

A2LM



Intellectual Property, Education and
Access to Knowledge in Southern Africa

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A2K

knowledge is a priori

What is access to learning materials?

Country	UNDP Education Rank (Out of 177)
South Africa	119
Namibia	126
Botswana	128
Swaziland	137
Lesotho	145

	South Africa	USA	UK
J.M. Coetzee's <i>Disgrace</i>	\$ 21.70	\$ 10.15	\$ 10.15
Nelson Mandela's <i>Long Walk to Freedom</i>	\$ 23.70	\$ 11.60	\$ 16.30
Oxford English Dictionary	\$ 44.61	\$ 20.46	\$ 24.00

Text book Access Issues

- affordability
- availability
- relevance
- language
- sensory disabled persons

Method

1. International agreements
2. Domestic law
3. Practise

TRIPS FLEXIBILITIES

Article 1.1 freedom in implementation

Article 3.2 existing exceptions in Paris, Berne, Rome

Article 6 exhaustion

Article 7 interpretation

Article 8.1 health, nutrition, public interest, technological development

Article 8.2 counter abuse measures

Article 9.1 Berne exceptions

Article 13 limitations and exceptions

TRIPS Focus

- “constitutional” role Art 7 & 8
- “grandfathering” of Berne exceptions in Art. 9
- limitations and exceptions Art 13

Article 10 of Berne

- (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.
- (2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works *by way of illustration in publications, broadcasts or sound or visual recordings for teaching*, provided such utilization is compatible with fair practice.
- (3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

COUNTRY	Constitutional Right	Copyright Statute	Copyright Regulations	Other legislation
Botswana	12. Protection of free dom of expression	Copyright and Neighbourin g Rights Act No. 8 of 2000		
Lesotho	Section 14 Freedom of Expression Principle of State Policy, Section 28, Provision for Education	Copyright Order No. 13 of 1989		Printing and Publishing Act 10 of 1967 (Gazette 13, 10 May 1967)
Namibia	Article 20 Education Article 21 (a) freedom of expression Article 21 (b) academic freedom	Copyright and Neighbourin g Rights Protection Act 6 of 1994		
Swaziland	Draft 99 Constitution	1912 Copyright Act.		

COUNTRY	Constitutional Right	Copyright Statute	Copyright Regulations	Other legislation
South Africa	<p>S 9 (3) discrimination on disability not allowed</p> <p>S 16, Freedom of Expression 1 (b) receive information 1 (c) freedom of creativity 1 (d) academic and scientific</p> <p>S 32 Right to Information</p> <p>S 29 Right to Education</p>	1976 Copyright Act	RGN50/16930/20,19Jan96 (corrected by: RGN368/17008/10,1Mar96)	<p>Counterfeit Goods Act 37 Of 1997</p> <p>Electronic Communications and Transactions Act [No. 25 of 2002]</p>

1911 Imperial Copyright Act

FAIR DEALING PROVISIONS

- dead wood presumption
- unclear
- dearth of case law
- contested by publishers
- no provision for market failure
- translation/adaptation limited

Photocopying at Makerere University

(Number of pages photocopied/ day)

Lecturers	Students	Others	Total
5700	34750	2950	43400

Some (In)Conclusions

Sub Saharan African countries
aren't using TRIPS flexibilities for A2LM

Informal provision is vital to A2LM

Informal provision legally unclear

Thanks

ICTSD

UNCTAD

TRALAC

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