



WIPO Information Session on
the Impact of the COVID-19 Pandemic
on the Copyright Ecosystem

Case studies submitted by EIFL

May 2022

Introduction

On 9 May 2022, WIPO (the World Intellectual Property Organization) held an [Information Session on the Impact of the COVID-19 Pandemic on the Copyright Ecosystem](#) to explore the impact on the cultural, creative and educational ecosystem, including copyright, related rights, and limitations and exceptions.

For the information session, EIFL submitted examples of the impact of COVID-19 on the work of libraries in partner countries, including Kenya, Malawi, South Africa, Uganda and Zimbabwe. Some examples were included in WIPO's Study, [“The impact of the COVID-19 pandemic on creative industries, cultural institutions, education and research”](#). The examples show that in times of a global emergency, libraries and educators need clear rights backed by law. Countries with good exceptions for online uses were, in general, better prepared to ensure continuity of learning and research during the pandemic, than those with no or more restrictive provisions.

Territory - Global

Description

Frontiers, a leading Open Access Publisher and Open Science Platform, conducted a survey of more than 25,000 academics representing diverse countries, roles, and areas of research to gauge the impact of the COVID-19 pandemic on the international scientific community. The survey found that about 20% of researchers globally, and over 30% of researchers in South America report that COVID has completely altered or halted their work. (Copyright exceptions in South America are among the most restrictive). As a result of the pandemic, 44% of respondents are more likely to publish in an open access journal; 45% of respondents will consider sharing their data in the future, with those most likely in Mexico, Chile, India and Brazil, and 29% of respondents are more likely to deposit their work on a n open access preprint server, including almost half of the researchers in India and China. The survey concludes, "Science saves lives. And open science will get us there faster."

Key lessons

The COVID-19 pandemic has highlighted the benefits of open science, cooperation among researchers and rapid dissemination of information. Copyright laws and policies should accommodate the drive towards open science through the adoption of exceptions that enable sharing and re-use of data and research results, including across borders. In November 2021, UNESCO member states adopted a Recommendation on Open Science. The Recommendation stresses the importance of exceptions to copyright and other intellectual property (IP) rights for research and educational uses that allow distribution and re -use of protected material (including derivatives), and the role of existing flexibilities in the IP system that support and promote open science. WIPO should work with UNESCO to help implement these recommendations.

Further reading

1. Matías Jackson Bertón, Text and Data Mining Exception in South America: A Way to Foster AI Development in the Region, GRUR International, 2021; [Link here](#)
2. Flynn, Sean; Palmedo, Michael; Izquierdo, Andrés. "Research Exceptions in Comparative Copyright Law" (2021) PIJIP/TLS Research Paper Series no. 72: [Link here](#)
3. UNESCO Recommendation on Open Science (2021): [Link here](#)

Territory - Global

Description

At the start of the pandemic, the International Coalition of Library Consortia (ICOLC) requested publishers to temporarily lift certain restrictions on the use of electronic resources contained in e-resource licences. For example, to lift campus-only access so that teaching activities could continue remotely during building closures; waive limits on the number of simultaneous users to accommodate spikes in online usage; lift any contractual restrictions on photocopying limits to help libraries assist students in completing assignments. Over 115 national and international publishers generously responded e.g. by providing access to additional content for existing customers (including textbooks), making certain COVID-19 content openly available, lifting paywalls, or allowing remote access (if not already permitted). ICOLC kept track of the expanded access that was set to expire at a variety of times, depending on the publisher and the territory e.g. by a certain date, the end of the semester, or when the public health emergency ends. By November 2020, the ICOLC tracker showed that 48% of the concessions had expired, while others continued on a rolling basis. While the concessions were welcome and appreciated, in times of a global emergency, libraries should not have to rely on goodwill to enable the continuation of education.

Rolling lockdowns, a feature of the pandemic, don't easily lend themselves to temporary licensing solutions: in June 2020, the majority of publishers in the ICOLC tracker had yet to determine when the concessions would end. Such uncertainties do not facilitate the necessary communication and planning needed to support faculty and students working remotely.

Key lessons

In times of a global emergency, libraries need clear rights backed by law that enable consistent, uniform access to copyright protected content within online teaching and learning environments. While voluntary publisher concessions during the pandemic were welcome and appreciated, libraries should not have to rely on goodwill, publisher generosity or lack of enforcement to facilitate the continuation of education and research. "A copyright law that can work in practice only if unenforced is not a sound copyright law. It is a law that would create uncertainty, would bring about selective enforcement, and, if widely unenforced, would breed disrespect for copyright law itself". *Kirtsaeng v. John Wiley & Sons, Inc.*

Further reading

1. Statement on the Global COVID-19 Pandemic and Its Impact on Library Services and Resources: [Link here](#).
2. ICOLC COVID19 Complimentary Expanded Access Specifics: https://docs.google.com/spreadsheets/d/1xiNIF9P00tO-5IGKi3v4S413iujYCM5QJoKUG19a_Y/edit#gid=2027816149

Territory - Kenya

Description

A library professor from Kenya reports: During the Covid pandemic lockdowns, teaching and learning came to a halt in many centres of learning in Africa. Libraries too, closed to prevent the spread of the disease. For those that opted to continue, the programmes had to move to distance or e- learning. Access to physical or in-person library services was suspended. Libraries resorted to serving the users through e-resources (for those that could afford). Where the e-resources were not available, libraries had to photocopy or scan the printed materials for the users. Digitizing information resources often required a reproduction fee or license. Many libraries did not have the ability to raise this money. Copyright exceptions and limitations in many countries do not cover distance learning, reproducing course packs, and inter -library lending. These services would have been very useful during the pandemic period. In view of copyright restrictions, many libraries were not able to support teaching and learning during the pandemic period.

Key lessons

Based on the experience of the Covid pandemic, efforts should be made to re -visit copyright exceptions and limitations in national laws to cover future calamities. Added to the above is lack of knowledge of copyright exceptions and limitations by librarians, many of whom think they have to pay reproduction fees whenever they are harassed by RROs. Librarians need guidance and support on the use of copyright exceptions from governments and WIPO

Further reading

N/A

Territory - Malawi

Description

During COVID lockdowns, universities in Malawi switched to Zoom for online teaching and used Moodle, the open source learning management system, to manage the courses. When restrictions were eased, university libraries aimed to operate 24 hours a day to cater for the reduced numbers allowed in the library. Use of physical resources was limited because returned books were placed in quarantine before they could be re-issued. Libraries relied heavily on access to e-resources and needed subscriptions in more subjects. A major problem was the lack of access to electronic publications outside the library. MALICO tried to negotiate 'remote access', and some publishers granted remote access, but others did not. In addition, some publishers provided access to abstracts instead of the whole articles that were needed. Librarians tried to source alternative materials, such as open access resources.

Key lessons

Some e-resource licences did not provide the remote access that was needed during COVID lockdowns when students and faculty had to study and learn off-campus. Some publishers did not grant access to the full-text resources that were needed in these circumstances. The key lesson is that librarians should ramp up efforts to identify, encourage and promote open access and open educational resources as alternatives.

Further reading

N/A

Territory – South Africa

Description

A librarian in South Africa reports: In March 2020, South Africa went into level 5 COVID -19 lockdown. All libraries, archives and other information services closed overnight. Lecturers and students had to quantum leap into remote teaching and learning mode. Lecturers had to suddenly scan book chapters, articles, and other teaching material from personal or borrowed copies onto e-learning platforms. Unable to access a hard-copy book in her institution's library, one lecturer asked the publisher for permission to upload sections of the e-book version onto her institution's password-protected e-learning platform. Access was required for registered students for that course only, for a 6-week period. Her request was declined on the basis that the copying was not permitted under the e-resource licence. Urgently needing the content, she requested the collective management organisation (CMO) for assistance. The CMO declined the request saying it could not assist if the publisher had already declined permission. Other lecturers had similar experiences with other works. Publishers advised that students needed to purchase e-book versions (despite high prices and limited study grants). Students had already paid for the printed versions that unfortunately, were left behind in their rooms when their residences were evacuated without warning on lockdown.

There were often no appropriate substitutions for the works, so lecturers had to seek alternative, less relevant material for teaching purposes.

Key lessons

Lecturers wasted time trying to get permission only to be refused, causing stress for lecturers and students and delays in getting access to suitable content. Alternative material had to quickly be sourced. Since rightsholders would not suffer monetary loss or competition in the market, it is hard to understand why lecturers were not allowed to make the relevant content accessible to their students for educational purposes during lockdown. In order to remedy this situation, an appropriate copyright exception is needed, especially for emergency situations such as the pandemic lockdowns.

Further reading

1. How SA's copyright bill would benefit citizens during COVID. COVID-19 highlights how citizens would have benefitted if the new copyright bill had been enacted: [Link here](#)

Territory – South Africa

Description

A librarian in South Africa reports: As part of their literacy programmes, public librarians in South Africa offer face-to-face reading sessions, where the librarian reads extracts from various library books to children to increase interest in reading and to improve literacy and comprehension. During the COVID-19 lockdown, all libraries were closed, making this important activity impossible. The only way librarians could continue providing this valuable service during the lockdown was to read onto YouTube and other e-platforms. This, unfortunately, is not permitted under the copyright law. On enquiring how to continue these readings online, some librarians were told by the collective management organization (CMO) that they would need prior permission and would have to pay copyright costs. Save for having to quickly find money in the middle of a pandemic, or using alternative material, what were these librarians supposed to do? With limited budgets, this option was not feasible. The alternative was to read from old out-of-copyright books or use open access books. Some librarians managed to get permission directly from authors who were only too happy for their works to be read online.

Key lessons

Since this reading aloud activity is permitted in the analogue world, it should also extend to the digital space. Regardless of the mode of delivery, whether face-to-face or in the digital space, this activity should be allowed via an appropriate copyright exception. Ironically, new authors were the most prejudiced in this situation where copyright law was a barrier to promoting their works through online reading sessions. Access to new or popular titles was hampered, and in the process works by new authors could not be used.

Further reading

N/A

Territory – South Africa

Description

A librarian in South Africa reports: In general, database and e-book licences were problematic during COVID. A few local publishers made concessions for expanded access during COVID and this was welcomed, but the concessions were limited. For example, two SA law databases lifted access restrictions for legal practitioners during lockdown, but not for academic institutions. International publishers also offered temporary concessions, for example, adding additional content for free to existing subscriptions, but the concessions often did not apply in South Africa, or they were discipline-specific and not always relevant to students and researchers working in other subject areas. Access to e-books was problematic for libraries in the lockdown period. Most books that are considered textbooks are simply not available for purchase by libraries in electronic format. For example, two South African textbook providers do not allow libraries to purchase e-books, and will only sell directly to individual lecturers or students. But e-book prices in South Africa are unaffordable for many individuals. Where libraries are allowed to purchase e-books, prices range from US\$50 to over US\$1,000

Key lessons

An appropriate copyright exception allowing printed and electronic course packs to be made for non-commercial, educational purposes would have been extremely helpful. Regarding the conditions of e-licences, some publishers do allow articles on their e-databases to be shared via printed and/or electronic course packs. However, these conditions are not always made public to the database users. It would be very helpful if publishers could put conspicuous notices on their databases setting out what is allowed e.g. that printed and/or electronic course packs are permitted. Whilst lecturers were hurriedly trying to prepare teaching materials for their students, not all of them were aware of the licence conditions so they sometimes applied for permission and paid copyright fees for material that essentially was already permitted in the licence. Having this information online would have saved a lot of time for lecturers during the lockdown who had to engage in copyright clearances before placing material on their e-learning platforms and having to pay copyright fees for them. This was a duplication of costs and effort. It would also be helpful for the future if all publishers allowed printed and/or electronic course packs to be provided to licensees' students, via password-protected e-learning platforms.

Further reading

N/A

Territory – South Africa

Description

A librarian in South Africa reports: The current South African copyright law allows a limited number of copies of single journal articles or extracts from books to be handed out to each student in a classroom situation, without permission. To circulate the same material to the same students via the institution's password-protected e-learning platform, the local collective management organisation (CMO) insisted on copyright clearance and payment of the appropriate licence fees. Although the relevant CMO offered assistance in clearing material more quickly during the lockdown period, the fees for copying were not reduced or waived. Whilst the licences allowed students to use the online resources directly themselves, access was problematic for students as mobile data costs were unaffordable. If students had been able to access the uploaded material via the institution's e-learning platform, access costs would have been free because Vodacom, a local mobile telecoms company, generously provided students with a free data package during the lockdown period. This free data package would have removed problems with data costs, and enabled students to access the articles needed for their online studies

Key lessons

As libraries and other information services were closed at short notice, lecturers were suddenly forced to find suitable course material for their students for online teaching. It would have been very helpful if copyright owners and the collective management organizations could have waived or reduced copyright fees during the lockdown period, matching the goodwill shown by other industry sectors, in this case, telecoms. It would have avoided the extra administration of having to apply for copyright clearance, and trying to find funds for copyright fees during a difficult and unprecedented time for institutions and individuals.

Further reading

1. COVID-19 turns learning into costly data exercise: [Link here](#)

Territory – South Africa

Description

A leading South African copyright scholar, Professor Caroline Ncube, wrote of the time during the COVID-19 pandemic*: The HE sector in South Africa found itself pressed to provide quick alternatives to face-to-face teaching. The easiest alternative, open educational resources (OER) that are openly licensed for such use, were not sufficient because of a lack of OER resources relevant across all subjects and fields taught in HE in South Africa. During the pandemic, HE institutions therefore had to turn to existing copyright protected materials. Such uses have to be lawful in terms of an existing licence or a limitation or exception in the copyright law. An examination of the standard terms in an existing blanket licence concluded with most HE institutions in South Africa, shows that the necessary digitization and distribution of learning materials in an emergency remote teaching scenario is not permitted. Ideally limitations and exceptions should enable such emergency uses, and the pending reforms in the Copyright Amendment Bill (CAB) would have gone some way in alleviating the situation “through modernized limitations and exceptions, more suited to online contexts”.

Key lessons

Professor Ncube states that the need to revise copyright law to meet digital contexts has been exacerbated by the pandemic that forced libraries and HE institutions to close their buildings and to switch to remote delivery of their services. In addition, copyright law “is not supportive of emergency remote teaching in its current form and reform is urgently needed”. Further, there are no suitable limitations and exceptions in South Africa’s copyright law to meet emergency demands and existing licensing agreements were not equal to the task. Copyright law is not supportive of emergency remote teaching in its current form and reform is urgently needed. “Internationally, it is accepted that copyright limitations and exceptions are in need of reform and that WIPO’s Standing Committee on Copyright and Related Rights (SCCR) has devoted much attention to this matter including the changes that are required for contemporary digital contexts”.

Further reading

1. *Source: The musings of a copyright scholar working in South Africa: is Copyright Law supportive of emergency remote teaching? By Caroline Ncube, Afronomics Law, 13 May 2020, [Link here](#)

Territory – Uganda

Description

A librarian in an academic institution in Uganda providing legal education reports that teaching continued online during the pandemic. Students were largely dependent on the library for study materials during this time. The library could provide access to the legislation of Uganda as well as local cases (reported and unreported) and foreign case law mainly from law reports, by scanning the needed material and emailing it to students and teachers. This is because legislative documents are mainly either in the public domain or from public institutions, such as the courts of law, government agencies e.g. Ministry of Justice and Constitutional Affairs, Uganda Law Reform Commission and JLOS, or available under a library subscription. However, it wasn't possible to provide this service for textbooks because of copyright concerns and the possible consequences of being exposed to claims of copyright infringement. As a result, the library unfortunately ended up denying students their textbook information during the pandemic when the institution was closed.

Uganda's National Curriculum Development Centre developed a range of home schooling materials for primary and secondary levels to support continuity of learning during the lockdown caused by the COVID-19 pandemic. Use of the materials for non-commercial purposes was permitted, enabling public libraries to support education recovery during the world's longest COVID-19 schools lockdown.

Key lessons

Copyright law was a determining factor in the provision of learning materials during lockdown, either enabling or restricting access. Librarians made full use of material in the public domain, from public institutions or where permissions for re-use were granted in order to provide essential learning materials or to develop vital new services for students to continue their education during lockdown and to study online. The key lesson is that wide, legal access to information is a catalyst for libraries and other institutions to develop innovative services in crisis situations, such as the COVID-19 pandemic, in order to support the continuation of education and learning.

Further reading

1. National Curriculum Development Centre: <https://www.ncdc.go.ug/>
2. Ugandan public library uses the internet and radio to support education recovery during the world's longest COVID-19 schools lockdown <https://www.eifl.net/eifl-in-action/education-recovery-during-covid-19-innovation-award>
3. World's longest education lockdown ends as Uganda's schools reopen <https://www.pbs.org/newshour/world/worlds-longest-education-lockdown-ends-as-ugandas-schools-reopen>

Territory – Zimbabwe

Description

Zimbabwe University Libraries Consortium (ZULC): During COVID-19 restrictions, universities were closed and the physical library was not accessible. Most students and faculty had to leave campus to return to their home towns or villages. The library suddenly relied on its electronic resources for all learning materials. The choice was more limited, but we did our best and quickly adapted. There was pressure for students to complete exams. Institutions had to sign licence agreements for e-resources to be accessed by users. Some e-resources restrictions created challenges e.g. some could only be viewed online, downloaded one page at a time, or could not be printed in hard copy, creating challenges especially for students in rural areas who did not have Internet access and those in towns had challenges with power cuts. Students who could not afford to buy data, or did not have the necessary equipment to access e-resources really needed this offline access. In addition, libraries provided online reference services through WhatsApp, email, website chat reference services. The inability to make print-outs also created problems for students with visual impairments, such as blind and those with albinism who needed alternate formats to read, such as large print or Braille.

Key lessons

During lock downs, libraries in Zimbabwe were creative in strengthening online services in universities, using technologies to enable remote access and promoting e-resources to university staff and students. In other words, educational institutions were encouraged to offer blended or hybrid teaching and learning cognizant of the fact that other institutions would not afford the technologies. Orientation and training on the use of e-resources was done online and this helped users to keep in touch with the library staff. Library staff members had to attend meetings online to keep themselves updated with current trends and technological development. Copyright laws and licences should allow users to be free to use both hard copies and e - resources to accommodate the particular needs and situation of students in Zimbabwe. Licences for e- resources should respect copyright exceptions and allow reasonable uses of material in educational settings.

Further reading

1. Digital tragedy: doing online teaching in Zimbabwe during the pandemic (article expands on the practical challenges described above): [Link here](#)
2. Varsity online learning continues: [Link here](#)
3. Students challenge 'exclusionary' university eLearning. 'Students from poor and rural backgrounds should not be unfairly discriminated!': [Link here](#)