Chapter 21
Legal Considerations of Providing Information in Support of Distance Learning by Digital Libraries in Universities in Kenya

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ABSTRACT

This paper examines the legal challenges librarians managing university libraries in Kenya experience when providing information services in support of distance learning. Kenya is experiencing enormous socio-economic changes. These changes have exerted serious pressure on higher education resulting to phenomenal expansion of university education. Unfortunately, the demand for university education has not translated into infrastructural expansion of universities. While university intake continues to grow at an alarming rate, funding for universities including libraries continue to diminish. An option taken by many universities to meet increased demand for higher education has been to invest in distance education. This option has its own challenges. Distance learning like residential programmes, require adequate financial investment in print and electronic information resources; and ICT infrastructure. Since libraries in Kenya are underfunded, they are compelled to reproduce the scarce materials available with them to serve distant learners as opposed to acquiring additional materials. This arrangement has equally serious challenges. Top on the list is copyright infringement. Without adequate exceptions and limitations to copyright restrictions, university authorities and librarians are likely to be charged for infringement.

INTRODUCTION

The growth of higher education in Kenya has been phenomenal. At independence in 1963, the country did not have a full-fledged university. The only institution of higher learning was the University College of Nairobi which was a constituent college of the University of East Africa. The student population in this constituent college was less than 1000. By March 2013, the number of universities in Kenya had shot up to over 55 universities. Out of this number, 22 comprised public universities. The total number of students in these universities has skyrocketed to over 200,000. The majority of these students are to be found in public universities. Of the public universities, Kenyatta University leads with a student enrolment of 61,928, followed by University of Nairobi (57162) and Moi University (34,477). The huge number of university enrolment has made the cost of funding university education unbearable to the government. This has forced public universities to look elsewhere for additional sources of funding to supplement the meager funds available from the government.

One of the areas that has suffered seriously from the financial crunch is the library. Ideally, a university library is supposed to receive a minimum of five percent of the total funding from the government. In Kenya, this rarely happens. The result has been that university libraries particularly in government funded universities have been seriously underfunded to the extent that it is difficult to access any popular title or issue of a journal on the library shelves. Shortage of information materials is the order of the day in public university libraries. This scarcity has been worsened by the presence of a growing number of university library staff who have decided to go back to class to improve on their papers. Many staff take advantage of their position to keep popular materials for themselves. In an impromptu exercise carried out in one public university library, a senior staff was found with over 150 titles in his office both processed and unprocessed!

In the absence of adequate and current information materials in the library, students have tended to rely very heavily on notes and handouts made available to them by lecturers. Lecturers, too, have tended to re-circle the same handouts year in and out. Photocopy shops have mushroomed in and around university libraries to take advantage of the high demand for reprographic services. To ensure that each student has access to handouts, lecturers deposit copies of their materials with copy shops to enable students to make copies at their convenience. This approach of imparting knowledge is not the best as it narrows students thinking and makes them to reproduce whatever they have been given. This is totally contrary to university teaching which seeks to make students creators of knowledge. Unfortunately, students can not generate knowledge when they have access to limited sources of information.

DISTANCE LEARNING IN KENYA

Distance learning is a mode of educational delivery where the instructor and the learner are separated by space and time; the instructions are delivered through specially designed materials and methods, supported by organizational and administrative structures; and arrangements. It uses a combination of learning methods varying from print, non-print to internet resources.

Distance learning is not new on the African continent and in Kenya in particular. It is something that existed long before independence. However, the kind of distance learning that existed in the pre-independence days was different from the one that exists presently. In the pre-independence days, it was conducted through correspondence by schools stationed essentially in Britain. Students were given

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