

Abstract for ATRIP 2022 Conference

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Teaching and research-related exceptions in the time of the COVID-19 pandemic: Lessons for and from South Africa

Like other intellectual property rights, copyright law grants a bundle of exclusive rights while using dedicated limitations and exceptions to provide a much-needed balance between the interests of rights owners and those of the public. Amidst the crisis of the COVID-19 pandemic, the efficacy and effectiveness of this balance was severely tested across various intellectual property rights including copyright. As most, if not all of learning moved online and has at least in some form remained online, it became even more pertinent to address the question of how the public especially teachers and learners would have access to teaching material, public information and culture online. Within higher education in South Africa, higher institutions and other users of copyright continued to require a licence as they did in the hybrid or sometimes physical-only learning environment. In some cases, there were documents and papers issued to support the statement that certain limitations and exceptions applied to provide access to users without need for licence from copyright owners to avoid liability for copyright infringement.

Ideally, it should be possible for the current teaching and research-related limitations and exceptions to be interpreted and/or applied in a manner that enable use of copyright protected materials in situations such as that presented by the COVID-19 pandemic. But, there is uncertainty as to the scope of these exceptions mostly because judicial interpretation regarding their scope is rare and sometimes, non-existent. This paper takes stock of the teaching and research-related limitations and exceptions in South Africa and how they fared during the COVID-19 pandemic and its aftermath by exploring government and intergovernmental organisations action as well as practices of universities and non-governmental organizations in the promotion and demotion of these exceptions. Further, the paper offers recommendations on how these stakeholders can deploy their statutory mandates to better ensure that needed information is made available to all.