limits to information and its provision, including the copyright law, the Penal Code and the Official Security Act. The final part of the chapter looked at the capacity and knowledge of the public university librarians within the context of the law and its implications in the provision of library services. Part of this discussion referred to the training available and its relevance to the issues of law and information.

CHAPTER SIX

SUMMARY OF MAJOR FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

The aim of this study was to investigate the legal implications of providing information services in public university libraries in Kenya, with a view to proposing a model that would improve information service delivery to the university community. The primary data used for the analysis was collected through interviews of 54 respondents in the seven public university libraries (PULs). The interviews with the key informants were based on semi-structured questionnaires that had been previously prepared and tested (Appendix. II and III). Secondary data was collected through the systematic examination of contents from print sources including books, theses, as well as from electronic resources. The data thus collected was analyzed for presentation, interpreted and discussed. The specific objectives that guided the study were to:

- 1) Examine the organizational structure upon which public university libraries in Kenya base their provision of information services;
- 2) Explore the information services provided by public university libraries in Kenya within the context of the influencing laws;
- 3) Examine the acquisition of information materials in public university libraries in Kenya against the background of the relevant laws;

- 4) Examine the laws and declarations in Kenya that have an influence on the provision of information services in public university libraries in the country;
- 5) Establish the knowledge of aspects of law required by librarians in public university libraries to enable them provide information services to their clientele ;
- 6) Propose appropriate and relevant recommendations to improve the provision of information services in public university libraries in Kenya;

This is the concluding chapter for this research and it consists of three sections. The following section gives a summary of the major findings. The second section gives the study's conclusions as derived from the findings and overall discussions from the previous chapters. Finally the study gives the recommendations which suggest the way forward for the area that the study was investigating, namely the legal implications of providing information services in public university libraries in Kenya.

6.2 Summary of findings

The detailed findings from the study were given in chapter four. The following section gives a highlight of the findings according to the guiding objectives which are outlined above.

6.2.1 The Organizational Structure within which Public University Libraries Provide Information Services

The study established that the provision of information services in the PULs was founded on an organizational structure partly made up of the vision, mission and objectives

(VMO) statements. From the statements the study developed a framework of the key aspects of the provision of information services by the public university libraries. The key aspects contained in the framework were as follows: to engage in teaching learning and research; to acquire information materials; to provide access to information; to disseminate information, to teach information skills; to apply Information Communication Technology; and to recruit and train staff. The study further identified a link between the above aspects which corresponded to the laws and declarations that had influence on the provision of information services by the public university libraries. The study saw this link was a reflection of the networked institutional environment made up of the government, the parent university, library users, among others, and within which the library exists and functions. The Government's link with the PULs consisted of various laws which either provided support or put limitations on information and its access in a manner that had implications for the information services. An interesting finding regarding this link revealed that it operated as a one-way connection, meaning that the all the influence came from the Government with no counter response from the libraries. For example in this connection the study noted there were two official boards, namely the Kenya Copyright Board (KECOBO), and the Prohibited Publications Review Board, whose responsibilities were closely related to information work. In spite of the knowledge and experience that librarians had in all aspects of information, they were surprisingly not represented in either of the two boards.

6.2.2 Information Services Provided by Public University Libraries in Kenya within the Context of the Influencing Laws

The study explored and carried out an analysis of the information services that were offered by the PULs in Kenya within the context of the influencing laws. Information services were part of the PUL's effort to achieve their goal of serving the respective university information needs of teaching, learning and research. The provision of information services emerged as a fulfilment of the obligation to impart ideas as set out in the Article 19 and Article 33 of the Universal Declaration on Human Rights, and the Constitution of Kenya respectively. The same obligation is specified by the Commission for University Education which requires a university library to establish, promote and sustain quality services that will facilitate teaching, learning and research.

According to the study, the information services offered were as follows: circulation, loans, and interlibrary loans, photocopying service, current awareness services, and teaching of information literacy. The study established that the PULs were faced with legal related challenges in provision of information services to the university community. For this study the circulation loans, the interlibrary loan and the photocopying services were a demonstration of the libraries' efforts to extend the access to information for their clients. However, the services were open to the excesses of copyright law and more so the photocopying service where KOPIKEN, the Reproduction Rights Society of Kenya, under the copyright Act CAP 12 of 2012 was reported to be on the scene to implement the role of copyright law by levying charges on libraries and their users on photocopy use of copyrighted materials. The study found that the legal conditions and restrictions

imposed by the use of electronic resources had an implication that was positive in that they put emphasis on the need for information skills. According to the study's findings, the teaching of information literacy as a service went beyond the acquisition of skills for the use of e-resources, to imparting long life learning skills to the individual as presumed by the right to information and highlighted by WSIS through their declaration on the information society.

6.2.3 The Acquisition of Information Materials in Public University Libraries in Kenya Against the Background of the Relevant Laws

According to the findings from the study, the acquisitions function was one of the library activities that was heavily affected by the shift from print to digital resources. The study found that PULs had a well-established process with policies and procedures that had given librarians specialized knowledge and skills of identifying, selecting and procuring information materials in all formats. According to the study's findings, the PULs had found the knowledge from this established foundation, especially in form of policies, useful in addressing the issues presented by the acquisition e-resources.

With regard use of license as a method of acquiring electronic resources, it emerged this originated from publishers' and copyright owners' concerns about the increased growth and use of electronic resources. They felt that copyright law did not adequately address the intricate detail of e-resources particularly in the environment where ICTs greatly increased the speed with which content could be copied and transmitted. Over and above the complexity of using the licenses, and despite the advantages that were attached to the

use of e-resources, the licenses were found to impose more restricting conditions than those allowed by the copyright for the use of print materials.

There was evidence that showed that the conditions introduced by the licensing of e-resources had imposed huge challenges for librarians who were used to procurement through tender or direct purchase that precluded the complicated issues of contractual negotiations and licensing. The study revealed that although the licensing process was done by INASP and KLISC, there were still concerns over the lengthy consultations, detailed documentation, involvement of legal processes, complex ownership models, and complicated user conditions. The study identified the need for local guidelines that would take note of the peculiar conditions in the country in line with related developments elsewhere in the world.

6.2.4 Laws and Declarations in Kenya that have an Influence on the Provision of Information Services in Public University Libraries in the Country

The study sought and collected information on laws, declarations and concepts that had implications on the provision of information services. A finding on the librarians' awareness of these laws and declarations revealed that reasonably high percentages of the respondents had an awareness of most of the laws and declarations on information and more so with regard to the Copyright Law (CAP 12). It was further established that mostly this awareness was from the media.

The study established that there was a category of laws and declarations among them the Universal Declaration for Human Rights Article 19, the Constitution of Kenya Article 19,

the IFLA and WSIS declarations, all of which supported information as a right and advocated for open access to information. The study established that although these laws and declarations supported and provided opportunities for the provision of information services, they also put certain obligations on librarians. The study established that public university librarians used various approaches to fulfil the obligations in question. Some of the methods used were the application of systems and methods of retrieval and standardized processes of organizing information and also extending services beyond the immediate university clientele to approved national scholars, researchers, government employees among others only restricting and limiting the services because of budgetary constraints. Additionally the extended services also targeted those with special needs particularly the blind. The implementation of the electronic resources and the establishment of Institutional Repositories (I. R.) were the other strategies that the libraries implemented as a way of increasing access to information.

The study found that the right to information and the related open access recommendation both had implications for the availability of resources needed to make them work. In particular financial resourcing was key to the implementation of the right to information and its access. However, the study found out that the libraries whose financing essentially came from the parent university, were not adequately funded and that inadequate budgetary allocations were a major handicap in their efforts to meet the obligation of providing information services. Although PULs were able to engage in resource sharing with other libraries especially through KLISC, and through this method

they managed to reduce some of the involved costs, the need for better financial facilitation remained critical.

The copyright law, the Penal Code, the Official Secrets Act and the Defamation Act represent category of the laws that put limits to information and its access. Copyright law falls within the intellectual property rights for the creations of the mind. It allows the creator of an intellectual original work the exclusive rights to use and distribute his work, while exemption clauses in form of fair use which permit the user of an information material to use protected work without seeking permission from the copyright owner. With regard to Kenya's Copyright law (CAP 12) the study established that librarians in public university libraries had an opinion that reflected a balanced view of copyright. They held that the reproduction of copyrighted materials for noncommercial purposes including research and teaching should be allowed. According to them it was almost impossible to offer library services where the reproduction of information materials was totally absent. This view came from the interest of the society comes before that of the individual, and that the products of Intellectual Property (I.P.) are a common public good that should be accessible to all. On the other hand there were presentations that proposed that the owners of copyright deserved to be compensated for their work and the library should not exploit them under the guise of providing information services. The latter view was a recognition of the fact that a person's effort should be rewarded and paid for by those getting benefits from this effort. The researcher found that the balanced views of the librarians contrasted with extreme views from elsewhere that were reported as rejecting the claim that copyright balances the interest of the author and those of the

society, stating that it in the final analysis, copyright law ends up restricting rather than enabling access to information.

The study found that the librarians were aware of copyright law and made efforts to educate users on the right use of copyrighted materials. However, librarians were apprehensive and concerned about the implications of infringement should this happen in the course of their work. Judging by the offences and penalties for copyright infringement as indicated by Kenya's Copyright Act CAP 12, this study appreciated the apprehension held by the librarians, and their proposal for the appointment of a copyright officer to attend to copyright matters in the library.

The study found that there were three other laws under the category that introduced restriction and limitations to information and its access, namely, the Penal Code (CAP 63), the Official Secrets Act (CAP 187) and the Defamation Act (CAP 36). Over and above the implications that these laws had on access to information, it was further established that with these laws librarians expressed the same apprehension and fear of infringement that they had with reference to the Copyright Law. They were also concerned that these laws did not have the benefit of the expertise or knowledge from librarians.

6.2.5 The Knowledge of Aspects of Law Required by Information Professionals in Public University Libraries to enable them Provide Information Services to their Clientele

To achieve the fifth objective that guided this research, the study collected and analyzed data on several of the aspects related to the training of librarians. The research findings showed that the training of librarians had evolved to a level where there were adequate training opportunities, and as a result librarians were appropriately prepared for their work through the training that was widely accessible. It was noted that the training institutions have initiated programmes that incorporate the legal aspects of information within their curriculum. The study also established that because of their work which was knowledge-based, librarians had a benefit that positioned them at a vantage point where they would readily acquire the needed skills and understanding. Despite this positive environment the study identified gaps in the skills required by the new developments and the demands associated with electronic resources. The findings showed that there were efforts from the International Network for the Availability of Scientific Publications (INASP) to address the challenge of the skills needed for the licensing and negotiation processes for the electronic resources. However according to the study there was need for further efforts that took into consideration the local environment and the related implications.

6.3 Conclusions

Consistent with the formation and functioning of other organizations, public university libraries have an organizational structure upon which they base the plans for their work starting with the vision, mission and objectives. This is followed by the implementation activities that are guided by policies that are formulated to give direction to the information services. The libraries do not exist in isolation, but they operate within the social structure of the larger society in which there are relationships that are established through set networks and linkages. The structure relevant to this study is in an environment with, on the one hand, the library with a complete organizational set up, while on the other hand there is a governing authority with the responsibility of regulating and controlling the activities and operations of the organizations falling within its realm. The two organizations are thus brought together through a link that requires to be understood and its role appreciated. The above overview fits in with the model suggested by the organizational theory and consequently forming a suitable base for the study on the legal implications of providing an information service in the public university library. An important rider that qualifies this linkage or connection between the government and the public university libraries, and one that was confirmed by this study observes that the relationship between the government and the public university library is linear in nature. This is a description of a situation with influence that only goes in one direction thus lacking the reciprocity or counter-influence that would bring about benefit from the exchange of ideas among the two organizations.

The main reason for the existence of public university libraries is to offer to their users access to information for learning, teaching and research. In the process of attaining this objective, the libraries have developed systems and procedures that provide an excellent base for the work of providing information services to their clientele. Both the acquisition function and the information dissemination services provide adequate evidence to this fact.

In the acquisition function, the PULs have developed methods through which librarians have registered outstanding performance in the area of information management by formulating and using policies, and applying approaches that have proved effective in the in identifying and acquiring information resources. This in part goes towards addressing the aspect of information right in the UDHR and the Constitution of Kenya that refers to the obligation to seek and receive information. The emergence of electronic resources through the licensing method has introduced new challenges with legal implications. This involves acquisition of electronic resources through the licensing method which demands new skills for contracting negotiations and stringent conditions of use. It is also in these particular functions and services that the legal implications are especially notable. The issue of the challenges involved notwithstanding, there are also opportunities which librarians can take up and move on to the next level. For example there is the new scope introduced by the Constitution or the licensing of electronic resources within which librarians can use their knowledge, skills and expertise to engage the Government and its agencies by way of advice and advocacy.

In carrying out the dissemination function, public university libraries can be said to be addressing the obligation of imparting information created by both the Universal Declaration for Human Rights and the Constitution of Kenya. The dissemination of information by the library has been based on a long tradition of information services such as loans, reference/enquiry service, photocopying among others. These services have gradually changed and evolved in line with developments in the area of information. For example, PULs are increasingly adopting new approaches that are availed by new technological advances and the digitalization of information resources. Such newly introduced services include the Internet through which electronic resources are accessed, and the Open Public Access Catalog (OPAC). A new dimension is introduced where librarians' extensive expertise and knowledge in information dissemination would be used to help attain some of the conditions provided by law. For example, one of the principles of the Freedom of Information concept requires that the state publishes documents with public information, and also provides public education and dissemination of information that the state holds. These are technical aspects of information handling that librarians can expertly address and handle.

A universal understanding of law is that it has the capacity to provide facilitation and support on the one hand, while creating restrictions and limitations on the other. This is clearly manifested in the manner that law applies in the area of information and the implications that are result from this application. This outcome presents two challenges to the public university libraries. An initial and important challenge for public universities is to identify those aspects of the law with the potential of adding benefit to their core

responsibility of providing information services to the university community, and thereafter to design ways of appropriating this potential. The second challenge is similarly important and will require the libraries to establish the areas in which law has a prohibitive effect on the provision of information services. The provisions in question and their implications are not necessarily simple or clear. Libraries in other parts of the world have worked in collaboration with others to address, for example, the effects of copyright on access to information. In the United States lobbying and seeking of clarification by libraries led to the inclusion of section 108 of their Copyright Law as a way of providing more legal support for libraries and their interlibrary loan services.

The above considerations suggest new added knowledge to get the capacity required by the librarians to effectively address the issues raised by legal aspects of law and their implications for the provision of information services. It was noted that the training institutions have initiated programmes that incorporate the legal aspects of information within their curriculum. This is a positive step that puts the profession at par with others in the training initiatives elsewhere in the world. Secondly, librarians have an advantage in that their work is knowledge based which positions them at a vantage point where they will be able to acquire the needed skills and understanding. What would appear to be lacking is the dynamism through which training institutions collaborate with other stakeholders to for example formulate guidelines, organize forums like seminars and conferences through which some of knowledge required will be created. Currently, the skills gap introduced by the new developments and the demands they put on PULs has been filled by the International Network for the Availability of Scientific Publications

(INASP). INASP has worked through the Kenya Libraries and Information Services Consortium (KLISC) to acquire e-resources for the libraries that are members of the consortium. This has set up a good foundation for further follow up.

6. 4 Recommendations

The following section forms the final part of the chapter. It gives the recommendations for the way forward based on the study findings and discussions. After the introduction given below, the section that follows gives recommendations for librarians while the last part looks at recommendations for policy makers.

6.4.1 Introduction

From this study it emerged that information has been evidently accorded high recognition at various levels. At the international level such support has come from the Universal Declaration for Human Rights (UDHR), the World Summit for Information Society (WSIS), and the Freedom of Information movement. At the national level the Constitution of Kenya under Articles 33 and 35 also provide for right to information. while at the professional level the International Federation of Library Associations strongly advocates for open access as a prerequisite for intellectual freedom, basing it on Article 19 of the UDHR. This recognition has in turn been rationalized on the contribution of information to the development of the individual and society in general, and it offers public university librarians a strong foundation upon which to base and rationalize their information services.

6.4.2 Recommendations for the Government

a) Copyright Law (CAP 12)

The study noted that the above law was inherited from the England's Copyright Law. It was also established that since then the law in England has gone through major reviews that attempt to address the contemporary and emerging issues introduced by ICTs and the digitization of information resources. This study recommends a review of the above Act in line with developments elsewhere in the world. Examples of the issues to be the focus of the suggested review include the use of definitions that are clearer, aspects of electronic resources, and the representation of librarians in the Copyright Board.

b) Freedom of Information Law

The study noted that Kenya has not passed the above law although the FOI Bill is in place and has been in line to receive assent from the President. The benefits accrued through the FOI law were enumerated in the study which also pointed out that more than seventy countries of the world have legislated FOI laws. This study recommends that based on the stated benefits of FOI as well as the universal global practice, that Kenya completes the legislation process that will put the country at par with the other nations in the world.

6.4.3 Recommendations for Librarians

i) Government Publications

The study established that because of their relevance and volume, Government publications constitute a major source of the information required for the academic functions of the university. This fact is supported by the Constitution of Kenya Article 35 which provides for the citizen's rights to information that is held by the state. The Freedom of Information principles also advocate for giving access and the necessary facilitation for the utilization of information held by the state. On this basis the study recommends that PULs bolster and enhance their government publications collections by intensifying the acquisitions of these publications and also promoting their use.

ii) Librarians - Policy Interaction

This study noted that although there was a link between the Government and the PULs through the laws that touched on information, there was no reciprocating action, dialogue or feedback. This one sided relationship was found to miss the benefits and variety that would be achieved through a better balanced discourse among the parties. This study therefore recommends that librarians seize the opportunities available to get in touch with policy makers and make relevant suggestions and proposals using their wealth of knowledge and expertise in information. For example, the study noted that Kenya's Freedom of Information Act for Kenya has not been passed and the Bill is awaiting presidential ascent since 2012. It is recommended that librarians in the PULs should with other interested stakeholders engage lawmakers through lobbying and advocacy calling for the enactment of the FOI Act so that Kenya aligns this particular law to the

Constitution and also join the other nearly countries of the world that have passed the FOI law. Moreover once the FOI law is passed, some of the provisions it will be seeking to implement include aspects of the dissemination of information, determining the information needs of users and offering them some form of information skills. Librarians are the most suited to carry out these and other functions associated with the FOI law. Secondly librarians should use advocacy to seek representation in the two boards that are directly related to information and its access, namely the Copyright Board, KECOBO, and the Publications Review Board.

iii) The Acquisitions of Information Materials

The study noted that PULs have well developed acquisition systems for information materials. These are supported by policies that have been formulated to give guidance in the various intricate processes and procedures involved. The acquisition process takes place through stages during which different stakeholders from the university management and finance as well as the teaching faculty are involved, thus giving the process an added cohesiveness. However according to the study, these processes and policies were not comprehensive in that they did not incorporate the acquisitions of electronic materials. The study noted the work done by the International Network for the Availability of Scientific Publications (INASP) in their area of e-resources and their acquisitions. The study recommends that PULs design approaches through which to build a holistic acquisitions system by utilizing the foundation already established by the policies currently in place, as well as the leading work done by INASP. Among the new areas to be thus addressed are the changed methods of acquisitions through licensing, the user

conditions set, and the KLISC partnership and its benefits. This would be in line with what the study noted as developments taking place elsewhere in the world. The copyright and implications in the new developments of e-resources acquisitions would form part of the background to this new policy development.

iv) Laws and Declarations on Information

It emerged from the study that librarians had limited awareness and knowledge of laws and declarations that have implications for the provision of information services. This study recommends that librarians in PULs develop and acquire a keen awareness of the laws and declarations that have an effect on information. Over and above this awareness, it will be necessary that the librarians are also able to analyze and interpret these laws and declarations in a manner that identifies their exact role or influence on the information services.

The findings from the study established that librarians in the PULs were fully aware of and well acquitted with their own role and that of information in the core business of their universities. Nevertheless, this stance needs to be extended to embrace an understanding of relevant provisions in law that can be applied to strengthen this contribution. For this to be realized librarians need to get a keen awareness and an acknowledgement of the elevated status accorded to information by law. Such an acknowledgement will provide a platform upon which to base an enhanced philosophy of information that will bolster and strengthen their rationale and strategy as they advocate and lobby for better recognition and increased resources to provide support for information services. Just as librarians require an understanding of the supporting laws as discussed above, they will also need to

be well versed with the limiting laws and their effects. For example it will be necessary to have knowledge of the extent to which such laws put limits and how these limits can be addressed by the library. In other words how far do these laws erode the scope allowed by the UDHR and the Constitution, for example, and is there any leeway through which the library can circumvent their effects without necessarily breaking the law? This study thus recommends that librarians in the PULs seek to acquire a purposeful, well planned and focused understanding of legal provisions that both support and limit information and its service provision.

6.4.4 Recommendations for Schools and Departments Running LIS Programmes

The study noted that a number of schools and departments in the country were offering courses on law and information as part of their LIS programmes. However, the study noted the existence of challenges such as the lack of any collaboration among the schools. The study recommends that the schools and department that are teaching courses on law and information collaborate through seminars, conferences, staff and student exchange, and benchmarking practices that will enhance their curricular.

6.5 Recommendation for A Model for the Study of Legal Aspects of Law and their Implications in the Provision of Information Services in the Public Library Universities

The study recommended model for the study of legal aspects and the provision of information services in public university libraries in Kenya as a way of ensuring that librarians get the necessary skills and knowledge on legal aspects that have an impact on

information. The researcher therefore recommends a model for the study of information and law that introduces a holistic view revealing the complete picture of the topics involved in the study (Fig 6.1). The following outline adopts a step by step explanation of aspects that are illustrated in the diagram.

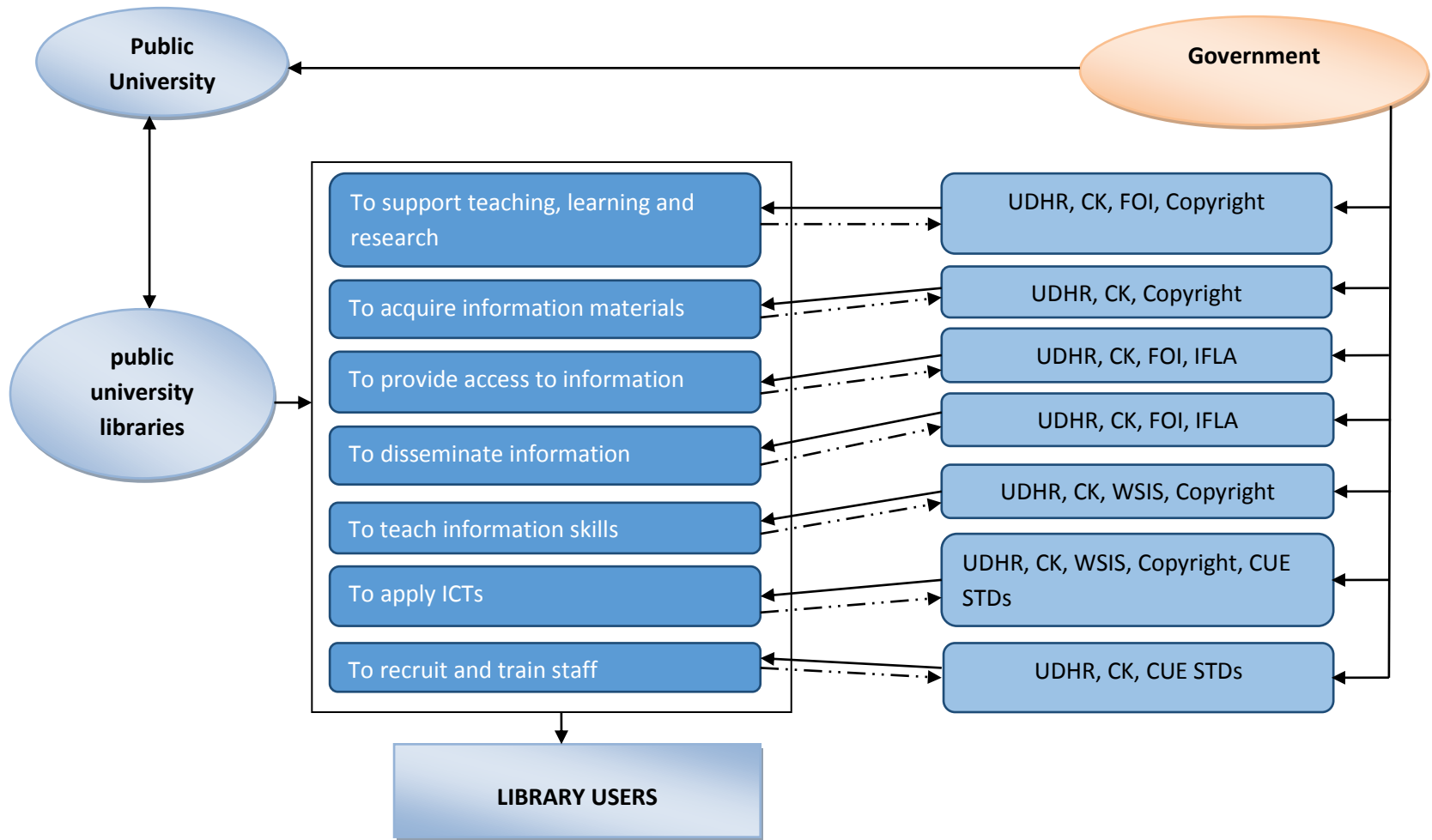


Figure 6.1: Proposed Model for the Study of Legal Aspects of Information and the Public University Libraries' Information Services.

Step one: The initial level assumes a conceptualization of the role played by theories that formed the background to the study. This is represented by the linkages and connectedness among the major institutional players, namely, the government and its agencies, the parent university, the public university libraries, and finally the library users. The model borrows from a major principle of the organization theory, namely, the fact of the organization being part of a larger society within which it has existing relationships with others in that social environment. This will facilitate the study and analysis of relationships among these interrelated organizations. Secondly, the model incorporates a principle from the social systems theory that advances the possibility of seeing the whole picture in the study of complex inter-disciplinary subjects so as to arrive at possible solutions, as opposed to disaggregating the study into separate individualized topics.

Step two: The model acknowledges the fact that the public university library is an organization set up to achieve specific purposes as articulated in its goals and objectives. Basing on this premise, the proposed model formulates a set of principles deduced from the vision, mission and objective statements of the PULs and identifies these as forming a suitable foundation for the study and analysis of the libraries' information services.

Step three: The model depicts the important controlling role of the government and its agencies upon the public university library. The model brings out an existing imbalance in the relationship between the government's laws and declarations and the principles of information services. To correct the imbalance a two-way linkage allowing for feedback from the service provision component is proposed. This suggests contribution and input

from PULs in form of proposals and recommendations to the legislative and other related activities.

6.6 Recommendations for Further Research

This study tried to have a wide scope of the aspects of law and information and the implications these have on the provision of information services in public university libraries. However it was not possible to include all the laws and services with relevance to the research topic. The study was therefore not exhaustive. Further research is recommended to look in to the following areas:

- a) Laws that were not covered by the study and their implications on the provision of information. These laws include for example the Books and Newspapers Act, and the data privacy bill and concept.
- b) Aspects of law and information that should form study curriculum;
- c) The role of the Kenya Library Association and other organizations in providing the necessary direction in the area of law and information.

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APPENDIX I: LETTER OF INTRODUCTION

Salome Mathangani,
School of Information Sciences
Moi University
Nairobi Campus
NAIROBI

7th July, 2010

Dear Sir/Madam,

I am a student at the Moi University's School of Information Sciences where I am currently pursuing a doctoral degree in Library and Information Studies. The title of my thesis is, "The legal implications of providing information services in public university libraries in Kenya". The aim of the study is to investigate the legal implications of providing information services in public university libraries in Kenya with a view to proposing a model that would improve information service delivery to the university community.

The study will include a review of various aspects of the library services, and the legal provisions in information, and will be partly based on the following semi-structured interview schedule. I have selected you as one of my respondents and I will be grateful if you can kindly assist me with the information I need. Your response will make a significant contribution by providing data that would otherwise be unavailable.

The interview schedule and the information you provide will be completely confidential and it will not be possible to identify individual respondents through the data presented in the dissertation.

May I thank you in advance and remain,

Yours sincerely,

Salome W. Mathangani

**APPENDIX II: INTERVIEW SCHEDULE FOR UNIVERSITY LIBRARIANS
AND DEPUTY UNIVERSITY LIBRARIANS**

Date _____ Time _____

SECTION I: BIO DATA

Name of institution _____

1. a) Title of respondent _____

b) Qualification _____

SECTION II: BACKGROUND INFORMATION

2. What is the vision and mission of your library

3. a) What in summary are the basic objectives of your library?

b) What activities does your library carry out in order to translate the above vision, mission and objectives into action?

4. a) Does your library have an annual budgetary allocation? (Tick as appropriate)

Yes [] No []

b) If your answer to question 4 a) above is yes, indicate the library's total acquisitions' annual budget (in K.shs.) (Tick one)

i. Under 1,000,000 [] iv). 10, 000,000 – 15, 000,000 []

- ii. 1,000,000 – 5,000,000 [] v). Over 15,000,000 []
- iii. 5,000,000 – 10,000,000 []

SECTION III: INFORMATION SERVICE PROVISION

5. a) What is the number of registered users in your library (Tick one)

- i) Under 3000 [] iv) 8001 – 15000 []
- ii) 3001 – 5000 [] v) Over 15000 []
- iii) 5001 – 8000 []

b) What is the size of your library collection in volumes? (Tick one)

- i. Under 50,000 [] iv) 150,001 – 200,000 []
- ii. 50,001 – 100,000 [] v) Over 200,000 []
- iii. 100,001 – 150,000 []

6. What are the five strongest areas by subject coverage in your library? (list in order starting with the strongest).

7. What are the library services available in your library? (Tick as necessary)

- a) Providing reading/study facility [] h) Current awareness []
- b) Loans [] i) Internet browsing []

- c) Interlibrary loans j) providing e-resources
- d) Reference/enquiry services k) Teaching infor skills
- e) Photocopying l) Other (specify)
- f) Special collection/ short loans
- g) Selective Dissemination of information (SDI)

8. Does the library provide information on all areas as per users' requests? (Tick as appropriate)

YES NO

9. If answer to 8 above is NO, what in your view, is the reason for this?

10. What general comment would you like to make regarding the information services provided by your library?

11. Does the library have a special collection designated as 'Government collection'? (Tick one)

YES NO

12. If not, why not?

13. If yes to question 10 above, indicate by listing below the particular type of Government publications needed by users.

20. If yes to above, briefly describe the method the library uses for the acquisition of the electronic journals.

21. Does the library's acquisition policy cover the acquisition of electronic books?
(Tick one)

Yes []

No []

22. If yes to above, briefly describe the method the library uses for the acquisition of the electronic books.

23. If yes to questions 19 and 21, does the library encounter any legal issues when acquiring electronic materials? (Tick one)

Yes []

No []

24. If yes to above, briefly state the type of legal issues involved.

25. Briefly state how the library deals with the legal issues involved in the acquisitions of electronic resources as indicated above.

26. Does the library acquire library materials published by the Kenya Government?
(Tick one)

Yes []

No []

27. If answer to above question is yes, has the library ever tried to acquire any publications by the Government and did not manage to do so? (Tick one)

Yes [] No []

28. If your answer to above question is yes, what was the reason for not getting the publication?
29. In your view, what are some of the challenges involved in acquiring Government publications? (Tick as appropriate)
- i) Cost [] iv) Unavailability []
- ii) Lack of awareness [] v) Other (Specify) []
- iii) Government restrictions []

SECTION V: LIBRARIANS' TRAINING IN/AWARENESS OF THE LAW

30. What do you consider to be the library senior staff's responsibility with regard to the issues of law and information?
31. Have you acquired any type of legal training? (Tick one)
- Yes [] No []
32. If not, why not?
33. If yes to question 30 above, in which areas was this training done? (Tick as appropriate).
- i) Copyright and intellectual property [] iv) Legal provisions and ICT []

ii) Information censorship v) Other (specify)

iii) Licensing and contracting

34.a) How was the above training acquired? (Tick as appropriate)

i) Seminar/workshop iv) Legal training

ii) On-line training v) Other (specify)

iii) LIS academic course

b) If you acquired your training through a LIS academic course, what are your comments on the actual unit that you studied?

35. Are you familiar with the concept and principles of Freedom of Information? (Tick one)

Yes No

36. If yes to question 35 above, how did you learn about the concept and principles of FOI ? (Tick as appropriate)

i) Colleagues iv) Conference

ii) Media v) Others (specify)

iii) Seminar/workshops

37. If yes to question 35, state how the FOI's principles relate to the library's information services?

38. Are you conversant with the Universal Declaration on Human Right Article 19 and its statement on information as a human right? (Tick one)

Yes [] No []

39. If yes to question 38 above, how did you learn about Article 19 of the UDHR? (Tick as appropriate)

i) Colleagues [] iv) Others (specify) []

ii) Media []

iii) Seminar/workshops []

40. If yes to question 38 above, what is the significance of this declaration in the provision of the library's information services?

41. Are you aware of the Constitution of Kenya Article 33 and its provision on information as a right for Kenyans? (Tick one)

Yes [] No []

42. If yes to question 41 above, how did you learn about Article 33 of the Constitution of Kenya? (Tick as appropriate)

i) Colleagues [] iv) Others (specify) []

ii) Media

iii) Seminar/workshops

43. If yes to question 41 above, what is the significance of the section with regard to the library's provision of information services?

44. Section 52-54 of the Kenya Penal Code (CAP 63) has provisions on prohibited publications. Are you aware of the stated provisions? (Tick one)

Yes No

45. If yes to question 44 above, what in your view would be the likely effect on the library's provision of information services?

46. The Official Secrets Act (CAP 187) restricts the disclosure of information on grounds of state security. Are you aware of the provisions of this act? (Tick One)

Yes No

47. If yes to question 46 above, what in your view would be the likely effect of the Official Secrets Act on the library's provision of information services?

48. Are you familiar with the Kenya Copyright Act (CAP 12)? (Tick one)

Yes No

49. If yes to question 48 above, how did you learn about the Copyright Act (CAP 12)? (Tick as appropriate)

- i) Colleagues iv) Others (specify)
- ii) Media
- iii) Seminar/workshops
50. The Copyright Act puts limitations to certain uses of copyrighted works. What are your views on the subject of copyrighted materials and their use in the library?
51. Are you aware of the Defamation Act (CAP 36)? (Tick one)
- Yes No
52. If yes to question 51 above, what are your views on the Act's effects on the library's provision of information services?
53. What recommendations/suggestions would you like to make regarding the issue of law and the provision of information services by public university libraries in Kenya?
54. What other comments/observations regarding the issue of the relationship between information services and law would you like to make?

**APPENDIX III: INTERVIEW SCHEDULE FOR SENIOR LIBRARIANS AND
LIBRARIANS**

Date _____ Time _____

SECTION I: BIO DATA

1. Name of institution _____

2. a) Title of respondent _____

b) Qualification _____

SECTION II: GENERAL RESPONSIBILITIES

3. Give a brief description of the activities you as Senior Librarian/Librarian carry out in performing your duties in the library.

4. In your view is it possible for the above activities to infringe any of the country's laws?

(Tick one) Yes [] No []

5. If not, why not?

6. If yes to question 4, what are the areas in which this is this likely to happen?

SECTION III: INFORMATION SERVICE PROVISION

7. What are the library services available in your library? (Tick as necessary)

- | | | | |
|---|------------------------------|---------------------------|------------------------------|
| a) Providing reading/study facility | [<input type="checkbox"/>] | h) Current awareness | [<input type="checkbox"/>] |
| b) Loans | [<input type="checkbox"/>] | i) Internet browsing | [<input type="checkbox"/>] |
| c) Interlibrary loans | [<input type="checkbox"/>] | j) providing e-resources | [<input type="checkbox"/>] |
| d) Reference/enquiry services | [<input type="checkbox"/>] | k) Teaching in for skills | [<input type="checkbox"/>] |
| e) Photocopying | [<input type="checkbox"/>] | l) Other (specify) | |
| f) Special collection/ short loans | [<input type="checkbox"/>] | | |
| g) Selective Dissemination of information (SDI) | [<input type="checkbox"/>] | | |

8. Does the library provide information on all areas as per users' requests? (Tick as appropriate)

YES [] NO []

9. If answer to 8 above is NO, what in your view, is the reason for this?

10. What general comment would you like to make regarding the information services provided by your library?

11. Does the library have a special collection designated as 'Government collection'?

(Tick one)

YES [] NO []

12. If not, why not?

13. If yes to question 10 above, indicate by listing below the particular type of Government publications needed by users.

14. In your view how would you rate the use of Government publications in the library?

(Tick as appropriate)

i) Very heavy iv) Low

ii) Heavy v) Very low

iii) Average

15. IFLA 's declaration calls for ensuring the widest access to information for all people.

State how your library implements this declaration.

16. The UN's World Summit on Information describes information as a resource that contributes to the development process. How do the library's services make this contribution?

SECTION IV: LIBRARY ACQUISITIONS

17. Does the library have an acquisitions policy? (Tick as one)

Yes No

18. If answer to 17 above is yes, what are the policy's principal elements?

19. Does the library's acquisition policy cover the acquisitions of electronic journals?

(Tick as one)

Yes [] No []

20. If yes to above, briefly describe the method the library uses for the acquisition of the electronic journals.

21. Does the library's acquisition policy cover the acquisitions of electronic books? (Tick one)

Yes [] No []

22. If yes to above, briefly describe the method the library uses for the acquisition of the electronic books.

23. If yes to questions 19 and 21, does the library encounter any legal issues when acquiring electronic materials? (Tick one)

Yes [] No []

26. If yes to above, briefly state the type of legal issues involved.

27. Briefly state how the library deals with the legal issues involved in the acquisitions of electronic resources as indicated above.

26. Does the library acquire library materials published by the Kenya Government?

(Tick one)

Yes [] No []

27. If answer to above question is yes, has the library ever tried to acquire any publications by the Government and did not manage to do so? (Tick one)

Yes [] No []

28. If your answer to above question is yes, what was the reason for not getting the publication?

29. In your view, what are some of the challenges involved in acquiring Government publications? (Tick as appropriate)

i) Cost [] iv) Unavailability []

ii) Lack of awareness [] v) Other (Specify)

iii) Government restrictions []

SECTION VI: LIBRARIANS' TRAINING IN/AWARENESS OF THE LAW

30. What do you consider to be the library senior staff's responsibility with regard to the issues of law and information?

31. Have you acquired any type of legal training? (Tick one)

Yes [] No []

32. If not, why not?

33. If yes to question 30 above, in which areas was this training done? (Tick as appropriate).

i) Copyright and intellectual property [] iv) Legal provisions and ICT []

ii) Information censorship [] v) Other (specify)

iii) Licensing and contracting []

34. a) How was the above training acquired? (Tick as appropriate)

iv) Seminar/workshop [] iv) Legal training []

v) On-line training [] v) Other (specify)

vi) LIS academic course []

b) If you acquired your training through a LIS academic course, what are your comments on the actual unit that you studied?

35. Are you familiar with the concept and principles of Freedom of Information? (Tick one)

Yes [] No []

36. If yes to question 35 above, how did you learn about the concept and principles of FOI ? (Tick as appropriate)

- i) Colleagues [] iv) Conference []
- ii) Media [] v) Others (specify)
- iii) Seminar/workshops []

37. If yes to question 34, state how the FOI's principles relate to the library's information services?

38. Are you conversant with the Universal Declaration on Human Right Article 19 and its statement on information as a human right? (Tick one)

Yes [] No []

39 . If yes to question 38 above, how did you learn about Article 19 of the UDHR? (Tick as appropriate)

- i) Colleagues [] iv) Others (specify)
- ii) Media []
- iii) Seminar/workshops []

40. If yes to question 38 above, what is the significance of this declaration in the provision of the library's information services?

41. Are you aware of the Constitution of Kenya Article 33 and its provision on information as a right for Kenyans? (Tick one)

Yes [] No []

42. If yes to question 41 above, how did you learn about Article 33 of the Constitution of Kenya? (Tick as appropriate)

i) Colleagues [] iv) Others (specify)

ii) Media []

iii) Seminar/workshops []

43. If yes to question 41 above, what is the significance of the section with regard to the library's provision of information services?

44. Section 52-54 of the Kenya Penal Code (CAP 63) has provisions on prohibited publications. Are you aware of the stated provisions? (Tick one)

Yes [] No []

45. If yes to question 44 above, what in your view would be the likely effect on the library's provision of information services?

46. The Official Secrets Act (CAP 187) restricts the disclosure of information on grounds of state security. Are you aware of the provisions of this act? (Tick One)

Yes [] No []

47. If yes to question 46 above, what in your view would be the likely effect of the Official Secrets Act on the library's provision of information services?

48. Are you familiar with the Kenya Copyright Act (CAP 12)? (Tick one)

Yes [] No []

49. If yes to question 48 above, how did you learn about the Copyright Act (CAP 12)?

(Tick as appropriate)

i) Colleagues [] iv) Others (specify)

ii) Media []

iii) Seminar/workshops []

50. The Copyright Act puts limitations to certain uses of copyrighted works. What are your views on the subject of copyrighted materials and their use in the library?

51. Are you aware of the Defamation Act (CAP 36)? (Tick one)

Yes [] No []

52. If yes to question 51 above, what are your views on the Act's effects on the library's provision of information services?

53. What recommendations/suggestions would you like to make regarding the issue of law and the provision of information services by public university libraries in Kenya?

54. What other comments/observations regarding the issue of the relationship between information services and law would you like to make?

**APPENDIX IV: INTERVIEW SCHEDULE FOR LECTURER FROM THE MOI
SCHOOL OF INFORMATION SCIENCES**

Date _____ Time _____

SECTION I: BIO DATA

Name of institution _____

1. Title of respondent _____

2. Qualification _____

SECTION II: BACKGROUND INFORMATION

3. What are the aims and objectives of the Moi School of Information Sciences?
4. What is the title of the course that deals with the area of information and law?
5. What is the background behind the development of this course?
6. What, in summary, is the course description?
7. What, in summary, are the objectives of the course?
8. In your view, what practical challenges for the librarians does the course specifically address?
9. In your view, how has the course prepared librarians to address the challenges that face them with from the law as they perform their work?

10. What future plans does the School have for the training librarians in the area of information and law?

11. What recommendations or suggestions would you like to make with regard to training librarians in the area of information and law?

12. What other comments do you have on the aspect of information and the law?

APPENDIX V: RESEARCH AUTHORIZATION

REPUBLIC OF KENYA



NATIONAL COUNCIL FOR SCIENCE AND TECHNOLOGY

Telegrams: "SCIENCETECH", Nairobi
 Telephone: 254-020-241349, 2213102
 254-020-310571, 2213123
 Fax: 254-020-2213215, 318245, 318249
 When replying please quote

Our Ref: **NCST/5/002/R/452/5**

P.O. Box 30623-00100
 NAIROBI-KENYA
 Website: www.ncst.go.ke

Date: **2nd June 2009**

Ms. Mathangani Salome Waigumo
 Moi University
 P.O. Box 3900
 ELDORET

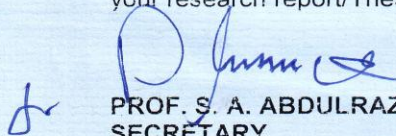
RE: RESEARCH AUTHORIZATION

Following your application for authority to carry out research on, *Law and the Provision of Information Sciences in Public University Libraries in Kenya*

I am pleased to inform you that you have been authorized to carry out research in Public University Libraries for a period ending 31st December 2011.

You are advised to report to the Vice-Chancellors of the Public Universities you will visit before embarking on your research.

On completion of your research, you are expected to submit two copies of your research report/Thesis to this office.



PROF. S. A. ABDULRAZAK Ph.D, MBS
SECRETARY

Copy to:

The Vice-Chancellors
 Public Universities