CHAPTER TWO

SPECIAL ACCESS NEEDS OF DEVELOPING COUNTRIES AND THE IMPACT OF COPYRIGHT ON ACCESS TO EDUCATION

2.1. INTRODUCTION

To better appreciate the usefulness of copyright limitations and exceptions (flexibilities) for access to education, it is essential to understand the access needs of developing countries. In this chapter, we outline the different kinds of needs and demonstrate why developing countries have special access needs that require special exceptions. We also illustrate the role of copyright in access to education in developing countries. However, an understanding of the basic elements of education can help in appreciating the concerns of developing countries. We thus begin this chapter by outlining the pertinent elements of education and the importance of such elements in attaining quality education which can lead to development. The chapter highlights the relationship between intellectual property and development.

2.2. UNDERSTANDING THE PERTINENT ELEMENTS OF EDUCATION

There are various ways of defining education: by level, type or what it achieves. But it is difficult to capture what “education” encompasses in just a few words. In this study we are guided by definitions provided by human rights bodies. In doing so, we do not intend to address IP and education from a human rights perspective, but rather to demonstrate the grave implications of lack of access to education for an individual’s life.

The Committee on Economic, Social and Cultural Rights (CESCR), defines education in different ways. For example, education is defined in terms of what functional aim it serves or what it can help an individual accomplish. Accordingly, education is both a human right in itself and an indispensable means to realizing other human rights. Katarina Tomaševski, former Special Rapporteur on the right to education, has described

education as a multiplier. “[I]t is a multiplier in relation to other rights. It enhances all other human rights when guaranteed and forecloses the enjoyment of most, if not all, when denied.” Education enhances the realization of other human rights such as the right to food, the right to development, the right to health or the right to work. It overlaps with other human rights such as freedom of religion and the right to privacy. Education is an empowerment right because it provides the individual with the ability to claim one’s rights against the state.

From a development perspective, education is key to achieving many development goals. Indeed, developing countries have argued that because education is the key to achievements in other fields, it must be given priority in development programs. These elements serve to highlight the significance of education.

However, for education to have a multiplier impact, its quality is highly important. Indeed, the CESCR states, in relation to the child, that the education offered must be adequate in quality, relevant to the child and must promote the realization of the child’s other rights. Article 1 of the Convention on the Rights of the Child (CRC) defines a ‘child’ as every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. Unfortunately, the CESCR and CRC definitions exclude students at the university level in many developing countries, where university or tertiary education starts at the age of 19. It is the present author’s view that for education to achieve its aims, it should be relevant to the person learning at all levels of education, regardless of whether or not the person is considered a child or not. In this connection, it is relevant to inquire as to the aims and objectives of education. We provide a response to this below.

### 2.2.1. Aims and Objectives of Education

According to article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the main objective is to direct education to the full development of the human personality and sense of dignity. In relation to children, the Convention on the Rights of the Child outlines the aims of education as to develop the child’s personality, talents and mental and physical abilities to their fullest potential. Article 26(2) of the

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8. This is mainly the case in countries with a British background.
