

INTELLECTUAL PROPERTY (IP)

By

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Training on IP for MUT Academic Staff

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Structure of Presentation

- Introduction
- What's Intellectual Property (IP)
- IP Policy—its role, etc.
- Intellectual Property Rights (IPR)—purpose, etc.
- Effect of Inadequate Policies on the Development of Copyright-Based Industries (CBI)
- Contribution of CBIs to the National Economies (Some Data)

Introduction—Highlights on Experiences and Interest in IP

- Interested in IP since 2007 when I was identified by the World Intellectual Property Organization (WIPO) and the Kenya Government, through the Kenya Copyright Board (KECOBO), to carry out a study on the contribution of Copyright and Related Rights-Based Industries to Kenya's national economy (GDP).
- Since then, assisted 4 countries in Africa –Kenya (2008-2009), Tanzania (2011-2012), Malawi (2010-2013) and Ethiopia (2014)—to complete these studies.
- Currently, assisting 2 countries—Botswana (Jan. 2018) and Ghana (April 2018)—to do the same.

Introduction (Cont'd)

- Kenya study (2008-2009), in which I served as the national consultant, was the first of its kind to be successfully completed in Africa.
 - Before the study in Kenya was launched by WIPO in 2008, two similar studies had earlier been initiated in Nigeria and Tanzania but had failed.
- For the Malawi study (2010-2013), I served as an International Expert.

Introduction (Cont'd)

- Tanzania study (2011-2012).
 - WIPO gave the study a second chance. However, WIPO was this time cautious and didn't want to take too many risks, and involved me directly as a lead researcher to work with the national researchers, because I had succeeded in Kenya.
 - The Tanzanian study covered a 4-year data set (2007-2010) compared to the 1-year data set in Kenya and Malawi ... the researchers were more bold.

Introduction (Cont'd)

- So far, the only studies on CBI that have succeeded in Africa are 5, 4 of which I've been involved in; 2 as the 'national' consultant and 2 as the international expert; the 5th is South African study.
- Currently, I'm aware of two studies going on in Africa—in which I'm involved as the international consultant—Botswana and Ghana.

What's Intellectual Property (IP)?

- The World Intellectual Property Organization (WIPO) defines intellectual property (IP) as ‘the creations of the mind such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.
- When the produced expressions are protected under intellectual property (IP) rights, they are referred to as copyright industries and the products there-from as copyright goods.
- The establishments involved in the production of copyright goods are referred to as copyright-based industries (CBI).
- Thus, CBIs are part of creative industries.

What's Intellectual Property (IP)? (Cont'd)

- Creative industries are economic activities based on the creation, management, use and trade in original creations expressed in tangible form.
- Copyright is a legal term used to describe the rights the creators have over their literary and artistic works.
- Works covered by copyright include books, music, paintings, sculpture and films, computer programs, databases, advertisements, maps and technical drawings.
- Copyright is a type of property that is founded on a person's creative skill and labour.
- Copyright is a bundle of exclusive economic rights to do certain acts with an original work or other copyright subject-matter.

IP Policy

- By definition: Policy is a definite course of action to guide present and future decisions
- Policies are (applied for) specific interventions, e.g. Intellectual property (IP) policy
- IP policy is mainly regulative in nature—in the form of laws and acts of parliament:
 - These laws and acts limit the discretion of individuals and agencies
 - They are best applied where ‘good behaviour’ can be defined and ‘bad behaviour’ can be easily regulated or punished through fines or sanctions
- IP policy may also be developmental—in the form of development plans and strategy papers

Importance of Policies

- IP has long been recognized by industrialized countries
- Developing countries are now increasingly recognizing IP as an important tool for technological & economic development
- Policies have been developed & laws enacted to protect IP for several reasons:
 - To create an environment that encourages the generation of new knowledge
 - To facilitate wide transfer of useful inventions to society
 - To give statutory expression to the moral & economic rights of the creator
 - To promote, as a deliberate action of government policy, creativity & fair-trading

How is IP Protected by Policies & Laws?

- IP is protected by national laws, unique in each country (e.g. Kenya's Copyright Act of 2001—under which the Kenya Copyright Board was Created—or the Industrial Property Act 2001)
- These laws & policies are guided by international treaties & agreements, such as:
 - WIPO
 - African Regional Intellectual Property Organization (ARIPO)
 - Singapore (Trademark Law) Treaty
 - Paris Convention for Protection of Industrial Property
 - Madrid Union on International Registration of Marks
 - Patent Cooperation Treaty (PCT)
 - Berne Convention on Copyright
 - Trade Related Aspects of Intellectual Property Rights (TRIPs)
 - Etc.

Intellectual Property Rights (IPR): Main Purpose

- IP protects applications of ideas and information of commercial value
- IPRs are rights to prevent others from doing certain things—to stop pirates, counterfeits, imitations, etc.
- The rationale of IP is to stimulate and promote creativity

Objects of IP

- Three main objects of IP:
 - Industrial property rights—Patents, trademarks, industrial designs, utility models, topography of integrated circuits & geographical indications
 - Copyright—Literary & artistic works
 - Protection of new varieties of plants

Administration of IPR

- Several bodies are usually used to administer IPR:
 - In Kenya, for example: Kenya Industrial Property Institute (KIPI), a body corporate in the Ministry of Trade, administers the Industrial Property Act 2001, covering patents, trademarks, service marks, industrial designs & utility models
 - Copyright is administered by the Kenya Copyright Board (KECOBO) under the Copyright Act 2001
 - The Kenya Plant Health Inspectorate Services (KEPHIS) administers the Plant Varieties Act

IPR, Innovation and Economic Growth

- IPR regimes play a key role in the way private firms and research institutions develop, acquire and manage their intellectual assets
- In many countries, the transition to a knowledge-based economy has given rise to changes in governments' IPR policies and firms' strategies concerning IPR management
- As a result of technology advancement in information and communication technology (ICT) and increasing globalisation, recent decades have witnessed a surge in the numbers of patents filed, esp. in developed countries
- IPR has helped make possible the conditions for innovation, entrepreneurship and market-oriented economic growth
- In the global economy, good IP systems are needed for promoting sharing of the knowledge protected by IPR, and for facilitating the globalisation of R&D.

Improving IPRs in Developing Countries by Strengthening Policy

- It is important to strengthen the linkages between IPR policy and other economic policies and co-operation between patent offices and relevant government agencies
- Developing countries with a certain level of technological and innovation capacities should focus on the following:
 - Use IPR policy to promote public R&D and commercialisation of public R&D results
 - Provide protection of small inventions
 - Use IPR protection to improve access to foreign technologies and FDI
 - Use IPR protection to encourage domestic business R&D
 - Develop the professional competence and capacity of IPR offices

Effect of Inadequate Policies on the Development of Creative Industries: Examples from Kenya

- As a result of inadequate policy support:
- Most of the creative industries operate haphazardly.
 - The absence of a National Intellectual Property Policy has led to failure to mainstream Intellectual Property into the National Development programs
 - Thus, the value of IP has not been fully recognized by policy makers as an important tool for national development that needs to be promoted and protected
 - Therefore, there is lack of concrete databanks on the contribution of creative industries

Effect of Inadequate Policies on the Development of Creative Industries: Examples from Kenya (Cont'd)

- Most of the artists avoid taxes & or avoid exposing themselves
- Some retailers of creative works either operate illegally or stock pirated materials
- Some artists want to protect their products from piracy because they do not possess patents
- All the above result in poor/no documentation, & thus inaccurate databases & valuation

Effect of Inadequate Policies on the Development of Creative Industries: Some Examples from Kenya (Cont'd)

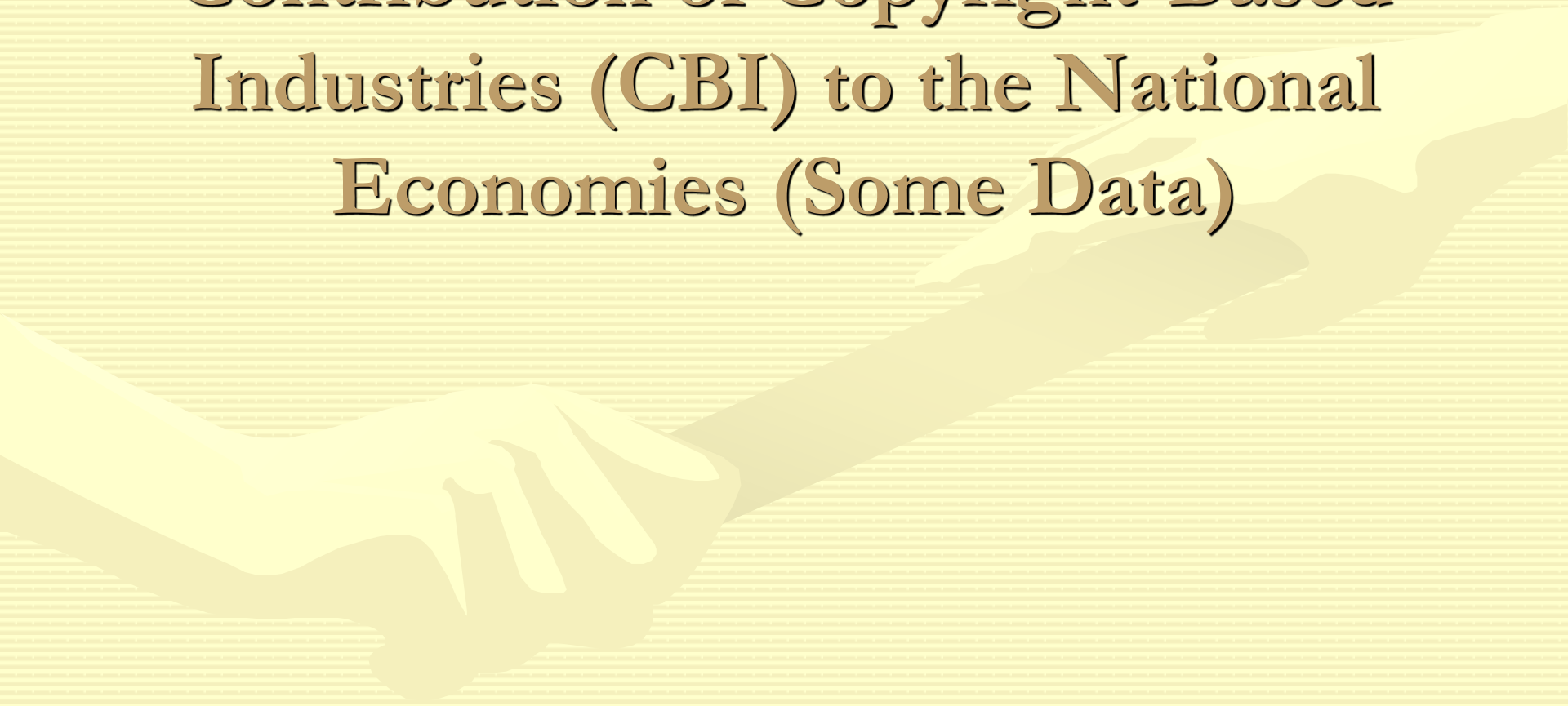
- Quantification of exported artistic work is difficult because of lack of data and also because some of the exportation is not legally done (not on record).
- Because of lack of strong policies and laws (and poor or inadequate interest in policing), piracy is on the increase:
 - Piracy makes it difficult to estimate the true economic contribution of creative industries (e.g. most of the music & video products are pirated)
 - With technology advancement, piracy has taken a new dimension & has become sophisticated & lucrative, making enforcement challenging & risky

IPR Policy and Growth of Creative Industries: The Main Message

- IPR protection can promote innovation and economic development by attracting FDI and strengthening incentives to innovate among domestic firms.
- IPR policy needs to strike the right balance between protection of innovation and facilitation of technology diffusion.
- The business community attaches great importance to the protection of trade secrets and patents, when making investment decisions.

IPR Policy and Growth of Creative Industries: The Main Message (Cont'd)

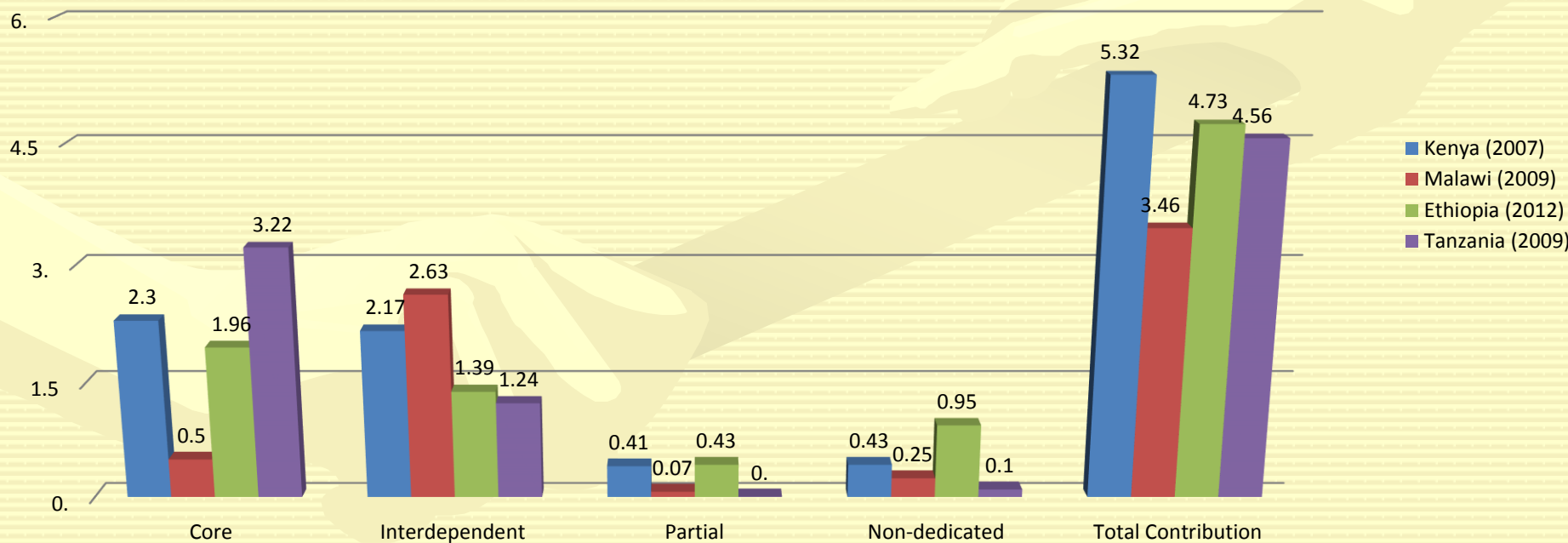
- Coherence must be maintained between IPR and related policies.
- Development of a coherent policy depends on appropriate consultations with *all* stakeholders, and involves constant learning by policy makers and enforcers of new theories and practices.
- Globalisation has led to an increasing demand for greater international harmonisation with respect to national IPR regulations and procedures in order to facilitate trade and investment.



Contribution of Copyright-Based Industries (CBI) to the National Economies (Some Data)

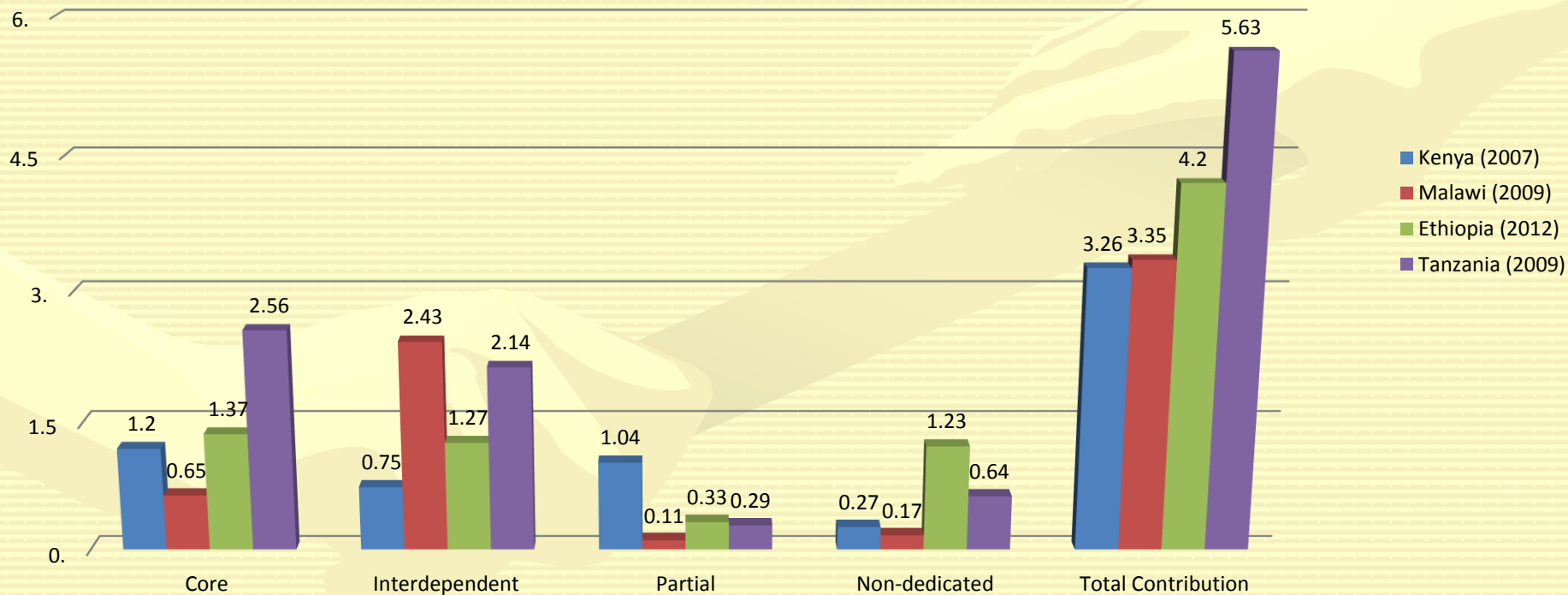
Value-Added (%) Contribution of CBI to the National Economies of Kenya (2007), Tanzania (2009), Malawi (2009), and Ethiopia (2012)

- The total value-added of CBI in Kenya in 2007 represented 5.32% of the total GDP; in Malawi in 2009, 3.46%; in Tanzania in 2009, 4.56%; and in Ethiopia in 2012, 4.73%
- The contribution to the total value-added by the core industries in Kenya was 2.3%, Malawi 2.63%, Tanzania 3.127%, and in Ethiopia 1.96%



Employee (%) Contribution of CBI to the National Economies of Kenya (2007), Tanzania (2009), Ethiopia (2012) and Malawi (2009)

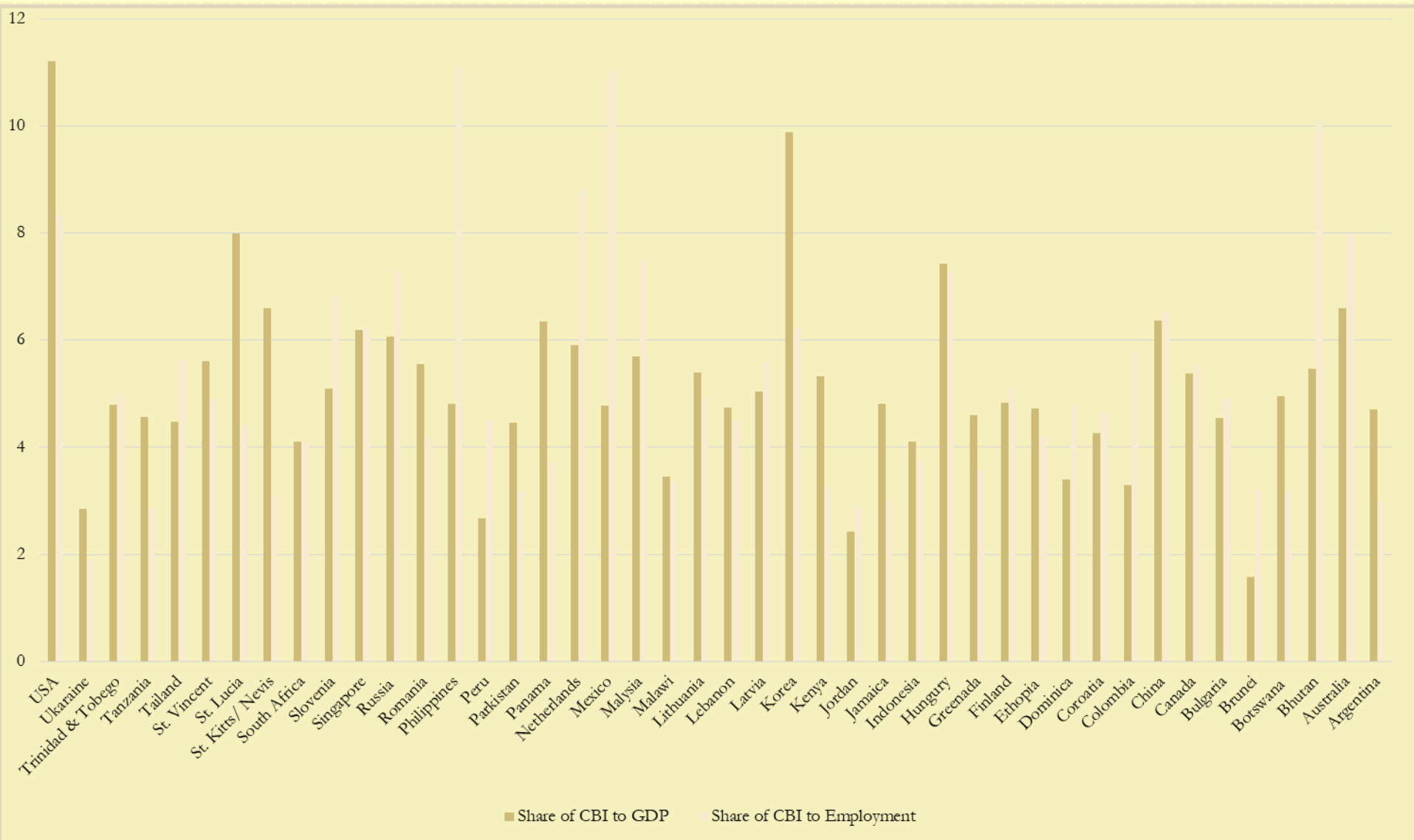
- The total employees in CBI in Kenya in 2007 represented 3.26% of the total national employees; in Malawi in 2009, 3.35%; in Tanzania in 2009, 5.63%; and in Ethiopia (2012), 4.20%
- The contribution to the total employees by the core industries in Kenya was 1.2.%, Malawi 0.65%, Tanzania 2.56%, and Ethiopia 1.27%



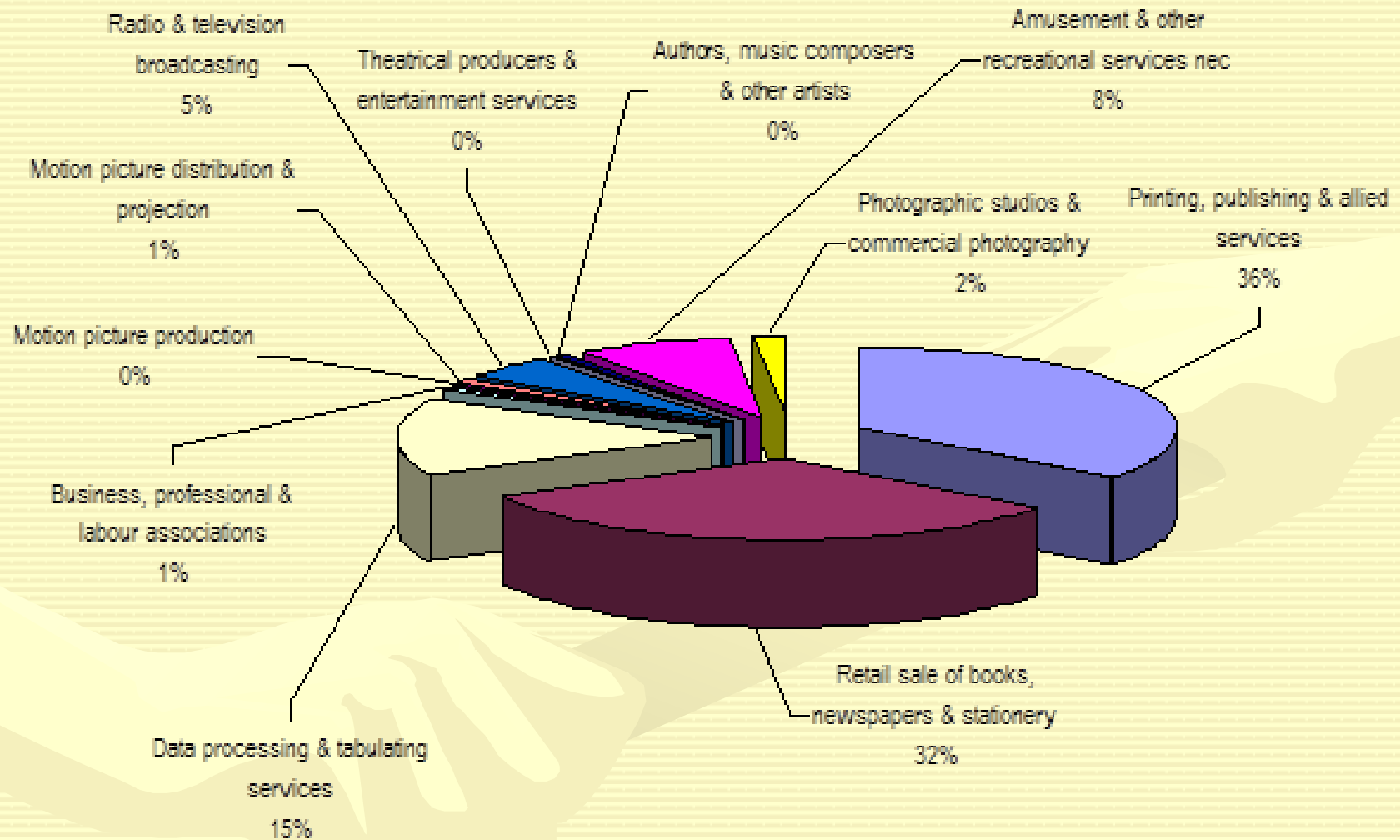
International Comparisons

- The performance of CBIs in Africa is somewhere in the middle compared to the world performance.
- Studies carried out so far show that CBIs in the US perform best wrt GDP contribution while the Philippines does best in employment

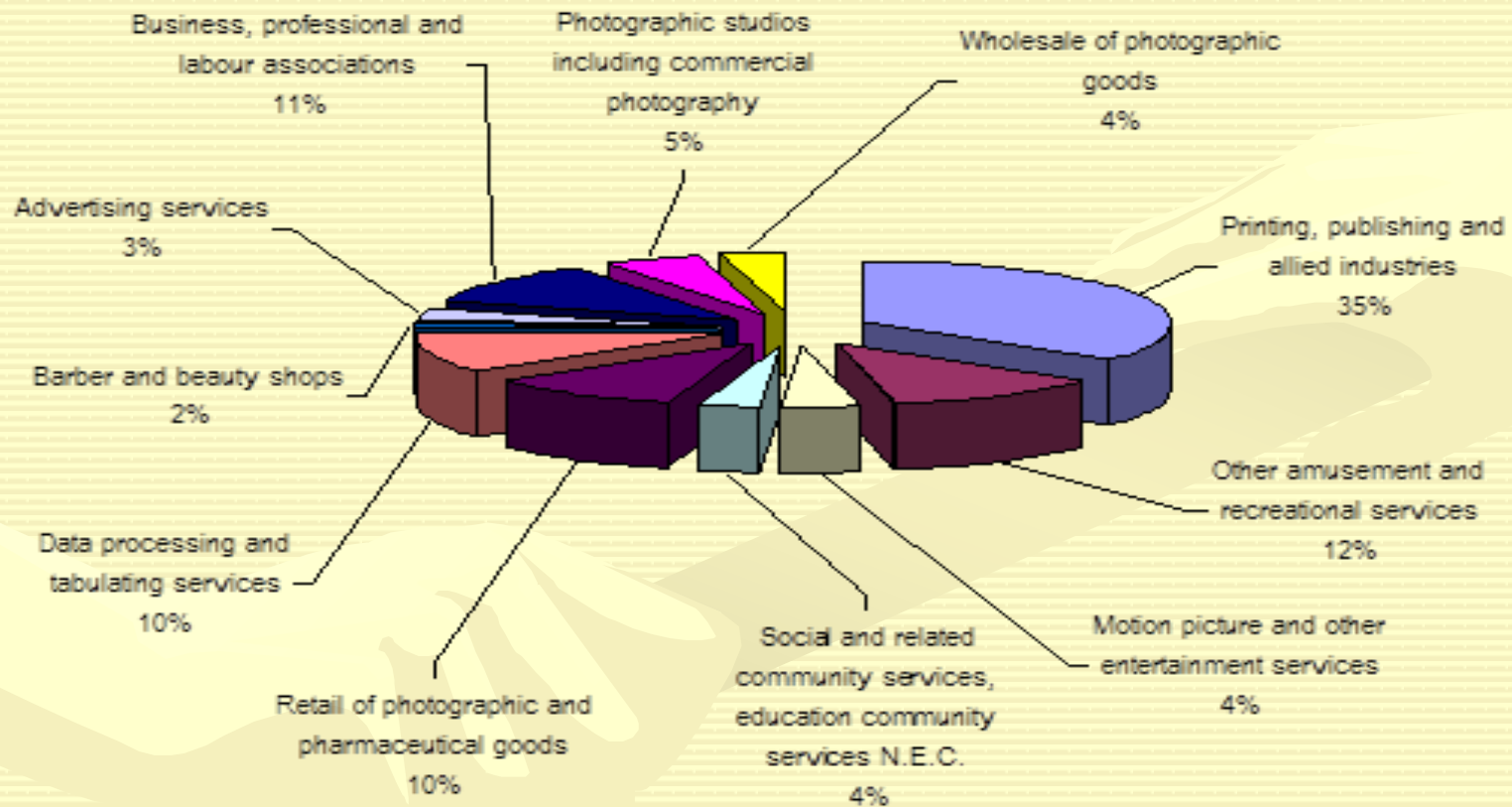
International Comparisons



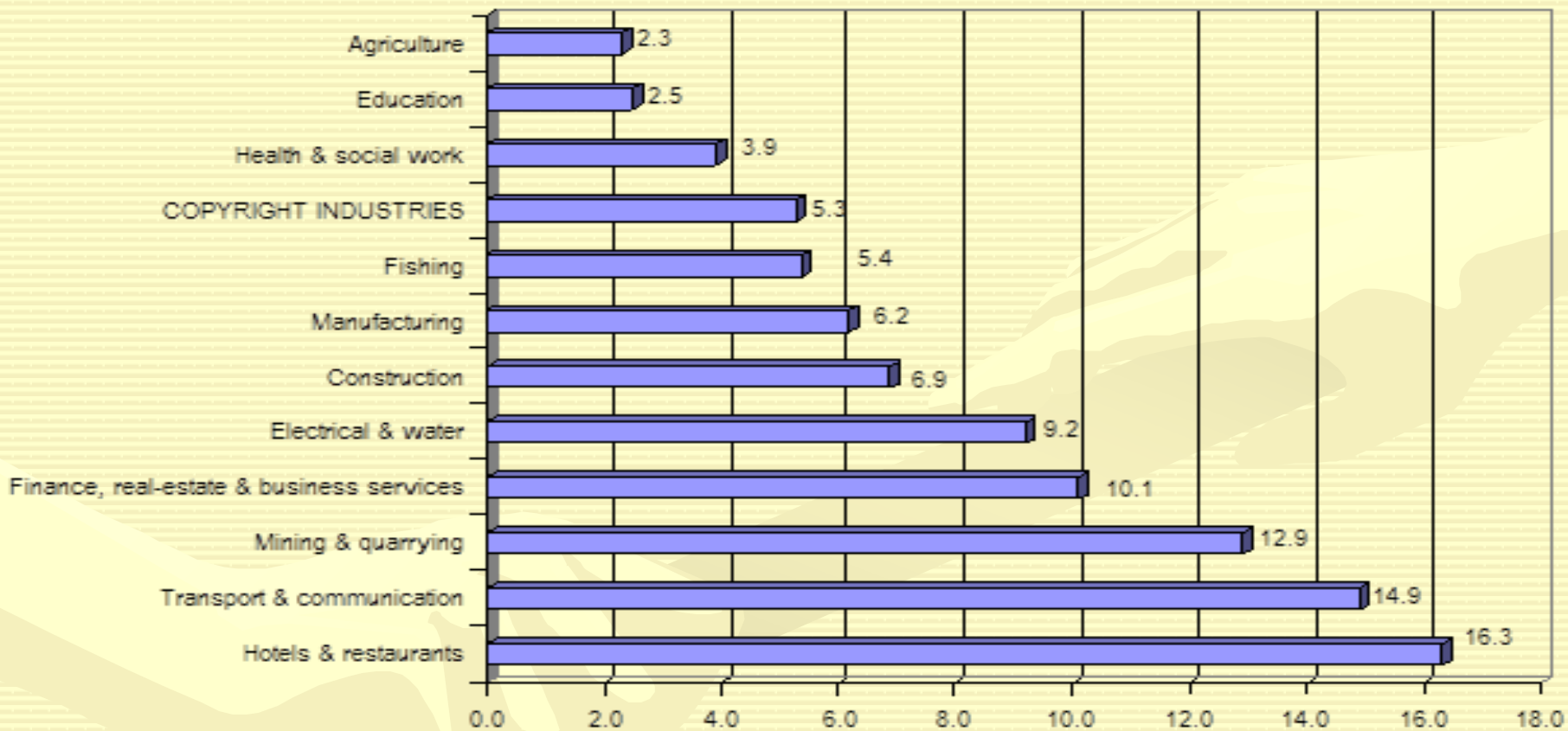
Structure of *core* copyright-based industries in Kenya in 2007 based on value-added (%)



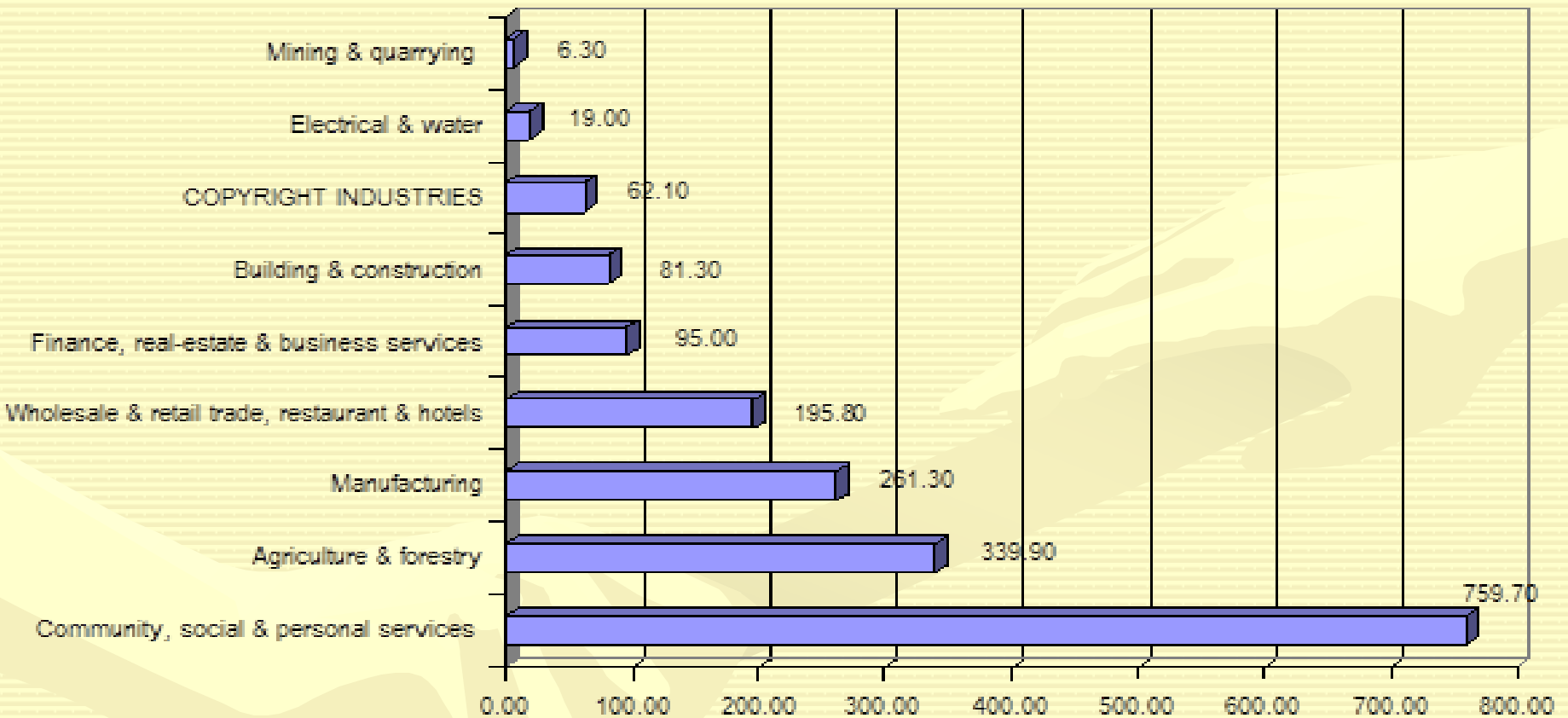
Structure of *core* copyright-based industries in Kenya in 2007 based on employment (%)



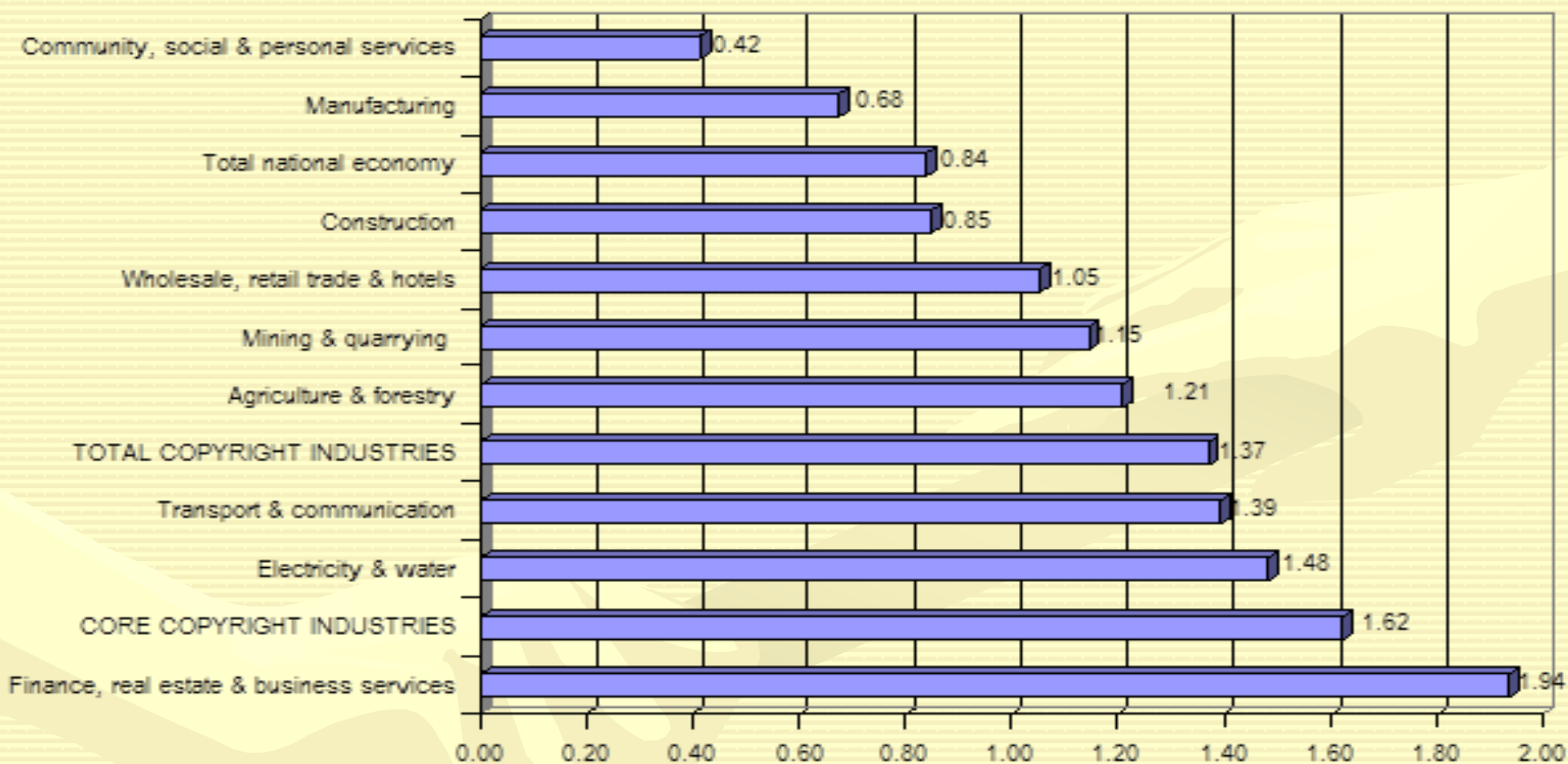
Value-Added (%) Contribution of CBI to the Economy compared to other sectors in Kenya (2007)



Contribution of CBI to Employment ('000) compared to other Sectors in Kenya (2007)



Productivity of CBIs (added value in KES millions/employee) compared to other sectors in Kenya (2007)



- END -
THANK YOU

