

Top down and bottom up approaches for providing access to learning materials in the global South

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Introduction

Last two decades intellectual property regime became one of the most harmonised law. This unification has been called to promote technology innovation and economic growth.

However, for many developing countries, intellectual property regulation has created an adverse effect and impinge different human rights, such as the right health or education. The issue becomes an agenda for many international forums among governments, academics, NGOs and grassroots movements.

It is widely agreed that education plays an essential role in the development, and many studies showed that access to learning materials is an important point in the full realisation of the right to education. Production and distribution of the educational resources mostly conflict with international Copyright Law presented by the Berne Convention and the TRIPS Agreement.

The study mostly focuses on approaches which should improve access to learning materials as indispensable and most vital premises for full realisation the right to education. Different sites promote various of methods: top-down and bottom-up, for overcoming hurdles created by the copyright regime.

The aim of the study is to outline different approaches called to promote better access to educational materials and consider the most noticeable benefits and drawbacks. I believe that approach based on wide grassroots movement is more sustainable for future human development than top-down approaches based on interpretation the existing copyright laws. Therefore, here I will argue in favour of a bottom-up ways for overcoming the copyright obstacles in the access to knowledge.

The method “from below”

Different existing solutions for overcoming will be elaborated and generalised in two groups. The first one considers the top-down way and the second one is an approach “from below”

(Chon 2007). On different examples and justifications here will be demonstrated fault of existing legal provision and benefits of social practices which defeat current copyright hindrances.

By Ramcharan, there is no one size fitting all countries in their law-making policy; that means that states do not approved all laws for every possible case but their specific needs. He writes, “[h]istorically, each country adopted its legislation to suit their vital concerns and levels of development” (Ramcharan 2013, p.65). And he continues that in the case of “access to information that is essential to education, such as textbooks crucial for the academic achievement of nation's schoolchildren has become more difficult as a result of heightened copyright protection”. As we considered in the previous parts, copyright tends to create harmonised legislation which is the same for all, especially in part establishing minimum standards for protection copyrighted works.

Forsyth reveals bottom-up and top-down approaches through principal focus. If in the bottom-up approach such as the user’s needs become in the centre, for example, affordability of the human development, in contrast, the top-down way concentrates attention on the compliance any capacity building initiatives with existing intellectual property regime (Forsyth 2015, p.96).

Chon argues that the top-down approach takes as a ground the current IP regulation which mostly reflects the needs of IP-rich countries (as we discussed it is the US and the UK) and keeps "radical inequality in a globalised trade system". For, example, the typical top-down approach are foreign direct investment, licensing, and technology transfer (Chon 2007, pp.210-213). This perspective significantly reduce possible strategies relating to "human development needs such as education" for both countries from the South and the North. Therefore, to develop IP policy "from below" which will be linked to "distributive justice" and cover broader interests for policymaking for developing as well as for developed countries means a more sustainable way of changing current imbalance in knowledge and money flows (Chon 2007, p.205).

Chon believes that way "from below ... can extend the original linkage between trade and intellectual property even further to human development" as distributive justice helps to balance IP and development needs. Thus, this interconnection can spread "access to educational materials for development needs." (Chon 2007, p.206).

Chon points out that the global IP regime creating regulation for technology transfer is not in favour of the South countries needs. She writes, "[f]ragmented regulatory system leads to glaring omissions in the production and distribution of public goods" (research and development); therefore, many of education related goods issues are neglected because they are mostly concentrated in the "poor or non-markets" (Chon 2007, p.210).

In contrast, IP from below highlights attention on: firstly, "groups and individuals with relatively less voice and representation in formal legal structures", secondly, gender, race, class, and nationality issues including oppression, and, thirdly, "non-elite users and consumers of knowledge goods within both developed and developing countries" (Chon 2007, p.214).

Top-down method: an illusion or a probable solution?

Blanket licence

The blanket licence is a type of licence provided by collecting societies for broad access to a set of different content. How does it work? For example, such collecting society as a reproduction rights organisation (RRO) makes contracts with many right holders and authors of learning materials (books, textbooks, media content). Thus, the organisation has right to collect a fee from a use of any work on which this organisation has a contract; and after it passes the fee to owners of copyright. It gives an opportunity for different clients just purchase one licence and use it for all works which it covers, on the one hand. Right holders and individual authors do not need to make negotiation with all set of interested users of their content, on the other. At first glance, the process should accelerate the exchange of knowledge and help in such cases as creation course packs for students. But not all glitter is gold.

As Story's research shows, there are disadvantages in such licenses. To begin with, in developed country to make a printed copy of article legally using blanket licence costs around 8-10 USD what is unaffordable for libraries in underdeveloped countries (Story 2006). The second drawback of the licences that they are more focus on tertiary institutions and do not refer to secondary and primary education in the South. Another obstacle for developing countries the blanket license has tight coverage of different content types, which are essential for creating course packs for students (Story 2006, pp.43-44). For example, it can be photocopied material and transient electronic copies; furthermore, the licence can have special conditions in what extent the material can be used. For instance, it can be copied only 10% or one article from a journal or one case study from a book. And finally, the usage is considered as commercial activity and includes 14 percent of Value-Added Tax (VAT) (Story 2006). Along with lines of Story, Forsyth adds that above mentioned obstacles increase transaction cost because of such schemes administration, especially, for many universities and libraries which have weak capacities for keeping the 'police' functions. In other words, to support enormous infrastructure as Copyright Licensing Agency (CLA) or the like¹ in the UK is too expensive for universities in the Pacific. She concludes that "blanket licence" in one university can exclude other universities in the region which are not in the net from enjoyment such licence policy, what creates disparity again (Forsyth 2015, p.99-100).

Story develops critiques that the RRO system in South Africa mostly collects money for foreign owners, that means that capital flees from the South towards the North continues and support the inferiority of the global South (Story 2006, p.42). Furthermore, Story points out the RROs focus more on "government-subsidized tertiary institutions and does not make much more effort in getting the private universities or corporate organisations on board as far as copyright clearance are concerned" (Story 2006, p.114).

¹The website Copyright and Schools (<http://www.copyrightandschools.org/>) show that event in the UK with well developed copyright infrastructure schools need to make agreements with ten different organization; and that is a result of policy to decline administrative burden on state school. It is worthy to note, that non-state (independent) school can use the benefits. Date of access: 23.05.2016

Fair use/dealing/practice

The idea of “fair” came from provisions in domestic copyright acts which based on international IP legislation relating to education and non-commercial use. Just several countries (the UK, US) have enough substantial provision of fair use or fair dealing. For example, the US use the rationale that teaching and scholarship have significant influence on society providing direct and indirect benefits through educated citizenry and dissemination knowledge; that is not a place where a market will stimulate "socially desirable transactions" (Chon 2007, p.237).

There is one more example from the South; the 2013 Copyright Act in the Cook Islands has several user-friendly provisions for educational purposes, such as students or educators can make a copy of books which are absent from local market or have unaffordable prices. Another exception gives teachers rights to use any electronic means in terms of education purposes (Forsyth 2015, p.95); however, the broad exceptions is not typical for most developing countries (Forsyth 2015, Chon 2007, Rens 2009, Story 2006).

Moreover, Shaheed notes inequality that some affluent countries, for example, the US has very well-developed fair use provisions for unlicensed “free use” in the education sphere. At the same time, most countries have very limited and restrictive rules which are very often uncertain and outdated for modern technologies (Shaheed 2015, p.16). Chon points out, discrimination in distribution more thoroughly showing the “fair use” doctrine in the US means that users do not need to pay for educational use, but for users from the South, they need to pay compensation for content owners even in “fair use” purposes. So, Chon following distributive justice claims that it needs to reshape existing bilateral and regional treaties and propose to expand the exceptions and limitations in respect of the cultural, historical and political context of the particular country (Chon 2007, p.235).

According to Forsyth’s observations shows although the Cook Islands, Fiji, Samoa, the Solomon Islands copyright laws have some exceptions relating to an education, they provide many vague concepts such as "fair dealing", "fair use", "short part", "short excerpt", "reasonable proportion". In the laws, the concepts usually have no explanations and

definitions. And, secondly, they are often interpreted in a restrictive manner because of fear of possible copyright infringement. Moreover, creating any “fair” provision expanding exceptions and limitations in favour of development these countries take the risk of enormous pressure from the international trade organisations because of "might be accused of being protectionist" (Forsyth 2015, p.94).

The Berne Convention Article 10(2) provides utilisation for teaching which compatible with “fair practice”, however, there is not any definition what the "fair practice" really means (Chon 2007, pp.237-238).

According to Rens, although publishers from the North insist that "fair practice" is a universal category, the special conditions (relative price, lack of sources, an absence of learning materials) in developing countries should be taken into consideration (Rens 2009, p.328). In fact, many countries from the South have no domestic institutional capacity to enact the “fair use” policy in the local copyright acts as well as implement this policy (Chon 2007, pp.237-238). Forsyth continues that existing exceptions in Berne Convention (Article 9, 10) and TRIPS (Article 9, 13) integrated into some “fair dealing” provision of domestic copyright acts are already outdated for current needs and technologies. Moreover, future examining of international copyright laws should turn attention that teaching and learning which play the crucial role in development can take place scarcity of resources (Forsyth 2015, p.92). In this line Rens thinks and claims that "[d]eveloping countries contexts and challenges require innovative exceptions and limitations" (Rens 2009, p.325).

From the human rights perspective, it is important to note that “fair dealing” is not a right, Ramcharan emphasises that they do not grant a right to work being used, “rather they simply state that infringement does not occur whilst availing of the limited exceptions provided” (Ramcharan 2013, p.66).

By Story, firstly, in terms of lack learning materials which can be used legally and freely the South countries should expand current “fair use”. In other words, “individual study” and “individual research” provisions do not make legal creating student course packs. Secondly,

the language describing the "fair dealing" is very complicated for non-lawyers, for example, teachers in primary or secondary school; it should be simplified (Story 2006, p.139).

Rens believes that "[a] comprehensive review of copyright law and regulation within SACU [(Southern African Customs Union)] suggests that, in the interest of access to learning materials, it is necessary to develop guidelines for fair practice which take into account the specific circumstances prevailing in developing countries and which acknowledge disparities among countries in the region". His survey findings suggest that fair dealing as a means of access to knowledge could be considerably enhanced by the introduction of clear, detailed, progressive provisions (Rens 2009, p.337).

Three-step test

There is one provision which called to extend exceptions and limitations on economic right owners. These provisions are contained in the Berne Treaty (Article 9(2)) and the TRIPS (Articles 13) Agreement. Article 13 of the TRIPS states,

"Members shall confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the interests of the rights holder".

Ideally, this three steps ("certain special cases", "do not conflict with normal exploitation", "do not unreasonably prejudice the interests of the right holder") somehow have to help in promotion access to learning materials.

Foster making the legal analysis on the test defines that positive solution means, firstly, an importance of interest or values which will be protected ("certain special case").

Undoubtedly, accordingly Foster, that education has higher priority for society than material interests of right holder. Furthermore, copyright has a strong implication to encourage creativity for the teaching purpose. Also, the TRIPS recognises necessity transfer of information that is a function of education. Secondly, access to the educational materials significantly contributes to education: "... making those materials available at a reduced cost

or for free to realise the goal of education in a state with depressed economy may be 'necessary'" ("do not conflict with normal exploitation"). And, thirdly, a trade impact of the measures "would be negligible in the situation of a depressed economy where the population does not have the ability to pay for educational materials" ("do not unreasonably prejudice the interests of the right holder") (Foster 2008, pp.304-305).

Sganga claims, human rights that based on the General Comments 17 interpretation of full realisation for the right to cultural participation (Article 15(1)) is necessary to rethink too much "trade-oriented" three-step test. Sganga argues that "normal exploitation" and "legitimate interest" "should be limited to the human rights core of author's rights". That means that human rights approach defines scope where author's rights can be affected. For example, any "States parties' obligations concerning the rights to food, health and education, as well as the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications" will comply with the Article 13 of the TRIPS. The principal balancing need should be done in the first step "certain special cases" (Sganga 2015, p.572-573).

Chon promotes development ground for three-step test interpretation. She believes the Article 13 of the TRIPS and Article 9(2) of the Berne Treaty provide for any possible the WTO dispute panels related to access to learning materials enough premises for implementation of the exceptions and limitations. Besides, these exceptions implemented in the domestic law will comply with three-step test provision in the spirit of Articles 7 and 8 (development goals) of the TRIPS (Chon 2007, p.243).

Further, Chon insists that in a situation of conflict between a "clearly defined" educational exceptions and the TRIPS Article 13, the educational exceptions will correspond with the first step ("certain special cases") in WTO dispute panel. If an educational exception is not "clearly defined" WTO panel should ask what is "the public policy purpose of the exception" and consideration of the educational exception should go broader than investigation "whether the exception is clearly defined". She concludes that "[u]nder a substantive equality principle, a decision maker should explicitly consider and defer to a developing country's stated policy of promoting education for development. This interpretive approach would contrast, again, with a differently weighted application of the three-step test toward exceptions of developed

countries and disputes between them over the scope of such exceptions" (Chon 2007, p.244). Continuing all these points of view Rens notes that southern African countries do not use in their domestic legislation "full advantage of the flexibilities provided by TRIPS" (Rens 2009, p.337).

Ramcharan argues that lack of certainty and omission of any "substantive guide as to which exceptions may qualify to meet the conditions set out in the various versions of the test". He continues that "[a]mbiguities and restrictiveness of the approach to exceptions under TRIPS have had the deterring effect on those developing countries aiming to devise new exceptions corresponding their individual socio-economic, cultural and technological level of development" (Ramcharan 2013, p.67). However, Foster shares a positive view on the lack of certainty in the Article 13 of the TRIPS because it can advance flexibility for adjustment the test for different requirements in various countries (Foster 2008, pp.301-302).

The Berne Appendix, compulsory licence and education

By Rens, there are at least four grounds for restriction of the copyright in the TRIPS Agreement. This provisions can mitigate mandatory copyright demands. To begin with, Article 8(2) stops all effects which "unreasonably restrain trade or adversely affect the international transfer of technology" Next, Article 9 of the Berne Treaty to provide translation opportunity. Thirdly, Berne Article 10(1) and 10(2) devoted quotation and teaching exceptions respectively. And, finally, every the WTO Member state can adopt "appropriate measures to prevent or control" abusive "licensing practices and conditions" adversely affecting on competition (Rens 2009, p.321).

Let's turn our attention to Article 10(2) as known as Bern Appendix concerning the study topic about educational provisions for developing countries. There are several questions: What is the scope of the Appendix? Who can enjoy its provision? And how does it work?

The Appendix can use just developing countries "only for the purpose of teaching, scholarship or research". The provision gives an opportunity to use compulsory licence by the government trusted entity for translation and reproduction of learning materials. However, the Appendix provide three-year waiting period from the date of the first publication of the

work before a translation licence may be issued. Moreover, if the translation has been done during the waiting period somewhere in the world, the translation permission will not be provided. For the reproduction licence, the waiting period is five years after a particular edition of the work. This duration is shorter for scientific work (three years) but longer for poetry, fiction, music or drama (seven years) (Helfer 2011, p.338-339).

In Helfer's opinion, although the Appendix called to facilitate educational initiatives, it is "quite confined and highly complex" because of long "waiting time" (three, five, seven years) and "grace period" which can prevent any activities for implementation compulsory license. (Helfer 2011, p.338-339) Also, commentators emphasise on useless the Appendix for developing countries (Story, 2006,2009; Chon 2007; Rens 2009). Why? The Berne Appendix does not overlay broadcasting and communication rights which are now profoundly important in education (Helfer 2011, p.338), for example, distant online education.

Gens stresses that his team doing the research in the Southern African Customs Union have not found any state's attempts to utilise the Appendix. And he concludes that the complex and precarious procedure failed because it does not help countries from the South to speed up and broad access to education (Rens 2009, p.323). It is still very often that textbooks are not available and suitable for such countries as Zambia in terms of transaction cost for education in the country. Primary and secondary school in a rural area is usually in the local languages, which are different from dominant. Students with disabilities have a similar issue for adopting the work on Braille. At the same time, Rens believes that compulsory licence could be in these cases an efficient solution (Rens 2009, p.308).

Other critique concentrates on a limited number of actors how can use compulsory licence. For example, it does not give an opportunity for teachers wanting to spread material among student without of compulsory license using a photocopier or the Internet do so. These very approaches would be very useful especially for distant education, libraries and research (Story 2006, p.140).

Story asks who can enjoy this Appendix. By Story, a compulsory license for translation book on local languages using Berne Appendix is problematic for many countries which is not fit

to “developing” size. Moreover, he emphasises that present "definition of what is 'developing country' is far too restrictive. For example, South Africa was excluded from the provision of the Appendix (Story 2002, p.137; Story 2006, p.134)

Even though, theoretically, under the Appendix developing state which does not have the capacity to produce materials can organise parallel import. However, narrow provisions of Berne can easily cut it off. Chon writes that parallel import can be prevented by domestic law, blocked by TRIPS plus agreements what makes the Berne Appendix useless for providing cheap books on the local market (Chon 2007, p.231).

Ramcharan analysing development potential of the Appendix notes that provisions provided for developing countries by Appendix 1971 are very complex for implementation and developing own publishing industries. Therefore, money flow continues to move toward affluent countries where the textbook publishing industry usually located, thereby rise disparity. Thus, the Appendix is not agreeable for the global South (Ramcharan 2013, p.66). In terms of the Appendix rigidity, Chon adds it creates structural barriers educational purposes and undermines local publishing industries and to the textbooks translation from the world's dominant language into minority languages" (Chon 2007, p.229).

Is it possible to use educational provisions for “public interest” or the Appendix remains a "technological anachronism" which reinforces the privileged position of publishers from the South (Story 2006, p.140).

Bottom-up method: Real Solutions

Informal economy

In this section, the bottom-up approach will be analysed. As Chon recognises, the approach from below pays more attention to “substantive reforms” of IP rather than on procedures. For example, in the case of AIDS disease, there exist a scarcity of drugs, and it is perhaps danger for society. IP from below will focus on involving in the issue grassroots social movements and NGOs and will stress on unequal access to patented medicine for minorities, children and

women rather than fit the problem to existing legal framework (Chon 2007, p.215). So, the bottom-up way relating to alternative economic practices in Africa will discover 'piracy' as a tool for fostering access to knowledge rather than demonise them.

Usually 'piracy' is considered as a business selling unauthorised copyright content like software, books, or media. As it was mentioned above, International Intellectual Property Alliance or United State Trade Representatives 301 Report call too much attention for loss of copyright holders usually marked level of 'piracy', but they do not implement any research about deprivation in education sphere or level of access to knowledge. It is important to note that in 19th and 20th centuries many developed country used 'piracy' as a tool for developing their industries (Story 2006, p.34).

Chow points out that 'piracy' is underestimated from a positive side and should be contemplated broader as a spillover with many positive consequences for societies such as knowledge production, dissemination and widening access to innovation for users in the South countries (Chon 2007, p.217).

Rens' study shows that the small photocopying businesses suffice people needs. For instance, in Makerere University (Uganda), copy shop cover students' demand in current course packs by supplying text for students as well as educators and solve cost and distribution issues in the conventional publishing sector (Rens 2009, p.303).

Open access movement

Forsyth very precisely reflects the ideology of Open Access:

"... free of charge to users, access is unlimited or largely unlimited by copyright restrictions (including licen[s]ing), the material is available in a variety of forms, including via internet, the full text is available and can be accessed by anyone with access to the internet, and can be used for any purpose by the person accessing it" (Forsyth 2015, p.102).

According to Story, Open Access movement promote "openness" as "the value that "should be endorsed consistently across all form of knowledge" (Story 2006, p.70). For instance,

corporate-owned scientific journals required authors to transfer all rights without any payments for an article even before it can be published. In many value-based aspects, it was a reason among scientists who want share knowledge, to bear new policy based on open access (Story 2009, p.20). There exists "drawback" in the open access. Conventional publishers insist that uncontrollable dissemination of scientific can destroy "peer reviewed" concept of private journals and thereby hampers scientific innovations (Story 2006, p.171).

There is a challenge for alternative content-making approach. For instance, University of Uganda (African Virtual University) terminated to buy materials for distance courses outside and focus on creation own. There appears the question: who will be an owner of new content? (Story 2006, pp.99-100).

One of the important steps in the open access history is access to knowledge movement was born from WIPO development Agenda consist of groups of academics and activists mostly based on developed country and focuses on the IP issues in the global South remarkably on improving an access to knowledge. The Declaration on Open Access includes the point that "open access enables education and use of scientific information by the public"; and it is worthy to consider this access as "a universal right" in the whole globe (Story 2006, p.171).

Story finds weak sides in the access to knowledge movement. The main critique that IP issues are inside the movement considered in "a traditional copyright lens, albeit a slightly more liberal and user-friendly version". In other words, many discussions appear around "fair use", "compulsory licence", "three steps test" regimes and use "traditional copyright legal narratives" and nothing about barrier for blind people, collecting societies administrative burden, distance learning (Story 2006, pp.162-163).

Forsyth research shows that there is readiness among local publisher (for example, in universities) who want to use open-licensed content and create textbook based on this in the Pacific region. She confidently says that domestic based printing industry can help to overcome price barrier and increase the relevance of content in the textbooks (Forsyth 2015, pp.106-108) what was proven in the informal economy part, however now it is supported by "copyright clearance" of content under open licence.

Forsyth points out, although open access prevents knowledge commodification through principles of sharing and gives Pacific countries necessary advances; however, there is a challenge within developing countries. Firstly, regional legislation is different; secondly, there are doubts that local writers will follow open access principles to share "own creative outputs" as well as government concerns about economic return from such activities (Forsyth 2015, p.108).

Creative Commons: strong and weak sites

The study shows that students of a college in Johannesburg have just two textbooks in the administration but no one more in the class. As a solution can be implemented open access licensed content. According to Rens, the strategy can significantly reduce the burden on education budgets in the South Africa; the same way can be carried out for providing free software, surely after the technical provision will be solved (Rens 2009, p.310).

Let's concentrate, firstly, on content-focused Creative Commons (CC) licence. Factually, this is a family from six licences which in different scope in author's choice can bestow some rights, but some of them keep for authors. For instance, all licences have attribution requirement; that means users of the works should mark an original author. One type can permit all means of usage, other only non-commercial utilisation or use without changes.

Last years open licence Creative Commons attained immense popularity especially for the work published on the internet. Now more than 1 billion creations (textbooks, scientific articles, pictures, websites, government databases) use Creative Commons. Moreover, this licence actively develops compatibility with other open licences, such as GNU General Public Licence for software. The main idea of the grassroots movement to foster "cultural commons" where everyone can access, share, edit knowledge products (Shaheed 2015, p.17).

Besides, CC has strong aspects are not only opportunity to use, change, reproduce and distribute free content, but also a legal instrument to defend these freedoms inside existing copyright laws. This moment has a drawback, for example, it promotes a copyright approach as the only way for incentive and distribution of creativity.

Creative Commons has disadvantages. Initially, in terms of their implementation in individualistic copyright paradigm (Story 2006), they define authorship for separate persons who makes a decision what CC licence choose with the message that "some rights reserved" not all. Even though in the legal text of the licence a licensor is defined "the individual(s) or entity(ies) granting rights under this Public License"², this scope shrinks the bottom-up way and an opportunity for alternative form of authorship who are not individual or legal personality (for example local, community or indigenous people).

Another weakness is that CC give only six choices what is very narrow grounds for using open access provisions broader. On the other hand, there is concerns about too complex structure in the vast set of tools. Thirdly, CC do not provide access to "already published works", in other words, for most works created by an employee ("work for hire") but not self-employed individuals. Next, that CC licence excludes creators who produce new work not motivated by copyright (for example, academics, in many communities in Asia or Africa, indigenous people around the globe). And the last drawback, CC can exacerbate copyright problems in the countries where the informal economy ('piracy') play a considerable role in the providing access to knowledge (for instance, India) by revitalization copyright ground for its existence (Story 2006, pp.168-170).

Besides, critics above, recent years some developing countries attain success in the growth of open access in the education system. For instance, Mexico could improve access to scientific journals. The Universidad Autónoma del Estado de México not only publish dissertations, presentations in the open repository but also provides 640 journals including 169 from Mexico on opens access ground. Another example from South Africa shows how a local social publisher prints textbooks licensed by Creative Commons for secondary school and disseminated millions of copies. And the third example from India is about children book (under Creative Commons) on eleven local languages and how multi-stakeholder publisher (convergence of non-profit, government, corporate sponsors) distributes millions of copies a year (Shaheed 2015, p.19). What is more, a grassroots initiative at the University of Cape

²Legal text of the Creative Common Licence Attribution Share-Alike 4.0 International
<https://creativecommons.org/licenses/by-sa/4.0/legalcode> Date of access: 04.05.2016

Town has organised a hub and develop learning materials like physics, chemistry, mathematics under open access premises (Rens 2009, p.311).

Free software. Technological transfer

Free software is another example of hacking copyrights “within the paradigm of copyright” (Story 2006, p.147) and promotion of real technological transfer.

Significant tensions for access to knowledge is proprietary software which in many emerged markets unaffordable and unable to customise it. Some countries like Uganda move its choice in favour of free open source software for public needs. The software allows for licence holders to access, study, modify and redistribute the software without limitations. These broad rights give opportunity not only reduce cost and customise the solution for local needs what stimulates domestic innovations but encourage interaction between government departments and agencies as well as "private/public cooperation" (Forsyth 2015, p.106), in other words, carry out the real technological transfer.

Why in the case cannot proprietary software performs “technological transfer”? Such software blocks any adaptation this technology for local needs and user can utilise "as is". This principle “as is” creates dependency on import technology and excludes the right to change this technology for translation, customization interface for specific tasks without owner’s permission (Story 2006, pp.213-214). Along the line of Story, Ramcharan argues that access to information (scientific knowledge and knowledge of technological advances) vital to the transfer of technology as well as for economic growth and poverty reduction (Ramcharan 2013, p.67-68).

And other important function of the free software that the resistance goes beyond of copyright paradigm (Story 2006, p.147) Story claims, that "free software is about more than cost. It's a matter of freedom, independence and local capacity"; and he underlines, just broad understanding through political economy lens opens the full potential of free software and open source "as a tool for economic liberation" (Story 2006, p.166).

More possible strategies

There are many different bottom-up and mixed strategies which reflect countries needs for learning materials. One of them is public domain. "Public domain" is a concept in the current copyright defining all creation for which copyright protection has already expired. In a broader sense, public domain means all work which can be used, changed, copied and redistributed freely, without one's permission. Helfer recommends that developing countries can use "public domain" way for bypassing the copyright hurdles. Initially, a state can seek or create analogues of learning materials which describe the same methods, formulas, ideas in the public domain because copyright does not protect it. Next, the country can use an approach "work for hire" with a single fee for a creator and place the product in public domain, that give chances for other publishers to reproduce this creation without licence fee and enormous transaction cost (Helfer 2011, p.359). However, Story does not agree that this way will be so simple. He sceptically notes that public domain within copyright law is not a useful tool for promoting access to teaching materials. Firstly, there are number ways to hook free content to the "distribution network", for example, making a film based on the public domain materials and any further use of the material protected by copyright. Moreover, public domain for the global South is tremendously thinner than for scientists from the affluent countries (Story 2009, p.37).

In many countries, copyright law uses in its title "author's rights" construction that misleads non-lawyers. For example, if the non-specialist will read that, as Ramcharan argues that it is necessary to make a balance between "author's exclusive rights over his work and the need to access to information" (Ramcharan 2013, p.65). It is important to note that in many cases the owner of the copyright cannot be an author, but legal entity including corporations, companies and other non-individuals. There is one more misleading provided by Foster, "TRIPS incorporates Berne, except for moral rights, so it protects what amounts to means of achieving the material interest of authors" (bolded by me) (Foster 2008, p.301). All the point creates an impression that the copyright law defends authors. The separation of authors and rights holders provoked an initiative in Venezuela which focused on authors' rights which belong to "natural persons, the composers, the writers, the interpreters, the artists, and performers." Where the companies will be expelled from an enjoyment of "any human right

like authorship." (Story 2006, p.155). Sganga offers that is necessary to include three categories in the further "copyright reform in order to restore a proper balance between authors' private interest, individual human rights and public needs, and proposed different solutions to tackle their often problematic interplay". Authors here means individuals who create new content (Sganga 2015, p.575).

Some theorists and activist argue that the main aim to change this situation is to change intellectual property international and regional agreements like TRIPS-plus. Regarding a lack of adaptability, history of copyright regulation demonstrated that the consensus is very improbable and "[t]he more realistic solution is political pressure through the international community directed toward those suggested that attempt to gain TRIPS-plus protection in the developing states" (Foster 2008, p.304). Political pressure can be both from civil society or state if it relevantly considers the existing needs of the citizens. However, in many countries, as Chon emphasises domestic governments cannot reflect the public interest, so, the approach from below posits social movements and non-governmental organisations as relevant legal actors who can play a significant role in the changing the copyright (Chon 2007, p.215). And Story develops the civic way, where public protests, marches, street theatres, all types of civil disobedience direct actions can be applicable for such aim. Furthermore, civil society can shape the discussion and use human rights approaches beyond of "piracy of intellectual property rights". And the last, all strategy should base on activists integration "the south with the north, local with global, and developed with developing" for further mobilisation and resisting copyright (Story 2006, p.174).

To sum up, using a combination of strategies it is possible to reshape copyright more fitted to the "from below" approach. Firstly, a government in the developing countries can mitigate³ the harshest consequence of current IP agreements⁴. Next, a social movement can inform the public how the neoliberal harmonisation including IP can damage creation and indigenous

³The visible example is The Commonwealth of Learning initiative. The intergovernmental organisation fosters any open access initiatives for open learning, distance education knowledge, resource and technologies. The movement includes mostly little Island countries and countries from the South (exceptions, Canada and the UK) (Forsyth 2015, p.102,104).

⁴ The African Group of WIPO in 2014 prepared limitations and exceptions to libraries, archives, educational, teaching and research institutions in the spirit of Marrakesh Treaty (2013) while developed countries are against this. (Forsyth 2015, p.101).

culture. Further, scholars can develop alternative views and theory to intellectual property, for example, through collective authorship or rethink the nature of creation. Fourthly, to stimulate sharing culture as a regular practice for a majority of people is vital. Finally, the use different from intellectual property language and approach based on user's rights and rethink the concept of 'piracy', place of traditional knowledge⁵ there can develop a new understanding of humankind heritage and original authorships (Story 2006, pp.147-148).

Conclusion

The aim of the research was to explore different approaches for enhancement access to learning materials inside or outside the international copyright regime. Two significant ways were elaborated and discussed in order to think viable solutions for developing countries. On the one hand, top-down approach demonstrates rigidity to individual needs of countries in the global South; and it keeps the existing inequality in the knowledge flow toward the North. Meanwhile, on the other hand, bottom-up approach showed flexibility and better sustainability, because it suffices needs of different countries including developed. The scope of the study consider a limited number of methods, and it can be expanded, for example, on collective authorships regarding new ways for creating intellectual educational goods and promoting better access to learning and teaching materials. The second point, the research can help activists, NGOs and policy makers thoroughly understand legal and social grounds for further discussion about reform of copyright in particular country of the South.

⁵ The Declaration of Shamans on Intellectual Property states that it is necessary "[r]esisting commodification and attempting to retain access to knowledge as a human right and not a commercial right." (Story 2006, p.160).

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