Intellectual Property, Education and Access to Knowledge in Southern Africa

Andrew Rens, Achal Prabhala and Dick Kawooya
knowledge is a priori
What is access to learning materials?
<table>
<thead>
<tr>
<th>Country</th>
<th>UNDP Education Rank (Out of 177)</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>119</td>
</tr>
<tr>
<td>Namibia</td>
<td>126</td>
</tr>
<tr>
<td>Botswana</td>
<td>128</td>
</tr>
<tr>
<td>Swaziland</td>
<td>137</td>
</tr>
<tr>
<td>Lesotho</td>
<td>145</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Book Title</th>
<th>South Africa</th>
<th>USA</th>
<th>UK</th>
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</thead>
<tbody>
<tr>
<td>J.M. Coetzee’s <em>Disgrace</em></td>
<td>$21.70</td>
<td>$10.15</td>
<td>$10.15</td>
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<tr>
<td>Nelson Mandela’s <em>Long Walk to Freedom</em></td>
<td>$23.70</td>
<td>$11.60</td>
<td>$16.30</td>
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<tr>
<td>Oxford English Dictionary</td>
<td>$44.61</td>
<td>$20.46</td>
<td>$24.00</td>
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</tbody>
</table>
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.
<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>Constitutional Right</th>
<th>Copyright Statute</th>
<th>Copyright Regulations</th>
<th>Other legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botswana</td>
<td>12. Protection of freedom of expression</td>
<td>Copyright and Neighbouring Rights Act No. 8 of 2000</td>
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<td>Lesotho</td>
<td>Section 14 Freedom of Expression Principle of State Policy, Section 28, Provision for Education</td>
<td>Copyright Order No. 13 of 1989</td>
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<td>Printing and Publishing Act 10 of 1967 (Gazette 13, 10 May 1967)</td>
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<td>Namibia</td>
<td>Article 20 Education Article 21 (a) freedom of expression Article 21 (b) academic freedom</td>
<td>Copyright and Neighbouring Rights Protection Act 6 of 1994</td>
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<td>1912 Copyright Act.</td>
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<tr>
<td></td>
<td>S 16, Freedom of Expression 1 (b) receive information</td>
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<td></td>
<td>Electronic Communications and Transactions Act [No. 25 of 2002]</td>
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<tr>
<td></td>
<td>1 (c) freedom of creativity 1 (d) academic and scientific</td>
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<tr>
<td></td>
<td>S 32 Right to Information</td>
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<td></td>
<td>S 29 Right to Education</td>
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</tbody>
</table>
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)

<table>
<thead>
<tr>
<th></th>
<th>Lecturers</th>
<th>Students</th>
<th>Others</th>
<th>Total</th>
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<tbody>
<tr>
<td>5700</td>
<td>34750</td>
<td>2950</td>
<td>43400</td>
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</tr>
</tbody>
</table>
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

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www.access.org.za
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