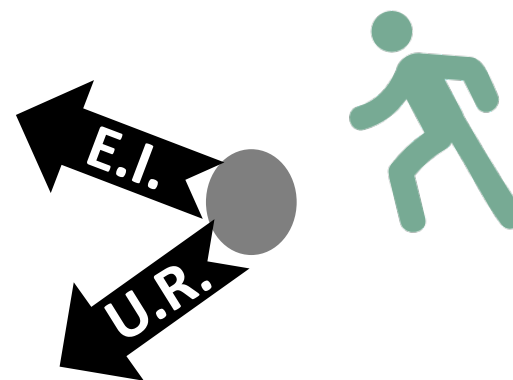
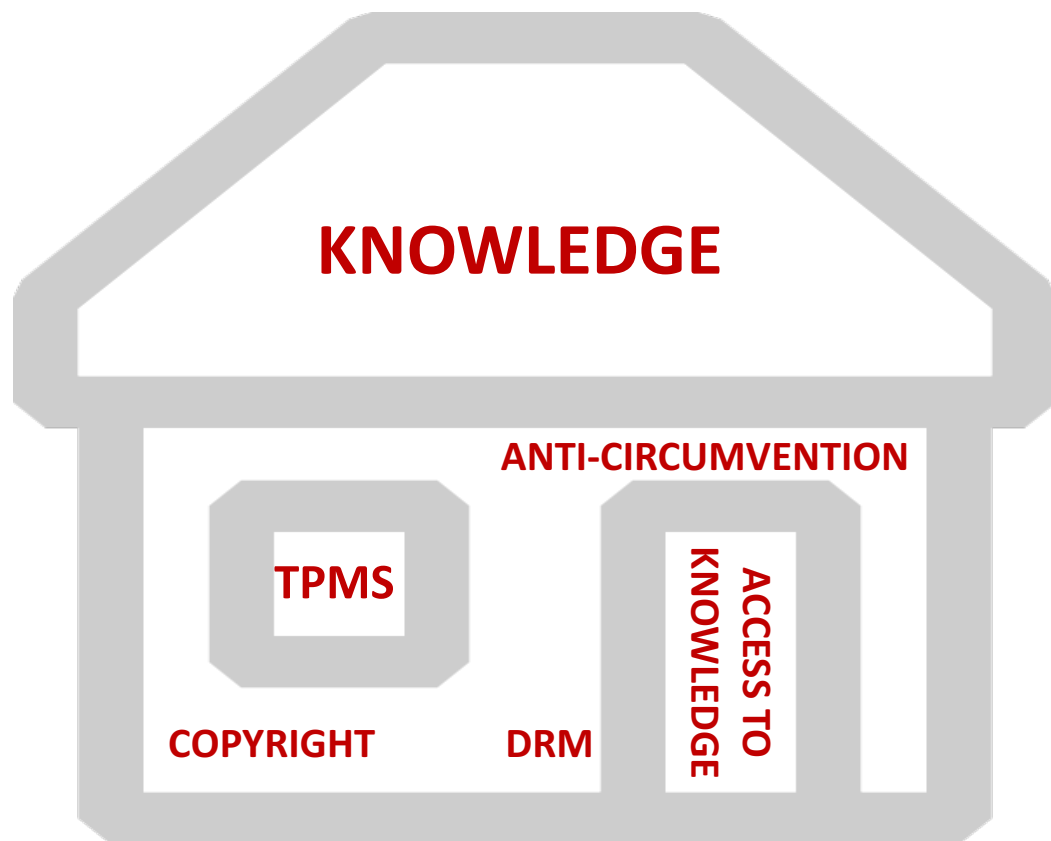


***"Reconciling the Right to Learn with
Copyright Protection in the Digital Age:
Limitations of Contemporary Copyright
Treaties"***

Presented by: Uchenna Felicia Ugwu, 18th May, 2017.

Access to Knowledge



Overview

- Learning in the digital age: characteristics and challenges
- Why does the right to learn have to be reconciled with copyrights?
- Reconciling copyright and the right to learn: the role of exemptions and limitations to copyright
- Critical analysis of relevant exceptions and limitations in current copyright and IP related treaties
- Conclusions and recommendations

Learning in the digital age

- Access to ICT a necessity, not an option, for learning (e.g. digital divide)
- Overlap between online and offline learning
- Information both a source and an asset
- Access constrained by the IPRs granted to few owners of technology such as digital databases, ICTs
- Access to knowledge constrained by technical measures such as DRM and TPMs

Contradictory nature of copyrights and the right to learn

Copyrights and related IPRs	Right to Learn
Exclusive right that restricts usage, access to, copying, distribution, and transmission of knowledge	Inclusive right that requires access to knowledge (A2K) by all
Focus on private individual economic interests	Focus on general social interests
Allows monopoly	Requires access by all, competition and equality of rights
Proprietary right	Fundamental human right
Individual property right	Collective commons
Expansive in nature, places rights of copyright holders, DRM and TPMs, above general public interests	Limits and balances IPRs with public interests
Compulsory rights that can be implemented: see TRIPS, WPPT, WCT, and DMCA	Aspirational, difficult to implement

Role of Exceptions and Limitations

- Checks on monopolistic copyright
- Balances competing interests (cf fair use, learning and research exceptions)
- Allows for flexible holistic interpretation
- Promotes future creativity (e.g India, 2001 copyright law exceptions)

Overview of Exceptions and Limitations in Contemporary IP Agreements

- Berne Convention: Articles 9.2 & 10.2
- TRIPS: Articles 9.1 & 13
- WCT: Articles 1.4, 10 & 11
- WPPT: Articles 16 & 18
- Exceptions optional and subject to national laws
- Adopts the three-step test
- Not to conflict with normal exploitation of IPRs
- Not unreasonably prejudice legitimate interests of author
- One size fits all/ straightjacket approach
- Subjects users rights to copyright owners rights
- Prioritizes economic interests of copyright holder over public rights like learning

Reconciliatory tools in Non-IP Agreements

- Universal Declaration of Human Rights (UDHR): Article 27.1-2
- International Covenant on Economic, Social, and Cultural Interests (ICESCR): Article 15.1©
- CESR: General Comment No.17

Conclusions and Recommendations

- Current E&Ls to copyright misbalanced in favour of copyright holder
- Right to learn requires strengthening of E&Ls by providing:
 - Mandatory E&L for equitable access to digital learning in national and regional laws
 - Statutory licensing; Reinterpretation of 3-step test
 - Applying instrumentalist theory in interpreting copyright provisions: Articles 7 & 8 TRIPS; Article 31.1 VCLT
 - Adopt policy advancing fair use, data sharing technologies, competition and differential pricing

QUESTIONS