

UNESCO ONLINE FORUM

Discussion document

Dr Tobias Schonwetter
University of Cape Town, South Africa



Does copyright restrict access to knowledge in Africa?

The relationship between copyright and education

(14 November 2010)

Education is the key to development - and according to Art 26 of The Universal Declaration of Human Rights, “[e]veryone has the right to education”. Education, however, requires the availability and accessibility of quality knowledge materials, particularly learning materials. And copyright protection is relevant to learning materials availability and access in several important ways.

This week’s discussion addresses this complex relationship between copyright, access to knowledge and education.

In short, copyright law grants copyright owners an automatic and time-limited monopoly in which to exploit their creations. As a result, the copyright owner’s permission – often combined with the payment of a fee - is usually required if someone other than the copyright owner wants to use a work, e.g. for copying the work or disseminating it. In recent decades, copyright protection has been significantly expanded in scope and length in many countries around the world, including several developing countries.

But why do we have copyright protection? Well, some scholars conceive of copyright simply as a natural right of creators in return for their creative efforts; others favour an utilitarian approach, according to which the existence of copyright protection (and the prospect of financial rewards as a result of copyright protection) incentivises the creation of new works for the benefit of society at large. Without copyright protection, so the argument goes, fewer learning materials would exist and those that would exist would be of lower quality. This said, a growing number of national and international stakeholders voices concerns that these potential benefits are outweighed by the disadvantages brought about by restricting access to and use of learning and other knowledge materials the way copyright does, i.e. through granting a limited monopoly to copyrights holders and by creating a default all-rights-reserved situation.

Regardless of what theory for the justification of copyright they favour, however, all stakeholders agree that some uses of copyright protected materials should be permission-free, particularly in the realm of education. Typically, it is by way of so-called copyright exceptions and limitations that this is achieved. Simply put, copyright exceptions and limitations curtail the exclusive rights assigned by copyright law to the copyright holder to allow selected uses of copyright protected materials that are considered to be in the public interest. However, in many developing countries, the current set of copyright exceptions and limitations, particularly in relation to educational uses of copyright protected materials, are vague, fragmentary and often outdated. The use of modern technologies, for example in distance education, remains largely unconsidered. Detailed and clear provisions for uses by libraries, archives, educators, learners and sensory-disabled persons are generally lacking.

It does therefore not come as a surprise that a recently completed research project, the African Copyright and Access to Knowledge (ACA2K) project (www.aca2k.org), found that access to learning materials in the eight African study countries is chiefly obtained by way of copyright infringement. The project concluded: "Evidence from the study countries strongly suggests that the copyright environment can be improved by legal reforms that make copyright more flexible and suitable to local realities. Paradoxically, less restrictive laws could provide more effective protection. Less restrictive laws would enable entire segments of the population currently operating outside of the copyright system altogether to comply with reasonably limited, realistic rules. This could, in turn, increase awareness of and respect for, the concept of copyright, compounding in the longer term to bolster the effectiveness of the system for all stakeholders."

This week we would like you to discuss whether current copyright laws are indeed a stumbling block for education in developing countries in that they hamper access to learning and other knowledge materials. How could the situation be improved? Could open licences – such as Creative Commons licences (www.creativecommons.org) – be a solution for increasing learning material access?