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Copyright and fair use during pandemic

December 3, 2020 @ 12:05am



Study materials, such as textbooks and worksheets, must be made accessible on the Internet to facilitate online learning. - File pic

LETTERS: Malaysia, like many other countries, has opted for online distance learning in the face of social distancing caused by Covid-19. However, the shift to online learning has been met with less-than-promising results.

The pandemic has, instead, brought to light the staggering inequality in access to education in Malaysia, intensified by outmoded copyright policy predicated upon assumptions of pre-pandemic normalcy.

Worldwide, even though school closures have kept 90 per cent of all students out of school, 500 million students still cannot access online learning due to a lack of infrastructure

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learning due to a lack of infrastructure.

In Malaysia, a survey conducted by the Education Ministry found that 37 per cent of students did not have the required digital devices to access online learning.

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Even when students and teachers are able to communicate online, problems remain as copyrighted study materials leave many classrooms with inadequate access to teaching materials such as textbooks and

worksheets, which cannot be shared over the Internet without proper licensing.

This lack of educational materials will have a drastic impact on student education and will make it more difficult for them to pursue skilled professions in the future.

On a similar note, research academics who have limited access to libraries or other research materials will likely be hampered in their research activities.

One of the main problems faced by those in the education sector is the lack of access to legitimate educational resources.

This means that educational content is locked behind a paywall or that students and educators simply do not have any means of accessing ordinarily physical resources for education.

Otherwise, the materials may exist and be accessible to educators, but they may have no legal means of sharing them with students due to copyright restrictions or similar licensing problems.

Even though copyright exceptions exist for educational purposes, some educators may still find it difficult to fully abide by regulations when undertaking distance learning as students in different locations may come under the purview of different laws regarding fair use or fair dealing exceptions, which are likely to complicate the sharing of copyrighted material over the Internet.

Copyright is also an issue when talking about asynchronous (or pre-recorded) classes, where copyrighted materials contained therein are unlikely to be protected as fair dealing in the same way they would be in a face-to-face classroom setting.

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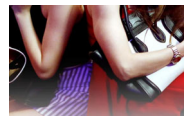
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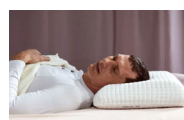
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In fact, fair dealing exceptions are often quite restrictive and only cover very limited scenarios such as use in a classroom or similar physical locations.

Therefore, there is a need for an international copyright policy that is robust, flexible and human-centred that is capable of ameliorating the worst of the pandemic as far as worldwide education is concerned.

Current copyright exceptions are too narrow to support blended or even online learning and are likely to place an inordinate burden on education policymakers formulating online educational regimes.

In seeking a better solution to the copyright policy, we can take heed of similar intellectual property provisions elsewhere such as the compulsory licensing provisions found in the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

Article 31 of the TRIPS Agreement allows governments to acquire licences for patents at a reasonable price from rights holders in order to manufacture patented products (such as medicine) in times of emergency.

Another useful platform is the Marrakesh Treaty, whereby cross-border exchange of books in formats useful for the visually impaired is allowed and supported.

While the benefits of a temporary copyright waiver or similar compulsory licensing scheme for copyright or cross-border exchange of copyright materials may be less direct, it is arguably essential in ensuring that the long-term development of a country, and effectively the sustainable development goals of the United Nations, are not stunted by Covid-19.

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