Book Review Symposium Introduction: The Right to Research in Africa - Exploring the Interface between Copyright and Human Rights

By:

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The Right to Research in Africa: Exploring the Interface between Copyright and Human Rights, a book authored by yours sincerely, was published by Springer Nature in 2023. The book examined international and regional human rights instruments to which African countries have subscribed, as well as those relevant to the African context, and the national bills of rights and constitutions in Africa with the aim of constructing an explicit right to research in Africa.

The imbalance existing within the African copyright ecosystem in relation to access to information for research and education became more prominent during the COVID-19 pandemic when teaching, learning and research via digital

and virtual learning platforms inevitably became the global reality. Learners and researchers in Africa were largely disadvantaged during the pandemic, and they continue to grapple with the challenges of accessing information owing largely to the protection of teaching and learning materials under copyright law . Indeed, access to information, which is necessary to actualise the right to science and culture, including authorial rights, the right to education, freedom of expression, and the right to property, continues to face a significant challenge by the exercise of copyright without a legal mechanism that properly balances copyright with the abovementioned human rights. To create the balance, therefore, there is a dire need for the recalibration of the African copyright system from the perspective of human rights law.

In view of the foregoing, the book advances the argument that the right to research is implicit in the rights to science and culture, especially when viewed from the perspectives of scientific research alone. However, research is not limited to scientific research and cultural activities. It includes other unorganised, every-day, kinds of research that are important to fulfil and promote the right to freedom of expression, rights to science and culture, right to education, and right to property guaranteed under international and regional instruments as well as national constitutional bills of rights in Africa. The core contents and obligations imposed by the right to science appears relevant mainly within the context of scientific research and cultural participation, and address the access to information issues for researchers, educators and libraries within those contexts. Even so, the right to science places an obligation on states to strike appropriate balance between the concerns of the public to access the information embedded in copyright works, and the interest of authors to benefit from the products of their creativity. States have sought to achieve this balance through the limitations and exceptions provided by national copyright regimes.

The book demonstrates that the approach of seeking to create the balance within copyright systems alone has over time proven ineffective to resolve the challenge that copyright poses to access to information. Also, the right to science and culture is broad and cannot match the specific protection that copyright enjoys under copyright and human rights law; and, as such, cannot address the concerns of researchers, educators and libraries as users of copyright works. Therefore, an explicit right to research, distilled and framed

from the broad rights to science and culture, freedom of expression, education, and property, is needed to specifically address the copyright challenges to access to information in the African context.

In his foreword, Professor Julio Gaitán Bohórquez, commended the book as a clear, pedagogical, and sufficient demonstration of “two manifestations of the tensions that cross the problem of contemporary inequality: first, that of the rights of the owner versus the rights of the citizens and, second, that of the aging dogmatic structures of intellectual property rights versus the emerging claims for the protection of human rights” (p VII). Noting that the “protection or guarantee of human rights often encounters obstacles in intellectual property law”, Professor Julio confirmed that the book is “an effort to update the necessary balance between intellectual property and the public interest, the demand for which is particularly urgent in our countries of the global South, precisely as a condition for our peoples to access many fundamental rights” (p VII).

This symposium brings together expert and critical reviews of the book from two outstanding scholars in the field of intellectual property and international human rights law: first, Ntando Sindane read Rahmatian’s uni-world, universalism and uniformity thesis into the book while critically reviewing its findings through the de-colonial lens. Secondly, Dr Eghosa Ekhator engages with the book from the perspectives of the enforceability of socio-economic rights under national constitutions in Africa.

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